

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

[1] Civil Writ Petition No.2757 of 2016
Date of Decision: May 16, 2016

Joginder Singh and anotherPetitioners

versus

Director, Rural Development and Panchayat Deptt. Punjab and
othersRespondents

[2] Civil Writ Petition No.4607 of 2016
Date of Decision: May 16, 2016

Joginder Singh and anotherPetitioners

versus

Director, Rural Development and Panchayat Deptt. Punjab and
othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE A.B.CHAUDHARI.

Present: Mr.K.S.Dadwal, Advocate, for the petitioners.
Mr.Rai Singh Chauhan, Advocate, for respondent No.3.

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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)

This order shall dispose of Civil Writ Petition
Nos.2557 and 4607 of 2016 as common questions of law and
facts are involved in both the cases.

For brevity, the facts are being extracted from CWP
No.2757 of 2016.

[2] This writ petition is directed against the orders dated 28.04.2015 passed by the Collector, Hoshiarpur and dated 30.09.2015 of the Commissioner-cum-Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961' Act). Vide the first order, petitioners' suit under Section 11 of the 1961 Act to declare them owners in possession of the subject-land as described in the head-note, was dismissed and vide the second order, their appeal against that order has also been dismissed.

[3] The petitioners claim that they are in possession of the subject-land from the time of their fore-fathers and their cultivating possession is duly recorded in the revenue record, i.e., jamabandies for the years 1931-32 onwards. They further claim to be in possession to the extent of their respective share being the proprietors of the village. The precise claim thus is that the land under their possession stands 'excluded' from the definition of shamlat deh under Section 2(g)(iii)&(v) of the 1961 Act.

[4] The respondent-Gram Panchayat is on caveat. Its learned counsel has placed on record translated version of the revenue record in support of the impugned orders.

[5] We have heard learned counsel for the parties and gone through the record.

[6] It is undeniable and is so expressly recorded by the Collector also that the petitioners have brought on record the jamabandies for the years 1931-32, 1959-60, 1966-67 and 2002-2003 which are duly exhibited. Unfortunately, the Collector mixed up the facts of two cases and without giving any reference to the documentary evidence, the petitioners' suit has been dismissed on a ground which was neither

pleaded nor was in issue for adjudication.

[7] The Appellate Authority has also mechanically upheld the above-stated order.

[8] Learned counsel for the Gram Panchayat also contends that the documentary evidence comprising revenue record produced by the Gram Panchayat to prove that the petitioners or their predecessors-in-interest were not in possession as co-sharers but as gair marusi only and thus cannot be allowed to take shelter of the above provisions of the 1961 Act, has not been discussed at all by the Collector.

[9] One cannot be oblivious of the fact that jurisdiction of the Civil Court is expressly barred and title disputes between proprietors and the Gram Panchayat in respect of the land which claims to have vested in shamlat deh, are required to be adjudicated by the Collector under Section 11 of the 1961 Act. The Collector is thus obligated to follow the well established procedure for deciding a title dispute, namely, the formation of issues, a brief reference to the evidence led by the parties and to draw contention(s) by appreciating the evidence on record. No such exercise has been undertaken vide the impugned order.

[10] In the light of the above discussion, we are of the considered view that the matter requires re-adjudication by the Collector who in turn is directed to frame the issues and thereafter return the findings. No further opportunity will be granted to the parties to lead further evidence and the Collector shall decide all the issues on the basis of the material already on record. Let the dispute be resolved within a period of two months from the date of receiving a certified copy of this order. In the event of any appeal by the parties, the

Appellate Authority shall decide the same within four months.

The parties are directed to appear before the Collector, Hoshiarpur, on 27.06.2016.

The parties are directed to maintain status quo as it exists today, till the matter is decided by the Collector.

In CWP No.4607 of 2016, learned counsel for the Gram Panchayat states at Bar that possession has already been taken and thereafter the land has been leased-out. It is directed that leasing out of the land shall cause no prejudice to the present proceedings and/or the appeal, if any, filed against the eviction order.

Ordered accordingly.

Dasti.

[SURYA KANT]
JUDGE

May 16, 2016
mohinder

[A.B.CHAUDHARI]
JUDGE