

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23867-2016 (O&M)
Date of Decision:06.03.2020

Gram Panchayat Bharaj, Tehsil Bhawanigarh, District Sangrur through its
Sarpanch Amar Singh s/o Chahan Singh

. Petitioner

Vs.

Joint Development Commissioner (IRD), Punjab, Sector 62, SAS Nagar Mohali
and others

. Respondents

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

Present: - Mr.Manish Kumar Singla, Advocate,
for the petitioner.

Mr. Unesh Kanwar, Advocate, for the applicant.

Mr.P.S. Bajwa, Addl. A.G. Punjab.

Mr.Suvir Sidhu, Advocate, for respondents No.3 to 5.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 5.9.2016, allowing the appeal of the respondents against the order dated 2.11.2015 by which suit filed by them under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'], was dismissed.

In brief, the Gram Panchayat filed a petition under Section 7 of the Act against Jeet Singh (father of the private respondents) for seeking his eviction from the land falling in Khasra Nos. 19//2/2 (5-8), 3/1 (1-9), 9/1 (7-8), 12/2 (3-8), 13 min (3-8) total measuring 21 kanal 1 marla situated in Village Bharaj, Tehsil Bhawanigarh, District Sangrur. The application was allowed on 6.11.1979 and during the proceedings of the said application, Jeet Singh (predecessor-in-interest of the private respondents) did not raise any question of

his right, title or interest involved in the land in question rather, after the eviction order was passed, he suffered the following statement on oath before the DDPO on 31.08.1981:-

*“Statement of Jeet Singh S/o Bagga Singh
Village Bharaj:-*

I state on oath that shamilat land of Gram Panchayat Bharaj measuring 20 K 19 M bearing Khara No. 19//3/1 (1-9), 19/9/1(7-8), 19/2/2 (5-8), 19/13 (3-6) 12/2/3 (3-8), which is in my possession and regarding which, Collector (District Development and Panchayat Officer) Sangrur has ordered for eviction on 06.11.1979. I do not want to keep the illegal possession of the same with me and I finish/cancel my concern with this land and hand over the possession to Pachayat Bharaj and agrees that in future I will not raise any claim or keep any possession. Panchayat can give the same on lease or on batai, as it may like.”

It is pertinent to mention that the aforesaid statement was suffered by Jeet Singh after filing a suit for permanent injunction in which he had alleged that he is the owner of the property in dispute. The suit was dismissed on 12.4.1983 and it was held that Jeet Singh was a tenant at will and not the owner. However, appeal filed by Jeet Singh against the judgment and decree dated 12.4.1983 was allowed on 28.5.1983 and he was ordered not to be dispossessed otherwise than in due course of law. Jeet Singh died on 5.11.1996. Although, the petition filed under Section 7 of the Act was already decided against Jeet Singh and had attained finality but under a wrong legal advice, the Gram Panchayat filed another petition under Section 7 of the Act against the heirs of Jeet Singh. In the said proceedings as well, the private respondents did

not raise any question of right, title or interest rather they chose to file a separate suit under Section 11 of the Act for seeking declaration of their right in the property in dispute on the ground that their predecessor-in-interest was in possession of the property in question before 26.1.1950 and as such the land in question does not fall within the definition of *Shamilat deh*. The petitioner contested the suit by filing a written statement in which it was averred that the suit is beyond limitation as the cause of action had already accrued to the private respondents herein when a petition under Section 7 of the Act was filed against them. In any case, the suit was dismissed on 02.11.2015 but appeal filed by the private respondents was allowed on 5.11.2016 and hence, the present writ petition has been filed.

Counsel for the petitioner has argued that the private respondents, who are the successor-in-interest of Jeet Singh, had no *locus standi* to maintain the suit filed under Section 11 of the Act because Jeet Singh had already suffered an order of eviction and thereafter made a statement to vacate the land in dispute. It is also submitted that the private respondents are claiming their right, title and interest in the land in dispute on the ground that they are in possession through Jeet Singh from 26.1.1950 but the question of title was never raised either in the petition filed under Section 7 of the Act against Jeet Singh or against the private respondents herein, therefore, a separate suit filed under Section 11 of the Act is not maintainable after the expiry of period of limitation prescribed under Rule 21A of the Punjab Village Common Lands (Regulation) Rules, 1964 [for short 'the Rules'] and that the suit is barred in view of the provisions of Order 2 Rule 2 of the Code of Civil Procedure, 1908 [for short 'the CPC'] and explanation IV of Section 11 of the CPC as the principles of constructive *res judicata* would apply to the facts of the case. It is

further submitted that the appellate authority has committed an error in passing the impugned order because the land in dispute is recorded as *banjar kadim* and hence the provision of Section 2(g)(viii) of the Act is not applicable because the private respondents were to establish that they were in individual cultivating possession not beyond their share as on 26.1.1950. It is further argued that the ownership claimed by the private respondents on the land in dispute is by way of a document of allotment (Annexure R-4) but the description of land in the said document is altogether different from the description of land mentioned in the suit filed under Section 11 of the Act. In support of his submission, he has relied upon the following three decisions rendered by this Court: -

1. **Gurdev Singh (deceased) through his LRs** Vs. **Additional Director, Panchayats, Punjab and another** ; 2012(3) PLR 326;
2. **Gurmail Singh and another** Vs. **Director, Rural Development and Panchayats, Punjab and others**; 2012(3) PLR 783 and;
3. **Karnail Singh** Vs. **State of Punjab and others**; 2020(1) RCR(Civil) 402.

On the other hand, counsel for the private respondents has submitted that the proceedings initiated under Section 7 of the Act were summary in nature and its finding would not operate as *res judicata* to the proceedings initiated under Section 11 of the Act because the said proceedings in the nature of a regular suit. It is also submitted that even if Jeet Singh had not raised the question of title when the first petition under Section 7 of the Act was filed by the Gram Panchayat, the suit filed under Section 11 of the Act is not barred as per the scheme of the Act. It is further argued that the Appellate Court has rightly allowed their appeal because their predecessor-in-interest was

found to be in possession of the land in dispute before 26.1.1950 as per jamabandi of the year 1945-46 but at the same time he has fairly conceded that the khasra numbers mentioned in Annexure R-4 are different from the khasra numbers mentioned in the suit for declaration of title.

In rebuttal, counsel for the petitioner has submitted that even if the finding recorded under Section 7 of the Act would not operate as *res judicata* in respect of the suit filed under Section 11 of the Act but the said suit without raising question of title, though available, when the proceedings under Section 7 of the Act were filed against their father or against them was not raised, shall be barred by principle of constructive *res judicata* and also Order 2 Rule 2 of the CPC.

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

From the resume of the aforesaid facts, the following questions arise for our consideration:-

- (i) Whether the suit filed under Section 11 of the Act for establishing title over the land in dispute is maintainable if the question of title though available in the previous proceedings under Section 7 of the Act is not raised?
- (ii) Whether the suit filed under Section 11 of the Act is time barred in view of Rule 21-A of the Rules if it is not filed within 30 days from the date of accrual of cause of action?

In order to decide the first question, it would be relevant to refer to certain provisions of the Act. Section 7, 11 of the Act and Rule 20 of the Rule reproduced as under: -

“Section 7.

Power to put panchayat in possession of Shamilat deh:-

(1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorized in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the Shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under Section 11 and till the question is so determined, the application shall remain pending.

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under Section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.

(2) An appeal against the order of the collector under sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.

Section 11.

Decision of claims of right, title or interest in Shamilat deh

(1) Any person claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form as manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such as he deems fit.

Rule 20

Putting Panchayat in possession. [Sections 7 and 15 (2)(k)]-

(1) When an application under Section 7 is received by the Collector, he shall issue in the manner, hereinafter provided a notice in writing calling upon all persons concerned to show cause, why an order to put the Panchayat in possession of the land or other immovable property vested or deemed to have been vested in the Panchayat under the Act, should not be made

(2) The notice shall

(a) specify the land or other immovable property in respect of which an order is proposed to be made under sub-rule (i);

(b) specify the grounds on which the order to put the Panchayat into possession of the land or other immovable property is proposed to be made, and

(c) require all persons concerned, that is to say, all persons who are or may be, in occupation of the land or other immovable property, specified in the notice, to show cause, if any against the proposed order on or before the date to be specified in the notice being the date, not earlier than ten days from the date of issue thereof.

(3) The Collector shall cause the notice to be affixed on a conspicuous part of the Panchayat Ghar or any other place used as office of the Panchayat and at some conspicuous place of the estate in which

the land or other immovable property specified in the notice is situate

- 4) *If after receipt of an application and before the Panchayat is put in possession of the land or other immovable property in the Shamilat Deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out by producing documentary evidence in support thereof, the Collector shall after recording in writing the reasons to this effect, direct the person raising such question to submit his Claim under section 11 of the Act within a period of thirty days and the fact of failure of that person, if any, for not submitting his claim, shall be recorded in the final order passed under section 7.”*

As per Section 7(1) of the Act, the Collector has been bestowed with the power to put the Panchayat in possession of the land or other immovable property in the *shamilat deh* which vests or deemed to have been vested in it. Section 7(1) of the Act has two proviso. The first proviso says that after the receipt of the application and before the Panchayat is put into possession, if a question of right, title or interest in such land or property is raised and a *prima facie* case is made out, the Collector is obliged to direct the person, who has raised such question, to submit his claim under Section 11 of the Act and till the question is so determined he would keep the application filed under Section 7 of the Act pending. The second proviso to Section 7(1) of the Act says that if the person who raises the question of title fails to submit his claim under Section 11 of the Act within the time prescribed then the Collector is obliged to presume that no question of title is involved and shall proceed

further to decide the application filed under Section 7 of the Act. The procedure for dealing with the application filed under Section 7 of the Act is prescribed in Rule 20 of the Rules in which Rule 20(4) says that if after receipt of the application the question of title is raised and *prima facie* case is made out within the support of documentary evidence, the Collector is obliged to record the reasons to that effect and direct the person raising the question to submit his claim under Section 11 of the Act within a period of 30 days and shall also record the fact of failure of that person, if any, for not submitted his claim in the final order passed by him on the application filed under Section 7 of the Act. Thus a conjoint reading of Section 7 of the Act and Rule 20 of the Rules provides that the Collector himself would not decide the question of title in the proceedings under Section 7 of the Act if so raised but he would relegate the person raising the question of title to file a suit under Section 11 of the Act for the purpose of determining the question because petition filed under Section 11 of the Act is treated as a suit and is to be decided as per the procedure provided in the CPC. It further provides that the said suit has to be filed within 30 days from the date of passing of the order by the Collector, relegating the said person to his remedy of filing civil suit and if no such suit is filed despite the order passed by the Collector in his behalf, no further suit under Section 11 of the Act would be maintainable and this fact that the suit has not been filed has to be recorded by the Collector in the final order passed by him under Section 7 of the Act.

Insofar as Section 11(1) of the Act is concerned, it applies in two situations. Firstly it shall apply in case a question of title is raised by a person before the Collector in the proceedings initiated under Section 7 of the Act for seeking his eviction and in that eventuality the Collector is obliged to relegate

the said person raising the question of title after having been satisfied that the question of title is *prima facie* made out which shall be supported by the reasons recorded by him in terms of Rule 20(4) of the Rules and secondly where no such petition is filed or pending under Section 7 of the Act and any person or Panchayat intends to seek a declaration of their right, title or interest in any land vested or deemed to have been vested in the Panchayat. In this regard, it would be relevant to refer to Rule 21-A of the Rules which is reproduced as under:-

Rules 21-A

A Decision of claim of right, title or interest in shamlat deh:-

(1) Any person claiming a right, title or interest in any land vested or deemed to have been vested in the Panchayat may submit an application in the form of a statement duly signed and verified in the manner provided in the Code of Civil Procedure, 1908, supported by a copy of the revenue record within the date of the accrual of cause of action to the Collector.

(2) The Collector shall, after receiving the application, send notice to the Panchayat concerned alongwith a copy application directing it to appear before him on the date fixed for the purpose. The Collector shall decide the matter, after affording a reasonable opportunity to the parties to substantiate their respective claims.”

According to Rule 21-A of the Rules, if any person is interested in setting up his right, title or interest in any land vested or deemed to have been vested in Panchayat, he may file an application in the form of a statement duly signed and verified in the manner provided in the CPC, supported by revenue

record, within 30 days from the date of accrual of cause of action to the Collector. The date of accrual of cause of action is not explained in the Act but it shall mean that the date on which the right, title or interest is denied by the other side because a declaratory suit is filed for a pre-existing right when it is denied by the other party.

Since this case pertains to an order passed under Section 11 of the Act against the Gram Panchayat, we shall now refer to Section 11 and Order 2 Rule 2 of the CPC.

Section 11 of the CPC is reproduced as under: -

11. *Res judicata*— *No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.*

Explanation I.—*The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.*

Explanation II.—*For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.*

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VII.—An issue heard and finally decided by a court of limited jurisdiction competent to decide such issue, shall

operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

Order 2 Rule 2 of the CPC is reproduced as under: -

“2. Suit to include the whole claim –

(1) Xxx

(2) Relinquishment of part of claim – Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any part of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Xxxx

Explanation - xxx

Section 11 of the CPC is based upon public policy that nobody should be vexed twice to litigate on the same issues which has already been decided but Explanation IV of Section 11(4) of the Act provides that any matter which might or ought to have been made a ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit. Similarly Order 2, Rule 2 of the CPC provides that if the plaintiff omits to sue in respect of or intentionally relinquishes any portion of his claim then he cannot sue in respect of the portion so omitted or relinquished.

In the present case, petition under Section 7 of the Act filed by the Gram Panchayat against Jeet Singh (Predecessor-in-interest of the private respondents) was allowed on 6.11.1979. Jeet Singh had all the opportunities to raise the question of right, title or interest in the land in question but he did not

choose to raise the question of title rather he suffered the order of eviction and a statement on 31.8.1981 that he would handover the vacant possession to the Panchayat. He died on 5.11.1996 without handing over the possession and under a wrong advice the Gram Panchayat filed another petition under Section 7 of the Act against the private respondents (successor-in-interest Jeet Singh). They also did not raise the question of title while contesting the said petition rather filed a separate suit under Section 11 of the Act.

In our considered view the suit filed under Section 11 of the Act was not maintainable and was barred under Order 2 Rule 2 of the CPC as well as under Explanation IV to Section 11 of the CPC because the private respondents have claimed their title over the property in question through their predecessor-in-interest Jeet Singh, who was claiming himself to be in possession of the land in question much before 26.1.1950 on the basis of Jamabandi for the year 1945-46. The said revenue record was available even to Jeet Singh when he was alive and had contested the petition filed against him under Section 7 of the Act and was also available with the private respondents when they were contesting the petition filed against them under Section 7 of the Act by the Gram Panchayat. At none of the occasions, the question of title was ever raised. Although, the first proviso to Section 7 of the Act says that if the question of title is raised then the Collector shall relegate the person raising question of title for filing a civil suit and shall not decide the application filed under Section 7 of the Act and second proviso of Section 7 of the Act says that if a person raising question of title fails to submit his claim in terms of Section 11 of Act within time prescribed before the Collector then it shall be presumed that no question of title is involved but it has to be read in this provision that if question of title is not raised at all, though available while defending the

petition filed under Section 7 of the Act, the Collector shall presume that no question of title is involved and shall proceed to decide the petition under Section 7 of the Act. Once, the application filed under Section 7 of the Act is decided in which question of title, though available, is not raised, it puts an end to the controversy regarding the question of title which cannot be raised thereafter by filing a suit under Section 11 of the Act.

But in the situation, if the title of a person is threatened by the Gram Panchayat or anybody else, he can always file a suit under Section 11 of the Act for seeking declaration for having acquired the right, title or interest in the property in question.

Thus in view of the aforesaid discussion, the first question is hereby decided to the effect that if in an application, filed under Section 7 of the Act, question of title is involved but not raised then subsequently a suit filed under Section 11 of the Act to establish the question of title shall not be maintainable.

Insofar as the second question is concerned, it pertains to such type of cases in which application under Section 7 of the Act is not filed but a person or a Panchayat seeks a declaration of their right, title or interest in the land vested or deemed to have been vested in the Panchayat then the suit has to be filed within the period of 30 days from the date of accrual of the cause of action as provided in Rule 21-A of the Rules which means that the suit has to be filed when the right, title or interest is threatened and not at any time otherwise Rule 21-A(1) of the Rules provided in the Rules will become redundant. Thus, the second question is also decided as aforesaid.

In view of the aforesaid discussion, the writ petition is thus hereby allowed and the suit filed by the private respondents under Section 11 of the Act is held to be not maintainable as it is barred under Explanation IV to Section 11 and in view of Order 2 Rule 2 of the CPC.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

06.03.2020

Vivek

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