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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3340-2020

Date of decision:29.01.2024

JAVITRI DEVI @ JAVANTRI DEVI 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. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Addl. AG Haryana with
Mr. Saurabh Mago, DAG, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. One Hukam Chand instituted case No.193/SDO, before the learned Assistant Collector, Ist Grade, Pehowa, whereby in terms of provisions embodied under Section 7(2) of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), he claimed the rendition of a decree of eviction in respect of the petition lands, and, against the respondents. A declining order on the above lis became recorded by the learned Assistant Collector, declining order whereof, is appended with the instant writ petition, as Annexure P-1.
2. A reading of the operative part of the declining order discloses, that the learned Assistant Collector could not, from the relevant records produced before him, by the petitioner, thus make a well conclusion, that

the petition lands are owned, and, possessed by the Gram Panchayat concerned, therefore he proceeded to adjourn the petition as sine die.

3. The adjournment of the lis as *sine die*, was *prima-facie* impermissible, and, lacks in legal sanctity, as the apt recourse available to be adopted, by the learned Collector concerned, to in the above event, was to may be direct the parties to access the remedy constituted under Section 13(a) of the Act. Even the said remedy was permissible to be recoured, but only if within the petition, the respondents, did not choose, to avail the benefit of the proviso, occurring in Section 7 of the Act, given the availment thereof being almost akin to the contesting litigants being relegated to the learned Collector concerned, to therefrom get clinchingly settled, thus the dispute as to the respective entitlements of the Panchayat or of the private respondents, thus as owners.

4. Be that as it may, as stated (*supra*), without the said recourse(s) being adopted by the learned Assistant Collector concerned, rather his proceeding to adjourn the lis sine die, is but not, the appropriate manner for terminating the lis, as thereby neither any disputed question of law became clinchingly rested nor also the learned Assistant Collector concerned, deemed it fit, from the otherwise available evidence before him, to pronounce, that in the wake of such documentary evidence, but unfolding the Panchayat being the owner of the disputed lands, that thereby the petition be decreed. The above lack of appreciation of the evidence adduced before the learned Assistant Collector concerned, but bespeaks of gross non-application of mind to the relevant documentary adduced evidence rather before him.

5. It appears that Annexure P-1 become assailed by one Hukam Chand, before the learned Collector concerned, who through Annexure P-2

proceeded to, after setting aside Annexure P-1, make an order of remand to the learned Assistant Collector concerned, for the lis being re-decided in accordance with law, but after granting an opportunity of adducing evidence upon the litigants concerned, on the relevant issues, if any, which become so struck.

6. Respondents in annexure P-1 assailed the order, passed vide Annexure P-2. Through Annexure P-4, the learned Commissioner, Ambala Division, set aside the impugned order of 03.01.2011, and, remanded the lis to the District Collector concerned, with a direction to the latter to decide the contentious issue qua the title over disputed lands, on the basis of merit-demerit, after granting opportunity of hearing, and, for producing evidence to the litigants concerned, under Section 13-A of the Act.

7. Even Annexure P-4 became assailed by the private respondents in Annexure P-1, through theirs raising thereagainst a revision petition before the learned Financial Commissioner concerned. The said petition became registered as ROR No.172 of 2013-14, and, thereons Annexure P-6 became rendered. A perusal of Annexure P-6 discloses, that the verdict drawn by the learned Appellate Authority in Annexure P-4 became quashed, besides the verdict drawn by Assistant Collector, Ist Grade, Pehowa, became also set aside. However, the verdict passed by the learned Collector, Kurukshetra on 03.02.2011, became upheld.

8. A reading of paragraph No.2 of Annexure P-6 discloses, that though the respondents concerned, in the lis (supra), made dependence, upon a decree of the Civil Court, to assert that they acquired title, as owners vis-a-vis the disputed lands, and, also therebys they are attempted to negate the espousal made in the petition (supra), by one Hukam Chand, that the

said respondents, rather had unauthorizedly made occupation over the

disputed lands. However, there was a challenge to the validity of the said decree, at the instance of the Gram Panchayat concerned, inasmuch as, the same being fraudulently obtained or it being obtained in collusion with the revenue officials, and, also with collusion with the then Sarpanch of the Gram Panchayat concerned. Further, it appears that the said argument, did not come to be adjudicated by the learned Financial Commissioner concerned, and, aptly so, as unless evidence in respect of the above became adduced by the contesting litigants, thus thereafter alone it could have been well concluded, but only in a civil proceeding that whether as such, the dependence made on such a decree rather a well made dependence or was an ill-made dependence.

9. Therefore, the learned Financial Commissioner concerned, aptly relegated the contesting litigants to, after setting aside the impugned orders passed in Annexure P-2 and P-4, thus to the learned Assistant Collector concerned, to enable the latter to make an adjudication on the question of title, thus in the exercise of his powers under the proviso to Section 7(2) of the Act. Therefore, it appears that *prima facie* the respondents in the misl concerned, did avail, the benefit of the proviso to Section 7(2) of the Act, and, yet the learned Assistant Collector concerned, initially refrained from making a decision, whether as a matter of fact, a disputed question of title is involved in the lis, besides omitted to convert the said lis into a title suit, so that thereby he makes an adjudication with respect to the legality or otherwise of the entitlement of the respondents concerned, to debar one Hukam Chand, to claim that the suit lands, are owned by the Gram Panchayat concerned, and, that thereby he becomes dis-entitled or otherwise to receive a decree of eviction against the private

10. It appears that the directions passed in Annexure P-4, whereby a remand order was made to the Collector concerned, was an inapt order of remand, as in terms of the proviso to Section 7 of the Act, thus in the event of germination of any disputed question of title, rather the learned Assistant Collector concerned, is well enabled to convert the petition into a title suit, and, is thereafter well equipped to decide the said title suit, but in accordance with law. Therefore, the learned Commissioner concerned, through the impugned annexure, has abided with the mandate of the proviso, as, carried in Section 7 of the Act, and, that obviously the learned Collector concerned, did not abide by the mandate (supra), thereby the annulment of Annexure P-4, through the impugned annexure, thus was both valid as well as was made with a keenest application of mind to the applicability of the proviso (supra), to the relevant lis.

11. Today, the learned counsel for the petitioners, has yet vigorously contended, that the said order of remand be reversed, and, he has thus asked this Court to make an adjudication, with respect to the entitlement of the present petitioners, to receive the benefit of the decree of Civil Court, in respect whereof an entry appears in the relevant revenue record. However, when this Court asked him, that whether the mutation is dependable, inasmuch as, it is yet banked upon a decree of the Civil Court concerned, yet the learned counsel for the petitioners has not been able to place on record the decree of the Civil Court concerned.

12. Be that as it may, since the relevant issue relates to the validity of the order of mutation, as, made purportedly in terms of the decree of the Civil Court dated 11.12.1963, or thus is lawfully entered or not, rather is to be tried, and, adjudicated (supra), only in civil proceedings, and, not in writ

respect to the said decree being collusively or fraudulently obtained, the parties are left to make dependence, upon the said Civil Court decree, before the learned Assistant Collector concerned, and/or, also are reserved liberty to make there an assault on the said decree, on the ground, that it is collusively obtained or it is ridden with a vice of fraudulence.

13. In the light of the above, this Court does not, at this stage deem it fit to make an adjudication with respect to the validity of the impugned order of remand, as, thereupon this Court would be impermissibly converting itself into a Civil Court or would be proceeding to enter into civil proceedings which are otherwise to be drawn by the learned Assistant Collector concerned, thus in terms of the proviso to Section 7 of the Act.

14. In consequence, the impugned order is maintained, and, upheld. All the parties are directed to, within a week from today record, their respective personal appearances before the learned Assistant Collector concerned, and, the latter is directed to, after striking issues upon the contentious pleadings, to thus permit the litigants concerned, to adduce documentary evidence on the said struck issues. The learned Assistant Collector concerned, is further directed to within a period of 3 months from today make a valid speaking decision on the said lis, but after hearing all affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

29.01.2024
Ithlesh

(LALIT BATRA)
JUDGE

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