

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 1640 of 1986
Date of decision: 31.5.2007

Gurbakhash Singh

...Petitioner

Versus

Joint Director Panchayat and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL

Present: Mr. DS Brar, Advocate,
for the petitioner.

Mr. Balbir Saini, Advocate,
for the respondent.

K.S.GAREWAL, J.

Gurbakhash Singh filed this petition to challenge the proceedings against him under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the **Act**). The petitioner pleaded that Gram Panchayat Baroli had filed an application before the Collector under Section 7 of the Act with regard to Khasra 170 (2-07), 171 (4-0) situated in Baroli. The case was instituted on August 6, 1980 for dispossessing Gurbakhash Singh and others from the said land. The respondents had disputed the title of the panchayat over the land. This necessitated the second application under Section 11 of the Act filed on

May 12, 1981. Both the applications were consolidated.

The respondents had defended the case on the basis of the civil court decree dated January 3, 1963 in favour of Bakhtawar Singh. The learned Sub Judge Ist Class, Rajpura had declared that Bakhtawar Singh was in possession of the suit land since January 26, 1950. Bakhtawar Singh had died and his heirs had sold the land to Balwant Singh son of Sunder Singh, who further sold it to Ishar Singh and Jeeta alias Jeet Singh sons of Chattar Singh and some others.

The Collector did not accept that the civil court decree proved ownership and continuous possession over the suit land prior to January 26, 1950, therefore, the Gram Panchayat was declared to be the owner of the land in dispute.

The appeal filed by Gurbakash Singh and others before the Commissioner was also dismissed.

The learned counsel has argued that Bakhtawar Singh's case was 223 of 1962 decided by the Sub Judge Ist Class, Rajpura on January 3, 1963. Copy of the judgment is Annexure P/3. The learned Sub Judge Ist Class had categorically declared that Bakhtawar Singh's case was entirely different to the the other connected cases. In this case, the land in dispute did not vest in the Gram Panchayat and after recording this finding the learned trial court granted the relief of permanent injunction restraining the Gram Panchayat from interfering in the possession.

In the written statement filed by the Gram Panchayat, it was pleaded that no decree has been passed regarding Bakhtawar Singh's title, only an injunction had been passed restraining the Panchayat from interfering in his possession. Bakhtawar Singh has not been able to prove

his possession prior to January 26, 1950. According to the civil court judgment, there was an issue whether the property in dispute was shamlat deh, has been partitioned and brought under cultivation by individual land holders before January 26, 1950. This issue was decided against the plaintiffs.

Reference was made by the learned counsel for the petitioner to **Gram Panchayat Village Batholi Kalan versus Jagar Ram and others** 1991 P.L.J., 41 in which the Full Bench held that a decree passed by the competent court cannot be ignored by the Collector, acting under the Punjab Village Common Lands (Regulation) Act, 1961 if the decree had been passed before the introduction of Section 13 (b) in 1976. In the present case, the decree was of January 3, 1963. This position would continue unless a competent civil court holds the decree to be collusive and fraudulent. The authorities under the Act cannot ignore the civil court decree. Similar was the view in **Gurnam Singh and others versus Joint Director Panchayats, Punjab and others** 1984 P.L.J 580, **Labh Singh versus State of Punjab** 1986 RRR 632 and **Baljinder Singh and another versus The Assistant Collector Ist Grade, Guhhla and others** 1983 P.L.J. 116.

If the judgment of the court is carefully read and understood, it would become clear that the court had declared that the land in dispute did not vest in the Gram Panchayat. If the land did not vest in the Gram Panchayat in 1963, then it would not vest in the Gram Panchayat at any subsequent date. The Collector and the Commissioner had proceeded on wrong premise that the decree had only restrained the Panchayat from interfering in the possession but had failed to appreciate that the issue of

ownership had been decided against the Panchayat. Therefore, the judgment operated as res-judicata.

In view of the above discussion, this petition is allowed and the impugned orders dated 26.11.1981 and 7.10.1985 Annexures P/1 and P/2 respectively, are hereby quashed.

May 31, 2007
prem

(K.S. GAREWAL)
JUDGE