

(1985) 09 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh**Case No:** Second Appeal Order No. 5 of 1985

Inder Singh

APPELLANT

Vs

Gram Panchayat of Village Achal

RESPONDENT

Date of Decision: Sept. 9, 1985**Acts Referred:**

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 11, 12, 13, 7

Hon'ble Judges: J.V. Gupta, J**Bench:** Single Bench**Advocate:** P.K. Palli and Mr. A.V. Palli, for the Appellant; Amarjeet Markan, for the Respondent

Judgement

J.V. Gupta, J.

This judgment will dispose of S.A Os. No 5 and 6 of 1985 as the question involved is common in both the cases.

2. The facts giving rise to S A O No. 5 of 1985 are that Plaintiff Inder Singh filed a suit for declaration that he is the sole owner in exclusive possession of the suit land and the orders of D D.P.O i.e. Collector Patiala passed in the year 1980 dated July 26, 1980, Exhibit P. 10 against his son Ugar Singh are illegal, without jurisdiction and void qua his rights. He also claimed permanent injunction on account of consequential relief restraining the Defendant Gram Panchayat from dispossessing him from the suit land. It was alleged in the plaint that earlier proceedings u/s 7 of the village Common Lands Act were taken on behalf of the Gram Panchayat before the Assistant Collector and there the application was dismissed vide order dated July 18, 1968, Exhibit P 11 and it was held therein that Inder Singh is in exclusive possession of the land since 2002 to 2004 BK, and as such he is in possession of the land in dispute prior to January, 190(sic), and is not liable to eviction- According to the Plaintiff, in view of the said order no proceedings u/s 7 of said Act could be taken again against his son Ugar Singh by the Collector/D.D.P.O. as he had no jurisdiction to entertain any such application in view of the earlier order Exhibit p. 11. Thus the

order passed by the Collector dated July 25, 1980, Exhibit P. 10 was without jurisdiction and ineffective qua his rights. The suit was con-tested inter alia on the ground that the earlier order dated July 18, 1968, Exhibit (sic). 11 was passed against Inder Singh whereas the present order Exhibit P. 10 dated July 25, 1930, has been passed against his son Ugar Singh who was in illegal possession of the suit land which vests in the Gram Panchayat and the order was, therefore, legal and binding on the Plaintiff as well.

3. The main controversy between the parties is as to whether the order of the Collector Exhibit P. 10 was without jurisdiction or not in view of the earlier order passed by the Assistant Collector dated July 18, 1968 P. 11. The trial court held that the order Exhibit P. 10 was illegal, void and ineffective qua the Plaintiff in the suit land. The plea of the Gram Panchayat that the civil court has no jurisdiction was negated and it was held that the suit as such was maintainable. Consequently, the Plaintiff's suit was decreed. In appeal, the learned Additional District Judge reversed the said findings of the trial court and came to the conclusion that the civil court had no jurisdiction to entertain the present suit in view of the provisions of Section 13 of the said Act. According to the lower Appellate court, if the said order P. 10 was illegal the only remedy available to the Plaintiff was to file an appeal under the said Act itself on the question of res judicata in view of the earlier order P. 11. The learned appellate court observed that the impugned order of the Collector Exhibit P. 10 is not between the same parties and consequently there can be no question of the applicability of the principles of res judicata in view of the earlier order P. 11. The learned appellate court observed that the impugned order of the Collector Exhibit P. 10 is not between the same parties and consequently there can be no question of the applicability of the principles of res judicata in view of these findings, the decree of the trial court was set aside and it was directed that the plaint be returned for presentation before the competent authority under the Act. Dissatisfied with the same, the Plaintiff has filed the second appeal in this Court.

4. The learned Counsel for the Appellant contended that the order of the Collector Exhibit P 10 was an order without jurisdiction in view of the earlier order passed by the Assistant Collector u/s 7 of the Act Exhibit P. 11 dated July 18, 1968. Thus the only form to challenge the same was the civil court and not the appeal as provided under the said Act. Moreover, argued the learned Counsel, Section 13 of the said Act barring the jurisdiction of the civil court was not at all attracted in the present case as there was no dispute to be decided in the suit as to whether the suit land is Shamilat Deh or not. According to the learned Counsel, that matter was already decided by the Assistant Collector i.e. Competent Authority u/s 7 vide order Exhibit P. 11. Since the impugned order Exhibit P. 10 passed by the Collector was without jurisdiction, it was only the civil court which could entertain the suit and declare the same to be illegal, void, and without jurisdiction. In support of his contention he referred to *Nakul and Ors. v. Lal Singh* 1984 P. L. J. 559, *Kala Singh v. Commissioner. Hissar Division* 1984 P.L. J. 169, *Jee Ram v. State of Haryana* 1980 P. L. J. 103 and

Bant Singh v. The Joint Director Panchayats etc 1984 P. L. J. 581. On the other hand, the learned Counsel for the Respondent submitted that reading Sections 11, 12 and 13 of the said Act together, it is evident that the order of the Collector u/s 7 is final unless it is set aside in appeal. The only forum, according to the learned Counsel, to the Plaintiff was to challenge the said order in appeal or to approach the Collector itself u/s 11 for getting his title decided under the Act itself. In support of his contention, he referred to Gram Sebha Balad Kalan and Anr. v. Sarwan Singh and other 1984 P. L. J. 311, and Garam Panchayat (Nagar Panchayat) Halalia and another's v. Babu Singh 1983 P. L. J. 13.

5. After hearing the learned Counsel for the parties and going through the case law cited at the Bar I am of the considered view that the order of the Collector Exhibit P 10 being without jurisdiction, the jurisdiction of the Civil Court was not barred to entertain the suit and declare the same as illegal and without jurisdiction. The impugned order Exhibit P 10 could not be said to be an order passed under the Act because the Collector had no jurisdiction to pass an order in view of the order passed u/s 7 by the then Assistant Collector on July 18, 1968, whereby Inder Singh was found to be the owner of the suit land it was held by the Division Bench of this Court in the case reported in Jee Ram's case (supra) that if an earlier order u/s 7 had become final between the parties, no fresh application u/s 7 was maintainable and it amounts to review of the earlier order. Similar view was taken in Sahej Ram v. Chbojram (1985-2) 88 P. L. R. 125, wherein it was held that the civil court jurisdiction cannot be held to be barred from adjudicating upon the legality of the order passed by the Assistant Collector

6. No judgment taking the contrary view has been cited at the Bar. Apart from it, if the order is held to be without jurisdiction, then the same can be declared to be so by the civil court alone. Since in the present case, the order u/s 7 has already been passed by the Competent Authority, the same matter could not be reopened again u/s 7 by the Collector. Thus, the view taken by the trial court in this behalf was correct whereas the lower appellate court has acted illegally in setting aside the same. Consequently, the appeal succeeds, the order on remand passed by the Appellate court is set aside.

7. Ordinarily, after setting aside the remand order, the case should have been sent back for decision on merits, but in the present cast this exercise shall be futile because this is the very controversy to be decided in the appeal as to whether the order of the Collector Exhibit P. 10 is without jurisdiction or not. Since the same has been held to be without jurisdiction, then in that situation the Plaintiff's suit is to be decreed. In the circumstances, instead of remanding the case to the lower-Appellate Court; the decree of the trial court is affirmed and the Plaintiff's suit stands decreed.

8. Consequently, both the appeals succeed and are allowed and the decrees of the trial court in both the suits are restored. However, there will be no order as to costs