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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Date of Decision : May 10, 2023

CHAMAN LAL

-Petitioner

V/S

STATE OF PUNJAB AND ORS.

-Respondents

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

Present : Mr. Parvinder Singh, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Vishal Garg, Advocate
for the respondent No.4.

SURESHWAR THAKUR, J.(ORAL)

1. The Gram Panchayat Jaijon, Block Mahilpur, Tehsil Garhshankar, District Hoshiarpur, through its Sarpanch, instituted a petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), thus impleading therein the present petitioner as a party/respondent. The eviction of the present petitioner, arrayed as respondent in the petition (supra), was claimed, on the premise, that though the present petitioner thus became assigned the disputed lands, measuring 2 marlas, through a lease deed becoming made in his favour, after his being declared a successful bidder, in an auction conducted at the instance of the Gram Panchayat concerned, yet his making breach of the terms and conditions of the auction. The breach of the terms and conditions of the auction, or, of the lease deed concerned, are spelt out in the petition (supra) to arise from the lease monies not being deposited by the present petitioner. (i) The petitioner in contravention of the terms and conditions of the lease deed, rather raising construction beyond the area of the open plot assigned to him on lease, (ii) his breaching the condition relating to his being barred to erect

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shutters and boundary walls, in and around the said construction. The learned Collector concerned, through a decision made on the petition (supra), on 28.02.2013 (Annexure P-5), proceeded to decree the above petition for eviction, as became filed before him by the Gram Panchayat concerned.

2. However, the aggrieved, present petitioner, reared thereagainst an appeal No.82 of 2013, before the competent appellate authority concerned, but through a decision drawn thereon, on 5.2.2016 (Annexure P6), the competent appellate authority concerned also concurred with the making of Annexure P-5, and thus dismissed the said statutory appeal. The above concurrently made verdicts of eviction caused grievance to the present petitioner and thus, he is led to institute thereagainst the instant writ petition before this Court.

3. Insofar as any purported breach being made, at the instance of the present petitioner, qua the condition relating to his not depositing lease monies, rather the said purported breach is not amenable to become countenanced by this Court, which rather became untenably done by both the authorities below. The reason for making the above conclusion arises from the factum, that since there was a refusal on the part of the Sarpanch of the Gram Panchayat concerned, to receive rent from the petitioner, thereby the present petitioner, as evidenced from Annexure P-10, taking to make deposit of the lease monies before the civil court. Thus, thereby the said deposit may become claimed by the Gram Panchayat concerned.

4. Moreover, yet both the competent authorities below, despite no valid demarcations being made of the disputed lands, but revealing that the present petitioner, in excess of the open plot assigned to him, on lease thereof being made to him, by the Gram Panchayat concerned, thus raising constructions thereon, especially when the said report, was but imperative for the Gram Panchayat concerned to become validly drawn, rather before its taking to institute the eviction petition (supra), before the learned Collector concerned. However, it has not done

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so, therefore the above omission is fatal to the Gram Panchayat concerned, and, at this stage, the same cannot be cured, reiteratedly when the makings of curing(s) of the said omission, would tantamount to this Court impermissibly creating evidence in favour of the Gram Panchayat concerned, which however became enjoined to be adduced before the statutory authorities below, evidence whereof patently remained unadduced.

5. Furthermore, even if the present petitioner has erected shutters to barricade the commercial establishment concerned, and, even if the said installation of shutters, does purportedly makes breaches of the relevant thereto terms and conditions of the lease deed. However since the above rather, per se, appears to be unreasonable and obviously so, when for ensuring the protection of the goods kept inside the commercial establishment concerned, and, besides for ensuring that the said goods stacked therein are not pilfered, thereby but required that the commercial establishment became barricaded, through installation of shutters on the commercial establishment, rather by the present petitioner. Therefore, after declaring the said condition, as, arbitrary and unreasonable, resultantly the concurrently made verdicts of eviction against the present petition also does not, on the above ground, withstand the test of validity.

6. Though the third ground, as also became countenanced, by both the statutory authorities below, in decreeing the Gram Panchayat's petition, for eviction of the present petitioner, from the commercial establishment concerned, thus relates to his erecting a boundary wall rather surrounding the commercial establishment, yet in respect thereof also no cogent evidence exists.

7. Assumingly, even if a boundary wall has been erected by the petitioner, and, which surrounds the petition lands, thereby he has only done so, so as to protect the commercial establishments concerned, from may be impermissible intrusions thereinto, rather being made by miscreants or by stray cattle. Therefore, in the present scenario, where the above are likely to occur,

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resultantly the condition (supra) appears to be also completely unreasonable and also arbitrary. Therefore, after striking the above condition also, this Court does not countenance the decisions, as made by both the authorities below, whereby they accepted, that the said conditions have been breached, and, resultantly both drew verdicts of eviction against the present petitioner.

8. Even otherwise, if the said boundary wall purportedly surrounding the commercial establishment thus has been so erected, thereby on termination of the lease, the said boundary wall, thus would fall to the ownership of the Gram Panchayat concerned and thereby, its erection at the instance of the present petitioner, rather cannot be taken to yet bar the petitioner from running the commercial establishment, as he has been assigned lease over the petition lands by the Gram Panchayat concerned, whereafter, he has raised a commerical establishment thereons.

9. Petition is disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

May 10, 2023
devinder

Whether speaking/reasoned.	:	Yes/No
Whether Reportable	:	Yes/No