

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

Civil Writ Petition No. 4415 of 2019

Date of Decision: December 08 , 2022.

Hartawal Singh through LRs and others

..... PETITIONER (s)

Versus

Joint Development Commissioner, Punjab and others

..... RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

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

Mr. K.S.Kang, Sr. DAG, Punjab.

Mr. Pankaj Garg, Advocate
for respondent No.3.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This writ petition has been filed for setting aside order dated 12.09.2018, Annexure P8, passed by the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) vide which the matter has been remanded to the Consolidation Officer for a decision afresh after setting aside order dated 23.08.1982 passed by the District Development and Panchayat Officer, Bathinda (exercising the powers of Collector).

It is submitted that respondent-Gram Panchayat filed application

Recovery) Act, 1973, seeking ejectment of the petitioners from the property in question measuring 7 Kanals as described therein. Said application of the Gram Panchayat was dismissed by the District Development and Panchayat Officer, Bathinda (exercising the powers of Collector) vide order dated 23.08.1982. It was observed that keeping in view the documents produced by the petitioners proving them to be in cultivating possession of the suit property through their predecessors-in-interest since 1942-43, rights of the petitioners are protected under Section 4(3)(ii) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the '1961 Act'). Appeal challenging decision dated 23.08.1982 was filed by the respondent-Gram Panchayat which was allowed by the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) on 23.06.1987.

Aggrieved therefrom, petitioners filed CWP No.5076 of 1987 which was admitted on 07.08.1987 with ejectment of the petitioners being stayed. CWP No.5076 of 1987 was finally allowed on 30.10.2014. Order dated 23.06.1987 passed by the Appellate Authority was set aside and the matter remitted to the Appellate Authority to decide respondent-Gram Panchayat's appeal afresh in accordance with law as earlier as possible but not later than six months from the date of receipt of copy of the order. It was observed in order dated 30.10.2014 in CWP No.5076 of 1987 as under:-

“7. We have perused both sets of revenue entries with the able assistance of learned counsel for the parties. We find from the jamabandis for the years 1942-43, 1946-47, 1954-55, 1958-59 (Annexures P-12 to P-15) that predecessor-in-interest of the petitioners, namely, Gurdial Singh was in possession of Khasra Nos.778/704 (5 kanals 7 marlas) and 780/197 (0 kanal, 10 marlas).

8. The petitioners have placed on record the order passed by Consolidation Officer, Mansa dated 29.05.1961 (Annexure P-3) according to which Gurdial Singh-shareholder was in possession of Khasra No.778/704 and 780/197 and in lieu of these two Khasra numbers, he was allotted and given possession of Khasra No.202/5 (7 kanals 0 marla) and Khasra No.79/1/1 (1 kanal 3 marlas).

9. It may be further seen from the jamabandis for the year 1961-62 onwards that Gurdial Singh is shown in possession of Khasra Nos.79/1/1 and 202/5. If that is so, it is apparent that the petitioners who were in possession of old Khasra Nos.778/704 and 780/197 continued in possession of the substituted Khasra Nos.202/5 and 79/1/1.

10. The reason assigned by the Appellate Authority, thus, cannot be accepted.

11. Faced with this, learned counsel for the Gram Panchayat has questioned the very validity and jurisdictional competence of the Consolidation Officer in passing the order dated 29.05.1961 (Annexure P-3).

12. In our considered view, the above-stated question need not be dwelled upon by this Court for the reason that the Appellate Authority has not even made a mention of the order dated 29.05.1961 passed by the Consolidation Officer. In other words, a material piece of evidence which is duly produced on record went unnoticed and has been overlooked by the Appellate Authority while accepting the appeal of the Gram Panchayat. For the reasons aforesaid, we are of the considered view that the order passed by the Appellate Authority dated 23.06.1987 cannot sustain. The question of validity or relevance of the order passed by the Consolidation Officer can be gone into by the Appellate Authority while deciding the appeal afresh after taking into consideration the entire evidence on record.”

Accordingly, order dated 23.06.1987 was set aside and Appellate

Authority directed to decide the appeal of the Gram Panchayat as early as possible but not later than six months from date of receipt of copy of the order.

Pursuant to passing of order dated 30.10.2014 by this High Court, appeal filed by the Gram Panchayat is stated to have been dismissed vide order dated 26.12.2016 which reads as under:-

“Appeal is dismissed. Order written be issued.”

It is submitted that detailed order was never received, but petitioners received notice dated 29.06.2017 from the Joint Development Commissioner, Punjab (exercising the powers of Commissioner), which reads as under:-

“Former Joint Development Commissioner Shri S.S.Bains had dismissed this appeal on 26.12.2016 but he did not write detailed order till the date of his retirement i.e. 28.2.2017. Therefore, case is again listed for arguments on 16.08.2017. Notice be issued to both the parties.”

Thereafter the matter was heard once again by the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) wherein order dated 23.08.1982 passed by the District Development and Panchayat Officer, Bathinda (exercising the powers of Collector) was set aside and the matter remanded before the Consolidation Officer for passing fresh order after considering the material on record in respect to possession of the petitioners 12 years prior to the date of commencement of the 1961 Act after consideration of the following:-

- “1) Whether possession of respondent party is 12 years prior from the date of commencement of the Act.
- 2) Under whose possession is the land in dispute and whether this land is being used for common purposes or not.

- 3) Which party is proved to be owner of the land in dispute as per revenue record, pedigree table.
- 4) Whether Khasra No.202//5(7-0) was allotted to respondent party at the time of consolidation?'

Though challenge in the writ petition has been raised to the subsequent notice dated 29.06.2017 with the averment that there was no occasion for re-opening the matter once the appeal filed by the Gram Panchayat was dismissed on 26.12.2016 and that said action has been taken in a *malafide* manner, learned counsel for the petitioners does not press this argument and addresses arguments challenging validity of order dated 12.09.2018 passed by the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) subsequent to notice dated 29.06.2017. It is submitted that all the documents being available on record, there is no question of remand of the matter before the Consolidation Officer yet again.

Learned counsel for respondent No.3-Gram Panchayat submits that he has instructions to the effect that there is no objection in case impugned order dated 12.09.2018 is set aside and the matter remanded to the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) for a decision afresh after affording proper opportunity of hearing to respondent-Gram Panchayat.

Keeping in view the facts and circumstances of the case, especially the stand of the parties, order dated 12.09.2018 passed by the Joint Development Commissioner, Punjab (exercising the powers of Commissioner) is set aside. Matter is remanded to the Joint Development Commissioner, Punjab (exercising the powers of Commissioner), who shall consider the facts and circumstances of

the case as well as the material available on record and pass a fresh order after
affording due opportunity of hearing to all concerned.

Writ petition is disposed of, accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 08 , 2022.
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No