

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11984 of 2015 (O&M)

Date of Decision: 12.01.2016

Attar Singh & Ors.

... Petitioners

VS.

State of Haryana & 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?

2. To be referred to the Reporters or not?

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

Present: Mr. Mahavir Sandhu, Advocate for petitioners

Ms. Kirti Singh, DAG Haryana

SURYA KANT, J. (Oral)

(1) The petitioners have laid challenge to the mutation dated 28.12.1954 (P2) sanctioned by AC-II Grade, the order dated 06.06.2006 (P7) passed by Assistant Collector-I Grade, the order dated 30.03.2007 (P8) passed by the Collector and that of Commissioner dated 26.03.2015 (P9). These orders have finally culminated into dismissal of their petition filed under Section 13-A of the Punjab Village Common Land (Regulations) Act, 1961 as applicable to the State of Haryana. In that petition, the petitioners sought a declaration of their title *qua* the subject-land and to set aside the mutation sanctioned in favour of the Gram Panchayat.

(2) One of the legal hurdles which led to dismissal of the petitioners' claim was that previously also they had filed a petition under Section 13-A for declaration of their title *qua* the suit land

which was dismissed by the Collector's Court etc. and finally they approached this Court by way of CWP No.19364 of 2001. The said writ petition was got tagged with **CWP No.5877 of 1992 (Jai Singh & Ors. vs. State of Haryana [2003(2) PLR 658])** though the issue raised in the petitioner's petition was statedly different than the issue of *vires* of an Amendment Act which was under challenge in **Jai Singh**. The petitioner's writ petition was also disposed of in terms of the judgement of **Jai Singh's** case without dwelling upon the merits of the orders challenged therein.

(3) The fact remains that the petitioners had earlier lost petition under Section 13-A and principle of *res judicata* thus is directly attracted so far as the second round of litigation for the same relief is concerned.

(4) It is in this backdrop that the petitioners were confronted with the following query raised by this Court on 14.07.2015:-

“This order be read in continuation of interim order dated 06.07.2015.

A perusal of the paper book of CWP No.19364 of 2001 reveals that the petitioners challenged orders passed under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”) (as applicable to the State of Haryana), holding that the land is “shamilat deh” and vests in the Gram Panchayat. The petitioners got the writ petition tagged with Jai Singh and Others Vs. State of Haryana, (CWP

No.5877 of 1992), though, as already recorded in our order dated 06.07.2015, the writ petition filed by the petitioners had nothing to do with the controversy in Jai Singh's case (supra). The petitioners then got the writ petition disposed of in terms of order dated 13.03.2003, passed in Jai Singh's case, i.e. a direction to approach revenue authorities, and thereafter approached the Assistant Collector of the 1st Grade, Jhajjar, for changing in the mutation from the name of the Gram Panchayat. The Assistant Collector Ist Grade, unmindful of the fact that order passed in Jai Singh's case relates to 'Jumla Mushtarka Malkan' land, and the land in the present case is "shamilat deh", set aside the mutation in the name of the Gram Panchayat. Taking advantage of the mutation, the petitioners filed another petition under Section 13-A of the 1961 Act, which has been dismissed and is subject matter of the present writ petition. To a specific query, as to how a second petition under Section 13 of the 1961 Act, is maintainable, counsel for the petitioners fairly concedes that CWP No.19364 of 2001 could not have been disposed of with CWP No.5877 of 1992 but prays for time to file an appropriate application in CWP No.19364 of 2001, for recalling of the order disposing of the writ petition."

- (5) Learned counsel for the petitioners states that they have moved a miscellaneous application for the recall of the order passed by this Court in the earlier writ petition i.e. CWP No.19364 of 2001.

(6) Since the instant writ petition as well as second round of proceedings under Section 13-A of the Act itself are not maintainable unless appropriate orders are passed by this Court in the above-mentioned application, the instant writ petition is disposed of with liberty to the petitioners to pursue their above-mentioned application and may thereafter initiate further proceedings provided the same are maintainable in law.

(7) Ordered accordingly.

(Surya Kant)
Judge

12.01.2016
vishal shonkar

(P.B. Bajanthri)
Judge