

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-27308-2018

Date of decision : 25.10.2018

Daljit Singh and others

... Petitioners

Versus

Commissioner, Ambala Division and others

... Respondents

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

Present: Mr.Alok Jain, Advocate
for the petitioners.

MAHABIR SINGH SINDHU, J.(ORAL)

Present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the impugned order dated 05.10.2018 passed by the Sub Division Magistrate, Naraingarh-respondent no.4 as well as communication dated 12.10.2018 (P-19) issued by Block Development & Panchayat Officer, Shahzadpur-respondent no.3 for demarcation as well as for taking possession of land in dispute from the petitioners.

Brief facts of the case are that the petitioners filed a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (in short "the Act") to the effect that they are owner in possession of the land in dispute and continuing in possession prior to 1950. Upon notice the Gram Panchayat-respondent no.6 opposed the suit and denied the claim of the petitioners while *inter alia* submitting that the land in dispute is *shamlat deh* as defined in Section 2 (g) of the Act and as such vested in the Gram

Further submitted that after the amendment of the Act by way of an amendment (Haryana Act 9 of 1992), the mutation was sanctioned in favour of the Gram Panchayat and that was the subject matter of the challenge before this Court at the instance of the petitioners Surjit Singh etc. vs. State of Haryana and others, in CWP no.14530 of 1992 and the same was disposed of along with CWP no.5877 of 1992 titled as “Jai Singh vs. State of Haryana and another” by Full Bench of this Court on 13.03.2003 and as such the petitioners have no right, title or interest in the land in dispute. After hearing both the sides, Collector vide his order dated 18.11.2016 (P-2) dismissed the suit of the petitioners while observing that land in dispute is *shamlat deh* and the same is vested in the Gram Panchayat and the petitioners could not produce any proof regarding their ownership or possession prior to 1950.

Aggrieved against the order passed by the Collector, the petitioners preferred an appeal under Section 13-AA of the Act and got interim stay in their favour. Subsequently the interim stay granted by the Commissioner was vacated on 23.05.2017 and that was challenged by the petitioners along with others by way of CWP no.17634 of 2017 and the same was disposed of vide order dated 09.08.2017 (P-9) thereby directing the petitioners to deposit an amount of Rs.20,000/- per acre before the Collector Ambala within one month and in case they failed to establish their title, the amount shall be released in favour of the Gram Panchayat.

It transpires that the petitioners could not comply with the order dated 09.08.2017 (P-9) passed by this Court for deposit of money and as such they moved CM no.13015 of 2017 for extension of time and which was accepted by this Court on 14.09.2017 (P-10) and the petitioners were

granted one month more time to deposit the amount in terms of the order dated 09.08.2017.

Paper book reveals that the appeal preferred by the petitioners was dismissed by the Commissioner vide order dated 31.10.2017 (P-11) while observing that only 16 persons (7 appellants and 9 LR's of the appellants) out of 34 appellants have deposited the amount on 22.10.2017 and the remaining have not paid any money despite the fact that they were under obligation to deposit the same on or before 13.10.2017.

Dissatisfied with the order passed by the Commissioner, petitioners preferred a revision before the Financial Commissioner, Haryana, under Section 13 AA of the Act but without waiting for the result of the same, the petitioners filed CWP no.26505 of 2017 which was disposed of by this Court on 18.12.2017 (P-13) with a direction to decide the revision petition preferably within a period of 4 months and till such time status quo regarding possession was granted subject to compliance of order dated 09.08.2017 as well as 14.09.2017 whereby they were required to deposit the mesne profits before the Collector.

The revision petition filed by the petitioners before the Financial Commissioner came up for hearing on 28.02.2018 and he observed that since out of 32 petitioners, only 16 have deposited the amount for user charges, therefore, the ad-interim stay granted in their favour stands vacated automatically and the main revision was posted for hearing on 21.03.2018.

Again the petitioners approached this Court by CWP no.5502 of 2018 against the above order of the Financial Commissioner and this Court issued notice of motion for 27.04.2018 (P-15) and stayed

dispossession of the petitioners subject to deposit of requisite amount in terms of the order dated 09.08.2017 passed by this Court within a period of six weeks..

Paper book reveals that the Financial Commissioner decided the main revision petition on 10.04.2018 and while accepting the same remanded the matter back for consideration before the Commissioner for quick disposal of the same.

Since the revision petition was finally disposed off by the Financial Commissioner, therefore the writ petition no.5502 of 2018 was rendered infructuous by this Court vide order dated 27.04.2018 (P-17).

The appeal filed by the petitioners came up for fresh adjudication before the Commissioner after remand and the same was dismissed vide order dated 12.06.2018 (P-18) primarily on the ground that land is *shamlat deh* and secondly that the appellants have failed to submit any proof regarding their ownership of the land in dispute. Concededly the order dated 12.06.2018 passed by the Commissioner is neither subject matter of challenge in the present writ petition, nor the same has been assailed before the Financial Commissioner.

In view of the above background, Sub Divisional Magistrate, Naraingarh-respondent no.4 vide order dated 05.10.2018 asked the Block Development and Panchayat Officer, Shahzadpur-respondent no.3, for taking over the possession of the land in dispute and in response thereto , vide impugned communication dated 12.10.2018 (P-19) a committee of three officers has been constituted for demarcation of the land in dispute and for taking possession from the petitioners and that is subject matter of challenge in the present writ petition.

It is argued by learned counsel for the petitioners that the petitioners are poor persons and they have made the land cultivable and are not in a position to pay the amount in terms of the order dated 09.08.2017 and 14.09.2017 passed by this Court. Further argued that the impugned order dated 05.10.2018 and 12.10.2018 are without jurisdiction.

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

Admittedly the suit for title filed by the petitioners along with others under Section 13-A of the Act has already been dismissed by the Collector vide order dated 18.11.2016 and the same has been upheld by the Commissioner in the appeal vide order dated 12.06.2018 (P-18) and the same is not the subject matter of challenge in any other proceedings. The Collector while dismissing the suit of the petitioners specifically recorded that land in dispute is *shamlat deh* and vested with the Gram Panchayat. Thus the petitioners have no right to remain in possession of the *shamlat deh* in view of the fact that they were mandated by this Court while disposing of their writ petition no.17634 of 2017 vide order dated 09.08.2017 and paras no.4 & 5 of the same being relevant are extracted as under:-

“[4] It appears that if the Gram Panchayat succeeds in dispossessing the petitioners from the suit land during the pendency of their appeal, it would, in a way, render the appeal infructuous. The petitioners' possession till the decision of the appeal thus deserves to be protected. Ordered accordingly. At the same time, one cannot overlook the fact that if the land is found to have vested in Gram Panchayat, the petitioners are liable to compensate the Gram Panchayat for the loss it is bound to suffer due to retention of its possession by the

petitioners. It would be thus in the interest of justice and equity to direct the appellants before the Commissioner, Ambala Division, to deposit a sum of Rs.20,000/- per acre in the Court of Collector at Ambala within one month. The Collector shall keep the amount in FDR in a Nationalised Bank. In case the petitioners fail to establish their title, the amount so deposited alongwith interest shall be released in favour of the Gram Panchayat. However, if the appellants before Commissioner, Ambala Division succeed and are held to be owners of the land in dispute, the deposited amount has to be refunded to them.

[5] The afore-stated amount is only for the crop year 2016-17, namely, upto harvesting the current kharif crop. The Commissioner, Ambala Division, is directed to decide the appeal on the date fixed i.e., 25.10.2017 and/or in any case before 30.11.2017. In the event of the decision goes against the petitioners and if they want to avail further remedy, they shall be liable to deposit user charges for the season of Rabi-2017 and Kharif-2018 also at the same rate of Rs.20,000/- per acre, within one month from the date of passing of the order by the Commissioner, Ambala Division, Ambala. In the event of non-deposit, the contesting respondents shall be at liberty to seek vacation of the ad-interim stay.”

Still further the petitioners were granted one month more time by this Court vide order dated September 14, 2017 but till date they have not honoured the order passed by this Court rather flouting the same with impunity. This Court specifically directed the petitioners that they should deposit the amount of Rs.20,000/- per acre in the Court of Collector at Ambala and in case they failed to establish their title the amount be released in favour of the Gram Panchayat. Concededly the petitioners lost their title

suit before the Collector and remained unsuccessful in appeal also.

Still further, this Court made it clear that in case the Collector decides against the petitioners and they wish to avail further remedy then user charges were to be deposited for the *rabi* season 2017 as well as *kharif* 2018, i.e. Rs.20,000/- per acre within one month from the date of passing of the order of the Commissioner.

Now the petitioners are taking a somersault by urging that they are poor persons and are not in a position to deposit the amount as directed by this Court. This action of the petitioners not only disentitles them from invoking the extra ordinary writ jurisdiction of this Court, but is also contemptuous in nature. The land in dispute is *shamlat deh* and the petitioners are occupying the same without any right, title or interest and not paying even a single penny to Gram Panchayat in lieu thereof. Thus respondent no.4 and 3 have validly passed the order dated 05.10.2018 and 12.10.2018 respectively for taking possession of the land in dispute being *shamlat deh* from the petitioners and this Court does not find any illegality with the said order for interference by way of the present writ petition. Consequently there is no merit in the writ petition and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

October 25, 2018.

D.K.

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No