

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

**CWP No.23177 of 2019
Date of Decision:-10.02.2020**

Mohinder Kaur and others

...Petitioners

Versus

Joint Development Commissioner (IRD), Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present:- Mr. Swarn Tiwana, Advocate
for the petitioners.

Ms. Ambika Sood, DAG, Punjab.

Mr. S.S. Salar, Advocate
for respondent No.3.

RAKESH KUMAR JAIN J.(Oral)

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing of order dated 14.6.2019 (Annexure P-3) passed by respondent No.1 and order dated 23.1.2018 (Annexure P-1) passed by respondent No.2.

The following order was recorded on 19.11.2019 :-

“Counsel for the petitioners, inter alia, contends that Kehar Singh, Mehar Singh and Gurdev Singh all sons of Gujjar Singh filed an application under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short ‘the Act’] seeking declaration of their title over the land measuring 41 kanal 5 marla. The said application was partly allowed on 25.10.1984 and they were declared owner of land falling in Khasra No.26//23/1 (7-0). Two appeals were filed. Appeal No.47 of 1985 was filed by the Gram Panchayat in respect of the Khasra No.26//23/1 (7-0) and Appeal No.67 of 1985 was filed by Kehar Singh, Mehar Singh and Gurdev Singh in respect of rest of the land. Both the appeals were clubbed together. The appeal filed by the Gram Panchayat, namely, Appeal No.47 of 1985, was allowed and the Appeal No.67 of 1985 filed by Kehar Singh, Mehar Singh and Gurdev Singh was dismissed. Kehar Singh, Mehar Singh and Gurdev Singh filed CWP-1160-1988 to challenge the orders dated 25.10.1984 and 22.07.1987. During the pendency of this writ petition, Mehar Singh and Gurdev Singh died. The present petitioners are the legal heir of Mehar Singh. CWP-1160-1988 was disposed of by setting aside the orders dated 25.10.1984 and 22.07.1987 and the matter was remanded back to the Collector, Patiala (now Fatehgarh Sahib) to decide the same afresh. Counsel for the petitioners has submitted that after the remand, the said matter has not been taken up for adjudication again because the records of Appeals No.47 & 67 of 1985 have not been received by the office of the Collector.

However, it is submitted that on 09.01.2015, the

Gram Panchayat also filed an application under Section 11 of the Act which is pending in the Court of ADC (D)-cum-Collector, Fatehgarh Sahib for 20.11.2019. It is submitted that while the proceeding initiated both by the petitioners (predecessors-in-interest) and the Gram Panchayat under Section 11 of the Act are pending, the Gram Panchayat initiated proceedings under Section 7 of the Act in which the impugned orders Annexures P-1 to P-3 have been passed.

Counsel for the petitioners has, thus, submitted that the rights of the petitioners are being adversely prejudiced in the absence of a decision on their application filed under Section 11 of the Act, which is pending adjudication since the matter was remanded by this Court and the said application is not making any headway.

It is further submitted that in case the petitioners are evicted from the land in dispute and are ultimately found to be the owners of the property in dispute then they would suffer an irreparable loss.

Notice of motion for 09.12.2019.

Till then operation of the impugned orders shall remain stayed.”

Learned counsel for respondent No.3 has put in appearance and submitted that the record of Appeal No.67 of 1985 is not traceable, therefore, despite the order passed by this Court, allowing the writ petition on 16.12.2013 and setting aside the orders dated 25.10.1984 and 22.07.1987, the matter has not been heard by the Collector, Patiala (now Fatehgarh Sahib). Learned counsel for respondent No.3 has suggested that in such a situation direction may be issued for reconstruction of record of

Appeal No.67 of 1985 and to decide the appeal in a prescribed time.

Counsel for the petitioners has submitted that till the appeal is decided by the Collector, the stay granted by this Court may be allowed to continue. Learned counsel for respondent No.3 has not raised any objection in this regard.

Consequently, the writ petition is allowed, the impugned orders dated 23.1.2018 (Annexure P-1) and 14.6.2019 (Annexure P-3), passed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'), shall remain on hold till the suit filed by the petitioners under Section 11 of the Act is decided by the Collector in accordance with law. The suit filed by the Gram Panchayat under Section 11 of the Act shall remain on hold.

The parties are directed to appear before the Collector on 05.3.2020. The Collector is directed to reconstruct the record of Appeal No.67 of 1985 with the assistance of both the counsel for the parties and shall decide the same as early as possible but preferably within a period of three months.

It is needless to mention that the petitioners shall deposit the mesne profit as ordered by this Court on 16.12.2013 in CWP No.1160 of 1988. The operative part of the said order is reproduced as under :-

“The petitioners are in possession of the land measuring more than 5 acres. They are directed to deposit an amount of Rs.1,50,000/- for the last 3 years towards mesne profits. The Collector shall put that amount in Fixed Deposit and on conclusion of the

proceedings, whatsoever is successful, the amount be disbursed to that party.”

(RAKESH KUMAR JAIN)
JUDGE

February 10, 2020
Vijay Asija

(JASGURPREET SINGH PURI)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes / No
Yes / No