

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

CWP-11376-2019

Date of Decision: 23.03.2023

HARPAL SINGH @ SATPAL SINGH (SINCE DECEASED)
THROUGH HIS LRS

-Petitioner

Versus

DIRECTOR RURAL DEVELOPMENT AND PANCHAYATS
DEPARTMENT, PUNJAB AND ORS.

-Respondents

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

Present: Mr. Amardeep Singh Gill, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J.

1. The petitioner is aggrieved from the concurrently made orders of eviction against him, respectively by the learned Collector concerned, and, later by the appellate authority concerned. The said orders are respectively enclosed as Annexure P-12, and, as Annexure P-15, to the instant writ petition.

2. Admittedly, the parties are not at contest with respect to the present petitioner being a valid allottee of the disputed land. On the disputed land, the petitioner has raised his house. The allegation raised against the petitioner, is that, in his raising his house on the petition land,

his also making an encroachment upon the land, allotted to one Karnail Singh. Moreover, it is also alleged against the petitioner, that in his raising a house even on the land of Karnail Singh, rather is doing so, after getting Karnail Singh's land alienated in his favour. Thus, it is alleged that the petitioner did cause breach to the relevant terms and conditions of the allotment, as made to Karnail Singh, inasmuch as, his inviting against himself, the wrath of the imperative condition as cast therein, whereby, one Karnail Singh became barred to alienate the plot allotted to him, rather in favour of the present petitioner.

3. The nature of the above allegations, did obviously require, that one Karnail Singh becomes impleaded as a party in the relevant lis. However, a reading of the memorandum of parties, as encapsulated, in the petition cast, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), does not unfold, that one Karnail Singh was impleaded as a party therein. Therefore, in the absence of impleadment of one Karnail Singh, prima facie no allegation could be raised, nor, could any inference, if any, as drawn, could be ably drawn qua Karnail Singh, qua his, in breach of the relevant terms and conditions of the apposite allotment, hence alienating his plot in favour of the present petitioner. Moreover, it could also not be ably concluded, that it does bring the ill consequence, even if assumingly, the petitioner had raised his construction, on the plot allotted to Karnail Singh, and that too, yet in the absence of a validly drawn demarcation report, qua such purported construction(s) as made by the petitioner, on the plot assigned to Karnail Singh, was ever amenable to become

dismantled or demolished, and/or, vacant possession of the said plot, being assigned to the Gram Panchayat concerned.

4. It is, but, the above lack of impleadment of Karnail Singh, in the array of respondents, who but was both a proper, and, a necessary party, in the petition cast under Section 7 of the Act of 1961. Moreover, obviously in the wake of his not being permitted to contest the allegations, as raised against him, rather the inference, if any, as drawn against the present petitioner, that he had, in breach of the relevant terms and conditions of allotment as made to one Karnail Singh, had caused the latter, to make alienation thereof in his favour, but becomes naturally a misfounded inference. The reason for forming the above inference stems from the premise, that neither any issue in respect thereof became struck, nor, any evidence became permitted to be adduced thereon, besides also, becomes spurred from the further premise, that the above made inference against Karnail Singh, rather makes the said Karnail Singh, to become untenably condemned unheard.

5. Moreover, even if assumingly the petitioner, in his raising construction upon the plot validly assigned to him, by the competent authority, had taken to encroach upon the plot allotted to one Karnail Singh, thereupon, though a valid demarcation report was required to be drawn, and thereafter, was also required to be tendered, besides, was further required to be proven in accordance with law. However, a reading of the impugned orders, does not disclose, that in the authorities concerned, hence making conclusions, if any, that in the present petition purportedly encroaching upon the plot allotted to one Karnail Singh, he

had hence provenly, as manifested in a validly drawn, and, validly proven demarcation report, had really made any construction thereon(s). Therefore, the order of eviction, as drawn against the petitioner is completely misfounded.

6. In aftermath, this Court finds merit in the instant writ petition, and, is constrained to allow it. Accordingly, the instant writ petition is **allowed**, and, the impugned orders are quashed, and, set aside. However, liberty is reserved to the Gram Panchayat concerned, to institute a petition under Section 11 of the Act of 1961, against the allottee, one Karnail Singh, with averments therein, about the said Karnail Singh unlawfully alienating the plot assigned to him, to the present petitioner. It is further directed that, in the said petition, the present petitioner shall be impleaded as a party, in the array of respondents, so as to enable him to canvass the plea of ostensible ownership, as engrafted in Section 42 of the Transfer of Property Act, 1882. Moreover, the Gram Panchayat concerned, may also, in the said petition, on the basis of a validly drawn demarcation report, ask for restoration of the vacant possession of the said land to it. On such a petition being instituted before the statutory authority concerned, the latter shall make a speaking decision thereon, after granting an opportunity of hearing to all affected concerned, but, positively within 6 months of its preferment before it.

(SURESHWAR THAKUR)
JUDGE

23.03.2023
devinder

(KULDEEP TIWARI)
JUDGE

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