

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.9722 of 1993
Date of Decision: December 17, 2015

Kaka Singh

....Petitioner

versus

Joint Development Commissioner and Additional Secretary to
Govt. of Punjab and another
Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Vikas Bahl, Senior Advocate with
Mr.Parminder Singh, Advocate, for the petitioner.
Mr.K.K.Gupta, Additional AG, Punjab.
Mr.Dhirinder Chopra, Advocate for respondent No.2.

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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)

The petitioner has laid challenge to the order dated 24.03.1993 (P-2) whereby the Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act') allowed the appeal of Gram Panchayat; set aside the order dated 03.06.1987 of the Collector-cum-DDPO, Patiala and decreed its declaratory suit against the petitioner in respect of the land in dispute measuring 66 kanal and 17 marla situated in the revenue estate of village Tejan, Block Bhunerheri, District Patiala.

[2] The petitioner assails the appellate order primarily on the plea of res-judicata. His case is that earlier also the Gram Panchayat had instituted a petition under Section 11 of the 1961 Act on 13.05.1981 in respect of the “same land” which was dismissed by the Collector on 17.02.1987. The Appellate Authority allowed the appeal of Gram Panchayat but the petitioner successfully challenged that appellate order dated 07.06.1991 before this Court in CWP No.15683 of 1991 which was allowed vide judgment dated 15.09.1994 (P-6).

[3] At this stage, it may be briefly noticed that the Appellate Authority vide its order dated 07.06.1991 ignored the Civil Court decree dated 01.06.1974 simply observing that the said decree was tainted with fraud and collusion. This Court in its judgement dated 15.09.1994 disapproved the said reason and held that the Appellate Authority in exercise of its powers under Sections 11 or 13 of the 1961 Act could not have declared the civil court decree as null and void. It was further held that the “Civil Court jurisdiction is not barred if the plea of litigating parties is with regard to a decree being tainted with fraud, collusion or misrepresentation of facts or any other such grounds. The Civil Court is a court of plenary jurisdiction and if there no bar created for entertaining a cause by special or local Act, it would always have jurisdiction to try the matter of civil nature....”

[4] The writ petition was thereafter allowed in the following terms:-

“.... For the reasons stated above, these petitions are allowed, the order passed by

the appellate authority allowing the Suit of Respondent-Gram Panchayat under Section 11 is dismissed, thus, restoring the order passed by the D.D.P.O., Patiala (Annexure P-2). It shall, however, be open to the Respondent-Gram Panchayat to challenge the validity of the decree on the grounds of fraud, collusion or misrepresentation of facts or any other ground that might be available to them under law. Parties are left to bear their own costs.....”

[5] The fact-situation which has prompted the Appellate Authority to pass the impugned order dated 24.02.1993 is altogether different as the khasra numbers in respect of which the Gram Panchayat sought eviction of the petitioner and declaration of its ownership, are different than those which were the subject-matter of civil court decree dated 01.06.1974.

[6] Nevertheless, there appears to be some confusion in respect of the identification of khasra numbers which were subject-matter of first round of litigation initiated by the Gram Panchayat on 13.05.1981 viz-a-viz those which are the subject-matter of the impugned order dated 24.02.1993. Since the appellate order is silent and does not refer to the previous round of litigation or the particulars of the land in dispute, we allow this writ petition in part; set-aside the impugned order dated 24.02.1993 (P-3) and remit the case to the Appellate Authority with a direction to decide the Gram Panchayat's appeal afresh and while doing so, determine the following questions:-

- (i) Whether the second eviction-cum-declaratory petition filed by the Gram Panchayat pertains to the same khasra numbers which were subject-matter of first round of litigation initiated on 13.05.1981?
- (ii) Whether the land in dispute, in respect of which the Gram Panchayat's claim has been accepted, is different than the land which was subject-matter of civil suit No.5 dated 25.01.1974 decided on 01.06.1974?

[7] The plea of res-judicata can be available only if the land in respect of which Gram Panchayat has sought declaration of its title, is one and the same which was subject-matter of the civil suit and/or any other civil court decree.

[8] The parties shall be at liberty to raise their other contentions, if any, before the Appellate Authority. The Appellate Authority is directed to decide the appeal afresh within a period of three months from the date of receiving a certified copy of this order.

[9] The parties are directed to appear before the Commissioner-cum-Appellate Authority, Rural Development and Panchayats, Department, SAS Nagar, Mohali, on 28.01.2016.

[10] Meanwhile, no incumbrance or third party rights shall be created on the land in dispute. Similarly, if the plea taken by the petitioner is found to be factually incorrect and contrary to record, the Appellate Authority is directed to assess the user charges/mesne profits to which the Gram

Panchayat shall be entitled to for the period during which the petitioner has been enjoying the fruits of the land in dispute at the cost of the Gram Panchayat and shall be at liberty to pass an order of recovery to that effect.

[11] Dasti.

[SURYA KANT]
JUDGE

December 17, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE