

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

**Civil Writ Petition No.24188 of 2013
Date of Decision: 30.03.2015**

Gram Panchayat Village Badangi

.....Petitioner

Versus

State of Haryana & others

....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. D.Khanna, Addl. A.G., Haryana
for respondents No.1 to 4.

Mr. S. K. Yadav, Advocate
for respondents No.5 to 7.

RAJIVE BHALLA, J (ORAL)

The Gram Panchyat of Village Badangi, is before us challenging orders dated 29.04.2010 (Annexure P-3) passed by the Commissioner, Gurgaon Division, Gurgaon and order dated 19.09.2012 (Annexure P-4) passed by Financial Commissioner and Secretary to the Government of Haryana, Revenue Department.

Counsel for the petitioner submits that the Assistant Collector of the First Grade passed an order under Section 7 (1) of the Punjab Village Common Lands Act, 1961 (as applicable to Haryana) (hereinafter referred to as 'the Act') directing the eviction of respondents No.5 to 7. The appeal

filed by respondents No.5 to 7 was dismissed by the Collector, Rewari. The Commissioner Gurgaon Division, Gurgaon, has in the exercise of revisional power, set aside orders, passed by the Collector and the Assistant Collector of the First Grade by holding that respondents No.5 to 7 are not in unauthorised occupation of any part of the phirni. The order is without jurisdiction as a revision can only be filed, against an order, passed by the Assistant Collector, under the proviso to Section 7 (1), recording a finding that a question of title arises or does not arise. A perusal of the order passed by the Assistant Collector reveals that the respondents did not raise any question of title much less did the Assistant Collector hold that a question of title arises or does not arise.

Counsel for the private respondents submits that the Assistant Collector has held that the land is a part of a phirni and, therefore, vests in the Gram Panchayat. The finding involves a decision on the question of title. The revision petition was, therefore, maintainable and has been rightly allowed.

We have heard counsel for the parties and perused the impugned order.

The question that calls for an answer is whether the Commissioner was empowered to entertain the revision?

An answer to the question would require appraisal

Sections 7 and 13-B. Section 7 of the Act reads as under:-

“7. Power to put Panchayat in possession of certain lands.--[(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as

arrears of land revenue.

(3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.

A perusal of Section 7 (1), of the Act, reveals that an Assistant Collector of the First Grade is empowered, after making a summary enquiry and holding that a person is in wrongful or unauthorised possession of land or other immovable property in the shamilat deh of the village to put a Panchayat in possession.

The proviso to Section 7 (1) of the Act, however, provides that in case a prima facie question of title is raised, the Assistant Collector of the First Grade shall record a finding to that effect and before deciding the question of eviction, proceed to decide the question of title, in the manner prescribed. Section 13-B (1) of the Act enables a party aggrieved by an order passed under Section 7 (1) or the proviso to Section 7 (1) to file an appeal before the Collector

whereas Section 13-B (2) of the Act confers the power of revision upon the Commissioner and reads as under:-

“13-B. Appeal and revision.--(1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7, is deposited with the Collector.}

(2) The Commissioner may, suo moto or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit.

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

A perusal of Section 13-B (2) of the Act reveals that the Commissioner is empowered either suo moto or on an application, to revise an order, but only if a person is aggrieved by an order passed, under the proviso to sub Section (1) of Section 7. The proviso to Sub Section (1) of Section 7, as already noticed, envisages a situation where the

Assistant Collector of the First Grade, has formed a prima facie opinion on a question of title and then proceeds to determine the question of title. Thus, a Commissioner, exercising the power of revision, may entertain a revision, only where the Assistant Collector of the First Grade has, while exercising jurisdiction under the proviso to Section 7 of the Act, held that a question of title arises or does not arise. As a necessary corollary if the person in alleged unauthorised occupation of shamilat deh has not raised a question of title, the Assistant Collector of the First Grade has not recorded an opinion for or against a question of title but has passed a simpliciter order of eviction, under Section 7 (1) of the Act, a revision would not be maintainable, before the Commissioner. We draw support for our opinion from a Division Bench judgment of this Court in **Leela Ram Vs. Gram Panchayat, Jailaf, 1997 (4) RCR (Civil) 354.**

A perusal of the order passed by the Assistant Collector of the First Grade reveals that the Assistant Collector has referred to the ownership of the Gram Panchayat only for the purpose of assuming summary jurisdiction under Section 7 (1) of the Act. The Commissioner, therefore, had no jurisdiction to entertain

the revision, filed by the private respondents and set aside the orders of eviction passed by the Assistant Collector of the First Grade, as affirmed by the Collector.

Consequently, we allow the writ petition, set aside order dated 29.04.2010, passed by the Commissioner, Gurgaon Division, Gurgaon and order dated 19.09.2012 passed by the Financial Commissioner and Secretary to Government of Haryana, Revenue Department but with liberty to the private respondents to seek their remedy against the order passed by the Collector, in accordance with law.

[RAJIVE BHALLA]
JUDGE

30.03.2015
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[AMOL RATTAN SINGH]
JUDGE