

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14002 of 1993
Date of Decision:-16.3.2016.

Ram Kishan through LRs

.....Petitioner

Versus

State of Haryana and others

.....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. Alok Jain, Advocate for the petitioners.

Ms. Kirti Singh, DAG, Haryana.

None for respondent No.4.

SURYA KANT, J. (ORAL)

1.) The petitioner has laid challenge to the order dated 22.2.1991 passed by the Assistant Collector Ist Grade, Sonapat, whereby his petition filed under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961' Act) as applicable to State of Haryana, to declare him as owner in possession of *khasra* No.164-165 (previous No.2017) measuring 35 *kanal 9 marla* situated in the Revenue Estate of Village Akbarpur Barota, was dismissed. He also assails the order dated 10.9.1993 of

the Commissioner, Rohtak Division vide which the revision petition filed by the Gram Panchayat against the order of the Collector, Sonapat dated 25.8.1992 whereby the order of the Assistant Collector 1st Grade was set aside and the claim of the petitioner was accepted, has been reversed resulting into the dismissal of the above stated declaratory petition.

2.) The issue that arose for consideration of the authorities was whether there was a public passage going through *khasra* No.164-165 and if so, whether such public passage falls within the definition of *Shamilat Deh* under Section 2 (g) of the Act and thus vests in the Gram Panchayat?

3.) The Assistant Collector 1st Grade who tried the declaratory suit, personally visited the site on 15.1.1991 in presence of both the parties and other respectables from the village and found that *“Rasta No.137 is passing through Khasra Nos.164-165 at site which is about 5-6 Karam wide. Rasta is existing at the site. There is no Rasta No.165/3 in the southern portion of Khasra No.165 at the site as claimed by the Plaintiff, instead it is under cultivation of the Plaintiff himself and by the other owners of the adjoining fields and mixed with their fields”* . The petitioner's petition was thus dismissed holding as follows:-

“From the above detailed discussion it is clear that the disputed land is Rasta No.137 and the same passed between Khasra No.164 and 165 and vests in Shamlat Deh under Section 2 (g)

(3) and (4) of the Punjab Village Common Lands Act. Although, this land was of Shamlat Patti Nizawat Beg but during the consolidation it was left in the form of a Rasta for common use and after the consolidation till date this Rasta-Sare-Aam is in vogue at side. Thus this vests into Shamlat Deh. In this way issue No.1 is decided against the Plaintiff and in favour of the defendants.”

4.) The petitioner went in appeal and the Collector, Sonapat allowed his appeal on the premise that *Kharsa* No.164-165 (previous *Khasra* No.2017) does not vest in the Gram Panchayat as no such *Rasta* (public passage) was shown in the Consolidation Scheme the findings returned by the Assistant Collector was reversed and the petitioner's declaratory petition was accordingly accepted. The Gram Panchayat went in revision and the Commissioner, Rohtak Division accepted the same, holding that as there was already an eviction order passed against the petitioner under Section 7 of the 1961 Act in respect of the land in dispute, he could not improve his title or claim on the basis of alleged sale of the suit land in his favour by the Custodian Department.

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

6.) In our considered view, both the orders passed by the Collector, Sonapat as well as the Revisional Authority are unsustainable and deserve to be set aside. The approach of the

Collector, least to say, is totally casual, perfunctory and in disregard to the evidence on record led by the Gram Panchayat. He has failed to take notice of the entries in the Revenue record and has been largely influenced by a certificate issued by the Custodian Department, according to which the land in dispute has been purchased by the petitioner subsequent to the eviction order, for a consideration of ₹ 45,313/-. The Collector failed to determine as to whether or not (i) Custodian Department was owner of this land? (ii) whether the sale was conducted in accordance with the prescribed Rules? and (iii) whether the existing public passage, if any, which, as per the findings returned by the Assistant Collector, was in existence and was being used by the entire village community could also be owned by the Custodian Department? In the absence of any categorical findings on these aspects, the Collector could not have accepted the ownership claim put-forth by the petitioner.

7.) Similarly, the Revisional Authority does not appear to be right in observing that principles of *res judicata* would apply. Needless to say that eviction proceedings under Section 7 of the 1961 Act are summary in nature and the observations made therein are not necessarily binding in a declaratory petition filed under Section 13-A of the 1961 Act.

8.) For the reasons aforestated, we allow this writ petition in part; set aside both the orders passed by the Collector, Sonapat as well as Commissioner, Rohtak Division and remit the case to the

Collector for a fresh decision, in accordance with law and after notice to the Gram Panchayat.

9.) The parties are directed to appear before the Collector, Sonapat on 10.5.2016.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 16, 2016.

sandeep sethi