

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

202

CWP-18598 of 2023

Date of Decision:28.11.2023

BALWINDER SINGH

....Petitioner

Versus

STATE OF PUNJAB & ORS

.....Respondents

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

Present: Mr. Divyam Singh, Advocate,
for the petitioner.

Mr. Maninder Singh, DAG, Punjab

Mrs. Raman Rekhi, Advocate,
for respondents No.4 and 5.

SURESHWAR THAKUR, J. (Oral)

1. Mrs. Raman Rekhi, Advocate has appeared and filed her power of attorney on behalf of respondents No.4 and 5, which is taken on record.

2. The present petition has been filed by the petitioner assailing the order dated 09.08.2023 (Annexure P-4) passed in a petition filed under Sections 4, 5 and 7 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 instituted by the

Gram Panchayat Maggar, Tehsil and District SAS Nagar, through its Sarpanch (respondent No.4 herein) before the Collector, as constituted thereunder.

3. In the said petition, the respondents are alleged to make encroachment upon *gair mumkin johar*, which is entered in the revenue record as *Jumla Mushtarka Malkan*. There is no contest reared before this Court by the learned counsel appearing for the contesting litigants, that the said petition was well constituted, as the Collector under the Act (supra), did hold jurisdiction to try, and, to make a verdict on the said petition.

4. The filing of the petition (supra) resulted in the Collector concerned, through Annexure P-1 making an order of eviction of the respondents, from the disputed land. Annexure P-1 brought grievance to the aggrieved judgment debtors and led them to institute statutory appeal No. PUN/JDC/EV/2023/000103, thus before the appellate authority concerned. The said appeal is stated to be yet sub-judice.

5. During the pendency of the statutory appeal (supra), one Karnail Singh filed an application under Order 1 Rule 10 CPC thereby seeking his impleadment, as a party to the said sub-judice statutory appeal. Vide the impugned order (Annexure P-4), the application (supra) was allowed and the said Karnail Singh was permitted to be arrayed as respondent No.3 in the array of respondents rather in the sub-judice statutory appeal (supra).

6. The said order (Annexure P-4) has been challenged before

this Court.

7. Since the abovesaid Karnail Singh remained never impleaded as such before the Collector concerned, whereas, his striving to become impleaded before the Collector concerned rather was the earliest apt opportunity for his thus seeking his impleadment in the motion, as became laid before the Collector concerned. Therefore, non availment by one Karnail Singh, of the earliest opportunity (supra), thus before the Collector concerned, thereby barred him to make an application for his impleadment before the statutory authority concerned.

8. Even otherwise since a verdict of eviction has been made on the relevant motion instituted at the instance of the Gram Panchayat concerned, thus before the Collector concerned. Therefore, the making of a verdict of eviction (Annexure P-1) by the Collector concerned, does thereby lead to conclusion, that the Sarpanch of the Gram Panchayat concerned, was ably propagating the cause of the Gram Panchayat concerned. Inconsequence, the averment made in the application, by one Karnail Singh, that there is likelihood of prejudice being caused to the espousal of the Gram Panchayat concerned, before the appellate authority concerned, rather was also lacking in any tenacity.

8. In the wake of the above, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed and the impugned Annexure P-4 is quashed and set aside. The statutory authority concerned is directed to, within

one month from today, make a valid speaking decision thereon but after hearing all the affected persons concerned. The appellate authority shall also ensure that a validly proven demarcation report is placed before it, besides shall ensure that the same becomes proven in accordance with law.

9. In view of the above, the present petition is allowed.
10. Pending application (s), if any, stand (s) also disposed of.

(SURESHWAR THAKUR)

JUDGE

(SUDEEPTI SHARMA)

JUDGE

November 28, 2023

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Whether speaking : Yes/No

Whether reportable : Yes/No