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

CWP-12897-2013

Date of decision : 23.03.2017

Santoshi Parshad and others

... Petitioner(s)

Versus

State of Punjab and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Vikas Singh, Advocate
for the petitioners.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

AMIT RAWAL, J. (ORAL)

The petitioners are aggrieved of the impugned order dated 31.01.2011 (Annexure P-4) rendered by the Collector, whereby the ejectment of the petitioner(s) has been ordered under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (for short 'the 1973 Act') and as well as the order dated 30.10.2012 (Annexure P-5) passed by the Deputy Commissioner, whereby the appeal filed against the order, aforementioned, has also been dismissed on the premise that in a proceeding under the provisions of Sections 4 & 5 of the 1973 Act, the issues were not framed.

Learned counsel for the petitioner(s) submits that the Government had failed to establish the unauthorized possession i.e. in the absence of demarcation report, though, copy of the jamabandi, affidavit, much less, the site plan and the report of the Patwari Halqa, had been

produced on record. In fact, as per the revenue record, the land falls in Khasra No.2881, 2882, 2883 and 2886/2. The total area as per jamabandi is 182 bighas, whereas the disputed land is 113 bighas approximately. All these aspects are required to be gone into, thus, urges this Court for setting aside the impugned order.

In support of his contentions, he relies upon the *ratio decidendi* culled out **“Sarjiwan Tiwari V/s Punjab State Electricity Board” 1998 (2) RCR (Civil) 2.**

Mr. Yatinder Sharma, Addl. A.G., Punjab submits that the petitioners are unauthorized occupants and cannot in equity retain the possession. It was incumbent upon the petitioner(s) to establish the ownership by placing on record the documents, but the one that produced on record i.e. Ex.R-1 to R-201 does not establish anything in their favour, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is a force and substance in the submissions of Mr. Vikas Singh, for, the issues of the demarcation and identification of the land had been raised. It was incumbent upon to Collector to frame the issues and give the opportunities to the parties to lead evidence. The documents have been produced on behalf of the petitioners, but the same have not been referred to while rendering the findings. The authorities are obliged to refer to and rely the documents, therefore, order of the Collector is suffering from illegality and perversity and the aforementioned order has erroneously been upheld by the Deputy Commissioner.

Keeping in view the aforementioned facts, the matter is

required to be remanded back to the Collector to decide the controversy afresh.

Accordingly, the impugned orders dated 31.01.2011 (Annexure P-4) and 30.10.2012 (Annexure P-5) are hereby set aside and the matter is remanded back to the Collector to decide the controversy afresh by framing the issues, on which the parties are at variance, by affording 4 effective opportunities as expeditiously as possible within a period of one year from the date of the receipt of the certified copy of this order. The parties shall be at liberty to lead evidence in accordance with law.

Learned counsel for the parties and as well as the parties are directed to appear before the Collector on 18.04.2017.

With the aforesaid observations, the present revisions stands disposed of.

23.03.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**