

(2013) 08 P&H CK 0655

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 12539 of 1994

Smt. Mali

APPELLANT

Vs

Collector, Mohindergarh and
Others

RESPONDENT

Date of Decision: Aug. 1, 2013

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 2(g), 7

Citation: (2013) 172 PLR 474

Hon'ble Judges: Jasbir Singh, J; G.S. Sandhawalia, J

Bench: Division Bench

Advocate: Ajay Jain, for the Appellant; D. Khanna, Addl. A.G. Haryana for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Allowed

Judgement

Jasbir Singh, J.

This order will dispose of CWP Nos. 12539, 12540, 12541 & 12542 of 1994 and 13647 of 1995. To dictate order, facts have been taken from CWP No. 12539 of 2004 titled Smt. Mali Vs. Collector, Mohindergarh & others. By filing this writ petition, the petitioner has laid challenge to an order dated 27.12.1993 (Annexure P2) vide which, she was ordered to be ejected from the land measuring 1 kanal 2 marlas falling in khasra No. 122/10. As per jamabandi for the year 1992-93 (Annexure P1), land is shown in the ownership of Gram Panchayat and in self-cultivation of the panchayat deh, nature of land is shown as gair mumkin pahad (mountains).

2. The above order was passed on an application filed by Gram Panchayat u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the "Act") alleging that the petitioner was in unauthorised occupation of Gram Panchayat's land to the extent as referred to above. Prayer was to eject her from the said piece of land. The Collector, on 27.12.1993, ordered her ejectment. Relevant portion of the

order reads thus:

I heard the learned counsel for the parties. After hearing the arguments and perusal of the file, it is found that as per jamabandi for the year 1987-88 the disputed land is owned by Gram Panchayat, Sareli and as per demarcation report dated 11-10-92 of Sh. Hazari Lal Kanungo the respondent has encroached upon 1 kanals 2 marlas of land and constructed a residential house on it. Therefore, the respondent is ordered to be evicted from the disputed property and a penalty at the rate of Rs. 5000/- per hectare per year is imposed on him with effect from the year 1987-88. The respondent should hand over the possession of the land to the Gram Panchayat and deposit the amount of penalty within one month.

3. Petitioner went in appeal which was dismissed by the appellate Court on 25.05.1994. Appellate Court also, perused the entries in the jamabandi referred to above, ordered ejectment of the petitioner after placing reliance upon a demarcation report dated 11.10.1992, showing construction raised by the petitioner in the land in dispute which otherwise was in the ownership of the Gram Panchayat.

4. After hearing counsel for the parties, we are of the opinion that the orders passed are non-speaking one. It is specific stand of the petitioner that she belongs to a poor section of society and does not have any other place to live in. She constructed her residential house since from the date of consolidation proceedings took place in the village. It was further stated that the land in dispute, having been used for residential house/barra, it would not fall in the definition of shamilat deh land, as depicted in Section 2(g) of the Act.

5. The Collector, after taking note of demarcation report dated 11.10.1992 and by making reference to the entries in jamabandi, ordered ejectment of the petitioner. Petitioner's contention that construction raised by her is more than 40 years of age was not considered at all. It was also not considered as to whether the petitioner, being member of a poor section of society, is entitled to retain land, under construction, along with some proportionate open land.

6. At the time of arguments, counsel for the petitioner very fairly stated that in case it is found that land in dispute falls in the definition of shamilat deh, the petitioner, being a member of a poor section of society, her request to sell that land to her, as per the provisions of Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short, the "1964 Rules") be considered. It is also case of the petitioner that there exists a scheme of the Government to allot land to landless persons like the petitioner for residential purposes, known as Mahatma Gandhi Gramin Basti Yojna" and her case for allotment of the land under the constructed portion alongwith proportionate vacant area, can also be considered against that scheme. Taking note of the facts and circumstances, we allow all these writ petitions, orders under challenge are quashed. Petitioners are directed to appear before the Assistant Collector, Narnaul on 19.08.2013. The Assistant Collector,

Narnaul, after giving notice to the Gram Panchayat, will take up and dispose of the matter taking note of observations made in this order. Contention of the petitioner that his/her house is more than 40 years of age be also considered and further, in case, petitioner is found in unauthorised occupation of the land in dispute, his/her case for purchase of land under constructed area alongwith proportionate vacant area be considered as per provisions of Rule 12(4) of the 1964 Rules and/or may be considered as per the provisions of the abovesaid scheme.