

Before S. S. Sodhi, J.

AZAMU,—Petitioner.

versus

THE COLLECTOR, SONEPAT AND OTHERS,—Respondents.

Civil Writ Petition No. 7617 of 1976.

May 9, 1983.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 7—Proceedings under section 7 initiated and dismissed—Fresh proceedings started at the instance of one of the other persons mentioned in section 7—Subsequent proceedings—Whether barred by the principles of res-judicata.

Held, that a reading of sub-section (1) of section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 would show that the Assistant Collector stands empowered thereby to eject any person who is in wrongful or unauthorised possession of land vesting or deemed to have vested in the Panchayat under the Act. In order to exercise this power, the Assistant Collector may either *suo motu* or on the application of (a) the Panchayat; (b) an inhabitant of the village; (c) the Block Development and Panchayat Officer; (d) the Social Education and Panchayat Officer or (e) any other Officer authorised by the Block Development and Panchayat Officer. These proceedings are by the Assistant Collector and for the Panchayat, no matter at whose instance proceedings against the person concerned are taken. It would run counter to the well settled considerations of public policy, under-lying the general principles of *res-judicata*, to construe section 7, to mean that each of the person on whose application, the Assistant Collector can exercise power under section 7 of the Act constitutes a different party with reference to the plea of *res-judicata*. There is, thus, no escape from the conclusion that once proceedings under section 7 have been taken by the Assistant Collector against the person concerned, no second application on the same cause of action is competent, irrespective of fact that such subsequent proceedings were at the instance of one of the other persons mentioned in section 7.

(Paras 6, 7 & 8)

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

- (a) a writ of Certiorari, mandamus, prohibition or any other appropriate writ, direction or order quashing the impugned orders, Annexures 'P. 1 and P. 2' passed by respondents Nos. 2 and 1 respectively, be issued;

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(b) *the records of the case be summoned for the disposal of this writ petition.*

(c) *costs of this writ petition be also awarded to the petitioner;*

(d) *Certified copies of Annexures may be dispensed with;*

It is further prayed that dispossession of the petitioner from the land in dispute be stayed still the decision of this petition.

J. S. Malik Advocate, for the Petitioner.

P. S. Kadian Advocate, for A.G. Haryana.

Romesh Hooda Advocate, for H. S. Hooda, Advocate, for respondent No. 3.

JUDGMENT

S. S. Sodhi, J.

(1) The controversy raised here is with regard to the applicability of the principle of *res judicata* to proceedings under section 7 of The Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of Haryana (hereinafter referred to as 'the Act').

(2) The facts relevant to this matter are that the ejection of the petitioner-Azamu was sought by the Gram Panchayat/Panchayat from the land held by him in proceeding under section 7 of the Act. This application was dismissed by the Assistant Collector 1st Grade, Sonapat by his order of December 2, 1968 (Annexure P.3). Another application of the Gram Panchayat for ejection of the petitioner from the same land was again dismissed by the Assistant Collector 1st Grade, Sonapat, by his order of July 30, 1970 (Annexure P.4). Later, on September 22, 1975, proceedings under section 7 of the Act were again initiated against the petitioner in respect of the same land, this time at the instance of Hoshiar Singh, and other inhabitants of the village. These proceedings culminated in an order of ejection being passed against the petitioner by the Assistant Collector 1st Grade, on February 9, 1976 (Annexure P.1). On appeal, the order of the Assistant Collector 1st Grade, was upheld by the Collector, Sonapat, by his order of September 13, 1976 (Annexure P.2).

(3) The contention raised by Shri J. S. Malik, learned counsel for the petitioner was that the impugned orders stood vitiated as the general Principles of *res judicata* applicable to proceedings under the Act barred a second application under section 7 of the Act. He cited in support of this contention *Jee Ram vs. The State of Haryana and others*, (1), where it was observed "the principle of *res judicata* or in other words the principle of giving finality to a decision inter parties is well known in judicial proceedings and besides being based on public policy has the sanction of justice, equity and good conscience." It was held that the general principles of *res judicata* barred a second application under section 7 of the Act. This authority was later followed by B. S. Dhillon, J. in *Sohalu v. The State of Haryana and others*, (2). It thus stands established that under the general principles of *res judicata* a second application for ejectment under section 7 of the Act in respect of the same land would stand barred.

(4) Mr. P. S. Kadian, appearing for the Advocate General, Haryana, sought to wriggle out of the bar of *res judicata* by seeking to contend that the parties to the proceedings before the Assistant Collector culminating in two orders Annexures P.1 and P.2 were not the same as those in the earlier proceedings wherein the orders Annexures P.3 and P.4 had been passed. The reference here was to the fact that in the earlier proceedings namely those which culminated in the orders Annexures P. 3 and P.4, the proceedings have been taken against the petitioner at the instance of Gram Panchayat whereas in the impugned orders the party was not the Gram Panchayat but some inhabitants of the village. The argument thus was that as the parties were different, the principles of *res judicata* did not apply in this case even though the land concerned was the same.

(5) In order to appreciate the soundness of the contention raised, reference may be made to the provisions of section 7 of the Act which are reproduced hereunder:

"7. Power to put panchayats in possession of certain lands (1)- 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 or the Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other officer authorised by the Block Development and Panchayat

(1) 1980 P. L. J. 103.

(2) 1981 P. L. J. 229.

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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".

(6) A reading of Sub-section (1) of section 7 of the Act would show that the Assistant Collector stands empowered thereby to eject any person who is in wrongful or unauthorised possession of land vesting or deemed to have vested in the Panchayat under the Act. In order to exercise this power, the Assistant Collector may act either *suo motu* or on the application of (a) the Panchayat; (b) an inhabitant of the village; (c) the Block Development and Panchayat Officer; (d) the Social Education and Panchayat Officer or (e) any other Officer authorised by the Block Development and Panchayat Officer. The point to notice is that these proceedings are by the Assistant Collector and for the Panchayat, no matter at whose instance, proceedings against the person concerned are taken.

(7) It would run counter to the well settled considerations of public policy, underlying the general principles of *res judicata*, to construe section 7 to mean that each of the persons on whose application, the Assistant Collector can exercise power under section 7 of the Act, constitutes a different party with reference to the plea of *res judicata*. Anomalous results would emerge from such a construction. It would imply thereby, that, in respect of the same land successive proceedings can be taken by the Assistant Collector against the same person and for the same period of time, at the instance of each of the persons mentioned in section 7. Further, on this reasoning, when one such person mentioned is "an inhabitant of the village" it would mean that the proceeding under section 7 of the Act could be taken in turn at the instance of each and every inhabitant of the village. A situation too glaringly absurd to countenance.

(8) There is thus, no escape from the conclusion that once proceedings under section 7 have been taken by the Assistant Collector

against the person concerned no second application on the same cause of action is competent, irrespective of the fact that such subsequent proceedings were at the instance of one of the other persons mentioned in Section 7. It follows, therefore, that the impugned orders (Annexures P—1 and P—2) are clearly barred by the principles of *res judicata* and are consequently hereby quashed. This Writ Petition is accepted. In the circumstances, however, there will be no order as to costs.

N. K. S.

Before M. M. Punchhi, J.

PETER GILL,—Petitioner.

versus

STATE OF PUNJAB AND ANOTHER,—Respondents.

Criminal Writ No. 138 of 1983.

May 12, 1983.

East Punjab Children Act (39 of 1949)—Section 34—Indian Penal Code (Act 45 of 1860)—Section 302—Child convicted for murder—Court reporting the case for orders of the State Government under section 34—Government ordering detention in Borstal jail till the convict attains the age of 21 years—No further order of detention before the convict attained the age of 21 years—Detention of the convict after attaining that age—Whether valid.

Held, that when a youthful offender suffers a trial for the offence of murder, the Court trying him passes an order of conviction. Thereafter the East Punjab Children Act, 1949 makes inroads to the sentencing powers of the Court. None of the choices given to the Court under the Indian Penal Code i.e., of imposing death penalty or sentencing the offender for life imprisonment, can be adopted. Thus the case of the child is reported for orders to the State Government under section 34(1) of the Act. Now, it is for the Government to order as to where the child should be detained. The only limit to the power being that the period of detention as ordered by the Government cannot exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed. It is noticeable that the Court has no choice in the matter of imprisonment after recording conviction under section 302 of the Code which has to be life imprisonment, but the