

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

CWP No.11559 of 2012 (O&M)

Date of Decision: 24.12.2015

Darbara Singh & Anr.

... Petitioners

VS.

State of Punjab & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

1. Whether Reporters of local papers may be allowed to see the judgment? yes

2. To be referred to the Reporters or not? yes

3. Whether the judgment should be reported in the Digest? yes

Present: Mr. Ashwani Kr. Chopra, Senior Advocate and
Mr. Narender Hooda, Senior Advocate with
Mr. Harminder Singh, Advocate;
Mr. Abhinav Sood, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner(s)

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. Kanwaljit Singh, Senior Advocate with
Mr. BBS Randhawa, Advocate and
Mr. Sukhjinder Singh, Advocate for Gram Panchayat

SURYA KANT, J.

(1) This order shall dispose of CWP Nos. 9840, 10772, 11470, 11556, 11559 of 2012 and CWP Nos.20423, 20424, 20425, 20499, 20538, 20549, 20600, 20653, 20674, 20687, 20688 of 2015 as the points in issue raised in all these cases are common in nature. The petitioners are proprietors of Village Jalbera, Tehsil Sirhand, District Fatehgarh Sahib and have a dispute with the Gram Panchayat of their village in respect of the proprietary and

possessory rights over a big chunk of land. On the suggestion of counsel for the parties, CWP No.11559 of 2012 is treated as the lead case for extracting the relevant facts.

(2) The petitioners have averred that the piece of land measuring 1019 Bighas and 18 Biswas situated in the revenue estate of village Jalbera, District Fatehgarh Sahib has been recorded in the jamabandi since the year 1907-08 onwards under the ownership of "*Shamlat Deh Hasab Rasad Zare Khewat*" i.e. the land left out by the proprietary body of the village wherein every proprietor had a share to the extent of his holding in the revenue estate of the village, and which continued in the cultivating possession of Makbuja Malkan i.e. the proprietors. The jamabandi for the year 1947-48 (P1) has been appended on illustrative basis. The proprietors were continuously cultivating the aforesaid land and none of them was in possession of excess area than his respective share.

(3) The proprietors, namely, the predecessor-in-interest of the petitioners filed a civil suit for declaration to the effect that the Gram Panchayat of their village (impleaded as defendant No.1) had no interest in the suit land and the proprietors alone were the owners in possession of it which they had been cultivating as per their respective share. It was averred that some of the proprietors had sold their shares but no entries were being made in the revenue record on an erroneous premise that since

the PEPSU Village Common Land (Regulations) Act, 1954 came into force, the proprietors/plaintiffs were left with no right or interest in the suit land.

(4) The Gram Panchayat filed its written statement and is said to have contested the suit. The Civil Court, Bassi framed the following issues:-

(i) Whether the plaintiffs and defendant No.2 are the owners of the property in dispute? OPP

(ii) Relief.

(5) The suit was finally decreed vide judgement and decree dated 25.06.1959 and a declaration was granted against the Gram Panchayat and in favour of the plaintiffs and other proprietors of the village (P2). The Civil Court held as follows:-

“...I do not find much force in the contention that because the Patwari failed to make the entry in his record so it is improbable that the partition took place. Further in force of overwhelming evidence adduced by the plaintiffs almost arrive at any other conclusion that the partition as alleged in the plaint had taken place...

...It is no doubt that ordinarily if a partition takes place through a Court then it would be according to the extent of revenue assessed or each holding that the share will be determined. In case of private partition, I do not deem it necessary that in case basis of partition it evolved on different from ordinary practice,

which could cast a veil of suspicion around the proved fact of partition having taken place.

Whether the Khewatdar had partitioned on the mutually agreed on that is according to extent of each one's holdings merely on the ground a doubt; regarding the fact whether any partition did take place could not arise.

6. In face of evidence both oral and documentary evidence led by the plaintiffs, I came to the conclusion that the plaintiffs and defendant No.2 are owners of the land in dispute on account of the partition having already taken place of 'Shamlat Deh' so the issue is decided against the defendant No.1.

7. Relief. The plaintiffs are entitled to relief claim.

8. In view of the above, I decree the suit with the costs against defendant No.1 and declare that the plaintiffs and defendant No.2 are the owners of the land in suit and that the land in suit is not shamlat deh."

(emphasis applied)

(6) No appeal was filed against the judgement and decree dated 25.06.1959 and it attained finality. The judgement was given effect and mutation was duly entered and sanctioned in favour of the proprietors in the revenue record.

(7) Meanwhile the Punjab Village Common Lands (Regulation) Act, 1961 came into force w.e.f. 04.05.1961 and the previous legislations were repealed.

(8) The Gram Panchatyat then filed eviction petition against the occupiers of the subject land under Section 7 of the 1961 Act which was allowed by the Assistant Collector 1st Grade, Bassi vide order dated 03.06.1965. The proprietors-cum-occupiers went in appeal, which were dismissed vide orders dated 23.01.1973 and 08.05.1973. Still aggrieved, some of the proprietors approached this Court by way of CWP Nos.1133 and 1676 of 1973. These writ petitions were allowed and eviction orders were set aside vide judgement dated 17.08.1973, primarily on the strength of Civil Court judgement and decree dated 25.06.1959. This Court, thus, held as follows:-

“...A copy of this judgement is added as Annexure ‘C’ to the Civil Writ No.1133 of 1973. It has been asserted that in the face of this judgement it was not open to the Revenue Authorities to order the ejectment of the petitioner. A reading of the judgement of the civil court shows that the shamlat deh in this village had been partitioned according to the khasra girdawari entries of 1954-55. It is not disputed that the Pepsu Village Common Lands (Regulation) Act, 1954 came into force on the 4th March, 1955. Thus, at the time when this Act as brought on the Statue Book all the shamlat land in this village had been partitioned though it continued to be shown in the Revenue papers as shamlat land.”

(emphasis applied)

(9) This Court further relied upon two previous decisions on the point of jurisdictional competence of the Civil Court in view of express bar of its jurisdiction under the Pepsu Village Common Lands (Regulation) Act, 1954 and relying upon the *ratio* of those decisions to the effect that exclusion of Civil Court jurisdiction regarding question of title cannot be readily inferred and that the Court of Assistant Collector under the 1954 Act was not a substitute of the Civil Court, it was further held that:-

“If the jurisdiction of the Civil Court to determine the nature of the land is not barred, then it is doubtful if the Revenue Authorities can give a finding that the decision of the Civil Courts was obtained by collusion. Even otherwise, it appears that this suit was seriously contested by both the parties. So long as this judgement remains in force the Revenue Authorities exercising summary jurisdiction under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act) cannot order the ejectment of the petitioner. The Gram Panchayat if so advised, can avail of a suitable remedy in a civil Court in which case it would be open to the parties to raise all the pleas whether the land in dispute was shamlat land or not.”

A reading of the judgement dated 2.6.1965 delivered by the Assistant Collector, Ist Grade, Bassi shows that he had placed the land into two categories. The land mentioned in prima facie

appears to be under possession of the land holders for the last more than twelve years. It was urged before him that the land holders were atleast entitled to retain this land. The Assistant Collector negatived this submission on the wrong premises that Section 4 of the Act was not attracted to such a case. The appellate authorities did not advert to this aspect of the case and dismissed the appeals filed by the petitioner. On this ground alone I would have been justified in remanding the case.

I have taken the view that it is not open to the revenue authorities to ignore the decree passed by a Civil Court, it is not necessary to remand the case.”

(emphasis applied)

(10) It may be seen from the operative part of the judgement dated 17.08.1973 that this Court following the law, as it was understood at that point of time, granted liberty to the respondent-Gram Panchayat to approach the Civil Court for setting aside the Civil Court decree dated 25.06.1959 which was alleged to have been obtained by collusion.

(11) The Gram Panchayat indisputably did not avail such liberty and did not file any civil suit for setting aside the Civil Court decree dated 25.06.1959. Instead the Gram Panchayat initiated eviction proceedings again under Section 7 of the 1961 Act against those very persons who were successful before this Court in getting the previous eviction orders quashed.

(12) Aggrieved by initiation of the second round of eviction proceedings, the proprietors – predecessor-in-interest of the petitioners filed a bunch of writ petitions in this Court which were allowed by a common judgement dated 04.12.1985 with main judgement rendered in CWP No.3647 of 1984 (Balbir Kaur & Anr. vs. Gram Panchayat, Village Jalbera & Anr.) (P5). The Division Bench accepted the plea taken by the proprietors that principles of *res judicata* are attracted and it held that:-

“In the facts of these admitted facts, the contention of the learned counsel for the petitioners that the second application under section 7 of the Act moved by respondent No.1 before respondent No.2 is barred by the general principles of res-judicata is well merited. The position of law in this regard as succinctly stated by the Supreme Court in Daryao and others vs. State of UP and others, AIR 1961 SC 1457 is as under...”

(13) The Gram Panchayat had also raised a new plea before the Division Bench that earlier Section 13-B of the 1961 Act was not kept in view whereunder the provisions of 1961 Act had got overriding effect notwithstanding anything to the contrary in any law or any agreement, instrument, custom or usage, or any decree or order of any Court etc. The said contention was repelled by the Bench as it held that:-

“We have not been able to appreciate the above argument of the learned counsel. If he means to

contend that section 13-B of the Act sets at naught the well considered general principles of res-judicata, this contention is unsustainable. The general rule of res-judicata is based on justice, equity and good conscience. It is a doctrine of conclusiveness of determination as to the points already agitated between the same parties in earlier proceedings. It is dictated by wisdom which is for all times. It does not draw sustenance from any statute nor should any statutory be easily constructed to render it ineffective.”

(14) The Gram Panchayat though lost twice before this Court but even without assailing those judgements dated 17.08.1973 and 04.12.1985 further, it initiated the third round of litigation by filing declaratory petitions under Section 11 of the 1961 Act whereunder the Collector is vested with the power to adjudicate title dispute between a proprietor and the Gram Panchayat in respect of the land which is claimed to have been vested in Gram Panchayat or is *shamlat deh*.

(15) No sooner these declaratory petitions were filed some time in the year 1994, some of the proprietors again approached this Court questioning the very initiation of those declaratory proceedings. Some of them who had meanwhile been proceeded against *ex parte* also came to this Court. All these writ petitions were heard together by a learned Single Judge who vide judgement dated 30.01.2009 (R-4/6) viewed that the writ petitions

were premature as there was no necessity for the proprietors to rush to this Court, for the plea of *res judicata* could be well taken by them before the Authority who was to adjudicate the declaratory petitions filed under Section 11 of the Act. The matters were accordingly remanded to Collector, Patiala to decide the Gram Panchayat's claim *qua* ownership of the land in dispute as well as the petitioners' plea of *res judicata*.

(16) On remand, the Collector-cum-Divisional Deputy Director, Rural Development and Panchayat, Patiala vide impugned order dated 19.09.2011 (P6) accepted the claim of Gram Panchayat and declared it as the rightful owner of the subject-land. The Collector formulated the following four issues:-

“1. Whether the decree dated 25.6.1959 passed by Sh. P.K. Bahri, Sub-Judge, Bassi Pathana is a collusive decree and there is no legal force of this decree and whether there is an entry of this decree in the revenue record? OPP

2. Whether the disputed land falls within the definition of shamlat as per Section 2(g)?OPP

3. Whether the dispute land was divided by the Khewatdars between themselves before coming into force of Punjab Village Common Land Act and whether they are in physical possession of their share and whether this possession is before 26.01.1950?OPD

4. Whether the principle of res-judicata is applicable on the present application filed by the Gram Panchayat u/S 11 and whether the

respondents have become owners by virtue of decree dated 25.6.1959? OPD”

(17) The Collector decided issue No.1 against the proprietors on the strength of judgement of the Hon'ble Supreme Court in **Gram Panchayat of Village Naulakaha vs. Ujagar Singh & Ors. (2000) 7 SCC 543** and held that the Civil Court decree dated 25.06.1959 is a collusive decree as it was passed by the Civil Court without any jurisdiction. He further urged that as per *Wajib-Ul-Arz* (R/2), the shamlat land cannot be partitioned and it would continue being a grazing ground. While holding so, the Collector also relied upon the order of Commissioner, Patiala dated 23.01.1973 in which the Civil Court decree dated 25.06.1959 was held to be collusive though the said order was quashed by this Court in the first round of *lis vide* judgement dated 17.08.1973. The Collector decided Issue No.2 also in favour of Gram Panchayat as according to him, the land is recorded to be owned by Nagar Panchayat hence it falls under the definition of 'shamlat deh' under Section 2(g) of the 1961 Act. Issue No.3 was decided against the proprietors on the plea that they failed to show their cultivating possession from 26.01.1950 or that the land was ever partitioned amongst them.

(18) Against Issue No.4, the Collector held that the principle of *res judicata* was not applicable as the High Court has remanded the case vide judgement dated 30.01.2009 passed in

Mewa Singh & Other's case (CWP No.3324 of 1994) to the Collector, Patiala for afresh decision.

(19) The petitioner – proprietors went in appeal under the Act but the Director, Rural Development and Panchayats, Punjab, exercising the powers of Commissioner-cum-Appellate Authority, dismissed their appeals vide impugned order dated 04.05.2012 (P8) holding as follows:-

“After going through the written arguments of both the parties and going through the file especially after going through the additional evidence, I have come to this conclusion that as per Misal Hakiat year 1958-59 Nagar Panchayat is the owner of the disputed land. In the jamabandies year 1955-56, 1963-64, 1969-70, 1974-75, 1979-80, 1984-84, 1994-95, 1999-2000 which were placed before the Lower Court Nagar Panchayat/Gram Panchayat is shown to be the owner of the disputed land. The civil court decree dated 25.6.1959 has not been implemented till date because the ownership is still in the name of Gram Panchayat. As per the Limitation Act, in case any decree is not executed within the prescribed period then there is no legal authority of that decree. The appellant has also not produced any evidence regarding the partitioned of this land before 26.01.1950. The individual and cultivating possession of the appellant is not proved before 26.01.1950 as per revenue record, therefore, the appellant can not

be given any benefit therefore this appeal is dismissed and the impugned order is upheld.”

(20) The orders passed by the Collector and the Appellate Authority declaring the Gram Panchayat as the owner of suit land are under challenge in this bunch of writ petitions.

(21) We have heard learned counsel for the parties at a considerable length and gone through the record.

(22) The core issue that arises for consideration to seal the fate of these cases is whether the Civil Court decree dated 25.06.1959 constitutes *res judicata* and bars the jurisdiction of the Collector to entertain any petition under Sections 7 or 11 of the 1961 Act at the instance of the Gram Panchayat in respect of the suit land? The second and allied issue is whether the Civil Court while passing the decree dated 25.06.1959 lacked jurisdiction or whether the said decree is liable to be ignored on the ground of fraud and collusion?

(23) Equally important would be to decide as to what is the legal effect of the two decisions of this Court dated 17.08.1973 and 04.12.1985 respectively which are also *inter se* parties.

(24) Before we advert to the issues formulated hereinabove, the brief reference to the different Statues may also be made.

(25) The first enactment on the subject was the Punjab Village Common Lands (Regulations) Act, 1953 which came into force on 09.01.1954. Section 3 of this Act provided that

notwithstanding anything to the contrary contained in any other law for the time being in force and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court, (i) the land which is included in the *Shamlat Deh* of any village, shall, on the appointed day, vest in a Panchayat having jurisdiction over the village; (ii) the land which is situated in the *Abadi Deh* of a village and which is under the house owned by a non-proprietor, shall vest in the said non-proprietor. Section 4 contemplated that all lands vested in the Panchayat shall be utilized or disposed of by the Panchayat for the benefit of the inhabitants of the village. Section 8 of this Act barred the jurisdiction of the Civil Court as according to it “*no Civil Court shall have any jurisdiction over any matter arising out of the operation of this Act*”.

(26) The 1953 Act did not survive for long as it was replaced by the PEPSU Village Common Lands (Regulation) Act, 1954, notified on 04.03.1955. The provisions of the new Act were *pari materia* to the 1953 Act, including its Section 8 whereunder jurisdiction of the Civil Court was barred.

(27) It may be seen that the jurisdiction of the Civil Court under 1953 or 1954 Acts was barred in respect of “any matter arising out of the operation” of these Acts. However, except one provision for adjudication of the dispute of a non-proprietor with the Gram Panchayat in respect of terms and conditions on which

he was entitled to retain the Panchayat land where he had constructed the house within the meaning of Section 5(1)(b), no adjudicatory forum like that of 'Assistant Collector' or the 'Collector' was defined or prescribed in both the Acts. Thus if there was a dispute as to whether or not a particular land is *shamlat deh* without which it could not have vested in the Gram Panchayat, the 1953 or 1954 Acts were totally silent as to who is the competent Tribunal or forum for deciding such dispute, if the jurisdiction of the Civil Court was taken to have been barred.

(28) It would be beneficial at this stage to refer to and follow the decision of Constitution Bench in **Dhulabhai etc. vs. State of M.P. & Anr., AIR 1969 SC 78**, as to in what circumstances the jurisdiction of a Civil Court be taken to have been excluded. It holds that:-

“(1) Where the statute gives a finality to the orders of the special tribunals the civil court's jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of

the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.

(3) xxxx xxxx xxxx

(4) xxxx xxxx xxxx

(5) *Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegally collected a suit lies.*

(6) xxxx xxxx xxxx

(7) *An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply.”*

(29) In **Balawwa vs. Hasanabi, (2000) 9 SCC 272,**

Supreme Court considered Section 48-A of Karnataka Land Reforms Act on the question of bar of jurisdiction of Civil Court and held that “*having examined the provisions of the Karnataka Land Reforms Act and the aforesaid two judgments of this Court, we have no doubt in our mind that the Civil Court cannot be said to be ousted of the jurisdiction, in granting the relief sought for. It*

is too well settled that when a Special Tribunal is created under a special statute and the jurisdiction of the Civil Court is sought to be ousted under the said statute, it is only in respect of those reliefs which could be granted by the Special Tribunal under the special statute, in other respects the jurisdiction of the Civil Court cannot be said to be ousted”.

(30) Applying these principles to the scheme of 1953 or 1954 Acts, it stands out that the jurisdiction of the Civil Court could not be taken to have been barred under Section 8 thereof for deciding a title dispute between proprietors and the Gram Panchayat as no special Tribunal was constituted under these Acts for adjudication of such like disputes.

(31) *Albeit*, Section 8 of both the Acts is to be construed very narrowly to mean that the jurisdiction of Civil Court was barred only in respect of the matters, namely, dispute under Section 5, for which an alternative adjudicatory mechanism was created under the Statute. The bar of Civil Court jurisdiction, express or implied, could arise only if the alternative forum was created and vested with the power to adjudicate all the disputes arising under the Act.

(32) Further, the dispute in respect of title of an immovable property is essentially of civil nature and the Civil Court undoubtedly enjoys upon jurisdiction under Section 9 of the Code of Civil Procedure to decide such dispute unless its jurisdiction is

barred. Since the 1953 or 1954 Acts did not confer any power on the Collector or any other Authority to decide a dispute as to whether a piece of land is *shamlat deh* and vests in the Gram Panchayat, the jurisdiction of the Civil Court cannot be taken to have been barred under these Acts.

(33) There can thus be no escape but to hold that the Civil Court which passed the judgement and decree dated 25.06.1959 did not lack jurisdictional competence. The view taken by the Collector or the Appellate Authority on this point being contrary to law, cannot sustain. It is pointed out at the cost of repetition that the relief sought in that civil suit was (a) declaration that defendant No.1, namely, Gram Panchayat “has no interest in the land” and that the “plaintiffs and defendant No.2 (pro forma defendants)...”, are the owners with possession of the land in suit...”. The Civil Court alone had the jurisdiction in the year 1958 to entertain such a suit and grant the declaration. The question of ‘fraud’ and ‘collusion’ is, however, being dealt with in the later part of this order.

(34) The Punjab Village Common Lands (Regulation) Act, 1961 came into force with immediate effect. It was notified on 04.05.1961. Section 2(g) of this Act defines “*shamlat deh*” which includes the lands enumerated in clause (1) to clause (5). The same provision also excludes certain lands from the ambit of

shamlat deh including those falling in clause (iii) which reads as follows:-

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

(35) In view of Section 5 of the 1961 Act, all lands vested or deemed to have been vested in a Panchayat are to be utilized or disposed of by Panchayat for the benefit of the inhabitants of the village concerned and in the manner prescribed.

(36) Unlike the 1953 or 1954 Acts, Section 7 of the 1961 Act empowered the Assistant Collector to evict a person who is unauthorisedly in occupation of the Gram Panchayat land. Such an order is appealable under the Act. Similarly, Section 11 of the Act enables any person or Panchayat claiming right, title or interest in any land vested or deemed to have been vested in a Panchayat or claiming that such land has not so vested in a Panchayat, to submit his claim petition to the Collector who shall have jurisdiction to decide such claim as per the prescribed manner.

(37) Section 13 bars the jurisdiction of Civil Court to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *shamlat deh* vested or deemed to have been vested in a Panchayat.

(38) Section 13-B was inserted by Act No.19 of 1976 and it reads as follows:-

“13-B. Provisions of this Act to be overriding. – The provisions of this Act shall have effect, notwithstanding anything to the contrary in any law or any agreement, instrument, custom or usage or any decree or order of any court or other authority.”

(39) Section 13-B is prospective and has been so construed in a catena of decisions. Hence, only those judgements and decree could be ignored which were passed after the enforcement of Act No.19 of 1976 w.e.f. 15.04.1976. Resultantly, the Gram Panchayat cannot take shelter under Section 13-B also as this provision was non-existent at the time when the decree dated 25.06.1959 was passed.

(40) The authorities under the 1961 Act cannot declare the Civil Court decree dated 25.06.1959 void for want of jurisdiction also for the reason that the same has got the seal of approval from this Court, firstly vide judgement dated 17.08.1973 and then by the Division Bench vide judgement dated 04.12.1985. It may be true that the doctrine of merger in its true sense does not apply as both the judgements were not rendered by this Court as an appellate forum against the judgement and decree dated 25.06.1959, nevertheless, the legality of the said decree passed by a subordinate forum was duly considered and approved, if not

affirmed. Once the High Court as a Superior Forum relied upon the Civil Court decree and decided the *lis* against Gram Panchayat, it amounted to affirmation of the decree, for, the orders passed by the authorities under the Act in derogation of that decree were expressly quashed. The Collector or the Appellate Authority cannot sit over the decisions of the High Court and continue to reiterate their *ex facie* perverse reasoning that the Civil Court decree was passed without any jurisdiction.

(41) We may now dwell upon the petitioner's plea that since the Gram Panchayat did not file any Civil Suit for annulment of the judgement and decree dated 25.06.1959 on the ground of 'fraud' or 'collusion' despite liberty accorded by this Court vide judgement dated 17.08.1973, no such plea is now available to the Gram Panchayat or that the principles of *res judicata* shall apply with full force.

(42) It is true that this Court after doubting the competence of Revenue authorities for holding that the decision of Civil Court was obtained by 'collusion' and after making a *prima facie* observation that "even otherwise, it appears that the suit was seriously contested by both the parties" granted liberty to the Gram Panchayat to approach Civil Court for setting aside the said decree but in our considered view, the recourse suggested by this Court to the Gram Panchayat was contrary to the law as it ought to be understood always.

(43) In **Gram Panchayat of Village Naulakha's** case (supra), the view taken by the Full Bench of this Court in **Gram Panchayat Village Batholi Kalan vs. Jagar Ram & Ors.** **1991 PLJ 41**, in a way, approving the *ratio decidendi* of *inter se* party judgements (P4 & P5), has been disapproved and declared to be contrary to law. Their Lordships after referring to Section 44 of the Indian Evidence Act and the views expressed by different High Courts as well as by other Courts in Common Law jurisdiction, have ruled that the plea of 'fraud' or 'collusion' can be taken by a party to the suit or proceedings without compelling such party to file an independent suit for setting aside that earlier decree. Following the *dictum* in **Gram Panchayat of Village Naulakha's** case, it is held that the respondent-Gram Panchayat was not obligated to institute a separate Civil Suit for annulment of decree dated 25.06.1959 and it is well within its right to raise such a plea in any subsequent suit or proceedings.

(44) It, however, must be clearly understood that 'collusion' and 'fraud' are neither synonymous nor interchangeable phrases. 'Collusion' is essentially play-acting by two or more persons for one common purpose, namely, a concerted performance which gives unreal and fictitious pretence of a contest by confederates whose game is the same.¹ 'Collusion' in judicial proceedings is a secret arrangement between two persons that one should institute

¹ Gram Panchayat of Village Naulakkha vs. Ujagar Singh & Ors., (2000) 7 SCC 543 (para 8)

a suit against the other in order to obtain a decision of judicial Tribunal for some sinister purpose.²

(45) However, mere agreement of the defendant not to contest the claim of a plaintiff or not to defend himself *per se* is not sufficient to prove collusion. It is only if this agreement is done improperly with an intent to achieve a dishonest purpose that collusion can be said to have taken place.³

(46) As against it, 'fraud' is when the claim made is untrue but the claimant had managed to obtain verdict of the Court in his favour and against his opponent by practicing fraud on the Court. Such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result of an understanding between the parties. It thus amounts to playing fraud with the Court also to get a real benefit.⁴

(47) That there was a collusion between the plaintiff(s) and the defendant(s) or that plaintiff(s) played a fraud on the defendant(s) as well as the Court are two distinct and essentially the questions of facts. These are not only required to be averred but whosoever alleges collusion or fraud is under a heavy onus to prove the distinguishable ingredients as well.

(48) Having held that the Gram Panchayat was not required to institute a separate civil suit for setting aside the

² Nagubai Ammal & Others vs. B. Shama Rao & Others, [1956 AIR 593] [1956 SCR 451]

³ Rup Chand Gupta vs Raghuvanshi Private Limited & Anr. 1964 AIR 1889

⁴ Nagubai Ammal & Others vs. B. Shama Rao & Others, [1956 AIR 593] [1956 SCR 451]

previous judgement and decree dated 25.06.1959 or that in view of the mandate in **Gram Panchayat Village of Naulakha's** case, such a plea could be taken by it in the subsequent suit or proceedings, namely, the proceedings initiated by it under Section 11 of the Act for declaration and perfection of its title, we may now consider whether such a plea was actually taken by the respondent-Gram Panchayat?

(49) The petitioners have placed on record two samples of Application-cum-petitions filed under Section 11 of the 1961 Act by the respondent-Gram Panchayat through its Administrator (P13 & P14). These petitions are cyclostyled. It is useful to reproduce all the paragraphs except the headnote or the formal prayer of one of these petitions which are as follows:-

“1. That the petitioner has been authorized to institute this case in this Hon’ble Court as he has been appointed Administrator of Gram Panchayat Jalbera, Tehsil Sirhind, Distt. Patiala vide DD&PO Patiala’s order No.79 dated 3.8.1987 conveyed to the petitioner vide its Endst.No.3836-39/Dev. Dated 3.8.87 (copy attached).

2. That the land in dispute fully described in the subject is Shamlat deh as defined in Sec.2(g) of the PVCLA, 1961 and it has therefore every right title and interest in it.

3. That defendants have illegally partitioned the shamlat land among themselves though it is clear

from the entries of the Revenue record that the shamlat land is not partitionable.

4. That the defendants have no title interest or right in the suit land. They are in an illegal possession of the suit land.

5. That no civil court has/had jurisdiction u/S 13 of the PVCLA 1961 to adjudicate upon the title of shamlat land and as such if any such order has been obtained by the defendants, it is illegal and void.

6. That this very Hon'ble Court ordered to get the title decided by instituting a separate case in the proper court.

7. That the defendants promised to vacate the land after rabi 1987 but they did not do so. Rather they have refused to recognize the title of the petitioner and have said that even after harvesting the Kharif crop they would not vacate the suit land since it belonged to them. Hence the cause of action.

8. That village Jalbera, Tehsil Sirhind falls within the jurisdiction of this Hon'ble Court."

(50) It is manifest from the averments made by the Gram Panchayat in its declaratory petition that there was not even a passing reference or whisper what to talk of making specific allegations of 'collusion' or 'fraud'. The only accusation against the proprietors is that they have illegally partitioned the shamlat land among themselves though it is clear from the revenue record that the shamlat land is not partitionable.

(51) In the absence of any pleadings, the proprietors got no opportunity to rebut the allegations in their written statements. It

is beyond one's comprehension as to how the Collector could formulate Issue No.1 to determine whether or not the decree dated 25.06.1959 is a collusive decree? Not only there was an omission in the pleadings, it also appears that the parties did not go to trial consciously on the question of 'collusion' and no exclusive evidence was led by them on Issue No.1.

(52) Faced with this learned senior counsel for the Gram Panchayat urged that 'collusion' was inferable from the plain reading of the judgement and decree dated 25.06.1959 as the Members of the Panchayat had deposed as plaintiffs' witnesses and *Wajib-Ul-Arz*, which explicitly recites that the subject land cannot be partitioned amongst proprietors and shall continue to be used as a *charand* (grazing ground), was not produced in evidence. The witnesses now examined by the Gram Panchayat are said to have deposed to the above effect.

(53) Such a plea, in our considered view, is contrary to the settled principles of pleadings and procedure. Firstly, no evidence appears to have been led by the parties with reference to Issue No.1. Secondly, such evidence cannot be considered unless a specific plea has been taken in the pleadings. Thirdly, there is nothing to assume that the parties were conscious of the plea of collusion and have not been taken by surprise. Fourthly, mere bald assertion by a witness that there was a collusion surely falls short of proving such allegation, more-so when the Gram

Panchayat had filed its written statement in the Civil Suit; led its evidence and had apparently contested also.

(54) The failure of the then Sarpanch to lead entire evidence or non-consideration of the evidence on record by the Civil Court may be termed as an error of judgement or improper exercise of jurisdiction which is a defect curable by a superior Court. It cannot be termed as a case of lack of jurisdiction.

(55) It appears that in the absence of proper pleadings and evidence, the Collector also got confused and in his over-enthusiasm to decide the case in favour of Gram Panchayat, he has intermingled the phrases “collusion” and “fraud”. Secondly, he has drawn inference of collusion from an order dated 23.01.1973 passed by Commissioner, Patiala Division which had already been quashed by this Court vide judgement dated 17.08.1973.

(56) The only other document which has weighed with the authorities under the Act is *Wajib-Ul-Arz*, a document forming part of the Record of the Rights within the meaning of Section 31 of the Punjab Land Revenue Act, 1887. It is true that *Wajib-Ul-Arz* is a relevant piece of evidence but it is farcical to presume it as a conclusive proof. The entries in *Wajib-Ul-Arz* are worth reliance but it is a rebuttable piece of evidence. As a result of the above discussion, the findings returned by the Collector or reiterated by the appellate authority on issue No.1 are liable to be

declared superficial based upon no material or reliable evidence. In fact, the very formulation of issue No.1 in the absence of such a plea taken by the Gram Panchayat was wholly unwarranted and it has done more harm to the Gram Panchayat's interest rather than protecting its perceived rights.

(57) Once the plea of any 'collusion' or 'fraud' having been committed in passing the judgement and decree dated 25.06.1959 is also discarded, it must follow that the said inter-se-party judgement and decree is binding and constitutes *res judicata* thereby debarring the authorities from entertaining any petition under Sections 7 or 11 of the 1961 Act at the instance of the Gram Panchayat in respect of the suit land.

(58) Ordinarily, we would have allowed these writ petitions and foreclosed the Gram Panchayat's attempt to rewind the settled issues and/or resort to yet another round of *lis* against the proprietors. However, having regard to the facts that (i) the Gram Panchayat did not plead collusion or fraud and did not take such a plea in its petition under Section 11; (ii) the authorities have unnecessarily formulated an uncalled for issue and returned a superficial finding which have been set aside; (iii) the element of larger public interest involving property of a public institution need not be jeopardized at the instance of the persons who had earlier represented the Gram Panchayat and due to conflict of interest with the Gram Panchayat might have colluded with the

proprietors, we are inclined to permit the respondent-Gram Panchayat to take such a plea specifically and then lead evidence to prove the same in accordance with law.

(59) Consequently and for the reasons afore-stated, these writ petitions are allowed; the impugned orders dated 19.09.2011 (P6), 04.05.2012 (P8) and/or similar orders passed in the connected cases are hereby quashed. The matters are remitted to the Court of Collector, Patiala. The Gram Panchayat may, if so advised, seek amendment of Section 11 petitions, within a period of three months from the date of receipt of a certified copy of this order and take the plea of 'collusion' or 'fraud', if it so wishes. The proprietors shall be entitled to file their amended written statements whereupon, the Collector shall formulate a specific issue on the question of fraud and collusion. The parties shall be permitted to lead additional evidence only on the issue of fraud or collusion and rest of all other issues shall be taken to have been concluded in favour of the proprietors. The Collector shall be required to decide the question of fraud or collusion in the light of the observations made hereinabove without relying upon the so-called finding of collusion mentioned in the Commissioner's order dated 23.01.1973 as the said order is non-existent and cannot form part of evidence.

(60) The petitioner(s) shall continue to retain the possession of the subject land though they shall not alienate and/or create third party rights on the subject-land.

(61) Parties are directed to appear before Collector, Patiala on 15.02.2016.

(Surya Kant)
Judge

24.12.2015
vishal shonkar

(P.B. Bajanthri)
Judge

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