

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

RSA No.3509 of 2013 (O&M)

Date of decision : 30.05.2018

Gram Panchayat, Village Sirsi

...Appellant

Versus

Biru @ Veer Bhan and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. P.S. Rana, Advocate for the appellant.

Mr. Chirag Wadhwa, Advocate for the respondents.

ANIL KSHETARPAL, J. (ORAL)

The defendant-appellant is in the Regular Second Appeal against the judgment passed by the First Appellate Court.

This litigation was filed only to frustrate the order of eviction passed from the land in dispute by the competent authority as per the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (*hereinafter to be referred as "the Act of 1961"*) (as applicable to Haryana).

The plaintiffs in the present suit who are respondents before this Court were ordered to be evicted vide order dated 14.01.2005. The plaintiffs-respondents thereafter filed a suit on 24.03.2009 challenging the aforesaid order.

Learned trial Court dismissed the suit vide judgment dated 29.09.2010. However, the learned First Appellate Court reversed the judgment on the basis of a Division Bench judgment of this Court reported as

2009(4) RCR (Civil) 478, Jarnail Singh and others, Vs. Gram Panchayat,

Mahan Singh Wala and others, which in fact the judgment interpreting the provisions of the Act of 1961 as applicable to Punjab.

Section 7 of the Act of 1961, as applicable in the State of Punjab and Section 7 of the Act of 1961 as applicable in the State of Haryana are different with regard to the jurisdiction of the Assistant Collector while hearing the eviction proceedings. Section 7 of the Act of 1961, as applicable to the Punjab and Section 7 of the Act of 1961, as applicable to Haryana are extracted as under:-

“Section 7 of the Act of 1961, as applicable to the Punjab:-

7. Power to put panchayat in possession of shamilat deh

– (1) *The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in 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 it under this Act and for so doing the collector 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 after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under Section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the

question of right, title or interest, fails to submit his claim under Section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.

(2) An appeal against the order of the collector under subsection (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.”

“Section 7 of the Act of 1961, as applicable to Haryana:-

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 or 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 proviso 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.”

It is apparent that as per proviso to Section 7(1) of the Act of 1961, as applicable to Haryana, if in any such proceedings the question of title is raised and prima facie proved on the basis of the documents, the question of title can be decided by the Assistant Collector, Ist Grade. Such provision is missing in Section 7 as applicable to State of Punjab. The judgment of the Division Bench, reliance whereof has been placed is interpreting the provision of Section 7, as applicable in State of Punjab. In

such circumstances, the judgment passed by the learned First Appellate Court is perverse. Still further, Section 13 of the Act of 1961, as applicable to the State of Haryana bars the jurisdiction of the Civil Courts in respect of any matter which any revenue Court, officer or authority is empowered by or under this Act to determine and to question the legality of any action taken by the Revenue Court, officer/authority empowered to do so under this Act. In such circumstances, the Civil Courts do not have jurisdiction to examine the validity of the order passed by the Revenue Officer exercising the powers under the Act of 1961.

It is not in dispute that the eviction order passed by the Assistant Collector on 14.01.2005 after deciding the question of title has become final. No appeal has been preferred against the aforesaid order.

Learned counsel for the respondents could not point out that how the order passed by the Assistant Collector, Ist Grade in the year 2005 is without jurisdiction or is not following the procedure laid down in the Act.

In view of the aforesaid discussion, the judgment under challenge is set aside and the judgment passed by the trial Court is restored.

Regular Second Appeal is allowed.

Let the Registrar General of this Court sent a copy of the judgment passed by this Court to the concerned Judicial Officer who was heading the First Appellate Court.

30.05.2018

Pawan

**(ANIL KSHETARPAL)
JUDGE**

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No