

104

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

(I)

CWP-10392-2017
Date of decision:24.07.2023

RAM PARSAD

...Petitioner

Versus

STATE OF HARYANA & ORS

...Respondents

(II)

CWP-20484-2018

RAM PARSAD

...Petitioners

Versus

STATE OF HARYANA & ORS

...Respondents

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

Present: Mr. Munish Gupta, Advocate
for the petitioner (in both cases).

Mr. Ankur Mittal, Addl. AG Haryana with

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Aman Gautam, Advocate
for respondents No.5 and 7.

Mr. Gulshan Nandwani, Advocate
for respondents No.11 to 13 and 17
in case CWP-10392-2017.

SURESHWAR THAKUR, J. (ORAL)

1. Since both the writ petitions make a challenge to common thereto
orders, as comprised in Annexure P-12 in both the writ petitions, therefore, both
the writ petitions are liable to be decided through a common verdict.

2. In terms of a policy formulated by the State of Haryana for rehabilitation of poor landless people thus, some of the claimants became allotted 100-100 square yards of plot in the abadi of each and every village of Haryana. The said policy was drawn on 01.02.2008. However, the allotments, as made to the allottees concerned, was challenged by the present petitioner(s), and, the said challenge succeeded, inasmuch as, on an enquiry being made by the Enquiry Officer, rather resulted in the drawing of Annexure P-4. Annexure P-4 details the names of ineligible persons. However, at the end of Annexure P-4 it has also been expressed that apart from the persons declared thus to be ineligible for allotments, thus others were not found ineligible for the said allotments, as were made in their favour. The drawing of Annexure P-4 occurred on 28.06.2013.

2. In pursuance to Annexure P-4, the Deputy Commissioner, Rewari addressed, on 19.07.2013, a letter to the Block Development and Panchayat Officer, Rewari and, thereby a direction was made, upon the Authorities concerned, to draw proceedings in terms of Section 10-A of the **The Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”)**, the provisions whereof are extracted hereinafter.

“10A.Power of the Collector to cancel or vary leases etc. of lands vested in Panchayats.

(1) Notwithstanding anything contained in this Act, or the Shamilat law or in any other law for the time being in force, the Collector in the area of his jurisdiction may call for the record of any lease contract or agreement entered into by the Panchayat in respect of land vested or deemed to be vested in it, whether such lease, contract or agreement is entered before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964 and examine such record for the purpose of satisfying himself as to the legality or propriety of such lease, contract or agreement.

(2) Where, on examination of the record under sub-section (1) and after making such inquiry, if any, as he may deem fit, the Collector is satisfied that such lease, contract or agreement:

(i) has been entered into in contravention of any of the provisions of this Act or the Rules made there under;

(ii) has been entered into as result of fraud or concealment of fact; or

(iii) is detrimental to the interests of the panchayat as prescribed; the Collector may, notwithstanding anything as aforesaid, cancel the lease, contract or agreement or vary the terms thereof unconditionally or subject to such conditions as he may think fit;

Provided that no order under this sub-section shall be passed by the collector without affording reasonable opportunity of being heard to the parties to the lease, contract or agreement.

(3) Where the terms of any lease, contract or agreement have been revised by the Collector under sub-section (2), the variation shall, notwithstanding anything contained in this Act or Shamilat law or in any other law for the time being in force be binding on the parties to the lease, contract or agreement as the case may be.

(4) Where the lessee or the person with whom a contract or agreement has entered into by a Panchayat refuses to accept the variation made by the Collector under this section in the terms of lease, contract or agreement, as the case may be, shall be deemed to be cancelled by the Collector under this section with effect the date of such refusal.

(5) Where, under this section, any lease, contract or agreement is cancelled or is deemed to be cancelled or its terms are varied, lessee or the person with whom the contract or agreement has been entered into, who suffers by such cancellation or variation, is entitled to receive compensation to be assessed by the Collector for any loss or damage caused to the lessee or such person, which naturally arose in

the usual course of things from such cancellation or variation.

Provided that no such compensation shall be given for any remote or indirect loss or damage sustained by reason of such cancellation or variation.

(6) Notwithstanding anything contained in any law for the time being in force, the amount of compensation awarded by the Collector under this section shall be payable by the panchayat in the prescribed manner and shall be a valid charge on the Shabha funds.

(7) Any party to a lease, contract or agreement aggrieved by any order of the Collector made under this section may, within a period of thirty days from the date of such order, appeal to the Commissioner whose decision thereon shall be final.”

3. A reading of the above extracted provisions, as embodied in Section 10-A of the Act of 1961 reveal, that a comprehensive *ad nauseam* procedure becomes contemplated therein, thus for examination(s) being made in respect of unlawful grant of lands, and/or qua allotments being made to ineligible persons, and/or, on satisfaction being drawn by the Authority concerned, that as a matter of fact such allotments are made to ineligible persons, thereby the Authority concerned, has been conferred jurisdiction to rescind or cancel such made allotments or to rescind or cancel such granted pattas to the claimants concerned.

4. Though, the Deputy Commissioner concerned, through his drawing Annexure P-5, did adopt, thus the able statutory procedure, as relates to cancellation of allotment or cancellation of pattas, as made to ineligible persons.

5. Nonetheless, it appears that despite the making of Annexure P-4, the petitioners herein accessed this Court, through the institution of writ petition No.CWP-6710-2016. The prayer made in the said writ petition was that despite enquiry report (Annexure P-4), becoming drawn on 28.06.2013, and, despite

representations being made for follow-up action being taken thereons, yet no follow-up actions being yet taken by the Authorities concerned.

6. Consequently, this Court in the operative of its verdict made the hereinafter extracted directions to the Deputy Commissioner, Rewari.

“Having heard learned counsel for the petitioner and considering the nature of relief sought in this writ petition however without expressing any views of the merits of the allegations, we dispose of this writ petition with a direction to the Deputy Commissioner, Rewari, to call for the records and if any enquiry in accordance with the principles of natural justice has been held in which illegalities and irregularities are noticed in allotment of 100 square yard plots, let the matter be taken to its logical conclusion, within a period of four months from the date of receiving a certified copy of this order.”

7. Though, in pursuance thereto, and, in compliance of the operative part of the verdict passed by this Court, the Deputy Commissioner, Rewari proceeded to make the impugned order Annexure P-12, whereby he made a modification of the enquiry report, inasmuch as, he made deletions of enlisted therein thus ineligible persons, inasmuch as, some of the persons declared ineligible in Annexure P-2, thus became declared to be eligible. Therefore, the learned counsel for the petitioner(s), has vehemently argued before this Court, that there has been a complete breach of the enquiry report, as comprised in Annexure P-12, and, that too without an adequate opportunity of hearing being granted to the petitioner(s) herein.

8. For the reasons to be assigned hereinafter this Court does not, despite the fact that Annexure P-12 has been drawn in pursuance to, and, in compliance to the verdict made by this Court, upon writ petition (supra), besides despite the therein made operative part, thus making a direction, upon the

Deputy Commissioner, Rewari to take such action, as deemed fit in terms of enquiry report (Annexure P-4), rather deem it fit to uphold Annexure P-12.

9. Primarily so, for the reason that it appears, that on the petitioners accessing this Court through their instituting the writ petition (supra), they completely suppressed the factum of the drawings by the Deputy Commissioner, Rewari of Annexure P-5, whereby the latter proceeded to recommend to the BDPO concerned, to draw the proceedings under Section 10A of the Act of 1961. The making of Annexure P-5 was fully clothed with statutory sanctity, and, was but the ablest recourse to be adopted for the relevant purpose, as there is no other statutory provision in any apposite statute, thus for the relevant purpose. Moreover, when in the light of the said specific statutory provision, as carried in a special statute, thus the Civil Court concerned, also has no jurisdiction to entertain a suit, thus for setting aside an order, as made by the Competent Authority, rather annulling or rescinding the patta allotted to ineligible persons, given the imminent facts that validity of the order of rescission rather is amenable to become scrutinized by the writ Court.

10. If so, it appears that despite the above legally befitting statutory recourse becoming adopted by the Deputy Commissioner, Rewari concerned, thus through his hence in pursuance to Annexure P-4, making Annexure P-5, but yet the writ petitioners, thus through suppressing the above fact earlier from this Court, thus, thereby they proceeded to obtain the above made directions from this Court.

11. The above suppression has resulted in a legally infirm Annexure P-12 becoming drawn by the Deputy Commissioner, Rewari. Resultantly, but when obviously Annexure P-12, is tainted with a gross vice of not only it being drawn in pursuance to the petitioners in writ petition (supra), suppressing from this Court, the factum of the drawing of Annexure P-5, but also from a further

vice of the jurisdiction as exercised by the Deputy Commissioner, Rewari, becoming thus exercised rather in gross departure from, and, in derogation of the order Annexure P-5, order whereof, is in alignment with the comprehensive statutory provision(s) (supra), as appertaining to the rescinding of allotments, as made to ineligible persons.

12. The consequence of the above is but simple, that the jurisdiction as exercised, for rescinding or cancelling, and/or, as became exercised for modifying the enlistment of ineligible persons in Annexure P-4, is but an inaptly exercised jurisdiction. In summa, after quashing Annexure P-12, the learned State counsel is directed to ensure, that the Gram Panchayat concerned, forthwith, if not already instituted, institute petition(s) under Section 10A of the Act of 1961 before the learned Collector concerned, thus seeking in terms of Annexure P-4 rescinding, and, cancellation of the allotments, as became made to purportedly ineligible persons. If the said petitions are subjudice, thereupon, after hearing all concerned, the Collector concerned, shall within a period of two months from today hence pass lawful speaking decision(s) thereons.

13. Disposed of accordingly.

14. A photocopy of this order be placed on the file of other connected case.

(SURESHWAR THAKUR)
JUDGE

24.07.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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