

(1992) 03 P&H CK 0093
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7597 of 1991

Surinder

APPELLANT

Vs

Collector-cum-District Development and Panchayats Officer
and Another

RESPONDENT

Date of Decision : 16-03-1992

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (1992) 102 PLR 38

Hon'ble Judges : H.S. Bedi, J

Bench : Single Bench

Advocate : S.S. Nijjar and M.S. Bedi, for the Appellant; Gurcharan Singh, for the Respondent

Final Decision : Dismissed

Judgement

H.S. Bedi, J.—The present petition is directed against the proposed auction of the land in dispute which was to be held in May 1991 and could not be held because of the stay order granted by this Court. The case of the petitioners is that the land which was under their cultivation belonged to the proprietors of the village and did not vest in the Gram Panchayat in terms of the Punjab Village Common Lands (Regulation) Act 1961 (hereinafter called the "Act") and, as such, the Gram Panchayat not being its owner was not entitled to auction the same. In support of their arguments, the petitioners have appended various copies of the revenue records which show them to be in cultivating possession on a part of the land in dispute, although the entry in the column of ownership identifies the land as being Shamlat Deh Hasab Razad Zar Khewat.

2. The stand of the petitioners has been controverted by the Gram Panchayat and it has been asserted that the revenue entries, referred to above, as also other documents appended with the reply, clearly show that the land in dispute was Shamlat Deh and vested in the Gram Panchayat in terms of Section 2(g) of

the Act. It has also been urged that the petitioners are neither right holders nor proprietors but are in fact lessees under the Gram Panchayat on the disputed land for the year 1990-91 and as the said period of lease had expired on 30th April, 1991, they were duty bound to restore possession thereof to the Gram Panchayat. In support of the assertion that the petitioners were in fact lessees, the respondents have appended with the reply the proceedings of the auction held for the year 1990 91 which show that the petitioners had in fact signed the proceedings" of the auction at that time accepting the lease. Mr. Bedi, learned counsel appearing on behalf of the petitioners, has today sought to file an affidavit controverting the facts referred to above, but permission was declined, as the reply in the main petition had been filed as far back as in July 1991 and no replication thereto had been filed. It to be noted that this case was part heard from last Friday and the petitioners apparently had become wiser after hearing the observations of the Court that day. It has also been urged by Mr. Gurcharan Singh, learned counsel appearing for the respondents, that if the petitioners were aggrieved by the proposed auction, the proper recourse for the petitioners was to file an application u/s 11 of the Act before the competent Collector, who after going into the merits of the controversy and examining the record could have arrived at a proper conclusion.

3. After hearing counsel for the parties, I find no merit in this petition. It is to be noted first and foremost that the Jand in question having been taken by the petitioners on lease, it was not open to them to deny the title of the Gram Panchayat. This has been so held by this court in the judgment reported as Inder Singh v. State of Punjab 1987 P. L. J. 614. Moreover, this court sitting on the writ side is not competent to go in to the disputed questions of fact as the matter in controversy must first be settled by the authorities under the Act. It needs to be reiterated that the petitioners have come to this Court directly by way of the present writ petition and have not chosen to take shelter under the provisions of the Act. It has also been pointed out to me during the course of arguments and endorsed by Annexure R-11 filed by the respondents with Civil Misc. No. 7174 of 1991 that an indential writ petition No. 7889 of 1991 (filed by petitioner No. 3 Majid in the present writ petition) was filed and was dismissed on 22nd October 1991 as being without merit. For this additional reason as well, I do not deem it proper to interfere.

4. Mr. Bedi, learned counsel for the petitioners has urged that the Rabi Crop is standing on a part of the land in dispute and they should be allowed time to harvest the same. I find force in this argument. The respondents are therefore directed to allow the petitioners- to harvest the crop and for that purpose not to dispossess them before 1st of May 1992, provided the petitioners pay to the Gram Panchayat within a period of two weeks from today damages for use and occupation calculated at the rate at which the auction took place for the year 1990-91. It is however, clarified that if the amount, referred to above, is not paid within a period of two weeks, there shall be no stay order in operation in favour of the petitioners.

5. In view of what has been stated above, I find no merit in the writ petition and the same is accordingly dismissed with costs which are assessed at Rs. 1000/-. The petitioners, other than Mazid, petitioner No. 3, shall however be at liberty to approach the authorities under the Act and take appropriate proceedings under it. Anything said herein will, however, not prejudice the decision of the authorities below.