

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.20591 of 2015
Date of Decision: September 28, 2015

Sarbjit Singh and othersPetitioners

versus

Gram Panchayat Village Chota Phool Khurd and others
.....Respondents

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

Present: Mr.S.D.Sharma, Senior Advocate, with
Ms.Bindu Goel, Advocate, for the petitioners.
Mr.Amrik Singh, Advocate, for caveator-respondent
No.1-Gram Panchayat.

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1. *Whether Reporters of Local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Surya Kant, J. (Oral)

The petitioners are residents of village Chota Phool Khurd, Tehsil and District Roopnagar. They have challenged the order dated 05.08.2015 (P-21) passed by the Joint Development Commissioner (IRD) in exercise of powers of Commissioner-cum-Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act').

[2] The Appellate Authority has vide the above-stated order allowed the appeal filed by the Gram Panchayat and set-aside the order dated 30.04.2012 of the Collector, Roopnagar whereby declaratory petition filed by the petitioners under Section 11 of the 1961 Act to hold them owners of the land fully described in the head-note, was accepted.

[3] We have heard learned counsel for the parties as the Gram Panchayat is on caveat.

[4] Mr.Amrik Singh, learned counsel for Gram Panchayat while defending the impugned order has contended that as per the revenue record comprising jamabandies for the year 1950-51 onwards, the land is owned by shamlat deh and it does not fall in any of the 'exclusion clause' of Section 2 (g) of the 1961 Act. According to him, this Court has already upheld the decision rendered in favour of the Gram Panchayat in respect of similar land of this very village and the matter is now pending in the Supreme Court without any interim stay.

[5] Mr.S.D.Sharma, learned senior counsel for the petitioners, on the other hand, urges that the earlier decision of this Court cited by Mr.Amrik Singh is distinguishable as the nature of land in two cases is entirely different. As regard to the first plea raised by Mr.Amrik Singh, he submits and rightly so that the Appellate Authority has not dealt with that aspect of the matter and has allowed the Gram Panchayat's appeal only on the basis of Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, namely, that the 'Management' and 'Control' of the land vests in Gram Panchayat. He also refers to the revenue record of pre-1950-51, namely, jamabandi for the year 1945-46 as relied upon by the Collector.

[6] We find from the impugned order that the Appellate Authority has not given due consideration to the rival contentions raised by both the parties and has allowed the Gram Panchayat's appeal on a short ground. Unfortunately, the revenue record prior to 1979-80 has not been discussed at all. We are, thus, of the view that the matter requires re-

determination by the Appellate Authority by way of a reasoned order.

[7] Consequently and without expressing any views on merits, the writ petition is allowed in part; the Appellate order dated 05.08.2015 is set-aside and the matter is remitted to the Appellate Authority to decide the appeal afresh by passing a reasoned order, as early as possible but not later than 31.12.2015.

[8] Till the appeal is decided, both the parties are directed to maintain status-quo re: possession.

[9] Parties are directed to appear before the Appellate Authority on 12.10.2015.

[SURYA KANT]
JUDGE

September 28, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE