

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

214

**CWP No.23655 of 2016
Date of Decision: 16.10.2019**

Rana Singh and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Aakash Singla, Advocate
for the petitioners.

Mr. Shreesh Gupta, Sr. D.A.G., Punjab
for respondents No.1 to 3.

Mr. Raj Kumar Garg, Advocate
for respondent No.4.

RAKESH KUMAR JAIN, J. (ORAL)

This petition is directed against the order dated 09.02.2016 passed by the District Development and Panchayat Officer (exercising the powers of Collector), Sangrur (for short, "the Collector") by which petition filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "the Act") by respondent No.4 seeking eviction of the petitioners from the *Gair Mumkin Sath*, land reserved for common purposes, has been allowed and the order dated 07.09.2016 by which the Joint Development Commissioner (exercising the powers of Commissioner) has dismissed the appeal.

Counsel for the petitioner has submitted that the Court of the Collector had recorded the following order on 09.02.2016:

"File is presented. Counsels for the applicant and respondent came present. Respondent filed written statement. It is taken on record. Both the parties argued

the matter. Application of the applicant is accepted. Orders in detail are separately passed."

It is submitted that while passing the separate order on the same day, respondent No.3 forgot to refer to the written statement filed by the petitioners and has rather observed that "but after that learned advocate has not filed any reply." Thereafter, the petition filed under under Section 7 of the Act has been allowed on the ground that the land in dispute is a *Gair Mumkin Sath* and the petitioners are in unauthorised occupation. It is further submitted that the petitioners had filed the appeal against the order dated 09.02.2016 along with the written statement filed by them before the Collector but the appeal also met with the same fate as it was dismissed on 07.09.2016.

Counsel for the petitioners has contended that the order passed by the Collector is patently illegal as it is contrary to the record because on the same day when the impugned order was passed on 09.02.2016 he had passed a separate zimini order in which he has recorded that the petitioners have filed the reply/written statement to the petition filed under Section 7 of the Act but while dictating the order, for the purpose of allowing the petition, did not refer to the reply at all. In this regard, he has relied upon a decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra Vs. Ramdas Shrinivas Nayak and another, 1982 AIR 1249 SC*** in which it has been held that the matters of judicial record are unquestionable and not open to doubt. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call the attention of the very Judges who have made the record to the fact that the statement

made with regard to his conduct was a statement that had been made in error. It is also held that the record of the Courts has to be accepted until and unless proved to the contrary.

On the other hand, counsel for respondent No.4 has submitted that the reply attached with the present petition is a forged one but he could not deny the fact that a zimni order was recorded on 09.02.2016 in which the Collector has categorically observed that the petitioners have filed the written statement on the said date.

In view of the aforesaid facts and circumstances, it is apparent from the record that there is an error committed by the Collector while allowing the petition in which it has been recorded that the petitioners had not filed the reply to the petition under Section 7 of the Act. It is a serious lapse on the part of the Collector which cannot be ignored by this Court. Thus, the petition is hereby allowed and the orders passed by the Courts below are hereby set aside and the matter is remanded back to the Collector to decide the same afresh after taking into consideration the written statement filed by the petitioners and also the other documents which are already on record.

The parties are directed to appear before the Collector on 30.10.2019

The Collector is further directed to decide the petition filed under Section 7 of the Act by the Gram Panchayat as early as possible but preferably within a period of three months after giving adequate opportunity to the parties.

At this stage, counsel for respondent No.4-Gram Panchayat has prayed that the petitioners may not take the advantage of the

situation and raise construction in the meantime.

Therefore, we direct that the parties shall maintain status quo as it exists today till they appear before the Collector.

(RAKESH KUMAR JAIN)
JUDGE

16.10.2019		(ARUN KUMAR TYAGI)
Vinay		JUDGE
	Whether speaking/reasoned	Yes/No
	Whether reportable	Yes/No