

Jit Singh and ors. Vs. Joint Development Commissioner and ors.

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Court : Punjab and Haryana

Decided On : Feb-19-2004

Reported in : (2004)137PLR438

Judge : V.K. Bali and; Rajive Bhalla, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 11 - Order 2, Rule 2; East Punjab Holdings (Consolidations and Prevention of Fragmentation) Act, 1948 - Sections 42; Punjab village Common Lands (Regulation) Act, 1961 - Sections 11

Appeal No. : Civil Writ Petition No. 13844 of 2001

Appellant : Jit Singh and ors.

Respondent : Joint Development Commissioner and ors.

Advocate for Pet/Ap. : G.S. Gill, Sr. D.A.G.,; P.K. Gupta,; Gaurav Chopra,;

Disposition : Petition dismissed

Judgement :

V.K. Bali, J.

1. Challenge in the present petition filed under Article 226 of the Constitution of India is to order dated 31.8,1998, Annexure P7, passed by the DDPO/Collector dismissing the title suit filed by the Gram Panchayat village Mandlan, Tehsil Bassi

Pathana, District Fatehgrah Sahib under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act of 1961') as also the appellate order, Annexure PII, dated 16.2.2001 passed by learned Joint Development Commissioner, Punjab, dismissing the appeal preferred against order dated 31.8.1998 passed by the Collector. It requires to be mentioned here that even though suit was filed by the Gram Panchayat, insofar as the appeal is concerned, it was filed by the petitioners arraying the Gram Panchayat as party respondent.

2. The bare minimum facts of the case that need a necessary mention, as projected in the writ petition, reveal that there was a land described in the revenue records as Sham-lat Deh Hasab Rasad Rakba Malkiat in possession of the proprietors of the village. Petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as 'the Act of 1948') was filed by some of the respondents before the Additional Director, Consolidation seeking partition of the land alleging the same to be the land belonging to the right holders and not the Gram Panchayat. This petition was filed in the year 1995 and it is the case of the petitioners that other right holders of the village, like them, were not impleaded. A favourable order for partition of land came to be passed on 2.5.1996. The order aforesaid was challenged by the Gram Panchayat by filing Civil Writ Petition bearing No. 10264 of 1996 in this Court. It is the case of the petitioners that said writ petition was filed by the Gram Panchayat through Pargat Singh, its Administrator, who was never authorised by any body to file the same. The writ was filed under the signatures of Harbans Kaur and Gurdev Kaur. It is then pleaded that no attorney was given by Shri Pargat Singh to Shri P.S. Majhail, Advocate, to file the petition and, thus, the same was not a writ petition in the eyes of law on behalf of the Gram Panchayat. On 17.5.1997, an affidavit was given by Pargat Singh stating therein that he never engaged any advocate nor filed any writ petition nor the Panchayat had spent any money from the Panchayat funds to file the writ petition. It is the case of the petitioners that the respondents by playing fraud upon the Court got the petition dismissed filed by Gram Panchayat. The petitioners then filed application on 19.7.1997 before the Director, Consolidation seeking share in the land as right holders of the village but the said application was dismissed vide order, Annexure P6 dated 19.7.1997.

Order of the Director Consolidation dated 19.7.1997 was challenged by the Gram Panchayat by filing Civil Writ Petition bearing No. 14635 of 1997, which, it is stated, is still pending before this Court. Inasmuch as, question of title was not decided, applications under Section 11 of the Act of 1961 were filed by the Gram Panchayat and the petitioners, respectively, before the DDPO/Collector. Said applications were dismissed by the Collector. Aggrieved, an appeal was filed by the petitioners, which has since been dismissed vide order, Annexure P11, dated 16.2.2001.

3. While challenging orders, Annexures P7 and P11 passed by DDPO/Collector and Joint Development Commissioner, respectively, all that has been urged is that the Director/Consolidation, exercising the powers under Section 42 of the Act of 1948 cannot determine the question of title and further that even the persons, to whom the land was allotted, were not the right holders of the village and further that the said persons were allotted excessive land than the share they held in Shamlat Deh.

4. When this matter came up for motion hearing before the Hon'ble Bench, then seized of the matter, learned counsel representing the petitioners relied upon two judgments of Hon'ble Supreme Court in Gram Panchayat Nurpur v. State of Punjab, (1997-2)116 P.L.R. 694 (S.C.), Gram Panchayat Village Sidh v. Additional Director, Consolidation of Holdings, Punjab, 1997(3) R.C.R. (Civil) 491, to contend that the authorities constituted under the Act of 1948 had no jurisdiction to determine the question of title or in other words, as to whether the land belonged to the Gram Panchayat under the provisions of the Act of 1961 or the proprietors of the village, such a question, it is the case of the petitioners, could be determined only by the authorities constituted under the Act of 1961.

5. In response to the notice that has been issued by this Court, two sets of written statements, one by respondent No. 3-Gram Panchayat and another by respondents 4 to 25, who claimed to be proprietors of the village, have been filed. Gram Panchayat has contested the pleadings of the petitioners that writ petition was filed by it by pleading that Vakalatnama/Power of Attorney as also the writ petition were signed by its Administrator and that no attorney was given by the

Gram Panchayat in favour of Harbans Kaur and Gurdev Kaur. Respondents 4 to 25 by way of preliminary objections have pleaded that the petitioners have remained unsuccessful in the earlier proceedings before this Court whereby, they challenged order of the Director Consolidation, Punjab dated 2.5.1996 wherein, they had taken a plea that they are also right holders of the village and the order of the consolidation authorities whereby the land was ordered to be restored in the name of the proprietors of the village has been wrongly passed ignoring their claim as they were also coshares. The said order was assailed by the petitioners before this Court by way of Civil Writ Petition bearing No. 14635 of 1997 (Jit Singh and Ors. v. Director Consolidation of Holdings, Punjab and Ors.) which came up for hearing before a Division Bench of this Court on 26.11.2001. This Court upheld the order passed by the Director Consolidation of Holdings and even the review application filed thereafter against order dated 26.11.2001 was also dismissed. Order dated 26.11.2001 has attained finality insofar as rights of the petitioners qua the land in question are concerned. It is then pleaded that even the Gram Panchayat challenged the order of the Director Consolidation, which was dismissed by this Court vide its order dated 18.7.1996 and the same was confirmed by Hon'ble Supreme Court vide its order dated 29.4.1999. Copies of orders dated 26.11.2001, 18.7.1996 and 29.4.1999 have been annexed with the written statement as Annexures R4/1, R4/2 and R4/3, respectively. On the basis of decisions, mentioned above, mutations have since been sanctioned in favour of the respondents and their names have been incorporated in the Jamabandis as well. The answering respondents filed civil suit against the petitioners in the month of May, 1997 alongwith application under Order 39, Rules 1 and 2 of Code of Civil Procedure restraining the petitioners from interfering in their peaceful possession. Learned Civil Court granted stay in their favour. It is then pleaded that even otherwise, the petitioners could not produce any evidence before the Director Consolidation or the Collector, Fatehgarh Sahib to prove their conscious possession over the land in dispute and the same has duly been dealt with by the Director Consolidation in his order dated 19.6.1997. It is then pleaded that the petitioners have miserably failed to prove that they are right holders of the village as no evidence was led to this effect before the authorities below. It is then pleaded that while dismissing the review application filed by the petitioners in Civil

Writ Petition No. 14635 of 1997, this Court has duly considered the arguments raised by the petitioners and has reached to the conclusion that the petitioners have failed to establish their possession and further stay has been granted in favour of the answering respondents in the proceedings under Order 39 Rules 1 and 2 of Code of Civil Procedure by learned Civil Court, which was upheld by the Appellate Authority as also this Court. In the facts aforesaid the respondents further plead that this Court has held that it is not a fit case to exercise its powers under Article 226 of the Constitution of India.

6. A perusal of Annexure R4/1, a judgment of this Court recorded in CWP No. 14635 of 1997, would reveal that the petitioners did challenge order dated 2.5.1996 passed by the Director Consolidation. It is interesting to note that before filing the writ petition aforesaid, the petitioners approached the Director Consolidation taking a plea that they could not be dispossessed on the ground that they were tenants. It has clearly been recorded in the order passed by the Division Bench of this Court on 26.11.2001 that plea of the petitioners that they are tenants was duly considered by the Director, Consolidation, who rightly remarked that the petitioners could not produce any lease deed (Pattinama) regarding continuous possession of the land in question. We lay emphasis here that the plea of the petitioners before the Director, Consolidation, before filing Civil Writ Petition bearing No. 14635 of 1997, was that they were the tenants and not proprietors in contrast to their plea now taken culminating into the impugned order that they are also co-sharers. A perusal of order, Annexure R4/2 recorded in Civil Writ Petition No. 10269 of 1996 does reveal that Gram Panchayat also challenged the very order dated 2.5.1996 passed by the Director, consolidation. The writ petition was dismissed on 18.7.1996. Special Leave Petition filed against the order recorded in CWP No. 10269 of 1996 was also dismissed by Hon'ble Supreme Court vide its order dated 29.4.1999, even though on the ground of limitation as there was no explanation furnished by the Gram Panchayat in filing the appeal late by 891 days. Perusal of Annexure R4/4 would show that the petitioners filed a review application under Section 114 read with Order 47 Rule 1 of Code of Civil Procedure. They sought to review order dated 26.11.2001 passed in Civil Writ Petition No. 14635 of 1997. While dismissing the review application aforesaid by the Division Bench vide its detailed order dated 6.9.2002, the whole history of

litigation was enumerated. Besides merits, contention raised by learned counsel representing the petitioners that order dated 2.5.1996 was obtained by the respondents at the back of the petitioners was also considered.

7. After considering the contentions of learned counsel representing the parties, Hon'ble Division Bench observed as follows:-

'We have considered the rival contentions of the parties and are of the opinion that this review application deserves to be dismissed irrespective of the fact that when the order under review was passed, the presence of the learned counsel for the petitioners was not recorded by this Court. We have already reproduced above the material portion of the order dated 19th June, 1997. A reading of the same would show that the learned Director Consolidation in the said order has categorically stated that Shri Inder Singh died in the year 1984 and the mutation of inheritance was sanctioned on 8th June, 1995. The applicants filed the application on the basis of possession as per the ratio of the judgment laid down in 1990 P.L.J. 15 on the plea that their possession should be treated on the land in question after the death of Inder Singh but the petitioners had failed to establish their possession. Similarly, they could not produce any pattanama etc. regarding their continuous possession. So much so, even respondent Nos. 3 to 22 filed a civil suit and claimed their possession, Their application under Section 39 Rules i and 2 CPC too has been accepted by the competent court of jurisdiction and appeal of the petitioners was rejected by the appellate authority. Therefore, in view of the finding given by the learned Civil Court, it will not be appropriate for the High Court while exercising powers under Article 226 of the Constitution to disturb the findings given by the Director Consolidation dated 19th June, 1997 and also the order passed by the civil court accepting the application filed under order 39 Rules 1 and 2 CPC by respondent Nos. 3 to 22.

With regard to the plea of the petitioners that they are also the Khewatdars of the village, the petitioners had already tried their luck in separate proceedings under Section 11 of the Act which has been dismissed. Their appeal also stands dismissed. Of course, they have filed a civil writ petition before the Hon'ble High Court. If the Hon'ble High Court feels that the plea taken by the petitioners that

they are the Khewatdars, still survives, the revenue authorities shall act accordingly as per the directions, if any, to be passed by the Hon'ble High Court in CWP No. 13844 of 2001. So far as the present writ petition is concerned, we are not inclined with the order Annexure P2 dated 19th June, 1997.

Faced with this difficulty, the learned counsel for the petitioners submitted that the petitioners are in possession of the documentary evidence which were supplied to them by the Gram Panchayat would indicate that they were in possession at the relevant time. We are not convinced with the submissions raised by the learned counsel for the petitioners. These documents were never shown before the Director Consolidation. At this juncture, it is not open for us to reopen the entire case when the petitioners themselves were responsible for not producing the documentary evidence before the learned Director and the Civil Court.'

Perusal of the order passed by the Division Bench in the review application, as extracted above, would clearly demonstrate that the petitioners have indulged into contradictory pleas. Whereever it suited them, they claimed to be lessees of the land and when such a plea turned against them on the basis of records, they started claiming themselves to be the proprietors. The petitioners even challenged the order of review passed by this Court, Annexure P4/4 before Hon'ble Supreme Court, which was dismissed vide orders dated 8.5.2003, Annexure R4/5.

8. The petitioners have filed replication to the written statements filed on behalf of respondents 3 and 4 to 25 but there is no need to give detail of the same as the averments made therein are, by the large, are reiteration of the facts pleaded in the writ petition.

9. We have heard learned counsel representing the parties and examined the records of the case. As on today, it may be correct and it is, indeed, so that the authorities constituted under the Act of 1948 have no jurisdiction to determine the question of title and wherever there is a plea of a party that the land, subject matter of dispute, belongs to the proprietors and not the Gram Panchayat or vice versa, it is only the authorities constituted under the Act of 1961, which would have jurisdiction to determine the question, No doubt, judgments of Hon'ble Supreme Court in Gram Panchayat, Nurpur and Gram Panchayat Village Sidh's cases

(supra) do support the contention of learned counsel for the petitioners. However, in the facts and circumstances of this case, in our considered view, this writ petition deserves to be dismissed.

10. Before we might delve on what we have observed above, it would be very significant to mention that Special Leave Petition filed by the petitioners against order dated 26.11.2001 passed in Civil Writ Petition No. 14635 of 1997 as also order dated 6.2.2002 passed in review application in the writ petition aforesaid, has been dismissed on 8.5.2003. Surely, by the time the orders aforesaid came to be passed, Hon'ble Supreme Court had already held in Gram Panchayat, Nurpur and Gram Panchayat Village Sidh's cases (supra) that consolidation authorities would have no jurisdiction to decide a question of title and yet, SLP filed against the orders passed by this Court in Civil Writ Petition No. 14635 of 1997 and review application dated 26.11.2001 and 6.9.2001, respectively, was dismissed. We are of the view that primary reason for dismissal of the SLP was inter se litigation between the parties, which had assumed finality upto the Supreme Court. What we have observed above is for the reasons that, at least, in the review application, Hon'ble Division Bench has noticed the entire history of the case and made a mention of various litigations between the petitioners and Gram Panchayat from time to time and the result thereof. It further appears to us that contradictory stands taken by the petitioners from time to time may also have been one of the reasons for dismissing the SLP filed by the petitioners against the orders referred to above. Be that as it may, we are, in any case, convinced that the petitioners cannot possibly succeed as the litigation inter se the parties has attained finality. In a title suit between the Gram Panchayat and the respondents herein, litigation has once again attained finality upto Hon'ble Supreme Court. In similar circumstances, wherein too, on the basis of judgments of Hon'ble Supreme Court in Gram Panchayat, Nurpur and Gram Panchayat Village Sidh's cases (supra), learned Single Judge had set aside the orders passed by the authorities constituted under the Act of 1948, even though there was an earlier litigation between the parties upto Hon'ble Supreme Court up-holding the orders passed by the Director Consolidation, a Division Bench of this Court in Letters Patent Appeal bearing No. 1059 of 1999 wherein, one of us (V.K. Bali, J.) was a member, had held that 'the matter does not rest there as petition filed on behalf of the present petitioners was

also barred by the principle of resjudicata as not only that the Gram Panchayat, which claimed title in the subject matter of dispute, who lost its cause upto the Apex Court, but those, who derived right or interest through Gram Panchayat, on the dint of tenancy, also lost likewise. Another set of tenants, who too raked the same issue, i.e., challenging order, Annexure P1, also did not succeed. The matter, on all counts, had assumed finality and could not be reopened. If what the petitioners have done is allowed only on account of law which stands finally settled, it would open flood gates of litigation. No litigation would achieve finality and the principle that 'no body should be vexed twice for the same cause of action' would go a-begging. We are, thus, of the confirmed view that the present petition is also barred by principles of res-judicata.' Said Letters Patent Appeal was decided by this Court vide order dated 4.7.2000. It is interesting to note that one of the counsel for the appellants in the LPA aforesaid was none other than Mr. P.K. Gupta, who is counsel of the petitioners in the present case. On being reminded of the decision in LPA No. 1059 of 1999 which, as mentioned above, had similar, if not the same, facts, was fair to inform the Court that decision of this Court in LPA No. 1059 of 1999 has since been confirmed by Hon'ble Supreme Court as well.

In view of the discussion made above, we find no merit in this petition and the same is dismissed in limine, leaving, however, the parties to bear their own costs.