

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.12877 of 2014
Date of Decision: November 26, 2015

Harjinder Singh

....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE HARI PAL VERMA.

Present: Mr.Gurmeet Singh, Advocate, for the petitioner.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.V.K.Sandhir, Advocate, for respondent No.4.

-. -

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?*

Surya Kant, J. (Oral)

This writ petition impugns the order dated 09.05.2013 passed by respondent No.2-cum Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act'), whereby the appeal preferred by Gram Panchayat against the order dated 24.05.2010 of the Collector, Hoshiarpur, has been allowed and on acceptance of the eviction petition filed under Section 7 of the Act, the petitioner has been ordered to be evicted from the land measuring 2 kanal 5 marla on the premise that the said land forms part of Khasra No.32 which is a 'Gair Mumkin Pond' and vests in Gram Panchayat.

[2] It may be mentioned that the eviction petition filed by the Gram Panchayat was dismissed by the Collector, Hoshiarpur vide order dated 24.05.2010 (P-6) with a categorical finding that the disputed land shown in 'red' colour in Annexure-A was in possession of the petitioner where he had constructed a shed with boundary wall and has installed one hand-pump. The said site was held to be different then the land which forms part of Khasra No.32 measuring 2 kanal 14 marla. The other finding given was that while the land in possession of the petitioner is within abadi deh, khasra No.32 is outside the abadi deh. The Gram Panchayat went in appeal and the Appellate Authority vide order dated 18.05.2011 allowed its appeal. The aggrieved petitioner came to this Court in CWP No.16699 of 2011 which was allowed vide order dated 01.11.2012 and the matter was remitted to the Appellate Authority for a fresh decision, with the following observations:-

“... The Gram Panchayat was, therefore, required to prove by prima-facie evidence that the land, which is admittedly situated within the “Lal Lakir” and is part of “Abadi Deh”, was used or reserved for common purposes as set out in Section 2 (g)(4) of the 1961 Act. A perusal of the impugned order reveals that the Appellate Authority has not referred to any material much less any evidence that could prima-facie prove that the land, in dispute, was used for common purposes, as set-out in Section 2(g)(4) of the 1961 Act. The learned Commissioner, in our

considered opinion, has committed an error of jurisdiction by placing reliance upon a police report, regarding theft of a hand pump while holding that Gram Panchayat is owner of the land, in dispute. The Gram Panchayat has averred in its reply, that as per jamabandi for the year 2001-02, the land is recorded as a “Gair Mumkin Pond” and is, therefore, “Shamlat Deh”. The Gram Panchayat was directed to produce this jamabandi but has failed to produce any such jamabandi. In view of what has been stated hereinabove, we allow the writ petition, set-aside the impugned order and remit the matter to the Director, Village and Panchayat Development, Punjab, SAS Nagar, Mohali, for adjudication afresh and in accordance with law.....”

[3] The Appellate Authority has again allowed the Gram Panchayat's appeal, this time observing that as per the jamabandi for the year 2000-01 the land in dispute falls in Khasra No.32 whose total area is 12 kanal 14 marla and the same is recorded as “Gair Mumkin Pond”.

[4] Heard learned counsel for the parties. The record perused.

[5] In our considered view, the Appellate Authority has again committed the same error which was sought to be rectified by this Court vide order dated 01.11.2012 passed in previous writ petition. This was not the question to be determined as to whether Khasra No.32 is a “Gair Mumkin Pond” or what is the total area of that khasra No.? The litmus-

test before the Appellate Authority was whether or not the land measuring 2 kanal 5 marla in possession of petitioner forms part of khasra No.32 and whether the said land is within or outside the abadi deh of village? Unfortunately, the later question has not been effectively answered vide the impugned order.

[6] While the onus was on the Gram Panchayat to prove the above-stated question of fact which could be successfully done by deputing a team of revenue officers/officials comprising (i) Tehsildar, (ii) Field Kanungo and (iii) Halqa Patwari, as well as the B.D.P.O. and the Panchayat Secretary from the Department of Rural Development and Panchayat. Such a team could scrutinize the official-records; carry out the demarcation of Khasra No.32 and then measure its total area to determine whether or not the petitioner has encroached upon a part of Khasra No.32 which is recorded as “Gair Mumkin Pond” in the jamabandi for the year 2000-01.

[7] For the reasons afore-stated, we allow this writ petition in part; set-aside the appellate order dated 09.05.2013 and remit the matter to the Appellate Authority with a direction to obtain additional evidence on record by deputing the team of revenue officers/officials alongwith two officers of the Rural and Panchayat Development Department, as stated above, who shall then carry out fresh demarcation to determine whether the land in possession of the petitioner measuring 2 kanal 5 marlas is form part of Khasra No.32 of not?

[8] After obtaining such report, the Appellate Authority is directed to decide the appeal afresh on merits and in accordance with law.

[9] Parties are directed to appear before the Appellate Authority on 21.12.2015.

[SURYA KANT]
JUDGE

November 26, 2015
mohinder

[HARI PAL VERMA]
JUDGE