

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

CWP No.15525 of 2016

Date of Decision: 28th August, 2017

Bhupinder Singh and others

....Petitioners

Vs.

State of Haryana and others

....Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.S.S. Dinarpur, Advocate,
for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana.

Dr.Naresh Kaushik, Advocate,
for respondent No.4.

Mr.Ram Kumar Saini, Advocate,
for respondent No.5.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioners are the residents of village Khanpur, Tehsil Jagadhri, District Yamunanagar. Earlier four villages, namely, Kanhri Khurd, Khanpur, Akalgarh Majra and Ahmadpur had one Gram Panchayat, namely, Gram Panchayat Kanhri Khurd. However by way of notification dated 28.9.2004, issued by the Development and Panchayats Department, two more Gram Panchayats, namely, Gram Panchayat Khanpur and Akalgarh Majra came into existence. In 2007, the Gram Panchayat Akalgarh Majra filed an application under Section 215-A of the Haryana Panchayati Raj Act, 1994 [for short 'the Act'] for apportionment of the property of Gram Panchayat Khanpur. The said application was dismissed by the Deputy Commissioner, Yamunanagar on 19.7.2012.

The Gram Panchayat Akalgarh Majra filed CWP No.21086 of 2012 to challenge the order of the Deputy Commissioner dated 19.7.2012. The said writ petition was disposed of on 1.9.2014, setting aside the order dated 19.7.2012 and the matter was remanded back to the Deputy Commissioner to decide afresh, after affording opportunity of hearing to the parties and keeping in view the amendment carried out in the Haryana Panchayati Raj Rules, 1995 in view of notification dated 4.6.2014 by which Rule 31A was added to the Haryana Panchayati Raj Rules, 1995 called the Haryana Panchayati Raj (Amendment) Rules, 2014 [for short 'the Rules']. Rule 31A of the Rules read as under: -

“31A Apportionment of assets and liabilities. (Section 7) – (1) For the purpose of sub-section (3A) of section 7, the assets and liabilities shall be apportioned by the concerned Deputy Commissioner as under: -

- (i) all immovable properties situated within the revenue estate or sabha area of a particular Gram Panchayat, shall vest in that particular Gram Panchayat;*
- (ii) other moveable and immovable properties, not within the revenue estate or sabha area of a particular Gram Panchayat including funds shall be*

apportioned between the existing and the newly constituted Gram Panchayat in proportionate to their population;

(iii) the assets and liabilities, not dealt under clauses (i) and (ii) above, shall be apportioned in the manner agreed upon and in case there is no such agreement within a period of one year from the date of bifurcation of sabha areas, the Deputy Commissioner shall be competent to determine such assets and liabilities, as he may deem fit;

(2) The gram Panchayat aggrieved by an order of the Deputy Commissioner, may within a period of thirty days from the date of order, prefer an appeal to the Divisional Commissioner, whose decision thereon shall be final.”

In pursuance of the direction issued by this Court and the amendment in Rule 31A of the Rules, the Deputy Commissioner, Yamunanagar allowed the application vide sorder dated 30.9.2015, apportioning the property of Gram Panchayat, Khanpur.

Learned counsel for the petitioners has submitted that the impugned order is patently erroneous as the land which has been given to Gram Panchayat Akalgarh is of the proprietors.

On the other hand, learned counsel for the respondents has submitted that since the order by the Deputy Commissioner is passed under Rule 31A(i) & (iii) of the Rules, therefore, the remedy lies with the petitioners in terms of Rule 31A(ii) of the Rules to file an appeal before the Divisional Commissioner within a period of 30 days from the date of the order passed by the Deputy Commissioner.

Learned counsel for the petitioner, however, submits that the appeal could have been filed by the Gram Panchayat if it is aggrieved against the order of the Deputy Commissioner and there is no remedy available to the members of the Gram Sabha. He has also submitted that the petitioners have made allegations against Gram Panchayat Khanpur of their collusion with the Gram Panchayat Akalgarh and therefore, they have prayed that the writ petition may be heard on merits.

I have heard learned counsel for the parties and examined the available record with their able assistance.

There is no dispute that the impugned order has been passed under Rule 31A(i) & (iii) of the Rules and there is a provision of filing of appeal before the Divisional Commissioner, in terms of Rule 31A(ii) of the Rules but as the language of the provision provides right of appeal to the Gram Panchayat if it is aggrieved by the order passed by the Deputy Commissioner and there is no remedy of appeal provided to the members of the Gram Sabha then the question is thus as to whether the petitioners can still maintain this petition or follow Rule 31A(ii) of the Rules. In such a situation, it would be apt to issue a direction to the Gram Panchayat

Khanpur to challenge the order of the Deputy Commissioner, Yamunanagar dated 30.9.2015 by filing appeal before the Divisional Commissioner so that the grievance of the petitioners may be redressed and the petitioners would also be allowed to join the proceedings as parties along with the Gram Panchayat so that they may watch the proceedings and ensure that the Gram Panchayat Khanpur would not collude with Gram Panchayat Akalgarh.

Accordingly, the present petition is disposed of, relegating the petitioners to avail their remedy of appeal through the Gram Panchayat Khanpur, which is directed to file an appeal within a period of 15 days from the date of receipt of certified copy of this order positively before the Divisional Commissioner. The Divisional Commissioner is also directed not to raise the question of limitation and decide the appeal after affording opportunity of hearing to the parties, who would appear before him, by passing a reasoned order. It is needless to mention that the petitioners would also file an application in such appeal to become parties which shall be allowed by the Divisional Commissioner. The Divisional Commissioner is also directed to decide the appeal expeditiously, preferably within a period of three months from the date of appearance of the parties before him.

28th August, 2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*