

Baljit Singh Vs. Joint Development Commissioner and anr.

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Court : Punjab and Haryana

Decided On : Feb-08-2005

Reported in : (2005)140PLR89

Judge : N.K. Sud and; Satish Kumar Mittal, JJ.

Acts : Punjab Village Common Lands (Regulation) Act, 1961 - Sections 4, 7 and 11; Transfer of Property Act - Sections 111; Punjab Village Common Lands (Regulation) Rules, 1964 - Rule 19

Appeal No. : Civil Writ Petition No. 10864 of 2003

Appellant : Baljit Singh

Respondent : Joint Development Commissioner and anr.

Advocate for Def. : G.S. Dhaliwal, Sr. D.A.G. for Respondent No. 1 and; Ramesh Kumar Sharma, Adv. for Respondent No. 2

Advocate for Pet/Ap. : A.K. Chopra, Sr. Adv. and; Harminder Singh, Adv.

Judgement :

Satish Kumar Mittal, J.

1. In this writ petition, the petitioner has challenged the order dated 30.10.2002, passed by the Joint Development Commissioner, Punjab, exercising the power of

Commissioner under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') vide which the petitioner has been ordered to be ejected from the land measuring 38 kanals 11 marlas situated in village Bulpur.

2. The case of the petitioner is that he is in possession of the land in dispute since 1975 being proprietor of the village and is a share holder in the Mushtarka Malkan land. The land in question is Mushtarka Malkan land, which is neither owned by the Gram Panchayat Bulpur nor vests in it under the provisions of the Act. It is further the case of the petitioner that the Gram Panchayat, Village Bulpur has no locus standi to file the instant ejectment application under Section 7 of the Act, as some portion of the land in question i.e. khasra Nos. 3/22 (0-14), 11//2 (7-9), 12/2 (2-8) and 13 (8-0) was mutated in the name of Gram Panchayat, village Dogar Mahesh.

3. On the other hand, the case of the Gram Panchayat, Village Bulpur is that the land measuring 38 kanals 11 marlas is owned and vests in it, as the same had fallen to its share in the bifurcation of the Gram Panchayat, Dogar Mahesh by the order of the Director, Rural Development and Panchayats, Punjab, Chandigarh, vide letter dated November 17, 1998. The land in question was mutated in the name of Gram Panchayat, Village Bulpur. It has been further averred that the land in question was leased out to the petitioner in the year 1978 by Gram Panchayat, village Dogar Mahesh, when the Panchayat was joint, but after the expiry of the lease period, the petitioner did not hand over the vacant possession of the land in dispute. After bifurcation of the Panchayat in the year 1998, on 22.8.2000, Gram Panchayat, Village Bulpur filed an application for ejectment against the petitioner when he refused to hand over the vacant possession of the land in dispute to it. The said application, though, initially was dismissed by the Collector but was allowed by the Commissioner vide the impugned order.

4. In the written statement, filed by respondent No. 2, in para No. 3 of the preliminary objections, it has been Specifically pleaded by tike respondent-Gram Panchayat that the land in question was given on lease to the petitioner for a period of two years by Gram Panchayat, village Dogar Mahesh. Thereafter, on

several occasions, the petitioner took the land on lease from the said Gram Panchayat. Copies of the resolutions have been annexed with the reply as Annexures R-2 to R8. These documents reveal that the petitioner had been taking the land on lease for a period of one or two year till 1999 from the Gram Panchayat. Thereafter, he was not given the land in dispute on lease, but he did not vacate the possession after the expiry of lease period. In the written statement, it has also been pleaded that after the bifurcation of Gram Panchayat, Village Dogar Mahesh in two Panchayats i.e. Gram, Panchayat, Village Dogar Mahesh and Gram Panchayat, Village Bulpur, the land in question has fallen to the share of Gram Panchayat, Village Bulpur and the mutation of ownership was sanctioned in its favour vide mutation No. 1164.

5. The petitioner has filed replication to the written statement. However, he has not disputed that he has not taken the land on lease from the Gram Panchayat. Rather, he has taken the stand that he had taken the land on lease under bonafide mistaken belief and that would not give ownership rights to the Gram Panchayat.

6. Counsel for the petitioner raised two fold submissions. Firstly, he submitted that out of 38 kanals 11 marlas, land measuring 18 kanals 11 marlas, comprised in khasra Nos. 3//22 (0-4), 11//2 (7-9), 12/2 (2-8) and 13 (8-0) belongs to Gram Panchayat, Village Dogar Mahesh, therefore, respondent-Gram Panchayat, Village Bulpur has no right to seek ejectment of the petitioner from this part of the land. Secondly, counsel for the petitioner submitted that as per the revenue record, the land in question is Bachat land and such land does not vest in the Gram Panchayat under section 4 of the Act, as the petitioner is in possession of the land in question since 1975 being proprietor of the village having a share in the Mushtarka Malkan. He submitted that the Commissioner, while passing the impugned order of ejectment against the petitioner, has recorded no finding that the land in question vest in the Gram Panchayat and ordered ejectment of the petitioner on the wrong presumption that this land vests in the Gram Panchayat.

7. Both the aforesaid submissions have been refuted by counsel for respondent No. 2 Gram Panchayat, Village Bulpur. He, while referring to order dated 26.5.1999, Annexure R-1; passed by the Block Development and Panchayat

Officer, vide which the land measuring 38 kanals 11 marlas was mutated in favour of Gram Panchayat, Village Bulpur, Submitted that the land in dispute vest in Gram Panchayat, Village Bulpur and it has legal right to file ejectment application under Section 11 of the Act. Secondly counsel for respondent No. 2 Submitted that since the petitioner himself has admitted that he has taken the land on lease from the Gram Panchayat in the year 1975, therefore, now he cannot question the title of his landlord in view of Section 111(g) of the Transfer of Property Act and possession of the petitioner after expiry of the lease period is unauthorised and he is liable to be ejected. In support of his contention, counsel for the respondent relied upon decisions of this Court in *Jarnail Singh and Ors. v. Joint Director, Panchayats and Ors.*, (1999-2)122 P.L.R. 361, *Mam Deen v. State of Haryana and Ors.* (2000-1)127 P.L.R. 563 and *Makhan Lal v. State of Haryana*, (2004-3)138 P.L.R.726.

8. After hearing the arguments of learned counsel for both the parties and perusing the various documents placed on record, we do not find any ground to interfere with the order of ejectment passed by the Commissioner in exercise of inherent power of this Court.

9. The petitioner has not disputed the fact that he had taken the land on lease from the Gram Panchayat from 1978 till 1999. The various documents annexed by respondent No. 2 Gram Panchayat, Village Bulpur, with the written statement in this regard have not been disputed by the petitioner in the replication, but it has been stated that he had taken the land on lease under bonafide mistaken belief and that would not give the ownership right to the Gram Panchayat.

10. At the time of arguments, counsel for the petitioner relied upon *Gram Panchayat, Bhedpura v. The Additional Director, Consolidation and Ors.*, (1997-1) 115 P.L.R. 391 and contended that the petitioner cannot be estopped from arguing that the land in question is not owned by the Gram Panchayat, though the same was taken by him on lease from it. We are not inclined to accept this contention of counsel for the petitioner. Once the petitioner had taken the land in dispute on lease from the Gram Panchayat, then after the expiry of the lease period, his possession is unauthorised and he cannot question the title of its landlord in view

of Section 111(g) of the Transfer of Property Act.

11. In *Mohinder Singh and Ors. v. State of Punjab and Anr.* (2004-2)137 P.L.R. 396, a Division Bench of this Court has held that a lessee who took the land on lease from the Gram Panchayat cannot deny the title of their landlords as per the provisions of Section 111(g) of the Transfer of Property Act. Similarly, in *Gram Panchayat, Balad Kalan v. The Joint Development Commissioner and Ors.*, (2003-2)134 P.L.R. 747, this Court has held as under:-

'It is well settled that after the expiry of lease period, a lessee of the Gram Panchayat shall be deemed to be in illegal and unauthorised possession of the land leased out by the Gram Panchayat in view of Rule 19 of the Punjab Village Common Land (Regulation) Rules, 1964. In this regard reference can be made to the decision of the Hon'ble Supreme Court in *Gurnam Singh and Ors. v. The Sub Divisional Officer (Civil), Kaithal and Ors.*, (1996-2) 113 P.L.R. 642 (S.C.) and the decisions of this Court in *Gram Panchayat, Jurassi Kalan v. The Collector, Kurukshetra*, (1996-1)112 P.L.R. 528, *Roshan alias Roshan Lal and Ors. v. The Secretary, Government of Haryana and Ors.*, (1998-3)120 P.L.R. 651 (F.B), *Baldev Singh v. State of Punjab and Ors.*, 1998(2) P.L.J. 107 (D.B.), *Mam Deen v. State of Haryana and Ors.*, (2000-1)127 P.L.R. 563. It is also well settled that a person having taken the land on lease cannot subsequently challenge the title of his landlord. In this regard, reference can be made to *Jarnail Singh and Ors. v. Joint Director, 'Panchayats and Ors.*, 1999(1) P.L.J. 318; (1999-2)122 P.L.R. 361 and *Mam Deen v. State of Haryana and Ors.*, (2000-1)127 P.L.R. 563. In view of the aforesaid factual and legal position, there is no merit in the suit/application filed by the contesting respondents under Section 11 of the Act and the same is liable to be dismissed.'

The judgment cited by learned counsel for the petitioner is not applicable to the facts of this case, as in that case the question was entirely different.

12. Secondly, vide Annexure R-1, mutation of the land, in question was sanctioned in favour of respondent No. 2 Gram Panchayat, Bulpur and it was competent to file ejectment application under Section 7 of the Act. Further, the petitioner has not placed on record any material to show that the land in question was reserved for

common purposes of the village during the consolidation and pro-rata cut was imposed on his land at that time. The petitioner has not placed on record any document showing that he was having any share in the proprietary body. If he wants to establish the title on the land in question, then he is required to file a title suit under Section 11 of the Apt. Thus, we do not find any reason to interfere with the order of ejectment, passed against the petitioner. However, it will be open to the petitioner to establish his title on the land in question by filing a regular suit under Section 11 of the Act.

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