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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-29582-2022 (O & M)

Date of Decision : 25.05.2023

GRAM PANCHAYAT RAOMAJRA THROUGH ITS SARPANCH
KARAM CHANDPetitioner

Versus

COMMISSIONER AMBALA AND ORS.Respondents

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

Present : Mr. A.D.S. Sukhija, Advocate
for the petitioner.

Mr. P.P.Chahar, Sr. DAG, Haryana.
Mr. Parveen Mehta, DAG, Haryana.

Mr. Vikram Singh, Advocate
for respondents No. 6 to 8, 10 to 12 (i) (ii), 13,
14, 16, 17, 20, 21, 22, 24, 25, 26.

SURESHWAR THAKUR, J. (Oral)

CM-9432-CWP-2023

1. During the pendency of the instant writ petition, the respective demises of respondent No. 15- Devi Chand, respondent No. 23- Ram Singh and respondent No. 27- Dharam Pal, has occurred respectively on 26.04.2023, on 30.05.2022 and on 25.11.2022. It has been averred respectively in paragraphs No. 4, 5 and 6 of the application, that the deceased respondents (supra) are survived by their LRs, as, enumerated therein.

2. Since for an adjudication of the instant writ petition, the substitution of the deceased by their LRs is imperative. Therefore, after

allowing the asked for substitution, the instant application is allowed and disposed of.

3. The amended memo of parties, as appended with the instant application is taken on record.

4. No notice is required to be served upon the newly added respondents, as they stand represented through their counsel Mr. Vikram Singh, Advocate.

Main Case

Factual Background.

1. One Bhupinder Kumar son of Lal Chand resident of Raumajra, Tehsil Barara, District Ambala filed case No. 205/PVCL on 05.03.2018, before the Assistant Collector, First Grade, Barara. The said case was filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (As applicable to Haryana) (hereinafter for short called as 'the PVCL Act'). In the said application, the petitioner asked for eviction of the respondents therein from the petition lands.

2. Through a decision (Annexure P-1), as made on the case (supra), on 07.06.2018, the asked for decree of eviction was passed against the respondents.

3. During pendency of the case (supra), before the Assistant Collector concerned, the summons were issued upon all the respondents therein, but despite valid service being purportedly caused upon them, yet there is none either appearing personally or through authorized counsel before the Assistant Collector concerned. Therefore, the said purportedly validly served respondents were ordered to be proceeded against ex-parte on 22.03.2018. Therefore, as stated (supra), an ex-parte decree was passed on the case (supra), by the Assistant Collector concerned.

4. Some of the aggrieved from the ex-parte decree of eviction (Annexure P-1), chose to file an application under Order IX Rule 13 of the CPC, before the Assistant Collector concerned, seeking recalling of the said ex-parte decree, and the other aggrieved from the said ex-parte decree, chose to institute a statutory appeal, before the competent Appellate Authority concerned.

5. Today, it is fairly stated at the bar, by the learned counsel appearing for the contesting litigants, that both on the application, as became filed under Order IX Rule 13 CPC, thus before the Assistant Collector concerned, thereby seeking the recalling of the ex-parte decree of eviction, as, passed through Annexure P-1, and also on the statutory appeal, as became preferred by some of the aggrieved against the ex-parte decree of eviction, rather orders thereons, thus against the aggrieved became passed respectively by the Assistant Collector concerned, and, by the competent Appellate Authority concerned.

6. Moreover, today, it is also fairly stated at the bar, by the counsel appearing for the petitioner, that subsequently a revision petition bearing No. 115 of 2020, was preferred by the aggrieved, from the said orders, and on the said revision petition, as disclosed by Annexure P-8, a verdict favourable to the aggrieved became passed. Through the said verdict Annexure P-8, an order of remand of *lis* to the Assistant Collector concerned, thus was made, with a direction to him, to make a fresh decision in accordance with law, upon the case (*supra*).

7. After dismissal orders being passed on the Order IX Rule 13 CPC application, by the Assistant Collector concerned, and on the dismissal orders being passed by the learned Appellate Authority concerned, on the appeal preferred by the aggrieved, from the ex-parte

decree of eviction, as, passed by the learned Assistant Collector concerned (Annexure P-1), that it is stated at the bar, that possession of the disputed lands became assumed by the Gram Panchayat concerned.

8. Though, yet it is stated at the bar, by the learned counsel appearing for the petitioner, that the order of remand, as made by the learned Revisional Authority (Annexure P-8), to the learned Assistant Collector concerned, has not been completely enforced, inasmuch as, the remanded *lis*, is still subjudice before the Assistant Collector concerned. Moreover, yet the learned Revisional Authority proceeding to draw Annexure P-12, whereby it has proceeded to order for restoration of possession of the disputed lands from the Gram Panchayat, to the respondents, the purported encroachers upon the panchayat land.

9. Moreover, as revealed by Annexure A-3, as appended with application CM-9271-2023, the Divisional Commissioner concerned, has taken to enforce Annexure P-12. The above order Annexure A-3, appended as such with the application (*supra*), though has not been specifically challenged, but since it is a sequel of the making of Annexure P-12, by the Revisional Authority concerned. Therefore, the legal merit worthiness of the said Annexure A-3, can also be permitted to be challenged before this Court.

Reasons for setting aside Annexure P-12, as the same is made in gross disregard of the jurisdictional competence invested in the Authority concerned.

10. For the reasons to be assigned hereafter, this Court finds, that the Revisional Court concerned, in its making Annexure P-12, whereby it has ordered for restoration of possession of the disputed lands, from the Gram Panchayat concerned, to the purported encroachers, upon the panchayat lands, rather has exercised jurisdiction, thus with a gross

illegality and with a material impropriety. The reason for making the above inference stems from the fact, that though a suo moto revisional jurisdiction, is conferred, upon, the Commissioner, thus through the mandate enshrined in Section 13 B of the Haryana Village Common Lands (Regulation) 1961, Act, but the exercisings of the said suo moto jurisdiction, has to be done with immense legal sagacity, and or, the said discretionary suo moto jurisdiction, as, vested in the Revisional Authority, rather is to be done not in a perfunctory manner. Contrarily, it has to be exercised only when a verdict is recorded upon a motion, as cast before the authorities rather below the Revisional Court, and which yet remaining unchallenged, before the Revisional Authority concerned, yet the latter suo moto choosing to, on an intimation becoming received from any quarter concerned, thus, exercise revisional jurisdiction. Moreover, the exercising of suo moto revisional jurisdiction, would be a validly exercised jurisdiction, only if gross illegalities and pervasive infirmities, thus grip the said basic order, relating to restoration of possession of the disputed lands, from the panchayat to the purported encroachers, upon, the panchayat lands.

11. However, in the instant case, though when yet the remanded *lis* is subjudice before the Remandee Court concerned, and though the appropriate jurisdiction, to order for restoration of possession of the disputed lands from the panchayat to the encroachers, upon, the said panchayat land, thus was to be exercised only by the Remandee Court concerned, and, but on an apposite application being preferred before it. However, the said purported encroachers yet during the pendency of the remanded *lis* before the Assistant Collector concerned, chose to usurp jurisdiction of the Remandee Court, through theirs' making an inapt

revisional motion, before the Revisional Authority concerned, who as above stated made Annexure P-12. Moreover, apparently without any application for the said purpose being filed before the Revisional Court nor any order being made thereons. Therefore, through Annexure P-12, an order became made for restoration of possession of the disputed lands from the Gram Panchayat to the respondents concerned.

12. It is the above manner of exercising of revisional jurisdiction which but is completely outside the contours of revisional jurisdiction, as, vested in the revisional court. Reiteratedly for the reason, that the jurisdiction to order for the restoration of apposite possession of the disputed lands, from the Gram Panchayat, to the respondents concerned, was to be made only by the Remandee Court concerned, wherebefore whom the remanded *lis* was subjudice. Therefore, the jurisdiction exercised by the Revisional Court, thus resulting in its drawing Annexure P-12, rather attracts thereons the vices of pervasive illegality and also the vice of gross material impropriety. Moreover, the order made subsequent thereto i.e. Annexure A-3, is also ingrained with an alike vice.

13. Moreover, even during the pendency of an application under Order IX Rule 13 CPC before the Assistant Collector concerned, and or, during the pendency of an appeal, against the ex-parte decree of eviction, thus with the Gram Panchayat concerned, having notice of such motions, thereby it was but just and appropriate, that an intimation with respect to the above, becoming purveyed to this Court, thus, in its through Annexure P-5, making a direction, upon the authority concerned, to ensure that there is restoration of possession of the disputed lands by the purported encroachers, to the Gram Panchayat concerned.

14. Consequently, irrespective of the above, yet if the said orders

have been complied with thereupon, it was but appropriate, that the said orders were required to be also rescinded, only on a motion being made before this Court. Thus, then this Court given the fact, that the remanded *lis* is yet subjudice before the Remandee Court, rather may have not thus proceeded to order for restoration of possession of the disputed lands, as became assumed by the Gram panchayat, to the purported encroachers, as has been untenably done, through order Annexure P-12, and Annexure A-3. In the light of the above also the exercising of jurisdiction by the learned Commissioner concerned, is a vitiated exercising of jurisdiction, and, is required to be deprecated in the strongest terms.

15. The factum of the remanded *lis* being subjudice before the Assistant Collector concerned, was also an extremely important factor, to be borne in mind, thus for the equities relating to the restoration of possession of the disputed lands from one litigant to the other, thus, becoming ably settled. The reason being that only on the completest termination of the *lis*, and, upon the Gram Panchayat concerned, thus succeeding therein. Resultantly then yet in the situation of happenings of transfer of possession from the Gram Panchayat to the purported encroachers, upon the panchayat land, thus there would be emergence of an undesirable situation, of multiplicity of litigation rather taking place, inasmuch as, then also the Gram Panchayat concerned, being led to file an application for restitution of possession. It was but to ensure, that the above does not take place, that the Revisional Court concerned, ought not to have chosen to make Annexure P-12, nor the learned Divisional Commissioner concerned, ought not to have enforced Annexure P-12, through its making Annexure A-3.

16. In view of the above, Annexure P-12 and Annexure A-3 are

quashed and set aside. The learned Assistant Collector concerned, is directed to within a period of three months from today, make a lawful decision upon the remanded *lis* but after hearing all affected persons concerned.

17. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

25.05.2023

kavneet singh

(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No