

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

CWP-14510-2014

Decided on : 23.07.2015

Bhikha Ram

.... Petitioner

VERSUS

State of Haryana and others

..... Respondents

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

Present: **Mr.J.P.Sharma, Advocate, for the petitioner.**

**Mr.D.Khanna, Addl.A.G., Haryana,
for respondents No.1 to 4.**

Mr.M.S.Chahal, Advocate, for respondent No.5.

RAJIVE BHALLA, J. (ORAL)

The petitioner prays for issuance of a writ of certiorari, quashing orders dated 04.01.2006 and 06.11.2013, passed by the Collector, District Mohindergarh, at Narnaul and the Financial Commissioner, Haryana, Chandigarh (Annexures P/1 and P/3) respectively.

Counsel for the petitioner submits that in a petition filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the “1961 Act”) by the Gram Panchayat, the petitioner raised a question of title which after due adjudication was decided, by the Assistant Collector, Ist Grade, Narnaul, on 15.04.1981, by declaring that the land is excluded from the Shamilat Deh of the

village. The petitioner, however, under wrong legal advice, filed a fresh petition under Section 13-A of the 1961 Act, for a declaration of his title and though it was brought to the notice of the Collector that in view of order dated 15.04.1981, the petitioner has to be declared owner of the land, in dispute, the Collector re-examined the matter on merits and held against the petitioner. An appeal filed by the petitioner was accepted by the Commissioner by holding that the petitioner has already been declared owner, vide order dated 15.04.1981 but the Financial Commissioner has reversed this order, without considering the effect of order dated 15.04.1981 and on irrelevant facts, held that the Gram Panchayat is owner of the land, in dispute.

Counsel for the Gram Panchayat as well as counsel for the State of Haryana, submit that as the petitioner has not been able to prove his cultivating possession prior to 26.01.1950 or tally pre and post consolidation numbers, the Financial Commissioner has rightly reversed the order passed by the Commissioner.

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

Admittedly, the Assistant Collector, Ist Grade, has while considering a petition filed by the Gram Panchayat under Section 7 and the petition under Section 13-B of the 1961 Act (declaration of title), held vide order dated 15.04.1981, that the land, in dispute, is excluded from the Shamilat Deh of the village.

For reasons, that we are neither able to fathom, nor is the petitioner able to explain, the petitioner chose to file a fresh petition under Section 13-A of the 1961 Act (the new provision relating to adjudication of title), for declaration of his title. The Collector, decided the case against the petitioner. The petitioner filed an appeal and pointed out to the Commissioner that a declaration of ownership had already been recorded in his favour. The Commissioner rightly relied upon order dated 15.04.1981, to hold that as order dated 15.04.1981 has already declared that the land does not vest in the Gram Panchayat, the petition filed by the petitioner should have been allowed. An extract from this order, reads as follows: -

“After hearing both the counsels and record was perused. Ld. Collector has not found possession of the appellants prior to the 26.01.1950 while the appellants have said that they are in possession prior to 26.01.1950 and appellants have adduced order of the Assistant Collector Ist Grade, dated 15.04.1981 and Assistant Collector, Ist Grade ordered U/S 13B of the Punjab Village Common Lands Regulation Act, 1961, that the possession of the appellants over the disputed land is prior to the 26.01.1950 as co-sharer and appellants have in possession less to their share as the order dated 15.04.1981 passed by Assistant Collector Ist Grade, under Section 13B and no appeal was filed against this order and this order has become final and there was no necessity filing of the suit again before the Collector as the decision was already in their favour. Hence I set aside the order of the Collector under appeal and has been passed ignoring the order of Assistant Collector Ist Grade and hence the order is illegal and not reasoned one.”

The Financial Commissioner has reversed this order, by holding as follows: -

“I have heard the learned counsel for the parties at length and perused the record available on file. Admittedly, the present suit has been filed by the respondents despite the fact that the application under Section 7 of the Act filed by the Gram Panchayat was dismissed by the Assistant Collector Ist Grade, vide his order dated 15.04.1981. In view of the argument advanced by learned

counsel for the respondents himself that the principle of resjudicata is applicable in the present case, the present suit deserves to be dismissed being non maintainable. On the other hand, the respondents have failed to refer to any of the documents available on record to prove their possession on or before 26th January, 1950. Even if it is presumed that the respondents were in possession even before 26th January, 1950, it was also required for them to prove that their cultivating possession over the land in question is not in excess to their share in shamilat deh. But this fact was also not established before the Collector. Until and unless the respondents establish their case under any exception clause of section 2(g)(5) of the Act, the land in question cannot be declared not to be shamilat deh. Therefore, the present appeal is allowed and the order passed by the Divisional Commissioner, Gurgaon is set aside.”

A perusal of findings recorded by the Financial Commissioner, reveals that though it has been accepted that order dated 15.04.1981 would operate as resjudicata but after holding as such, the Financial Commissioner proceeded to ignore order dated 15.04.1981 and hold that the petitioner has not been able to prove that he was in cultivating possession before 26.01.1950 or establish the ingredients of any inclusion clause enacted by Section 2(g)(5) of the 1961 Act. The Financial Commissioner having accepted that vide order dated 15.04.1981, an inter-parties adjudication, the land, in dispute, has already been excluded from Shamilat Deh, the Financial Commissioner could not have reopened the matter, whether at the behest of the petitioner or the Gram Panchayat and recorded an opinion contrary to the opinion recorded in order dated 15.04.1981. The remedy, if any, available to the Gram Panchayat, was to challenge order dated 15.04.1981, by filing an appeal.

Consequently, we allow the writ petition, set aside order

dated 06.11.2013, passed by the Financial Commissioner, Haryana, Chandigarh, restore order dated 12.03.2010, passed by the Commissioner, Gurgaon Division, Gurgaon, leaving it to the Gram Panchayat to file an appeal against order dated 15.04.1981, passed by the Assistant Collector, Ist Grade, Narnaul. No order as to costs.

[RAJIVE BHALLA]
JUDGE

23.07.2015
shamsher

[AMOL RATTAN SINGH]
JUDGE