
Gurnam Singh Vs State of Punjab

Civil Writ Petition No. 943 of 2003

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Jan. 21, 2003

Acts Referred:

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

Citation: (2003) 3 LLJ 324 : (2003) 134 PLR 52 : (2003) 1 RCR(Civil) 806

Hon'ble Judges: S.S. Nijjar, J; Hemant Gupta, J

Bench: Division Bench

Advocate: Rajiv Atma Ram and G. Atma Ram, for the Appellant; H.S. Sran, Addl. A.G., for the Respondent

Final Decision: Allowed

Judgement

S.S. Nijjar, J.

The petitioner at the relevant time was working as Tehsildar and was posted at Jalandhar. Certain proceedings were pending

in the Revenue Courts with regard to some land wherein the controversy related to the vesting of the land. It was a moot point as to whether the

land vested in the Panchayat or in the Proprietors of the Village. The matter was ultimately taken to the Supreme Court by the Gram Panchayat of

Village Mand Chakoki, Tehsil and district Kapurthala (hereinafter referred to as "the Gram Panchayat"), On 6.8.1999, the Supreme Court

disposed of the Special Leave Petition, after noticing the submissions made by the counsel for the Gram Panchayat to the effect that under the

relevant statutes application to Punjab, the land in question vests in the Gram Panchayat. He had further submitted that the Gram Panchayat may

be permitted to raise the aforesaid plea before the Consolidation Officer. The SLP was disposed of with a direction that the Gram Panchayat shall

be at liberty to raise all such pleas as are available to them before the Consolidation Officer, including the plea that the land vests in Gram

Panchayat and therefore, the authorities under the Act have no jurisdiction to deal with the matter. On remand, the petitioner passed a quasi

judicial order and held that the land did not vest in the Gram Panchayat. Against the aforesaid order, an appeal has been filed before the Settlement

Officer, Kapurthala by order dated 7.8.2002 has held that the land does not vest in the Gram Panchayat. A categorical finding has been given that

the Gram Panchayat has not been able to give any evidence regarding the ownership of the Gram Panchayat. A charge-sheet was issued to the

petitioner on 23.11.2001 on the ground that the decision of the petitioner was against the instructions issued by the Government of Punjab dated

27.11.1996, 27.6.1997 and 22.7.1997. After a departmental enquiry, the petitioner has been punished by imposing a major penalty i.e. stoppage

of five increments with cumulative effect. This order has been passed by the Financial Commissioner on 5.12.2002. Mr. Rajiv Atma Ram has

submitted that the impugned order is liable to be quashed on the short ground that it is not a speaking order.

2. In view of the above, notice of motion. Mr. H.S. Sran, Additional A.G., Punjab accepts notice on the asking of this Court.

3. A number of submissions have been made by Mr. Rajiv Atma Ram which may be briefly noticed. He has submitted; (i) that it was incumbent on

the Financial Commissioner to consider the reply to the show cause notice dated 24.7.2002 whilst passing the impugned order, (ii) That the

charge-sheet is wholly without jurisdiction as the petitioner has passed a quasi judicial order. The order being appealable, no disciplinary action

could have been initiated against the petitioner, (iii) That the impugned order does not even take into consideration the order passed by the

Collector, Kapurthala who after considering the entire matter u/s 11 of the Punjab Village Common Land Regulations Act, 1961, has come to the

conclusion that the land does not vest in the Gram Panchayat. (iv) That the order of punishment could not have been passed without granting an

opportunity of hearing to the petitioner, (v) That the Supreme Court had directed that on the plea of ownership being raised by the Panchayat, the

same shall be decided by the Consolidation Officer. Therefore, the petitioner had only done that was expected of him by the Supreme Court, (vi)

That no allegations have been made by any party that the petitioner has acted either mala fide or that the order, which is quasi-judicial, has been

passed for extraneous considerations. Therefore, no departmental proceedings could have been initiated against the petitioner.

4. We are of the considered opinion that the aforesaid submissions made by the learned counsel for the petitioner ought to have been duly

considered by the Financial Commissioner before passing an order of punishment. A perusal of the order, Annexure P-9 shows that it is wholly

non-speaking.

5. Consequently, the writ petition is allowed. The impugned order, Annexure P-9 is quashed and set aside. The matter is remanded back to the

Financial Commissioner. He is directed to pass speaking order after giving due opportunity of hearing to the petitioner. Let the order be passed

within a period of two months of the receipt of a certified copy of this order. Mr. Sran is directed to communicate the order passed by this Court

to the respondents for necessary action.

Copy of this order be given dasti under the signature of Special Secretary of this Court.