

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

CWP-32387-2018
Date of Decision: 20.09.2022

MAHABIR SINGH

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present : Mr.SumitSangwan, Advocate
for the petitioner.

Mr.AmitAggarwal, D.A.G., Haryana.

Mr.Sushil Jain, Advocate
for respondents No.7(1) to 7(iv).

HARSH BUNGER, J.

The present petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for setting aside orders dated 30.01.2013 (Annexure P-6), 13.10.2017 (Annexure P-7) and 08.08.2018 (Annexure P-8) passed by respondent No.3, respondent No.2 and respondent No.1, respectively.

Brief facts of the case are that the petitioner submitted an application dated 29.08.2006 (Annexure P-1) under Section 7 of the 'Punjab Village Common Lands (Regulation) Act, 1961' as applicable to the State of Haryana (here-in-after referred to as 'the Act, 1961'), seeking ejectment of respondent No.7-Vidya Nand (since deceased) (whose legal representatives have been brought on record vide order dated 18.03.2019) on the ground that

he was in wrongful & unauthorized possession of common passage bearing *khasra No.115 of shamlatdeh*. The Assistant Collector Ist Grade, Jhajjar, after considering the demarcation report as well as evidence available on file passed an ejectment order dated 15.10.2008 (Annexure P-2). Aggrieved, respondent No.7-Vidya Nand (since deceased) preferred an appeal before the Collector, Jhajjar, which was allowed vide order dated 24.08.2010 (Annexure P-3) and the matter was remanded back to decide afresh on the basis of merit. Thereafter, the petitioner filed a revision before the Commissioner, Rohtak, however, the same was also dismissed vide order dated 29.09.2011 (Annexure P-4).

Pursuant to remand order dated 24.08.2010, Assistant Collector Ist Grade, Jhajjar, after inspecting the spot, passed the ejectment order dated 09.02.2012 (Annexure P-5) and directed Tehsildar, Matanhail to handover the vacant possession of the passage to the Gram Panchayat, if the land is not vacated by the private respondent(s) within a period of one month.

Being dis-satisfied with the aforesaid order, respondent No.7 filed an appeal before Collector, Jhajjar, who vide order dated 30.01.2013 (Annexure P-6) again remanded the matter to Assistant Collector Ist Grade, Jhajjar for deciding the same afresh. The revision filed by the petitioner against order dated 30.01.2013 was dismissed by the Commissioner, Rohtak Division, Rohtak vide order dated 13.10.2017 (Annexure P-7) with the said officer being the same one who had passed order dated 24.08.2010 (Annexure P-3) in his capacity as Collector. The petitioner preferred ROR 125 of 2017 which too was dismissed vide order dated 08.08.2018 (Annexure P-8), being not maintainable. Being aggrieved, instant writ petition has been filed by the petitioner.

Respondent No.5-Block Development and Panchayat Officer, Matanhail Block, Jhajjar and also the private respondents No.7(i) to 7(iv) have contested the writ petition by filing their respective written statements. It is the stand of the respondents that earlier resolution dated 08.05.1961 was passed by the then Gram Panchayat and subsequent thereto, *pucca* residential houses as well as streets have been constructed and in case, the work is done as per consolidation then people of the village will face more difficulty than convenience. It is further stated that said resolution dated 08.05.1961 has been re-iterated by the *Gram Panchayat* vide subsequent resolutions dated 02.01.2007 and 26.07.2017. It is stated that since the matter had only been remanded by the Collector vide order dated 30.01.2013 (Annexure P-6) which was upheld by Commissioner, Rohtak, vide order dated 13.10.2017 (Annexure P-7), no prejudice is caused to the petitioner; accordingly, prayer for dismissal of writ petition was made.

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

During the course of arguments, learned counsel for the petitioner had restricted the prayer to the extent that the matter be remanded to the Commissioner for deciding the same afresh as order dated 13.10.2017 (Annexure P-7) as well as order dated 24.08.2010 (Annexures P-3) have been passed by the same officer, namely, Shri Chander Parkash, I.A.S., while exercising the powers of Commissioner and Collector, respectively, at the relevant time. It is submitted that once an officer has dealt with a matter and decided it in a particular manner and when the same matter on being challenged comes up before the same officer though in his capacity of Revisional Authority, judicial propriety demands that such officer should

recuse from the matter, so as to rule out any apprehension of bias in the mind of a litigant.

Learned counsel appearing on behalf of the respondents have not raised any objection in this regard and rather, it is admitted that the Commissioner at the earlier point of time in his capacity as Collector had passed order dated 24.08.2010 (Annexure P-3) in the same matter.

Since the petitioner has limited his prayer for quashing of order dated 13.10.2017 (Annexure P-7) passed by Commissioner, Rohtak Division, with no serious objection being raised in this regard by the respondents, accordingly, we need not delve on the respective stands taken by the parties. Since, it is admitted by all the parties that order dated 13.10.2017 (Annexure P-7) has been passed by the same officer who earlier passed order dated 24.08.2010 (Annexure P-3) whereby the matter had been remanded after setting aside the eviction order, we are of the considered opinion that there should not be any scope given to any person to go away with a feeling that the Presiding Officer was biased, however unfounded the impression may be.

In the instant case, the same officer, who had earlier passed remand order dated 24.08.2010, again dealt with the matter at a subsequent stage in the same quasi-judicial proceedings in his capacity as the revisional authority and upheld the remand order, thereby, creating a sense of bias in the mind of the litigant. Hon'ble the Apex Court in case ***Gurcharan Dass Chadha vs State of Rajasthan AIR 1966 (Supreme Court) 1418*** held that it is one of the principles of the administration of justice that justice should not only be done but it should be seen to be done. Accordingly, keeping in tune with the dictum that 'justice must not only be done, but must also seen to be

done', order dated 13.10.2017 (Annexure P-7) passed by the Commissioner is not sustainable and accordingly, the same is set aside.

Since, order dated 13.10.2017 (Annexure P-7) passed by the Commissioner, Rohtak Division, Camp-Jhajjar has been set aside, accordingly, we need not delve into the issue regarding the maintainability of second revision before the learned Financial Commissioner.

In the totality of circumstances and as an upshot of the above discussion, order dated 13.10.2017 (Annexure P-7) passed by the Commissioner, Rohtak Division, Camp-Jhajjar and also order dated 08.08.2018 (Annexure P-8) passed by the Financial Commissioner, Haryana, are set aside. The matter is remanded to the Commissioner, Rohtak for fresh consideration and adjudication after affording due opportunity of hearing to all the parties concerned and deciding the same in accordance with law by passing a speaking order within a period of two months from the date of receipt of certified copy of this order.

The writ petition stands disposed of accordingly.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

September 20, 2022
gurpreet

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No