

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

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CWP-11289-2020

Date of Decision : **January 18, 2023**

DHIAN SINGH AND OTHERS

.....Petitioners

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

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

Present: Mr. Arun Takhi, Advocate for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Ram Kumar Chauhan, Advocate
for respondent No.4.

SURESHWAR THAKUR, J.(ORAL)

1. The instant petition is directed against the verdicts of eviction, as became concurrently rendered by both the statutory authorities below. The said concurrently made orders are respectively carried in Annexures P-11 and P-13. The petition cast under Section 7 of the Punjab Village Common Land (Regulation) Act, 1961(in short “**the Act**”) by the Gram Panchayat concerned, had ventilated the hereinafter extracted (head note) :-

“Petition under Section 7 of the Punjab Village
Common Land Act as amended upto date for the
ejectment/eviction of the respondents No.1 to 3 in respect of:

i) From the land measuring 1K-17M out of Khasra No.5507/1-4001 and land measuring 0K-16M (passage) out of bearing Khasra No. 5778 and land measuring 0Kanal 8 Marla (passage) out of Khasra No. 5753/1-4001 0-8 (0-1-53.58) and land measuring 0 kanal 9 marlas (passage) out of Khasra No. 5762, Khatauni No. 502, Khewat No. 433/420 situated in the area of village Pandori Bibi, District Hoshiarpur as entered in Jamabandi for the year 2012-2013 and shown red in the site plan is after removal of tube well connection and any other superstructure is raised illegally by the respondents during the pendency of the petition and putting the petitioner and vacant possession of the same.

ii) Eviction/ejection of the respondents No.1 to 3 from the passage of plot land bearing 2 Kanal 15 Marla bounded as East: Rasta, West: Rasta, North: Rasta, South: Rasta and land of Dhain Singh which is red colour in site plan and denoted within letters ABCD situated in the village Pandori Bibi, District Hoshiarpur, Total encroached area 3K 10M i.e. 1K 17M out of Khasra No.5507 and 0K-16M(passage) out of Khasra No. 5778, 0K 8M(passage) out of Khasra No.5753, 0K 9M(passage) out of Khasra No.5762.”

2. The learned counsel appearing for the petitioners submits that he has abandoned his claim, if any, as it appertains to head note No.I. Moreover, when the abandoned claim in respect of the relief carried in the head Note No.1, is also submitted by the learned State counsel, to be not yet surviving, given the assumption of possession of the lands mentioned therein, by the respondent concerned, through the valid execution of validly issuing warrants of possession. Though the above abandoned claim does not warrant any adjudication being made thereons.

3. However, the claim for eviction, as, reared by the Gram Panchayat concerned, and as becomes made in the head note No.II, of the eviction petition, yet survives for an adjudication being made by this Court.

4. The land described in the head note of column No.II, and, which is alleged to be encroached upon by the petitioners herein, becomes carried in *Khasra Nos.5507, 5778* and in *5753*, besides in *khasra no.5762*. However, the Gram Panchayat concerned, though was required to establish through the revenue entries as reflected in the revenue record concerned, that the above said *khasra numbers* hence fall to its valid ownership and possession, and, was to also imperatively establish that the petitioners herein, had no valid right or title or interest therein. However, the Gram Panchayat concerned, did not establish through the relevant permissible mode hence the above factum rather through the apposite revenue entries. Therefore, without any revenue entries being carried in the revenue documents concerned, rather suggestive that the above *khasra numbers* fell to the legitimate ownership and possession of the Gram Panchayat concerned, thus, there was no occasion for the Gram Panchayat concerned, to yet proceed through the institution of a petition under Section 7 of the Act, hence ask for the eviction of the writ petitioners herein from the above said lands.

5. It appears that even both the authorities below, without bearing in mind, the above pivotal aspect, had yet proceeded to concurrently make orders, for the eviction of the petitioners herein from the above said *khasra numbers*. The abandonments of the dire necessity,

by the quasi judicial authorities, to call for adduction of cogent evidence, suggestive of any valid possession as owner of the Gram Panchayat concerned, qua the above *khasra numbers*, but has obviously led the statutory authorities below, to untenably yet proceed to order for the eviction therefrom of the petitioners herein. The above abandonments are but obviously a condemnatory practice, as it speaks volumes of the grossest non application of mind by the authorities below viz-a-viz the above requirements qua adduction(s) of cogent evidence (Supra), besides also resultantly make clear, candid echoings that the concurrently orders, as made against the petitioners are but rendered in a most slipshod and in an arbitrary manner.

6. What adds strength to the above reason, becomes gathered from the fact that in a civil suit instituted at the instance of the petitioners against the Gram Panchayat concerned, the petitioners had therein instituted an application cast under the provisions of Order 39 Rules 1 and 2 read with Section 151 CPC, and, thereons the learned Civil Judge concerned, had proceeded to, on the basis of the demarcation report, with a finding therein, that the above *khasra numbers*, do not become encroached upon by the petitioners herein, rather grant the relief of interim injunction to the petitioners. Though the above made order has been stated to be challenged before the first appellate Court concerned, but yet there is no finding recorded thereons, besides, when hence no independent demarcation of the disputed *khasra numbers* was either called for nor the said demarcations were proved in accordance with law. Therefore, even if assuming no title deed in respect of the disputed

khasra numbers becoming owned not by the petitioners rather became adduced before the authorities below, by the Gram Panchayat concerned, yet there was an incumbent duty cast, upon, the Gram Panchayat concerned, to in the face of an appeal becoming cast, against the affirmative order, made on the petitioners' application cast under Order 39 Rules 1 and 2 read with Section 151 CPC, and, the said appeal thereagainst being sub judice, before the appellate authority concerned, to yet not proceed to make concurrent orders of eviction of the petitioners herein from the lands concerned. The above avoidable exercise has not been done. Thus, though the orders challenged before this Court may have been validated irrespective of the above appeal, being sub judice before the Appellate Court concerned, yet only if an impartial and unbiased valid demarcation of the disputed *khasra numbers* became hence made by the Revenue Officer concerned, and, thereafter the apposite demarcation report became tendered besides became proved in accordance with law hence before the authorities concerned. Enigmatically, the above has also not been done. Therefore, this Court is constrained to accept the instant writ petition, and, to concomitantly also order for the quashing of the concurrently made orders, as, respectively drawn by the District Divisional and Panchayat Officer-cum-Collector, Hoshiarpur, and, by the Director, Rural Development and Panchayat Department, Punjab (exercising the powers of Commissioner), and, as become respectively carried in Annexures P-11, and, in P-13.

7. It is clarified that in case a binding conclusion, adversial to the petitioners, become arrived by the Civil Court concerned, thereupon

the said decree may be enforced in accordance with law against the petitioners herein.

8. Disposed of

(SURESHWAR THAKUR)
JUDGE

January 18, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No