

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

**Civil Writ Petition No.942 of 2015
Date of Order: 10.03.2015**

Harbant Singh and others

..Petitioners

Versus

**Joint Development Commissioner(IRD), Punjab
and others.**

..Respondents

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

**Present:Mr. Manish Kumar Singla, Advocate,
for the petitioners.**

**Mr.Rajinder Goyal, Addl.A.G.,Punjab
for respondent nos.1 and 2.**

**Mr. Vijay Sharma, Advocate,
for respondent no.3-Gram Panchayat.**

RAJIVE BHALLA, J (Oral)

The petitioners challenge orders dated 02.12.2013 (Annexure P-3) and 17.12.2014 (Annexure P-5), passed by the Divisional Deputy Director, Rural Development and Panchayat (exercising the powers of Collector), Patiala and Joint Development Commissioner (IRD), Punjab (exercising the powers of Commissioner), dismissing their petition, filed under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') and their appeal, respectively.

Counsel for the petitioners submits that while exercising power under Section 11 of the Act to decide a question of title, a

Collector exercises power akin to a Civil Court and, therefore, is required to adopt a just procedure i.e., issue notice to the respondents, frame issues, call upon parties to lead evidence and only, thereafter pronounce an order. The Collector, on the other hand has dismissed the petition summarily, without issuing notice, framing issues or calling upon the petitioners to lead evidence. The Appellate Authority has failed to discern this error. Counsel for the petitioner further submits that apart from the merits of the case, the petitioners and their family members shall give up actual physical possession of the land, in dispute, to the Gram Panchayat, if they are allowed to harvest the standing wheat crop, subject however to the grant of an opportunity to prove their title before the Collector. Gurtej Singh son of Harbans Singh, representing himself, the other petitioners and their family members, has filed an affidavit deposing that they shall vacate the land, in their possession, i.e., 52 acres approximately, immediately after the harvest.

Counsel for the Gram Panchayat submits that it is true that a petition under Section 11 of the Act has to be decided like a civil suit, but a Collector is not prohibited from rejecting a petition, if it does not disclose a cause of action. The petition filed by the petitioners is devoid of any merit and, therefore, the Collector, rightly dismissed the petition. Counsel for the Gram Panchayat, however, submits that he has no objection if the petitioners are allowed to harvest the wheat crop.

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

A perusal of the impugned orders reveals that the Collector dismissed the petition under Section 11 of the Act summarily, without issuing notice, framing issues or granting any opportunity to the petitioners to adduce evidence. As held by this court, in **Nant Singh v. Joint Director, Panchayats, Punjab (DB)** and **Gram Panchayat Fattuwalla v. State of Punjab (DB)**, a Collector, exercising power under Section 11 of the Act, who is a substitute for a civil suit and is required to adopt a just and fair procedure i.e., issue notice to the respondents, call upon parties to complete pleadings, frame issues and, thereafter, allow parties to lead evidence, for and against their respective pleadings. The Collector has, however, treated the petition, filed under Section 11 of the Act, as a summary adjudication and dismissed the petition summarily. The Appellate Authority failed to discern this error and proceeded to reject the appeal, on merits without there being any reply or any evidence before the Collector. The impugned orders are, therefore, without jurisdiction. Gurtej Singh son of Harbans Singh, attorney of the petitioners, has filed an affidavit praying that in case they are allowed to harvest the standing wheat crop, they shall hand over actual physical possession to the Gram Panchayat on the harvesting of the crop.

Having held that the impugned orders are without jurisdiction, we set aside the impugned orders, allow the writ petition and while restoring the matter to the Collector for adjudication afresh, order as follows:-

- (a) The appeal is allowed, the impugned orders are set aside and the matter is remitted to the

Divisional Deputy Director, Rural Development and Panchayat (exercising the powers of Collector), Patiala, for adjudication afresh;

- (b) Gurtej Singh son of Harbans Singh, the petitioners and their family members, shall be allowed to harvest the standing wheat and sarson crop;
- (c) Gurtej Singh son of Harbans Singh, the petitioners and their family members shall vacate the land, in dispute, on or before 15.05.2015 and hand over vacant physical possession to the Gram Panchayat, on or before 15.05.2015;
- (d) Gurtej Singh son of Harbans Singh, the petitioners and their family members shall be entitled to remove any fixtures/structures that they may have installed/constructed in the land, in dispute;
- (e) It is made clear to Gurtej Singh son of Harbans Singh, the petitioners and their family members that in case they do not abide by the affidavit and this order, they shall be liable to be punished for Contempt of Court.
- (f) The Gram Panchayat shall be at liberty to initiate auction proceedings but shall not interfere with the possession of the petitioners upto 15.05.2015;
- (g) In case, Gurtej Singh son of Harbans Singh, the petitioners and their family members do not vacate the land, in dispute, by 15.05.2015, Deputy

Commissioner, Patiala and the Senior Superintendent of Police, Patiala, shall personally ensure that actual physical possession is delivered to the Gram Panchayat.

(h) In case the petitioners succeed in their petition, filed under Section 11 of the Act, the Gram Panchayat shall restore possession to the petitioner, in accordance with law.

(i) liberty is granted to the parties to approach this Court in case of any difficulty/clarification.

Parties are directed to appear before the Divisional Deputy Director, Rural Development and Panchayat (exercising the powers of Collector), Patiala, on 18.05.2015.

(RAJIVE BHALLA)
JUDGE

March 10, 2015
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(AMOL RATTAN SINGH)
JUDGE