

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

CWP No.7787 of 2020 (O&M)

Date of decision: July 17, 2020

Sanju

...Petitioner

Versus

Collector, Kurukshetra and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Rajinder Goyal, Advocate for the petitioner
Mr. Ankur Mittal, Addl. Advocate General, Haryana.
Mr. Sanjiv Gupta, Advocate for respondent No.3.

Rakesh Kumar Jain, J.(oral)

Case taken up through Video Conferencing.

This order shall dispose of two writ petitions i.e. CWP No.7787 of 2020 and CWP No.7793 of 2020, as common questions of law arise in both these cases. However, the facts are being extracted from CWP No.7793 of 2020.

Petitioners have challenged the orders dated 25.11.2019 (Annexure P-2), passed by respondent No.2 and 4.3.2020 (Annexure P-3) passed by respondent No.1 and also for quashing the order dated 21.05.2020 (Annexure P-4) passed by respondent No.2.

On 8.6.2020 following order was passed by this court:-

“Case taken up through Video Conferencing.

The petitioner(s) has challenged the order dated 04.03.2020 passed

by respondent No.1 and order dated 21.05.2020 passed by respondent No.2 in these petitions. It is submitted that respondent No.4-Deshraj filed a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) for seeking declaration that the Gram Panchayat (Respondent No.3) is the owner of the land in dispute. The said suit was decreed on 25.04.2012. The appeal filed by the petitioner was dismissed on 27.03.2018. The petitioner thereafter filed a revision before the Financial Commissioner which is now fixed for 15.07.2020. It is submitted that during the pendency of the revision before the Financial Commissioner, Deshraj-respondent No.4 filed an application under Section 7 of the Act seeking eviction of the petitioner from the land in question. In the said application, the petitioner represented that since the question of title which could have been raised by the petitioner before the AC 1st Grade also in the proceedings under Section 7, is now pending adjudication by way of a separate suit filed by Deshraj himself, before the Financial Commissioner, therefore, the proceedings initiated under Section 7 are patently illegal. The AC 1st Grade adjourned the hearing of the application sine die vide order dated 25.11.2019. However, the Gram Panchayat filed an appeal before the Collector against the order dated 25.11.2019 which has been allowed by order dated 24.03.2020 directing AC 1st Grade to decide the application filed under Section 7 of the Act within a period of two months, on the ground that no stay is involved in the revision filed by the petitioner.

Learned counsel for the petitioner, *inter alia*, argued that firstly, the Collector had erred in the exercise of his jurisdiction in remanding the case back to the AC 1st Grade to decide it within a period of two months knowing fully well that the issue involved is still pending before the Financial Commissioner and would have a great bearing on the decision of the application filed under Section 7 of the Act in case it is held by the Financial Commissioner that the Gram Panchayat is not the owner of the land in dispute, then the application filed by Deshraj for seeking eviction of the petitioner from the land in dispute on the ground that it falls within the definition of *Shamlat* shall automatically become redundant and

secondly, the stay granted by the AC 1st Grade is also without jurisdiction because AC 1st Grade can only decide the issue as to whether the land in question is *shamlat* and the occupation of the petitioner over it is unauthorized.

Notice of motion for 25.06.2020.

Till then operation of both the impugned orders shall remain stayed.

A photocopy of this order be placed on record the connected file of this case.”

On 10.7.2020 the following order was passed by this court:-

“Heard through video conferencing.

CM-5537-2020 in CWP-7787-2020

CM-5534-2020 in CWP-7793-2020

Applications are allowed, as prayed for. Exemption sought is granted.

CM-5540-2020 in CWP-7787-2020

CM-5541-2020 in CWP-7793-2020

These applications have been filed by respondent No.3-Gram Panchayat for issuing direction to the petitioner(s) to deposit the mesne profit for unauthorised occupation of the land of Gram Panchayat.

Notices of the applications were issued.

Learned counsel for the non-applicant-petitioner(s) submits that reply has already been filed.

To be heard with the main case(s).

CM-6013-2020 in CWP-7787-2020

CM-6026-2020 in CWP-7793-2020

The prayer in these applications is for placing on record replication to the written statement filed by respondent No.3 along with Annexure P-5.

Applications are allowed. Replication(s) is taken on record. Copy of the same be furnished.

Registry is directed to tag the same at appropriate place.

Main case(s)

Learned counsel for Gram Panchayat-respondent No.3

submits that possession of the disputed premises, qua which eviction proceedings are pending, would not be taken without adopting due course of law.

Learned counsel for the petitioner(s) prays for time to seek instructions.

List for further consideration on 17.07.2020.

In view of the statement made by the learned counsel for respondent No.3-Gram Panchayat, the prayer for extending the interim order dated 08.06.2020 is declined.

A photocopy of this order be placed on the file of connected case(s).”

Counsel for the petitioners has submitted that after the order dated 25.11.2019 was passed, the respondent No.2 has passed the order of eviction against the petitioners in terms of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 despite the fact that revision petition filed by the petitioners before the Financial Commissioner under Section 13 (AAA) of the Act is pending.

Counsel for the petitioners has made an innocuous prayer that he may be allowed to withdraw this petition to challenge the order dated 15.07.2020, by which eviction has been ordered but since their crop is already there on the land in question, therefore, the respondents may be restrained from taking forcible possession till the time the appeal is filed. He has also submitted that he will file the appeal within a period of ten days but during this period the petitioners may not be dispossessed.

Mr. Ankur Mittal, Additional Advocate General, Haryana and Mr. Sanjiv Gupta, counsel for respondent No.3 have not raised any objection in this regard. Consequently, the present petition is hereby

disposed of as having been withdrawn but with liberty to the petitioners to challenge the order dated 15.7.2020 stated to have been passed against them by respondent No.2 under Section 7 of the Act, by way of a statutory appeal, within a period of ten days. It is made clear that the respondents shall not interfere into the possession of the petitioners for a period of ten days. It is also made clear that the petitioners shall have to make a prayer for stay in their appeal independently and the court of appeal shall not be swayed with the stay granted by this court today in order to protect the petitioners to file the appeal. It is further made clear that the Assistant Collector 1st Grade/respondent No.2 shall provide a copy of the order dated 15.7.2020 forthwith to the petitioners and a period of ten days shall be counted from the date of receipt of certified copy of the said order.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

July 17, 2020
'Rajpal'

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No