

104

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-116-1996

Date of Decision : 11.03.2024

BANARSI DASS & ORS.

.....Petitioners

Versus

STATE OF PUNJAB & ORS.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

Present : Mr. J.P.Sharma, Advocate
for LR.s. of petitioner No. 1.

Ms. Aparna Singhal, Advocate
for petitioners No. 2 to 4.

Mr. Maninder Singh, Sr. DAG, Punjab.

SURESHWAR THAKUR, J. (Oral)

1. The Gram Panchayat, Village Bhagwasi instituted a petition for eviction against one Siri Ram son of Dwarka Dass. The said eviction petition was constituted under the provision of Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961'). Through a decision made on the said petition on 21.07.1981 (Annexure P-7), the Collector concerned proceeded to order for the eviction of respondent therein, from the disputed lands. It appears that the said decision remained un-assailed before the competent Appellate Authority, thereby Annexure P-7 has acquired binding and conclusive force. Subsequently, the decree holder

Gram Panchayat concerned, proceeded to ensure the making of execution of the binding and conclusive verdict of eviction (Annexure P-7) through its instituting an eviction petition before the Collector concerned.

2. The learned Collector concerned, proceeded to issue warrants of possession for thereby the verdict of eviction (Annexure P-7) becoming successfully and completely executed. The said warrants of possession became issued on 03.05.1995 (Annexure P-8). The said Annexure becomes challenged before this Court.

3. Be that as it may, it appears that since then till now there is an untenable obstruction and resistance on behalf of the judgment debtors to ensure the completest and efficacious execution of the warrants of possession (supra), despite the present petitioners not making an appeal qua Annexure P-7, before the competent appellate authority.

4. The said resistances are revealed by Annexure P-10, whereby the judgment debtors, the petitioners before this Court proceeded to raise an objection against the execution against their encumbered estates, thus of the warrants of possession, rather on the ground that the judgment debtors are not in unauthorized possession over the disputed lands.

5. The above ground became rested, upon, this Court while deciding CWP No. 2756 of 1981 rather declining the espoused declaratory relief vis-a-vis the disputed lands qua the decree holder-Gram Panchayat concerned. Consequently, it was argued that for lack of title vesting in the Gram Panchayat concerned, thereby it becomes

disabled to ensure an efficacious execution being made of Annexure P-7.

6. As revealed by Annexure P-10, the said objections became dismissed and resultantly after dismissal of the said objections, a challenge has been made to Annexure P-10.

7. The learned counsel for the petitioners argues that since this Court had in CWP No. 2756 of 1981 (Annexure P-5), as became instituted before this Court, at the instance of the predecessor in interest of the present petitioners, had proceeded to annul the concurrently made verdicts respectively by the Collector and the Joint Director, Panchayats, Punjab, whereby a declaratory decree became accorded qua the disputed lands vis-a-vis the Gram Panchayat concerned. Consequently, it is argued that the execution petition, as became laid before the Collector concerned for thereby execution(s) being made of Annexure P-7, was hit by the decision (supra) (Annexure P-5) as became recorded by this Court.

8. Moreso, when thereby, no valid title vested vis-a-vis the disputed lands in the decree holder Gram Panchayat concerned. However, the above made submission is devoid of merits and is required to be rejected.

9. The reason for rejecting the said submission becomes founded upon the factum, that though this Court in decision (supra), had quashed the declarations of title as became made vis-a-vis the decree holders Gram Panchayat concerned, but as is evident from the operative part of the decision, operative para whereof becomes extracted hereinafter, that liberty was also assigned to the Gram

Panchayat concerned, from taking such remedies as are open to it, for ensuring the restoration to it of possession of the disputed lands, as became held by the defendants in the eviction petition, the petitioners before this Court.

“Accordingly, the writ petition is allowed and the orders of the Collector and the Joint Director Panchayats, Punjab (Annexure P-2 and P-3) are hereby quashed. However, it is made clear that this order will not come in the way of the Gram Panchayat from taking such remedies as are open to it for recovery of the land in accordance with law, if so advised.”

10. In the wake of the said liberty becoming assigned to the Gram Panchayat concerned, it appears that therebys the binding and conclusive verdict of eviction, as became rendered by the Collector concerned (Annexure P-7), thus the decree holder Gram Panchayat concerned, instituted an execution petition, and, on the said execution petition, the warrants of possession became issued.

11. Imperatively, the warrants of possession became issued on 03.05.1995, as such, the warrants of possession became issued, post the decision as became made by this Court on 24.03.1995, upon, CWP No. 2756 of 1981 (Annexure P-5). Through Annexure P-5, despite this Court quashing and setting aside the decisions respectively recorded by the Collector, and, the Joint Director Panchayat Punjab, whereby they assigned the espoused declaration to the Gram Panchayat, yet when liberty was left open to the Gram Panchayat concerned, to take such remedies as open to it for ensuring the restoration of possession to it of the disputed lands, which were unauthorizedly held by the respondents, thus petitioners before this Court.

12. Consequently, the filing of the execution petition for therebys ensuring the completest and efficacious execution being made of the verdict of eviction, as passed by the Collector concerned (Annexure P-7), thus cannot be said to be as such any availed remedy which was thus completely outside the domain of the verdict recorded by this Court (Annexure P-5).

13. It appears that despite the predecessors in interest of the petitioners accessing this Court through theirs filing CWP No. 2756 of 1981, he confined his relief only to a challenge being made to the validity of the according of the espoused declaratory decree to the Gram Panchayat, through respectively drawn verdicts by the Collector concerned and the Joint Commissioner concerned, but he did not choose to challenge Annexure P-7, therebys the omission (supra) on the part of the predecessor in interest of the petitioners, rather to cast a challenge to Annexure P-7, despite his being arrayed therein as a party respondent, thus thereby tantamounts to his abandoning or waiving his challenge to Annexure P-7.

14. Consequently thereby he became estopped to subsequently resist the execution of the warrants of possession, as became issued post the verdict (Annexure P-7), as became recorded by this Court, especially when liberty became granted to the decree holder Gram Panchayat concerned, thus in accordance with law, ensure the restoration of possession of the disputed lands to it, from the predecessor in interest of the present petitioners and on his demise from the present petitioners.

15. Moreover, also when the warrants of possession have been

completely and successfully executed, therefore, too the instant petition becomes rendered infructuous.

Final Order of this Court.

16. In consequence, this Court finds no merit in the writ petition and is constrained to dismiss it.
17. The writ petition is accordingly dismissed.
18. No order as to costs.
19. Since the main case itself has been decided, thus, all pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

(SUKHVINDER KAUR)
JUDGE

11.03.2024

kavneet singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No