

Gram Panchayat, Bari

Vs

Collector, Sonapat and another

Civil Appeal No.8867 of 1983

(T.K. Thommen, R.M. Sahai JJ)

15.03.1991

ORDER

1. The Punjab and Haryana High Court by the judgment under appeal dated 2-6-1983 dismissed a writ petition filed by the present appellant under Art. 226/227 of the Constitution of India challenging the order of the Collector of Sonapat dated 31-3-1983 holding that the respondent No. 2 was in authorised occupation of the land in question. The Collector reversed the finding of the Assistant Collector Ist Grade, Sonapat dated 29-11-1982 holding that the present respondent No. 2 was in unauthorised occupation of the land in Shamilat deh belonging to the Gram Panchayat. The High Court by the impugned judgment dismissed the writ petition filed by the Panchayat by a one word order. Consequently, we are not in a position to understand the implications of the various questions of law and fact as emerged in the proceedings in the High Court and as no doubt appreciated by the High Court. We would have been in a better position to appreciate the respective contentions of the parties had we the advantage of a reasoned order of the High Court.

2. The question that arises in this case, as we understand from the submissions on either side, is whether or not the respondent, as contended by the appellant Panchayat is in unauthorised occupation of the land in Shamilat deh belonging to the Panchayat within the meaning of Rule 19(a) of the Punjab Village Common Lands (Regulation) Rules, 1964, which reads:-

"19. Unauthorised occupation of Shamilat deh (Ss. 7 and 15(2)(k) of the Act).

For purposes of S. 7 of the Act, a person shall be deemed to be in unauthorised occupation of any land in shamilat deh:-

(a) where he has, whether before or after the commencement of the Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant by the panchayat;

....."

3. According to the Panchayat there is no evidence whatsoever to support the contention of the respondent that he was ever permitted by the Panchayat either as a lessee or as a licensee or in any other capacity to occupy the land in question. Counsel for the Panchayat, Mr. M. S. Gujral submits that the burden is upon the person claiming to be in authorised occupation of Panchayat land to prove by evidence that he has the necessary authority for his occupation of the land.

4. Mr. Prem Malhotra, counsel for the respondent, submits that his client has been in occupation of

the land for several years and he has been paying rent to the Panchayat, but it has never been customary for the Panchayat to give any receipt for the rent paid by him. Counsel says that the statement of the respondent to this effect has never been controverted by the Panchayat.

5. We do not wish to express any view on the merits of the respective contentions. However, we are of the view that the matter is sufficiently important for reconsideration with reference to the facts and the law. It is necessary, therefore, that the question should be reconsidered and disposed of by the High Court by a detailed speaking order.

6. In the circumstances, we set aside the impugned judgment of the High Court and direct the High Court to re-hear the parties and dispose of the matter by a speaking order after affording the parties a reasonable opportunity of being heard with reference to whatever additional evidence they may wish to produce. It will also be open to the High Court, if necessary, to remit the case to the appropriate statutory authority for the purpose of taking evidence on the questions involved.

7. The appeal is disposed of in the above terms. However, we do not make any orders as to costs.

8. The parties shall appear before the High Court on 15th May, 1991 for further directions of that Court.

9. The records shall be sent back immediately.

Order accordingly.

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