

(1988) 02 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3124 of 1979

Bawa Lachhman Dass and
another

APPELLANT

Vs

The Collector, Kurukshetra and
others

RESPONDENT

Date of Decision: Feb. 22, 1988

Acts Referred:

- Constitution of India, 1950 - Article 226

Hon'ble Judges: M.R. Agnihotri, J

Bench: Single Bench

Advocate: J.K. Sharma, with Mr. Y.K. Sharma, for the Appellant; C.B. Kaushik, for the Respondent

Judgement

M.R. Agnihotri, J.

In this petition under Article 226 of the Constitution of India, the prayer is for the quashing of the order passed by the Assistant Collector 1st Grade, Kaithal, on 27th April, 1979 (Annexure P-3) and the order passed by the Collector, Kurukshetra, on 6th August, 1979 (Annexure P-4), in pursuance of the remand order issued by this Court on 20th October, 1978, in Civil Writ Petition No. 3834 of 1978, which is to the following effect:-

It has been contended by the learned counsel for the petitioners that the land in dispute is attached to Mandir Devi Dass and is, thus, the land attached to the religious institution. We find from the order of the Assistant Collector (respdt. No. 2) that such a plea was raised by the petitioners before him but the Assistant Collector did not go into that matter on the plea that the consolidation records were not produced before him. An extract from the scheme of the consolidation of the village has been placed before us in which entries Nos. 21, 36, 37 and 45 are being relied on the side of the petitioners. Whether the land in dispute is attached to the said Mandir or not is essentially a finding of fact which the authorities below have not

enquired into as they should have faced with this situation, Mr. Maluk Singh, learned counsel for the Gram Panchayat respondent No. 3, says that the impugned order be quashed and the Assistant Collector may be asked to look into the matter afresh after giving opportunity to the parties to lead their evidence. We accordingly quash the impugned orders dated 31st May, 1978, passed by the Assistant Collector 1st Grade, Kaithal, and the order dated 31st August, 1978, passed by the Additional Collector, Kurukshetra, and direct that the former shall go into this question after allowing the parties to lead evidence and shall determine whether the land in question is attached to the Mandir in question and, if so, what is its effect in law. The writ petition is disposed of accordingly. No order as to costs.

Sd/- Bhopinder Singh Dhillon

Sd/- S.P. Goyal

Judges.

2. After remand of the case, when the matter came up before the Assistant Collector 1st Grade, Kaithal, it was contended on behalf of the petitioners Bawa Lachhman Dass Chela Shri Ram Piare Dass, Mohtmim of Samadh Bawa Devi Dass and Shiv Mandir Bawa Devi Dass and Rameshwar Diss Chela Bawa Lachhman Dass; that even though the land in dispute was recorded as Shamilat Deh in the revenue papers, yet it was meant for the shrine and, therefore, stood excluded from the definition of "Shamilat deh" u/s 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961. However, the learned Assistant Collector, without deciding the question of title with regard to the land in dispute, proceeded to examine the evidence available on the record and came to the conclusion that the disputed land vested in the Gram Panchayat and the Gram Panchayat was its owner. Consequently, on the basis of the above facts, order u/s 7(1) of the said Act were also issued "for the ejectment of the respondents from the disputed land excepting the houses and Samadhi etc. (building portion) shown in the revenue records" and simultaneously ordered that possession of the disputed land be got delivered to the Gram Panchayat forthwith.

3. Against the above order of the Assistant Collector, the petitioners preferred an appeal before the Collector. Kurukshetra, wherein it was inter alia pleaded by the petitioners that "in this case the proceedings u/s 7 of the Punjab Village Common Lands (Regulation) Act, are not maintainable because where ever a question of title arises, the Assistant Collector 1st Grade has first to decide the question of title and the proceedings u/s 7 can continue only if that question is decided. In support of this assertion he also produced (Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of village Atil and others) 1979 P.L.J. 1 and said that because the dispute in respect of his land is as to whether in fact this land is owned by the Panchayat, therefore, the Assistant Collector 1st Grade should have first decided this question u/s 13-B of the above Act."

4. In reply to this, the learned counsel for the respondents pleaded that this objection could not be raised by the petitioners at that stage as the Assistant

Collector was only called upon by the High Court to decide as to whether the land belongs to the Mandir or not and what would be its legal effect. According to the learned counsel for the respondents, it was improper for the petitioners to raise that objection, and with this argument of the learned counsel for the respondents the Collector agreed and overruled the objection. Consequently, the appeal was dismissed and it was held that the land in dispute was not for the purpose of worship and was, therefore, not covered by the proceedings u/s 7 of the Act.

5. It is a settled view of this Court, that where during the proceedings initiated under the Punjab village Common Lands (Regulation) Act, 1961, if the question of title was involved, then the only proper course available to the authorities under the Act is to first (sic) the question of title instead of proceeding u/s 7 of the said, Act. Reliance has been placed by the learned counsel for the petitioners on Tara Chand's case (supra), Gram Sabha Balad Kalan and another v. Sarwan Singh and others 1981 P.L.J. 311, Gram Panchayat Village Mau v. Amin Chond 1983 P.L.J. 329, and Baba Nihal Gir v. The Commissioner, Ambala Division and others 1986 P.L.J. 678. I am bound by the above position of law.

6. Consequently, I accept this writ petition the impugned orders passed by the Assistant Collector 1st Grade, Kaithal (Annexure P-3) and the Collector, Kurukshetra (Annexure P-4) are quashed and it is directed that the Assistant Collector shall first decide the question of title as raised by the petitioners. Till then, the petitioners shall not be dispossessed from the land in dispute. There shall be no order as to costs.