

(1988) 07 P&H CK 0011

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 3080 of 1979

Gurnam Singh

APPELLANT

Vs

Gram Panchayat
Village Mangoli and
others

RESPONDENT

Date of Decision: July 25, 1988

Acts Referred:

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

Hon'ble Judges: Gokal Chand Mital, J

Bench: Single Bench

Advocate: R.S. Rathor, for the Appellant; T.S. Mangat, for the Respondent

Final Decision: Allowed

Judgement

Gokal Chand Mital, J.

Gram Panchayat Pipal Mangoli filed an application u/s 7 of the Punjab Village Common Lands (Regulation) Act 1961, (hereinafter called the "Act") against Gurnam Singh to seek possession in regard to agricultural land measuring 34 Bighas 15 Biswas, the details of which are given in para 2 of the writ petition, on the plea that it vested in the Gram Panchayat and Gurnam Singh was in unauthorised and illegal possession thereof. The application was contested and it was pleaded that it was not Shamilat Deh and did not vest in the Gram Panchayat.

2. The Assistant Collector vide order dated 28.10.1974 ordered the eviction of Gurnam Singh. His appeal before the Collector was dismissed by order dated 28.12.1977. He went up in revision before the Commissioner, Patiala Division, who vide order dated 7.3.1979, copy Annexure P. 1, allowed the same after recording several findings, and the relevant of which deserve mention:-

(1) The Gram Panchayat had failed to prove that the land in dispute was Shamilat Deh and vested in it.

(2) Notice was not issued to Gurnam Singh in accordance with law and the entire proceedings are void.

As a result, the revision was allowed and after setting aside the order of the authorities below the application was dismissed. However, observation was made that it will be open to the Gram Panchayat to file a fresh application.

3. The Gram Panchayat filed fresh application u/s 7 of the Act, copy of which is Annexure P. 2 On receipt of the notice of fresh application, Gurnam Singh filed C.W.P. No. 3080 of 1979 in this Court in which notice of motion was issued and proceedings in the fresh application were stayed. On receipt of the notice of the writ petition filed by Gurnam Singh. Gram Panchayat Pipal Mangoli filed a separate Civil Writ Petition No. 3759 of 1979 to challenge the order of the Commissioner in regard to the findings recorded against it. Both the Writ Petitions were admitted to be heard together and are thus being disposed of by this common judgment since they arise out of the same proceedings.

4. In Paras 23 and 24 of the judgment of the Commissioner, he had recorded a finding that the Gram Panchayat failed to produce evidence to show that the land in dispute was Shamilat Deh and thus vested or deemed to have vested in it, and on this finding observed that the ejectment of Gurnam Singh could not be entered. And he came to the conclusion that the orders of ejectment deserved to be vacated. If the findings recorded in paras 23 and 24, afore referred to, are to be upheld then Shri S.S. Rathore, Advocate, appearing for Gurnam Singh is right in urging that the Commissioner erred in law in permitting the Gram Panchayat to file a fresh application on the same matter, but if it is otherwise then, of course, the matter raised in the writ petition filed by the Gram Panchayat will have to be considered.

5. On a careful reading of paras 23 and 24 of the order of the Commissioner I find that the finding is unassailable. The Gram Panchayat produced documents from Kharif 1965 onwards, whereas the requirement of law is to see the position as it emerged when the Shamilat Law, i.e., 1954 Act came into force. If the Gram Panchayat had been able to show that when the Shamilat Law came into force, the land in dispute was recorded as Shamilat and was being used for common purposes of the village, it would have vested in the Gram Panchayat and then it would have been for Gurnam Singh to show that his case fell within one of the exceptions contained in Section 2(g) of the Act, which defines Shamilat Deh and provides as to which land would not be Shamilat Deh.

6. Mr. T.S. Mangat, advocate, who appeared for the Gram Panchayat was pointedly asked if he could show that keeping in view the definition of Shamilat contained in Section 2(g) of the Act whether there was any material on the record to prove that the land in dispute was Shamilat. He was unable to refer to any evidence prior to Kharif 1965. Under the circumstances the Commissioner was right in coming to the conclusion that the Gram Panchayat failed to prove the land in dispute was Shamilat

Deh. Accordingly, on proceedings for ejectment against Gurnam Singh could be started. Once this finding is recorded second petition under the same provision and on the same cause of action, could not be allowed to be filed because the order of the Commissioner recording a definite finding that it is not Shamilat Deh would operate as res judicata between the parties.

7. Before parting with the writ petition filed by Gurnam Singh one preliminary objection raised by the Gram Panchayat deserves to be dealt with. The preliminary objection raised was that the Commissioner, Patiala Division, whose order is sought to be challenged was not made a party in the writ petition filed by Gurnam Singh. In the other writ petition filed by the Gram Panchayat the Commissioner has been made a party. It is true that the Commissioner should have been made a party in the writ petition filed by Gurnam Singh but in spite of this preliminary objection the writ petition was admitted for regular hearing. Moreover in the writ petition filed by the Gram Panchayat in suite of impleading Commissioner, Patiala Division as a party appearance has not been put on his behalf. In any case by not impleading him as a party, on the peculiar facts (not to be cited as precedent) there is no prejudice caused to the Gram Panchayat and on the technical objection the relief and justice to which Gurnam Singh is entitled to cannot be denied merely on the ground that at proper stage the Commissioner was not impleaded as a party. His impleading as a party would be of a formal nature as he has neither to oppose nor to support any of the parties. Accordingly, this objection is overruled.

8. Adverting to the writ petition filed by the Gram Panchayat the only argument raised by Mr. T.S. Mangat Advocate, which deserves to be mentioned is that it was also found by the Commissioner that Gurnam Singh was not properly served in the proceedings and therefore, the Commissioner was right in observing that the Gram Panchayat could file fresh proceedings. As already noticed above the findings in paras 23 and 24 are categorical that the Gram Panchayat has failed to prove if the land in dispute is Shamilat Deh and vests in it. Once a firm finding like this is recorded, no right vests in the Gram Panchayat to take proceedings u/s 7 of the Act. Therefore, the additional finding recorded by the Commissioner on the point of proper service would not entitle the Gram Panchayat to start proceedings afresh.

9. For the reasons recorded above while Civil Writ Petition No. 3759 of 1979 filed by the Gram Panchayat is dismissed, Civil Writ Petition No. 3080 of 1979 filed by Gurnam Singh is allowed to the extent that the order of Commissioner where he has observed "however, the Panchayat shall be within its competence to file a fresh application u/s 7 of the Act in this case in accordance with law" is hereby quashed as a result the Gram Panchayat could not file a fresh application u/s 7 of the Act, and the fresh application Annexure P. 2 was incompetent and, therefore, the same and the proceedings taken thereon are hereby quashed. However, the parties are left to bear their own costs.