

317 & 350

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 08.01.2015.

1.

CWP No.4592 of 1988

Ajmer Singh

.....Petitioner

Vs.

Joint Director, Panchayats, Punjab & anotherRespondents

2.

CWP No.4100 of 1992

Gurdev Singh

.....Petitioner

Vs.

Addl. Director, Panchayats, Punjab & othersRespondents

3.

CWP No.9585 of 1992

Kashmir Singh

.....Petitioner

Vs.

Addl. Director, Panchayats, Punjab & anotherRespondents

4.

CWP No.16805 of 1992

Sadhu Singh

.....Petitioner

Vs.

Addl. Director, Panchayats, Punjab & anotherRespondents

5.

CWP No.2020 of 1995

Baldev Singh

.....Petitioner

Vs.

Joint Director, Rural Dev. & Panchyat, Pb. & Ors.....Respondents

CORAM: HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Vikas Singh, Advocate &
Mr. Amit Jain, Advocate
for the petitioner(s).

Mr. Onkar Rai, Advocate
for the petitioner in CWP No.16805 of 1992.

Mr. Vikram Bishnoi, A.A.G., Punjab.

Mr. J.S. Bhandohal, Advocate
for respondent(s)-Gram Panchayat.

Mr. R.K.S. Brar, Advocate with
Mr. A.P. Kaushal, Advocate
for respondent No.2- Gram Panchayat in CWP No.4100 of 1992.

1. ***Whether Reporters of local papers may be allowed to see the judgment ?***
2. ***To be referred to the Reporters or not ?***
3. ***Whether the judgment should be reported in the Digest?***

SURYA KANT, J. (ORAL)

This order shall dispose of CWP Nos.4592 of 1988, 4100, 9585 & 16805 of 1992 & 2020 of 1995 as all the cases involve common question of law and facts. Though the petitioners are different but their grievance is against the Gram Panchayat of Village Mehmoodpur, Tehsil and District Patiala. All the petitioners are also residents of the said village.

(2) The question that arise for consideration is whether the land in dispute involved in each case is *shamlat deh* and vests in Gram Panchayat or is owned by the petitioners/proprietors of the village?

(3) For the sake of brevity the brief facts are being extracted from CWP No.4592 of 1988.

(4) Respondent No.2-Gram Panchayat filed an eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act 1961, (hereinafter referred to as 'the Act') seeking eviction of the petitioner(s) from the land measuring 80 Kanal 14 Marla, the details whereof are given in the headnote of the petition. The case of the Gram Panchayat was that the above stated land was *shamlat deh* and vests in it. The petitioner also moved a counter-petition under Section 11 of the Act, seeking a declaration that he was the owner in possession of the subject land which was in his possession for the last 35 years without payment of any *chakota* or *batai*.

(5) Both the above stated petitions were clubbed and heard together by the DDPO-cum-Collector, Patiala, who vide order dated 27.03.1985 and after referring to the revenue record, rejected the claim of the Gram Panchayat and accepted the petitioner's claim, holding that the Gram Panchayat has failed to prove that the subject land was being used for any 'common purpose' or it was even leased out.

(6) The aggrieved Gram Panchayat preferred an appeal before the Joint Director, Panchayat, exercising the powers of Commissioner under 1961 Act. The Appellate Authority vide impugned order dated 05.09.1986 (Annexure P-3) held that as per the jamabandies for the years 2004-05 B.K., 1951-52 A.D., 1955-56 and some subsequent jamabandies till the year 1979-80, there was *shamlat deh* in the village before the consolidation held in the year 1958-59, hence that *shamlat deh* land which was in existence even before the consolidation, stood vested in the Gram Panchayat. As regard to the identity of the land as to whether the land in dispute was the same which comprised *shamlat deh* before consolidation, the Appellate Authority relied upon on the oral version of Kanungo to hold that the land in dispute is the same *shamlat deh* which stood vested in the Gram Panchayat before and after the consolidation. On this premise, the appeal was allowed and the eviction order has been passed against the petitioner.

(7) The aggrieved petitioner approached this Court and vide order dated 02.08.1988 conditional stay was granted subject to his furnishing security for mesne profits to the satisfaction of Joint Director, Panchayat namely the Appellate Authority.

(8) We have heard learned counsel for the parties and gone through the record.

(9) The solitary question that arises for determination hovers around the identity of the land which is the subject matter of dispute in these cases namely, whether it is the same land which was identified as '*shamlat deh*' before the year 1951-52 or the land in possession of the petitioner is different than that?

(10) The Appellate Authority has relied upon only on the statement of the Kanungo where he stated that there is no document on record to connect the present land with *shamlat* land owned by the Gram Panchayat. But according to him, the land in dispute belongs to the Gram Panchayat.

(11) In our considered view, the consolidation scheme and/or the other relevant old revenue record ought to have been summoned by the authorities to determine the old khasra numbers of the *shamlat* land and the corresponding new numbers which must have been allotted in lieu thereof at the time of consolidation. Similarly, the land in possession of the petitioner(s) before consolidation could be identified with its old khasra numbers to determine whether the land now in their possession is the same land could or a different one. Such an exercise would have determined the identity of the land in dispute beyond any uncertainty.

(12) Suffice to observe that since proceedings under Sections 7 and 11 of the Act were clubbed together, the onus was on both the parties to establish the identity of their respective lands.

(13) The above made observations do justify to hold that the matter requires afresh determination by the Appellate Authority after taking into consideration not only the above noticed but the other contentions of the parties as well. Similarly in the peculiar facts and circumstances of the case, it will be in the interest of justice to accord an opportunity to both the

parties to lead additional evidence, if need be.

(14) For the reasons aforestated and without expressing any views on merits of the claims, we allow these writ petitions in part; set aside the orders dated 05.09.1986, 03.03.1987, 11.09.1991, 31.01.1992, 14.09.1994 & 03.02.1984 and remit the cases to the Appellate Authority, namely, the Joint Development Commissioner, Panchayats, Punjab to decide the appeals afresh and in accordance with law after hearing the parties.

(15) The parties are directed to appear before the Appellate Authority on 16.02.2015.

(16) The interim orders earlier passed by this Court shall continue to operate on the same terms and conditions till the appeals are decided afresh.

(17) Ordered accordingly.

(SURYA KANT)
JUDGE

08.01.2015
Atik

(RAJ MOHAN SINGH)
JUDGE