

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.13007 of 1993
Date of Decision:-22.12.2015.

Nathu

.....Petitioner

Versus

The Assistant Collector, Ist Grade, Sirsa and another

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

Present: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Anil Mehta, DAG, Haryana.

Mr. J.S. Thind, Advocate for respondent No.2.

SURYA KANT, J. (ORAL)

1.) The petitioner has approached this Court challenging the order dated 28.1.1992 passed by the Assistant Collector, Ist Grade, Sirsa whereby ejectment application of Gram Panchayat moved under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') for eviction of the petitioner from the land measuring 1 *kanal* and 12 *marla* was allowed and the eviction order was passed.

2.) The petitioner appears to have taken the plea that he has constructed a residential house and *Bara* and the land does not fall within *Shamlat-deh*. The said plea was rejected by the Assistant Collector after observing that as per the revenue record, Gram Panchayat was the owner

of the land and the house constructed by him was 5/6 years old only.

3.) The petitioner admittedly did not file any appeal against the eviction order dated 28.1.1992. He rather instituted civil suit No.1539 of 1993 on 25.9.1993 (Annexure P-3) seeking injunction order against the Gram Panchayat. That suit was dismissed as withdrawn on 22.10.1993.

4.) Thereafter, the instant writ petition was filed which came up for preliminary hearing on 20.10.1993 and was adjourned to 22.11.1993 to enable the petitioner to place on record copy of the plaint. Meanwhile, it was directed that his house shall not be demolished.

5.) Sh. Thind, learned counsel for the Gram Panchayat states that as per his instructions the possession of the suit land has already been taken by the Gram Panchayat on 12.1.1993, namely, when neither the civil suit was pending nor the writ petition was filed. Learned counsel for the petitioner, however, is not aware of the fact whether or not possession has been taken by the Gram Panchayat.

6.) We have heard learned counsel for the parties and gone through the record.

7.) The petitioner's claim that the subject land is a part of *abadi deh* has to be rejected for the reason that the Assistant Collector Ist Grade has, on consideration of entries in the revenue record, has held that the Gram Panchayat is its true owner. That finding of fact was not challenged by the petitioner before the Appellate Forum. Once the Revenue record depicts the Gram Panchayat as the owner, the onus was shifted on the petitioner to prove it otherwise. He has failed to do so. Hence, the first contention has to be rejected.

8.) The second plea namely that the petitioner is the true owner in

possession of the suit land cannot be effectively decided in these proceedings. Firstly, the petitioner has to take a categorical plea as to whether he is claiming ownership on the basis of any 'exclusion clause' of Section 2 (g) of the 1961 Act or he is claiming such ownership on the plea that the land is not *Shamlat Deh* and is possessed since time of his forefathers. Suffice it would be to say that the petitioner has got an effective remedy to establish his ownership qua the suit land by way of a declaratory petition under Section 13 (a) of the 1961 Act. If the petitioner so advised, he may initiate such proceedings.

9.) With liberty aforementioned we decline to interfere with the impugned order.

10.) However, if the petitioner is still in possession, *status quo re* : demolition of the house shall be maintained for a period of three months to enable him to avail the remedy as may be available under the law.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

December 22, 2015.

sandeep sethi