

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

**CWP No.22015 of 2018
Date of decision: 14.03.2019**

Ram Karan and another

.... Petitioners

Versus

The Financial Commissioner, Haryana and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Jagram Singh Cooner, Advocate for the petitioners.

ARUN KUMAR TYAGI, J.

1. The petitioners have filed the present petition seeking issuance of a writ in the nature of certiorari/mandamus for quashing the impugned judgment and decree dated 19.06.2006 (Annexures-P/1 and P/2) passed by respondent No.3-Collector, Kaithal whereby judgment and decree dated 17.05.1974 passed in Civil Suit No.80 of 1974 in favour of deceased-Ram Kala and subsequent judgment and decree dated 19.02.1981 passed in Civil Suit No.62 of 1981 in favour of Kundan were declared to be illegal and Gram Panchayat was declared to be owner in possession of land measuring 41 Kanals 7 Marlas comprised in Khewat No.70, Khatauni No.117 Rect. No.32 Killa No.21 Rect. No.38, Killa No.5, 15/1, Rect. No.39, Killa No.1, 2, 3, 8/2, 11/1 situated within the revenue estate of Village Rewar Jagir, Tehsil Guhla, District Kaithal (hereinafter referred to as the land in dispute), impugned order dated 13.06.2007 (Annexure-P/3) passed by respondent No.2-Commissioner, Ambala Division, Ambala whereby appeal

filed against the above-said judgment and decree was dismissed and impugned order dated 13.12.2017 (Annexure-P/3A) passed by respondent No.1-Financial Commissioner, Haryana whereby revision against the above-said order was dismissed.

2. The petitioners, who are residents of Village Rewar Jagir, Tehsil Guhla, District Kaithal, have filed the present writ petition on the averments that the respondents No.4 to 8 filed suit dated 19.12.2005 (Annexure-P/4) under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') in the Court of respondent No.3-Collector, Kaithal challenging the Civil Court judgment and decree dated 17.05.1974 passed in favour of deceased-Ram Kala and subsequent judgment and decree dated 19.02.1981 passed in favour of Kundan. The petitioners filed written statement dated 12.03.2006 (Annexure-P/5) to the suit pleading that respondent No.3 had no jurisdiction to entertain and try the suit. The plaintiffs had no *locus standi* to file the suit. The suit was barred by limitation. The land in dispute did not vest in the Gram Panchayat and the Civil Court judgment and decree dated 17.05.1974 were rightly passed in favour of deceased-Ram Kala who was in possession of the land in dispute being a proprietor. Respondent No.3-Collector, Kaithal decreed the suit of respondents No.4 to 8 vide judgment and decree dated 19.06.2006 (Annexure-P/1 and Annexure-P/2) declaring respondent-Gram Panchayat to be owner of the land in dispute. The petitioners along with other evicted persons filed appeal No.417 of 2006 (Annexure-P/6) before respondent No.2-Commissioner, Ambala Division, Ambala which was dismissed vide order dated 13.06.2007 (Annexure-P/3). The petitioners filed CWP No.11562 of 2008 in this Court which was disposed of vide order dated 23.12.2010 (Annexure-P/7) with liberty to the petitioners to file

revision petition under Section 13-AA(ii) of the 1961 Act before respondent No.1-Financial Commissioner, Haryana. The petitioners filed revision petition No.241 dated 18.01.2011 (Annexure-P/8) before respondent No.1-Financial Commissioner, Haryana which was dismissed vide order dated 13.12.2017 (Annexure-P/3A).

3. The petitioners have challenged the above-said judgment and decree and orders passed by the respondents No.1 to 3 respectively on the grounds that the Courts below did not appreciate that Ram Kala was in possession of the land in dispute, being a proprietor as per his share in the *Shamlat Deh* and judgment and decree dated 17.05.1974 were rightly passed in his favour. Mutation thereof was sanctioned in *Jalsa-e-Aam* and no fraud was committed upon the Gram Panchayat. Several Gram Panchayats succeeded in between the passing of the above-said Civil Court judgments and decrees and filing of suit under Section 13-A by respondents No.4 to 8. Respondents No.4 to 8 had no locus standi to file and maintain the suit. Respondent No.4 Ram Bhaj admitted in his cross examination that he had knowledge about the judgment and decree since the date of passing of the same. Therefore, the suit was time barred. The Civil Court judgments and decrees dated 17.05.1974 and 19.02.1981 could be set aside on the ground of fraud only by the Civil Court and respondent No.3-Collector Kaithal was not competent to set aside the same. Impugned judgment and decree dated 19.06.2006 and orders dated 13.06.2007 and 13.12.2017 passed by respondents No.1 to 3 respectively are wrong, illegal and against the settled principles of law.

4. We have heard learned Counsel for the petitioners and gone through the record.

5. Learned Counsel for the petitioners has argued that deceased-Ram Kala was in possession of the land in dispute, being proprietor as per his share in the *Shamlat Deh* and Civil Court judgment and decree dated 17.05.1974 was rightly passed in his favour. Mutation of the same was sanctioned in *Jalsa-e-Aam* and no fraud was committed upon the Gram Panchayat. Respondents No.4 to 8 had no locus standi to file and maintain the suit. The suit was time barred as respondents No.4 to 8 had knowledge about the above-said judgments and decrees since the date of passing of the same, as admitted by respondent No.4 in his cross-examination. Section 13 barring the jurisdiction of the Civil Court was inserted in the 1961 Act (as applicable to the State of Haryana) by Haryana Act No.34 of 1974 w.e.f. **12.11.1974**. The Civil Court had jurisdiction to entertain and try the civil suit and adjudicate upon the question of title during the period from 1961 to 1974 and Civil Court judgments and decrees dated 17.05.1974 and 19.02.1981 having been passed by competent Civil Court were binding on the parties. The Civil Court judgments and decrees dated 17.05.1974 and 19.02.1981 could be set aside on the ground of fraud and collusion only by the Civil Court and respondent No.3-Collector Kaithal was not competent to set aside or ignore the same in the proceedings under 1961 Act. Impugned judgment and decree dated 19.06.2006 and orders dated 13.06.2007 and 13.12.2017 passed by the respondents No.1 to 3 respectively are wrong, illegal and against the settled principles of law. Therefore, the same may be quashed.

6. The questions which arise in the present case are as to whether the Civil Court had jurisdiction to entertain and try the suits and adjudicate upon the question of title and pass the impugned judgments and decrees dated 17.05.1974 and 19.02.1981 and whether the impugned judgments and

decrees dated 17.05.1974 and 19.02.1981 could be ignored by the Revenue Authorities in proceedings under Section 13-A of the 1961 Act. For determination of these questions it will be apposite to refer to the relevant statutory provisions and the judicial precedents interpreting the same.

7. Section 13 of the 1961 Act, as originally enacted, barred jurisdiction of the Civil Court for both States of Punjab and Haryana but did not provide for any forum for adjudication of question of title. Section 13 as originally enacted reads as under:-

"Bar of jurisdiction of civil Courts. - No civil Court shall have any jurisdiction over any matter arising out of the operation of this Act".

8. This provision was subject matter of adjudication in a number of cases and the settled position which emerged therefrom was that jurisdiction of the Civil Court is barred only in respect of matters arising out of the operation of the 1961 Act and the Civil Court had jurisdiction to adjudicate upon the questions as to whether any land or other immovable property is or is not *shamlat deh* and whether any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under the 1961 Act.

9. In many places the *shamlat deh* were occupied unlawfully by unscrupulous persons, acting sometimes in collusion with the representatives of the Gram Panchayats. To combat this evil and with a view to save and protect Panchayat lands from collusive decrees and to prevent usurpation of *shamlat* lands, amendments were made to the 1961 Act in 1974 by the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974 (Haryana Act No.34 of 1974) whereby inter alia Section 7 and 13 were substituted and Sections 13-A and 13-B were inserted.

10. Section 13 of the 1961 Act as substituted by Haryana Act No.34 of 1974, which came into force with effect from **12.11.1974**, reads as under :-

"13. Bar of Jurisdiction. - No Civil Court shall have jurisdiction -

- (a) to entertain or adjudicate upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in a panchayat under this Act; or
- (b) in respect of any other matter which any officer is empowered by or under this Act to determine; or
- (c) to question the legality of any action taken or any matter decided by any authority empowered to do so under this Act."

11. Sections 13-A and 13-B, which were inserted in the 1961 Act by Haryana Act No.34 of 1974, were to the following effect: -

"13A. Certain decrees to be set aside and fresh trial of cases:-

- (1) Where a decree has been obtained from a civil Court by any person against any panchayat in respect of any land or other immovable property on the grounds of its being excluded from shamilat deh under clause (g) of Section 2 or on any of the grounds mentioned in sub-section (3) of section 4, and the copies of the relevant entries of the revenue records had not been produced in support of the averments made in the plaint, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer authorised by the State Government or any inhabitant of the village, wherein the land or other immovable property is situate may, within a period of two years from the date of coming into force of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974, make an application for setting aside the decree to the Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is situate.
- (2) On receipt of the application, the Assistant Collector of the first grade shall summon the record of the suit from the Civil Court concerned and also serve a notice in the manner prescribed, on the decree-holder.
- (3) After the record of the suit has been received and the service of the notice has been effected on the decree-holder the Assistant Collector of the first grade shall examine the record and hear the decree-holder in order to satisfy himself as to whether the copies of the

relevant entries of the revenue records in support of the averments made in the plaint had been produced during the trial of the suit. If he is satisfied that the copies of the said entries had not been so produced, he shall set aside the decree.

- (4) On setting aside of the decree, all rights, title and interests whatsoever in the land or other immovable property shall vest in the panchayat and the Assistant Collector of the first grade shall put the panchayat in possession of the same and for so doing he may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.
- (5) Notwithstanding anything herein before contained, any person aggrieved by the order passed under sub-section (3) may, within a period of thirty days from the date of setting aside of the decree or within such further period as the Assistant Collector of the first grade may allow on sufficient cause being shown, make an application to the Assistant Collector of the first grade for seeking relief in respect of any land or other immovable property on the ground of its being excluded from shamilat deh under clause (g) of Section 2 or on any of the grounds mentioned in sub-section(3) of Section 4. He may also claim the relief of possession or compensation or both. The State Government, alongwith the panchayat, shall also be impleaded as a party in these proceedings. The Assistant Collector of the first grade may, on such application, pass such order as he deems proper.
- (6) The State Government shall be represented in such application by the concerned Block Development and Panchayat Officer or any other officer appointed by the State Government for this purpose. The notice of application shall be served on such officer.
- (7) The procedure for deciding the application under sub-section (5) shall be the same as laid down in Section 88 of the Punjab Tenancy Act, 1887.
- (8) No such application shall be allowed only on the basis of any admission made by the Sarpanch or any representative of the Panchayat with respect to any right, title or interest in the land.
- (9) Any person aggrieved by an order of the Assistant Collector of the first grade passed under sub-section (5) may, within a period of thirty days from the date of the order, prefer an appeal to the Collector in such form and manner as may be prescribed.
- (10) The Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or

order and may pass such order in relation thereto as he may deem fit.

13B. Transfer of pending suits and institution of fresh proceedings:-

All suits pending in any civil Court in respect of any land or other immovable property wherein relief has been claimed on the ground of its being excluded from shamilat deh under clause (g) of Section 2 or on any of the grounds mentioned in sub-section (3) of Section 4 against the panchayat, shall stand transferred to, and the fresh proceedings for seeking relief on the aforesaid grounds shall be instituted before the Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is situate, who shall dispose of the same in the manner laid down in sub-sections (5) and (7) of Section 13-A."

12. Section 13-A as inserted in the 1961 Act vide Haryana Act No.34 of 1974 came up for consideration before an Hon'ble Division Bench of this Court in **The Karnal Co-operative Farmers Society Ltd., Pehowa Vs. Gram Panchayat, Pehowa, 1976 PLJ 37**, wherein it was held that the legislature had conferred arbitrary and unguided powers on the Assistant Collector to set aside the decree of the Civil Courts. Consequently, sub-Section (3) of Section 13-A, was declared ultra vires. The above said judgment was upheld by the Hon'ble Supreme Court in **State of Haryana Vs. Karnal Cooperative Farmers Societies Limited, (1993) 2 SCC 363**.

13. It may be observed here that the 1961 Act as applicable to the State of Punjab was amended by the Punjab Village Common Lands (Regulation) Act, 1976 (Punjab Act No.19 of 1976) whereby inter alia Section 7, 11, 12 and 13 were substituted and Section 13-A and Section 13-B were inserted. Section 11 provided for decisions of claims of right, title or interest in *shamlat deh* by the Collector, Section 12 attached finality to the orders passed while Section 13, which was similar to Section 13 in the 1961 Act as applicable to the State of Haryana, barred jurisdiction of Civil

Courts. Section 13-A laid down the penalties and procedure. Section 13-B which gave overriding effect to the provisions of the 1961 Act reads as under:-

“13-B. Provisions of this Act to be overriding –

The provisions of this Act shall have effect, notwithstanding anything to the contrary in any law or any agreement, instrument, custom or usage or any decree or order of any court or other authority.”

14. In view of striking down of some of the provisions by the High Court and to remedy the infirmities found by the High Court and for making some incidental changes and making some of the provisions more explicit so as to ensure more effective implementation, the 1961 Act as applicable in the State of Haryana was amended by the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980 (Haryana Act No.2 of 1981) whereby Section 13 inserted by Haryana Act No.34 of 1974 was substituted, Sections 13-A and 13-B inserted by Haryana Act No.34 of 1974 were omitted and Sections 13-A, 13-B, 13-C and 13-D were inserted w.e.f. **12.02.1981**. Section 13 barred jurisdiction of the Civil Court. Section 13-A provided for adjudication of title by the Collector. Section 13-B provided for appeal and revision. Section 13-C attached finality to orders passed and Section 13-D, which was similar to Section 13-B inserted in the 1961 Act (as applicable to the State of Punjab) by Punjab Act No.19 of 1976, gave overriding effect to the provisions of the 1961 Act.

15. Section 13 of the 1961 Act (as applicable to the State of Haryana) substituted by Haryana Act No.2 of 1981, reads as under:-

“Section 13 Bar of Jurisdiction - No civil court shall have jurisdiction -

- (a) to entertain or adjudicate upon any question whether -
 - (i) any land or other immovable property is or is not shamilat deh;
 - (ii) any land or other immovable property or any right, title or interest in such land or other immovable

property vests or does not vest in a Panchayat under this Act;

- (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or
- (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.”

16. Section 4 of Haryana Act No.2 of 1981 while substituting Section 13 barring jurisdiction of Civil Court also provided that Section 13 shall be deemed to have been substituted with effect from the 4th day of May, 1961.

17. In **Baljinder Singh Vs. Assistant Collector Ist Grade, Guhla, 1983 P.L.J. 116** the vires of Section 13 of the 1961 Act, as substituted by Haryana Act No.2 of 1981, were challenged. In that case, it was held by the Hon’ble Division Bench of this Court that the retrospective abrogation of jurisdiction of Civil Courts validly exercised by them from 1961 onwards, by section 4 of the Haryana Amendment Act 2 of 1981 fictionally substituting section 13 with effect from May 4, 1961, and thereby giving retrospectivity from that date, clearly amounted to trenching upon the judicial power by legislature. Consequently, the relevant part of the aforesaid section fictionally substituting Section 13 with effect from the 4th day of May, 1961, and thereby giving retrospectivity thereto from the said date, was held to be unconstitutional and struck down.

18. It may be observed here that Section 13-B inserted in 1961 Act as applicable to the State of Punjab w.e.f. **27.04.1976** by Punjab Act No.19 of 1976 (which is *pari materia* to Section 13-D in the 1961 Act as applicable to the State of Haryana) came up for consideration before an Hon’ble Division Bench of this Court in **Gurnam Singh and others Vs. Joint Director Panchayats, Punjab and others, 1984 RRR 187** which

followed the judgment in **Bajinder Singh's Case (supra)**, and held that the decrees obtained by the land owners from the Civil Courts which had become final either because no appeal was filed against the same or the appeals filed had been disposed of and decrees had been sustained, whereby they became the owners of the disputed land before the enforcement of Act No.19 of 1976, could not be ignored and the amending Act will not have any effect thereon.

19. However, in **CWP No.5419 of 1981 titled Baldev Singh Vs. State of Punjab, decided on 22.01.1982**, another Division Bench of this Court held that Section 13-B of the 1961 Act (as applicable to the State of Punjab) by itself authorized the overriding of any decree or order of the Court and did not interfere with eviction order passed under Section 7 of the 1961 Act by the Collector by ignoring ex-parte Civil Court decree on the ground of being collusive

20. The question as to whether the judgment in **CWP No.5419 of 1981 titled Baldev Singh Vs. State of Punjab, decided on 22.01.1982** runs contrary to the decision rendered in **Bajinder Singh's Case (Supra)** and followed in **Gurnam Singh's Case (Supra)** was referred to an Hon'ble Full Bench of this Court in **Gram Panchayat Batholi Khan Vs. Jagar Ram, 1991(1) RRR 368**. Hon'ble Full Bench while answering the reference in the affirmative observed as under :-

“7. Though there was no such provision in the Act as applicable to the State of Punjab, but it is evident that the decree passed by the competent civil Courts between the parties could not be ignored by the authorities under the Act, prior to the amendment of the Act by Punjab Act No. 19 of 1976. However, it may be made clear that the parties will always be at liberty to get those decree set aside on the grounds of collusion, fraud etc., or otherwise, by a competent Court. Unless the said decrees passed by the Civil Courts, are held to be collusion or obtained by fraud, by a competent civil Court,

the same could not be ignored by the authorities under the Act in view of the judgment rendered by the Division Bench in *Baljinder Singh's* case (supra), the correctness of which was not challenged before us.”

21. The judgment of Hon’ble Full Bench of this Court in **Gram Panchayat Batholi Khan Vs. Jagar Ram, 1991(1) RRR 368** was considered by Hon’ble Supreme Court in **Gram Panchayat of Village Naulakha Vs. Ujagar Singh 2000 (4) R.C.R. (Civil) 749**. While overruling the above-said judgment Hon’ble Supreme Court observed as under:-

“5. We may state that the view taken by the Full Bench of the Punjab and Haryana High Court in Jagar Ram's case is not correct and in fact, it runs contrary to the provisions of Section 44 of the Indian Evidence Act. That section provides that : Any party to a suit or proceeding may show that any judgment, order or decree which is relevant under Sections 40, 41, 42 and which has been delivered by a Court not competent to deliver it or was obtained by *fraud* or *collusion*. (Section 40 refers to the relevance of previous judgments which are pleaded as a bar to a second suit or trial and obviously concerns Section 11 Civil Procedure Code).

6. It appears from commentary in Sarkar's Evidence Act (13th Ed., reprint) (at p. 509) on section 44 that it is the view of the Allahabad, Calcutta, Patna, Bombay High Courts that before such a contention is raised in the latter suit or proceeding, it is not necessary to file an independent suit. The passage from Sarkar's Evidence which refers to various decisions reads as follows:-

"Under Section 44 a party can, in a collateral proceeding in which fraud may be set up as a defence, show that a decree or order obtained by the opposite party against him was passed by a court without jurisdiction or was obtained by fraud or *collusion* and it is not necessary to bring an independent suit for setting it aside (**Bansi v. Dhapo, ILR 24 Allahabad 242; Rajib v. Lekhan, ILR 17 Calcutta 11; Parbati v. Gajraj, AIR 1937 Allahabad 28; Prayag v. Siva, AIR 1926 Calcutta 1; Hare Krishna v. Umesh, AIR 1921 Patna 193; Aswini v. Banamali, 21 CWN 594; Machharam v. Kalidas, ILR 19 Bombay 821; Ranganath v. Govind, ILR 28 Bombay 639; Jamiruddin v. Khadejanessa, AIR 1929**

Ca. 685; Bhagwandas v. Patel & Co., AIR 1940 Bon. 131; Bishunath v. Mirchi, AIR 1955 Patna 66; Vijaya v. Padmanabham, AIR 1955 Andhra Pradesh 112)."

15. Thus, in order to contend in a latter suit or proceeding that an earlier judgment was obtained by collusion, it is not necessary to file an independent suit as stated in Jagar Ram's case for a declaration as to its collusive nature or for setting it aside, as a condition precedent. In our opinion, the above cases cited in Sarkar's Commentary are correctly decided. We do not agree with the decision of the Full Bench of the Punjab and Haryana High Court in Jagar Ram's case. The Full Bench has not referred to Section 44 of the Evidence Act nor to any other precedents of other Courts or to any basic legal principle."

22. It is also pertinent to observe here that Section 13-A providing for adjudication of question of title, as inserted by Haryana Act No.2 of 1981 was omitted by the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1991 (Haryana Act No.9 of 1992) w.e.f. 11.02.1992 and re-inserted by The Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1991 (Haryana Act No.9 of 1999) w.e.f. 10.03.1999. During the period w.e.f. 11.02.1992 to 10.03.1999 after omission of Section 13-A by Haryana Act No.9 of 1992 till reinsertion of Section 13-A by Haryana Act No.9 of 1999, there was no forum provided under the 1961 Act (as applicable to the State of Haryana) for deciding the question of title other than that of Assistant Collector First Grade empowered to decide the question of title under the proviso to Section 7 of the 1961 Act. However, the question as to what was the effect of omission of Section 13-A during the period from 11.02.1992 to 10.03.1999 does not arise and is not required to be adjudicated upon in the present case.

23. In the present case plaintiff-Ram Kala filed Civil Suit No.80 of 1974 titled Ram Kala Vs. Gram Panchayat Rawar Jagir through its Sarpanch for declaration as to his ownership and possession over the land in dispute measuring 41 kanals 7 marlas with consequential relief of

permanent injunction. The Sarpanch filed written statement and made statement admitting the claim of plaintiff-Ram Kala. In view of the same, suit of the plaintiff was decreed. Subsequently, Ram Kala transferred land measuring 17 kanals 16 marlas out of the above-said land in favour of Kundan by suffering judgment and decree dated 19.02.1981 in Civil Suit No.62 of 1981.

24. Since at the time of passing of judgments and decrees dated 17.05.1974 and 19.02.1981 the Civil Court had jurisdiction to entertain and adjudicate upon the title suit, the judgments and decrees dated 17.05.1974 and 19.02.1981 were not liable to be set aside on the ground of lack/bar of jurisdiction of the Civil Court.

25. However, in the suit filed by Ram Kala there was no adjudication on merits and the judgment and decree were passed on the basis of written statement filed and statement made by the Sarpanch admitting the claim of plaintiff-Ram Kala. There is no evidence to prove that the Sarpanch was authorized by the Gram Panchayat by passing any resolution, to file written statement and make statement admitting the claim of plaintiff-Ram Kala in the suit filed by him. In the absence of such resolution, written statement filed and statement made by the Sarpanch admitting the claim of plaintiff-Ram Kala was without any authority and act of collusion and fraud.

26. Further, it may be observed that as per Jamabandi for the year 1955 and 1962-63, the land in dispute was owned and possessed by the Gram Panchayat through *Chokatedar*. In the suit filed by the respondents No.4 to 8 the petitioners did not produce any evidence to prove that (i) the land in dispute was in individual cultivating possession of their predecessor in interest Ram Kala as a proprietor of the village prior to 26.01.1950 not

being in excess of his share; the land in dispute was never leased out to him and he had never paid any rent except the land revenue; or (ii) that Ram Kala was in possession of the land in dispute for more than 12 years at the time of commencement of Punjab Village Common Lands (Regulation) Act, 1953 and Pepsu Village Common Lands (Regulation) Act, 1954 without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon; or (iii) that the land in dispute had been partitioned and brought under cultivation by their predecessor in interest Ram Kala before the 26th January 1950. The petitioners failed to prove essential conditions for applicability of exclusion clauses of Section 2(g) and Section 4 (3) of the 1961 Act to bring the land in dispute out of the ambit of *shamlat deh* vesting in Gram Panchayat and failed to rebut the presumption of truth attached to entries in the above said jamabandies.

27. By the material on record, the impugned judgment and decree dated 17.05.1974 in favour of plaintiff-Ram Kala and subsequent judgment and decree dated 19.02.1981 in favour of Kundan are proved to have been procured by collusion and fraud.

28. Respondents No.4 to 8, being inhabitants of the village and beneficiaries of *shamlat deh*, had *locus standi* to file and maintain the suit. Suit filed within 3 years of knowledge was within limitation. Even otherwise encroachment of a public property is a public wrong. So long as the encroachment continues, the wrong continues, giving rise to continuing cause of action and defence of suit being time barred would not be available. Reference in this regard may be made to the judgment of Hon'ble Supreme Court in **Hari Ram Vs. Jyoti Parsad and another, (2011) 2 SCC 682**. Since illegal possession over the land was continuous wrong being committed by the petitioners, the suit was not time barred.

29. In **Mohan Lal Vs. Mohan Singh, 1995 (3) PLR 564** an Hon'ble Single Bench of this Court observed that the Courts are guardians of public property.

30. In **Gram Panchayat of Village Naulakha Vs. Ujagar Singh and others, (2000) 7 Supreme Court Cases 543** Hon'ble the Supreme Court observed that property of a public institution cannot be allowed to be jeopardized by persons who, at an earlier point of time, might have represented it and who were expected to effectively defend public interest and community property.

31. In this factual and legal backdrop, the impugned Civil Court judgments and decrees dated 17.05.1974 and 19.02.1981, having been procured by collusion and fraud, could be ignored and set aside by respondent No.3 Collector Kaithal on the ground of collusion and fraud in suit filed under Section 13A of the 1961 Act and filing of independent civil suit before the Civil Court for setting aside the same on the grounds of collusion and fraud was not required.

32. It follows from the above discussion that the impugned judgment and decree dated 19.06.2006 and orders dated 13.06.2007, and 13.12.2017 passed by respondents No.1 to 3 respectively do not suffer from any illegality and are not liable to be quashed.

33. Consequently, the writ petition is devoid of any merit and is accordingly dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

14.03.2019
kothiyal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No