

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

Date of decision: 10.09.2019

(i) CWP No.24871 of 2019

Sushma Rani

.... Petitioner

Vs.

The Commissioner/Joint Development Commissioner (IRD), SAS Nagar
(Mohali) and others

....Respondents

(ii) CWP No. 24835 of 2019

Mishan Pal

.... Petitioner

Vs.

The Commissioner/Joint Development Commissioner (IRD), SAS Nagar
(Mohali) and others

....Respondents

(iii) CWP No. 24866 of 2019

Jasrath Ram

.... Petitioner

Vs.

The Commissioner/Joint Development Commissioner (IRD), SAS Nagar
(Mohali) and others

....Respondents

(iv) CWP No. 24869 of 2019

Subh Karan

.... Petitioner

Vs.

The Commissioner/Joint Development Commissioner (IRD), SAS Nagar
(Mohali) and others

....Respondents

(v) CWP No. 24870 of 2019

Ram Karan Mehta

.... Petitioner

Vs.

The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others

....Respondents

**CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Keshav Pratap Singh, Advocate for the petitioner(s).

ARUN KUMAR TYAGI, J.

1. This order shall dispose of (i) CWP No.24871 of 2019 titled Sushma Rani Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others; (ii) CWP No.24835 of 2019 titled Mishan Pal Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others; (iii) CWP No.24866 of 2019 titled Jasrath Ram Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others; (iv) CWP No.24869 of 2019 titled Subh Karan Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others and (v) CWP No.24870 of 2019 titled Ram Karan Mehta Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) because similar question of facts and law are involved in these petitions.

2. The petitioners, residents of village Bhagwasi, Tehsil Derabassi, District S.A.S. Nagar (Mohali), have filed the above mentioned

writ petitions seeking issuance of writ in the nature of certiorari for quashing the order dated 23.01.2019 (**Annexure P-8**) passed by respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) whereby order dated 31.12.2012 passed by respondent No.2-Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) (**Annexure P-6**), dismissing petition filed by respondent No.3-Gram Panchayat, Bhagwasi under Section 11 of the Punjab Village Common Land (Regulation) Act, 1961 (for short 'the 1961 Act') has been set aside and the case has been remanded back for a fresh decision.

3. For the sake of convenience, the facts are being extracted from CWP No.24871 of 2019 titled Sushma Rani Vs. The Commissioner/Joint Development Commissioner (IRD), SAS Nagar (Mohali) and others. The predecessors of the petitioners in the above mentioned writ petitions, claiming themselves to be in individual cultivating possession as proprietors of land measuring 176 bigha 18 biswas bearing Khasra No. 153, 154, 155, 156, 157, 158, 162, 163, 161, 168, 166, 167, 169, 170, 172, 173, 175, 176, 178, 179, 184, 185, 186, 356, 404, 406, 407, 408, 409, 412, 160, 171, 405, 151, 152, 159, 164, 165, 150 situated within the revenue estate of village Bhagwasi (hereinafter referred to as the land in dispute), assessed to land revenue, not being in excess of their share in the shamlat deh, partitioned and brought under cultivation before 26.01.1950 and interference in their possession by respondent No.3-Gram Panchayat, Bhagwasi, filed (i) Civil Suit No.146 of 12.06.1962 titled Babu Ram and another Vs. Gram Panchayat, Mianpur Bhagwasi, (ii) Civil Suit No.150 of

14.06.1962 titled Kishna Vs. Gram Panchayat, Mianpur Bhagwasi, (iii) Civil Suit No. 197 of 02.07.1962 titled Mam Raj Vs. Gram Panchayat, Mianpur Bhagwasi, (iv) Civil Suit No.198 of 02.07.1962 titled Sardhi Vs. Gram Panchayat, Mianpur Bhagwasi, and (v) Civil Suit No. 199 of 02.07.1962 titled Dasondhi Vs. Gram Panchayat, Mianpur Bhagwasi for permanent injunction. All the above-mentioned civil suits except Civil Suit No.197 of 02.07.1962 titled Mam Raj Vs. Gram Panchayat, Mianpur Bhagwasi were decreed by the learned Sub Judge, 1st Class, Rajpura vide judgment and decree dated 01.02.1963 (**Annexure P-1**), observing that the land in dispute did not vest in the Gram Panchayat under Section 2(g) read with Section 3 of the 1961 Act and the decree for permanent injunction was accordingly passed restraining the Gram Panchayat, Mianpur Bhagwasi from taking possession of the suit land. Respondent No.3-Gram Panchayat, Bhagwasi filed petition under Section 7 of the 1961 Act for ejectment of the predecessors of the petitioners which was dismissed by the Collector/D.D.P.O., Patiala vide order dated 30.01.1980 (**Annexure P-2**). The predecessors of the petitioners filed application under Section 11 of the 1961 Act which was contested by respondent No.3-Gram Panchayat, Bhagwasi. The application was allowed by the Collector, Sub Division Rajpura vide order dated 14.01.1981 (**Annexure P-3**) and mutation was also entered and sanctioned in their favour. Respondent No.3-Gram Panchayat, Bhagwasi filed application under Section 11 of the 1961 Act on 14.07.2011 (**Annexure P-4**) which was contested by the petitioners in terms of written statement (**Annexure P-5**). The application was dismissed by the respondent No.2-Additional Deputy Commissioner (Development)-

cum-Collector, S.A.S. Nagar (Mohali) vide order dated 31.12.2012 (**Annexure P-6**) holding that the same is barred by the principle of res-judicata. Respondent No.3-Gram Panchayat, Bhagwasi filed appeal against the above said order before respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) which was allowed vide impugned order dated 23.01.2019 (**Annexure P-8**) whereby order dated 31.12.2012 passed by respondent No.2-Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) was set aside and the case was remanded back for decision afresh after giving an opportunity of being heard to the parties and examination of the revenue record.

4. The petitioners have challenged the impugned order dated 23.01.2019 (**Annexure P-8**) passed by respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) on the grounds that the application under Section 11 of the 1961 Act filed by respondent No.3-Gram Panchayat, Bhagwasi after more than 30 years was barred by limitation and also by the principle of res-judicata and order dated 31.12.2012 (**Annexure P-6**) passed by respondent No.2-Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) holding the application to be barred by the principle of res-judicata and ruling out fraud and collusion, did not suffer from any illegality merely due to not framing of issues. The petitioners have accordingly prayed that the impugned order dated 23.01.2019 (**Annexure P-8**) being illegal and against facts and law may be quashed.

5. We have heard learned Counsel for the petitioners and perused the record.

6. Learned Counsel for the petitioners has argued that all the suits filed by the predecessors of the petitioners except Civil Suit No.197 of 02.07.1962 titled Mam Raj Vs. Gram Panchayat, Mianpur Bhagwasi, were decreed vide judgment and decree dated 01.02.1963 holding that the land in dispute did not vest in the Gram Panchayat under Section 2(g) read with Section 3 of the 1961 Act and decree for permanent injunction was accordingly passed restraining the Gram Panchayat, Mianpur Bhagwasi from taking possession of the suit land. The Civil Court had jurisdiction to adjudicate upon the question of title and the decree passed is valid and binding on the parties. Application filed by the Gram Panchayat under Section 7 of the 1961 Act was dismissed vide order dated 30.01.1980 and application filed by the predecessors of the petitioners under section 11 of the 1961 Act was allowed vide order dated 14.01.1981. Since declaration under Section 11 of the 1961 Act had already been granted on earlier application filed by the predecessors of the petitioners, the second application under Section 11 of the 1961 Act filed by the Gram Panchayat on the same cause of action between the same parties was barred by the principle of res-judicata. The application filed by the Gram Panchayat after a gap of more than 30 years from the date of grant of earlier declaration was time barred. Respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) set aside the impugned order holding that respondent No.2- Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) had not framed

issues and did not consider the questions of collusion and connivance between the Sarpanch and the petitioners and non-applicability of the principle of res-judicata. For adjudicating petition under Section 11 of the 1961 Act, it was not necessary for respondent No.2- Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) to frame issues. Respondent No.2- Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) had given his findings as to whether there was collusion and connivance between the Sarpanch and the petitioners and the application being barred by the principle of res-judicata. The case is covered by a judgment of this Court in the case of **Maghi Ram (deceased) through his LRs and another Vs Gram Panchayat, Chirwa and others : 2012 (1) Local Acts Reporter 519**. Therefore, the impugned order dated 23.01.2019 may be quashed.

7. In the present case the predecessors of the petitioners filed (i) Civil Suit No.146 of 1962 tiled as Babu Ram and another Vs. Gram Panchayat, Mianpur Bhagwasi; (ii) Civil Suit No.150 titled as Krishan Vs. Gram Panchayat, Mianpur Bhagwasi; (iii) Civil Suit No.197 of 1962 titled as Mam Raj Vs. Gram Panchayat, Mianpur Bhagwasi; (iv) Civil Suit No.198 titled as Sardhi Vs. Gram Panchayat, Mianpur Bhagwasi and (v) Civil Suit No.199 titled as Dasondhi Vs. Gram Panchayat, Mianpur Bhagwasi for permanent injunction for restraining defendant-Gram Panchayat from interfering with their possession and leasing out the land in dispute. The suits were contested by the defendant-Gram Panchayat, Mianpur Bhagwasi on the ground that Gram Panchayat was the owner of the suit land. Issues were framed and the parties were given opportunity to

produce evidence as noticed in judgment and decree dated 01.02.1963 **(Annexure P-1)**. The plaintiffs did not produce any evidence to prove that there was any partition in the village and the land in dispute fell to their share. The plaintiffs who appeared in the witness-box were not cross-examined by the defendant Gram Panchayat Mianpur Bhagwasi. Sadhu Ram, Sarpanch of Gram Panchayat, Mianpur Bhagwasi, who appeared in the witness box on behalf of the defendant Gram Panchayat, Mianpur Bhagwasi admitted most of the facts alleged by the plaintiffs. All the civil suits, except Civil Suit No.197 of 1962 titled as Mam Raj Vs. Gram Panchayat, were decreed vide judgment and decree dated 01.02.1963 **(Annexure P-1)** and the land in dispute was held not to vest in defendant-Gram Panchayat, Mianpur Bhagwasi under Section 2(g) read with Section 3 of the 1961 Act and decree for permanent injunction restraining the defendant-Gram Panchayat, Mianpur Bhagwasi from taking possession of the suit land was passed. Since the claim of plaintiff Mam Raj in Civil Suit No.197 of 1962 titled as Mam Raj Vs. Gram Panchayat was not supported by revenue record, the above said suit was dismissed. Respondent No.3-Gram Panchayat, Bhagwasi did not file any appeal against judgment and decree dated 01.02.1963 **(Annexure P-1)**. Instead, respondent No.3-Gram Panchayat, Bhagwasi subsequently filed petition No.7(1) DDPO of 1977 under Section 7 of the 1961 Act titled as Gram Panchayat, Bhagwasi Vs. Babu Ram and another but the Sarpanch Gram Panchayat, Bhagwasi did not submit any evidence in the case while the respondents submitted copy of judgment and decree dated 01.02.1963 passed by learned Sub Judge First Class, Rajpura. In view of the judgment and decree dated 01.02.1963, the

ejectment petition was dismissed by the Collector-cum-D.D.P.O., Patiala vide order dated 30.01.1980 (**Annexure P-2**) as not being maintainable and barred by the principle of res-judicata. Respondent No.3-Gram Panchayat, Bhagwasi did not file any appeal against the above mentioned order dated 30.01.1980 dismissing the ejectment application. The predecessors of the petitioners filed application under Section 11 of the 1961 Act. Sh. Mati Ram Sarpanch appeared in the witness box on behalf of the respondent no. 3-Gram Panchayat, Bhagwasi and in his written reply admitted the claim of the applicants. The applicants examined Ram Sarup as AW-1 and produced documents Exhibit P-1 to P-4. Sh. Hazoora Singh, Patwari was examined as Court witness. In view of the judgment and decree passed in favour of the predecessors of the petitioners, admission of Sh. Mati Ram, Sarpanch of respondent No.3-Gram Panchayat and statement of Sh. Hazoora Singh, Patwari, the Collector, Sub Division, Rajpura vide order dated 14.01.1981 (**Annexure P-3**) granted declaration under Section 11 of the 1961 Act to the effect that the land in dispute did not vest in respondent No.3-Gram Panchayat, Bhagwasi and the applicants had a proprietary claim to the same. Respondent No.3-Gram Panchayat, Bhagwasi did not file any appeal against the above-mentioned order also.

8. Respondent No.3-Gram Panchayat filed petition No.268/VCL titled Gram Panchayat Bhagwasi Vs. Shubhkaran and others under Section 11 of the 1961 Act challenging the Civil Court judgment and decree and orders passed by the Collector in the applications filed under Section 7 and 11 of the 1961 on the grounds of fraud and collusion. In para No.4 of the petition, it has been categorically pleaded that the respondents and their

predecessors with malafide intentions with the connivance of the then Sarpanch of the Gram Panchayat got the land mutated in their favour by procuring a false decree from the Civil Court which had no jurisdiction to pass a decree and the decree was passed by playing a fraud by the Gram Panchayat and the Sarpanch.

9. The petition was dismissed by respondent No.2-Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) vide order dated 31.12.2012 (**Annexure P-6**) in view of Civil Court Judgment and decree dated 01.02.1963 and orders dated 30.01.1980 and 14.01.1981 passed by the Collector while observing that order passed by the Collector can not be said to be collusive and the Gram Panchayat had never challenged the orders till the filing of the present petition which was barred by the principle of res-judicata. Respondent No.3-Gram Panchayat, Bhagwasi filed appeal against the above said order which has been allowed by respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) on the grounds that the issues were not framed by the lower court which also did not consider as to whether the order passed by the Collector was the result of connivance between Sarpanch and respondents and whether the principle of res-judicata was applicable in the case and accordingly remanded the case to the Collector for decision afresh as mentioned above.

10. The question which first arises is whether Civil Court judgment and decree dated 01.02.1963 and orders dated 30.01.1980 and 14.01.1981 based on the same could be challenged on the ground of fraud and collusion?

11. Section 13 of the 1961 Act as originally enacted provided that no civil Court shall have any jurisdiction over any matter arising out of the operation of the 1961 Act. Section 13 of the 1961 Act as substituted by the Punjab Act No.19 of 1976 barred jurisdiction of the Civil Court by providing that 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 the 1961 Act; or(b) in respect of any other matter which any officer is empowered by or under the 1961 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 the 1961 Act. It is settled by a catena of judgments that prior to the amendment of the 1961 Act by Punjab Act No.19 of 1976, jurisdiction of the Civil Court was 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. Consequently, a decree passed by a Competent Civil Court during the above said period binds the parties thereto and cannot be challenged on the ground of lack of jurisdiction. However, such a Civil Court decree can be challenged on the grounds of fraud and collusion and where collusion and fraud is writ large, such a decree can be ignored in collateral proceedings even without getting it set aside by filing a separate suit. Reference in this regard may be made to

judgment of the Hon'ble Supreme Court in **Gram Panchayat Naulakha vs. Ujjagar Singh and others (2000) 7 SCC 543.**

12. Rule 16 (3) of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short the 1964 Rules) provides that the Sarpanch or Panch appointed by the Gram Panchayat under Rule 16(1) of the 1964 Rules shall not be competent to compound or admit claim of the party suing the Panchayat without prior authorization by the Panchayat by a resolution in writing, passed in a meeting specifically called for the purpose. In **Gram Panchayat of Village Naulakha Vs. Ujagar Singh and others : (2000) 7 SCC 543** Hon'ble the Supreme Court has observed that the 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. As observed in **Mohan Lal Vs. Mohan Singh, 1995 (3) PLR 564** and also in **Gurdial Singh and others Vs. Joint Director, Panchayats (exercising powers of Commissioner), Punjab, Chandigarh, and others: 2013 (25) RCR (Civil) 898** the Court being a guardian of public property is under a solemn duty to ensure that every effort is made within legal domain to protect public property from illegal encroachments.

13. It follows from the above discussion that the judgment and decree dated 01.02.1963 and orders dated 30.01.1980 and 14.01.1981 can be challenged on the grounds of fraud and collusion.

14. In the present case, the factum of failure to cross examine the plaintiffs who appeared as witnesses, admission of most of the facts of the plaintiffs by Sh. Sadhu Ram Sarpanch in his statement before learned Sub

Judge, First Class, Rajpura in the above mentioned civil suits; not filing of any appeal against the Judgment and decree dated 01.02.1963 passed by learned Sub Judge First Class, Rajpura; non-production of any evidence before the Collector in petition filed under Section 7 of the 1961 Act; admission of claim of the predecessors of the petitioners by Sh. Mati Ram Sarpanch in written reply filed on behalf of the Gram Panchayat to the petition filed by the predecessors of the petitioners under Section 11 of the 1961 Act without any resolution of the Gram Panchayat in this regard; not filing of any appeal against order dated 30.01.1980 dismissing the petition under Section 7 of the 1961 Act and order dated 14.01.1981 allowing petition filed by the predecessors of the petitioners under Section 11 of the 1961 Act, clearly points out that the above-said said judgment and decree and orders are collusive between the predecessors of the petitioners and the then Sarpanches of the Gram Panchayat and were procured by playing fraud. No doubt, impugned judgment and decree dated 01.02.1963 **(Annexure-P1)** passed by learned Sub Judge Ist Class, Rajpura between the parties prior to the amendment of the Act by Punjab Act No.19 of 1976 cannot be challenged by respondent No.3-Gram Panchayat, Bhagwasi and ignored by the authorities under the 1961 Act on the ground of lack of jurisdiction of Civil Court but the same can be challenged by respondent No.3-Gram Panchayat, Bhagwasi on the grounds of collusion and fraud and the Collector can also go into this aspect and adjudicate upon the questions of collusion and fraud while adjudicating upon the question of title.

15. In **Maghi Ram (deceased) through his Legal Representatives Vs. Gram Panchayat, Chirwa : 2012 (1) Local Acts**

Reporter 519 (relied upon by learned Counsel for the petitioners) a Division Bench of this Court has held that the adjudication on a question of title, pursuant to a petition filed under Section 11 of the 1961 Act, operates as res judicata in a subsequent petition pertaining to the same land and between the same parties.

16. However, in the present case, in the eventuality if the impugned judgment and decree dated 01.02.1963 and order dated 30.01.1980 dismissing the petition under Section 7 of the 1961 Act and order dated 14.01.1981 allowing petition under Section 11 of the 1961 Act filed by the predecessors of the petitioners is held to be collusive and result of fraud, principle of res-judicata will not be applicable and petition under Section 11 filed by respondent No.3-Gram Panchayat, Bhagwasi will not be liable to be dismissed as being barred by the principle of res-judicata.

17. Prima facie petition filed by respondent No.3-Gram Panchayat, Bhagwasi under Section 11 of the 1961 Act within 3 years of knowledge of collusion and fraud has to be considered to be within limitation. Even otherwise encroachment of a public property is a continuing 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.**

18. The question which next arises is as to what procedure is to be followed by the Collector in adjudication of the question of title?

19. Section 11 of the 1961 Act confers jurisdiction on the Collector to decide question of title **in such manner as may be prescribed**. Rule 21 A of the 1964 Rules provides that the Collector shall decide the matter, **after affording a reasonable opportunity to the parties to substantiate their respective claims**. It is now well settled by a catena of Judgments that for the exercise of jurisdiction to adjudicate upon the question of title, the Collector is a substitute for civil Courts and, as far as possible, has to follow a procedure akin to the procedure adopted by civil Court, for deciding a suit. The Collector is, therefore, required, while adjudicating a dispute under Section 11 of the 1961 Act, to call upon the Panchayat, or where the Gram Panchayat has filed a petition, the opposite party to file its reply and upon receipt of reply, if any, to frame issues, grant an opportunity to parties to lead evidence and then, proceed to record his opinion in favour or against the claim set out in the petition. Reference in this regard may be had to the judgments of the Division Benches of this Court in **Jagir Singh Vs. State of Punjab and others, 2013 (3) LAR 354** and **Santa Singh and others Vs. State of Punjab and another, 2012(3) LAR 560**. However, it may be added here that merely non-framing of issues will not vitiate the proceedings where the parties are alive to the nature of the dispute and have led evidence in support thereof. Reference in this regard may be made to the judgments of the Division Bench of this Court in **Kashmir Singh and others Vs. Joint Development Commissioner (IRD), Punjab, Chandigarh and others: 2006(1) LAR 606**.

20. In the present case respondent No.2-Additional Deputy Commissioner (Development)-cum-Collector, S.A.S. Nagar (Mohali) not only omitted to frame issues but also did not give any opportunity to the applicant Gram Panchayat, Bhagwasi to produce evidence to prove its claim of the impugned judgment and decree and orders being collusive and having been procured by fraud.

21. In these facts and circumstances, the impugned order dated 23.01.2019, passed by respondent No.1-the Commissioner/Joint Development Commissioner (IRD), S.A.S. Nagar (Mohali) remanding the case to the collector for fresh decision did not suffer from any illegality.

22. Accordingly, the writ petitions, being devoid of any merit, are dismissed.

23. However, it is classified that the observations made by us for disposal of these writ petitions shall not be treated as expression of any opinion on merits so as to bind the Collector who shall adjudicate upon the question of title without being influenced by the same.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

10.09.2019
Kavneet Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No