

Gram Panchayat v. Additional Commissioner, Ferozepur and others
(I. S. Tiwana, J.)

enumerated in Part A to the Schedule framed under rule 9 of the Chandigarh (Sale of Sites and Buildings) Rules, 1960. As observed earlier, the running of the sweets shop is not included thereunder. It is specifically included under "special trade" enumerated under Part C to the said Schedule. Thus, the tenant has used the premises for a purpose for which they could not be utilised by him. In the written statement filed by him in the civil suit, he admitted in paragraph 6 of the written statement, reproduced above, that he was using the premises according to the rules and regulations made under the Capital of Punjab (Development and Regulation) Act, 1952. This plea raised by him, was negatived by the civil Court and it was held that he was using the premises, in contravention of the said rules and, therefore, the decree for the grant of the permanent injunction was passed against him. The judgments relied upon by the learned counsel for the petitioner are clearly distinguishable and have no relevancy to the facts of the present case.

5. The learned counsel for the respondents also challenged the findings of the authorities below on the question of subletting. However, in view of the finding on the question of change of user, it need not be gone into.

6. Consequently, this revision petition fails and is dismissed with costs. However, the tenant is allowed three months' time to vacate the premises; provided all the arrears of rent if any, and the advance rent for three months, are deposited with the Rent Controller within fifteen days along with an undertaking, in writing, that after the expiry of the said period of three months, it will vacate the premises and hand over their vacant possession to the landlords.

N.K.S.

Before : I. S. Tiwana, J.

GRAM PANCHAYAT,—Petitioner.

versus

ADDITIONAL COMMISSIONER, FEROZEPUR and others,—Respondents.

Civil Writ Petition No. 3622 of 1981.

February 25, 1986.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 10-A—Landowners voluntarily agreeing to exchange their land with that of the panchayat—All formalities regarding exchange completed—Such landowners subsequently applying under

section 10-A to the Collector for nullifying the exchange and for restoring possession of their lands—Application of the landowners dismissed by the Collector—Landowners filing appeal against the order of the Collector—Landowners—Whether an aggrieved party—Appeal at their instance—Whether maintainable.

Held, that one of the essential conditions for the maintainability of an appeal before the Commissioner, under section 10(A)(7) of the Punjab Village Common Lands (Regulation) Act, 1961, is that the appellant before him should be a person aggrieved. A person can be said to be aggrieved by an order if that order worsens his position from the one held before the order was passed. If it does not, then that person cannot be said to be aggrieved. This precisely was the position of the landowners when their application under section 10-A of the Act was dismissed by the Collector. Their position had not worsened in any manner by the dismissal of that application and they could not style themselves as persons aggrieved by that order and, therefore, their appeal before the Commissioner was not maintainable. (Para 5).

Amended Petition under Articles 226/227 of the Constitution of India praying that :—

- (a) *that this Hon'ble Court may be pleased to send for the record of the case from respondents No. 1 & 2 and after perusing the same may be pleased to issue a writ of Certiorari/Mandamus or any other appropriate Writ, direction or order quashing and setting aside the impugned order Annexure P-6;*
- (b) *that this Hon'ble Court may be pleased to issue an appropriate writ, direction or order staying ad-interim the disposition of the petitioner from the land in dispute till the decision of the Writ Petition;*
- (c) *that the filing of certified copy of Annexure P-1 to P-6 may kindly be dispensed with;*
- (d) *that respondent Nos. 3 to 5 are dispossess out to petitioner from the land in dispute. The matter is urgent and it is a fit case where serving of advance copies of the Writ Petition on the respondents may be dispensed with; and;*
- (e) *that the costs of the Writ Petition may be awarded to the petitioner and any other relief which this Hon'ble Court considers appropriate may also be given.*

Gulshan Sharma, Advocate, for the Petitioner.

G. S. Chawla, A. G. Punjab, for the State.

N. L. Dhingra, Advocate, for Respondent No. 3 to 5.

Ravinder Chopra, Advocate, for respondent No. 6 & 8.

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JUDGMENT

I. S. Tiwana, J.

(1) In this petition against the order of the Additional Commissioner, Ferozepur, dated July 24, 1981 (Annexure P. 6) under section 10-A(7) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the Act), the following factual matrix is not in dispute.

(2) In pursuance of a scheme known as 'Integrated Rural Development Programme', the State Government decided to establish a focal point in village Tibbi Khurd, forming part of the area of the petitioner Gram Panchayat. Since in order to implement the scheme the Government wanted the Panchayat to provide a suitable site close to a metalled road free of compensation, the petitioner as also the Block Development and Panchayat Officer approached various landowners of the village having lands adjoining to a Pacca road for exchanging that land with the land of the Panchayat. Respondents Nos. 3 to 5 conjointly swore an affidavit on October 28, 1978, offering their land along the road to be exchanged with the land of the Panchayat. The details of the land offered are duly mentioned in this affidavit; copy of which is Annexure P. 2. *Vide* resolution dated November 15, 1978 (copy Annexure P. 3), the petitioner Panchayat resolved to exchange its land with that of various landowners including the above-noted respondents and for this purpose approached the Collector, Ferozepur, to accord the necessary approval to the exchange. The Collector,—*vide* his letter, dated November 22, 1978 (Annexure P. 4) conveyed his sanction in terms of Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 as amended in 1978. With the completion of the formalities of this exchange a number of focal point buildings, such as, Grain Market, Co-operative Bank, Civil Hospital, Veterinary Hospital, offices of the Agriculture Inspector, Cooperative Societies, residential quarters of the staff, godowns for storage of bags to the extent of 50,000, Post Office, Water Supply Scheme and Petrol Pump, etc. were constructed on the land along the road at a fabulous cost of lacs of rupees. The above-named three respondents, realising the potentiality their exchanged land had gained, moved an application under section 10-A of the Act before the Collector, Ferozepur, with the assertion that the above-noted exchange was not only violative of the provisions of the Act and the Rules, but they had

been defrauded too in entering into that exchange with the petitioner Panchayat. They, wanted the nullifying of the exchange and restoration of the possession of their land to them. The Collector on enquiry found no substance in these allegations of these respondents and dismissed their application. However, on appeal under sub-section (7) of this section, the Additional Commissioner, Ferozepur, as already indicated, set aside this order and directed the petitioner to surrender possession of certain part of the land (on which according to the Additional Commissioner no construction had been raised) to these respondents. For passing this order the Additional Commissioner recorded these two conclusions:—

- (i) No prior approval of the State Government for entering into this exchange was obtained by the Panchayat, and
- (ii) the above-noted respondents had surrendered double the area than the one they had in exchange from the Panchayat; so they were defrauded to enter into this exchange.

Having heard the learned counsel for the parties, I find that not only the above two conclusions of the Additional Commissioner are wholly unwarranted but the very appeal before him under section 10(7) of the Act was not competent.

(3) So far as the first conclusion of the Additional Commissioner is concerned, he completely lost sight of the proviso to rule 5—the violation of which rule was noticed by him—which was added to the rule by way of amendment in 1978. This proviso reads thus:—

“Provided that where the land is required in connection with the Integrated Rural Development Programme sponsored by the Government, the Panchayat may with the approval of the Collector transfer any land in *shamilat deh* by exchange with land of an equivalent value.”

The requirement of this proviso, i.e., ‘prior approval of the Collector’ completely stood fulfilled in the instant case. This approval was granted by the Collector, Ferozepur,—*vide* his communication, Annexure P. 4.

(4) So far as the second conclusion of the Additional Commissioner is concerned, the same besides being conjectural is based on

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straining of the facts available on record. It is no doubt true that the land surrendered by the respondents was almost double to the one they got from the Panchayat, yet it was found by the Collector and also is so depicted by the revenue record that it was inferior in quality to the one they got in exchange. As per averments in paragraph 4 of this petition, the Khasra Girdawari Register shows that these respondents could not raise any Kharif crop in this land with effect from the year 1975 on account of its being Kallar infested. The land which had been surrendered by the Panchayat to these respondents was Nehri land and was much more productive than the land it got in exchange from the respondents. Otherwise also it is not clear as to on account of what suppression of facts or material the respondents stood defrauded. As already indicated, they had sworn an affidavit on October 28, 1978 offering their land in exchange to that of the Panchayat. Nothing but greed appears to be the motivating force behind their claim. Anyway, I find this conclusion of the Additional Commissioner as totally unsustainable.

(5) So far as the maintainability of the appeal before the Commissioner under section 16(7) of the Act is concerned, one of the essential conditions for the same was that the appellant before him should have been a person aggrieved. A Division Bench of this Court in *Sohan Singh and others v. Shri Surjit Singh Sodhi, Commissioner, Patiala Division, Patiala and others*, (1) while examining meaning and scope of this sub-section has held that a person can be said to be aggrieved by an order if that order worsens his position from the one held before the order was passed. If it does not, then that person cannot be said to be aggrieved. This precisely was the position of the respondents when their application under section 10-A of the Act was dismissed by the Collector. Their position had not worsened in any manner by the dismissal of that application and they could not style themselves as persons aggrieved by that order. In *Sohan Singh's* case (supra), the land was leased by the Gram Panchayat and a regular lease deed was executed. However, the Collector *suo motu* issued a notice to the lessees under section 10-A of the Act to show cause why the lease of the land in their favour should not be cancelled as it was detrimental to the interests of the Panchayat. After hearing the lessees and the Sarpanch, the Collector enhanced the rate of rent but maintained the period of lease. The Gram Panchayat filed appeal before the Commissioner which

(1) 1973 P.L.J. 71.

was accepted and the lease was cancelled. This was challenged on the ground that the Gram Panchayat was not an aggrieved party from the decision of the Collector and thus no appeal lay to the Commissioner at the instance of the Gram Panchayat. As already pointed out, this plea of the lessees was accepted and it was held by the Division Bench that the Gram Panchayat was not an aggrieved party as the order of the Collector had not worsened its position in any manner. I am thus satisfied that the ratio of this judgment completely covers the contention of the learned counsel for the petitioner that the appeal before the Additional Commissioner was not maintainable.

(6) For the reasons recorded above I allow this petition and set aside the impugned order of the Additional Commissioner, Annexure P. 6, with costs which I determine at Rs. 1,000. However, since no relief has been claimed against respondents 6 to 8, the petition *qua* them stands dismissed but with no order as to costs.

N.K.S.

Before : S. P. Goyal and Pritpal Singh, JJ.

SUBHASH CHANDER JAIN,—*Petitioner.*

versus

HARYANA STATE FEDERATION OF CONSUMERS CO-OPERATIVE WHOLESALE STORES and others,—*Respondents.*

, *Civil Writ Petition No. 3297 of 1979.*

February 26, 1986.

Constitution of India, 1950—Articles 12 and 226—Writ of mandamus—Co-operative Society—When amenable to writ jurisdiction of the High Court.

Held, that normally Co-operative Societies are not amenable to the writ jurisdiction of the High Court, but whenever a Society fails to perform any statutory requirement to the prejudice of someone, the latter is entitled to approach the High Court for seeking the writ of *mandamus* to direct the Society not to commit breach of the statutory requirement. In other words, so long no case is made out of