

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 18067 of 2023 (O&M)

Reserved on : 04.9.2023

Date of Decision: 12.9.2023

Jile Singh and another

.....Petitioners

Versus

State of Haryana and others

....Respondents

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

Argued by: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J.

1. In the instant petition, a challenge is made to Annexure P-2, as made on Case No. 1391/ACT on 29.7.1999 whereby the predecessors-in-interest of the petitioners were ordered to be evicted from the petition land. Moreover, through the instant petition, the petitioners also impugn the verdict of eviction, comprised in Annexure P-6, besides also impugn the concurrent therewith verdict, as, carried in Annexure P-8.

2. Apparently, Annexure P-2 was passed in the year 1999. Annexure P-2 was made ex parte against the predecessors-in-interest of the petitioners. The reason for the making of an exparte verdict on the case (supra), thus by the Assistant Collector concerned, appears to become generated from the said predecessors-in-interest of the petitioners, despite being attempted to become personally served by the serving agent concerned, yet they, as revealed by Annexure P-2, rather refusing to accept the summons. The said refusal was construed to be tantamounting to the

serving agent concerned, making a valid service, upon them with an intimation therein about the date when the respondents in the case (supra), were to rather report their personal appearance before the Assistant Collector concerned. However, despite the relevant intimation being conveyed to the respondents concerned, in the case (supra), yet they neither appeared in person, nor through their validly engaged counsel, thereby the respondents concerned, were ordered to be proceeded against ex parte.

3. Assumingly, if the above detailings in Annexure P-2 were false or were made erroneously, thereby the ex parte proceedings drawn against the said respondents, were required to be challenged by the latter, through theirs immediately, since the making(s) of Annexure P-2, thus instituting an application under Order 9 Rule 13 of the CPC, before the Assistant Collector concerned. However, the above recourse remained unadopted by the predecessors-in-interest of the petitioners. Therefore, the omission of the predecessors-in-interest of the petitioners to seek the recalling(s) of the drawing(s) of the ex parte proceedings against them, thus by the Assistant Collector concerned, which resulted in an ex parte decree of eviction becoming passed, thus creates the bar of estoppel against the present petitioners. Necessarily the present petitioners who are the successors-in-interest of their predecessors-in-interest rather are bound by the adversarial decision (Annexure P-2), as, made against their predecessors-in-interest.

4. The present petitioners made an appeal against the ex parte verdict (supra) made in the year 1999, rather in the year 2007, before the Collector concerned. However, through an order made thereons, on 26.4.2012 (Annexure P-6), the said appeal was dismissed. Nonetheless, a revision petition bearing No. 114/2017-18 was, thus raised against Annexure

P-6, before the Commissioner concerned, which also suffered a similar fate

of dismissal.

5. Irrespective of the fact, that the predecessors-in-interest of the petitioners, also did not within the relevant period of limitation, seek the recalling of the ex parte verdict of eviction, thus on the tenable ground, that neither the process server concerned, visited their abode for causing personal service of the summons, upon them, nor there was any refusal on their part to accept the said summons, besides thus the said purported refusal, rather not tantamounting to their becoming as such validly served. If so, assumingly if there was a complete want of knowledge of the predecessors-in-interest of the petitioners, with respect to the making of an ex parte decree of eviction against them, yet the best evidence to bely the report of the process server, became comprised in the relevant summons, being ensured to be placed on record, whereafter the serving agent was required to be summoned for his being both examined-in-chief, and, cross-examined, in respect of the endorsement made on the relevant summons.

6. However, a reading of the discussion, made in Annexure P-6, reveals that after the refusal on the part of the predecessors-in-interest of the petitioners, to personally receive the summons, from the serving agent concerned, the latter was led to paste a copy of the summons, on the homestead of the predecessors-in-interest of the petitioners. Even if assumingly the said assigned reason is fallible, yet it appears from the discussion made in Annexure P-6, that yet no evidence, comprised in the report of the process server concerned, thus becoming adduced into evidence, rather became adduced, whereas, it constituted the best evidence for belying the above inference, as made in Annexure P-6.

7. Therefore, the above made inference, thus for want of adduction of best evidence (supra), rather for belying it, thereby the ex parte decree of

eviction passed in the year 1999 (Annexure P-2) against the predecessors-in-interest of the petitioners, was also binding upon the present petitioners, but obviously does appear to be both tangible as well as valid. In sequel, since obviously knowledge in respect of the date of appearance for the relevant purpose, being made by the predecessors-in-interest of the petitioners, before the Assistant Collector concerned, was thus endowed upon the said predecessors-in-interest of the petitioners, yet theirs failing to either appear personally before the authority concerned, or to cause their appearance through a validly engaged counsel. Therefore, the said non-appearance(s) appear(s) to be both intentional as well as deliberate. Resultantly, there was no able opportunity for the predecessors-in-interest of the petitioners to file an application under Order 9 Rule 13 of the CPC, thus to seek the recalling(s) of the ex parte decree, remedy whereof, also remained unadopted. The further corollary thereof, is that, the present petitioners cannot contend, that there was any lack of knowledge of their predecessor(s)-in-interest of the petitioners, about the making of the ex parte decree, nor can they contend, that thereby the completely time barred appeal (Annexure P-6), was a validly raised appeal, thus against Annexure P-2.

8. Be that as it may, the revision petition directed against Annexure P-6, became also filed much belatedly or after the happening of an inordinate delay, from the appositely prescribed period of limitation, thus for an able challenge being made to Annexure P-6. Therefore, it appears, that Annexure P-8, thus affirming Annexure P-6, but on the ground that the said revision petition, was rather time barred, thus is a validly made order.

9. From the above discussion, it appears that the present petitioners despite valid orders of eviction becoming passed against them,

the lawful rights of the Gram Panchayat concerned, over the panchayat land. The above ploys of the petitioners are required to be undone by this Court.

Final Order

10. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it. Accordingly, the instant petition is dismissed. The impugned orders are maintained and affirmed. The decree holder concerned, is directed to forthwith institute an execution petition before the Assistant Collector concerned, thus for enforcing the impugned orders. On the said execution becoming forthwith filed, thereupon the Assistant Collector concerned, shall most expeditiously ensure the utmost, and, efficacious execution thereof, but after hearing all the affected persons concerned.

11. Since the instant writ petition is a frivolously raised petition, therefore, the same is dismissed with costs of Rs. 25,000/- to be forthwith deposited in the Punjab and Haryana High Court Bar Clerk Association.

12. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

September 12, 2023
Gurpreet

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