

CWP No.10015-2023

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

CWP No.10015-2023.

Date of Decision: 25.01.2024.

Gram Panchayat Bijalpur

....Petitioner.

Versus

State of Punjab and others

....Respondents.

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Nakul Sharma, Advocate for petitioner.

Mr. Maninder Singh, Deputy Advocate General, Punjab.

Lalit Batra, J.

This petition under Articles 226/227 of the Constitution of India has been filed by petitioner-Gram Panchayat, Bijalpur (hereinafter to be referred as 'petitioner'), seeking quashing of order dated 04.02.2019 (Annexure P-4), passed by Divisional Deputy Director, Rural Development and Panchayat (Exercising the Powers of Collector, Panchayat Land), Patiala, (hereinafter to be referred as 'Collector'), vide which petition under Section 11 of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as 'Act, 1961'), filed by petitioner claiming ownership of land comprised in Khasra No.30//12(8-0), 13(6-8), 14(7-2) and 18(8-0), total land measuring 29 Kanals – 10 Marlas, situate in village Bijalpur, was dismissed. Further, petitioner has challenged order dated 16.03.2022 (Annexure P-6), rendered by Joint Development Commissioner

(IRD) (Exercising the Powers of Commissioner), Rural Development and Panchayats Department (hereinafter to be referred as 'Commissioner'), in terms of which, appeal preferred by Harbhajan Singh (proforma respondent No.6 herein), against above mentioned order dated 04.02.2019 (Annexure P-4), was dismissed.

2. Petitioner's case in brief is that in terms of document *Wazib-Ul-Arj*, at the time of Consolidation in the year 1960-1961, area of *Shamlat Deh* measuring 973 Kanals – 7 Marlas (*Baran* land measuring 61 Kanals – 17 Marlas, *Banjar Qadim* land measuring 592 Kanals – 17 Marlas and *Gair Mumkin* land measuring 318 Kanals – 13 Marlas) has been left for the use of Gram Panchayat/villagers and cultivation and income to be managed by the Gram Panchayat. At the time of Consolidation, no area out of above said land was under cultivation of villagers and, thus, land in dispute was not in cultivating possession of private respondents as per requirement of Section 2(g) of Act, 1961. Therefore, the land in dispute falls within the definition of *Shamlat Deh* and vests in Gram Panchayat. As per *Jamabandi* for the year 1960-1961, in the column of ownership, entry is *Shamlat Majqur* and in the column of cultivation, entire *Shamlat* land is shown as cultivation *Majqur*, in column No.10, nature of land is shown as *Banjar Qadim*. Thus, it is apparent that land in dispute was never partitioned by villagers or it never came into cultivating possession of private respondents on or before 26.01.1950. Previously, petitioner had filed application under Section 7 of Act, 1961, seeking eviction of private respondents, which was decided against private respondents by the Collector, vide order dated 27.05.2002.

Aggrieved against said order, private respondents preferred appeal, which was dismissed by the Commissioner, vide order dated 01.12.2004 observing therein that in the year 1997-1998, land in dispute was given on lease for Rs.5600/- to private respondents and the lease holder cannot challenge the title of true owner. Petitioner had filed petition under Section 11 of Act, 1961, against the private respondents in the year 2018, seeking declaration as owner of land in dispute. Above said petition was contested by private respondents. Vide order dated 04.02.2019 (Annexure P-4), Collector had dismissed the said petition in a summary manner, without framing any issue and giving any opportunity to the parties to lead evidence. Above said order was assailed by Harbhajan Singh (proforma respondent No.6 herein), by filing appeal, however, the said appeal was dismissed, vide order dated 16.03.2022 (Annexure P-6) passed by Commissioner. Hence, instant petition has been instituted by petitioner for setting aside above said orders and seeking declaration as owner of land in dispute.

3. Learned counsel for petitioner *inter alia* contended that order dated 04.02.2019 (Annexure P-4) as well as order dated 16.03.2022 (Annexure P-6) are illegal, arbitrary, against law and facts and are liable to be set aside as petition filed by petitioner under Section 11 of Act, 1961, was dismissed without affording any opportunity to petitioner to lead evidence and further Appellate Authority wrongly dismissed the appeal. While adjudicating petition under Section 11 of Act, 1961, Collector is substituted for Civil Court and as far as possible due opportunity of hearing is required to be given. Petitioner is owner of the land in dispute in terms of

revenue record and the said land does not vest in private respondents and they have no right, title or interest in the said land as the same has been used for common purposes of the village community and is fully covered under the definition of *Shamlat Deh*. The proprietors and non-proprietors of the village use the land in dispute for common purposes. As per the Draft Scheme Consolidation, no area was kept for the partition of the *Shamlat* land and the entire *Shamlat* land was reserved for Gram Panchayat and since then it is being used by the Gram Panchayat as per requirements of villagers. The land in dispute is part of *Shamlat* land, which was kept for the income of the Gram Panchayat. Learned counsel for the petitioner further contended that in the previous litigation, as there was connivance between the then Gram Panchayat and the private respondents, thus, order dated 21.05.2001 passed by Commissioner could not be challenged and as such there is no estoppel against petitioner to continue with instant proceedings under Section 11 of Act, 1961, and in this scenario, principle of *res judicata* does not create any bar to the claim of petitioner.

4. We have heard learned counsel for the parties at length and carefully perused the record.

5. A bare perusal of the record reveals that on 26.11.1997 respondent No.4-Rachhpal Singh had filed petition under Section 11 of Act, 1961, against petitioner seeking declaration of his ownership qua land measuring 29 Kanals – 10 Marlas, as detailed above, mainly on the ground that the said land was never used for the common purposes of the village and he being *Khewatdar* and resident of village Bijalpur, is in possession of

said land continuously prior to 26.01.1950 and though the land was *Banjar Qadim*, after spending huge amount, he has made it cultivable and as such land in question does not fall within the ambit of *Shamlat Deh*, as defined in Section 2(g) of Act, 1961. The said petition was contested by the then respondent-Gram Panchayat and after hearing parties, above said petition moved by Rachhpal Singh was dismissed, vide order dated 12.02.2001 (Annexure P-9) passed by Collector. Feeling aggrieved of above said order, Rachhpal Singh preferred Appeal No.67 of 2001, which was allowed, vide order dated 21.05.2001 (Annexure P-10) rendered by Commissioner, while setting aside order dated 12.02.2001 and declaring that land in dispute is the ownership of Rachhpal Singh. Gram Panchayat, Bijalpur, being unsatisfied with the order dated 21.05.2001 filed Civil Writ Petition No.8977 of 2005 challenging that order. Vide order dated 23.08.2005, this Court finding no merit in the above said petition dismissed the same in limine and the order of dismissal is reproduced hereunder:-

“We have heard learned counsel for the petitioner and perused the paper-book as also the orders impugned before us.

It has been found as a matter of fact that the disputed land was 'Banjar Kadim' as on 9.1.1954 when the Shamlat Law was enforced and that this area was never ever used or reserved for any common purpose of the village community.

The land could not fall within the shamlat land as defined under Section 2(g) of the Punjab Village Common Lands (Regulation), Act, 1961. Resultantly, the authorities have given a correct finding that the petitioner is not the owner of the land in dispute.

No merit. Petition is dismissed in limine.”

6. It is pertinent to mention here that though petitioner had moved Review Application No.400 of 2013 seeking review of order dated 23.08.2005 but review application was dismissed by this Court, vide order dated 28.10.2013 (Annexure P-11).

7. In this scenario, once order dated 21.05.2001 declaring respondent No.4-Rachhpal Singh as owner of land in dispute, has already attained finality, for this reason alone, subsequent petition under Section 11 of Act, 1961, moved by petitioner against Rachhpal Singh, claiming ownership of land measuring 29 Kanals – 10 Marlas, as detailed above, was rightly dismissed, vide order dated 04.02.2019 (Annexure P-4) passed by Collector, for the reasons that since vide order dated 21.05.2001 (Annexure P-10), Rachhpal Singh has already been declared owner of land in dispute in earlier proceedings under Section 11 of Act, 1961, claim raised by petitioner is barred by principle of *res judicata*. It is relevant to point out here that though petitioner did not prefer any appeal impugning the legality of order dated 04.02.2019, however, one Harbhajan Singh claiming himself to be permanent resident of village Bijalpur, preferred appeal against order dated 04.02.2019, wherein Gram Panchayat, village Bijalpur, was arrayed as proforma respondent. No effort was made at the instance of proforma respondent-Gram Panchayat (petitioner herein) for its transposition as appellant in the appeal preferred by Harbhajan Singh. Above said appeal was dismissed, vide order dated 16.03.2022 (Annexure P-6) passed by Commissioner, reiterating that the claim in appeal is barred by principle of *res judicata*.

8. Doctrine of *res judicata* in substance means that an issue or a point decided and attaining finality should not be allowed to be reopened and reagitated twice over. *Res judicata* is a plea available in a civil proceedings in accordance with Section 11 of Code of Civil Procedure. It is a doctrine applied to give finality to “*lis*” in original or appellate proceedings. Section 11 of Code of Civil Procedure engrafts this doctrine with a purpose that a final judgment rendered by a Court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.

9. In view of above, order dated 04.02.2019 (Annexure P-4) and order dated 16.03.2022 (Annexure P-6), do not call for any interference by this Court as the matter in question has already attained finality in earlier proceedings under Section 11 of Act, 1961, which culminated vide order dated 23.08.2005 passed in CWP No.8977 of 2005 and the review of said order was also dismissed, vide order dated 28.10.2013 (Annexure P-11). Thus, instant matter is barred by principle of *res judicata*.

10. It is relevant to point out here that once respondent No.4-Rachhpal Singh has already been declared owner of land measuring 29 Kanals – 10 Marlas, as detailed above, in proceedings under Section 11 of Act, 1961, and the said matter has already attained finality, in this scenario, any order passed against him under Section 7 of Act, 1961, qua above said land, is unexecutable.

11. There is another aspect which goes to the root of the case and

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the same pertains to the fact that though petitioner did not prefer appeal impugning the legality of order dated 04.02.2019 (Annexure P-4), but while taking cue of order dated 16.03.2022 (Annexure P-6), passed in appeal preferred by one Harbhajan Singh, has chosen to file this petition to challenge order dated 04.02.2019 (Annexure P-4) and order dated 16.03.2022 (Annexure P-6). It is relevant to point out here that as petitioner was well aware of the fact that matter in controversy has already been resolved and attained finality and that too in the year 2005, subsequent setting into motion same cause of action and that too at the cost of State Exchequer, in this scenario, petitioner, is required to be burdened with costs especially in view of the fact that it has attempted to revive a life in a skeleton in a futile manner.

12. As a sequel to above, instant petition is dismissed with costs of Rs.50,000/- to be deposited with Poor Patients' Fund, PGIMER, Chandigarh.

Pending application, if any, also stands disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

25.01.2024

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