

SUPREME COURT OF INDIA

Collector, Phagwara

Vs.

Brahm Dutt

C.A.Nos.573-574 of 2003

(P.Sathasivam and Dr. B.S.Chauhan JJ.)

25.10.2010

JUDGMENT

P.Sathasivam, J.

1. These appeals are directed against the common final judgment and order dated 24.04.2000 passed by the High Court of Punjab & Haryana at Chandigarh in Civil Writ Petition Nos.10490 and 10738 of 1998 whereby the High Court allowed both the writ petitions filed by the respondents herein.

2. Brief facts:

“(a) The Tehsildar, Phagwara, Appellant No.3 herein, filed two eviction petitions under Sections 4 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as "the Act") against Brahm Dutt and Hari Saran, the respondents herein. In the petition filed against Hari Saran, it was stated that the land bearing Khasra No. 45 Min. North 2- 5, 46 Min. East 2-4 (KM), 47/8-0, 50/8-0, total measuring 20-K-9M, bearing Khewat No. 24, Khatauni No. 109 situated in village Bishanpur, Tehsil Phagwara, as per Jamabandi for the year 1990-91, was owned by the Punjab Government and the respondent had unauthorisedly taken possession of the same. In the petition filed against Brahm Dutt, it was stated that as per Jamabandi for the year 1975-76 land measuring Khewat No. 240 Khatauni No. 240, Khatauni No. 112, Khasra No. 37/K7 M4 38/8K-0M, 39 Min. North 2K-4M, 40 Min. North 2K-6M total measuring 19K-14M KM belongs to the Punjab Government and has been unauthorisedly occupied by the respondents.

(b) By orders dated 23.10.1996 and 24.10.1996, the Collector, Phagwara, Dist. Kapurthala, ordered the eviction of both the respondents herein. (c) Aggrieved by the said orders, the respondents preferred appeals before the Commissioner, Jalandhar under Section 9 of the Act. By order dated 27.01.1998, the appellate Authority - the

Commissioner, dismissed both the appeals and confirmed the orders passed by the Collector.

(d) Questioning the said order, Brahm Dutt filed C.W.P. No. 10490 of 1998 and Hari Saran filed C.W.P. No. 10738 of 1998 before the High Court of Punjab & Haryana for quashing the orders of the Collector dated 23 & 24.10.1996 as well as the order of the Commissioner dated 27.01.1998. In the writ petitions, it was stated by the respondents herein that the land in dispute were earlier owned by the Maharaja of Kapurthala, who had allowed their fore-fathers to cultivate the land. It was also stated that they had been in possession of the land for more than 30 years and, therefore, had become the owners of the land by adverse possession. (e) The appellants herein - official respondents, filed written statement before the High Court denying their claim as to possession and asserted that the Government is the real owner of the land in dispute. (f) By a common order dated 24.04.2000, the High Court allowed both the writ petitions and quashed the orders passed by the Collector and the Commissioner. The High Court held that the respondents had been in possession of the land by way of grant/gift from the Maharaja of Kapurthala. It was also held by the High Court that the respondents had entered into the possession of land in an authorized manner and had become owners since they had been in possession for more than 30 years.

(g) Aggrieved by the aforesaid common order passed by the High Court, the officials of the Government of Punjab preferred the above appeals by way of special leave petitions before this Court.”

3. Heard Mr. Prashant Shukla, learned counsel for the appellants and Mr. S. Balakrishnan, learned senior counsel for the respondents in both the appeals.

4. After going through the claim and assertion of the respondents based on certain materials placed before the Collector, Phagwara and the reasoning of the original appellate authority as well as the High Court, we intend to remit the matter to the original authority, namely, the Collector, to decide the question as pleaded by the respondents for the following reasons:

5. In order to arrive at a conclusion, it would be useful to refer to these definitions. "Premises" and "Public Premises" are defined in Section 2(d) and (e) of the Act which read as follows:

“2(d) "premises" means any land, whether used for agricultural or non-agricultural purposes, or any building or part of a building and includes:-

(i) the garden, grounds and out-house, if any, appertaining to such building; or part of a building; and

(ii) any fittings affixed to such building or part of a building for the more beneficial enjoyment thereof; (e) "public premises" means any premises belonging to, or taken

on lease or requisitioned by, or on behalf of the State Government and includes any premises belonging to, or taken on lease by, or on behalf of- (i) any Municipal Committee, Notified Area Committee, Zila Parishad, Panchayat Samiti, Panchayat or Improvement Trust;

(ii) any company as defined in Section 3 of the Companies Act, 1956 (1 of 1956), in which not less than fifty one per cent of the paid-up share capital is held by the State Government; and

(iii) any Corporation [not being a company as defined in Section 3 of the Companies act, 1956 (1 of 1956), or a local authority] established by or under a Central Act as defined in clause (7) of Section 3 of the General Clauses Act, 1897, or a Punjab Act and owned or controlled by the State Government;" In view of the above definitions, there is no dispute about the applicability of the Act. When notice under Section 4(1) of the Act was issued to the respondents calling upon them as to why an order of ejection be not passed against them, they appeared through their counsel and filed their reply to the notice alleging that they are the owners and in possession of the land in dispute for a period of 30 years. They further asserted that even though in the revenue records, the Provincial Government is shown to be its owner, yet by adverse possession, they have become the owners of the land in dispute. They also asserted that they had been cultivating the land continuously for the last 30 years. They made certain improvements in the land and also installed a tubewell in the land in dispute. It was also stated that since the name of the respondents are shown as cultivators in the Jamabandi as "Gair Marusi Bina lagan" (without payment of rent) and deemed to be the owners, during consolidation proceedings, therefore, the Tehsildar or the Government has no concern with the said land. They also produced in evidence Patwari Sarwan Singh Halqa PW-1, Phagwara as well as Chanan Singh, Office Qanungo and got their statements recorded. In his evidence, Patwari brought the original Jamabandi and stated that the Jamabandi for the year 1990-91 was prepared by his predecessor. As per the Jamabandi, the land bearing Khasra No. 45 Min. North 2- 5, 46 Min. East 2-4, 47/8-0, 50/8-0 is shown to be in the ownership of the Provincial Government and the name of Hari Saran, s/o Karam Chand is mentioned as cultivator and similarly the land bearing Khasra No. 37/K7 M4, 38/8K-0M, 39 Min. North, 2K-4M and 40 Min North, 2K- 6M is shown to be in the ownership of the Provincial Government and the name of Brahm Dutt is mentioned as cultivator and they are cultivating the said lands and are in possession of the same. Similarly, the Khasra Ex. P-2 has also been issued by his predecessor and he had brought the original register."

6. No doubt, in the same record, the Provincial Government is the owner of the land in dispute and the names of both the respondents were mentioned as cultivators/deemed owners (without payment of rent). Apart from the same, they also appeared and asserted their stand that they had been in cultivation and possession of the land in dispute for the last 50 years and by adverse possession, they became the owner of the land. Though the District Collector

adverted to all the materials and assertions of the respondents, more particularly, about their statements that they were cultivating the land after the grant/gift of Maharaja of Kapurthala to their fore-fathers, the said aspect was not looked into.

7. When the respondents herein filed appeals before the Commissioner under Section 9 of the Act, without adverting to any of these material aspects, the Commissioner dismissed both the appeals by passing a cryptic order.

8. The High Court, without adverting to the factual details, particularly, the assertions of the respondents as well as the entries in the Jamabandi for the relevant years (Annexures R-1 to R-3), and without assigning valid reasons, set aside the orders of the original and the appellate Authority.

9. On going through the factual details, the stand of the respondents, their assertions, the statement of Patwari and the Office Qanungo and the entries in the relevant Jamabandi, we feel that the ends of justice would be met by directing the original authority - the Collector, Phagwara, to pass fresh order after considering the above materials and after affording opportunity to all the parties concerned. Both the parties are permitted to lead fresh evidence, if any, with reference to their respective claim/stand within a period of eight weeks. It is made clear that we have not expressed any opinion on the claim/stand of both the parties and it is for the Collector to apprise and take a decision in accordance with law within a period of six months. In view of the same, we set aside the impugned order of the High Court as well as the orders of the original authority - Collector, Phagwara and the appellate authority - the Commissioner, Jalandhar.

10. In the result, the civil appeals are allowed to the limited extent. There shall be no order as to costs.