

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.9443 of 1994

Date of Decision: February 27, 2016

Bhartu and others

....Petitioners

versus

Collector, District Jind and others

.....Respondents

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

Present: Mr.R.K.Gupta, Advocate, for the petitiones.

Ms.Kirti Singh, Deputy Advocate General, Haryana.

Mr.R.N.Lohan, Advocate, for respondent No.4.

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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 petitioners have laid challenge to the orders dated 19.07.1993 and 28.03.1994 passed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act') as applicable to the State of Haryana. Vide the first order, the petitioners were ordered to be evicted from the land measuring 10 marlas where they have constructed a residential house. The second order is of dismissal of their appeal against the eviction order. The impugned orders have been passed at the instance of a private-person-respondent No.4 who claims, inter-alia, that the suit land is shamlat deh and vests in Gram Panchayat and the petitioners are in its unauthorized possession.

[2] On the other hand, the case of the petitioners who are legal heirs of Dal Singh son of Pakhria, was that they belong to Scheduled Caste community and their predecessor-in-interest was allotted the subject land being non-proprietor

of the village for construction of a residential house. It is also their case that when the consolidation was held in the year 1959-60, one parcel of land was reserved for allotment to non-proprietors of the village for residential purposes. The plot in question is also a part of that chunk of land. The petitioners further pleaded that their civil suit against the Gram Panchayat had been decreed and since the said decree attained finality, the eviction proceedings were not maintainable. It was also their case that they constructed the residential house which is the only social shelter available to them. The record further reveals that some residents of the village forcibly dispossessed the petitioners from their house, compelling the petitioners to file a suit for possession. The said suit was decreed by this Court in RSA No.234 of 1977 allowed on 05.09.1985 (P-2). In that judgment also, a finding has been returned that the plot in dispute was allotted to the petitioners' family for residential purposes.

[3] Aggrieved by their eviction, the petitioners have approached this Court. Their dispossession was stayed vide order dated 20.07.1994.

[4] We have heard learned counsel for the parties at a considerable length and gone through the record.

[5] In our considered view, the impugned orders cannot sustain for more than one reasons. The petitioners admittedly filed a civil suit against the Gram Panchayat in respect of the same plot in which it was held that it was allotted to their predecessor-in-interest. The Gram Panchayat neither challenged the said decree of the civil court nor it filed any eviction petition or proceedings under the 1961 Act on the plea that civil court decree was without jurisdiction. So

long as such a declaration is not sought by the Gram Panchayat, the decree inter se parties shall have binding effect.

[6] Secondly, the Assistant Collector, 1st Grade has nowhere held that the land was not earmarked for residential purpose during the consolidation or that the plot was in excess of the earmarked area. The petitioners admittedly belong to Scheduled Caste community of the village. Under the Consolidation Scheme, same land is always reserved for residential purposes of the non-proprietors of the village.

[7] Thirdly, it is not the case of respondent No.4 that the petitioners or their predecessor-in-interest had any residential house in the village or that they illegally took possession of the plot in dispute. On the other hand, it has come on record that the possession was given by the Gram Panchayat and thereafter only the residential house was constructed.

[8] Be that as it may, there is a serious dispute in relation to ownership and title of the subject plot and without adjudication of such dispute through a declaratory petition under Section 11 of the Act, eviction proceedings under Section 7 of the 1961 Act which are summary in nature ought not to have been entertained.

[9] For the reasons afore-stated, we allow this writ petition and quash the impugned orders dated 19.07.1993 and 28.03.1994.

Dasti.

[SURYA KANT]
JUDGE

February 27, 2016
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[P.B.BAJANTHRI]
JUDGE