

CM-17809-CWP-2023 & RA-CW-357-2023 in
CWP-6780-2023 [1]

[N.C. No.2023:PHHC:150423-DB]

In the High Court of Punjab and Haryana at Chandigarh

CM-17809-CWP-2023 & RA-CW-357-2023 IN
CWP-6780-2023

Date of Decision: 24.11.2023

Sandeep Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Manvinder Singh Dalal, Advocate
for the petitioner.

Mr. Vikram Singh, Advocate for the
applicant-respondent No.5.

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

SURESHWAR THAKUR, J. (ORAL)
CM-17809-CWP-2023

For the reasons indicated in the application, the same is allowed as prayed for, subject to all just exception, and the Order Inquiry dated 14.03.2023 as annexed with the application is taken on record as Annexure A-1.

RA-CW-357-2023

1. The order made by this Court on 29.03.2023, upon Civil Writ Petition No. 6780 of 2023, becomes extracted hereinafter.

“1. The writ petition is disposed of with a direction to the BDPO concerned, to forthwith institute a Section 7 petition in respect of the disputed lands before the Assistant Collector concerned. On such a petition being filed, it shall be lawfully decided through a speaking decision made thereons, but the said decision shall be made only after hearing all affected persons concerned, and, shall be positively made within a period of six months from its preferment.

2. Needless to state, that before the institution of the said petition, a valid demarcation shall be made of the petition lands, wherein, the participation of all the aggrieved concerned, shall be elicited and shall also be ensured.

3. It is further clarified that till the said procedure is resorted, thereunto the parties shall maintain the status quo, as of today, in respect of the disputed lands.”

2. The above said order was made, on the premise of an averment made in the head-note of the writ petition, wherein it was articulated, that encroachments have been made on Gair Mumkin Johar, by certain private encroachers, and that thereby, the said Gair Mumkin Johar is required to be freed from encumbrance(s) of any construction as became allegedly made thereon.

3. The learned counsel appearing on behalf of Gram Panchayat concerned, has filed an application seeking recalling of the said order, thus on the ground, that since the Gram Panchayat concerned is the owner of the disputed lands, given the disputed Johar(Pond), becoming reserved in the finalized consolidation scheme, for the village common purpose, thereby the present petitioner becomes disabled to file a petition against the Gram Panchayat concerned, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961(as applicable to State of Haryana) hereinafter for short called as the 'Act of 1961'.

4. The above made averment, though may be correct, but yet the order strived be recalled, became erected on the premise, that certain encroachments, at the instance of the private individuals concerned, were made on the Gair Mumkin Johar. Therefore for ensuring that the said constructions are ordered to be removed therefrom, thus through a petition under Section 7 of the 'Act of 1961' being filed, thereby the above directions were passed.

5. It was in the face of the above, that hence the said order was passed by this Court. Therefore, it appears that if as a matter of fact, even if the Gram Panchayat concerned, is the owner of the disputed Gair Mumkin Johar, whereons certain unauthorized constructions are made at the instance of the certain individuals concerned, and, if as a matter of fact, if the Gram Panchayat concerned, omitted to make a resolution for preferring a petition under Section 7 of the 'Act of 1961', thereby, but obviously, it tacitly permitting the said averred encroachments made over the Gair Mumkin Johar, thus to continue. Therefore, in the face of the above, the application for the reviewing or for the recalling of the order, *de hors* the Gram Panchayat concerned being the owner thereof, rather is not maintainable.

6. In consequence after dismissing the review application, the order passed by this Court is maintained and affirmed.
7. The Sarpanch of the Gram Panchayat concerned or the BDPO concerned are directed to in terms of the said order, forthwith institute a petition under Section 7 of the 'Act of 1961' against the encroachers, who have allegedly made encroachments on the Gair Mumkin Johar. The said motion shall be preceded by a validly prepared demarcation report, and, if therein, encroachments are revealed to be made on the disputed Gair Mumkin Johar hereupons petition (supra) shall be forthwith instituted within three weeks before the Assistant Collector concerned, who on receiving the same, shall proceed to make an expeditious decision thereon but after hearing all affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

November 24, 2023
Anjal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No