

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

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CWP-11471-2023

Date of Decision : **May 26, 2023**

GRAM PANCHAYAT VILLAGE DHAMOULI MAJRI

.....Petitioner

VERSUS

THE COMMISISONER AMBALA CANTT. AND OTHERS

.....Respondents

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CWP-8609-2023

AVTAR SINGH AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present : Mr. S.M.Sharma, Advocate
for the petitioners in CWP-11471-2023.

Mr. Vikram Singh, Advocate
for the petitioners in CWP-8609-2023.

Mr. Raman Sharma, Addl. AG, Haryana.

KULDEEP TIWARI. J.

On the request of both the counsels for the parties, both the petitions are taken up together, as both petitions arise from the common dispute.

For the sake of brevity, the facts are taken from CWP-11471-2023.

The Gram Panchayat, village Dhamoli Majri, Tehsil

Naraingarh, District Ambala has filed the present petition seeking quashing of order dated 17.5.2013 (Annexure P-8) passed by the Commissioner, Ambala Division, Ambala (respondent No.1) vide which permission was granted to private respondents No.4 to 13 to harvest the crops and also directed the Asstt. Collector Ist Grade, Naraingarh to provide police protection for enabling the petitioner to cut the trees and harvest the crops. The case is best example where deliberately multiple litigations is generated from an order of status-quo dated 29.3.2023 passed by this Court in CWP No.6840 of 2023 in order to derive undue benefits. Therefore, to settle the dispute once and for all, it is imperative for us to discuss the factual issues in detail.

FACTUAL MATRIX

The private respondents No. 4 to 13 had earlier approached this Court seeking quashing of the notice(s) under Section 24 (2) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as “the Act of 1994”) issued by the petitioner-Gram Panchayat. This Court while adjudicating the legality of notice(s) served under Section 24(2) of the Act of 1994 held that since the proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act of 1961') are still pending before the Asstt. Collector Ist Grade concerned, therefore, notice(s) served under Section 24(2) of the Act of 1994 is illegal and, thus, be quashed. However, it was specifically observed that the Asstt. Collector Ist Grade concerned, before whom petition under Section 7 is pending shall make an objective independent

decision without getting influenced of quashing of above notice(s) under Section 24(2) of the Act of 1994 and decide the eviction petition within a period of three months. **Further, specific direction was issued to maintain status-quo as on that day in respect of the disputed land (emphasize specifically).**

Today. the learned counsel for the petitioner-Gram Panchayat has brought on record certain additional facts that prior to the quashing of the impugned notice(s) under Section 24(2) of the Act served upon respondents No.4 to 13, the actual physical possession was resumed and this fact was being concealed by the respondents No.4 to 13). He further submitted that in pursuance of the notice dated 17.3.2023 (Annexure P-15), the physical possession was taken on 24.3.2023 in the presence of the Duty Magistrate SDO(C) and officials of BDPO, Sahjadpur, Sarpanch, Gram Panchayat Village Dhamoli Majri, Girdawars Halqua and Duty Magistrate. He further brought the attention of this Court to the DDR No. 26 dated 24.3.2023 recorded by the police wherein, it is recorded that in the presence of Sh. Pardeep Kumar, SDO, UHVPN, Sahjadpur (Duty Magistrate), in compliance of order No.8262-MA/MC-2 dated 17.3.2023, the possession of the panchayat land was handed over to the Panchayat and the previous occupant i.e. respondents No. 4 to 13 were present on the spot, who raised objection regarding possession proceedings. However, they could not produce any document, therefore, the transfer proceedings were conducted peacefully. Learned counsel for the petitioner further placed reliance upon the compliance

report which was submitted by the Duty Magistrate, concerned, to the Deputy Commissioner, Ambala dated 28.3.2023. the relevant extract reads as under:-

“It is intimated that I had been appointed as Duty Magistrate vide your good office memo no 8325/MA/MC-2 dated 22.03.2023 to maintain the law and order during possession of Panchayti land in Gram Panchayat Dhamauli Majri.

In the subject cited matter it is informed that the possession work of Panchayat land has been done peacefully with the help of Police (Men and Women) and in the presence of officials of BDPO office Shahzadpur, Sarpanch Gran Panchayan Dhamouli Mari, Girdawar and Patwari of Halka Mojan Dhamouli Majri on dated 24.03.2023.

Submitted for your kind information and further necessary action please.”

A perusal of the above report clearly depicts that the SDO, UHVCN, Shahzadpur was appointed as Duty Magistrate by the Deputy Commissioner, Ambala vide order dated 22.3.2023 and he in pursuance of the above said order handed over the actual physical possession to the Sarpanch, Gram Panchayat Dhamoli Majri on 24.3.2023.

From the facts which was brought on record by the learned counsel for the petitioner, it is crystal clear that the Gram Panchayat concerned, was put into physical possession of the land in dispute on 24.3.2023 and this Court on 29.3.2023 while quashing the notice(s) under Section 24(2) of the Act of 1994 specifically observed to maintain status-quo as it exist on that day.

The private respondents No.4 to 13, who have earlier concealed this fact from this Court while seeking quashing of the notice(s) under Section 24(2) of the Act that they have already lost the actual physical possession and now the Gram Panchayat, Dhamoli Majri is infact in the physical possession, tried to create new litigation out of the order dated 29.3.2023 and filed contempt petition No.COCP-1342-2023 before this Court with the false averment that only symbolic possession was taken by the petitioner-Gram Panchayat concerned, in pursuance of the notice(s) issued under Section 24(2) of the Act of 1994 which has already been set-aside vide order dated 29.3.2023 and got the contempt notice(s) issued to the official respondents and the petitioner-Gram Panchayat concerned, vide order dated 5.5.2023 (Annexure P-5). In the meanwhile, SDO(C), Naraingarh issued direction to the BDPO, Shahjadpur to get the wheat harvested from the petition land(s) and the same be sold under his supervision and the sale proceed of the crop be kept as security so that after the decision of the eviction petition filed under Section 7 which is pending before him, the entitlement with regard to such sale proceed will also be decided. The relevant extract of order dated 2.5.2023 reads as under:-

“On the above noted subject and in continuation of above referred letter that above noted case under village Common Regulation Lands Act, is pending before this Court, in which you have requested for cutting of standing crop from the disputed land. In this connection you are requested that you get the riped wheat crop cut from the disputed land and be sold under your

supervision. After sale of the crop, amount be kept with you as (Amanat). So, that after decision of the case the amount be paid to the concerned. On this connection, both the parties and office be informed positively.”

The respondents No.4 to 13 under the garb of the contempt notice(s) which was issued to the official respondents challenged the above order dated 2.5.2023 passed by the SDO(C), Naraingarh before the Commissioner, Ambala Division, Ambala. The Commissioner, Ambala Division, Ambala misconstrued the interim order dated 5.5.2023 passed by the contempt Court and granted permission to the private respondents to cut the crop and also directed the Asstt. Collector Ist Grade, Naraingarh to provide police protection facilitating the respondents to cut the trees and harvest the wheat crop. Aggrieved against this order, the petitioner-Gram Panchayat filed the present writ petition.

ANALYSIS

We have examined the entire facts and dispute minutely. It is a case where respondents No.4 to 13 by concealing the vital facts from this Court procured the order of status-quo and thereafter generated multiple litigations just to re-enter into petition land(s). As already mentioned above, vide order dated 29.3.2023, we have only ordered to maintain status-quo as exist on that day and the private respondents have already lost the possession prior to passing of the order of status-quo. Therefore, for all purpose and intent, the petitioner-Gram Panchayat is entitled to retain the possession. Further, the Commissioner concerned has misread the order dated 5.5.2023 passed by the contempt Court to

conclude that the High Court in its order declared the private respondents to be in possession whereas, the contempt Court has only recorded the submissions made by the counsel for the private respondents (petitioners therein) and issue notice in the contempt petition. Therefore, the directions which were issued by the Commissioner concerned, are totally perverse, illegal and against the facts. Therefore, the order dated 17.5.2023 passed by the Commissioner concerned, is liable to be quashed. In order to give quietus to all these litigations, the following directions are issued:-

- i) The BDPO concerned shall immediately under his observations get harvest the crop from the petition land(s) and deposit the sale proceed in a Nationalised Bank in the form of Fixed Deposit:
- ii) The Asstt. Collector Ist Grade concerned, who is seized of the eviction petition filed by the Gram Panchayat shall decide the same positively, but preferably within a period of three months from today and thereafter also make decision with regard to entitlement of sale proceed:
- iii) Since the private respondents have already lost the possession, therefore, liberty is given to the Panchayat to utilize the petition land(s) in accordance with the rules and procedure prescribed under the Haryana Village Common Lands (Regulation) Act, 1961 and;
- iv) In case the private respondents succeed in the eviction proceeding and upon attaining conclusivity and finality of such *lis*, they will be entitled to seek restoration of possession by making an appropriate motion before the appropriate authority.

In view of the above observation, the present petition i.e.

CWP-11471-2023 is allowed and the order dated 17.5.2023 (Annexure P-8) passed by the Commissioner, Ambala Division, Ambala is, hereby, set-aside.

CWP-8609-2023 filed by the private respondents No.4 to 13 challenging letters dated 11.4.2023, 12.4.2023 and 14.4.2023 (Annexures P-19 to P-21) passed by the authorities concerned, in the process of appointing Duty Magistrate for the purpose of taking the actual physical possession and to hand over the same to the Gram Panchayat concerned has now become rendered infructuous in view of the fact that the actual physical possession has been delivered to the Gram Panchayat concerned, way back on 23.3.2023. Therefore, no further adjudication is required in the present petition.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 26, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No