

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

CWP-2891-2024

Date of Decision : 15.02.2024

RULIA KHAN

.....Petitioner

Versus

STATE OF HARYANA AND OTHERS

.....Respondents

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

Present : Mr. M.D.Khan, Advocate
 for the petitioner.

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

Mr. Vikram Singh, Advocate
for respondent No. 5.

SURESHWAR THAKUR, J. (Oral)

1. The instant writ petition is directed against the concurrently made verdicts of eviction, as became respectively passed by the Assistant Collector, Yamuna Nagar (Annexure P-5), by the Appellate Authority (Annexure P-6) and by the Revisional Court (Annexure P-7).
2. Initially the assumption of revisional jurisdiction by the Commissioner concerned, on the relevant revision petition, which led to the making of the impugned Annexure P-7, is completely outside the purview of the statutory mandate as enclosed in Section 13 B of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter for short called as the 'Act of 1961'), provisions whereof are extracted hereinafter.

'[13B. Appeal and revision - (1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit:

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of section 7, is deposited with the Collector.]

(2) The Commissioner may, suo motu [or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time] call for the record of any proceedings pending before, or order passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

3. The reason for making the above conclusion becomes sparked from the factum, that there are plethora of verdicts rendered by this Court, declaring that thus only in the event of a revision petition, arising from a declining order becoming passed by the competent statutory authorities concerned, thus on a declaratory suit becoming instituted under the provisions of Section 13 A of the 'Act of 1961' or when within a petition cast under Section 7 of the 'Act of 1961' rather within the ambit of the proviso occurring therein, a disputed question of title is raised, and, a decision adversarial to the respondent-

encroachers concerned is made, respectively by the Assistant Collector concerned, and, by the Collector concerned, thereupon, only the revisional court concerned, is well empowered to assume revisional jurisdiction, on the relevant revision petition, as becomes instituted before him.

4. It is also therefore trite that in a situation where on a petition instituted under Section 7 of the 'Act of 1961', no disputed question of title is raised by the respondent-encroacher, thus within the domain of the proviso of Section 7(1) of the 'Act of 1961', thereupon, the concurrently made orders of eviction against the encroacher(s) thus respectively by the Assistant Collector, and, by the Appellate Authority concerned, rather are challengeable only through a writ petition becoming instituted before this Court by the aggrieved, but no empowerment is vested in the aggrieved to assail the said decision, through his constituting a revision petition before the revisional Court/authority concerned.

5. Therefore, the institution of the revision petition, against the verdicts respectively passed by the Assistant Collector concerned (Annexure P-5), and, by the Collector concerned (Annexure P-6), thus before the Revisional Court concerned, was a completely mis-recoursed remedy, besides any assumption of jurisdiction thereons was not ever exercisable.

6. Resultantly also the passing of impugned verdict (Annexure P-7), is ingrained with a pervasive illegality inasmuch as, the making of the impugned Annexure P-7, is non est, the same becoming recorded on a revision petition, whereons, no valid

exercisable jurisdiction was vested in the Revisional Court concerned.

7. Therefore, the impugned Annexure P-7, is quashed and set aside. Resultantly, both the eviction orders passed by the Assistant Collector (Annexure P-5), and, by the Appellate Authority (Annexure P-6), are maintained and affirmed.

8. However, the learned counsel for the petitioner, submits that since a challenge to the impugned Annexure P-7, was made by some of the aggrieved therefrom, through CWP No. 15310 of 2017 (Annexure P-9), becoming instituted before this Court. He also submits that since the hereafter extracted order has been made thereons.

“It is contended, inter alia, that the petitioners fulfil all the conditions prescribed in Rule 12(4) of the Punjab Village Commons Lands (Regulations) Rules, 1964, as applicable to State of Haryana, and are willing to pay the market value of the land to the Gram Panchayat especially in the light of the observations made by the Commissioner, Ambala Division, Ambala Cantt., in his order dated 03.05.2016 (P7).

Notice of motion for 09.10.2017.

Till then status quo re: demolition of the houses be maintained.”

9. As such the present petitioner is to be treated at par with petitioners in the writ petition (supra).

10. However, since it appears that the said made order was a result of gross mis-representation besides is also as a result of suppression of the material facts, from the learned Co-ordinate Bench, which passed the above extracted orders, inasmuch as, of the trite factum of inapplicability, of Rule 12(4) of the Punjab Village Common Lands (Regulations) Rules, 1964, (hereinafter for short called as 'the

1964 Rules') vis-a-vis the extant *Gair Mumkin Johar* lands.

11. In consequence, no reliance can be made upon the said made orders, it being a result of mis-representation and suppression of the material facts (supra) from the learned Co-ordinate Bench, especially when in view of the disputed lands being classified as *Gair Mumkin Johar*, thereby the beneficent mandate carried in Rule 12 (4) of 'the 1964 Rules' rather being not applicable to the instant *lis*.

12. In consequence, this Court finds no merit in the writ petition and is constrained to dismiss it.

13. The writ petition is accordingly dismissed.

14. No order as to costs.

15. 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

15.02.2024

kavneet singh

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