

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP No.27256 of 2018  
Date of Decision: 25.10.2018

Raminder Singh and another

..... Petitioners

Versus

The Divisional Commissioner, Karnal and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL  
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Som Nath Saini, Advocate  
for the petitioners.

**MAHABIR SINGH SINDHU J.**

Present writ petition under Articles 226/227 of the Constitution has been filed for issuance of a writ in the nature of certiorari for quashing of impugned order dated 19.04.2018 (P-29) passed by respondent No.1-Commissioner, Karnal Division, Karnal, whereby an appeal of the petitioners filed under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') has been dismissed and order of the Collector-cum-Deputy Commissioner, Karnal-respondent No.2 dated 15.11.2017 (P-27) has been affirmed.

Brief facts of the case are that the Gram Panchayat-respondent No.4 filed a petition under Section 7 of the Act on 02.08.2002 (P-8) before the Assistant Collector, Ist Grade, Karnal-respondent No.3 (for short 'the AC, Ist Grade') for ejectment of the petitioners being in unauthorized occupation of Charand (Grazing) Land measuring 65 Kanals 7 Marlas situated in the revenue estate of village Dhungra (Gumto) comprised in

Khasra Nos.10/11, 12/1, 12/2, 19 & 20, 11/3, 14, 15, 18/2, 25 & 12/5 being Shamilat Deh within the definition of Section 2(g)(1) of the Act as per *Jamabandi* for the year 1989-90.

Upon notice, petitioners opposed the same by filing reply and both sides led their evidence. After taking into consideration the entire material available on record and hearing the parties, AC, Ist Grade ordered for ejectment of the petitioners and also imposed a fine of Rs.10,000/- per hectare *Per Annum* for their illegal occupation vide order dated 21.12.2009 (P-10).

Aggrieved against the above order, the petitioners preferred an appeal and the same was allowed by the Collector-respondent No.2 vide order dated 28.09.2010 (P-11) and set aside the order passed by the AC, Ist Grade. Aggrieved against the order of Collector, the Gram Panchayat challenged the same before the then Commissioner, Rohtak Division, Rohtak and which was allowed vide order dated 18.10.2012 (P-12). Consequently, the order of Collector was set aside and matter was remanded back with a direction that Collector should first decide the question of title.

In compliance of the order of Commissioner, the Collector after hearing both sides, passed fresh order dated 15.11.2017 (P-27) thereby dismissing the appeal of the petitioners and upheld the order of ejectment passed by AC, Ist Grade on 21.12.2009 (P-10). Still aggrieved against the order dated 15.11.2017 (P-27), the petitioners preferred an appeal on 21.11.2017 (P-28) before the Commissioner and which has been dismissed while passing the impugned order dated 19.04.2018 (P-29) and that is the subject matter of challenge in the present writ petition.

It is argued by learned counsel for the petitioners that Collector

has committed a grave error of law while deciding the question of title and ordering their ejectment from the land in dispute. He has further argued that learned Commissioner has also repeated the same illegality while rejecting their appeal as both the orders are not legally sustainable inasmuch as the petitioners are *bonafide* purchasers of the land in dispute.

Heard learned counsel for the petitioners and perused the paper-book.

Before proceeding with the matter, it is necessary to extract Sections 2(g)(1), 7 and 13-B of the Act and which are as under:-

**“2(g) “shamilat deh” includes-**

- (1) *lands described in the revenue records as shamilat deh or Charand excluding abadi deh.*

**Section 7**

**Power to put Panchayat in possession of certain lands-**

- (1) *An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by panchayat or an inhabitant of the village or the Block Development and Panchayat Officer of Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and Put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise*

*the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:*

*Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.*

- (2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.*
- (3) The procedure for deciding the question of title under provision to sub-section (1), shall be the same as laid down in the Code of Civil Procedure, 1908.*
- (4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.*
- (5) Any person who is found in wrongful possession of the land or other immovable property in shamilat deh and*

*is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.*

**Section 13-B**

**Appeal and revision**

- (1) *Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:*

*Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of section 7, is deposited with the Collector.*

- (2) *The Commissioner may, suo motu (or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time) call for the record of any proceedings pending before, or order passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:-*

*Provided that no order adversely affecting any*

*person shall be passed unless he has been afforded an opportunity of being heard.”*

Perusal of section 7 of the Act reveals that AC, Ist Grade having jurisdiction in the village may either *suo moto* or an application made to him by Gram Panchayat or an inhabitant of the village or any of the officer mentioned therein after making such summary enquiry, order for ejectment of the person, who is in wrongful or unauthorised possession of the land or other immovable property in the *shamilat deh* of that village which is vested in the Gram Panchayat under the Act and put the Panchayat in possession thereof and that order is to be executed as a decree for possession as stipulated under the Punjab Tenancy Act, 1887 (for short 'the Act of 1887'). It is further provided that if during the proceedings under Section 7, a question of title is raised and *prima facie* proves that question of title is really involved, AC, Ist Grade shall record the finding to that effect and first decide the question of title in the manner laid down under Section 7(3) of the Act. Sub-section (2) also stipulates that AC, Ist Grade shall by an order in writing require the person to pay a penalty in respect of the land or other immovable property which was in his wrongful or has been unauthorized possession at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum. If the penalty is not paid within the period of thirty days from the date of order, the same is to be recoverable as arrears of land revenue. Sub-section (4) further envisages that if the person refuses or fails to comply with the order of eviction passed under sub-section (1) within ten days of the order, AC, Ist Grade may use such force including police force, as may be necessary for putting the Panchayat in possession. Still further sub-section (5) lays down that if any

person is found in wrongful or unauthorized possession of the land or other immovable property of *shamilat deh* and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years. It is relevant to mention here that procedure for taking cognizance of offence and for prosecution is prescribed under Section 7-A and 7-B of the Act.

Section 13-B(1) of the Act talks about the remedy of appeal against the order passed by AC, Ist Grade under Section 7(1) or 7(2). It further provides that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) is deposited with the Collector. Section 13-B(2) is regarding the remedy of revision before the Commissioner against the order passed by the Assistant Collector either under proviso to sub-section (1) of section 7 or order(s) passed by any authority subordinate to him.

In the present case, admittedly, a petition under Section 7(1) of the Act was filed against the petitioners by Gram Panchayat and the same was allowed by AC, Ist Grade vide order dated 21.12.2009 (P-10) while observing that the respondents have no right to cultivate *Shamilat* land because this land is continuing as *Gau Charand* (grazing for cows) from the very beginning and no competent court of jurisdiction has excluded the land in question from the definition of *shamilat deh*. AC, Ist Grade also imposed a fine of Rs.10,000/- per hectare per year for illegally occupying the land and the District Development and Panchayat Officer was directed to deliver the possession to the Gram Panchayat Gumto and further directed that the amount of fine be got deposited in the Panchayat fund.

The petitioners challenged the above order by way of an appeal

before the Collector, which was allowed on 28.09.2010 (P-11). Dissatisfied with the order passed by the Collector, the Gram Panchayat challenged the same before the then Commissioner, Rohtak Division, Rohtak (although the nomenclature of the same is described as appeal but it should be revision in view of Section 13-B(2) of the Act) and which was allowed and the matter was remanded back to the Collector vide order dated 18.10.2012 (P-12).

In pursuance of the above remand order, the Collector decided the matter afresh and found that order of Assistant Collector for ejectment of the petitioners dated 21.12.2009 is perfectly legal and valid and consequently, dismissed their appeal and conclusion drawn by the Collector in his order dated 15.11.2017 (P-27) is as under:-

- “1. That the land in dispute as per the revenue record is Gram Panchayat Deh, which falls within the definition of Shamilat Deh, vest in the Gram Panchayat.*
- 2. Since the land in dispute has not been declared evacuee property in accordance with rules and wrongly allotted by ignoring the rules.*
- 3. The order passed by the Assistant Collector, Ist Grade, Karnal dated 21.12.2009 is kept intact the appellants/respondents are order to be ejected forthwith and handover the possession to the Gram Panchayat and after recovery the compensation @ Rs.10,000/- per hectare per year be deposited in the fund of the Panchayat.*
- 4. The appellants/respondents are not accepted as bonafide purchaser because the land vest in the Gram Panchayat and in the earlier Jamabandies also so recorded.”*

Again aggrieved against the order passed by the Collector, the petitioners preferred an appeal before the Commissioner under Section 13-A

of the Act, rather it should have been revision under Section 13-B(2) of the Act and which was dismissed by the Commissioner while passing the impugned order dated 19.04.2018 (P-29) and agreeing with the findings recorded by Collector in the following terms:-

*“As per the revenue record the land in dispute is continuing in the name of Gram Panchayat Gumto. Since the time of consolidation, Panchayat is leasing out the land. The father of the appellants himself took this land on lease from 1975 to 1985 from this it is proved that the land is of Panchayat. Later on, the father of the appellants by misusing the post of Sarpanch in connivance with the Custodian Department on the basis of farzi documents the land was got transferred in his name. Besides this there is a statement of Sh. Fateh Singh, PW 2 on the record of lower Court who has stated that the land is of Shamilat Deh, there was no custodian land in the village. The land in dispute as per the revenue record in the Jamabandi is continuing in the ownership of Panchayat and in the name of the appellants is in the column of the cultivation as Gair Marusi under Charand Billa Lagan Bavaja Kabja. The lower Court vide its order dated 15.11.2017 has decided the case on the basis of the issues by explaining in detailed the point wise given his decision which is in all circumstances enforceable. Here it is also important and considerable fact that kind of the land in dispute is “Charand”. Meaning thereby, this land is meant for the public purpose of whole village. The utilization and necessity of such land is increasing regularly. The public purpose is above personal purpose. The appellants cannot be conferred the ownership rights regarding the Charand is of Panchayat land. The impugned order is detailed and there is no illegality and there is no necessity found to interfere. So the appeal of the appellants is dismissed.”*

Undisputedly, the petitioners have not paid even a single penny

in compliance of the order dated 21.12.2009 (P-10) passed by AC, Ist Grade which is pre-requisite for filing an appeal under proviso to Section 13-B(1) of the Act and it is not conceivable as to how and under what circumstances the appeal on behalf of the petitioners was entertained before the Collector without payment of user charges rather it should have been rejected outrightly.

Also to be noticed that in view of averments made in paragraph No.23 of the writ petition, the petitioners have availed the remedy of revision before the Financial Commissioner, Haryana against the impugned orders dated 15.11.2017 and 19.04.2018 passed by the Collector and Commissioner, respectively, and which is stated to be pending for 21.11.2018.

Therefore, on one hand, the petitioners are raising the plea before this Court that impugned orders are not sustainable but on the other hand they have resorted the remedy of revision before the Financial Commissioner. Thus, in the same breath, the petitioners are blowing hot and cold and they should have chosen as to what should be the appropriate remedy against the impugned orders. Once the petitioners have already chosen the remedy of revision before the Financial Commissioner, then there is no occasion even to file the present writ petition for seeking the judicial review of those very orders which are the subject matter of challenge under other proceedings.

Since the petitioners have not paid even a single penny out of the amount of penalty in terms of Section 7 (2) of the Act and thus they are not entitled for invoking the extra ordinary jurisdiction of this Court being flouters of law and that too deliberately while unauthorised and illegally

occupying the common land of the village.

It seems that petitioners want to prolong the litigation on one pretext or another just to remain in possession of the land in dispute without payment of any user charges.

In view of the above, this Court does not find any merit in the present writ petition and left with no option, except to dismiss the same.

Dismissed.

(RAJESH BINDAL)  
JUDGE

(MAHABIR SINGH SINDHU)  
JUDGE

25.10.2018

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No