

Present:- Mr. Nps Mann Advocate Vs. Director, Department of Rural Development and Panchayats, Punjab and Others

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Court : Punjab and Haryana

Decided On : Aug-13-2013

Appellant : Present:- Mr. Nps Mann Advocate

Respondent : Director, Department of Rural Development and Panchayats, Punjab and Others

Judgement :

CWP No.2124 o

1. IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH CWP No.2124 of 2013 Date of Decision:- August 13, 2013 Raghbir SinghPETITIONER(S) versus Director, Department of Rural Development and Panchayats, Punjab and othersRESPONDENT(S) CORAM:- HON'BLE Mr.JUSTICE JASBIR SINGH HON'BLE Mr.JUSTICE G.S.SANDHAWALIA Present:- Mr.NPS Mann, Advocate, for the petitioneRs.Mr.Rajinder Goyal, Addl.

A.G., Punjab.

Mr.Sarabjit Singh, Advocate, for respondent No.4.

JASBIR SINGH, J.

(Oral) Petitioner has challenged order dated 17.10.2011 (Annexure P-1) vide which, he was ordered to be ejected from land measuring 21 Kanals 8 Marlas allegedly owned by the Gram Panchayat, Gurala falling in KhaSr.No.24/18/8 (8-0).19(8-0).20/1 (5-8).as per the Jamabandi for the year 2001-2002.

Above order was passed on an application moved by respondent No.4-Kirpal Singh.

Reading of the order indicates that service upon the petitioner was effected through affixation and he failed to appear, so an ex parte order was passed.

It is apparent from the record that on the very fiRs.day, a report was made that the petitioner was not found at his house, so a notice was pasted at the door.

The Collector, by noting entries in the latest jamabandis, came to a conclusion that the land is owned by the Gram Panchayat.

Possession of the petitioner was found unauthorized and he was ordered to be ejected.

Petitioner went in appeal where large number of documents were produced before the Commissioner which were noted by the said officer in Gupta Shivani 2013.08.30 14:26 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.2124 o

2. his order dated 16.05.2012.

Detail is noted as under:- Appellant is his written arguments has stated that the impugned orders are wrong and baseless because the impugned orders have been passed at his back.

The service report of the notice issued by the lower court has wrongly been given by the Block Development and Panchayat Officer by stating that the appellant is not at his house and the notice has been pasted on the door of his house.

In this regard, no order was passed by the court.

No opportunity has been given to the appellant to produce witness etc. His possession is continuously from earlier to 26/1/1950 and the same is without payment of any rent or lease.

As per Jamabandi for the year 2001-02, 2006-07 the appellant is shown in cultivation column and he is also shown in possession in the KhaSr.Girdawari from Sawni 2007 to Hari 2011.

The land is shown as Panchayat Deh Hasab Rasad Mal Gujari, year 1912-12 Bastania Taraf Sekhen. Similar entries are present in the Jamabandies for the year 1986-87, 1991-92, 1996-97.

These Jamabandies show that the house of the appellant is situated over 1 kanal of land in KhaSr.No.24//18 (8-0). The KhaSr.Girdawari for the year 1992 to 2002 also shows the possession of the Appellant.

In the Jamabandi for the year 1981-82 and 1976-77 Darshan Singh son of Krishan Singh and then the appellant is shown in possession.

As per the Jamabandi for the year 1961-62, at the time of consolidation the KhaSr.No.24//19 has been carved out of khaSr.No.695, 700, 701, 702, 709, 711, 795.

KhaSr.No.24//20 has been carved out of KhaSr.No.694, Gupta Shivani 2013.08.30 14:26 I attest to the accuracy and integrity of this document High Court Chandigarh CWP No.2124 o

3. 695, 699, 700, 701.

As per the Jamabandi for the year 1934- 35, the above said KhaSr.numbers were in possession of the Muslim.

The ownership of KhaSr.No.695, 700, 708, 711 is shown as Balait Shah Sahib, Peer Ali Shah, Jati Sakrani Sakan Deh. In the same manner KhaSr.No.701 and 702 are the ownership of Ali Muhamad Anaitulla, Kadaitulla. KhaSr.No.699 is the ownership of Hasan Baksh.

and KhaSr.No.711 is the ownership of Bagga.The ownership of the land in dispute has never remained with the Gram Panchayat and neither the possession has ever been demanded by the Gram Panchayat.

This land has never been auctioned.

Gram Panchayat has no document to prove that this land is the ownership of the Gram Panchayat.

The eviction of the appellant is wrong and penalty of 20 times has also wrongly been imposed.

Without discussing those documents, simply by making reference to jamabandis for the years 2001-02, 1966-67 and 1971-72, appeal was dismissed.

By making reference to copies of various jamabandis on record, especially jamabandi for the year 1934-35, it is argued by the counsel for the petitioner that the land in dispute was left by Mohammedans in the village.

Thereafter, it was entered in the name of Shamilat Deh Taraf Lakhu.

It is further stated that the petitioner is in possession of 21 kanals of land before 26.01.1950.

It is stated that had an opportunity been granted to the petitioner, he would have proved that fact.

It is further stated that as per provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (in short 'the Act').it is not open to a private individual to file an application for ejectment of an unauthorized occupant.

Only the Gram Panchayat or any officer so authorized can move that application.

At this stage, we are not giving any finding in that regard, since we are of the
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4. opinion that the petitioner has not been heard properly and his valuable rights have been prejudiced.

This writ petition is allowed and the orders under challenge are quashed.

The matter is remitted to the Collector to decide the issue afresh.

Directions are also issued to Sarpanch, Gram Panchayat Village Gurala through District Development and Panchayat Officer to move an application under Section 7 of the Act for ejectment of the petitioner from the land in dispute.

Application filed by Kirpal Singh-respondent No.4 and application to be moved by Gram Panchayat shall be heard together by the Collector.

Copy of the order be sent to the concerned District Development and Panchayat Officer, Amritsar for necessary compliance.

(Jasbir Singh) Judge 13.08.2013 (G.S.Sandhawalia) shivani Judge Gupta Shivani
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Chandigarh

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