

(1993) 10 SC CK 0096
In the Supreme Court Of India
Case No : Civil Appeal No. 24 Of 1990

Amar Singh and Another

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 12-10-1993

Acts Referred:

Citation : (1994) 2 SCC 517 Supp

Hon'ble Judges : S. P. Bharucha, J;S. Mohan, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. The second respondent-Gram Panchayat Chhaleri filed an application under Section II of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the Act") that the Gram Panchayat is the owner of an area of 146 kanals 5 marlas spread over in several Khasra numbers. According to the Panchayat, the appellants are in unauthorised possession. Whenever the Gram Panchayat demanded possession, the appellant challenged the ownership of Gram Panchayat. Therefore, it became necessary to have declaration as to the title of the property as could be done under Section 11 of the Act. According to the Panchayat the dismissal of the earlier applications filed on November 27, 1960/04/1978 and 23/05/1982 under Section 7 of the Act would not constitute res judicata.

2. The stand was opposed by the appellants. The principal contention is that the earlier applications filed by the Gram Panchayat came to be dismissed by the relevant authority. That would constitute res judicata and concluded the question of title.

3. The original authority, namely, the Collector (Divisional Deputy Director) Rural Development, Patiala, accepting the contention of the appellants that the dismissal of earlier application under Section 7 would constitute res judicata dismissed the application of Panchayat under Section 11. Aggrieved by the

same, an appeal was preferred before the Joint Director, Punjab, exercising the powers of the Commissioner.

4. The appellate authority under Section 1 1(2) held that the dismissal of the earlier applications would not constitute *res judicata* and thereafter proceeded to hold that having regard to the entry in Jamabandhi 1976-77 and Khasra Girdwari Year 1959-83, the ownership of second respondent-Panchayat had come to be established, more so in the absence of any evidence to the contrary. SCC When a writ petition was filed by the appellants that was dismissed in limine. Thus, the appeal.

5. It is urged before us by the appellants that once the appellate authority came to the conclusion that the dismissal of the earlier applications by the second respondent-Panchayat under Section 7 would not constitute *res judicata*, an opportunity ought to have been afforded to the appellants to lead in evidence on the question of title. This is because the entire case proceeded both before the original authority and the appellate authority as to the effect of dismissal of earlier applications under Section 7 and whether that would constitute *res judicata*. As regards title, if an opportunity had been afforded, the appellants could have established it factually. The High court fell into error in overlooking this aspect and dismissing the writ petition in limine.

6. Per contra it is argued by the second respondent-Panchayat that under Section 11, both the original (sic and the) appellate authority have a duty to decide the question of title. The appellate authority found factually in favour of the Panchayat, more so, in the absence of any evidence to the contrary. Hence the question of title cannot be reopened.

7. We have given our careful consideration to the aforesaid submissions. We accept the arguments of the learned counsel for the appellants. We find both before the Collector and the appellate authority the case of the parties mainly rested on the applicability of the principles of *res judicata* inasmuch as the previous applications of the Gram Panchayat under Section 7 came to be dismissed. The appellate authority, namely, the Commissioner has held that dismissal of those applications would not constitute *res judicata*. Thereafter normally the matter should have been remitted to the original authority to decide the question of title. Unfortunately the High court also has not adverted to this aspect. Under these circumstances, we are obliged to set aside the order of the High court as well as the judgments of the appellate authority (Commissioner) and that of the Controller and remand the matter to the Collector for a decision on title. It is made clear that it is open to the parties to urge all the points they would like to, excepting the point relating to *res judicata*. Having regard to the fact that it is an old matter we would direct the Collector to dispose of the same before the end of February 1994. The Civil is disposed of in the above terms with no order as to costs.