

CWP-25549-2019

1

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

222

CWP-25549-2019

Date of Decision : May 09, 2023

GRAM PANCHAYAT VILLAGE KOTLA AFGANA

-Petitioner

V/S

STATE OF PUNJAB & ORS.

-Respondents

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

Present : Mr. R.S. Ghuman, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Nakul Sharma, Advocate
for the respondents No.4 to 7.

SURESHWAR THAKUR, J.(ORAL)

1. The impleadment of LR's of the deceased co-respondent No.8, as became ordered to be substituted in the array of respondents concerned, is not required, as it is fairly stated at the bar, that she is not the legal heir of the deceased litigant concerned. However, yet if in the relevant application thus for ensuring the substitution of the deceased litigant concerned, it becomes revealed from the apposite legal heir certificate, that as a matter of fact, she, on the demise of the litigant concerned, is authorized to represent the deceased litigant concerned, thereupon at that stage, she be permitted to be impleaded in the array of respondents, in the petition, thus on an order being made by the learned Collector concerned.

2. The Gram Panchayat Kotla Afgana, Tehsil Payal, District Ludhiana filed Case No.929 on 17.03.2015, before the learned Collector

CWP-25549-2019

2

concerned, thus impleading therein four respondents. The said case was filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), claiming therein, the making of a decree of eviction against the respondents from land(s), rather owned and possessed by the Gram Panchayat concerned.

3. Through a decision drawn on 01.05.2019 (Annexure P-3), upon the petition (supra), the learned Collector concerned assigned the espoused decree of eviction to the Gram Panchayat concerned. The said decree of eviction was made ex parte, as despite the process server concerned, visiting the family members of the respondents impleaded therein, yet the family members of the respondents concerned refusing to accept service, as such, their refusal to accept service, was concluded to tantamount their being validly served. However, despite valid service being caused upon the respondents concerned, since they yet neither appeared in person, nor through any validly engaged counsel, therefore through an order drawn on 30.04.2019, they were directed to be proceeded against ex parte and resultantly, a decree of eviction was passed.

4. The aggrieved therefrom, the LR's of the deceased respondents concerned, instituted an appeal bearing No. PUN/JDC/EV/2018/000412 before the learned competent appellate authority concerned, who through Annexure P-5 becoming drawn thereon, ordered for remand of the lis to the learned Collector concerned. The reason for making the above order of remand became rested on the factum, that despite the demise of one Inderbir Singh son of Nahar Singh occurring on 30.12.1998, thus as revealed by his death certificate tendered vide Annexure P-2 therein, yet his becoming impleaded as party/respondent in the eviction petition. Resultantly, as such

CWP-25549-2019

3

when his demise occurred prior to the institution of the petition (supra) before the learned Collector concerned, and, when he remained unsubstituted by his LRs, resultantly the decree of eviction, as became passed vide Annexure P-3 by the learned Collector concerned but became obviously stained with the vice of it being nonest, as it became rendered against a dead litigant. Therefore, the appeal (supra) became accepted by the learned appellate authority concerned, whereafter he proceed to make an order of remand, upon, the learned Collector concerned, to, after ensuring the substitution of the LRs of the deceased respondent(s) concerned, thereafter proceed to draw a fresh decision, in accordance with law, upon the petition (supra).

5. The above verdict (Annexure P-5), as made by the competent appellate authority concerned, has been challenged before this Court. The learned counsel appearing for the petitioner, does not contest the fact, that the decision as made by the competent appellate authority concerned, is legally sound, as the decision as became recorded earlier by the learned Collector concerned, was bereft of jurisdictional vigour, as it was made qua deceased litigant(s), who remained unsubstituted by their respective LRs, either at the time of the institution of the petition (supra), or, during its pendency.

6. If so, yet he makes a submission, that since the warrants of possession, as became issued on 30.05.2019, and, which resulted in the Gram Panchayat concerned assuming possession over the disputed land(s), therefore when the verdict drawn by the learned Collector, thus has been completely enforced, as such, in case the order of remand is accepted by this Court, thereupon there would be multiplicity of litigation.

CWP-25549-2019

4

7. The above argument is not accepted by this Court, and, the reason for not accepting the said argument, is that, unless there are conclusive, effective, and, binding decision(s) recorded, upon, the lis concerned, by the competent statutory authorities concerned, besides by this Court, thereupto the verdict made by the learned Collector concerned, whereby, the claimed for decree of eviction was granted to the Gram Panchayat concerned, rather was not enforceable, thus immediately on its making. Contrarily, it has been successfully strived to be executed, through the warrants of possession (supra), and thus also execution of the warrants of possession, at the instance of the executing officer concerned, rather is premature, as yet the appellate authority concerned, has through its drawing Annexure P-5, rather annulled the decreeing of Gram Panchayat's petition, as, cast under Section 7 of the Act of 1961, besides has annulled the warrants of possession.

8. The premature execution of the warrants of possession, at the instance of the executing officer concerned, thus would be subject to a decision on remand of the lis rather being made by the Collector concerned, and, in case a decision adversarial to the Gram Panchayat concerned is made by the remandee court. Resultantly thereupon, if the said decision acquires conclusivity, and, finality, thus it is open for the aggrieved respondents in the said petition, to ensure, that the possession over the disputed lands, as become assumed by the Gram Panchayat concerned, in pursuance to the execution(s) being made of the warrants of possession, thus becomes restored to them. The above would not result in multiplicity of proceedings, as the warrants of possession have been issued, and, also have been executed at a premature stage, especially when no binding and

CWP-25549-2019

5

conclusive finality has been acquired by the decision embodied in Annexure P-2. Therefore, this Court finds no merit in the instant writ petition and is constrained to dismiss it. Accordingly, the instant writ petition is dismissed. The remandee court is directed to, after complying with the order of remand, proceed to thereafter decide the petition under Section 7 of the Act of 1961 rather most expeditiously, but after hearing all concerned.

9. Be that as it may, since the warrants of possession also become quashed and set aside by the competent appellate authority concerned, but yet since the latter has proceeded to make a remand of the lis to the learned Collector concerned, therefore until a decision is made on the remanded lis by the remandee court, thereupto, the aggrieved therefrom, may not file an application under Section 144 CPC, seeking restoration or restitution of possession of the disputed land(s) from the Gram Panchayat concerned, rather to them. However, the application for restitution of possession may become instituted before the learned Collector concerned, only after the learned Collector’s decision, thus dismissing the application (supra) of the Gram Panchayat, but acquires apposite conclusivity and finality.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 09, 2023
devinder

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