
(1994) 09 P&H CK 0085

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16287 of 1991

Ram Pal and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 15-09-1994

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11, 13, 13B, 2, 4

Citation : (1995) 109 PLR 705

Hon'ble Judges : V.K. Bali, J; M.S. Liberhan, J

Bench : Division Bench

Advocate : M.S. Sandhu and R.S. Sandhu, for the Appellant; M.C. Berry, DAG and Jasbir Singh, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—This order shall dispose of two writ petitions bearing Nos. 15683 and 16287 of 1991 as common questions of law and facts are involved therein. The facts have, however, been extracted from Civil Writ Petition 16287 of 1991 (Ram Pal and Ors. v. State of Punjab and Ors.).

2. Challenge herein is to orders passed by the Additional Director, Punjab, dated June 7, 1991, Annexure P-3, vide which appeal preferred by the Gram Panchayat, Tejan, Block Bhunerheri, District Patiala, against orders of the Collector (District Development & Panchayat Officer), Patiala dated February 17, 1987, was allowed, thus declaring the possession of petitioners herein to be unlawful in a suit instituted by the Gram Panchayat u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961.

3. The Motion Bench vide order dated February 4, 1992 while admitting the writ petition to DB observed that inasmuch as it was observed by the Full Bench of this Court in Gram Panchayat Village, Bathoi Kalan, Patiala Vs. Jagar Ram and others, that Civil Court decree could be questioned on the grounds of collusion, fraud etc. before a competent Court but it was not clarified which was the

competent Court i.e. whether it was the Civil Court or the Authority under the Act exercising jurisdiction u/s 11 of the said Act, the matter required determination by the Division Bench.

4. Before we proceed any further in the matter, it shall be useful to extract the facts of the case even though briefly. Pritam Singh, father of Petitioners who died on 26.12.1988 had been in possession of the land in dispute and as per the case of the petitioners for the last 35 to 40 years. On his demise, Petitioners Nos. 1 to 3 inherited land and mutation to that effect was duly sanctioned in their favour. A major chunk of the land was sold by Petitioners Nos. 1 to 3 to Petitioners Nos. 4 and 5. The land was initially uncultivable and Pritam Singh by dint of his hard labour made it cultivable. He also installed a tubewell. He acquired ownership rights by adverse possession. He was in exclusive, peaceful, continuous and in interrupted possession without payment of any rent to anyone. In 1974, however, respondent - Gram Panchayat made a vain attempt for dispossessing Pritam Singh constraining him to institute a Civil Suit bearing No. 7 dated 25.1.1974 wherein he sought declaration to the effect that he had become owner by way of adverse possession of the land in dispute. This matter was contested, written statement was filed and the case was argued by both the sides. The Civil Court found substance in the averments made in the plaint resulting into judgment and decree in favour of Pritam Singh on 1.6.1974. During the Course of trial, Sarpanch Gurdev Singh and Panch Gullu Ram appeared as witnesses of Gram Panchayat and asserted that land in dispute was owned by Gram Panchayat and the same was Shamlat deh as defined in section 2 (g) of the Punjab Village Common Lands (Regulation) Act. This decree of the Civil court was not challenged by way of appeal or revision and thus, attained finality. Respondent-Panchayat, however, in 1987 filed an application u/s 11 of the Punjab Village Common Lands (Regulations) Act against Pritam Singh which was decided by the D.D. & P.O. on 17th of February, 1987 (Annexure P-2). The said Authority held that Pritam Singh had become owner in possession in view of the Civil Court decree, reference of which has been given above. Aggrieved, Gram Panchayat challenged the aforesaid order in appeal before the Additional Director Panchayat, Punjab, resulting in order of eviction of the petitioners. It is this order, as referred to in the earlier part of the judgment that has been challenged in this writ Petition.

5. It is not disputed between the parties that Full Bench of this Court in Jagar Ram's case (supra) has held that section 13-D as introduced by Punjab Act 19 of 1976 in pari materia with section 13-D as introduced by Haryana Act 2 of 1981 and that the decree passed by competent Civil Court between the parties prior to amendment by Punjab Act 19 of 1976 cannot be ignored by authorities under the Act. Parties, however, are always at liberty to get the decree set aside on the ground of collusion, fraud or otherwise by a competent Court. It requires to be mentioned here that section 13-B was introduced by Act 19 of 1976 which reads as under:-

"The provisions of this Act shall have effect, notwithstanding anything to the contrary in any law, or any agreement, instrument, custom or usage, decree or order of any Court or other authority".

It is by virtue of section 13-B that the authorities constituted under the Act could ignore decree passed by the Civil Court. As mentioned above, the decision of the Full Bench is that such decrees which had been passed prior to amendment of Punjab Act of 1976 cannot be ignored by authorities constituted under the Act and that being so, the decree in the present case admittedly being prior to amendment in the Act could not be ignored by the appellate authority.

6. In so far as question as to which is the competent court which can entertain and decide the suit challenging the Civil Court decree on the ground of collusion, fraud etc. is concerned, in our considered view, it is the only Civil Court which can entertain and decide such matters.

7. In view of section 9 of the Code of Civil Procedure, a Civil Court has jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. It is not disputed that the dispute that a judgment and decree is vitiated on account of fraud, collusion, misrepresentation of facts and such allied grounds is a dispute of civil nature. In so far bar of jurisdiction of Civil Court as per the provisions contained in the Punjab Village Common Lands (Regulations) Act, 1961 is concerned, it shall be seen from Section 13 of the aforesaid Act that the same is with regard to entertaining or adjudicating upon any question, whether any property or any right to or interest in any property is or is not Shamilat deh vested or deemed to have been vested in a Panchayat or to question the legality of any action taken by the Commissioner the Collector or the Panchayat or in respect of any matter which the Commissioner or the Collector is empowered by or under the Act to determine. By virtue of Section 11, Collector has the jurisdiction to decide right, title or interest in Shamilat deh. The section provides that any person claiming right, title or interest in any land, vested or deemed to have been vested in a Panchayat tinder 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 the such manner as he may deem fit. Sections 11 and 13 are the only relevant sections in the Punjab Village Common Lands (Regulations) Act, 1961 from which bar of jurisdiction of Civil Court can be spelt out. A perusal of section aforesaid, however, would clearly manifest that Civil Court's jurisdiction is not barred if the plea of litigating parties is with regard to a decree being tainted with fraud, collusion or misrepresentation of facts or any other such ground. Civil Court is a Court of plenary jurisdiction and if there is no bar created for entertaining a cause by special or local Act, it would always have jurisdiction try the matter of civil nature. That being so, we are of considered view that competent Court as mentioned by the Full Bench in Gram Panchayat Village, Bathoi Kalan, Patiala Vs.

Jagar Ram and others, refers to a Civil Court, even though not specifically so mentioned. It is, thus, held that the competent Court is a Civil Court.

8. For the reasons stated above, these petitions are allowed the orders passed by the appellate Authority allowing the suit of respondent-Gram Panchayat u/s 11 is dismissed, thus, restoring the order passed by D.D.P.O. Patiala (Annexure P-2). It shall, however, be open to the respondent-Gram Panchayat to challenge the validity of the decree on the grounds of fraud, collusion or misrepresentation of facts or any other ground that might be available to them under law. Parties are left to bear their own costs.