

Sr.No. 347

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

**CWP No. 11495 of 1995(O&M)
Date of decision: 19.04.2018**

Aki Devi

.....Petitioner

versus

State of Punjab and others

.....Respondents

**Coram: Hon'ble Mr. Justice Mahesh Grover
Hon'ble Mr. Justice Rajbir Sehrawat**

Present: Mr. Deepak Thapar, Advocate
for the petitioner.

Mr. Sandeep Vermani, Addl.AG, Punjab.

Mr. J.S.Bandohal, Advocate
for the Gram Panchayat.

Mahesh Grover, J.(Oral)

The petitioner through this writ petition has impugned the orders dated 28.06.1989(Annexure P-10) and 01.02.1995(Annexure P-12) passed by the Collector and the Joint Development Commissioner exercising their powers under Section 11 of the Punjab Village Common Land Act.

To understand the matter, a brief reference may be made to the facts as the parties have been litigating since long.

The petitioners are in cultivating possession of khasra nos. 123 (5-7) and 124(0-4) which according to them stood partitioned prior to 26.01.1950 and came to their share. The Gram Panchayat has been contesting this claim of the petitioner and filed a petition under Section 7 of

the Punjab Village Common Land Act(hereinafter referred to as the 'Act') in the year 1964 which was dismissed on 28.12.1964 vide Annexure P-3 with the following finding:-

“The counsel for the respondent has referred to Khasra Girdawari attached with the file from which it appears that the respondent is in possession of khasra Nos. 123 and 124 since 1950 which means that possession of this land with Sadhu Ram respondent is beyond 12 years. Therefore, this is not a fit case for ejectment, and I order to stop the proceedings.”

No appeal was preferred by the Gram Panchayat and then once again in the year 1969 proceedings under Section 7 were initiated after the death of Sadhu Ram, the predecessor-in-interest of the petitioner which were dismissed vide order dated 31.10.1969 by holding that this issue already stood determined by Assistant Collector, Ist Grade(reference by the earlier order dated 28.12.1964). Despite this, proceedings under Section 7 were again initiated on 27.11.1972 which were decided on 10.08.1973 with a similar observation. The relevant is extracted herein below:-

“On perusal of the decision, it is found that about the land khasra Nos. 123 and 124, a decision has already been taken u/s 7(2) of Village Common Lands Act on 31-10-1969 and notice has been taken back. Therefore, when this court has already decided the case, there is no necessity to start the proceedings again. The notice is hereby withdrawn. The file is consigned to record.”

Once again proceedings under Section 7 were initiated on

06.03.1981 where the Collector after appraisal of the evidence concluded that *“this question had already been decided by the Assistant Collector, Grade-I, Nabha and the notice issued by the Court was withdrawn, copy of which is Ex:R-1, from which it is evident that in respect of khasra No. 123 and 124 this question has already been decided on 31.10.1969 under Section 7(2) of the Punjab Village Common Lands(Regulation Act, 1961). That since the question in issue has already been decided by Assistant Collector, Grade-I, Nabha 10.08.1973, this case can not be tried again.”*

The Gram Panchayat persisted with its unrelenting attitude and then filed a petition under Section 11 and Section 7 of the Act on 03.02.1986 which was decided on 19.09.1986 by giving liberty to the Gram Panchayat to move only under Section 11 but before doing so the Court observed once again as follows:-

“After hearing both the parties and going through the authorities cited by them it is evident that application u/s7 of the Punjab Village Common Lands Act cannot be heard again when application under this Section has already been decided by the Assistant Collector/Collector and if no appeal has been filed than that order would be deemed as final.”

It is then that a petition under Section 11 of the Act was filed on 09.04.1987 decided on 28.06.1989 resulting in one of the impugned orders Annexure P-10. An appeal preferred against it, was also dismissed by another order dated 01-02-1995(Annexure P-12) which is now the cause of grievance to the petitioner who contends that once the proceedings under Section 7 were determined many times over with the conclusion of their possession prior to December, 1950 the Gram Panchayat would have no

occasion to re-agitate this matter time and again. Besides it is contended that even a cursory look at the impugned orders show that this issue of the determination of the proceedings under Section 7 time and again have not even been remotely commented upon. It is further contended that the impugned order show that even the procedure under Section 11 has been grossly violated and no material but worth name has been considered to determine the issue against the petitioner. The only reasoning that finds mentioning in the impugned order, Annexure P-10 is as follows:-

“On careful perusal of the record produced and examining the statement of the parties, after hearing the arguments of the learned counsels of the parties, I, the undersigned, have reached this conclusion that according to the column 4 of the Jama Bandis produced Gram Panchayat Shamashpur is the owner. The respondent had herself stated that she and her predecessors are in possession of the land in dispute after 1966 and had purchased the same. She had not produced any evidence regarding purchase. Respondents had failed to show that they are in continuous possession of the land in dispute prior to 26-1-1960. Therefore, the petition of the petitioners is being allowed and the claim regarding title of the land comprising of Khewat/Khatauni No.34/91, Khasra No.123 (5-7), 124(0-4) is decided in favour of Gram Panchayat, Shamashpur, Tehsil Nabha, District Patiala and is declared as the owner of the said land.”

Similar is the reasoning given by the Commissioner who had

merely reiterated the findings of the Collector as extracted above.

Learned counsel for the respondent on the other hand has been unable to offer any meaningful argument to offset the one raised by learned counsel for the petitioner except to say that proceedings under Section 7 of the Act are summary in nature and in view of the detailed procedure of a regular suit prescribed under Section 11 findings recorded in these proceedings would prevail. The argument of the petitioner being in possession 12 years prior to the Act has not been adequately met by any response.

We have considered the matter at some length and are of the opinion that the petition deserves to succeed. Over a period of time and in repeated exercise of powers under Section 7 of the Act, the competent authority has affirmed a finding of fact of the petitioner being in possession 12 years prior to the Act. This finding has not been upset in any of the proceedings and would therefore, continue to bind the parties. If that be so then the impugned orders dated 28.06.1989(Annexure P-10) and 01.02.1995 (Annexure P-12) which do not even remotely discuss this issue and the effect thereof would necessarily have to be negated particularly when no evidence contrary to what has been established has been brought on record and neither does any reasoning manifest itself from the impugned orders that may persuade us to accept the genuineness of the claim of the panchayat. The impugned orders also reveal that no issues in this regard were ever struck and evidence led in support of the rival claims. In any eventuality once when on as many as four occasions the Courts of competent jurisdiction have commented and recorded a finding of fact which has remained unimpeached there would be no occasion for the

Collector or the Joint Development Commissioner to upset the findings affirmed earlier, without even offer any reasons. We are thus of the opinion that the petition has to be accepted and the impugned orders dated 28.06.1989(Annexure P-10) and 01.02.1995(Annexure P-12) quashed.

Ordered accordingly.

[MAHESH GROVER]
JUDGE

19th April, 2018
Shivani Kaushik

[RAJBIR SEHRAWAT]
JUDGE

Whether speaking/reasoned *Yes/No*

Whether Reportable *Yes/No*