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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-9842-2021

Date of decision:02.02.2023

BIRU ALIAS VEER BHAN AND ANR

...Petitioners

Versus

STATE OF HARYANA AND ORS

...Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioners.

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

SURESHWAR THAKUR, J. (ORAL)

1. The Gram Panchayat, Sirsi through Govardhan resident of village Sirsi, Tehsil and District Karnal instituted against the present petitioners case No.79/DDPO. The above case was instituted under the provisions of Section 7 (2) of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as “the Act”).

2. The petitioner therein made an averment, that the respondents therein, who are the petitioners in the instant writ petitioner, are on unauthorizedly, and, illegally making cultivation of the petition lands, as, the said land is described in the revenue records, as *Shamlat Deh*, and, resultantly the petitioners hold no lawful title either as owners or as lawful cultivators over the petition lands. The Assistant Collector, Ist Grade through an order drawn thereons, on 14.01.2005 after granting the asked for relief in the petition (supra),

made a direction, upon the respondents concerned, to hand over the vacant possession of the disputed lands to the panchayat concerned.

3. Despite the above order becoming pronounced on 14.01.2005, yet only on 04.04.2019 the aggrieved concerned, preferred thereagainst an appeal before the learned Commissioner, Karnal Division, Karnal. The statutory appeal as raised before the Competent Appellate Authority was palpably a time bared appeal, as it became instituted after an elongated lapse of about 14 years, since the making of the verdict by the Assistant Collector, Ist Grade in the year 2005. Though, the said appeal was accompanied by an application cast under Section 5 of the Limitation Act rather purportedly explaining the said period of delay, on the premise that the appellants were entitled to the benefit of Section 14 of the Limitation Act, as the appellants had bonafidely adopted to re-course the remedy of filing a making civil suit before the learned Civil Court concerned, claiming therein the rendition of a declaratory decree in respect of the petition lands.

4. It is apparent on a reading of the records, that the said civil suit was unsuccessfully prosecuted by the plaintiffs upto the Hon'ble Apex Court.

5. Now it is to be determined whether the adoption of the above civil remedies, hence before the learned Civil Court concerned, at the instance of the petitioners, does but fall within the ambit of Section 14 of the Limitation Act, and/or, whether the adoption of the above civil remedies, could be well considered to be a bonafidely adopted recourse, whereupon this Court may be constrained to pronounce that the dismissal of the petitioners' appeal by the learned Appellate Court, on the ground of limitation rather became invalidly drawn.

6. For the reasons to be recorded hereinafter, the petitioners cannot draw the benefit of Section 14 of the Limitation Act, as they were well aware

about the provisions of the Act, especially when through the Gram Panchayat concerned, re-coursing the mandate of Section 7 of the Act, rather an affirmative order became made on the case No.79/DDPO, by the Assistant Collector, Ist Grade. Moreover, since the petitioners were arrayed as party-respondents therein, and, also when it is apparent on a reading of the order, as made on 14.01.2005 by the learned Assistant Collector, Ist Grade, Karnal, that they had even raised therein, a question of title which however, become decided against the present petitioners, thereupon it was obviously not open for them to yet proceed, to adopt the remedy of making a civil suit, rather before the learned Civil Court concerned. It was at that such point of time, the petitioners could have been well enabled to within the prescribed period of limitation commencing from 14.01.2005, to challenge the order, as made by the Assistant Collector, Ist Grade, hence before the competent statutory authority especially when he had held that there was no raisable question of title inhering in the respondents therein, and, consequently concluded that he became vested with an able jurisdictional competence to decide the petition (supra), and, thus declined to grant leave to the respondents therein to institute a petition under Section 13 (a) of the Act.

7. Therefore, the option as made by the petitioners, to yet proceed to draw a civil suit in respect, of the dispute which became settled, through Annexure P-1 as drawn by the Assistant Collector, Ist Grade, cannot at all be considered to be a bonafidely re-coursed remedy nor the elongated period of 14 years from the making of Annexure P-1, upto, an appeal being preferred in the year 2019, before the Competent Appellate Authority, can never to be construed to be at all a well explicated delay, even within the frontiers of Section 14 of the

Limitation Act. Therefore, this Court is constrained to not interfere with Annexure P-1.

SUBMISSIONS OF LEARNED COUNSEL FOR THE PETITIONERS

8. However, at this stage, the learned counsel for the petitioners, has contended with much vigor, before this Court that yet the learned Revisional Court concerned, could proceed to consider the purportedly well explained apposite delay, as became set forth by the revisionist before the Competent Appellate Authority concerned. He further submits, that instead of determining the validity of the reason, as recorded by the Appellate Court in Annexure P-4, the Revisional Court proceeded to untenably dismiss the revision petition, through an order made thereon, on 03.02.2021 (Annexure P-5), rather on the ground, that the revisional jurisdiction, does not vests in it, upon, a petition cast under Section 13(a) of the Act, but vests in him when the initial petition is cast under Section 7 of the Act, but hence completely ignored that as a matter of fact the petition was cast under Section 7 of the Act. Thus, the above noted ground in Annexure P-5 is contended to be completely flawed.

9. The learned counsel for the petitioners also makes a submission, that even irrespective of the delay in challenging the dismissal order as made on Section 7 petition, yet the order drawn by the learned Assistant Collector, Ist Grade, on the petition cast under Section 7 of the Act, rather was completely vitiated. He supports the above submission, on the premise, that since a question of title, did emerge before the learned Assistant Collector, Ist Grade, therefore there was complete lack of jurisdictional competence in the learned Assistant Collector, Ist Grade to decide it, whereas, he has untenably done so. In supporting the above submission, has also draws the attention of this Court to

the mandate occurring in the proviso underneath Section 7 of the Act, provisions whereof stands extracted hereinafter.

“7. Power to put Panchayat in possession of certain lands.- An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorized by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised 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 the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade 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:

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.”

10. Thus, he submits that when a question of title, does emerge, thereupon, the Assistant Collector, Ist Grade is required to, at the initial stage record a finding to the effect, that the said question of title is really involved, and, thereafter is required to instead of his deciding the said question of title rather to ensure that the same becomes decided, inasmuch as, in the manner prescribed in 13(a) of the Act. Therefore, he submits that since the Assistant Collector, Ist Grade, did yet untenably proceed to determine the question of title, as was raised before him by the respondents therein, than his granting leave to the petitioner to ensure that it becomes determined in the title suit. Thus, in his determining the question title, through his drawing Annexure P-1, he did breach the limits of the lawful jurisdictional competence vested in him. Therefore, he argues before this Court that the order of eviction, as, made through Annexure

P-1 is legally infirm, and, is required to be set aside even by this Court through its exercising its writ jurisdiction.

REASONS FOR REJECTING THE ABOVE ARGUMENT

11. However, even the above made argument before this Court by the learned counsel for the petitioners is not accepted, and, obviously, the same is rejected. The reason for drawing the above conclusion, becomes rested on the factum that, the proviso underneath Section 7, has been not read in the complete spirit in which it is made, inasmuch as, a close reading of the proviso, discloses that, as and when a question of title is raised by the respondents, in the said petition, laid before the Assistant Collector, Ist Grade, thereupon the Assistant Collector, Ist Grade is required to ensure, that the said question of title is *prima-facie* proven, hence on the basis of documents, and, but is to thereafter record a finding, that as a matter of fact a question of title, is really involved. In the above situation, when obviously he has no jurisdictional competence to determine such a question of law, thereupon, the Assistant Collector, Ist Grade, is to refrain, from drawing an order of eviction in a petition cast under Section 7 of the Act, and, rather is required to ensure that the jurisdictionally competent Court, be accessed, for determining the question of title in the manner, enshrined in Section 13(a) of the Act. However, in the event of his making a scrutiny of the relevant documents he gathers, that *prima-facie* no real question of title emerges, thereupon may well pass a lawful eviction order. While assigning the above import, to the proviso (*supra*), it is to be determined whether as a matter of fact, the Assistant Collector, Ist Grade, had entered into the exercise of examining the documents, as became placed before him, and, whether he did *prima-facie* objectively conclude, that a question of title is really involved or arises amongst the litigants concerned, and, as relates to the petition lands. In

reading the relevant discussion, as made in the order of the learned Assistant Collector, Ist Grade and, but in the above light, it is discerned that the Assistant Collector, Ist Grade after perusing the relevant documents, he as required, did objectively ensure whether *prima-facie* really a question of title did emerge in the lis. However, he concluded on such examination, that no proof became adduced by the respondent qua theirs being in possession of the petition lands prior to 1950, and, as such proceeded to draw an inference, that the title, reared by the petitioners over the disputed lands rather, is not really involved, Therefore, he did not make any breach of the proviso (supra), rather ably concluded that it has been raised in a gross perfunctory or mechanical manner, and, but only for ensuring that there is prolongation of litigation amongst the contesting parties.

12. Therefore, the argument raised by the learned counsel for the petitioners, that the learned Revisional Court, had jurisdictional competence, to decide the revision petition, though appears to be an able argument, but yet when the learned Assistant Collector, Ist Grade, was vested with jurisdictional competence, to decide the Section 7 petition, therefore, yet this Court deems it just, and, fit to yet uphold the order carried in Annexure P-1.

13. Therefore, this Court for all the above stated reasons, does not find any merit in the instant writ petition, and, is constrained to dismiss the same. Accordingly, the petition is dismissed, and, the impugned order Annexure P-1, is affirmed, and, maintained.

(SURESHWAR THAKUR)
JUDGE

02.02.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned:-
Whether reportable:

Yes/No
Yes/No