

(2005) 01 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12158 of 2003

Suraj Bhan

APPELLANT

Vs

Deputy Commissioner and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 7(2)
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 8, 8(3)

Citation : (2005) 140 PLR 114

Hon'ble Judges : Satish Kumar Mittal, J;N.K. Sud, J

Bench : Division Bench

Advocate : Rakesh Nagpal, for the Appellant; Ritu Bahri, D.A.G. for Respondent Nos. 1 to 3, R.S. Malik and Roopak Bansal, for the Respondent

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—On 30.3.1993, the Gram Panchayat Barona filed an ejectment application against the petitioner u/s 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act), alleging therein that the petitioner has illegally encroached upon some area of Khasra No. 33/100, which was reserved in the consolidation for Harijans Chopal and vests in the Gram Panchayat. In the said proceeding, it was found that under the direction of the Hon'ble Supreme Court, issued in the year 1987, the petitioner was allowed 3 feet wide street out of the land of Harijans Chopal after payment of compensation, and in compliance of the said direction, the Block Development and Panchayat Officer allowed 3 feet wide street to the petitioner. However, subsequently, the petitioner illegally encroached upon 5 feet land, as shown in red colour in the site plan, which was annexed with the application as Ex.A2, and constructed a bath room thereon. Thus, contrary to the directions issued by the Hon'ble Supreme Court, the petitioner had widened the street by 8 feet instead of 5 feet. Therefore, vide order dated 29.3.1994. Annexure P-2, passed by the Assistant Collector, 1st Grade, Sonapat, the petitioner was ordered to be ejected from the encroached portion of the Harijans Chopal i.e. 5 feet in

width and 40 feet 3 inches in length, which was shown in red colour in the site plan by letters ABCD in the site plan.

2. Against that order, the petitioner filed an appeal before the Collector, Sonapat, which was disposed of vide order dated 22.9.1994. Annexure P-3, by observing that during the course of arguments, the petitioner and his brother have admitted ownership of the Gram Panchayat and requested to purchase the encroached portion as the Block Development & Panchayat Officer has reported that the encroachment made by the petitioner is not obstructing any kind of passage. On the basis of these facts, the petitioner was directed to get a resolution passed from the Gram Panchayat for transfer of the land in question and to get the proceedings for purchase completed within six months, failing which they will be treated as dispossessed from the land in question.

3. Thereafter, no step was taken by the petitioner to get the land transferred in his favour. In the year 2001, some residents of the village made a representation to the Deputy Commissioner, Sonapat to the effect that the petitioner had encroached upon land of the Harijans Chopal and he was ordered to be ejected from the said land subject to the condition of the passing of resolution by the Gram Panchayat within a period of six months, but no resolution has been passed by the Gram Panchayat and approved by the competent authority, therefore, the ejectment order be got implemented. Simultaneously, the petitioner also filed representation to the Deputy Commissioner to the effect that in view of the order dated 22.9.1994, he has deposited price of the land with the Gram Panchayat, therefore, the Gram Panchayat be directed to execute the sale deed in his favour regarding the disputed portion.

4. Both the representations were disposed of by the Deputy Commissioner vide impugned order dated 29.7.2003, Annexure P-8, whereby he observed that the petitioner had deposited the amount on 22.4.1995 i.e. after the expiry of six months time, therefore, he could not fulfill the condition of the order, as he had failed to get the resolution of the Gram Panchayat passed and complete the sale proceedings within the prescribed period.

5. In this petition, the petitioner has taken the stand that the amount of Rs. 8,000/- was deposited by him on 22.4.1995 vide receipt, Annexure P-6, and on the same day, a resolution, Annexure P-5, was passed by the Gram Panchayat. Subsequently he also filed an application before the Block Development and Panchayat Officer in the year 2001 for registration of the sale deed.

6. In the written statement, filed by the Gram Panchayat, it has been specifically pleaded that as per its record, no resolution dated 22.4.1995 was ever passed by it. It has been averred that on 22.4.1995, no meeting of the Gram Panchayat was ever held. In the reply, filed by respondents No. 1 to 3, it has been specifically averred that the Gram Panchayat neither sent any resolution to the Director, Pancahyats, for approval of the same nor any approval was ever granted for transfer of the land, which is required as per Rule 8(3) of the Punjab

Village Common Lands (Regulation) Rules, 1964 (as applicable to Haryana).

7. Counsel for the petitioner contends that once the petitioner has deposited an amount of Rs. 8,000/- with the Gram Panchayat on 22.4.1995 as compensation, then it was for the Gram Panchayat to pass resolution and get the same approved from the competent authority. Therefore, the petitioner should not suffer because of the lapses of the Gram Panchayat. He submitted that the petitioner deposited the amount after receiving the certified copy of the order dated 22.9.1994.

8. On the other hand, counsel for the respondent-Gram Panchayat submitted that the land in dispute was reserved in consolidation for Harijans Chopal and the same cannot be transferred to the petitioner. It was further submitted that a false resolution has been annexed by the petitioner with the petition. Actually, no such resolution was ever passed by the Gram Panchayat. He further submitted that the petitioner was already given 3 feet wide passage to his land from the land in dispute under the direction of the Hon'ble Apex Court, but subsequently, he again encroached upon 5 feet wide excess land, which shows his conduct. He submitted that the Collector has no jurisdiction under the Act for ordering the transfer of the land of the Gram Panchayat, as has been held by this Court in *Ram Chander v. The State of Haryana* and Ors. 1995 P.L.J. 1 and *Gram Panchayat Khanpur v. Joint Development Commissioner IRD Punjab* 1998(1) P.L.J. 84.

9. We have considered the arguments raised by counsel for the petitioner and have gone through the impugned orders and the record of the case. In our opinion, in this case, no interference is required. As per the order dated 22.9.1994, the petitioner was required to get a resolution of the Gram Panchayat passed and complete the formalities within a period of six months. In this case, no resolution has been passed by the Gram Panchayat. Copy of the resolution annexed by the petitioner has been specifically denied by the Gram Panchayat.

10. Rule 8(3) of the Punjab Village Common Lands (Regulation) Rules, 1964 (As applicable to Haryana) reads as under:-

"All inhabitants of the village are entitled to purchase or take on lease non-cultivable Shamilat deh from the Panchayat for residential, commercial, or industrial purposes, on the terms and for the period settled by the Panchayat, but all such sales or leases shall be subject to the approval of the Director of Panchayats.

11. In this case, neither any resolution was passed nor the same was ever approved by the competent authority. Though the appeal filed by the petitioner was disposed of with the condition that if the petitioner get the resolution passed from the Gram Panchayat and get it approved from the competent authority, the land could have been transferred in his favour, but no such resolution was passed by the Gram Panchayat or approved by the competent authority. Even otherwise, in our view, the Collector was having no jurisdiction to give directions to the

Gram Panchayat or to transfer the land owned by the Gram Panchayat in the ejectment proceedings under the Act. In this regard, it is settled proposition of law, as has been held by this Court in Ram Chander's case (supra) that only the Gram Panchayat under Rule 8 of the Rules is the competent person to pass the resolution subject to approval by the Director. It has further been held by this Court in Gram Panchayat, Khanpur's case (supra) that the Commissioner and the Collector have no power to give any direction to the Gram Panchayat to charge price of the land under the Punjab Village Common Lands (Regulation) Rules, 1964. Such rule does not authorise any other person except the Gram Panchayat to transfer the land owned by it on payment to third person. Thus, in our view, any observation made by the Collector in the order dated 22.9.1994 was without any jurisdiction and the same does not confer any right on the petitioner, who is illegal occupant of the Gram Panchayat land. In this case, on an earlier point of time, the Hon''ble Supreme Court allotted only 3 feet wide street from the land of the Harijans Chopal to the petitioner, but contrary to that order, the petitioner encroached upon 5 feet more area to widen the street. Therefore, keeping in view this conduct of the petitioner as well as the fact that he has placed on record a resolution, which has not been passed by the Gram Panchayat, we do not find any reason to interfere with the order dated 29.7.2003. Annexure P-8, passed by the Deputy Commissioner, Sonapat vide which the Block Development & Panchayat Officer, Kharkhoda and the Gram Panchayat Barona has been directed to remove the unauthorised possession of the petitioner.

12. Dismissed.