

Pv
C.A.No. 4307 OF 1998

ITEM No.106

Court No. 9

SECTION IV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 4307 of 1998

GRAM PANCHAYAT, ROORKI Appellant (s)

VERSUS

JT. DEVELOPMENT COMMNR. (IRD), PUNJAB & ORS.Respondent (s)

(With appln.(s) for permission to submit additional documents and office report)

Date : 17/12/2003 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. A.V. Palli,Adv.
Ms. Rekha Palli,Adv.

For Respondent (s)Dr. Meera Agarwal,Adv.
Mr. R.C. Mishra,Adv.
Ms. Sangita Dhanda,adv.

UPON hearing counsel the Court made the following
O R D E R

Mr. A.V. Palli, learned counsel for the appellant, commenced his arguments at 3.30 p.m. and concluded at 3.45 p.m. Thereafter, Dr. Meera Agarwal, learned counsel for the respondent, commenced his arguments and concluded at 3.55 p.m. Mr. A.V. Palli, learned counsel, thereafter rejoins and was on his legs when the court rose for the day.

The matter remained part-heard.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master
...2/-

PART-HEARD
ITEM No.101

Court No. 9

SECTION IV

DATE : 18TH DECEMBER, 2003.

QORAM AND APPEARANCE : AS OF 17TH DECEMBER, 2003.

Mr. A.V. Palli, learned counsel, resumed his arguments at 11.20 a.m. and concluded at 11.30 a.m. Thereafter, Dr. Meera Agarwal, learned counsel, commenced his arguments and concluded at 12.45 p.m. Mr. A.V. Palli, learned counsel, thereafter rejoins and concluded at 1.00 p.m.

The civil appeal is allowed.

No costs.

[T.I. Rajput][Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4307 OF 1998

Gram Panchayat, Roorkee ...Appellant(s)

Versus

Jt. Development Commnr. (IRD),
Punjab & Ors. ...Respondent(s)

O R D E R

The appellant filed an application under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 [for short, "the Act"] before the Collector seeking eviction of Respondent Nos. 3 and 4 from the land in question. In reply to the notice issued in those proceedings, the contesting respondents took the contention that the land in dispute is a "Samadh", there are three rooms for the purpose of worship and the Collector had no jurisdiction to evict them from the remaining land attached to that "Samadh". After conclusion of the evidence, the second respondent made an application under Section 11 of the Act claiming title to the land in question. The Collector, after holding the enquiry and in the light of the evidence that was placed on record before him, concluded that from the area of two Biswas, where there is actual construction (Dera), the

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- 2 -

respondents could not be evicted. As far as the remaining land is concerned, the claim of the appellant was upheld as against the claim of the respondents. The appellant did not challenge that part of the order passed by the Collector wherein relief was given to the respondents to the extent of two Biswas, where the Dera is situated. However, the second respondent filed an appeal questioning the validity and correctness of the order passed by the Collector rejecting the claim in respect of the remaining land before the Joint Development Commissioner. The Joint Development Commissioner, noticing the argument advanced on behalf of the second respondent and without referring to the submissions or contentions of the present appellant, allowed the appeal and set aside the order of the Collector. In this situation, the appellant approached the High Court by filing a writ petition assailing the order passed by the Joint Development Commissioner in the appeal. The High Court, by the impugned order, re-producing the material portion of the order passed by the Joint Development Commissioner and adding one more paragraph referring to certain statements said to have been made by the devotees, dismissed the writ petition. Hence, this appeal.

The learned counsel for the appellant strongly contended that the High Court committed a manifest error in not examining the serious contentions, both on facts and in law, which certainly arose for consideration in the light of the rival contentions; the High Court simply re-produce

ed the material portion of the order passed by the Joint Development Commissioner and added one more paragraph at the

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- 3 -

end on some assumption in regard to certain statements said to have been made by some devotees without there being any basis. According to the learned counsel, the order passed by the High Court in writ jurisdiction is not a reasoned order dealing with the contentions on merits. The learned counsel added that Respondent Nos.2 and 3 did not satisfy and establish their claim over the land in question; none of the documents placed on record show the ownership of Respondent Nos.2 and 3; in some documents, though names are shown in the column of "Cultivator" but those entries are also not consistent with the stand taken by Respondent Nos.2 and 3. His further submission is that the entries made in the Revenue records stood unchallenged for a long period of time; in other words, the respondents did not question their correctness if they were serious and certain about their rights over the property. The learned counsel also found fault with the order passed by the Joint Development Commissioner who set aside the order of the Collector without discussing the evidence placed on record and even without dislodging the reasons recorded in the order of the Collector.

In opposition, the learned counsel for Respondent Nos.2 and 3 contended that the Joint Development Commissioner was right in holding in favour of the respondents having regard to the definition of "shamilat deh" in Section 2(g) of the Act and their case is covered by exception (ix) thereto, as indicated in the order of the Joint Development Commissioner. The learned counsel further

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- 4 -

submitted that in the absence of the Gram Panchayat establishing that the land vested in it as the common land, i.e., "shamilat deh", it has no locus standi even to initiate proceedings against them. She also submitted that the records produced also support the case of the respondents. In short and substance, the submissions of the learned counsel for the contesting respondents are in support of the order made by the Joint Development Commissioner, as affirmed by the High Court in the impugned order.

We have carefully considered the submissions made by the learned counsel for the parties. The Collector, in his order, observed that the land in dispute covered by Exhibit P-1, Jamabandi for the year 1991-1992, shows the ownership of Gram Panchayat, Roorki. Out of the land in dispute, only two Biswas of land is "Gair Mumkin Kutia and Samadh" and the remaining land is "cultivable land". Surinder Singh, son of Surjit Singh, admitted that he was not in possession of the land. Sher Singh, son of Munder Ram, claimed his possession over the land in dispute being "Mohtam". The Collector also recorded a categorical finding that Sher Singh is not the owner of the total land in dispute. Under the circumstances, the Collector held that Sher Singh is in unauthorised occupation of the disputed land, except two Biswas of land where Kutia is shown to exist. Consequently, direction was given in favour of the appellant Gram Panchayat to take possession of the disputed land.

The Joint Development Commissioner,

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- 5 -

referring to the arguments only of the learned counsel for the appellants in that appeal (Respondent Nos.2 and 3 herein) held that the Gram Panchayat had not been able to show as to how the land vested in it as "shamlet deh"; the ownership of the land changed in 1971-1972 but no satisfactory explanation is forthcoming why the change of ownership took place; thousands of people come there on every purnima; and the order of the Collector that the Dera is entitled to only two Biswas of land is palpably wrong. We must state here itself that in arriving at this conclusion, the Joint Development Commissioner has not assigned any reasons whatsoever and has not shown how the finding of the Collector in regard to two Biswas of land where the Dera is situated is palpably wrong. The Joint Development Commissioner proceeded to say in the order thus:

"The land attached to the Samadh cannot and should not be separated. It is natural that people visit this place and the area around serves the devotees who come on different modes of transportation. Then the area around may be serving to grow crops etc. for running common kitchen langar. The Dera is in existence since the year 1947. No proof has come on record if at any time the land was put on auction of used for common purpose. I, therefore, accept this appeal and set aside the order of the Collector."

The portion, extracted above, does not show any basis for such a conclusion, except the assumption or inference drawn by the Joint Development Commissioner. It is unfortunate that the High Court, in the impugned order, did not deal

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- 6 -

with the contentions on their relative merits, did not examine the records and even did not give reasons for affirming the order of the Joint Development Commissioner, except re-producing

the order of the Joint Development Commissioner. The High Court added one paragraph at the end, which reads:

"In addition to the aforementioned finding, the learned counsel for respondent No.2 has read out before us the statement of certain devotees to the effect that fundings are held on the disputed land which belongs to Dera. The finding is based on facts. No interference in writ jurisdiction is called for. Dismissed at the stage of motion hearing."

In regard to the so-called statement of certain devotees, during the course of the arguments, we asked the learned counsel for the parties. The learned counsel for the appellant submitted that no such statement is available on record and as a matter of fact, no such statement was made. The learned counsel for the contesting respondents was not in a position to point out any such record or statement. If this is the position, the High Court was not at all right and justified in acting upon such a statement to conclude against the appellant. We have no hesitation whatsoever in taking the view that the order passed by the Joint Development Commissioner or, for that matter, the impugned order of the High Court affirming the same cannot be sustained.

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- 7 -

The register of mutation of Village Roorki, Annexure P-1, shows Nagar Panchayat as the owner and the entry also shows "Shamlat Deh Hasab Rasad Zare Khewat" under the heading "Name of owner". The name of the cultivator is shown as "Maqbooza Malkan". A copy of the Jamabandi for the year 1961-1962 of the said Village {Annexure P-2} shows the name of the owner/allottee as "Shamlat Deh Majkoo"; the column of the "Name of cultivator/allottee" shows "Makbooja Majkoo" and the lands are classified as "Banjar Kadim". The Jamabandi for the year 1966-1967 shows Nagar Panchayat as the owner. In the column "Name of cultivator", "Makbooja Nagar Panchayat Mas koor" is shown in respect of Khewat No.166 and in respect of Khewat No. 275, the name of the cultivator is shown as "Sewa Ram Chela Shiv Nath". In this document, as regards the land in "Khasra No. 1462, 6-5" is shown as "Bila Lagan Ba-waja Kabja Banjar Kadim", in respect of "Khasra No. 1463, 6-5", it is shown as "Banjar Kadim G.M.", and in respect of "6-3 to the extent of 0.2", it is shown as "Kutia". In the Jamabandi for the year 1991-1992 also, "Nagar Panchayat Deh" is shown as the owner. "Sher Singh-Surinder Singh s/o Sewa Ram alias Munder Ram Chela Shiv Nath" is shown as the cultivator. Khasra Girdawari for the year 1992-1997 again shows "Nagar Panchayat" as the owner and "Sher Singh Surinder Singh sons of Sewa Ram alias Munder Ram Chela Shiv Nath (568)" as the cultivators. Copy of the Jamabandi of the village for the year 1945-1946 (Annexure R-1) shows the name of the owner as "Shamlet Deh Hazab Rasad Zar Khewat". In the column "Name of Cultivator", it is shown as "Maqbooza Malkaan" and the nature of the land is shown as "Banjar Qadim".

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- 8 -

As can be seen from these documents, one thing is clear that the name of the contesting respondents never appeared in these records as the owners. To the extent of two Biswas, finding of fact recorded is that the Dera, i.e., Kutia, is existing. It is not clear as to how the remaining land was used to subserve the purpose of the Dera. In order to claim the benefit of Exception (ix) to Section 2(g) of the Act, referred to above, it was necessary for the contesting respondents to establish that the remaining land attached to the place of worship was for the subservient purpose thereto immediately before the commencement of the Act. The stand of the respondents appears to be varying from stage to stage. Although the records were in the name of the Gram Panchayat as the owner, the respondents did not challenge those entries till the proceedings were initiated under Section 7 of the Act and that too they made the claim only after the closing of the evidence before the Collector in regard to the Enquiry under Section 7 of the Act. Be that as it may, the Collector having enquired the claims of the parties, both under Sections 7 and 11 of the Act, as stated above, passed the order. In our view, the High Court did not examine the respective contentions on merits in the light of the material placed on record. We think it is just and appropriate that the writ petition is examined by the High Court afresh dealing with the contentions raised on behalf of the parties. Under the circumstances and in the view we propose to take, we do not think it necessary to state anything further on the merits of the respective contentions. Hence,

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- 9 -

this appeal is allowed, the impugned order is set aside and the writ petition is remitted to the High Court to pass orders afresh on the merits dealing with the contentions raised on behalf of the parties.

We, however, state that all the contentions of the parties are left open to be urged before the High Court.

The interim order passed by this Court on 21st August, 1998 shall continue to operate till the disposal of the writ petition by the High Court.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]
New Delhi,
December 18, 2003.