

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No.16980 of 2017.

Date of Decision: September 06, 2017

Gram Panchayat Hansala

.....Petitioner

versus

Joint Development Commissioner (IRD), Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.

HON'BLE MR.JUSTICE SUDHIR MITTAL.

Present: Mr.J.S.Bhandohal, Advocate, for the petitioner.

Mr.NPS Mann, Advocate, for the caveator-respondents.

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Surya Kant, J. (Oral)

The Gram Panchayat, Hansala, Block Dera Bassi, District SAS Nagar Mohali seeks quashing of the orders dated 14.10.1996 and 02.02.2017 passed in the proceedings under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act') whereby land measuring 41 bigha 14 biswas, fully described in para No.2 of the writ petition, has been held to be under the ownership of private-respondents.

[2] The private-respondents filed a petition under Section 11 of the 1961 Act against the Gram Panchayat seeking declaration of their ownership qua the land in dispute. It may be mentioned at the outset that in a dispute as to whether the land vests in Gram Panchayat or it is owned by the proprietors, the jurisdiction of Civil Court has been expressly barred under the 1961 Act and the power to adjudicate such dispute has been vested in the Court of Collector. The Collector vide order dated 14.10.1996 (P-2) held that the subject land is not *shamlat deh* and the petitioner-Gram

admittedly in continuous cultivating possession of the private-respondents since the year 1941-42.

[3] The expression '*shamlat deh*' is defined under Section 2(g) of the 1961 Act. While the lands mentioned in clauses (1) to (5) are included in *shamlat deh*, the lands which are mentioned in sub-clauses (i) to (ix) are excluded from the definition of *shamlat deh*. Sub-clause (iii) provides that where the land "has been partitioned and brought under cultivation by individual land-holders before 26.01.1950", such land shall stand excluded from the definition of *shamlat deh*. Since the land in dispute in the instant case has been found to be in individual cultivating possession of the private-respondents since the year 1941-42, the Collector vide order dated 14.10.1996 granted the declaration of ownership in favour of the private-respondents.

[4] The petitioner-Gram Panchayat did not challenge the order of Collector for almost two decades and filed an appeal only in the year 2015. Regardless of the inordinate delay, the Appellate Authority entertained the appeal on merits and has dismissed the same after observing that as per the jamabandies for the years 1941-42, 1945-46, 1953-54, 1956-57 and onwards, the names of fore-fathers and great fore-father of the private respondents are duly entered in the column of cultivators. No contrary record has been produced by the Gram Panchayat. The appeal was thus dismissed.

[5] In the instant writ petition, learned counsel for the petitioner-Gram Panchayat contends that the private respondents own land measuring 10 acres only as khewatdars of the village, hence they could claim only proportionate shares in the *shamlat deh* which cannot be 41 bighas and 14

biswas land as is now occupied by them.

[6] We are afraid, no such plea can be allowed to be taken at this stage. From a plain reading of the written statement filed by the Gram Panchayat, it stands established that no such plea was taken before the Collector. The Gram Panchayat cannot spring surprise by taking a plea which is neither here nor there.

[7] No case to interfere with the impugned orders is made out.

[8] Dismissed.

[SURYA KANT]
JUDGE

September 06, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No