

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.3542 of 1993
Date of Decision: 30.3.2015

Bhira @ Dhira

..Petitioner

versus

Commissioner, Hisar and others

..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. M.S.Rana, Advocate, for the petitioner.

Mr. D.Khanna, Addl.A.G., Haryana
for respondent nos.1 to 3.

None for respondent no.4-Gram Panchayat

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari, quashing orders, dated 8.6.1983 (Annexures P-2), and 04.02.1991 (Annexure P4) passed by Assistant Collector 1st Grade, Narwana, and order dated 16.7.1991 (Annexures P-5) and dated 2.11.1992 (Annexure P-6) passed by the Collector, Jind and the Commissioner, Hisar, respectively.

Before recording our opinion, it would be appropriate to narrate the facts:-

The Gram Panchayat, filed a petition, under Section 7 of the Act, praying for the petitioner's eviction by alleging that the petitioner is in unauthorised occupation of "shamilat deh". The petitioner opposed the petition by asserting his ownership. The

Assistant Collector 1st Grade, Narwana, vide order dated 5.11.1980, ordered the petitioner's eviction but without deciding the question of title. An appeal filed by the petitioner, was allowed by the Collector, on 8.6.1983, by setting aside the order of eviction and directing the Assistant Collector 1st Grade, Narwana, to decide the question of title.

The Assistant Collector 1st Grade, Narwana, took up the matter once again and after considering the pleadings, framed the following issues:-

- “1 Whether land in dispute is shamlat deh and vest or does not vest in the Gram Panchayat, if not what is the effect of possession of the respondent?
2. Whether the suit is maintainable in the present form?
3. Relief.

A perusal of the issues reveals that issue no.1 relates to the question of title raised by the petitioner.

After framing issues, the Assistant Collector 1st Grade, Narwana, called upon parties to adduce evidence but during pendency of these proceedings, the petitioner filed a civil suit, before the Sub Judge 1st Class, Narwana, praying for a declaration that he is owner in possession and for an injunction to restrain the Gram Panchayat from interfering in his possession. The Gram Panchayat did not put in appearance. The Sub Judge 1st Class, Narwana, passed an ex parte decree dated 20.8.1981, declaring the petitioner as owner in possession of the land in dispute and restrained the

Gram Panchayat from interfering in the petitioner's possession. The Gram Panchayat did not file an appeal or an application for setting aside the decree.

The petitioner produced the decree before the Assistant Collector 1st Grade and prayed that the eviction petition be dismissed. The Assistant Collector 1st Grade, ignored the decree and after holding that Jamabandi for the year 1979, records the Gram Panchayat as owner, held that as the petitioner is recorded in possession as "Kabza Jabran" (forcible), answered the question of title against the petitioner and in favour of the Gram Panchayat and ordered the petitioner's eviction. The petitioner, admittedly, did not file an appeal against the order of eviction. The Gram Panchayat filed a petition under Section 13-A of the Act, for declaration of its title. The petition was dismissed as barred by limitation, on 25.7.1989. The Gram Panchayat, did not file any further appeal.

The Gram Panchayat, thereafter, filed an application for execution of the eviction order. The Assistant Collector, issued warrants of possession. The petitioner filed an appeal and then a revision, impugning the warrants of possession, which were both dismissed, hence, the present petition challenging the legality of the eviction order, the warrant of possession and orders dismissing the appeal and the revision, primarily, on the pleas of ownership and that in view of civil court decree dated 20.8.1981, the eviction order is executable.

Counsel for the petitioner submits that the petitioner and before him his predecessors were in cultivating possession of land

bearing Killas Nos.70/15/1, 16/1, 86/6 min, 87/1 min, 10/2, 11,12, 13 and 18, total measuring 45 Kanals-7 Marlas. The Sub Judge 1st Class, Narwana, has, vide judgment and decree dated 20.8.1981, declared that the petitioner is owner in possession of the land in dispute and, restrained the Gram Panchayat from interfering in the petitioner's possession. The Gram Panchayat has not filed any appeal against this decree. The order dated 8.6.1983, directing the petitioner's eviction and the warrants of possession, issued to enforce this order are not enforceable, in view of the civil court decree. This apart, a petition filed by the Gram Panchayat for declaration of its title, has been dismissed. Counsel for the petitioner also submits that warrants of possession have been issued without complying with the procedure prescribed by Rule 20 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to Haryana) (hereinafter referred to as "the Rules") and though the eviction order does not levy penalty/damages, the Assistant Collector 1st Grade, Narwana, has directed recovery of penalty/damages.

As no one had put in appearance on behalf of the Gram Panchayat, Mr. D.Khanna, Additional Advocate General, Haryana, was requested to assist the Court for and on behalf of Gram Panchayat Udepur, Tehsil Narwana, District Jind.

Counsel for the State of Haryana, submits that on the date of passing of judgment and decree dated 20.8.1981, the land in dispute was recorded as "shamilat deh", i.e., the ownership of the Gram Panchayat. Section 13 of the Punjab Village Common Lands

(Regulation) Act, 1961 (hereinafter referred to as “the Act”), prohibits a civil court from deciding a question whether a parcel of land is or is not “shamilat deh”. The Sub Judge 1st Class, Narwana, was, therefore, prohibited from entertaining the suit declaring the petitioner owner in possession of the land in dispute. Counsel for the State of Haryana also submits that as on the date of passing of the decree dated 20.8.1981, the petitioner was a member of the Gram Panchayat, the Gram Panchayat did not put in appearance and allowed the Sub Judge 1st Class, to pass an ex parte decree against the Gram Panchayat. The civil court decree is, therefore, clearly collusive. The collusion is fortified by the fact that Gram Panchayat did not file any application for setting aside the ex parte decree or an appeal. The Assistant Collector 1st Grade, Narwana, the authority, empowered by the Act, to decide a question of title, has rightly decided that the land in dispute does not vest in the Gram Panchayat and disregarded the decree. The petitioner has not filed any appeal against this order. The dismissal of the petition filed by the Gram Panchayat under Section 13-A of the Act, is meaningless as the Gram Panchayat had already been declared owner of the land in dispute.

We have heard counsel for the parties and perused the impugned orders, the warrants of possession and the civil court decree.

The questions that call for an answer are whether the petitioner has adduced any evidence to prove his ownership of the land in dispute, the effect of judgment and decree dated 20.8.1981,

passed by the Sub Judge 1st Class, Narwana, upon order dated 8.6.1983, holding that the Gram Panchayat is owner of the land in dispute and ordering the petitioner's eviction, upon warrants of possession issued to enforce the eviction order and whether any penalty was imposed in the eviction order.

At the outset, we shall deal with the question whether the petitioner has produced any evidence to prove his ownership. Admittedly, the land in dispute was "shamilat deh" and recorded as the ownership of the Gram Panchayat. The Assistant Collector of the 1st Grade has, in the exercise of power, to decide a question of title, under the first proviso to Section 7 of the Act, vide order dated 8.6.1983, held that the land in dispute vests in the Gram Panchayat and while doing so, has referred to jamabandi for the year 1979, Ex.A1, which records the Gram Panchayat as owner and the petitioner as "gair marausi", "kabza jabran", i.e., a person in forcible possession. A relevant extract from the order passed by the Assistant Collector 1st Grade, Narwana, reads as follows:-

Issue No.1

Bhira respondent has produced R-1 copy of the decree dated 20.8.81 and copy of the mutation R-2 and laid stress on these two documents. He argued that in accordance with the decree of the civil court dated 20.8.81, mutation has been sanctioned in his favour and in this manner he has become owner of the land in dispute. Gram Panchayat examined PW-1 Ram Chander Sarpanch and stated that Panchayat is owner of the land

in dispute and Bhira is in unauthorised possession. No rent was ever paid to the Panchayat. PW2 Sajjan Singh Panch and PW-3 Kanshi Ram supported the version of the Sarpanch. They drew my attention to the jamabandi 1978-79 Ex.A-1 and asserted that the Gram Panchayat is owner of the land in dispute and cultivation of Dhira son of Chajju, Bawaja Dajardasri Gair Marausi entered. Similarly they drew my attention to the Khasra Girdawari for the year Kharif 1979 to Rabi 1980 and claimed that the Panchayat is owner and Dhira son of Chajju is in possession as Gair Marausi.

In these circumstances, it is proved that the land in dispute vest in the Gram Panchayat because the respondent has not produced any evidence to prove his title except the ex parte civil court decree dated 20.8.81 which has no bearing on the present suit and therefore, this issue is decided in favour of the Gram Panchayat.”

The above extract clearly records that the Gram Panchayat is owner of the land in dispute and the petitioner is in “Kabza Jabran”, i.e., forcible possession. Counsel for the petitioner is unable to refer to any evidence or revenue record to rebut the presumption of truth, attached to entries in jamabandi for the year 1978-79 or prove by way of any other evidence that the land is excluded from the “shamilat deh” of the village or vests in the petitioner and not in the Gram Panchayat.

The question that now requires an answer is the effect of

judgment and decree dated 20.08.1981, passed by the Sub Judge 1st Class, Narwana, declaring the petitioner as owner in possession of the land in dispute upon order, dated 8.6.1983, passed by the Assistant Collector 1st Grade and the warrant of possession, issued to execute this order.

A perusal of the facts reveals that eviction order dated 5.11.1980, passed by the Assistant Collector, was set aside, by the Collector, Jind, by directing the Assistant Collector 1st Grade, Narwana, to decide the question of title raised by the petitioner. The Assistant Collector framed issue no.1 relating to the question of title, raised by the petitioner. The petitioner, while pursuing the question of title, before the Assistant Collector, in apparent collusion with the then Gram Panchayat, of which he was a member, filed a suit, before the Sub Judge 1st Class, Narwana, praying that the petitioner be declared owner in possession and the Gram Panchayat be restrained from dispossessing him. The Gram Panchayat, which was colluding with the petitioner, deliberately abstained from putting in appearance and allowed the suit to be decreed, ex parte. The Gram Panchayat did not file an application for setting aside the ex parte decree or an appeal. The collusion, however, does not end here. Despite having obtained an order from the Assistant Collector, affirming its ownership, the Gram Panchayat. strangely enough, chose to file a petition, under Section 13-A of the Act, for declaration of its title and eventually, got the petition dismissed as barred by time. We have no hesitation, in view of these findings, in holding that decree dated 20.8.1981, was procured as the result of collusion

between the petitioner and the then Gram Panchayat. A perusal of the revenue record, as already pointed out, reveals that the petitioner is recorded as a person in forcible possession and is unable to refer to, much less prove any relevant fact that would enable us to even prima facie hold that the land in dispute is excluded from the “shamilat deh” of the village or is the ownership of the petitioner. This apart, as facts pleaded in the suit, which were not opposed by the Gram Panchayat, are contrary to the record, the judgment and decree dated 20.8.1981 is not only collusive but also a fraud on the rights of the Gram Panchayat and the provisions of the 1961 Act.

Even if we disregard the collusion, Section 13 of the Act prohibits a civil Court from entertaining or adjudicating upon any question, relating to any right, title or interest in the “shamilat deh” of the village and confers the power to entertain and opine upon such a question upon the Assistant Collector of the first grade, by the proviso to Section 7 and upon the Collector by Section 13-A of the Act.

Section 13, the proviso to Section 7 and Section 13-A of the Act, as they existed on 20.8.1981 (the date of the decree) read as follows:-

“13. **Bar of Jurisdiction**-- No Civil court shall have jurisdiction--

(a) to entertain or adjudicate upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in a

Panchayat under this Act; or

(b) in respect of any matter which any officer is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or any matter decided by any authority empowered to do so under this Act.”

“7 Power to put Panchayat in possession of certain lands:- (1) XX XX XX

Provided that if in such proceedings the question of title is raised, the Assistant Collector of the first grade shall first decide the question of title under Section 13A.”

“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 within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, 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 Assistant Collector of the first Grade, having jurisdiction in the area wherein such land or other immovable property is situate.

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

A conjoint reading of these statutory provisions, which were, admittedly, in force on the date of recording of judgment and decree dated 20.8.1981, reveal that the jurisdiction of a civil court to entertain and opine upon a question whether any land or other immovable property is or is not “shamilat deh”, was barred. The power to entertain and adjudicate such a dispute was specially conferred upon the Assistant Collector of the 1st Grade, exercising power under the first proviso to Section 7, or the Collector, exercising power under Section 13-A of the Act. The Sub Judge 1st Class, Narwana, was, thus, prohibited by Section 13 from entertaining the suit or determining whether the land in dispute is or is not “shamilat deh” or whether it vests or does not vest in the Gram Panchayat. The judgment and decree dated 20.8.1981 passed by the Sub Judge 1st Class, Narwana, therefore, suffers from an inherent lack of jurisdiction.

Another aspect of the case requires mention. The State of Haryana has, by an amendment, dated 12.2.1981, added Section

13-D, in the 1961 Act, to provide that provisions of the Act shall have over-riding effect over any judgment and decree of any Court/authority etc.

Section 13-D of the Act reads as follows:-

“13-D. Provisions of this Act is to be over-riding.- The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority.”

The vires of Section 13-D of the Act, insofar as it operates prospectively, were upheld by the the Supreme Court in State of Haryana versus Karnal Cooperative Farmers Society, Limited and others, 1993 (2) R.R.R., 122. A relevant extract from the judgment, reads as follows:-

“In the instant case, the Haryana State Legislature, by the Amendment Act of 1981, has not made any provision to include the lands and immovable properties – the subject of the civil Court's decrees, in 'shamilat deh' so as to bring them within the purview of the principal Act. But, the provision made therein merely directs the Assistant Collector of First Grade, in effect, to disregard or disobey the earlier civil Court's decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside 'shamilat deh' regulated by the principal Act. Such provisions inserted by the Amendment Act of 1981 in the principal

Act by a Legislature are clearly unconstitutional for they are to be regarded as provisions made by encroaching upon the judicial power. Hence, the view of the High Court that the provisions of the Amendment Act of 1981 which merely authorise the Assistant Collector of First Grade to decide the claims to be made before him claiming certain lands or immovable properties as 'shamilat deh' vesting in Panchayats ignoring the judicial orders or decrees, by which any right, title or interest of private parties in such lands or immovable properties are recognised are unconstitutional, requires to be upheld. Consequently, the provisions of the Amendment Act of 1981, insofar as they are intended to operate retrospectively for nullifying the adjudications made by civil Courts prior to that Amendment Act are invalid, inoperative and unconstitutional. However, the provisions in the Amendment Act of 1981, can undoubtedly operate prospectively for adjudicating upon claims to 'shamilat deh' in proceedings initiated subsequent to the commencement of that Act, if they do not, in any way, disturb the finality of adjudications made earlier."

The judgment and decree passed by the Sub Judge 1st Class, on 20.8.1981 by ignoring that his jurisdiction is prohibited, by Section 13 of the Act was, therefore, rightly ignored by the Assistant Collector. The judgment and decree dated 20.8.1981, being

collusive and without jurisdiction, cannot be pressed into service by the petitioner, in support of his plea that eviction order dated 8.6.1983 has been rendered inexecutable or that the warrants of possession are inexecutable.

The question that remains is whether warrants of possession have been issued without complying with the procedure prescribed by the 1964 Rules?

Section 7 of the 1961 Act, empowers an Assistant Collector of the 1st Grade, to evict a person in unauthorised possession of land in the "shamilat deh" of the village. Rule 20 of the Rules, prescribes the procedure and requires the Assistant Collector of the 1st Grade, to serve a notice upon the unauthorised occupant. Rule 21 of the Rules provides that if, after considering the cause, if any shown and evidence adduced, in response to the notice under rule 20, the Assistant Collector, is satisfied that land in "Shamilat Deh", is in unauthorised occupation, pass an order directing eviction. Sub rule (2) of Rule 21 of the Rules provides that if any person refuses to or fails to comply with the order of eviction, the Collector may evict such person by taking possession of land in 'shamilat deh' and may, for that purpose, use such force as may be necessary.

A perusal of the order of eviction reveals that the procedure prescribed by Rule 20 and Rule 21 of the Rules, has been meticulously followed and only after considering and deciding the petitioner's defence, i.e., the question of title, was the order of eviction passed. The petitioner has not complied with the order of eviction. The Assistant Collector was, therefore, justified in the

exercise of power under Section 21(2) of the Rules, to issue warrants of possession. The petitioner's challenge to the warrants of possession, before the appellate and revisional authorities, has failed. We are unable to discern any error of jurisdiction or of law in the warrants of possession or the impugned orders, that would enable us to interfere or issue the writ, as prayed.

As regards the question of fine/penalty/damages, a perusal of the eviction order reveals that the Assistant Collector has neither assessed nor imposed any fine, penalty or damages. The demand for penalty raised in the warrants of possession is, therefore, without jurisdiction.

In view of what has been recorded above, the impugned orders are affirmed but the warrant of possession insofar as it demands penalty, is set aside. The writ petition is, therefore partly allowed. The Collector, Jind, is directed to take possession of the land in dispute, within one month of the receipt of a certified copy of this order.

A copy of the order be forwarded to the Assistant Collector 1st Grade, Narwana, for compliance. No order as to costs.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

30.3.2015
VK