

Gharsi v. Collector, Narnaul and others (M. R. Agnihotri, J.)

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terminated on 18th June, 1981. By that time he had not completed 240 days. The earlier period when he was appointed as Mali for two hours only with effect from 14th July, 1980 and then for four hours only with effect from 6th November, 1980 could not be counted towards 240 days. The appointment of the petitioner as mali for two hours and four hours subsequently was altogether separate and distinct appointment, taking into consideration that the office was situated in a residential building. That being so, there is nothing wrong or illegal in the finding of the Labour Court that it was a separate and distinct appointment from that of his appointment as Chowkidar. The matter as to whether part-time employment was an employment for the purpose of Industrial Disputes Act or not, came up for consideration before the Andhra Pradesh High Court in *Rangamannar Chetti's case* (supra). It was observed therein :—

“The point urged for setting aside the aforesaid award is that part-employment is inconsistent with the relationship of master and servant, Sastri would not be an employee within the meaning of the Industrial Disputes Act, XIV of 1958, and therefore the tribunal would not have the jurisdiction to determine the main question. It is now well settled that if a person be not an employee within the meaning of the Act, questions cannot be referred to the tribunal under the enactment. Further there are several decisions by industrial tribunals to which reference has been made before me that part-time employees are not covered by the Act.”

No judgment taking the contrary view has been cited at the bar.

(8) In this situation, the writ petition fails and is dismissed with no order as to costs.

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P. C. G.

*Before M. R. Agnihotri, J.*

GHARSI,—Petitioner.

*versus*

COLLECTOR, NARNAUL AND OTHERS,—Respondents.

*Civil Writ Petition No. 3310 of 1979.*

February 9, 1988.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Ss. 2(g), 13-A and 13-B as added by Amendment Act (II of*

1981)—Order of ejectment of petitioner passed—Authorities not considering and appreciating evidence on record—Validity of such order questioned in writ petition—Order quashed—During the pendency of writ Act amended—Amending Act providing remedy of suit—Period of filling the suit expired—Extension of period granted.

*Held*, that since the writ petition was filed in the year 1979 and the amendment came into force in 1981, obviously, there was no question of the petitioner availing the remedy of adjudication under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961. However, the fact remains that without considering and properly appreciating the documentary evidence produced before the Assistant Collector, it was neither possible nor safe for him to give a finding one way or the other, as to whether the petitioner and his brother were in actual physical possession of the land in dispute or not for the purposes of Section 2(g) of the Act. Such a finding could only be arrived at by proper adjudication under Section 13-A of the Act by considering the rival claims of the parties after appraising the overwhelming documentary evidence on the record. This having not been done both the impugned orders are set aside.

(Para 3)

*Held*, that the petitioner had approached this Court in 1979 and since then has been pursuing his cause with due diligence and the amendment to the Act has come during the pendency of these proceedings, the period of limitation prescribed in Section 13-A of the Act for approaching the Court of Assistant Collector under that Section deserves to be extended.

(Para 4).

*Writ Petition Under Article 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to :—*

- (i) Issue a writ in the nature of writ of certiorari calling for the records of respondents 1 & 2 relating to the impugned Order, Annexure 'P/1' & 'P/2' and after a perusal thereof, the impugned Orders, Annexures 'P/1' and 'P/2' be quashed.
- (ii) Issue an ad interim order staying the dispossession of the petitioner from the land in dispute and as also the recovery of penalty of Rs. 9,600 imposed by write of the orders at Annexures 'P/1' and 'P/2' till the final adjudication of this writ petition by this Hon'ble Court;
- (iii) Issue any other appropriate Writ, Direction or Order that this Hon'ble Court may deem fit and proper in the circumstances of this case;

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(iv) *Dispense with the prior service of notices of motion on the respondents as required by Article 226(iv) of the constitution of India as if the same is insisted upon, it is very likely that the petitioner may be forced to deliver possession of the land in dispute and as also the amount of penalty may be recovered by coercive methods; this rendering the Writ Petition as infructuous;*

(v) *Award costs of this Writ Petition to the petitioner.*

Chandra Singh, Advocate, for the Petitioner.

Nemo for the Respondent.

### JUDGMENT

M. R. Agnihotri, J (oral)

This Petition under Articles 226 and 227 of the Constitution of India has been filed by Gharsi son of Tulla, resident of village Mohabatpur Bhungarka, Tehsil Narnaul, District Mohindergarh in the State of Haryana, praying for the quashing of the order, dated 31st March, 1978, Annexure P.1, passed by the Assistant Collector 1st Grade, Narnaul, respondent No. 2 and the order, dated 26th June, 1979, passed by the Collector, Narnaul respondent No. 1 Annexure P.2 in appeal. Vide aforesaid orders, the petitioner has been ordered to be ejected from the land in dispute and a penalty of Rs. 9600 has been imposed at the rate of Rs. 600 per acre for the use and occupation of the land in dispute.

2. According to the petitioner land bearing Killa Nos. 16/19/2 (4-2), 21(8-7), 22(7-7) and 37/3/1 (5-16) totalling 25 Kanals 12 Marlas is the part of revenue estate of village Mohabatpur Bhungarka, Tehsil Narnaul, District Mohindergarh and is described as *Shamlat deh* in the revenue record. The petitioner claimed to be in cultivating possession of the aforesaid land in dispute as co-sharers of the ancestors of the petitioner along with one Mata Din, son of Tulla, respondent No. 4, for the last 50 years. The petitioner's case is that he and his real brother had been in cultivating possession of the land in dispute for the last about half century and as such the land stands excluded from the definition of '*Shamlat deh*' as provided in section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'). However, the Block Development and Panchayat Officer, Nangal Chaudhary moved an application under Section 7 of the Act for the ejection of the petitioner

and his brother Mata Din, respondent No. 4 from the land in dispute. In those proceedings a number of documents were produced before the learned Assistant Collector relating to the land in dispute in the form of Jamabandis, Maps, excerpts from the revenue records etc. However, the learned Assistant Collector by his order, dated 31st March, 1978 ordered the ejection of the petitioner and that of his brother Mata Din from the disputed land. A penalty of Rs. 9600 was also imposed on the petitioner @ of Rs. 600 per acre for the use and occupation of the land in dispute for a period of 5 years. Against the aforesaid order passed by the Assistant Collector the petitioner went up in appeal before the Collector, Narnaul, who,—*vide* his order, dated 26th June, 1979 dismissed the appeal and affirmed the order of the learned Assistant Collector. The present writ petition was filed on 18th September, 1979 challenging the aforesaid two orders. On 15th November, 1979 the Motion Bench admitted the writ petition and allowed the petitioner to continue in occupation of the land in dispute.

3. During the pendency of the writ petition, the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana was amended by the Haryana Act No. 2 of 1981. Sections 13-A and 13-B were inserted in the Act providing the remedy of a suit before the Assistant Collector, an appeal before the Collector and a revision before the Commissioner. It was provided in Section 13-A that any person claiming right, title or interest in any land or other immovable property, vested or deemed to have vested in the panchayat under this Act, may within a period of five years from the date of commencement of the amending Act file a suit for adjudication as to whether the land in dispute or immovable property vests in a Panchayat. Such a suit can be filed in the court of the Assistant Collector 1st Grade having the jurisdiction in the area where such land or other immovable property is situate. Sub-section (2) of this section provides that the procedure for deciding the suits filed under sub-section (1) shall be the same as laid down in the Code of Civil Procedure. Since the writ petition was filed in the year 1979 and the amendment came into force in 1981, obviously, there was no question of the petitioner availing the remedy of adjudication under section 13-A of the Act. However the fact remains that without considering and properly appreciating the documentary evidence produced before the Assistant Collector, it was neither possible nor safe for him to give a finding one way or the other, as to whether the petitioner and his brother Mata Din, respondent No. 4 were in actual physical possession of the land in

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dispute or not for the purposes of section 2(g) of the Act. Such a finding could only be arrived at by proper adjudication under Section 13-A of the Act by considering the rival claims of the parties after appraising the overwhelming documentary evidence on the record. This having not been done both the impugned orders Annexures P.1 and P.2 are set aside.

4. As the petitioner had approached this Court in 1979 and since then has been pursuing his cause with due diligence and the amendment to the Act has come during the pendency of these proceedings, the period of limitation prescribed in section 13-A of the Act for approaching the Court of Assistant Collector under that section deserves to be extended.

5. Accordingly, the petitioner, if so advised, may avail the remedy provided under Section 13-A of the Act for the proper adjudication by presenting a suit before the Assistant Collector 1st Grade concerned for adjudication within a period of three months from today. The Assistant Collector is directed to go into the dispute under section 13-A of the Act on merits, and decide the same on the basis of the material produced before him. With these directions the writ petition is allowed with no order as to costs.

S.C.K.

Before D. V. Sehgal, J.

UMESH KUMAR,—Petitioner.

versus

STATE OF HARYANA AND ANOTHER,—Respondents.

Civil Writ Petition No. 8864 of 1987

February 10, 1988.

*Constitution of India, 1950—Article 226—Admission to B.E. Course—Requirement of Medical Examination—Condition that candidate with power glasses above 2.5 power not eligible—Petitioner using glasses with more than 2.5 power found fit by the Board of Ophthalmologists—Chief Medical Officer held him unfit according to the condition laid down in Annexure VI of information bulletin—Principal cancelling his admission—Whether such a condition valid.*