
R.N.R.

Before S. S. Saron, J

JOGINDER SINGH AND ANOTHER—Petitioners

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 10418 of 2009

17th July, 2009

Constitution of India, 1950—Art. 226—Punjab Village Common Lands (Regulation) Act, 1961—S. 7(2)—Res judicata—Shamlat land—Predecessor-in-interest of petitioners making land cultivable—Gram Panchayat seeking eviction of petitioners from land on many occasions—Gram Panchayat failing to establish that either petitioners were lessees of land for a fixed term of period or their possession had become wrongful or unlawful in any manner—High Court granting liberty to Gram Panchayat for initiating any fresh proceedings for eviction of petitioners in accordance with law—High Court ordering only to the extent that if there is a lease in favour of petitioners then before ejection lease has to be determined—No question of res judicata involved as earlier decisions passed by High Court do not, in any manner, preclude Gram Panchayat from initiating proceedings for eviction of petitioners in accordance with law—Petition dismissed.

Held, that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden. Therefore the provisions of the Act which provide for eviction of unauthorized occupants or those in wrongful possession of panchayat land is to be done in the manner provided in the Act. This would necessarily mean that all objections to avoid the ejection are to be raised before the authorities entertaining the objections and not before this Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India. In the facts and circumstances, no question of *res judicata* is involved in the present case and the earlier decisions passed by this Court do not, in any manner, preclude the Gram Panchayat from initiating proceedings for the eviction of the petitioners from the land in their occupation in accordance with law.

(Para 10)

Further held, that the proceedings under the Act in terms of Section 7 of the Act are summary in nature and the earlier proceedings do not operate as *res judicata*. The orders passed by this Court are to the extent that if there is a lease in favour of the petitioners then before the ejection of the petitioners is ordered the lease has to be determined. There is no dispute to the said proposition. However, this does not, in any manner, preclude the Gram Panchayat from otherwise showing that the petitioners are in wrongful or in unauthorized occupation and, therefore, entitled to ejection in terms of Section 7 (1) of the Act.

(Para 10)

R.S. Mittal, Senior Advocate with Sudhir Mittal, Advocate,
for the petitioners.

S. S. SARON, J.

(1) The petitioners by way of the present petition seek quashing of the order dated 12th June, 2009 (Annexure-P.8) passed by the Deputy Commissioner, Kurukshetra (respondent No. 1).

(2) The case of the petitioners is that they are descendants and successors-in-interest of the original allottees of land situated in the revenue estate of Village Karah, Tehsil Pehowa, District Kurukshetra. The names

of predecessors-in-interest, it is submitted, are as per Jamabandi for the year 1956-57. The ancestors and predecessors-in-interest of the petitioners were settled in Village Karah from their village in Amritsar District. This was done in implementation of the Government of India policy of "Grow More Food Campaign". It is submitted that vast areas of shamlat lands were under wild forests on account of untamed waters of rivers Tangri and Markanda which used to stagnate in the land for months. Village Karah also had vast shamlat lands on which flood water of seasonal rivers/rivulets, namely, Tangri and Markanda stagnated for months on end. The shamlat land was not cultivated by any proprietor/proprietors of the village because it was barren; besides, it was infested with wild boars, herds of 'Neel Gais' (Nigai), monkeys and poisonous snakes and other reptiles. The ancestors/predecessors-in-interest of the petitioners made the land cultivable and also constructed residential houses. The petitioners/their predecessors-in-interest paid an amount of Rs. 5 per acre per annum in the account of the Panchayat which was maintained with the Cooperative Bank, Cheeka, District Kurukshetra in terms of the lease. However, the Gram Panchayat and the original proprietors of the village became greedy and asked the petitioners to vacate the lands which had been made cultivable by continuous efforts of the petitioners and their predecessors-in-interest. The Gram Panchayat started refusing to accept the deposit of rent and grant any receipt for the same. On 2nd November, 1977, the Gram Panchayat, Karah filed an application under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in the State of Haryana) ('Act' for short) seeking eviction of the petitioners from various parcels of land under their possession. The said applications were allowed by the Assistant Collector 1st Grade, Kaithal in terms of similar orders dated 30th January, 1979. The petitioners filed separate appeals against the said orders passed by the learned Assistant Collector 1st Grade. These were dismissed in terms of similar orders dated 8th May, 1979 passed by the Collector, Kurukshetra. Copies of the said orders, it is alleged, were not supplied to the petitioners despite applications for grant of copies made in this regard. The petitioners, therefore, filed writ petitions in this Court (i.e. CWP Nos. 1707 to 1731 of 1979 and CWP No. 2165 of 1979) assailing the non-speaking orders passed by the Collector and Assistant Collector, Kurukshetra. The said petitions were decided by this Court *vide* order dated 14th November, 1979 (Annexure-P.2) passed by

a Division Bench of this Court in the case of **Mothinder Singh versus Collector, Kurukshetra District** (CWP No. 1707 of 1979). The orders that were impugned in the said writ petition were quashed. However, it was held that the quashing of the order would not preclude the Gram Panchayat from initiating any fresh proceedings for the eviction of the petitioners in accordance with law. It is alleged that another attempt was made in the year 1981 by the Gram Panchayat, Karah to seek ejection of the petitioners in terms of Section 7 (2) of the Act. It is submitted that the authorities under the Act accepted the application of the Gram Panchayat holding that there was a 20 years lease in terms of which the petitioners had been given possession of the land and on the expiry of the same their possession had become unauthorized rendering them liable for eviction. The orders that were passed were challenged by the petitioners in this Court by way of a writ petition (CWP No. 3486 of 1981) which was allowed on 6th November, 1990 (Annexure-P.3). It was held by this Court that the authorities under the Act were clearly precluded from holding otherwise than what was held by this Court in **Mohinder Singh's case** (*supra*) *vide* order dated 14th November, 1979 (Annexure-P.2). As such, the petitioners did not hold the land under any lease for a fixed period of time. This being so their ejection on the ground that the period of lease had expired could not be countenanced. Further, it was not suggested that the petitioners were liable for ejection on any other ground. This being so, the impugned orders of ejection, it was held, could not be sustained. Thereafter, to seek ejection of the petitioners from the land in dispute another attempt was made by the Gram Panchayat Karah in the year 1992-93. The petitioners received notices in 59 applications seeking their ejection. They raised preliminary objection of *res judicata* before the Assistant Collector Grade-I, which was decided against the petitioners. Against the order passed by the Assistant Collector, the petitioners came to this Court. A Division Bench of this Court, however,—*vide* order dated 17th August, 1993 relegated them to the alternative remedy of appeal before the Collector. The petitioners filed an appeal before the Collector which was dismissed. Thereafter, the petitioners filed CWP No. 9785 of 1993 titled **Anoop Singh and others versus Gram Panchayat Village Karah and others** in this Court which was disposed of by a Division Bench of this Court *vide* order dated 5th April, 1994 (Annexure-P.4). It was held that there was no written instrument of lease and the alleged lease

was created by the State Government before the Punjab Village Common Lands (Regulation) Act, 1961 and the Rules framed there under came into force. It was held that in various decisions to which a reference was made, the petitioners were in possession as lessees and the lease in their favour had not been determined according to law. It is submitted that the Gram Panchayat Karah again filed an application for seeking eviction of the petitioner Mohinder Singh and others from the land in dispute without complying with the directions as contained in the judgment dated 5th April, 1994 (Annexure-P.4) passed by this Court. The said application of the Gram Panchayat Karah was resisted by the petitioners *inter alia* on the ground of it being barred by the principles of *res judicata*. Assistant Collector Grade-I-cum-District Revenue Officer, Kurukshetra,—*vide* order dated 6th February, 1996 (Annexure-P.5) held the applications to be not maintainable and rejected the same. The Gram Panchayat Karah was directed to file suit for eviction after complying with the directions of this Court. The proprietors of the village, it is submitted, again made applications for seeking eviction of the petitioners through Harish Singh, Avtar Singh, Balkar Singh and Sukhbir Singh. The application made by the said four persons was registered as Case Nos. 72/SDO136/SDO The said 70 cases, it is submitted, were decided by the Assistant Collector Grade-I, Pehowa by a common order dated 25th October, 2002 (Annexure-P.6) It was held that the cases were not competent and dismissed on account of orders passed by this Court in CWP No. 9785 of 1993 decided on 5th April, 1994 (Annexure-P.4). The respondents No. 4 to 9 then filed CWP No. 16665 of 2007 in this Court against the said order. It is alleged that various wrong averments were made in the said petition; besides, there was suppression of material facts. The petitioners filed reply to the said writ petition and denied the averments. Division Bench of this Court in terms of order dated 27th February, 2009 (Annexure-P7) disposed of the said writ petition and directed the Deputy Commissioner, Kurukshetra (respondent No. 1) to look into the matter and ascertain as to what were the terms and conditions under which possession of the land was transferred in favour of the private respondents (now petitioners) and whether the State Government was justified in transferring the land by way of lease which was under ownership of the Gram Panchayat to private respondents. It was directed that after ascertaining the facts if the Deputy Commissioner was satisfied that the lease was created in favour of the private respondents

he shall ask the Gram Panchayat to terminate and determine that lease in accordance with the provisions of law. After terminating the lease, if any, the Gram Panchayat was directed to file an ejection application against the private respondents (now petitioners). This exercise was to be started by making a reference to the official documents in possession of the State Government. The private respondents (now petitioners) were directed to produce any document in proof of creation of leases in their favour. It is contended that the order dated 25th October, 2002 (Annexure-P.6) passed by the Assistant Collector Grade-I, Pehowa itself suffers from various infirmities including the acceptance of incorrect facts stated by respondents No. 4 to 9 who were petitioners in the case of **Molu Ram and others versus State of Haryana**, CWP No. 16665 of 2007 decided on 27th February, 2009 (Annexure-P.7). It is submitted that various preliminary objections raised by the present petitioners who were respondents No. 7 to 79 were not adverted to; besides, four consistent attempts made by the Gram Panchayat on four different occasions were ignored. The orders passed by the Assistant Collector Grade-I were not taken into account. Moreover, the petitioners were purportedly claiming a right to invoke public interest litigation and in the course of the said attempt had made deliberate mis-statement of facts; besides, suppressed the facts. It was further ignored that the writ petition in **Molu Ram' case** CWP No. 16665 of 2007 decided on 27th February, 2009 (Annexure-P.7), was not in public interest but was in private interest of respondents No. 4 to 9. In any case, it is submitted that the orders dated 27th February, 2009 (Annexure-P.7) passed in **Molu Ram's case** have not been complied with by the Deputy Commissioner, Kurukshetra while passing the impugned order dated 12th June, 2009 (Annexure P.8). It is submitted that the orders Annexures-P.1 to P.5, the orders including Annexures-P.2 to P.4 that were passed by this Court, were submitted before the Deputy Commissioner, Kurukshetra (respondent No. 1) on behalf of the petitioners, however, the same were not given due consideration. The order dated 12th June, 2009 (Annexure-P.8) passed by the Deputy Commissioner, Kurukshetra (respondent No. 1) is assailed in the present petition.

(3) Learned senior counsel for the petitioners has contended that this Court on more than one occasion has held that there is no written instrument of lease or 'Pattanama' in favour of the petitioners and that the alleged lease was created by the State Government in their favour before

the Act and the Rules framed there under particularly relating to those governing lease granted by the Gram Panchayats came into force. Besides, this court has held that the petitioners are in possession of the land in dispute as lessees, which lease in their favour has not been determined according to law. Therefore, according to the learned senior counsel the findings returned by this Court operate as *res judicata* inter parties. However, despite that the learned Deputy Commissioner, Kurukshetra (respondent No. 1) has in his impugned order dated 12th June, 2009 (Annexure-P.8) held that since there is no document creating any lease right in favour of the petitioners by the Gram Panchayat no question arose for ascertaining the terms and conditions of the lease. The said finding of the Deputy Commissioner, it is submitted, is contrary to the earlier order. It is also contended that the impugned order dated 12th June, 2009 (Annexure P.8) is contrary to the order dated 27th February, 2009 (Annexure P.7) passed in the case of **Molu Ram and others** (*supra*) whereby this Court had directed the Deputy Commissioner to look into the matter and ascertain as to what were the terms and conditions under which possession of the land was transferred in favour of the private respondents and whether the State Government was justified in transferring by way of lease land which was under the ownership of the Gram Panchayat to the private respondents. It is submitted that the binding part of the order is that the land measuring 372 Acres is shamlat land in the ownership of the Gram Panchayat and that it was leased out in favour of respondents No. 7 to 79 (now petitioners) by the State Government. Therefore, it is submitted that the lease has been accepted in the order dated 27th February, 2009 (Annexure P.7) passed in **Molu Ram's case** (*supra*).

(4) I have given my thoughtful consideration to the contentions of the learned senior counsel for the petitioners. The petitioners and their predecessors-in-interest came in possession of the land in Village Karah in consequence of the Government of India Scheme of "Grow More Food Campaign". Vast tracts of shamlat land were lying vacant on which flood water of seasonal rivers/rivulets of Tangri and Markanda stagnated. The shamlat land was not cultivated and was infested by animals at that time. The predecessors-in-interest of the petitioners made the land cultivable by cultivating it. According to the petitioners, now the original proprietors of the village had become greedy and were asking the petitioners to vacate

the lands. They had in fact paid an amount of Rs. 5 per acre per annum which was deposited in the account of the Gram Panchayat which account was maintained with the Cooperative Bank, Cheeka, District Kurukshetra in terms of the lease. There has been litigation with respect to the said land. The Gram Panchayat Karah filed an application under Section 7 (2) of the Act seeking eviction of the petitioners from various parcels of land under their possession. The applications were allowed by the Assistant Collector Ist Grade, Kaithal,—*vide* similar orders dated 30th January, 1979. The appeals against the same were dismissed by learned Collector,—*vide* orders dated 8th May, 1979. The copies of the orders were not supplied to the petitioners despite their filing applications for the same. In any case, Civil Writ Petition Nos. 1707 to 1731 of 1979 and Civil Writ Petition No. 2165 of 1979 were filed in this Court assailing the orders of the Collector and Assistant Collector, Kurukshetra. A Division Bench of this Court in the case of **Mohinder Singh versus Collector, Kurukshetra District** (CWP No. 1707 of 1979) decided on 14th November, 1979 (Annexure P.2) quashed the order of the Collector and the Assistant Collector, Kurukshetra. It was, however, held that the quashing of the orders would not preclude the Gram Panchayat from initiating any fresh proceedings for the eviction of the petitioners in accordance with law. The Gram Panchayat, Karah in 1981 filed an application in terms of Section 7 (2) of the Act seeking ejection of the petitioners. According to the petitioners, the authorities under the Act accepted the application of the Gram Panchayat holding that there was a 20 years lease under which the petitioners had been given possession of the land and on the expiry of the same their possession had become unauthorized rendering them liable for eviction. The said orders it is contended were challenged in the case of **Tara Singh and others versus State of Haryana** (CWP No. 3486 of 1981). This Court *vide* order dated 6th November, 1990 (Annexure P.3) placed reliance on the observations made in **Mohinder Singh's case** (*supra*). It is further contended that this Court held that the authorities under the Act by their impugned order accepted the application for eviction by holding that there was a 20 years lease under which the petitioners had been given possession of the land and on the expiry thereof their possession had become unauthorized rendering them liable for eviction. It was observed that the error in law in recording the said finding was writ large as when the matter had come up earlier in **Mohinder Singh's case** (*supra*), the point directly

and substantially in issue was whether or not the petitioners held the land under a lease for a fixed period. It is submitted that a definite finding was also recorded that the petitioners did not hold the land under any lease. The said finding was rendered finally and it could not, therefore, be re-opened or a contrary finding given in any subsequent proceedings even by the production of a lease deed entered into between the parties. It was observed that in other words on the principle analogous to *res judicata* the authorities under the Act were clearly precluded from holding otherwise than what was held by this Court in **Mohinder Singh's** case (*supra*). This being so their ejection on the ground that the period of lease had expired could not be countenanced. It had not been suggested that the petitioners were at all liable for ejection on any other ground. This being so, the impugned orders of ejection against the petitioners, it was held, cannot be sustained and were accordingly set aside.

(5) The Gram Panchayat thereafter again initiated proceedings under Section 7 of the Act seeking ejection of the petitioner. In reply to those proceedings the petitioners took preliminary objections that the applications were barred on the principle of *res judicata*. The Assistant Collector 1st Grade decided the preliminary objection against the petitioners. The order of the Assistant Collector was assailed before this Court and a Division Bench of this Court,—*vide* order dated 17th August, 1993 relegated the petitioners to their alternative remedy of appeal before the Collector. The appeal was dismissed against which CWP No. 9785 of 1993 titled **Anoop Singh and another versus Gram Panchayat of Village Karah and others** was filed which was disposed of by this Court *vide* order dated 5th April, 1994 (Annexure P.4). This Court in its order dated 5th April, 1994 (Annexure P.4) observed that there was no written instrument of lease. The alleged lease was created by the State Government before coming into force the Act and the Rules framed there under particularly those governing lease granted by the Gram Panchayat. It was observed that it has been held in the various decisions to which a reference was made that the petitioners were in possession as lessees and the lease in their favour had not been determined according to law. The said finding had become final between the parties. Therefore, if the Gram panchayat

wanted to proceed for the eviction of the petitioners, it was necessary for them :—

- “(a) to ascertain the terms of the lease granted by the State Government.
- (b) to ascertain whether the State Government was competent to grant lease in respect of the land vesting in the Gram Panchayat; and
- (c) to determine the lease in accordance with law before applying for ejectment of petitioners under Section 7 of the Punjab Village Common Lands (Regulation) Act.”

(6) It was further observed that unless the Gram Panchayat took action spelt out above, the decision rendered by this Court would continue to operate as *res judicata* and it would not be possible for the authorities to evict the petitioners. Thereafter, the proprietors of the village filed applications seeking eviction of the petitioners, which applications were filed through Harish Singh, Avtar Singh, Balkar Singh and Sukhbir Singh. There were 70 cases in all and the Assistant Collector Ist Grade Pehowa,—*vide* order dated 30th September, 2002 (Annexure P.6) dismissed the same after referring to the order dated 5th April, 1994 (Annexure P.4) passed in **Anoop Singh's** case (CWP No. 9785 of 1993). The Gram Panchayat, Karah Sahib was directed to comply with the decision dated 5th April, 1994 (Annexure P.4) passed by this Court. Thereafter, respondents No. 7 to 79 filed CWP No. 16665 of 2007 in this Court titled **Molu Ram and others versus State of Haryana** in which a prayer was made for directing the official-respondents to lease out Shamlat Deh land which is the ownership of the Gram Panchayat through open auction. It was alleged that respondents No. 7 to 79 (petitioners herein) were in unauthorized occupation of Shamlat Deh land measuring 372 acres. A Division Bench of this Court after considering contentions raised directed the Deputy Commissioner, Kurukshetra (respondent No. 1) to look into the matter and ascertain as to what were the terms and conditions under which possession of the land was transferred in favour of the respondents and whether the State Government was justified in transferring by way of lease the land which was under the ownership of Gram Panchayat to the private respondents. After ascertaining the facts if the Deputy Commissioner

was satisfied that a lease was created in favour of the private respondents (now petitioners) he was to ask the Gram Panchayat to terminate/determine that lease in accordance with the provisions of law. After determining the lease, if any, the Gram Panchayat was to file an ejectment application against the private respondents. The Deputy Commissioner, Kurukshetra (respondent No. 1) in consequence of the order dated 27th February, 2009 (Annexure P.7) passed by a Division Bench of this Court in **Molu Ram's** case (*supra*) has passed the impugned order dated 12th June, 2009 (Annexure P.8). It has been observed that no rights have been created in favour of the private respondents (now petitioners) to be in possession of panchayat land by way of lease by the Gram Panchayat or by the State Government for a period of 20 years or for an indefinite period. Thus, it was proved beyond doubt that they were not lessees for 20 years or for an indefinite period. With regard to entries of Rs. 4 and 13 Annas and further Rs. 5 it was observed that there was no evidence or revenue record on the basis of which such entries had been incorporated in the revenue records. Rather, it was evident that the land was not leased out for 20 years. It was concluded that the private respondents (now petitioners) were cultivating the panchayat land without any right or title and thus were liable to be ejected from the land in dispute. Accordingly, the Gram Panchayat, Karah was directed to initiate ejectment proceedings against the private respondents (now petitioners) or any other person in possession from the disputed land measuring 378 Acres, 4 Kanals 2 Marlas in due course of law. The Block Development and Panchayat Officer, Pehowa was also directed to monitor the said ejectment proceedings as directed by this Court.

(7) The land in question is admittedly Shamlat Deh land. In terms of Section 2 (g) of the Act, lands described in the revenue records as Shamlat Deh excluding Abadi Deh are Shamlat Deh. In terms of Section 4 of the Act such land vests in the Gram Panchayat. Section 4 provides for vesting of rights in Panchayats and non-proprietors. Section 4 reads as under :—

“4. Vesting of rights in Panchayats and non-proprietors.—

Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument,

custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatsoever in the land,—

- (a) which is included in shamlat Deh of any village and which has not been vested in a panchayat under the shamlat law shall, at the commencement of this Act, vest in Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a panchayat having jurisdiction over that village is constituted;
 - (b) which is situated within or outside the *abadi deh* of a village and which is under the honse owned by a non-proprietor, shall on the commencement of the shamlat law, be deemed to have been vested in such non-proprietor.
- (2) Any land which is vested in a Panchayat under the shamlat law shall be deemed to have been vested in Panchayat under this Act.
- (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) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhonedars, Butimars, Bassikhuopahus, Saunjidars, Muqararidars;
 - (ii) rights of persons who were in cultivating possession of shamlat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953, or the Pepsu Village Common Lands (Regulation) Act, 1954 and were in such cultivating possession or more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;
 - (iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.”

(8) In terms of the above provisions land which is included in *shamlat deh* of any village is to vest in the Panchayat which has been constituted for such village. In **Shiv Charan Singh versus Gram Panchayat Narike and another, (1)** a Division Bench of this Court held that from the perusal of sub-clause (1) of Section 2(g) of the Act, it is evident that Shamlat Deh would include land described in the revenue record as *shamlat deh*. Besides, any land which is vested in a panchayat under the shamlat law shall be deemed to have vested in a panchayat under the Act. Shamlat law has been defined in Section 2 (h) in the Act to mean in relation to land situated in part of the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1954; or in relation to land situated in part of the territory which immediately before the 1st November, 1956, was comprised in the State of Patiala and East Punjab States Union, the Pepsu Village Common Lands (Regulation) Act, 1954. Therefore, for all intents and purposes in terms of Section 4(1) and 4(2) of the Act, *shamlat deh* land which is recorded in the revenue record as *shamlat deh* is to vest in the Gram Panchayat of the village in terms of Section 4 read with Section 2(g) of the Act. Sub-section (3) of Section 4 provides that 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 existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhonedars, Butimars, Bassikhuopahus, Saunjidars, Muqararidars. Learned senior counsel for the petitioners has cited **Narasamma and others versus State of Karnataka and others, (2)** to contend that if possession in respect of the land in dispute on the relevant date was in favour of the occupants showing them to be in cultivation and possession of the same, they were entitled to registration of occupancy rights in respect thereof. The said contention, however, is devoid of any merit as in the present case it has never been the case of the petitioners that they were 'occupancy tenants' and were entitled to be recorded as such. They have at no point of time ever claimed or even otherwise are entitled to claim the rights of 'occupancy tenants'. The Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952

(1) 1977 P.L.J. 453

(2) (2009) 5 S.C.C. 591

was enacted on the recommendations of the Land Reforms Committee appointed by the Government to examine the tenancy legislation. One of the recommendations of the said committee was that the 'occupancy tenants' should be given proprietary rights in their tenancy on payment of suitable compensation of the land. In order to be given proprietary rights, the occupant was required to be recorded as an 'occupancy tenant' in the revenue records. Section 2(s) of the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1952 provided that occupancy tenants means a tenant who, immediately before the commencement of the said Act, is recorded as an occupancy tenant in the revenue records and includes a tenant, who, after such commencement obtains a right of occupancy in respect of the land held by him whether by agreement with the landlord or through a Court of competent jurisdiction or otherwise and includes also the predecessor-in-interest and successor-in-interest of an occupancy tenant. Therefore, to claim occupancy tenancy, the occupant is to be recorded as an 'occupancy tenant' which is normally recorded in revenue records as a 'Marusi'. There is no such entry in favour of any of the petitioners and neither has it even been their case that they are 'occupancy tenants' under any provision. In fact, at no point of time did they apply for claiming proprietary rights under the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Rules, 1956. Therefore, the judgment in **Narasamma's** case (*supra*) referred to by the learned senior counsel is clearly out of context.

(9) The other contention of the learned senior counsel is that the earlier judgment passed by this Court operates as *res judicata* as the lease was granted by the State Government before the coming into force of the Act. It is admitted case of the petitioners that there is no written lease deed or 'Pattanama' in favour of the petitioner. However, their case is that lease was granted in their favour. In **Mohinder Singh's case** (*supra*) (CWP No. 1707 of 1979, decided on 14th November, 1979) (Annexure-P.2), a Division Bench of this Court observed from the order of the Assistant Collector which was impugned therein that it appeared that he (Assistant Collector Ist Grade) assumed that there was a 'Pattanama' (lease deed) executed between the parties and the term of lease was 20 years i.e. from 1955 to 1975. However, no such 'Pattanama' had been produced. It was held that the panchayat had failed to completely establish

that either the petitioners were lessees of land for a fixed term of period or their possession had become wrongful or unlawful in any manner by virtue of any action or act of any of the party or operation of law. It was, however, specifically held that the order would not preclude the Gram Panchayat from initiating any fresh proceedings for eviction of the petitioners in accordance with law. Therefore, in **Mohinder Singh's** case (*supra*) a specific liberty having been given to the Gram Panchayat for initiating fresh proceedings in accordance with law, the said-order would not operate as *res judicata*. In **Tara Singh's** case (*supra*) (CWP No. 3486 to 1991, decided on 6th November, 1990) (Annexure-P.3), it was held that the petitioners did not hold the land under any lease for a fixed period of time. This being so their ejection, it was held, on the ground that the period of lease had expired cannot be countenanced. The ejection proceedings in the said case had been initiated on the ground that the land in possession of the petitioners had been allotted to them in 1955 under a 20 years lease and on the expiry thereof their possession had become unauthorized. This aspect, in fact, had already been determined in **Mohinder Singh's** case (*supra*) in which it was held that no 'Pattanama' (lease deed) had been produced or proved on record. Besides, it was held that the panchayat had failed to establish that the petitioners were lessees for a fixed term or that their possession had become wrongful or unauthorized. Therefore, the question that the petitioners were lessees for a fixed term had already been decided in **Mohinder Singh's** case (*supra*). As such the subsequent petition that was filed by the Gram Panchayat on the same ground was rightly negated by this Court in **Tara Singh's** case (*supra*) (CWP No. 3486 of 1991, decided on 6th November, 1990) (Annexure-P.3). However, this did not affect or preclude the Gram Panchayat from initiating fresh proceedings as was held in **Mohinder Singh's** case (*supra*) *vide* order dated 14th November, 1979 (Annexure-P.2). The Gram Panchayat did file a fresh petition in which a preliminary objection regarding the earlier decision operating as *res judicata* was raised which was negated by the authorities under the Act. The same was assailed in this Court in **Molu Ram's** case (*supra*) (CWP No. 16665 of 2007, decided on 27th February, 2009) (Annexure-P.7). This Court held that the terms of lease granted by the State Government was to be ascertained. Besides, it was to be ascertained whether the State Government was competent to grant the lease and to determine the lease in accordance with law before applying

for ejection of the petitioners under Section 7 of the Act. The said three orders, therefore, in **Mohinder Singh's case** (*supra*), **Tara Singh's case** (*supra*) and **Molu Ram's case** (*supra*) were passed as the Panchayat had initiated the proceedings by taking the stand that the petitioners were lessees. It may, however, be noticed that Section 7 of the Act provides for the power to put the Panchayat in possession of certain lands, which are owned by the Gram Panchayats. Section 7(1) of Act reads as under :—

“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 authorized by the Block Development and Panchayat 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 unauthorized possession of the land or other immovable property in the *shamlat 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:

Provided that if in any such proceedings the question of title is raised and proved *prima facie* on the basis of document that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

- (10) In terms of the above provision, the Assistant Collector Ist Grade is authorized either *suo motu* or on an application made to him by a Panchayat or an inhabitant of the village or a Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other officer authorized by the Block Development and Panchayat Officer to eject a person who is in wrongful and unauthorized possession of land or

other immovable property which vests in *shamilat deh* of the village. It is further provided that in case any question of title is raised *prima facie* and proved such question is to be determined. Therefore, the Panchayat or an applicant before the Assistant Collector Ist Grade seeking ejection of a person in possession of Shamilat land, which vests in the Gram Panchayat is to show that the person in possession of the said land is in wrongful or unauthorized possession. The Panchayat if it shows that the petitioners are in unlawful or unauthorized possession, the same is to be considered by the Assistant Collector. The Division Bench in **Molu Ram's** case (*supra*), decided on 27th February, 2009 (Annexure-P.7) issued directions to the Deputy Commissioner, Kurukshetra (respondent No. 1) to look into the matter and ascertain what were the terms and conditions under which possession of land was transferred in favour of the private respondents and whether State Government was justified in transferring by way of lease the land which was the ownership of Gram Panchayat to the private respondent (now petitioners). It is in consequence of the said directions that the Deputy Commissioner, Kurukshetra (respondent No. 1) *vide* order dated 12th June, 2009 (Annexure-P.8) has decided the case. The Deputy Commissioner (respondent No. 1) held that no right had been created in favour of the private respondent (petitioners herein) to be in possession of the panchayat land by way of lease by the Gram Panchayat or by the State Government for a period of 20 years or for any indefinite period. The entries with regard to Rs. 4 and 13 Annas and Rs. 5, it was observed that there was no evidence or revenue record on the basis of which such entries had been recorded. It was concluded that the private respondents were cultivating the land without any right or title and thus liable to be ejected from the land in dispute. The said inquiry which was conducted by the Deputy Commissioner (respondent No. 1) *vide* order dated 12th June, 2009 (Annexure-P.8) was for the purpose of initiating proceedings under the Act. Therefore, the question whether the occupants of the land are in wrongful or unauthorized occupation is to be determined by the Assistant Collector in the proceedings to be conducted by him on the basis of the records as produced before him. The scope and intent of the order of the Division Bench in **Molu Ram's** case (*supra*) was for the purpose of ascertaining the terms and conditions of possession and occupation of the petitioners and thereafter for taking action on the same in accordance with law. The findings and conclusions recorded by the

Deputy Commissioner do not by themselves determine any right and these are to be determined and gone into by the Assistant Collector 1st Grade in the proceedings initiated before him under the provisions of the Act. The eviction of unauthorized occupants or those who are in wrongful possession is to be done only in accordance with the provisions of the Act. It is well known that where power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden. therefore, the provisions of the Act which provide for eviction of unauthorized occupants or those in wrongful possession of panchayat land is to be done on the manner provided in the Act. This would necessarily mean that all objections to avoid the ejection are to be raised before the authorities entertaining the objections and not before this Court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India. In the facts and circumstances, no question of *res judicata* is involved in the present case and the earlier decisions passed by this Court do not, in any manner, preclude the Gram Panchayat from initiating proceedings for the eviction of the petitioners from the land in their occupation in accordance with law. Even otherwise in **Inder Singh versus Financial Commissioner, Punjab, (3)** it was observed by the Supreme Court that doctrine of *res judicata* is not applicable to summary proceedings unless the statute expressly applied to such orders. It was held that the authorities under the Pepsu Tenancy and Agricultural Land Act are not Civil Courts and nor petitions are plaints. No issues were framed nor tried as a civil suit and the orders passed by the authorities without any elaborate trial like any civil suit but in a summary manner would not make the principle of *res judicata* applicable. The proceedings under the Act in terms of Section 7 of the Act are also summary in nature and the earlier proceedings do not operate as *res judicata*. The orders passed by this Court are to the extent that if there is a lease in favour of the petitioners then before the ejection of the petitioners is ordered the lease has to be determined. There is no dispute to the said proposition. However, this does not, in any manner, preclude the Gram Panchayat from otherwise showing that the petitioners are in wrongful or in unauthorized occupation and, therefore, entitled to ejection in terms of Section 7(1) of the Act. In fact, this was so held even in **Mohinder Singh's** case (*supra*) decided on 14th November, 1979 (Annexure-P.2).

(11) For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed. However, the authorities under the Act shall decide the ejection petition that may be filed on the basis of evidence and material produced before it uninfluenced by the observations made herein or the order dated 12th June, 2009 (Annexure-P.8) passed by the Deputy Commissioner, Kurukshetra (respondent No. 1).
