

(2013) 07 P&H CK 0041

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 10179 of 2007 and Regular Second Appeal No. 3481 of 2009 (O&M)

Vijay Singh

APPELLANT

Vs

The Commissioner

RESPONDENT

Date of Decision : 04-07-2013

Acts Referred:

Citation : (2013) 07 P&H CK 0041

Hon'ble Judges : Jasbir Singh, J;Gurmeet Singh Sandhawalia, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Jasbir Singh, J.—This order will dispose of Civil Writ Petition No. 10179 of 2007 titled as "Vijay Singh v. The Commissioner, Rohtak Division, Rohtak and Others" and Regular Second Appeal No. 3481 of 2009 titled as "Virender Singh and Another v. Raj Singh and Others". To dictate order, the facts are being taken from Civil Writ Petition No. 10179 of 2007. In both these cases, dispute pertains to encroachment upon khasra No. 798 (passage) in village Ladain. As per the facts on record, on this passage, various right-holders have entered into unauthorized occupation. The private respondent, namely Raj Singh filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (As Applicable to State of Haryana) (hereinafter referred to as "the Act") for ejectment of Randhir Singh, Jabar Singh, Surender and Ran Singh from the above said passage. The Collector and the Appellate Authority passed ejectment order against the above said persons. The matter came to this Court in Randhir Singh and Others v. Commissioner, Rohtak Division, Rohtak and Others, (Civil Writ Petition No. 4985 of 1997), which was dismissed vide order dated 27.1.1998. When dismissing that writ petition, this Court opined that unauthorized occupants have been identified as per report made by the Local Commissioner. Taking note of the report of Local Commissioner dated 29.10.1995, it was specifically averred that the land over which construction has

been raised by the above said four persons was not part of khasra No. 808 as was projected by them. When dismissing that writ petition, it was clarified that those four persons/petitioners be evicted from portion of the land indicated by the Local Commissioner in his report dated 29.10.1995 which was put on record as Annexure P3 i.e. the portion indicated by letter A, B, E, F in the site plan prepared at the time of spot inspection. Till today, no action has been taken to execute those orders. In the meantime, one Hawa Singh filed an application against petitioner Vijay Singh for his ejectment from the land falling in khasra No. 798 (passage). That application was allowed vide order dated 19.5.2003. The petitioner failed in appeal and revision. A positive finding was given that he was in an unauthorized occupation of part of the above said khasra number.

2. When this matter was taken up by this Court on 13.7.2012, taking note of contradictory demarcation reports made by the revenue authorities and also the stand taken by the Block Development and Panchayat Officer, Matanhail, District Jhajjar in the written statement filed in this case, the following order was passed:-

"Admittedly, vide order dated 18.3.1996, the Assistant Collector 1st Grade, Jhajjar, directed eviction of Randhir Singh son of Mange Ram, Jabar Singh son of Mir Singh, Surinder Singh son of Bhup Singh, and Ran Singh son of Ramji Lal from a part of Khasra No. 798, which is, admittedly, a passage. The eviction order was affirmed in appeal and the writ petition filed by these persons was also dismissed on 27.1.1998. It, however, appears that for the reasons best known to the Gram Panchayat and the Assistant Collector 1st Grade, Jhajjar, the orders of eviction were not executed. Thereafter, one Hawa Singh, alleged to be a nephew of Ran Singh, filed a fresh petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act") against the petitioner. The application was allowed. Appeal filed by the petitioner, was dismissed and revision was also dismissed."

We have perused the record, particularly reply dated 01.12.2010 filed by the Block Development and Panchayat Officer, Matanhail, District Jhajjar and paragraphs 5 and 6 of the affidavit read as follows:

"5. That it is pertinent to mention here that both the ejectment order dated 18.3.1996 and 19.5.2003 has been passed regarding the same portion of rasta No. 798. In order dated 18-3-1996 Sh. Raj Singh S/o. Ram Singh has been declared unauthorized occupant over the portion of rasta No. 798 whereas in order dated 19-5-2003 Sh. Vijay Singh (petitioner) and Sh. Hawa Singh S/o. Sh. Umrao who is the respondent No. 4 in the present writ petition has been declared unauthorized possession over the same portion of rasta No. 798. The ejected portion in both orders dated 18-3-1996 & 19-5-2003 is the same portion of rasta No. 798.

"6. That due to the stay order dated 12-7-2007 passed in the present writ petition which has been mentioned in para No. 4 of the affidavit, the

unauthorized possession of Sh. Raj Singh S/o. Ram Singh etc. in compliance of ejectment order dated 18-3-1996 which was affirmed in CWP No. 4985 of 1997 could not be removed because this portion is the same portion which is involved in ejectment order dated 19-5-2003 (under challenged in the present writ petition)."

A perusal of the above paragraphs reveals that two orders have been passed with respect to the same portion of rasta No. 798. On a question being addressed to counsel for the State of Haryana, as how two orders could be passed with respect to the same land, counsel is not in a position to explain the passing of two separate orders against two separate sets of persons with respect to the same portion of the rasta. Faced with this situation, counsel for the parties state that they have no objection if order dated 18.3.1996 is executed and encroachment, referred to in the said order, is removed. In fact, counsel for the respondents is fair enough to state that all encroachments in rasta No. 798 should be removed.

In view of the facts noticed hereinabove, and the statements made by counsel for the parties, we direct the Assistant Collector 1st Grade, Jhajjar, to execute order dated 18.3.2006, within 15 days from the date of receipt of a certified copy of this order and file a report before this Court.

At this stage, counsel for respondent No. 4 states that execution of the order passed by the Assistant Collector 1st Grade, Jhajjar, may create a law and order problem in the village.

The apprehension of the counsel appears to be prima facie correct. The Superintendent of Police, Jhajjar, is directed to ensure that order dated 18.3.1996, is carried out without any hindrance from any person whatsoever."

In response to the above said order, a compliance report was submitted in Court. In that report, it is stated that Surender Singh son of Bhup Singh, who was in an unauthorized possession of part of khasra No. 798 has removed the same voluntarily. It is necessary to mention here that in the affidavit dated 1.12.2010, filed by Pardeep Ahlawat, Block Development and Panchayat Officer, Matanhail, District Jhajjar it is stated that portion of the disputed land in possession of other right holders could not be removed because of pendency of an appeal in this Court.

3. Counsel for the petitioner was not satisfied with the demarcation report. Again, this Court, on 2.5.2013, passed the following order:-

"The dispute in the present case is, whether there is any encroachment on path No. 798?

Counsel for the parties agree that in view of different demarcation report submitted by the revenue authorities, it would be necessary that path No. 798 is demarcated afresh and whosoever is in unauthorized occupation of any part of path No. 798, may be evicted summarily.

We have heard counsel for the parties and after due consideration of their submissions, direct the District Development and Panchayat Officer, Matanhail, District Jhajjar, to demarcate path No. 798 situated in village Ladian, Tehsil and District Jhajjar, by reference to the Aksshjra, musavi and the field book and to submit a report to this Court setting out the particulars of unauthorized occupation and unauthorized occupants of path No. 798."

The Block Development and Panchayat Officer, Matanhail, District Jhajjar was directed to demarcate the land falling in khasra No. 798.

4. In compliance to the above said order, demarcation report has been put in Court today and the same is taken on record. Reading thereof indicates that petitioner-Vijay Singh, Rattan Singh, Arjun and Mahender Singh were found in unauthorized possession of the khasra number in dispute. The existence of passage bearing khasra No. 798 is shown in the Aks Shajra etc. placed on record and also in the report made by the Local Commissioner. The public property has been wrongly occupied by the right-holders, it has caused injustice to the general public and they are continuing in possession of the unauthorized occupation without any justification.

5. Under the circumstances, we dispose of this writ petition directing the Deputy Commissioner, Jhajjar to personally oversee the execution of orders passed against Randhir Singh, Jabar Singh, Surender Singh and Ran Singh in the year 1998 qua which writ petition viz. Civil Writ Petition No. 4985 of 1997 was dismissed by this Court on 27.1.1998 and also the orders passed against the petitioner and get the passage cleared forthwith. In the report made by the Block Development and Panchayat Officer, Matanhail, unauthorized occupation of some other individuals was also indicated, against whom action be initiated, as per law, forthwith. The Deputy Commissioner, Jhajjar, on receipt of a certified copy of order of this Court shall do the needful within two months. So far as appeal viz. Regular Second Appeal No. 3481 of 2009 is concerned, it is contention of the appellants therein that portion of the land in their possession is not part of khasra No. 798, rather it falls in khasra No. 808. Qua above said fact, a positive contrary finding has been given by this Court in Civil Writ Petition No. 4985 of 1997 titled as Randhir Singh & Others v. Commissioner, Rohtak Division, Rohtak decided on 27.1.1998. Furthermore, concurrent findings of fact have been given by both the Courts below that land in possession of the appellants falls in khasra No. 798. No illegality has been indicated in the above said orders. Regular Second Appeal No. 3481 of 2009 is also disposed of with the observations made above.