

(2011) 02 P&H CK 0447

High Court Of Punjab And Haryana At Chandigarh

Case No: CWP No. 9372 of 2008

Gram Panchayat Village
Bajghera

APPELLANT

Vs

Financial Commissioner
(Revenue), Haryana and others

RESPONDENT

Date of Decision: Feb. 15, 2011

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 1, 5
- Punjab Village Common Lands (Regulation) Act, 1961 - Section 13A, 13A(1), 13AA(1)(2), 13B, 13B(2)

Citation: (2011) 3 RCR(Civil) 71

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ajai Lamba, J.

Gram Panchayat Village Bajghera, Tehsil and District Gurgaon through its Sarpanch has filed this petition for issuance of a writ in the nature of certiorari quashing order Annexure P-4 dated 04.04.2008 passed by respondent No. 1 i.e. Financial Commissioner (Revenue), Haryana and quashing order dated 20.11.2003 Annexure P-3 passed by respondent No. 2 i.e. Commissioner, Gurgaon Division, Gurgaon.

2. Vide order Annexure P-4, the Financial Commissioner, Revenue has dismissed the revision petition of the Gram Panchayat (petitioner) on the premise" that there is no provision in the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Haryana (for short The Act) which would permit filing or consideration of second Revision Petition. Vide order Annexure P-3, Commissioner Gurgaon Division, Gurgaon allowed the revision filed on behalf of respondents No. 5 to 12 as themselves and in representative capacity of the Biswedars. It has been held by the

Financial Commissioner that second revision petition against the order of Commissioner is not permissible u/s 13-B of the Act.

3. After reading all the orders viz. Annexures P-1 to P-5 in extenso, short contention of learned counsel for the petitioner in this writ petition is that the Financial Commissioner had the powers of revisional authority and, therefore, order Annexure P-4 is based on wrong legal premise.

4. It has been argued that the proceedings were initiated by the private respondents u/s 13-A of the Act. Perusal of Section 13-A of the Act indicates that the prescribed authority for the purposes of the said provision is the Collector having jurisdiction in the area. The respondents had filed an application u/s 13-A of the Act, however, before the wrong authority namely Assistant Collector 1st Grade.

5. Section 13-A was introduced by Act No. 2 of 1981 Vide Act No. 9 of 1992, however, Section 13-A was omitted from the Act. Under Act No. 9 of 1999 w.e.f. 10.03.1999, Section 13-A was re-inserted in the terms it exists today.

6. Learned counsel contends that the suit for declaration u/s 13-A of the Act was filed on 10.09.1998. At the point in time when it was filed, it was not maintainable before the Assistant Collector 1st Grade and, therefore, it should be construed that the order of Collector passed in appellate jurisdiction would be the first order against which appeal would lie to the Commissioner in terms of sub-section (1) of Section 13AA. The said order has been passed by Commissioner vide Annexure P-3 dated 20.11.2003. Under the circumstances, revision is clearly maintainable under sub-section (2) of Section 13AA before the Financial Commissioner.

7. Mr. Dhruv Mehta, Sr. Advocate assisted by Mr. Akshay Bhan, Advocate appearing on behalf of respondents No. 13 and 14 has argued that there is no challenge to the impugned orders in the entire writ petition on facts or merits. Learned counsel contends that the facts have wrongly been stated in so much as perusal of the orders indicate that one Raj Singh and Mehar Singh filed an application u/s 7 of the Act against the private respondents No. 5 to 12 before the Assistant Collector 1st Grade,. Gurgaon with the plea that the said respondents are in unauthorized possession of immovable property in Shamlat Deh which vests in the Panchayat and, therefore, they be ejected therefrom. The respondents No. 5 to 12 raised a question of title on the basis of documents stating that they are proprietors of the village and, therefore, the property does not vest in Gram Panchayat, Bajghera.

8. Considering the provisions of proviso to sub-section (1) of Section 7 of the Act, vide order dated 28.09.1999, the proceedings were converted into a regular suit under sub-section (3) of Section 7 of the Act and non-applicants therein (respondents No. 5 to 12 before this Court) were ordered to file a plaint/suit. Learned counsel contends that these facts are made evident on a perusal of Annexure R-13/1 and other orders that have been placed on record by the petitioner.

9. It has been argued that in the facts and circumstances of the case, Section 13-A and Section 13AA of the Act would have no role to play. This case arose out of proceedings initiated u/s 7 of the Act and, therefore, order passed by the Commissioner in Revisional jurisdiction attained finality. Second revision before the Financial Commissioner is not maintainable.

10. I have heard the learned counsel for the parties and have perused the papers placed before me.

11. Before proceeding further, a gist of proceedings may be referred to. First order passed by the authorities, in context of the issue that has been placed on record, is dated 27.05.1999 as Annexure R-13/1 entitled Inderjit s/o Prithvi Singh and others v. Grant Panchayat Bajghera and others. Perusal of the order clearly shows that Raj Singh and Mehar Singh filed an application u/s 7 against Inderjit etc. (respondents No. 5 to 12 in this petition) stating that he is a permanent resident of the village and is entitled to protect the land of Panchayat. Inderjit etc. (respondents No. 5 to 12 in this petition) are in illegal possession of Gram Panchayat land detailed in the application and they be evicted with imposition of fine. Notice of the application was issued to Inderjit etc. (respondents No. 5 to 12 in this petition) who appeared and raised a question of ownership and in support produced revenue records. The order further indicates in the following terms :-

By the order dated 28.09.1998 of this Court the proceeding u/s 7 was converted into the regular suit u/s 7(3) and the non-applicants 1 to 8 were ordered to file the plaint (suit).

12. It appears that as a consequence of order dated 28.09.1998, the suit as titled in Annexure R-13/1 was filed, which has been allowed by Assistant Collector 1st Grade, Gurgaon vide the order (Annexure R-13/1 dated 27.05.1999).

13. If a brief resume of facts is considered, order Annexure R-13/1 was challenged by the proprietors before the Collector. The appeal was dismissed vide order dated 16.08.2001," which has not been placed on record. Order of appellate authority dated 16.08.2001 was challenged before the Commissioner. Order passed by the Commissioner is not on the record, however, it has been stated by learned counsel that the case was remanded back to Assistant Collector 1st Grade for re-adjudication. The present proceedings arise out of the orders passed after remand.

14. After remand, Assistant Collector 1st Grade decreed the suit of the proprietors and held them to be the owners vide order Annexure P-1 dated 20.06.2002. Gram Panchayat carried an appeal before the Collector, which has been allowed vide order Annexure P-2 dated 18.02.2003. The proprietors carried a revision before the Commissioner which has been allowed vide order Annexure P-3 dated 20.11.2003.

15. Under order Annexure P-3 passed by Commissioner in revisional jurisdiction, it has been held that the suit land has never been under, possession of Gram Panchayat. The proprietors are not claiming any land that fails under rasta, johar or any other land used for common purposes. Under provisions of Section 2(g) of the Act, land in the village described as Banjar Qadim can be deemed to be shamlat deh, only if apart from being described as such, the same is used for common purposes of the village. No material has been placed before the authorities to show that the land at issue was used for common purposes of the village at any point in time. Rather, it has been shown that proprietors of the village have held sway over the suit land much before the coming into existence of the Act. A plain reading of Section 2(g)(5) shows that land has to be Banjar Qadim and used for common purposes in order it to fall within the purview of shamlat deh. The revenue record indicates that the land at issue has not been used for common purposes or utilized by the Gram Panchayat by way of auction or lease of the land. Gram Panchayat was not able to auction/lease out the suit land due to the shareholders"/proprietors" control and possession thereupon.

16. The Gram Panchayat carried a revision before the Financial Commissioner, which has been dismissed vide order Annexure P-4. It has been held that there is no provision for second revision under the Provisions of the Act. Rather order Annexure P-4 mentions in the following terms :-

It is an admitted fact that the impugned order has been passed by the Commissioner in exercise of his revisional jurisdiction u/s 13-B(2) of the Act and not in exercise of his appellate powers under sub-section (1) of Section 13AA of the Punjab Village Common Lands (Regulation) Act, 1961.

17. Relevant provisions of the Act are required to be seen. Portion relevant for adjudicating the issue from Section 7 of the Act is extracted here below :-

7. Power to put Panchayat in possession of certain lands.- (1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto 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 unauthorized possession of the land or other immovable property in the shalmilat 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 for possession of land under the Punjab Tenancy Act, 1887 :

Provided that if in any such proceedings the question of title is raised and proved *prima facie* on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

xx xx xx

(3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

Section 13-B of the Act is to be read in context of provisions of Section 7 and, therefore, the same is reproduced hereunder :-

13-B. Appeal and revision.- (1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under subsection (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under subsection (2) of Section 7, is deposited with the Collector.

(2) The Commissioner may, *suo motu* or on an application made to him by any person aggrieved by an order passed under the proviso to subsection (1) of Section 7 at any time call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

18. Section 13-A of the Act reads as under :-

13-A. Adjudication. - (1) Any person or in the case of a 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 been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is *shamilat deh* or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings u/s 7 of this Act under which the question of title has been raised and decided or under

adjudication.

(2) The procedure for deciding the suits under subsection (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).

Section 13AA of the Act reads as under :-

13AA. Appeal and revision.- (1) Any person, aggrieved by an order passed under sub-section (1) of Section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-section (1), call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

19. Perusal and consideration of provisions of Section 7 of the Act show that the Assistant Collector of the First Grade having jurisdiction in the village can either suo moto or on an application made to him in that behalf make summary inquiry and eject any person who is in wrongful or unauthorized possession of the land or other immovable property in the shamlat deh of that village which vests or is deemed to have been vested in the Panchayat, and put the Panchayat in possession thereof.

20. A proviso has been provided to sub-section (1) of Section 7, that has been extracted above, which says that if in any such proceeding question of title is raised and proved *prima facie* on the basis of documents that the question of title is really involved, Assistant Collector of the First Grade shall record a finding to that effect and first decide the question of title in the manner laid down.

21. u/s 13-B extracted above, any person aggrieved by an order of Assistant Collector 1st Grade can prefer an appeal to the Collector.

22. Under sub-section (2) of Section 13-B of the Act, revision is maintainable before the Commissioner. Section 13-B does not provide for any further proceeding before the Financial Commissioner.

23. Perusal of order Annexure R-13/1 clearly shows that in fact an application u/s 7 of the Act had been filed. Respondents No. 5 to 12, however, could *prima facie* prove on the basis of documents that question of title is really involved. It is thereupon that Assistant Collector 1st Grade vide order dated 28.09.1998 recorded a finding that question of title is involved and, therefore, the proceedings were converted into a regular suit under sub- section (3) of Section 7 of the Act. The respondents under

the circumstances, were ordered to file a suit/plaint which was decided, culminating into passing of order Annexure P-3 by the Commissioner in revisional jurisdiction, to which a reference has been made in detail hereinabove.

24. The remedy of revision having already been availed by the petitioner before the Commissioner, second revision before the Financial Commissioner was not maintainable, in context of proceedings initiated u/s 7 of the Act.

25. Rather, bare perusal of order passed by Commissioner itself indicates that challenge to order of Collector was made u/s 13-B(2) of the Act: Under the circumstances, there was no occasion for the petitioner even to construe that the proceedings had been initiated u/s 13-A of the Act.

26. Although it has been argued on behalf of the petitioner that the proceedings were carried as a consequence of a petition having been filed u/s 13-A of the Act, however, perusal of para No. 3 of the petition indicates that the petitioner very well knew that petition had been filed by the proprietors of the village u/s 7 of the Act seeking a declaration regarding their ownership over the land. Since the pleadings in the petition itself show that the petitioner knew as to under what provision of the Act the case had been initiated, it does not lie with the petitioner to argue at this stage to say that the proceedings arise out of a petition u/s 13-A of the Act.

27. In a suit u/s 13-A of the Act, Collector is the prescribed authority. Proviso to Section 13-A(1) states that no suit shall lie under this Section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings u/s 7 of the Act, under which the question of title has been raised and decided, or is under adjudication. Collective reading of Section 7 of the Act on the one hand; and Section 13-A(1) in conjunction with the proviso to Section 7(1) indicates that proceedings initiated u/s 7(3) are different and independent of proceedings initiated u/s 13-A of the Act, although the relief claimed under the proceedings is the same.

28. While the provision in regard to appeal and revision against orders passed u/s 7 have been provided u/s 13-B of the Act, the provision for appeal and revision in context of an order passed by the prescribed authority viz. Collector u/s 13-A has been provided u/s 13AA of the Act.

29. Consideration of facts and circumstances of this case clearly establish that proceedings were initiated u/s 7 of the Act. The present petition, however, has been argued on the premise that proceedings had been filed u/s 13-A of the Act and, therefore, no relief can be granted to the petitioner so as to hold that the order passed by the Financial Commissioner (Annexure P-4) is illegal, without jurisdiction or against the provisions of law.

30. Considering the above, I am of the considered opinion that Financial Commissioner has held, for the right reasons, that second revision petition is not

maintainable.

31. There is not even a whisper of challenge to the orders passed by the authorities on facts and merits. A limited question of jurisdiction has been raised which has been answered.

32. In view of the above, the petition is dismissed with no order as to costs.