

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-14132-2022

Date of Decision: 23.11.2022

SHUBH LATA

..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Vineet Chaudhary, Advocate
for the petitioner.

Mr. Sandeep Jain, Additional A.G. Punjab.

LISA GILL, J.

Prayer in this writ petition is for setting aside order dated 28.09.2018 (Annexure P-1), passed by respondent no.3-District Development and Panchayat Officer-cum-Collector, Pathankot, District Pathankot whereby petition under Section 7 the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act'), filed by the Gram Panchayat has been allowed as well as order dated 28.12.2020 (Annexure P-3), passed by respondent no.2-Director, Rural Development & Panchayats Department, SAS Nagar (Mohali) (exercising the power of Commissioner), whereby appeal filed by the petitioner has been dismissed.

Contention on behalf of the petitioner while issuing notice of motion in this writ petition reads as under:-

“Learned counsel for the petitioner submits that order dated 28.12.2020 (Annexure P-3) has been passed by respondent no.2 without even affording an opportunity of hearing to the petitioner. Presence of Mr. Virender Partap Singh, Advocate, has been incorrectly marked in the said order whereas petitioner had already changed the counsel and Mr. Virender Partap Singh, Advocate, had not even appeared before respondent no.2 on 28.12.2020. Affidavit dated 25.08.2022 of Mr. Virender Partap Singh, Advocate, who is present in Court today, is taken on record subject to just exceptions.”

Despite service, none has appeared on behalf of respondent no.4-Gram Panchayat, Faridanagar. However, we do not feel it appropriate to adjourn the matter on this count, keeping in view the nature of the controversy.

It is stated that petition under Section 7 of the 1961 Act was incorrectly allowed by respondent no.3-the District Development & Panchayat Officer-cum-Collector, Pathankot, District Pathankot vide order dated 28.09.2018 (Annexure P-1).

Appeal challenging the said order was filed by the petitioner while pleading that as per demarcation report, no illegal possession over the property in question was found. It is submitted that petitioner's appeal was dismissed vide order dated 28.12.2020 (Annexure P-3), which was passed by respondent no.2 in the absence of the counsel for the petitioner. The appeal, it is stated, was filed through Mr. Varinder Partap Singh, Advocate, however, during pendency of the appeal, petitioner changed her counsel and engaged Mr. Ram K. Dhiman, Advocate. It is stated that Mr. Ram K. Dhiman, Advocate even issued a certificate on 15.03.2021, Annexure P-11, stating that he was appearing on behalf of the petitioner and he placed on record his power of attorney on 17.05.2019 but due to outbreak of pandemic COVID-19, Court of Commissioner was closed and Court staff had informed him that he would be informed as and when Court proceedings are resumed. However, on the date of decision i.e. 28.12.2020 neither petitioner was called nor her counsel informed regarding the proceedings being undertaken. It is further stated that presence of petitioner's earlier counsel is incorrectly marked in order dated 28.12.2020.

Affidavit dated 25.08.2022 of Mr. Varinder Partap Singh, Advocate is on record, wherein it is stated that after giving no objection to the petitioner for engaging Mr. Ram K. Dhiman, Advocate, he never attended any Court proceedings in this matter before the Commissioner and he was not present when the matter was decided on 28.12.2020.

Keeping in view fact and circumstances including the specific affidavit of the counsel as mentioned above, order dated 28.12.2020 (Annexure P-3) is set aside and the matter remanded to respondent no.2-the Director, Rural Development & Panchayats Department, SAS Nagar (Mohali), to decide the same afresh, in accordance with law, after giving proper opportunity to all concerned.

Parties to appear before the Director, Rural Development & Panchayats Department, SAS Nagar (Mohali) on 14.12.2022. The Director, Rural Development & Panchayats Department, SAS Nagar (Mohali) to finally conclude the matter expeditiously and definitely within a period of three months thereafter.

Writ petition is accordingly disposed of in the aforesaid terms.

It is clarified that there is no expression of opinion on the merits of the matter.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

23.11.2022

Sunil

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