

## CIVIL MISCELLANEOUS.

Before Prem Chand Jain, J.

DEIYA RAM AND ANOTHER,—Petitioners

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ No. 2778 of 1969.

September 25, 1970.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 7 and 13—Application for ejectment of an unauthorised occupant of Shamilat land—Occupant denying the title of the panchayat—Jurisdiction of the Assistant Collector to eject such occupant—Whether ousted.*

Held, that under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, the Assistant Collector, 1st Grade is empowered to put the panchayat in possession of the land or other immovable property in the Shamilat Deh which vests or is deemed to have been vested in it and for that purpose, either *suo motu* or on the application of the Panchayat or an inhabitant of the village, eject, in accordance with the procedure under sub-section (1), any person who is in wrongful or unauthorised possession of such land. This section clearly authorises the Assistant Collector First Grade to take proceedings against a person who is in wrongful or unauthorised possession of the Shamilat land and if a dispute arises as to the nature of the possession over the land in dispute, then in that contingency, the Assistant Collector would go into that matter. Section 13 of the Act bars the jurisdiction of the Civil Courts over any matter arising out of the operation of the Act. Hence it is the exclusive jurisdiction of the Assistant Collector First Grade to take proceedings under section 7 of the Act and a mere denial of the title of the Panchayat on the part of the person who is alleged to be in wrongful or unauthorised possession of the Shamilat land, is not sufficient to oust the jurisdiction of the Assistant Collector First Grade, under section 7 of the Act. (Paras 5 and 6).

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued, quashing the impugned order, dated 22nd July, 1969, (Annexure 'A'), of respondent No. 1.*

BHAL SINGH MALIK, ADVOCATE, for the petitioners.

PURAN CHAND ADVOCATE, for respondent No. 4 only.

## JUDGMENT

P. C. JAIN, J.—(1) Deiya Ram and Banwari have filed his writ petition under Articles 226 and 227 of the Constitution of India, challenging the legality and correctness of the order of the Commissioner,

ASSISTANT COLLECTOR No. 5768/5  
Date: 27.9.70 cop. 14

Ambala Division, respondent No. 2, dated July 22, 1969 (copy Annexure 'A' to the petition.)

(2) Briefly the facts, as alleged in the petition, are that the petitioners and respondents No. 5 are residents of village Sarsadh, Tehsil Gohana, District Rohtak, and are in cultivating possession of land measuring 22 Kanals and 14 Marlas comprised in Rectangle No. 21 and Killas Nos. 15, 19 and 20 and that on March 14, 1967, the Gram Panchayat, respondent No. 4, filed an application under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred as the Act) before the Collector First Grade for the ejectment of the petitioner and respondent No. 5 on the ground that they were in unauthorised occupation of the land in dispute without the consent of the Gram Panchayat. This application was contested by the petitioners and respondent No. 5 who *inter alia* contended that they were the owners of the land in dispute and had been in cultivating possession of the same since the time of their forefathers. The matter was tried by the Assistant Collector who ordered the ejectment of the petitioners and respondent No. 5,—*vide* his order dated March 30, 1968 (copy Annexure 'C' to the petition). Feeling aggrieved from that order, Deiya Ram petitioner filed an appeal which was allowed by the Collector, Rohtak,—*vide* his order dated August 26, 1968 (copy Annexure 'B' to the petition). Aggrieved from the order of the Collector, the Gram Panchayat respondent No. 4, filed an appeal before the Commissioner, Ambala Division, Ambala, which was allowed by him on July 22, 1969 (copy Annexure 'A' to the petition). As earlier observed, it is the legality and correctness of this order of the Commissioner which has been challenged on various grounds by way of this petition.

(3) There is no representation on behalf of any of the respondents except respondent No. 4 who has filed a written statement in which the material allegations made in the petition have been controverted.

(4) The main ground urged before me by the learned counsel for the petitioners, is that the Assistant Collector had no jurisdiction to go into the matter as a question of title had been raised by the petitioners by alleging that they were the owners in possession of the land in dispute. In substance, the contention of the learned counsel

for the petitioners, is that the jurisdiction under the Act is exercisable by the Assistant Collector only in cases where it is admitted that a person against whom an application for ejection has been filed is in unauthorised occupation of the Shamilat land and not otherwise.

(5) The contention, though ingenious, is devoid of force. The relevant provision of the Act which authorises an Assistant Collector Ist Grade to put a Panchayat in possession of lands, vested or deemed to have been vested in it, reads as under :—

“7. (1) An Assistant Collector of the first grade having jurisdiction in the village shall on an application made to him by a Panchayat, after making such summary enquiry as he may think fit and in accordance with such procedure as may be prescribed, put the Panchayat in 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 it under this Act and for so doing the Assistant Collector 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.

(2) An Assistant Collector of the first grade having jurisdiction in the village may, either *suo motu* or on an application made to him by a Panchayat or an inhabitant of the village eject in the manner and in accordance with the procedure referred to in sub-section (1), any person who is in wrongful or unauthorised possession of any land or immovable property in the Shamilat Deh of that village which vests or is deemed to have been vested in the Panchayat under this Act.

\* \* \* \* \*

Under this section the Assistant Collector Ist Grade is empowered to put the Panchayat in possession of the land or other immovable property in the Shamilat Deh which vests or is deemed to have been vested in it and for that purpose, either *suo motu* or on the application of the Panchayat or an inhabitant of the village, eject in accordance with the procedure referred to in sub-section (1), any

person who is in wrongful or unauthorised possession of such land. This section clearly authorises the Assistant Collector First Grade to take proceedings against a person who is in wrongful or unauthorised possession of the Shamilat land and if a dispute arises as to the nature of possession over the land in dispute, then in that contingency, the Assistant Collector would go into that matter. In case he comes to a finding against the Panchayat then he would dismiss the application and in case he comes to the conclusion that the other party is in wrongful or unauthorised possession, then he shall further proceed in the matter. No provision of the statute was brought to my notice which could warrant a finding that mere denial of the nature of possession by the opposite party would oust the jurisdiction of the Assistant Collector First Grade under section 7. If the nature of the land is disputed by the opposite party, the authority under the Act has still to go into the matter in order to determine the correctness of the averment made before it.

(6) Further, section 13 bars the jurisdiction of the civil Court over any matter arising out of the operation of the Act. This means that it is only under section 7 that the Panchayat can be put in possession of the Shamilat land and the person, who is in an unauthorised or unlawful possession of the same, can be ejected. For this purpose, a civil Court cannot be approached. In case on a mere denial, the Assistant Collector Ist Grade refuses to proceed, then he would be failing to exercise jurisdiction vested in him under the statute. It is the exclusive jurisdiction of the Assistant Collector First Grade to take proceedings under section 7 of the Act and section 13 completely bars the jurisdiction of the civil Court in that respect. A suit would lie in a civil Court if it is shown that the order of the Assistant Collector is without jurisdiction or outside the four corners of the statute and that the property is not Shamilat Deh. Thus I am of the considered opinion that mere denial on the part of the person who is alleged to be in wrongful or unauthorised possession of Shamilat land, is not sufficient to oust the jurisdiction of the Assistant Collector First Grade, under section 7 of the Act.

(7) It is next contended by the learned counsel that the petitioners were not liable to be ejected as they were in possession of the land in dispute for more than 12 years. It is also contended by the learned counsel that the period of 12 years' occupation is to be computed up to the time of the filing of the application before the Assistant Collector. Reliance in support of his

Mangal Singh etc. v. Piara Lal etc. (Sodhi, J.)

contention is placed on sub-section (3)(ii) of section 4 of the Act which reads thus :—

“4(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the—

(i) \* \* \* \* \*

(ii) rights of persons in cultivating possession of Shamilat Deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) \* \* \* \* \*

I am afraid, there is no merit in this contention of the learned counsel. From the plain reading of the relevant provision of the statute reproduced above, there is no manner of doubt that the period of 12 years is to be computed up to the date of the enforcement of the Act and not up to the date when an application is filed under sub-section (2) of section 7 of the Act.

(8) No other point is urged.

(9) For the reasons recorded above, this petition fails and is dismissed but in the circumstances of the case I make no order as to costs.

**B.S.G.**

**REVISIONAL CIVIL**

*Before H. R. Sodhi, J.*

**MANGAL SINGH AND ANOTHER,—Petitioners**

*versus*

**PIARA LAL AND ANOTHER,—Respondents.**

**Civil Revision No. 781 of 1970.**

September 29, 1970.

*Code of Civil Procedure (V of 1908)—Section 115 Order 16, rule 19 and Order 26, rule 4—Party to a suit—Whether has statutory right to claim the*