

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.4248 of 2017
Date of Decision: March 02, 2017

Gurcharan Singh

...Petitioner

Versus

Joint Development Commissioner, Mohali & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Raman Goklaney, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

Contention of the petitioner in the present writ petition is that the Gram Panchayat Sher Khan Wala, Block Ghal Khurd, Tehsil and District Ferozepur, through its Sarpanch, had initiated the proceedings under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction & Rent Recovery) Act, 1973 (for short "1973 Act") and as well as under Section 7 of the Punjab Village Common Land Act for ejection of the petitioner from Shop No.3 situated in Main Bazar, Village Sher Khan Wala and claiming payment of Rs.37,500/- as well as fine upto 20 times, which were allowed vide order dated 18.12.2015 (Annexure P-8).

Mr.Raman Goklaney, learned counsel for the petitioner submits that various documents were also placed on record to belie claim of the Gram Panchayat, However, statutory appeal was preferred under Section 9 of 1973 Act before the Commissioner, but the Commissioner without going into the merits and de-merits of the matter, dismissed the appeal on the

premise that the possession of the shop has been taken. He submits that the possession could have been restored had the Commissioner heard the matter on merits by taking into consideration the oral submissions and as well as the grounds of appeal as it is settled law that if a decree is executed, the appeal does not become infructuous and the provisions envisaged under Section 144 of the CPC can be made applicable. In this regard, he has drawn the attention of this Court to the operative part of the impugned order dated 31.8.2016, which reads thus:-

“The counsel for the respondent Gram Panchayat during the course of arguments while submitting Rapat Roznaamcha (Daily Diary Report) contended that the Gram Panchayat has taken the possession of the shop in question according to law. Therefore, the appeal of the appellant cannot proceed. Therefore, the appeal is liable to be dismissed having become infructuous.

After hearing the arguments of the counsels of both the parties, I have reached to the conclusion that the Gram Panchayat has taken over the possession of the shop in question. Therefore, the appeal of the appellant is not liable to be maintained in this Court. Therefore, the appeal case is hereby dismissed after having become infructuous.

Order has been pronounced.

S.A.S.Nagar

Sd/-

31.08.2016

Commissioner.”

I am in agreement with the contention of the learned counsel for the petitioner as the Commissioner could not have rejected the appeal on the ground of objection having been taken by the Gram Panchayat allegedly branding the appeal to have been rendered infructuous on account of having taken possession of the shop. It is settled law that even if the decree has been executed, the pendency of the appeal would not be rendered

infructuous, but can be decided on merit. In case any of the parties to the lis succeeds, particularly if the order is set-aside, he can always seek restoration of the possession as per the provisions of Section 144 CPC.

Resultantly, I deem it appropriate to remand the matter back to the Commissioner by setting-aside the order under challenge without issuing notice to the other side in order to defray the costs of litigation and waste of time. In my view, the findings are not conforming to the statutory requirement of law.

The impugned order is hereby set-aside and the matter is remitted back to the Joint Development Commissioner (I.R.D.), exercising the powers of Commissioner to decide Appeal No.13 of 2016 preferred under Section 9 of 1973 Act afresh after affording opportunity of hearing to both the parties by passing a speaking and detailed order.

Writ Petition stands disposed of.

March 02, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No