

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

220

CWP-3896-2016 (O&M)

Date of Decision : February 20, 2023

GRAM PANCHAYAT THAPAL

.....Petitioner

VERSUS

STATE OF PUNJAB AND ORS.

.....Respondents

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

Present : Mr. Ram Kumar Chauhan, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Rishi Kaushal, Advocate
for the respondent No.5 and
for the LRs of respondent No.4.

SURESHWAR THAKUR, J.(ORAL)

CM-17115-CWP-2022

1. It is averred on affidavit that, during the pendency of the instant writ petition, the demise of co-respondent No.4 has occurred on 14.03.2020, and, he is stated to be survived by his LRs, as enumerated in paragraph 2 of the application. Thus, for ensuring the continuation of the lis, the substitution of the LRs of the deceased respondent No.4 is imperative. Thus, the application is allowed and the LRs of co-respondent No.4, as detailed in paragraph 2 of the application, are ordered to be substituted in his place in the array of respondents, in the instant petition. The amended memorandum of parties, as filed along with the instant application, is taken on record.

2. No notice is required to be issued to the newly added

respondents, as they are represented by Mr. Rishi Kaushal, Advocate, who records his appearance on their behalf.

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3. The Gram Panchayat Thapal, Block Mahilpur, Tehsil Garhshankar, District Hoshiarpur, through its Sarpanch Ranjit Kaur, had instituted against the respondents therein, a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961' for short). To the said petition, case no.43 of 2013 became assigned. Through an order drawn on 12.09.2014, upon the petition (supra), it became allowed and the respondent therein, i.e. Dharam Chand, was directed to vacate the petition land(s). Though, the learned Collector concerned, in his making an affirmative order, on the case (supra), had referred to the *Aks Shajra*, which became drawn in respect of the petition land(s) rather in the year 1884, and, which became attached with the petition (supra), and, with revelations therein that petition khasra No.460 has been assigned the description of '*Chapri*'. Thus, obviously he was led to allow the eviction petition (supra). However, the aggrieved therefrom, preferred a statutory appeal before the learned appellate authority concerned. The appellate authority concerned allowed the appeal, and, reversed the affirmative decision, as became earlier recorded by the learned Collector concerned, upon the petition cast under Section 7 of the Act of 1961, and, as became filed by the Gram Panchayat concerned.

4. The appellate authority concerned has, without referring to the infirmity, if any, which purportedly ingrained the order of eviction, as became made by the Collector concerned, has merely depended upon a demarcation report, which became made qua the petition khasra numbers,

and, with an echoing therein that, when the demarcating officer visited the petition land(s), he noticed that, there the villagers had tethered their cattle (s), and, that on the vacant place, on the land in dispute, some water of 2/3 houses was falling.

5. Since there is no challenge, but at the instance of Dharam Chand, to the order, as made upon appeal No.329 of 2014, on 13.11.2015, by the learned appellate authority concerned, therefore, the above made conclusion(s) acquire a conclusive, and, binding effect, insofar as, one Dharam Chand is concerned.

6. The effect of the above is that, the respondent, i.e. Dharam Chand, is estopped from contesting the legality of the demarcation report, rather as became drawn by the demarcating officer, qua the petition land(s), and, but with the therein (supra) echoings. Consequently, the grave, and, deep pervasive infirmity, which grips the order of the learned appellate authority concerned, is comprised in the factum that, the latter being completely unmindful, to the revenue records, which became drawn by the Consolidation Officer concerned, and, whereby the petition land(s) became assigned to the village propriety body, besides became described as *Gair Mumkin pond*, and, which was hence meant for the benefit of the entire village propriety body, and, was not meant for the exclusive user of the respondent. It is the above lack of unmindfulness to the revenue record concerned, which but, is the Aks Shajra (Ex.P4), and, which became drawn in pursuance to the finalized consolidation scheme, and, which has a presumption of truth, and, unless the said presumption of truth was rebutted through adduction of cogent evidence, therefore, when did it acquire a firm conclusivity, that has but stained the impugned verdict. More so, when even

there is no discussion therein, nor is there any cogent rebuttal thereto evidence on record, suggestive that the respondent had therethrough chosen to rebut the efficacy of the above echoings, as becomes carried in Ex.P4, as became drawn after the lawful termination of the consolidation proceedings. Resultantly, if the petition land(s) were reserved in the said finalized consolidation scheme, as *Gair Mumkin Chapar*, thus, they were meant to be used by the entire village propriety body concerned, or, were meant for the benefit of all the co-abadi owners, but, were not meant for the exclusive user of the respondent, one Dharam Chand. Therefore, this Court partly accepts the instant writ petition, and, quashes and sets aside the order of the appellate authority, as carried in Annexure P-6, whereas, upholds the order of the learned Collector, as carried in Annexure P-5.

7. The writ petition is partly allowed. All pending application(s), if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 20, 2023
devinder

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