

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No.26106 of 2018
Date of Decision: 16.10.2018

Amar Singh

..... Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present: Mr. Man Mohan, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Manoj Dhankhar, AAG, Haryana.

MAHABIR SINGH SINDHU J.

Petitioner has filed the present writ petition for issuance of a writ in the nature of mandamus directing respondent No.2-Collector-cum-Deputy Commissioner, Panchkula not to proceed further with the appeal titled as “Gram Panchayat, Naya Gaon vs. Amar Singh” till the decision of the Civil Suit No.74 of 2017 pending before the learned Civil Judge (Sr.Divn.), Panchkula.

Brief facts of the case are that petitioner is claiming to be in possession of a house comprised in Khasra No.80 and 76, situated in Bazigar Colony, village Naya Gaon, Tehsil and District Panchkula for the last 60 years and there is a common passage on the eastern side of the same.

In the year 1994, due to some harassment by the then Sarpanch as well as Members of the Gram Panchayat, petitioner filed a Suit for permanent injunction not to interfere in his peaceful possession and which

was decreed by learned Civil Judge (Senior Division), Panchkula vide judgment and decree dated 23.08.1999 (P-1) and no further challenge was made by the defendants therein and as such, the same has become final. On 02.09.2016, Gram Panchayat, Naya Gaon-respondent No.3 filed a suit for declaration to the effect that judgment and decree dated 23.08.1999 is null and void and prayed for setting aside of the same but since matter was not pursued, therefore, resulted into dismissal for non-prosecution by learned Civil Judge (Junior Division), Panchkula, vide order dated 30.05.2017 (P-2). In the interregnum, in the year 2013, the Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands Act (for short 'the Act') against the petitioner for ejectment but the same was dismissed by the Assistant Collector, Ist Grade, Panchkula vide order dated 15.07.2016 (P-3) and an appeal there against was preferred before the Collector, Panchkula and during pendency thereof an inspection report dated 28.12.2016 was submitted regarding the passage in question by Sadar Kanungo, Panchkula (P-4). The Collector, Panchkula, vide order dated 03.01.2017, came to the conclusion that there was no passage as per the revenue record to reach the house of the petitioner and the only passage is through Khasra No.76 which belongs to Gram Panchayat. Aggrieved against the order dated 03.01.2017, Gram Panchayat preferred a revision petition before Commissioner, Ambala Division, Ambala and the same was disposed of vide order dated 13.12.2017 while setting aside the order passed by the Collector and the matter was remanded back to Collector to decide the appeal afresh after hearing both sides. In these circumstances, the appeal is pending before the Collector against the order dated 15.07.2016.

It is also necessary to mention here that Gram Panchayat filed

another Civil Suit bearing No.474 dated 17.08.2016 for permanent injunction regarding the passage in question but the same was dismissed for non-prosecution by Additional Civil Judge (Senior Division), Panchkula vide order dated 07.10.2017 (P-7). The petitioner has also filed a Civil Suit No.74 of 2017 (P-8) for permanent injunction against the Gram Panchayat which is stated to be pending before the Civil Judge (Sr.Divn.), Panchkula and the petitioner wants that till the decision of the said Civil Suit, the Collector be directed not to proceed with the appeal, pending before him.

It is contended by learned counsel for the petitioner that since a petition filed under Section 7 of the Act by the Gram Panchayat has already been dismissed by Assistant Collector vide order dated 15.07.2016 (P-3) and an appeal there against is pending and in case, the same is decided prior to the Civil Suit then his Civil Suit will be rendered infructuous. Thus, he has prayed that till the decision of the Civil Suit, the Collector be directed not to proceed with the appeal.

Heard learned counsel for the parties and perused the paper book.

There is no dispute that against the order passed by the Assistant Collector Ist Grade while exercising the power under Section 7 of the Act, the remedy of appeal is provided to the aggrieved party under Section 13-B of the Act and the same is pending at the instance of the Gram Panchayat. The dispute is regarding Khasra No.76 and which Gram Panchayat is claiming to be *Shamlat deh* and that did not find favour by the Asstt. Collector Ist Grade. Be that as it may, the statutory appeal preferred by the Gram Panchayat is pending before the Collector and thus, this Court will refrain from issuing a mandate to the said authority not to proceed with

the same because that will be a interdict *de hors* the provisions of the Act and the law is well settled that no mandamus can be issued contrary to law while exercising power under Article 226 of the Constitution.

In view of the above, this Court has no option except to dismiss the present writ petition being without any merit. Consequently, the same is dismissed.

The observations made above may not be construed as an expression of the opinion on the merits of the appeal pending before the Collector.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

16.10.2018

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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No