

Before : A. L. Bahri & H. S. Bedi, JJ.

RAJBIR AND OTHERS,—Petitioners.

versus

THE ASSISTANT COLLECTOR, 1ST GRADE, NARWANA,

DISTRICT JIND AND ANOTHER,—Respondents.

Civil Writ Petition No. 10953 of 1991.

8th October, 1991.

*Punjab Village Common Land Regulation Act—1961, S. 7(1) & (4)—Question of title—Determination of—Affidavits submitted in support of claim—Order of Assistant Collector that no prima facie evidence of title was produced, hence, application is rejected—Such order—Whether appealable.*

*Held*, that affidavits of the persons produced, would be evidence to be taken into consideration. What value to be attached to such affidavits on the points involved in the case is entirely for the Authorities to determine. Since, in the present case, application filed under S. 7(1) proviso, has been rejected holding that there was no prima facie evidence, such order of the Assistant Collector would be final qua determination of the question of title as contemplated under S. 7(1). This provision would cover the case in hand and appeal would be maintainable under S. 7(4) of the Act.

(Paras 2 & 3)

*Petition under Article 226 and 227 of the Constitution of India, praying that:—*

- (a) *writs in the nature of certiorari, mandamus, prohibition etc. may be passed quashing the impugned order dated 16th July, 1991 (Annexure P-10) passed by the Assistant Collector Ist Grade, Narwana, respondent No. 1, as illegal, ultra vires, void and without jurisdiction, and respondent No. 1 may be directed to decide the question of title involved in the present case and raised by the petitioners before taking further proceeding in the main application of the Gram Panchayat, respondent No. 2, and of its decision, and respondent No. 1 may also be directed to keep the proceedings in the main application of respondent No. 2 in abeyance till the decision of question of title;*
- (b) *any other writ, order or direction as this Hon'ble Court may deem fit keeping in view the facts and circumstances of the present case and in the interests of justice, equity and good conscience, may be issued;*

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- (c) records of the case may be summoned from the respondents;
- (d) notices of motion to the respondents may be dispensed with;
- (e) filing of certified copies of the Annexures P-1 to P-10 may be dispensed with; and
- (f) costs of this petition may be awarded to the petitioners.

It is further prayed that an ad-interim order may be passed staying the further proceedings in the main application of the Gram Panchayat, respondent No. 2, before the Assistant Collector 1st Grade Narwana, respondent No. 1, and dispossession of the petitioners from the land in question during the pendency of the present civil writ petition in this Hon'ble Court.

Mr. P. N. Aggarwal, Advocate, for the petitioners.

Mr. R. N. Lohan, Advocate, for the respondents.

#### JUDGMENT

(1) Rajbir Singh and others have filed this writ petition for quashing order dated July 16, 1991 (Annexure P.10) passed by the Assistant Collector 1st Grade Narwana. Proceedings under Section 7 of the Punjab Village Common Land Regulation Act as applicable to Haryana were initiated against the petitioners by the Gram Panchayat in respect of plots situated in the village *abadi* (*premises in question*). During the pendency of the proceedings, an application was filed by the petitioners raising *prima facie* question of title and calling upon the Assistant Collector to first decide the said question. This application was filed under Section 7(1) read with proviso. Alongwith this application, the petitioners submitted affidavits of some of the villagers. The Assistant Collector without making reference to these affidavits held that no *prima facie* evidence of title was produced by the petitioners and passed the impugned order. Notice of motion was issued and written statement has been filed on behalf of the Gram Panchayat *inter alia* taking objections with respect to the maintainability of the petition as alternative remedy of appeal is available to the petitioners and on merits, the Assistant Collector rightly rejected the application.

(2) We have heard the learned counsel for the parties and we are of the view that appeal was maintainable against the impugned order. Shri P. N. Aggarwal learned counsel appearing on behalf of

the petitioners referred to the decision of the Division Bench of this Court in *Sarwan Singh and others v. Gram Panchayat Balad Kalan and others* (1), holding that appeal was not maintainable under the provision of the Act and only remedy available was writ jurisdiction. On going through the facts of the case, we find that impugned order was of stay during the pendency of the proceedings, obviously, by passing the stay order, no final decision regarding the controversy was made. As for as, the present application is concerned, the controversy on the question of title raised was decided finally by the Assistant Collector. It may be emphasised that affidavits of the persons produced, would be evidence to be taken into consideration. What value to be attached to such affidavits on the points involved in the case is entirely for the Authorities to determine. Since, in the present case, application filed under Section 7(1) proviso, has been rejected holding that there was no *prima facie* evidence, such order would be final qua determination of the question of title as contemplated under Section 7(1) which reads as under :—

“An Assistant Collector of the first grade having jurisdiction in the village may, either *suo moto* or on an application made to him by a panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the *shamilat deh* of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.”

*Proviso* : “Provided that if in any such proceedings the question of title is raised (and proved *prima facie*) the Assistant Collector of the first grade shall first decide the question of title under Section 13-A.”

(3) The aforesaid provision would cover the case in hand and appeal would be maintainable under Section 7(4) of the Act. It is

(1) 1984 P.L.J. 42.

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left to the petitioner to approach the Appellate Court and raise other questions involved in the case. We refrain from commenting on merits of the case. May be for *bona fide* reasons, the petitioners have approached this Court instead of approaching Appellate Court. The question of limitation would not be raised as a bar for entertainment of the appeal if the same is filed within one month from today. The petitioners may approach the Appellate Court for obtaining any interim order regarding stay of proceedings before the Assistant Collector. The Assistant Collector will not finally determine the question of ejection of the petitioner for one month. With the directions aforesaid, this writ petition stands disposed of.  
No order as to costs.

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J.S.T.

Before : B. C. Verma, C.J. & Ashok Bhan, J.

DARSHAN RAM SUMAN AND OTHERS,—Petitioners.

*versus*

THE STATE OF PUNJAB AND ANOTHER,—Respondents.

Civil Writ Petition No. 5691 of 1985.

10th October, 1991.

*Constitution of India, 1950—Arts. 14, 16 & 226—Promotion—Educational qualification—Classification between graduates and non-graduates—Minimum qualification for direct recruitment of Excise/Taxation Inspectors prescribed as graduation—Clerical staff of Excise and Taxation Department possessing above qualification, earlier ineligible to be promoted/appointed as Excise/Taxation Inspector, given incentive by way of concession to appointment by transfer as also to compete directly for such post—10 per cent. posts, however, reserved for matriculates and under-graduates—Challenge by under graduates to validity of such classification—Not permissible—Equality clause—Burden rests on person questioning the constitutional validity of rules and regulations—Lack of cogent evidence and proper material—Classification cannot be held as discriminatory.*

*Held*, that while considering the validity of classification of reserving posts for graduate clerks alone, one has to bear in mind that minimum qualification prescribed for direct recruitment to the post of Excise/Taxation Inspectors is graduation. The clerks in the department, if otherwise eligible, were not precluded from contesting for direct appointment as Excise/Taxation Inspectors. They were.