

In the High Court of Punjab and Haryana at Chandigarh

(117)

**CWP No. 1291 of 2024
Date of Decision: 24.1.2024**

Sandeep Kumar and others

.....Petitioners

Versus

State of Haryana and others

.....Respondents

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

Present: Mr. Divyam Singh, Advocate for the petitioners.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioners, as revealed by Annexure P-2, are the successors-in-interest respectively of one Shri Chand, and, of one Dhan Singh, both of whom were impleaded as respondents in a petition filed under Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (applicable to Haryana) (for short 'the Act of 1961'), before the Assistant Collector concerned, who after holding a trial on the said petition, allowed the same, thus through an order made thereons on 16.11.2018 (Annexure P-1).

2. The learned counsel for the petitioners submits, that the verdict of eviction (Annexure P-1), though became affirmed by the Appellate Authority concerned, through an order made on the relevant statutory appeal on 6.2.2019, yet the said concurrently made orders of eviction, are completely non-est, nor they were enforceable, as are attempted to be enforced through the issuance of warrants of possession (Annexure P-5).

3. The learned counsel for the petitioner further submits, that since the demises of the above respective predecessors-in-interest of the petitioners

learned Assistant Collector concerned, therefore, the application (supra), at its very inception was completely mis-constituted. He further submits, that since the order of eviction, as made on the relevant petition on 16.11.2018 (Annexure P-1), was made against the deceased litigants, and, as such Annexure P-1 was completely non-est, and/or, was unenforceable.

4. On a reading of Annexure P-2, it appears, that an appeal against Annexure P-1, became reared by the surviving LRs of the deceased respondents in Annexure P-1, besides it also appears on a reading of Annexure P-2, that their substitution, as co-appellants in the array of the appellants of the relevant statutory appeal, was made through an order made, on 28.3.2019, thus on the relevant application.

5. Though prima facie, the petition (supra) was mis-constituted at its very inception, given it being reared against dead persons, thus the decision made on the said mis-constituted petition, but against the dead persons, was prima facie non-est, and, void. Though, the Appellate Court concerned, was required to prima facie allow the appeal of the successors-in-interest of the deceased litigants, thus on the ground, that the order of eviction (Annexure P-1), was made against dead persons, but it only ordered for substitution of the appellants, through an order made on the relevant application, thus on 28.3.2019.

6. The order of substitution (supra) could be construed to be well made, only if the respective demises of the respective predecessors-in-interest of the appellants, rather had occurred during the pendency of the appeal. However, when the respective demises, did not occur during the pendency of the appeal, but had occurred even much prior to the institution of the eviction petition. Therefore, after the Appellate Court concerned, making the order of substitution, but only for the purpose of enabling the appellants to negate the

the limited purpose (supra), rather the Appellate Court concerned, rather than setting at naught Annexuer P-1, has prima facie proceeded to untenably assign affirmation thereto.

7. For supporting the above inference that substitution of the deceased litigants, by his LRs rather can be made only when the apposite demise occurs, during the pendency of the relevant suit or the relevant appeal proceedings, and, qua the such substitutions are not tenable, if the relevant demise occurs, prior to the institution of the eviction petition, this Court draws sustenance, from the mandate incorporated in Order XXII Rule 3 of the CPC, and, in Order XXII Rule 4 of the CPC, provisions whereof become extracted hereinafter.

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an

application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.”

8. It but obviously appears that the laying of above mis-constituted petition before the Assistant Collector concerned, rather has happened, thus prima facie from the Sarpanch of the Gram Panchayat concerned, who was otherwise required to be holding knowledge with respect to the surviveability of the respondents in the said petition, rather failing to endow the said knowledge onto impleadable respondents in the eviction petition, whereas, his impleading the deceased litigants' as respondents. The above negligence could, but have saved time in a valid decision, being recorded, on the eviction petition (supra), inasmuch as, when may be, on the above pervasive stain qua Annexure P-1, being non-est or unenforceable, thus this Court may become ultimately, led to quash Annexure P-1, and, also the concurrent therewith order of the Appellate Court, and, to thereafter direct, the Sarpanch of the Gram Panchayat concerned, to re-institute a well constituted petition for eviction, but against the surviving LRs of the deceased concerned. Significantly, the above was avoidable, and, would have saved the consumptions of time, in the makings of an adjudication on a non-est, thus made order of eviction in the year 2018, besides also on a fresh decision being made on a re-instituted petition.

9. Be that as it may, since a revision petition has been filed against the concurrently made orders of eviction, and, though the said revision petition

petition for its restoration is pending, which application may be decided, in accordance with law, yet when the petitioner seeks an order for staying the operation of Annexure P-5. Consequently, for the above jurisdictional disempowerment of the Assistant collector concerned, to proceed to embark, upon the petition for eviction, and, yet its making a prima facie flawed order thereons Annexure P-1, thereupon, this Court is constrained to stay the operation of Annexure P-5. The said stay shall continue to remain in operation till the making of a decision on the application seeking restoration of the lis, to its original number, after its becoming dismissed for non prosecution, and, if an affirmative order becomes made thereons, thereupon, the Collector concerned, on legally permissible grounds may allow the revision petition or may dismiss it. The above be completed within one month from today, whereupto the operation of Annexure P-5, shall remain stayed.

- 10. The petition stands disposed of.
- 11. The pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

January 24, 2024
Gurpreet

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