

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8454/2010

HARPAL SINGH & ORS.

Appellant(s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

O R D E R

The appellants are aggrieved by the judgment and order dated 21.12.2009 passed by the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 3768 of 2009.

The broad facts of the case indicate that the appellants were owners of land in village Pandori Waraich. According to the appellants, the land is Jumla Mushtarka Malkan (for short referred to as 'Jumla land').

Sometime in 1987, one Joginder Singh filed a civil suit against the Gram Panchayat of village Pandori Waraich for a declaration that the land in dispute belonged to him and others. This suit was registered as Suit No. 115 of 1987 and decreed in favour of Joginder Singh and others. By a judgment and order dated 08.01.1990, it was held that Joginder Singh and others were co-sharers and joint proprietors of land measuring 231 Kanals 19 Marlas.

Feeling aggrieved by the judgment and order dated

08.01.1990, the Gram Panchayat preferred an appeal before the Additional District Judge, Amritsar which was dismissed vide order dated 23.11.1993. This decree has attained finality.

The appellants had purchased about 100 Kanals 1 Marla of land from Joginder Singh and others. Some disputes arose about their ownership of land and that led to the appellants filing a suit against the Gram Panchayat being Suit No. 437 of 1999 for a declaration of title. This suit was decreed *ex parte* on 15.09.2004 by the Civil Judge (Junior Division), Amritsar. No appeal appears to have been preferred in respect of this decree obtained by the appellants against the Gram Panchayat.

In the meanwhile, the Gram Panchayat also filed a civil suit in November, 1998. The original number of that suit is not available but it was subsequently re-numbered as Civil Suit No. 170 of 2005. In that civil suit, it was prayed by the Gram Panchayat that a permanent injunction be granted restraining the appellants from alienating the land in question and getting the sale deeds earlier executed by Joginder Singh and others implemented by the Revenue Authorities by way of mutation and also to obtain possession of the suit land. The suit filed by the Gram Panchayat was dismissed by the Civil Judge (Junior Division), Amritsar vide judgment and decree dated 22.08.2007.

The Gram Panchayat preferred an appeal against the dismissal of the suit but that appeal was also dismissed by the Additional District Judge, Amritsar since no one had appeared on behalf of the Gram Panchayat. In other words, the appeal was dismissed in default.

It is important to note that in the civil suit instituted by the Gram Panchayat the admitted position was that the suit land was Jumla land. There is now no dispute about this at all. There is also no dispute about the fact that the appellants are owners of the suit land that was subject matter of three decrees; (i) at the instance of vendors of the appellants, (ii) at the instance of the appellants themselves and (iii) at the instance of the Gram Panchayat.

Notwithstanding this, it appears that the Gram Panchayat instituted proceedings in the Revenue Court in terms of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act').

Section 7 of the Act reads as follows:

"7. Power to put panchayat in possession of *shamilat deh*.--(1) The Collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the *shamilat deh* of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the

execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the *shamilat deh*, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under Section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under Section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the *shamilat deh*.

(2) An appeal against the order of the Collector under sub-section (1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against."

A plain reading of Section 7 indicates that the proceedings under this Section can be instituted by Panchayat only in respect of land that is characterized as *shamilat deh* and in terms of the Section and the proviso thereto, if there is any dispute about the title of the land, then the proceedings will have to be instituted under Section 11 of the Act.

Section 11 of the Act reads as follows:

"11. Decision of claims of right, title or interest in *shamilat deh*.--

(1) Any person or a Panchayat claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat

under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed."

In the proceedings instituted by the Gram Panchayat under Section 7 of the Act, it was reiterated that the land in dispute is Jumla land. Therefore it was not subject to the provisions of the Act. Nevertheless, the Revenue Authority i.e. the Collector-cum-DDPO, Amritsar continued with the proceedings instituted by the Gram Panchayat. The Collector-cum-DDPO held that the land is Jumla land and that the Act is not applicable to such land.

However, the Collector-cum-DDPO relied upon Section 42A of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short '1948 Act') which provides the land reserved for common purposes shall not be partitioned amongst the proprietors of the village and it shall be utilized and continue to be utilized for common purposes and that this would be notwithstanding any judgment/decreed/order or decision of any Court or any Authority. In view of this, it was held by the Collector-cum-DDPO that the Gram Panchayat was entitled to have the appellants evicted from the land in question.

Feeling aggrieved, the appellants preferred an appeal

(being Number 100 of 2007) to the Commissioner. The Commissioner also came to the conclusion that the land is Jumla land but again relying upon Section 42A of the 1948 Act dismissed the appeal filed by the appellants.

Feeling aggrieved by the decision rendered by the Commissioner, the appellants approached the High Court by way of a writ petition which was dismissed vide the impugned judgment and order dated 21.12.2009.

Our attention has been drawn by the learned counsel for the appellants to the decision rendered by the Punjab and Haryana High Court in *Mahatam Singh and Ors. v. State of Punjab and Ors.* [(2012) ILR Punjab and Haryana 72] in which it was clearly noted that the State Government had filed an affidavit dated 24.08.2010 to the effect that Section 42A of the 1948 Act would not be given retrospective effect. In view thereof, the vires of Section 42A of the said Act were upheld and the consequence of this is that the decree in favour of the appellants cannot be disturbed.

We are told that the judgment delivered by the Punjab and Haryana High Court at Chandigarh is under challenge in this Court in which an order *status quo* has been passed. Apart from that, our attention has also been drawn to the decision of the Full Bench of the Punjab and Haryana High Court in *Parkash Singh v. Joint Development Commissioner* [(2014) 3 PLR 543]. In that decision, it was held that Jumla land is not subject to

the Act and in fact only the civil court will have jurisdiction in respect of Jumla land. We are told that the decision of the Full Bench is also under challenge in this Court at the instance of some land owner. However, that petition is not being prosecuted and it has perhaps been dismissed since the defects raised by the Registry have not been cured by the petitioners therein. In any event, we are told that neither the State Government has challenged the decision of the Full Bench nor the Gram Panchayat has challenged the decision of the Full Bench. That being the position, since the Revenue Authorities have no jurisdiction over the land, as held by the Full Bench of the High Court, it is only the civil courts that have jurisdiction over Jumla land.

Under these circumstances, the judgment and order passed by the High Court deserves to be quashed in as much as it is held that the decision of the Revenue Authorities will bind the appellants. The findings of the High Court are contrary to the decision of the Full Bench.

That apart, Section 42A of the 1948 Act will not apply to the facts of this case since there is nothing on record to suggest that the land in question was being used for common purposes. In fact it has been specifically noted in the decision rendered in the civil suit filed by the Gram Panchayat that there is no

evidence on the file that the land is being used by the Gram Panchayat for the benefit of the proprietors of the village and no evidence has been led by the Gram Panchayat that the land is being used for common purposes or the income derived from that land is being used for common purposes. In that view of the matter even if it is held that Section 42A of the 1948 Act is ultra vires and that it has retrospective effect as sought to be contended by the learned counsel for the Gram Panchayat, it will not be of any assistance, particularly since there is nothing to suggest, on facts, that the land in question was being used for common purposes.

Under the circumstances, we set aside the impugned judgment and order passed by the High Court.

The civil appeal is accordingly allowed with no order as to costs.

.....J.
[Madan B. Lokur]

.....J.
[S.A. BOBDE]

NEW DELHI
SEPTEMBER 17, 2015

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 8454/2010

HARPAL SINGH & ORS.

Appellant(s)

VERSUS

STATE OF PUNJAB & ORS.
(With office report)

Respondent(s)

WITH

C.A. No. 8455/2010
(With Office Report)

Date : 17/09/2015 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S.A. BOBDEFor Appellant(s) Mr. Nidhesh Gupta, Sr.Adv.
Mr. Bhaskar Vali, Adv.
Mr. R. N. Keshwani, Adv.
Mr. Ram Lal Roy, Adv.Mr. Akshat Goel, Adv.
Mr. Rohit Kumar Singh, Adv.

For Respondent(s) Mr. Kuldip Singh, Adv.

Mr. R.K. Kapoor, Adv.
Ms. Rekha Giri, Adv.
Ms. Shweta Kapoor, Adv.
Ms. Kheyali Sarkar, Adv.
Mr. Anis Ahmed Khan, Adv.

Mr. Jagjit Singh Chhabra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

C.A. No. 8454/2010

The civil appeal is allowed in terms of the signed order.

C.A. No. 8455/2010

On the request of the learned counsel, the matter is adjourned.

(Meenakshi Kohli)
COURT MASTER

(Jaswinder Kaur)
COURT MASTER