

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 24874 of 2023
Reserved on : 6.11.2023
Date of Decision: 04.12.2023**

Gurdev Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

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

Argued by: Mr. Anureet Singh Sidhu, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SUDEEPTI SHARMA, J.

1. One Buta Singh instituted an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), before the learned Collector exercising jurisdiction, as such, under the Act of 1961.

2. In the said application, Buta Singh (respondent No. 4 herein), claimed that the petitioner in the present petition (respondent therein), had made encroachment, upon the gair mumkin street shown as ABCD in the red colour in the site plan, as were attached to the application (supra).

3. It is averred in the said application, that the applicant therein owned a property opposite to his house, wherein, he has installed a Gobar Gas Plant, and, also using the same for storing of Toori. It is further averred in the application (supra), that between the house and plot of the applicant, there is a public street. On the both sides of the said public street there is a

house and plot of the petitioner herein. It is further averred in the application (supra), that the petitioner herein threatened to encroach over the said public street, and, also extended threats to the applicant from using the said street.

4. The application filed by Buta Singh (respondent No. 4) was dismissed vide order dated 7.2.2020 (Annexure P-2), passed by the learned Collector concerned.

5. Being aggrieved by the order dated 7.2.2020, an appeal was preferred by Gram Panchayat, Bahona (respondent No. 3) and Buta Singh (respondent No. 4). Vide order dated 9.8.2023 (Annexure P-1), the said appeal filed by respondents No. 3 and respondent No. 4 was accepted by the appellate Court and the petitioner herein Gurdev Singh was ordered to be evicted from the disputed land. Petitioner Gurdev Singh has challenged the said order by filing the present petition before this Court.

6. The learned counsel for the petitioner contends, that reliance placed on the site inspection report by the appellate authority concerned was not as per the validly drawn demarcation report by the concerned revenue officer. Therefore, the order of eviction passed by the appellate authority is bad in the eyes of law. He further contends that the order passed by the learned Collector on 7.2.2020 (Annexure P-2), dismissing the application of Buta Singh (respondent No. 4 herein) is a well reasoned order.

7. Before advertng to the merits of the case and concluding, it is important to reproduce Section 7(1) of the Act of 1961. The same reproduced as under:-

“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 execution of a decree for possession of land under the Punjab Tenancy Act, 1887.”

8. A plain reading of language of Section 7(1) of the Act of 1961 shows that an application for putting the Gram Panchayat in possession can be filed by the concerned Panchayat or by the officer duly authorized in this behalf by the State Government. The document annexed with the present writ petition i.e. Annexure P-2 shows that in the application filed by Buta Singh (respondent No. 4 herein), he had neither averred that he had been authorized by the Gram Panchayat or by the State Government to file an application on behalf of the Gram Panchayat nor any material was produced to show that he was authorized by the State Government to invoke the provisions of Section 7(1) of the Act of 1961. Therefore, the application filed by Buta Singh (respondent No. 4 herein) was not maintainable and respondent No. 2 had committed a jurisdictional error by entertaining the same.

9. Since the basic order dated 7.2.2020 could not be passed due to lack of maintainability, therefore the order passed by the appellate authority, setting aside the same would also be bad in the eyes of law.

10. In view of the above, this Court allows the instant petition. Consequently, the impugned order (Annexure P-1) is quashed and set aside.

However, liberty is reserved to the BDPO concerned, or to the Sarpanch of

the Gram Panchayat concerned, to move an application under Section 7 of the Act of 1961, before the Collector concerned.

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

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 04, 2023
Gurpreet

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