

IN THE HIGH COURT OF PUNJAB AND HARYANA, AT
CHANDIGARH

Civil Writ Petition No. 11553 of 2011

Date of Decision: 9th October, 2015

Ravi Sher Singh and others

..Petitioners

versus

Director, Rural Development and
Panchayat, Punjab and others

..Respondents

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

Present: Mr. J.R.Mittal, Senior Advocate,
with Mr. Bir Davinder Singh, Advocate,
for the petitioners.

Mr.P.S.Bajwa, Addl.A.G.,Punjab

Mr. Kanwaljit Singh, Senior Advocate
with Mr. Ajaivir Singh, Advocate
for respondent no.3.

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari, quashing, orders dated 5.4.2010 and 26.,11.2010, passed by Divisional Deputy Director, Rural Development and Panchayats, Punjab, exercising power of the Collector and the Director, Rural Development and Panchayats, Punjab, exercising power of the Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act").

Counsel for the petitioners submits that the impugned orders holding that the land in dispute vests in the Gram Panchayat are illegal, null and void as the dispute regarding ownership of the

land in dispute has been settled upto the Supreme Court, on three different occasions.

The petitioners' predecessors were allotted a parcel of land during consolidation, but as there was a deficiency in the allotment, they filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Consolidation Act"). The Additional Director, Consolidation after holding that there is a deficiency, directed, vide order dated 30.3.1983 that deficiency be made good and identified specific khasra numbers, namely, the land in dispute. The Gram Panchayat filed a writ petition which was dismissed. The Special Leave Petition filed by the Gram Panchayat was also dismissed. The legality of order dated 30.3.1983 allotting the land in dispute to the petitioners has been affirmed upto the Supreme Court. The petitioners are, therefore, owners of the land in dispute. The petitioners thereafter filed a suit for an injunction to restrain the Gram Panchayat from interfering in their possession. The suit was decreed by holding that the petitioners are owners in possession of the land in dispute. The judgment and decree were affirmed upto the High Court.

The Gram Panchayat did not rest here as it filed a suit claiming that the order dated 30.3.1983, passed by the Additional Director, Consolidation, is vitiated by fraud. The suit was once again dismissed. The appeals filed by the Gram Panchayat were dismissed by the first appellate court and the High Court. The Special Leave Petition filed by the Gram Panchayat met the same fate.

Counsel for the petitioners submits that despite affirmation of order dated 30.3.1983 in three different sets of litigation, the Gram Panchayat, filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”), before the Collector. The petition has been allowed by ignoring that the Additional Director, Consolidation has allotted this land and his order has been affirmed in three separate sets of litigation upto to the Supreme Court. The Collector also disregarded the fact that order dated 30.3.1983, passed by the Additional Director Consolidation, has merged with orders passed in writ jurisdiction, orders passed in Regular Second Appeal and orders passed in Special Leave petitions. The Collector was prohibited from ignoring these orders or recording an opinion contrary to the opinion recorded by the High Court and the Supreme Court. The dismissal of the writ petitions and the Special Leave Petitions in limine are irrelevant as held in Khem Chand versus Financial Commissioner, Haryana, Chandigarh, 1996 PLJ 49 and Ralla Gir versus State of Punjab, 1993 PLJ 482.

Counsel for the petitioners further submits that Rule 21(1) A of the Punjab Village Common Lands (Regulations) Rules, 1964 (hereinafter referred to as “the 1964 Rules”) prescribes that a petition, under Section 11 of the 1961 Act shall be filed, within 30 days of the cause of action arising. The petition under Section 11 of the 1961 Act was filed by the Gram Panchayat, in the year 2008 and is, therefore, clearly barred by limitation.

Counsel for the Gram Panchayat submits that the land

in dispute, was, admittedly, recorded as “shamilat deh” in jamabandi for the year 1955-56 and was being used as “charand” (a grazing ground). The land in dispute, therefore, vested in the Gram Panchayat, under the Punjab Village Common Lands (Regulation) Act, 1953 and thereafter under the 1961 Act. As the land was, admittedly, “shamilat deh” and was used and reserved as charand, the Additional Director, Consolidation had no jurisdiction to treat it as Bachat land and make good any shortfall in the petitioners' allotment from land belonging to the Gram Panchayat. Counsel for the Gram Panchayat further submits that even if it is accepted that there was deficiency in land allotted to the petitioners, the deficiency could only have been made good from the land owner who was in possession of excess land. The allotment of land belonging to the Gram Panchayat without recording that the Gram Panchayat has been allotted excess land, renders the order passed by the Additional Director, Consolidation, null and void.

Counsel for the Gram Panchayat, however, fairly concedes that in inter-party litigations, the order passed by the Additional Director Consolidation, has been affirmed upto the Supreme Court but submits that as consolidation authorities, including the authority exercising power under Section 42 of the Consolidation Act, are officers of limited jurisdiction empowered to consolidate land holding, the order passed by the Additional Director, Consolidation can, at best, be construed as an order rectifying an error but cannot be construed as a final answer on the question of ownership. The affirmation of the order passed by the Additional

Director, by the High Court and the Supreme Court, is, at best, affirmation of an order passed by an officer or a Tribunal conferred with limited jurisdiction to correct errors in allotment, but cannot be construed as a final decision on a question of title. A full Bench of this Court has held in Ajit Singh versus Smt. Shubhagan and others AIR, 1970 (P&H) 93, that consolidation authorities have no jurisdiction to decide a question of title. The Supreme Court, in Gram Panchayat Nurpur versus State of Punjab and others, 1997(1) PLJ 268, Gram Panchayat of Village Sidh versus. Additional Director, Consolidation of Holdings, 1997(3) RCR (Civil) 491 (SC) has held that the Director, Consolidation, has no power to decide whether a parcel of land vests or does not vest in the Gram Panchayat. The power to decide a question of title vests, in the Collector exercising power under Section 11 of the 1961 Act. The order passed by the Additional Director, Consolidation, allotting land belonging to the Gram Panchayat to the petitioners is, therefore, at best, an order passed by an officer/Tribunal of limited jurisdiction conferred with power to consolidate land holdings or correct errors but cannot be construed to be an order passed by a Court or Tribunal conferred with jurisdiction to finally opine on the question of ownership. A reference, in this regard, is made to a Full Bench judgment in Parkash Singh and others versus Joint Development Commissioner, Punjab and others, 2014(2) RCR (Civil) 721.

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

Before recording our opinion, it would be appropriate to

refer to the facts as narrated in the petition as well as in the reply.

Ajmer Singh and Baghel Singh sons of Basant Singh, predecessors of the petitioners, filed a petition under Section 42 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Consolidation Act") praying that a deficiency of Rs.2/-, in the valuation of their lands, may be rectified. The Additional Director, Consolidation of Holdings, Punjab, exercising plenary power of the State, under Section 42 of the Consolidation Act, to rectify errors in consolidation proceedings held, vide order dated 30.3.1983 (Annexure P-1), that as there is an error in Consolidation proceedings, the deficiency in land allotted to the petitioners, may be made good from "bachat land" bearing Killa Nos.1232-1233 etc., which has vested in the "Nagar Panchayat". A relevant extract from order dated 30.3.1983 reads as follows:-

"I consider this application as source of information and take up case suo moto as this is an omission on the part of consolidation staff. Bant Singh SI says that Bachat Land is available in Killa Nos.1232-1233 etc., which is now vested in the Nagar Panchayat. As this is a genuine request and the deficiency is based on record, I see no hesitation to allow this petition and make up the deficiency from the Panchayat land. Consequently the following changes are ordered:-

1. Ajmer Singh, Baghel Singh ss/o

Basant Singh are given:

1232 6-5 - /3/3

1233 6-5 - / 3/-

1236 4-19 - / 2/6

1239 5-16 - / 3 /-

1240 7-4 - / 3 / 3

1241 9-3 - / 4/ 6

1248 6-5 - / 3/ 3

1249 6-5 - / 3 /-

 57-2 1/ 9/ 9

2. Nagar Panchayat

Area withdrawn "shown as area given against Sr.No.1."

Announced.

Sd/-

30.3.83

Additional Director Ch. Pb.

Chandigarh Camp, Ludhiana."

The Gram Panchayat filed Civil Writ Petition No. 7117 of 1992, which was dismissed on 3.6.1992, by recording the following order:-

" We find no ground to interfere with the order of Additional Director, Consolidation of Holdings dated 30.3.1983. Moreover, under the writ jurisdiction we do not want to intervene in this delayed petition. Dismissed."

The Gram Panchayat filed a Special Leave to Appeal (Civil), which was dismissed on 4.1.1993 by recording the following order:-

" There is an inordinate delay of 679 days in filing this

S.L.P. for which there is no cogent reasons. The S.L.P. is, therefore dismissed as time barred.”

After dismissal of the Special Leave Petition, consolidation authorities delivered possession of the land in dispute, to Ajmer Singh and Baghel Singh, who filed civil suit no.199 of 2.5.1994, before the Sub Judge II Class, Sangrur, praying for an injunction to restrain the Gram Panchayat from interfering in their possession. The dispute regarding possession, in the meanwhile, also led to initiation of proceedings under Sections 145/146 of the Code of Criminal Procedure and attachment of the land.

The suit for grant of an injunction was decreed on 15.5.1995, by holding that as the land is now owned and possessed by the plaintiffs, the Gram Panchayat is restrained from interfering in their possession. The appeal filed by the Gram Panchayat, before the Additional District Judge, Sangrur, was dismissed on 17.8.1988. The Regular Second Appeal No.3942 of 1998, filed by the Gram Panchayat was dismissed on 5.5.2000, by holding that as the land was allotted to make up deficiency in land allotted to the petitioners, the Gram Panchayat, has no right to auction the land. The order, passed by the Sub Divisional Magistrate attaching the land, was also vacated and the receiver was directed to deliver possession to Ajmer Singh and Baghel Singh.

The Gram Panchayat, ill-advised, filed a suit before the Additional Civil Judge (Senior Division), Sangrur, praying for a declaration that order dated 30.3.1983, passed by the Additional Director Consolidation, is null and void. The suit was dismissed on

2.5.2002. The appeal filed by the Gram Panchayat was dismissed by the Additional District Judge (Fast Track) Court, Sangrur on 14.8.2003. Regular Second Appeal No.457 of 2004 filed by the Gram Panchayat was dismissed by holding as follows:-

“ Having considered the contentions of the learned counsel for the appellant and perused the record, I am of the opinion that the appeal does not deserve to succeed. A scrutiny of the record shows that the fraud as alleged by the appellant was not established before the Courts below. The matter had been agitated before the Consolidation Authorities which went upto the Apex Court. The mere fact that the appellant could not bring to the notice of the Consolidation Authorities the fact relating to the passing of earlier orders under Section 42 of the 1948 Act would not vitiate the subsequent proceedings on the ground of fraud. It is evident that the matter had been taken up to the Supreme Court which fact cannot be denied by the appellant. In view of the fact that the matter has been finally adjudicated upon by the highest Court of the land, the present suit seems to be an attempt to circumvent the orders which have already attained finality.

Even otherwise, the orders of the Consolidation Authorities could not have been challenged in a civil suit. The civil court's jurisdiction was clearly barred. The plea of fraud was probably raised to rope in the jurisdiction of the civil court. Even if the averments of the appellant are

taken to be correct that the defendants were in unauthorised possession of the land in question belonging to the Gram Panchayat, even then the Civil Court has no jurisdiction in view of the specific provisions in the 1961 Act.

In view of the above discussion, I do not find any merit in this appeal and the same is dismissed.”

A Special Leave Petition filed by the Gram Panchayat was dismissed on 27.8.2007.

It would be appropriate at this stage to emphasise that these judgments, decrees and orders are all based upon order dated 30.3.1983, passed by the Additional Director, Consolidation, allotting the land in dispute to the petitioners.

The Gram Panchayat, in the meanwhile, had filed a petition under Section 11 of the 1961 Act on 21.1.2008, before the Divisional Deputy Director-cum-Collector, exercising power of the Collector, claiming ownership of the land in dispute. The Gram Panchayat, apart from pleading that the land is “shamilat deh” also pleaded that order passed by the Additional Director Consolidation has been obtained by fraud, namely, concealing an earlier application filed by Ajmer Singh, which was dismissed on 25.11.1971 and a second application No.5672 of 1972 titled as Ajmer Singh versus Gurmukh Singh, which was dismissed on 21.9.1972. The Gram Panchayat also pointed out that the land in dispute was part of the “Shamilat Deh” of the village, used as a grazing ground and, therefore, was wrongly allotted to Ajmer Singh and Baghel Singh,

treating it as “bachat land” even if there was deficiency in their allotment. The Gram Panchayat also pleaded that an earlier petition filed under Section 11 of the 1961 Act on 10.3.2004, was withdrawn and a fresh petition was filed on 21.1.2008.

The Divisional Deputy Director, Rural Development and Panchayat-cum-Collector, Patiala, issued notices to the petitioners, who filed a reply, pleading deficiency in allotment during consolidation, pressed into service the order passed by the Additional Director Consolidation, orders passed in writ petitions, Special Leave Petitions and the other inter-parties litigation and prayed for dismissal of the petition.

The parties were, thereafter called upon to lead evidence. Upon conclusion of evidence, the Additional Director Consolidation heard arguments and after appraisal of the pleadings and the evidence on record, held as follows:-

“From the perusal of record and arguments of both the learned counsel, I came to the conclusion that the applicant-Gram Panchayat remained owner of the disputed land as per record produced by the Gram Panchayat for the year 1958-59 to 1992-93, i.e., Ex.P2 to Ex.P9 and it was shown as Makbuja Charand. As per Jamabandi for the year 1977-78, 1982-83, 1987-88 and lease receipts Ex.P16 to Ex.P19 the land was given to the different persons at different times on lease and from the income earned from this was being used for the welfare works of the village. It is mentioned in receipt Chakota

1988-89 Ex.P16 that the disputed land comprised in khasra No.1232, 1233, 1238, 1239 measuring 23 bighas 5 biswas is entered to be taken on chakota by Karam Singh s/o Baghel Singh. Besides it Additional Director Consolidation, Mohali passed the order dated 30.3.1983 in favour of Ajmer Singh etc. that authority had no jurisdiction to decide the ownership of shamilat deh because disputed land is shamlat deh. Hon'ble Supreme Court of India in decision 1996 AIR 2187, 1997 (1) PLJ 268 that the ownership of shamlat deh can be decided by the Collector under Section 11 of the Punjab village Common Lands Regulations Act, 1961. Respondents are also failed to prove that the land in dispute is bachat land and they are in continuous possession over it since 26.1.1950. The respondents have no concern whatsoever with the disputed land, so petition of the applicant-Gram Panchayat is accepted and the disputed land is declared ownership of Gram Panchayat Balad Kalan. Order pronounced in the open court.”

A perusal of the order passed by the Collector reveals that jamabandis for the years 1958-59,1992-93, Exhibits P-2 to P-9, record that the land is “shamilat deh” and “Makbuja Charand”, i.e., the common land of the village which is used as a grazing ground. The jamabandis for the years 1977-78, 1982-83 and 1987-88 record that the land was being cultivated, as proved by lease receipts Ex.P-16 to P-17. The Collector has discarded order passed by the

Additional Director, Consolidation by holding that the Collector is the only authority empowered, in view of judgments of the Hon'ble Supreme Court, to decide whether a parcel of land is or is not "shamilat deh" and, therefore, the order passed by the Additional Director, Consolidation, is not binding, particularly as the land is clearly recorded as "shamilat deh" and vests in the Gram Panchayat and not in the petitioner.

The petitioners filed an appeal. The Director, Rural Development and Panchayats, Punjab, vide order dated 26.11.2010 dismissed the appeal, by holding as follows:-

“ Upon the perusal of written arguments of both the parties and oral arguments of respondent, record on file, I came to the conclusion that as per the jamabandi for the year 1958-59, 1961-62, 1967-68, 1971-72, 1982-82, 1987-88 and 1993-93 the disputed land has been described as ownership of Nagar Panchayat. In the jamabandi for the year 1958-59 to 1977-78 disputed land has been described "Makbuja Charand" in the column of cultivation and this land has been explained as "Banjar Qadim". Upon Khasra no.1240-41, 1248-1249 Jarnail Singh and Bhinder Singh have been described as Chakotedar and explain the chakota (lease) @ Rs.60 per bigha. Like this upon khasra no.1238,1239 Naranjan Singh has been described as Chakotedar @ Rs.100/-per bigha per year. As per the Jamabandi for the 1982-83 Budh Nath etc. five persons have been shown in cultivation differently and lease

amount Rs.7650/, 4600/-, 9000/-, 2600/-,100/-(per bigha) has been entered respectively. In the jamabandi for the year 1986-87 Bara Singh etc. has been entered as Chakotedar for Rs.84000/-. From the Jamabandi etc. and entries in the revenue record it revealed that disputed land is ownership of the Gram Panchayat and Gram Panchayat is leasing out this land. Appellants failed to prove their continuous possession individually before 26.1.1950 or 9.1.1954 (if land is banjar qadim). In 1976 Punjab village Common Land (Regulations) Act, 1961 was amended and the jurisdiction of civil court regarding the decision of Panchayat land were withdrawn. In these cases Collector and Commissioner are competent authority for taking the decision of ejectment and ownership etc. Disputed land is ownership of Gram Panchayat, so appeal is dismissed and order of lower court is upheld.”

The Appellate Authority has affirmed the findings recorded by the Collector, particularly the findings that the land was “shamilat deh” and used as “Makbuja Charand”, i.e., a grazing ground and was being leased out by the Gram Panchayat, from time to time before it was ordered to be retrieved from the Gram Panchayat by the Additional Director, Consolidation.

Before recording our opinion as to the legality of the impugned orders, it would be appropriate to point out that jamabandi for the year 1955-56 clearly records that the land is “shamilat deh”

and is used as a grazing ground. It would be necessary at this stage to recount that though the land belonged to the Gram Panchayat, the Additional Director, Consolidation, by order dated 20.3.1983, accepted the petitioners' prayer to make good deficiency from "bachat land" but while doing so, allotted land belonging to the Gram Panchayat, i.e., Killa Nos.1232-1233, total measuring 57K-2M instead of "bachat land"

At this stage, it would also be appropriate to point out that we are not recording an opinion on the question of deficiency in the allotment to the petitioners or the legality of the allotment as this part of dispute has attained finality upto the Hon'ble Supreme Court but would only confine answer to the question whether order dated 30.3.1983 passed by Additional Director, Consolidation, affirmed upto the Hon'ble Supreme Court is final on the question of ownership of the land in dispute, and as a necessary corollary, whether the order passed by the Additional Director, Consolidation, estops the Gram Panchayat from filing a petition to establish its ownership of the land in dispute and the Collector, from exercising power under Section 11 of the 1961 Act, to determine whether the land in dispute vested or did not vest in the Panchayat?

An answer to these questions would require, a reference to, the nature of power conferred by the Consolidation Act, to examine whether consolidation authorities are empowered to confer, divest or decide title, to appraise a Full Bench judgment of this Court in Ajit Singh versus Smt. Shubhagan and others, AIR, 1970 (P&H), judgments of the Supreme Court in Gram Panchayat Nurpur versus

State of Punjab and others, 1997(1) PLJ 269, Gram Panchayat of village Sidh versus. Additional Director, Consolidation of Holdings, 1997(3) RCR (Civil) 491 (SC) and a Full Bench of this Court in Parkash Singh and others versus Joint Development Commissioner, Punjab and others, 2014(2) RCR (Civil) 721.

At the outset, we need to record an obvious but significant fact that the Consolidation Act is a special statute enacted to consolidate land holdings. The process of consolidation commences with the government issuing a notification for consolidation of a revenue estate(s). The Consolidation Officer, updates the record of rights and tabulates the land owned by each land owner, with details of rights in land etc. A scheme, which is the basis of consolidation, is then prepared, after associating land owners to set out the mode and manner of consolidation, the land to be included and excluded in consolidation, the value to be assigned to a particular variety of land etc. The Consolidation Officer then assigns a particular value to each variety of land. The entire land is put into a common hotchpotch and after determining, on the basis of the valuation assigned, each land owner/right holder, is allotted a new consolidated parcel to land, identified by rectangle and khasra numbers. A Consolidation Officer, thereafter, prepares a new record of rights to record the land allotted to each land-owner by exercising the power of a revenue officer, under Section 22 of the Consolidation Act, read along with powers conferred upon revenue officers under the Punjab Land Revenue Act, 1887 (hereinafter referred to as “the 1887 Act”). The final step in consolidation is

preparation of a new record of rights and exchange of possession.

The process of consolidation, thus, inheres a right, in a Consolidation Officer, to transfer the land holding of one land owner to another and in the exercise of power of a revenue officer, allot a new consolidated parcel of land and prepare a new record of rights, recording the name of the new allottee. A person aggrieved by any order passed or allotment made during consolidation, may file appeals under Section 21 of the Consolidation Act and thereafter a petition under Section 42 of the Consolidation Act, for rectification of any error.

At this stage, it would be appropriate to recall that after conclusion of consolidation proceedings, the private respondents approached the Additional Director, Consolidation, by way of an application for making good deficiency in their land. The Additional Director, as already noticed, allotted land belonging to the Gram Panchayat to the petitioners.

A perusal of the Consolidation Act reveals that though it empowers a Consolidation Officer, to allot land belonging to one land-owner to another, the Act does not, whether by any specific provision or intent, confer upon any authority or officer, exercising power under the Consolidation Act, the power to finally vest or divest title or finally decide a question of title. The power under the Consolidation Act is confined to identifying a consolidated parcel of land, allotting it to a land owner and then preparing a new record of rights. It is well settled by judicial precedent that entries in the record of rights do not confer or divest title and, therefore, all that the Consolidation Officer determines, is an identifiable parcel of land to

be allotted to a land owner without a conclusive conferment of title.

The question whether consolidation authorities have the power to decide a question of title, was answered in the negative by a Full Bench of this Court in Ajit Singh's case (supra). The judgment in Ajit Singh's case (supra) was referred to by a Full Bench of this Court in Parkash Singh's case (supra) and the question whether consolidation authorities can decide a question of title was answered, in a situation similar to situation obtaining in the present case, in the following terms:-

“25. A consolidation officer is, therefore, empowered, during consolidation proceedings to decide all such disputes and pass all such orders that fall to the jurisdiction of a revenue officer, as may be necessary for preparing revenue records and may even partition the land amongst co-sharers. Section 16-A of the Consolidation Act, which confers power upon a Consolidation Officer to partition land holdings provides that provisions of Chapter (IX) of the Punjab Land Revenue Act, 1887 (the chapter pertaining to partition of land), except Section 117, i.e., the power of a revenue officer to decide a question of title or refer parties to a civil Court, shall apply to consolidation proceedings. The question whether consolidation authorities are empowered by Section 16-A of the Consolidation Act to decide a disputed question of title came up for consideration before a Full Bench of this Court in Ajit Singh v. Smt. Shubaghan

and others, AIR 1970, Punjab and Haryana, 93. After considering the provisions of Sections 16-A and 22 of the Consolidation Act and Section 117 of the 1887 Act, it was held that Consolidation authorities are not empowered to decide a disputed question of title.”

The question whether the Director, Consolidation, exercising power under Section 42 of the Consolidation Act, has the power to decide a question, whether a particular parcel of land vests or does not vest in the Gram Panchayat and allot this land to a private person, was answered by the Supreme Court in Gram Panchayat Nurpur and Gram Panchayat of Village Sidh's cases (supra) by holding that the Director, Consolidation has no jurisdiction to determine whether a parcel of land is or is not “shamilat deh” and vests or does not vest in the Gram Panchayat.

Thus, while allotting land, belonging to one land owner to another, the authority, exercising power under the Consolidation Act, identifies a parcel of land, based upon valuation, allots proportionate land and prepares a new record of rights. The allotment, so made, and the record so prepared, in the absence of any provision conferring power upon a consolidation officer to confer or divest title, is binding and final for the purpose of valuation, identification of the land so allotted and for consolidation but does not, in law, have the status of an order, that binds parties on a question of title or any rights, title or interest in land so allotted or divested. The allotment, so made, is not final as to any proprietary or possessory rights in land. An order passed in the exercise of power

under the Consolidation Act, is an order passed by a revenue officer/tribunal conferred with limited jurisdiction to consolidate land holdings without any finality on a question of title.

A land-owner aggrieved by the allotment of his land, to another may, legitimately, where a question of title or rights in land arise, approach a Civil Court for a declaration of his title and where the land is “shamilat deh”, approach the Collector, under Section 11 of the 1961 Act, to seek a declaration of his rights.

As a necessary corollary, if the order passed in consolidation proceedings, is affirmed in appeal, in a writ petition or even in a Special Leave petition, it would be an affirmation of an order passed by a forum of limited jurisdiction, i.e., a Tribunal or an officer, conferred with power to consolidate land holdings and powers of a revenue officer to prepare a record of rights. The forum that finally determines a dispute regarding title, if the dispute is between private parties, as held by a Full Bench in Ajit Singh's case (supra) is a civil court and if the land is “shamilat deh” and the dispute is whether it vests or does not vest in a Gram Panchayat, is the Collector exercising power under section 11 of the 1961 Act as held by the Supreme Court in Gram Sabha Sadhaur (formerly Dhumma) versus Balbir Singh and others 1997 PLJ 276.

We also draw support for our opinion from the Full Bench judgment of this Court in Parkash Singh's case (supra), where this question was answered by holding as follows:-

“50 Accepting for a moment that power conferred by
Section 42 of the Consolidation Act empowers the State

or its delegate, the Director Consolidation/ Director Land Records to order correction of any error committed, while establishing the “Shamilat Khewat” or creating “Jumla Mushtarka Malkan” and while doing so to adversely affect the proprietary or possessory rights of a Gram Panchayat or the State, such an order, in our considered opinion, cannot be held to be a binding or a final adjudication on a question of title. Section 42 of the Consolidation Act merely empowers the State, to satisfy itself as to the legality or propriety of any order, passed or scheme prepared during consolidation and to correct any errors committed during consolidation but does not empower the authority to decide a disputed question of title. Thus, if a party raises a question of title, under Section 42 of the Consolidation Act or pleads that land has been wrongly allotted to the Gram Panchayat as it is not “Shamilat Deh” or there is an error in allotment of “Jumla Mushtarka Malkan” land, the Director Consolidation, should generally desist from passing an order touching upon a question of title and should direct parties to file a petition under Section 11 of the 1961 Act, where the land is “Shamilat Deh” and before an appropriate forum where the land is “Jumla Mushtarka Malkan”. If, however, the authority does not adopt such a course and passes an order holding that the land does not vest in the Gram Panchayat or that the land is not “Jumla Mushtarka

Malkan”, the order so passed would at best be an order passed by a Tribunal of limited jurisdiction and, therefore, not conclusive as to the proprietary and possessory rights of a Gram Panchayat or a private individual, so as to estop the Gram Panchayat or a private individual from approaching the adjudicatory authority i.e. the Collector exercising power under Section 11 of the 1961 Act or an appropriate forum to determine whether land vests or does not vest in a Gram Panchayat. As referred to in the preceding paragraphs, Consolidation authorities, including the authority exercising plenary jurisdiction, under Section 42 of the Consolidation Act, exercise powers of a revenue officer under the 1887 Act. A revenue officer is not competent to decide disputed questions of title as held by a Full Bench in Ajit Singh's case (supra) and the Hon'ble Supreme Court in Gram Panchayat, Nurpur (supra). Thus, even if we were to hold that Consolidation authorities are empowered, under the Consolidation Act, to correct errors, touching upon a question of title, such an exercise of power cannot be held to a final or a binding opinion on a question of title.”

“51. Consolidation authorities are tribunals of limited jurisdiction, conferred with power to consolidate land holding. A finding on a question of title by a tribunal of limited jurisdiction is binding or final as to the correction so ordered but cannot, be held to be final on a

matter that does not fall to its jurisdiction. Such an order would be subject, necessarily to any adjudication on the question of title, by the jurisdictional forum, in case the land is “Shamilat Deh” by the Collector, exercising powers under Section 11 of the 1961 Act, in case the land is “Jumla Mushtarka Malkan” by an appropriate forum. We will deal with the forum that may be called upon to decide a dispute whether the land is “Jumla Mushtarka Malkan” at a later stage. At this stage, we would like to once again clarify that though counsel for the petitioner has canvassed that inherent in the exercise of a power to order correction, is the passing of an order holding that the land is or is not “Shamilat Deh” or “Jumla Mushtarka Malkan”, such an order would not be binding on a question of title, whether it pertains to a Gram Panchayat or private individuals, or the Government.”

“52. We, therefore, hold that:- (a) Consolidation authorities, are tribunals of limited jurisdiction; (b) Consolidation authorities exercise powers of revenue officers, under the 1887 Act, a power to record and update fiscal entries and prepare record of rights; (c) but are not empowered to decide a question of title or vest/divest a party of its title; (d) the only authority empowered to determine a question, whether the land is “Shamilat Deh”, between a Gram Panchayat and a private individual was the Civil Court but after enactment

of Sections 11, 13 and 13-A of the 1961 Act, the Collector and; (e) if the land is “Jumla Mushtarka Malkan”, an appropriate forum.”

A due consideration of the above discussion and precedents leads to a singular conclusion that order dated 30.3.1983, passed by the Additional Director, Consolidation, allotting the land in dispute to the petitioners, is final as to the allotment so made but as it is an order passed by a Tribunal of limited jurisdiction, conferred with jurisdiction to only consolidate land holdings, it cannot be construed in law as a binding or final opinion on the question of any rights, title or interest in the land in dispute.

The land having been recorded as “shamilat deh”, in all relevant jamabandis, any dispute as to any right, title or interest in the land in dispute, may be validly raised for adjudication before the Collector, the only authority empowered by law to determine, by exercise of power under Section 11 of the 1961 Act, any rights, title or interest in the “shamilat deh” of a village. The affirmation of the order, passed by Additional Director, Consolidation, in writ jurisdiction, in Special Leave Petitions and in a Civil suit is an affirmation of an order passed by the authority/tribunal of limited jurisdiction constituted to consolidate land holding, exercising powers of a revenue officer, but devoid of the power or jurisdiction to vest or divest title or determine a question of title, much less finally. The Collector, exercising power under Section 11 of the 1961 Act is neither prohibited nor estopped by the preceding litigation or the order passed by the Additional Director, Consolidation from

entertaining the petition filed by the Gram Panchayat, under Section 11 of the 1961 Act or recording an opinion on the rights in the land in dispute.

As regards the question whether dismissal of the writ petition and Special Leave Petitions against orders, passed by the Director, Consolidation and the civil court decree that have been affirmed, would operate a res judicata and whether the doctrine of merger etc. prohibits the Collector from considering whether the land in dispute vests in the Gram Panchayat, was also considered and answered by the Full Bench judgment in Parkash Singh's case (supra). After a detailed discussion and relying upon various judgments of the Supreme Court, the question was answered as follows:-

“83 A perusal of these judgment and due consideration of the principles of res judicata leads to a singular conclusion that for an order passed, in former proceedings, to operate as resjudicata in latter proceedings, it should have been passed by a Court of competent jurisdiction. The Director Consolidation, as held, hereinbefore, is a tribunal of limited jurisdiction not competent to decide a question of title and, therefore, any finding recorded in an order passed by Consolidation authorities or by the Director Consolidation under section 42 of the Consolidation Act on a question of title, even if writ petitions and special leave petitions have been dismissed, would not operate as res judicata, on a question of title, raised before the jurisdictional forum.”

On the question of merger and the plea that the Collector is prohibited from ignoring orders, affirming the order passed by the Director Consolidation, the Full Bench in Parkash Singh's case (supra) also considered this matter and held as follows:-

“96. In view of the nature of the doctrine of merger and the precedents referred to by us, we have no hesitation in holding that where a tribunal/Court of limited jurisdiction, adjudicates upon a matter that does not fall to its jurisdictional competence, such an order, even if affirmed by dismissal of the writ petition or a special leave petition, shall not operate as res judicata or prohibit the jurisdictional forum from deciding questions that fall to the letters jurisdictional competence. This apart, if an order is affirmed, by dismissal of a writ petition and the special leave petition but neither the order passed in writ jurisdiction nor in leave to appeal, assigns any reasons, such the order shall not be deemed to have merged in the order passed by the High Court or the Supreme Court, so as to prohibit the jurisdictional forum from entertaining a petition on a question of title and the said forum would not be prohibited from deciding the matter on merits.”

97. We, therefore, answer the second and third questions, 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 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 res judicata 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 res judicata 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, customs or usage or 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."

A perusal of the aforesaid extracts reveals that an order passed by a Tribunal of limited jurisdiction, shall not operate as res judicata before a forum, conferred with jurisdiction to decide a question of title or prohibit such a forum from proceeding to decide such a question merely because the order passed by the Tribunal of

limited jurisdiction, has been affirmed upto the Supreme Court.

At this stage, it would be appropriate to clarify that we shall not be misunderstood to have held that the Collector or the authorities exercising power under the 1961 Act can sit in judgment over orders or ignore orders passed by the High Court or the Supreme Court. All that we have held, is that, an order passed by an officer/Tribunal conferred with limited jurisdiction, to consolidate land holding, cannot be construed as a final opinion on the question of title , i.e, any rights, title or interest in the land which is subject matter of an order, passed under the Consolidation Act.

The plea that as rule 21(1) A of the 1964 Rules requires the filing of a petition under Section 11 of the 1961 Act within 30 days of the cause of action arising, the petition was time barred merits rejection. It would be appropriate to point out that the Gram Panchayat had already filed a petition under Section 11 of the 1961, during pendency of the civil suit. The litigation has been pending before one forum or the other for more than a decade and, therefore, the question of the petition under Section 11 of the 1961 Act being barred by limitation cannot be decided in favour of the petitioners or against the Gram Panchayat.

As regards the merits of the controversy, a perusal of the order passed by the Additional Director Consolidation, orders passed by the Collector as well as Appellate Authority, reveal that the land in dispute was always “shamilat deh” and was used as a grazing ground. The land came to vest in the Gram Panchayat under the 1953 Act and thereafter under the 1961 Act under Section 2(g) of the

1961 Act. The petitioners have not pleaded or proved, apart from the order passed by Additional Director, Consolidation, any other fact that would enable us to hold that the land in dispute is excluded from the “shamilat deh” of the village by reference to any of the exclusion clauses enacted under Section 2(g) of the 1961 Act.

Consequently, finding no error of jurisdiction or of fact or of law in the impugned orders dated 5.4.2010 and 26.11.2010, passed by Divisional Deputy Director, Rural Development and Panchayats, Punjab, exercising power of the Collector and the Director, Rural Development and Panchayats, Punjab, exercising power of the Commissioner under the 1961 Act, the impugned orders are affirmed and the writ petition is dismissed, with no orders as to costs.

Liberty is, however, granted to the private respondents to approach the Director Land Records for making good deficiency in their land, as was found deficient by the Additional Director, Consolidation, affirmed upto the Supreme Court, after identifying the person (s), who has/have been allotted excess land. No order as to costs.

(RAJIVE BHALLA)
JUDGE

(AMOL RATTAN SINGH)
JUDGE

9th October, 2015
VK