

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

CWP No.1783 of 2016(O&M)

Date of Decision:-30.04.2019

**Gram Panchayat Nurpur Lubana, Sub Tehsil Dhilwan, District
Kapurthala through its Sarpanch Sukhinder Kaur.**

.....Petitioner.

Versus

State of Punjab & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present:- Mr. Raj Kumar Garg, Advocate for the Petitioner.

Ms. Anu Pal, Deputy Advocate General, Punjab.

Mr. Vikram Singh, Advocate for respondent no.4.

JASWANT SINGH, J.(ORAL)

Gram Panchayat Nurpur Lubana, Sub Tehsil Dhilwan, District Kapurthala has invoked the jurisdiction under Article 226 of the Constitution assailing the order dated 18.12.2015 (**P-10**) passed by Appellate Authority/Director Rural Development and Panchayat, Punjab, whereby the appeal filed by Samitter Singh-respondent no.4 filed against the order of Collector, Kapurthala dated 15.1.2015 (**P-6**), whereby title suit filed by Samitter Singh under Section 11 of The Punjab Village Common Lands Act 1961 was allowed and order 15.1.2015 (**P-6**) has been set aside.

The conceded facts are that the land measuring 02 Kanals and

Kanals and 10 Marlas recorded as *Shamlat Deh* is stated to be in the unauthorised possession of Samitter Singh. The Gram Panchayat sought the eviction of respondent no.4 by filing a petition under Section 7 of the 1961 Act. During the pendency of the eviction proceedings, Samitter Singh filed a separate suit under Section 11 leading to the Eviction proceedings to be kept in abeyance. The learned Collector based on the entries in the jamabandies for the year 1958-59 onwards and mutation no.287, showing the ownership to be vesting in Gram Panchayat and the Samitter Singh having failed to lead any evidence to show his individual cultivating possession prior to 26.01.1950, decided the suit against Samitter Singh and in favour of Gram Panchayat vide order dated 05.05.2015 (**P-9**). The appeal against the eviction order is stated to be pending.

As regards title suit under Section 11 of the 1961 Act filed by Samitter Singh, the learned Collector, Panchayat Lands after hearing both sides and perusing the material available on record, vide order dated 15.1.2015(P-6) held that according to jamabandi for the year 2011-12, the land in question was owned by Panchayat deh and in the column of ownership its ownership was recorded. Samitter Singh could not produce any record or evidence to prove that he was in possession of the land in question. In his cross examination it was stated by him that he was owner of 2.75 killas of land out of which he had purchased 10 kanals of land and rest was ancestral. It was further stated by him in his cross examination that land in dispute measuring 2 kanals 5 marlas had been calculated by him orally, of which he had no right. Thus, it was found that he could not prove his ownership or possession prior to 1950. It is in these circumstances that his title suit was dismissed.

The appeal filed by Samitter Singh against the order dated 15.01.2015 (P-6) has been allowed vide impugned order dated 18.12.2015 (P-10). The operative portion of the order reads as under:-

“ After hearing the arguments of both the parties and after perusal of the record on the file, I have come to the conclusion that Gram Panchayat has not produced any record in the Court below or in this Court showing that the land in dispute is being used for the common purposes. According to jamabandi for the year 2011-12, the girdawri is in favour of appellants, but the Gram Panchayat has not produced any record challenging the said girdawri. Vide order dated 17.12.2014 suit for permanent injunction was decided in their favour in a civil suit by Sh. Sameet Sabharwal, PCS., Civil Judge, Jr. Division, Kapurthala. Gram Panchayat has not produced any such order vide which the appellants are proved to be in illegal possession. Therefore, in this way the plea of the appellant is acceptable that their possession is prior to 26.01.1950 from the time of their forefathers. Therefore, the order passed by lower Court is set aside and the appeal is accepted. ”

At the time of hearing today, without going into the rival contentions, counsel for the parties are agreed that the order passed by the Appellate Authority is a non speaking and non reasoned order, which cannot be sustained in the eyes of law. It is conceded that the fresh determination based on the material on record would be required to be passed by the Appellate Authority.

In view of the above, counsel for the parties have no objection if the impugned order dated 18.12.2015 (P-10) is set aside with the direction to the Appellate Authority to pass a fresh and speaking order after affording due opportunities of hearing to the parties.

Accordingly the impugned order dated 18.12.2015 (P-10) is hereby set aside and parties are directed to appear before the Appellate Authority on 21.05.2019 which shall decide the appeal within six months from the date of appearance of the parties i.e. 21.05.2019 by passing a fresh and speaking order after affording due opportunities of hearing to the parties.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

April 30, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>