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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-16515-1996
Date of decision:23.01.2024

GRAM PANCHAYAT AHRANA KALAN

...Petitioner

Versus

JOINT DEVELOPMENT COMMISSIONER (IRD), PUNJAB AND
OTHERS

...Respondents

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

Present: Mr. G.S. Jaswal, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab

Mr. G.S. Punia, Sr. Advocate with
Ms. Harveen Kaur, Advocate
for respondents No.3 to 6.

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner Gram Panchayat concerned, is before this Court, it becoming aggrieved from the concurrently made dismissal orders, on its petition, filed under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”), whereby it sought the eviction of the respondent one Niranjan Singh, from the petition lands.
2. The allegation made against the private respondents herein, whose ancestor one Niranjan Singh became impleaded, as a respondent in the eviction petition concerned, is that he had through raising a construction on the “*Gair Mumkin*” rasta, but meant for the common user of the entire

village proprietary body, thus had made the said rasta to be unamenable for being used for the relevant common purpose. The Khasra number, whereons the disputed passage exists, is unraveled in the petition (supra).

3. The reason which appears to prevail, upon the learned Collector concerned, in his drawing Annexure P-5, whereby he declined relief, to the Gram Panchayat concerned, becomes rested, on the factum, that after a personal site inspection being made by him of the disputed passage, his proceeding to arrive at a conclusion, that though the disputed land is owned by the Gram Panchayat concerned, but thereafter he also made a conclusion, that no rasta exists on the said lands. Furthermore, he also made a conclusion in Annexure P-5, that the villagers, do not have any necessity, for making user of the disputed path, because there is another path which adjoins the suit path. In addition, he also proceeded to hold that in case the private respondent's structure as raised thereon, is demolished, thereupon it will bring gross injustice to him. In consequence, he directed the Gram Panchayat of village Ahrana Kalan, Tehsil and District Hoshiarpur, not to eject the respondent from the disputed passage.

4. Through Annexure P-5 a further direction was made, upon the Tehsildar Revenue, that the value of the disputed lands, shall be assessed by the said Tehsildar Revenue, and, the assessed amount may be recovered from the respondent, and, thereafter deposited in the Panchayat funds.

5. In an appeal becoming carried against Annexure P-5 by the aggrieved Gram Panchayat concerned, the outcome thereof as revealed by Annexure P-6 also was not favourable to the appellant concerned.

6. In consequence, the Gram Panchayat concerned, is led to institute the instant writ petition before this Court, whereby it seeks, to

make a challenge to the concurrently made dismissal orders, thus by the statutory authorities below. Since no appeal became filed by one Niranjana Singh, against the conclusions drawn by the learned Collector concerned, in Annexure P-5, whereby he inferred, that the disputed passage is owned by the Gram Panchayat concerned. Therefore, the non-filing of any cross appeal against the said conclusion formed by the learned Collector concerned, thus at the instance of one Niranjana Singh, rather leads to a conclusion, that thereby the said private respondent, but naturally acquiesces to the conclusion recorded in Annexure P-5, and, in Annexure P-6, that the suit passage is owned by the Gram Panchayat concerned.

7. Therefore, it has to be adjudged, whether the inferences (supra) drawn by the statutory authorities below, despite their concluding, that the disputed passage is owned by the Gram Panchayat concerned, inasmuch as, their making a conclusion, that for want of common users of the said disputed path, whereon, the disputed structure becomes raised, at the instance of one Niranjana Singh, besides their concurrently concluding, that since the rasta alternate to the disputed passage, is used by the village proprietary body concerned, thereby the said disputed structure, is not required to be demolished, thus acquires any force in law.

8. For the reasons to be assigned hereinafter, but primarily for the reasons (supra), that the private respondents herein, do not dispute, the fact, that the disputed passage is owned by the Gram Panchayat concerned, thus this Court cannot justify the conclusion(s), which became concurrently formed by the statutory authorities below, inasmuch as, the ones qua the disputed structures raised on the disputed passage, is in existence, on the said site, since the year 1953, that thereby, besides given the disputed passage being

no longer subjected to common users by the village proprietary body, rather a passage alternate to the said disputed passage being, as such used by the villagers concerned, thus thereby the said disputed structure be not demolished.

9. Initially the above made conclusions are completely infirm, as the existence of a rasta alternate to the disputed passage, was no reason to prevail, upon the statutory authorities below, to deprive the village proprietary body, to make common users of the disputed passage nor the statutory authorities below, rather could proceed to merely for the reasons, that the disputed structure purportedly exist on the disputed passage, thus to proceed to make an order that the Tehsildar Revenue assess, the value thereof, and, thereafter on making recoveries, from the respondents, his proceeding to deposit them, in the Panchayat funds.

10. The said concurrently made orders though appear to be made in terms of Rule 12 of The Punjab Village Common Lands (Regulation) Rules, 1964, but for the completest leverage therefrom, becoming assigned to the private respondents herein, it was but necessary, that a panchayat resolution was required to be as such passed, and, thereafter approval was required to be made to the said panchayat resolution by the competent approving authority. However, most enigmatically, and, in compete departure of the said procedure, the statutory authorities below proceeded to, but unjustifiably assign to the private respondents concerned, the right to seek alienations of the disputed passage.

11. The said concurrently made reason is completely flawed, as reiteratedly, it is made in a completest departure of the statutory rule

(supra). In consequence, the above made concurrent reasons, do not appear to justifiable in law.

12. Though, the learned counsel for the private respondents submits, that a resolution has been passed by the Gram Panchayat concerned, to make sale of the disputed passage to the private respondents, and, with the Gram Panchayat concerned, thus not choosing to assail the panchayat resolution, through filing an appeal before the Appellate Authority concerned. Therefore, it is argued that the panchayat resolution has force. However, even the mere passing of the panchayat resolution for the relevant purpose, is in consequential, as unless it became assigned approval, by the competent approving authority, thereupto, it acquires no force in law nor any valid dependence can be made thereons, by the private respondents before this Court.

13. Furthermore, the rejection orders as made concurrently, on the petition for eviction filed under Section 7 of the Act of 1961, thus, by both the statutory authorities below, appear to, besides from the above pervasive breach, but become grounded on the factum, that a site inspection became carried by the learned Collector concerned, and, the result thereof, being that he detected that as a matter of fact, a rasta alternate to the disputed passage becoming commonly used by the village proprietary body concerned.

14. The further consequence of the above inference, was that, the statutory authorities below concluded, that since the disputed structure, on the relevant site, which for reasons (supra), is admittedly owned by the Gram Panchayat concerned, rather is existing thereons since the year 1953, thereby there is no requirement for making an order of ejectment against the

private respondents before this Court. The above conclusions are also completely flawed, as unless, there was a validly made demarcation of the disputed passage by an empowered Revenue Officer concerned, and, it revealing, that there was no encroachments on the disputed passage, that only thereby any conclusion could be formed that as a matter of fact, no encroachment, was made on the disputed passage, and, resultantly a declining order was required to be justifiably made on the petition filed under Section 7 of the Act of 1961, before the learned Collector concerned.

15. However, without the statutory authorities below ordering for a demarcation of the disputed passage, thus being made by an empowered Revenue Officer concerned, rather proceeded to assign validity, to the site inspection, as personally made by the learned Collector concerned, who otherwise was not empowered to, without seeking the assistance of an empowered Revenue Officer concerned, rather draw any conclusion, that the disputed passage becoming or not becoming encroached upon, at the instance of the private respondents concerned.

16. In the wake of the above, but misplaced reliance as made on the personal site inspection report, which for reasons (supra), is a completely flawed reliance, thereupon, this Court deems it fit, and, appropriate to, after quashing the impugned orders, allow the instant writ petition, and, to further remand the lis to the learned Collector concerned, who shall after restoring the same to its original number, thus proceed to appoint an empowered Revenue Officer concerned, to carry a valid demarcation of the disputed passage. The empowered Revenue Officer concerned, shall after the making a valid demarcation of the disputed passage, thus personally tender his demarcation report before the learned Collector concerned, and, in case any

aggrieved therefrom choose to make cross-examination, upon, the author of the demarcation report, thus they shall be assigned such an opportunity by the learned Collector concerned.

17. It is further directed that after lawful proof being lent to the demarcation report by the author thereof, the learned Collector concerned, shall proceed to make a re-adjudication, but in accordance with law, upon the remanded lis, and the above exercises be ensured to be completed within 3 months from today, but after hearing all the affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

23.01.2024
Ithlesh

(SUKHVINDER KAUR)
JUDGE

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