

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

CWP-35420-2019
Date of Decision:06.12.2019

Sucha Singh and others

..... Petitioners

Vs.

State of Punjab and others

..... Respondents

2.

CWP-35423-2019

Karnail Singh

..... Petitioner

Vs.

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA

Present: - Mr.Vikas Singh, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J. (ORAL)

This order shall dispose of two petitions bearing
CWP No.35420 of 2019 titled as ***“Sucha Singh and others Vs. State of Punjab and others”*** and **CWP No.35423 of 2019** titled as ***“Karnail Singh Vs. State of Punjab and others”*** as the issue involved in both the petitioners are same. However, for the sake of convenience the facts are being extracted from CWP No.35420-2019.

The petitioners have challenged the orders dated 17.11.2015
passed by respondent No.3 and 1.8.2018 passed by respondent No.2 by

which an application filed under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'], by the Gram Panchayat, has been allowed.

In brief, the predecessor-in-interest of the petitioner (Isher Singh) had filed Civil Suit No.368 in the year 1975 in the Civil Court at Bassi Pathana. Isher Singh sought the declaration that he is owner in possession of the property in dispute without any interruption from more than 50 years without paying any batai or chakota to the Gram Panchayat. Written statement to the suit was filed by the Gram Panchayat. On the pleadings of the parties, only one issue was framed "whether the plaintiff has become the owner of the land in dispute?"; and onus was placed upon the plaintiff to prove the same. Gram Panchayat did not lead any evidence. The witnesses of the plaintiff were also not cross-examined by the defendant. The plaintiff, however, relied upon only two jamabandi i.e. Ex. P-1 of the year 1963-64 and Ex. P-2 of the year 1968-69. The trial Court found that the land in dispute is in possession of the plaintiff for more than 12 years and since there was no evidence led by the defendants to rebut the evidence of the plaintiff, the suit was decreed declaring the plaintiff as owner by way of adverse possession. The Gram Panchayat also did not file any appeal to challenge the judgment and decree dated 29.9.1975 and the matter came to rest at that time. However, an application under Section 11 of the Act was filed later on by the Gram Panchayat in the year 2004 claiming its title over the property in dispute bearing Khasra Nos.19//11/2/1 (3-4), 12/1/1 (4-0), 13/1(4-0), 13/1 (0-9), 13/2 (7-11), total measuring 15 kanal 4 marla, situated in Village Naulakha, Tehsil and District Fatehgarh Sahib on the ground that the land in dispute is recorded in the revenue record as Shamlat and vests in the Gram Panchayat. The said application was dismissed by the Collector,

Fatehgarh Sahib on 29.5.2009 on the ground that the title of the property has already been determined by the Civil Court in favour of the predecessor-in-interest of the petitioner and the remedy, if any, to challenge the said judgment and decree is with the Civil Court. However, the appeal filed by the Gram Panchayat was allowed on 09.03.2012.

Aggrieved against the decision of the Appellate Court, petitioners had filed **CWP-15026-2012** titled as “**Sucha Singh and others Vs. State of Punjab and others**” which was disposed of by this Court vide order dated 09.8.2012, which read as under: -

“Prayer in this petition is to set aside order dated 09.03.2012 (Annexure P-6) passed by the Director Rural Development and Panchayats, Punjab, holding that Gram Panchayat is owner of the land, in dispute.

Counsel for the parties agree that orders passed by the Collector/Additional Deputy Commissioner (Development) Fatehgarh Sahib and the Director, Rural Development and Panchayats, Punjab, may be set aside and Collector may be directed to frame an issue and adjudicate, whether judgment and decree dated 29.09.1975 passed by the Sub-Judge Ist Class, Bassi Pathana, was obtained by collusion or fraud. It is also prayed that an opportunity may be granted to parties to lead evidence in support of their respective pleas.

In view of the agreement between counsel for the parties, the writ petition is allowed, order dated

29.05.2009 passed by the Collector/Additional Deputy Commissioner (Development), Fatehgarh Sahib and order dated 19.03.2012 passed by the Director, Rural Development and Panchayats, Punjab, are set aside and the matter is remitted to the Collector/Additional Deputy Commissioner (Development), Fatehgarh Sahib to decide the same afresh, after framing an issue whether judgment and decree dated 29.09.1975 passed by the Sub- Judge Ist Class, Bassi Pathana, was obtained by fraud and collusion. The Collector shall grant two opportunities each to the petitioner and the Gram Panchayat to prove their respective pleas. The Collector shall conclude proceedings within three months.

Parties are directed to appear before the Collector/Additional Deputy Commissioner (Development), Fatehgarh, on 04.10.2012.

During the pendency of proceedings before the Collector/Additional Deputy Commissioner (Development), Fatehgarh, parties shall maintain status quo with respect to possession and ownership of the land, in dispute.”

The aforesaid order was passed on consensual basis because it was argued that the judgment and decree obtained by the petitioners was by way of fraud and collusion. While remanding the case back to the Collector, it was directed that he would frame an issue as to whether judgment and

decree dated 29.09.1975 passed by the Sub-Judge Ist Class, Bassi Pathana, was obtained by collusion or fraud. After the remand, the Collector framed the following issues: -

- “1. *Whether the land in dispute is covered by Section 2(g) of the Punjab Village Common Lands Act?*
2. *Whether the decree of the year 1975 has been obtained by collusion of Ishar Singh and Ranjodh Singh, Panch?*
3. *Whether the land in dispute was in possession of Ishar Singh on 29.1.1950?*
4. *Relief.”*

The Collector, after appraisal of the evidence lead by the parties, came to the conclusion that the suit filed by the predecessor-in-interest of the petitioners was not contested by the Gram Panchayat and observed that the decree obtained by the petitioners is not based upon the revenue record and has obtained by collusion with the Gram Panchayat. The order of the Collector was unsuccessfully challenged by the petitioners before the Court of Commissioner as their appeal was dismissed by the impugned order dated 1.8.2018. Hence, the present petition has been filed.

Counsel for the petitioners, *inter alia*, contends that the judgment and decree dated 29.9.1975 has been passed prior to the jurisdiction of the Civil Court was taken away and thus it will enure. He further submits that the application filed under Section 11 of the Act is also time barred.

We have heard learned counsel for the petitioners and perused the record with his able assistance.

The issue involved in this case is as to whether the predecessor-in-interest of the petitioners had actually become the owner of the property in dispute after obtaining decree dated 29.9.1975?

From the perusal of the judgment and decree dated 29.9.1975 delivered by the Civil Court, it is found that the declaration has been sought by the predecessor-in-interest of the petitioners of having become the owner of the property in dispute is only on the basis of possession. He has not made the basis of his suit on the basis of any documentary evidence of title. The suit was not sincerely contested by the Gram Panchayat. The witnesses of the plaintiff were not even cross-examined nor any evidence in rebuttal was led by the defendants. Civil Court had also not declared the petitioners' predecessor-in-interest, who was the plaintiff in the suit, as owner observing that the land would be excluded from the definition of Shamlat Deh though it is recorded in the jamabandis Ex.P-1 & P-2 as Shamlat Deh. The only observation made by the Civil Court is that since the possession of the petitioners' predecessor-in-interest was of more than 12 years, therefore, he became owner by virtue of adverse possession. The judgment and decree was also not challenged by the Gram Panchayat by way of an appeal. It is also one of the significant factors to observe therein that there was some kind of collusion on the part of the then Panchayat with the plaintiff of the suit.

Be that as it may, it appears that when the stakeholders in the Gram Panchayat were changed, an application under Section 11 of the Act was filed for seeking eviction of the petitioners from the land in dispute on the ground that it is recorded in the revenue record as Shamlat deh. The

Collector dismissed the application of the Gram Panchayat only on the ground that there is a Civil Court decree and he could not ignore Civil Court decree in order to declare the rights of the parties in the petition filed under Section 11 of the Act. However, the order of the Collector was set aside in appeal and when the matter was brought to this Court by the petitioners, it was consented by them that the issue in regard to the fact as to whether the judgment and decree dated 29.9.1975 was in fact obtained by way of collusion or fraud has to be determined after leading evidence. On the consent given by the parties, the order of the Collector in favour of the plaintiff and the order of the Commissioner against him were set aside and the matter was remanded back to the Collector to decide a fresh to record a finding as to whether the judgment and decree dated 29.9.1975 was obtained by fraud or collusion or not. Thereafter, the parties appeared before the Collector and on the pleadings of the parties, as many as four issues were framed. Issue No.2 was categorical that as to whether the decree of the year 1975 was obtained by collusion of Ishar Singh and Ranjodh Singh, Panch. The Collector has giving his finding after recording evidence both oral as well as documentary that there was collusion between the plaintiff of the suit and the Panch, who was contesting the suit at that time as defendant.

We have also found that in such a situation where the Gram Panchayat being a statutory body, not even cross-examined the witnesses of the plaintiff and not leading any evidence in rebuttal and after suffering the decree not filing the appeal is absolutely an act of collusion with the plaintiff to his benefit and detrimental to the interest of the Gram Panchayat. The finding recorded by the Collector has been upheld by the Commissioner. The argument of the counsel for the petitioners that the application filed under Section 11 of the Act is beyond limitation and reference has been

made to Rule 21A of the Punjab Village Common Lands (Regulation) Rules, 1964 [for short 'the Rules'], we are of the considered opinion that once the consent has been given by the petitioners before this Court in CWP-15026-2012 that they would not mind if the matter is decided again to decide the issue as to whether the judgement and decree dated 29.9.1975 was obtained by fraud or collusion after providing opportunity to both the parties to lead oral as well as documentary evidence and not raising issue of limitation in that petition the same cannot be raised at this stage. No other point has been raised.

In view of the aforesaid, we are of the considered opinion that there is hardly any merit in both the petitions for the purpose of interference and hence the same are hereby dismissed. No costs.

A photocopy of this order be placed on the file of connected case.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

06.12.2019
Vivek

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