

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.10658 of 1990
Date of decision : 03.05.2017

Gurdial Singh

...Petitioner

Versus

Additional Director, Panchayats and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Vikas Singh, Advocate and
Ms. Sukhmani Tiwana, Advocate for the petitioner.

Ms. Monica Chhibber Sharma, DAG, Punjab.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the order of the Director, Panchayat, whereby in petition filed under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, the ejection of the petitioner from the house reflected in the jamabandi as gair mumkin house, has been sought though rejected by the Collector but the eviction has been ordered by the Director, Panchayat.

Mr. Vikas Singh, Advocate assisted by Ms. Sukhmani Tiwana, learned counsel appearing on behalf of petitioner submits that Gram Panchayat-respondent No.2 instituted the petition seeking eviction of the petitioner from the house constructed in Killa No.25 (1-17) of Rectangle No.8 situated in Village Rajgarh, Tehsil and District Patiala. In fact, the

petitioner had got the house from one Amar Singh through agreement to sell dated 10.06.1983 and had paid the entire consideration of ₹8,000/-, thus, his status in the possession of the house was of owner and, therefore, the petition filed was without jurisdiction as it would not fall within the definition of Public Premises Act. In the petition, Gram Panchayat alleged that land is comprised of shamlat deh which is managed by the Panchayat and, therefore, by way of resolution had sought eviction by branding the petitioner to be unauthorized occupant. The petitioner is in possession of the property more than 40 years and has constructed the house. The aforementioned petition was contested by taking all possible legal objection, much less, on the premise that Gram Panchayat has not been able to establish public premises and thus, the authority trying the petition had no jurisdiction to deal with the matter.

The evidence produced before the Collector i.e. jamabandi for the year 1977-78 reflected the possession of Amar Singh who was shown to be in possession. The petition was dismissed vide order dated 05.09.1985 (Annexure P-1). However, in appeal Director Panchayat has erroneously allowed the same and the same is not sustainable in the eyes of law on the premise that land and house is comprised as sham lat deh and as per the definition of Section 2(g) (vi) of The Punjab Village Common Land (Regulation) Act, 1961, “shamlat deh” would not include the land i.e. the house which is outside the abadi area. The Punjab Village Common Land (Regulation) Act, 1961 is a Special Act and Special Enactment whereas 1973 Act being general enactment, therefore, the Collector did not have jurisdiction. Once it is shamlat deh, it cannot be branded as Public Premises

and, therefore, the petition under Sections 4, 5 and 7 was not maintainable.

Section 2(g) was amended in 1976 and jamabandi is of the year 1977-78, and, therefore, on comparison of the same, possession of the petitioner cannot be said to be unauthorized occupant.

On the contrary, Ms. Monica Chhibber Sharma, DAG, Punjab submits that order of the Director is perfectly legal and justified. The agreement to sell does not confer any right. Amar Singh has not to be shown as owner of the land. In the column under ownership reflected to be the land of Gram Panchayat and unauthorized person cannot sell the land, in essence, person who does not have title cannot pass on better title and thus urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submissions of Mr. Vikas Singh, Advocate.

For appreciating the controversy of Mr. Vikas Singh, Advocate, it would be apt to reproduce the provision of Section 2(g) (vi) of the The Punjab Village Common Land (Regulation) Act, 1961 and as well as Section 2(e) of Public Premises and Land (Eviction & Rent Recovery), Act , 1973, which reads thus:-

“Section 2(g) (vi) of the The Punjab Village Common Land (Regulation) Act, 1961:-

lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of the Act

Section 2(e) of Public Premises and Land (Eviction & Rent Recovery), Act , 1973:-

"public premises" means' any premises belonging to, or

taken on lease or requisitioned by, 'or on behalf of the State-Government and includes any premises belonging to, or taken on lease by or on behalf of--'

(i) any Municipal Committee Notified Area Committee, Zila Parishad, Panchayat Samiti Panchayat or Improvement Trust; .

(ii) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty one percent of the paid up share capital is held by the State Government; and .

(iii) any Corporation [not being a company, as defined in Section 3 of the . Companies Act, 1956 (1 of 1.956), or a local authority established by or under a Central Act as defined in clause (7) of Section 3 of General Clause Act, 1897, or a Punjab Act and owned or controlled by the state Government;”

As per Section 2(g) (vi), the land described i.e. the house outside the abadi area would not be shamlat deh but nowhere in the Act, it has been specified that it cannot be treated to be a public premises as public premises is the land belonging to the Gram Panchayat also. Once land of the Gram Panchayat has been reflected under column of ownership in the name of Gram Panchayat, in my view, the objection of Mr. Vikas Singh, Advocate with regard to the maintainability of the petition under Public Premises and Land (Eviction & Rent Recovery), Act, 1973 and the jurisdiction of the Collector is wholly misplaced and in view of observation *ibid*, is hereby rejected.

As regards the plea of acquiring the ownership, the petitioner has not been able to prove the payment of the money, much less, establish that Amar Singh was owner of the land. In jamabandi for the year 1977-78,

Amar Singh reflected to be in illegal occupation. In the absence of any title of Amar Singh, petitioner cannot get better title and that too by agreement to sell which is not document of title. At the best, petitioner is at liberty to seek refund of the money from Amar Singh but cannot take up the plea in the proceedings initiated under 1973 Act.

The order of the Director setting aside the order of Collector, in my view, is perfectly legal and justified and do not call for interference. Resultantly, same is upheld.

Accordingly, present writ petition stands dismissed.

No other points have been urged, therefore, interim order granted by this Court is also vacated.

03.05.2017

Pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No