

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

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CWP-3057-2015 (O&M)

Date of Decision: 17.02.2023

SURINDER SINGH

-Petitioner

Versus

STATE OF HARYANA AND OTHERS

-Respondents

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

Argued by: Mr. Abhinav Singla, Advocate for
Mr. Rakesh Gupta, Advocate
for the petitioner.

Mr. P.P. Chahar, DAG, Haryana.

Mr. R.N. Lohan, Advocate
for the respondent No.5.

Mr. Suresh Ahlawat, Advocate
for the respondent No.6- Gram Panchayat.

KULDEEP TIWARI, J.

1. Through the instant writ petition, the petitioner has sought quashing of the orders dated 11.06.2014, 11.07.2013, and, 27.02.2009, as passed by the respondent Nos.2, 3, and, 4 respectively, wherethrough, the petitioner has been ordered to be evicted from the suit land.

2. The respondent No.5 had filed an application under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act' for short), seeking eviction of the

petitioner, and, some others, from the suit land, bearing Khewat No.261 min, Khatoni No.445 min, Khasra No.285 (1-8), which has been recorded as '*Gair Mumkin Rasta*', in Jamabandi for the year 1999-2000. It was pleaded therein that the petitioner along with some others had encroached upon 8 Marlas of panchayat land by raising construction of a house thereon. Upon notice being issued, the petitioner, along with others who were arrayed as respondents therein, had appeared and filed written statement pleading therein that the application (supra) is vague and ambiguous, as no detail or dimension of the area allegedly encroached upon by the petitioner and others has been specified therein. It was further pleaded therein that the house of the petitioner is an old construction, as the same was constructed by his grandfather about 35/40 years back, which even has an electricity meter bearing No. BL-108 installed therein since 1981, and, that they have also been paying 'Chuhla Tax' since long. Apart from such pleadings, the factum of any encroachment being made over the suit land was completely denied. Considering the contentions of the parties as well as the demarcation report dated 10.02.2009, the respondent No.4 recorded a finding that the petitioner and others were illegally encroaching the suit land, to the extent of 5 Marlas, by constructing a house, and, a boundary wall thereon, and, accordingly he ordered their eviction therefrom, vide order dated 27.02.2009. Feeling aggrieved, the petitioner challenged the eviction order (supra) by filing a statutory appeal before respondent No.3, who vide order dated 25.08.2009, had accepted the appeal, and, set aside

the eviction order dated 27.02.2009, as passed by respondent No.4.

3. Although, the statute does not provide any further remedy of appeal, or, revision, in case the Assistant Collector, Ist Grade, has not recorded any finding regarding title, or, recorded any opinion for or against the question of title, in proceedings under Section 7 of the Act, nonetheless, the respondent No.5 went on to prefer an appeal, before respondent No.2, challenging the order dated 25.08.2009, as passed by the respondent No.3. Thereupon, the respondent No.2, without taking into account the issue of maintainability, proceeded to decide, on merits, the appeal (supra) of the respondent No.5. This appeal was accepted by the respondent No.2, vide order dated 12.03.2010, whereby the order passed by the first appellate authority was set aside, and, the case was remanded to the appellate authority for deciding the lis afresh.

4. Upon receipt of the remand orders, respondent No.3 again adjudicated the matter, and, further remanded the case back to the court of the first instance, i.e. respondent No.4, vide order dated 07.09.2010. However, the respondent No.4, vide order dated 28.07.2011, had maintained his earlier order of eviction, and, had again directed eviction of the petitioner from the suit land. Thereafter, the statutory appeal, as led by the petitioner, was also dismissed by the respondent No.3, vide order dated 11.07.2013. Even the revision petition against the order dated 11.07.2013, which was subsequently preferred, was dismissed by the respondent No.2, vide order dated 11.06.2014.

5. At the outset, this Court does not deem it necessary to

adjudicate the legality of all the orders, which were passed subsequent to the order dated 25.08.2009, as there was no further remedy available under the statute to assail the order (supra), by filing appeal, or, revision. This issue is no more *res integra*. A Coordinate Bench of this Court, in its judgment titled **“Gram Panchayat Village Badangi V/s State of Haryana & Ors.”**, 2015(2) L.A.R. 662 : 2015(23) R.C.R. (Civil) 683, has held that a Commissioner, exercising the power of revision, may entertain a revision, only where the Assistant Collector of the First Grade, while exercising jurisdiction under the proviso to Section 7 of the Act, has held that a question of title arise or does not arise, or, proceed to decide the question of title. The relevant extract of the judgment (supra) is extracted hereunder:-

“9. A perusal of Section 13-B (2) of the Act reveals that the Commissioner is empowered either suo moto or on an application, to revise an order, but only if a person is aggrieved by an order passed, under the proviso to sub Section (1) of Section 7. The proviso to Sub Section (1) of Section 7, as already noticed, envisages a situation where the Assistant Collector of the First Grade, has formed a prima facie opinion on a question of title and then proceeds to determine the question of title. Thus, a Commissioner, exercising the power of revision, may entertain a revision, only where the Assistant Collector of the First Grade has, while exercising jurisdiction under the proviso to Section 7 of the Act, held that a question of title arises or does not arise. As a necessary corollary if the person in alleged unauthorised occupation of shamilat deh has not raised a question of title, the Assistant Collector of the First Grade has not

recorded an opinion for or against a question of title but has passed a simpliciter order of eviction, under Section 7 (1) of the Act, a revision would not be maintainable, before the Commissioner. We draw support for our opinion from a Division Bench judgment of this Court in Leela Ram Vs. Gram Panchayat, Jailaf, 1997 (4) RCR (Civil) 354.

10. A perusal of the order passed by the Assistant Collector of the First Grade reveals that the Assistant Collector has referred to the ownership of the Gram Panchayat only for the purpose of assuming summary jurisdiction under Section 7 (1) of the Act. The Commissioner, therefore, had no jurisdiction to entertain the revision, filed by the private respondents and set aside the orders of eviction passed by the Assistant Collector of the First Grade, as affirmed by the Collector.”

6. Perusal of the eviction order dated 27.02.2009 passed by the respondent No.4, clearly depicts that it is an order of eviction simpliciter, and, neither any issue as to title was raised, nor adjudicated upon by respondent No.4. The Act does not envisage any jurisdictional competence in the Commissioner to entertain appeal against order passed by first appellate authority, although, only revision is maintainable before the Commissioner in a limited case, wherein, the Assistant Collector of First Grade, while exercising jurisdiction under the proviso to Section 7 of the Act, has held that a question of title arise or does not arise, or, proceed to decide the question of title. Therefore, in the present case, respondent No.2 does not have any jurisdictional competence to decide

the appeal filed by respondent No.5 against the order dated 25.08.2009 of the first appellate authority concerned. Accordingly, the order dated 12.03.2010, passed by respondent No.2, upon such appeal instituted by respondent No.5, is without any jurisdictional competence, therefore, is not sustainable, being a nullity. More so, all the orders passed pursuant to the order dated 12.03.2010, as passed by respondent No.2, thereby remanding the matter back to the first appellate authority, are also of no significance, as the initial order itself is a nullity.

7. Therefore, in view of the above facts and circumstances, the present writ petition is **allowed**, and, the impugned orders dated 11.06.2014, 11.07.2013, and, 27.02.2009, are hereby set aside, while the order dated 25.08.2009 passed by the first appellate authority is ordered to be upheld.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.02.2023
devinder

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