

CWP No.29038 of 2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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1. CWP NO. 29038 OF 2018

Sudesh Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

AND

2. CWP NO.12579 OF 2018

Date of Decision: 24.07.2019

Sanjay deceased through LRs

.....Petitioner

Versus

State of Haryana and others

.....Respondents

**CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE AVNEESH JHINGAN**

Present: Mr.Vikram Singh Dhakla, Advocate for the petitioners in both cases.
Mr. Sandeep Moudgil, Addl. Advocate General, Haryana.
Mr. Sanjiv Gupta, Advocate
for respondent no.6 in CWP-29038-2018 and
for applicants-respondents no.6 and 7 in CWP-12579-2018.
Mr. Vinod K. Kanwal, Advocate
for respondent no.4 in CWP-29038-2018.
Mr. Nitin Meel, Advocate
for respondent no.5 in CWP-12579 -2018.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of two writ petitions bearing CWP No.29038 of 2018 and CWP No.12579 of 2018 as the issue involved in both the writ petitions is same. However, for the sake of convenience, facts are being taken from CWP-29038-2018.

An interesting question has arisen in this petition as to whether a revision under Section 13-B(2) of the Punjab Village Common Lands (Regulation), Act, 1961 (for short 'the Act of 1961') would be maintainable before the Commissioner against the order passed by the Collector on an application filed under Section 7 of the Act of 1961?

In brief, the facts are that respondent no.5 filed an application under Section 7(2) of the Act of 1961 against the present petitioners for seeking their eviction from the land falling in khasra no.14 (6-7), stated to be a Gair Mumkin Abadi, on the ground that the said land is a shamlat deh. The application was allowed by the Assistant Collector 1st Grade (for short 'ACIG'), Indri District Karnal vide its order dated 12.02.2018 (Annexure P-5). An appeal filed by the petitioners against that order under Section 13-B (1) of the Act of 1961 was dismissed by the Collector on 22.10.2018 (Annexure P-7). The petitioners have, thus, approached this Court by way of writ petition invoking the extra ordinary jurisdiction under Articles 226/227 of the Constitution of India on the ground that the writ petitioners have no other remedy under the statute.

At the threshold, counsel appearing for respondent no.6 has submitted that the petitioners have a remedy of revision against the order of Collector in terms of Section 13-B(2) of the Act of 1961. In this regard, he has relied upon a Division Bench judgment of this Court in the case of **Orion Infrastructure Ltd. Versus Commissioner, Gurgaon Division, Gurgaon and others** **2012(3) RCR (Civil) 247.**

On the other hand, counsel for the petitioners submits that the remedy of revision under Section 13-B(2) of the Act is confined to an order passed in terms of proviso of sub section 1 of Section 7 of the Act of 1961. In support of his contention, he has relied upon division Bench judgments of this Court rendered in **Leela Ram versus Gram Panchayat, Jailaf 1997(4) RCR (Civil) 354 and Gram Panchayat village Badangi versus State of Haryana and others 2015 (23) RCR (Civil) 683.**

We have heard learned counsel for the parties and perused the record with their assistance.

In order to decide the aforesaid question, it would be relevant to refer to certain provisions of the Act of 1961 at the first instance which are reproduced as under:-

Section 7 of the Act of 1961

“7.(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by panchayat or an inhabitant of the village or the Block Development and Panchayat Officer of Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorized possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and Put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall

record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

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(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under provision to sub-section (1), shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.

7A. *Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no court other than that of the Judicial Magistrate of the first class shall take cognizance of, or try, any offence punishable under this Act.*

7B. *No court shall take cognizance of any offence under this Act except on the complaint of, or upon information received by the Block Development and Panchayat Officer or District Development and Panchayat Officer or District Development and Panchayat Officer or any other authorised by the State Government in this behalf. Such proceedings shall be initiated only after the ejectment order against such person has become final under section 7]*

Section 13-B of the Act of 1961

1/13B.(1) *Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector*

may after hearing the appeal, confirm, vary or reverse the order as he deems fit :

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Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of section 7, is deposited with the Collector.]

(2) The Commissioner may, suo motu [or on application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time] call for the record of any proceedings pending before, or order passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit :

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

A bare perusal of Section 7 of the Act of 1961 would show that it has three parts. Firstly, Section 7(1) deals with application to be filed before the ACIG who has the jurisdiction in the village, either by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer (for short ‘BDPO’) or Social Education and Panchayat Officer, or any other officer authorized by the BDPO, to decide by way of summary enquiry as to whether the person against whom the application has been filed is in unauthorized occupation of the property recorded in the record as shamlat deh.

The proviso to section 7(1) of the Act of 1961 says that in the proceedings initiated under Section 7(1) for the purpose of seeking eviction of unauthorized person from the shamlat deh, question of title if raised by the respondent therein and proved *prima facie* on the basis of document that the question of title is duly involved then the ACIG would first require to record a finding and decide the question of title in the manner laid down in the said Section.

The second part of Section 7 of the Act of 1961 says that the ACIG would require a person to pay penalty in respect of land or other immovable

property which was or has been in his unauthorized possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum.

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Insofar as Section 7(3) of the Act of 1961 is concerned, it says that the procedure for deciding the question of title under proviso to sub section (1), shall be the same as laid down in the Code of Civil Procedure, 1908.

Section 13-B of the Act of 1961 deals with appeal and revision. It also has two parts. Section 13-B (1) says that if any person is aggrieved by any order passed by ACIG under Section 7(1) or 7(2) of the Act of 1961 then he may prefer an appeal to the Collector within a period of 30 days in the manner provided. Section 13-B(2) of the Act of 1961 gives *suo motu* power to the Commissioner of revision or if an application is made to him by any person who is aggrieved against the order passed under the proviso to sub-section (1) of Section 7.

The argument of learned counsel for the petitioners is that the power of Commissioner is restricted to hear a revision petition only against an order passed in terms of under the proviso to sub section (1) of Section 7 of the Act of 1961. Whereas the argument of learned counsel for the respondents is that the power of Commissioner to hear the revision is also against any kind of order passed by any authority subordinate to him for the purpose of satisfying himself to the legality or propriety of the proceedings or order. He has not denied that the Commissioner has no power for taking into consideration the order passed under proviso 1 to sub section 7 of the Act of 1961. Argument is that he has got further power to decide by way of revision about the legality or propriety of any order passed by the authority subordinate to him.

The judgments relied upon by the learned counsel for the petitioners

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in **Leela Ram's case (supra) and Gram Panchayat village Badangi's case (supra)**

are only to the effect that after an order is passed under proviso to Section 7(1) of the Act of 1961 then the revision would be maintainable. There is no dispute that revision will be maintainable but the question is if the order is passed under Section 7(1) or 7(2) of the Act of 1961, then the Commissioner would have the jurisdiction or not? This question is answered by this Court in case of **Orion Infrastructure Ltd.v. Commissioner, Gurgaon Division, Gurgaon and others** **2012(3) RCR (Civil) 247** and in this regard reference can be had to para 37 of this judgment which read as under:-

"Para 37

An argument has been raised by learned counsel for the petitioner that under sub-section (2) of [Section 13-B](#) of the Act of 1961, the Commissioner can only entertain the revision either suo motu or on an application made to him by a person aggrieved against the order passed under the proviso to sub-section (1) of [section 7](#), and not against an order passed by the Assistant Collector 1st Grade under [Section 13-A](#) of the Act of 1961. Therefore, the order of the Commissioner setting aside the order of the Assistant Collector 1st Grade, in exercise of suo motu power under [Section 13-B](#) (2) of the Act of 1961 is wholly without jurisdiction. This contention of learned counsel for the petitioner cannot be accepted. If this contention is accepted, then the words "call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order" used in [Section 13-B](#) (2) will become redundant. It is fundamental principle of interpretation that every word of the statute is to be given meaning. The Court cannot give interpretation to a provision by rendering certain portion or words of the provision as meaningless or redundant. In Aswini Kumar Ghose Vs. Arabinda Bose, AIR 1952 SC 369, it has been held that "It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute".

Similar observation was made in Rao Shiv Bahadur Singh & Anr. State of Vindhya Pradesh, AIR 1953 SC 394 that "It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application". In J.K. Cotton Spinning & Weaving Mills Co. Ltd. Vs. State of U.P., AIR 1961 SC 1170, it was observed that "the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect". The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. In the present case, we do not find any reason to give construction to the provision of [Section 13-B](#) (2) of the Act of 1961, by rendering some portion or words of the provision as meaningless or redundant. Sub-section (2) of Section 13- B of the Act of 1961 deals with two types of revisions, firstly on the application made by a person aggrieved against an order passed under the proviso to sub-section (1) of [section 7](#), and secondly, the Commissioner has been given suo motu power to revise or modify any order passed by any authority subordinate to him. The Commissioner has been given wide suo motu power to pass any order in relation to any proceedings or order passed by any authority subordinate to him, as he may deem fit."

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We are in agreement with the view take by the Division Bench in the case of **Orion Infrastructure's case (supra)** because in this case the Hon'ble Court has defined the powers of Commissioner to hear the revision petition. It is held that no doubt the Commissioner has the power to hear the revision against the order passed in terms of proviso to Section 1 of sub section 7 of the Act of 1961 but his other powers cannot be made redundant which says that the Commissioner would have the power to call for the record of any proceedings pending before, or orders passed by, any authority according to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order.

In view of the aforesaid facts and circumstances, following the dictum of this Court in Orion Infrastructure's case (supra), we answer the question posed in the beginning of the judgment to the effect that for the purpose of satisfying himself as to the legality or propriety of the proceedings or order passed by the Collector in a proceeding under Section 7(1)(2) of the Act of 1961, the Commissioner would be competent to hear the revision petition.

Thus, in view of the above, the present writ petition is not maintainable because the petitioners have the remedy before the Commissioner.

Learned counsel for the petitioners has prayed for withdrawal of the petition to file a revision petition in accordance with law before the Commissioner.

Dismissed as withdrawn.

In case any such revision petition is filed within a period of one month from the date of receipt of certified copy of this order, said revision shall be entertained by the Commissioner without raising the question of limitation either by him or the other side.

Till then the order of dispossession of the petitioners, already granted, shall continue.

CWP-12579-2018

Faced with the order passed in CWP-29038-2018, learned counsel for the petitioners prayed for withdrawal of the petition to file a revision petition in accordance with law before the Commissioner.

Dismissed as withdrawn.

In case any such revision petition is filed within a period of one month from the date of receipt of certified copy of this order, said revision shall be entertained by the Commissioner without raising the question of limitation either by him or the other side.

Till then the order of dispossession of the petitioners, already granted, shall continue.

(RAKESH KUMAR JAIN)
JUDGE

(AVNEESH JHINGAN)
JUDGE

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Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No

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