SUPREME COURT OF INDIA

Puran and Others

Vs

Gram Panchayat, Faridabad

Appeal (Civil) 5517 of 2003

(Arijit Pasayat and R.V. Raveendran, JJ)

30.01.2006

JUDGMENT

R. V. RAVEENDRAN, J.

This is a plaintiff's appeal against the judgment dated 19.9.2002 of the Punjab & Haryana High Court in Regular Second Appeal No.3689 of 2002 confirming the judgment and decree of the first appellate court dated 6.8.2002 allowing defendant's appeal and dismissing the plaintiff's suit. The first appeal was filed by the defendant against the judgment and decree dated 16.1.2002 in Civil Suit No. 1083/1996 on the file of Civil Judge, Junior Division, Palwal decreeing the suit for a declaration that the plaintiffs are the owners in possession of the suit land (agricultural land measuring 70 Kanals and 1 Marla situated within the revenue estate of village Hassapur, Tehsil Palwal, district Faridabad, described in the plaint)

2. The appellants filed the said suit alleging that a century prior to the filing of the suit, the suit land had been entrusted by the defendant/owners of the land, to their (Appellants') forefathers for cultivation on the understanding that they and their successors would not be evicted therefrom; that

as per the local custom, such tenants became full fledged owners by acquiring occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act, 1887 (for short 'the Tenancy Act') read with Section 3 of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953 (for short 'the Proprietary Rights Act'). The appellants contended that though the name of respondent Gram Panchayat was entered as the owner of the suit land in the revenue records, the respondent had no right, title or interest therein.

3. The suit was contested by the respondent Panchayat. Respondent alleged that the suit land, being part of Shamilat deh, vested in it under section 4(1) of the Punjab Village Common Lands (Regulations) Act, 1961 (for short 'the Common Lands Act'). It was also pointed out that as the Gram Panchayat itself came into existence in or about the year 1952, the question of the respondent Panchayat entering into any agreement with the forefathers of appellants about 100 years prior to the suit, as alleged by the appellants, did not arise. The Gram Panchayat contended that neither the plaintiffs nor their predecessors had cultivated the suit land at any point of time prior to the Common Lands Act came into force, nor secured any occupancy rights at any time under any law or local custom; and that the suit was an attempt to grab a large area of valuable land belonging to the Gram Panchayat.

4. On the said pleadings, the parties went to trial, the main and first issue being whether the plaintiffs were entitled to a declaration that they had become the owners in possession of the suit land by acquiring occupancy rights thereof. The other issues were whether the plaintiff had any locus standi to file the suit, whether the suit was maintainable and whether the court had jurisdiction to try the suit.

5. The trial court decreed the suit by judgment dated 16.1.2002, on the basis of the oral evidence of the appellants that they and their predecessors were cultivating the suit land for several decades and the revenue documents, namely, Jamabandi for the years 1966-67, 1971-72, 1976-77, 1986-87, 1991-92 (Ex. P-1 to P-3, P-5 and P-6) and the Khasra Girdawaries (Ex. P-7, P-9, P-11 and P-12) which showed the Gram Panchayat as the owner and Sarjeet (father of appellant Nos.1 to 3) and Jivan Lal (father of appellant Nos.4 and 5) were the Gair Marusian. The trial court held that the appellants had proved that they were in possession of the suit land for a period of more than 30 years and had acquired occupancy rights under Section 5 of the Tenancy Act read with Section 3 of the Proprietary Rights Act, and consequently, they were entitled to the declaration prayed for.

6. The appeal filed by the Gram Panchayat was allowed by the first appellate court by judgment and decree dated 6.8.2002. The first appellate court held that the suit land which was admittedly Shamilat deh of the village and had vested in the Gram Panchayat, under Section 4(1) of the Common Lands Act; and that the appellants had failed to establish that they had any right title or interest which was protected under sub-section (3) of section 4 of the Act. The first Appellate Court also held that the mere fact that appellants' predecessors were shown as Gair Marusian for the year 1966-67 or subsequent years by paying some nominal rent, will not given them the status of allottee,

lessee or grantee, so to seek any protection under the Common Lands Act or Rules thereunder, unless they are able to establish that they had entered into possession in pursuance of an allotment, lease or grant by the Gram Panchayat. Consequently, the first appellate court set aside the decree of the trial court.

7. The second appeal filed by the appellants was dismissed by the High Court, affirming the findings recorded by the first appellate court. The said judgment is challenged in this appeal. The following contentions are urged by the Appellants :-

i) The right crystallized in their favour under Section 5 of Tenancy Act read with section 3 of Proprietary Rights Act, due to long and uninterrupted possession, could not be defeated by the Gram Panchayat by invoking section 4 of the Common Lands Act.

ii) Having regard to the fact that the names of the father of Appellants 1 to 3 and father of Appellants 4 and 5 were shown in the Jamabhandi for 1966-67 and some subsequent years as persons cultivating the suit land, it should be assumed that Appellants and their forefathers were in possession for a period of more than 12 years immediately preceding the commencement of the Common Lands Act, in the absence of positive evidence to the contrary.

8. The Punjab Village Common Lands (Regulations) Act, 1961, enacted by the Punjab Legislature to consolidate and amend the law relating Shamilat deh, which came with operation on 4.5.1961, applied to all lands which are Shamilat deh. Section 4 of the 1961 Act relates to vesting of rights in panchayats and non-

proprietors. It is extracted below :

"4. Vesting of rights in Panchayats and non-proprietors. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interests whatever in the land, -

a) which is included in the Shamilat deh of any village and which has not vested in a panchayat under the Shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non- proprietor, shall on the commencement of the Shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the Shamilat law shall be deemed to have been vested in the panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

Rights of persons in cultivating possession of Shamilat deh for more than twelve years [immediately proceeding the commencement of the Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

iii) Rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

Sub-section (3) of section 4 makes it clear that neither sub-section (1) (a) nor (2) of section 4 will affect the rights of the three categories of persons mentioned therein. It is not the case of Appellants that they were accorded a status similar to occupancy tenants by custom or otherwise (though not entered as occupancy tenants in the revenue record), such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, and Muqararidars. Nor are appellants mortgagees in favour of whom, the land had been mortgaged with possession prior to 26.1.1950. Therefore, neither clause (i) nor (iii) of sub-section (3) will apply. That leaves only clause (ii) of section 4(3). Clause (ii) of section 4(3) will be attracted only if the following 3 conditions are satisfied : (i) the person must be cultivating land which is part of the Shamilat deh of a village, (ii) he should be cultivating such land for a period of 12 years immediately preceding the commencement of the Act; and (c) he should be cultivating such land without payment of rent or payment of charges in excess of the land Revenue and cess. Let us consider whether appellants fulfilled the said three conditions.

9. Section 5 of the Tenancy Act enumerates the tenants who have the right of occupancy in the land occupied by them. Sub- sections (1) and (2) of section 5 are extracted below:

"5. Tenants having right of occupancy. (1) A tenant

a) who at the commencement of this Act has, for more than two generations in the male line of descent through a grand-father or grand-uncle and for a period of not less than twenty years, been occupying land paying no rent therefor beyond the amount of land revenue thereof and the rates and cesses for the time being chargeable thereon; or

b) who having owned land, and having ceased to be landowner thereof otherwise than by forfeiture

to the Government or than by any voluntary act, has, since he ceased to be landowner continuously occupied the land; or

c) who, in a village or estate in which he settled along with, or was settled by, the founder thereof as a cultivator therein, occupied land on the twenty-first day of October, 1868, and has continuously occupied the land since that date; or

d) who being jagirdar of the estate or any part of the estate in which the land occupied by him is situate, has continuously occupied the land for not less than twenty years, or, having been such jagirdar, occupied the land while he was jagirdar and has continuously, occupied it for not less than twenty years; has a right of occupancy in the land so occupied unless, in the case of a tenant belonging to class specified in clause (c), the landlord proves that the tenant was settled on land previously cleared and brought under cultivation by, or at the expense of, the founder.

(2) If a tenant prove that he has continuously occupied land for thirty years and paid no rent therefore beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (a) of Sub-section (1)."

Section 8 of the said Act provides that nothing in Sections 5 to 7 shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those Sections. The appellants admitted that they were not 'tenants' falling under any of the four categories described in sub-section (1) of section 5. Nor could they establish that they took the suit land from Gram Panchayat in the year 1966 and held the land under the Gram Panchayat as lessee and occupied it continuously for thirty years in the manner described in sub-section (2) of section 5.

10. The Appellants contend that their right of tenancy is based on a ground other than those mentioned in section 5 and is based on section 3(a) of the Proprietary Rights Act, which is extracted below :

"3. Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords.- No withstanding anything to the contrary contained in any law, custom or usage for the time being in force, on and from the appointed day

a) All rights, title and interest (including the contingent interest, if any, recognized by any law, custom or usage for the time being in force and including the share in the Shamilat with respect to the land concerned of the landlord in the land held under him by an occupancy tenant, shall be extinguished, and such rights, title and interest shall be deemed to vest in the occupancy tenant free

from all incumbrances, if any, created by the landlord : Provided that the occupancy tenant shall have the option not to acquire the share in the Shamilat by giving a notice in writing to the Collector within six months of the publication of this Act or from the date of his obtaining occupancy rights whichever is later."

Section 3 of the Act relates to vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of landlords. It is evidence therefrom that the right, title and interest shall be deemed to vest only in an 'occupancy tenant'. Occupancy tenant is defined under section 2(f) as meaning a tenant who, immediately before the commencement of the Proprietary Rights Act, is recorded as an occupancy tenant in the revenue records and includes a tenant who, after such commencement, obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a court of competent jurisdiction or otherwise, and includes also the predecessors and successors-in-interest of an occupancy tenant. Admittedly, neither the appellants nor their predecessors were recorded as occupancy tenants in the revenue records immediately before the commencement of the Proprietary Rights Act, nor did they obtain a right of occupancy in respect of the said land either by agreement with the landlord or through a court of competent jurisdiction or otherwise after the commencement of the Act. The appellants, therefore, do not answer the definition of 'occupancy tenant' under the Proprietary Rights Act. Consequently, they cannot derive any benefit under Section 3 of the said Act.

11. If section 3 of the Proprietary Rights Act is inapplicable, the question that remains for consideration is whether they are entitled to the relief sought merely because the names of Sarjit and Jivan Lal (father of appellants 1 to 3 and father of appellants 4 and 5 respectively) were shown as cultivating the lands for some years from 1966-67. To get excluded from the vesting under section 4(1) of the Common Lands Act, by relying on section 4(3)(ii), the Appellants should prove that they and their ancestors were cultivating such land for a period of at least 12 years prior to the commencement of the Common Lands Act. The Appellants have not produced any document prior to 1966 to show that they were in possession or cultivating the suit land. The oral evidence is also of no assistance. As against the pleading that the land was given to appellants' forefathers about a century prior to the filing of the suit, Appellant No. 1 (PW-3) admitted in his evidence that no record was available to show that they were so cultivating the land prior to 1966. In his cross-examination, he admitted that neither his grandfather nor his great grandfather cultivated the suit land. He stated that he was cultivating the land for about 25 years and earlier his tau (father's elder brother) was cultivating the land. PW- 2 (Aged 35 years) has stated in his evidence (recorded in the year 2000) to his knowledge appellants and earlier Sarabjit (father of appellants 1 to 3) was cultivating the land. His knowledge obviously cannot exceed 25 to 30 years. To same effect is the evidence of PW-1 who was aged 40 years when he gave evidence in 2000. There is thus no oral or documentary evidence to show possession or cultivation of suit land by appellants or their parents/ancestors prior to 1966. The evidence at best shows that for a few years between 1966-67 and 1986-87 and that too not continuously, the appellants (or the father of Appellant 1 to 3 and father of Appellant 4 & 5) unauthorisedly cultivated some portion of suit land. That does not entitle them to protection under section 4(3)(ii) of the Act. Consequently, the vesting under section 4(1) in the Panchayat cannot be questioned. In view of the above, it is unnecessary to go into the defence evidence that appellants were ejected in the year 1976-77 and that thereafter, appellants again illegally cultivated the land for a few years.

12. The suit is based on title. Title is not made out. As a consequence, the dismissal of the suit by the first appellate court, affirmed by the decision of the High Court in Second Appeal, cannot be said to suffer from any infirmity. The appeal is, accordingly, dismissed.