

**(2011) 08 P&H CK 0227**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : CWP No. 6170 of 2011 (O and M)**

Ram Saroop @ Ram Swarup

APPELLANT

Vs

Financial Commissioner and Principal Secretary, Haryana,  
Development and Panchayat Department and others

RESPONDENT

---

**Date of Decision :** 16-08-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 13A(1), 7

**Citation :** (2011) 164 PLR 780 : (2012) 1 RCR(Civil) 957

**Hon'ble Judges :** Alok Singh, J

**Bench :** Single Bench

**Final Decision :** Dismissed

---

## Judgement

Alok Singh, J.—Petitioner has invoked jurisdiction of this Court under Article 226/227 of the Constitution of India assailing orders dated 9.3.2011 (Annexure P-9) passed by Financial Commissioner, dated 29.1.2010 (Annexure P-8) passed by Commissioner, Hisar Division, and dated 4.8.2009 (Annexure P-7) passed by Collector, Bhiwani.

2. Petitioner and proforma respondents have filed suit u/s 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (herein after called as "the 1961 Act") for the declaration that plaintiffs are owners in possession of the disputed land comprised in khewat No.79/74, khatoni No.95 total measuring 88 kanal 5 marla, village Kari Aadu; disputed land does not fall within the definition of "Shamlat Den"; plaintiffs (petitioner and proforma respondents herein) have been in cultivating possession thereof since the time of their forefathers even prior to 1928 from the date of inception of the village; mutation No.246, which was sanctioned in favour of Gram Panchayat, is not correct; Gram Panchayat has no concern with the land in dispute.

3. Suit of the petitioner and proforma respondents was contested by the Gram Panchayat. Suit was dismissed by the Collector vide impugned order dated

4.8.2009, which was duly confirmed by the Divisional Commissioner and Financial Commissioner vide impugned orders dated 29.1.2010 and 9.3.2011, respectively, by observing that earlier Gram Panchayat has initiated eviction proceedings against the plaintiffs (petitioner and proforma respondents herein) u/s 7 of the 1961 Act wherein question of title was raised by the plaintiffs and was turned down by the Division Bench of this Court in CWP No. 19211 of 2004 arising out of the eviction proceeding filed by Gram Panchayat and writ petition was dismissed vide order dated 7.7.2006 holding that Gram Panchayat was the owner and petitioner and proforma respondents could not prove their title; therefore, present suit u/s 13-A is not maintainable question of title cannot be allowed to be raised again and again. Feeling aggrieved, petitioner has approached this Court by way of present petition.

4. I have heard learned counsel for the petitioner at length and have perused the entire record.

5. Record reveals that on 29.3.1995 Gram Panchayat/respondent No.5 initiated proceedings for the eviction of the petitioner and proforma respondents u/s 7 of the 1961 Act, Wherein petitioner and proforma respondents have filed their written statement, copy of which is made available On the record as Annexure P-13 and have contended in paragraph No.4 as under:-

That the contents of para No.4 of the application are wrong and denied because the possession and cultivation of the respondent on the land in question is legal, because Gram Panchayat has no concern, whatsoever with the land in question. The respondents have become the owner of the land and are in possession of the land much prior to 1928.

6. Learned Assistant Collector, 1st Grade, Charkhi Dadri, vide order dated 27.9.2000 has directed eviction of the petitioner and proforma respondents; petitioners being aggrieved against the said order preferred an appeal before the Collector, Bhiwani, which was dismissed vide order dated 11.12.2000; against the order of the Collector, petitioner and proforma respondents preferred revision petition before the Commissioner, which was also dismissed vide order dated 1.5.2003; thereafter order of eviction passed by Assistant Collector dated 27.9.2000, as affirmed by Collector vide order dated 11.12.2000 and Commissioner dated 1.5.2003, was challenged before this Court in CWP No. 19211 of 2004.

7. Division Bench of this Court vide order dated 7.7.2006 dismissed CWP No.19211 of 2004 filed by petitioner and proforma respondents herein thereby confirming the eviction order passed by Assistant Collector. Division Bench of this Court has held that Gram Panchayat is the owner of the land in question and petitioner and proforma respondents herein are not the owners of the same and are in unauthorized occupation of the land. Certified copy of order dated 7.7.2006 is available on the record as Annexure P-12.

8. Mr. Anurag Jain, learned counsel appearing for the petitioner, has vehemently

argued that since proceeding initiated by the Gram Panchayat against the petitioner and proforma respondents u/s 7 of the 1961 Act was of summary in nature, therefore, decision of the Division Bench of this Court in a writ petition arising out of the summary proceeding of eviction shall not be res judicata in a regular suit u/s 13-A of the 1961 Act. He has placed reliance on the judgment of Division Bench of this Court in the case of Tara Chand and Fateh Singh v. Gram Panchayat and Gram Sabha of village Atil and others, (1979) 81 PLR 1 to argue that even after eviction order u/s 7, petition u/s 13-A is maintainable.

9. Section 13-A of the 1961 Act as applicable in the State of Haryana was inserted vide Haryana Act No.9 of 1999, which reads as under:-

13-A. Adjudication. - (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education, and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the court of the Collector, having jurisdiction in the area, wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or which has been the subject matter of the proceedings u/s 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under sub-section (1) shall be same as laid down in the Code of Civil Procedure, 1908 (Act 5 of 1908).

10. From the perusal of proviso to Section 13-A, I have no hesitation to hold if question of title was raised in earlier proceeding u/s 7 of the 1961 Act and question of title has been decided then no suit would lie u/s 13-A thereafter. In the case of Tara Chand (supra), Division Bench had no occasion to consider the proviso to Section 13-A, which was introduced by Haryana Act No.9 of 1999 after almost twenty years from the judgment in the matter of Tara Chand (supra), therefore, judgment of this Court in Tara Chand (supra) is of no help to the petitioner.

11. Undisputedly, question of title was raised by the petitioner and proforma respondents in an earlier eviction proceeding u/s 7 of the 1961 Act and the same was decided by elaborate judgment by this Court in CWP No.19211 of 2004 arising out of eviction proceeding u/s 7 of the 1961 Act, therefore, once again same question of title cannot be raised in a suit u/s 13-A of the 1961 Act in view of proviso to Section 13-A.

Petition is devoid of merit. Hence is dismissed.