

PEPSU HIGH COURT

Mohindar Singh

Vs

State of Pepsu

Civil Misc. No. 154 of 1953

(Mehar Singh, J.)

30.06.1954

ORDER

Mehar Singh, J.

1. This is a petition under Article 226 of the Constitution arising out of facts as stated below.
2. The petitioner Mohinder Singh, avers that he is the owner of 29 kanals and 5 marlas land, field, Nos.81, 82 and 87, situate within the area of village Hari Nau, in tehsil Faridkot of Bhatinda District, and was in possession of the land as such, when on 14-6-1953, under the authority of the respondents, the Pepsu State and the Collector of Bhatinda district, some members of backward; classes were put in possession of the land, thus dispossessing the petitioner of the same. The respondents treated the land as State land and on that score leased it to certain members of backward classes. The petitioner points out that he had been in possession of the land for more than fifty or sixty years even in the time of the former Faridkot State and later a suit brought against him by His Highness the Maharaja of Paridkot on 28-8-2005 Bk. for possession of this land was dismissed on 25-10-2006 Bk. The petitioner, therefore, says that the action of respondent No.2, Collector of Faridkot district, in leasing the land and ousting the petitioner from possession of it without any notice to him is illegal and without jurisdiction. He made an application to respondent No.2 for delivery back of the possession of the land but in vain. He, therefore, prays for the issue of:
 - (a) a writ in the nature of mandamus directing the State (respondent No.1) not to lease out the land,
 - (b) a writ in the nature of prohibition restraining the respondents from dispossessing the petitioner from the land, or
 - (c) any other direction or order that may be deemed necessary and proper in the circumstances of the case.
3. The position taken on behalf of the respondents is that the application of the petitioner for 'delivery back' of the possession to him is still pending with the Government and the petition is

premature, that the petitioner could approach the higher Revenue authorities in an appeal or file a civil suit to recover possession of the land and so the petition ought to be dismissed on this ground, that the petitioner is not the owner of the land in question and was not in possession of it, that His Highness the Maharaja of Faridkot had no interest in the land as it had become the property of the State and, therefore, he allowed the suit to be dismissed in default, that the land is the property of the State and so the respondents had every legal right to lease it to members of backward classes, and that the order of respondent No.2 is legal, just and proper and the petitioner has no title to the land.

4. It is admitted by the learned counsel for the parties that possession of the land had passed from the petitioner to the lessees under the respondents so there can be no question of issuing writs in the nature of mandamus directing the respondents not to lease out the land or prohibiting them from dispossessing the petitioner from the land.

5. The petitioner has produced a copy of a treasury receipt, dated 21-7-2003 Bk., to show that he deposited a sum of Rs.600/- as one-fourth of the auction-money in relation to the purchase of some land by him at village Hari Nau. It is not clear that that receipt relates to the land subject-matter of this petition. But it is clear that the receipt is not payment of the full price of the land to which it relates. It is, therefore, no evidence that it relates to a completed transaction of sale about land. This receipt by itself does not prove the title of the petitioner in the land in question. There is no other evidence on record of this case that the petitioner is the owner of this land. The respondents have put in Khasra Girdawries from Kharif 1999-Rabi 2000 down to Kharif 1952-Rabi 1953. These Khasra Girdawries show that in the years 1950-51 the field numbers in dispute were in possession of one Gurdit Singh. His possession was disputed by Mohindar Singh petitioner and Mukhtiar Singh. In the years 1951-52 and 1952-53 the possession of the land is shown with Mohinder Singh petitioner and Mukhtiar Singh, but it is also stated that the possession is disputed. One thing is clear from these Khasra Girdawries that since Kharif 1951 down to Rabi 1953 the petitioner was in physical possession of the land along with one Mukhtiar Singh. Their possession may have been disputed either by the State authorities or by somebody else, but the fact remains that they were in actual possession of the land. They were deprived of the possession on 14-6-1953. There is no explanation by the respondents under what law the petitioner was dispossessed of this land and all that is said is that he was not in possession of it. I do not think that the respondents had any right to dispossess the petitioner of the land in his actual possession without the authority of law and by mere executive action. It may be, and it probably is true, that the petitioner has no valid title to the land, but that is a matter that would come for decision by a civil Court when the respondents should attempt to dispossess the petitioner of the land by a regular suit in a Court of law. It is admitted on behalf of the respondents by their learned counsel that there is no summary procedure provided by law in this State whereby the executive authorities can dispossess a man of immovable property as has been done in the present case. It is, therefore, manifest that the action of the respondents in dispossessing the petitioner of the land by executive action and without recourse to law is illegal and without jurisdiction.

6. It is contended on behalf of the respondents that in any case the respondents are in the position of a trespasser just as a private person, and the only remedy that the petitioner has is a suit for possession of the land against the respondents as trespassers and not by way of this petition. In the case of trespass by a private individual that position is to a considerable extent correct, but

where the Government enters upon a highhanded executive action to dispossess a subject of his property, in such a case a writ petition is a proper and an adequate remedy for the subject against the Government.

7. In the end it is contended by the learned counsel for the respondents that the possession of the land is no longer with the respondents and that it is with the lessees, who are no parties to this petition, and, therefore, no effective order can be made against the respondents in this petition. In - '*Sardara Singh v. Custodian Muslim Evacuee's Property*'¹, the petitioner had been dispossessed of the property allotted to him by the Custodian, and the order of the Custodian having been found to be without jurisdiction was quashed, and then with regard to the possession of the property the Hon'ble the Chief Justice observed:

"As I am told that the petitioner has been dispossessed of part of the Khola which the Custodian has allotted to the Oil Company, during the pendency of these proceedings, I further direct the Custodian to take back the possession of that plot from the Oil Company or from the persons who may be holding it on behalf of the Company, and to restore it to the petitioner."

This provides answer to the argument of the learned counsel for the respondents. But he further points out that the Government having leased the land to third persons has no means of summary eviction of those persons to take back possession and to give it to the petitioner. The Government, according to him, will again be taking high-handed action against those third persons if they are dispossessed of the leased land summarily and so the Government will be forced to file a suit against them to obtain possession of the land and then only it would be possible for it to give its possession to the petitioner which would practically render the order to the Government to obtain back possession of the land and to deliver it to the petitioner ineffective. It is clear that if in such a case the Government, respondent No.1 in this case, was itself in possession of the land an order could be made directing it to deliver possession of it to the petitioner; - *Kistareddy v. Commr. of City Police, Hyderabad*², Here the respondents have by their own action created difficulties for the petitioner. The respondents may find it somewhat difficult to obtain immediate possession of the land for its delivery to the petitioner, but what they can effectively do is one of the two things, that is, (a) that they can obtain an attornment on the part of the lessees in favour of the petitioner thus putting him in the position of lessor, or (b) as the crop year is just ending, this being the end of the month of June, the respondents can obtain possession from the lessees for the new agricultural year and deliver it back to the petitioner, that is subject to the terms of the lease.

8. The consequence is that this petition succeeds and as the order of the respondents depriving the petitioner of possession of his land was illegal and without authority of law so a direction will issue to the respondents to put the petitioner back into possession of the land and if necessary after recovering the possession from the lessees or if that is for some practical reasons impossible then to obtain attornment of the lessees to the petitioner as lessor.

9. The respondents will bear the costs of the petitioner, counsel's fee being Rs.32/-.
Petition allowed.

Cases Referred.

¹ AIR 1952 Pepsu 12

² AIR 1952 Hyd 36