

Before K. Kannan, J.

SAUDAGAR SINGH,—Petitioner

versus

THE DIRECTOR PANCHAYATS, PUNJAB
AND OTHERS,—Respondents

C.W.P No. 12291 of 1990

4th May, 2011

Constitution of India—Article 226/227—Punjab Village Common Lands (Regulation) Act, 1961—S. 7—Punjab Village Common Lands (Regulation) Rules, 1964—Rl. 20 & Rl. 21—Ejectment order passed—Warrant of possession issued—In appeal petitioner contended that no notice issued and order ex-parte and that property was not in unlawful occupation but had been permitted to be occupied in the proceeding before the Deputy Commissioner after a resolution of the Panchayat—Appeal rejected and petition allowed.

Held, that Rule 21 empowers Panchayat to secure eviction only on holding that property vested in Panchayat is in unauthorized occupation. When possession is shown to be pursuant to a resolution passed by Panchayat and on recommendation of Deputy Commissioner, Panchayat could not have applied for ejectment under Section 7 of the Act. Director also could not have passed order without satisfying him self that the proceedings had been before the Collector after due notice and after eliciting information that petitioner was in unlawful possession. Petition allowed.

(Para 6)

G K. Hundal, Advocate, for the petitioner.

K. S. Sivia, DAG Punjab.

K. KANNAN, J. (ORAL)

(1) The petitioner was resident of village Dhanoor, District Ludhiana. He was sought to be ejected pursuant to the proceedings initiated under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961.

(2) It was contended that no notice had been issued to him and the order had been passed *ex-parte* and he had known about the order only when the warrant of possession had been issued by DDPO. An appeal had been filed against warrant of possession urging contentions on merit that the property was not in unlawful occupation but it had been permitted

to be occupied by them in the proceedings of the Deputy Commissioner, Ludhiana after due resolution of the Panchayat. The earlier authority did not examine the case on merits and summarily rejected it holding that since warrant of possession had been issued, the contention of the petitioner can not be entertained. It is the order of the Collector which was affirmed by the Director, Panchayats, Punjab which is under challenge before this Court.

(3) The contention of the petitioner is that the property had been allotted at the time when Village Dhanoor and Village Tanda Kalia were in single Panchayat and on the recommendation of the Deputy Commissioner, Ludhiana, the Panchayat had passed a resolution to allot the land to the petitioner for construction of the house. A resolution had been passed in the year 1973 and property was permitted to be occupied by the petitioner. He had constructed a house thereon and after the bifurcation of the Panchayat into two, for each of the two villages, the newly constituted Panchayat at Village Tanda Kalia had filed an application under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961 for ejection before Collector, Samrala. The Collector had dismissed the application,—*vide* his order dated 21st December, 1992 (Annexure P-3) holding that the property had already been granted to the petitioner on a resolution of the Panchayat and possession was not shown to be in unauthorized occupation of the petitioner. This order became final but without in any way assailing the same, the Panchayat had filed a fresh petition before the Collector at Ludhiana and an *ex-parte* order had been secured.

(4) Rule 20 deals with putting the Panchayat into possession under Section 7 and Rule 21 sets out the matter of consideration in the matter of eviction.

(5) Rule 21 of the Punjab Village Common Lands (Regulations) Rules, 1964 reads as follows :—

“Rule 21. Eviction (Section 7 and 15(2)(k)—(1) If after consider the cause, if any, shown by any person in pursuance of notice under rule 20 and any evidence that may be produced and after giving the parties a reasonable opportunity of being heard, the collector is satisfied that the land or other immovable property specified in the notice served under rule 20 or any part thereof is in unauthorised occupation, the collector may on a date to be fixed for the purpose make an order of eviction for reason to be recorded therein, directing that the land or other immovable

property, or any part thereof as the case may be, shall be vacated by all persons who may be in unauthorized occupation thereof, and cause a copy of the order to be affixed on the outer door of panchayat ghar and at some other conspicuous place of the estate in which the land or other immovable property is situated.

(2) If any person refused or fails to comply with the order or eviction within thirty days of the date of its publication, the collector or any other officer duly authorised by him in this behalf may evict that person from and put the panchayat in possession of the land or other immovable property and may for that purpose, use such force as may be necessary.”

(6) The rule empowers the panchayat to secure an eviction only on holding that the property which is vested in the panchayat is in an unauthorized occupation. Without finding that the possession is unauthorized, it shall not be possible to evict the possession. When the possession is shown to be pursuant to resolution passed by Panchayat and on the recommendation of the Deputy Commissioner, the Panchayat could not have applied for ejection under Section 7 of the Act. There is also no answer to the contention made by the petitioner that there had been earlier an order passed by the Collector, Samrala dismissing the petition and the panchayat had resorted to action before another authority without disclosing the earlier dismissal. Dismissal of the appeal by the Director of the Panchayat without adverting to the merits and the contentions raised by the petitioner is also untenable where the contention of the petitioner was that he had no notice of the petition under Section 7 of the Act and that he knew about the proceeding only when warrant of possession had been issued. The Director could not pass an order without satisfying himself that the proceedings had been taken before the Collector after due notice and after eliciting information that the petitioner was in unlawful possession.

(7) The impugned proceedings are in contravention of law and order of ejection passed and affirmed by first respondent can not be sustained.

(8) The impugned proceedings are consequently quashed and writ petition is allowed.

M. JAIN