

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

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CWP-3028-2023

Date of Decision : 15.02.2023

KARAMBIR

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

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

Present : Mr. Vinod Bhardwaj, Advocate and
Ms. Nipun Bhardwaj, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. A.G., Haryana.

SURESHWAR THAKUR, J. (Oral)

1. One Vakil son of Lal Chand, resident of Village Pasawal, Tehsil Guhla, District Kaithal instituted a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Haryana) (for short hereinafter call 'the Act of 1961'). The said petition became assigned case No. 247/50010/06.03.2020. In the petition (supra), the petitioner (supra) claimed relief, that respondent No. 1 therein, the petitioner herein, being ordered to be evicted from the petition lands. The said order of eviction was claimed, on the premise, that the respondent No. 1 therein, had made encroachments upon land owned and possessed by the Gram Panchayat concerned.

2. In pursuance to the institution of the above petition, the statutory notice was issued to one Karambir. However, the notice (supra), as became issued in terms of Rule 20 (2) (b) of the Haryana Village Common Lands (Regulation) Rules, 1964 was uncontestedly

issued but without permitting the noticee to avail ten days since the issuance of the said notice to him, and or, the noticee was asked to cause appearance before the Collector concerned, before ten days elapsing since the issuing of the notice, upon him.

3. Therefore, the learned counsel for the petitioner, one Karambir who became arrayed as co-respondent No. 1 in the case (supra), has made a submission before this Court, that the resultant effect, of breach of the above statutory provision appertaining, to the above period of time being granted to the noticee, hence computable from the date of issuance thereof, has further resulted in the ill consequence qua the subsequent thereto drawn proceedings, also becoming completely vitiated. Therefore, the naunce of the above submission, is that, the proceedings drawn against the petitioner herein be ordered to be quashed.

4. The above made argument before this Court by the learned counsel for the petitioner is not accepted. The reason for forming the above inference does but naturally ensue, from the fact that the statutory notice, did become validly served upon the petitioner herein. Even if the said notice, did from the date of its issuance omit to accord to the noticee, a period of ten days therefrom, hence for his making his personal appearance or his appearing through his counsel, before the learned Collector concerned, yet the said provisions, as occur in Rule 20 (2) (b) of the Haryana Village Common Lands (Regulation) Rules, 1964, Rules whereof became extracted hereinafter, are not cast in a mandatory phraseology.

“20. Issue of notice to show cause against order of eviction.

Xxxxxxxxxx

(2) The notice shall --

(a) specify the grounds on which the order of eviction is proposed to be made; and

(b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in the land in shamlat deh, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3) xxxx

(4) xxxx

5. The result of the said provisions being not cast in a mandatory phraseology, does but make room for this Court, to conclude that the said provisions are merely directory in nature, and also spark an inference that they are only for facilitating the noticee, to on the date specified in the notice, make(s) his appearance either personally or through an authorized counsel before the Collector concerned. Naturally also on the first appearance as made either personally or through validly engaged counsel by the noticee, before the collector concerned, there was no imperative necessity for the collector concerned, to in deviation from the procedure, as contemplated in the Code of Civil Procedure, 1908, rather to not assign a date to the noticee, to furnish a reply to the eviction petition. Therefore but naturally when on the date fixed in the notice, even if there was a minimal breach of the mandate (supra). Nonetheless, when there is no further statutory provision, that on the very first appearance being made by the noticee, either personally or through validly engaged counsel before the Collector concerned, the latter shall in a summary manner, merely on the pleadings cast in the case (supra), hence ably proceeding

to draw an eviction order against the respondent therein. Therefore, but naturally, the said provisions are to be construed to be merely directory in nature, and or, to merely grant an opportunity to the noticee to, at least, make his personal appearance or through validly engaged counsel, before the Collector concerned, and, such personal appearance of the petitioner or of his validly engaged counsel, before the Collector concerned, is rather to enable the concerned, to ask for time being granted for furnishing a reply to the eviction petition.

6. The said appearance was as a matter of fact made before the Collector concerned, and, also the petitioner herein was granted an opportunity to institute a reply to the eviction petition. Therefore, when the above opportunity was granted to the petitioner herein, by the learned Collector concerned. Thus there is no possibility for any permissible argument being raised before this Court by the learned counsel for the petitioner, that yet a grave prejudice became yet encumbered upon the petitioner, merely for a minimal breach being made to the above directory provisions, as contained in the above extracted Rules.

7. Be that as it may, a reading of the order appended to the petition, as Annexure P-9, and, which has been challenged before this Court, though reveals qua it being made on 02.02.2023, whereas, the statutory notice, did, as above stated, became served upon the petitioner much earlier thereto, and, also as above stated also resulted in the petitioner making a reply to the eviction petition. Therefore, the drawing of Annexure P-9, on 02.02.2023, cannot at this stage, be faulted on any count, except that the learned Collector concerned has

and, their too prima facie without his striking the relevant issues on the contested pleadings, and, also prima facie without his permitting the litigants to adduce their respective evidence(s) thereons.

8. It appears that since the provisions of CPC are applicable to proceedings drawn before the Collector concerned, under 'the Act of 1961'. Therefore, the learned Collector concerned, was enjoined to abide with the provisions in the CPC, relating to his proceeding to strike issues on the contested pleadings of the litigants concerned. Furthermore, he was also naturally obliged to ask for evidence being adduced on the respectively struck issues rather by the litigants concerned. It is but the above omission on the part of the learned Collector concerned, if not made, to mete compliance with the above statutory provisions, as contained in the CPC, which as above stated are applicable to proceedings drawn under 'the Act of 1961' which may have caused prejudice to the petitioner.

9. In consequence, the learned Collector concerned, if he is not already struck issues nor has asked the litigants concerned, to adduce their respective evidence(s) on the issues as become formulated by him. Thus, if not already drawn, he is directed to draw the issues, on the contested pleadings of the litigants, and, is also directed to thereafter permit the litigants concerned, to adduce their respective evidence(s) thereons, but only if the same has not been earlier adduced by the litigants concerned.

10. The above exercise be ensured to be completed within three months from today. The learned Collector concerned, is also directed to bear in mind, the effect of judgments and decrees, even if

they are final and conclusive, and, especially qua whether they are hit

by the statutory bar contemplated in Section 13 of 'the Act of 1961' against the rearing of civil proceedings before the learned Civil Courts concerned, in respect of a subject matter which is but completely covered within 'the Act of 1961'.

11. Disposed of.

(SURESHWAR THAKUR)
JUDGE

15.02.2023
kavneet singh

(KULDEEP TIWARI)
JUDGE

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