

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

116

CWP-1225-2024

Date of Decision: 24.01.2024

Jaikam Deen

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. Sachin Mittal, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana with
Mr. Saurabh Mago, Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. The Panchayat land was allegedly encroached, upon, by the present petitioner, therefore notices become passed upon the petitioner, rather under Section 24 (1) of the Haryana Panchayati Raj Act, 1994, thus, by the Sarpanch of the Gram Panchayat concerned, whereby he was asked to remove the structures raised on the common passage, but owned and possessed by the Gram Panchayat concerned.

2. The validities of issuance of notice (supra) has been adjudicated, upon, by this Court, in a judgment made by this Court, in case titled as “Karambir and others v/s State of Haryana and others”, to which CWP No.14698 of 2023 has been assigned. The relevant principles which become

summarized therein and also the conclusions which became drawn by this Court, are carried in paragraph Nos.5 and 6 thereof, paras whereof, become extracted hereinafter:-

“5. Since this Court while deciding CWP-19867-2020 (Annexure P-11), had summarized the hereinafter principles, which but cover the common thereto(s) questions of law, as are also involved in the present writ petition.

(i) The exercising of jurisdiction by the Gram Panchayat concerned, through recouring the relevant mandate(s) of Section 24 of the 1994 Act, may be a validly adopted recourse, but only when prior to the makings of the apposite notice, a valid demarcation of the sites concerned, is conducted, and, such notice is validly served upon the respondents concerned.

(ii) The consequent thereto drawing(s) of actions against the encroachers concerned, who raise constructions, upon the vacant places within the abadi deh, may also be a validly drawing action(s), but only when even prior thereto a valid demarcation of the sites concerned, is conducted by competent Revenue Officer:

(iii) The proceedings drawn under Section 24 of the 1994 Act, are summary in nature, thus recourse thereto may be avoided by the Gram Panchayat concerned, especially when evidence in respect of the lands concerned, falling within or outside the ambit of the apposite inclusionary clause, is required to be adduced, and, when such evidence may surface, not in summary proceedings, but may surface in fully contested proceedings, launched under Section 7 and 11 of the Haryana Village Common Land (Regulation) Act, 1961.

6. *Thus, in view of the above summarized principles, it can be safely concluded, that when the proceedings drawn under Section 24 of 'the 1994 Act', are but summary in nature, and, when but evidence, in respect of encroachments being made upon the petition lands, may not surface in the said summary proceedings, but may surface only in fully contested proceedings, launched under Section 7 or 11 of the 1961 Act. Therefore, the issuance of notice(s) (supra) are construable to be made with the completest lack of application of mind and rather are rendered in a cryptic, slipshod and in an ill informed manner."*

3. The above extracted conclusions, when completely discount the validity of initiation of proceedings for eviction, by the Sarpanch of the Gram Panchayat concerned, through the latter invoking the provisions of Section 24 (1) of the Act, (supra), thereupon the Sarpanch of the Panchayat concerned, has derogated from the mandates (supra), whereupon, the notice (supra) as has been issued upon the present petitioner, but naturally becomes legally unjustifiable.

4. In pursuance to the notice issued by the Sarpanch of the Gram Panchayat concerned, the Collector of the District Collectorate concerned, as revealed by Annexure P/4, proceeded to appoint the BDPO concerned, to ensure the execution of the said notice, on the encroachers concerned, but since obstructions were made to the execution of the said notice, thereby, as revealed by Annexure P/5, thus, police help was asked for, thus, by the Executing Officer concerned for ensuring the removal of the encroachments made upon the common passage.

5. It is stated before this Court by the learned State counsel, that the notice (supra) has been executed, therefore though thereby, no cause of action

survives in the present petition, to make a challenge to the notice (supra), as the same becomes fully executed. Nonetheless since there is breach to the principles of law, as carried in verdict supra thereby, the BDPO concerned or the Sarpanch of the Panchayat concerned, are yet directed to forthwith institute, a petition for eviction against the present petitioner, so that, the validly made demarcation report in respect of the disputed passage, becomes sufficiently proven in accordance with law, thus, by its author stepping into the witness box.

6. The above is necessitated for ensuring, that in case the present petitioner rather owns land abutting or adjoining to the common passage, that thereby his eviction as made through Annexure P/5, may not result in his despite his holding lawful title thereto, thus, becoming perennially evicted from the disputed land, which ultimately may be revealed to be not owned by the Gram Panchayat concerned, but rather is revealed to be owned by him. Furthermore, the above is also necessitated, as, in case the validly made demarcation report, reveals that the construction, if any, made by him, even if it is temporarily made, thus, exists on land owned by him, thereby the Assistant Collector concerned may proceed to, after dismissing the eviction petition laid, in respect of those portions of the purported common passage, whereons, still there is some occupation by the present petitioner, thus, declare that such occupation be permitted to be retained or in case, the construction of a temporary shed, which has been removed, through Annexure P/5, if found to be made on land owned by the present petitioner, the same may become ordered to be reconstructed thereon, through vacant free delivery of possession, of the disputed land, becoming restored to the present petitioner.

7. It appears that despite this Court, in verdict (supra) summarizing therein, the above extracted principles, whereby this Court has discounted the invocation of powers cast, under Section 24 (1) of the Act (supra) thus, by the Sarpanch of the Panchayat concerned, yet the authority concerned, but making brazen and arbitrary recourses to the provisions (supra). Moreover, despite the fact, that no validly prepared demarcation report being rather available with the Sarpanch concerned, to set forth the motion as contemplated under the provisions (supra), but yet thereby the notice being galvanized into further action thus, ultimately leading to purported arbitrary demolitions of structures, even if, they are revealed in a subsequently made demarcation report, to be so raised, on land owned rather by the persons concerned.

8. In consequence for obviating the further perpetuation of arbitrary and brazen misuse of provisions (supra) by the Sapranches concerned, this Court makes a direction, upon, the Registry of this Court to forthwith transmit the verdict (supra) to the Principal Secretary (Revenue), to the Government of Punjab and also to the Principal Secretary (Revenue), to the Government of Haryana, who shall thereafter transmit the same to all the Panchayats concerned, so that complete compliance thereto thus, is made by all concerned. Compliance affidavit be sworn by the afore, in respect of the above, besides also in respect of the number of the notices (supra) becoming issued and action taking thereons. The above be done within two months hereafter. Furthermore, if no actions have been taken on such arbitrarily issued notices, thereupon, it shall be ensured that no further action is taken thereons

rather, the encroachments made on the land owned by the Gram Panchayat concerned shall be ensured to be removed, but only through therein, recouring the statutory provisions as engrafted in the relevant statutes rather than making recourse to the statutory provisions (supra). In regard to the above also echoings be made in the respectively furnished compliance affidavits (supra).

- 9. Disposed of accordingly.
- 10. Pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

24.01.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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