

GURNAM SINGH AND ORS.

v.

THE SUB-DIVISIONAL OFFICER (CIVIL), KAITHAL AND ORS.

MARCH 12, 1996

[K. RAMASWAMY AND K. VENKATASWAMI, JJ.]

*Punjab Common Lands (Regulation) Act, 1961 : Sections 7 and 13-B.*

*Punjab Common Lands (Regulation) Rules : Rules 19 and 20.*

*Tenancy and Land laws—Gram Panchayat—Shamlat Dah lands—Unauthorized occupant—Eviction of—Appellants in possession of lands in question as tenant 20 years prior to 1975—Expiry of lease in 1975—No fresh lease granted—High Court holding that Assistant Collector 1st class was empowered to eject appellants and notice issued under Rule 20 was valid—Appeal—Held appellant being in unauthorised occupation after expiry of lease were liable to be ejected unless they show any other legal right for continuance in possession—Rule 19 held not ultra vires.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3200 of 1979.

From the Judgment and Order dated 18.9.79 of the Punjab & Haryana High Court in C.W.P. No. 5747 of 1975.

P.P. Juneja for the Appellants.

R.P. Sharma, (NP) for the Respondents.

The following Order of the Court was delivered :

This appeal by special leave arises from the order of the Division Bench of the Punjab and Haryana High Court made on June 11, 1979 in writ petition No. 1944/79.

The admitted facts are that the appellants came into possession of the lands in question as tenants 20 years prior to 1975 and the lease had expired in the year 1975. Thereafter, no fresh lease was granted to the appellants. It is not in dispute that the lands are Shamlat Deh lands vested in the Gram Panchayat. The High Court relying upon its earlier decision

has held that under Section 7 of the Punjab Common Lands (Regulation) Act, 1961 read with Rules 19 and 20 of the Rules the Assistant Collector, 1st class has been empowered to have the appellants ejected and the notice issued under Rule 20 cannot be said to be invalid. Thus, this appeal by special leave.

Shri P.P. Juneja, learned counsel for the appellants, contended that Rule 19 is bad in law since the Act did not define as to who is an unauthorised occupant; that Rule 19 cannot specify an unauthorised occupant; and that, therefore, it is beyond the rule making power. We find no force in the contention

Rule 19 elaborately states thus :

"19. For the purpose of Section 7 of the Act, a person shall be deemed to be in unauthorised occupation of any land in Shamlat Deh :

(a) where he has, whether before or after the commencement of the Act, entered into possession thereof, otherwise than under and in pursuant of any allotment, leased or grant by the Panchayat; or

(b) where, he being an allottee, lessee or granatee, has by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf therein contained ceased whether before or after the commencement of the Act, to be entitled to occupy or hold such land in Shamlat Deh; or

(c) where any person authorised to occupy any land in Shamlat Deh, has whether before or after the commencement of the Act :

(i) Sublet, in contravention of the terms of allotment, lease or grant without the permission of the Panchayat or of any other authority competent to permit such sub-letting, the whole or any part of such land in Shamlat Deh; or

(ii) Otherwise acted in contravention of any of the terms express or implied under which he is authorised to occupy such land in Shamlat Deh.

*Explanation :*

For purposes of clause (a) a person shall not merely, by reason of the fact that he has paid any rent, be deemed to have entered into possession as allottee, lessee or grantee."

Rule 20 specifies the procedure as under :

"20. Issue for Notice to show cause against order of eviction.

(Sections 7 and 15(2) (k)-(1). If the Assistant Collector of the Ist grade is of opinion that any person are in unauthorised occupation of or claim interest in the land in shamlat deh situated within his jurisdiction and that they should be evicted, he shall issued in the manner hereinafter provided a notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say all persons who are or may be, in occupation of or claim interest in shamlat deh, to show cause, if any against the proposed order notice being a date not earlier than ten days from the date of issue thereof.

(3) The Assistant Collector shall cause the notice to be affixed outside the panchayat ghar or any other building used as office by the Panchayat and at some conspicuous places of the estate in which the land in Shamlat Deh is situated, whereupon the notice shall be deemed to have been duly given to all persons concerned.

(4) where the Assistant Collector knows or has reasons to believe that any persons are in occupation of the land in shamlat deh, then without prejudice to the provisions of sub-rule (3) he may cause a copy of the notice to be served on every such person by post, or by delivering or tendering it to that person."

Section 7 and 13-B read as under :

"7. (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 the Panchayat or an inhabitant of Village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer 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 unauthorised 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.

(2) This Assistant Collector of the first grade may, by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than six hundred rupees and not more than two thousand and five hundred rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) If any person refused or fails to comply with the order of eviction passed under sub-section (1) within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(4) Any person aggrieved by an order of the Assistant Collector of the first grade may within a period of thirty days from the date of the order, prefer an appeal to the Collector, in such form and manner, as may be prescribed."

"13-B. All suits pending in any Civil Court in respect of any land or other immovable property wherein relief has been claimed on the ground of its being excluded from Shamlat Deh under clause

(g) of Section 2 or on any of the grounds mentioned in sub-section (3) of Section 4 against the Panchayat, shall stand transferred to and the fresh proceedings for seeking relief on the aforesaid grounds shall be instituted before the Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is suitable who shall dispose of the same in the manner laid down in sub-sections (5) and (7) of Section 13-A."

A conjoint reading of these provisions would clearly indicate that the conspectus of the operation of the Act was intended to have unauthorised occupants ejected by specified officer who has been invested with power and jurisdiction to evict unauthorised occupants from the possession of the lands vested in the Gram Panchayat. The contention, therefore, that the Government is devoid of power to make Rule 19 is without force. The further contention of Shri Juneja is that contrary to the specifications mentioned in Rule 20, the appellant was called upon to give the grounds for his not being ejected which is in derogation of the language in which Rule 20 is couched. Though *prima facie* the contention is attractive, on the facts we do not find any substance in the contention. On his own admission that the appellants are in unauthorised occupation after the expiry of the lease, they are liable to be ejected unless they show any other legal right for their continuance in possession. Under these circumstances, we do not think that there is any substance in the appeal.

The appeal is accordingly dismissed. No costs.

Appeal dismissed.