

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5621 of 2015

Date of Decision:-29.3.2016.

Gram Panchayat Village Mehra

.....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. Arvind Singh, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana.

Mr. Sanjiv Gupta, Advocate for respondent No.5.

SURYA KANT, J. (ORAL)

1.) CWP No.9996 of 2008 was purportedly filed in public interest by some residents of Village Mehra, Sub Tehsil Ladwa, District Kurukshetra. This Court noticed in that case that *Johar* (village pond) bearing *khasra* No.101 was a part of *abadi* where the waste water was accumulating, hence it was required to be filled with earth. The writ petition was then disposed of with the following directions:-

“This Court on 3.11.2008 had opined that filling up of Johar No.101, will deprive the village of the benefit of water body, which is

essential for vegetation and replenishment of the other soil water and an innovative and ingenious solution which may permit continuation of Johar No.101 and yet prevent inconvenience to the villagers and any threat to the lives of the inhabitants, be evolved by the authorities in consultation with some experts on the subject. It was pursuant to said directions that the Deputy Commissioner has submitted the status report mentioned above. Since the committee of experts has recommended filling up of Johar No.101, therefore, it is for the respondent-authorities to proceed ahead and take appropriate steps to implement the decision taken by the committee presided over by the Deputy Commissioner. It shall be open to the respondents to plan a road map for undertaking the work of Phase-I and Phase-II of the proposal, as expeditiously as possible so as to take care of the difficulties faced by the villagers.”

2.) The non-compliance of above reproduced directions led to initiation of some contempt proceedings which prompted the petitioner-Gram Panchayat to start the filling work and raise a *pucca* wall so as to protect the pond bearing *khasra* No.101 from encroachment etc.

3.) The photographs reveal that a substantial part of *pucca* wall has been completed by the Gram Panchayat and when it was near completion, respondent No.5 has got the construction work stalled on the strength of an *ex parte* Civil Court decree dated

5.5.2001 passed in a “suit for declaration with consequential relief of permanent injunction”. The Gram Panchayat though was impleaded as defendant No.1 but it is categorically stated that the then Sarpanch was from the family of respondent No.5 and he chose not to contest the civil suit. Resultantly, the *ex parte* decree was passed setting aside the orders passed by Assistant Collector 1st Grade, the Collector and the Commissioner, Ambala Division in exercise of their statutory powers under the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') as applicable to State of Haryana.

4.) It deserves mention here that the jurisdiction of the Civil Court to grant any kind of declaration, especially with regard to ownership of *Shamlat*/Gram Panchayat land is expressly barred under the 1961 Act and Section 13 of the 1961 Act to that effect reads as follows:-

“13. Bar of Jurisdiction in civil courts.-- no civil courts shall have jurisdiction--

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not shamilat deh vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

5.) Regardless of this provision, the Civil Court passed the *ex parte* decree without realizing the fact that the Sarpanch was colluding with the plaintiff.

6.) The Gram Panchayat filed an application to set aside the *ex parte* decree but the same was dismissed for non-prosecution.

7.) The Gram Panchayat is thus sandwiched in two judicial commands, namely, the directions issued by the Division Bench in PIL jurisdiction on one hand and the *ex-parte* Civil Court decree on the other. Hence, it is before this Court.

8.) We have heard learned counsel for the parties and gone through the record.

9.) Since the Civil Court jurisdiction is expressly barred under the 1961 Act and in the absence of any assistance from the defendant side the Civil Court misdirected itself in assuming jurisdiction over a matter which it actually did not possess, we declare that the judgment and decree dated 5.5.2001 passed in Civil Suit No.RBT/260 of 2000 shall have no binding effect on the petitioner-Gram Panchayat and the same is declared to be null and void being without jurisdiction. The petitioner-Gram Panchayat and the District Administration are directed to proceed accordingly.

10.) However, if respondent No.5 has moved an application for recall/modification of the judgment of this Court dated 17.3.2009 passed in PIL jurisdiction, he may pursue such remedy and the observations made hereinabove shall have no bearing on the merits of that application.

11.) Similarly, if respondent No.5 has any other remedy available under the 1961 Act in respect of identification of the area and location of *khasra* No.101 comprising the village pond (*Johar*), he may avail such remedy in accordance with law. The writ petition is allowed in above terms.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

March 29, 2016.

sandeep sethi