

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

Civil Writ Petition No.15362 of 2000

Date of Decision: 8th April, 2015

Relu Singh and another

..Petitioners

versus

Joint Development Commissioner, Punjab
and others

..Respondents.

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. F.S.Virk, Advocate, for the
petitioners.

Mr. P.S.Bajwa, Addl.Advocate General, Punjab
for respondent nos 1 and 2.

Mr. Rakesh Chopra, Advocate,
for respondent no.3.

RAJIVE BHALLA, J. (ORAL)

The petitioners pray for issuance of a writ, quashing orders Annexures P-1 and P-4, dated 9.4.1999 and 15.7.1999, passed by District Development and Panchayat Officer-cum-Collector and the Joint Development Commissioner, respectively, allowing the application filed by the Gram Panchayat, under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) and dismissing their appeal, respectively.

Counsel for the petitioners submits that the petitioners
filed an application, under Section 11 of the Punjab Village Common

Lands (Regulation) Act, 1961, claiming ownership of the land in dispute. The Divisional Deputy Director, Rural Development and Panchayats, Patiala, vide order dated 13.6.1985, dismissed the petition by holding that the petitioners have failed to prove their possession "since" 26.1.1950, but also held that the land in dispute is not "Shamilat deh". The finding that the land in dispute is not "shamilat deh", prohibits the Gram Panchayat from filing a petition under Section 7 of the Act.

Counsel for the Gram Panchayat submits that khasra numbers mentioned in the petition, filed under Section 11 and Section 7 of the Act, are different. The petition under Section 11 of the Act, was dismissed by holding that the petitioners have not been able to prove their ownership. The finding that the land is not "shamilat deh" was incidental and, therefore, does not bind the Gram Panchayat. Even otherwise, as the petition filed under Section 11 of the Act was dismissed, the Gram Panchayat could not file an appeal, against a finding.

We have heard counsel for the parties and perused the impugned orders.

The petitioners filed an application, under Section 11 of the Act, claiming ownership of khasra numbers 11/4(0-12), 12/1(3-4), situated in rectangle no.35. The Collector-cum- Divisional Deputy Director, Rural Development and Panchayat, Patiala, vide order dated 13.6.1985, held that though the land is not "shamilat deh" but as the petitioners have not been able to prove their possession, "since" 26.1.1950, the petition is dismissed. Admittedly, neither the

petitioners nor the Gram Panchayat filed any appeal. The Gram Panchayat filed a petition, under section 7 of the Act, seeking to evict the petitioners. The petition was allowed on 9.4.1999. The appeal filed by the petitioners was dismissed on 15.7.1999, hence, the present petition challenging the orders directing their eviction.

A perusal of order dated 13.6.1985 reveals that the Collector-cum-Divisional Deputy Director, Rural Development and Panchayat, Patiala, has, while dismissing the petition filed by the petitioners, held that the land bearing rect no.35, khasra no.11/4(0-12) and 12/1(3-4) is not "shamilat deh". The Gram Panchayat did not file an appeal to challenge this judgment or file a petition of its own for declaration of its title, but instead, filed a petition under Section 7 of the Act seeking the petitioners' eviction.

Section 11 (2) of the Act, empowers any person or a Panchayat aggrieved by "an order" passed by a Collector under Section 11 of the Act, to file an appeal before the Commissioner. The Gram Panchayat was, therefore, required to challenge the finding that the land in dispute is not "shamilat Deh" by way of an appeal or to file an independent petition under Section 11 of the Act. The argument that the Gram Panchayat could not file an appeal against a finding, in view of Section 96 of the Civil Procedure Code, is misconceived. A perusal of the Act and particularly, Rule 21-A of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as "the Rules") reveals that the Code of Civil Procedure, 1908, applies only for the purpose of signing and verifying pleadings.

The use of the word "an order", as already held, leaves no ambiguity

that an appeal under Section 11 (2) of the Act may be filed even against an adverse finding. The Gram Panchayat should have, before resort to proceedings under Section 7 of the Act, sought a declaration of its title. The eviction orders passed without seeking a declaration of title are, therefore, illegal.

The writ petition is, therefore, partly allowed and the impugned orders are set aside with respect to rect no.35, khasra No. 12/1(3-4),(which is subject matter of the order passed under Section 11 of the Act), but maintain the order of eviction with respect to the other khasra number. Liberty is granted to the Gram Panchayat, to seek adjudication of its title and in case the Gram Panchayat is held to be an owner, to proceed, in accordance with law, to evict the unauthorised occupants.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

8.4.2015
V.K.