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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No.8705 of 1988 (O&M)
Date of Decision: 10.04.2015**

Ram BhajPetitioner
Versus
Commissioner, Ambala Division, Ambala & Ors.
.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. M.L. Sarin, Senior Advocate with
Ms. Alka Sarin, Advocate
for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana.

Mr. Ramandeep Singh, Advocate
for respondent No.4.

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?*

RAJ MOHAN SINGH, J.

Petitioner assails the order dated 31.08.1988 (Annexure P-4) passed by the Commissioner, Ambala Division, Ambala -respondent No.1.

[2]. Brief facts culminating in filing the present petition are that respondent No.4-Gram Panchayat filed an eviction petition under Section 7 of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act') against the petitioner before respondent No.3 which was dismissed vide order dated

06.04.1970. The aforesaid order was assailed by respondent No.4- Gram Pachayat in appeal, which was also dismissed by respondent No.2. Further, a revision was filed against the order passed by Appellate Authority before respondent No.1. The revision was allowed and an order of ejectment was passed against the petitioner.

[3]. Against the order passed by respondent No.1, petitioner approached this Court by filing **CWP No.1589 of 1972** titled as **Ram Bhaj v. Commissioner, Ambala Division, Ambala Cantt. etc.** The writ petition was allowed vide order dated 27.09.1972, whereby order passed by respondent No.1 was quashed and the case was remanded to respondent No.3 for fresh decision.

[4]. After the remand, respondent No.3 took up the proceedings and passed order dated 23.07.1974 holding the possession of petitioner to be unauthorised and ordered his ejectment. Petitioner filed appeal against the said order before respondent No.2 who vide his order dated 07.04.1975 set aside the order of respondent No.3 and found that the possession of petitioner over the land in dispute was for more than 35 years and, therefore, no order of ejectment could be passed.

[5]. Against the order dated 07.04.1975 passed by respondent No.2, respondent No.4 filed **CWP No.2771 of 1975** titled as **Gram Panchayat, Sutana v. Collector, Karnal etc.** The petition was dismissed by this Court vide order dated 19.10.1982. In this way the

proceedings initiated under Section 7 of the 1961 Act stood culminated.

[6]. Thereafter, respondent No.4-Gram Panchayat filed title suit under Section 13-B of the 1961 Act before respondent No.3. Vide order dated 20.03.1986, respondent No.3 decreed the suit, declaring respondent No.4 to be owner of the property in question, but did not pass any order of ejectment against the petitioner for the reasons that he was in possession since time of his father.

[7]. Against the aforesaid order respondent No.4 filed appeal before respondent No.2 and the petitioner also filed cross-objections. Respondent No.2 vide order dated 11.12.1986 dismissed the appeal of respondent No.4 and allowed the cross-objections of the petitioner thereby dismissing the petition under Section 13-B of the 1961 Act in toto. Against the order dated 11.12.1986 passed by respondent No.2, respondent No.4 filed revision petition before respondent No.1, who vide order dated 31.08.1988 (Annexure P-4) accepted the revision petition, conferring title to respondent No.4.

[8]. The aforesaid order passed by respondent No.1 has now been assailed in the present writ petition, primarily on the ground of *res judicata* and applicability of Section 4(3)(ii) of 1961 Act.

[9]. We have heard learned counsel for both the parties and have also gone through the material on record.

[10]. Before embarking upon merits of the case, it is beneficial to reproduce relevant extracts of Section 2(g) and Section 4(3)(ii) of the 1961 Act.

“2. (g) *“Shamilat deh” includes*

(1) *Land described in the revenue records as Shamilat deh excluding abadi deh.*

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(3) *Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.*

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(5) *Land in any village described as banjar qadim and used for common purposes of the village, according to revenue records; [...]*
but does not include land which--

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(iii) *has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.*

(viii) *was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or....”*

[11] Section 4(3)(ii) of the 1961 Act is reproduced as under:-

“4. Vesting of rights in Panchayats and non-proprietors:-

(3) Nothing contained in clause (a) of sub-section (1) and in sub section (2) shall affect or shall be deemed ever to have affected the ;-

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years [immediately preceding the commencement of this Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.”

[12]. Respondent No.1 vide order dated 31.08.1988 while accepting the revision petition held that according to *jamabandi* for the year 1965-66 (Ex.P-11), the disputed land was shown as pastures. *Jamabandies* for the years 1970-71 (Ex.P-5), 1975-76 (Ex.P-10) and *Jamabandi* for the year 1980-81 (Ex.P-12) depicts ownership of the Gram Panchayat and land was shown as pastures vide Ex.P-8. The Gram Panchayat came in possession of the land in execution of order dated 16.12.1971 passed by the Commissioner, Ambala Division. However, petitioner again re-posessed the land in July 1983 after passing of the order dated 19.10.1982 by this Court. From 1972 to 1983 Gram Panchayat was in possession of the land. The petitioner also could not prove his possession for a period of 12 years prior to commencement of the 1961 Act or w.e.f. 26.01.1950. Respondent No.1 further held that the orders passed under Section

7 of the 1961 Act cannot operate as *res judicata* as proceedings under Section 7 of the 1961 Act are summary in nature and question of title can be decided only in regular suit under Section 13-B of the 1961 Act by following proper procedure like framing of issues. The proceedings under Sections 7 and 13 of the Act are distinct and independent of each other. On the basis of precedents cited at the bar, respondent No.1 concluded that the principle of *res judicata* does not apply and the land having shown as 'pasture' has the effect of vesting in Panchayat as *Shamlat Deh* and that ingredients of Section 4(3)(ii) of the 1961 Act were not attracted to advance the case of the petitioner.

[13]. Learned counsel for the petitioner cited Full Bench decision of this Court in **Teja Singh v. Union Territory of Chandigarh, 1982 PLR Page** to contend that Order 23 Rule 1 CPC is applicable to writ proceedings and when a writ petition is dismissed after contest by passing a speaking order, that decision would operate as *res judicata* in any other subsequent proceedings such as suit or a petition under Article 32 of the Constitution of India etc.

[14]. Learned counsel further relied upon **Naurang Singh (died) now through his LRs v. The State of Punjab and others, 1997(1) PLJ Page 61** to supplement his argument that the Gram Panchayat cannot be permitted to keep the *lis* alive for times immemorial by mere articulating the petition and by frustrating the principles of *res*

judicata, equitable *res judicata* and estoppel.

[15]. Learned counsel further cited **Parkash Singh and others v. Joint Development Commissioner, Punjab and others, 2014(3) PLR 543** in order to extract interpretation of *res judicata* in the context of proceedings already culminated before the Authority having no jurisdiction. Learned counsel also pressed into aid the doctrine of merger by citing **Amarjit Singh and others v. Financial Commissioner, Taxation, Punjab, and others, 1978 RLR 464**, and **Smt. Daya Wanti v. Yadvindra Public School, Patiala, 1996(1) PLR 208**. He also banked upon **Pritam Singh v. The Collector, Sirsa and others, 1981 PLJ 179** in order to apply Section 4(3)(ii) of the 1961 Act.

[16]. On the other hand learned counsel for respondent No.4- Gram Panchayat relied upon **Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of Village Atil and others, 1929 PLJ (1); Inder Singh and another v. The Financial Commissioner, Punjab and others, 1997(1) PLJ 52; CWP No.653 of 2011** titled as **Balbir Singh v. State of Punjab and others** decided on 03.02.2012; **Jang Bahadur and others v. Director Rural Development and Panchayat, 2012(3) LAR 614; Municipal Council, Zirakpur v. Mohinder Singh and others, 2013(2) LAR 416**; and **Gram Panchayat, Balbera v. Director Village Development and Panchayat, Punjab and another, 2012(4) RCR**

(Civil) 422 to contend that doctrine of *res judicata* is not applicable in the facts and circumstances of the instant case and land in question is fully capable of vesting in Panchayat as *Shamlat Deh*.

[17]. With a view to attract the ratio of **Teja Singh's** case (supra) and **Parkash Singh and others'** case (supra) the petitioner has laid emphasis on Annexure P-1 i.e. order dated 19.10.1982 passed by this Court in **CWP No.2771 of 1975** dismissing the writ petition of the Gram Panchayat arising out of proceeding under Section 7 of the 1961 Act. Learned counsel would argue that by virtue of aforesaid decision when a writ is dismissed after contest by passing a speaking order then such decision would operate as *res judicata* in any other proceedings such as suit or a petition under Article 32 etc. of the Constitution of India. In order to supplement the aforesaid submission that the decision rendered by a Full Bench of this Court in **Parkash Singh and others'** case (supra) is also relied upon. The judgment dated 19.10.1982 passed by this Court was undoubtedly in the context of proceedings under Section 7 of the 1961 Act. No title issue to the property was involved or decided in those proceedings, rather the factum of possession whether unauthorised or lawful was the limited point gone into those proceedings.

[18]. In **Parkash Singh and others'** case (supra), Full Bench of this Court was considering reference on the following four issues:-

“1. Whether a Director Consolidation, exercising power under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 can decide whether land vests or does not vest in a Gram Panchayat?

2. If answer to the first question is in the negative, then whether an order passed by a Director Consolidation, determining ownership of a Gram Panchayat, affirmed by the High Court and the Supreme Court operates as res-judicata in a subsequent petition, filed under Section 11 of the Act?

3. Whether Section 13-B of the Act empowers the Collector, exercising jurisdiction under Section 11 of the Act, to disregard an order passed by the Director Consolidation, that has been affirmed by the High Court and the Hon'ble Supreme Court.

4. Whether a plea that the order passed by the Director Consolidation was obtained by fraud can be raised after the order has been affirmed by the High Court and the Hon'ble Supreme Court?”

[19]. It has been held under point in issue No.1 that the Director Consolidation exercising the powers under Consolidation Act of 1948 cannot decide whether land vests or does not vest in Gram Panchayat i.e. in a way question of title cannot be decided by the Director Consolidation. The jurisdiction of civil Court to entertain a dispute regarding *Jumla Mushtarka Malkan* was not held barred and it was held that the Forum available to a person who raises a dispute regarding title of *Jumla Mushtarka Malkan* is the civil Court having

jurisdiction in the matter as provided under Section 9 CPC.

[20]. The answers to points in issues No.2 and 3 are discernible from para 96 of the judgment which holds as under:-

“96. We, therefore, answer the second and third question, in the following terms:-

(1) The State or its delegate, exercising power under Section 42 and authorities under the Consolidation Act are tribunals of limited jurisdiction.

(2) Consolidation authorities have no power to decide disputed questions of title in respect of lands, or any right, title or interest therein.

(3) The State or its delegate, may in the exercise of power under Section 42 of the Act Consolidation Act order correction of errors, in accordance with law.

(4) While exercising powers under Section 42 of the Consolidation Act, if it is held that the land, in dispute, vests or does not vest in a Gram Panchayat such an order would be construed to be an opinion recorded by a Tribunal of limited jurisdiction and an order so passed would not operate as resjudicata to be binding upon parties or the Collector, exercising power under Section 11 of the 1961 Act, or the jurisdictional forum, constituted for deciding a question of title.

(5) *If a writ petition or special leave petition filed to challenge an order passed under Section 42 of the Consolidation Act is dismissed without assigning any reason, by use of the words "dismissed", no merits, dismissed" or such like similar expressions, the order passed under Section 42 of the Consolidation Act shall not merge in the order passed by the High Court or the Hon'ble Supreme Court, so as to operate as resjudicata or prohibit the Gram Panchayat from approaching the jurisdictional forum or.*

(6) *If an order passed under Section 42 of the Consolidation Act has not been challenged in a writ petition or before the Hon'ble Supreme Court, such order shall be ignored, by the Collector exercising power under Section 11 of the 1961 Act, as Section 13-B clearly postulates that notwithstanding anything to the contrary in any law or any agreement, instruments, custom or usage of any decree or order of any court or other authority, the provisions of the 1961 Act shall prevail.*

(7) *If, however, the order passed by the Director Consolidation has been affirmed, by the High Court or in a special leave petition or an appeal before the Hon'ble Supreme Court on merits, the order passed by the Director Consolidation shall be deemed to have merged in orders passed under Articles 226 and 136 of the Constitution of India and would, therefore, on the basis of the doctrine of rule estoppel, merger and*

the order of precedence among courts, prohibit the Gram Panchayat from filing a petition under Section 11 of the 1961 Act, the Collector from entertaining such a petition, or where the land is "Jumla Mushtarka Malkan" the Civil Court"

[21]. The fourth point in issue was answered accordingly that the fraud vitiated all solemn acts and even the decision of superior Court can be nullified by the lower Court on detection of fraud.

[22]. The answer to 2nd question considered by the Full Bench was in negation. The Consolidation Authorities were held to have no power to decide question of title and if such an attempt was made while exercising powers under Section 42 of the Consolidation Act, then the order would be construed as an opinion of the Authority and such order would not operate as *res judicata* between the parties or binding upon the party or the Authority under 1961 Act deciding the title.

[23]. As regard to the view taken by Full Bench in **Parkash Singh and others'** case (supra) on point in issue No.3, suffice to point out that Section 7 of the 1961 Act is not the prescribed Forum for deciding question of title under that Act. No title issue was involved in Section 7 proceedings, therefore, doctrine of merger of decision rendered under Section 7 of the 1961 Act cannot be treated as a decision on the title dispute or to have been merged in the judgment of the High Court. For that purpose since the proceedings

under Section 7 are undoubtedly summary in nature, no issue of title was framed, no evidence was led and no finding was returned. The decision made in the proceedings under Section 7 of the 1961 Act thus cannot be applied as *res judicata* on the proceedings of regular suit under Section 13-B of the 1961 Act.

[24]. The reliance placed upon **Naurang Singh (died) now through his LRs's** case (supra) is also misconceived as that cited decision no longer lay down correct Law, for it was considered in **Balbir Singh's** case (supra) and it was held that in view of judgment of the Hon'ble Supreme Court in **Inder Singh's** case (supra), the judgment in **Naurang Singh (died) now through his LRs's** case (**supra**) does not lay down the correct position of law. The other precedents cited by learned counsel for the petitioner are also in the context of doctrine of merger which has been discussed at length in preceding paras.

[25]. Learned counsel for the respondent-Gram Panchayat, on the other hand, vehemently argued on the strength of precedents like **Tara Chand's** case (supra) wherein the Hon'ble Supreme Court has opined that *res judicata* is not applicable in the given situation and that very view was reiterated by the Hon'ble Supreme Court in **Balbir Singh's** case (supra). The Division Bench of this in **Jang Bahadur and others'** case (supra) has discussed the position of law in respect of applicability of *res judicata* in a given situation and

endorsed that view in *Municipal Council, Zirakpur's* case (supra) also.

[26]. In the light of the aforesaid discussion, we are of the opinion that plea of *res judicata* is not at all attracted in the case in hand and the proceedings under Section 13-B of the Act are not hit by *such* a principle or estoppel or merger etc.

[27]. The second leg of argument is in the context of applicability of Section 4(3)(ii) of the 1961 Act. The ingredients of Section 4(3)(ii) of the Act of 1961 Act postulates the following:-

- A. The person must be be cultivating the land which is part of *Shamlat Deh* of the village.
- B. He should be cultivating such land for a period of 12 years immediately preceding the commencement of the 1961 Act; and
- C. He should be cultivating such land without payment of rent or payment of charges in excess of land revenue and cess.

[28]. The entitlement of the petitioner has to be tested within the aforesaid criteria. Revenue record viz. *Jamabandi* for the year 1940-41 (Annexure P-7) shows *Shamlat Pana Raudan* in the column of ownership. The predecessor-in-interest of the petitioner and his father Bhala were shown as co-sharers in capacity of non-

hereditors under Pasture. Bhala, Joga Jeet sons of Jota were shown as co-sharers in equal share in the capacity of non-hereditors under the Pasture. The nature of land was shown to be Barren and column No.9 of the *Jamabandi* with respect of land revenue was shown as lease on account of vacant plot (*taur*). The aforesaid status as shown in *Jamabandi* for the year 1940-41 (Annexure P-7) was reflected in subsequent *Jamabandies* (relevant for the year 1952-53 Annexure P-8). Also in this *Jamabandi* too, status of land in column of ownership was "*Shamlat Pana Raudan* as usual". In column of cultivation, father of the petitioner along with his brother were shown as co-sharers in equal shares. Nature of land as Barren and relevant column No.9 has not been brought out with respect to any assessment to land revenue (though in column No.11 revenue of cess has been shown).

[29]. The land was 'pasture' as per *Jamabandi* for the year 1940-41. The predecessors-in-interest of the petitioner were non-hereditors in the land in question which signifies that they had no claim on the basis of inheritance qua the subject land. Since the land was shown as *Shamlat Deh Pana* and the possession of the predecessor-in-interest was in the capacity of non-hereditor, therefore, it cannot be read in favour of the petitioner.

[30]. In view of such factual and legal position it can be very safely concluded that the predecessor-in-interest of the petitioner was not a proprietor of *Shamlat Deh*, therefore the case even if not

pleaded with regard to applicability of Section 2(g)(3), cannot be applied particularly when the nature of land being 'pasture' was meant for user by village community. Since the petitioner has staked his claim on the basis of Section 4(3)(ii) of the 1961 Act, therefore, the availability of revenue record has to be tested in the said context.

[31]. First ingredient for Section 4(3)(ii) of the 1961 Act is that the person must be in cultivating possession of the land which is part of *Shamlat Deh* of the village. Firstly, the land is shown to be *Shamlat Pana* not *Shamlat Deh*, though *Pana* land also vests in Panchayat as *Shamlat Deh* if the same is not found to be used for common purposes of the village. The possession being in the capacity of co-sharer is squarely hit by Division Bench judgment of this Court in **Gram Panchayat, Balbera's** case (supra), wherein it was held that cultivating possession must be pursuant to a partition. Possession of proprietary body or other family members cannot satisfy the ingredients of being in cultivating possession.

[32]. Above all, the land is shown to be Barren as per *Jamabandi* for the year 1940-41 even as per *Jamabandi* for the year 1952-53 (Annexure P-8). Since the land was not shown as *Shamlat Deh* in column of ownership or in cultivating possession of petitioner in column of cultivation on the basis of partition and the predecessor of the petitioner was shown to be non-hereditor under 'pasture', such type of land fully vests in Panchayat as *Shamlat Deh* with the interpretation of Section 2(g)(3) of the 1961 Act and even if the

petitioner or his predecessor was in possession of the land, such possession cannot be termed as legal by any stretch of imagination.

[33]. Viewed from any angle claim put forth by the petitioner is not legally sustainable, consequently this writ petition is found to be totally devoid of merits and the same is dismissed.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

April 10, 2015
Atik