

CWP-12354-2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-12354-2013

Date of Decision: 17.03.2016

Kapur Singh and others

... Petitioner(s)

Versus

Financial Commissioner (Revenue), Haryana and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH
DHALIWAL**

- 1) Whether Reporters of the 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.K.Bura, Advocate,
for the petitioners.

Mr. Rajneesh Chadwal, DAG, Haryana.

Mr. Anurag Jain, Advocate,
for respondent Nos.5 to 8.

Paramjeet Singh Dhaliwal, J. (Oral)

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 26.03.2013 (Annexure P-12) passed by respondent No.1-Financial Commissioner (Revenue), Haryana.

Brief facts of the case are to the effect that the petitioners claim themselves to be tenants as gair marusi over the disputed land

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measuring 260 kanals 1 marla. The father of petitioner Nos.1 to 4 and predecessors-in-interest of petitioner Nos.8 to 10, namely, Deshraj, petitioner No.5-Bhalle Ram, petitioner No.6-Hari Ram @ Hari Singh and father of petitioner No.7 namely Dhan Singh filed a suit for declaration of occupancy rights under Sections 5 and 8 of the Punjab Tenancy Act, 1887 in respect of land measuring 260 kanals 1 marla comprised in khewat No.15 khatauni No.20 killa No.5/21 (3-14), 6//24/2 (7-4), 25(8-0), 16//5/1(4-0), 29/22 (6-1), 32//17/2 (4-0), 24(8-0), 25(8-0), 33/1(8-0), 2(8-0), 3(8-0), 4(8-0), 5(8-0), 6(8-0), 7(8-0), 9(8-0), 10(8-0), 11(8-0), 12(8-0), 13(8-0), 33/14(8-0), 15(8-0), 16(8-0), 17(8-0), 19(8-0), 20(8-0), 21(8-0), 23(8-0), 24(8-0), 33/25(8-0), 34//10(7-8), 11/1(3-14). In the said suit, the defendants were proceeded against *ex parte* and *ex parte* decree was passed on 02.06.1979. After 21 years of passing of the said decree, the defendants filed application for setting aside the *ex parte* decree dated 02.06.1979 (Annexure P-4). The said application was dismissed vide order dated 28.02.2006 (Annexure P-7). A relevant extract of the order dated 28.02.2006 (Annexure P-7) reads as under:

“File put up today. Counsels for the parties present. Heard. In view of the judgment dated 29.05.2004 of the Hon'ble High Court of Punjab and Haryana (Full Bench) in Civil Writ Petition No.5266 of 1999, titled as 'Shiv Charan vs. F.C.Haryana and others' which has been published in PLR 2004-03, Vol. CXXXVIII Page 569, this Court has got no

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jurisdiction to try the suit for occupancy rights. As such, the present application also cannot be heard by this Court for want of jurisdiction. Hence, the present application is returned to the applicants for presentation in the competent court having jurisdiction. Case be consigned to the record-room after due compliance”.

Feeling aggrieved, respondent Nos.5 to 8 preferred an appeal before the Collector, Hisar, who dismissed the said appeal vide impugned order dated 10.06.2008 (Annexure P-8). A relevant extract of the order dated 10.06.2008 reads as under:

“The learned counsel for the respondents stated in his argument that as per the order dated 29.05.2004 passed by Hon'ble Punjab and Haryana High Court in CWP-5266 of 1999 (PCR 2004) Vol. XXXXVIII Page 569, Revenue Court has no jurisdiction to hear the cases of Occupancy Tenant. There is no illegality in the order under appeal passed by the lower courts. Therefore, the present appeal may be rejected.

I have heard the arguments in detail of the counsel of both the parties. As per the order dated 29.05.2004 passed by the Hon'ble Punjab and Haryana High Court in CWP No5266 of 1999 (PCR 2004) Vol. XXXXVIII Page 569, the Civil Court has the jurisdiction to decide the cases of rights of occupancy tenants. Revenue Courts have no jurisdiction to hear the cases of rights of occupancy tenants. Therefore, there is no illegality in the order dated 28.02.2006 passed by the lower court and

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hence the present appeal is rejected. File be consigned to the record-room.”

Against that, respondent Nos.5 to 8 preferred revision before the Commissioner, Hisar Division, Hisar who vide order dated 26.05.2009 (Annexure P-9) adjourned the case *sine die*. Against that, the private respondents herein approached this Court by way of CWP-8492-2010 which was disposed of vide order dated 20.12.2010 with liberty to the private respondents to approach the Financial Commissioner, Haryana. In pursuance of the said order dated 20.12.2010 passed by this Court, the private respondents preferred revision before the Financial Commissioner, Haryana who vide impugned order dated 26.03.2013 (Annexure P-12) directed the parties to appear before A.C-Ist Grade by holding that appropriate proceedings lie before the revenue court and jurisdiction of the civil court is barred. A relevant extract of the impugned order dated 26.03.2013 reads as under:

“3. The arguments in this case were heard from both the sides. Sh. Amit Jain, learned counsel for the petitioner was heard on 12.03.2013 with liberty to learned counsel for respondents to argue his case on 26.03.2013. Sh. Ashwani Kumar Bura, learned counsel for the respondent and Sh. Raghbir Singh, DDRA for the State were present on 26.03.2013. Sh. Ashwani Kumar Bura, learned counsel argued the case and also submitted his written argument along with legal citations. Arguments were closed and the decision was reserved. On hearing the arguments, I find that

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main contentious issue in this case is whether the ex parte proceedings taken against the petitioners are valid or not. Keeping in view the submissions made by the petitioners that they were not duly served at the time of passing the order dated 02.06.1979, I feel that A.C-Ist Grade Hisar needs to go through the entire record to see that the petitioners were properly served as per law. In case, they were properly served there is no need to look afresh in this case. However, in case they were not served and the ex parte proceedings were brought in operation without following due process of law, I am of the opinion that the petitioners need to be given a fresh hearing at the level of A.C-Ist Grade, Hisar. With these observations, I send this case to A.C-Ist Grade, Hisar, who will hear both the parties afresh and then decide the case accordingly.

4. *As regards jurisdiction of revenue court, the latest legal citation produced by learned counsel for the respondents as 2011 (3) PLR 333 clearly brings out that appropriate proceedings lie before revenue court and jurisdiction of the civil court in this regard would be barred. Relying upon the legal citation, the preset case is decided accordingly in so far as the issue relating to court jurisdiction is concerned.”*

Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

Admittedly, the *ex parte* decree dated 02.06.1979 (Annexure

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P-4) was passed by A.C-Ist Grade and application for setting aside the *ex parte* decree dated 02.06.1979 was filed after a considerable delay of 21 years. It is settled law that once a decree has been passed by A.C-Ist Grade, an aggrieved party always has a right to file the application for setting aside the decree and other remedy available with the aggrieved party is to file appeal against such a decree. When the application (Annexure P-5) for setting aside the *ex parte* decree dated 02.06.1979 was filed before A.C-Ist Grade by the private respondents, A.C-Ist Grade was required to decide the same on merits after giving notice to the present petitioners being plaintiffs in original suit for declaration of occupancy rights. The contention of learned counsel for the petitioners is that respondent No.1 has virtually set aside the *ex parte* decree vide impugned order dated 26.03.2013 (Annexure P-12). In fact, it was observed in the impugned order dated 26.03.2013 that A.C-Ist Grade is required to go through the record to see as to whether the applicants who moved application for setting aside the *ex parte* decree dated 02.06.1979 before him were properly served and thereafter pass an order in accordance with law. There is no specific order that *ex parte* proceedings stand set aside. It is for the A.C-Ist Grade to come to the conclusion as to whether there was a valid service upon the applicants before him in the application (Annexure P-5) for setting aside the *ex parte* decree dated 02.06.1979. The petitioners herein will be at liberty to raise all the pleas/objections in reply to the application for setting

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aside the *ex parte* decree dated 02.06.1979 before Assistant Collector-Ist Grade.

Dismissed with the aforesaid observations.

17.03.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge