

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-22130-2016 (O & M)

Reserved on: 19.04.2023

Pronounced on: 26.04.2023

GRAM PANCHAYAT KOT FATUHI

.....Petitioner

Versus

DIRECTOR RURAL DEVELOPMENT AND PANCHAYAT
PUNJAB, SAS NAGAR, MOHALI

.....Respondent

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

Argued by: Ms. Amandeep Soni, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. V.K.Sandhir, Advocate
for respondent No. 3.

SURESHWAR THAKUR, J.

Factual Background.

1. Gram Panchayat Kot Fatuhi instituted case No. 19 of 2012 on 14.06.2012, before the Collector concerned. In case (supra), one Sohan Lal was impleaded as a respondent. The above case was filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter for short called 'the PVCL Act', hence for seeking the eviction of the respondent, from the petition lands, which are described as *Gair Mumkin* passage.

2. In the said petition, it was averred that though, the respondent therein was assigned lease of 1 marla of the disputed khasra

exists. Moreover, in pursuance to the said granted lease over a portion of the disputed khasra number, he is averred to have constructed thereons a wooden cabin (*khokha*). However, the said lease is stated to be become cancelled, through a resolution passed on 25.03.2009, by the panchayat concerned, and, the said resolution cancelling the assignment of lands to the respondent, is averred, to arise from the factum, that though at the time of the said assignment of a portion of the disputed khasra number (*supra*), to the respondent concerned, the Forest Department which possessed the land adjoining thereto, thus, had not erected pillars and barbed wires, thus, skirting the Forest land. Though then, there was no obstruction to the villagers concerned, to access their *abadies*. However, it is averred in the petition, that since in the year 2009, the Forest Department concerned, which possessed land(s) contiguous to the disputed portion of the khasra number, rather has erected pillars and barbed wires, which but pre-empt and obstruct the villagers to access their *abadies*. Therefore, the existence of the respondent's wooden cabin (*khoka*) at a portion of the starting point of the disputed khasra number, is rather causing obstruction, to the villagers to access their respective *abadies*. Resultantly, despite a valid lease being made in favour of the respondent, but on the above score, yet after cancellation of his lease, through a resolution of the panchayat made on 25.03.2009, the Gram Panchayat concerned, claimed the eviction of the respondent, from a portion of the disputed khasra number. The learned Collector concerned, through a decision (Annexure P-3), as made on 29.11.2013, on the case (*Supra*), granted the espoused relief to the Gram Panchayat.

Sohan Lal, to prefer appeal No.15 of 2014, before the Competent Appellate Authority concerned, who however through a decision made thereons on 28.12.2015 (Annexure P-4), after accepting the statutory appeal (supra), annulled and quashed the orders (Annexure P-3), as passed by the learned Collector concerned. It is but the acceptance of the aggrieved Sohan Lal's statutory appeal by the Competent Appellate Authority concerned, as became directed against the making of Annexure P-3, whereby the Gram Panchayat's petition, for eviction was allowed, that has caused grievance to the Gram Panchayat concerned, and, has led it to institute thereagainst the instant petition before this Court.

Contesting respondent concerned, is admittedly the lease holder of the petition lands.

4. The impact of the above, especially when the respondent is not making any defaults in attorning the lease monies, to the Gram Panchayat concerned, rather his depositing the lease monies before the Court of Additional Civil Judge, Hoshiarpur, is that, the contesting respondent, was not asked to be evicted, from the petition lands, but on the premise of his defaulting in his attorning the lease monies to the Gram Panchayat concerned. Though the above was a permissible ground available to the Gram Panchayat concerned, to seek the makings of a valid order of eviction of the contesting respondent, from a portion of the disputed khasra number. However, reiteratedly on the above premise, the Gram Panchayat did not seek the eviction of the contesting respondent from a portion of the petition lands.

5. Be that as it may, it is only on the above premise, inasmuch as, post 2009, the Forest Department, thus, evidently possessing the

area contiguous to the disputed portion of the petition khasra number, rather proceeding to skirt the said khasra number through its raising a boundary wall, that the Gram Panchayat concerned, was led to, through the makings of resolution (supra), thus, cancel the lease, as became granted in favour of the contesting respondent, and thereafter its instituting the eviction petition (supra), before the learned Collector concerned.

6. It is a contentious fact, that on account of the above act of Forest Department, there was any purported obstacle or obstruction to the villagers concerned, to access their respective *abadies*. Thus, it became imperative upon the Gram Panchayat concerned, to ensure the citings as witnesses of those *abadi* owners concerned, who became purportedly obstructed or halted, from theirs' accessing their respective homesteads, but on the premise that the land, whereons, the contesting respondent, had raised a *khoka*, rather in pursuance to a valid lease being granted to him, thus, becoming the purported prime reason for such obstruction(s) being caused. However, the said villagers concerned, never became cited as witnesses, nor stepped into the witness box, to prove the said assertion of the petitioner Gram Panchayat concerned, whereas, theirs' both being cited as witnesses, besides theirs' stepping into the witness box, thus, was imperative for ensuring, that the said assertion was a validly made assertion, and or, that it carried an aura of truth, but importantly after theirs being also subjected to cross examination by the respondent concerned.

7. Since for want of the above, merely on the bald pleadings of the Gram Panchayat concerned, the learned Collector concerned,

contesting respondent from the petition lands. Therefore, the order enclosed in Annexure P-3, as made by the learned Collector concerned, did warrant its being interfered with, as aptly done by the learned Appellate Authority concerned.

Final Order

8. In aftermath, this Court does not find any merit in the writ petition, and, with the above observations, the same is dismissed. The impugned order Annexure P-4, is affirmed and maintained.

9. No order as to costs. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

26.04.2023

kavneet singh

(KULDEEP TIWARI)
JUDGE

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