

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

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CWP-7793-2017 (O&M)
Date of Decision : January 10, 2023

DHARAMPAL SINGH

.....Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present: Mr. Sunil Kumar, Advocate
for the petitioner.

Mr. Amit Aggarwal, DAG, Haryana.

Mr. Sandeep Parkash Chahar, Advocate
for the respondent No.7.

SURESHWAR THAKUR, J.(ORAL)

1. Khasra No.3091 is assigned to the disputed land. In the classification column, drawn in respect of the above Khasra No., it is described as Gair Mumkin Johar. The import of the above classification, as made to the petition land(s), is that, it was meant for the common purpose of the village proprietary body. However, since the petitioner herein, has allegedly encroached upon the above Gair Mumkin Johar, but to the extent of 200 sq. yards, therefore, the Gram Panchayat concerned was led to institute a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act'), for seeking the eviction of the petitioner herein from the petition land(s).

2. The learned Collector concerned, after referring to all the material produced before him, proceeded to allow the eviction petition, as became preferred before him by the Gram Panchayat Bahu Akbarpur, Tehsil

and District Rohtak. The above decision recorded by the learned Collector concerned resulted in a challenge being thrown thereto by the aggrieved hence before the Appellate Authority concerned. The Appellate Authority concerned, after dismissing the appeal of Dharampal (petitioner herein), proceeded to affirm the orders, as became passed by the learned Collector concerned.

3. The petitioner herein became aggrieved from the concurrently made orders of eviction against him, and, was led to institute throughout the instant writ petition before this Court.

4. The petitioner, as apparent on a reading of his reply, as became, furnished to the eviction petition, asserted his holding valid possession, upon the Gair Mumkin Johar, but, to the extent of 200 sq. yards, and the above contention became rested upon the factum that a valid exchange, did occur, but, in pursuance to a Resolution, made by the Gram Panchayat concerned, inter-se the petitioner herein and the Panchayat concerned. However, the above made plea became declined by both the statutory authorities.

5. Be that as it may, though, the learned counsel for the petitioner contends before this Court that the verdicts, as recorded against him by both the authorities below, are legally infirm, as no valid demarcation hence preceding the makings of the impugned orders against him, was ever made nor became relied upon by the Gram Panchayat concerned, but, the said argument is completely shaky. The reason for forming above inference, does but, ensue from the above made admission carried in the reply filed by the petitioner to the eviction petition filed by the Gram Panchayat concerned.

6. The learned counsel appearing for the respondent- Gram

Panchayat submits that, though, there is a civil litigation pending inter se the contesting litigants before the first Appellate Court concerned, and, that the issue of maintainability of the instant proceedings occur only before the authorities concerned, as contemplated under the Act, has been answered in favour of the petitioner herein. Moreover, though, he also submits that awaiting the makings of a decision thereons, by the learned first Appellate Court concerned, this Court may not proceed to record any decision upon the instant writ petition.

7. However, even the above made submission cannot be accepted by this Court. The reason for rejecting the above submission become squarely grooved, in the factum, that the above civil litigation commenced subsequent to the institution of the petition under Section 7 of the Act, before the learned Collector concerned. The above factum attracts to the subsequently instituted litigation, hence the principle of res subjudice. Prima facie, the necessary sequel thereof, is that, the jurisdictional competence of the Collector concerned, besides, of the Appellate Authority concerned, and, importantly of this Court, to decide the lis at hand, can never be deemed to be ever snatched. Even otherwise, the meteing of an answer favourable, to the petitioner herein, on the issue of maintainability of the suit, does prima facie, appear to infringe the mandate carried in Section 13 of the Act, wherein a statutory bar is cast, against the recouring of a civil remedy before the civil court concerned, by any person, in respect of an issue, or on a matter, which is to fall for consideration, and, is to be decided solitarily by the authorities contemplated under the Act.

8. Since the petitioner herein did admittedly encroach upon the Panchayat land, and, when in respect thereof, there is the completest bar qua

exercising of jurisdiction by the Civil Court concerned. Therefore, any answer favourable to the petitioner being recorded thereon by the learned civil court concerned, is of least significance nor does deprive this Court to uphold the concurrently made orders of eviction, by the authorities below, against the petitioner. In consequence, this Court finds no merit in the petition and is constrained to **dismiss** the instant petition. Any observations made herein above, with respect to an answer in the affirmative being recorded by the civil court concerned, on the issue of maintainability of the civil suit concerned, may not be construed to be binding upon the learned first Appellate Court but subject to the latter civil proceedings attracting thereon the principle of res subjudice.

9. The instant petition stands **dismissed** and all the pending applications, if any, also stand disposed off accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 10, 2023
devinder

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No