

**239 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-22060-2023

Date of Decision : 04.10.2023

GURNAM SINGH

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

....Respondents

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

**Present : Mr. D.S.Virk, Advocate
for the petitioner.**

**Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.**

SURESHWAR THAKUR, J. (Oral)

1. One Gurdyal Singh instituted against one Santokh Singh a petition/application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. In the said petition, the petitioner claimed relief, that the consolidation rasta, as became carved in the consolidation scheme, did not provide, any link or access towards the south of Killa No. 97/25. The said Gurdyal Singh also ventilated therein a grievance, that owing to lack of path to Killa No.97/25, the east and west of the said killa are not accessible.

2. Through an order made on the said application on 08.08.2014, (Annexure P-1), the Commissioner Hisar Division, Hisar after accepting the application, made an order of remand to the Tehsildar and C.O.

Ellenabad, with direction(s) to investigate the entire record, as to how the

link of passage No. 764 was cut in Kila No. 97/25. Moreover, a further direction was made that the area of Kila No. 97/25 be determined from the field book and jamabandi. In addition, it was further directed that if the area is 8 kanal, then the area should be given to the applicant in lieu of the lands in passage and if the area is less then the records Musavi should be linked by drawing a line.

3. In pursuance to the said order of remand being made to the Tehsildar and C.O. Ellenabad, the latter made a decision on 09.02.2015, whereby he ordered that the said error as became caused, during the consolidation, be rectified and thus passed direction(s) that path No. 764/2 starting from kila no. 129/21 upto 103/16 will be shown in red colour continuously in the masavi as per filed book. Photocopy of the said order has been placed on record by the learned counsel for the petitioner today.

4. The aggrieved therefrom preferred an appeal thereagainst before the District Revenue Officer and Settlement Officer Consolidation, Sirsa. The Appellate Authority through an order made on 12.06.2015 (Annexure P-2) nullified the orders, as became recorded by the Remandee Court concerned.

5. Subsequently, the aggrieved from Annexure P-2, made a motion before the Deputy Commissioner and Assistant Director Consolidation Officer, Sirsa through instituting therebefore case No. 1/MS on 23.12.2015. The above case resulted in the drawing of Annexure P-3, on 02.01.2018, whereby an order of remand was made to the District Revenue Officer and Settlement Officer, Consolidation Sirsa, thus for making a decision afresh on the *lis*.

6. Consequently, the remandee Court drew Annexure P-4, on

25.03.2021, whereby the order passed earlier by Tehsildar-cum-Consolidation Officer Ellenabad, on 09.02.2015 was restored. Thereafter's an appeal thereagainst was instituted before the Deputy Collector-cum-Assistant Director, Consolidation Officer, Sirsa.

7. It is stated, at the bar, by the counsel for the petitioner and by the learned Additional Advocate General, Haryana that the said appeal is yet subjudice but within the said statutory appeal, an application was filed seeking interim relief or status-quo being maintained in respect of the disputed properties rather till a decision is made on the statutory appeal.

8. Though, on 13.04.2021, the District Collector, Sirsa, made an order whereby he stayed the operation of the orders dated 25.03.2021. However, subsequently through an order drawn on 26.04.2023 (Annexure P-7), he vacated the order made on 13.04.2021, whereby he had stayed the operation of the order, as made on 25.03.2021.

9. The drawing of Annexure P-7, brings grievance to the petitioner.

10. Since, as above stated, the counsels are ad idem that the statutory appeal is yet subjudice. Therefore, until a clinching decision becomes made on the statutory appeal, it was but required that the equities in respect of the disputed lands thus being maintained, rather than theirs becoming disturbed. However, the above solemn principle rather governing the ordering(s) for staying the operation(s) of the order challenged, before the Appellate Authority, till a final decision is recorded on the relevant motion, rather appears to have been breached, at the instance of author of Annexure P-7. Resultantly since equities would be disturbed in case the Appellate Authority concerned, ultimately concludes,

that there is merit in the said statutory appeal, whereby also there would be multiplicity of litigation, inasmuch as, the successful appellant becoming driven to launch apposite restitutory proceedings, in respect of those disputed parcels of lands, qua possession whereof may become assumed by the respondent concerned, in the said appeal, thus on the basis of the impugned order.

11. Resultantly, it appears that the making of the impugned order Annexure P-7, suffers from grossest lack of insightful application of mind to the above necessity(ies).

12. Moreover, the exercisings of jurisdiction by the Appellate Authority, on the interim application, thus appears to be not properly exercised, rather it appears to become exercised with a material illegality, and, gross impropriety.

13. In consequence, the above is required to be undone. Therefore, after quashing the impugned order (Annexure P-7), unless the equities since its drawing uptil now have not yet been disturbed, thus the parties are directed to maintain *status quo* in respect of the disputed lands as exists today.

14. Moreover, the Appellate Authority concerned, is directed to positively within a period of two months from today, make a reasoned speaking order upon the statutory appeal, but after hearing all affected persons concerned.

15. Before parting, it is deemed necessary to also make an advisory upon the Appellate Authority, that the latter in its drawing the impugned order, thus vacating the earlier made order, whereby it stayed the operation of the impugned order (Annexure P-7), rather has presented

himself with a fait accompli and/or has shown likelihood of bias qua the respondent in the said statutory appeal.

16. Therefore, it was but expected from the author of Annexure P-7 to restrain himself from drawing the impugned order. Contrarily in his passing the impugned order he has exceeded the jurisdiction as vested in him.

17. Disposed of.

(SURESHWAR THAKUR)
JUDGE

04.10.2023
kavneet singh

(KULDEEP TIWARI)
JUDGE

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