

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1518 of 2014 (O&M)

Date of decision: 08.02.2016

Gram Panchayat Ranila

... Petitioner

versus

Commissioner Hisar Division, Hisar and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Mani Ram Verma, Advocate, for the petitioner.

Mr. Siddharth Sanwania, DAG Haryana.

Mr. Vikram Singh, Advocate, for the respondent.

K.Kannan, J. (ORAL)

The revision petition is brought at the instance of Gram Panchayat who is aggrieved about the order passed by the Commissioner Hisar Division in proceedings that appear to have been initiated at the instance of persons claiming to be *dohlidars*. The persons have already suffered a decree of dismissal in the suit for injunction that was filed that came up to this High Court when the relief of injunction sought against the Gram Panchyat by persons claiming to be *dohlidars* was dismissed in RSA No. 2797 of 1980 decided on 03.05.1993. The injunction had been sought on the basis of the that one Chandgi Dass died in the year 1969 and he was *dohlidar* of the suit

land. It was contended that Chandgi Dass @ Chander Prakash died in the year 1969 leaving the plaintiffs as his successors. There are two specific issues raised in the suit in issue Nos.5 & 6 that read as follows:

5. Whether the dohli rights in the suit land have vested in the plaintiffs after the death of Chandgi Dass and whether they have been in possession of its as dohlidars?

6. If issue No.5 is proved, whether the dohli came to an end and whether the dohli rights in the suit land have reverted to the original owners?

The trial Court was holding that there was no proof on record that any one of them had a right to claim as a *chela* of Chandgi Dass. The Court found the proprietorship to reside in the village and with the constitution of the Panchayat, the property as having vested in the Panchayat. This decision has become final between the parties. High Court had rejected the plaintiffs' claim as successors of Chandgidas and left it to the Panchayat to initiate action under Section 7 of the Village Common Land Act.

Admittedly, the Gram Panchayat filed a case against all these persons before the Assistant Collector 1st Grade and secured the order of ejectment on 28.02.2013. This order was confirmed in appeal before the Collector. It appears that the persons claiming to be successors of Chandgi Dass have preferred a further appeal to the Commissioner. Alongside the proceedings under The Village Commons Land Act (in short the 'Act') the persons who claimed *dohlidars* rights have petitioned for rights under Haryana Dohlidar,

Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010 before the competent authority for determination of some rights. The application filed by them appears to have dismissed and the appeal has been filed before the Commissioner where the impugned order has been passed. The counsel for the petitioner would state that the order passed by the Commissioner granting status quo has been assumed by the Collector as an order of stay and has dismissed the application for ejectment passed under the Act. The counsel appearing on behalf of the private respondents says that their rights have to be redetermined under 2010 Act notwithstanding the dismissal of the suit for, all that is necessary under the 2010 Act is that there shall be proof of possession of the property for more than 20 years and the property will fall to be vested in their hands. He also argues that there is a procedure for an appeal against any order of the Financial Commissioner and the order of status quo itself could have been a subject of appeal before the Financial Commissioner.

Under the normal circumstances, if there is an adjudication on merits and there is a provision for an appeal, I would have left it to the competent authority to hear the appeal to dispose of the case and adopted a hands-off approach to the order passed by the Commissioner. In this case, it is not any order that addressed the merits of the claim. The order simply is incomprehensible. The order is cryptic and therefore, I will reproduce the same:

“Counsel for the appellant is present. His preliminary submissions have been heard. Now the case is adjourned to 26.04.2013 for

summoning the respondents and record. On the request of counsel for the appellant status quo is ordered on the orders of subordinate courts.”

Interim orders of injunction or stay are predominantly allowed for the status to continue if there is a prima facie case shown. An order at an Appellate court will be stayed if there is a strong case for the appellant or the Court is of the view that the order already passed would require to be stayed. If the Commissioner was, therefore, entertaining an appeal against the order of the validity under the 2010 Act and if it was an order ejecting the persons claiming as *dohlidars*, an order of stay would have meant the recovery action to be stalled. If in this case, 1st authority had rejected the claim of the persons of any right under 2010 and they were preferring an appeal to the Commissioner, there is nothing to be stayed. There is, therefore, no meaning in an argument that the order passed rejecting the claim under 2010 Act could have been stayed for there was no order in the first^t place granting them any rights to be stayed by higher authority. If there is an order of ejectment, it was an order passed only in the proceedings under the Village Common Lands Act and that order of ejectment could have been stayed. The impugned order which I have extracted states that the status quo is ordered on the order of subordinate Courts. If the subordinate Court's orders must remain by preservation of status quo, it is another way of saying that the Commissioner was not making any intervention to prevent the further process in execution to go. So considered, it was impermissible for a lower authority to fetter its own

hands and stop further proceedings for orders of ejectment passed. There was surely no prima facie case for the persons claiming as *dohlidars* after the disposal of the second appeal by this Court. If they fancy any right to canvass under 2010 Act, it should go through a full fledged consideration in the manner in which they want the case to be considered. As of now, there is nothing to be stayed for the Appellate Authority and the order passed by the Commissioner is set aside as not tenable and in making an incomprehensible order, shorn of any legal effect.

The order impugned is quashed and I allow the civil revision. The order of ejectment already passed shall be put through in execution but any such order will abide by the final adjudication regarding the so-called rights of *dohlidars* by the private respondents pending before the Commissioner.

The civil revision petition is allowed on the above terms.

(K.KANNAN)
JUDGE

08.02.2016

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