

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

**(i) CWP-6780-2022 (O&M)
Date of Decision: 16.02.2023**

TARSEM LAL

-Petitioner

Versus

**DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT
DEPARTMENT & ORS.**

-Respondents

(ii) CWP-29001-2022

PAL SINGH

-Petitioner

Versus

**DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT
DEPARTMENT & ORS.**

-Respondents

(iii) CWP-29031-2022

PURAN SINGH

-Petitioner

Versus

**DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT
DEPARTMENT & ORS.**

-Respondents

(iv) CWP-29093-2022

HANS RAJ AND ORS.

-Petitioner

Versus

**DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT
DEPARTMENT & ORS.**

-Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. G.S. Nagra, Advocate and
Mr. K.S. Rawat, Advocate
for the petitioner(s).

Mr. Karanjit Singh, Addl. A.G., Punjab.

Mr. Rakesh Kumar, Advocate
for the respondent-Gram Panchayat.

KULDEEP TIWARI, J.

1. This order shall dispose of CWP-6780-2022, CWP-29001-2022, CWP-29031-2022, and, CWP-29093-2022, as they arise out of the same order dated 21.05.2021, passed by the respondent No.1. For brevity, the facts are being extracted from CWP-6780-2022.
2. The petitioner herein had filed a petition under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act' for short) seeking a declaration to the effect that he is owner in possession of the suit land, measuring 16 Kanals 0 Marla, situated in the revenue estate of Village Gadani, Sub Tehsil Dilwan, Tehsil and District Kapurthala, pleading therein that the Gram Panchayat Gadani has no concern, whatsoever, with the suit land, as the same is *Nazul* land, which was allotted to one Bhagat Ram, and, qua that a Rapat Roznamcha (Diary Report) has been entered on 31.08.1963. It was further pleaded that Bhagat Ram had died issueless, and, during his lifetime, he had executed a Will in favour of the petitioner. Thereupon, the respondent- Gram Panchayat had filed written statement, pleading

therein that the suit land is not *Nazul* land, rather, the same belongs to Gram Panchayat, as per Jamabandi for the year 2004-2005, wherein the petitioners have been recorded as *Gair Marusi*. It was further averred that earlier, the Gram Panchayat had filed a petition under Section 7 of the Act, whereupon order dated 21.11.2012 was passed, thereby ordering ejectment of the petitioner. Even the appeal preferred thereagainst by the petitioner also stood dismissed. Upon the pleadings of both the parties, the respondent No.2 framed specific issues, one amongst which was “*Whether the petitioner is in possession of the land before 26.01.1950? OPP*”. After giving opportunity to both the parties, to lead evidence, finally the learned Collector had dismissed the suit vide order dated 27.02.2018. Being aggrieved from this order, the petitioner filed a statutory appeal before the respondent No.1, however, the same was also dismissed vide the impugned order dated 21.05.2021 (Annexure P-14).

3. Before we advert to decide the issue involved in the instant writ petition, it is apt to first deal with some additional facts, as the present case has a chequered history. It is not in dispute that earlier the respondent- Gram Panchayat had filed an application under Sections 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, seeking eviction of the petitioner from the suit land, and, also seeking recovery of damages for unauthorized occupation thereof. The above application was allowed vide order dated 21.03.1986, and, the petitioner was ordered to be evicted, and, to pay damages @ Rs.300/- per acre. The petitioner challenged this order, by filing a suit for

declaration, being Civil Suit No.130 of 19.04.1986, before the learned Senior Sub Judge, Kapurthala, and, the suit was decreed vide judgment and decree dated 08.06.1989 (Annexure P-2). Thereafter, the Gram Panchayat had filed a petition under Section 7 of the Act, seeking eviction of the petitioner from the suit land, on the strength of the Jamabandi for the year 2004-2005, wherein, in the column of ownership, the name of Gram Panchayat has been recorded, and, in the column of cultivation, the name of the petitioner has been recorded as *Gair Marusi*. The petitioner was proceeded against ex parte in the aforesaid petition, and, an ex parte eviction order was passed on 21.11.2012, by the learned Collector concerned. Thereafter, the petitioner preferred a statutory appeal, bearing No.62/2013, under Section 11(2) of the Act, before the respondent No.1. However, this appeal was also dismissed by the statutory appellate authority, being devoid of any merit, vide order dated 23.01.2015 (Annexure P-7). The petitioner preferred a writ petition before this Court, being CWP-10153-2016. This Court, vide order dated 23.5.2016, had allowed the writ petition, and, granted liberty to the petitioner to file a declaratory petition, under Section 11 of the Act, to establish his claim regarding allotment/possession of the land. The operative part of the order (supra) reads as under:-

“Since the petitioner has not led any evidence in the eviction proceedings regarding allotment of the subject-land, we decline to interfere with the eviction order but grant him liberty to file a declaratory petition under Section 11 of the 1961 Act and establish his claim re: allotment/possession of the land. The Collector, Kapurthala

is directed to decide the said petition on merits uninfluenced of the findings given in summary proceedings under Section 7 of the 1961 Act.

Ordered accordingly.

The parties are directed to maintain status quo re: possession for a period of three months from the date of receiving a certified copy of this order, to enable the petitioner to file declaratory petition accordingly.”

4. Thereafter, the petitioner had filed a suit, under Section 11 of the Act, before the respondent No.2, for declaring him as owner of the suit land. However, this suit was dismissed vide impugned order dated 27.02.2018 (Annexure P-11), and, even the statutory appeal was also dismissed vide impugned order dated 21.05.2021 (Annexure P-14). Being aggrieved by the orders dated 27.02.2018, and, 21.05.2021, the petitioner has approached this Court through the instant writ petition, seeking quashing of these orders.

5. The learned counsel for the petitioner, while placing reliance upon the Rapat Roznamcha (Annexure P-1), dated 31.08.1963, would submit that the land was allotted to one Bhagat Ram, and, by virtue of his Will, the petitioner is successors-in-interest of Bhagat Ram, therefore, he is in lawful possession of the suit land, and, the respondent Gram Panchayat Gadani has no concern, whatsoever, with the suit land.

6. We have examined the entire record, as placed on record by the petitioner. As per the Jamabandi for the year 2014-2015 (Annexure P-1), the name of Gram Panchayat is recorded in the column of ownership, whereas, the name of father of the petitioner, i.e. Channu Ram, is

recorded as *Gair Marusi* in the column of cultivation. Perusal of the impugned order dated 27.02.2018, passed by the respondent No.2, reveals that the petitioner had examined one Vijay Kumar, Halqa Patwari, to prove on record the Rapat Roznamcha dated 31.08.1963, however, during cross-examination, he has categorically admitted that he has not brought any order, vide which the Rapat Roznamcha was entered, as the same is not available on record. Here, it would be relevant to mention that earlier, before this Court also, the petitioner had sought time to place on record the allotment letter in respect of the suit land, to substantiate the entry of the Rapat Roznamcha, however, despite availing numerous effective opportunities, the petitioner has not produced on record any allotment letter, to support the entry of the Rapat Roznamcha. Therefore, in absence of any allotment letter/order, the entry in the Rapat Roznamcha is of no significance.

7. We do not find any revenue document, or, any other document, which could suggest that the suit land is *Nazul* land, and, had been allotted to the predecessor-in-interest of the petitioner, whereas, as per the revenue record, i.e. Jamabandi for the year 2004-2005, the name of Gram Panchayat is recorded in the column of ownership, and, the name of father of the petitioner, i.e. Chanu Ram, is recorded as *Gair Marusi* (A non occupant tenant) in the column of cultivation. A non occupant tenant cannot acquire the status and rights of Marusi and claim ownership. This Court, in **CWP No.20563 of 2008**, titled “**Jaleb Khan and others V/s Commissioner, Gurgaon Division, Gurugaon and**

others”, has held as under:-

“After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. The Gram Panchayat, Agon (respondent No.3) filed a petition under Section 7 of the Act seeking eviction of the petitioners. As per Jamabandis for the years 1962-63, 1967-68 and 1997-98 (Annexures P-7, P-8 and P-9) respectively the ownership of the land in question is recorded in the name of Gram Panchayat. In the column of cultivation, Kallu son of Kale Khan son of Chhota Khan is recorded as 'Gair Marusi' in the three afore-referred Jamabandis. Therefore, the predecessor-in-interest of the petitioners having been recorded as 'Gair Marusi' he cannot possibly acquire the status and rights of 'Marusi' (occupancy tenant) as contended by the learned counsel for the petitioners. The fact that the petitioners acquired rights of ownership being an occupancy tenant is clearly misconceived.”

8. We have also perused the judgment and decree dated 08.06.1989 (Annexure P-2), which makes it clear that there is no finding recorded by the civil court qua the suit land being a *Nazul* land, or, that of the Gram Panchayat, whereas, the civil court has observed that the plaintiff therein should not be dispossessed forcibly from the suit land, without due course of law. The relevant extract of the order (supra) is extracted hereunder:-

“....it is hereby ordered that the suit of the plaintiff for declaration with consequential relief of permanent injunction is decreed with costs, that the order dated 21.3.86 is set aside being illegal, void and the defendant should not make recovery of the damages and also should not

dispossess the plaintiff, forcibly without due course of law from the suit land.”

9. It is interesting to note that, in the above civil suit, the plaintiff therein (present petitioner) had specifically pleaded that the suit land is *Shamlat Deh*, and, ejectment therefrom could only be ordered under Section 7 of the Act. Therefore, now the petitioner cannot turn around, and, say that the suit land is not *Shamlat Deh*, rather, it is *Nazul* land. As already mentioned above, the suit land does fall within the ambit of *Shamlat Deh*, as defined in Section 2(g) of the Act, therefore, vests within the Gram Panchayat. Section 13 of the Act imposes a specific embargo on the civil court to entertain any claim with regard to *Shamlat* land. Section 13 of the Act reads as under:-

*“13. **Bar of Jurisdiction.**-- No civil court shall have jurisdiction---*

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

(i) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.”

Perusal of the above extracted Section makes it clear that the

civil court has no jurisdiction over the subject matter of dispute. Therefore, any order passed by the civil court would be *coram-non-judice*, thus a nullity. The above conclusion gathers support from a judgment of Hon'ble Supreme Court passed in **Hasham Abbas Sayyad v. Usman Abhas Sayyad, 2007 AIR (Supreme Court) 1077**, wherein it has been held as under:-

“21. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to.

22. This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi v. DLF Universal Ltd. and Another, 2005(4) RCR (Civil) 260 : [(2005)7 SCC 791], in the following terms :

"We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest

possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity."

23. We may, however hasten to add that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Civil Procedure Code; and a decree passed by a court having no jurisdiction in regard to the subject matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with."

Therefore, the judgment and decree dated 08.06.1989, passed by the Civil Court concerned, is beyond its jurisdictional competence and therefore, is a nullity.

10. Furthermore, there is nothing on record to substantiate that the petitioners are the legal representatives of Bhagat Ram, in whose favour the allotment was allegedly made by the government. The petitioner has not placed on record Sajra Nasab (pedigree table) issued by any competent revenue authority, therefore, we find no merit in the

present writ petition, and, the same is accordingly dismissed. There is no infirmity or illegality in the impugned orders dated 21.05.2021, and, 27.02.2018, passed by the competent jurisdictional authorities concerned, therefore, the same are hereby upheld.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

16.02.2023
devinder

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No