

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

Reserved on: 17.01.2023

Pronounced on: 27.01.2023

1. CWP-6493-2020

Gurvinder Singh

.....Petitioner

Versus

State of Punjab and Others

.....Respondents

2. CWP-6421-2020

Hardeep Singh and Another

.....Petitioners

Versus

State of Punjab and Others

.....Respondents

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

Argued by: Mr. Ish Puneet Singh, Advocate
for the petitioner(s) in both the cases.

Mr. Karanjit Singh, Addl. A.G., Punjab.

Mr. Nakul Sharma, Advocate
for respondent No. 4- Gram Panchayat.

SURESHWAR THAKUR, J.

1. Since both the petitions arise from a common order, made by the Appellate Authority concerned, and, as becomes embodied in Annexure P-6, therefore, both the petitions are amenable to become decided through a common verdict becoming made thereons.

Factual Background

2. The Gram Panchayat village Randhawa, instituted a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, and, under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, seeking therein the relief that the petitioners herein, respondents therein, becoming evicted from the petition khasra numbers. The said petition is appended to the writ petition as Annexure P-4. The learned Collector concerned, dismissed the plea, as raised by the Gram Panchayat in the above said petition. However, thereafter in an appeal becoming preferred thereagainst, by the the aggrieved-Gram Panchayat, before the Appellate Authority concerned, the latter reversed the verdict, as became initially recorded by the learned Collector concerned. The verdict as recorded by the learned Collector concerned is embodied in Annexure P-6.

Verdict of the learned Collector

3. Though, in the revenue records, the petition land is described as *Gair Mumkin Chappar*/pond, however, yet the learned Collector concerned, in dismissing the said petition, rested the said verdict, on the ground, that since the said *chappar*/pond existed within the *abadi deh*, thereupon, the existences of a pond, but within the *abadi deh* of the petition land, rather saved it from vestment in the Gram Panchayat concerned. Resultantly the learned Collector concerned, came to a conclusion, that the Gram Panchayat was not entitled to either claim, that the enchroached upon *Gair Mumkin Chappar* rather was meant for the common user of the entire village proprietary body nor the Gram Panchayat concerned, was well enabled to claim that the

respondents therein were not entitled to raise any construction thereons.

Verdict of the learned Appellate Authority on an appeal preferred against the verdict of the Collector.

4. However, in an appeal becoming preferred by the aggrieved therefrom by the Gram Panchayat Randhawa, Tehsil Phillaur, District Jalandhar, before the Appellate Authority, the latter disconcured with the above verdict of dismissal, as became initially recorded by the Collector concerned, on petition (Supra). The reason as became assigned by the learned Appellate Authority concerned, to make a verdict different from the verdict, as became initially pronounced, by the Collector concerned, became rested upon the factum, that since Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961, includes any *chappar* or pond, as, existing within the *abadi deh* concerned, to fall within the domain of the apposite inclusionary clause. Therefore, a further conclusion was made, that any raising of constructions thereons, at the instance of the petitioners herein rather was grossly impermissible, as the said encroached upon village pond, even if it was existing within *abadi deh*, was rather meant for its' common user by the entire village proprietary body, as it vested not in the co *abadi deh* owners concerned, who hold their abadi's within the *abadi deh* concerned, but rather vested in the Gram Panchayat concerned.

5. It is against the above order, as made by the learned Appellate Authority concerned, hence allowing the appeal of the Gram Panchayat concerned, that has led the aggrieved petitioners, to institute thereagainst the instant petition.

Inference drawn by this Court on the impugned order, embodied in Annexure P-6.

6. A reading of the provisions of Section 2 (g)(4) of the Punjab Village Common Lands Act, 1961, provisions whereof are extracted hereinafter, also discloses that any *Gair Mumkin pond*, even if it exists within the *Abadi Deh*, does ipso facto hence makes it fall within the domain of the apposite inclusionary clause. Therefore, the Appellate Authority concerned, did make a merit worthy decision, as carried in Annexure P-6, on appeal bearing No.733 of 2019, that the purportedly encroached upon *Gair Mumkin pond*, irrespective of its existing within the *Abadi Deh*, rather was impermissible, as the said encroached upon *Gair Mumkin pond*, became vested in the *Gram Panchayat Deh*, and, was meant for the common user of the entire village proprietary body, and, was not meant for the exclusive user of the co *abadi* owners concerned.

“ Section 2(g) Shamlat deh includes :

1. xxxx
2. xxxx
3. xxxx
4. lands used or reserve for the benefits of the village community including streets, lanes, playgrounds, school, drinking wells or ponds within the abadi deh or gorah deh and...
5. xxxx.....”

7. Be that as it may, it was yet imperative for the Gram Panchayat concerned, to cogently establish that the disputed *Gair Mumkin Chappar/pond*, does evidently exist within the *Abadi Deh*. The best evidence to support the above factum became comprised, upon a validly drawn demarcation report by a competent revenue officer concerned, and, thereafter it becoming proven in accordance with law. However, the above best evidence has not emerged. Though as above stated, it was the best clinching evidence for supporting the claim of the Gram Panchayat concerned, that a *Gair Mumkin Chappar/pond* existed

within the *Abadi Deh*, and, also was the best evidence, to support the Gram Panchayat petition, that a construction had been raised thereons at the instance of the petitioners herein. However, since the above imperative best evidence, did not surface before both the authorities below, whereas, it was the best evidence to support the Gram Panchayat's petition, as, cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961. Therefore, in absence of above evidence the concurrently made eviction orders, do hence, become vitiated.

Principles of Law.

(1) The pond/*chappar* existing even within the *abadi deh*, does not bar Gram Panchayat to claim removal of illegal encroachment, as made on the said *chappar*/pond, by the unlawful encroachers, as Section 2 (g) of the Punjab Village Common Land (Regulation) Act, 1961, includes any *Chappar* or pond existing within the *abadi deh* concerned, to fall with the domain of the apposite inclusionary clause.

(2) However, the above is but subject to lawful demarcation of the sites being conducted by the Competent Revenue Officer concerned.

Final Order by this Court.

8. Therefore, this Court deems it fit and appropriate to after quashing the impugned order, as carried in Annexure P-6, and, as became recorded by the Appellate Authority, in appeal bearing No. 733 of 2019, to remand the *lis* to the said Appellate Authority, to after its restoring it to its original number, to proceed to in accordance with law, make a lawful decision thereons, but only after its ordering for the holding of a valid demarcation of the disputed lands, and, thereafter its

ensuring, that the author of the demarcation report, steps into the witness box to prove the contents, as carried therein.

9. The above decision, on the remanded *lis* be made, by the Competent Authority, but after hearing all affected, rather positively within six months from today.
10. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

27.01.2023

kavneet singh

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