

(1997) 12 P&H CK 0024

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 3052 of 1997

Gram Panchayat

APPELLANT

Vs

Commissioner and Others

RESPONDENT

Date of Decision: Dec. 16, 1997**Acts Referred:**

- Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 - Section 4

Citation: (1998) 119 PLR 125 : (1998) 1 RCR(Civil) 707**Hon'ble Judges:** V.K. Jhanji, J; T.H.B. Chalapathi, J**Bench:** Division Bench**Advocate:** G.S. Nagra, for the Appellant; R.L. Gupta, for the Respondent**Final Decision:** Allowed

Judgement

V.K. Jhanji, J.

This shall dispose of Civil Writ Petitions Nos. 6874, 6873 and 3052 of 1997 as common question of law and facts is involved therein.

2. In all the writ petitions, challenge is to order dated 30.11.1994, passed by the Commissioner, Ferozepur Division, Ferozepur, whereby appeals filed by private respondents against the order of eviction passed under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 1973 Act) on application filed by the Panchayat, were accepted and in consequence thereof eviction orders passed against the private respondents were set aside.

3. It is the case of the petitioners that Gram Panchayat being owner of the land in dispute filed an application for ejectment of private respondents under the 1973 Act. The said application was rejected by the Collector vide order dated 6.6.1985 on the ground that the land in dispute is not a Shamlat deh as defined in Section 2-G of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as 1961 Act) and therefore, is not a public premises. Gram Panchayat on 25.7.1989 filed another application Under Sections 4, 5 and 7 of the 1973 Act against the private

respondents but the Collector dismissed that application on 6.6.1989 only on the ground that subsequent application by Gram Panchayat on the same subject matter is not competent. It was held that general principles of res judicata are applicable. Order dated 6.6.1989 was challenged in appeal before the Commissioner, Ferozepur Division, Ferozepur, who vide order dated 21.5.1991 accepted the appeal and consequently, remanded the case to the Collector for deciding the applications afresh in accordance with law. Collector vide order dated 30.4.1993 on careful perusal of the record, allowed the application filed by the Gram Panchayat for eviction of private respondents. Private respondents challenged the order of the Collector in appeal and the learned Commissioner vide order dated 30.11.1994 allowed the appeals on the ground that in view of decision given in the previous applications, proceedings against the private respondents under the 1973 Act were not maintainable. Hence, the present writ petition calling in question order dated 30.11.1994.

4. It has been contended by learned counsel for petitioners that proceedings under the 1973 Act are summary in nature and so, principle of res judicata has no application to the proceedings under the Act. Against this counsel for the respondents on the strength of judgments in *Laxmi Ginning and Oil Mills v. The Commissioner of Income Tax* (1971) 73 P.L.R. 363 *Jee Ram v. The State of Haryana and Ors.* 1980 P.L.J. 103 and *Bant Singh v. The Joint Director Panchayat etc.* 1984 P.L.J. 581, has contended that second application by the Gram Panchayat was barred by principle of res judicata and so, Commissioner was right in setting aside the eviction order passed against the private respondents.

After hearing the counsel for the parties and going through the record we are of the view that order dated 30.11.1994, under challenge in all the three writ petitions is not sustainable in law. The judgments cited by the counsel for the petitioners relate to the proceedings taken under the 1961 Act. Section 7 of the 1961 Act empowers the Collector to put the Panchayat in possession in shamlat deh and Section 11 confers jurisdiction on the Collector to decide the claim regarding right, title or interest in any land deemed to have been vested in the Panchayat. Section 13 of the 1961 Act bars the jurisdiction of the Civil Court as it provides that no civil court shall have jurisdiction to entertain or adjudicate any question, whether any property or any right to or interest in any property is or is not Shamlat deh vested or deemed to have been vested in a Panchayat under the Act, or in respect of any matter which the Commissioner or the Collector is empowered by or under the Act to determine. Section 21-A of the Punjab Village Common Lands (Regulation) Rules, 1964 prescribes the procedure for submitting an application and the manner in which Collector is to decide the application. It provides that any person claiming a right, title or interest in any land vested or deemed to have been vested in the Panchayat shall make an application in the form of a statement duly signed and verified in the manner provided in the Code of Civil Procedure, 1908, supported by a copy of the revenue record within 30 days from the date of accrual of cause of action to the

Collector and the Collector after receiving the application shall send notice to the Panchayat concerned along with the copy of the application directing it to appear before him on the date fixed for the purpose. Rule further provides that the Collector shall decide the matter after affording a reasonable opportunity to the parties to substantiate their respective claims. From a reading of Section 11 read with Rule 21-A and Section 13, it becomes clear that the proceedings under the 1961 Act are not summary in nature. The decision given by the Collector on claims regarding right title or interest in Shamlat deh deemed to have been vested in Panchayat or that any land has not so vested in the Panchayat, is final subject to the decision of the Commissioner in appeal. The decision given u/s 11 is binding between the parties and cannot be called in question in Civil Court and the jurisdiction of the Civil Court is barred u/s 13 of the 1961 Act. It is in the context of 1961 Act that in Jee Ram's, Laxmi Ginning and Oil Mills and Bant Singh's cases (supra), this Court has held that subsequent application under the provisions of 1961 Act by the Gram Panchayat on the same subject matter is not competent. The principles laid down in the said cases cannot be applied to the proceedings under the 1973 Act as the same are summary in nature. In fact, the Authority under the 1973 Act has no powers to decide questions of title to land. Its primary jurisdiction is to decide whether it is a fit case for ordering eviction and question of title or possession are gone into for that purpose only. Recently, in Inder Singh v. The Financial Commissioner, Punjab and Ors. 1997 (1) P.L.J. 52 their Lordships of the Supreme Court were pleased to hold that doctrine of res judicata is not applicable to summary proceedings unless the statute expressly applies to such orders. One of the contentions raised before the Lordships in Inder Singh's case was in regard to maintainability of second application under the Pepsu Tenancy and Agricultural Lands Act by the tenant for proprietary rights, after dismissal of first application. It was contended therein that since the proceedings before the Authority are of summary nature, the doctrine of res judicata has no application. Their Lordships of the Supreme Court finding force in the contention, held that "it is not in dispute that the order passed by the Authorities is without any elaborate trial like in a suit but in a summary manner. It is well-settled law that the doctrine of res-judicata envisaged in Section 11 of C.P.C. has no application to summary proceedings unless the statute expressly applies to such orders. The Authorities are not Civil Court nor the petition a plaint. No issues are framed nor tried as a civil suit. Under these circumstances, the Division Bench of the High Court was clearly in error to conclude that the earlier proceedings operate as res judicata."

5. In view of the binding precedent, the contention that principle of res judicata applies to the proceedings under the 1973 Act is without any merit.

6. It is then contended by the counsel for private respondents that a reading of order dated 6.6.1989 of the Collector clearly shows that while dismissing the application of the Gram Panchayat, the collector in fact had decided the title u/s 11 of the 1961 Act and therefore, judgment of the Supreme Court in Inder Singh's case

(supra) cannot be applied in the Case of private respondents. We find no merit in this contention as well. Order dated 6.6.1989, was passed on an application for eviction filed by the Gram Panchayat under the 1973 Act and if the Collector while exercising powers under the 1973 Act proceeded to decide the question of title the finding, if any given in that regard cannot bind the parties as the Collector under the 1973 Act had no jurisdiction to adjudicate the question of title. In this view of the matter, order dated 30.11.1994 passed by the Commissioner, Ferozepur Division, Ferozepur, dismissing the appeal only on the ground that second application is barred by principle of res judicata deserves to be quashed.

7. Consequently, the writ petition, namely, C.W.P. Nos. 6874, 6873 and 3052 of 1997, are allowed and order dated 30.11.1994 of the Commissioner, Ferozepur Division, Ferozepur is quashed. The matter is remanded to the Commissioner, Ferozepur Division, Ferozepur with a direction to decide the appeals afresh on merits in accordance with law.

8. Parties through their counsel are directed to appear before the Commissioner, Ferozepur Division, Ferozepur on 5.2.1998.