

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 12080 of 2020 (O&M)

Date of Decision: 09.09.2020

LABH CHAND AND ANOTHER

...*Petitioners*

VS.

STATE OF HARYANA AND OTHERS

....*Respondents*

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

Present: Mr. S.S. Momi, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

Mr. Pankaj Maini, Advocate,
for respondents No. 5 to 12.

RAKESH KUMAR JAIN (J.)

The petitioners have prayed for the issuance of a writ in the nature of *certiorari* for quashing the order of the Collector, Kurukshetra dated 30.03.2007 (Annexure P-14), the order dated 14.08.2007 (Annexure P-15) of the Commissioner, Ambala Division, Ambala and the order dated 15.01.2020 (Annexure P-16) of the Financial Commissioner, Haryana by which the suit filed under Section 13 (A) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (for short "the Act") by the private respondents herein has been decreed and the Civil Court decrees set up by the petitioners in order to claim the ownership of the land in question have been held to be null and void.

In brief, the petitioners are the residents of Village Kalsa, Tehsil Pehowa, District Kurukshetra, Haryana. The land in question is recorded as *shamlat deh hasab rasad zar khewat* and was mutated in the name of the

Gram Panchayat, Village Kalsa on the instructions issued by the Government of Haryana after the enactment of the Punjab Village Common Lands (Regulation), Act in the year 1953. The petitioners are the successor in interest of Sardari Lal Son of Diwan Chand who had filed a civil suit No. 327/1973 titled as Sardari Lal Vs. Gram Panchayat, Kalsa for declaration that he is owner in possession of the suit land measuring 105 kanal 4 marla which was decreed on 26.05.1973 by the Sub Judge, First Class, Kaithal. The relevant portion of the decree is reproduced as under:-

“And it is ordered that the in view of the statement of the Defdt. And written statement filed by him admitting the claim of the plaintiff, the suit is decreed with no order as to costs.”

It is pertinent to mention here that the predecessor-in-interest of the petitioners, namely, Sardari Lal had averred in his plaint/suit that he is a co-sharer in the *shamlat deh*, not exceeding to his share, without payment of rent except the land revenue. The petitioners have attached documents as Annexures P-3 (Colly.) pertaining to other suits filed by Mohinder Singh Son of Bhagat Singh Vs. Gram Panchayat which was decreed on 19.05.1973 by the Court of Sub Judge, First Class, Kaithal with the following observations:-

“In view of the statement of the defendant and written statement filed by him, admitting the claim of the plaintiff, the suit of plaintiff is hereby decree with no orders as to costs.”

The petitioners have attached the documents of Civil Suit No. 297 of 1973 titled as Diwan Chand Vs. Gram Panchayat, Village Kalsa which was decreed on 19.05.1973, Civil Suit No. 298 of 1973 titled as Soran

Singh Vs. Gram Panchayat, Village Kalsa decreed on 19.05.1973, Civil Suit No. 311 of 1973 titled as Ram Singh Vs. Gram Panchayat, Village Kalsa, decreed on 26.05.1973, Civil Suit No. 318 of 1973 titled as Sharam Chand Vs. Gram Panchayat, Village Kalsa decreed on 26.05.1973 and Civil Suit No. 333 of 1973 titled as Manga Ram Vs. Gram Panchayat, Village Kalsa decreed on 01.06.1973. All the aforementioned Civil Suits were decreed in the same manner in which the Civil Suit filed by Mohinder Singh was decreed i.e. on the basis of the statement made by the then Sarpanch, admitting the claim of the plaintiffs both orally as well as in the written statement. It is further averred in the petition that on the basis of the Civil Court decree, mutation was sanctioned in favour of the petitioners and similarly situated other persons but by the amending Act No. 34 of 1974 which came into force w.e.f. 16.08.1974, the Civil Court decrees passed prior to 16.08.1973 were annulled on administrative instructions. The said action was challenged in this Court vide CWP No. 525 of 1975 titled as Banarasi Dass and Others Vs. Gram Panchayat, Village Kalsa. The writ was allowed by this Court vide order dated 06.02.1975 wherein it was held that the decree passed prior to the amendment of the Act i.e. 16.08.1974 cannot be annulled on the ground of lack of jurisdiction.

The Special Leave Petition/Civil Appeal No. 165 of 1978 filed by the Gram Panchayat against the order of the High Court was dismissed by the Hon'ble Supreme Court on 11.07.1987 for non-prosecution. It is also the case of the petitioners that Section 13(D) was also added on 11.02.1981 in the statute whereby all the decrees passed by the Civil Court were declared null and void. The said amendment of Act dated 11.02.1981 was also

challenged in this Court vide CWP No. 565 of 1981. The writ was decided on 13.01.1983 and it was held that the Legislature had no jurisdiction to annul the decrees passed by the Civil Court from time to time as the Civil Court had the jurisdiction to pass such decrees. Aggrieved against the said order dated 13.01.1983, the Special Leave Petition was filed by the Gram Panchayat but the same was dismissed on 15.07.1987.

It is further averred that the Gram Panchayat, Village Kalsa had filed a Civil Suit (Annexure P-6) for declaration against one Charan Singh in order to challenge the decree passed in Civil Suit No. 22 of 1974 but the said suit was not contested by the Gram Panchayat as plaintiff and was dismissed on 02.05.1979 for want of prosecution.

The petitioners have also made a reference of another Civil Suit filed by the Gram Panchayat (through Administrator) against one Ram Singh which was dismissed on 21.11.1979 because the Gram Panchayat did not lead any evidence despite taking several dates and ultimately its evidence was closed by invoking Order 17 Rule 3 of the Code of Civil Procedure, 1908 (for short "the CPC") and the suit was dismissed in the absence of any evidence.

It is further averred that two residents of the Village Kalsa, namely, Bhalla Ram Son of Harphul and Ronki Ram Son of Mansa Ram, had also filed a suit for declaration to challenge the Civil Court decrees passed in the years 1973 and 1974 in which the decree-holder was impleaded as defendant No. 1 and Gram Panchayat was impleaded as defendant No. 2 but the said suit was dismissed on 11.05.1993. It is pertinent to note here that the

suit filed by those two persons from the village was dismissed for not leading any evidence.

It is further averred that the Gram Panchayat had filed a suit for declaration against one Charan Singh for setting aside the Civil Court decree but the said suit was dismissed again for non-prosecution. Now, the petitioners and similarly situated other decree holders of 1973 and 1974 were sanguine of the declaration of their ownership rights on the basis of the decrees obtained by them in the year 1973 and 1974 but the present litigation was initiated by the predecessor-in-interest of the private respondents by filing another civil suit in order to challenge the collusive decrees obtained by the petitioners and other similarly situated persons of the land in dispute which is recorded as *shamlat deh* in which they are the co-sharers. The Civil Court returned the plaint of the suit under Order 7 Rule 10 of the CPC on the ground that the Civil Court does not have the jurisdiction in view of Section 13 of the Act as it vests with the Collector. The suit was, thus, tried by the Collector, Kurukshetra. It is pertinent to mention that as many as 84 suits were filed out of which 33 suits were consolidated with the Case No. 247-DC-2002 titled as Niranjan Singh Vs. Gurpal Singh and Others and other 51 suits were consolidated with the Case No. 255-DC-2002 titled as Niranjan Singh Vs. Joginder Singh and others. The suits were decreed, order dated 19.08.1974 was set aside and the Gram Panchayat was declared as the owner of the property in dispute. Against the said orders, plaintiffs in the suit and the respondents except Gram Panchayat filed appeals before the Commissioner, Ambala Division, Amabala who vide order dated 28.02.2006

set aside the order dated 28.05.2005 passed by the Collector, Kurukshetra and remanded the matter back with certain directions.

After the remand, the Collector framed two additional issues i.e. whether the suit is time barred and what is the effect of the decrees passed by the Civil Court in the years 1973 and 1974. After taking evidence, the Collector passed a detailed order on 30.03.2007 (Annexure P-14) and held that the Gram Panchayat is the owner of the land in dispute and decrees of years 1973 and 1974 were liable to be ignored because those were obtained by the plaintiffs in the suits by playing fraud with the Gram Panchayat because the then Sarpanch of the Gram Panchayat was in collusion with the plaintiffs.

Aggrieved against the judgement-decree of the Collector, 84 appeals were filed before the Commissioner, Ambala Division, Ambala under Section 13 (AA) of the Act. The said appeals were also dismissed vide detailed order dated 14.08.2007. The operative part of the said order of the Commissioner is reproduced as under:-

“I have heard the counsels of the parties and have gone through the record available on the file. The instant case was remanded to the Collector, Kurukshetra vide order of this court dated 28.2.2006 with specific directions. The Collector, Kurukshetra while deciding the cases afresh on merit framed two additional issues keeping in view the directions issued by this Court. According to Issue no. 1 regarding limitation of the suit, the Collector has discussed in detail this matter and the legal provisions and also referred a judgment rendered in Civil Appeal No. 5467 of 2000 reported at page 596 in 2002 (2) PLJ, He has clarified in his order that status of

the appellants was lessee of Gram Panchayat and not co-sharer and concluded that a collusive decree passed by civil court can be set aside by the Prescribed Authority under the Punjab Village Common Lands (Regulations) Act, 1961 by the Collector, Kurukshetra under Section 13-A as no limitation applies in such type of collusive and fraudulent decrees. Regarding the land described as banjar kadim in the revenue record, it has clearly been established by Collector, Kurukshetra that such land was used for common purposes and it falls within the purview of Section 2 (g) (5) of the Act. He has given his findings on the basis of revenue record i.e. jamabandi for the year 1956-57 and 1967-68. I am in agreement with the findings of the lower court and arguments advanced by the ld. counsel for private respondents and legal officer (Panchayat). The principle of resjudicata is not applicable in the present case. The decision of the Hon'ble Supreme court is not on merits rather the S.L.P. filed by the Gram Panchayat was dismissed in default. However, the Hon'ble Supreme Court in the case Gram Panchayat, Naulakha versus Ujjagar Singh reported as 2000 (2) PLJ, 596 has held that the decree obtained by fraud with regard to Panchayat land can be ignored by the authority Constituted under the Act and no separate suit is required to set aside such decree, so the decree passed by the civil court otherwise be avoided. Therefore, I do not think that any interference is required in the impugned judgment and decree. I have come to the conclusion that the Collector, Kurukshetra has legally passed the impugned judgment and decree and the appeals are devoid of merits and accordingly dismissed. Since in these cases the Panch or Sarpanch of Gram Panchayat, Kalsa had made wrong statements which were detrimental to the interest of the

Gram Panchayat and they were not duly authorized to make such statements as per rule 16 (3) of the Punjab Village Common Lands (Regulations) Rules, 1964, therefore, it is necessary that appropriate action is initiated against those persons.”

Still aggrieved, as many as 84 revision petitions were filed before the Financial Commissioner, Haryana including the one by the petitioners which were all dismissed vide order dated 15.01.2020. The relevant observations of the Financial Commissioner while dismissing the revision petitions is reproduced as under:-

“10. I have gone through the arguments advanced by the learned counsels for all the parties and perused the case files. There is no denial of the fact that the land in question was recorded in the revenue record as shamilat deh on the relevant date i.e. 9.1.1954 and petitioners are were neither the proprietors of village nor in possession of the land in question as co-sharers in shamilat deh, rather they were in possession of the land as lessees under the provisions of the East Punjab Utilization of Lands Act, 1948. The lease period had already expired in the year 1972. In the present suits also, there is no claim on merit to the effect that the land in question does not fall within the ambit of shamilat deh or it falls under any of the exception clauses of section 2 (g) of the Act, rather the petitioners' claim is merely on the ground that they are owners of the land by virtue of judgment and decree dated 19.1.1974. It is also an undisputed fact that the claim of petitioners was conceded by the then Sarpanch Gram Panchayat but without any resolution of Gram Panchayat to this effect as was required under Rule 16 (3) of the Punjab Village Lands (Regulation) Rules, 1964. Hon'ble

Supreme Court, in a case titled Gram Panchayat of village Naulakha versus Ujagar Singh' - 2004 (4) RCR (Civil) 749, has held 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. Persons representing public bodies are expected to discharge their functions faithfully and keeping with the trust reposed in them. In the present case, civil suits decreed on 19.1.1974 on the statement of Sarpanch were challenged before the Civil court but it these suits were again got dismissed without pursuing the cases or without leading any evidence Thus a fraud has been played on the rights of the Gram Panchayat.

11. The amendment in the Act vide Act No. 34 of 1974 barring jurisdiction of Civil Court has not prejudiced the facts of this case in either way as the judgment and decree dated 19.1.1974 have not been ignored on the dint of the Act No. 34 of 1974. Further the said decrees have also not been considered as void decree on the dint of section 13D inserted on 11.2.1981, rather the judgment and decrees dated 19.1.1974 have been quashed or ignored because these were collusive and fraudulent decrees and could be ignored as per the judgment delivered by the Hon'ble Supreme Court in case titled Gram Panchayat versus Ujagar Singh'. So far as the impugned orders passed in a suit filed by private persons and counter claim against the co-defendant is concerned, it is provided under Section 13A of the Act that any inhabitant of the village may file a suit for declaration as to whether any land is shamilat deh or not and it vests or does not vest in the Gram Panchayat. Hence there is no infirmity in adjudicating the title of land on the application of respondent no. 1. The

Hon'ble Supreme Court has clearly held in Gram Panchayat Naulakha's case that a collusive decree obtained by fraud can be ignored in a subsequent proceedings and it is not necessary to file an independent suit for declaration as to its collusive nature or for setting it aside as a condition precedent. Hence the suit filed under Section 13A of the Act cannot be alleged as barred by limitation. Further the petitioners cannot be given the benefit of adverse possession because this possession was on the basis of a collusive decree against the interest of a public institution and no adverse possession can be claimed against a public institution.

12. In view of the analysis of the above facts, I find no merit in the present revision petitions and hence these revision petitions are hereby dismissed. A copy of this order be placed in all the revision petitions."

Counsel for the petitioners has argued that the decree has been passed in favour of the Gram Panchayat which never claimed the title of the property in dispute nor any counter claim was filed. It is also submitted that the petitioners are in possession of a decree of the Civil Court passed before coming into force the amending Act of Act No. 34 of 1974 i.e. 16.08.1974, which are upheld as a valid decree vide order dated 06.02.1975 of the High Court in CWP No. 487 of 1975. It is further submitted that even otherwise, the petitioners are in possession continuously for more than 12 years, therefore, in view of Article 65 of the Limitation Act, 1963, they have become owners by way of adverse possession.

On the other hand, counsel for the respondents has submitted that there is no error in the impugned orders, concurrently passed by all the

three revenue Courts, dealing with each and every aspect of the matter, much less the argument raised by the petitioners and by the similarly situated other persons. It is submitted that the very fact that the petitioners have pleaded ownership by way of the adverse possession over the land in question is sufficient to show that they have never been the owners of the property in dispute and are claiming their title only on the basis of long possession. It is further submitted that the petitioners had never filed any suit in the Civil Court to the effect that they are only in continuous possession and became the owners by way of the adverse possession rather the suit filed by the petitioners was that they are the co-sharers in the *shamlat deh* which is a blatant lie because there is no such evidence. The then Sarpanch, namely, Mara Ram who was in collusion with the plaintiffs, for the reasons best known to him, had filed the admitting written statement and suffered the statement in the Court while appearing as witness on the basis of which all the suits in all the cases were decreed. The suits filed by the Gram Panchayat through him or even through Administrator failed because either no evidence was lead or the suit was not contested and were dismissed for non-prosecution.

It is further submitted that even the Gram Panchayat which had gone to the Hon'ble Supreme Court against the decision in CWP No. 525 of 1975 had not put in appearance and thus, was dismissed for non-prosecution. It is rather submitted that the petitioners have played a calculated fraud in usurping the huge chunk of land of the Gram Panchayat measuring 6531 kanal 11 marla i.e. 816 acres (approx.).

Counsel for the respondents have relied upon a decision of the Hon'ble Supreme Court in the case of *Gram Panchayat of Village, Naulakha Vs. Ujagar Singh*; 200(4) RCR (Civil) 749 to contend that the collusive decree against the public property have to be ignored.

We have heard counsel for the parties and perused the record with their able assistance.

It has come in the order of the Financial Commissioner, Haryana that land of the shamlat deh measuring 9413 kanal 13 marla i.e. about 1176 acres was given on lease to the petitioners and others in the year 1952 under the East Punjab Utilization of Lands Act, 1948. The petitioners did not vacate the land after expiry of the lease period and remained in unauthorized possession without paying any rent to the Gram Panchayat. The petitioners filed suits in the Civil Court and obtained the collusive decrees of the land measuring 6531 kanal 11 marla i.e. about 816 acres because the then Sarpanch Mara Ram had admitted the claim of the petitioners and others and also suffered the statement admitting their claim. Besides this, the suit filed by the Gram Panchayat in order to challenge the decrees of the years 1973 and 1974 were also not contested by it and were dismissed for want of prosecution or evidence. Thus, the petitioners and others, who are otherwise not the owners, got a declaration of the ownership rights from the Civil Court though the land in dispute is recorded in the revenue record as *shamlat deh hasab rasad zar khewat* which cannot be owned by a person who is not a co-sharer or proprietor. The petitioners and others are admittedly not the co-sharers but were only in possession as lessee and there is no such law that a lessee can become the owner without purchasing the land in his possession.

The ownership can be set up in an immovable property by way of sale, gift or exchange whereas the possession can be claimed by way of lease and mortgage.

The claim of the petitioners is that their decrees have been protected by this Court while deciding CWP No. 525 of 1975 is not acceptable because in the case of *Gram Panchayat, Village Naulakha (Supra)*, the Hon'ble Supreme Court has held that the collusive degree obtained by fraud can be ignored in a subsequent suit/proceedings if question is raised and proved and it is not necessary to file an independent separate suit for setting aside such a decree, overruling the Full Bench decision of this Court in the case of *Gram Panchayat, Village Batholi Kalan Vs. Jagar Ram and Others*; 1991(1) RRR 368. It has also been observed by the Hon'ble Supreme Court in the case of *Gram Panchayat, Village Naulakha (Supra)* that *“Further property of a public institution cannot be allowed to be jeopardised 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. Persons representing public bodies are expected to discharge their functions faithfully and in keeping with the trust reposed in them.”*

Thus, we are of the considered opinion that if such type of decrees obtained by the petitioners and similarly situated other persons in collusion with the Sarpanch of the Gram Panchayat, for declaration of ownership, though they are not the owners of the land in question and were only in possession and the land is *shamlat deh* are protected then there would be a total chaos in the Society. Therefore, in view of the aforesaid facts and circumstances and discussion, we are of the considered opinion that there is

no error in the impugned orders and therefore, the writ petition is hereby dismissed though without any orders as to cost.

[RAKESH KUMAR JAIN]
JUDGE

September 9, 2020

Ess Kay

[ASHOK KUMAR VERMA]
JUDGE

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No