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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : May 16, 2023

BEGRAJ (SINCE DECEASED) THROUGH HIS LRS -Petitioners

V/S

STATE OF HARYANA AND ORS.

-Respondents

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

Present : Mr. V.K. Jindal, Sr. Advocate with
Mr. Akshay Jindal, Advocate and
Mr. Pankaj Gautam, Advocate
for the petitioner.

Mr. P.P. Chahar, Sr. DAG, Haryana.

Mr. S.P. Chahar, Advocate
for the respondent No.5.

Mr. S.R. Hooda, Advocate
for the respondent No.6.

SURESHWAR THAKUR, J.(ORAL)

1. The present petitioners becoming aggrieved from the concurrently made verdicts of eviction, as became respectively rendered by the Assistant Collector concerned, by the learned Commissioner concerned, and, by the learned revisional authority concerned, thus have taken to impugn the said decisions, through their instituting the instant writ petition before this Court.

2. The learned counsel for the petitioners has submitted with much force and vigour, before this Court, that earlier the Gram Panchayat Village Fatehpur, Tehsil and District Sonapat, through its Sarpanch, had instituted a petition, cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), against one Man Singh, and, to which Case No.34 became assigned. He submits, that the present petitioners are the successors-in-interest of one Begraj, who at the relevant time,

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was holding a joint family unit, along with his other brothers, namely Man Singh and Ishwar Singh. Therefore, he submits, that only one Man Singh was chosen by the Gram Panchayat concerned, to become impleaded as a party/respondent, in the said eviction petition. Resultantly, he submits, that though the judgment which became pronounced on case (supra), on 26.02.1976 (Annexure P-1), rather became not instituted against the predecessor-in-interest of the present petitioners, but since the lands as mentioned in the said verdict, are common to the subsequent petition (supra), whereon the above orders became rendered. Thus he argues, that there is commonality inter se the lands in Annexure P-1, rather with the lands as mentioned in the verdict(s) (supra), verdicts whereof become assailed before this Court. In the face of the above, there is no requirement of yet any acerbic contest emerging on the part of the Gram Panchayat concerned, thus planked upon that since the previous petition became instituted against only one of the members of a purported joint family, in which, but, only one of them was a predecessor-in-interest of the present petitioners, thereby no benefit as such, on the basis of the said judgment thus can be assigned to the present petitioners, who are rather uncontestedly the successors-in-interest of one Begraj. Importantly when the said Man Singh is not declared to be succeeded by his LRs, who rather have an interest adverse to the present petitioners.

3. Be that as it may, the important issue relates to the fact, whether the lands mentioned in the said verdict are common to the lands mentioned in the impugned subsequent verdicts.

4. Before proceeding to make an adjudication in the above respect, it is necessary to mention the operative paragraph 3 of the verdict, as became made on 26.02.1976 (Annexure P-1), paragraph whereof stands extracted hereinafter.

“I have heard the Ld. Counsel for second party and parokar of the panchayat. One thing is apparent from the record as also from the spot inspection that the second party has constructed it's house over Charand Land and the stand of the

second party that this house has been constructed long ago i.e. his possession is more than 50-60 years old is wrong as there is no other house adjoining this house and this house is constructed totally out of the village. The stand of the second party is also falsified from the record as the land is situated outside abadi. The house of the second party consists of a Kotha over one marla land and house over 7 marlas land wherein his children are residing and 4 kanal 3 marlas land is in possession as courtyard (Aangan). As I have observed herein above, the second party is in illegal possession over the property in dispute and have raised xxxxxxxx construction thereon, as such I order there immediate eviction from the left over land excluding the constructed area. Appropriate price as per the assessment of BDO be obtained by the panchayat by the second party.”

5. A reading of the above extracted paragraph makes patent speakings, that the eviction order relates, to the estate of the respondent therein, one Man Singh, thus consisting of a Kotha over 1 Marla land, and, also a house over 7 Marlas land, wherein his children were residing, and, of another piece of land measuring 4 Kanals 3 Marlas, thus stated to be in apt possession as courtyard (Aangan). Moreover, the other open lands were also declared to be amenable for a verdict of eviction being passed against the said Man Singh. However yet a reading of the above extracted operative portion of the verdict (supra) also reveals, that appropriate price, as per the assessment of the BDO was directed to be obtained by the Panchayat concerned.

6. The verdict of eviction (supra) became challenged by the aggrieved Man Singh, before the learned Collector, Sonapat, through his casting an appeal bearing No.213 of 1976. Through an order drawn on the statutory appeal (supra), the competent appellate authority, in the operative part of its verdict, made the hereinafter extracted directions.

“3.I instructed the Sub Divisional Officer (Civil) Sonapat to get the area of house and boundary wall in

question re-measured and to submit his report as to whether the area under the said house and boundary wall is 2 kanals or 4 kanals 3 marlas. Sub Divisional Officer (Civil) Sonapat has reported that he has got the spot measured through Girdawar wherein it has been found that the total area under house and boundary wall of the appellant is 1 kanal 19 marlas. Thus, the eviction of the appellant is ordered from the remaining land in dispute while excluding the said 1 kanal 19 marlas constructed area. Concerned Block Development and Panchayat Officer is directed that he should get the price of said 1 kanal 19 marlas land under construction ascertained from Tehsildar Sonapat as per Government instructions and get the amount deposited in the Panchayat Fund and get the said land sold to be appellant from Panchayat. The appeal of the appellant is accepted to the said extent.”

7. The relevant directions, as are carried therein, relate to instructions being issued to the SDO (Civil) Sonapat, to get the area of house and boundary wall in question re-measured, and, to submit his report, as to whether the area under the said house and boundary wall, thus is about 2 Kanals or 4 Kanals 3 Marlas. In pursuance thereof, it is revealed, that the SDO concerned, reported to the appellate authority, that after the said measurements being carried through Girdawar, thereupon it was found, that the total area carries a dimension of about 1 Kanal 19 Marlas. Consequently, the eviction of the appellant therein, was ordered from the remaining land in dispute, while excluding the said land measuring 1 Kanal 19 Marlas. Thereafter, the Block Development and Panchayat Officer concerned was directed, that he should get the price of said 1 Kanal 19 Marlas land, which was having construction thereon, becoming ascertained from the Tehsildar, Sonapat, as per government instructions, and, to ensure, that the sale price comes to be deposited in the Panchayat fund, and, thereafter title as owner becomes conferred upon said Man Singh, thus in respect of the constructed portion of the unauthorizedly occupied land, by said Man Singh. The said order has acquired finality, and, conclusivity.

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8. The dispute, which has subsequently emerged, and, which has led to the making of the impugned orders, relates to whether prima facie the said subsequent motion being similar to the one, as became initially instituted against one Man Singh, who is the brother of the predecessor-in-interest of the present petitioners. If there is commonality inter se the lands mentioned in the conclusive, and, binding judgments, thus earlier made by the competent authorities below, thereupon any subsequent motion, in respect of similar lands, was completely barred by the principle of res judicata. However, it appears from a reading of the impugned orders, as become concurrently pronounced against the present petitioners, that the learned Assistant Collector concerned, in a most slipshod and a hasty manner, made a finding in Annexure P-9, that the respondent in the said petition was unable to produce cogent proof, that the conclusive decision (supra) became complied with. The reason for making the said conclusion arose from, despite receipts relating to the settled sale price, in respect of the disputed lands, being tendered before the Assistant Collector concerned, yet merely for the reason, that the veracity of the said receipt could not be verified, from the Register of the Block Development and Panchayat Officer, that no reverence become meted to the said receipt.

9. The Assistant Collector concerned, on the receipt concerned, being tendered before him, was required to ensure, that a valid exhibition mark is made thereon, and, in case there's any opposition to the making of a valid exhibition mark thereon, thereupon it was but incumbent upon the Assistant Collector concerned, to rear an apposite objective and independent conclusion, thus not merely on the statement of the B.D.P.O. concerned, that the said receipt is false or fabricated. Thus, it was incumbent upon the Assistant Collector concerned to, in case there is any opposition to the making of an apposite valid exhibition mark, to ensure, that he makes a summoning order upon the custodian of the original receipt, so that in pursuance thereof, the apposite produced Register makes a

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display therein of the said receipt, as but imperatively only from its keen scanning a conclusion could become made, whether as a matter of fact, the said receipt is entered in the records, whereupon alone the benefit of Annexure P-2 would become assignable to the petitioners.

10. Though, in the above regard, it appears, on a reading of the impugned order (Annexure P-9), as drawn by the Assistant Collector concerned, that the said Register w.e.f. 1.6.1976 till 25.9.1979, thus containing 100 pages, though became produced, but yet with the official concerned, stating that therein, the receipt comprising a payment of sale price of Rs.3540/-, thus becoming not entered, that thereby no credence became assigned to the relevant receipt. Therefore, it appears, that the Assistant Collector concerned, did not proceed to make any personal insightful reading of the entire register, rather he merely in a most hasty and ill informed manner, proceeded to conclude, but on the statement of the B.D.P.O. concerned, that the said register, does not reflect, that the sale price of Rs.3540/-, which became carried in the relevant receipt, rather being entered therein, whereby he declined to assign credence to the said receipt. It is but from the above absence of exercisings by the Assistant Collector, thus of an insightful personal reading of the entire register, rather his believing the statement of the B.D.P.O. concerned, that has resulted in no lawful exhibition mark, being made on the apposite receipt, and, thereby obviously no credence being assigned to the said receipt. Ultimately also it led to the purported ill consequence of the respondent therein, being deprived of the benefit of a conclusive and binding verdict, as became earlier recorded by the competent statutory authorities concerned, whereby leave was assigned to one Man Singh, brother of the predecessor-in-interest of the present petitioners, to purchase the constructed portions of the lands.

11. In the above manner, there is complete failure of exercising of jurisdiction by the learned competent authorities concerned, and, resultantly the

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jurisdiction exercised by each of them, thus has been exercised with a gross illegality, and, also with a gross material impropriety. The said manner of exercising(s) of jurisdiction is thus required to be undone. Consequently, after accepting the instant writ petition, the impugned orders are quashed and set aside. The lis is remanded to the Assistant Collector concerned to, after restoring the petition cast under Section 7 of the Act of 1961 to its original number, thus permit the petitioners herein to produce the original(s) of the relevant receipt/register, and, resolution before him, thus through his making the summoning of the custodian of the original records of such registers/receipts, and, of the resolution registers, and thereafter, he shall ensure that a valid exhibition mark is made on the photocopies of originals of such adduced documents. Subsequently, the Assistant Collector shall draw a fresh decision in accordance with law, upon the remanded lis, but after hearing all affected persons and positively within four months from today.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 16, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No