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**(1992) 09 P&H CK 0077**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 4279 of 1980**

Karam Singh

APPELLANT

Vs

Collector, Kurukshetra & Ors.

RESPONDENT

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**Date of Decision :** 03-09-1992

**Acts Referred:**

**Citation :** (1993) 2 LJR 181 : (1993) PLJ 269 : (1993) 1 RRR 199

**Hon'ble Judges :** H.S.Bedi, J

**Advocate :** Mr. B.B. Aggarwal, Advocate., Advocates for appearing Parties

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## Judgement

H.S. Bedi, J.

1. (Oral) Petitioner, Karam Singh, claims to be the owner of 46 kanals 2 marlas of land situated in village Jhinjharpur, Tehsil and District Kurukshetra. It has been stated by him that the land in question prior to the year 1941 was held by one Smt. Jeewani his predecessor in interest as shown in the revenue record. It has further been stated though the land was shown as part of the Shamlat Deh but that was not the correct position as Smt. Jeewani was in possession since long without paying any rent. As there was some apprehension in the mind of Smt. Jewani with regard to the conduct of the Gram Panchayat with respect to the land that she was holding, she filed a civil suit against the Gram Panchayat claiming ownership and possession which was decreed in her favour on 20.10.1965. A copy of the order of the trial Court decreeing the suit is Annexure P6 to the petition. It appears that the petitioner who claimed to be helping Smt. Jeewani in cultivating the land in question filed another suit against Smt. Jeewani claiming ownership and possession over the land in dispute and this suit too was decreed by the Sub Judge IIInd Class, Kaithal, on 16.12.1967 vide Annexure R3 annexed with the supplementary written statement filed by the Gram Panchayat. In May, 1978 respondent No. 3 the Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands Act (hereinafter referred to as the "Act") seeking to eject the petitioner from the disputed land, as being an unauthorised occupant of the Shamlat Deh. This application was contested by the

petitioner but was allowed on 20th November, 1979 vide Annexure P2. Aggrieved by the order Annexure P2 the petitioner preferred an appeal before respondent No. 1 who dismissed the same vide Annexure P3 dated 3.11.1980. The authorities who made the orders Annexures P2 and P3 came to the conclusion that the land in dispute was recorded as Shamlat Deh and the decree of 1965 in favour of Smt. Jeewani was required to be ignored in view of the provisions of Section 13B of the Act. It was also held that the proceedings under Section 13B of the Act were not required to be taken as no question of title arose in the dispute. Aggrieved by the orders Annexures P2 and P3 the petitioner preferred the present writ petition before this Court but the same was initially dismissed by a speaking order dated 2nd April, 1981, on the ground that as it raised disputed questions of fact the matter could not be gone into in the writ jurisdiction. A review application filed before the Division Bench was also dismissed. The petitioner thereafter approached the Supreme Court by way of Civil Appeal No. 2799 of 1982 and the same was disposed of on 7th January, 1992 and a direction was issued that the matter be examined afresh in the light of various provisions of the Act. The writ petition was thereafter admitted vide order dated 27.3.92. and is now before me.

2. It has been urged on behalf of the petitioner that the proceedings under section 7 of the Act could not have been taken as admittedly in view of the decree of 1965 in favour of the predecessor in interest of the petitioner the question of title did not arise. It has also been asserted that vide the decree of 1967 the land did not stand in the name of the petitioner himself. In reply to the assertions of the petitioner, respondent No. 2 filed various documents in order to contend that no question of title arose as from even a casual look at the revenue record it was apparent that the land in dispute vested in the Gram Panchayat. It has also been asserted that the decree of 1967 Annexure P3 the suit of the plaintiff i.e. Karam Singh petitioner was decreed to the limited extent with regard to his possession only and the assertion made before the Supreme Court that he had become the owner of the suit land was incorrect.

3. After hearing counsel for the parties, I am of the view that this petition deserves to succeed. It is clear to me that the decree in favour of Smt. Jeewani, predecessor in interest of the petitioner, had been obtained on the concession made by the Gram Panchayat itself in which it had been stated that the land in dispute was the property of Smt. Jeewani. The volte face now sought to be made by the respondent Gram Panchayat itself shows that prima facie a question of title does arise. It has also been asserted by the petitioner that he had become owner of the land by virtue of the judgment and decree of 1967 as also by the fact that he had remained in possession since long. All these are questions of fact which cannot be gone into in the summary proceedings as provided in Section 7 of the Act. This has been so held in *Tara Chand and another v. Gram Panchayat and Gram Sabha of Village Atail* 1969 LLR 151, *Mela Singh v. State of Punjab* SLJ 1992 (1) 267 : 1992(1) RRR 308 and *Diwan Singh v. Collector Kurukshetra*, 1990(2) LLR 477 : 1990(2) RRR 326. From a reading of these judgments it is

apparent that where there is a serious dispute on facts the proper course would be to decide the matter under Section 13B of the Act. In the present case the Gram Panchayat had itself at one stage admitted the claim of Smt. Jeewani to the ownership of the property. The mere denial by the Gram Panchayat at this stage would not detract from the effect of the earlier decree and the matter would have to be reexamined in the light of Section 13B of the Act.

4. For the reasons recorded above, the respondent writ petition is allowed; Annexures P2 and P3 are quashed. The matter is remanded to the Assistant Collector Ist Grade, Kaithal, for rededcision. The matter would be disposed of by him within a period of six months from the date of the receipt of a copy of this order. The parties are directed to appeal before the Assistant Collector Ist Grade, on 23.10.1992. No costs.