

(2009) 09 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 11930 of 2009

Surat Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g)(vi), 7

Citation : (2010) 1 PLR 696 : (2010) 1 RCR(Civil) 795

Hon'ble Judges : S.S.Saron, J

Advocate : Mr. Rajendar Chhokar, Advocate., Advocates for appearing Parties

Judgement

S.S.Saron, J.

1 This petition under Articles 226/227 of the Constitution of India has been filed seeking quashing of the order dated 8.6.2009 (Annexure P10) passed by the learned Financial Commissioner, Haryana (respondent No. 1), the order dated 16.12.2008 (Annexure P9) passed by the Commissioner, Rohtak Division, Rohtak (respondent No. 2) and the order dated 4.10.2006 (Annexure P7) passed by the Collector, Panipat (respondent No. 3).

2 The Gram Panchayat Kurana, Tehsil Israna, District Panipat (respondent No. 4) filed an application (Annexure P2) under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in Haryana) ("Act" for short) seeking possession of land measuring 5 Kanals comprised in Rectangle No. 298 situated in village Kurana, Sub Tehsil Israna, District Panipat as per Jamabandi for the year 1997/98. Surat Singh (petitioner) filed written statement (Annexure P3) to the said application. The Gram Panchayat (respondent No. 4) filed replication (Annexure P4) to the written statement. The Assistant Collector 1st Grade, Panipat after considering the evidence and material on record dismissed the application (Annexure P2) of the Gram Panchayat (respondent No. 4) vide order dated 2.3.2006 (Annexure P5). Aggrieved against the same, the Gram Panchayat, Kurana (respondent No. 4) filed an appeal (Annexure P6). The

Collector, Panipat vide order dated 4.10.2006 (Annexure P7) allowed the appeal and the order dated 2.3.2006 (Annexure P5) passed by the Assistant Collector 1st Grade was set aside and the matter was remanded with the direction that the case should be decided again on the basis of merit. The petitioner aggrieved against the said order filed a revision petition (Annexure P8) before the Commissioner, Rohtak Division, Rohtak who vide order dated 16.12.2008 (Annexure P9) upheld the order of the Collector dated 4.10.2006 (Annexure P7). It was observed that the Collector had just remanded the case to the Assistant Collector for deciding the same afresh on merit and no party would be adversely affected on account of the order of remand. The petitioner aggrieved with the said order of the Commissioner, Rohtak Division, Rohtak filed a revision petition before the learned Financial Commissioner, who vide order dated 8.6.2009 (Annexure P10) dismissed the same holding it to be not maintainable. Aggrieved against the same, the petitioner has filed the present petition.

3 Learned counsel for the petitioner has contended that the Collector, Panipat in terms of order dated 4.10.2006 (Annexure P7) has gravely erred in remanding the matter to the Assistant Collector Ist Grade. It is submitted that the land in dispute is "Gair Mumkin Bara" which is outside the "Abadi Deh". Therefore, clause (vi) of Section 2(g) of the Act would apply and the land which is "Bara" outside the "Abadi Deh" would be excluded from the definition of "Shamilat Deh". In support of his contention learned counsel cites *Jagir Singh v. Gram Panchayat Village Mirzapur and Others*, 1989(2) RRR 385:1989 PLJ 494 (P&H) (DB). It is also submitted that in fact the matter had earlier been decided by the Assistant Collector 1st Grade in terms of the order dated 31.7.1976 (Annexure P1) wherein the earlier petition filed by the Gram Panchayat, Kurana (respondent No.4) for eviction of the petitioner from the same land was dismissed. The said order, it is submitted, is final and operates as *res judicata* between the parties. Reliance is placed on the case of *Azamu v. The Collector, Sonapat and Others*, 1984 RRR 503 : 1983 PU 392 (P&H) to contend that the principle of *res judicata* is applicable to proceedings under Section 7 of the Act. It is also submitted that a second petition under the same provision is not maintainable as the earlier finding that the land is not "Shamilat Deh" would operate as *res judicata* between the parties. In this regard learned counsel cites *Gurnm Singh v. Gram Panchayat Village Mangoli and Others*, 1988(2) RRR 496 : 1988 PLJ 520. Reliance is also placed on *Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas and another*, 2008(2) RCR(Civil) 936 : 2008(3) RAJ 479 (SC). It is further contended that the Commissioner, Rohtak Division, Rohtak in terms of his order dated 16.12.2008 (Annexure P9) has recorded that in the earlier order dated 31.7.1976 (Annexure PI) no decision regarding possession of the petitioner in respect of the land comprised in rectangle No. 298 was taken whereas a reading of the said order dated 31.7.1976 (Annexure P1) shows that the application had been filed by the Gram Panchayat, Kurana (respondent No. 4) for possession of land in rectangle No. 298.

4 I have given my thoughtful consideration to the matter. The contention of the

petitioner is that the land in dispute is a "Bara and, therefore, it would be excluded from the definition of "Shamilat deh". In support of this, learned counsel for the petitioner has referred to the order dated 2.3.2006 (Annexure P5) passed by the Assistant Collector Ist Grade, Panipat wherein reference has been made to the statement of Om Parkash, Member Panchayat who appeared for the Gram Panchayat Kurana (respondent No.4). A perusal of the same rather shows that it is stated by Om Parkash, as recorded in the said order, that the disputed land is of "Shamilat Deh" for "Johar" (pond). It is 5 kanals land. "Johar" (pond) is situated at the rear side of the plot. "Joliar" (pond) is comprising of 34 acres. It is further mentioned in the said order dated 2.3.2006 (Annexure P5) that the second party i.e. the petitioner had stated that the disputed land was in his possession for the period from prior to consolidation and his possession could not be shown to be due to a mistake at the time of consolidation. The respondents had produced judgment dated 31.7.1976 (Annexure P1) and judgment dated 6.2.2002 of the Civil Court. The said contention of the learned counsel for the petitioner would in fact show that Om Parkash had submitted that the disputed land was a "Johar" (pond). During the course of hearing, learned counsel for the petitioner also submitted copies of Jamabandis for the years 199798 and 200203 which are taken on record as Mark A and Mark A. 1 respectively. A perusal of the Jamabandi for the year 199798 (Mark A) shows that the Gram Panchayat Deh is recorded as owner of the land. In the column of cultivation it is recorded as "Rafaya Aam" in respect of land comprised in Khasra No. 298//26 Min measuring 104 kanals 5 marlas. Besides, land measuring 4 kanals comprised in Khasra No. 298//26 Min is recorded under the column of cultivation it is recorded in possession of Dharam Pal son of Nanak son of Nathu. The said lands measuring 104 kanals 5 marlas and measuring 4 kanals are recorded as "Gair Mumkin Johar". In the Jamabandi for the year 200203 (Mark A. 1), the Gram Panchayat Deh is recorded as owner of land measuring 104 kanals 5 marlas comprised in Khasra No. 298//26 Min and "Rafaya Aam" is recorded in cultivating possession. The kind of land is recorded as "Gair Mumkin Johar". Therefore, there is nothing in the revenue records to show that the land as shown in the Jamabandis for years 199798 and 200203 Mark A and Mark A1 respectively submitted by the learned counsel that the land in question is "Gair Mumkin Bara". The land shown in the revenue record as "Rafaya Aam" is evidently for common purposes of the village. In case the land in question is recorded in the revenue records as "Gair Mumkin Bara", the same may be excluded from "Shamilat deh" in view of Clause (vi) of Section 2(g) of the Act, which is amongst the exclusionary clauses of land which is not Shamilat Deh. Section 2 (g)(vi) of the Act is as follows :

"2(g) "Shamilat Deh" includes (1) to (6) xx xx xx but does not include land which (i) to (v) xx xx xx

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry, immediately before the commencement of this Act.

(vii) and (ix) xx xx xx"

5 A perusal of the above show that the land which lies outside the "Abadi Deh" and was being used as gitwar, bara, manure pit, a house or for cottage industry, immediately before the commencement of the Act would be excluded from the definition of "Shamilat Deh". However, there is no revenue record to show that the land in question is "Gair Mumkin Bara" before commencement of the Act. Land recorded in the revenue record before commencement of the Act as Bara is excluded from the definition of "Shamilat Deh". For the present, there is no material to show that the land in question before the commencement of the Act which commenced on 4.5.1961 was it is "Gair Mumkin Bara". In fact even Om Parkash in his statement as is recorded in the order dated 2.3.2006 (Annexure P5) mentions that the land in question is of "Shamilat Deh" for "Johar" (pond).

6 Learned counsel for the petitioner has, however, contended that RW5 as is recorded in the order dated 31.7.1976 (Annexure P1) who was a member of Gram Panchayat had stated that at the time of consolidation "baras" were carved out of this land which are in possession of the respondents and the "Johar" is far away from there. The same also is merely an oral statement and is not substantiated by the Consolidation records. Besides, it is not mentioned that the Baras were there before the commencement of the Act. In any case, the matter has only been remanded and the petitioner would be at liberty to show that "Baras" were carved out of land comprised in rectangle No.298. There is no material before this Court to show that in the land in question "Baras" had been carved out before the commencement of the Act and consequently the said land is excluded from "Shamilat Deh" in view of the provisions of Section 2(g)(vi). In the circumstances, the judgment of this Court in Jagir Singh v. Gram Panchayat, Village Mirzapur and Others (Supra) referred to by the learned counsel for the petitioner is inapplicable as in the said case it was held on the basis of material on record that the land therein was a "Bara".

7 Insofar as the contention of the learned counsel for the petitioner regarding res judicata is concerned, it may be noticed that proceedings before the authorities under the Act are of a summary nature. It may be noticed that the petitioner had filed civil suit No. 328 of 2000 in the Court of Civil Judge (Junior Division), Panipat titled Surta @ Surat Singh v. Gram Panchayat, Kurana. The said suit was decided on 6.2.2002. In the said suit, the plaintiff (now petitioner) was held in possession of the suit property. The suit of the plaintiff was decreed to the effect that the defendants Gram Panchayat, Kurana (respondent No. 4) was restrained from dispossessing the plaintiff (now petitioner) from the suit land except in due course of law. It may be noticed that in the circumstances, the Gram Panchayat (respondent No. 4) in terms of the Civil Court judgment and decree dated 6.2.2002 was not to dispossess the plaintiff (now petitioner) except in due course of law.

8 The property comprised in rectangle No. 298 is in the revenue records is recorded as "Gair Mumkin Johar" (Pond). The said property is "Shamilat Deh" in

terms of Clause (4) of Section 2(g) which provides that lands used and reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the Sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952. Therefore, "Johar" (pond) would fall under clause (4) of Section 2(g) and would be "Shamilat Deh" which would vest in Panchayat in terms of Section 4(l)(a) of Act. The order dated 31.7.1976 (Annexure PI) was passed in proceedings under Section 7 of the Act. In the said case respondents No. 1 and 2 therein (including the petitioner) produced copy of Jamabandi (Ex R.12/1) in which possession over the "Baras" it is mentioned is shown qua respondents No. 1 and 2 therein (including the petitioner). Besides, it was also supported by the witnesses of the respondents that the possession of the respondents (including the petitioner) over the "Baras" was prior to the time of consolidation and these "Baras" were allotted to them prior to consolidation and the same were being used as "Gher". No such revenue record has been shown before this Court or before the Courts below that the land comprised in rectangle No.298 is a "Bara" before the commencement of the Act. Therefore, the Jamabandi (Ex.RI2/1) as mentioned in the order dated 31.7.1976 (Annexure PI) is out of context. Besides, no finding has been given in the said order that the land in dispute is not "Shamilat Deh" land. Moreover, the said order is not an order whereby title to the property has been determined under Section 13A of the Act, which provides for adjudication. Therefore, there being no adjudication as regards the title of the property in the order dated 31.7.1976 (Annexure P1) the principle of res judicata would be inapplicable. A Division Bench of this Court in Rama Sarup and Others v. State of Haryana and Others, 2006(4) RCR(Civil) 350 held that doctrine of res judicata is not applicable in summary proceedings unless the statute expressly applies to such orders. It was held that dismissal of earlier petition under Section 7 of the Act does not bar subsequent petitions. Reliance was placed on the decision of the Supreme Court in Inder Singh v. Financial Commissioner, Punjab, 1997(1) PLJ 52 wherein it was held that the doctrine of res judicata is not applicable to summary proceedings unless the statute expressly applies to such order. It was held that the authorities under the Pepsu Tenancy and Agricultural Land Act are not civil courts and nor the petition, a plaint. No issues were framed nor tried as a civil suit and the orders passed by the authorities without any elaborate trial like in a civil suit but in a summary manner would not make the principle of res judicata applicable. Therefore, merely because an earlier petition under Section 7 of the Act filed by the Gram Panchayat has been dismissed vide order dated 31.7.1976 (Annexure P1), the principle of res judicata would not be applicable.

9 In Azamu v. The Collector, Sonapat and Others (supra), this Court held that no second application on the same cause of action is competent. Besides, in Gurnam Singh v. Gram Panchayat Village Mangoli and others (supra) it was held that a second petition under the same provisions and on the same cause of action cannot be allowed to be filed as earlier finding that land is not "Shamilat Deh" would operate as res judicata between the parties. In the present case, however,

as already noticed, there is no finding in the order dated 31.7.1976 (Annexure P1) that the land in question is not "Shamilat Deh". Besides, the said order was passed in summary proceedings. Therefore, the said judgments cited by the learned counsel are inapplicable to the facts of the present case.

10 In *Dadu Dayalu Mahasabha, Jaipur (Trust) v. Mahant Ram Niwas and another* (supra) cited by the learned counsel, the dispute related to succession and management of "Gaddi". The case arose out of a suit filed before the Senior Sub Judge at Rohtak. Another suit was filed for grant of permanent injunction by Mahant Mani Ram Sadhu Dadu Panthi. The appellant Trust in the said case claimed its entitlement to the management of the "Gaddi" under a Will executed by Mahant Mani Ram Swami. The controversy between the parties, therefore, was as to which party was entitled to manage the "Gaddi" at Kalanaur of the said Trust. In the said suit issues were framed and the case was tried. The principal issues were decided against the first respondent holding that he was not entitled to hold or manage the "Gaddi" in question. An appeal was filed by the first respondent therein which was dismissed by the learned Additional District Judge, Rohtak. The matter then came up before this Court wherein additional evidence was taken and the findings of the Courts below on issue No.1 were set aside. Thereafter SLP was filed in the Supreme Court wherein the judgment and decree of the High Court was set aside and that of the first appellate Court was restored. However, it was held that its judgment would not come in the way of the plaintiff (respondent therein) from filing a suit for possession, if he was so advised. In the fresh suit, the first respondent also impleaded "Gaddi Dadu Dawara Kalanaur" through himself as the second plaintiff. The appellants before the Supreme Court were arrayed as defendants. The suit for possession of property was decreed. The learned trial Judge had opined that the said suit was barred by the principles of res judicata as the issues arising therein were directly and substantially in issue between the parties in the previous suit as well. It dealt with in details as to how the causes of actions in both the suits were the same. The said judgment and decree of the trial Court was reversed by the first appellate Court. It was held that neither the principles of res judicata nor Order II Rule 2 of the Code of Civil Procedure were applicable in view of the observations of the Supreme Court in its order setting aside the judgment of the High Court that its judgment would not come in the way of the plaintiff (respondent therein) from filing a suit for possession. An appeal was filed before this Court which was allowed. This Court held that the previous suit was suit for injunction. In the said suit a finding was returned by the trial Court that the plaintiff had failed to prove ownership and possession. Thus, the suit for injunction was dismissed. The said finding was affirmed in appeal as well. The High Court in Second Appeal reversed the findings recorded by the learned first appellate Court after admitting additional evidence and held that the plaintiff is in possession of the suit property. Thereafter, the Supreme Court had set aside the judgment and decree passed by the High Court and liberty was given to the plaintiff (respondent therein) to file a suit for possession. It was held that the order passed by the Supreme Court shows that

the findings that plaintiff was not in possession in a suit for injunction was set aside and it was clarified that the judgment of the Supreme Court would not come in the way of the plaintiff to file a suit for possession. Meaning thereby in a suit for possession, the plaintiff could establish his title. It was held that the order of the Supreme Court has to be read in its entirety and once it was ordered that the judgment would not come in the way of suit for possession, the suit for possession could not be dismissed on the basis of previous judgment in a suit for injunction. It is in the said circumstances that the question regarding applicability of the principles of res judicata was considered in the context that if the judgment and order of the first appellant Court in the earlier suit was restored by the Supreme Court, a finding arrived at by it attained finality. The question that principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice was not in issue in the said case and the issue was regarding the findings reached at in an earlier suit and the subsequent suit for possession. However, as already noticed in Inder Singh's case (supra) the Supreme Court held that doctrine of res judicata is not applicable to a case of summary proceedings unless the statute expressly applies to such orders. The said case was a case under the Pepsu Tenancy and Agricultural Land Act and it was held that the authorities are not Civil Court nor the petition, a plaint. No issues were framed nor tried as a civil suit. The position under the Punjab Village Common Lands (Regulation) Act would also be that the authorities exercising jurisdiction under the said Act are not civil Courts and neither have any issues been framed in regard to title to the land in the order dated 31.7.1976 (Annexure P1) and nor any finding as regards the land as "Shamilat Deh" has been given. In the circumstances, the doctrine of res judicata would be inapplicable.

11 The contention of the learned counsel for the petitioner that in the order dated 16.12.2008 (Annexure P9), the Commissioner, Rohta Division, Rohtak has mentioned that no decision regarding possession of the petitioner in respect of the land comprised in rectangle No. 298 was taken whereas a reading of the order dated 31.7.1976 (Annexure P1) shows that the application had been filed by Gram Panchayat, Kurana (respondent No. 4) for possession of the suit land may be considered. A reading of the order dated 16.12.2008 (Annexure P9) passed by the Commissioner, Rohtak Division, Rohtak indeed does show that the Commissioner has recorded that no decision about the possession of the petitioner over the said rectangle No. 298 was taken. However, in fact the actual intent of the said order or what the Commissioner meant is that no decision regarding title of the petitioner in the said rectangle No. 298 was taken. The word "possession" is an inadvertent slip in the order dated 16.12.2008 (Annexure P9) as the petition filed by the Gram Panchayat, Kurana (respondent No. 4) in which the order dated 31.7.1976 (Annexure P1) was passed was in fact for possession alleging that the petitioner had taken unauthorized possession of the land forcibly. Therefore, the decision regarding possession was to be taken and has been taken. In any case, the intention of the Commissioner, Rohtak

Division, Rohtak in his order dated 16.12.2008 (Annexure P9) is that no decision regarding title of the petitioner over said rectangle No. 298 was taken. It is the intention of the order that is to be seen and in case there is a slip, the same is to be construed so as to bring out the actual intention. Besides, an order passed by the authorities under the Act is not a statutory provision which is to be literally construed. As such, there is no merit in the said contention. For the foregoing reasons, there is no merit in this petition and the same is accordingly dismissed. Petition dismissed.