

(2014) 04 P&H CK 0249

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 6399 of 2011 (O&M)

Harminder Kaur

APPELLANT

Vs

Director, Rural Development and
Panchayat Department

RESPONDENT

Date of Decision: April 23, 2014

Citation: (2014) 4 RCR(Civil) 410

Hon'ble Judges: Rajan Gupta, J

Bench: Single Bench

Advocate: Vijay Sharma, Advocate for the Appellant; V. Ramswaroop, Addl. A.G. and R.P.S. Mann, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Rajan Gupta, J.

Petitioner has sought a writ in the nature of certiorari for quashing orders dated 4.8.2008 and 11.6.2010, Annexures P-4 and P-5 respectively on the ground that same are illegal and arbitrary. Learned counsel for the petitioner has contended that dispute is only with regard to land comprised in Khasra No. 19. According to him, application filed by Gram Panchayat u/s 7 of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") was decided by Assistant Collector 1st Grade on 11.12.1975. Said order attained finality. Thereafter, fresh application was moved seeking eviction of petitioner from Khasra No. 19 (7-18). According to him, such an application would be barred by principle of res judicata.

2. Plea has been opposed by learned State counsel. According to him, principle of res judicata is not attracted to proceedings u/s 7. Fresh cause of action accrues to the Gram Panchayat every time illegal possession is detected.

3. I have heard learned counsel for the parties and given careful thought to the facts of the case.

4. It appears, proceedings u/s 7(2) of the Act were initiated against Hans Raj son of Kehar Singh on the ground that he was in unauthorized possession of land measuring 11 Kanals 08 Marlas falling in Khasra No. 83/12/2 and 19. Gram Panchayat claimed that land was in its ownership. Prayer was opposed by the petitioner on the ground that she was Khewatdar of the village and land was in her possession before 26.01.1950. Assistant Collector 1st Grade came to the conclusion that petitioner was in possession of land prior to 26.01.1950. There was, thus, no ground to direct her eviction. Petition of the Gram Panchayat u/s 7(2) of the Act was dismissed on 11.12.1975 (Annexure P-1). In the year 2007, Gram Panchayat again moved an application seeking eviction of the petitioner from the said land. Gram Panchayat produced Jamabandi for the year 2001-2002 before the authority to contend that it was owner of the land. Harminder Kaur (petitioner herein) was not able to rebut the documentary evidence produced by the Gram Panchayat. Respondent No. 2, thus, directed her eviction from the land in question. Order was unsuccessfully challenged before the appellate authority. Only contention raised before this court is that the authorities below could not have adjudicated the matter with regard to Khasra No. 19 (7-18) as fresh application would be barred by principle of res judicata. I am not convinced with the plea. It is evident that Gram Panchayat had earlier moved the petition against Hans Raj where it did not succeed. After lapse of 32 years, instant application was moved to seek eviction of petitioner Harminder Kaur who claims to be successor of Hans Raj (see affidavit dated 21.4.2011). The authorities perused the Jamabandi for the year 2001-2002 and found that in cultivation column, land was recorded as Nagar Panchayat Deh. In column No. 9 of the Jamabandi it was recorded "Jabri Billa Lagan Kabza". Petitioner was not able to produce any record to prove her possession before 26.01.1950. The authorities, thus, found that she was in unauthorized occupation of the land in question and directed her eviction. I find no infirmity with the orders passed. I am not convinced with the argument that second application by the Gram Panchayat would be barred by principle of res judicata. In a judgment reported as Rama Sarup and others v. State of Haryana and others, 2006 (4) R.C.R. (Civil) 350, Division Bench of this court has observed as follows:--

"23. The other contention raised by the learned counsel for the petitioners that the respondent Gram Panchayat has no right or title over the disputed land is also without any merit as the land in the revenue record has been described as Shamilat Deh and in terms of Section 4(1) of the 1961 Act it vests in the Gram Panchayat. Another contention that has been raised by the learned counsel for the petitioners is with regard to the petition u/s 7 being barred. This is moreso in respect of Ram Sarup's case (CWP No. 19211 of 2004) and Darya Singh's case (CWP No. 244 of 2005) in view of the earlier petitions being dismissed. In this respect, it may be noticed that the Hon'ble Supreme Court in Inder Singh and Another Vs. Financial Commissioner, Punjab and Others, held that the doctrine of res judicata is not applicable to summary proceedings unless the statute expressly applies to such

order. It was held that the authorities under the Pepsu Tenancy and Agricultural Land Act are not civil Courts and nor the petition a plaint. No issues were framed nor tried as a civil suit and the orders passed by the authorities without any elaborate trial like any civil suit but in a summary manner would not make the principle of res judicata applicable. Therefore, merely because an earlier petition filed by the Gram Panchayat before the authorities under the 1961 Act has been dismissed would in the circumstances of the case not bar the filing of another petition by the Gram Panchayat. Therefore, this objection of the petitioners is also without any basis."

Counsel for petitioner has not been able to produce any law to buttress this argument nor support it by any precedent. There is, thus, no ground to interfere in writ jurisdiction.

Dismissed.