



In the High Court of Punjab and Haryana at Chandigarh

CWP No. 12571 of 2012 (O&M)

Reserved on: 21.1.2025

Date of Decision: 4.2.2025

Tikka Singh and others

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Hardip Singh, Advocate
for respondents No. 4 and 5.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioners seek the quashing of the order dated 14.7.2011 (Annexure P-11) passed by respondent No. 3, whereby the application filed by the Gram Panchayat concerned, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961') was allowed, and, also seek the quashing of the order dated 4.4.2012 (Annexure P-14), passed by respondent No. 2, whereby the appeal filed against the supra dated 14.7.2011, was dismissed, and, the said order became affirmed.

Brief facts of the case

2. It is averred in the instant petition, that initially the land owners including the present petitioners had filed an application under Section 11(1)

of the Act of 1961 with a prayer therein, that the land described as Shamlat



Deh Hasab Rasad Zare Khewat, was in possession of the land owners prior to the year 1942-43, and, thus the same was not shamlat deh land. Through an order dated 15.11.1994, passed by the learned Collector concerned, the said application was allowed, and, the applicants therein were declared to be the owners to the extent of their share of the land shown as Shamlat Deh Hasab Rasad Jar Khewat. The order (supra) was challenged by the Gram Panchayat concerned, through the filing of an appeal before the statutory appellate authority concerned, however, the said appeal was dismissed through an order made thereons on 21.5.1997.

3. Subsequently, the Gram Panchayat concerned preferred CWP No. 16196 of 1996 before this Court, which became dismissed by a Division Bench of this Court, through an order made thereons on 3.11.1997. Being aggrieved therefrom, the Gram Panchayat concerned, approached the Apex Court, and, preferred SLP (Civil) No. 5129 of 1998, which became also dismissed vide order dated 27.3.1998.

4. Since despite the passings of orders (supra), yet with the apposite mutation becoming not attested in the name of the land owners concerned, therefore, the land owners filed COCP No. 1352 of 2020. However, during the pendency of the said petition, vide order dated 12.3.2001, passed by the Sub Divisional Officer(C)-cum-Assistant Collector Ist Grade, Kharar, mutation was ordered to be sanctioned in favour of the land owners concerned.

5. Being aggrieved from the order (supra), the Gram Panchayat concerned, preferred an appeal, which became dismissed through an order made thereons on 20.6.2001. A revision petition was filed against the said

order before the learned Commissioner concerned, which was also



dismissed. The Gram Panchayat concerned, challenged the supra orders respectively passed by the Assistant Collector, Collector, and by the Commissioner concerned, by filing a revision petition bearing ROR No. 405 of 2004. Vide order dated 10.3.2008, passed by the Financial Commissioner (Revenue), the revision petition (supra) was allowed. The said order passed by the Financial Commissioner concerned, was challenged by the land owners concerned, through their filing CWP No. 12045 of 2008. In the said petition, the Gram Panchayat raised a plea that it had filed a petition under Section 11 of the Act, alleging therein that the order dated 15.11.1994, had been obtained by perpetuating a fraud. The petition (supra) became allowed by this Court on 25.10.2010, and, the order dated 10.3.2008 passed by the Financial Commissioner concerned, was set aside.

6. Subsequently, the application (supra) filed by the Gram Panchayat concerned, was allowed vide the impugned order dated 14.7.2011 (Annexure P-11) passed by the Additional Deputy Commissioner concerned. Being aggrieved therefrom, the petitioners herein preferred an appeal before the statutory appellate authority concerned. However, through an order dated 4.4.2012 (Annexure P-14), the said appeal was dismissed. Hence the instant petition.

Reply on behalf of respondents No. 4 and 5

7. In reply filed by respondents No. 4 and 5, it is averred that the petitioners have not come to the Court with clean hands, inasmuch as they have concealed the material facts. It is further averred therein, that this Court while disposing of on 24.4.1990, CWP No. 14024 of 1989, titled as Des Raj and others versus Joint Director and others, rather directed the petitioners to file the application under Section 11 of the Act of 1961 within



one month from the passing of the said order. However, there is no documentary evidence to prove that the petitioners have filed the petition under Section 11 of the Act of 1961 within the period of 30 days from the passing of the order (supra). It is further averred that the individually filed petitions by the petitioners, were dismissed on 16.8.1995. However, the said fact was not disclosed by the petitioners. Therefore, from the evidence on record it is evident that the order dated 15.11.1994 was procured by the petitioners by concealing the material facts.

8. Furthermore, it is averred that there is no khewat/khatauni/khasra numbers or the measurements of total land claimed by the petitioners in their petition, and, the learned Collector concerned, without describing the description of the lands, passed the order dated 15.11.1994. It is further averred that the petitioners have committed fraud and forgery by including the dead persons concerned in the petition and also by forging their thumb impressions on the power of attorney filed along with the instant petition. Moreover, the then Sarpanch Hakam Singh, did also collude with the present petitioners in the passing of the order dated 15.11.1994.

Inferences of this Court

9. Pursuant to the directions issued by this Court on 25.10.2010, in CWP No. 12045 of 2008, directions whereof become extracted hereinafter, thus on a subjudice application under Section 11 of the Act of 1961, as became filed by the Gram Panchayat concerned, claiming therein relief qua the suit land vests in the Gram Panchayat concerned, the same being *shamlat deh* land, thus a decision became recorded on 14.7.2011 (Annexure



Collector, S.A.S. Nagar, whereby the supra petition became allowed, rather declaring the Gram Panchayat concerned to be the owner of the suit land.

“During the course of arguments, counsel for the petitioners and counsel for the Gram Panchayat have arrived at a consensus that the writ petition should be allowed and the order dated 10.3.2008 passed by the Financial Commissioner should be set aside leaving it to the Additional Deputy Commissioner, SAS Nagar, Mohali exercising powers under Section 11 of the Act to decide the petition, filed by the Gram Panchayat, by recording a finding as to whether the order dated 15.11.1994 passed by the Collector exercising powers under Section 11 of the Act was obtained by fraud.

In view of the consensus between counsel for the parties, the writ petition is allowed, the order dated 10.3.2008 is set aside. The Additional Deputy Commissioner, SAS Nagar, Mohali seized of the application filed under Section 11 of the Act, is directed to decide the application within six months from receipt of a certified copy of this order and while doing so, is directed to record a positive finding for or against the plea of fraud allegedly raised by the Gram Panchayat.

It is made clear that during the pendency of proceedings before the Additional Deputy Commissioner, SAS Nagar, Mohali parties shall maintain status quo with respect to possession, ownership and shall not create any third party rights without the prior permission of the Additional Deputy Commissioner, SAS Nagar, Mohali.”

10. A reading of the order dated 14.7.2011 (Annexure P-11), as made on the said case, details that on the contentious pleadings of the parties, the following issues became struck-

- “1. Whether the shamlat land in this application is concerned with the order dated 15.11.1994, or
Whether the order dated 15.11.1994 is concerned with the land mentioned in the application ?*
- 2. Whether order dated 15.11.1994 is the result of fraud ?*
- 3. Whether the land described in the application is reserved for common purposes under the Gram Panchayat and is shamlat ?”*

11. After considering the adduced evidence, on the above said issues, the learned Collector concerned, concluded that in the application dated 23.2.1994, as became instituted under Section 11 of the Act of 1961, at the instance of Tikka Singh (petitioner herein), thus he had admitted that 683



kanals of land was kept for common purposes of the village. Moreover, it is also detailed in the supra order, that in the application, as became filed by one Seem Khan, it has been mentioned that 683 kanals of land in the village has been left for common purposes and for the income of the Gram Panchayat, thus during the consolidation operations. Furthermore, it is also apparent on a reading of the order (supra), that in the previous petition filed under Section 11 of the Act of 1961, the respondent(s) therein one Lekh Ram and one Phool Singh, had made a statement before the DDPO concerned, whereby they had admitted that the land in dispute was kept for works of the village, thus during consolidation operations, and, that theretos no objection became ever raised by the respondents. Furthermore, a witness one Rama Kant, produced all the applications filed by the respondents under Section 11 of the Act of 1961, wherein, it has been admitted that the suit land became reserved for common purposes of the village, thus during consolidation proceedings. As such, it was concluded that thereby on the basis of the said admissions, the respondents have acquiesced, that the suit land was reserved for common purposes, and, for the income of the panchayat, rather during the holding of consolidation operations, thereby thus the suit land vests in the Gram Panchayat concerned. Resultantly, the decree in the said regard was passed in favour of the Gram Panchayat concerned, thus in respect of the suit land.

12. In the order (supra), it is also detailed that insofar as the order dated 15.11.1994 being obtained by fraud is concerned, since the Financial Commissioner (Revenue) in the order has observed that the joint application under Section 11 of the Act of 1961 became thumb marked by dead persons.



was withdrawn, therefore thus only two share holders had competently preferred the application. Consequently, the learned Collector concerned, in the order (Annexure P-11) made the hereinafter conclusions:-

“After considering all these applications filed and documents, it is clear that the Hon’ble High Court in petition No. 12045 of 2008 had directed that the case be examined from angle of fraud and had directed that the decision be made under Section 11 of the Punjab Village Common Lands Act. I have reached the following conclusion:-

- 1. In the application filed under Section 11 of the Punjab Village Common Lands Act before the Collector earlier, there were names and forged thumb impressions who were already dead.*
- 2. The respondents have got entered the mutation in their favour in respect of the land measuring 683 kanals, which were reserved for common purposes and land measuring 68 kanals which has been kept for school.*
- 3. The applicant had earlier filed an application under Section 11 before the District Development and Panchayat Officer-cum-Collector Rupnagar, but the same was beyond the period ordered by the High Court vide its order in CWP No. 14024 of 1989 and at that time the District Development and Panchayat Officer, Rupnagar had no authority to hear the same.*
- 4. In the application filed by Tikka Singh etc. before Jaswant Singh, DDPO Rupnagar, under Section 11, there was no mention of any khatauni number/khasra number and there was no description of land regarding which the applicant were in possession or had sought relief and there is no description of any khasra number area/khatauni number in the order of Jaswant Singh DDPO as to which land had been decided in favour of the applicant.*

The order of the then District Development and Panchayat Officer, Rupnagar dated 15.11.1994 was passed in haste, on considering the record in a proper manner in order to cause loss to the Gram Panchayat and to decide in favour of the applicant.

x x x x”



13. The said order became affirmed in an appeal filed thereagainst by the aggrieved, through an order becoming made on the said statutory appeal, on 4.4.2012 (Annexure P-14).

14. Though, the learned counsel for the petitioner submits, that since the earlier petition filed by the petitioners under Section 11 of the Act of 1961 was allowed through an order dated 15.11.1994, besides when the supra order became affirmed upto the Hon'ble Supreme Court. Resultantly therebys, conclusivity becomes endowewd vis-a-vis the said order, wherebys the Gram Panchayat concerned, was estopped from raising the instant petition cast under Section 11 of the Act of 1961.

15. However, for the reasons to be assigned hereinafter, the said order, does not acquire any conclusivity, nor it operates as constructive res judicata against the Gram Panchayat concerned, thus in its instituting a petition under Section 11 of the Act of 1961. The reason for stating so becomes comprised in the factum, that though a petition bearing CWP No. 12045 of 2008, thus became filed by the land owners concerned, and, though the said petition became consensually allowed by this Court on 25.10.2010 (Annexure P-7), wherebys, the order dated 10.3.2008, as became passed by the Financial Commissioner (Revenue), became set aside.

16. However, on making an insightful reading of the order (supra) passed by this Court, it becomes revealed, that the said passed consensual order, wherebys, the order dated 10.3.2008 passed by the Financial Commissioner (Revenue) became set aside, but yet was with a reservation of an empowerment to the Additional Deputy Commissioner concerned, exercising the powers of Collector under Section 11 of the Act of 1961, to,



1961, make a decision within six month from the receipt of the certified copy of the said order. Furthermore, since a mandamus was also passed upon the Collector concerned, to record a positive finding vis-a-vis the plea of fraud allegedly raised by the Gram Panchayat concerned. The operative paras of the order (supra) become already extracted hereinabove.

17. Though, through the consensual order (supra) passed by this Court, the order, as became rendered by the Financial Commissioner, Revenue became set aside. However, though therebys the Collector concerned, was not required to be taken into account the conclusions, and, inferences, as became recorded in the order (supra) passed by the Financial Commissioner, Revenue, as related to the application cast under Section 11 of the Act of 1961, becoming thumb marked by dead persons. However, when yet in the supra order (Annexure P-7), a direction was made upon the Collector concerned, to on the subjudice petition before him, as cast under Section 11 of the Act of 1961, record a positive finding vis-a-vis the plea of fraud, as raised by the Gram Panchayat concerned. Therefore if some of the conclusions (supra), as occurred in the order rendered by the Financial Commissioner, Revenue, rather became taken into account by the learned Collector concerned, but after an opportunity to the respondents therein, to contest the evidence adduced in respect thereof. Resultantly therebys, when thus an opportunity became assigned by the learned Collector concerned, to all the litigants concerned, to lead affirmative evidence on the allegation of fraud, or to lead rebuttal evidence thereto, therebys the adduced evidence, as became depended upon by the learned Collector concerned, and, as became adduced in the proceedings drawn by him, thus is to be concluded to be a well made dependence thereons.



18. Additionally since the present respondents were also arrayed as party in the case, which travelled upto the Financial Commissioner, Revenue, besides when they through theirs after maintaining the earlier instituted petition only vis-a-vis two share holders, whereas, theirs rather withdrawing the petition vis-a-vis the other share holders. Therefore therebys, as such the joint petition, as became withdrawn vis-a-vis the other share holders was, thus withdrawn on account of the thumb impressions of the other share holders being either forged or becoming made on the joint petition despite the other share holders not being alive at the time of filing of the said petition.

19. Resultantly, the conclusions (supra) recorded by the learned Collector concerned, earmarking the factum, that therebys the earlier applications filed by the land owners concerned, were defectively filed applications, thus on the ground, that thereons existed the names and thumb impressions of those petitioners who are already dead, but obviously are well made conclusions. Moreover when, apart from the said evidence, the Collector concerned, has also referred to the admissions made by the litigants in the earlier application(s) respectively filed in the year 1994, wherebys they acquiesced that the suit lands were reserved for the common purposes of the Gram Panchayat, besides for the income of the Gram Panchayat, and, qua the said reservations being made during the course of holding of consolidation operations. Resultantly, the dependence made on the said admissions when do ultimately lead to an inevitable conclusion, that therebys the petitioners concede to theirs holding no right, title and interest over the suit lands, rather the right, title and interest over the suit lands vesting in the Gram Panchayat concerned. Therefore, also therebys if the



said admissions were not earlier taken into account, thus by the competent authorities. Resultantly, the non takings into account thereof, in the earlier round of litigations between the contesting litigants, and, theirs being taken into account only in the present litigation, thus to the subjective mind of this Court, was but a telling fact, which is clearly suggestive, that the earlier declaratory decree, as became obtained by the land owners, were but per incuriam vis-a-vis the above said admissions.

20. Be that as it may, irrespective of the above, besides irrespective of the earlier decision recorded on 15.11.1994, though became affirmed upto the Apex Court. Nonetheless, when in terms of the supra extracted directions, as became passed by this Court in the writ petition (supra), vis-a-vis the learned Collector concerned, wherebys, the learned Collector concerned, has been directed to render a positive finding with respect to the allegation raised by the Gram Panchayat concerned, that the declaratory decree rendered vis-a-vis the land owners concerned, on 15.11.1994, was obtained by fraud. In sequel, when thus through the endowment of said empowerment by this Court to the learned Collector concerned, the latter proceeded to, on the basis of the adduced evidence before him, rather make the supra conclusions, which clearly magnify that the earlier order rendered on 15.11.1994 but was obtained by the present petitioners through theirs actively practicing the vices of *suggestio falsi and suppressio veri*. Therefore when therebys, thus no final and effective conclusivity is acquired by the order dated 15.11.1994, thereupon the said order neither operates as an estoppel, nor the said order is to be construed to be operating as *constructive res judicata* against the Gram Panchayat concerned, thus to raise a subsequent petition under Section 11 of the Act of 1961.



21. Moreover when, the subsequent petition, which is the present one, has been decided in terms of the supra made directions by this Court.

Final order

22 In aftermath, this Court finds no merit in the writ petition, and, with the above observations, the same is hereby dismissed. The impugned orders are maintained and affirmed.

22. The pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

February 4th, 2025
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No