

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

RFA No.653 of 2021 (O&M)

Date of decision:16.08.2021

Balwinder Singh and ors.

..Appellants

Versus

Gram Panchayat and ors.

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. ML Sharma, Advocate for the appellants.
Mr. Munish Jolly, Advocate for respondent No.1.
Ms. Kanica Sachdeva, AAG, Punjab.
Mr. GS Sandhu, Advocate for respondent No.3.

ANIL KSHETARPAL, J

1. Through this regular first appeal, the appellants call into question the correctness of the judgment passed by the Additional District Judge, SAS Nagar, Mohali, dated 07.05.2021.

2. The appellants on the acquisition of land in para 1 of the application under the Land Acquisition Act, 1894, (hereinafter referred to as '1894 Act') vide award No.527, dated 13.12.2011 applied to the Land Acquisition Collector under Sections 18 and 30 of 1894 Act for sending the reference to the Court. The appellants claim that they being proprietors of village Manauli are entitled to compensation, with respect to the land acquired from them, whereas the Gram Panchayat, Village Manauli claims that the property is shamlat deh as defined in Section 2(g) of the Punjab

Village Common Lands (Regulation) Act, 1961 (in short '1961 Act') and

hence, it is entitled to the amount of compensation. The concerned Land Acquisition Collector forwarded the matter to the Court at Mohali. It has been rejected, at the initial stage, by the Court while exercising its power under Order 7 Rule 11 CPC. The Court has held that the matter cannot be adjudicated upon by the Civil Court in view of the bar under Section 13 of the 1961 Act.

3. Heard learned counsel for the parties at length and with their able assistance perused the paper book as well as the record requisitioned. Learned counsel representing the appellants has forwarded their written arguments, supplementary written arguments and the proposed questions of law required to be adjudicated upon. The questions of law read as under:-

(i). Whether the petition under Section 30/18 shall have to be sent to the Civil Court of original jurisdiction and shall have to be decided by the same Court or the Civil Court of original jurisdiction nominated by the High Court, District Court or the State when there is dispute of entitlement and apportionment under the Land Acquisition Act/National Highway Act?

(ii). What is the definition of Civil Court of original jurisdiction under the Land Acquisition Act & National Highway Act and General Clauses Act, 1897?

(iii). Whether Collector, Commissioner, Financial Commissioner or Panchayat is Court as per the definition given under the Land Acquisition Act, National Highway Act, General Clauses Act?

(iv). Whether the definition of Central Act, Revenue Authority,

Collector, District Judge enactment, High Court Local Authorities, Magistrate Regulations Rules State Act which have been given Section 3 sub Section 7, 10, 11, 17, 19, 25, 31, 50, 51, 59, 61 and Section 17, 21, 22 and 29 of General Clauses Act, Section 2(d) of Land Acquisition Act and Section 3H of National Highway Act, can be considered in the in hand?

(v). Whether the Central Act will prevail over the State Act?

(vi). Whether the Superior Legislation will prevail over the subordinate Legislation?

(vii). Whether the State Act can bar the jurisdiction under the Central Act when the cause of action is of Central Act?

(viii). Whether the jurisdiction of Civil Court of original jurisdiction given under the superior legislation under Section 30/18 and under Section 2(d) stand outside by the operation of the State Act under Section 11 and 13 of PVC Act which is enacted by subordinate legislation?

(ix). Whether the petition under Section 30/18 can be barred under law under the operation of law under Section 42A of the 1948 Act and Section 11 and 13 of 1961 Act?

(x). Whether when the proprietary right of the proprietor have been protected under Rule 16(ii) 1949 rule and the law laid down by Hon'ble Supreme Court in Ajit Singh's and Ranjit Singh's case, the Panchayat has no right, title, interest as the land deemed not vested with the Panchayat?

(xi). Whether in view of the legal position here in above the application under Order 7 Rule 11 CPC for rejecting the plaint under Section 30/18 which have been sent to the Civil Court of original jurisdiction District Judge under the Land Acquisition Act and the same has been define under the General Clauses

Act and National Highway Act can be rejected?

4. At this stage, it will be appropriate to notice the relevant statutory provisions.

The Land Acquisition Act, 1894

Section 3(d)

the expression “Court” means a principal Civil Court of original jurisdiction unless, the [appropriate Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform functions of the Court under this Act;

Section 18

Reference to Court. - (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made-

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award; (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six

months from the date of the Collector's award, whichever period shall first expire.

Section 30

(Dispute as to apportionment) - When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof, is payable, the Collector may refer such dispute to the decision of the Court.

The Punjab Village Common Lands (Regulation) Act, 1961

Section 2(g)

(g) “shamilat deh” includes-

- (1) lands described in the revenue records as shamilat deh excluding abadi deh;
- (2) shamilat tikkas;
- (3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;
- (4) lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh; and
- 5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;

[----]

but does not include land which-

(i) [-----]

(ii) has been allotted on quasi-permanent basis to a displaced person;

[(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the Jamabandi or is supported by a valid deed; [and is not in excess of the share of the co-sharer in the shamilat deh].

(v) is described in the revenue records as Shamilat, Taraf, Pattis, Pannas, and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act];

(vii) [----]

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in

such shamilat deh on or before the 26th January, 1950;

or

[(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act;]

Section 11

Decision of claims of right, title or interest in shamilat deh.--

(1) {Any person or a Panchayat} 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 and manner as maybe prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such order as he deems fit.

Section 13

Bar of Jurisdiction in civil court.-- No civil courts shall have jurisdiction--

(a) to entertain or adjudicate upon any question, whether

any property or any right to or interest in any property is or is not *shamilat deh* vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.]

The General Clauses Act, 1897

Section 3(17)

“District Judge” shall mean the Judge of a principal Civil Court of original jurisdiction, but shall not include a High Court in the exercise of its ordinary or extraordinary original civil jurisdiction;

5. From a careful perusal of the provisions of Section 11 read with Section 13 of the 1961 Act, it is apparent that if the question arises as to whether a particular property falls in the definition of 'shamlat deh' or not, the jurisdiction of the Civil Court to adjudicate upon such question is barred. Section 11 confers exclusive jurisdiction on the Collector to determine the claims of right, title or interest in shamlat deh. In other words, through a Legislative Act, exclusive jurisdiction is conferred on the Collector to decide as to whether a particular land is or is not shamlat deh. Such decision does not only take within its sweep the question of title but also any right or

interest in the land which is described as 'shamlat deh'. Section 13 expressly debars the Civil Court to adjudicate such disputes. It is important to note that any person, claiming that any land is not so vested in the Panchayat, is further required to get the adjudication of such an issue from the Collector exclusively under Section 11 of the 1961 Act.

6. As per Section 30 of the 1894 Act, the Land Acquisition Collector is required to refer such dispute to the decision of the Court. As per Section 3(d) of the 1894 Act, the expression 'Court' means Principal Civil Court of original jurisdiction. As per Section 3(17) of the General Clauses Act, 1897, the District Judge is the foremost Judge of a Principal Civil Court of original jurisdiction. Now the question is whether the Additional District Judge has correctly rejected the reference made to him under Section 30 or not. It is not in dispute that the Gram Panchayat of village Manauli still exists. With respect to the entitlement and apportionment of the compensation, the appropriate remedy available with the interested persons is to seek reference under Sections 18 and 30 of the 1894 Act. In such situation, the Court is required to harmoniously construe the provisions of various Acts in order to advance the cause of justice.

7. On the one hand, the 1961 Act puts an embargo on the jurisdiction of the Civil Court to adjudicate upon the question of title of shamlat deh land whereas on the other hand, Sections 18 and 30 of 1894 Act,

provides for determination by the Civil Court whenever the dispute with regard to the apportionment/entitlement of the compensation arises. Hence, there arises a repugnancy in the said laws. No doubt, as per Article 254 of the Constitution of India, whenever there is an irreconcilable conflict between the two Acts where one is enacted by the Centre and the other is enacted by the State Government, the Central Act would prevail. However, this does not end the quandary of the Court in the present case. Article 254 is extracted as under:-

“Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void

(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with

respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.”

8. On a careful reading of the Article 254, it is evident that it would apply only when both the legislature of the State and the Parliament are competent to enact an Act on the subjects which are enumerated in the concurrent list provided in the 7th Schedule to the Constitution of India.

9. Hence, it becomes imperative to examine the 7th Schedule. It may be noted here that the Act of 1961 is in essence the Law enacted by the legislature of the State in exercise of powers under entry 18 of list II which falls in the State list. The same is extracted as under:-

Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization

10. Hence, with respect to the land, the Parliament has no power to make legislation. Therefore, the impasse of the Court continues. Fortunately, a 5 Judge Bench of the Hon'ble Supreme Court in '**Gram Panchayat of**

village Jamalpur vs Malwinder Singh and ors., (1985) 3 SCC 661' while examining repugnancy between the Administration of Evacuee Property Act, 1950 and the Punjab Village Common Lands (Regulation) Act, 1953, held that the State legislature is competent to enact in respect of 'shamlat deh' land under entry 18 of list II of 7th Schedule while observing as under:-

The line of reasoning of our learned Brother, Chinnappa Reddy, affords a satisfactory solution to this constitutional impasse, which we adopt without reservation of any kind. The pith and substance of the Punjab Act of 1953 is 'Land' which falls under Entry No.18 of List II (State List) of the Seventh Schedule to the Constitution. That entry reads thus:

“Entry No.18- Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation.”

Our learned Brother has extracted a passage from a decision of a Constitution Bench of this Court in *Ranjit Singh v. State of Punjab*, 1965 (1) S.C.R. 82, which took the view that since, the Punjab Act of 1953 is a measure of agrarian reform, it would receive the protection of Article 31-A. It may be recalled that the Act had received the assent of the President as required by the first proviso to that Article. The power of the State Legislature to pass laws on matters enumerated in the State List is exclusive by reason of the provision contained in Article 246(3). In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry No.41 of the Concurrent List, while the State Legislature has passed a

law which falls under Entry No.18 of the State List. The law passed by the State Legislature, being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even in so far as Shamlat-deh lands are concerned.

11. From the reading of the said interpretation in the background of the facts in the present case, it is observed that if the appellants are ultimately established to be the owners of the acquired land by the Collector then in that case, they will be entitled to the amount as determined. In such a case , it is the Civil Court under Section 30 of the 1894 Act, which is empowered to give the qualified relief. Furthermore, it is a well settled rule that while exercising powers under Order 7 Rule 11 CPC, the Court is required to make out a case of rejection based on the examination of the contents of the plaint itself and should not analyse the reply filed by the defendant/respondent or the material produced thereupon. However, in matters where the Court is required to analyze the pleadings and the evidence produced by both the sides, it is not appropriate for the Court to reject the plaint per se.

12. Keeping in view the aforesaid objective in mind, this Bench is of the considered view that in the facts and circumstances of the present case, it

would be appropriate to set aside the judgment under challenge and remit the

matter back to the Court. However, at the same time, this Bench cannot overlook the legislative bar to the jurisdiction of the Civil Court under Section 13 of 1961 Act. Hence, the proceedings before the Court will stand adjourned sine die. Any of the parties shall be at liberty to file a suit under Section 11 of the 1961 Act before the Collector for adjudication of their respective claims of right, title or interest. If any of the parties files a suit under Section 11, the Collector shall not only decide the claims of right, title or interest but will also determine their respective shares along with the list of proprietors, within 6 months positively.

13. With these observations, the appeal is allowed. The parties through their counsels are directed to appear before the Court on 03.09.2021.

All the pending miscellaneous applications, if any, are also disposed of.

16.08.2021

ashok

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

(ANIL KSHETARPAL)

JUDGE