

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

**CWP No.17099 of 2000  
Date of decision : 19.09.2017**

Suba Singh and others

..... Petitioners

**VERSUS**

State of Punjab and others

..... Respondents

**(2)**

**CWP No.14719 of 2002**

Gram Panchayat village Nanowal

..... Petitioner

**VERSUS**

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT  
HON'BLE MR. JUSTICE SUDHIR MITTAL**

Present: Mr. Vijay Sharma, Advocate in CWP-17099-2000,  
Mr. Vikas Singh, Advocate in CWP-14719-2002,  
for the petitioner(s).

Ms. Anu Pal, AAG, Punjab.

Mr. Arun Jain, Senior Advocate with  
Mr. Sunil Sharma, Advocate  
for respondents No.4 to 13 in CWP-17099-2000.

Mr. Vikas Singh, Advocate  
for Gram Panchayat in CWP-17099-2000.

Mr. Mahavir Sandhu, Advocate  
for respondents No.6 and 11 in CWP-14719-2002.

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**SUDHIR MITTAL, J.**

This judgment shall dispose of two writ petitions viz., CWP  
No.17099 of 2000 and CWP No.14719 of 2002 as common questions of law  
and facts are involved therein.

2. The present writ petitions are an excellent example of the innovativeness of the human mind and its misuse for obtaining unlawful benefits. The litigation highlights the lengths to which a dishonest litigant can go to retain unlawful possession of land, possession of which was initially acquired through lawful means. It also highlights the manner, in which the process of law can be misused for wrongful gain.

3. The facts are being extracted from CWP No.17099 of 2000.

4. The writ petitioners have challenged the order dated 25.08.2000 (Annexure P-14), by which the appeals filed by the private respondents against the eviction order dated 19.05.2000 (Annexure P-11) passed by the Collector/DDPO, Patiala, under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 'the Act'), have been allowed. The petitioners had obtained the cultivating rights for the land in dispute by way of open auction. However, they were unable to take possession thereof as the same was in illegal occupation of the private respondents. Thus, the present writ petitions have been filed challenging the impugned order.

5. The land in dispute was owned by the Gram Panchayat-respondent No.3. In the year 1981-82, the same was leased out to the private respondents for one year. After the expiry of the lease period, the private respondents refused to vacate the land in dispute. Initially a suit for permanent injunction restraining the Gram Panchayat-respondent No.3, from dispossessing them was filed, but the same was dismissed. Thereafter, proceedings under Section 145 Cr.P.C. were initiated and a receiver was appointed. Even a criminal complaint was filed against the private respondents by Gram Panchayat-respondent No.3. However, the private

respondents apparently in collusion with the revenue officials continued to retain possession.

6. To avoid the consequences of the criminal proceedings initiated against them, the private respondents moved the Additional Director, Consolidation, Punjab, by way of application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, claiming therein that at the time of consolidation, the land in dispute had been improperly allotted to the Gram Panchayat-respondent No.3 and therefore, the same should be re-allotted to the rightful owners and apportioned amongst them. The Additional Director Consolidation, Punjab, allowed their application/petition vide order dated 31.10.1984. This order was challenged by the Gram Panchayat-respondent No.3 vide CWP No.127 of 1985, which was allowed on 26.04.1985 by this Court on the concession of the parties that the issue regarding title to the land in dispute be got decided under Section 11 of the Punjab Village Common Land Act, 1961 (hereinafter referred to as 'the 1961 Act'), as applicable to the State of Punjab.

7. Earlier, on 23.09.1982, the Gram Panchayat-respondent No.3 passed a Resolution directing the private respondents to pay penal rent for illegal occupation of Panchayat land. The said Resolution was challenged by way of CWP No.11366 of 1991, which came to be dismissed vide order dated 21.10.1991. Review petition No.284 of 1992 was also dismissed vide order dated 17.01.1992 as was another writ petition, viz., CWP No.15842 of 1991.

8. Meanwhile, the private respondents filed a petition under Section 11 of the 1961 Act. An application was filed therein for stay of

dispossession during the pendency of the suit. This application was however, dismissed. Thereafter, the private respondents filed CWP No.11544 of 1989 challenging the vires of Section 7 and 11 of the 1961 Act. During the pendency of this writ petition, further proceedings before the Authority under Section 11 of the 1961 Act were stayed. The writ petition was ultimately dismissed by this Court vide judgment dated 08.05.1992.

9. From the above facts, it is apparent that the private respondents were denied relief by this Court, whenever the same was granted to them by the Revenue Authorities. This however, did not deter them. Fresh proceedings were initiated by them, this time before the Rehabilitation Authorities. An application was filed before the Tehsildar-cum-Managing Officer, Nabha, for 'allotment' of the land in dispute claiming it to be 'evacuee property'. Vide order dated 30.01.1990, the Tehsildar-cum-Managing Officer, Nabha, gave a finding that the land in dispute was 'evacuee property' and he allotted the same to the private respondents by relying upon a policy of the Punjab Government to allot surplus evacuee property to its unauthorized occupants. The order of allotment dated 30.01.1990 was challenged by the Gram Panchayat-respondent No.3 vide CWP No.5666 of 1992, which was admitted. Meanwhile, one Mohinder Singh became Surpanch. He was none other than the father of respondent No.10 and was thus, more interested in the private respondents. Thereafter, the said writ petition was withdrawn by Mohinder Singh as Surpanch of the Gram Panchayat-respondent No.3 by engaging a different lawyer. In furtherance of this conspiracy and with a view to give it a colour of 'finality', a civil suit was filed seeking a declaration that the order dated

30.01.1990 was illegal and void. However, no evidence was led by the Gram Panchayat-respondent No.3 and therefore, the suit was ultimately dismissed vide judgment and decree dated 25.11.1998. Appeal was dismissed on 28.01.1999 and Regular Second Appeal was dismissed on 21.02.2000. The judgment and decree dated 25.11.1998 is Annexure P-5 on the record and its perusal shows that it was dismissed because the Gram Panchayat-respondent No.3 did not lead any evidence in support of its case.

10. In the interregnum, the order dated 30.01.1990 was brought to the knowledge of the Deputy Commissioner, Patiala, who conducted an inquiry against the Tehsildar (Allotment Authority) and gave the following findings:-

*“Tehsildar is vested with the powers of Asstt. Collector 2<sup>nd</sup>/Ist Grade and regarding custodian property he works as a Managing Officer. In spite of the fact that the land is clearly recorded in the name of the Panchayat in the Jamabandis, Sh. Hardev Singh has declared it to be wrong and as mentioned that mutation No.145 which has changed the ownership of the land in favour of the Panchayat, has been referred for review of the Deputy Secretary to Govt. Punjab, vide this office letter dated 28.03.1989 and thus the recommendation which the Tehsildar has made to the Deputy Secretary vide letter No.433 dated 28.03.1989 has been treated to have been accepted in advance and has made the allotment. The Tehsildar holding that the entry in the Jamabandi is wrong because a review of the mutation has been recommended is a clear case of dis-honesty and he has dis-honestly allotted the land to the illegal occupants vide his order dated 30.01.1990.*

*Thus Sh. Hardev Singh Tehsildar has acted illegally, as follows:-*

(a) *He has allotted the land of the Gram Panchayat to the illegal occupants by declaring it to be custodian property.*

(b) *According to the Rules notified by notification No.2(753)/G.5./19556, dated 24.09.1976, under Rule 5(7) (11) it is clear that the Tehsildar if he wants to transfer any land on the basis of possession he has to make recommendations to the Sales Commissioner (S.D.O.(c) and after obtaining his consent the transfer shall be treated as valid. After going through the file it is revealed that this file was never sent to the Sales Commissioner, as such, question of his consent does not arise. If the transfer was never sent for approval, so the deposits of money by the same persons is meaning-less. This file reveals that the following illegal occupants have deposited the amounts:*

- 1. Bagicha Singh son of Deva Singh;*
- 2. Bohar Singh son of Deva Singh;*
- 3. Tara Singh son of Lal Singh;*
- 4. Chain Singh son of Hardeep Singh;*
- 5. Virsa Singh son of Karam Singh;*
- 6. Harbans Singh son of Ajit Singh;*
- 7. Jasdev Singh son of Mohinder Singh.*

*Thus the decision of the Tehsildar Sh. Hardev Singh, so taken, has been used by the illegal occupants as a base in suits filed by them in different Courts. Thus showing that the Panchayat was not the owner of this land and land has been allotted to them.”*

Accordingly, stringent departmental action was recommended against the Tehsildar vide order dated 30.06.1993 (Annexure P-9).

11. After passing of order dated 30.01.1990, it appears that the Rehabilitation Authorities were not accepting the payment of instalments offered by the private respondents. Presumably, the said instalments were not being accepted as an inquiry was underway into the circumstances which

led to the passing of the allotment order. The private respondents therefore, instituted Civil Suit No.322 on 18.09.1996 for a mandatory injunction directing the concerned authorities to accept the payment of instalments and for a permanent injunction restraining them from dispossessing the plaintiffs of the said suit. This suit was dismissed vide judgment and decree dated 20.02.1999 (Annexure P-10). It was, inter alia, found by the learned Civil Court that:-

- (i) The Tehsildar did not have the authority to direct allotment of land.
- (ii) The Tehsildar can only make a recommendation for transfer/allotment to the Sales Commissioner.
- (iii) A recommendation was sent to the SDO-cum-Sales Commissioner, Nabha, but no allotment could be made in anticipation of its confirmation.
- (iv) The Tehsildar had no authority to set aside mutation in favour of the Gram Panchayat and to declare that the property belonged to custodian department.
- (v) The order dated 31.01.1990 was without jurisdiction.

It is not in dispute that the said judgment and decree has not been challenged any further and has attained finality.

12. As has been stated earlier, the petitioners took the land in dispute on lease vide auction held on 17.06.1996. This auction was held through an Administrator appointed for the Gram Panchayat. The grant of lease in favour of the petitioners, was challenged by the private respondents through CWP No.6238 of 1996 and CWP No.6719 of 1996. Meanwhile,

petitions under Sections 4 and 5 of the Act had been filed for eviction of the private respondents on 27.07.1993. Since the said petitions were pending, this Court vide order dated 09.04.1999 passed in CWP No.6238 of 1996 and CWP No.6719 of 1996 directed the Collector/DDPO, Patiala, to decide the same expeditiously. The learned Collector/DDPO, Patiala, decided the eviction petitions vide order dated 19.05.2000 and after noting all the facts including the fact that land in dispute was '*Shamlat Deh*' and it had vested in the Gram Panchayat, directed the eviction of the private respondents. This order has been reversed by the impugned order by the Appellate Authority by holding that the land in dispute stood allotted to the private respondents vide allotment order dated 30.01.1990 and that the same had been upheld by this Court by implication since the writ petition challenging the same had been withdrawn. Reliance has also been placed upon the dismissal of the civil suit challenging the said order. He further held that the learned Collector/DDPO, Patiala, appeared to be biased against the private respondents.

13. Another fact to be noted is that although CWP No.11544 of 1989, challenging the vires of 1961 Act, had been dismissed, the private respondents did not seek revival of their petition under Section 11 of the 1961 Act. Instead, they chose to sit tight over the matter regarding title to the land in dispute and concentrated on getting the order of allotment dated 30.01.1990 upheld through this Court and the Civil Court. It is also to be noted that the Gram Panchayat-respondent No.3 through its Sarpanch Balbir Singh challenged the order dated 30.01.1990 in a bunch of writ petitions viz., CWP No.12635 of 2000 and some others (these were apart from CWP No.5666 of 1992, which had been withdrawn earlier). The then Sarpanch

Balbir Singh was none other than real brother of Virsa Singh (respondent No.12 in the said writ petition and one of the beneficiaries of order dated 30.01.1990). The said writ petitions were dismissed vide judgment dated 18.09.2000 by holding that the order dated 30.01.1990 had attained finality because the Civil Court had upheld the same. A perusal of the said judgment reveals that the detailed facts of this case were not brought to the notice of this Court as the said writ petitions were collusive in nature and had been filed with an oblique motive.

14. Keeping in view the above facts the following questions arise for consideration:-

- A. Whether the action of the private respondents in approaching the Rehabilitation Authorities seeking allotment of the land in dispute was mala fide ?
- B. Whether the authorities in the Rehabilitation Department has the jurisdiction to decide question of title ?
- C. Whether order dated 30.01.1990 was fraudulent in nature and hence vitiated ?
- D. Whether judgment dated 18.09.2000 operates as res judicata in the present case ?

15. **Question 'A'**

For answering this question, it is necessary to examine the back-drop in which the private respondents approached the Tehsildar-cum-Managing Officer, Nabha, for allotment of the land in dispute. It is not in dispute that the private respondents came into possession of the land in dispute in the year 1981-82 as lessees. After the expiry of the lease period,

they refused to vacate the said land. Hence, their status became that of unauthorized occupants. Yet, they claimed themselves to be owners and sought re-partition before the Consolidation Authorities on the ground that the land in dispute had been wrongly mutated in favour of the Gram Panchayat at the time of consolidation. The Consolidation Authorities passed order dated 31.10.1984 in their favour, but the said order was set aside by this Court by allowing CWP No.127 of 1985 vide order dated 26.04.1989. Thus, they failed to get the desired relief. The private respondents then filed a petition under Section 11 of the 1961 Act for establishing their title to the land in dispute. In these proceedings also they failed to get an order of stay of dispossession. Thereafter, they challenged the very vires of the provisions under which they were seeking relief. The vires was upheld by this Court by dismissal of CWP No.11544 of 1989 vide judgment dated 08.05.1992. Having failed to get any relief thus far, the private respondents decided to approach the Tehsildar-cum-Managing Officer, Nabha, for allotment of the land in dispute by claiming that the said land was evacuee property. This step was taken during the pendency of the writ petition, viz., CWP No.11544 of 1989, challenging the vires of Section 7 and 11 of 1961 Act. These facts show that the private respondents continued to change their stand regarding the nature of the land in dispute for oblique motive. In the beginning, they claimed proprietary rights, although they could not do so as they came into the possession of the land in dispute as lessees and no lessee is entitled to question the title of his lessor. Yet the private respondents set up their own title while retaining illegal possession of the land in dispute. On failing to get the desired relief, they took a diametrically opposite stand before the Tehsildar-cum-Managing

Officer, Nabha, that the land in dispute was evacuee property and that they were entitled to allotment of the same, in terms of a Government circular, which permitted allotment of surplus evacuee land to unauthorized occupants. It, therefore, becomes clear that the private respondents wanted to grab the land in dispute at any cost. Thus, the intention behind approaching the Tehsildar-cum-Managing Officer, Nabha, was not for establishment of a legitimate right, but for retaining possession of the land in dispute by any means whatsoever. Such an approach can only be termed mala fide and nothing else. This question is answered, accordingly.

**Question 'B' and 'C'**

The land in dispute was mutated in favour of the Gram Panchayat-respondent No.3 in the year 1957 as it was '*Shamlat Deh*' in accordance with the Pepsu Village Common lands (Regulation) Act, 1954. Ever since, the said land has been auctioned regularly by the Gram Panchayat-respondent No.3. Thus, as per the revenue record, the land in dispute was owned by the Gram Panchayat being '*Shamlat Deh*'. Even though, the question of title was pending before the authorities under the 1961 Act, the Tehsildar-cum-Managing Officer, Nabha, arrogated to himself the jurisdiction to decide whether or not the land in dispute was '*Shamlat Deh*'. It is now settled law that except the Court of Collector under the 1961 Act, no other authority has the jurisdiction to determine the question of title whenever there is a dispute regarding title between a Gram Panchayat and a private person. Ignoring this settled principle of law and without calling upon the Gram Panchayat-respondent No.3, the Tehsildar-cum-Managing Officer, Nabha, by himself determined the question of title and declared the land in dispute to be evacuee property. Not only that, he proceeded to allot

the same to the private respondents even though he only had the authority to recommend an allotment of evacuee property to the Sales Commissioner. Though a recommendation to the Sales Commissioner was made, but without receiving any confirmation or approval from him, actual allotment was made in favour of the private respondents. Further, the mutation in favour of the Gram Panchayat was also treated as having been set aside although the said mutation was only under review on the basis of a recommendation made by the same authority. All this shows that extraneous considerations were at play while passing the allotment order. There is nothing on record to show that the mutation in favour of the Gram Panchayat was ever reviewed or that the Sales Commissioner approved the recommendation for allotment made by the Tehsildar-cum-Managing Officer, Nabha. The Civil Court, in judgment and decree dated 20.02.1999 arising out of the injunction suit (Civil Suit No.322 of 18.09.1996) filed by one of the allottees-private respondents recorded the illegalities committed by the Tehsildar-cum-Managing Officer, Nabha, on the basis of evidence produced before it. These findings have become final as no appeal has been filed against the said judgment and decree. Even, the Deputy Commissioner, Patiala, has made similar observations in his inquiry report, dated 30.06.1993 (Annexure P-9).

A Division Bench of this Court in **Mangtu @ Mintlal and another Vs. Commissioner, Rohtak Division, Rohtak and others, CWP No.21493 of 2015**, decided on 17.05.2016 has held as follows:-

*“As against it, ‘fraud’ is when the claim made is untrue but the claimant had managed to obtain verdict of the Court in his favour and against his opponent by practicing fraud on the*

*Court. such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result an understanding between the parties. It thus amounts to playing fraud with the Court also to get a real benefit (See: Nagubai Ammal and others Vs. B. Shama Rao and others, AIR 1956 SC, 593).”*

An another Division Bench of this Court in **Darbara Singh and another Vs. State of Punjab and others, CWP No.11559 of 2012** decided on 24.12.2015 has held as follows:-

“44. It, however, must be clearly understood that ‘collusion’ and ‘fraud’ are neither synonymous nor interchangeable phrases. ‘Collusion’ is essentially play-acting by two or more persons for one common purpose, namely, a concerted performance which gives unreal and fictitious pretence of a contest by confederates whose game is the same. ‘Collusion’ in judicial proceedings is a secret arrangement between two persons that one should institute a suit against the other in order to obtain a decision of judicial Tribunal for some sinister purpose.

45. However, mere agreement of the defendant not to contest the claim of a plaintiff or not to defend himself per se is not sufficient to prove collusion. It is only if this agreement is done improperly with an intent to achieve a dishonest purpose that collusion can be said to have taken place.

46. As against it, ‘fraud’ is when the claim made is untrue but the claimant had managed to obtain verdict of the Court in his favour and against his opponent by practicing fraud on the Court. such a proceeding is started with a view to injure the opponent and there can be no question of its having been initiated as the result of an understanding between the

*parties. It thus amounts to playing fraud with the Court also to get a real benefit.”*

Thus, it becomes crystal-clear that the order dated 30.01.1990 was not only collusive, but also fraudulent. In fact, in the present case, the authority itself was party to an act committed with a view to injure the interest of the Gram Panchayat-respondent No.3. Such an order is dishonest to its core and cannot stand the test of the judicial scrutiny. The order dated 30.01.1990 is not only without jurisdiction but is also illegal and nonest because:-

- (i) the Tehsildar-cum-Managing Officer, Nabha, did not have the jurisdiction to decide a question of title.
- (ii) the said authority could not make an allotment without prior approval of the Sales Commissioner.
- (iii) the impugned order is mala fide and has been obtained fraudulently.

The same does not confer any right on any party.

#### **Question “D”**

A perusal of judgment dated 18.09.2000 brings out that the said judgment was based upon the submissions that the order dated 30.01.1990 had been upheld by the Civil Court and further appeals had also been dismissed. No material regarding the fraudulent conduct of the private respondents was placed before the Division Bench which passed the said judgment.

16. We have already held that the order dated 30.01.1990 is without jurisdiction and nonest. Could we have given such a finding in the presence of judgment dated 18.09.2000 ?

17. An order obtained by practicing fraud and deceit can be explained in collateral proceedings. Even though, such an order has been upheld by a higher Court, the same does not merge in the judgment/order of the higher Court because the doctrine of merger is of limited application. It cannot apply in a situation as the present one because illegalities cannot be perpetuated. Applying the doctrine of merger in such a situation would be contrary to public policy and would operate to grant undue benefits to underserving persons. The doctrine of res judicata also cannot apply in such a situation as the original order is itself without jurisdiction. Thus, we are justified in examining the order dated 30.01.1990 independently as the bar of res judicata does not apply in this case. For holding so, we rely upon a Full Bench judgment of this Court in **Parkash Singh and others Vs. Joint Development Commissioner, Punjab and others, 2014 (2) RCR (Civil) 721,** decided on 08.11.2013, which holds follows:-

“83. A perusal of these judgment and due consideration of the principles of res judicata leads to a singular conclusion that for an order passed, in former proceedings, to operate as res judicata in latter proceedings, it should have been passed by a Court of competent jurisdiction. The Director Consolidation, as held, hereinbefore, is a Tribunal of limited jurisdiction not competent to decide a question of title and, therefore, any finding recorded in an order passed by Consolidation Authorities or by the Director Consolidation under Section 42 of the Consolidation Act on a question of title, even if writ petitions and special leave petitions have been dismissed, would not operate as res judicata, on a question of title, raised before the jurisdictional forum.”

It has further been held in relation to the doctrine of merger as follows:-

“96. *In view of the nature of the doctrine of merger and the precedents referred to by us, we have no hesitation in holding that where a Tribunal/Court of limited jurisdiction, adjudicates upon a matter that does not fall to its jurisdictional competence, such an order, even if affirmed by dismissal of the writ petition or a special leave petition, shall not operate as res judicata or prohibit the jurisdictional forum from deciding questions that fall to the latter's jurisdictional competence. This apart, if an order is affirmed, by dismissal of a writ petition and the special leave petition but neither the order passed in writ jurisdiction nor in leave to appeal, assigns any reasons, such an order shall not be deemed to have merged in the order passed by the High Court or the Supreme Court, so as to prohibit the jurisdictional forum from entertaining a petition on a question of title and the said forum would not be prohibited from deciding the matter on merits.*”

18. We, therefore, have the requisite competence to examine the order dated 30.01.1990 independently. As held earlier, the said order is not only without jurisdiction but it has also been obtained with mala fide intention and in collusion with the then Tehsildar-cum-Managing Officer, Nabha. Moreover, the petitioners were not party to those proceedings, hence it cannot be binding on them.

19. In view of the findings given above, the order dated 25.08.2000 (Annexure P-14) cannot be sustained in law as it is based upon reasons, which are unsustainable in law. The same is quashed, accordingly and the order dated 19.05.2000 (Annexure P-11) is restored. Respondent No.1 is directed to evict the private respondents from the land in dispute within a

period of one month from the date of receipt of a certified copy of this judgment. The private respondents are also liable to pay a sum of ₹5,000/- (per acre) per year for illegal use and occupation of the land in dispute. The sum so determined would be recoverable as arrears of land revenue. However, the private respondents, if so advised, would be at liberty to pursue their suit filed under Section 11 of the 1961 Act, but only after handing over the physical possession.

20. The writ petitions are allowed, accordingly with costs of ₹50,000/- payable to the Gram Panchayat-respondent No.3 by the private respondents. The writ petitioners, in the given facts and circumstances, cannot be granted any effective relief.

**(SUDHIR MITTAL)**  
**JUDGE**

**(SURYA KANT)**  
**JUDGE**

**September 19, 2017**

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No