

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

223

CWP-1469-2020

Date of Decision : **January 18, 2023**

SUNIL KUMAR

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Mukul Sheoran, Advocate and
Mr. Abhishek Kharb, Advocate for
Mr. Keshav Pratap Singh, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

SURESHWAR THAKUR, J.(ORAL)

1. This Court through a decision made on 17.7.2017, upon, CWP No. 8267 of 2017, affirmed the concurrently made orders by the statutory authorities concerned, where throughs hence, affirmative orders became rendered, on the Gram Panchayat petition(s), as cast under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961, and, as applicable to the State of Haryana.

2. Despite this Court on 17.7.2017, making an order of dismissal of the writ petition(Supra), yet in the hereinafter extracted manner, the petitions (Supra) became disposed of.

“The case of the petitioner is that he is in possession of a small piece of Gram Panchayat land where residential house has been constructed. The B.D.P.O. Nagina had filed an ejectment petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, as

applicable to the State of Haryana, seeking petitioner's eviction from the Gram Panchayat land. The said petition was dismissed as withdrawn on 04.08.2004 in view of the petitioner's stand on affidavit that he was ready to pay the market value of the plot. Thereafter, the Gram Panchayat passed a resolution on 15.11.2008 and again on 02.09.2011 to sell the land under illegal possession of the petitioner to him at the market value. The resolutions were sent to the B.D.P.O., who in turn sought some legal opinion and thereafter, statedly sat over those resolutions. As no decision was taken in the matter, the aggrieved petitioner is before this Court.

Having heard learned counsel for the petitioner and considering the nature of relief sought by him, the instant writ petition is disposed of with a direction to the Block Development and Panchayat Officer, Nagina to forward the aforesaid resolutions to the Deputy Commissioner, Nuh at Mewat for appropriate decision within one week from the date of receiving a certified copy of this order. The Deputy Commissioner, Nuh at Mewat is further directed to take appropriate decision within three months thereafter.”

3. The disposal of the writ (Supra), was with a direction to the BDPO concerned, to forward the resolution, as made on 15.11.2008, and, repeated on 2.9.2011, with a proposal therein qua the land in dispute becoming sold to the petitioner, at the prevalent market value, rather to the Deputy Commissioner, Mewat at Nuh, for an appropriate decision thereon being rendered within one week, on receipt of a certified copy of the order (Supra). The Deputy Commissioner Mewat at Nuh, was further directed to take an appropriate order thereon, but within three weeks

thereafter.

4. Though, it is not contested amongst the contesting litigants that the above motion was to be decided according to the principles contemplated in Rule 12 of the Punjab Village Common Land (Regulation) Act, 1964, but a perusal of the orders made by the competent authorities, on the said resolution, and, as occur in Annexure P-2, as drawn on 27.2.2018, yet discloses, that in view of the orders rendered on 28.1.2011, by the Hon'ble Apex Court in SLP No. 1132 of 2011, rather pronouncing a complete bar against the Gram Panchayat concerned, to (either) make sale of the disputed *khasra numbers*, to the private owners or to private institution or to regularize any illegal possession of the Panchayat land, that the said motion rather became declined. Though a reading of the above orders, as embodied in Annexure P-2, does prima facie make them fall within the mandate, as rendered by the Hon'ble Apex Court in SLP (Supra).

5. However, at this stage, the learned counsel for the petitioner intimates this Court, that subsequent thereto, a rule alongwith certain relevant clarifications has been incorporated in/to the relevant statute, whereby there is bestowment of an empowerment, to the competent authorities concerned, to with the domain(s) thereof, rather accept any resolution passed by the Gram Panchayat concerned, with a proposal, for regularizing the encroachments, as made, on the Panchayat lands concerned, or to make lawful alienation thereof qua the encroachers concerned. If at the stage of drawing of Annexure P-2, the relevant Rule or certain clarifications hence covering the relevant motion rather

were in vogue, resultantly non application of mind thereto rather by the authority concerned, does prima facie make Annexure P-2, to become ridden with a pervasive vice of arbitrariness, and, non application of mind.

6. Moreover, since the vires of the said Rule or of certain relevant clarifications, has not been challenged nor when the said Rule, or the relevant clarifications, have been stated, at the bar to be set-aside, therefore, they enjoy sanctity. Therefore, to ensure that the verdict made by this Court on 17.7.2017 upon CWP No. 8267 of 2017 becomes complied in letter and spirit, and, but obviously within the ambit of the relevant Rule or clarifications, thus, this Court deems it fit and appropriate to order for the quashing of Annexure P-2, but with a direction to the competent authority to within the ambit of relevant Rule, and/or the apposite clarifications, rather make a fresh decision in respect of the resolution of the Gram Panchayat concerned, hence containing a proposal for the sale of the Panchayat land to the petitioner herein. The apposite decision, be made through the making(s) of a speaking order, to be rendered within three months from today, but only after hearing all affected concerned.

7. Disposed of.

(SURESHWAR THAKUR)
JUDGE

January 18, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No