

In the High Court of Punjab and Haryana at Chandigarh

[120]

CWP-2432-2024

Date of Decision: 05.02.2024

AJIT SINGH

..... PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

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

Mr. Maninder Singh, DAG, Punjab.

SURESHWAR THAKUR, J. (ORAL)

1. One *Ajit Singh son of Banta Singh, resident of Village Toti, Tehsil Sultanpur Lodhi, District Kapurthala*, instituted a *Suit No.17/2013/A.D.C.(D)*, on 05.07.2013, before the Addl. Deputy Commissioner(D)-cum-Collector Panchayat Lands, Kapurthala. The said suit was instituted under Section 11 of the Pujab Village Common Lands (Regulation) Act, 1961 (*hereinafter in short referred to as 'the Act of 1961'*), whereby he claimed for the rendition of a declaratory decree, thus, declaring him to be the owner in possession of the suit land. Through Annexure P-1, being made on the said *lis* on 05.10.2015, the learned Collector concerned, declined the espoused declaratory decree to the plaintiff one Ajit Singh.

2. The denial of the espoused declaratory decree to Ajit Singh by the learned Collector concerned, led him to institute thereagainst a statutory appeal *bearing No.147 of 2015(Annexure P-3)*, before the Ld. Commissioner concerned, who after accepting the said statutory appeal, proceeded to, thus, grant the espoused declaratory decree to the plaintiff one Ajit Singh.

3. The decision (*supra*), as became made by the Ld. Commissioner,

No.15172 of 2016, before this Court, and, this Court through a decision made thereons, on 03.05.2023 (Annexure P-4), after accepting the said writ petition, thus, made an order of remand to the learned Commissioner concerned. The relevant paras thereof become hereinafter extracted.

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4. This Court, at this stage does not deem it fit, and, appropriate to quash Annexure P-4. The simple reason for doing so is firmly rooted, in the factum, that the impugned decision, as carried in Annexure P-4, does not detail, whether as a matter of fact the above referred lease registers, and, auction registers, and with the above apposite tallyings therein, thus came up for deliberation and discussion, and, thereafter for some reason becoming assigned by the Appellate Authority concerned, thus the validity of the said auction register, and, lease register rather became not countenanced. 5. Since only in the event of there being a discussion about the validity of the said documents, and, such a discussion but clearly reflecting, that the import of the said document has been misconstrued, thus resulting in a legally vitiated, and, flawed decision as carried in Annexure P-4, being made by the learned Appellate Authority, thereupon alone this Court would become constrained to accept the instant petition. Since the above has not been done, whereas, it was required to be thoroughly deliberated upon, and, also a well informed reason, was to be assigned, thus for either accepting or rejecting the validity of the above lease registers, and, auction register(s). Resultantly, this Court is constrained to after annulling Annexure P-4, to yet make an order of remand, upon, the learned Appellate Authority concerned, to after restoring appeal No.147 of 2015, to its original number, to thereafter make a well informed, and, reasoned decision, about the validity and import of the apposite lease registers, and, auction registers, and to thereafter within 3 months from today record a fresh decision, upon, the above appeal.”

4. During the pendency of the said restored *lis*, the Remandee Court/the Ld. Commissioner concerned, entertained an application cast under order 1 Rule 10 of CPC, as became filed by the apposite applicant, namely, Gurdev Singh. Moreover, an affirmative order (Annexure P-7) also became rendered thereons on 15.12.2023.

5. A reading of the impugned order, which becomes extracted hereinafter, reveals that it is cryptically drawn. Therefore, on the the said account, the impugned order is, thus, liable to be declared to be ridden with the vice of gross non-application of mind, *vis a vis* the trite factum that the said Gurdev Singh did well espoused that, unless he becomes heard in the relevant appeal, that therebys his right, title and interest over the disputed lands, rather would become adversely affected, thus thereupon the allowing of the said application may have been vindicated. The impugned order passed in the said application, reads as under:-

“Application for impleading as party is accepted and case is adjourned for arguments on date 22.12.2023.”

6. The reason for a detailed discussion in respect of above being made in the impugned order, did necessarily arise, as the Gram Panchayat concerned, was defending the Civil Suit, and unless evidence surged-forth, thus, making loud speakings that the declaratory suit filed by the plaintiff became ill-defended by the Gram Panchayat concerned, thereupon, the application(supra) filed by one Gurdev Singh, may have been allowed. However, the said Gurdev Singh, did not either during the pendency of the *lis* before the Ld. Collector concerned, nor during the pendency of the writ petition(supra), thus, made any espousal rested on the factum, that there was any ill-defendings of the *lis* on the part of the Gram Panchayat concerned, and, that therebys, may be the '*Jumla Mushtaraka Land*', thus, also entered as

'*Shamlat Patti Rajputana*', in the revenue records, rather becoming is usurped by the plaintiffs. The said ill-defendings were also required to be well premised on the ground, that the suit lands which became entered in the revenue records as '*Jumla Mushtaraka Land*' and also as '*Shamlat Patti Rajputana*', and, though, the said entries made the disputed lands to, in terms of Section 2(g) (3) of the Act of 1961, provisions whereof are extracted hereinafter, rather fall within the inclusive definition of '*Shamlat Deh Lands*', but yet upon Gurdev Singh, either along with his application adducing pointed documentary bevidence, suggestive that the said lands, are being used for the benefit of the village community or a part thereof, or for the common purposes of the village, that therebys, he could raise a claim that he has also an interest thereovers, but that as a member of the village propriety body, whereby he has an interest in saving them, from becoming assigned to the plaintiffs, as valid title holders theretos. Section 2(g) (3) of of the Pujab Village Common Lands (Regulation) Act, 1961, reads as follows:-

“2(g) Shamilat Deh includes-

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(3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of village community or a part thereof or for common purposes of the village”

7. However, a reading of the application, cast under Order 1 Rule 10 CPC, does not disclose that the said Gurdev Singh, who sought his being arrayed as a party in the appellate proceedings, did make the above-said pleadings in the apposite application, which were rather required to be made, thus, in terms of the above extracted provisions.

8. Therefore, for lack of the above imperative echoings, being cast in the apposite application, thereby, his impleadment, as a party in the

appellate proceedings, was not required to be made, especially when otherwise too, there is no evidence suggestive, that the appellate proceedings became ill-defended by the Gram Pachayat concerned.

9. In consequence, reiteratedly without the relevant pleadings (supra) being cast in the apposite application, thus, there was no occasion, as such, for the Ld. Commissioner concerned, to pass an affirmative order on the said application, therefore, his yet passing the said order, makes the same to be ridden with the vice of gross non-application of mind to the parameters (supra), besides also, makes the impugned order to be suffering from the vice of its becoming cryptically drawn.

10. In suma, the said belated motion also appears to be a sequel of an afterthought, and, is required to be dismissed.

11. In the wake of the above, this Court finds merit in the instant petition, and, is constrained to allow it. Consequently, the instant petition is allowed and the impugned Annexure P-7 is quashed and set aside. The statutory authority concerned is directed to, within three months from today, make a valid speaking decision as the statutory appeal, but after hearing all the affected persons concerned.

12. In view of the above, the present petition is allowed.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

February 05, 2024
Anjal*