

Punjab-Haryana High Court

Piara Singh vs The Joint Director Of Panchayats on 4 January, 1996

Equivalent citations: (1996) 112 PLR 765

Author: N Kapoor

Bench: N Kapoor

ORDER N.K. Kapoor, J.

1. This judgment shall dispose of civil writ petition Nos. 2958,2959 2960 of 1983.
2. Petitioners seek quashing of Annexures P-4 and P-5 or for grant of any other writ, direction or order as the Court may deem fit and proper in the circumstances of the case.
3. It is the case of the petitioners that sometime in the year 1950-51 on account of consolidation of holdings in the village they as well as other allottees were allotted separate qurrahs as per their entitlement. A part of their land was taken 'from each of the right holder for common purposes as Bachat land. Subsequently, this Bachat land was recorded in revenue record as Shamlat Deh of the proprietors of the village 'Hasab Rasad Khewat Dar'. It is the case of the petitioners that such a land could not be termed or deemed to be Shamlat Deh in terms of Section 2(g) of the Punjab Village Common Lands (Regulation) Act (hereinafter to be referred as 'the Act'). It is in the year 1970 that Nagar Panchayat made attempts to put this common purposes land to lease to various right holders and petitioners alongwith 61 right holders filed a civil suit for declaration to the effect that land measuring 164 bighas 1 biswas as per details given did not vest in the Gram Panchayat and infact is owned by the petitioners. By way of consequential relief petitioners prayed that respondent-Gram panchayat be restrained from leasing the same or interfering with their possession. This suit was decreed by the civil Court on 30.11.1972, annexure P-2. With a view to get rid of the civil Court decree Gram Panchayat through its Sarpanch Kashmir Singh filed suit No. 149-T on 27.1.1982 for setting aside the judgment and decree dated 30.11.1972. This suit was also dismissed by the Court vide judgment and decree dated 18.5.1983; copy of the judgment is annexure P-3. Despite the decision of the civil Court holding that the land in dispute is owned and possessed by the petitioners and other right holders, yet respondent-Gram Panchayat instituted an application for eviction of the petitioners Under Section 7 of the Act. The District Development and Panchayat Officer further declined to place reliance upon the decision of the civil Court and so passed an order of eviction, annexure P-4. Appeal filed by the petitioners too has been dismissed by the appellate authority, annexure P-5. Petitioners have termed the orders, annexures P-4 and P-5 to be wholly without jurisdiction, void, illegal and un-justified on the following grounds :-

(i) That the land subject matter of adjudication does not fall within the ambit of Shamlat Deh as per Section 2(g) of the Act;

(ii) That the decision of the civil Court holding that the land is not Shamlat Deh is binding between the parties ; and

(iii) That the civil Court decree dated 30.11.1972 having been passed before the amendment effected in Section 13 of the Act could not be ignored in view of the full Bench judgment reported as Gram

Panchayat, Village Bathoi Katan v. Jogar Ram, (1991-1)99 P.L.R. 260 i.e. the authorities under the Act cannot go into the validity of the civil Court decree which is prior to the year 1976.

4. Contesting the claim set up by the petitioners, the contesting respondents beside raising few preliminary objections have controverted the various material averments made in the petition. By way of preliminary objections, it has been stated that petitioners cannot pursue two remedies at a time i.e. one by way of writ petition and the other by way of civil suit and so that writ petition deserves to be dismissed on this ground alone; that Shangara Singh-petitioner No.2 died some 5 years back but his legal representatives, namely, Balbir Singh and Joga Singh have not come forward to prosecute the pending writ petition; that Inder Singh has handed over the possession of the land in dispute to the Gram Panchayat and the Gram Panchayat has leased it in an open auction held on 10.1.1994; and that another suit has been filed by Piara Singh and others on 23.7.1994 and it is only when an interim injunction had been granted, the suit has been got dismissed as withdrawn and it is thereafter that the writ petition has been got restored, so the petitioners action is per-se malafide. On merits, it has been stated that none of the petitioners name appears in the list of right holders and so they cannot lay claim to any land which has been described to be a Bachat land by them. At best such a claim could be laid by the original right holders, if any. It has been further stated that since the jurisdiction of the civil Court was barred; any decision rendered by such a Court is wholly without jurisdiction and so does not effect the right of the respondents in terms of the provisions of the Act.

5. The learned counsel for the petitioners in support of the case set up argued that the right of the parties stand determined by the decision of the civil Court dated 30.11.1972. No appeal, review or revision was filed by the Gram Panchayat against judgment and decree of the Civil Court and so it became final hence binding. Even an attempt to get the decree set aside on all conceivable grounds in the year 1982 again met the same fate (annexure P-3) and hence the initiation of proceedings Under Section 7 of the Act are per-se without jurisdiction and so the order passed by the Collector and its affirmation by the appellate Court is nonest.

6. Learned counsel for the respondents on the other hand argued that in view of the bar of Section 13 of the Act any decision rendered by the civil Court is without jurisdiction and so has been rightly ignored by the authority under the Act. Besides it the petitioners have been cleverly pursuing the civil Court as well for the identical relief, which is now being sought. Since writ petition does not make mention of the alternate remedy availed of by the petitioners the writ petition deserves to be dismissed on this ground alone. Otherwise, too, the action initiated by the authority under the Act cannot be termed to be without jurisdiction or un-just.

7. Broad facts have been noted above. Petitioners alongwith others sought a declaration to the effect that land recorded in revenue record as Shamlat Deh-Hasab Rasad Khewat Dar - is infact owned by proprietors of the village to the extent of their share and such a land cannot be taken to be Shamlat Deh nor the same can be leased out by the Gram Panchayat under the provisions of the Act. In this suit Gram Sabha was proceeded ex-parte. Court after considering the matter found merit in the plea of the plaintiffs and so decreed the suit as prayed for. Judgment dated 30.11.1972 is annexure P-2. This judgment was challenged by the Gram Sabha/Gram Panchayat before the civil Court in the year

1982. On the pleadings of parties issues were framed and parties were permitted to lead evidence. Court, however, found no good ground for setting aside the decree impugned and so dismissed the suit vide judgment dated 18.5.1983. Concededly, no further appeal was filed by the Gram Panchayat and on the other hand proceedings for eviction of the petitioners and others were initiated in terms of Section 7 of the Act. Collector declined to place any reliance upon the judgment and decree of the Civil Court and so passed an order of eviction vide annexure P-4. Similarly, the appellate Court declined to consider the effect of civil Court decree on the pending proceedings. Section 13 as in the Act of 1961 reads as :-

"Bar of Jurisdiction of civil Courts.-

No civil Court shall have any jurisdiction over any matter arising out of the operation of this Act."

This precise provision had been subject matter of adjudication in a number of cases and this Court after considering the matter in all its details had come to the conclusion that jurisdiction of the civil Court is barred only in respect of matter arising out of the operation of this Act and so as and when a claim is laid that such a property or properties does not fall within the definition of Shamlat Deh as per Section 2(g) of the Act, such a claim can be legitimately raised in a civil Court of competent jurisdiction. It is in the context of the then existing provision in Section 13 that the civil Court had been examining the matter and granting the relief, if the case is made out.

9. With a view to bar the jurisdiction of the Civil Court certain amendments were effected vide Punjab Act No. 19 of 1976 and the amended Section 13 reads as:-

"13. Bar of Jurisdiction in civil Court.-

No civil Court shall have jurisdiction-

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine."

10. A bare perusal of the aforesaid provision now makes it abundantly clear that the civil Court will have no jurisdiction to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamlat deh vested or deemed to have been vested in a Panchayat under this Act. So, now in view of the amending Act of 1976 even such a dispute is beyond the purview of a civil Court yet a controversy arose as to the affect of the amendment upon the civil Court decree which have become final between the parties. Incidentally, the State of Haryana too

effected amendment of Section 13 vide Act No. 2 of 1981. Vide amending Act the amended provision was deemed to have been substituted w.e.f. 4.5.1961. Since this was intended to render all civil judgments and decrees passed over the last almost 20 years to be nonest, the same was challenged by way of a writ petition and this Court in *Bajinder Singh and Anr. v. The Assistant Collector Ist Grade, Guhla and Ors.*, 1983 P.L.J. 116 held the substituted Section 13 giving effect to it retrospectively from 4th day of May 1961 to be un-constitutional and so struck down. However, it was held that the amended Act can apply prospectively.

11. The aforesaid judgment came up for consideration before the apex Court in *State of Haryana and Ors. v. Karnal Co-op Farmers Society Limited and Ors.*, 1993 P.L.J.446. The Court while upholding the decision of this Court in *Bajinder Singh's case (supra)* further held that Legislature has no power to abrogate Civil Courts' decrees or orders or judicial adjudications by merely declaring these as no longer valid or binding on parties and the only way is by fundamentally altering the law.

12. So, in the present case the civil court decree dated 30.11.1972 having been passed before the amending Act of 1976 could at best be got set aside for all such reasons like based on fraud or mis-representation or collusive etc. and that too by a competent Court. In the present case, respondents have failed even in their second attempt vide annexure P-3. Since the judgment of the civil Court had become final the same could not be ignored by the authorities, as held by the full Bench judgment in *Gram Panchayat, Village Bathoi Kalan's case (supra)*. So, In the present case authorities while examining the case as set up by the Gram Panchayat Under Section 7 of the Act could not ignore the binding effect of the civil Court decree and hence the order passed by the Collector and affirmed in appeal by the Commissioner are un-sustainable, in law. Resultantly I accept the writ petitions and set aside the orders of the Collector, Annexure P-4, and of the Commissioner- the appellate authority, annexure P-5.

12. No orders as to costs.