

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

CWP-4766-2022

Date of decision : 20.12.2023

Dilbag Singh

.....Petitioner

versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.K. Garg Narwana, Senior Advocate with
Mr. Vishal Garg Narwana, Advocate and
Mr. R.P.S. Jammu, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. R.V.S. Chugh, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for setting aside the impugned order dated 08.12.2021 (Annexure P-6) passed by respondent No.2 whereby case has been remanded back to Hansi W/S Division, Hansi by observing that Irrigation & Water Resources Department has no power to pass eviction order from the encroached land, being wrong, illegal, perverse, unjustified, arbitrary and other provisions of law.

It has been submitted by learned Senior Counsel that the petitioner along with numerous shareholders of O/L RD 38550-L Petwar Disty moved an application before respondent No.4 for shifting Moga No.38550/L PTR Dy to new Moga RD 31850-L/PTR Dy. On filing the application, the case was inspected through Zileadar, Narnaund and SDCO, Narnaund for investigation. They recommended the case and submitted the scheme under Rule 17 of the Canal Act. The scheme was published under

Section 18(1), Rule 7 of the Canal Act for inviting objections/suggestions if

any to the proposal. On completing the procedure, respondent No.4 vide order dated 20.07.2020 allowed the shifting of head of O/L 38550-L to 38150-L Petwar Disty, in the interest of better irrigation. Being aggrieved, respondent No.5 filed an appeal against the order dated 20.07.2020 however, the same was dismissed by respondent No.3 vide order dated 02.02.2021. Thereafter, the application for demarcation of Mogha 38150/L i.e. for the area sanctioned for the watercourse was moved by Sub Divisional Canal Officer, Hansi and after demarcation, encroachment by respondent No.5 was found on Khasra No.465 whereas, Gram Panchayat, Petwar is the owner of the same. Subsequently, the notice under Section 24(1) of the Haryana Canal and Drainage Act, 1974 was issued to respondent No.5. Respondent No.5 filed Civil Suit No.142-C of 2021 along with application under Order 39 Rule 1 & 2 read with Section 151 CPC for restraining the Gram Panchayat and other respondents from interfering in the construction raised by respondent No.5. Learned Civil Court directed for conducting the demarcation vide order dated 19.07.2021 and Assistant Collector 2nd Grade was appointed for demarcation who submitted his report on 02.08.2021. As per the demarcation report, respondent No. 5 and his brother Anil Kumar was found to have constructed a water tank and some portion of his house in question for Khasra No.465. Resultantly, application under Order 39 Rule 1 & 2 filed by respondent No.5 was dismissed by learned Civil Judge(Junior Division), Hansi vide order dated 05.08.2021. He has submitted that respondent No.5 challenged the order dated 02.02.2021 passed by respondent No.3 by filing an appeal before respondent No.2. It is submitted that during the pendency of the above appeal, respondent No.5 also filed CWP No.16099-2021 which was disposed of vide order dated 20.08.2021 by directing respondent No.2 to decide the appeal by passing a speaking

order within three months. He has submitted that in pursuance to the order passed by this Court, respondent No.2 decided the appeal by observing that reserved watercourse is available where the head of existing outlet was ordered to be shifted from RD 38550/L to 38150/L Petwar Disty. However, perusal of the record reveals that the land of reserved watercourse was encroached by appellant and he had constructed a house. He has submitted that it was further illegally and wrongly held by respondent No.2 that the Irrigation and Water Resources Department has no power to pass the eviction order from the encroached land rather power vests with the Sub Divisional Officer (Civil) under the Public Premises Act and thus, remanded the case to Hansi W/S Division after receipt of eviction order from the competent authority. He has submitted that the impugned order passed is totally wrong, illegal or perverse and thus, learned Senior counsel has submitted that after having been passed the impugned order the Gram Panchayat had filed the petition for eviction of respondent No.5 from the encroachment under the Village Common Land Act. He has submitted that the competent authority has already evicted respondent No.5 as is evident from the letter dated 10.11.2023 written by Block Development and Panchayat Officer, Narnaund wherein it has been informed that illegal possession of Anil Kumar and Sanjay sons of Sh. Raj Kumar was removed from the Shamlat land and G.M. Khal in Gram Panchayat Petwar and on the spot in presence of the panches, the possession has been handed over to Gram Panchayat. He has submitted that once the illegal possession of respondent No.5 has already been removed in the proceedings initiated by the Gram Panchayat under the Village Common Land Act, the impugned order does not survive and the matter should be decided afresh by taking into consideration the eviction of respondent No.5.

Learned counsel for respondent No.5 has also submitted that in the proceedings under the Village Common Land Act, the possession of the Gram Panchayat has been taken back by the Gram Panchayat.

Learned State counsel has also affirmed the submissions made by counsel for respondent No.5.

Heard. On hearing counsel for the parties and perusing the record, it is evident that the impugned order has been passed by the respondent by observing that due to illegal possession of respondent No.5, they do not have the jurisdiction for evicting him from the encroached land and hence, the case was remanded. However, it is evident from the arguments advanced before this Court and the record produced that this encroachment is now removed in the proceedings initiated by the Gram Panchayat under the Village Common Land Act. Resultantly, the impugned order dated 08.12.2021 is set aside. The case is remanded to respondent No.2 to decide the case afresh in the light of the subsequent proceedings initiated by the Gram Panchayat wherein the illegal encroachment made by respondent No.4 has already been removed and the possession of the land is already handed over to the Gram Panchayat. In the facts and circumstances of the case, respondent No.2 is directed to decide the case afresh as directed above expeditiously preferably, within three months from the date of receipt of certified copy of this order.

Petition is allowed in the above-mentioned terms.

20.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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