

FULL BENCH

Before P. C. Jain, A.C.J., S. P. Goyal & I. S. Tiwana, JJ.

SARWAN AND ANOTHER,—Petitioners.

versus

THE JOINT DIRECTOR, PANCHAYATS AND OTHERS
—Respondents.

Civil Writ Petition No. 3869 of 1984

May 1, 1985.

Punjab Village Common Lands (Regulation) Act (XXXVII of 1961)—Section 7(2)—Persons found by Civil Court to be in possession of land as tenants of the Gram Sabha—Petition for their ejection under section 7(2)—Whether maintainable—Such persons—Whether could be said to be in unauthorised possession.

Held, that where the petitioners have been held to be the tenants by the Civil Court, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 for their ejection does not lie in as much as they are not in unauthorised occupation of the land in dispute.

(Para 5)

Writ petition under Article 226 of the Constitution of India praying that :

- (i) that a Writ of Certiorari or any other Writ, Order or Direction may be issued quashing the Orders contained in Annexures P-9 and P-6.
- (ii) that the dispossession of the petitioner from the land in dispute may be stayed till the pendency of the writ petition.
- (iii) that the petitioner may be exempted from filing certified copies of Annexures P-1 to P-9. The petitioner is filing true copies of the same.

I. K. Mehta, Advocate with K. K. Mehta, Advocate, for the Petitioner.

A. S. Sandhu, Addl. A. G. (Punjab), for the Respondent.

JUDGMENT

Prem Chand Jain, A.C.J.

(1) The petitioners are Harijans and are residents village Dadoa, tehsil and district Patiala. In the year 1956, a proclamation was made by the Gram Panchayat, Mardanheri that Banjar

Qadim Jungal variety of land was available for being given on perpetual lease. One Mangal son of Kanhaiya, father of the petitioners, took 151 Kanals 19 Marlas of land from the Gram Panchayat. He reclaimed that land and made it cultivable. There was an understanding between him and the Gram Panchayat as an assurance had been given by the latter that he would not be ejected from the land in dispute. Thereafter, the father of the petitioners made other improvements. It is further averred that on finding that the land had become rich in produce, the Gram Panchayat started taking steps to forcibly evict the father of the petitioners with the result that a suit for permanent injunction against the Gram Sabha was brought in the Civil Court, which was disposed of by the learned Sub-Judge Ist Class, Nabha, on March 29, 1969, with the following observations:—

“Perusal of the Khasra Girdawari mentioned above showed that the plaintiff is in continuous possession of the suit land as a tenant-at-will under the defendant. As such, the plaintiff is not liable to ejection by defendant from the land in dispute forcibly and without recourse to law. There being no rebuttal to the evidence led by plaintiff, I accept this suit and pass a decree ex-parte with costs for permanent injunction in favour of the plaintiff and against the defendant restraining the defendant from forcibly dispossessing the plaintiff from the land in dispute.”

Copy of the judgment of the learned Sub Judge has been attached with the petition as Annexure P. 1.

(2) It is next averred that on 6th April, 1970, the Gram Panchayat (Respondent No. 3) filed an application under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) for ejection of father of the petitioners. It was asserted in the application that the petitioners' father was in unauthorised and illegal possession of the land in dispute. The application was contested by the petitioners' father. On consideration of the entire matter, the application for ejection was dismissed by the Assistant Collector 1st Grade, Patiala, —vide his order dated September 24, 1971 (copy Annexure P. 2 to the petition). The Gram Panchayat did not file any appeal against that order of the Assistant Collector. However, on February 27, 1974, another application under Section 7(2) of the Act

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was filed by the Gram Panchayat against the petitioners' father, which was contested by him on merits. The Assistant Collector, on consideration of the entire matter, again did not find any merit in the application and dismissed the same,—*vide* his order dated December 4, 1974 (copy Annexure P.3 to the petition). Against that order of the Assistant Collector also, no appeal was preferred by the Gram Panchayat. In spite of the fact that earlier two petitions under Section 7(2) of the Act had been dismissed, the Gram Panchayat did not resist and again filed a petition under Section 7 of the Act on May 9, 1981, for the ejection of the petitioners. But, this time the Collector, who was seized of the matter, accepted the application, held the petitioners to be in unauthorised occupation of the land in dispute and passed an order of ejection,—*vide* his order dated August 24, 1982 (copy Annexure P—6 to the petition). Feeling aggrieved from the order of the Collector, the petitioners preferred an appeal but they did not succeed as their appeal was rejected by the Joint Director, Panchayats, Punjab (Respondent No. 1),—*vide* his order dated October 19, 1984 (copy Annexure P—9 to the petition).

(3) Feeling aggrieved from the orders of the appropriate authorities, the petitioners have filed this petition in this Court under Articles 226 and 227 of the Constitution of India calling in question the legality of the said orders of Respondents No. 1 and 2 dated October 19, 1984 and August 24, 1982 (copies Annexure P. 9 ad P.6 respectively). The petition came up for motion bearing on August 29, 1984, when notice of motion was issued. In obedience to that notice, the respondents put in appearance. The Bench heard the arguments on January 10, 1985, and observed thus ;

“Since we find ourselves unable to concur in the view of the Division Bench as taken in judgment rendered in C.W.P. No. 1479 of 1979 decided on 6th September, 1979 that the tenancy-at-will cannot be unilaterally terminated, so this petition is admitted to Full Bench.”

It is in the wake of the aforesaid order of the Bench that the matter has been placed before us for disposal.

(4) We have heard the learned counsel for the parties and find that the impugned orders are wholly perverse and cannot legally be sustained. It may be observed at the outset that the point on which the matter was admitted to Full Bench has not been raised before us and, in this situation, it is not necessary to

opine on that aspect of the matter and to go into the correctness of the Division Bench judgment of this court in (*Shri Dhara Singh v. The Collector, Kurukshetra* (1), and others.

(5) The only contention raised before us by the learned counsel for the petitioners, is that the impugned orders are wholly perverse and have completely ignored the finding of the civil court rendered in the litigation between the parties, wherein it has been held that the plaintiff (petitioners' father) was in continuous possession of the suit land as tenant-at-will under the defendant (respondent Gram Panchayat) and, as such, he could not be dispossessed forcibly without having recourse to law. As the petitioners have been held to be the tenants by the Civil Court, we fail to understand as to how did a petition under Section 7 of the Act lie in as much as they are not in unauthorised occupation of the land in dispute. The Appellate Authority has misread the order of S. Dyal Singh PCS, Assistant Collector, Ist Grade, Patiala, dated September 24, 1971. In that judgment, it is nowhere stated that the Sarpanch had deposed that the land in dispute was given on lease for the period of eight years. The respondent-Gram Panchayat has not been able to establish in the present case that the land was given for a fixed period on lease to the petitioners and that after the expiry of that period, the petitioners' possession was unauthorised. As earlier observed, the Civil Court has held the petitioners to be tenants-at-will and there is no allegation nor any evidence to prove that their tenancy at any time was terminated by the respondent-Gram Panchayat. In this view of the matter, we find that the petitioners are in occupation of the land in dispute as tenants and that their possession is not unauthorised and no order of ejection against them could legally be passed in the petition filed under Section 7 of the Act.

(6) No other point is urged.

(7) For the reasons recorded above, we allow this petition and quash the impugned orders of respondent No. 1 and 2 dated October 19, 1984 and August 24, 1982 (copy Annexures P. 9 and P. 6 respectively). In the circumstances of the case we make no order as to costs.

N.K.S.

(1) CW 1479/79 decided on 6th September, 1979.