

112-4

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

CWP-23935-2023

Date of decision:22.11.2023

LAKHWINDER SINGH

...Petitioner

Versus

JOINT DEVELOPMENT COMMISSIONER (IRD) PUNJAB AND
OTHERS

...Respondents

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

Present: Mr. H.S. Dhandi, Advocate
for the petitioner.

SURESHWAR THAKUR, J. (ORAL)

1. Notice of motion.
2. Mr. Maninder Singh, DAG, Punjab, waives service of notice on behalf of respondent No.1. Mr. Sahil Sharma, Advocate and Mr. Paruneet Singh, Advocate waives service of notice on behalf of respondent No.2.
3. Gram Panchayat Salempur, Tehsil and District Ludhiana, instituted, on 03.12.2015, a petition under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), whereby it claimed the making of a declaratory decree, thus declaring the plaintiff (supra), to be owner in possession of the suit lands.
4. The said petition was based upon the purported illegality occurring in an order passed, on 27.03.1995 by the Consolidation Officer, Hoshiarpur, whereby through a mutation becoming recorded in favour of

the proprietors, thus an untenable conferment of right, title and interest over the disputed lands became endowed, upon the plaintiff.

5. On the said raised plea issues were struck by the learned Collector concerned.

6. After adduction of evidence on the said issues but solitarily by the Gram Panchayat concerned, it was concluded, that since in the pre consolidation records, the respondents therein, petitioner before this Court was entered as a “*Gair Marusi*”, rather on payment of rent. Therefore, the Consolidation Officer concerned, was not required to be modifying the said entry, through his making the contested mutation. Therefore, it was concluded, that in the making of a correction in the revenue entries, he had exceeded his jurisdiction.

7. The said suit resulted in the rendition of Annexure P-5, whereby the suit (supra), became decreed in favour of the Gram Panchayat concerned.

8. It is not contested amongst the learned counsels appearing before this Court that the said declaratory decree as became passed, on the misl (supra), rather was an ex-parte decree. However, it is also fairly conceded, before this Court by the learned counsel for the petitioner, that no application became preferred by the present petitioner before the learned Collector concerned, thus for seeking the setting aside of the order, whereby the present petitioner was proceeded against ex-parte, thereby his becoming debarred to adduce any cogent evidence, on the issues, which became struck on the misl concerned.

9. However, the learned counsel appearing for the petitioner submits, that the said rendition of an ex-parte decree against the present petitioner was taken as a ground of appeal, in appeal No.3 of 2018, by the

present petitioner, but he submits, that the said grounds of appeal relating to the untenability of the present petitioner becoming proceeded against ex-parte and thereby his becoming debarred from participation in the petition cast under Section 11 of the Act rather became never adjudicated upon.

10. The above made submission before this Court by the learned counsel for the petitioner appears to be well founded, as on a reading of the Annexure P-11, as became rendered on the statutory appeal (supra), thus as a matter of fact, there occurs no finding on the said taken ground in the appeal.

11. If so, the instant petition which challenges Annexure P-11, does have some merit. The reason being, that the present petitioner, had taken in the grounds of appeal a specific objection, that the said correction, in the revenue entries, as became made by the Consolidation Officer, became grooved in a notification No.534-1767/563 dated 20.07.1954, whereby those persons who are entered over the disputed lands as "*Gair Marusi*", and, if the said entry was occurring in the revenue records before 26.01.1950, thereby they became entitled to seek endowment of rights as owners over the disputed lands.

12. It appears that only because the present petitioner was proceeded against ex-parte, and, with no specific finding becoming returned on a specific ground, taken in the appeal, that the present petitioner was untenably proceeded against ex-parte, thus thereby the validity or application of notification (supra), thus remained not adequately dealt with.

13. Consequently, without going into the merits of the said notification, and, also without going into the fact whether the said petitioner was covered by the said notification, this Court for ensuring that justice is

learned Commissioner concerned, to ensure the rendering of finding whether the present petitioner was untenably proceeded against ex-parte, and, if a finding favourable to the petitioner is rendered, thereons, thus subsequently the learned Commissioner concerned, shall proceed to deal with the fact whether the present petitioner is covered by the above mentioned notification.

14. In consequence, with observations (supra), after accepting the instant petition, the impugned order of 26.10.2017 (Annexure P-5) and the impugned order of 06.11.2019 (Annexure P-11) are quashed, and, set aside, and, the lis is remanded to the learned Commissioner concerned, to after restoring the appeal to its original number, to, within 6 months from today, but after hearing all affected persons concerned, thus pass a fresh decision thereons.

(SURESHWAR THAKUR)
JUDGE

22.11.2023

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(SUDEEPTI SHARMA)
JUDGE

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