

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Civil Writ Petition No.22734 of 2015
Date of Decision: December 07, 2015

KamruPetitioner
versus
State of Haryana and othersRespondents

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

Present: Mr.Keshav Partap Singh, Advocate, for the petitioner.
Ms.Kirti Singh, Deputy AG, Haryana.
Mr.Sanjeev Kumar Panwar, Advocate,
for respondent No.5.

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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)

The petitioner has laid challenge to the orders dated 08.02.2005 (P-5), 31.01.2006 (P-7), 16.06.2011 (P-8) and 16.07.2013 (P-10). Vide the first ex-parte order, the petitioner was ordered to be evicted from the land measuring 94 kanal 09 marla situated within the revenue estate of village Naurangabad, Tehsil Hodal, District Faridabad (now District Palwal) pursuant to an application filed by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana (for short, 'the 1961 Act'), the subsequent orders pertain to dismissal of his application to set-aside the ex-parte order, then appeal and revision petition etc.

[2] It is not necessary to notice the facts in extenso and suffice it would be to mention that the petitioner claims

to be in possession of the suit land from the year 1964-65 as gair-marusi tenant for which a civil court decree has also been obtained by him. The case of the Gram Panchayat, on the other hand, is that the subject-land is Panchayat deh and vests in it under Section 2(g) of the 1961 Act. It is further maintained that an eviction order under Section 7 of the 1961 Act was passed against the petitioner on 22.06.1992 and the same was duly executed on 28.02.1993. In other words, the Gram Panchayat claims that the petitioner was physically evicted from the subject-land in the year 1993.

[3] The mystery however is still unresolved as to how the petitioner came to occupy the land again? when and how such an event went un-noticed?

[4] The civil court decree relied upon by the petitioner was passed on 16.09.1998 and it does appear from the judgment that the petitioner was in possession of the suit land.

[5] Be that as it may, the Gram Panchayat filed another petition under Section 7 of the 1961 Act against the petitioner on 16.03.2004 which was allowed ex-parte by the Assistant Collector 1st Grade, Hodal on 08.02.2005 (P-5). The petitioner applied for the recall of that ex-parte order on 09.02.2005 (P6). Relying upon some remarks made on that application by the Reader of 'Presiding Officer' of the Forum under the Statue to the effect that application was accepted with the order "Heard. Restored.", it is claimed that the case was thereafter listed on 15.03.2005. Meanwhile the Presiding Officer was transferred and subsequently the application is said to have been rejected. The petitioner went in appeal which also met with the same fate. His revision petition was turned down by the Commissioner, Gurgaon Division vide order dated

16.07.2013 (P-10) observing that already an eviction order stood passed against the petitioner in the year 1992 and had he been aggrieved by the subsequent eviction, he would have filed an appeal against the same.

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

[7] Adverting to the reasons assigned by the Revisional Authority while rejecting the petitioner's revision petition, it does appear that had there been an eviction order passed against the petitioner in the year 1992 qua the same land, there was hardly any necessity for the Gram Panchayat to institute fresh eviction proceedings as in the event of violation of that eviction order, the Gram Panchayat could apply for restitution. So far as the second reason is concerned, it may be seen that soon after passing of the ex-parte eviction order, the petitioner applied for the recall of that order within a reasonable time. In such a situation, the Assistant Collector 1st Grade ought to have observed the principles of natural justice and fair play and pass an order on merits. The Appellate and Revisional authorities also committed the same sin of procedural irregularities.

[8] Be that as it may, the question whether the subject land is shamlat/panchayat-deh and vests in Gram Panchayat has to be adjudicated by the authorities under the 1961 Act.

[9] The Assistant Collector 1st Grade while deciding the summary proceedings under Section 7 of the 1961 Act held within his jurisdictional limits to hold that prima-facie the subject-land vests in Gram Panchayat. The question of tenancy rights claimed by the petitioners cannot arise as the Gram Panchayat land can be leased out only in accordance with law

i.e, for a period of one year only.

[10] However, it would be in conformity with the principles of natural justice and fair play if one more opportunity is granted to the petitioner to plead his case before the Assistant Collector 1st Grade who has passed the ex-parte order. Such a recourse can not be resorted to free of costs. The petitioner is in possession of a big chunk of land measuring more than 94 kanals since the year 1964-65 though it is statedly vests in Gram Panchayat. He or his brother have not paid any user-charges/ mesne-profit/lease-money so far to the Gram Panchayat. Ordinarily this kind of cultivable land can fetch annual lease of not less than Rs.25,000/- to Rs.30,000/- per acre.

[11] Taking into consideration the totality of circumstances, we allow the writ petition; set-aside the impugned orders dated 08.02.2005 (P-5), 31.01.2006 (P-7), 16.06.2011 (P-8) and 16.07.2013 (P-10) and remit the case to the Assistant Collector 1st Grade, Hodal to decide the same afresh and in accordance with law after granting reasonable opportunity of hearing to the petitioner. However, this recourse shall be subject to the condition that the petitioner on the first date of appearance before the Assistant Collector 1st Grade furnishes a cash security or irrevocable bank guarantee of Rs.3,00,000/- (Rs.three lacs) for the year 2014-15 and another security of equal amount for the year 2015-16. The second security shall be furnished after two months but before the matter is decided by the Assistant Collector, 1st Grade. If the Gram Panchayat succeeds, the aforesaid amount shall be released forthwith.

[12] The aforementioned conditions shall apply mutatis-mutandis in case of any other proceedings which may be initiated by the petitioner's brother and/or their other family-members.

[13] No appeal by the petitioner, his brother or any other family member against the order of Assistant Collector 1st Grade, shall be obligatory upon the Appellate and Revisional Authorities also be heard unless the above-mentioned conditions at a considerable revised rates.

[14] The Assistant Collector 1st Grade, Hodal is directed to decide the petition within a period of six months.

[15] Parties are directed to appear before the Assistant Collector 1st Grade, Hodal on 18.01.2016.

[16] Dasti.

[SURYA KANT]
JUDGE

December 07, 2015
mohinder

[P.B.BAJANTHRI]
JUDGE