

(1998) 03 P&H CK 0045

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 18215 of 1996

Balwinder Singh and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision: March 16, 1998

Acts Referred:

- Punjab Village Common Lands (Regulation) Rules, 1964 - Rule 6

Citation: (1998) 119 PLR 672 : (1998) 3 RCR(Civil) 243

Hon'ble Judges: N.K. Aggarwal, J; G.C. Garg, J

Bench: Division Bench

Advocate: Gurcharan Singh Gandhi, for the Appellant; A.P. Manchanda, Addl. A.G. for Respondent Nos. 1 and 2 and J.B. Tacoria, for the Respondent

Judgement

N.K. Aggarwal, J.

This is a petition by three persons, namely, Balwinder Singh, Tara Singh and Jodha Singh, under Articles 226 and 227 of the Constitution for declaring the auction of land as arbitrary, illegal and mala fide and for restraining the respondents from conducting auction of the land which is in the petitioners' possession.

2. The petitioners are residents of Guldehra Tehsil Pehowa, District Kurukshetra and were landless persons belonging to a backward class. The petitioners have explained that an announcement was made by the then Chief Minister of Punjab, Sardar Partap Singh Kairon, asking the people to settle on the land for cultivation so as to make the barren land and the Jungle cultivable. The petitioners and others came down to village Guldehra to settle there and they were given land for reclamation on patta for an indefinite period. An assurance was given to them that, on growing more food, proprietary rights would be granted to them and that the lease money paid by them would be finally adjusted towards the price of the land. The petitioners brought the land under cultivation, spending huge money and putting hard labour. They installed tubewells and constructed pucca residential

houses on the land. The land was originally given to them on patta with lease money ranging from Rs. 5/- to Rs. 10/- per acre per year which the petitioners used to deposit regularly against receipts issued by respondent No. 3 Gram Panchayat. The lease money was increase from time to time and it is now Rs. 180/- per Killa per year. The petitioners have asserted that their names find mention in khasra girdawari as well as the jamabandi. Respondent No. 3, Gram Panchayat, stopped accepting lease money from the petitioners.

3. The petitioners grievance is that the Gram Panchayat was likely to auction the land without authority. The State Government of Haryana had prepared a scheme for allotment of land on the payment of reserve price and instructions were issued to the revenue authorities in this regard. Another Gram Panchayat of Kallar Majra, Tehsil Gulha, sought concurrence of the State Government to sell shamlat deh land at the reserved price for 5 years to old pattedars. Respondent No. 2 Block Development and Panchayat Officer Pehowa, District Kurukshetra, verified the possession and cultivation of the occupants of the land and forwarded the revenue records to Director Panchayats, Haryana, but no action was taken even through a period of six years has passed. The petitioners have, therefore, sought a direction from this Court to the State Government to transfer the land in occupation of the petitioners. The lease money paid by them, may be adjusted towards the price and no auction should be held. It is explained that the petitioners have been shown in the revenue records as gair Marusi (tenants-at-will). The petitioner's case is that they cannot be ejected from the land till they are complying with the terms and conditions of the lease and are paying lease money.

4. Respondent No. 3, Gram Panchayat has controverted the petitioners' plea on all counts. It is stated that the petitioners are unauthorised occupants of the land inasmuch as no lease can be granted except by open auction for a specified period. Rule 6 of the Punjab Village common Lands (Regulation) Rules, 1964 (for short, "the Rules") requires that lease for shamlat deh can be granted by the Gram Panchayat by open auction only for a period not exceeding two years if it is under plough and for five years if the land is infested with trees, bushes, etc. Since the petitioners are admittedly tenants, the Gram Panchayat is authorised to auction the land under Rule 6 of the Rules.

5. On the consideration of the rival contentions, it is found that the petitioners are admittedly occupying the land on payment of lease money. Receipt (Annexure P-1) relates to lease money paid by petitioner No. 1, Balwinder Singh for 1988-89, Receipt (Annexure P-3) shows payment of fee of Rs. 50/- in the year 1957 by petitioner No. 2 Tara Singh father of petitioner No. 1 Balwinder Singh. Similarly, receipt (Annexure P-2) shows the payment of lease money by Tara Singh for 1978-79. Receipt (Annexure P-5) shows the payment of lease money by petitioner No. 3, Jodha Singh, for 1971-72. Receipt (Annexure P-4) shows payment of Rs. 115/- by Jodha Singh for patta. Receipt (Annexure P-6) again shows the payment of lease money by Jodha

Singh for 1995-96 to 1997-98. Jamabandi (Annexure P-12) relating to 1992-95 shows petitioner No. 1 Balwinder Singh, as pattedar and Khasra girdawari (Annexure P-15) for 1995-96 again shows him as Pattedar. Jamabandi (Annexure P-11) relating to 1967-68, shows petitioner No. 2 Tara Singh, as gair marusi. Similarly, Jamabandi (Annexure P-7) for 1977-78, again shows him gair marusi. Likewise, Khasra girdawari Annexures P-12 and P-14 relating to the years 1978-79, 1979-80 and 1981-82, show petitioner No. 2, Tara Singh, as gair marusi. Jamabandi (Annexure P-8) shows Tara Singh as "pattedar villages" in respect of 1987-88. Similarly, petitioner No. 3, Jodha Singh has been shown as "pattedar halqa niwasi" in the year 1992-93 in the jamabandi (Annexure P-9) and he has been shown as "pattedar village halqa" in Khasra girdawari for 1997-98 (Annexure P-10).

6. From the receipts showing the payment of lease money as also from the revenue records, it is apparent that the petitioners are holding possession of land on payment of lease money. Their ejection from the land would, therefore, depend either on non-payment of the lease money or any violation of the terms and conditions of lease.

7. The petitioners have also filed a copy of the decree dated 29.3.1995, passed by the Additional Senior Sub Judge, Pehowa, in suit No. 546 of 1993 titled "Balwinder Singh son of Tara Singh son of Ishar Singh v. Gram Panchayat Guldehra". It appears that the decree was granted by the civil court ex parte and the defendant was restrained from dispossessing the plaintiff from the suit land forcibly. Similarly, another decree (Annexure P-16) was granted on 15.10.1988 in a civil suit (No. 16 of 1988) titled as Tara Singh son of Ishar Singh son of Sh. Kaushal Singh v. Gram Panchayat, Guldehra" on the basis of a compromise by Additional Senior Sub Judge, Kaithal. It is, however, apparent that the civil court decree dated 29.3.1995 in favour of petitioner No. 1, Balwinder Singh, does not help him in any way except that he can be ejected from the land in accordance with law only and not forcibly. However, decree dated 15.10.1988 in favour of petitioner No. 2, Tara Singh, operates in his favour though granted on the basis of a compromise. The plea put forward by the learned counsel for the Gram Panchayat is that the suit was not maintainable in the civil court in the light of provisions of Section 25 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "the Act"). It is also argued that the civil court decree dated 15.10.1988 is not a valid decree inasmuch as the Sarpanch had no authority to enter into a compromise in a civil suit without a resolution from the Gram Panchayat. The decree is said to be collusive, void and a nullity.

8. The learned counsel for the petitioner has placed reliance on decision of this Court in *Tale and Ors. v. Gram Panchayat of village Katwal and Ors.*, 1974 P.L.J. 57, wherein it was held that a tenant of a Gram Panchayat cannot be ejected from the land at the mere whim and sweet will of the Gram Panchayat. It is essential for the Gram Panchayat to establish contravention by the tenant of the terms of the grant. A reading of Sub-rule (b) of Rule 19 of the Rules shows that possession of a tenant

becomes unauthorised if the grant, made in his favour, is terminated in accordance with the conditions of the grant. Sub-rule (c) lays down that the possession of a tenant would become unauthorised if he sublets the land under his tenancy or if acts in contravention of any of the express or implied terms of the grant. The learned counsel has thus argued that the Gram Panchayat is required to show that the petitioners have violated any of the terms and conditions of the grant/lease. Reliance was also placed on a decision of the Supreme Court in *State of Haryana and Ors. v. Kamal Co-operative Farmers' Society Limited and Ors.* (1993) 105 P.L.R. 220 (S.C.), where the civil court decree had been challenged. It was held that the provision, inserted in the Act by the Haryana Amendment Act No. 2 of 1981, was unconstitutional in so far as it directed the Assistant Collector Ist grade to disregard or disobey the earlier civil court decree and judicial orders was observed that the legislature has no power to abrogate civil court decree or orders of judicial adjudications by merely declaring these as no longer valid or binding on parties. The learned counsel has contended that the civil court decree, dated 15.10.1988, in favour of Tara Singh, was a valid decree unless set aside by a superior Court and, therefore, it was binding on the revenue authorities. Similarly, decree dated 29.3.1995, in favour of the petitioner No. 1 Balwinder Singh was also binding on the parties.

9. The learned counsel for the petitioner has also placed reliance on another decision of the Supreme Court in *Charan Singh and Ors. v. State of Punjab and Ors.* 1997(1) P.L.J. 188. It was held in that case that the lease of uncultivable waste land, granted to the members of Scheduled Castes, could not be cancelled inasmuch as the land had been reclaimed and brought under cultivation after hard work. The Government was directed to regularise possession.

10. The learned counsel for the petitioners has argued that the Government has already framed scheme so as to settle the persons, who are in continuous and peaceful possession of land. It is necessary to fix the reserve price of such land and allot it to the petitioners as they were in continuous possession of the land as lessees or tenant since 1957 onwards.

11. The learned counsel for the Gram Panchayat has, on the other hand, pointed out that when the petitioners were admittedly tenants on the land under lease, they were liable to be ejected after the expiry of the lease period. Their possession is unauthorised and the Gram Panchayat was within its jurisdiction to issue auction notice of the land under Rule 6 of the Rules. Reliance has been placed on a decision of this court in [Hussan Lal Vs. Krishna Devi](#), wherein it was held that the possession of a lessee after the expiry of the lease period becomes unauthorised and such a lessee was liable to be ejected.

12. On a consideration of the controversy arising from the rival contentions, it is clear that the petitioners are in occupation of the land on payment of lease money. It is, however, not clear from the rent receipts (Annexures P-1 to P-6), filed by the

petitioners, if they have regularly paid lease money to the Gram Panchayat or if any of them is a defaulter. Therefore, the matter needs fresh examination. Even if they are tenants-at-will, they are liable to be ejected in termination of their tenancy under the Act. In *Sarwan and Rati Ram v. The Joint Director Panchayat, Punjab and Ors.* 1988 P.L.J. 262 (FB), it has been held that a tenant-at-will can be ejected from the land after terminating his tenancy in accordance with law.

13. In the result, the writ petition is disposed of with the observation that the petitioners, being tenants-at-will, can be ejected from the land under their occupation after terminating their tenancy in accordance with law inasmuch as they are not unauthorised occupants or trespassers", but tenants paying lease money to the Gram Panchayat. Till the tenancy is terminated by respondent No. 3 Gram Panchayat and the petitioners are ejected according to law, the Gram Panchayat shall not auction the land in occupation of the petitioners.