

In the High Court of Punjab and Haryana at Chandigarh**CWP No. 22609 of 2018****Reserved on 23.2.2023****Date of Decision: 3.3.2023**

Katar Singh

.....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI*****Argued by:*** Mr. Vikram Singh, Advocate for the petitioner.

Mr. Pardeep Prakash Chahar, DAG, Haryana.

Mr. S.R.Hooda, Advocate for respondent No. 5.

SURESHWAR THAKUR, J.

1. The petitioner is aggrieved from the making of Annexure P-4, and, Annexure P-5, and, has challenged the same on the ground, that no lawful authority vested in the authorities concerned, to draw an action, for the removal(s) of the alleged unauthorized possession of the petitioner, on the petition land.

2. The above submission is rested on the factum, that the drawings of Annexure P-4, and, Annexure P-5 would be valid only when prior theretos hence validly drawn binding, and, conclusive verdicts of eviction became rendered against the petitioner. However, the learned counsel for the petitioner argues, that since there are no validly drawn orders of eviction, and, that too with a conclusive, and, binding effect, and, but prior to the making of Annexures P-4 and P-5. Therefore, he contends, that the makings of Annexures P-4 and P-5 are completely void, and/or they intend to usurp without the procedure established by law, hence the petitioner from his lawful

right, title and interest in respect of the petition land/petition property.

3. However, the above argument, does completely stagger, in the face of a conclusive, and, binding verdict being passed against the real brother of the petitioner one Zile Singh, by the Civil Judge concerned, on 30.7.2014, upon civil suit bearing No. RBT 75 of 2010. Moreover, since in pursuance to the above binding, and, conclusive verdict, being drawn in respect of the petition land, an execution petition, to which Annexure R-5/3 is assigned, has been preferred before the learned Executing Court concerned. Moreover, since subsequently, as revealed by Annexure R-2, the learned trial Judge concerned, has proceeded to embark, upon, completely enforcing, and, executing the decree of possession, as became passed by him, on the civil suit (supra), hence against the real brother of the petitioner one Zile Singh. In addition, since in that regard, the Block Development and Panchayat Officer, Ganaur, has forwarded compliance report dated 24.7.2017, to which Annexure R-5 is assigned, to the Additional Civil Judge (Senior Division), Ganaur, rather trying the execution petition concerned, wherein, it is mentioned, that the illegal encroachment, as made by Zile Singh, on the disputed gali, has been removed, and, the vacant possession thereof, rather has become handed over to the Gram Panchayat concerned. Therefore, the making of the impugned annexures appears to be in sequel to the above drawn valid orders.

4. However, the learned counsel for the petitioner yet argues, that though the present petitioner, is the real brother of one Zile Singh, who suffered a decree of possession in the defendants' counter claim, as, filed in the suit of Zile Singh, for permanent injunction. Moreover, he argues, that though the said decree of possession was made in respect of the lands therein, which are but similar to the lands in the instant petition.

Nonetheless, he argues that since the petitioner was not impleaded as a party

thereins. Therefore, he argues, that since the petitioner is the co-owner in the petition land, thus, the binding, and, conclusive verdict of possession, as became passed on the respondents-defendants' counter claim, is not amenable for being executed against him. However, even the above ground cannot well capacitate, the petitioner to yet subsequent, to the drawing of Annexure R-5 on 2017, make encroachments upon the petition land concerned. The reason becomes comprised in the factum, that one Zile Singh, is the real brother of the petitioner, and, the said lands were donated both by the petitioner, and, his brother (supra). The said donation occurred under their respective signatures, as became put on the apposite resolution of the Gram Panchayat concerned, as became drawn on 1.3.2010. The said resolution also became acted upon, and, since post the execution of the binding, and, conclusive decree, rather through the drawing(s) of Annexure R-5, the petitioner has not raised any contest to his signatures as occur on the apposite resolution of the Gram Panchayat concerned, as became drawn on 1.3.2010. Thus, he cannot make any argument before this Court, that the impugned Annexures are without any authority of law.

5. Be that as it may, the remedy, if any, which was available to the petitioner, even if he was not impleaded as a defendant in the said suit or in the counter claim concerned, was hence to resist the execution of warrants of possession, upon him, through his drawing proceedings under Order 21 Rule 97 of the CPC, hence before the learned Executing Court concerned. However, the petitioner did not do so, whereas, it was the best remedy, thus for his ably resisting the execution of the binding, and, conclusive decree of possession, as became made by the learned Civil Judge concerned, on the defendants' counter claim. Therefore, he is estopped from resisting the execution upon him, of the impugned annexures, as they are in compliance to

the order, comprised in Annexure P-5, and, in sequel whereto the completest satisfaction became recorded by the learned Civil Judge concerned, about the fullest execution being made of the decree of possession, as became passed on the defendants' counter claim. Resultantly any construction, as became raised on the petition land rather post the completest, and, effective execution of the binding, and, conclusive decree, recorded by the learned Civil Judge concerned, but is a stratagem deployed by the petitioner to evade the process of law, and, also is a clever mechanism deployed by the petitioner, but to evade the resolution of the Panchayat, whereons his uncontested signatures exist, whereby he and his brother had donated the petition lands, to the Gram Panchayat concerned.

Final order

6. In view of the above stated reasons, this Court does not find merit in the instant petition, and, is constrained to dismiss it.

7. Consequently, the instant petition is dismissed. The encroachments, if any, as made by the petitioner hence post the drawing of Annexure R-5, be ensured to be suo moto forthwith removed by him, failing which it may be open to the authorities concerned, to draw lawful action against the petitioner.

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

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 3rd, 2023
Gurpreet

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