

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.11486 of 2020 (O&M)

Reserved on: 01.09.2022

Date of pronouncement:27.09.2022

Jagjit Singh and others

... Petitioners

Vs.

The Director, Rural Development and Panchayats,
Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Karan Dhawan, Advocate for
Mr. B.S.Jaswal, Advocate
for the petitioners.

Mr. Aman Dhir, Deputy Advocate General, Punjab.

Mr. Vivek Chauhan, Advocate,
for respondent No.3.

N.S.SHEKHAWAT, J.

The petitioners have challenged the order dated 08.09.2016 (Annexure P-6) passed by the learned Collector-cum-DDPO, Amritsar and the order dated 14.02.2020 (Annexure P-8) passed by the learned Appellate Authority i.e. Director, Rural Development Panchayat, Punjab, whereby, the application filed by the Gram Panchayat, respondent No.3 under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') was ordered to be allowed and the petitioners were ordered to be evicted from the land in dispute. Apart from that in lieu of

Rs.20,000/- per acre per year for the last 3 years along with interest of 10% PA.

The brief facts of the case are that the respondent No.3-Gram Panchayat filed an application under Section 7 of the Act for eviction of the petitioners alongwith others on the ground that the land in dispute is within 'Abadi Deh' of village Bhaini Badeshan, Block Jandiala Guru, Tehsil Baba Bakala, District Amritsar and forms part of the pond and all the inhabitants of the village were using the pond for common purposes like drinking, bathing their cattle and for other allied purposes. It was pleaded that suit land was never allotted nor leased to the respondents, but they have illegally occupied the said land by putting soil in it and illegally raising temporary/permanent structures in the same. Consequently, it was prayed before the learned Collector-cum-DDPO, Amritsar that the eviction of the present petitioners may be ordered by demolition of the structures existing on the land in question.

A detailed reply was submitted on behalf of the petitioners herein (respondents in the petition, before Collector) and it was *inter alia* pleaded that the respondents had used the land in question as Haveli-cum-residential house and as per Section 2(c) of the Act, house includes a courtyard, whether walled or not. It was pleaded that the land in question belongs to 'Abadi Deh' as per the Revenue Records and in view of the provisions contained in Section 2(g) of the said Act, the learned Collector-cum-DDPO, Amritsar had no jurisdiction to entertain and try this application. It was denied that inhabitants of the village were using the pond for common purposes and rather it was a part of the 'Abadi Deh'.

That the matter was finally heard by the Court of Collector-cum-DDPO, Amritsar on 08.09.2016 and the application under Section 7 of the Act was ordered to be allowed. The relevant extract of the said order has been produced below:-

“Arguments of learned counsel for the parties were heard. During arguments, the counsel for the defendants submitted copy of order by Punjab and Haryana High Court in CWP No.589 of 1981 along with copy of the conveyance deed. From the documents on record, it is clear that the land in dispute belongs to the Panchayat. The Panchayat has erected a wall around the pond for its proper use. The possession of defendants is outside this wall. Thus illegal possession is proved. So allowing the suit of the Panchayat, the defendants are evicted from the land in dispute. In lieu of holding illegal possession, the defendants are burdened with a fine of Rs.20,000/- per acre per year for the last 3 years along with interest of 10% PA.”

The petitioners preferred a statutory appeal before the learned Appellate Authority and had made a detailed submissions in the same. Again vide the impugned order (Annexure P-8), the learned Appellate Authority disposed of the said appeal by passing a non-speaking order. The findings recorded by the learned Appellate Authority have been reproduced below:-

“After hearing the arguments of both counsels and pursuing record on file, I have come to the conclusion that the order passed by the Collector-cum-DDPO, Amritsar under Section 7(2) of the Punjab Village Common Lands (Regulations) Act, 1961 is correct as per law. Hence, this appeal is dismissed.”

We have heard learned counsel for the parties at length and

have also perused the record annexed with the petition.

Learned counsel for the petitioners submitted that both the learned Courts have completely over looked the pleadings of the parties and the material placed before the said authorities. Even the impugned orders are non-speaking and are liable to be set aside on the sole ground alone. Still further, it was argued that the land falls within '*Abadi Deh*' and was never reserved for any common purpose, so it was not included in the definition of '*Shamlat Deh*' as defined in the Act and consequently, no eviction petition under Section 7 of the Act qua the said land was maintainable. Still further, it was also argued that earlier the Panchayat claimed the property in dispute bearing Khasra No.40 Min. and the matter was heard by this Court, in which, it has been held that the Panchayat is not the owner of the suit land and the proprietors of the village were found to be entitled for the land. In support of his argument, learned counsel has referred to the judgment dated 07.11.1996, passed by this Court in ***CWP No.589 of 1981 titled as "Gurmukh and others Vs. The Gram Panchayat Village Bhaini Bade Shah and others"*** (Annexure P-4) and contended that the land does not vest in '*Shamlat Deh*' of the village and the proceedings were liable to be dropped against them. Learned counsel has further referred to the Conveyance Deed (Annexure P-5) to contend that the property in question was allotted to them by the Punjab Wakf Board and they had the rightful claim to the same and the Gram Panchayat had no right, title or interest in the property in dispute and the impugned orders passed by respondents No.1 and 2 were without jurisdiction.

The submissions made by the petitioners have been vehemently opposed by learned State counsel as well as the learned counsel appearing on behalf of respondent No.3. It was *inter alia* contended that both the authorities have applied their judicial mind to the facts of the case and the petitioners have been correctly ordered to be evicted from the land in question. Even the proceedings under Section 7 of the Act are summary in nature and before passing any order, both the parties have been granted ample opportunity to plead their respective case. It was prayed that the impugned orders are legally sustainable and liable to be affirmed by this Court.

We have perused the record and reproduced above the findings recorded by respondents No.1 & 2 in the impugned orders, Annexure P-6 and P-8, respectively. A perusal of the order passed by learned Collector would establish that he had referred to the order, Annexure P-4, passed by this Court in CWP No. 589 of 1981 and Conveyance Deed, but did not record any finding on the same. It has been simply held that from the documents on record, it is clear that the land in dispute belonged to the Panchayat. In the impugned order, the learned Collector has recorded no reasons at all for holding that the land in question is a '*Shamlat Deh*'. Even no evidence/ material produced by both the parties have been referred by the learned Collector, while passing the impugned order. Similarly, while passing the impugned order (Annexure P-8), the learned Appellate Authority also failed to discern the said error and proceeded to adjudicate the appeal without even advertng to the grounds of appeal and the material filed by both the parties. The proceedings before the learned Appellate

Authority were in the nature of re-hearing of the entire matter afresh and to record findings after carefully perusing the grounds of appeal of the appellant as well as the lower Court records. However, the learned Appellate Authority did not hold any discussion on the same and both the impugned orders are to be set aside only on this ground.

Furthermore, Section 2(g) of the Act, defines “*Shamlat Deh*” and the relevant extract has been reproduced below:-

“(g) “*shamlat deh*” includes-

- (1) *lands described in the revenue records as shamlat deh excluding abadi deh;*
- (2) *Shamlat tikkas;*
- (3) *lands described in the revenue records as shamlat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
- (4) *lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh; and*
- (5) *lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;*

xxxx xxxx xxxx xxxx
but does not include land which -
xxxx xxxx xxxx xxxx”

Learned counsel for the petitioners has referred to the law laid down by this Court in the matter of “**Balwant Singh Vs. State of Punjab, 1993(3) PLR, 107**”, where this Court discussed the scope of proceedings under Section 7 of the Act as follows:-

“9. Does Section 7 confer totally unguided & unbridled powers ? A perusal of the various provisions of the Act shows that all land falling within the definition of Shamilat-deh as given in Section 2(g) comes to vest in the Panchayat. Further all questions relating to the nature of the land and its vesting in the Panchayat, can be agitated only in the forum provided under this Act. Section 7 has been enacted with the sole object of providing a speedy remedy to the Panchayat for the purpose of getting, possession of land or other immovable property in the Shamilat deh which vests or is deemed to have vested in it. However, it provides that the Collector shall decide "after making such enquiry as he may think fit and in accordance with such procedure as may be prescribed." Accordingly, the safeguard of holding an enquiry by following the prescribed procedure has been provided by the Act. Still further a reference to the rules shows that a show-cause notice has to be given to the person who is in possession before an order for his eviction can be passed. In this notice, the particulars of the land have to be mentioned; the grounds on which it is proposed to put the Panchayat into possession have to be disclosed at least 10 days time for showing cause has to be given. It is thus apparent that the provision ensures a due and a reasonable opportunity. Similarly, even in cases where question of title arises, the procedure of giving due and a reasonable opportunity to the person, who is likely to be affected, has been provided for. Above all, the Collector is not the final authority, his order can be challenged in appeal.

10. On an examination of the various provision, it is clear that the Collector has to grant a due and a reasonable opportunity to a person before any order adverse to his interest can be passed. As such, it is difficult to hold that the power is arbitrary, unguided or unbridled. The provision has in built checks and is in accord with the legislative policy contemplated by the Legislature.”

The Gram Panchayat had filed the application under Section 7 of the Act on the ground that the land in question was even though within 'Abadi deh', but was reserved for common purposes of the village i.e. pond and thus, the ownership vests with the Gram Panchayat. Whereas, the petitioners relied upon the *Jamabandi* for the years 2011-2012 (Annexure P-1) to contend that in the column of owner, 'Abadi Deh' has been shown and in the column of cultivation, the name of Punjab Wakf Board through the petitioners is appearing in Khasra No.40 Min. Learned counsel for the petitioners contends that the land in question was allotted to the petitioners by the Punjab Wakf Board. Learned counsel for the petitioners also referred to the judgment dated 07.11.1996 in CWP No.589 of 1981 (Annexure P-4) to contend that it has been held by this Court that the petitioners were the pattedars under the Punjab Wakf Board and land in question was never used for the common purposes. Learned counsel for the petitioners also annexed the photographs (Annexure P-7) to contend that they had raised construction on the land in question, even though the said averments have been vehemently opposed and denied by the learned State counsel and the learned counsel appearing for respondent No.3.

Consequently, we hold that the parties had raised question of title in the instant case and the learned Collector and the learned Appellate Authority decided the matter in an exceptional hurry, without even granting proper opportunity to both the parties to place on record to their respective evidence before the same. In such cases, the effective recourse for the Collector would have been to undertake such an exercise by expanding the scope of proceedings from Section 7 to Section 11 of the Act as the eviction proceedings under Section 7 of the Act are summary in nature and such

summary proceedings can cause prejudice to either party.

Still further, it was also to be seen as to whether the land was exclusively used as '*Abadi Deh*', then it would not have been included in the '*Shamlat Deh*' and the instant petition under Section 7 of the Act on behalf of Gram Panchayat in respect of such land would not have been maintainable. But if the land fell within '*Abadi Deh*' and was used or reserved for the benefit of village community including the pond, as alleged by respondent No.3, then it would be included in the definition of '*Shamlat Deh*' and the Gram Panchayat would be entitled to maintain a petition under Section 7 of the Act and to seek eviction in respect thereto. It is in this background, both the learned Courts should have decided the matter in respect of the land in question as the petitioners are also equally entitled to protection of Clause (1), if the land under their possession is exclusively part of '*Abadi Deh*' and was never used for any common purposes or for the benefit of the village community.

In view of the above observations, we allow the writ petition, set aside the impugned order dated 08.09.2016 (Annexure P-6) passed by the learned Collector-cum-DDPO, Amritsar and the order dated 14.02.2020 (Annexure P-8) passed by the Appellate Authority i.e. Director, Rural Development Panchayat, Punjab and remit the case to the Court of learned Collector-cum-DDPO, Amritsar to re-determine the whole controversy in the light of the observations made hereinabove. The parties shall be given three additional opportunities to lead their respective evidence. The learned Court shall frame specific issues and the findings shall be recorded to that effect. Till the disposal of the case by the learned Collector-cum-DDPO, Amritsar, the parties shall be bound to maintain status quo and the needful

shall be done expeditiously, but preferably within a period of four months from above. Needless to say that the learned Collector-cum-DDPO, Amritsar shall consider the case of both the parties on merits, by taking into consideration the evidence led by the parties and shall pass a speaking order by keeping in mind the mandatory provisions of the Punjab Village Common Lands (Regulations) Act, 1961.

The present petition is allowed in the above terms.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

27.09.2022
hemlata

Whether speaking/reasoned : Yes
Whether reportable : Yes