

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.

Date of decision : 21.09.2022  
1. CWP-13987-2022 (O & M)

RAVINDER SINGH AND ORS. ....Petitioners

Versus

STATE OF PUNJAB AND ORS. ....Respondents

2. CWP-32376-2019

GRAM PANCHAYAT AND ORS. ....Petitioners

Versus

JOINT DEVELOPMENT COMMISSIONER AND ORS.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR  
HON'BLE MR. JUSTICE N.S. SHEKHAWAT**

Present : Mr. J.S.Thind, Advocate and  
Mr. Sartaj Singh Thakur, Advocate  
for the petitioners in case CWP-13987-2022.

Mr. Baltej Singh Sidhu, Senior Advocate with  
Mr. Chandan Singh, Advocate  
for the petitioners in case CWP-32376-2019 and  
for the respondents No. 4 to 23 in case CWP-13987-2022.

Mr. Maninder Singh, DAG, Punjab.

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**SURESHWAR THAKUR, J. (Oral)**

1. The facts relevant to decide the instant petitions are that the members of the village proprietary body motioned the DDPO-cum-Collector, Jalandhar, for the relevant purpose. A copy thereof is annexed with petition bearing No. **CWP-32376-2019**, as Annexure P-1. The above case was filed against the respondents who were alleged to be in unauthorized possession of lands to which they had no lawful title.

2. The head note of the petition was cast in the hereinafter extracted manner.

“Petition under Section 3, 4 and 5 of the Punjab Public Premises Act and Section 7 of the Punjab Village Common Lands Act, 1961, for ejectment of respondents from land measuring 14 K comprising Khewat No. 328/319, Khatoni No. 448, Khasra No. 22//18 (6-0), 19 (8-0) of village Bajuha Kalan, Tehsil Nakodar and District Jalandhar.”

3. The learned Collector concerned, after allowing the petition, on 07.03.2018 ordered for the ejectment of the encroachers from the disputed land.

4. However, the aggrieved respondents preferred appeals against the afore order before the Joint Development Commissioner (IRD), Punjab. The above appeals became registered vide Nos.PUN/JDC/EVP- 001195/2018, 001178/2018, 001192/2018, 001197/2018, 001180/2018, 001163/2018, 001167/2018, 001194/2018, 001193/2018, 001169/2018, 001172/2018, 001198/2018 and 001176/2018, and, through a common order, they were decided on 11.09.2019. The operative part of the order made on the respective appeals constituted before the appellate authority, is extracted hereinafter.

“..... After hearing the Ld. Counsel of both the parties and on perusal of record on the file, I have come to the conclusion that respondent Nos. 3 to 21 have filed petition U/S 3, 4 and 5 of P.P. Act 1973 and under Punjab Village Common Lands (Regulations) 1961 in their personal capacity whereas the Collector was required to pass different order under the different provision of abovesaid Act, which have not been passed by the Collector. Therefore, the abovesaid one order passed by the Collector under two different Acts, has no value in the eyes of law. Respondents No. 3 to 23 and appellant himself admitted before the Court below that land in dispute is of Mushtarka Malkan. Therefore, the petition was required to be filed U/Section 3, 4 and 5 of the P.P. Act 1973 before the Court's below.

Principal of res-judicata is not applicable on the petition before the Court below because ejectment petition is not a summary trial. There are decisions of the Court in this regard. Therefore, I hereby set aside the impugned order passed by the Court below with a direction to the Court below to pass afresh order in accordance with law, by giving full opportunity to the parties within 3 months of the receipt of this order.....”

5. From a reading of the operative part of the order challenged before this Court, it becomes apparent, that the appellate authority had remanded the lis to the learned Collector concerned. However, the ground as taken therein, is comprised in the factum, that since the petition instituted before the Collector, was under different statutory provisions, thus, different orders were to be passed in respect of all the statutory provisions concerned. The implication is that, the learned Collector concerned, was impliedly directed to invite fresh petitions, for breaches being done to the relevant provisions, as carried in each of the statutes, as mentioned in the head note of the petition, as became initially cast before the Collector. However, the above would obviously untenably lead to different petitions under different statutory provisions, being separately cast, before the learned Collector concerned.

6. The above order of remand appears to be made in gross non appreciation of the fact that assumingly, even if there were encroachment(s) made by the errants concerned, upon Government lands or Panchayat land. Thus, not only the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, but also the provisions of Section 3, 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 rather became attracted. The reason being qua if, upon the Collector making a finding that there is an unauthorized occupation of panchayat lands, and that too only after his

determining the titles thereto of the contestants concerned, that he could pass a valid order of ejectment against the unauthorized occupiers of Government/Panchayat lands. However, significantly since the above determination, did also require its execution, through recourse being made to the apposite provisions carried in the Punjab Public Premises Act (supra) or through recourse being made to any other apposite provisions, as carried in the Punjab Village Common Lands (Regulation) Act, 1961. Thus, the above provisions were also required to be cast in the head note of the petition as aptly done. Moreover, a common/cumulative adjudication was required to be also made thereons.

7. Contrarily, the learned Appellate Authority concerned, has not made a keen application of mind to the above. Moreover, rather than deciding the appeals on merits, especially when the relevant evidence for making the relevant determinations' was available before him, it has proceeded to make an untenable order of remand, and, that too on flimsy pretext (supra).

8. Therefore, it was incumbent upon the learned appellate authority concerned, to, on the basis of material available on record, rather proceed to, make an adjudication on merits on the respective appeals (supra), than to on the above flimsy and erroneous ground, order for remand of the lis' concerned, to the learned Collector concerned, for the latter making a fresh decision in accordance with law, upon, impliedly different petitions under different statutory provisions being separately cast, before the learned Collector concerned.

9. In consequence, the writ petitions are allowed. The impugned order, as made by the learned Appellate Authority is quashed

and set aside. The learned Appellate Authority concerned, is directed to,

in accordance with law, make a fresh decision upon the appeals (supra), but only after hearing all concerned, and, also within eight weeks hereafter.

(SURESHWAR THAKUR)  
JUDGE

21.09.2022  
kavneet singh

(N.S. SHEKHAWAT)  
JUDGE

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