

(1997) 02 P&H CK 0035
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4715 of 1982

The Khalsa College

APPELLANT

Vs

The Joint Director, Panchayats and Others

RESPONDENT

Date of Decision : 28-02-1997

Acts Referred:

Punjab Gram Panchayat (Common Purposes Land, Eviction and Rent Recovery) Act, 1976 — Section 2, 3

Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 5

Citation : (1997) 117 PLR 43 : (1997) 4 RCR(Civil) 175

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : Arun Jain, for the Appellant; A.K. Kalsi, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.

1 This writ petition is filed to quash the orders of the District Development and Panchayat Officer, Amritsar dated March 9, 1981, as confirmed by Joint Director. Panchayats, vide his order dated July 14, 1982.

2. The petitioner which is an educational institution, claims ownership of the land measuring 19 kanals in Khasra No. 47/13, 16, 17 and 18. The Gram Panchayat, Mahal, through its sarpanch filed an application before the District Development and Panchayat Officer, Amritsar, for eviction of the petitioner institution Under Sections 2 and 3 of the Punjab Gram Panchayat (Common purposes Land) Eviction and Rent Recovery Act, 1976 read with Section 5 of the Punjab Public Premises and land (Eviction and Rent Recovery) Act, 1973. The authorities below basing on the entry in jamabandi for the year 1972-73 came to the conclusion that the disputed land belonged to the Gram Panchayat and reserved for common purposes and accordingly ordered eviction. Hence this petition.

3. Admittedly, the disputed land was shown in the revenue record as Jumla

Mushtarka Malkhan as can be seen from the written statement filed by the Collector, District Development and Panchayat Office, Amritsar. Respondent No.3 Gram Panchayat in its written statement stated that the land was reserved for common purposes by the Consolidation Authorities which took place during 1962-63 and it is further averred inter alia that the petitioner institution is in unauthorised occupation of the land for the last eighteen or nineteen years. There is nothing on the record to show that the land was reserved for common purposes during the consolidation proceedings which admittedly took place in the year 1962-63. Neither the District Development and Panchayat Officer, Amritsar, nor the Joint Director, Panchayats, referred to the consolidation scheme in their orders. Thus, there is nothing to show that the land was reserved for common purposes and whether the said common purposes came to an end or still continuing. Admittedly, the land had been in possession of the institution for the last eighteen or nineteen years. If that is so, it is clear that the Gram Panchayat has not utilised this land for any common purpose as already said, the purpose for which the land was reserved, was also not known as the scheme was not referred to by any of the authorities below. The fact remains that the land has been described in the revenue records as Jumla Mushtarka Malkan. Even if assumed for a moment that the land was reserved for any common purpose, non-utilisation of land for nineteen years by the Gram Panchayat for the purpose for which it was reserved under the consolidation proceedings clearly indicates that it was no longer required by the Gram Panchayat for utilising the same for any common purpose. If the land has not been utilised, then it ceased to be the panchayat land and, therefore, it reverts back to the proprietors from whom it was taken as held by this Court in Gram Panchayat Vs. Director, Consolidation of Holdings and Others, . The mere entry in the jamabandi which was made in the year 1972 in favour of Gram Panchayat does not confer any right on the Gram Panchayat as admittedly Gram panchayat was never in possession of the land at any time. It is not the case of the Gram Panchayat that it was in possession of the land either in 1971 or during 1972-73. Therefore, no reliance can be placed on the entry in the jamabandi recorded for the year 1972-73. Both the authorities below failed to examine the scheme framed under the Consolidation Act and the entry and utilisation of the property by the occupant. In the circumstances of the case, when the petitioner was admittedly in possession of the land for about twenty years prior to 1932, the authorities cannot pass an order of eviction without referring to the scheme framed under the Consolidation Act. The Gram panchayat has not placed any material on record to show that it was in possession of the land at any time and it exercised its rights of ownership. In these premises, it cannot be said that the Gram panchayat, is entitled to evict the petitioner-Institution. In fact, the record shows that the educational institution has been utilising this land for the demonstration farm of the students of the Agriculture College, Amritsar. I am, therefore, not able to sustain the orders passed by the authorities below. Writ Petition is therefore to be allowed.

4. Writ Petition is accordingly allowed. No order as to costs.