

and not under any other special Statute like the Punjab Town Improvement Trust Act. Section 59 of the Town Improvement Act as reproduced above makes the award of the Tribunal as final, there being no other provision for appeal being made in the Statute. By analogy the right of appeal cannot be conferred. Appeal has always been a statutory right. I hold that the appeal is not maintainable and reject the appeal.

(6) On the request of counsel for the appellants, it is ordered that the court-fee paid be refunded.

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J.S.T.

Before Hon'ble N. K. Sodhi, J.

DHARAM SINGH AND OTHERS,—Petitioners.

versus

THE STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 2447 of 1991

31st October, 1991.

*Constitution of India 1950—Articles 226/227—Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to State of Haryana)—Proviso to Section 7—13A—Ejectment proceedings—Petitioner raised question of title in ejectment proceedings before the Assistant Collector—Title not decided and ejectment ordered.—vide impugned orders—Held that it is incumbent upon Assistant Collector to convert himself into a Tribunal under Section 13-A and decide question of title first—Impugned orders set aside.*

*Held, that the proviso to Section 7 of the Act is very clear. In the summary proceedings sought to be initiated under Section 7 of the Act for the ejectment of a person allegedly in unauthorised occupation, it is open to the latter to raise a question of title and if he proves the same prima facie, the Assistant Collector 1st Grade has no choice but to first decide that question of title by converting himself into a Tribunal under Section 13-A of the Act.*

(Para 4)

Anil Khetarpal Advocate, for the Petitioner.

H. S. Sangha Senior Advocate with Amarjit Singh, Advocate for respondent No. 3.

C. L. Sharma, Advocate for the State of Haryana.

## JUDGMENT

N. K. Sodhi, J.

(1) The petitioners are residents of village Kishangarh, Tehsil Thanesar, District Kurukshetra in the State of Haryana and claim to be the owners of the land in their possession in this village. Gram Panchayat, Kishangarh, respondent No. 3, filed an application for the ejectment of the petitioners under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (as applicable to the State of Haryana and hereinafter called 'the Act') before the Assistant Collector 1st Grade Kurukshetra as according to the Gram Panchayat, the petitioners were in wrongful/unauthorised possession of the land which was *shamilat deh* of the village and which vested in the Panchayat under the Act. On receipt of notice of the ejectment petition, the petitioners filed their reply on May 24, 1990 and took various objections regarding maintainability of the application. It was also pleaded by them that they purchased the land in the village in the year 1947 and during the consolidation proceedings in the year 1952-53, 12 acres of land was reserved for inhabiting the village which area was taken from the land-owners as per their shares. The plea of the petitioners is that they were big land-owners in the village and according to their shares, a cut of 16 kanals of land was imposed which was included in the *abadi deh*. It was further alleged that the area then left with the petitioners was abutting the *abadi* of the village on which the Panchayat constructed a hospital, Gurdwara and a school as per the statutory Scheme of consolidation. In lieu of the aforesaid land of the petitioners, the latter are said to have been allotted 16 Kanals of land in *abadi* out of which a thoroughfare was carved out and 15 Kanals of land was given to them by way of exchange of which they are now absolute owners. On this basis, the claim of the Gram Panchayat was controverted and the petitioners claimed to be in possession of the land in the *abadi* as co-sharers and it was pleaded that the application under section 7 of the Act was not maintainable and deserved to be dismissed. It may be mentioned that in support of their case, the petitioners had produced a copy of the consolidation scheme, jamabandi for the year 1983-84 where they were shown in possession because of exchange and the same possession was reflected in the subsequent jamabandi for the year 1988-89.

(2) The pleas raised by the petitioners did not find favour with the Assistant Collector 1st Grade who held that the land in dispute as per the revenue record vested in the Panchayat. The contention advanced on behalf of the Gram Panchayat that there was no question of title involved was accepted. The petitioners contended

that in view of the proviso to section 7 of the Act which was introduced by Haryana Act 2 of 1981, they had raised the question of title in defence to the petition for ejection and *prima facie* proved the same and, therefore, the Assistant Collector 1st Grade should have proceeded to decide that question under section 13-A of the Act. Feeling aggrieved against the order of the Assistant Collector 1st Grade, the petitioners filed an appeal before the Collector, Kurukshetra who,—*vide* his order dated January 24, 1991 dismissed the same. The order of the Assistant Collector 1st Grade as also the appellate order passed by the Collector have been impugned in the present writ petition.

(3) The primary contention advanced on behalf of the writ petitioners is that since the petitioners had raised a question of title in the written statement filed before the Assistant Collector 1st Grade, it was incumbent upon him to have converted himself into a Tribunal under section 13-A of the Act and he should have decided the question of title first before dealing with the petition filed by the Gram Panchayat under Section 7 of the Act. Learned counsel for the Gram Panchayat, on the other hand, contended that the petitioners were not the owners and did not *prima facie* produce any document on the record to support their plea. According to the learned counsel for the respondents, if ownership by way of exchange was being pleaded by the petitioners, the same must have been registered somewhere and the exchange deed executed could have been produced to *prima facie* prove their case. Again, some mutation must have been entered in the record of rights which could have shown that the petitioners were owners by way of exchange but nothing of the sort was placed on the record, the question of title could not thus be said to have been raised and *prima facie* proved so as to be decided by the Assistant Collector 1st Grade under section 13-A of the Act.

(4) I have given my thoughtful consideration to the submissions made by the learned counsel for the parties and am unable to agree with the counsel for the respondents. The proviso to section 7 of the Act is very clear. In the summary proceedings sought to be initiated under section 7 of the Act for the ejection of a person allegedly in unauthorised occupation, it is open to the latter to raise a question of title and if he proves the same *prima facie*, the Assistant Collector 1st Grade has no choice but to first decide that question of title by converting himself into a Tribunal under section 13-A of the Act. In the instant case, the petitioners had produced the statutory scheme of consolidation (Annexure P5 with the

writ petition) which also talks of some exchange of land having taken place and the jamabandis for the years 1983-84 and 1988-89 show that the petitioners are in possession of the land by reason of exchange. It is true that the petitioners have not been recorded as owners in the jamabandis but *prima facie* they have raised the question of title and in my opinion, the Assistant Collector was not justified in not disposing of such a plea under section 13-A of the Act. At that stage, the Assistant Collector 1st Grade is only to be satisfied *prima facie* and it is only after he converts himself into a Tribunal under section 13-A of the Act that the parties could have produced evidence in support of their respective claims. If the petitioners fail to prove their title, they would be ejected from the land in dispute as unauthorised occupants. If, on the other hand, they succeed in establishing their ownership as claimed by them now, the petition filed by the Gram Panchayat would have to be dismissed. In my opinion, in the present case not only a question of title was raised but even *prima facie* proved so as to necessitate a decision under section 13-A of the Act. In this view of the matter, the impugned orders as passed by the Assistant Collector 1st Grade and the Collector in appeal are quashed. The case is remanded to the Assistant Collector 1st Grade, Kurukshetra with a direction, to first dispose of the question of title in terms of the provisions of section 13-A of the Act. It is made clear that nothing stated herein is the expression of my views in regard to the merits of the case and the Assistant Collector 1st Grade will have to decide the issue on the basis of the evidence that may be led before him by the parties. Consequently, the writ petition is allowed with no order as to costs. The parties through their counsel are directed to appear before the Assistant Collector 1st Grade Kurukshetra on 18th November, 1991 for further proceedings.

*J.S.T.*

*Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.*

**BABU RAM AGGARWAL,—Petitioner.**

*versus*

**THE COMMISSIONER & SECRETARY TO GOVERNMENT OF HARYANA & OTHERS,—Respondents.**

*Civil Writ Petition No. 15057 of 1993*

*6th January, 1994*

*Constitution of India 1950—Arts. 226/227—Haryana Municipal Act S. 21 & 27—meeting convened to consider no confidence motion—*