
(2012) 03 P&H CK 0116

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No's. 358, 359, 360 of 2012 (O and M)

The Gram Panchayat

APPELLANT

Vs

Dalbir Kaur and others

RESPONDENT

Date of Decision : 07-03-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g)(5)

Citation : (2012) 166 PLR 700

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Advocate : Radhey Shyam Sharma, for the Appellant;

Judgement

Satish Kumar Mittal, J.—This order shall dispose of Letters Patent Appeals No. 358, 359 and 360 of 2012, filed by Gram Panchayat, Village Hjarawan Kalan, Tehsil Fatehabad, District Hissar. LPA No. 358 of 2012 has been filed against the order dated 26.4.2011, passed by the learned Single Judge, whereby the writ petition (CWP No. 7259 of 1988) filed by Dalbir Kaur (respondent No. 1 herein) was allowed and the order dated 8.10.1987, passed by the Chief Settlement Commissioner, Haryana, cancelling the allotment in favour of her vendor was set aside.

2. LPA Nos. 359 and 360 of 2012 have been filed against the common order dated 20.8.2010, passed by the learned Single Judge, whereby the writ petitions (CWP Nos. 2116 and 2117 of 1988) filed by Dalbir Kaur (respondent No. 1 herein) were allowed and the separate orders dated 8.10.1987, passed by the Chief Settlement Commissioner, Haryana, cancelling the allotment in favour of her vendors, were set aside.

3. Though there is delay of 280, 559 and 529 days in filing these appeals and the appellant has filed applications (CM Nos. 937-LPA, 940-LPA and 943-LPA of 2012) for condoning the delay, yet we have heard learned counsel for the appellant on merits, and gone through the orders, passed by the learned Single

Judge as well as the orders passed by the Chief Settlement Commissioner.

4. The facts are being taken from LPA No. 358 of 2012.

5. Undisputedly, before partition of the country in the year 1947, the revenue estate of village Hjarawan Kalan was owned, partly by Muslims and partly by non-Muslims. After partition of the country, the Muslim proprietors migrated to Pakistan. Their share in the "shamlat deh" was mutated in favour of the Custodian Department, being evacuee property, under the provisions of the East Punjab Evacuees (Administration of Property) Act (Act No. 14 of 1947), which was later on repealed by the Central Act, called the Administration of Evacuee Property Act, 1950. The share of the non-Muslim local proprietors was mutated in favour of the Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, 1953 (Act No. 1 of 1954) (hereinafter referred to as "the Act of 1953"). Later on, the revenue authority effected partition of the share of the Muslim migrants and share of the local non-Muslim proprietors. Accordingly, mutation of the partition was sanctioned. The part of land, which was mutated in favour of the Rehabilitation Department, being evacuee property, was allotted to one Baij Nath, being a displaced person, vide order dated 13.5.1981 and the mutation was sanctioned in his favour. Subsequently, respondent No. 1 purchased the said land from Baij Nath vide registered sale deed dated 29.6.1982 for consideration, and on the basis of the said sale deed, mutation of the land in question was sanctioned in her favour on 15.12.1984.

6. The issue of sanctioning mutation of the share of the Muslims in the "shamlat deh" in favour of the Custodian Department, instead of the Gram Panchayat was raised by various Gram Panchayats on the plea that such share in the "shamlat deh" should not be deemed to have vested in the Custodian Department being Muslim evacuee property, but it should vest in the Gram Panchayat under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act of 1961"). This dispute was decided against the Gram Panchayats, by a Division Bench of this Court in Gram Sabha and Gram Panchayat Daba v. The Chief Settlement Commissioner and others,¹ 1973 P.L.J. 398, and it was held that share of the Muslim proprietors in the shamlat deh vested in the Custodian Department. This issue was finally determined by the Hon'ble Supreme Court in Gram Panchayat of village Jamalpur v. Malwinder Singh and others,² 1985 P.L.J. 463, and it was held that the shamlat deh shall vest in the Gram Panchayat and the allotment of such land made by the Rehabilitation Department was held to be illegal. After the aforesaid judgment, the Chief Settlement Commissioner, vide order dated 8.10.1987, cancelled the allotment in favour of the vendor of respondent No. 1.

7. Respondent No. 1 challenged the said order by filing Civil Writ Petition No. 7259 of 1988. During the pendency of the said writ petition, provisions of the Act of 1961 were amended by Punjab Act No. 8 of 1995 and clause (ii-a) was added in Section 2(g)(5), according to which "shamlat deh" does not include the land, which has been allotted by the Rehabilitation Department on or before the 9th

day of July, 1985. The said amendment was upheld by a Division Bench of this Court in Gram Panchayat of village Kum Kalan v. The State of Punjab and others,³ (2010-4)160 P.L.R. 578. In view of the said decision and keeping in view the fact that allotment in the present case was before 9th day of July, 1985, the writ petition filed by respondent No. 1 was allowed and the impugned order of cancellation of allotment in favour of Baij Nath, vendor of respondent No. 1, was set aside by the learned Single Judge.

8. The Gram Panchayat has challenged the said order by filing the instant appeal.

9. Learned counsel for the appellant argued that the order of partition passed by the revenue authority was challenged by the Gram Panchayat by filing Civil Writ Petition No. 5280 of 1983, titled as Gram Panchayat Hijrawan Kalan v. State of Haryana and others,⁴. Vide judgment dated August 23, 1985, the said writ petition was allowed and in view of the judgment of the Apex Court in Gram Panchayat of village Jamalpur's case (supra), the mutation and Rapat Roznamcha Waqiyati were set aside. Learned counsel argued that in view of the said order, the learned Single Judge should not have reversed the order of the Chief Settlement Commissioner, which had set aside the allotment in favour of the vendor of respondent No. 1. We do not find any substance in the argument advanced by learned counsel for the appellant. Undisputedly, after the judgment of the Apex Court in Gram Panchayat of village Jamalpur's case (supra), the provisions of the Act of 1961 were amended. In the definition of "shamlat deh" contained in Section 2(g)(5) of the Act of 1961, clause (ii-a) was added, according to which the land which was allotted by the Rehabilitation Department on or before the 9th day of July, 1985, does not fall under the definition of "shamlat deh" and the said amendment was upheld by a Division Bench of this Court in Gram Panchayat of village Kum Kalan's case (supra). The learned Single Judge, while taking into consideration the said amendment and the judgment of this Court, has rightly set aside the order of the Chief Settlement Commissioner, cancelling the allotment of the land, which was admittedly made before 9th day of July, 1985, because such land does not fall under the definition of "shamlat deh". It is undisputed position that when the land in question was allotted to Baij Nath in the year 1981, the said share stood mutated in favour of the Rehabilitation Department. In view of the aforesaid amendment made in the Act of 1961, allotment of the land made before 9th day of July, 1985 was not liable to be cancelled. Thus, we do not find any illegality in the order passed by the learned Single Judge.

No merit. Dismissed.