

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 13547 of 2016 (O&M)

Date of Decision: 21.3.2023

Shiv Ram Singh Kapoor and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner

Mr. Maninder Singh, Sr. DAG, Punjab.

None for respondents No. 3 and 4.

SURESHWAR THAKUR, J. (ORAL)

1. One Santokh Singh filed a petition No. (7) 1016/DDPO before the Collector (Panchayat Land) DDPO, Patiala. The said petition was cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'). In the petition (supra), the petitioners sought the eviction of the respondents therein, from the petition land, on the ground that they were encroachers, upon land rather owned and possessed by the Gram Panchayat concerned. On petition (supra), the learned Collector concerned, made an affirmative order, on 5.9.2014, leading the aggrieved to institute a statutory appeal before the learned Appellate Authority concerned. On the said statutory appeal to which Appeal No. 5 of 2015 became assigned, the Appellate Authority on 26.5.2016, after dismissing the appellants' appeal hence affirmed the order as became initially pronounced by the learned Collector concerned.

Therefore, the aggrieved therefrom, the petitioners herein, are led to institute thereagainst the instant petition before this Court.

2. Learned counsel for the petitioners, has challenged both the impugned orders, and submits that both the impugned orders, are completely vitiated, as they become rendered on a misconstituted motion, being made by one Santokh Singh, who, however, was not ably bestowed with the statutory leverage, to file a petition under Section 7 of the Act before the Collector concerned. In making the above argument(s), he rests them on sub-section 1 of Section 7 of the Act, provisions whereof become extracted hereinafter:-

*“Power to put panchayat in possession of shamilat deh-
(1) The Collector shall on an application made to him by a panchayat, or by an officer, duly authorized in this behalf by the State Government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in 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 it under this Act and for so doing the collector 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.”*

3. A reading of the above extracted provision, thus, vividly supports the arguments addressed before this Court by the learned counsel for the petitioners that, the therein bestowed statutory leverage for ably drawing lawful orders against the encroachers, upon the Panchayat land or on the Shamlat land rather becomes ably vested in the Gram Panchayat or in a duly authorised officer. Necessarily when any private person, as one

privilege. Therefore, both the authorities below could neither entertain a misconstituted petition nor were well empowered, to exercise any valid jurisdiction thereons nor they could pass the impugned orders respectively, upon case No. (7) 1016/DDPO dated 16.6.2014, and, later upon appeal No. 5 of 2015.

4. In consequence, the instant petition is allowed, and, the impugned orders are on the above ground hence quashed and set-aside. However, with the liberty to the respondent concerned, to re-institute a better constituted petition under Section 7 of the Act, before the Collector concerned, and, on such petition(s) becoming instituted, the Collector concerned, shall after hearing all affected persons, make a speaking decision thereons, but within a period of 6 months of their preferment.

5. Disposed of in the above terms.

6. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 21, 2023
Gurpreet

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