(2011) 3 RCR(Civil) 78

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No"s. 11941, 13137, 13372 and 13576 of 2006

Gram Panchayat		APPELLANT
	Vs	
Director, Rural Development and Panchayats, Punjab and others		RESPONDENT

Date of Decision: Feb. 9, 2011

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11, 2

Citation: (2011) 3 RCR(Civil) 78

Hon'ble Judges: Ajai Lamba, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ajai Lamba, J.
This shall dispose of four petitions viz. Civil Writ Petition Nos. 11941, 13137, 13372 and 13576 of 2006, all entitled "Gram Panchayat, Jalalpur, Tehsil Samana, District Patiala through its Sarpanch v. Director, Rural Development and Panchayats, Punjab & others" in view of the fact that common questions of law and facts are involved.

2. For reference to record, Civil Writ Petition No. 11941 of 2006 titled "Gram Panchayat, Jalalpur, Tehsil Samana, District Patiala through its Sarpanch v. Director, Rural Development and Panchayats, Punjab & others" is being taken up.

3. This civil writ petition has been filed for issuance of a writ in the nature of certiorari, quashing Order dated 6.4.2004 (Annexure P-5) and Order dated 14.6.2006 (Annexure P-8).

4. Vide Order dated 6.4.2004 (Annexure P-5), Additional Deputy Commissioner (Development), exercising the powers of Collector, Hoshiarpur, u/s 11 of the Punjab

Village Common Lands (Regulations) Act, 1961 (for short, "the Act"), on a petition filed by respondent No. 3, Harpreet Singh, held that Harpreet Singh is the owner of the land/ property in dispute. The Gram Panchayat filed an appeal before the Commissioner. On 12.8.2005, the following order was passed by the Commissioner that has been reproduced in Para 9 of the writ petition which is in following terms :-

Respondent ex-parte. Appeal accepted.

12.8.2005

Sd/- Sarvjit Singh Commissioner

5. It stands established that no reasons were given while accepting the appeal of the Gram Panchayat. Respondent (No. 3) in the writ petition had not appeared before the appellate authority.

6. Order dated 19.8.2005 passed by the Director, Rural Development & Panchayats, Punjab (exercising powers of Commissioner), has been placed on record as Annexure R-3/4 by the contesting respondent and reads as under :-

Adjourned to 16.9.2005 for arguments. Restored with the consent of appellant.

7. During the course of hearing of this petition, Sarvjit Singh, IAS, who was the then Commissioner and exercised powers of appellate authority under the Act, was asked to file an affidavit as to whether such orders have been passed. Sarvjit Singh has filed an affidavit sworn on 6.9.2010, endorsing the factum of passing of the orders as extracted above. On restoration of the appeal, impugned order dated 14.6.2006 (Annexure P-8) has been passed which has been challenged.

8. Other than giving a challenge to order, Annexure P-8 on facts, learned counsel for the petitioner has contended that Order dated 12.8.2005 could not have been reviewed vide Order dated 19.8.2005. Learned counsel contends that order Annexure P-8 is illegal as the rights of the petitioner Gram Panchayat have not been considered.

9. Learned counsel for the contesting respondent (No. 3) contends that Order dated 12.8.2005 is only an ex-parte one line order. There is no adjudication on facts and therefore, order dated 19.8.2005, as extracted above, cannot be called an order in review of the earlier decision. On merits, learned counsel for the respondent contends that Order, Annexure P-8 is based on facts and documents, and therefore, no interference is called for.

10. I have considered the rival contentions of the learned counsel.

11. In 1992(1) R.R.R. 125 : 1992(2) PLR 57, Kailash Chand v. The State of Haryana, Division Bench of this Court has held in Para 4 in the following terms :-

4. When application for setting aside the ex-parte order was moved, the same was required to be decided on merits i.e. to consider the cause shown for non appearance on the date of hearing fixed in the case. The approach of the Assistant Collector in the order dated April 1, 1986 that by allowing the application for setting" aside the ex parte order, he would review his previous order is erroneous in law. When any ex parte order is passed against any person, on sufficient cause being shown for non appearance, the order could be set aside. Even if there is no provision in the Act did not specifically providing for setting aside the ex parte order, general provision of the CPC for setting aside ex parte order would be applicable and the Assistant Collector should have exercised the powers in deciding the application filed for setting aside the ex parte order. He failed to do so on erroneous assumption of law.

12. I am of the considered opinion, considering the contents of Order dated 12.8.2005 and Order dated 19.8.2005, as extracted above, that there is no judicial examination of facts and law while passing Order dated 12.8.2005. Since the respondent did not put in appearance, he was proceeded against ex-parte, and appeal was accepted, however, without assigning any reason and without consideration of the pleadings or material placed before the appellate authority. In such circumstances, Order dated 19.8.2005 restoring the appeal with the consent of the parties, in the presence of both the counsel, cannot be addressed an order passed in review jurisdiction. By any means, Order dated 12.8.2005 cannot be addressed as an act of deciding or settling the controversy by way of giving judgment and after judicial determination of question or cause.

13. On merits, Order Annexure P-8 has been passed on the premise that the private respondent before this Court was found in cultivating possession before 1950; is a permanent resident of the village; had the possession of land for more than 12 years prior to commencement of the Act; consolidation took place in the village in 1961 and lands were distributed amongst khewatdars before 1950; khewatdars remained in possession of the land according to their share; land was never used for common purposes of the village, rather the respondent developed the land and made it cultivable; Collector came to the Conclusion that land is covered u/s 2(g) of the Act, and therefore, fails in exception (iii) to Section 2(g) of the Act. On the other hand, the Gram Panchayat failed to produce any record in regard to auction of land so as to indicate its possession over the land. Land has never been used for common purposes of the village community and therefore, it does not fall within the definition of Shamilat Deh.

14. Learned counsel appearing for the petitioner has not referred, during arguments, to any document or material to establish that the land was ever utilised for common purposes.

15. I find no reason to interfere with the findings recorded by the appellate authority in Order dated 14.6.2006 (Annexure P-8). Findings have been recorded on relevant material and after considering the relevant aspects of the matter.

16. The petition is accordingly dismissed.