

(2006) 03 P&H CK 0035

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 92 of 2005

Tejinder Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision: March 2, 2006

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11, 7

Citation: (2006) 144 PLR 211 : (2006) 3 RCR(Civil) 309

Hon'ble Judges: S.N. Aggarwal, J; H.S. Bedi, J

Bench: Division Bench

Advocate: Som Nath Saini, for the Appellant; A.S. Grewal, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

H.S. Bedi, J.

The petitioner was elected as Sarpanch of the Gram Panchayat, Nagla in the elections to the Panchayats held in June, 2003. As per the averments made in the petition, the Gram Panchayat filed an application u/s 7 of the Punjab Village Common Lands Regulation Act, 1961 on 25.7.1994 against one Lachhman Singh. As a counter-blast, it appears that Lachhman Singh also filed a petition u/s 11 of the aforesaid Act, which was decided on 29.11.1996 declaring him as owner of the land in question. The Gram Panchayat, thereafter filed an appeal before the Director Panchayats, which was decided on 19.9.2003 and the order dated 29.11.1996 was reversed and the Gram Panchayat was held to be the owner of the land in dispute. The Director, however, ordered the land to be transferred to Lachhman Singh @ Rs. 1,000/- per marla. The Gram Panchayat through the petitioner challenged this part of the order by way of Civil Writ Petition No. 16033 of 2003, in which notice of motion was issued and stay was granted. This petition was eventually dismissed and withdrawn with liberty to file a fresh one on the same cause of action. Civil Writ Petition No. 10736 of 2004 was thereafter filed, in which notice of motion was issued and the parties were directed to maintain status quo. It is the case of the petitioner

that as a consequence of the action taken, Lachhman Singh manipulated a complaint against the petitioner that he had encroached upon land measuring 5 Bigha 12 Biswasi of Khasra No. 440(0-11). The petitioner was accordingly issued a show cause notice, Annexure P-5, in this regard. The petitioner submitted his reply dated 22.11.2004 (Annexure P-2) and pointed out that a Government Dispensary had been constructed on this very land in Khasra No. 440 about 20 years ago along with a boundary wall. He further stated that his father had constructed his house about 15 years ago over Khasra No. 439, which was owned and possessed by him. The Deputy Director after a preliminary enquiry placed the petitioner under suspension vide order dated 7.12.2004 (Annexure P-3) giving a finding that he had encroached upon the land of the Gram Panchayat. The petitioner preferred an appeal (Annexure P-4) against the said order before the Director, Panchayats, Punjab, who vide his order dated 22.12.2004 (Annexure P-5) dismissed the same and up-held the order of the Deputy Director. The orders Annexures P-3 and P-5 have been impugned in the present writ petition.

2. We have heard the learned Counsel for the parties. The learned Counsel for the petitioner submits that in the regular enquiry, which had been conducted pursuant to the preliminary enquiry, the petitioner had been exonerated, but a fresh enquiry has been ordered against him, which was the subject-matter of Civil Writ Petition No. 9924 of 2004, which too was listed along with this matter.

3. The relevant portion of the findings recorded by the Special Secretary in the order dated 22.12.2004 (Annexure P-5) is reproduced as under:

The respondent Director has himself visited the spot. On the spot the Sarpanch is the owner of the Khasra No. 439 which should have been 57 fts. breadth but is 89 fts. at the spot. The khasra No. 440 is the ownership of the Gram Panchayat, the length of this should have been 133 fts, while it is 117 fts. From this is clear that the Sarpanch has unauthorised!) occupied the Panchayat land and where the appellant is residing there electricity meter is in the name of father of the appellant. The Law Officer further submitted that according to the voter-list of 2003. Tejinder Singh and his father Charan Singh has been shown as one unit.

After hearing both the parties and perusing the record especially the preliminary report, demarcation report and voter-list 2003 it transpires that in the voter-list of Election Department the appellant and his father have been shown as one unit. Demarcation report and during the measurement made by the Director at the spot it was found that the appellant is in unauthorised occupation of this land. So there is no defect in the order of the lower Court. There is no merit in the appeal. The same is dismissed.

We are of the opinion that a mathematical precision with regard to an encroachment of a small piece of land cannot be made the basis for suspension of a Sarpanch. Even if it is taken to be correct that the petitioner had encroached upon

an area of 5 Biswasi of Khasra No. 440, such a mistake can occur at any time more particularly when land is under cultivation. Moreover, we find that the allegations against the petitioner that he had encroached upon land measuring 5 Biswas and 12 Biswasi through his father has completely been falsified by the Order Annexure P-5 and a look at the Jamabandi for the year 1998-99 (Annexure P-7) appended to the writ petition which shows that the owners of Khasra No. 439, which adjoins Khasra No. 440 are Kulwant Singh, Bhag Singh and Charan Singh etc. Charan Singh is the father of the petitioner. We reiterate that in the regular enquiry conducted against the petitioner, he has been exonerated.

We are, therefore, of the opinion that the writ petition must succeed. The impugned order Annexure P-3 and P-5 are quashed. No order as to costs.