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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-21513-2022

Date of decision:22.11.2023

BANSIDHAR ALIAS BANSHI LAL AND ORS.

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Sandeep K.Yadav, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. One Hira instituted file No.289/VCL on 19.12.1981 before the learned Assistant Collector concerned. In the said file, he claimed the rendition of a declaratory decree, for his becoming declared to be the lawful owner in possession of the suit lands.

2. However, through a decision made thereons, on 15.02.1983 (Annexure P-1) the said declaratory decree became declined to the writ petitioners, thus on the ground, that they are recorded as “*Gair Marusi*” over the suit lands.

3. Learned counsel for the petitioners fairly submits before this Court, that the said decision remained unassailed before the competent Appellate Authority concerned, therefore, it has acquired binding, and,

conclusive effect.

4. Since the revenue entries clearly depict that the suit lands is “*Shamlat Deh*”. Therefore, since Section 7 of The Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) empowers any individual to assert a claim over the said nature of revenue entries. Resultantly, one Mukhtyar Singh, an estate holder or a proprietor in the revenue estate concerned, proceeded to, on 06.12.2011 institute a petition under Section 7 of the Act, before the learned Assistant Collector concerned. On the said petition a decision (Annexure P-5) became rendered on 22.11.2022, whereby the respondents, plaintiffs in Annexure P-1, were declared to be not amenable to retain possession of the suit lands, thus, on the basis that the above rendered dis-affirmative declaratory decree on the plaintiff’s suit remained unchallenged, at the instance of the respondent-judgment debtor in Annexure P-1. The decision as made on the said petition (Annexure P-5) resulted in the aggrieved-judgment debtor assailing the same, through instituting a statutory appeal before the learned Collector concerned. However, the learned Collector concerned, proceeded to affirm the verdict Annexure P-5, through his making Annexure P-7.

5. Since conclusivity and finality became acquired by Annexure P-1, therefore, but naturally the verdicts of eviction based thereons, do concomitantly also acquire binding and conclusive effect.

6. Though, at this stage, the learned counsel for the petitioners has vehemently argued before this Court, that since in the ownership column relating to the jamabandi, the Gram Panchayat concerned, has been entered to be owner the suit lands. Therefore, he contends that much vigor before this Court, that the Gram Panchayat concerned, alone was vested, with an able empowerment, to institute a petition under Section 7 of the Act, before

petition was disabled to institute a petition for eviction before the learned Assistant Collector concerned.

7. However, the above made argument is extremely flimsy and is also legally frail, inasmuch as, Section 7 as occurs in the Act, provisions whereof becomes extracted hereinafter, does bestow a leverage, in any private individual, to institute a petition for eviction before the learned Assistant Collector concerned, especially when the petition lands are described in the revenue records as “*Shamlat Deh*”, besides when in respect thereof, any member of the village proprietary body, may have a right of common user along with the other members of the village proprietary body concerned.

“7. Power to put Panchayat in possession of certain lands.-- [(1) *An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamlat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Haryana Tenancy Act, 1887:*

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land

of other immovable property which was or has been in his wrongful of unauthorised possession, [at the rate of one percent of the Collector rate of the land per acre per annum with the ceiling of total penalty amount equal to ten percent of the current Collector rate of the encroached land), having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

8. In view of the above, this Court finds no merit in the instant petition, and, after affirming the impugned annexures, the writ petition is dismissed.

9. No order as to costs.

(SURESHWAR THAKUR)
JUDGE

22.11.2023

Ithlesh

(SUDEEPTI SHARMA)
JUDGE

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