

FULL BENCH

Before : J. V. Gupta, C.J., M. S. Liberhan & R. S. Mongia, JJ.
GRAM PANCHAYAT VILLAGE BATHOI KALAN, TEHSIL AND
DISTRICT PATIALA,—Appellant,

versus

JAGAR RAM AND OTHERS,—Respondents.

Letters Patent Appeal No. 13 of 1986

10th September, 1990.

Punjab Village Common Lands (Regulation) Act, 1961—Ss. 7 & 11—Suit for declaration qua ownership decreed in favour of plaintiffs—Application for ejectment under S. 7 filed by Gram Panchayat—Civil Court decree—Cannot be ignored.

Held, that it is evident that the decree passed by the competent Civil Courts between the parties could not be ignored by the authorities under the Act, prior to the amendment of the Act by Punjab Act No. 19 of 1976. However, it may be made clear that the parties will always be at liberty to get those decrees set aside on the grounds of collusion, fraud etc. or otherwise, by a competent Court. Unless the said decrees passed by the Civil Courts, are held to be collusive or obtained by fraud, by a competent Civil Court, the same should not be ignored by the authorities.

(Para 7)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. H. N. Seth and Hon'ble Mr. Justice S. S. Kang, dated the 22nd September, 1986 to a larger Bench for deciding the important question of law involved in the case. The Full Bench consisting of Hon'ble the Chief Justice Mr. J. V. Gupta, Hon'ble, Mr. Justice M. S. Liberhan, and Hon'ble Mr. Justice R. S. Mongia decided the case finally on 10th September, 1990.

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment and order, dated 1st November, 1985 passed by Hon'ble Mr. Justice I. S. Tiwana in the above noted Civil Writ Petition and the main judgment was pronounced in Civil Writ Petition No. 217 of 1985.

R. S. Hundal and Jasbir Singh, Advocates, for the appellant.

H. S. Mattewal, A.G. Punjab with H. S. Riar Sr. D.A.G., for the State.

Sarjit Singh, Sr. Advocate with Jagdev Singh, Advocate, for the private respondent No. 2.

Rajiv Kataria, Advocate.

O. P. Goyal, Sr. Advocate with I. S. Sagu, Advocate, for respondent.

JUDGMENT

J. V. Gupta, C.J.

(1) Civil Writ Petition No. 1870 of 1986, when came up for motion hearing, the same was admitted to the Full Bench with the following order:—

“Counsel for the respondents cites Division Bench decisions in *Baldev Singh v. The State of Punjab, through Secretary, Development and Panchayat, Punjab, Chandigarh*, 1983(1) L.L.R. 385 and *Gurnam Singh and others v. Joint Director, Panchayats, Punjab and others*, 1984 P.L.J. 580, which have taken a view contrary to each other on the same point.”

Later on when L.P.A. No. 13 of 1986, came up for final hearing, this fact was brought to the notice of the Bench and consequently, the said L.P.A., which was against the judgment in Civil Writ Petition No. 217 of 1985, which was decided on November 1, 1985 (now reported in 1986 P.L.J. 404) was also ordered to be heard and decided by a Full Bench alongwith the said writ petition.

(2) The facts giving rise to the said L.P.A. were that the Gram Panchayat of Village Bathoi Kalan, Tehsil and District Patiala, filed an application under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter called the Act), for ejection of Labh Singh, respondent, from the land measuring 296 kanals 6 marlas, situated in village Bathoi Kalan, Tehsil and District Patiala. That application was allowed and Labh Singh respondent, was ordered to be ejected from the land, in dispute. Appeal filed by Labh Singh, respondent, did not succeed and was dismissed. Aggrieved against the same, Labh Singh, respondent, filed Civil Writ Petition No. 217 of 1985 *inter alia* pleading that he and other right-holders had filed a suit for declaration against the Gram Panchayat that they were the owners in possession of the land, in dispute. The Gram Panchayat was impleaded as a defendant. It contested the suit. The suit was decreed on July 3, 1972, by the Subordinate Judge, Second Class, Patiala and it was declared that the plaintiffs were the owners of the suit land along with other proprietors of the village. No appeal against the judgment and decree of the trial Court was filed and thus the said judgment and decree which were *inter partes* were binding on the

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Panchayat. In the face of this decree, another application under Section 7 of the Act by the Gram Panchayat for the ejection of the writ petitioner on the ground that he was in unauthorised occupation of the *shamilat deh* was not competent. This plea found favour with the learned Single Judge who did not accept the contention of the Gram Panchayat that in view of the amendment of the principal Act, by Act No. 19 of 1976, the decree passed by the Civil Court had to be ignored by the authorities dealing with the applications under section 7 of the Act. In reaching this conclusion, the learned Single Judge relied upon a Division Bench judgment of this Court in *Gurnam Singh v. Joint Director, Panchayats, Punjab*, (1), wherein it was held that the decrees passed by the Civil Courts prior to the enforcement of the Punjab Act No. 19 of 1976 amending the principal Act, cannot be ignored by the authorities exercising the jurisdiction under the Act. The learned Single Judge distinguished the decision of another Division Bench of this Court in *Baldev Singh v. State of Punjab*, (2) observing that it had not been mentioned therein as to whether the decree of the Civil Court had been passed before the enactment and enforcement of the Punjab Act No. 19 of 1976. The orders of the Collector and the Joint Director, Panchayats, exercising the powers of the Commissioner were thus quashed. Dissatisfied with the same, the Gram Panchayat, had filed this letters patent appeal. The main question to be decided by this Full Bench is: as to whether the judgment in *Baldev Singh's case* (supra), runs contrary to the decision rendered in *Gurnam Singh's case* (supra), or not.

(3) *Baldev Singh's case* (supra) was decided a year earlier to the case reported as *Bajinder Singh v. The Assistant Collector, 1st Grade Guhla*, (3), and was disposed of at the stage of motion hearing. No argument was raised on behalf of the writ petitioner therein that section 138 of the Act, as amended, could not set at naught the decrees passed by the Civil Courts prior to the amendment of the Act by Act No. 19 of 1976 (passed on April 15, 1976). Therein categorical and concurrent findings were given that the *ex parte* decree passed in favour of the landowners and against the

(1) 1984 PLJ: 580.

(2) 1983(1) I.L.R. 385.

(3) 1983 Punjab Law Reporter 116.

Gram Panchayat was a collusive one. On the basis of that finding, the Bench observed,—

“It would be manifest from the above that the law itself authorises the overriding of any decree or order of the court. Herein a concurrent finding of fact has been arrived at that the *ex parte* decree sought to be relied upon was a collusive one. We, therefore, see not the least ground for interference in the concurrent orders of the authorities below.”

Later on, it was *Bajinder Singh's case* (supra), in which the *vires* of section 13 of the Act, as substituted by Haryana, Act No. 2 of 1981, were challenged. In that case, it was held by the Division Bench that the retrospective abrogation of jurisdiction of Civil Courts validly exercised by them from 1961 onwards, by section 4 of the Act, Haryana Amendment Act 2 of 1981 fictionally substituting section 13 with effect from May 4, 1961, and thereby giving retrospectivity from that date clearly amounted to trenching upon the judicial power by legislature. Consequently, the relevant part of the afore-said section fictionally substituting section 13 with effect from the 4th day of May, 1961, and thereby giving retrospectivity thereto from the said date, was held to be unconstitutional and struck down. Following the said judgment, another Division Bench of this Court in *Gurnam Singh's case* (supra), came to the conclusion that the decrees obtained by the landowners from the Civil Courts which had become final either because no appeal was filed against the same or the appeals filed had been disposed of and decrees had been sustained whereby they became the owners of the disputed land before the enforcement of Act No. 19 of 1976, could not be ignored and the amending Act will not have any effect thereon. The relevant observations made by the Bench are as under:—

“The matter is not *res integra* and on principle, is covered in favour of the petitioners by a Division Bench judgment of this Court reported as *Bajinder Singh and another v. Assistant Collector, 1st Grade, Guhla and others*, 1983 *P.L.J.* 116. We entirely concur in the view that this Court had taken in *Bajinder Singh's case* (supra).”

Thus, both for the State of Haryana and the State of Punjab, the view taken by this Court, was that the amendment made in the

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Haryana Act, by Act No. II of 1981 and in the Punjab Act, by Act No. 19 of 1976, whereby it was provided that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, or any agreement, instrument, custom or usage or any decree or order of Court or other authority, will not override the decrees passed by the competent Civil Courts between the parties. Hence section 13-B of the Punjab Act, as introduced by Act No. 19 of 1976, may be reproduced which reads as under:—

“The provision of this Act shall have effect, notwithstanding anything to the contrary in any law, or any agreement, instrument, custom or usage, or any decree or order of any Court or other authority.”

The equivalent provision as applicable in the State of Haryana, introduced by Haryana Act No. II of 1981, was Section 13-D, which provides as under:—

“The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, or usage, decree or order of any Court.”

Reading both the sections together, as introduced in both the States of Punjab and Haryana, it is quite evident that they are in *pari materia* with each other. That being so, in *Gurnam Singh's case* (supra), the Division Bench rightly followed the earlier Division Bench Judgment of this Court in *Bajinder Singh's case* (supra). The correctness of the said two judgments was not challenged before this Bench.

(4) The argument raised on behalf of the appellant Gram Panchayat was that the Assistant Collector, while deciding an application under section 11 of the Punjab Act, as amended, could go into the decree of the Civil Court and if the same was found to be collusive, it could be ignored. In support of this proposition, the observations made in *Baldev Singh's case* (supra), were pressed into service. Since in that case both the District Development and Panchayat Officer as well as the appellate authority had come to the clear, categorical and concurrent finding that the *ex parte* decree was a collusive one, it was argued on behalf of the Gram Panchayat

that in the present case as well the decree of the civil Court had been found to be collusive and, therefore, was rightly ignored.

(5) After giving our thoughtful consideration to the proposition, we find that in a way the judgment of the Division Bench in *Baldev Singh's case* (supra), runs contrary to the judgment given subsequent thereto in *Bajinder Singh's case* and followed in *Gurnam Singh's case* (supra).

(6) At this stage, it may be noticed that prior to the Haryana Amendment Act No. II of 1981, the Act was also amended in the year 1974, whereby section 13-A of the Act was introduced, which was to the following effect:

“Certain decrees to be set aside and fresh trial of cases.

- (1) Where a decree has been obtained from a Civil Court by any person against any Panchayat in respect of any land or other immovable property on the ground of its being excluded from *Shamilat deh* under clause (g) of Section 2 or on any of the grounds mentioned in sub-section (3) of section 4, and the copies of the relevant entries of the revenue records had not been produced in support of the averments made in the plaint, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer authorised by the State Government or any inhabitant of the village, wherein the land or other immovable property is situate, may, within a period of two years from the date of coming into force of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974 make an application for setting aside the decree to the Assistant Collector of the first grade having jurisdiction in the village wherein the land or other immovable property is situate.
- (2) On receipt of the application, the Assistant Collector of the first grade shall summon the record of the suit from the Civil Court concerned and also serve a notice, in the manner prescribed, on the decree-holder;
- (3) After the record of the suit has been received and the service of the notice has been effected on the decree-holder, the Assistant Collector of the first grade shall

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examine the record and hear the decree-holder in order to satisfy himself as to whether the copies of the relevant entries of the revenue records in support of the averments made in the plaint had been produced during the trial of the suit. If he is satisfied that the copies of the said entries had not been so produced, he shall set aside the decree."

This provision came up for consideration in *The Karnal Co-operative Farmers Society Ltd. Pehowa v. Gram Panchayat, Pehowa*, (4) wherein it was held that the legislature had conferred arbitrary and unguided powers on the Assistant Collector to set aside the decree of the Civil Court. Consequently, sub-section (3) of section 13-A, was declared *ultra vires*.

(7) Though there was no such provision in the Act as applicable to the State of Punjab, but it is evident that the decree passed by the competent civil Courts between the parties could not be ignored but the authorities under the Act, prior to the amendment of the Act by Punjab Act No. 19 of 1976. However, it may be made clear that the parties will always be at liberty to get those decrees set aside on the grounds of collusion, fraud etc. or otherwise, by a competent Court. Unless the said decrees passed by the Civil Courts, are held to be collusive or obtained by fraud, by a competent civil Court, the same could not be ignored by the authorities under the Act in view of the judgment rendered by the Division Bench in *Bajinder Singh's case* (supra), the correctness of which was not challenged before us.

(8) Thus following the law as laid down in *Bajinder Singh's case* (supra), L.P.A. No. 13 of 1986 stands dismissed as the decrees therein have been passed by the Civil Courts in favour of the landowners comprising the land, in dispute, prior to the passing of the amending Act No. 19 of 1976 whereas Civil Writ Petition No. 1870 of 1986 is allowed and the orders of the Joint Director, Panchayats, exercising the powers of the Commissioner, dated October, 19, 1984, copy Annexure P. 1 and that of the Collector, are hereby quashed with no order as to costs.

P.C.G.

(4) 1976 P.L.J. 237.