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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision: March 31, 2015

1. CR No.7721 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Suman Garg and othersRespondents

2. CR No.7725 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Rekha Jain and othersRespondents

3. CR No.7726 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Lalit Chopra and othersRespondents

4. CR No.7742 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Robin Chawla and othersRespondents

5. CR No.7743 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Sunita Ahuja and othersRespondents

6. CR No.7744 of 2012 (O&M)

Gram PanchayatPetitioner
Versus
Satish Kumar Jain and othersRespondents

7. CR No.7745 of 2012 (O&M)

Gram Panchayat

.....Petitioner

Versus

Baldev Dass Garg and others

.....Respondents

8. CR No.7836 of 2013 (O&M)

Gram Panchayat

.....Petitioner

Versus

Surinder Kumar and others

.....Respondents

9. CR No.7837 of 2013 (O&M)

Gram Panchayat

.....Petitioner

Versus

Hari Kishan and others

.....Respondents

10. CR No.7720 of 2012 (O&M)

Gram Panchayat

.....Petitioner

Versus

Komal Kalra and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. D.R. Punia, Advocate
for the petitioners.

Mr. V.K. Jain, Senior Advocate with
Mr. Anil Bansal, Advocate
for the contesting respondents.

SABINA, J

Vide this order, above mentioned ten petitions would
be disposed of as the controversy involved in all the cases, is
the same.

Learned Counsel for the petitioner-Gram Panchayat
has submitted that the land in question was *shamilat deh* and
vested in the Gram Panchayat. Civil Court had no jurisdiction

to try the suit in view of the Section 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'Act'). In support of his arguments, learned counsel has placed reliance on **Ajit Singh versus State of Punjab and others** 2011 (3) RCR (Civil) 67, wherein it was held as under:-

“10. In view of the aforesaid judgment and the nature of Section 7 of the Act, as inserted vide Act No.19 of 1976, the Collector is empowered to pass an order to put Panchayat in possession of the land which vests and is deemed to have been vested in it under the Act. Such provision pre-supposes the title of the Panchayat over the said property. The jurisdiction of the Collector under Section 7 of the Act is analogous to the execution proceedings. The disputed question of title over any land claimed to be shamlat or otherwise, is required to be adjudicated upon under Section 11 of the Act as substituted by Act No.19 of 1976. While providing alternative mode of adjudication of question of title of the land as shamlat or not, the jurisdiction of the Civil Court was specifically barred. Therefore, in proceedings under Section 11 of the Act, the question of title is adjudicated upon in substitution of the proceedings before the Civil Court and the order passed in such proceeding alone is final and binding on the parties.”

Learned counsel has also relied on **Joginder Singh through L.Rs versus State of Punjab and others** 2008(1) LAR 445, wherein it was held as under:-

“19. Now the next question which arises for determination is whether the common land owned by Gram Panchayat could be allotted by the Rehabilitation Department to the present petitioners. This question

came up for consideration before the Apex Court in case **Gram Panchayat of Village Jamalpur vs. Malwinder Singh and others, AIR 1985 Supreme Court, 1394**, wherein their Lordships observed as under:-

“The effect of the Administration of the Evacuees Property Act was not to take away the character of Shamilat-deh as Shamilat-deh but only to vest in the Custodian such interest as the Evacuee possessed in the Shamilat-deh. The interest with the erstwhile evacuees possessed in the Shamilat-deh was neither enlarged nor abridged. The land continued to be Shamilat-deh and it could be the subject of competent State Legislation as Shamilat-deh. If for the purposes of agrarian reform the legislature of the State enacted a law as it was competent to do, and consent to which was accorded by the President under Article 31-A of the Constitution, we do not see any justification for the argument that there was any conflict between the Punjab Act and the Central Act. When the Parliament and the State Legislature, each of them legislate in their own field with respect to different subjects - in this case Evacuee Property and Shamilat-deh - there could be no reason to conclude that there was necessarily a conflict between the two legislations. The question in the present case is whether the legislature of the State could make a law relating to agrarian reform in respect of property which included property which by a process of law had become vested in the Central Government or the Custodian. There is no reason why the State Legislature should be considered incompetent to make a law relating to agrarian reform, if indeed it is a law relating to agrarian reforms as it has been found to be so, in the present case, even it affects land vested in the Central Government or the

Custodian.”

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25. In view of the settled position of law as laid down above, the necessary conclusion which can be drawn is that irrespective of the fact (even if proved) that the land measuirng 307 kanals 4 marls was allotted to Gurbaz Singh now falling on the petitioners yet the same could not be allotted to them out of the land owned by Gram Panchayat.”

Learned senior counsel for the respondents, on the other hand has opposed the petitions and has submitted that the land in question had been allotted to Malkiat Kaur in the year 1977. Therefore, the land in question could not longer be described as *shamilat deh*. In these circumstances, the question with regard to the title of the suit property could only be decided by the Civil Court.

Contesting respondents have filed suit for declaration that they were owners-in-possession of the suit land and for permanent injunction that the Gram Panchayat be restrained from dispossessing them from the suit land. Alongwith the suit, respondents moved applications under Order 39 Rule 1 and 2 of Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). Trial Court vide orders dated 23.07.2011 directed the parties to maintain status quo over the property in question. Appeals filed by the Gram Panchayat against the said orders were dismissed vide order dated 11.06.2012. Hence, the present petitions by the Gram Panchayat.

Section 11 of the Act reads as under:-

“11. Decision of claims of right, title or interest in shamilat deh.-

(1) {Any person or a Panchayat} claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.”

Section 13 of the Act reads as under:-

“13. Bar of Jurisdiction in civil courts.- No civil courts shall have jurisdiction--

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

Thus, as per Section 13 of the Act, Civil Court has no

jurisdiction to try the suit, wherein the dispute is as to whether the land in question is *shamilat deh* or not.

The case of the contesting respondents is that the land in question was allotted to Malkiat Kaur in the year 1977. Malkiat Kaur agreed to sell the land in favour of Surinderpal Singh and Jagtar Singh. Suit filed by Surinderpal Singh and Jagtar Singh was allowed by the trial Court for specific performance of the agreement to sell. Mutation of the land in dispute was sanctioned in favour of Malkiat Kaur and thereafter, in favour of Surinderpal Singh and Jagtar Singh on the basis of sale-deed dated 23.05.1985. Plaintiffs had purchased the land from Surinderpal Singh and Jagtar Singh.

Annexure P-7 is the order passed in CWP No.8960 of 2007, decided on 15.07.2009. A perusal of the order reveals that mutation sanctioned in favour of Surinderpal Singh and Jagtar Singh was challenged by the Gram Panchayat in appeal and the same was allowed. However, the said order was set aside in appeal filed by Surinderpal Singh and Jagtar Singh. Thereafter, Gram Panchayat filed a petition before the Financial Commissioner and the same was allowed on 31.08.2006. Surinderpal Singh and Jagtar Singh challenged the said order by way of CWP No.8960 of 2007. While dismissing the petition, this Court held that Surinderpal Singh and Jagtar Singh could not be held to be bonafide purchasers of the suit land from a person who held a valid title of the suit land. The said order was challenged by Surinderpal Singh and Jagtar Singh by way

of LPA No.494 of 2009 and the same was decided on 05.06.2009. A perusal of the said order (Annexure P-8) reveals that liberty was given to Surinderpal Singh and Jagtar Singh to approach the learned single Judge alongwith the documents sought to be relied by them. Thereafter, Review Application No.237 of 2009 was dismissed by this Court with costs vide order dated 24.07.2009. It was observed by this Court that the review application was not only misconceived but had been filed to usurp the Gram Panchayat's land. The said order was challenged by Surinderpal Singh and Jagtar Singh by way of LPA No.1352 of 2009 and the same was dismissed vide order dated 10.12.2009 (Annexure P-10). However, it was held that any finding recorded by the learned single Judge was only for the purposes of deciding the claim of the appellants in respect of mutation entered in favour of the Gram Panchayat. As and when the jurisdiction of the competent authority was invoked qua title dispute between the Panchayat and the appellants, the same would be disposed of on merits in accordance with law.

Thus, in the present case, the dispute is as to whether the land in question is *shamilat deh* or not. As per Section 13 of the Act, jurisdiction of the Civil Court to decide as to whether the land in dispute is *shamilat deh* or not and vested or deemed to have been vested in Panchayat under the Act, cannot be decided by the Civil Court. As per Section 11 of the Act, any person or Panchayat claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat,

can approach the Collector for determination of such claim. However, civil suit filed by the plaintiffs was prima facie not maintainable. In the facts and circumstances of the present case, the Courts below erred in directing the parties to maintain status quo with regard to the property in question as prima facie in view of Section 13 of the Act, Civil Court had no jurisdiction to try the suit.

Accordingly, these petitions are allowed. Impugned orders 23.07.2011 are set aside. Consequently, applications moved by the plaintiffs under Order 39 Rule 1 and 2 CPC are dismissed.

**(SABINA)
JUDGE**

March 31, 2015
m.singh