

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

CWP-16352-2017 (O&M)
Date of Decision:27.10.2022

PARGAT SINGH

...Petitioner

Versus

**DIRECTOR RURAL DEVELOPMENT AND
PANCHYATS, PUNJAB**

...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. M.S. Bedi, Advocate
for the petitioner.

Mr. K.S. Kang, Sr. D.A.G., Punjab.

Mr. J.S. Thind, Advocate
for respondent No.3.

HARSH BUNGER, J.

CM-18241-2019

This is an application for placing on record affidavit dated 27.11.2019 of Sh. Sandeep Malhotra, Block Development and Panchayat Officer, Majitha, on behalf of respondents No.1 and 2 along with Annexures R-1 and R-2, in compliance of order dated 26.11.2018.

Civil Misc. Application is allowed, as prayed for. Affidavit dated 27.11.2019 along with Annexures R-1 and R-2 is taken on record, subject to all just exceptions.

CWP-16352-2017

Petitioner, herein, has filed the instant writ petition under Articles 226/227 of the Constitution of India, seeking quashing of order dated 30.05.2012 (Annexure P-6) passed by respondent No.2-Collector, Panchayat Lands, Amritsar, under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961 (here-in-after referred to as 'the Act, 1961) and also order dated 17.03.2017 (Annexure P-7) passed by the Appellate Authority i.e. Director, Rural Development and Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961).

A perusal of the file shows that the petitioner filed a petition under Section 11 of the Act, 1961, seeking declaration that he is the owner in possession of land measuring *04 kanals – 0 marla* falling in *Khasra no.135 min*, as part and parcel of Village *Abadi Deh*, comprising of *Khasra no.135* of Village Wadala, Tehsil and District Amritsar.

In the petition, the petitioner's stand is that the aforesaid land measuring *04 Kanals* is the ancestral property of the petitioner and prior to him, his father namely, Inder Singh, who was the member of the proprietary body of the village, was in possession thereof. It is further submitted that the petitioner has been in possession of the land in dispute since 01.01.1948, through his predecessor-in-interest and his father had constructed *Haveli*, *cattle shed* and was using the said land for tethering the cattle, placing the agricultural implements and other materials. It is stated that the land in dispute is recorded as "*Abadi Deh*" in the revenue records and the same is excluded from the definition of "*Shamlat Deh*" as defined under Section 2(g) of the Act, 1961. It is also submitted that the land in dispute was never reserved for any common purpose of the village nor the same was used for

the benefit of the village or the village community and neither the said land was ever put to auction by any *Gram Panchayat*.

Said petition under Section 11 of the Act, 1961 was contested by respondent No.3-*Gram Panchayat, Wadala, Veeram*, by filing its written statement dated 04.04.2008, wherein, although it was admitted that the land in dispute falls within the “*Abadi Deh*”, however, the claim of the petitioner was disputed on the ground, *inter alia*, that the land in dispute was a vacant plot and the same would fall within the definition of “*Shamlat Deh*” as defined under Section 2(g) of the Act, 1961.

On the basis of their pleadings, the respective parties led evidence in support of their respective claims. Learned Collector, Amritsar, vide order dated 30.05.2012 (Annexure P-6) dismissed the said petition filed by the petitioner under Section 11 of the Act, 1961.

Aggrieved, the petitioner filed an appeal No.13 of 2013 under Section 11(2) of the Act, 1961 before the learned Director, Rural Development and Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961), which was dismissed vide order dated 17.03.2017. Hence, the present petition.

We heard learned counsel for the parties and went through the record with their able assistance.

It is the contention of the petitioner that the learned authorities below have failed to consider his claim in its right perspective and have proceeded to non-suit him by passing non-speaking orders. It is further submitted that order dated 17.03.2017 (Annexure P-7) passed by the learned Director, Rural Development and Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961) is not only sketchy but the

same lacks reasoning and is non-speaking. Learned counsel for the petitioner submits that none of the contentions and grounds raised in appeal were considered or deliberated upon, with the appeal being dismissed in a casual manner. It is thus prayed that the impugned orders be set aside.

On the other hand, learned counsel for respondent No.3-Gram Panchayat as well as learned counsel representing State of Punjab, while seeking dismissal of the writ petition, have not been able to deny the fact that order dated 17.03.2017 (Annexure P-7) passed by the learned Director, Rural Development and Panchayats, Punjab, indeed suffers from total non-application of mind and is a non-speaking order.

The operative part of order dated 17.03.2017 (Annexure P-7) passed by the learned Director, Rural Development and Panchayats, Punjab reads as under :-

“ The counsel for Respondent – Gram Panchayat during the arguments have brought into the knowledge of this Court that the District Development and Panchayat Officer, Amritsar has already passed the eviction order on 31.10.2002 against the appellant against which he filed the appeal before this Court which was dismissed vide order dated 29.07.2007. Therefore, the appellant in order to delay the execution of the eviction order, filed this case petition under Section 11 of the Act before the court below. The present appeal has been filed by the appellant with a purpose to get delayed the above orders intentionally. The panchayat is owner of the disputed land. The land is being used for common purposes, therefore, the appellant has no concern with the disputed land. The court below has passed the order as per law. There is no need to interfere in the same. Therefore, by dismissing the appeal of the appellant, the impugned order is uphold.”

While going through the impugned order dated 17.03.2017 (Annexure P-7) passed by the learned Director, Rural Development and Panchayats, Punjab, we feel that the Appellate authority has failed to discharge the obligation placed on it as an Appellate Court. Order dated 17.03.2017 (Annexure P-7) *ibid* is not only non-speaking and cryptic but the appeal has been decided in an un-satisfactory manner reflecting absolute non-application of mind by the Appellate Authority. It is well settled that a quasi-judicial authority is bound to pass a well-reasoned order after considering the material/evidence on record, facts and circumstances of the case. A non-speaking order deprives an affected party of an effective opportunity to represent against the same.

It is also noticed that the learned Director, Rural Development and Panchayats, Punjab, has not even framed the points of determination in view of the respective claims set up by the parties before it. Such a non-speaking order cannot be countenanced in law.

Hon'ble the Apex Court in *M/s Kranti Associates Pvt. Ltd. & Anr. vs Sh. Masood Ahmed Khan & Others 2010(4) RCR (Civil) 600*, has held as under :-

“51. xxx xxx xxx

- a. *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. *A quasi-judicial authority must record reasons in support of its conclusions.*
- c. *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*

- d. *Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. *Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
- f. *Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- g. *Reasons facilitate the process of judicial review by Superior Courts.*
- h. *The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.*
- i. *Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*
- j. *Insistence on reason is a requirement for both judicial accountability and transparency.*
- k. *If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*
- l. *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.*
- m. *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers*

less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya v. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, “adequate and intelligent reasons must be given for judicial decisions.”

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of “Due Process.”

In view of the aforementioned facts and circumstances, the instant writ petition is partly allowed and order dated 17.03.2017 (Annexure P-7) passed by the Director, Rural Development and Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961) is hereby quashed.

The matter is remitted to the Director, Rural Development and Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961) to decide the appeal filed by the petitioner afresh after taking into consideration all the relevant documents, annexures and other attending records by passing a speaking/well-reasoned order after framing points of determination arising out of the respective claim of the parties, within a period of three months from the date of passing of this order and the parties are directed to appear before the Director, Rural Development and

Panchayats, Punjab (Exercising the powers of Commissioner under the Act, 1961) on 16.11.2022.

Writ petition is disposed of in the afore-mentioned terms.

(LISA GILL)
JUDGE
October 27, 2022
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No