

In the High Court of Punjab and Haryana, at Chandigarh

1. Letter Patent Appeal No. 1291 of 2010 (O&M)

Savitri and Others

... Appellant(s)

Versus

Chandigarh Administration, U.T. Chandigarh and Others

... Respondent(s)

AND

2. Letter Patent Appeal No. 1023 of 2010 (O&M)

Lala Ram and Another

... Appellant(s)

Versus

Chandigarh Administration, U.T. Chandigarh and Others

... Respondent(s)

Date of Decision: 10.08.2016

**CORAM: Hon'ble Mr. Justice Mahesh Grover.
Hon'ble Mr. Justice Shekher Dhawan.**

Present: Mr. Aman Bahri, Advocate
for the appellants (In LPA-1291-2010).

None for the appellants (In LPA-1023-2010).

Mr. Deepak Sharma and Mr. Rakesh Sobti, Advocates
for respondents No.1 to 4.

Mr. D.P.S.Mann, Advocate
for Mr. Hitesh Kaplish, Advocate
for respondent No.5.

Mahesh Grover, J.

This order of ours shall dispose of two appeals i.e. Letters

Patent Appeal No. 1291 of 2010 and Letters Patent Appeal No. 1023 of 2010

as they have arisen from the same orders. For adjudication of the instant

appeals, facts are being taken from Letters Patent Appeal No. 1291 of 2010.

This appeal is directed against the judgment dated 22.2.2010 passed by the learned Single Judge.

As writ petitioners, the appellants had prayed for issuance of a writ in the nature of certiorari for quashing of orders dated 25.2.2005, 26.5.2006 and 13.9.2007. Learned Single Judge noticed that the land in dispute is a part of khasra Nos. 13//19/57 and 20//1, which, as per the Scheme of Consolidation, was reserved for the purpose of taleem/education and recorded as *Shamlat Deh* in terms of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) vesting the same with the Gram Panchayat. Local Commissioner was appointed, during the course of proceedings before the Assistant Collector Ist Grade, to demarcate the property to determine that the land in dispute did not fall within *Abadi Deh*. The appellants were held to be unauthorized occupants of panchayat property. Before the writ Court as also before us, it was strenuously argued by learned counsel for the appellants that prior to the initiation of the proceedings before the Assistant Collector Ist Grade, civil suit had been filed by the appellants seeking an injunction against the gram panchayat from forcibly ousting them. In those proceedings, a specific issue was framed as to whether the land was *Shamlat Deh* or not, which issue was answered against the gram panchayat. On the strength of this, it is contended that this issue, having been settled, could not have been gone into again by the Assistant Collector Ist Grade or even in the writ proceedings by ignoring the factum of Civil Court's findings in this regard.

operation of Section 11 of the Act, was never adopted by the Chandigarh Administration. Consequently, the proceedings under Section 11 of the Act were dismissed as not maintainable. Thus, the appellants face the prospect of eviction as unauthorized occupants with no remedy to agitate the issue of ownership of the disputed land. It is, thus, contended that the learned Single Judge has gone wrong in ordering the eviction by upholding the orders passed by the revenue authorities under Section 7 of the Act, particularly when the issue of title has not been settled.

The next contention raised is that in the proceedings under Section 7 of the Act, the Collector was not empowered to go into the issue of title, which he has done and orders would, thus, be unsustainable.

We notice that the issue of jurisdiction was infact never raised before the learned Single Judge. Learned counsel for the appellants would contend that it was very much a part of the pleadings in the writ proceedings. But we are unable to persuade ourselves to the argument of the learned counsel for the appellants that merely because it was a part of the pleadings, it would necessarily imply that it was raised before the learned Single Judge to invite an answer. Indeed, grievance of jurisdiction can be raised at any stage if the order is to be shown non-est. Insofar as the arguments of learned counsel for the appellants that the Collector would have no jurisdiction to go into the question of title in proceedings under Section 7 of the Act, it would go without saying that the very language of the statute would provide the answer that question of title cannot be determined by the revenue authority while dealing with an application under Section 7 of the Act. But a bare

look at the order shows that no such exercise has been undertaken. It is evident that the revenue authority under Section 7 of the Act while examining the matter of an unauthorized possession, would necessarily have to deal with the revenue record to establish and notice the ownership for it is only then that a question of unauthorized occupation can be appreciated and answered. The appellants claimed ownership on the basis of a gift deed which has not seen the light of the day till today. Neither in the civil suit nor in any other proceedings was such a document ever produced which could have remotely given an insight to the justification or legitimacy of the appellants' possession. As against this, the gram panchayat produced the revenue record to establish the land as *Shamlat Deh* reserved for taleem/education. It is, thus, an incident of controversy of unauthorized possession that the ownership record was seen and commented upon. The over emphasis on the findings of the Civil Court is totally misplaced as it would have no jurisdiction to determine the land being *Shamlat Deh* or not, for the reason that it is not a proper Forum provided under the Act. Besides, it was for the appellant to have raised a plea of ownership on a gift deed, and establish it after claiming an issue. No such effort was made.

During the Course of proceedings before the Assistant Collector, a proper demarcation was carried with which the appellant was duly associated, and he raised no objection at any stage of proceedings questioning the demarcation by filing the objections. Therefore, it was established on the basis of revenue record as also the demarcation that the land belongs to gram panchayat to be used for common purpose.

We, thus, do not find any reason to interfere in the judgment of the learned Single Judge and leave an option open to the appellants to agitate the issue of ownership before the proper forum, if so advised.

Consequently, both the appeals stand dismissed.

**(Mahesh Grover)
Judge**

**(Shekher Dhawan)
Judge**

August 10, 2016
“DK”

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No