

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

CRR No.3132 OF 2016
DATE OF DECISION : 2ND MARCH, 2017

Naib Singh

.... Petitioner

Versus

Rulia Ram & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

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Present : Mr. Sachin Mittal, Advocate for the petitioner.

Mr. B. S. Dhillon, Advocate for
Mr. Hardeep Singh Dhillon, Advocate
for respondents No.1 to 4.

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A. B. CHAUDHARI, J. (ORAL)

Rule heard forthwith with consent of learned counsel for the parties.

Heard learned counsel for the rival parties.

It is not in dispute that the land in question is owned by Gram Panchayat, Thol District Kurukshetra. The dispute in relation to the said land arose and the SDM started the proceedings under Section 133 Cr.P.C. and also made an order dismissing the said petition vide order dated 15.05.2013. Revision petition was also filed before the Sessions Court which confirmed the said order of the SDM. The order passed by the SDM in relation to the dismissal of the proceedings or rather reasons given by him are not at all satisfactory nor any enquiry has been made in relation to the public land. The Gram Panchayat, was not made party by the SDM. The proceedings under Section 133 Cr.P.C. ought to be conducted in the presence of the party who actually owns the land i.e. Gram Panchayat. Obviously in this case the property admittedly

belongs to the Gram Panchayat. However, the SDM did not think it fit to add Gram Panchayat as party to the proceedings under Section 133 Cr.PC. and straightaway decided the dispute between the private parties as if the owner of the land has nothing to do with the proceedings. As a matter of fact, the SDM was, under an obligation to make enquiry as to the subject land before him. The SDM also should have called resolutions of GP, Jamabandi and all government records in order to resolve the dispute effectively under Section 133 Cr.P.C. In that view of the matter this Court, prima facie, observed on October 20, 2016 that the duty which ought to have been performed by the SDM was not performed and therefore, in-depth enquiry is required to be done by the SDM, which is the first Court under Section 133 Cr.P.C. Learned counsel for the Gram Panchayat as well as complainant submits that it was not necessary as the Gram Panchayat has no objection for handing over the property. Gram Panchayat may take any stand it likes but then the same has to come on record of the SDM in the proceedings under in question as Gram Panchayat is holding the public property in trust. It is the SDM who will ultimately look into the interest of the public rather than any private interest. In that view of the matter I make the following order:

ORDER

- (i) The CRR No.3132 OF 2016 is allowed in part.
- (ii) The impugned orders dated 27.07.2016 passed by the Additional Sessions Judge, Kurukshetra and order dated 15.05.2013 passed by the SDM, Pehowa, are set aside.
- (iii) The proceedings under Section 133 Cr.P.C. bearing case no.43/SDO decided on 15.05.2013 are remanded to the

SDM for fresh enquiry and after addition of Gram Panchayat as respondent to the proceedings.

- (iv) The SDM shall hold fact finding enquiry by summoning all documents and after coming to conclusion for protecting the interest of the public property.
- (v) The parties shall appear before the SDM on 27.03.2017 and thereafter the SDM shall decided the proceedings within six months from the date of first appearance.

2nd MARCH, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No