

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 26936 of 2022

Date of Decision: 13.2.2023

Suba Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. Petitioner one Suba Singh filed a petition under Section 7 read with Rule 20-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), before the learned Collector concerned. In the said petition, the petitioner arrayed one Harbhajan Singh as co-respondent No. 1 and, also arrayed Gram Panchayat, village Kang, Tehsil and District Gurdaspur as co-respondent No. 2. The petitioner claimed therein, that the petition land was owned and possessed by the Gram Panchayat concerned, and, the said land has been subjected to construction, at the instance of co-respondent No. 1 Harbhajan Singh. Therefore, relief was claimed in the above petition, that an order of eviction, be made against the said respondent. In the said petition, bearing case No. 186 of 8.7.2014, the learned Collector concerned, made an order for ejectment of co-respondent No. 1-Harbhajan Singh, from the petition land. Moreover, he also ordered, that within one month, after removing the illegal construction, as made thereons at the instance of one Harbhajan Singh, he shall hand over the vacant possession to respondent No. 2, and, further directed the respondent concerned, to pay damages for a sum of Rs. One lac, to co-respondent No. 2, for raising

unauthorized constructions over the panchayat land. The above affirmative order, as made by the learned Collector concerned, upon the petition (supra), led the aggrieved therefrom one Harbhajan Singh, to institute an appeal thereagainst, before the learned Appellate Court concerned. The learned Appellate Court concerned, after disconcurring with the reasons, as became assigned by the learned Collector concerned, hence to make an affirmative order on the case (supra), rather proceeded to allow the apposite statutory appeal. The above order, as made by the learned Appellate Court concerned, has brought pain to one Suba Singh, and, has led him to institute thereagainst the instant writ petition, before this Court.

Analysis of the provisions of Section 7 of the Act of 1961

2. At the very outset, the learned State counsel has argued, that the petitioner has no locus standi to institute a petition under Section 7 of the Act of 1961, before the Collector concerned. In making the above argument, the learned State counsel, has drawn the attention of this Court, to the mandate, carried in sub-Section (1) of Section 7 of the Act of 1961, provisions whereof become extracted hereinafter, wherein, becomes embodied a mandate rather only authorizing the panchayat concerned, or an officer duly authorized in this behalf, by the State Government by a general or special order, to avail the remedy, constituted in Section 7 of the Act of 1961.

***“7. Power to put panchayat in possession of shamilat deh.--(1)
The Collector shall, on an 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 is 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. The above made argument is well rested on the above provision, as there is a specific mandate, carried in the provision (supra), whereby, the exercise of jurisdiction by the Collector concerned, on a petition cast under Section 7 of the Act of 1961, is validly exercisable, only when an application, as cast under the said provision, is instituted before him, but only by a panchayat or by an officer duly authorized in this behalf by the State Government by a general or special order. Necessarily there is no empowerment or locus standi in any private individual to invoke the jurisdiction as vested under Section 7 of the Act of 1961, in the Collector concerned.

Conclusions

4. In the wake of the above, since the petitioner had no locus standi to institute a petition under Section 7 of the Act of 1961, yet the learned Collector concerned, proceeding to exercise jurisdiction, on the petition filed under Section 7 of the Act of 1961, but was an invalidly exercised jurisdiction thereon. Therefore, the effect of, no locus standi vesting for the relevant purpose in the present petitioner, besides also with the Collector concerned concomitantly rather exercising an ill jurisdiction on the said petition, rather makes both the assumption of jurisdiction, as also the makings of an order on to the said petition, hence to become stained with the pervasive vice of completest lack of able jurisdictional empowerment, in the learned Collector Concerned, and, also in the learned Appellate Authority concerned. The said orders are completely void.

5. Though, in the wake of the above, this Court is of the firm view, that the impugned orders are required to be quashed and set aside, and, also is of the further view, that if any grievance, is still surviving in respect of the petition land, in the Gram Panchayat concerned, to permit it to avail the

remedy under Section 7 of the Act of 1961, through either the Gram Panchayat concerned, through a resolution being made in favour of the Sarpanch concerned, hence instituting a petition under Section 7 of the Act of 1961, or the BDPO concerned instituting a petition under the said provisions, before the learned Collector concerned.

Ratio of judgment in *Dalbir Kaur versus Gram Panchayat, Hijrawan Kalan, District Fatehabad and another*, and, reasons for distinguishing the said judgment

6. Though, the learned counsel for the petitioner, has drawn the attention of this Court, to a judgment made by this Court in case titled as ***Dalbir Kaur versus Gram Panchayat, Hijrawan Kalan, District Fatehabad and another, 2009(3) RCR (Civil) 224***, wherein, this Court on 27.5.2009, had in paragraph 7 thereof, para whereof stands extracted hereinafter, made a conclusion, that the locus standi is to be adjudged on the basis of cause of action, and, the relief sought. Further, it has also been expostulated therein, that any resident of the village, if has a proven interest, and, the locus standi, to seek eviction of a person from the land, rather meant for the common user of all. Resultantly, such a resident of a village, having an interest in a property, meant for the common user of the villagers, can upon a valid grievance, qua his common user thereof becoming breached, rather make a claim under Section 7 of the Act of 1961, before the Collector concerned. On the said claim becoming putforth, thereupon there would be an obviation of likelihood of the common interest of the private individuals concerned, in lands reserved for the benefit of the entire village proprietary body, hence becoming prejudicially affected. Therefore, it was in the context of the rights of the private individual concerned, becoming materially or prejudicially affected, in respect of common enjoyment, along with the other members of the village proprietary body concerned, of those lands meant for the common

user, of the entire village proprietary body concerned, that it was held, that the restriction under Section 7 of the Act of 1961, against any private individual accessing the jurisdiction of the Collector concerned, rather as such, becoming relaxed in favour of any aggrieved private individual concerned.

*“Locus otherwise is to be seen on the basis of cause and the relief sought. Any resident of the village would have interest and the locus to seek eviction of a person from land meant for common use of all. A resident of a village, who has an interest in a property, which is meant for common use of the villagers, can certainly have a grievance, if the property is unauthorisedly occupied or encroached upon by any person. This court in Shankar's case (supra), has held that any villager can approach the Collector to protect the interest of shamlat land vested in Gram Panchayat. In **Gadde Vendateswara Rao Vs. Government of Andhra Pradesh and others, AIR 1966 Supreme Court 828**, it was observed that anybody who has been prejudicially affected by the act or omission complained of, can apply, even though he may not have a proprietary or even a fiduciary interest in the subject matter. In **Jashbai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others, AIR 1976 Supreme Court 578**, it was observed that the petitioner must be a person prejudicially affected by the act or omission, which is under challenge. Since the land under the occupation of the petitioner was meant for common use, respondent No.3 can be said to be a person who could be prejudicially affected. In large number of cases, the person has been allowed to maintain petitions, which are in public interest as when public interest is affected by the action, an organisation, which has a special interest in the subject matter or a Member thereof, should be allowed to apply. Where a public injury is committed by an act or omission, which is contrary to law or Constitution, any member of the public can maintain an action for redressing that public injury provided only he acts bonafide and not for personal or private gain or out of political motivation. Though may not be applicable but reference here can be made to the provisions of Section 7 of the Act as applicable to State of Haryana, where an inhabitant of the village, apart from the Panchayat, Block Development and Panchayat Officer and Social Education and Panchayat Officer are held entitled to file application, seeking eviction of a person who is in an unauthorised or wrongful possession of a land or other immovable property in shamlat land.”*

7. Therefore, for culling out the ratio decidendi of the above judgment, and, which would but make the said judgment applicable to the facts at hand, it is necessary to bear in mind the foundational facts, as were

setforth in the said petition. A reading of the relevant paragraph of the petition, as laid, in the verdict (supra) reveals, that therein the petition land was reserved for a “gair mumkin chhapar”, hence was obviously meant for the common enjoyment of the entire village proprietary body concerned. Therefore, in the context of the above foundational facts, it was concluded, that since the private individual(s) concerned, in the said petition, in case there is any omission, at the instance of the Gram Panchayat concerned, to cause removals of encroachments, if any, as made by the errant concerned, upon the gair mumkin chhapar, that it became concluded, that in case the said omission, does continue, to be made at the instance of the Gram Panchayat concerned, thereupon the rights common with the other members of the village proprietary body, of the petitioner therein, would be materially affected, in case he is still barred to make a motion under Section 7 of the Act of 1961. Therefore, the said provisions were read down.

8. Having set forth the above factual foundation, as existing in the judgment (supra), necessarily the facts similar to the facts therein, had to be setforth in the instant petition, for this Court becoming constrained to apply, the ratio decidendi (supra), as set forth in paragraph 7 of the judgment (supra). However, a reading of the petition discloses, that the petition land never became reserved either as a gair mumkin chhapar nor a gair mumkin rasta. Therefore, only when the petition lands became reserved for the above purpose, thereupon the petitioner could well rest an argument, that since he alike the other members of the village proprietary body concerned, had a common right to make an enjoyment with them, of the above category of lands, that this Court would have removed the apposite statutory restrictions, as, placed on a private individual. Resultantly, since the above lands are not

mumkin rasta, thus, when the petitioner has no right, title, and, interest common with the other members of the village proprietary body, hence to make enjoyments of the petition lands. Therefore, he cannot seek the eviction of respondent No. 5, from the petition lands, and, rather only the Gram Panchayat concerned, or other authorized officer could in respect of the nature, and, category of the petition lands, hence well move a petition under Section 7 of the Act of 1961, before the Collector concerned.

Final order

9. In nutshell, this Court finds that the impugned order, made by the learned Collector concerned, as well as by the learned Appellate Court concerned, are devoid of any jurisdiction, and, as such they are quashed, and, set aside.

10. However, liberty is reserved to the Gram Panchayat concerned, to forthwith institute a petition under Section 7 of the Act of 1961, before the learned Collector concerned. On the above petition becoming instituted before the learned Collector concerned, the latter shall, in accordance with law, make an expeditious decision thereons.

11. With the above observations, the petition stands disposed of.

12. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 13, 2023

Gurpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No