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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-4515-2014 [O&M]

Date of Decision : May 10th, 2016

Chottu Ram

.... Petitioner

Versus

Block Development & Panchayat Officer and others Respondents

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

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. Harsh Bunger, Advocate,
for the petitioner.

Mr. Kapil Bansal, DAG, Haryana,
for respondent no.1

Mr. Vikram Singh, Advocate,
for respondent No.2.

SHEKHER DHAWAN, J.

Present revision petition under Article 227 of the Constitution of India is challenge to the order dated 09.07.2014 [Annexure P/9] passed by Collector, Kurukshetra whereby application filed by the present petitioner for treating issues No. 4 and 5 as preliminary issues, was dismissed.

2. The present controversy was before this Court in CWP-13407-2006 titled – **Gram Panchayat Syonsar, Tehsil Pehowa, District Kurukshetra Vs. State of Haryana and others** and the Hon`ble Division Bench passed the following orders on 08.08.2013:-

“ After taking note of above facts and circumstances, we

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dispose of these writ petitions directing Collector, Kurukshetra to proceed ahead with the title suit filed by the BDPO, Pehowa on behalf of the Gram Panchayat to decide question of title. All the pleas which the petitioner – Gram Panchayat has taken in these writ petitions, the Gram Panchayat is permitted to take those pleas in the pending title suit. To the proposal made, no objection has been shown by counsel for the respondents. The parties are directed to appear before the Collector, Kurukshetra on 04.09.2013. The suit be decided as per law within one year therefrom.”

3. As per the above orders passed by Hon`ble Division Bench of this Court, the matter was to be decided within one year from 08.08.2013. The Court below passed the order dated 9.7.2014 [Annexure P/9], while making the observations that the matter required leading of evidence and appreciation thereof and as such, the same could not be decided on the basis of preliminary issues alone.

4. Learned counsel for the petitioner submitted that the impugned order is liable to be set-aside as the request made by the petitioner for deciding issues No. 4 and 5 as preliminary issues has been wrongly and arbitrarily rejected.

5. Learned counsel for the respondent submitted that in fact, the matter required leading of evidence and the Collector, Kurukshetra has rightly passed the impugned order and the present petition is without any merit. In fact, the petitioner is in unauthorized possession of the Panchayat land and just to remain in unauthorized possession, the petitioner has opted to challenge the order, which is otherwise in accordance with law and the present petition deserves dismissal.

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6. Having considered the submissions made by learned counsel for the parties and appraisal of impugned order and the order passed by Hon`ble Division Bench of this Court, this Court is of the considered view that the Court below has rightly taken the view that the matter required leading of evidence. It is settled proposition of law that even if the controversy involves some legal and substantial questions of law as well a conflict on facts, it is to be decided on the basis of evidence. Such a controversy cannot be decided on the basis of decision of preliminary issues alone and the Collector, Kurukshetra was conscious enough of passing of order by Hon`ble Division Bench of this Court dated 8.8.2013 [Annexure P/7] and the fact that the matter involved unauthorized possession on the panchayat land and passed the impugned order dated 9.7.2014 [Annexure P/9] and the said order does not suffer from any illegality.

7. In view of the above, there are no grounds for setting aside the impugned order [Annexure P/9] and the present revision petition stands dismissed.

(SHEKHER DHAWAN)
JUDGE

May 10th, 2016
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