

(2002) 11 P&H CK 0042

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 2492 of 1983

Jai Narain

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Nov. 13, 2002

Acts Referred:

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

Citation: (2003) 134 PLR 20 : (2003) 1 RCR(Civil) 655

Hon'ble Judges: N.K. Sodhi, J

Bench: Single Bench

Advocate: O.P. Sharma, for the Appellant; Ritu Bahri, for Respondent Nos. 1 and 4 and D.V. Gupta, Respondent No. 5, for the Respondent

Final Decision: Dismissed

Judgement

N.K. Sodhi, J.

Raghubir Respondent initiated proceedings u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable in the State of Haryana (hereinafter called the Act) for the ejectment of the petitioners from the land in dispute on the ground that the latter had encroached upon a public thoroughfare which vested in the Gram Panchayat as a result of which the public path had been narrowed down. The petition was contested by the petitioners only on the ground that their residential house in which they were residing had been constructed almost 80 years back by their forefathers and that the house did not even touch the public path. They also pleaded that there had been no demarcation of the land in dispute and, therefore, it could not be said that they had encroached upon any part of the public path. A Local Commissioner was appointed by the Assistant Collector who demarcated the land and submitted his report holding that the petitioners had constructed a pucca haveli after making encroachment on the public street and that only 14"6" wide path had been left at the spot. On a consideration of the oral and documentary evidence fed by the parties, the Assistant Collector accepted the demarcation report of the Local

Commissioner and held that the petitioners were in unauthorised occupation of the public street. He accordingly allowed the application and ordered their ejectment. Feeling aggrieved by this order, the petitioners filed an appeal before the Collector, Narnaul who by his order dated 15.4.1992 dismissed the same. Still not satisfied the petitioner filed a revision petition before the Commissioner who by his order dated October 21, 1982 dismissed the same in limine. It is against these orders that the present petition has been filed under Article 226 of the Constitution.

2. I have heard counsel for the parties and am of the view that the writ petition deserves to be dismissed. Sub-section (1) of section 7 of the Act, as it then stood, reads as under:-

"7. Power to put panchayats in possession of certain land in Haryana - (1) An Assistant Collector of the first grade, having jurisdiction in the village may, either suo motu or on an application made to him by a panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other officer authorised by the Block development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the Panchayat under this Act and put the Panchayat in possession thereof and for so doing, the Assistant Collector of the first grade may exercise the powers of a Revenue Court in relation to the execution of a decree under the Punjab Tenancy Act, 1887:

Provided that, if in any proceedings, the question of title is raised, the Assistant Collector of first grade shall first decide the question of title u/s 13-A."

It will be useful to notice the provisions of Section 13-A of the Act as well which reference has been made in the proviso to Section 7(1). This section reads as under:-

"13-A. Adjudication. - (1) Any person or in the case of panchayat, either the panchayat or its gram sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have vested in the panchayat under this Act, may within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, file a suit for adjudication, whether such land or other immovable property is shamlat deh or not or whether any land or other immovable property or any right, title or interest therein vests or does not vest in panchayat under this Act, in the court of the Assistant Collector of the first grade having jurisdiction in the area wherein such land or other immovable property is situate.

2. The procedure for deciding the suits filed under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908".

3. The contention of the learned counsel appearing for the petitioners is that his clients had raised the question of title before the Assistant Collector and, therefore, it was incumbent upon the said officer to have first decided the question of title u/s 13-A of the Act before proceeding to decide the petition u/s 7. This arguments is fallacious. It is true that if a question of title had been raised the Assistant Collector had no option but to decide the same first u/s 13-A of the Act by converting himself into a court and after allowing the parties to lead their evidence but in the present case it was not necessary for the Assistant Collector to follow that procedure because the petitioners did not raise any question of title before him. I have perused the written statement filed by the petitioners before the Assistant Collector and it is nowhere pleaded by them that they were the owners of the land in dispute over which the residential house had been constructed by their forefathers. In the alternative they could have pleaded that they had become owners of the land in their occupation by adverse possession but even this plea has not been taken. All that has been pleaded is that the residential house in which they are residing had been constructed by their forefathers and that they had not encroached on any part of the public street as was alleged by the applicant (respondent No. 5 herein) in his application before the Assistant Collector. Since the question of title had not been raised before the Assistant Collector, there was no occasion for him to convert the application into a plaint and try the same as a regular suit in a civil court.

4. As regards the unauthorised occupation of the petitioners, the authorities below have concurrently found that they have encroached upon the public street. This is a finding of fact and based as it is on the material on the record, there is no reason for me to interfere with the same in the exercise of jurisdiction under Article 226 of the Constitution. This finding does not suffer from any error of law or fact which could be said to be apparent from the record so as to warrant interference by this Court. In fact, this finding was not seriously challenged by the learned counsel for the petitioners.

In the result, the writ petition fails and the same stands dismissed with no order as to costs.