

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

216

CWP-14566-1996 (O&M)
Date of Decision: 29.04.2024

Tilak Ram

..... Petitioner

Versus

State of Haryana and others

..... Respondents

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

Present: Mr. Ashish Kapoor, Advocate,
for the petitioner.

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

SURESHWAR THAKUR, J. (ORAL)

1. Case No. R.S./40 was instituted on 06.12.1965 by one Sunehra and others against Gram Panchayat concerned, whereas, case No. R.S/39 was set up by Tilku Ram and others against the Gram Panchayat, besides R.S/38, was set up by Munshi and others against the Gram Panchayat. All the said petitions were instituted before the Additional Director, Consolidation of Holdings, Punjab Rohtak, Camp Sonapat and were decided through a common order (Annexure P-1) passed on 21.05.1966. The dispute

raised in the said petition(s), was that, despite the persons concerned, becoming recorded in the pre-consolidation record, as 'Gair Marusian' under the 'Shamlat Deh', yet, in terms of their said recorded previous status in the pre-consolidation records, rather in the post consolidation records the said status remaining unrecognized. Resultantly, therebys they contended that thereby they became pre-empted to claim conferment of proprietary rights over the disputed lands. Through an order made on 21.05.1966 (Annexure P-1), the said claim was accepted and an order of remand was passed on the Consolidation Officer to determine the size and location of their tenancies. The remanded *lis* was directed to be decided in terms of Section 21(2).

2. It appears that since some of the respondents in the said petitions were proceeded against *ex parte*, therebys an application was preferred before the competent authority concerned, thus to annul Annexure P-1, so that, after a recalling being made of the order whereby the respondents in the said *lis* were directed to be proceeded against *ex parte*, thus, the *lis* becoming ordered to become restored to its original number. On the said application(s) cast under Order 9 Rule 13 C.P.C., the impugned order dated 06.05.1996 (Annexure P-5) has been passed. The said order dated 06.05.1996 (Annexure P-5) has been challenged before this Court.

3. A reading of Annexure P-5 reveals, that despite the authority concerned becoming seized with an application cast under Order 9 Rule 13 C.P.C., and, also despite none of the parties recording their appearances, yet the authority concerned not only proceeding to allow the said application, but, subsequently it also making a detailed order on the merits of the case

wherebys it proceeded to declare the applicants to have proved that they have acquired title as owners over the disputed lands.

4. The effect of the above, is that, the author of Annexure P-5, proceeded to exercise jurisdiction on the said application, thus with a gross impropriety and gross illegality. The reason being that despite no appearances being made on the said date, either by the applicant or the respondent, and/or, by the counsel(s) concerned, whereupon rather the said application(s) were required to be dismissed in default, yet the said author not only allowed the said application(s) but also on the said applications he proceeded to make a detailed order on the merits of the *lis*. Contrarily, after the allowing of the application (*supra*), thus the *lis* was required to be restored to its original number, so that on the subsequent date, in respect whereof thus on notices becoming issued qua the litigants, the restored *lis* becoming heard after participation therein of all affected persons. However, in the said recourse remaining unadopted, therebys the author of Annexure P-5, has also proceeded to impermissibly review the earlier made order of remand, whereas, the said review, as stated *supra*, was permissible only after both the contesting litigants becoming heard, but pursuant to the passing of an affirmative order, on the apposite application, whereby the respondents sought relief for the recalling of the order, wherebys they were directed to be proceeded against *ex parte*.

5. In the wake of the above, thus evident infirmity in the impugned order, thereby the same is ridden with a vice of gross impropriety, and/ or, jurisdiction vesting in the authority which drew Annexure P-5,

becoming exercised with an utmost illegality and with a gross impropriety. In consequence, the writ petition is allowed and the impugned order is set aside. The author of Annexure P-5, is directed to initially make a well reasoned order on the application cast under Order 9 Rule 13 C.P.C., but after hearing all affected persons concerned, and, after allowing the said application, the author of Annexure P-5 may pass such just and lawful orders as he deems fit, thus on the merits of the *lis* concerned.

- 6. Disposed of accordingly.
- 7. All pending applications, if any, stand disposed of accordingly.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

29.04.2024
Satyawar

- 1. Whether speaking/reasoned: Yes/No
- 2. Whether reportable: Yes/No