

HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6159-2016

Date of Decision: October 26, 2017

Gram Panchayat Fatehpur

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR. JUSTICE SUDHIR MITTAL**

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| 1. | To be referred to the Reporters or not? | Yes/No |
| 2. | Whether the judgment should be reported in the Digest? | Yes/No. |
| 3. | Whether Reporters of local papers may be allowed to see the judgment? | Yes/No |

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Present: Mr.Vinod Kumar, Advocate for the petitioner.

Mr.Rajesh Bhardwaj, Sr.DAG, Punjab.

Mr.Parminder Singh, Advocate for

Mr.Amit Shukla, Advocate for respondent Nos.7, 28, 35 and 63

Mr.Rajiv Joshi, Advocate for respondent Nos.5, 6, 9, 15 to 18,

22, 25, 27, 36, 38, 41, 46, 47, 49, 52, 56, 59, 61 to 69.

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SURYA KANT, J.

The petitioner is Gram Panchayat of village Fatehpur, Tehsil Mukerian, Block Talwara, District Hoshiarpur. It seeks quashing of orders dated 10.09.2007 and 23.11.2015, Annexures P-2 and P-3 respectively, whereby the DDPO-cum-Collector, Hoshiarpur, dismissed the eviction petition filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for brevity, 'the 1961 Act') and the said order has been further upheld by respondent No.2.

[2] The controversy pertains to the land measuring 803 kanals 01 marla on which the Gram Panchayat claims to have its ownership. It

accordingly filed eviction petition alleging that the private respondents are in unauthorised possession of the said land. The authorities below have dismissed the eviction petition on the ground that the private respondents are in possession of the land since 26.01.1950 and that the land was never leased out by the Gram Panchayat. It has been further held that the land stands partitioned amongst the proprietors way back on 01.03.1976 and the partition proceedings were never challenged by the Gram Panchayat.

[3] On the other hand, the star contention raised on behalf of the petitioner-Gram Panchayat is that it had earlier filed a petition under Section 11 of the 1961 Act seeking declaration of its title qua the suit land. The said petition was decreed in favour of the Gram Panchayat and the said order has attained finality. It is, thus, contended that once the Gram Panchayat has been held to be owner of the land in dispute under Section 11 of the 1961 Act, it is fully justified to seek eviction of the private respondents under Section 7 of the Act *ibid*.

[4] Learned counsel for the private respondents, on the other hand, contends that the order passed under Section 11 of the 1961 Act has no bearing in the instant case for the reasons that (i) the said order does not pertain to the land in dispute; and (ii) the said order was passed qua the land measuring 232 kanals, whereas the land in dispute is 803 kanals and 01 marla.

[5] Having pondered over the rival submissions but keeping in view the fact that the effect of order passed under Section 11 of the 1961 Act, if any, on the eviction proceedings has not been considered at all by the

authorities below, we are of the view that the matter requires re-

consideration by the Collector, Hoshiarpur. Suffice to observe that while re-considering the matter, the Collector will also be required to find out whether the order passed under Section 11 of the 1961 Act pertains to the same land and, if not, does it have any bearing on the instant eviction proceedings. All these issues are essentially questions of fact, which can be decided by the authorities on appreciation of the material on record. In this regard, the petitioner-Gram Panchayat shall be required to produce certified copy of the order passed under section 11 of the 1961 Act alongwith details of khasra numbers in relation to which such declaration was granted.

[6] For the reasons aforestated, the writ petition is allowed in part. The impugned orders dated 10.09.2007 and 23.11.2015 are set aside and the case is remitted to the Collector, Hoshiarpur for fresh adjudication in the light of the observations made hereinabove. It is made clear that we have not made any express view on the merits of the claim made by the parties, who are directed to appear before the Collector, Hoshiarpur on 27.11.2017.

(SURYA KANT)
JUDGE

October 26, 2017
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(SUDHIR MITTAL)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |