

**CWP no.11519 of 2015 (O&M)
and connected cases**

1

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

1.CWP no.11519 of 2015 (O&M)

Jagdish Ram and others

....Petitioner(s)

Versus

Joint Development Commissioner(IRD) and others

...Respondent(s)

2.CWP no.19829 of 2015 (O&M)

Megh Nath

....Petitioner(s)

Versus

Joint Development Commissioner and others

...Respondent(s)

3.CWP no.19831 of 2015 (O&M)

Alakh Ram and another

....Petitioner(s)

Versus

Joint Development Commissioner and others

...Respondent(s)

Date of Decision : 02.08.2018

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE MAHABIR SINGH SINDHU**

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

Mr. Suveer Sheokand, Addl. AG, Punjab

**Ms. Parminder Kaur, Advocate for
Mr. Rohit Sud, Advocate for respondent nos. 3 and 4
in CWP no. 19829 of 2015**

Mr. Manish Joshi, Advocate for Gram Panchayat

MAHESH GROVER, J.(ORAL)

By this order we will dispose of three Civil Writ Petitions bearing nos. 11519, 19829 and 19831 of 2015.

Ms. Parminder Kaur, Advocate, learned counsel for respondents no. 3 and 4 (in CWP no. 19829 of 2015) pleads no instructions and seeks permission to withdraw from the proceedings.

In view of the statement made, we permit learned counsel for respondents no. 3 and 4 to withdraw from the proceedings. Since respondents no. 3 and 4 have already been served, they are directed to be proceeded against ex parte.

The instant petitions have been filed under Article 226 of the Constitution of India impugning orders dated 31.12.2012 and 18.3.2015 passed by the Collector and the Commissioner respectively. While determining the proceedings initiated by the Gram Panchayat under Section 11 of the Punjab Village Common Lands Act, the present petitioners were held to be in unauthorized occupation of the land belonging to the Gram Panchayat.

Learned counsel for the petitioners contends that there is sufficient material before the authorities below to suggest prolonged possession prior to 1950 but the same has not even been dealt with. That apart it is contended that proceedings under Section 11 are in the nature of a suit and it should have been determined as such but it has been decided in a summary manner depriving the parties opportunity to adduce quality evidence.

During the course of arguments, learned counsel for the petitioners drew our attention to a judgment of the Civil Court dated

1.2.1963 in suit for permanent injunction where a finding of fact regarding the petitioners' possession since 1948-49 was recorded. We would extract the same herebelow for ready reference:-

“7. Suit No. 150

Kishna plaintiff had a share in the shamlat deh to the extent of 106 bighas and 15 biswas vide statement ex. P1. As against it, he occupied only 18 bighas and 18 biswas of land in the year 1948-49 vide Ex. P8. He held only 18 bighas and 11 biswas of land out of it in 1952-53 vide Ex. P9. He did not leave any khasra number but there was some difference in the totals or measurements. Any how since the area in lieu of which he got the present land was reduced, it does not affect his case. The khasra girdwari also support his case. He occupied 18 bighas and 18 biswas of land from 27.10.50 to 27.3.53 vide Ex. P11 and from 29.3.54 to 1956 vide Ex.P12. He occupied 18 bighas and 11 biswas of land vide ex.P12. Consolidation of holdings came in way and vide missal Haqiat Murabandi Ex. P10 he was allotted 18 bighas and 8 biswas of land in 1956-57. He has been occupying that land from 11.11.58 to 18.3.61 vide Ex. P.13. It is, therefore, proved that the plaintiff has been occupying the land in dispute since the consolidation of holdings and the land in lieu of which this land is allotted to him since the year 1948-49.”

It is contended that once a finding of fact in this regard was recorded which was never disturbed, either in appeal or any other proceedings, the Collector and the Commissioner ought to have dealt with this, particularly when it is so pleaded by the petitioners and the judgment produced for perusal and appreciation.

Learned counsel for the respondents on the other hand contends that revenue entries constantly show the Gram Panchayat to be the owner. However, he could not satisfy the Court regarding the issues raised by the petitioners.

We have heard learned counsel for the parties and have perused the impugned orders and find that the contentions raised before us by the learned counsel for the petitioners are not mis-placed. The orders passed by the Collector and Commissioner both are deficient in this regard. A finding of fact recorded by the Civil Court and undisturbed till today ought to have been considered and if there were reasons to ignore it, the same should have manifested themselves in the reasoning while deciding the issue. Finding no such reasons, we are of the opinion that the petitioners' case has been prejudiced. That apart we cannot but agree with the contention of the learned counsel for the petitioners that proceedings under Section 11 of the Punjab Village Common Lands (Regulation) Act are in the nature of a civil suit and ought to be decided as such as per the procedure prescribed. Both the Collector and the Commissioner have adopted a summary procedure. Neither any issues have been framed nor evidence led in a proper way.

We, therefore, accept the instant petitions and set aside the impugned orders to remit the matter back to the Collector to decide the

proceedings in accordance with law after taking into consideration all relevant material that may be produced by the parties.

Since the matter has been under litigation since long, we deem it appropriate to direct the Collector to conclude the proceedings as expeditiously as possible, preferably within a period of six months from the date of receipt of certified copy of this order. It is made clear that neither of the parties would be given any untoward flexibility in the matter of adjournments to complete the process.

In the meantime, no third party rights shall be created and the petitioners are restrained from alienating the dispute property in any manner.

(Mahesh Grover)
Judge

02.08.2018
rekha
Whether speaking/reasoned
Whether reportable

(Mahabir Singh Sindhu)
Judge

Yes/No
Yes/No