

(1997) 07 P&H CK 0062

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 135 of 1987 in Civil Writ Petition No. 4295 of 1979 and C.M.A. 834 (LPA) of 1990

The State of Punjab and Another

APPELLANT

Vs

Bhag Singh and Others

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13, 13B

Citation : (1997) 117 PLR 403 : (1997) 4 RCR(Civil) 78

Hon'ble Judges : T.H.B. Chalapathi, J;R.S. Mongia, J

Bench : Division Bench

Advocate : G.S. Grewal, AG and G.S. Cheema DAG, for the Appellant; R.S. Mittal and Arti Gupta, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Mongia, J.—This judgment will dispose of six Letters Patent Appeals No. 135 to 139 of 1987, and 102 of 1992. The first five Letters Patent Appeals are against a common Judgment of a learned Single Judge dated December 9, 1986, by which five writ petitions viz. C.W.Ps. No. 4295 of 1979, 307, 316, 315 and 306 of 1980 were allowed. The main judgment was written in CWP No. 4295 of 1979. The sixth Letters Patent Appeal, i.e., LPA No. 102 of 1992 is against the judgment of another learned Single Judge in C.W.P No. 333 of 1980, which was decided on March 20, 1991, in the same terms as in CWP No. 4295 of 1979. The State of Punjab has come up in these appeals against the aforesaid judgments of the learned Single Judges.

2. The facts in all the aforesaid cases are almost identical and are being taken from C.W.P. No. 4295 of 1979 against which L.P.A. No. 135 of 1987 has been filed. The respondents herein, i.e., the petitioners in C.W.P. No. 4295 of 1979 claimed themselves to be the owners of certain land, situated in the revenue estate of village Ganeshpur, Tehsil and district Patiala, and they alleged to be in possession of the same for more than 15 years. On February 26, 1976,

apprehending threat to their peaceful enjoyment of the land and interference in their possession at the behest of the Gram Panchayat, they filed a civil suit in the Court of Subordinate Judge Ist Class, Patiala, against the Gram Panchayat and the Gram Sabha of village Ganeshpur. The suit was for declaration that the plaintiffs were owners in possession of the land and for permanent injunction for restraining the defendants from interfering in their possession of the land in dispute. The Gram Panchayat contested the suit that the plaintiffs were not the owners of the land in dispute and were not entitled to the relief claimed. However, the learned Subordinate Judge 1st Class, Patiala, after considering the entire evidence and earlier judgments of the Civil Court decreed the suit of the plaintiffs on April 17, 1976. This judgment became final between the parties.

3. The Punjab Village Common Land (Regulations) Act, 1961, was amended by the Punjab Legislature by Punjab Act No. 19 of 1976. The Amending Act received the assent of the President of India on April 15, 1976, which was published in the Punjab Gazette (Extra Ordinary) Legislative Supplement Part I on April 27, 1976. By virtue of Section 7 of the Amending Act, Section 13 of the principal Act was substituted. Section 13 prior to its Substitution read as under:

"Bar of jurisdiction of Civil Court. No. Civil Court shall have jurisdiction over any matter arising out of the operation of this Act."

The Substituted Section 13 is in the following terms:

"13. Bar of jurisdiction of civil courts No Civil Court shall have jurisdiction -

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat under this Act, or

(c) in respect of any matte." which the Commissioner or the Collector is empowered by or under this Act to determine."

It may further be observed that Section 13-B was also introduced by the Amending Act No. 19 of 1976, which is in the following terms:

"13-B. Provisions of this Act to be overriding. The provision of this Act shall have effect notwithstanding anything to the contrary in any law, or any agreement, instrument, custom or usage, or any decree or order of any court or other authority."

After the amending Act came into force, it appears that it as for the first time that on September 12, 1979, an application was filed by the Gram Panchayat, Ganeshpur, to the Collector, Patiala, u/s 7 of the Punjab Village Common Land (Regulations) Act for putting the Panchayat in possession of the land in question, which, according to the Panchayat, came to be vested in it as "Shamilat Deh" land. A notice dated November 7, 1979, was received by the writ petitioners

regarding the proceedings for ejectment launched by the Gram Panchayat to appear in the Court on November 17, 1979. The writ petitioners challenged the impugned notice by way of writ petition. The State of Punjab contested the writ petition. The learned Single Judge allowed the writ petition and quashed the notice.

4. the learned Single Judge held that the Amending Act barring the jurisdiction of the Civil Court had come into force on April 27, 1976, and the decree of the Civil Court having been obtained prior to that date, i.e. April 17, 1976, the same could not be ignored by the Collector and it was binding between the parties being inter se judgment. Since the civil Court had decreed the suit in favour of the writ petitioners that they were the owners in possession and respondent-Gram Panchayat could not interfere, no application lay before the Collector under the Punjab Village Common Land (Regulations) Act. Learned counsel for the appellant argued that in fact even before the substitution of Section 13 of the Act, the civil Court's jurisdiction was barred and, therefore, any decree granted by the civil Court was a nullity and could be ignored by the Collector under the Punjab Village Common Land (Regulations) Act, and therefore, according to the learned counsel, the learned Single Judge was not correct in allowing the writ petition by giving effect to the Civil Court decree between the parties. On the other hand, learned counsel for the respondents - writ petitioners argued that in fact Section 13 before its substitution only created bar to the civil Court jurisdiction over any matter arising out of the operation of the Punjab village Common Land (Regulations) Act, which meant that the Gram Panchayat for purposes of ejectment of alleged unauthorised persons from the Shamilat land could only file a petition under the Act and could not go to the civil court but this did not bar the civil Court jurisdiction to decide the question of title etc. at the behest of a land owner against a Gram Panchayat. It was for this reason that Section 13 was substituted to even bar the civil Court's jurisdiction to entertain a civil suit at the behest of a land owner. He relied upon the judgment in *Bajinder Singh v. The Assistant Collector Ist Grade Guhla* (1983)85 P.L.R. 528, as also a Full Bench judgment of this Court in *Gram Panchayat Village, Bathoi Kalan, Patiala Vs. Jagar Ram and others*, , to contend that the decrees passed by the Civil Court could not be set at naught by virtue of Section 13-B of the Act as introduced by the Amending Act and Section 13 as substituted could not be applied retrospectively. Since in the present case, the decree had been obtained prior to the enforcement of Section 13 as substituted (which could not be given retrospective effect according to the learned counsel), the learned Single Judge had rightly held the decree to be binding between the parties and the application of the Gram Panchayat under the Punjab Common Land (Regulations) Act as not maintainable.

5. After hearing learned counsel for the parties we are of the view that there is no substance in these appeals. While dealing with similar provisions of the Haryana Act as Section 13-B of the Punjab Act, it was observed by the Division Bench in *Baljinder Singh's case* (Supra) that the retrospective abrogation of

jurisdiction of Civil Courts validly exercised by them from 1961 onwards and thereby giving retrospective effect from the date of the original enforcement of the principal Act, i.e., May 4, 1961, clearly amounted to trenching upon the judicial power by the Legislature. Similar view was taken by a Division Bench in *Gurnam Singh v. Joint Director, Panchayats, Punjab* 1984 P.L.J. 580. The Full Bench judgment (in which one of us (R.S. Mongia, J.) was a member) in *Gram Panchayat, Village Bathoi Kalan's case* (Supra) held that the decrees passed by the competent civil Courts between the parties could not be ignored by the authorities under the Act which were granted prior to the amendment of the Act by Punjab Act No. 19 of 1976.

6. Consequently, we are of the view that the inter se decrees between the parties could not be ignored in the present case which were obtained prior to April 27, 1976, on which date the Amending Act was published in the official gazette and became effective. No fault can be found in the judgments of the learned Single Judge allowing the writ petitions.

7. For the forgoing reasons, we find no merit in these L.P.As., which are hereby dismissed. However, there will be no order as to costs.