

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.15604 of 2014

Date of Decision: December 03, 2015

Charanjit Singh

....Petitioner

versus

The Director, Rural Development and Panchayats, Punjab and
others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.B.S.Jaswal, Advocate, for the petitioner.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.V.K.Sandhir, Advocate, for respondent No.3.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Surya Kant, J. (Oral)

The petitioner seeks quashing of the orders dated 25.02.2011 (P-7) and 13.02.2014 (P-11) whereby he was ordered to be evicted under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act'), from the land measuring 5 kanal 8 marla and his appeal against that order has been dismissed.

[2] The Gram Panchayat of petitioner's village filed the eviction petition alleging that land measuring 5 kanal 8 marla comprising khewat No.58, khatauni No.105 and khasra No.33 min. in the revenue estate of village Ali Khel, Block Jalandhar West, Tehsil and District Jalandhar, was owned by it and the petitioner had illegally occupied the same.

[3] In his written-statement dated 20.08.2008, the petitioner questioned the locus-standi of Gram Panchayat on the ground that the land belonged to Jumla Mustarka Malkan,

i.e., proprietary body of the village and he was in cultivating possession under that body. He further averred that civil suit for injunction was pending in which ad-interim stay was granted, hence the eviction petition was not maintainable.

[4] The Collector, Jalandhar rejected the petitioner's plea and held that though the subject-land was Mustarka Malkan, i.e., owned by the proprietary but it was reserved for 'common purposes', hence its management, control and supervision vests in Gram Panchayat.

[5] The petitioner went in appeal which was also turned down by the Appellate Authority vide order dated 30.09.2011.

[6] The aggrieved petitioner came to this Court in CWP No.22325 of 2011 which was allowed in part and the matter was remitted to the Appellate Authority for afresh adjudication of the appeal after observing as follows:-

“.... Counsel for the Gram Panchayat submits that as land in dispute is admittedly 'Jumla Mushtarka Malkan' the management and control vests in the Gram Panchayat. The petitioner is, therefore, an unauthorized occupant and has been validly ejected from the land in dispute.

We have heard counsel for the parties, perused the impugned orders have no option in the absence of any finding that the land was 'Shamlat/Panchayat Deh' or recorded as the ownership of Gram Panchayat, partly allow the writ petition, set aside order dated 30.09.2011 passed by respondent No.1 and

remit the matter for adjudication afresh and in accordance with law.....”

[7] The Appellate Authority has again dismissed the petitioner's appeal giving rise to these proceedings.

[8] We have heard learned counsel for the parties and gone through the record.

[9] The petitioner has placed on record copies of jamabandies for the years 1983-84 (P-12) and 1988-89 (P-13) where under the head 'Name of the Owner', i.e., column No.4, proprietors of the village alongwith their respective shares are recorded. In the column of 'Cultivation', i.e., column No.5, 'Maqbooja Bashindgan Deh', namely the residents of the village is recorded. In column No.9, the land is shown to be “Gair Mumkin Pond”, namely, the land was a “pond” used for common purposes of the entire village community.

[10] In the backdrop of the above-stated entries, the factual plea taken by the Gram Panchayat needs to be considered as according to it, the land was reserved as a 'pond'. One Ajit Singh who had unauthorizedly occupied the same as he was got evicted in the year 1980. Meanwhile, father of the petitioner became the Sarpanch of Gram Panchayat and during his tenure, “petitioner took illegal possession over the land in dispute.....”

[11] The petitioner relied upon jamabandies for the years 2003-2004 and 2008-2009, where he is recorded in cultivating possession as a “Gair Marausi” and the land is shown to be Chahi, namely, cultivable land.

[12] There is no explanation as to how the entries were suddenly changed and whether due procedure prescribed for change of entries in revenue record was followed, namely,

whether the Gram Panchayat was heard before changing entries to its disadvantage. In the absence of such material on record, the subsequent entries are liable to be discarded as has been rightly done by the authorities.

[13] Adverting to the old entries, the subject-land is recorded as a “pond” which is undoubtedly meant for common purpose of the village. It is true that the land is owned by the proprietary body as they must have contributed it at the time of consolidation out of their individual land-holdings on pro-rata basis.

[14] Section 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, (for short, 'the 1948 Act') provides that the management and control of lands for 'common purposes' is to vest in Panchayats or State Government. It reads as follows:-

“23-A. Management and Control of lands for common purposes to vest in Panchayats or State Government: - As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under Section 18;-

- (a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of Section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and
- (b) in the case of any other common purpose, shall vest in the Panchayat of

that village;

and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly.....”

(emphasis applied)

[15] Similarly, Section 42-A of the 1948 Act says as follows:-

“42-A. Prohibition to partition the land reserved for common purposes:- Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority or any officer, the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized and continue to be utilized for common purposes.....”

(emphasis applied)

[16] As a cumulative effect of the above reproduced provisions, it stands crystalized that the management, control and supervision of the lands which are reserved for common purposes and are not owned by Gram Panchayat, shall continue to vest in Gram Panchayat so as to utilize the same for common purposes. Thus, the petitioner's plea that the land

is owned by the proprietary body and the Gram Panchayat has no claim qua the same is wholly misconceived and contrary to the scheme of Statute.

[17] The plea taken by learned counsel for the petitioner that in respect of the land owned by the proprietary body, eviction petition under Section 7 of the 1961 Act was not maintainable or that the Gram Panchayat ought to have file a petition under Sections 4, 5 & 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, also does not advance his case, for the reasons that (i) no such objection in relation to jurisdiction of Collector's Court under the 1961 Act was taken by the petitioner in the written statement; (ii) the jurisdiction of civil court is expressly barred under both the Statutes; (iii) no prejudice is shown to have been caused to the petitioner to whom a fair trial including opportunity to lead evidence was accorded by the Collector; (iv) no such objection re: jurisdiction was raised by the petitioner in the previous round of litigation; (v) in the light of express provisions under the 1948 Act regarding management, control and supervision of the Gram Panchayat over the land reserved for common purposes, it is otherwise difficult to accept the objection that eviction petition under Section 7 of the 1961 Act is not maintainable.

[18] For the reasons aforementioned, we do not find any merit in this case. The same stands dismissed.

[SURYA KANT]
JUDGE

December 03, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE