

CWP-13755-2022 &
CM-9548-CWP-2022

Date of decision: 07.07.2022

WAZIR CHAND AND ANR.

.....PETITIONERS

Versus

DIRECTOR, DEPARTMENT OF RURAL DEVELOPMENT AND
PANCHAYAT, PUNJAB AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Rishi Malhotra, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

CM-9548-CWP-2022

C.M. is allowed subject to just exceptions. Copies of order dated 29.01.2010 passed by the A.D.C. Hoshiarpur, order dated 21.01.2011 passed by the Director, Rural Development & Panchayat, Punjab are taken on record as Annexures P-8 and P-9.

CWP-13755-2022

Challenge in this writ petition is to the order dated 27.01.2021 (Annexure P-3) passed by the Additional Deputy Commissioner (D) vested with the powers of Collector, Hoshiarpur under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act'), whereby petition under Section 11 of the 1961 Act for declaration to the effect that the petitioners are owners in possession of land measuring 467

Kanals and 12 Marlas, as detailed in the head-note of the same, situated in Village Dadial, Tehsil Dasuya, District Hoshiarpur as per the Jamabandi for the year 2005-06 and making necessary corrections in the ownership column of the revenue record by replacing the name of Gram Panchayat, Dadial with that of the petitioners, has also been dismissed and the appeal, which was preferred by the petitioners, stands dismissed by the Director, Rural Development and Panchayat, Punjab (exercising the right of Commissioner) dated 04.03.2022 (Annexure P-5) apart from the auction notice dated 13.06.2022 (Annexure P-7), which has been issued qua the property which is the subject matter of the present writ petition.

2. It is the contention of the learned counsel for the petitioners that the predecessors-in-interest of the petitioners were the original proprietors of Village Dadial. Out of the total land i.e. 35962 Kanals, 02 Marlas of the village, 21812 Kanals of land is shamlat land. Petitioners were owners to the extent of 559 Kanals, 09 Marlas and as per their ownership, their share in the shamlat land comes to 467 Kanals and 12 Marlas. The land, which is the subject matter of the suit, is not in excess of the share in the shamlat land. Since wrong and incorrect entries have been made in the ownership column in the revenue records, petitioners were forced to file a petition under Section 11 of the 1961 Act for declaration to the effect that they are owners in possession of the land, as detailed above.

3. It has been pleaded that the petitioners are in individual cultivating possession of 961 Kanals and 12 Marlas of land as per the Jamabandi for the year 1950-51. During the consolidation, petitioners were given 764 Kanals and 14 Marlas of land. They projected their claim on the plea that the land is assessed to the land revenue and has been

in the individual cultivating possession of the petitioners which is not in excess of their share and thus, are entitled to be declared owners of the land in view of Section 2 (g) (viii) of the 1961 Act. The Gram Panchayat is trying to interfere in the peaceful possession of the petitioners without any right, title or authority whatsoever and therefore, the Gram Panchayat be restrained from doing so.

4. Counsel contends that the stand as has been taken by the respondents is on the plea that the said petition would be hit by the principle of *res-judicata* as an earlier title suit claiming the same relief preferred under Section 11 of the 1961 Act i.e. *Puran Chand and others vs. Gram Panchayat, Dadial*, stands dismissed vide order dated 29.01.2010 (Annexure P-8) passed by the Additional Deputy Commissioner (D) vested with the powers of Collector, Hoshiarpur and the appeal preferred against the same stands dismissed by the Commissioner vide order dated 21.01.2011 (Annexure P-9).

On merits, the stand taken by the respondents is that the petitioners have no share in the shamlat land which is not assessed to land revenue and that the Gram Panchayat is claiming ownership over the same. None of these grounds would be acceptable as the principle of *res-judicata* would not be applicable in the revenue matter. Counsel has placed reliance upon a judgment of the Hon'ble Supreme Court in **Inder Singh and another vs. Financial Commissioner, Punjab**, 1997 (11) SCC 206, to contend that the principle of *res-judicata* would not be applicable to summary proceedings unless statute expressly provides therefor. The revenue authorities are not Courts and, therefore, rejection of the plaint/appeal will have no bearing on the merits.

5. Counsel for the petitioners has referred to the revenue record to substantiate his contention that the predecessors-in-interest of the petitioners were in possession of the land prior to the cut off date i.e. 26.01.1950. That apart, they are not in possession of the excess land than their share in the shamlat land. The case of the petitioners would be covered by the provisions of Section 2 (g) (viii), which does not include the land detailed and defined therein in Shamlat Deh. Assertion has also been made that the land is not being used for the village community nor any part of it has been used for common purposes. Submission has also been made that the petitioners would be entitled to the declaration, as has been prayed for, and the orders passed by the authorities, which have been impugned, deserve to be set aside and the suit of the petitioners decreed.

6. We have considered the submissions made by the learned counsel for the petitioners and with his assistance, have gone through the pleadings, the impugned orders and the revenue record made available.

7. The facts are not in dispute. The real issue is whether the petitioners are entitled to the declaration, as has been prayed by them, apart from the aspect relatable to the applicability of the principle of *res-judicata* as also the evidence, which has been brought on record in the form of revenue entries?

8. It is an admitted position that the petitioners were parties to the suit, which has been preferred by Puran Chand and others i.e. Case No. 111 of 2003 instituted on 13.11.2003, which came to be decided vide order dated 29.01.2010 (Annexure P-8) by the Collector, Hoshiarpur. A detailed order, on merits, has been delivered highlighting therein each and every aspect with regard to the claim, as has been projected by the counsel for the

petitioners in the present writ petition.

9. The petition under Section 11 of the 1961 Act, which was filed on 13.11.2003, was for a declaration to the effect that the petitioners, which included the present petitioners as well, were owners in possession of the land. They had made a claim that even prior to 26.01.1950, they or their predecessors-in-interest were in possession of the land in question. Jamabandis prior to 1950 also reflected *Maqbooja Malkan* in the column of ownership although the land was mentioned as *Shamlat Deh Hasab Rasad Khewat*. Petitioners had claimed individual cultivating possession of the land in dispute. The exceptions, as have been sought to be carved out by the counsel for the petitioners in the present writ petition and the subsequent petition, which was preferred by the petitioners under Section 11 of the 1961 Act, had been dealt with by the Collector and had concluded that since the nature of the land has been shown as Gair Mumkin Pahar, Banjar Quadim and no individual had remained under cultivating possession, the claim, which has been made by the petitioners therein, stood rejected.

10. As regards the plea of the Gram Panchayat that the land in dispute was on annual lease by conducting open auction in the village for the sale of grass, Kharkana and trees, the conclusion was drawn that the petitioners were not in possession of the land and rather the land was being used for common purposes as the proceeds which were earned by the Gram Panchayat due to auction of the land was being used for the betterment of the village community. The auction proceedings were also brought on record. All these documents, which were placed on record, indicated that the petitioners were not in possession of the land. It has also come in the

said order that in a Regular Second Appeal preferred by the ancestors of the petitioners i.e. RSA No. 1225 of 1958, mutation in favour of the respondent-Gram Panchayat was assailed by filing suits which were dismissed leading to the filing of the appeal, as referred to above, where it has been held vide judgment dated 15.09.1960 that the ancestors of the petitioners have not succeeded in establishing their rights in the land either as proprietors or as body entitled to remain in possession of it. The matter having been settled up to the High Court with the mutation in favour of the Panchayat already upheld, the petition under Section 11 to be held as not maintainable. On the ground of delay also, the petition was dismissed. A detailed order has been passed on 29.01.2010 (Annexure P-8) by the Collector dealing with each and every aspect, as has been sought to be projected by the counsel for the petitioners.

11. Appeal against this order has also been dismissed by the Commissioner vide order dated 21.01.2011 (Annexure P-9) leaving no doubt that the subsequent petition, as has been preferred by the petitioners on 15.04.2011, would be hit by the principle of *res-judicata*.

12. As regards the plea of the learned counsel for the petitioners that the said principle would not be applicable to the proceedings preferred under Section 11 of the 1961 Act, suffice it to say that the judgment of the Hon'ble Supreme Court, on which reliance has been placed by the learned counsel for the petitioners i.e. Inder Singh's case (supra), related to the summary proceedings, which is not the same as far as Section 11 is concerned. In fact, it is a suit for declaration, which is preferred, where parties have projected their respective stands and all aspects have been gone into by the competent authority. Proceedings under Section 11 cannot, thus,

be stated to be summary proceedings and the principle of *res-judicata* would apply. Adjudication on the question of title pursuant to the petition filed under Section 11 of the 1961 Act in a subsequent petition pertaining to the same land and between the same parties would act as a bar to entertainment of the petition. Reference in this regard may be made to a judgment of the Division Bench of this Court in **Manghi Ram (deceased) through his legal representatives vs. Gram Panchayat, Chirwa, 2013 (1) RCR (Civil) 76.**

13. In the light of the above, we do not find any illegality in the orders passed by the revenue authorities which would call for any interference by this Court.

The writ petition, therefore, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

07.07.2022
PJ

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>