

IN THE HIGH COURT OF PUNJAB & HARYANA  
AT CHANDIGARH

CWP-2125-2024  
Reserved on: 14.03.2024  
Pronounced on: 19.03.2024

HARI SINGH AND OTHERS

.....Petitioners

Versus

GRAM PANCHAYAT VILLAGE ROHTA AND ANOTHER

....Respondents

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

Argued by: Mr. Kanwal Goyal, Advocate  
for the petitioners.

Mr. Manish Kumar Singla, Advocate and  
Mr. Sohan Lal, Advocate  
for respondent No.1.

Mr. Maninder Singh, Sr. DAG, Punjab

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**SURESHWAR THAKUR, J.**

1. The instant writ petition is directed against the order dated 18.12.2023 (Annexure P-13), as became passed by respondent No.2, whereby the learned Collector concerned, after returning a finding adversarial to the present petitioners, on the hereinafter extracted preliminary issue, proceeded to subsequently frame other issues, which also become extracted hereinafter. Moreover, through the impugned annexure, the learned Collector concerned, after returning findings thereons, against the present petitioners proceeded to declare the Gram Panchayat Village Rohta, Block/Tehsil Nabha, District Patiala, to be owner of the suit lands.

*“Preliminary issue*

*Whether the petition filed by the petitioner Gram Panchayat under the Punjab Village Common Lands (Regulation) Act 1961, is maintainable or not? O.P.R.”*

*“1) Whether the land in dispute was reserved for common activities in Murababandi Scheme? O.P.P.*

*2) Whether after the murababandi, the land in dispute was vested within the land of Gram Panchayat Rohta and Gram Panchayat is owner in possession? O.P.P.*

*3) Whether decision passed by the Murababandi Officer in favour of the respondents and on the basis of that decision, the mutations so registered, is illegal and un-authorized? O.P.P.*

*4) Whether the order dated 1.02.1975 and dated 28.02.1978 passed by the Civil Court hold any legal significance or not? O.P.P.*

*5) Whether in accordance with the order dated 13.02.1975 and dated 28.02.1978 passed by the Civil Court, Panchayat does not have any right on this land? O.P.R.*

*6) Whether the mutation of the land in dispute, has been registered in favour of respondent as per law? O.P.R.*

*7) Relief”*

2. Since the said preliminary issue was formulated in terms of the directions as became passed by this Court, on 12.05.2023, upon CWP-9172-2019, therefore, it is contended that when in paragraph 17 of the judgment (supra), para whereof becomes extracted hereinafter, a direction was passed upon the learned Collector concerned, to after recording a finding on the above stated preliminary issue, to defer the formulation of other issues, as arose from the contentious pleadings of the litigants concerned.

*“17. The learned Collector concerned, is directed to frame the preliminary issues, in terms of Annexure P-7, and, to record a finding*

*thereons, but within three months hereafter, and, yet after hearing all affected persons concerned. Till a decision is made on the said preliminary issue, he may not proceed to draw other issues, as arise from the contesting pleadings of the litigants concerned.”*

3. Consequently, it is submitted that since the learned Collector concerned, after recording a finding against the present petitioners on the above preliminary issue, therebys was required to, on a subsequent date of hearing frame the other issues, besides was required to permit the litigants concerned, to adduce their respective evidence(s) on those issues, whereons, the evidence discharging onus became cast upon them.

4. The learned counsel for the petitioners, as such, submits that the learned Collector concerned, through the impugned decision rather has not adhered to the said directions. Contrarily, he has after deciding the preliminary issue against the present petitioners also drawn other issues (supra), besides has returned findings thereons, therebys he has caused breach to the above stated paragraph, as carried in the judgment made by this Court (supra).

5. Moreover, the learned counsel for the petitioners also argues, that the findings returned on other issues, than the preliminary issue, rather through an order of even date, has also not only breached the principles of natural justice inasmuch as, the petitioners becoming deprived to rear an appeal against the findings drawn on the preliminary issue, but also the formulation of issues other than the preliminary issue, thus by the learned Collector concerned, but within the impugned order, has caused breach to the mandate, as enclosed in Order XIV Rule 2 of the CPC, provisions whereof, become extracted hereinafter.

**“2. Court to pronounce judgment on all issues.—(1)**

*Notwithstanding that a case may be disposed of on a preliminary issue,*

*the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.*

*2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—*

*(a) the jurisdiction of the Court, or*

*(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”*

6. Much emphasis is laid, upon the stark mandate as enclosed therein, and, as relates the factum that a preliminary issue, as relates to the jurisdiction of the Court, and/or in respect of a bar to the suit being created for the time in force, thereupon there being an injunction upon the learned Collector concerned, to postpone the settlement of other issues, until and after, the above said preliminary issue has been determined, and, a further statutory injunction is made, upon the learned Collector concerned, to subsequently deal with the suit in accordance with the decision on that issue. Therefore, even if the learned Collector concerned, had rendered a finding against the present petitioners on the preliminary issue (*supra*), yet he was required to postpone the settlement of other issues, as arose from the contentious pleadings of the parties at *lis*, and, was also required to defer the hearing of the suit, so as to not only permit the petitioners to raise an appeal against the decision recorded, thus on the preliminary issue, besides also to ensure that the evidence adducing discharging onus, as became cast upon the litigants concerned, becomes efficaciously discharged, as thereby the principle of natural justice, thus would become adhered to.

7. In consequence, gross departures have been made by the learned Collector concerned, not only from the mandate enclosed in the above extracted paragraphs, as became made by this Court, on 12.05.2023, upon CWP-9172-2019, but also there is gross departure from the mandate (supra), enclosed in Rule 2 of Order XIV of the CPC, thus requiring him to, after returning a finding on the preliminary issue, postpone the settlement of other issues, and, thereafter to proceed with the suit in accordance with law.

8. Resultantly, reiteratedly no opportunity has been granted to the petitioners to make an appeal against the findings returned on the preliminary issue, reiteratedly also the completest opportunity to the petitioners, to fully avail the opportunity to adduce the best evidence on the relevant issues, whereons the evidence adducing discharging onus became cast upon them, rather remained not granted to the present petitioners, as such, this Court finds that the impugned order is required to be quashed, and, set aside.

9. However, the learned counsel for the respondents has vigorously argued, that the said decision is not required to be upset, as the impugned order is appealable before the Appellate Authority concerned.

10. However, the said argument does not appeal to the judicial conscience of this Court, as the availability of an alternative remedy to the aggrieved, from the impugned decision does not yet restrain this Court to, in the exercise of supervisory jurisdiction as invested in it, under Article 227 of the Constitution of India, thus make an interference with the impugned order, rather for the reasons which have been above stated.

11. Furthermore, the availability of an alternative remedy of appeal to the aggrieved from the impugned order, does not yet restrain the exercisings of

supervisory jurisdiction by this Court, as invested in it under Article 227 of the Constitution of India, to thereby test the validity of the impugned order, whereby after recording a finding on the preliminary issue, the learned Collector concerned, proceeded to untenably also formulate other issues, besides returned findings thereons, whereas, as stated (supra), after a decision being made on the preliminary issue, there was a requirement of postponement of striking of other issues, and, thereafter a statutory necessity became cast, upon the learned Collector concerned, to subsequently proceed to hold trial of the suit, rather than his proceeding to within the impugned order after returning findings on the preliminary issue, thus proceed to formulate other issues, besides thereby the Collector concerned, also proceeding to non suit the present petitioners. Resultantly, the remedy of appeal to the aggrieved from the findings made on the preliminary issue has been frustrated.

12. In making the above conclusion, that despite availability of an alternative remedy to the aggrieved from the impugned order, yet the supervisory jurisdiction invested in this Court under Article 227 of the Constitution of India, thus yet is available to be recoured by the petitioners, this Court finds support from a decision made by the Hon'ble Apex Court in a decision rendered in case titled as "**Radhey Shyam V. Chhabi Nath**", reported in **(2015) 5 SCC 423**, in relevant paragraphs whereof, it has been expostulated that the High Courts should always bear in mind the distinction between (i) cases where such alternative remedy is available before civil courts in terms of the provisions of Code of Civil Procedure, and (ii) cases where such alternative remedy is available under special enactments and/or statutory rules and the fora provided therein happen to be quasi judicial authorities and tribunals. It is also

Hon'ble Apex Court, that in respect of cases falling under the first category, which may involve suits and other proceedings before civil courts, the availability of an appellate remedy in terms of the provisions of CPC, may have to be construed as a near total bar. However, it has been also expostulated therein, that the orders passed by quasi judicial authorities and tribunals rather stand on a different footing, than the orders passed by the Civil Court of competent jurisdiction, and, when the jurisdiction exercised by statutory quasi judicial authorities and tribunals is exercised with a material impropriety or gross illegality, thereupon the availability of an alternative remedy of appeal to the aggrieved from such orders passed by such quasi judicial authorities, and, by statutory tribunals, rather does not deter the exercising of supervisory jurisdiction by the High Courts, as becomes invested in it, through Article 227 of the Constitution of India.

13. The above expostulated principles, as, carried in the verdict (supra), passed by the Hon'ble Apex Court, incline this Court to take a firm view, that since the learned Collector concerned, has after striking the relevant preliminary issue, and, has subsequently made an adverse finding thereon, but has within the said order also formulated other issues, and, subsequently, has also untenably proceeded to also return findings thereons, whereas, he was required to, after making a finding on the preliminary issue, rather defer the formulation of other issues, besides was required to list the suit for some other date, so that the trial thereons becomes re-coursed in accordance with law.

14. Consequently, the above pervasive illegality and impropriety in the exercisings of jurisdiction by the learned Collector concerned, whereby, it has caused gross departure to the mandate (supra), as enclosed in the CPC.

Moreover, when it has also restrained the aggrieved to make an appeal against the orders passed on the preliminary issue. Therefore, it is but the above gross illegality and gross impropriety in the exercising of jurisdiction by the learned Collector concerned, that thereupon, besides in view of the Hon’ble Apex Court in judgment (supra), reserving jurisdiction in this Court to, in the face of the above evident facts, despite availability of an alternative remedy to the aggrieved, to make an appeal against the impugned order, that impels this Court to entertain the instant petition constituted under Article 227 of the Constitution of India.

15. In consequence, there is merit in the instant writ petition, and, is allowed. The impugned order is quashed, and, set aside. The aggrieved from the findings returned is permitted to raise an appeal thereagainst before the Appellate Authority concerned. After a binding, and, conclusive decisions becoming recorded on the apposite preliminary issue, and, if the said issue is decided against the present petitioners thereupon subsequently, the learned Collector concerned, shall draw other issues, and, shall also record findings/ decision thereons, but in accordance with law.

(SURESHWAR THAKUR)  
JUDGE

(LALIT BATRA)  
JUDGE

19.03.2024  
Ithlesh

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