

(1996) 08 P&H CK 0192
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2069 of 1986

Naurang Singh (Died)	Vs	APPELLANT
The State of Punjab and Others		RESPONDENT

Date of Decision : 20-08-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 11
Evidence Act, 1872 — Section 115
Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (1997) 115 PLR 363 : (1997) 1 RCR(Civil) 660

Hon'ble Judges : M.S. Liberhan, J;M.L. Singhal, J

Bench : Division Bench

Advocate : K.S. Grewal, for the Appellant; Kanwaljit Singh, for the Respondent

Final Decision : Allowed

Judgement

M.S. Liberhan, J.—The instant proceedings originated in a petition filed by the respondent-Gram Panchayat to be put in possession of the land in dispute u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (herein after referred to as the Act). Appositely the facts emerging from the pleadings of the parties and the undisputed inferences put during the jourse of arguments run as under :

2. Respondent-Gram Panchayat sought to be put in possession of the land in dispute in 1967, u/s 7 of the Act, as was then applicable. It was contended that the land in dispute vested in Gram Panchayat, and predecessor-in-interest of the petitioner who was none else than his father, was claimed to be in un-authorized possession of the said land and so the petitioner continued as such. Consequently, the Gram Panchayat Claimed to be put in possession. The Assistant Collector vide his order dated 4.5.1967 dismissed the petition observing that "from the evidence produced by Shri Naurang Singh, it is evident that he bought land on 15th Jeth 1966 BK alongwith share of Shamlat land which falls as 12 bighas 13 biswas, so acquired this land prior to the enforcement of

this Act and has been in continuous cultivating possession of the land which none has been given to him. So, according to rules, he acquired this land prior to the enforcement of this Act. As the notice is withdrawn and the land is excluded from the definition of shamlat deh". No further action was taken.

3. The Act was amended in 1976 though no substantial change was brought about in Section 7 of the Act. The Gram Panchayat again sought to be put in possession of the land in dispute on the same averments as referred to above. The petition was dismissed as withdrawn for non-prosecution by Gram Panchayat on 6.11.1981.

4. The respondent-Gram Panchayat again moved a petition for the same relief on the same grounds as referred to above on 26.11.1981. We may hasten to add that the only distinguishing feature added in this petition was that in the heading petition for ejectment was referred to "the petition u/s 11 read with Section 7 of the Punjab Village Common Lands (Regulation) Act." The said petition was dismissed on 30.7.1982. The respondent-Gram panchayat went in appeal against the said order, which was set aside and the case was remanded back by the Commissioner vide his order dated 27.12.1985. It was observed :- "As the Assistant Collector First Grade was not competent to decide the question of title, the proper remedy for the Gram Panchayat was to file an application u/s 11 of the Act." It is this remand order which has been impugned in this writ petition, inter-alia, contending that no application u/s 11 of the Act is maintainable on behalf of the Gram Panchayat to determine the question of title (ii) decision or order of rejection of the petition earlier for ejectment of the petitioner and putting Gram Panchayat into possession i.e. for the same relief prior to this petition operates as res-judicata or equitable estoppel.

5. The respondent-Gram Panchayat refuted the contentions raised by the petitioner. It was averred that order dated 4.5.1967 would not operate as res-judicata inasmuch as the Assistant Collector had no jurisdiction to decide the question of title in proceedings u/s 7 of the Act. Consequently, the finding returned by him with respect to title was without jurisdiction, nonest and void. Later petition which was dismissed as withdrawn did not determine the question on merit and thus does not operate as res-judicata. In either case petitioner cannot invoke the principle of res-judicata in any eventuality. The provisions of Section 11 of the Act does not debar the authority to determine the question of title at the instance of Gram Panchayat.

6. The learned Single Judge, after noticing the judgments cited by learned counsel for the parties viz. Gram Panchayat Deh Mawaza Garhi Brahman v. Kesho Narain and Anr. (1964) 66 PLR 518, Gram Panchayat Village Bhagan v. Dharam Singh 1975 PLJ 68, Mangal v. Gram Panchayat village Faizabad 1977 PLJ 249 and Piare Lal and Ors. v. Puran 1977 PLJ 263 found conflict of decisions on law laid down in these judgments. It was desired that since the disputed questions viz. whether the question of deciding the title u/s 11 of the Act, an application at the instance of Gram Panchayat is maintainable. Vesting of the

land in Gram Panchayat raises the question of title, consequently the Assistant Collector had no jurisdiction to decide the same. Since the above questions are involved, the matter was placed as a whole to be decided by a larger Bench. Thus, it has come before us.

7. Learned counsel for the petitioner contended that in view of the finding in the order dated 5.4.1967 to the effect : (i) the petitioner was found to be the owner having purchased the land in dispute before 26.1.1950 from a co-sharer to be in possession of not more than his share, and thus was in possession hence it did not fall within the definition of Shamlat deh as envisaged by Section 2(g) exception (iv) of the Act. An application for the same relief under the same provisions of law i.e. u/s 7 of the Act, was dismissed as withdrawn because of lack of evidence to support the claim of Gram Panchayat to be its owner, vide order dated 6.11.1981. The impugned order dated 27.12.1985 remanding the case cannot be sustained inter-alia, on the ground that earlier order became final and operates, as res-judicata or an equitable estoppel interse the parties. On merits, it was contended that the petitioner purchased the land along with share in Shamlat-deh before 26.1.1950 and, the therefore, the same does not fall within the definition of "Shamlat deh" nor it vests in Gram Panchayat under the Act, consequently the petition u/s 7 of the Act for putting Gram Panchayat in possession is not maintainable. The questions involved including the one involving wider litigative fall out run as under:-

i) Whether the order passed u/s 7 of the Act rejecting the petition for ejectment and putting Gram Panchayat in possession by the competent authority i.e. dated 5.4.1967 as in the present case was final and operates as res-judicata or equitable estoppel interse the parties ?

ii) Whether similar application u/s 7 of the Act having been dismissed as withdrawn for lack of evidence, operates as res-judicata or equitable estoppel and the Gram Panchayat cannot make applications u/s 7 of the Act again and again for the same relief ?

iii) Whether the Gram Panchayat has locus standi to prefer a petition u/s 11 of the Act, though it may be titled as a petition u/s 7 read with Section 11 of the Act ?

iv) Whether the alleged Shamlat deh land acquired before 26.1.1950 by way of purchase does not fall within the definition of Shamlat deh, and does not vest in the Gram Panchayat as per exception provided ?

8. The Collector after finding, that the land in dispute does not fall within the definition of Shamlat deh and resultantly would not vest in Gram Panchayat inasmuch as petitioner became owner of the land by its purchase on 26.1.1950 and is not in possession in excess of his share, no rent was ever paid to the Gram Panchayat. Thus, the earlier judgments operate as res-judicata, he dismissed the petition.

9. The Appellate Authority came to the conclusion that the order dated 6.11.1981 dismissing the petition as withdrawn is neither a matter heard nor decided on merits nor any objection with respect to withdrawal of the petition was raised. The Gram Panchayat could seek the only remedy available to it with respect to the declaration of title u/s 11 of the Act, which is being done through the present proceedings. The order dated 6.11.1981 under no circumstances operates as either res-judicata or estoppel.

10. It would be expedient to notice the relevant provisions of the Act of 1961 (before amendment) as well as after the amendment brought about in the Act of 1976. These run as under:-

Relevant provisions of the Act of 1961 (before amendment) :

Section 2(g) Shamlat deh includes

- 1) xx xx xx xx
- 2) xx xx xx xx
- 3) xx xx xx xx
- 4) xx xx xx xx

5. Land in any village described as Banjar qadim and used for common purposes of the village according to revenue records:

Provided that Shamilat deh or charand at least to the extent of twenty five per centum of the total area of the village does not exist in the village;

but does not include land which:

(i) to (iii)

XX XX XX

(iv) having been acquired before 26th January, 1950 by a person by purchase or in exchange for proprietary land from a cosharer in shamilat deh and is so recorded in the jamabandi or is supported by a valid deed and is not in excess of the share of the co-sharer in the shamilat deh.

Section 3 Lands to which this Act applies:-

(1) xx xx xx

(2) Notwithstanding anything contained in sub-section (1) of Section 4, where any land has been vested in a Panchayat under Shamlat law, but such land has been excluded from Shamilat Deh, as defined in clause (G) of Section 2, all rights title and interests of the Panchayat in such land, shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the persons whom they vested immediately before the commencement of Shamilat law, and Panchayat shall deliver the possession of

such land to such person or persons:

Section 4 Vesting of rights in Panchayats and non-proprietors :

1) xx xx xx

2) xx xx xx

3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall effect or shall be deemed ever to have affected the :

(i) xx xx xx xx

(ii) rights of persons in cultivating possession of shamilat deh for more than twelve years, without payment of rent or payment of charges, not exceeding the land revenue and ceses payable thereon ;

Section 7 Power to put the Panchayat in possession of shamilat deh-in-Punjab.

The Collector, shall, on an application made to him by a Panchayat or by an officer duly authorised in this behalf by State Government by a general or special order, after making such enquiry as he may think fit and in accordance, with such procedure as may be prescribed, put the Panchayat in possession of the land or other immoveable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the Collector may exercise the power of a Revenue Court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887. Hierarchy of appeal, revision and limitation was provided thereafter.

Section 13 Bar of Jurisdiction :

Section 13 provides that no civil Court shall have jurisdiction over any matter arising out of the operation of this Act.

(Relevant provisions of the Act after amendment vide Act 19 of 1976)

2(g) "Shamilat deh includes

(1) to (4) xx xx

(5) Lands in any village described as Banjar qadim and used for common purposes of the village according to revenue records, but does not include land which

(i) to (iii) xx xx xx

(iv) having been acquired before 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the Shamilat deh and is so recorded in the jamabandi or is supported by a valid deed; and is not in excess of the share of the co-sharer in the shamilat deh. 11. Section 7 as amended by Punjab Act 19 of 1976 runs as under:

Section 7 : Power to put the Panchayat in possession of Shamilat deh:

" The Collector shall on an application made to him by a Panchayat, or by an Officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the Panchayat in 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 it under this Act and for so doing the Collector 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 further that if the person, who has raised the question of right/title or interest, fails to submit his claim u/s 11 within the time prescribed under that Section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.

It further provided hierarchy of appeal and limitation for it.

12. Sections 11, 12, and 13 were substituted by Act 19 of 1976 which respectively run as under:

" Section 11; Decision of claims of right, title or interest in shamilat deh:

(1) Any person or a Panchayat claiming right, title, or interest in any land vested or deemed to have been vested in a Panchayat under this Act or claiming that any land has not so vested in a panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order, of the Collector made under sub Section (1) may, within six days from the date of order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm vary or reverse the order appealed from and may pass such order as he deems fit".

Section 12: Finality of orders:-

"Save, as otherwise, expressly provided in this Act" every order made by the Collector or the Commissioner shall be final and shall not be called in question in any Court by way of appeal or revision or in any original suit, application or execution proceedings".

Section 13: Bar of Jurisdiction in civil Court

"No civil Court shall have jurisdiction:

(a) to entertain or adjudicate upon any question, whether a property or right or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the

Collector or the Panchayat, under this Act, or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine".

13. In order to support his contention, the learned counsel for the petitioner relied on *Jee Ram v. The State of Haryana and Ors.* 1980 PLJ 103, *Gram Sabha Salina v. Nahar Singh and Ors.* 1982 PLJ 261, *Bant Singh v. The Joint Director Panchayats etc* 1984 PLJ 581, *Smt. Ram Kali and Ors. v. Sohan Lal* 1984 PLJ 600. Further reliance was also placed on *Shri Kuldip Singh Vs. Smt. Balwant Kaur* (deceased) represented by her L.R. (i) *Smt. Surinder Kaur and others, , Inder Singh and Anr. v. State of Punjab* 1987 PLJ 614, *Richpal Singh and Others Vs. Dalip, , Om Prakash Gupta Vs. Rattan Singh and Another, ,* to support the submission that finding returned by a Tribunal of exclusive jurisdiction would be binding inter se the parties in the later proceedings with respect to the question determined by the authority of conclusive jurisdiction. In view of the discussion in the later part of the judgment, the law laid down in these judgments is not in dispute.

14. The conspectus of law as emerged from *Kesho Narain's* case, *Piara Lal's* case, *Mangal's* case, *Dharam Singh's* case, (supra) is that the authorities under the Punjab Village Common Land (Regulation) Act had jurisdiction to decide the relevant question before ejectment. The civil Court's jurisdiction to challenge the correctness of the decision of the authority constituted under the Act was barred though jurisdiction is not barred where the authorities acted without jurisdiction. The question whether the land falls within the definition of *Shamlat deh* or vest in Gram Panchayat or a person is in unauthorised occupation or wrongful possession of land which vested in Gram Panchayat arise directly for determination in the proceedings in an application u/s 7 of the Act and are not collaterally a jurisdictional fact. Thus, the authorities are competent to decide the same and cannot be said to have acted without jurisdiction while determining the above said question. Thus the civil Court is debarred to entertain any suit to determine the above question. It was further observed that Section 11 of the Act is not retrospective in its nature.

15. The law laid down in *Dharam Singh's* case and *Kesho Narain's* case (supra) emerges: (i) That there is no machinery provided under the Act to determine the question of title with respect to the land in dispute i.e. whether it is a part of *Shamlat deh* or not or whether it vest in it or not. It is in the forum of the civil Court where it can be so determined. The Assistant Collector in exercise of his power u/s 7 of the Act and having regard to the summary nature of the inquiry, cannot determine the question of title and can decide only the questions relating to possession; (ii) The power conferred u/s 7 (1) of the Act for ejectment can, only be exercised with respect to the land which vested in Gram Panchayat under the Act and with respect to no other land though Gram Panchayat may be owner of it.

16. The edifice of the provisions contained in the Act of 1961 before amendment, is to the effect that the land acquired before 26.1.1950 by way of purchase or exchange by a co-sharer in it and it being not in excess of his share would neither fall within the definition of Shamilat deh nor the same would vest in Gram Panchayat under the Act. Not only this, even if it has vested under the Act of 1953, it shall revest into the right-holders and the Gram Panchayat shall cease to have any right, title or interest in it with effect from coming into force of 1961 Act. Similarly, the adverse possession of a person with respect to Shamlat deh was protected. Summary procedure was provided in order to avoid finer technicalities of the civil procedure. In order to put Gram Panchayat in possession, after such an enquiry as the authority thought fit with respect to vesting of land in Gram Panchayat and the land covered within the definition of Shamlat deh under the Act. Hierarchy of appeal etc. was provided for, though jurisdiction of civil Court was barred with respect to matters arising out of the coming into operation of the Act.

17. By amendment of 1976 Act, the only change which has been brought about is that an additional power has been conferred on the authority to exercise power of revenue Court in relation to execution of a decree and further provided a right to get declaration with respect to one's title within the specified period in relation to question of vesting or not vesting the land in dispute in the Gram Panchayat. (ii) To determine the nature of the land as to whether it is Shamlat deh or not by enacting Section 11 of the Act. It also put an embargo on the right of a person to raise the question if right, title or interest who failed to claim the same within the specified time u/s 11 of the Act. Finality to the order u/s 11 of the Act was attached. The civil Courts were debarred to adjudicate with respect to the questions (i) Whether the land is Shamlat deh or not and (ii) Whether it vests or does not vest in Panchayat?

18. The questions involved in this "lis" are of wider litigative fall out than it may appear to be on the surface. Public policy demands that rule of law, justice, equity and good conscience which has by now become legend having got imbibed in the jurisprudence by innumeral consistent and persistent pronouncements of the Apex Court, the principle is, that one should not be vexed twice for the same cause of action even by articulating or splitting the relief or claim particularly when the element of certainty, continuity and to bring an end to the litigation, and determination of rights of the parties for all times to come is one of the judicial concern.

19. The point adumbrated during the course of arguments on which emphasis has been laid is on the principle of res-judicata i.e. to the effect that the matter could not have been reagitated for innumeral times and the question determined was determined finally and the same having become final cannot be redetermined. Although strict principles of res-judicata may not be invoked yet the principles termed as "equitable resjudicata" or "cause of action estoppel, do arise in this case and are squarely applicable.

20. The principle of res-judicata whether it is equitable, statutory or cause of action estoppel is based on the principle of object of bringing about a finality to the lis. It may not be fulfilled by construing it literally. In order to attain it, one has not to cull out words to be applied literally and facts - be sacrificed at the altar of phrases.

21. The basic quintessence of the principle of res-judicata whether equitable, statutory or cause of action estoppel may be culled out and is available from various pronouncements of the Apex Court as well as the High Court is to the effect: (i) that the order must be between the same parties or their successors on the same subject matter under the same statute by the same authority has again arisen. The fair and expedient adjudication is the elementary need precluding relitigation on the same issues time and again with the obvious object of obliterating the miscarriage of justice, contradictory results, inconsistent decisions on the same question between the same parties on the same subject matter especially by the same authority, keeping in view to bring about conclusiveness of the decision on an issue, rather keeping the sword of Democles hanging and the litigation unending in successive suits or in successive forums leading to conflict of decisions, thus permitting people to take chance of fortuitous circumstances in the arena of litigation by changing the forums time and again. Permitting otherwise would introduce disorder, confusion, chaos relating to Courts, which would instead of becoming forums for settling the rights of the parties to enable them to enjoy the same would become mere adornment and the rights would always remain in transitory form, apart from the fact that it would result in dilatory and wasteful litigation. As observed earlier in view of the public policy to promote predictability, certainty, suitability and providing guide to the people to conduct themselves or to plan their affairs with assurance against surmises apart from expeditious adjudication by eliminating the need to re-litigate over the same proposition between the same parties. The Courts are meant to do justice and not to reck this end on the altar of technicalities.

22. Provisions in this statute are made for the rights to be enforced and hierarchy for correcting the errors in appeal or other forums are provided. In spite of all human frailties, it is expedient that this must come to an end in a finally authoritative decision in spite of impossibility to provide a perfect judgment or means for Courts for every imaginable breach of rule. It is well established that when hierarchy is provided for challenging the order, it cannot be assumed that challenge to them collaterally is forbidden.

23. There is no gainsaying that main purpose of rule of law has to be applied in actual working, experience of life, existing facts emerged, community, social life affecting the individuals rather to have a draconian approach to the issue. The object of the Legislation by providing a remedy to put Gram Panchayat in possession of the Shamlat deh vesting in it is to avoid delays inordinately in the civil Courts under common law and to provide a summary remedy to the Gram Panchayat to recover possession from the unauthorised occupants of the land

expeditiously.

24. Prior to 1976 there was no special forum to determine the question with respect to vesting of the land in dispute in the Gram Panchayat or with respect to the nature of the land. Reading of the Section makes it incumbent that before a Gram Panchayat could be put in possession either vesting of land in dispute in it or nature of the land is not in dispute. In the alternative, the authority was required to determine the nature of possession, vesting of the land in the Gram Panchayat and only then the Authority assumes jurisdiction to put Gram Panchayat into possession, although the questions were to be determined summarily yet the parties adversely affected by the decision could get their right, title or interests determined from the civil Court.

25. The Legislature with the passage of time and learning experience provided for amendments in the Act conferring jurisdiction in the Authority under the Act to determine the question of title between Gram Panchayat and occupants by introduction of Sections 11, 12 and 13 vide Act No. 19 of 1976. Even the phraseology of section 7 has been changed later. It would be reasonable to infer, that it is later the Legislature removed the jurisdiction of ordinary civil Court to determine the lis with respect to determination of factum whether the land vests or does not vest in Gram Panchayat or falls within the definition of Shamlat deh under the Act. The questions to be determined were left to the authorities under the Act free from ordinary judicial process which was not the case prior to the Amended Act of 1976. In the progressing judicial trend, the Apex Court as lately as 1996 in *State of Kerala v. M.K.K.N.M.Manikoth Naduvil Ors.* JT 1996 (8) Section 533 observed as under-

" Even a void order or decision rendered between parties cannot be said to be non-existent in all cases and in all situations. Ordinarily, such an order will, in fact, be effective interse parties until it is successfully avoided or challenged in higher forum. Mere use of the word "void" is not determinative of its legal impact. The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided. There are degrees of invalidity, depending upon the gravity of the infirmity, as to whether it is fundamental or otherwise"

"Void-Void order- The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. It can be avoided-Mere use of the word "void" is not determinative of its legal impact".

26. In view of the observations made above and putting a purposive construction on principle of res-judicata as understood by ordinary mortals for whom it is meant, the conclusion arrived at in the order dated 5.4.1967 by the competent authority are to the effect that the land in dispute did not fall within the definition of Shamlat deh. It did not vest in the Gram Panchayat. Petitioner was in cultivating possession of the same before 26.1.1950 i.e. before the Act came into force. Petitioner came in possession of the Shamlat deh of the share of co-sharer

not more than his share by purchase. The order became final between the parties now as the same was never" challenged in the hierarchy of higher authorities provided under the Act to correct errors, if any, in the order nor the question of title was got determined by the respondent-Gram Panchayat from the civil Court. The statute then prevalent did not oust jurisdiction of civil Court to determine the question of title having been decided in summary proceedings against the respondents. Even if it is assumed that question of title was decided summarily, the respondent Gram Panchayat was entitled to get the same determined from the civil Court which course, the Gram Panchayat never adopted.

27. We find force in the submission of the learned counsel for the petitioner that the respondent Gram Panchayat cannot be permitted to relitigate the issue under the same provisions of the Act under which it has lost the first round of litigation particularly when there is neither any change much less substantial provided in Section 7 of the Act conferring jurisdiction on the authority to put Gram Panchayat in possession of the land in dispute at the time of proceedings initiated in 1967, later after the amendment of 1976 Act and still later till date, nor any new facts or change in facts, or grounds for ejectment or to put the Panchayat in possession came into being.

28. The respondent-Gram Panchayat's further attempt to relitigate the issue resulted in fiasco because of there having lack of evidence and leading no evidence in spite of number of opportunities given and resultantly because of which the Gram Panchayat got the petition dismissed as not interested for prosecution of the same any further, for reasons best known to it. It is just after a lapse"of 21 days from bringing down the curtain on the same round of litigation on the same cause of action between the same parties, before the same forum, under same statutory provisions on same facts or cause of action preferred another application by articulating an addition of Section 11 of the Act in the application with a prayer to determine the question of title. In our considered view, the Gram Panchayat cannot be permitted to keep the lis alive for times immemorial by mere articulating the petition and thus frustrate the very principle not only imbibed in the principle of res judicata, equitable res judicata estoppel, even otherwise recognised by the Constitution of India to the effect that a person cannot be vexed twice over for the same cause of action i.e. a cause of action cannot be put to trial time and again much less in the peculiar facts and circumstances of the case in hand.

29. The impugned order of the Appellate Authority cannot be sustained as the observations made to the effect that since the order dated 6.11.1981 which is the second application for ejectment, did not decide the matter on merits nor it was heard on merits, the petitioner had not raised any objection with respect to its withdrawal, the only appropriate remedy available to the Gram Panchayat was to get their application decided u/s 11 of the Act, thus rejecting the plea of res-judicata. The authorities below have lost sight of the judgment dated 5.4.1967

which meets all the requirements spelled out by the Appellate Authority. Consequently, in our considered view, the reasons recorded by the Appellate Authority in the impugned order cannot be sustained for the reason that Section 7 before amendment of 1976 Act, did not debar the Assistant Collector to determine the question whether the land in dispute fall within the definition of Shamlat deh or not and whether it vest in Gram Panchayat or not.

30. The questions determined by the Authority were squarely within the parameter of its jurisdiction and the finding recorded in the judgment dated 5.4.1967 became final inter se the parties. Even the second application was dismissed as withdrawn not simpliciter in default, rather it was dismissed as withdrawn on account of non-availability of evidence with express desire on the part of the respondent. Gram Panchayat not to prosecute. Resultantly, the principle of res-judicata, equitable resjudicata, estoppel on the causes of action as observed in the earlier part of the judgment would squarely be attracted in the facts and circumstances of this case. The parties cannot be permitted to litigate and relitigate indefinitely much less in a different forum, in the same forum with the same powers on the parimateria of statutory provisions of Section 7, on the same facts with no fresh cause of action or grounds for ejection thrown up or one becoming trespasser subsequently or the land getting vested under the Act in the Gram Panchayat, with no material difference brought about by the amendment. Taking any other view, would result in draconian rule of law and would result in chaotic situation i.e. the rights of the parties will never be determined finally. Articulation cannot be permitted to denude the final adjudication to the lis, in order to deprive a person to enjoy fruit of his success in the lis particularly an illiterate village-folk who is usually ignorant of finer technicalities and articulation of law for whose benefit the Legislature enacted the village Common Lands Act.

31. The facts and circumstances of this case judged from any angle or principle enunciated above precisely or percinctly fall within the four corners of principle of equitable res-judicata or analogous thereto.

32. For the reasons recorded above, we are of the considered view that the order dated 5.4.1967 would operate as res-judicata inter se the parties or in the alternative 1 it would operate as estoppel for the respondent Gram Panchayat to re-litigate the same cause of action before the same forum between the same parties. We may hasten to add that subsequent application cannot be termed something more than review of the earlier decision in the facts and circumstances of this case. Since the authorities have not been conferred with any statutory power of review, they are estopped from, reviewing the order dated 5.4.1967 and taking any other contrary view. On the parimateria reasoning given above, the order dated 6.11.1981 again re-litigating the same cause of action before the same forum on the same facts and circumstances and getting the application dismissed as withdrawn as the Gram Panchayat did not want to prosecute the same any further in view of the lack of evidence led by it,

if not strictly speaking operates as res-judicata would definitely debar the respondent-Gram Panchayat on the principle of equitable estoppel to reagitate the matter on the same cause of action on the same facts and circumstances before the same forum after having two rounds of litigation.

33. We may hasten to add that even if second application for ejectment is not barred yet it can be only maintained if the facts and circumstances of the case are changed to such an extent that by then the facts coming into force, new cause of action has arisen, or a person has become an unauthorised occupant of the land in dispute subsequently or by the subsequent events the land got vested in Gram Panchayat.

34. Even on undisputed facts viz. the respondent having purchased the land in dispute from co-sharer to the extent of his share and was in possession before the date of terminus-quo fixed by the Statute i.e. 26.1.1950, the land in dispute does not fall within the ambit of definition of Shamlat deh. As a necessary corollary it would not vest in the Gram Panchayat. Thus, in the totality of the facts and circumstances, the authorities have no jurisdiction to pass an order of ejectment in exercise of power u/s 7 of the Act,

35. Learned counsel for the Gram Panchayat relied on Gurnam Singh v. The District Development Officer (Collector) Patiala and Anr. 1988 P.L.J. 497 in order to contend that Gram Panchayat cannot get its title decided and it is an anomaly that after getting the question of title decided u/s 11 of the Act, the Gram Panchayat would be at liberty to move an application afresh u/s 7 of the Act. Though in this case, the question was purely of academic in view of the decision made on the other questions raised, yet prima-facie, we find no force in the contention of learned counsel for the Gram Panchayat to the effect that in view of the amended Act of 1976, u/s 11, no right has been conferred on the Gram Panchayat, with respect to getting the question of title of Gram Panchayat determined. Reading of Section 11 in its totality and for making Sections (1) and (2) operative and not rendering any one of them redundant or contradictory, a right conferred on a person claiming a right title or interest in any land vested or deemed to have been vested in Gram Panchayat under this Act or claiming that any land has not been vested in Gram Panchayat could get his right, title or interest determined by the Collector. Right of appeal has been given to the person agitating the question of title as well as to the Gram Panchayat, Section 12 confirms finality of such an order. Section 13, as referred to above debar the civil Court from determining and adjudicating upon a question with respect to any property of any right or interest in any property or whether any property is or is not Shamlat deh vested or deemed to have been vested in Gram Panchayat under this Act, it categorically leads to an inference that any person has a right to get the question of title determined from the Collector.

36. We may hasten to add that a person described in sub-section (1) cannot be restricted only to a person other than a Panchayat as in the juristic parlance a Gram Panchayat can be termed as a juristic person who could get its right or title

determined. Since operation of the provision is prospective and not retrospective, the rights which have been determined 13 years back cannot be permitted to be reopened in view of the prospective legislation. The judicial decisions cannot be set aside by legislation though the grounds for the same can be set at naught. We may further add that section 11 has not made any attempt to set aside the judicial decision arrived at by a competent authority nor the same has been suggested during the course of arguments. Consequently, we are of the considered view that the Gram Panchayat has a locus-standi to get the question of title determined u/s 11 of the Act but prospectively.

37. The order dated 5.6.1987 rejecting the petition for ejectment and putting Gram Panchayat in possession by a competent authority having become final, no change either in facts or law or new cause of action having arisen, operates as res-judicata at least operates equitable estoppel inter se the parties.

38. Application dismissed as withdrawn for lack of evidence operates as equitable estoppel and Gram Panchayat can be permitted to sue for the same cause of action afresh, without there being any material subsequent even to bring out either a new cause of action, right or liability of the possessor.

39. Gram Panchayat could and has a locus-standi to bring petition u/s 11 of the Act to get its title determined by the authority under the Act.

40. Land acquired before 26.1.1950 by purchase from co-sharer in Shamlat deh, not more than his share, does not vest in Gram panchayat particularly when the purchaser or the co-sharer was in possession.

41. For the reasons recorded above, the writ petition is allowed. The impugned order dated 27.12.1985 (Annexure P1) is quashed and the petition u/s 7 of the Act is dismissed and the order dated 30.7.1982 of the Collector is affirmed. There would be no order as to costs.