

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Civil Writ Petition No.21732 of 2017.
Date of Decision: November 20, 2017

Parkash Singh and othersPetitioners

versus

Joint Development Commissioner (IRD) and othersRespondents

[2] Civil Writ Petition No.21862 of 2017.
Date of Decision: November 20, 2017

Jaspal SinghPetitioner

versus

Joint Development Commissioner (IRD) and othersRespondents

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

Present: Mr.Manish Kumar Singla, Advocate, for the petitioner(s)
Mr.Rajesh Bhardwaj, Senior DAG, Punjab.
Mr.Amrik Singh, Advocate, for the caveator-respondent.

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Surya Kant, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.21732 and 21862 of 2017 as the points in issue in both the writ petitions are similar in nature.

For brevity, the facts are being extracted from CWP No.21732 of 2017.

[2] The controversy between the petitioners and respondent-Gram Panchayat is whether the land in dispute, which is a part of land measuring 506 kanal 15 marla, is *shamlat deh* and vests in the Gram Panchayat or it is owned by the proprietors including the petitioners?

[3] Shorn of the details, the Consolidation Authorities vide their orders dated 19.04.1989 and 14.02.1990 partitioned the land in dispute

amongst the proprietors on the basis of self-styled jurisdiction as if the title

dispute could also be decided by such authorities. Those orders were, however, set-aside by this Court at the instance of the Gram Panchayat, vide order dated 28.07.2010 passed in Civil Writ Petition No.12357 of 1991 (Gram Panchayat, village Hassanpur versus The State of Punjab and others).

The private-respondents in the said writ-petition were nevertheless granted liberty to seek declaration of their title by way of a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act').

[4] The present petitioners, who were private-respondents in the above-mentioned writ petition, thereafter filed petitions under Section 11 of the 1961 Act which were dismissed by the Collector, Ludhiana vide the impugned order dated 04.02.2016 and their appeals against the same have also been turned down by the Appellate Authority vide order(s) dated 21.07.2017.

[5] The aggrieved petitioners are before this Court.

[6] It is apparent from the order of the Collector that the petitioners led documentary evidence in order to make out a case that they were in individual cultivating possession of the land in dispute before 26.01.1950 and as such the land falls under the exceptional clause(s) of Section 2(g) of the 1961 Act and it does not form part of *shamlat deh*. On the other hand, the Gram Panchayat led evidence to the effect that the subject land vests in it from the very inception and the petitioners were not in its possession before 26.01.1950. The land was leased out by the Gram Panchayat from time to time. Unfortunately, the Collector as well as the Appellate Authority have turned down the petitioners' claim summarily without discussing the documentary evidence led by the parties. The reason assigned by the

authorities below is that the petitioners have heavily relied upon the order passed by the authorities of the Consolidation Department which stood set-aside by this Court vide order dated 28.07.2010 passed in CWP No.12357 of 1991. The approach of the authorities, in our considered view, is totally erroneous. While examining the case with reference to a claim raised under Section 11 of the 1961 Act, it is imperative upon the authorities to determine whether or not (i) the land was/is *shamlat deh* before and after 26.01.1950 and (ii) whether any co-sharer has been in individual possession of such land before 26.01.1950?

[7] While answering these questions, it is obligatory on the Collector to refer to the entries in the revenue record, khatauni pamaish and consolidation scheme etc. None of these documents have been discussed or explained in the impugned orders.

[8] This Court cannot be oblivious of the fact that the jurisdiction vested under Section 11 of the 1961 Act is a substitute of the Civil Court for the adjudication of title disputes. It is thus imperative upon the Collector not only to frame the issues but also to discuss the oral and documentary evidence threadbare and then return a finding of fact as to whether the land vests in Gram Panchayat or it is owned by the proprietors. No such exercise has been undertaken by the Collector. The Appellate Authority has also done nothing except to repeat the words and phrases used by the Collector while rejecting the petitioners' claim. The Appellate Authority too has not discussed the evidence led by the Gram Panchayat.

[9] In the light of the above discussion but without expressing any views on merits, we allow these writ petitions; set-aside the orders passed by the Collector as well as the Appellate Authority and remand the case to

CWP Nos.21732 and 21862 of 2017

[4]

the Collector, Ludhiana for deciding the same afresh in accordance with law and in the light of the discussion made above, within a period of four months from the date of receiving a certified copy of this order.

The parties are directed to appear before the Collector, Ludhiana, on 11.12.2017.

[SURYA KANT]
JUDGE

November 20, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

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

130 CM No.16596 of 2017 in
CWP No.21732 of 2017

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Parkash Singh and others vs. Joint Development Commissioner and others

Present : Mr.Manish Kumar Singla, Advocate,
for the applicant-petitioners.
Mr.Rajesh Bhardwaj, Sr.DAG. Punjab.
Mr.Amrik Singh, Advocate,
for the caveator-respondent.

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For the reasons mentioned in the application, the same is
allowed and the documents (P-18 to P-25) are taken on record.

CM stands disposed of.

(SURYA KANT)
JUDGE

November 20, 2017
mohinder

(SUDHIR MITTAL)
JUDGE