

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1.)

CWP No.13354 of 1993
Date of Decision:-20.01.2016.

Varinder Singh

.....Petitioner

Versus

Joint Development Commissioner (IRDP), Punjab and others

.....Respondents

(2.)

CWP No.13355 of 1993

Jagir Kaur

.....Petitioner

Versus

Joint Development Commissioner (I.R.D.), Punjab and another

.....Respondents

(3.)

CWP No.15491 of 1993

Kirpal Singh

.....Petitioner

Versus

Joint Development Commissioner, Development Department 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. A.S. Khaira, Advocate for the petitioner(s) in
CWP Nos.13354 and 13355 of 1993.
Mr. D.S. Gurna, Advocate for the petitioner in

CWP No.15491 of 1993.

Mr. K.K. Gupta, Additional A.G. Punjab.

Mr. P.S. Bhangu, Advocate for the Gram Panchayat.

SURYA KANT, J. (ORAL)

- 1.) This order shall dispose of CWP Nos.13354, 13355 and 15491 of 1993 as there is a commonality on the point in issue. The facts are being extracted from CWP No.13354 of 1993.
- 2.) The petitioner is a resident of Village Shampur, Tehsil and District Fatehgarh Sahib. He has laid challenge to the order dated 13.11.1992 (P-4) passed by the Collector, Fatehgarh Sahib ordering his eviction under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (in short 'the 1961 Act') as well as order dated 26.8.1993 whereby the Joint Development Commissioner exercising the powers of Commissioner has dismissed his appeal *in limine*.
- 3.) The Gram Panchayat of Village Sidhuwal-respondent No.3 instituted an ejectment application under Section 7 of the 1961 Act alleging *inter alia* that the petitioner had unauthorizedly occupied the Panchayat land comprising *khasra* No.11//14/2(0-13), 23/2(2-9), 24/3 (1-6) situated within the revenue estate of Village Shampur. The petitioner contested the claim of Gram Panchayat on the plea that the land was never used for any common purpose; it was *mustarkan malkaan* and he was in its cultivating possession to the extent of his share. The Collector did not accept the petitioner's plea and passed

the ejectment order dated 28.2.1990.

4.) The petitioner went in appeal which was allowed by the Commissioner vide order dated 27.3.1991 and the matter was remanded to the Collector for fresh adjudication after scrutinizing the documentary evidence on record.

5.) In the second round, the petitioner is said to have raised a dispute re : title but without deciding the same, the Collector, Fatehgarh Sahib passed the impugned eviction order dated 13.11.1992.

6.) The aggrieved petitioner again filed appeal but this time the Appellate Authority dismissed his appeal *in limine* with the following observations:-

“Heard. Earlier the case was decided in favour of Gram Panchayat and eviction of the appellant was ordered. He filed an appeal stressing mainly the plea that he had not been afforded reasonable opportunity to defend the case. After accepting the plea of the appellant the case was remanded on 27.3.1991. Despite the expiry of more than one year eight months the appellant did not produce any evidence in respect of his claim in the lower court, which has again ordered his eviction from that land. The appeal has now again been filed to gain time to prolong his unauthorised possession on the shamlat land. In these circumstances the appeal is dismissed in limine.”

7.) Still aggrieved, the petitioner has approached this Court

and vide order dated 2.11.1993, his dispossession was stayed till further orders.

8.) We have heard learned counsel for the parties at some considerable length and gone through the record.

9.) In our considered view, it is not necessary for this Court to delve upon the merits of the case as firstly the controversy requires re-determination at the hands of the Appellate Authority. We say so for the reason that the Appellate Authority has in a perfunctory manner simply noticed the purpose for which the case was earlier remanded to the Collector and has jumped to the conclusion that the petitioner wanted gain more time. The appeal has then been dismissed *in limine*. Suffice it to mention that in such like quasi-judicial proceedings, the Appellate Authority is the only superior Forum to re-appraise, re-consider and re-appreciate the evidence on record and then return a finding of fact. Whatever evidence the petitioner or the Gram Panchayat have led was before the Appellate Authority and the same ought to have been taken into account for deciding the appeal on merits. The practice of dismissing the first and only appeal *in limine* can hardly be encouraged. Since the nature of the dispute adjudicable under the 1961 Act pertains to the ownership or possessory rights on immoveable properties and such power has been conferred upon the Authorities after imposing an express bar on the jurisdiction of the Civil Court, their lies an onerous duty on the Authorities under the Act to follow the principles which

are akin to the procedure and practice observed by Civil Courts in deciding inter se disputes. A reasoned order, preferably with issue-wise findings, is the soul of judicial adjudication. It has to be observed without any exception. For example, the entries in the revenue record in the case in hand are of paramount importance and a specific reference thereto ought to have been made along with reasons for accepting or discarding such entries.

10.) Since such a recourse is conspicuously missing in the instant case, we allow the writ petition in part; set aside the impugned order dated 26.8.1993 and direct the Joint Development Commissioner-cum-Appellate Authority to decide the appeal, after hearing the parties, by way of a reasoned order and in accordance with law, preferably within a period of six months. Till the appeal is decided, dispossession of the petitioner's land shall remain stayed. The petitioners as well as the Gram Panchayat may avail one opportunity each to lead additional evidence before the Appellate Authority so as to enable the latter to arrive at a just conclusion.

11.) The parties are directed to appear before the Appellate Authority on 24.2.2016.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

January 20, 2016.

sandeep sethi