

In the High Court of Punjab and Haryana, at Chandigarh

1. Regular Second Appeal No. 2188 of 1989 (O&M)

Narinder Singh
... Appellant(s)

Versus

Pritam Singh (Since Deceased) through his Legal Heirs
... Respondent(s)

AND

2. Civil Writ Petition No. 16335 of 1996 (O&M)

Gram Panchayat, Village Talwandi Rai Dadu, Tehsil Ajnala, District
Amritsar
... Petitioner(s)

Versus

The Custodian General, Punjab and Others
... Respondent(s)

RESERVED ON: 18.08.2023
PRONOUNCED ON: 01.09.2023

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vijay Kumar Jindal, Senior Advocate
with Mr. Akshay Jindal, Mr. R.K.Arya and
Mr. Pankaj Gautam, Advocates, for the appellant
(In RSA-2188-1989) and for the respondent No.2
(In CWP-16335-1996).

Mr. Balbir Singh Jaswal, Advocate
for the petitioner (In CWP-16335-1996).

Mr. Amandeep Soni, Advocate
for the respondent-Rajwant Singh (In RSA-2188-1989).

Mr. Sandeep Chopra, Deputy Advocate General,
Punjab.

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Anil Kshetarpal, J.

1. With the consent of the learned counsel representing the parties, Regular Second Appeal No. 2188 of 1989 and Civil Writ Petition No. 16335 of 1996, which are *inter se* connected, shall stand disposed of.

2. In order to comprehend the controversy involved in these two cases, it is significant to take note of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”) and a Constitution Bench judgment in *Gram Panchayat of Village Jamalpur v. Malwinder Singh and Others (1985) 3 SCC 661*.

3. In order to consolidate and amend the laws regulating the rights in *Shamlat Deh* and *Abadi Deh*, the State Legislature has enacted the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as “the 1953 Act”) and the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as “the 1954 Act”). However, after repealing both the aforementioned Acts, the 1961 Act was enacted, which received the assent of the President of India on 16.04.1961. Section 2(g) of the 1961 Act defines “*Shamlat Deh*” which reads as under:-

(g) "shamlat deh" includes

(1) lands described in the revenue records as shamlat deh excluding abadi deh;

(2) shamlat tikkas;

(3) lands described in the revenue records as shamlat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for

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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*

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*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.”*

In common parlance, *Shamilat Deh* is the land which is reserved, assigned or utilized for the common purposes of the village.

4. Section 11 of the 1961 Act confers exclusive power to the

Collector to decide the right, title or interest in any land, vested or deemed to

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have vested in a Panchayat. Any person claiming that any land has not been so vested in the Panchayat is also required to file a suit under Section 11 of the 1961 Act in the Court of the Collector. Section 11 of the 1961 Act reads as under:-

“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 may be 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.”

5. Section 13 of the 1961 Act provides that no Civil Courts shall have the jurisdiction to entertain or adjudicate upon any question, whether any property or any right or interest in any property is or is not *Shamilat*

Deh vested or deemed to have been vested in a Panchayat. Thus, on the one

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hand, the exclusive jurisdiction has been conferred on the Court of Collector, notified under the 1961 Act, whereas on the other hand, the jurisdiction of the Civil Court stands excluded to decide such questions.

6. There is another relevant Act which needs a brief reference. The Central Government has enacted the Administration of Evacuee Property Act, 1950 (hereinafter referred to as “the 1950 Act”). As defined in Section 2(d), of the 1950 Act the “evacuee” means any person who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March, 1947, left, any place in the State for any place outside the territories now forming part of India. In other words, the evacuee property is that property which was left behind the persons who migrated to Pakistan pursuant to the disturbances when the country was being partitioned between India and Pakistan.

7. Through the writ petition, the Gram Panchayat prays for the issuance of a writ of certiorari to quash the order passed by the Custodian General on 11.06.1996 while exercising the powers under Section 27 of the 1950 Act which is extracted as under:-

“This is a revision petition under Section 27 of the Administration of Evacuee Property Act, 1950 for declaring the land measuring 126 K 16 M comprised in Khasra No. (e) 42//2, 8/2, 9, 12, 13, 14/1, 17/1, 18,19,20, 21,22,23,24/1, 25/2, 43/10, 44/2/2, 3,4,5, 6/1 situated in Patti Rai Alam of village Taluandi Rai Dadu, Tehsil Ajnala, District Amritsar as an evacuee property being ownership of the Central Government which has

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*wrongly and illegally stood in the name of Gram Panchayat,
Talwandi Rai Dadu.*

2. *The facts in brief of this case are that as per Jamabandi for the year 1944-45 area measuring 142 K 13 M comprising in Kheuat No.59 to 59/319 in the column of ownership it has been mentioned that 'Shamlat Taraf R i Aam & hasab hises Jadi and this entry existed even in the Jamabandi for the year 1961-62. In the Jamaband i for the year 1965 it has been mentioned that Mutation No.329 dated 16.7.1965 was sanctioned and in view thereof the ownership from Rai Dadu and Rai Aalm was changed into the ownership of the Gram Panchayat.*

3. *The Counsel for the petitioner argued that since prior to the partition of the country as is evident from the Jamabandi for the year 1944 the ownership vested with the Muslims who migrated at the partition of the country and as such the property in question automatically vested with the Custodian. The Gram Panchayat got the ownership changed with a general letter of the Provincial Government which is against the Rules. The counsel for the respondent could not either adduce any evidence and has nothing to d say anything in rebutal, even written arguments are not convincing.*

4. *I have heard the arguments advanced by the counsel for the parties and gone through the record minutely. The District Revenue officer-cum-Additional Custodian Amritsar has catagorically reported that before the partition of the country*

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the land in dispute was property of the Muslims and it should have been gone to the Custodian and not to the provincial Government who vide his general order released in favour of Government, In view of the facts stated above I am convinced that the property in question does not belong to the Gram Panchayat and accordingly the same is declared as Evacuee Property which should be disposed of under the Rules.”

8. In this order, the Custodian General has held that the property in question does not belong to the Gram Panchayat and granted declaration that the property is an evacuee property which should be disposed of as per the Rules.

9. In the Regular Second Appeal, Narinder Singh, appellant, filed a suit in the Court of first instance claiming a decree for permanent injunction restraining Pritam Singh from dispossessing from the land measuring 126 kanals and 16 marlas. He claims to be in possession of the land for the last two/three years and in fact, the suit property is under the ownership of the proprietors of *Patti Rai Alam* of village Talwandi Rai Dadu. It is the case of the plaintiff that predominantly the village was inhabited by Mohammedans, who, on the partition of the country, migrated to Pakistan, therefore, the ownership vested in the Central Government. He also claims that the land has been wrongly mutated in the favour of Gram Panchayat. Pritam Singh, while contesting the suit, has stated that a previous suit is pending and the property is owned by the Gram Panchayat since 1969. He claims that the land was transferred by the Central Government in

the favour of the State Government, which, in turn, transferred the land to

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the Gram Panchayat and he as a lessee under the Gram Panchayat of village Talwandi Rai Dadu is in possession of the same.

10. On the appreciation of the pleadings, filed by the parties, the Court of first instance has culled out the following three issues which require adjudication:-

- “1. *Whether the plff. is entitled to the permanent injunction as prayed for? OPP.*
2. *Whether the suit is not maintainable in the present form as alleged in preliminary objection No.1 of the w/s? OPD.*
3. *Relief.”*

11. The trial Court decreed the suit. However, the first Appellate Court, on re-appreciation of the evidence, found that the plaintiff has failed to prove his case and the gram panchayat being the necessary party has not been impleaded in the suit. It was also found that in the plaint, the plaintiff claims that he is in possession through Surjan Singh and Jagir Singh, whereas in the evidence, he claims that he himself is in possession. Hence, his evidence is at variance with his own pleadings. Moreover, neither Surjan Singh nor Jagir Singh have been examined to prove their possession. The Court also held that there is no record to prove the plaintiff's possession. Rather it is proved that the gram panchayat leased out the land in the year 1969 for a period of 20 years to Pritam Singh. The report of Patwari also proves the possession of Pritam Singh. This is how the plaintiff has filed the second appeal which was admitted for the regular hearing.

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Custodian General passed an order on 11.06.1996 declaring that the property does not vest in Gram Panchayat of village Talwandi Rai Dadu. The writ petition has been filed by the Gram Panchayat to challenge the correctness of such order passed by the Custodian General.

13. Now, this Court proceeds to carefully examine the judgment passed by the Constitution Bench of the Supreme Court in ***Gram Panchayat of Village Jamalpur's case (supra)***. The Court noticed that there is a repugnancy between Section 3(a) of the 1953 Act and Section 8(2) of the 1950 Act. After observing that, by virtue of Article 254 (1) of the Constitution of India read with Entry No. 41 of the Concurrent List, the Central Act, 1950, prevails over the Punjab Act. However, in order to overcome the constitutional impasse, the satisfactory solution was found in Entry No. 18 of List-II (State List) of the Seventh Schedule to the Constitution of India. It was held that the 1953 Act is a measure of agrarian reform which would receive protection under Article 31-A of the Constitution of India. Ultimately, the Court found that the law passed by the State Legislature, being a measure of the 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. Para 14 of the concurring judgment written by the then Hon'ble Chief Justice of India reads as under:-

“14. 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

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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

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*of Punjab over the Central Act of 1950, even in so far as
Shamlat-deh lands are concerned.”*

As already noticed, the 1953 Act was superseded by the 1961 Act, which also falls in Entry No.8 of the State List and has received the assent of the President as required by the first proviso to Article 31-A of the Constitution of India. Thus, the provisions of the 1961 Act will prevail over the provisions of the 1950 Act.

14. In the writ petition, the Gram Panchayat has also stated that the Government of India, Ministry of Rehabilitation, vide letter dated 02.02.1960, decided to transfer the land measuring 46863 acres, 3 kanals and 3 marlas evacuee land to the Government of Punjab which was situated within five miles of the Indian border. The State of Punjab, on payment of the amount, as demanded by the Central Government, became the owner of the land. Thereafter, the Government of Punjab transferred the property to the Gram Panchayat including this parcel of land. It has also been stated that the land in dispute is situated within the periphery of five miles of Indian border.

15. On the careful reading of Section 27 of the 1950 Act, it is evident that the power of the Custodian General is of superintendence over the order or the proceedings which are of any custodian. Section 27 of the 1950 Act does not enable the Custodian General to pass orders even in the absence of order or proceedings pending or decided before any custodian. From the reading of the order, it is evident that the Custodian General has passed the order on a petition filed by Narinder Singh (plaintiff in the suit).

After noticing that before partition of the country, the land in dispute was the

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property of Muslims and it should have gone to the custodian, the Custodian General came to a conclusion that the property does not belong to the Gram Panchayat. Neither the Custodian General has examined the matter in the context of the case set up by the Gram Panchayat nor it was examined after taking note of the judgment passed by the Constitutional Bench to the effect that if the land was reserved, utilized or assigned for common purpose, then being *patti* land, would vest in the Gram Panchayat nor the factum of transfer of the property by the Central Government in favour of the State Government, which, in turn, transfer the property in favour of the Gram Panchayat has been examined by the Custodian General. In fact, the exclusive jurisdiction to decide such disputes lies in the Court of the Collector under Section 11 of the 1961 Act. The jurisdiction of the Civil Court is barred. In these circumstances, the order passed by the Custodian General is not correct. In fact, the plaintiff (Narinder Singh), in the regular second appeal, did file an application under Section 11 of the 1961 Act to the Court of the Collector on 02.05.1995. This fact was brought to the notice of this Court. Hence, the State of Punjab was requested to get an information about the same. However, the learned counsel representing the State of Punjab has informed that the record was burnt and they do not have any information. Narinder Singh (plaintiff in the suit), while filing the written statement to the writ petition, admits the aforesaid fact. It is admitted that he filed an application under Section 11 of the 1961 Act, but when it came to the notice of the said Collector that the matter is already pending in the High Court, the proceedings were kept in abeyance. In the considered

opinion of this Court, the appropriate remedy lies in revival of the

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proceedings which were kept in abeyance by the Collector. For the reasons noted above, the order passed by the Custodian General is not sustainable, therefore, it is set aside.

16. The learned senior counsel representing Narinder Singh, respondent No.2 in the writ petition, contends that there is no requirement of relegating the parties to the remedy under Section 11 of the 1961 Act as there is clarity with respect to the nature of the land, hence, this Court should decide the matter. It would be noted here that the learned senior counsel relies upon a report submitted by the Deputy Commissioner to the Joint Secretary to the Government, Rehabilitation and Resettlement Department (Annexure R1) dated 05.09.1994. On its careful perusal, it is evident that the Deputy Commissioner itself has noticed that in the ownership column, the name of *Shamilat Taraf Rai Aalm/Hasab Hises Jaddi* is entered in the jamabandi for the year 1944-45, whereas in the year 1961-62, the entry in the name of *Patti Taraf* continues and in the possession column, *Diggar Hasab Rasad* has been recorded. The Deputy Commissioner concluded that the Gram Panchayat has failed to provide any material evidence, which is relevant to prove that the land belongs to it. Such report is neither equivalent nor a substitute of the proceedings in a regular suit where the parties are granted an opportunity to prove their case. Hence, there is no substance in the first argument.

17. The next argument of the learned senior counsel representing Narinder Singh is that the writ petition is not maintainable as it involves the disputed questions of facts. There is some substance in the argument.

However, the Custodian General has passed an order without any

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jurisdiction, which requires to be set aside. This Court does not intend to finally decide the dispute. In these circumstances, in the context of the correctness and validity of the order passed by the Custodian General on 11.06.1996, there is no disputed question of fact.

18. The next argument of the learned senior counsel representing Narinder Singh is based on the fact that the ownership of the property could not be transferred in favour of the Gram Panchayat merely on the basis of the letter written by the State Government in the year 1960. In this regard, it may be mentioned that it would not be appropriate for this Court to observe anything particularly when the resolution of the dispute lies in the Court of Collector at the first instance.

19. The last argument of the learned senior counsel representing Narinder Singh is based on the judgment of the Five Judges Bench in ***Indira Sohanlal v. Custodian of Evacuee Property, Delhi and Others AIR 1956 Supreme Court 77***. While relying upon the observations made by the Supreme Court in para 16 of the report, he submits that the power under Section 27 of the 1950 Act is very wide in its nature and cannot be construed as being subject to any such limitations. This Court has carefully read the aforesaid judgment. In para 1 of the report, the Supreme Court noticed that the two questions which were raised before it are extracted as under:-

“(1) *Whether the Custodian-General had the revisional power which he purported to exercise? and*

(2) *Was the order of the Custodian-General on its merits such as to call for interference by this Court?”*

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In that context, the Supreme Court made observations about the scope of Section 27 of the 1950 Act. Moreover, this judgment was passed in the year 1956, but the repugnancy between the Central Act of 1950 and the Village Common Land Act was never in dispute in that case. Hence, in the facts of the case, the judgment relied upon by the learned senior counsel representing Narinder Singh has no substance.

20. Now, this Bench proceeds to examine the regular second appeal. It would be noted that appellant-Narinder Singh has filed an application under Order XLI Rule 27CPC, in order to produce the copy of Civil Suit No. 109 dated 16.07.2008 titled as “Gram Panchayat, Village Talwandi Rai Dadu v. Union of India and Others” decided on 26.02.2015. In this suit, the Gram Panchayat sought the decree under Section 45 of the Punjab Land Revenue Act, 1887 (hereinafter referred to as “the 1887 Act”) for correcting the entries in the revenue record and for the grant of decree of mandatory injunction directing the defendant No.1 to 3 to correct the entries. The suit against the Union of India was dismissed in default. Ultimately, the suit filed by the Gram Panchayat was dismissed. The appellant also wishes to produce a copy of the judgment passed in Civil Suit No. 787 of 1995 titled as “Jinda Singh vs. Manjit Singh and Others” wherein Jinda Singh sought the decree of permanent injunction. Jinda Singh claimed that he is a lessee in possession under the Gram Panchayat. His suit was also dismissed. The next document relied upon by the appellant is the judgment passed in the Criminal Case No. 9 dated 01.02.1997 titled as “State v. Manjit Singh and Others” arising from the FIR No. 153 dated

16.12.1997, wherein the accused were acquitted. The next document sought

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to be produced in the additional evidence is a copy of judgment passed in Civil Suit No. 253 of 1995 titled as “Narinder Singh v. Gram Panchayat, Talwandi Sabo”, decided on 09.03.1998. This was a suit for permanent injunction restraining the defendants from interfering in possession. The aforesaid suit was decreed on 09.03.1998. The last document relied upon is an order passed by the Executing Court in the proceedings under Order XXI Rule 32 CPC. In these proceedings, Narinder Singh sought to execute the injunction decree dated 09.03.1998. Though, this application was never pressed at the time of final arguments, however, all these judgments are without jurisdiction because the exclusive jurisdiction vests in the Court of the Collector. Section 13 of the Act is categoric. Moreover, in *Ram Singh and Others v. Gram Panchayat Mehal Kalan and Others (1986)4 SCC 364*, the Supreme Court has held that a clever drafting of the suit would not confer jurisdiction on the Civil Court and the matter should be decided by the Court of the Collector.

21. It is also evident that the plaintiff Narinder Singh does not claim to be a member of the proprietary body. It is his case that the land vests with the Central Government and he is in possession for the last two/three years before filing of the suit. He has not been able to prove his right, title or interest in the property. As correctly noticed, there is variance in the stand taken by the plaintiff in the plaint and in his evidence. Non-alignment of pleadings and evidence does not lead to any substantial conclusion. Moreover, Surjan Singh and Jagir Singh have never been examined in evidence. Moreover, the plaintiff has not proved that in what

Capacity he claims to be in possession of the property.

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22. Keeping in view the aforesaid facts and discussion, there is no merit in the regular second appeal.

23. Ultimately, it is held that the writ petition filed by the Gram Panchayat is allowed and the order passed by the Custodian General on 11.06.1996 is set aside. Narinder Singh shall be entitled to file an application for revival of the proceedings filed under Section 11 of the 1961 Act or file a fresh one. Whereas the regular second appeal filed by Narinder Singh is dismissed. It is clarified that the Collector under Section 11 of the 1961 Act will decide the question of vesting of the land in the Gram Panchayat, independently, in accordance with law.

24. The miscellaneous application(s) pending, if any, in the regular second appeal as well as the writ petition shall stand disposed of.

(Anil Kshetarpal)
Judge

September 01, 2023**“DK”**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No