

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-5592 of 2015 (O&M)
Date of Order: 27.07.2023

Gram Panchayat Village Bass Kiroad Umrabad

.Appellant

Versus

Jaswant Rai Ahuja and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

**Present: Mr. Sudhir Kumar Pandey, Advocate
for the appellant.**

Ms. Vibha Tewari, AAG, Haryana

Mr. Ajay Jain, Advocate, for respondent no.2.

ANIL KSHETARPAL, J

1. The appellant-Gram Panchayat was defendant in a suit for grant of decree of declaration. The respondents (plaintiffs) filed a suit challenging the correctness of a mutation entry dated 23.06.1992 mutating the land in favour of the Gram Panchayat. While filing the suit, the plaintiffs claim that the suit property vests with them and not with the Gram Panchayat. The Gram Panchayat claimed that the property was reserved for common purposes and therefore, it vests with the Gram Panchayat.

2. The trial court dismissed the suit on the ground that the court of Collector under Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act') has the exclusive jurisdiction. However, the First Appellate Court without discussing or analyzing or referring to the question of jurisdiction has set aside the judgment of the trial court. It was wholly inappropriate for the

First Appellate Court to pass the judgment without even referring to the question of jurisdiction on which the trial court had dismissed the suit.

3. This Bench has heard the learned counsels representing the parties at length and with their able assistance perused the paper book.

4. The learned counsel representing the appellant submits that the jurisdiction of the civil courts is barred to entertain and adjudicate any question, whether any property or any right, title or interest in any property is or is not Shamilat Deh, vested or deemed to have been vested in a Panchayat under the 1961 Act. Section 13-A confers exclusive jurisdiction on the court of Collector. Section 13 and 13-A of the 1961 Act are extracted as under:-

Sec 13. Bar of Jurisdiction-- No civil court shall have jurisdiction- (a) to entertain or adjudicate upon any question whether

(1) 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 of 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 .]

13-A Adjudication - (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachive, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title of interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings under section 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub - section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908)”

5. At the most, the plaintiffs' case that the land was Jumla Mushtarka Malkan. In **State of Haryana vs. Jai Singh and others, 2022**

AIR (SC) 1718, the Supreme Court while reversing the judgment rendered by the 5 Judge Bench of the High Court held that once the land was reserved for common purposes, even though recorded as Jumla Mushtarka Malkan in the revenue record, the same would vest with the Gram Panchayat and it shall not revert back to the owners. In *Samar vs. Roshan Lal and others*(Regular Second Appeal No.2412 of 2018, decided on 04.07.2022), this court after examining the issue of jurisdiction has declared that the jurisdiction to decide such question exclusively vests in the court of Collector.

6. In view of the aforesaid, the appeal is allowed. The judgment and decree passed by the First Appellate Court is set aside and that of the trial court is restored.

7. The plaintiffs, if so advised, may avail the remedy under Section 13A of the 1961 Act.

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

July 27, 2023

nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned
Whether reportable

:YES/NO
:YES/NO