

(2015) 04 P&H CK 0410
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12556 of 1992

Sohan Singh and Others

APPELLANT

Vs

Additional Director, Rural Development & Panchayats
and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 4 RCR(Civil) 664

Hon'ble Judges : Rajive Bhalla and P.B. Bajanthri, JJ.

Bench : Division Bench

Advocate : Sarwan Singh, Senior Advocate and N.S. Rapri, Advocate, for the Appellant; P.S. Bajwa, Additional A.G., for the Respondent

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of a writ of certiorari quashing, order dated 12.08.1992, (Annexure P-11), passed by the Additional Director, Rural Development and Panchayats, Punjab, reversing an order passed by the Collector and holding that the land, in dispute, vests in the Gram Panchayat. Counsel for the petitioners submits that the land in dispute was allotted by the Rehabilitation Department, to one Bool Chand, son of Wasu Mal, on 23.04.1984. The land is excluded from the Shamilat Deh of the village by Section 2(g)(ii-a) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "the Act"). The petitioners admittedly purchased the land, in dispute, from Bool Chand, vide two sale deeds, dated 06.08.1984 and 06.07.1984. The mutations reflecting the sale deeds have been recorded in the revenue record. The petitioners have constructed a residential building and a shopping complex. The Gram Panchayat, however, filed a petition under Section 7 of the Act, which was allowed. The appeal filed by the petitioners was dismissed but CWP No. 4138 of 1987, filed by the petitioners was allowed by setting aside the orders of eviction and holding that as the land, in dispute, was allotted by the Rehabilitation Department, it is excluded from the Shamilat Deh of the village by Section 2(g)(ii-a) of the Act, thus, putting at rest the controversy relating to eviction and ownership.

2. Counsel for the petitioners further submits, that in the meanwhile the Gram Panchayat had approached the Rehabilitation Department, for cancellation of the allotment made in favour of Bool Chand. The Financial Commissioner, exercising power under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, cancelled the allotment. The petitioners filed CWP No. 1202 of 1991 which was allowed, on 23.12.2010, by holding that the allotment to Bool Chand is protected by Section 2(g)(ii-a) of the Act.

3. Counsel for the petitioners prays that as the land in dispute is excluded from the Shamilat Deh of the village, under Section 2(g)(ii-a) of the Act, the writ petition may be allowed and the impugned order, holding that the land in dispute is Shamilat Deh, and, therefore, vests in the Gram Panchayat, may be set aside.

4. As no one had put in appearance either on behalf of the Gram Panchayat, Nagar Panchayat or Municipal Committee, we requested counsel for the State of Punjab to defend the writ petition on behalf of the Gram Panchayat, the Nagar Panchayat and the Municipal Committee.

5. Counsel for the State of Punjab submits that the Panchayat has filed a reply denying that as the land was never evacuee property it could not be validly transferred by the Rehabilitation Department to the petitioners' vendor. The land, in dispute, is the share of Muslim migrants, in the Shamilat Deh of the village and must, therefore, vest in the Gram Panchayat, as held by the Hon'ble Supreme Court in Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others, .

6. We have heard learned counsel for the parties and perused the facts. The question that calls for an answer, is whether the land, in dispute, is included in the Shamilat Deh of the village and as a consequence, vests in the Gram Panchayat?

7. A perusal of admitted facts reveals that the land in dispute was allotted to Bool Chand, son of Wasu, on 23.04.1984, by the Rehabilitation Department, in satisfaction of his claim as a displaced person. Admittedly, the petitioners purchased a part of this land, bearing Khasra No. 41/2 (5-13) and 42 Min (0-7), by way of two separate registered sale deeds, dated 06.08.1984 and 06.07.1984, for Rs. 6,000/-, each, from Bool Chand. The Gram Panchayat, alleging that the land, in dispute, is Shamilat Deh, filed a petition under Section 7 of the Act, to eject the petitioners, from Khasra Nos. 41/2 (5-13) and 42 Min (0-7). The Collector, vide order dated 25.03.1986, accepted the petition and ordered the petitioners' eviction. The petitioners filed an appeal which was dismissed, by the Director, Panchayats, on 29.04.1987. The petitioners filed CWP-4138-1987, challenging the eviction orders. The writ petition was allowed on 23.12.2010 by holding that as a valid allotment was made in favour of the petitioners' vendor, the allotment and the land purchased by the petitioners is protected by Section 2(g)(ii-a) of the Act. The eviction orders were consequently set aside.

8. The Gram Panchayat had, in the meanwhile also approached the Rehabilitation Department for cancellation of the allotment made in favour of Bool Chand. The Financial Commissioner, Punjab, cancelled the allotment. The petitioners filed CWP-1202-1991 which was allowed, along with CWP-4138-1987, by setting aside the cancellation order, passed by the Financial Commissioner and holding that allotment made in favour of the petitioners" vendor is protected by Section 2(g)(ii-a) of the Act, thereby excluding the land, in dispute, from the Shamilat Deh of the village.

9. During pendency of the aforesaid proceedings, the petitioners filed a petition under Section 11 of the Act, claiming that as allotment made in favour of their vendor is protected by Section 2(g)(ii-a) of the Act, the land does not vest in the Gram Panchayat. The Collector after considering the evidence adduced by the parties, allowed the petition and held that as the land was allotted by the Rehabilitation Department to the petitioners" vendor, it is protected by Section 2(g)(ii-a) of the Act and, therefore, does not vest in the Gram Panchayat. Aggrieved by this order, the Gram Panchayat filed an appeal. The Director Panchayats has reversed this order by holding that the land, in dispute, vests in the Gram Panchayat.

10. Admittedly, the land, in dispute, was the share of Muslim migrants in the Shamilat Deh of the village and was allotted to the petitioners" vendor on 31.04.1984, in satisfaction of his claim as a displaced person. Admittedly, the petitioners have purchased this land by two separate sale deeds dated 06.08.1984 and 06.07.1984. The question as already noticed that calls for an answer is whether the land, in dispute, is included or excluded from the Shamilat Deh of the village and, therefore, vests or does not vest in the Gram Panchayat?

11. The Gram Panchayat claims ownership on the ground that as the land is the share of Muslim migrants in the Shamilat Deh of the village it vests in the Gram Panchayat as held by the Hon"ble Supreme Court in Gram Panchayat of village Jamalpur v. Malwinder Singh (supra). The Gram Panchayat also asserts that in view of the aforesaid judgment the allotment made in favour of the petitioners" vendor is null and void. The stand taken by the Gram Panchayat could have been accepted but for the fact that after the judgment in Gram Panchayat of village Jamalpur v. Malwinder Singh (supra), the State of Punjab, cognizant of the fact that between 1947 and the date of pronouncement of the judgment in Gram Panchayat of village Jamalpur v. Malwinder Singh (supra), vast tracts of land had been allotted by the Rehabilitation Department, to rehabilitate refugees from Pakistan and for other purposes, enacted Section 2(g)(ii-a) of the Act, to provide that land allotted on a quasi-permanent basis to a displaced person, before the 9th day of 1985 shall "not" be included in the Shamilat Deh of a village.

Section 2(g)(ii-a) of the Act reads as follows:-

"2(g) "Shamilat Deh" includes:-

(1) xxx xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) xxx xxx xxx

but does not include land which:-

(i) xxx xxx xxx

(ii) xxx xxx xxx

[(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985."

12. The land, in dispute, was admittedly allotted to the petitioners' vendor, as a displaced person, before the 9th day of July 1985. The validity of allotment order has been affirmed in CWP-1202-1991, decided on 23.12.2010, on the basis of Section 2(g)(ia) of the Act. The order of eviction has also been set aside, by order dated 23.12.2010, passed in CWP-4138-1987, once again on the basis of Section 2(g)(ii-a) of the Act, thereby leaving no ambiguity that though the land, in dispute, was the share of Muslim migrants in the Shamilat Deh of the village but as it was allotted to the petitioners' vendor before 09.07.1985, it is not included in the Shamilat Deh of the village in view of Section 2(g)(ii-a) of the Act. The Collector rightly placed reliance upon Section 2(g)(ii-a) of the Act while allowing the petition filed by the petitioners but the Director Panchayats reversed this order by ignoring Section 2(g)(ii-a) of the Act, thereby rendering his order contrary to law. Consequently, we have no hesitation in holding that the land, in dispute, is excluded from the Shamilat Deh of the village by Section 2(g)(ii-a) of the Act. The writ petition is allowed, the impugned order passed by the Additional Director, Rural Development and Panchayats, Punjab is set aside and the order passed by the Collector is restored but with no order as to costs.