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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18763-2020

Reserved on:02.03.2023

Date of decision: 3.03.2023

BANWARI LAL AND OTHERS

...Petitioner

Versus

STATE OF HARYANA AND OTHERS

...Respondents

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

Present: Mr. Munish Gupta, Advocate for the petitioners.

Mr. Raman Sharma, Addl. A.G. Haryana

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav, Advocate for respondents No.3 to 13.

Mr. Gaurav Jain, Advocate for respondent No.14.

SURESHWAR THAKUR, J. (ORAL)

1. Initially Gram Panchayat Sehlang, Tehsil and District Mahendergarh through its Sarpanch had instituted a petition under Section 7 of The Haryana Village Common Lands (Regulation) Act, 1961 (as notified on 05.04.2021) (hereinafter referred to as “the Act of 1961”). The said petition was instituted on 17.07.2001. In the petition (supra), the present petitioners were impleaded as respondents. It was claimed in the said petition, that the respondents therein, had on a *Gair Mumkin Johar* hence existing on a part of the petition lands, hence reared competence. Apart therefrom, the other parts of the petition lands were also alleged to become also encroached upon.

2. However, during the pendency of the said petition the respondents therein raised a question of title in respect of the petition lands. Therefore, the

learned Assistant Collector Ist Grade, Mahendergarh, proceeded to through an

order drawn on 10.11.2003, convert petition cast under Section 7 of the Act of 1961, into a petition under Section 13A of the Act of 1961. Consequently, the learned Assistant Collector Ist Grade, Mahendergarh through a decision made on 10.11.2003, upon a petition cast under Section 13A of the Act of 1961, proceeded to declare the present petitioners, as owners of the petition lands. Though the learned Collector concerned, while exercising jurisdiction upon appeal bearing No.03/2017/VCL dismissed the said appeal. Subsequently a revision petition bearing No.002/2018-2019 was filed before the learned Commissioner concerned. However, the learned Commissioner on 26.10.2020 allowed the said revision petition, and, quashed the order of the learned Collector concerned, as becomes enclosed in Annexure P-1.

3. The above order became appealed by the aggrieved concerned, but yet the Gram Panchayat concerned, did not make an appeal before the Appellate Authority against the order carried in Annexure P-1. Contrarily, the persons affected by the order enclosed in Annexure P-1 rather preferred an appeal bearing No.03/2017/VCL, before the learned Collector concerned.

4. The respective exercisings of the jurisdictions, as became exercised respectively by the learned Collector concerned, on appeal bearing No.03/2017/VCL, and, also the subsequent thereto exercising of jurisdiction by the learned Commissioner concerned, on revision petition bearing No.002/2018-2019, rather conspicuously are both vitiatedly exercised jurisdictions thereons. The reason being that the provisions of Section 13AA of the Act of 1961, which become extracted hereinafter, assign the appellate jurisdiction only in the learned Collector concerned.

“Section 13AA. (1) Any person, aggrieved by an order passed under sub-section (1) of section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in such form and manner, as

may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-section (1), call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit :

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.] ”

5. Moreover, the revisional jurisdiction is assigned only in the learned Financial Commissioner concerned. However, the appellate jurisdiction became contrarily exercised upon appeal No.03/2017/VCL, by the learned Collector concerned, and, the revisional jurisdiction, on the apposite revision petition, also became untenably exercised by the learned Commissioner concerned. Therefore, the above exercised jurisdictions respectively on appeal No.03/2017/VCL hence by the learned Collector concerned, and, the subsequent thereto exercise of jurisdiction on revision petition No.002/2018-2019, by the learned Commissioner concerned, rather are both devoid of any merit. Thus also the duo of inaptly exercised jurisdictions thereons, and/or, are hence exercised with inherent lack of jurisdiction in each, besides became exercised with a material illegality, and, impropriety.

6. Irrespective of the above vitiating premise, what completely annuls the exercisings of jurisdiction by the learned Assistant Collector, Ist Grade, on a petition cast under Section 13A of the Act of 1961, is but grooved on the anvil, that the above jurisdiction was only exercisable thereons, rather only by the learned Collector concerned, and not by the learned Assistant Collector concerned. Therefore, the initially drawn order by the learned Assistant Collector concerned, as becomes enclosed in Annexure P-1, is completely devoid of force, it being made, despite the inherent jurisdiction to

draw a valid decision on a Section 13-A petition, rather not becoming vested in the learned Assistant Collector. Contrarily, the same becoming vested only in the learned Collector concerned.

FINAL ORDER

7. The effect of the above discussion, is that, the jurisdiction as became exercised by each of the authorities concerned, was completely infirm, therefore, all the orders challenged before this Court are quashed, and, set aside. Moreover, this Court also does not deem it fit to make an order of remand to the learned Assistant Collector concerned, to after restoring the lis to its original number hence to make a lawful decision thereon. The reason being that, the said order would be defective, given as stated above, the learned Assistant Collector concerned, had no jurisdiction to try a petition under Section 13AA of the Act of 1961, rather the learned Collector concerned, alone held the jurisdiction to try a petition, cast under Section 13A of the Act of 1961. Therefore, avoiding the making of a remand of the lis to the learned Assistant Collector concerned, this Court deems it fit to direct the petitioners to institute a petition under Section 13A of the Act of 1961, before the learned Collector concerned, but on such a petition becoming instituted before the learned Collector concerned, the latter shall make a lawful decision thereon, but positively within a period of 6 months thereafter, yet after granting an opportunity of hearing to all affected persons.

8. Disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

3.03.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE