

CWP-7715-2018 & connected cases 1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

220 + 108 (i) CWP-7715-2018 (O&M)
Date of Decision : May 11, 2023

SUSHIL KUMAR AND ORS -Petitioners

V/S

STATE OF HARYANA AND ORS -Respondents

(ii) CWP-7716-2018

CHARAN SINGH AND ORS -Petitioners

V/S

STATE OF HARYANA AND ORS -Respondents

(iii) CWP-7717-2018

PRITHI SINGH THR LR AND ORS -Petitioners

V/S

STATE OF HARYANA AND ORS -Respondents

(iv) CWP-7718-2018

SHRI RAM SINGH THR LR AND ORS -Petitioners

V/S

STATE OF HARYANA AND ORS -Respondents

(v) CWP-7719-2018

MANN SINGH AND ORS -Petitioners

V/S

STATE OF HARYANA AND ORS -Respondents

(vi) CWP-7845-2018 (O&M)

GURDYAL SINGH AND OTHERS -Petitioners

V/S

THE STATE OF HARYANA AND OTHERS -Respondents

CWP-7715-2018 & connected cases

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(vii) CWP-7849-2018

**AJMER SINGH (SINCE DECEASED) THROUGH LRS AND
OTHERS**

-Petitioners

V/S

THE STATE OF HARYANA AND OTHERS

-Respondents

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

Present : Mr. Ashish Aggarwal, Sr. Advocate with
Ms. Nidhi, Advocate and
Mr. Vishal Pundir, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G. Haryana with
Mr. P.P. Chahar, Sr. DAG, Haryana and
Mr. Saurabh Mago, DAG, Haryana.

Mr. Vikram Singh, Advocate with
Mr. Divyam Singh, Advocate and
Ms. Sumitra, Advocate
for the respondent No.5- Gram Panchayat (in all cases).

Mr. R.S. Mamli, Advocate
for the applicants/proposed respondents No.6 to 32
(in CWP-7715-2018).

SURESHWAR THAKUR, J.(ORAL)

**CM-8293-CWP-2023, CM-17530-CWP-2019 & CM-17531-CWP-2019
IN CWP-7715-2018**

1. The learned counsel for the applicants seeks permission to withdraw the present applications.
2. Permission granted.
3. Consequently, the extant applications are dismissed as withdrawn.

Main Cases

4. Since all the writ petitions relate to a common factual matrix,

besides relate to common questions of law, therefore irrespective of the fact, that they are directed against separate statutory appeals, as raised by the aggrieved, from the common affirmative concurrent verdict(s), as made on the petition, cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), by the Assistant Collector, Ist Grade, Indri (hereinafter referred to as the Assistant Collector), thereby decreeing the eviction petition (supra) of the Gram Panchayat concerned, thus these writ petitions are amenable for a common verdict becoming drawn thereon.

Factual Matrix

5. The Gram Panchayat Garhpur Tapu, Tehsil Indri, District Karnal, instituted Case No.9/VCLA, on 16.01.2015, before the Assistant Collector. Through a decision made thereon, on 21.07.2016 (Annexure P-10), the Assistant Collector thereby decreed the Gram Panchayat's petition (supra), wherein, it had claimed the eviction of the respondents therein, from the petition lands. The Assistant Collector after making an insightful study of the Jamabandis relating to the petition lands, and, appertaining to the years commencing from 1904-1909 and there onwards. However with the said Jamabandis not reflecting, that the lawful predecessor(s)-in-interest of the present petitioners, were holding cultivating possession of the petition lands, thus prior to 1950. Resultantly, the petitioners who are the successor(s)-in-interests of their said lawful predecessor(s)-in-interest, thus not becoming assignable the benefit of the apposite savings clause, as carried in Section 2(g)(viii) of the Act of 1961, provisions whereof stand extracted hereinafter.

“2. Definition- In this Act, unless the context otherwise

requires.

XX XX XX

(g) “*Shamilat deh*” includes

XX XX XX

(viii) *was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or*

XX XX XX”

6. Another reason, which prevailed, upon, the Assistant Collector to draw Annexure P-10, flowed from the factum, that in the consolidation scheme, besides in the Wazib Ul Arz, relating to the petition lands, the lands became described either as “Charand” or became assigned some other revenue designations, which thus made them amenable for joint or common user thereof, by the village proprietary body concerned. In addition, the Assistant Collector also appears to have borne in mind, an entry in the column of ownership in the relevant Jamabandi, thus depicting therein the name of shamlat deh. Resultantly, he concluded that per se, on the plank of the said entry, the mandate as enclosed in Section 2(g) of the Act of 1961, thus becomes attracted. The reason being that the said entry in the column of ownership, even if it occurred in substitution of the prior thereto entry, rather remaining unchallenged. Therefore, he appears to draw a conclusion, that the petition lands were shamlat deh lands.

7. As above stated, since the petitioners before this Court, were arrayed as respondents in the eviction petition, whereon an affirmative verdict Annexure P-10 became drawn, therefore though they made separate statutory appeals before the competent appellate authority concerned.

However, this Court deems it fit to refer to the verdict of dismissal

(Annexure P-12), as made on the statutory appeal No.19/DC/RE/2016. The reason being, that on other statutory appeals as raised by the aggrieved from Annexure P-10, an order alike the one as became made on Annexure P-12, thus also became made thereons. Yet again, the petitioners herein, respondents in the eviction petition (supra), proceeded to assail Annexure P-12, through theirs creating a revision petition before the competent revisional authority concerned. However, a reading of Annexure P-15, which is an order drawn on the relevant revision petition, discloses, that the revisional authority concerned also concurred with the decisions, as became earlier recorded respectively by the Assistant Collector, besides by the competent appellate authority concerned. The said concurrent verdicts are respectively enclosed in Annexure(s) P-10, and, P-12.

8. Resultantly, the above concurrently made verdicts against the present petitioners, brings grievance to them, who are the aggrieved encroachers upon the Panchayat land, who thus have constituted the above writ petitions before this Court.

Submissions by learned counsel for the petitioners

9. The learned counsel appearing for the petitioners, has very vehemently argued before this Court, that since in the column of ownership, in the Jamabandi relating, to the petition lands, and, appertaining to the year 1902-1903, there is a reference of “Shamilat Patti Tapu”, besides when in the column of cultivation thereof, “Makbuza Malkan” has been recorded, to be, in cultivating possession of the petition lands. Therefore, he argues, that the substitution in the column of ownership, thus in place of “Shamilat Patti Tapu” rather of “Shamlat Deh”, rather is an impermissible and an unauthorized substitution, as the said substitution is not made in pursuance

to any valid order thus becoming made by an authorized revenue officer concerned.

Reasons for rejecting the above argument

10. Insofar as the above submission is concerned, it is liable to be straightaway rejected, as there appears neither any pleading in respect of the above submission, in the reply(ies) furnished to the eviction petition (supra), by the petitioners, nor obviously, in that regard, any evidence became adduced. Therefore, the lack of challenge, at this stage, to the said purported unauthorized substitution or alteration in the revenue records, thus is deemed to have been waived and abandoned. Moreover, thereby the petitioners also are deemed to acquiesce to the validity of the making of the said substitution in the records of rights, as, relating to the disputed lands.

11. A reinforced momentum to the above inference becomes available from the consolidation officer, rather post consolidation proceedings, proceeding to draw Naksha Haqdarwar as well as Missal Haqiat, wherein also, the petition lands become assigned to the “shamlat deh”. Therefore, as such, there was a valid substitution of “Shamlat Deh” in place of “Shamlat Patti Tapu”, latter revenue term whereof occurs in the column of ownership in the prior thereto Jamabandis, as relates to the petition lands.

Second submission of the learned counsel for the petitioners

12. The other submission as addressed before this Court, by the learned counsel for the petitioners, relates to the fact, that even if assuming no challenge is made to the said purported illegal substitution of the name of “Shamlat Patti Tapu” as occurs in the column of ownership, in the Jamabandi drawn for the year 1902-1903, to that of “shamlat deh”.

Moreover, even if assumingly, after lawful termination of the consolidation proceedings, a Missal Haqiat became drawn, which but yet ordered for the said substitution thus taking place. In addition, he also submits, that even if assumingly, the said substitution is made by an unauthorized revenue officer, but yet again the learned counsel for the petitioners submits, that the said substitution, is yet flawed rather in the face of their being irreverence to the apposite savings clause (supra), as occurs in the Act of 1961. However, again the said submission(s) is rudderless, and, is liable to be rejected.

Reasons for rejecting the above argument(s)

13. The reason for making the above inference and conclusion, stems from the factum, that even though, in the column of cultivation, there exists an entry of self cultivation thus by the Makbuza Malkan, but yet none of the lawful predecessor(s)-in-interest of the petitioners rather have been revealed to be making such cultivation(s) of the petition lands. Whereas, if the learned counsel for the petitioners intended to draw the fullest statutory leverage, from the above savings clause, thus he became enjoined to ensure, that irrespective of the fact of the non naming of the lawful predecessor(s)-in-interest of the petitioners, in the column of cultivation, of the Jamabandi relating to the petition lands, and, appertaining to the year 1902-1903, yet in the list of Bartandarans, the names of the predecessor(s)-in-interest of the petitioners, rather does evidently exist. In the above event alone, the said non namings of the predecessor(s)-in-interest of the petitioners, in the column of cultivation of the said Jamabandi, rather would become completely overcome. However, even in that regard, the said evidence relating to the list of Pattidars concerned, who were but the lawful predecessor(s)-in-interest of the petitioners, thus never became adduced into

evidence. Resultantly the simpliciter entry (supra) in the column of cultivation, as occurs in the Jamabandi for the year 1902-1903, and thereafter lasts upto 1950, is but a simplistic entry, and, as such does not provide any able plank for the learned counsel for the petitioners, to yet argue, that the benefit of the above apposite savings clause is assignable to them. The reason is that, when the said savings clause thus imperatively requires that certain named lawful predecessor(s)-in-interest, were making lawful cultivations over the petition lands, but prior to 1950. Importantly, when yet the above evidence is completely amiss, thereby a conclusion becomes boosted, that the benefit of the said savings clause, thus being not assignable to the petitioners.

Third submission of the learned counsel for the petitioners

14. The learned counsel for the petitioners, has further argued before this Court, on anvil of Section 2(g)(iii) of the Act of 1961, provisions whereof become extracted hereinafter. He thus submits, that since the said provisions, do on their keenest reading, disclose, that even if there is an entry in the column of ownership of the relevant records of rights, of “shamlat deh”, yet in case, according to the revenue records, such shamlat deh lands, if are recorded as Patti lands. Resultantly, if the Pattidars amongst whom the present petitioners purportedly are, thus become assigned in the consolidation scheme, rather exclusive rights of user of lands of any description, as spoken in the consolidation scheme. Therefore, he submits that such reservations, in the consolidation scheme, of lands of any description, only to the Pattidars, thereby yet does not make the petition lands rather to fall within the ambit of Section 2(g)(iii). In other words, the learned counsel for the petitioners submits, that the Pattidars, in terms of

Section 2(g)(iii) of the Act of 1961, are to be treated to be a part of the village proprietary body. Therefore, as such, even if the Pattidars alone are using the petition lands amongst themselves, but to the exclusion of the other members of the village proprietary body. Resultantly, he argues, that the petition lands, even if are being exclusively used by the Pattidars, thus in terms of the consolidation scheme, thereby their rights, as such, over the petition lands, as become assigned to the Pattidars, rather cannot be interfered with, by the Gram Panchayat concerned. Moreover, any valid order of eviction cannot be made against the petitioners, who are the Pattidars over the petition land(s).

“2(g)(iii) Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.”

15. In making the above submission, the learned counsel appearing for the petitioners has placed reliance, upon, a judgment rendered by this Court, in case titled “Gram Panchayat Sadhraur V/s Baldev Singh and others”, reported in 1977 P.L.J., Page 276, wherein, one amongst three questions, which were formulated for determination, was question number 3, question whereof becomes extracted hereinafter.

“(3) Whether the view of law taken in 1962 P.L.R. 730 proceeds on a correct interpretation of the expression “for the benefit of the village community or a part thereof or for common purposes of the village” occurring in sub-clause (3) of clause (g) of Section 2 ?”

16. In the said decision, upon, this Court thus assigning an answer to the said question, hence in paragraph 7 thereof, paragraph whereof

becomes extracted hereinafter, has proceeded to make an expansive interpretation, to all the statutory coinages, as are carried in Section 2(g)(iii) of the Act of 1961.

“7. So far as the third question is concerned, it is not possible for us to persuade ourselves to agree with the interpretation of Mahajan, J., in Co-operative Society of Improvement of Shamilat Patti Harnam Singh's case (supra). According to the ratio of that decision, if land is described as Shamlat Patti and is in possession of the owners thereof, the benefit is not confined to any one of the owners of the Shamlat individually and the same is enjoyed jointly by all the owners of the Patti, and such a land can be held to be used for the benefit of a part of the village community and thus falls within the definition of Shamlat Deh. In Sehaj Ram's case (supra), the correctness of the decision in Co-operative Society of Improvement of Shamilat Patti Harnam Singh's case (supra), was challenged. The contentions in this respect were taken due notice of, but Pandit, J., thought that it was not necessary to decide the matter in view of the other findings. Before any land can be held Shamlat Deh under sub-clause (3), it has to be proved that the same is being used for the benefit of the village community as a whole or a part of the village community. It is not disputed that the village community does not comprise of the owners or proprietors of the land alone. There is a considerable section of the population who work as tenants or as landless workers or even engage in other occupations such as artisans, blacksmiths, carpenter etc, or shopkeepers who have nothing to do with the land as such. Use for the benefit of the village community must have relation to all sections of the population in the village including those who do not own land. Similarly, benefit to a part of the village community must have reference to benefit to those who do not own land in the Patti concerned. In the present case, the entry

in the revenue record is to the effect that the proprietors of the Patti are in possession of the land in proportion to their shares. This entry can only be interpreted to mean that the proprietors of the Patti are entered as joint owners of the Shamlat land situated in that Patti. There is no evidence on the record to show that the owners of the Patti much less those who are not the owners are using the suit land for any benefit. The expression “benefit of the village community or a part thereof” cannot be given by any stretch a restricted meaning so as to confine the benefit to only the owners of the land. Besides, it is also necessary that the entries in the revenue records must show that actually some benefit was being derived from the use of such land by the village community or a part thereof. Thus, in our considered opinion, the interpretation of sub-clause (3) in Co-operative Society of Improvement of Shamlat Patti Harnam Singh's case (supra), cannot bear scrutiny and does not lay down a correct view of law.”

Principles of law enunciated in the judgment (supra)

17. The relevant portion of paragraph 7, as relates to the above argument addressed before this Court, by the learned counsel for the petitioners, makes clear underlinings, (i) that Pattidars, who are as such assigned in the consolidation scheme, the right of sharing amongst themselves, or to make conjoint user of lands of any description, as detailed in the consolidation scheme, are but necessarily required to establish, (ii) that such an exclusive assignment, thus was made to them alone, and, (iii) that no such assignment was ever made to any other member of the village proprietary body, or, to any other Bartandaran enlisted as such, in the list of Bartandarans. Therefore, as such, this Court in decision (supra), when received no evidence demonstrative, that the relevant assignment was made only to Pattidars, and, not to other members of the village proprietary body.

Resultantly, a conclusion was drawn, that the Pattidars concerned, as such, but merely on theirs being recorded as Pattidars, thus not becoming entitled to claim any exclusivity of rights of common users rather thereons, and/or, of users thereof only amongst themselves, rather of lands of any description as spoken in the consolidation scheme. Resultantly, the Gram Panchayat concerned, thus as an able controller and manager of such lands, but can proceed to seek an order of eviction of such purported Pattidars from the disputed lands.

Reasons for rejecting the above argument

18. This Court, on culling out the above principles of law, as carried in paragraph 7 of the decision (supra), as made earlier by this Court, thus has proceeded to analyze the evidence existing on record. In the above endeavour, though the counsel for the petitioners could succeed, but their success, in their submission was required to be completely planked, or, was to be based, upon, tangible and cogent evidence, (i) thus displaying that only to the Pattidars concerned, who thus are claimed to be only the petitioners, rather becoming in the consolidation scheme, thus assigned exclusivity of joint user of lands of any description, and, (ii) that no other member of the village proprietary body, and/or, (iii) no other person outside the village proprietary body, rather being assigned any right to claim any benefit of such reserved lands. However, in the above regard, the petitioners, respondents in the eviction petition (supra), completely failed to adduce evidence, (a) that as a matter of fact, they are the Pattidars in respect of the petition lands, (b) besides they also completely failed to adduce evidence, as, enshrined in the consolidation scheme, that only to the Pattidars, and, to none other member of the village proprietary body, rather

became bestowed the benefits of exclusive user of the disputed lands, thus described either as “Charand” or theirs being assigned any other revenue term. The effect of, failure on the part of the petitioners, respondents in the eviction petition (supra), to adduce the above requisite evidence, is that, it results in an inevitable conclusion, that thereby the learned counsel for the petitioners, cannot oust the attempt, of the Gram Panchayat concerned, to yet bar the petitioners, who are thus not the Pattidars over the petition lands, to claim that they have any exclusivity of any title or interest, as joint sharers over the disputed lands. Moreover, the petitioners cannot assert, that thereby the Panchayat has no vested right, thus as an able controller and manager of such lands, to deny to other members of the village proprietary body, the user of the petition lands, nor can they ask, that thus for facilitating the above purpose, yet the Gram Panchayat be ousted from its making a petition under Section 7 of the Act of 1961, before the Assistant Collector concerned.

Reasons for forming the above inference

19. The reason for the above inference is but simple, inasmuch as, when for the above reasons, the petitioners are not the Pattidars, thereby, they have no vestige of any title, as such, to make user of the petition lands, resultantly rather the Panchayat is capacitated to ensure their eviction from the petition lands. Thus for ensuring, that there is no misutilization of the petition lands by the petitioners, rather the utilizations of the petition lands are made by those members of the village proprietary body concerned, to whom the right of utilization(s) thereof, thus is bestowed by the consolidation scheme.

20. Moreover, reiteratedly since the above evidence is completely

amiss, therefore, the Gram Panchayat concerned, for ensuring its protecting the common user of the petition lands, by all the members of the village proprietary body concerned, thus has made an able attempt to secure, the eviction of the present petitioners from the disputed lands. Reiteratedly so, as the petitioners, are not cogently established to be Pattidars over the petition lands. Contrarily it appears that they have impermissibly made encroachments, upon, the petition lands, which are but required to be terminated, through an eviction petition being filed against them, before the Assistant Collector.

Fourth submission of the learned counsel for the petitioners

21. Lastly, the learned counsel appearing for the petitioners has also vehemently argued before this Court, that since a title suit under Section 13-A of the Act of 1961, is yet subjudice before the Collector concerned, as such he argues that since the petitioners before this Court, plaintiffs in the title suit, have yet asserted their lawful title over the petition lands. Therefore, he argues, that till a valid decision is made on the said title suit, thereupto, thus to avoid multiplicity of litigation, this Court may not proceed to yet affirm the concurrently made orders of eviction, as drawn by the authorities below, against the present petitioners. However, for the reasons to be assigned hereinafter, even the above submission falters, and, is liable to be rejected.

Reasons for rejecting the above argument. The above argument does not withstand the principle of res subjudice, as engrafted in Section 10 CPC.

22. The basic premise for rejecting the above argument, becomes rested upon the factum, that a perusal of the reply furnished to the eviction petition, by the present petitioners, but reveals, that a plea was taken therein,

that the Gram Panchayat, thus has no locus-standi to maintain the petition, besides another plea was raised therein, that a serious question of title, is involved in the eviction petition (supra). Therefore, thereby given the institution of a title suit, before the Collector concerned, though normally in the face of a title suit, being subjudice, before the Collector concerned, thus a petition as cast under Section 7 of the Act of 1961, though may not become amenable, to yet make further progresses. Moreover, it was also not amenable, thus for its securing its termination, rather through a verdict of eviction being made thereon, against the plaintiffs in the title suit.

23. In other words, in the face of the above situation, the Assistant Collector may have become enjoined, to stay the making of further progresses, on the petition as cast under Section 7 of the Act of 1961. Nonetheless, the apposite statutory governing principle, which but required its becoming applied by the Assistant Collector, on his trying the Section 7 petition, yet when a title suit was subjudice, thus before the learned Collector concerned, is the one engrafted in Section 10 of the CPC. Section 10 of the CPC thus engrafts the principle of res subjudice, but the limitation to the application of the said statutory principle, is rested on the premise, that the prior litigation inter se the contesting litigants, and, relating to a common cause of action, to the one propagated in the subsequent lis, thus between similar parties, rather becoming the able statutory plank, imperatively for the subsequent thereto proceedings, as also relating to a common cause of action, thus becoming estopped to be launched amongst common litigants, and/or, such launched subsequent proceedings being stayed.

24. In other words, the said principle would be applicable, if the

title suit, was evidently filed prior to the filing of the petition, as, cast under Section 7 of the Act of 1961, otherwise not. Therefore, reiteratedly, if the Assistant Collector, upon, becoming awakened about such a subsequent petition, thus being moved, thereby but on the anvil of Section 10 of the CPC, he was rather required to stay the proceedings, as became launched before him, under Section 7 of the Act of 1961, otherwise not. In the face of the above principle underlying the staying of subsequent proceedings by a court, or a quasi judicial authority, as become laid by common litigants, and, relating to a common cause of action, thus with a prior thereto litigation, rather subjudice before another jurisdictionally competent authority, necessarily thereby thus required, that the title suit cast under Section 13-A of the Act of 1961, thus becoming instituted prior to the institution of a petition under Section 7 of the Act of 1961.

25. In the above regard, the learned counsel for the petitioners, has fairly submitted before this Court, that a title suit under Section 13-A of the Act of 1961, was instituted post the institution of a petition under Section 7 of the Act of 1961. Resultantly, the above principle underlying and governing the staying of subsequent proceedings, when evidently speaks that for its apt application, thus the purported prior thereto launched proceedings, as laid in respect of apposite common cause of action, besides relating to common litigants, thus becoming evidently instituted, but prior in time, to the purportedly subsequently launched proceedings, rather does not become established before this Court. The reason being that reiteratedly, the title suit was instituted but post the institution of a petition under Section 7 of the Act of 1961, thereby the prior thereto proceedings, as launched under Section 7 of the Act of 1961, thus were required to beget

culmination through a final verdict becoming drawn qua it. Therefore, the plea of res subjudice, was not available to be galvanized, at the instance of the petitioners, nor it was open for the Assistant Collector, to yet drop or stay the makings of further progresses, on the petition cast under Section 7 of the Act of 1961. Imperatively so, when a title suit under Section 13-A of the Act of 1961, was instituted post, or, subsequent to the institution of a petition cast under Section 7 of the Act of 1961.

Subsequent suit hit by the principle of estoppel engrafted in Order 2 Rule 2 CPC

26. Be that as it may, though the petition under Section 7 of the Act of 1961, became instituted prior to the institution of a title suit, under Section 13-A of the Act of 1961, at the instance of the petitioners herein. However, yet since Section 7 of the Act of 1961, as applicable to the State of Haryana, provisions whereof stand extracted hereinafter, assigns leverage to the respondents, to within the Section 7 petition, assert a question of title, than to subsequently institute a title suit. Nonetheless, with the petitioners herein, yet not availing the above statutory remedy, thus engrafted within Section 7 of the Act of 1961 as applicable to State of Haryana, rather theirs choosing to institute, but post the institution of a Section 7 petition, hence a title suit under Section 13-A of the Act of 1961, before the Collector concerned. Resultantly, the said omission tantamounts to a breach being caused to the assignment of a statutory privilege to the petitioners, to yet, within the Section 7 petition, thus raise a question of title. The above assignment of a privilege to the respondents in the Section 7 petition, is but with a keen and circumspect legislative intent, thus for saving multiplicity of litigation.

“7. Power to put panchayat in possession of certain lands- [(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorized by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if in any such proceedings the question of title is raised and proved prima face on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, [at the rate of one percent of the Collector rate of the land per acre per annum with the ceiling of total penalty amount equal to ten percent of the current Collector rate of the encroached land] having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under

proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

27. Therefore, with the petitioners herein, thus not adopting the said remedy, thereby they are deemed to waive, the said specially assigned privilege to them, thus within the Section 7 petition, besides it speaks of the subsequent thereto institution of a title suit, thereby causing breach to the mandate of Order 2 Rule 2 CPC. The reason for making the above conclusion, becomes spurred from the factum, that despite the said assignment becoming purveyed to the petitioners, yet theirs not availing it before the Assistant Collector, rather theirs choosing an impermissible remedy of instituting a title suit cast, under Section 13-A of the Act of 1961, but post the institution of a petition cast under Section 7 of the Act of 1961. Resultantly, thereby, as above stated, through the stark omission (supra), to raise the said challenge within the Section 7 petition, thus completely estops them, from subsequently creating a title suit, as at the earliest stage, they were to raise all pleas in the petition (supra), which they omitted to raise. In sequel, their omission thus to raise a plea or to state a fact, to be stated, but at the earliest in the petition (supra), thus attracts the estopping principle as engrafted in Order 2 Rule 2 CPC, provisions whereof stand extracted

hereinafter, thus against the institution of a subsequent title suit, as, evidently relates to common litigants, and/or, relates also to a cause of action common to the Section 7 petition. Resultantly, the institution of a title suit prima facie appears to be a completely mis-recoursed remedy.

“Order 2, Rule 2 of the Civil Procedure Code is as follows:--

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards, sue in respect of the portion so omitted or relinquished.

(3) A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

28. Be that as it may, even otherwise, during the pendency of the petition cast under Section 7 of the Act of 1961, the petitioners herein, had pleaded through an application, as moved before the Assistant Collector, that he may not embark upon making further progresses, on the petition cast under Section 7 of the Act of 1961, but a dismissal order was made thereons, thus on 05.04.2016, thus it was made during the pendency of the Section 7 petition. However, even the said order has remained unchallenged. The effect of no challenge being made to the said order, as became made thus during the pendency of the Section 7 petition, is that, it

thereby results in an inference, that the said order has acquired conclusivity, and with a further concomitant effect, that thereby the petitioners, became prima facie estopped, from filing the subsequent title suit, under Section 13 of the Act of 1961. Importantly, when earlier thereto, they were impleaded as respondents in the petition as cast under Section 7 of the Act of 1961, and wherein, they could have raised such a question of title. Their failure to do so, works against them the principle of estoppel.

Final Order

29. In aftermath, the instant writ petitions are dismissed, being devoid of merits, and, the impugned orders are affirmed and maintained.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 11, 2023
devinder

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No