

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH.

201

CWP-3148-2020

Date of Decision : 23.03.2023

GURSEWAK SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

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

Present : Mr. Surjit Singh, Advocate  
for Mr. Vikram Singh, Advocate  
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab  
for respondents No. 1 to 3.

None for respondents No. 4 to 7.

Mr. Naresh Chander, Advocate  
for Mr. Sukhjinder Singh, Advocate  
for respondent No. 8.

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

1 Gurdas Singh, Harjit Kaur, Ranjit Singh son of Sukhmandar Singh and Ranjit Singh son of Pritam Singh, respondents no.4 to 7 herein, petitioners therein, filed a petition bearing No.156/DDPO dated 15.09.2016/21.11.2017 before the DDPO, Bathinda (Exercising the powers of Collector). The said petition was cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'). In the petition (supra), the petitioners

thereins, respondents No. 4 to 7 herein, sought the eviction of respondent no. 1 therein, petitioner herein, from the petition land, on the ground that respondent no. 1, has illegally encroached upon the panchayat lands, but in connivance with the Sarpanch of the Gram Panchayat concerned. In the said petition the Gram Panchayat concerned, was also impleaded as respondent No. 2.

2. On the petition (supra), the learned Collector concerned, made an dis-affirmative order, on 30.01.2018, leading the aggrieved-respondent No. 6 herein, as well as, the Gram Panchayat concerned (respondent No. 8 herein), to institute thereagainst the respective statutory appeals before the learned Appellate Authority concerned.

3. On the said statutory appeals to which respectively Appeal No. 1037 of 2018 and Appeal No. 1844 of 2018 became assigned, the Appellate Authority on 29.08.2019, after quashing the order, as became initially pronounced by the learned Collector concerned, hence proceeded to allow the apposite appeals. Therefore, the aggrieved therefrom, the petitioner herein, is led to institute thereagainst the instant petition before this Court.

4. Learned counsel for the petitioner, has challenged the order, as passed by the learned Appellate Authority concerned, on the respective appeals (supra), and, submits that the impugned order, is completely vitiated, as it becomes rendered on a misconstituted motion, being made by the petitioners therein, respondents No. 4 to 7 herein, who, however, were not ably bestowed with the statutory leverage, to file a petition under Section 7 of the Act before the Collector concerned. In making the above argument(s), he rests them on sub-section (1) of Section 7 of 'the 1961

*“Power to put panchayat in possession of shamilat deh-*

*(1) The Collector shall on an application made to him by a panchayat, or by an officer, duly authorized in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.”*

5. A reading of the above extracted provision, thus, vividly supports the arguments addressed before this Court by the learned counsel for the petitioner that, the therein bestowed statutory leverage for ably drawing lawful orders against the encroachers, upon the Panchayat land or on the Shamlat land, rather becomes ably vested in the Gram Panchayat or in a duly authorised officer. Necessarily when any private person, as respondents No. 4 to 7 herein, are rather, not ably bestowed with the above statutory privilege.

6. Moreover, even if the petition under Section 7 of 'the 1961 Act' was dismissed, and, wherein the Gram Panchayat concerned, was impleaded as co-respondent No. 2, but leading to the aggrieved therefrom institute an appeal thereagainst. However, the said statutory appeal was not maintainable, as it was directed against an order made on a misconstituted petition. Thus, the allowing of the statutory appeals (supra), is also vitiated, and is ridden with a vice of exercising of jurisdiction thereons but with a material illegality or gross infirmity. Therefore, both the authorities below could neither entertain a misconstituted petition or statutory appeals nor were well empowered, to exercise any valid

jurisdiction thereons nor they could pass the impugned orders respectively, upon case No. 156/DDPO dated 15.09.2016/21.11.2017, and, later upon appeal no. 1037 of 2018, and, appeal No. 1844 of 2018.

7. In consequence, the instant petition is allowed, and, the order, as passed by the Collector concerned, as well as, the order made on the statutory appeals (supra), by the learned Appellate Authority concerned, are on the above ground hence quashed and set-aside. However, liberty is reserved to the Gram Panchayat concerned, to forthwith re-institute a better constituted able petition under Section 7 of the Act, before the Collector concerned, and, on such petition(s) becoming instituted, thereupon, the Collector concerned, shall after hearing all affected persons, make a speaking decision thereons, but within a period of 6 months of its preferment.

8. Disposed of in the above terms.

9. The pending application(s), if any, is/are also disposed of.

**(SURESHWAR THAKUR)**  
**JUDGE**

**23.03.2023**

kavneet singh

**(KULDEEP TIWARI)**  
**JUDGE**

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