

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

1. LPA No. 171 of 2011 (O & M)

Gurjit Singh and othersAppellants

v.

Gram Panchayat Village Kassabad and othersRespondents

LPA No. 172 of 2011 (O & M)

Date of Decision: 15.2.2017

Nirmal Singh and othersAppellants

v.

Gram Panchayat Village Kassabad and othersRespondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE DR. SHEKHER DHAWAN**

Present:- Mr. Gagandeep Singh Wasu, Advocate, for the appellants

 Mr. J.S. Bhandohal, Advocate, for respondent No. 1

MAHESH GROVER, J.

 This order will dispose of abovesaid two appeals which are interconnected.

 The appellants questioned the judgment of the learned Single Judge dated 26.5.2010 in the present proceedings, whereby the petitions filed by the Gram Panchayat, were allowed and the matter was remanded back to the Collector, Ludhiana.

 The Gram Panchayat had preferred writ petitions seeking the setting aside of orders dated 25.6.2004 passed by the Additional Deputy

Commissioner-cum-Collector, Ludhiana and order dated 22.2.2007, passed by the Joint Development Commissioner (IRD) Punjab. The appellants, who are respondents in these writ petitions, had filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) before the Collector for ownership of land measuring 95 kanals 0 marla, situated in Village Kasabad, Tehsil and District Ludhiana. It was pleaded that this land was allotted to Smt. Lal Kaur on 19.12.1975, by the Rehabilitation Department, in lieu of the land left by her husband in Pakistan. Prior to its allotment, she allegedly executed a general power of attorney in favour of one Balbir Singh, who eventually sold this land to Tarlok Nath on 14.10.1998, who in turn, sold it to the present appellants by way of multiple sale deeds dated 6.5.1999, 7.5.1999 and 10.5.1999.

The Gram Panchayat asserted its ownership and questioned the very existence of Smt. Lal Kaur, implying thereby that the entire transactions, beginning from the allotment by the Rehabilitation Department till the subsequent sales, were result of fraud to divest the Gram Panchayat of its shamlat land.

The learned Single Judge noticed the status of the land existing prior to partition as shamlat deh owned by muslim proprietors, who migrated to Pakistan. He also noticed the position of law governing the disputes resulting from the conflict from diverse stands of the Gram Panchayat and the vendees under the Rehabilitation Department. The disputes were put to rest only by the Supreme Court in **“Gram Panchayat of Village Jamalpur v. Malwinder Singh and others, AIR 1985 SC 1394”**

to hold that such lands (shamlat deh) would vest in the respective Gram

Panchayats as shamlat deh and not in the Rehabilitation Department.

An amendment was made to the provisions of the Act to introduce sub section (ii-a) in Section 2 (g) of the Act excluding land that had been allotted on a quasi permanent basis to a displaced person or otherwise transferred to any person binding through sale or any other manner on or before the prescribed date i.e. 9.7.1985. Such lands were distinctly taken away from the preview of the shamlat deh.

In the proceedings under Section 2(g) sub section (ii-a) of the Act, the appellants were held to be owners in possession by applying this amendment and the prevailing provisions of law whereas, the Gram Panchayat pleaded fraud from the very inception of the transactions by the Rehabilitation Department. It was contended specifically that Smt. Lal Kaur is a fictitious person, who has been never heard of or seen, which was strenuously contested by the present appellants.

The learned Single Judge observed as follows before remitting the matter back to the Revenue authorities for decision afresh :-

“A perusal of the impugned orders discloses that the Gram Panchayat raised a specific plea, before the Collector, that the allotment to Smt. Lal Kaur through her attorney Balbir Singh, is fraudulent. The Gram Panchayat alleged that Smt. Lal Kaur is a fictitious person, who has never been heard of or seen and has failed to appear before any authority at any time. It was further pleaded that the Assistant Collector Ist Grade-cum-SDM, Ludhiana, while rejecting a prayer for recording a mutation in favour of respondents No.2 to 15 has returned a clear finding that the allotment in favour of Smt. Lal Kaur is fraudulent. At this stage, it would be appropriate to refer to the circumstances pointed out by the Assistant Collector Ist Grade-cum-SDM, Ludhiana, in support of her finding of fraud :-

“1. The power of attorney was executed on 12.8.1974, whereas the allotment was made on 19.12.1975.

2. Smt. Lal Kaur has not appeared before any Court, Tribunal or Revenue officer in support of the allotment, the execution of the general power of attorney or the execution of the sale deeds.

3. The sale deeds disclose that Smt. Lal Kaur is a resident of 94, Bharat Nagar Chowk, Kanpur.

4. The summons issued by the Assistant Collector Ist Grade at this address was returned with a report that no lady by this name resides at this address and the address pertains to a commercial building.

5. The beneficiaries are Ex-Panches and Sarpanches of the village. FIR No. 285 dated 31.8.2000 was registered against the private respondents with respect to this dispute.

The Gram Panchayat, in my considered opinion, did raise a credible plea of fraud before the Collector and the Joint Development Commissioner but though the Collector and the Joint Development Commissioner have specifically adverted to the plea of fraud, they have for reasons that are not discernible from the impugned orders failed to decide this plea. The operative part of the order passed by the Collector reads as follows :-

“After hearing the arguments of both the learned counsel for the parties, I have gone through the legal position, from the record it is established that the property is not shamlat deh and does not vest in the gram Panchayat. It has been excluded from the definition of shamlat deh and Gram Panchayat has no concern with the same. While on the other hand, the petitioners have been proved to be the owners as well as in possession of the property in question. So far respondent No.2 is concerned, he has totally failed to prove his right or title over the property. So, I hereby

accept the petition and declare that the petitioners to be the owners in possession of the property subject matter of this petition. Order announced in the open Court and file be consigned to record room.”

The operative part of the order passed by the Joint Development Commissioner reads as follows :-

“I have gone through the revenue record placed on file very carefully and thoroughly and have also gone through the written arguments of the parties and I have come to the conclusion that the land in dispute is “Baachat Land” it does not fall within the definition of shamlat deh. The land in dispute has never been used or reserved for any common purpose of the village community. Therefore, the lower Court has passed the order on 25.6.2004 rightly and correctly. I am left with no alternative but to dismiss the appeal filed by the Appellant Panchayat. Order was reserved on 8.2.2007 and the same is announced today in the open Court.”

It is, therefore, beyond dispute that the Gram Panchayat raised a credible plea of fraud, which has not been decided by the Collector or the Joint Development Commissioner.

At this stage, it would be appropriate to deal with an argument raised by counsel for respondents No. 2 to 15 that as the Collector and the Joint Development Commissioner have noticed the plea of fraud, it shall be deemed to have been rejected. With due reference to the argument raised by the learned Senior counsel, this argument cannot be accepted. A mere reference to the facts, to the evidence and to the arguments, would not absolve an adjudicatory forum of its duty to record a finding, particularly on a plea of fraud.

In view of what has been stated herein above, the writ petitions are allowed, the orders dated 25.6.2004 and 22.2.2007 are set aside and the matter is remitted to the Collector, Ludhaina, for the limited purpose of deciding the plea of fraud,

raised by the gram Panchayat.

It would be necessary to mention here that in case the allotment of Smt. Lal Kaur is held to be legal and valid, the transfers made by her attorney would be saved by sub-section (ii-A) of Section 2(g) of the Act, but if the allotment is held to be vitiated by fraud, the transfers made in favour of respondents No.2 to 15 would be void and the land in dispute would necessarily vest in the gram Panchayat as “Shmlat Deh”. Parties are directed to appear before the Collector, Ludhiana, on 26.7.2010.”

Learned counsel for the appellants contends that the Collector had indeed recorded a finding about the existence of Smt. Lal Kaur and thus, the observation of learned Single Judge was totally un-warranted as also would be the order of remand as a conclusion.

Our attention has been invited to the orders of the Collector, the relevant of which we may extract here :-

“That Tarlok Nath was the lawful purchaser and he purchased the property from Lal Kaur after the amendment in the Act and he was fully competent to alienate the same. There was no illegality in the sale deeds made by Sh. Tarlok Nath in favour of the petitioners. That the counsel for the petitioners further argued that the contention of respondent No.1 that there was no lady in the name of Lal Kaur is against the stand taken by respondent No.1. Respondent No.1 himself impleaded Lal Kaur in the Hon'ble High Court and Supreme Court and Lal Kaur was duly appeared there through her attorney and also appointed counsel on her behalf. So, this contention of the respondent is irrelevant.”

To our mind, this does not address the core issue of Smt. Lal Kaur, being a fictitious person, which would depend on a proper evidence to be produced before the competent authority. We would not upset the

findings given by the learned Single Judge considering that the valuable land in Ludhiana is at stake and the facts as noticed by the learned Single Judge to infer fraud would weigh with us equally. Besides, no prejudice would be caused if the truth is unveiled as the appellants are continuing in possession and enjoying the lands' fruits as well.

We, therefore, decline the prayer made by the appellants and dismiss the appeals but make it clear that during the pendency of the proceedings before the Collector upon remand, as mandated by the learned Single Judge and affirmed by us, the land in dispute shall not be alienated or any charge created thereon. Likewise, the possession of the appellants would also be protected. However, the Collector shall conclude its proceedings within a period of six months.

Both the parties will be required to appear before the said authority on 8.3.2017. It is also made clear that no un-warranted adjournments shall be granted to either of the parties.

Since the main appeal has been decided, all the pending applications also stand disposed of.

(MAHESH GROVER)
JUDGE

(SHEKHER DHAWAN)
JUDGE

15.2.2017
Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No