
(2011) 09 P&H CK 0209
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 16705 of 2011

Wattan Singh @ Sadhu Singh and another	APPELLANT
Vs	
State of Punjab and others	RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Companies Act, 1956 — Section 3
Constitution of India, 1950 — Article 226
General Clauses Act, 1897 — Section 3(7)
Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 — Section 2, 5, 6
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 13A

Citation : (2011) 164 PLR 678 : (2012) 1 RCR(Civil) 942

Hon'ble Judges : Satish Kumar Mittal, J; M. Jeyapaul, J

Bench : Division Bench

Judgement

Satish Kumar Mittal, J.—Two residents of village Salhopur, Tehsil and District Gurdaspur have filed this writ petition under Article 226 of the Constitution of India for issuing a writ in the nature of Certiorari for quashing the order dated 31.5.2011 (Annexure P-11) passed by the Deputy Commissioner, Gurdaspur exercising the powers of the Commissioner, whereby the order dated 31.5.2010 (Annexure P-9) passed by the Sub Divisional Magistrate, Gurdaspur exercising the powers of the Collector, has been set aside.

2. The Government of Punjab in consonance with Rule 13A of the Punjab Village Common Lands (Regulation) Rules, 1964, had formulated a scheme for allotment of 5 marlas plots to the homeless, Scheduled Castes, weaker sections of the society etc. in the villages. Clause (4) of the said scheme provides for condition to be applied regarding allotment of plots. Under the scheme, all the applications of the beneficiaries were to be considered by the Gram Sabha without giving due favour to anybody. The Deputy Commissioner was to grant permission to the Gram Panchayat after seeing the resolution of Gram Sabha in which selection of beneficiary was made. The Deputy Commissioner is required to ensure that the

selection and allotment of land will be made fairly. After the allotment by the Gram Panchayat, the concerned Block Development and Panchayat Officer is to issue letter to the concerned beneficiary.

3. In the present case, the Gram Sabha prepared the list of beneficiaries and on the recommendations of the Gram Sabha and Panchayat, the allotment was made by the Block Development and Panchayat Officer, with the approval of the Deputy Commissioner, to the private respondents, who were homeless, Scheduled Castes and weaker sections of the society.

4. Both the petitioners and four other persons, namely, Bachan Singh, Balwinder Singh, Jagir Singh and Kulwinder Singh had filed an application u/s 5/6 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as "the Public Premises Act") for eviction of the persons to whom the plots were allotted on the grounds that their possession on those plots was unauthorized as to some of them the plots were allotted, though they were not eligible, and some of the allottees had not constructed their houses on the allotted plots within the stipulated period. In the said application, only Gram Panchayat, Block Development and Panchayat Officer and District Development and Panchayat Officer were made the parties, and none of the persons against whom eviction order was sought, who was allotted the alleged plot, was arrayed as a respondent.

5. The Sub Divisional Magistrate, exercising the powers of the Collector under the aforesaid Act, allowed the said application and the allotment of all the allottees was cancelled and the plots were ordered to be entered in the name of the Gram Panchayat while observing that when the terms and conditions of the allotment orders allotting plots to the allottees had not been fully complied with, they have lost their rights claiming allotment of plots in their names and the allotment made in their names needs to be cancelled.

6. Feeling aggrieved against the said order, 29 allottees filed an appeal before the Commissioner. The Deputy Commissioner, Gurdaspur exercising the powers of the Commissioner, allowed the said appeal and set aside the order of the Collector, while observing as under:-

I have carefully considered the arguments put before me by the parties and have perused the record. The delay is condoned in the interest of justice. The Gram Panchayat Sallopur made the allotment of plots in landless persons under the scheme of the department and this allotment has not so far been cancelled. The application for eviction in the lower court has not been filed by the Gram Panchayat which is competent authority. It is surprising as to how this eviction application has been entertained at all when the same has not been filed by the party competent to seek eviction and the persons ordered to be evicted are still the allottees of the plots. When the competent authority has not cancelled the allotment of plots allotted to the appellants, they cannot be said to be unauthorized occupants of public premises. The application for eviction has been filed against

the Gram Panchayat. Block Development and Panchayat Officer, District Development and Panchayat Officer, Gurdaspur and none of these respondents was the allottee of the plots in respect of which the eviction order was sought. The persons/appellants against whom eviction order was actually sought and passed by the Collector were not made the parties and order of eviction was passed in their absence at their back which is against principles of natural justice. The Collector does not seem to have applied his mind and has committed gross error in passing the impugned order. In view of this factual and legal position I accept the appeal and set aside the impugned order.

This order has been challenged in the present petition.

7. We have heard the learned counsel for the petitioners and gone through the impugned order.

8. u/s 5 of the Public Premises Act, on the application filed by a public body, an unauthorised person, in occupation of the public premises, can be evicted, after providing him a reasonable opportunity of being heard, if the Collector is satisfied that the public premises are in unauthorised occupation of the said person. The said provision can only be invoked by the Gram Panchayat if it found that some persons have unauthorisedly occupied the public premises. Section 2(e) of the Public Premises Act defines "public premises" which reads as under:-

"public premises" means any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the State Government and includes any premises belonging to, or taken on lease by, or on behalf of -

(i) any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust.

(ii) any company as defined in section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty-one per cent of the paid up share capital is held by the State Government; and

(iii) any Corporation [not being a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), or a local authority] established by or under a Central Act as defined in clause (7) of section 3 of the General Clauses Act, 1897, or a Punjab Act and owned or controlled by the State Government.

9. It is pertinent to mention that under the Public Premises Act, there is no provision for cancellation of the plots allotted to the homeless, Scheduled Castes, weaker sections of the society etc. under the Scheme framed by the Government of Punjab in consonance with Rule 13A of the Punjab Village Common Lands (Regulation) Rules, 1964. Undisputedly, the plots allotted to the petitioners under the Scheme were never cancelled by the competent authority, after providing an opportunity of hearing to them. After the allotment, the mutation of the ownership was sanctioned in favour of 54 allottees and their names appeared in the Jamabandi for the year 2002-03. Thereafter the Gram Panchayat was not the owner of the plots. If this was the factual position, then no application either by

the Gram Panchayat or the inhabitants of the village could have been filed under the Public Premises Act because the plots allotted to the private respondents do not fall under the definition of "public premises" as envisaged in Section 2(e) of the Public Premises Act. In our view, the Collector had entertained the application filed by the petitioners and four other persons, referred to above, who are inhabitants of the village, u/s 5/6 of the Public Premises Act, and passed the impugned order even without providing an opportunity of hearing to them without having any jurisdiction to cancel the allotment made by the authority under the Scheme prepared by the Government of Punjab under Rule 13A of the Punjab Village Common Lands (Regulation) Rules, 1964.

10. During the course of hearing, an argument has been raised that some of the respondents, who were allotted the plots, have not raised the construction on those plots within the prescribed time. Since the allottees are weaker sections of the society, homeless and Scheduled Castes, they could not have saved the sufficient funds for constructing the houses on 5 marlas plots allotted to them. But merely because they have not constructed their houses on the plots allotted to them within the specified period, their allotment cannot automatically be cancelled by the authority, particularly when he has no jurisdiction to cancel the allotment. Only the competent authority, after providing an opportunity of hearing to the affected persons, could have cancelled the allotment if it is satisfied that the allotment in favour of a particular person was illegal. The authority under the Public Premises Act has no jurisdiction to entertain such application. In our opinion, the petitioners, who claim themselves to be the proprietors, even have no locus standi to challenge the allotment of plots because neither they belong to the weaker sections of the society nor Scheduled Castes nor homeless. The Gram Panchayat has formulated a Scheme and allotted the plots to the homeless, Scheduled Castes, weaker sections of the society etc. long back. If there was illegal allotment, the petitioners could have brought this fact to the notice of the authority, but at the belated stage they moved an application before the Sub Divisional Magistrate, exercising the powers of Collector, who had no jurisdiction to cancel the allotment on the flimsy ground that some of the allottees have not constructed the houses. We are of the opinion that the Commissioner has rightly set aside the order of the Collector which was wholly illegal and without jurisdiction. Thus, we do not find any illegality in the impugned order passed by the Commissioner.

Dismissed.