

CWP No. 18109 of 2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 18109 of 2023

Date of decision : September 05, 2023

Ganga Ram

....Petitioner

Versus

Commissioner, Rohtak Division, Rohtak and others

....Respondents

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

Present : Mr. Sunil Kumar Bhardwaj, Advocate, for the petitioner

Mr. Ankur Mittal, Addl. Advocate General, Haryana with  
Mr. Saurabh Mago, Deputy Advocate General, Haryana  
for respondents No. 1 to 4

Mr. Ramesh Hooda, Advocate for  
caveator-respondent Nos. 5 and 6

**KULDEEP TIWARI, J.**

1. The petitioner has thrown challenge to the order dated 26.4.2023 (Annexure P/12), passed by respondent no. 1, in revisional jurisdiction, whereby the order dated 9.2.2022 (Annexure P/11), passed by the appellate authority which was in favour of the petitioner, was set aside and the eviction order dated 29.1.2021 (Annexure P/7), passed by the learned Assistant Collector Ist Grade, Meham District Rohtak was upheld. The main grouse of the petitioner is that, the well reasoned order passed by the appellate authority concerned has been set aside by the revisional court in a most perfunctory manner, without assigning any valid reasons.

2. Before we examine the legality of the impugned orders, it is deemed necessary to first trace the factual matrix of the instant petition.

3. The private respondents No. 5 and 6 have filed an application under Section 7 of the Haryana Village Common Land (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961') for eviction of the present petitioner, on the ground that the petitioner has encroached upon a passage which vests in the Gram Panchayat. Respondents No. 5 and 6 have alleged that they are owner in possession of plot bearing Khasra No. 4337 Khatoni No. 527 and Khasra No. 4611 Khatoni No. 528. For this plot a passage of 16 ½ feet width from the South East side was assigned, which the petitioner has illegally encroached upon.

4. Upon notice, the petitioner has put in appearance before the Assistant Collector Ist Grade concerned, and submitted that the land falls within the *Abadi Deh*, therefore, the proceedings under Section 7 of the Act of 1961 are not maintainable. It was further submitted by the petitioner that a shop has been constructed on suit land and to support his above contentions many witnesses were examined to prove his possession on the suit land. The learned Assistant Collector Ist Grade concerned, allowed the application and ordered the eviction of the petitioner from the suit land(s), which has caused grievance to the present petitioner and a statutory appeal was preferred by the petitioner. The first appellate authority found merits in the appeal and the order of eviction (*supra*) was set aside and the lis was remanded back to the learned Assistant Collector Ist Grade concerned, with the direction to provide an adequate opportunity to all the

parties to lead evidence and thereupon, after conducting spot inspection, take afresh decision on the eviction application. The order passed by the first appellate authority (supra) was challenged by the private respondents No. 5 and 6. The revisional authority vide order dated 26.4.2023, has set aside the order of the first appellate authority and has maintained the eviction order dated 29.1.2021, passed by the Assistant Collector Ist Grade concerned, which is now under challenge before this Court.

5. We have examined the entire records.

6. Learned counsel for the petitioner has submitted that the revisional authority has failed to examine the relevant material available on record. Rather in a perfunctory manner, the well reasoned order passed by the appellate authority concerned, has been set aside without assigning any cogent reason. The learned counsel for the petitioner has further submitted that during the pendency of lis before the learned Assistant Collector Ist Grade, Naib Tehsildar was appointed as a Local Commissioner and he submitted a demarcation report which was not considered by the learned Assistant Collector Ist Grade, while passing the eviction order (supra). The counsel for the petitioner further submits that as per the report of the Local Commissioner, there is no shop existing on the '*Rasta*', as alleged by the petitioner. The learned Assistant Collector Ist Grade concerned, has also inspected the petition land(s) and an adequate opportunity was granted to the petitioner to produce the document pertaining to the ownership of the land in dispute, but on the next date of hearing, when the case was fixed for production of documents, the final order was pronounced by the Assistant

Collector Ist Grade concerned, without adhering to its own directions given earlier to produce documents pertaining to the ownership of the land in dispute.

7. Upon examination of the entire records, we find that the main dispute is with regard to the demarcation of the petition land. Before passing of the eviction order it was necessary for the learned Assistant Collector Ist Grade concerned, to get the disputed site demarcated and thereupon, the author of the demarcation report was required to be stepped into the witness box and an opportunity should have been granted to the parties concerned, to cross-examine the author of the demarcation report. In the present case, no such procedure was adopted, rather the demarcation which was carried out by the Naib Tehsildar was not even taken into consideration by the learned Assistant Collector Ist Grade concerned, while passing the eviction order (supra). The first appellate authority concerned, has rightly taken the note of the above illegality and had set aside the eviction order, and remanded the lis to the learned Assistant Collector Ist Grade concerned for deciding the application afresh. However, without assigning any valid and cogent reasons, the learned revisional authority concerned, has interfered with the legal and apt order passed by appellate authority concerned.

7. In view of the above detailed discussion, we find that the order passed by the learned revisional authority concerned, is totally a non-speaking order. There is no valid reason assigned to interfere with legally sustainable and well reasoned order passed by the first appellate authority

concerned. Therefore, we set aside the order dated 26.4.2023 (Annexure P/12), passed by the revisional court and maintain the order of appellate authority concerned. Accordingly, after quashing the impugned order (supra), the lis is remanded to the learned Assistant Collector Ist Grade, concerned, with a direction to conduct a fresh demarcation of the petition land(s) and afford an opportunity to all the affected person(s) concerned, to raise objections in respect to the newly conducted demarcation report, and, with a further direction to the learned Assistant Collector Ist Grade concerned, to ensure that the fresh demarcation report becomes validly proved, through the author, by stepping in the witness box. Consequently, the learned Assistant Collector Ist Grade concerned is directed to restore the lis back to its original number and thereafter, make a lawful decision, positively within four months, from the date of passing of this order.

9. Disposed of accordingly.

**(SURESHWAR THAKUR)**  
**JUDGE**

**(KULDEEP TIWARI)**  
**JUDGE**

**September 05, 2023**

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| <i>Whether speaking/reasoned ?</i> | <i>Yes/No</i> |
| <i>Whether Reportable ?</i>        | <i>Yes/No</i> |