

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.960 of 1994

Date of Decision:-20.01.2016.

Ram Singh

.....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. Rajinder Chhokar, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. S.N. Saini, Advocate for respondent No.4.

SURYA KANT, J. (ORAL)

1.) The petitioner though at the time of institution of these proceedings, also questioned the *vires* of Sections 2 and 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (in short 'the 1961 Act') as amended by Haryana Amendment Act, 1991 vide Act No.9 of 1992 but now has confined his challenge only to the order dated 14.12.1993 whereby the Gram Panchayat's appeal was allowed and he has been ordered to be ejected from the land measuring 3 *kanal* 13 *marla* situated within the revenue estate of

Village Asan Kalan, Tehsil and District Panipat.

2.) The facts are to the following effect. The suit land bearing *khassra* No.230 was recorded under the ownership of "*Thola Guhla, Hasab Hissa Mandarja Shajra Nasab*". An entry to this effect finds mentioned in the *jamabandi* for the year 1962-63 as well as in the latter *jamabandi* till the year 1977-78 and 1981-82, when in the column of ownership entry was made in favour of the Gram Panchayat in the light of the amended provisions of the 1961 Act. The dispute between the Gram Panchayat and the petitioner, however, has to be determined with reference to the entries as were existing prior to the year 1977-78.

3.) The respondent-Gram Panchayat filed eviction petition under Section 7 of the 1961 Act alleging that the petitioner was in unauthorized occupation of the subject land. It was averred that the suit land was property of *Thola Gulha* and was reserved for a common purpose, namely, to set up *Kohlu* (sugarcane crusher) but the petitioner had encroached upon it and constructed a building.

4.) The petitioner, on the other hand, contested the Gram Panchayat's claim claiming *inter alia* that he was in possession since the time of his fore-fathers and the Gram Panchayat never objected to the construction of his house. He further maintained that the land which was reserved for *Kohlu* had in fact been included in the premises of the adjoining school and the site where he had constructed the house was not meant for any 'common purpose'.

Alternatively, the petitioner also took the plea that installation of *Kohlu* was not a 'common purpose' to serve the entire village community.

5.) The Assistant Collector 1st Grade, Panipat vide order dated 26.8.1983 (P-5) dismissed the Gram Panchayat's claim with a categorical finding that he himself had inspected the site and was satisfied that the house constructed by the petitioner was not on the land which was reserved for *gair mumkin kohlu*. It was also found that the house was very old and the Gram Panchayat ought to have raised its objection, if any, at the time when its construction commenced.

6.) The Gram Panchayat went in appeal which was allowed in part by the Collector, Karnal vide order dated 15.10.1984 and the case was remanded to the Assistant Collector for fresh adjudication after giving an opportunity to the Gram Panchayat to lead further evidence.

7.) It appears that no additional evidence was led by the Gram Panchayat. The Assistant Collector 1st Grade, Panipat vide order dated 23.8.1993 again rejected the Gram Panchayat's claim.

8.) The aggrieved Gram Panchayat preferred the appeal which has been allowed by the Collector, Panipat vide impugned order dated 14.12.1993 (P-9). The Appellate Authority held that as per the *jamabandi* for the years 1977-78 and 1981-82, the Gram Panchayat is recorded as the owner of the suit land which was in

cultivating possession of the *Makbujan Malkaan* (i.e. proprietary body of the village). As the land was reserved for *gair mumkin kohlu*, hence, it was meant for a 'common purpose'. It has been further observed that the petitioner had constructed one room about 10/12 years back whereas two more rooms were added by him recently after taking unauthorized possession and that the suit land was not in his possession from the time of his fore-fathers.

9.) The aggrieved petitioner approached this Court and vide order dated 24.1.1994, status quo re : possession was directed to be maintained. The said order was made absolute on 17.5.1994 and is still operative.

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

11.) In our considered view, the matter requires a fresh decision by the Appellate Authority and having formed such an opinion, it may not be expedient for this Court to express any final view in relation to the rival submissions. Suffice it would be to observe that following two issues indeed require determination by the Appellate Authority:-

- (i) Whether the land where the petitioner has raised construction is the same which was owned by *Thola* and was reserved for *gair mumkin kohlu* or that the land reserved for *gair mumkin kohlu* is now part of the adjoining school premises?

(ii) Whether the land owned by a *Thola* and reserved for '*Kohlu*', would amount to putting such land for the benefit of entire village community or such a user is restricted for the agricultural community only and if so, whether the land falls within the ambit of Section 2 (g) (3) of the 1961 Act?

12.) Let these issues be determined by the Collector after hearing the parties and on consideration of the evidence on record. If need be, the parties may be permitted to lead additional evidence. There would however, arise a necessity of fresh demarcation of the site which shall be carried out by a team of revenue officials in the presence and after advance notice to the parties. The issues shall be answered by the Collector with reference to the land measuring 3 *kanal* 13 *marla* only and the additional land, if any, in possession of the petitioner and/or the construction raised subsequently shall have no bearing on the determination of these issues.

13.) Disposed of.

14.) The parties are directed to appear before the Collector, Panipat on 24.2.2016.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

January 20, 2016.

sandeep sethi