

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

1 **CWP-19864-2020(O&M)**
Date of Decision : **January 18, 2023**

GRAM PANCHAYAT THANDRANPetitioner
VERSUS
STATE OF HARYANA AND OTHERSRespondents

2. **CWP-4656-2022(O&M)**

GURMUKH SINGHPetitioner
VERSUS
STATE OF HARYANA AND OTHERSRespondents

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

Present: Mr. Sumit Gujjar, Advocate for
Mr. S.S.Dinarpur, Advocate for the petitioner.

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

Mr. Rajbir Singh Arya, Advocate for respondents No.6 to 8.

SURESHWAR THAKUR, J.(ORAL)

1. This order will dispose of CWP-19864-2020 and CWP-4656-2022, as they being cover common question of law.

2. The Sarpanch of Gram Panchayat, Thandran, village Thandran, Tehsil Pehowa, District Kurukshetra, issued, upon the private respondents herein a notice drawn under Section 24(1) of the Haryana Gram Panchayati Raj Act, 1994 (in short '**the Act**'). The contents of the said notice are extracted hereinbelow:-

“Gram Panchayat has found that you Sh. Gurmukh Singh, 2. Jasbir Singh, 3. Jaswinder @ Dipla sons of Sh. Naib Singh have put up agriculture implements etc. on the vacant land of the gram panchayat with malafide intention to encroach upon the said land and by putting up barbed wire, you have made illegal possession on the

gram panchayat land. You are hereby issued a notice U/s 24(1) of Haryana Panchayati Raj Act and you are ordered to vacate the said gram panchayat land within a period of 07 days from 27.06.2019 to 05.07.2019. If you have any objection against this order of the gram panchayat you may appear before the Gram Panchayat on 02.07.219 at 10.00 AM at Harijan Dharamshala Thandran and may explain your position and produced if there is any evidence or proof in your favour. If you fail to appear on the scheduled date, in that event, Gram Panchayat would take further legal action against you.”

EFFECT OF NON-SERVICE OF NOTICE(SUPRA) UPON THE RESPONDENTS CONCERNED:

3. Though the learned State counsel submits, that the above extracted notice, became validly served upon the respondents concerned, but he is not able to place on record any evidence, suggestive that any valid service of Annexure P-3, became caused, upon all the respondents concerned. Therefore, for want of valid service of Annexure P-3 being caused, upon the respondents concerned, thus any thereafter undertaken affirmative proceedings, at the instance of the authorities concerned, when hence ultimately resulted in a eviction order, being made qua the purported Panchayat land concerned, rather upon the respondents concerned, are all deemed to be vitiated, as they obviously became drawn in breach of the principles of natural justice, given the respondents concerned, becoming visibly condemned unheard.

4. However, at this stage, since Gurmukh Singh, one of the respondents concerned, in CWP-19864-2020 rather has admitted qua his receiving the notice concerned, therefore, in so far as, the said Gurmukh

Singh, is concerned, it cannot prima facie, at this stage, be said that any affirmative action, as became drawn against him, in pursuance to Annexure P-3, hence becoming vitiated, given his purportedly becoming condemned unheard. The disputed *khasra numbers* are contended to fall within the ambit of inclusionary clause carried in Section 2(g)(i)(a) of 4(a) of the Haryana Village Common Lands (Regulation) Act, 1961 (in short “**the Act**”).

5. In pursuance to the issuance of Annexure P-3, the authorities concerned, as revealed by the reply, on affidavit, furnished to the petition on behalf of co-respondent No.5, had strived to unsuccessfully enforce the said notice, through theirs drawing Annexure P-9. The learned State counsel submits, that since some constructions were raised on lands comprised, on the disputed *khasra number(s)*, to which *khasra no.13*, and, *khasra no.106* becomes assigned. Therefore, he submits that since uncontestedly, the description, as made in the revenue records qua the above *khasra numbers*, is, of theirs being *abadi deh* land. Moreover, he submits that the constructions, if any, as becomes raised on the land described, in the revenue records as *abadi deh* land, when rather occur on the open/vacant parcels of land(s), hence existing within the *abadi deh* land, thus, they do also become covered within the inclusionary Clause, as, carried in Section 2(g)(i)(a) of 4(a) of the Act, provisions whereof become extracted hereinafter:-

“shamlat deh' includes-

(1) lands described in the revenue records as

(Shamilat, deh or Charand) excluding abadi deh;
(4a) vacant land situate in abadi deh or gorah deh
not owned by any person.”

6. Therefore, he submits that the said vacant land(s), even if they existed within the *abadi deh* land concerned, thereupon, yet they also became included within the inclusionary definition of *shamlat deh* and, therefore, the respondents concerned, could not raise any constructions thereons.

NOTICE IS VITIATED AS IT IS ISSUED IN BREACH OF THE PRINCIPLE OF NATURAL JUSTICE:

7. Therefore, prima facie though initially, at the outset, the above factum of applicability or non applicability of the apposite inclusionary Clause, to the lands in dispute, rather became triable only by the Collector concerned, through either a petition cast under Section 7 or under Section 11 of the Act, 1961 rather becoming instituted before him, at the instance of the aggrieved concerned.

8. However, even dehors the above motion, being not cast before the Collector concerned, at the instance of the aggrieved concerned, yet the Sarpanch of the Gram Panchayat concerned, proceeded to issue notice (Supra), on the respondents concerned.

9. The notice (Supra), which also resulted in the drawings of affirmative actions, against the respondents concerned, all of whom, excepting one Gurmukh Singh who hence admitted qua his being becoming validly served with notice (Supra), when rather became not validly served with notice (Supra), thus, does renders, the drawings of such affirmative actions to become strained with the vice of breach being

caused to the principles of natural justice, and, or the drawings of affirmative action in pursuance to notice (Supra) are deemed to be completely flawed, in as much as, the respondents concerned, became evidently condemned unheard.

ANALYSIS OF THE PROVISIONS OF SECTION 24(1) OF THE HARYANA PANCHAYATI RAJ ACT, 1994.

10. Now in the wake of the above, yet the learned State counsel submits, that the notice drawn under the provisions of Section 24(1) of the 1994 Act, rather was a validly adopted course. He refers to the empowerment vested in the Sarpanch of the Gram Panchayat concerned, through the mandate carried in Sub Section 1 of Section 24 of the 1994 Act, wherein, the Gram Panchayat concerned, has been empowered to *suo moto* or on receiving the report or other information and on taking such evidence, if any, as it thinks fit, hence make a conditional order requiring within a time to be fixed in the order to be made upon the owner or the occupier of any building or land to remove any encroachment on a public street, place or drain. Therefore though, even if assuming, the aforesaid exercisings of purported lawful jurisdiction by the Sarpanch of the Gram Panchayat concerned, resulted in the drawings of affirmative action in consequence to the makings of notice (Supra). However, the above said drawings of affirmative action, does also become flawed, qua the respondents concerned, excepting one Gurmukh Singh, in-as-much as, the said exercise of jurisdiction visibly caused breach to the principles of natural justice. However, yet irrespective of the above, unless there is an evident display in the revenue records

concerned, that

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such a public street, place or drain, evidently exists within the *abadi deh* concerned, besides it also further becomes evidently established qua such open place or drain also becomes evidently encroached upon, by the encroachers concerned, thus through their raising constructions thereons, thereupon the drawing of notice (Supra) by the authority concerned, through its recouring the mandate (Supra) rather would make such drawings to prima facie make the lands described therein, but to prima facie fall with the domain of the apposite inclusionary definition, besides would also make the consequent thereto drawings of affirmative action to be construable to be a validly drawn action. Conspicuously also would make such notice to be construable to be a valid drawn notice besides would make it to be made with an ably informed reason. Moreover, for wants of the above facts becoming not evidently established rather would render the notice (Supra) to become deemed to be drawn in an arbitrary, cryptic or in a slipshod manner.

REASONS FOR CONCLUDING THAT NOTICE(SUPRA) IS DRAWN IN AN ILL INFORMED MANNER:

11. Now even if assuming that the vacant piece of land as purportedly exists within the *abadi deh*, may prima facie make it an open place therein, whereby, it becomes covered within the apposite inclusionary definition, as carried in Section 24(1)(a)(i) of the 1994 Act. However, yet the Sarpanch of the Gram Panchayat concerned, was required to ensure, that the purported vacant place or vacant site, prima facie, does evidently fall within the *abadi deh* concerned, besides was to

ensure that the structures, if any, as purportedly raised thereons, thus were infact evidently raised thereons by the encroachers concerned. The best evidence in respect of the above, became comprised in the authority which drew the notice (Supra), imperatively prior to its' drawing, thus rather ensuring that a valid demarcation of the site concerned, is made, by the competent Revenue Officer. In case the above report was ensured to be collected by the authority, who drew the notice (Supra), hence from the competent Revenue Officer concerned, thereupon alone the authority, who drew notice (Supra) could well conclude, that such lands did prima facie, fall within the apposite inclusionary clause, appertaining to shamlat land, and, as becomes carried in Section 2(g)(i)(a) of 4(A) of the Act.

12. However, the learned State counsel fairly submits, before this Court, that in the presence of the respondents concerned, no valid demarcation, occurred of the relevant site, rather he only submits that since a vacant place or site existed within the *abadi deh*, and, thereons constructions became purportedly raised, hence when obviously such vacant lands, thus purportedly existing within the *abadi deh*, thus makes them fall within the ambit of the apposite inclusionary Clause, referred to in Section 24(1)(a)(i) of the 1994 Act. In consequence, he argues that *per se* the makings of constructions upon the vacant lands existing within the *abadi deh* rather were impermissible, and that prior to the drawings of the notice (Supra), no valid demarcation was required to be made by the authority, who drew the notice (Supra). However, the above argument is rejected. The reasons for rejecting the above argument ensues from the dire necessity of a valid demarcation being carried out, besides becomes

sparked from the further imperative necessity, of such a valid demarcation being carried out, but prior to the drawing of notice (Supra), as all the above requisite emergencies would then *prima facie* occur. Therefore, unless prior to the drawings of the notice (Supra), a valid demarcation of the relevant sites became conducted by competent Revenue Officer concerned, and, thereafter the said apposite report became purveyed to the authority, who drew notice (Supra), thereupon the authority drawing notice (Supra), could be deemed to have made a valid, and, well informed reason(s), that *prima facie* evidence rather emerging, with respect to encroachments being made upon the lands within the *abadi deh*, which otherwise were unamenable for any constructions being raised thereons. However, the above has not been done, therefore, the drawing of notice (Supra) makes it construable, to become rendered in a cryptic, slipshod, and, in an ill informed manner. As but a natural corollary, the consequent thereto drawings of Annexure P-9, is also to be concluded to be done in a most slipshod and in an ill informed manner.

13. Moreover, the mere reflections in the *jamabandi* of the vacant sites irrespective of a valid demarcation being made of the sites concerned, prior to the issuance of Annexure P-9, yet may enable the further takings of affirmative action thereons, by the authorities concerned, through theirs drawing Annexure P-9, but yet only when a validly made demarcation, became conducted conspicuously prior to the issuance of Annexure P-9, hence unfolding qua happening of constructions on such vacant places or sites within the *abadi deh*. In the

above event, it may have been concluded that such vacant pieces of lands within the *abadi deh*, did become cogently established to exist therein, besides would boost a further inference, that such lands, as fall within the *abadi deh* rather were unamenable for any constructions being raised thereon. Therefore, reiteratedly in the wake of the above valid demarcations, being not carried of the site concerned, in the presence of all the respondents concerned, rather even prior to the drawings of Annexure P-9, thus it can be safely concluded, that the drawings of Annexure P-9 by the Sarpanch of the Gram Panchayat concerned, rather was completely unlawful. Further-more, reiteratedly even if one Gurmukh Singh was served with notice(Supra), but even for the above reasons, the said notice suffers from all the above referred vices, besides all the subsequent thereto proceedings drawn even against him, are also completely flawed.

CONCLUSION;

14. In consequence, the Gram Panchayat concerned, may hence though a petition cast upon under Section 7 or 11 of the Act, before the Collector concerned, hence sought the eviction of the encroachers concerned from the lands concerned, rather than through the drawings of notice (Supra), and, through the drawings of Annexure P-9. The reason for driving the Gram Panchayat concerned, to draw succor from the above statutory provisions, become sparked, from the fact that the said proceedings are not summary in nature, as, are the proceedings contemplated under Section 24 of the 1994 Act. Therefore, when in the above proceedings, the fullest opportunity would become ably assigned

to all to raise the apposite saving pleas, and, to also adduce evidence in respect of attraction or non attraction of the apposite inclusionary clause to the lands concerned, thus, it is deemed fit to relegate the Gram Panchayat concerned, to initiate the above proceedings before the authorities contemplated in the Haryana Village Common Lands (Regulation) Act. On such a petition being filed before the Collector concerned, the latter shall but in accordance with law, and, after an opportunity of hearing being given to all the concerned, hence make a decision thereons rather positively within six months of its preferment. Till the said petition becomes instituted, thereupto the parties are directed to maintain status-quo in respect of the *khasra numbers* concerned. In case, the above petition becomes instituted before the Collector concerned, thereupon the respondents therein, may institute an application therein claiming an apposite interim relief, and, thereons a lawful order shall be promptly passed by the Collector concerned, but after granting an opportunity of hearing to all the concerned.

SUMMARIZATION OF PRINCIPLES:

14. Before parting, it is deemed imperative to hereafter cull certain relevant principles of law.

(i) The exercising of jurisdiction by the Gram Panchayat concerned, through recouring the relevant mandate(s) of Section 24 of the 1994 Act, may be a validly adopted recourse, but only when prior to the makings of the apposite notice, a valid demarcation of the sites concerned, is conducted, and, such notice is validly served upon the respondents concerned.

(ii) The consequent thereto drawing(s) of actions

against the encroachers concerned, who raise constructions, upon the vacant places within the *abadi deh*, may also be a validly drawing action(s), but only when even prior thereto a valid demarcation of the sites concerned, is conducted by competent Revenue Officer:

(iii) The proceedings drawn under Section 24 of the 1994 Act, are summary in nature, thus recourse thereto may be avoided by the Gram Panchayat concerned, especially when evidence in respect of the lands concerned, falling within or outside the ambit of the apposite inclusionary clause, is required to be adduced, and, when such evidence may surface, not in summary proceedings, but may surface in fully contested proceedings, launched under Section 7 or 11 of the Haryana Village Common Land (Regulation) Act, 1961.

15. Disposed of in the above terms.

(SURESHWAR THAKUR)
JUDGE

January 18, 2023
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(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned. : Yes/No
Whether Reportable. : Yes/No