

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

CWP-16075-2016(O&M)

Date of Decision : February 1, 2023

Shankar 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. Nakul Sharma, Advocate
for the petitioners.

Mr. Maninder Singh, DAG, Punjab.

Mr. V.K.Sandhir, Advocate
for respondent no.4.

SURESHWAR THAKUR, J.(ORAL)

1. The Gram Panchayat Alipur, Tehsil and Distt. Jalandhar instituted case No.232 of 2002 before the Collector concerned. The above case, was constituted under the provisions of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'). Through the above petition, the eviction of the respondents therein, was asked to be made from the land, comprised in khasra no.33, 34 and 35.

Through an order made thereon, on 15.02.2006, the relief (Supra) as became claimed therein was declined to the Gram Panchayat concerned.

2. At this stage, it is relevant to refer to the reasons, as became drawn by the learned Collector concerned, to decline relief to the Gram Panchayat concerned, in the petition (Supra). The reason as enclosed therein is comprised the factum, that the demarcation report, as became tendered before the learned Collector concerned, rather not displaying that the lands as became purchased by the respondents therein, and, to which khasra numbers 16/7/1/1, 7/12 are assigned, hence encroaching upon the suit khasra numbers, nor the purchased khasra numbers being echoed to form the part and parcel of the suit khasra numbers. Therefore obviously it became concluded that the suit khasra numbers have not been encroached upon at the instance of the respondents therein. Moreover, a further reading of the order, as made by the learned Collector concerned, does not disclose, that any *tatima* became appended with the demarcation report, and, but its revealing that the purchased (Supra) khasra numbers, by the respondents therein, from their vendors, were also a part and parcel of the suit khasra numbers, and as such, the purchased khasra numbers to which the above khasra numbers are assigned, were the ones which became encroached, upon

at the instance of the respondents therein, and/or but such encroachments being made upon the suit khasra numbers.

3. Therefore, but obviously, the learned Collector concerned in the operative part of its verdict, came to a conclusion that the Gram Panchayat concerned, has utterly failed to establish qua its being the lawful owner, in possession of land comprised in khasra no. 16/7/1/1, and/or land comprised in khasra no.7/12. Though, there is silence in the operative part of the judgment, whether the suit khasra numbers, did also become encroached upon, but the above silence is of the least significance, as the purchased khasra numbers, to which the above khasra numbers, are assigned rather have been declared, for the above reasons to be the ones, which are, but outside the suit khasra numbers, and, or not within the domain of the suit khasra numbers.

4. The above drawn verdict by the learned Collector concerned has been stated at the bar, to have acquired conclusive and binding effect, and resultantly, the Gram Panchayat concerned, for reasons assigned hereabove, was not to either file an execution petition, before the learned Collector concerned, in respect of the suit khasra numbers, nor the learned Executing Court, was to draw any warrants of possession, for ensuring that encroachment, if any, thereons being ordered to be removed at the instance

of the respondents / JDs, may be through efficacious execution of warrants of possession.

5. However, yet an execution petition was filed before the learned Collector concerned, and, despite the objections to its maintainability becoming raised at the instance of the respondents/JDs, the said objections were dismissed initially by the learned Collector concerned, and, later became also likewise dismissed by the Appellate Court concerned. Resultantly, the warrants of possession became issued for the making eviction(s) of the respondents/JDs from the petition land(s). The said warrants of possession are appended as Annexure P-2 to the petition. The drawing of the above warrants of possession, as also, the prior thereto dismissal of the petitioners' objections, through concurrent orders (dated 01.04.2016 and 30.05.2016 carried in Annexures P-6 and P-8 respectively) being passed by the authorities below, do become the plank for the petitioners being aggrieved, and, is earnestly seeking a direction for the quashing and setting aside of the impugned orders.

6. The primary reason which prevails upon this Court, to quash the above said orders (dated 01.04.2016 and 30.05.2016 carried in Annexures P-6 and P-8 respectively), as also the warrants of possession, becomes rested on the plank, that since as above stated, the learned Collector concerned, in

its final and conclusive judgment, had drawn a conclusion, that the purchased land comprised in khasra numbers 16/7/1/1 and in khasra number 7/12, are for reasons (Supra), outside the domains and the area(s), of the suit khasra numbers, to which khasra numbers 33, 34 and 35 were assigned. Moreover, obviously when there is no categorical declaration by the learned Collector concerned, that suit khasra numbers became encroached upon at the instance of the respondents/JDs concerned. Thus, when the said verdict of dismissal as made upon the Gram Panchayat's petition as cast under Section 7 of the Act has, acquired conclusive and binding effect. Thus, even if subsequent to the order of dismissal being made by the Collector concerned on 15.02.2006, on the above case, there were encroachments made on the khasra nos. 33,34 and 35, thus, the remedy available to the Gram Panchayat concerned, was to institute a fresh eviction application, before the learned Collector concerned, than to seek execution of a dismissal order, as made on the petition cast under Section 7 of the Act, or in other words to seek evictions of the respondents/JDs, from the suit khasra numbers, especially when executable eviction order did never come to be rendered, by the learned Collector concerned.

8. For all the above stated reasons, this Court finds merit in the petition and is constrained to allow it. Therefore, the instant petition is

allowed and the impugned orders (dated 01.04.2016 and 30.05.2016 carried in Annexures P-6 and P-8 respectively) are quashed and set aside. However, liberty is reserved to the Gram Panchayat concerned, to institute a fresh petition under Section 7 of the Act, by impleading therein all the encroachers concerned, and, claim therein relief that the encroachment, if any, as made upon khasra nos. 33,34 and 35, be ordered to be removed.

9. All the pending applications stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 01, 2023
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No