

In the High Court of Punjab and Haryana at Chandigarh

(1)

**CWP No. 4835 of 2017
Date of Decision: 18.1.2023**

Gram Panchayat, Dharak Kalan

.....Petitioner

Versus

State of Punjab and others

.....Respondents

(2)

CWP No. 5188 of 2017

Gram Panchayat, Dharak Kalan

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Nakul Sharma, Advocate
for the petitioner(s).

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Prashant Bansal, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J.

1. Since both the above petitions arise from an order passed by the appellate authority concerned, and, also when they carry a similar cause of action, besides when they relate to a common thereto disputed khasra number, except the fact that the CWP No. 4835 of 2017, is directed against the order made under Section 11 of the Act, and, that Civil Writ Petition No. 5188 of 2017 is directed against the order made under Section 7 of the Act, therefore, they are liable to be disposed of by a common order.

2. The Gram Panchayat, Dharak Kalan becomes aggrieved from

an order made by the appellate authority concerned, and, as carried in Annexure P-5 (in CWP-4835-2017), whereby the appeal filed by the respondent herein one Jagmohan Singh, under Section 11(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act), and, as directed against the verdict of the Collector concerned, hence was allowed. Thereins the appellate authority concerned, made an order, that the disputed land, is not meant for the user of any common purposes, by the village proprietary body, nor the disputed land is reserved for the purpose of pond/common purpose, besides made a verdict, that the respondent herein, does not hold unauthorized possession thereof, thereupon the order passed by the Collector concerned, became quashed, and, set aside.

3. The Gram Panchayat, Dharak Kalan also becomes aggrieved from an order made by the Collector concerned, on 18.12.2014 (Annexure P-2), (in CWP-5188-2017), whereby the petition filed by the Gram Panchayat concerned, under Section 7 of the Act, was dismissed. The Gram Panchayat concerned, being aggrieved from the above order, filed an appeal before the appellate authority concerned. However, the same was also dismissed by the appellate authority concerned, through an order made on 22.12.2016, and, to which Annexure P-4 is assigned.

4. The Gram Panchayat concerned, being aggrieved from the afore orders, becomes led to institute thereagainst the instant petition(s) before this Court.

5. The learned counsel for the petitioner(s)-Gram Panchayat, has argued with much vigour, before this Court, that the orders challenged before this Court, are completely infirm, as the appellate authority concerned, has disregarded the factum of gair mumkin pond or a gair

mumkin johar, existing on the abadi deh land. Though, the existence of a house, rather on a gair mumkin pond or on a gair mumkin johar, even if the said pond becomes described in the revenue records, to occur on abadi deh land, hence was impermissible, but yet the said existence(s) thereon, was required to be validly established. In the above regard, the cogent and best proof qua existence(s) thereons of a pond or johar, rather meant for the common user of the village proprietary body, became comprised in initially the revenue entry concerned, hence supporting the above made fact, besides became comprised in the factum, that subsequent thereto, a valid demarcation being carried, of the disputed site concerned, and, the same revealing that the respondent herein had, qua land(s) described as gair mumkin johar, rather in the revenue records, had changed its prescribed user through his raising a construction thereons.

6. However, in the above regard, this Court is of the view, that there is neither any revenue entry, carried in any of the revenue records appertaining to the disputed writ khasra number, hence with any reflection thereins, that on the disputed khasra number, which is not disputed amongst the contesting litigants concerned, to carry the description of abadi deh, that yet there exists thereons a gair mumkin johar, or a gair mumkin pond, which in the above event, was may be meant for the common user of the inhabitants of the entire abadi concerned, and/or for the user of the entire village proprietary body, and/or, was not meant for any construction to become raised thereons by the respondent herein.

7. In the wake of the above, this Court does not find any merit in both the petitions, especially when even if with no entry (supra) existing in the revenue records, yet with there being also no other cogent oral evidence,

adduced by the Gram Panchayat concerned, suggestive that the said gair mumkin pond or a gair mumkin johar, was existing since times immemorial, on the abadi deh land, and, that it was meant for the common user of the inhabitants of the houses raised on the abadi deh land, and, that hence it was grossly impermissible for the respondent herein, to change its user, to his raising a construction thereons. Furthermore, even there is no validly drawn demarcation report, and, obviously no proof in respect of valid drawings thereof, rather became adduced by the Gram Panchayat concerned, before the learned Collector concerned. Therefore, for lack of any validly drawn demarcation (supra), and, thereafter its being proven, in accordance with law, before the learned Collector concerned, it was grossly inappropriate for the Collector concerned, to in the face of the above discussion, yet proceed to make an order, that the respondent concerned, has impermissibly raised a construction, purportedly upon a gair mumkin pond, or a gair mumkin johar.

8. In view of the above, this Court does not find any merit in the instant petitions, and, both are dismissed as such. The orders, as rendered by the appellate authority concerned, are maintained, and, affirmed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 18, 2023
Gurpreet

Whether speaking/reasoned : Yes
Whether reportable : Yes