

In the High Court of Punjab and Haryana at Chandigarh

(205+114)

CWP No. 26946 of 2019 (O&M)

Date of Decision: 24.1.2023

Rano

....Petitioner

Versus

Director, Rural Development and Panchayats
Punjab and others

.....Respondents

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

Present: Mr. N.P.S.Mann, Advocate for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. J.S.Mahal, Advocate for respondent No. 3.

Mr. G.S.Bhinder, Advocate and
Mr. S.K.Chaudhary, Advocate for respondent No. 4.

SURESHWAR THAKUR, J.

1. In respect of the petition land, a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') was filed, by respondent No. 4, before the learned Collector concerned,. Thereons through an order made on 21.3.2013, and, as becomes embodied in Annexure P-1, the respondents therein, the petitioner herein, was ordered to be evicted from the petition land. In an appeal, becoming constituted thereagainst before the appellate authority concerned, the latter on appeal No. 319 of 2014, as revealed by Annexure P-3, proceeded to concur with the verdict, enclosed in Annexure P-1. The petitioner becomes aggrieved from the above made concurrent orders against her, by the above referred authorities.

2. Without going into the merits of the case, since the learned counsel for the petitioner submits, that the respondent concerned, had no locus

standi to institute the petition under Section 7 of the Act, before the Collector concerned. Therefore, it is necessary to determine whether the above argument has any merit, and, also in case it has some meritworthiness, to thereafter draw a conclusion whether the impugned order became rendered, upon a misconstituted petition, and, whether the said purported vice is yet curable, through a direction being made, upon the Gram Panchayat concerned, to after passing of a resolution, authorizing the Sarpanch concerned, to institute an application, within the originally instituted lis, seeking the substitution of one Dayal Singh by the Sarpanch of the Gram Panchayat concerned. The above may ensure that the above purported vice becomes cured, and, also may ensure that the initially instituted petition, becomes well constituted. Initially for determining whether the above made argument has some vigour, it is necessary to gather the import of the provisions, as become carried in the substantive sub-Section (1) thereof. In the above endeavour, it is necessary to extract the mandate, as carried in sub-Section (1) of Section 7 of the Act, provisions whereof become ad verbatim extracted hereinafter.

“The Collector shall, on application made to him by a Panchayat or by an officer, duly authorised in this behalf by the State Government by a general or special order, after making such enquiry as he may think fit and in accordance with such procedure as may be prescribed, put the Panchayat in possession of the land or other immovable property in the Shamilat Deh of that village which vests or as deemed to have been vested in it under this Act and for so doing the Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.”

3. A reading of the above extracted provisions, as carried in sub-Section (1) of Section 7 of the Act, reveals, that the jurisdiction, as become vested in the Collector for well assuming jurisdiction on a petition cast before him, under Section 7 of the Act, would become well rested only when the said petition is cast before him, by a Panch or by an officer duly authorized in this

behalf by the State Government by a general or special order. Therefore, but

necessarily, unless the petition (supra) is cast by Panch or by an officer, duly authorized in this behalf by the State Government by a general or special order, thereupon alone the Collector concerned, could validly assume jurisdiction thereto. However, the institution of a petition under Section 7 of the Act, by a private person or by an inhabitant of the mohal concerned, who becomes aggrieved from the delinquent act of the errant concerned, but is obviously a misconstituted petition, nor the Collector concerned, ever is, vested with any jurisdiction to make any valid decision thereons nor the appellate authority concerned, could affirm the initially recorded decision, upon the petitioner's application.

4. Therefore, the above made submission before this Court, by the learned counsel for the petitioner, that one Dayal Singh had no locus standi to invoke the jurisdiction vested in the learned Collector concerned, is well rested, and, the said submission is accepted.

5. However, the above vice in the makings of affirmative order, upon the petition, cast under Section 7 of the Act, initially by the Collector concerned, and, the latter by the appellate authority concerned, rather to the considered mind of this, is rather a curable infirmity, and, would not coax this Court to quash the impugned orders. Contrarily, this Court is of the view, that the above infirmity can be cured, after quashing the impugned orders, but on the above ground, and, thereafter through an order or remand, being made, upon the learned Collector concerned, to make a fresh decision, in accordance with law, upon the lis concerned. However, any decision upon the remanded lis, shall be made, only when preceding thereto, the Gram Panchayat concerned, passes a resolution authorizing the Sarpanch thereof, to institute an application within the initially instituted lis, for seeking the substitution of one Dayal Singh rather by the Sarpanch of the Gram Panchayat concerned. On the

said application being filed, the learned Collector concerned, shall make lawful order thereons. Subsequently, the learned Collector concerned, shall after hearing all the affected concerned, shall make lawful orders upon the petition cast under Section 7 of the Act.

6. The resolution (supra) shall be positively passed within two weeks from today, and, thereafter within one week subsequent thereto, the application seeking substitution of one Dayal Singh in the array of the petition, by the Panchayat, shall be moved before the Collector concerned. The remanded lis shall be positively decided in accordance with law, hence within three months from today.

7. It is clarified that till a lawful decision is made on the application for substitution, the parties shall maintain status quo with respect to the petition land. However, after a lawful order being made, upon an application for substitution, liberty is reserved to the petitioner herein to within the petition (supra) move an application claiming the apposite interim relief, and, on the said application being filed, lawful order shall be made thereons, but only after hearing all the affected concerned.

8. The petition stands disposed of in the above terms.

9. All the pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

January 24, 2023
Gurpreet