

2024:PHHC:095057-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

(103)

CWP-13721-1998

Decided on: 25.07.2024

Lekhi & another

.....Petitioner (s)

Versus

The Collector, Faridabad & others

....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA  
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.Ankur Kaushik, Advocate, for the petitioner (s).  
Mr. Saurabh Mago, DAG, Haryana.

**G.S. Sandhawalia, J. (Oral) :**

1. Prayer in the present writ petition, filed under Article 226/227 of the Constitution of India, is to quash the orders dated 22.07.1997 (Annexure P-3) and 26.03.1998 (Annexure P-4) passed by respondents No.2 & No.1, respectively.

2. As per the office report, petitioner No.2 has expired. We do not deem it fit to wait for the LRs of the said deceased petitioner No.2 to be brought on record since we are of the considered opinion that the matter is liable to be remanded as the orders passed by the authorities do not contain any valid reason and are non-speaking. The LRs of the said deceased petitioner No.2 could be brought on record if the matter is to be contested by respondent No.3 who has filed the eviction petition and has chosen not to put in appearance and who was served through his brother way-back on 05.08.1999.

3. The petitioners were ordered to be evicted vice order dated 22.07.1997 (Annexure P-3) by the Assistant Collector, 1<sup>st</sup> Grade, Palwal.

that the land in dispute was owned by the Gram Panchayat and there were two passages with the plots on which the petitioners were in illegal occupation and therefore, loss had been caused to the Gram Panchayat, eviction was ordered. The said order was upheld in appeal by the District Collector vide order dated 26.03.1998 (Annexure P-4) which is subject matter of challenge. The Collector rather put the onus on the petitioners and held that they were in unauthorized occupation and had not given any evidence of their ownership and from the documents on record, it was held that the Gram Panchayat was the owner of the land. The petitioners were stated to be using the land in dispute as passage and because of that the villagers were facing problem.

4. We are of the considered opinion that the said order is totally non-speaking as it has not referred to the land and whether any demarcation was carried out to record a finding, as such. It is pertinent to notice that the proceedings were initiated by one Bir Singh, respondent No.3 herein wherein he had alleged that the petitioners had encroached upon plot No.2 measuring 42'x40' as EFGH shown in as Map ABCD whereas the petitioners had encroached upon the passage adjoining these plots shown as DLSP and BECH which is 16'-16' wide. The petitioners were stated to have been directed many times to remove the said illegal occupation and thereafter, the present petition had been filed.

5. A perusal of the notice issued under Rule 20 of the Punjab Village Common Land (Regulation) Rules, 1965 (for short, the 'Rules') would go on to show that there were allegations that there was encroachment upon the agricultural and non-agricultural land of *Shamlat* and *prima facie* the opinion was that they were in illegal occupation and

opportunity was given to appear and file reply failing which proceedings had been undertaken and that the petitioners were liable to be charged under Section 7 for illegal encroachment on the said plots which fell in *Abadi Deh*. A perusal of Rule 20 of the Rules would go on to show that notice can be issued calling upon the person concerned who is in occupation of claimant's interest, to show cause while making a proposed order. Rule 21 further provides that any evidence was to be given by the person who was to be given opportunity of being heard that the land was *Shamlat Deh* and they are in unauthorized occupation and the Assistant Collector shall make an order of eviction with the reasons to be recorded therein that the land of *Shamlat Deh* shall be vacated. However, a perusal of the notice issued under Rule 20 does not give any description of the area on which the encroachment had been done and on what basis the notice showed that the land in question was *Shamlat*.

6. The present petitioners had put in appearance and stated that they had raised construction in the land and the Gram Panchayat had no concern and the petition had been filed due to party faction. The witness led by the petitioners were to the extent that the construction was since the time of the forefathers and they had not encroached upon the Panchayat land and the alleged encroachers did not have any other residential house. Rather it was their case that Faqira, Nanhe and Parbhati had illegally encroached upon the passage in front of their house against whom they had filed a suit which was decreed in their favour and the land in dispute did not vest in the Panchayat. The petitioners produced Ex.R1 to R6 and closed their evidence. One Mool Chand had appeared as AW1 stated that he was Member of the Gram Panchayat and his statement was recorded by

the Assistant Collector itself. The said witness in cross-examination admitted that he had not seen the record of the Panchayat and that he had seen the site-plan and the land was within *Abadi Deh*. Similar statement had also been recorded by the petitioner who appeared as AW2 that he had not seen the record of the ownership and he did not know whether respondent No.3 had filed any suit against the present petitioners. DW3, Brij Lal, Sarpanch stated that the petitioners were in illegal possession. Similar was the statement of Krishan Singh, Lambardar that the occupation was for the last 2-3 years. It transpired that he did not know whether he has seen the Panchayat record wherein the plots No.1 & 2 were recorded as the property of the Panchayat. The stand of the present petitioners was that they were residents of the village and they have no other residential house and that they had raised construction over the land.

7. The Assistant Collector, as noticed above, did not refer to the evidence brought on record by the petitioners in the form of Ex.R1 to Ex.R6 and did not record any finding whether the land belong to *Shamlat Deh* and vested in the Panchayat and there was no basis on which the ownership of the land was held to be of the Panchayat. The findings recorded by the District Collector, Faridabad while dismissing the appeal also go on to show non-application of mind and reads as under:

“I have heard counsel for both the parties and perused the record. The land in dispute is owned by the Gram Panchayat on which appellants have unauthorized occupation. The appellants have not given any evidence of their ownership. From the documents on record, it is proved that the Gram Panchayat Alawalpur is owner of the land in dispute and this land is used as passage and because of the unauthorized occupation villagers are facing problem. Thus I have come to the conclusion that the disputed land is owned by Panchayat and appellants

have illegal possession. Thus, I do not find any reason to interfere in the order of court below. Appeal of the appellants be dismissed.

Order pronounced. File be consigned to record room.”

8. Keeping in view the above, we are of the considered opinion that once there were substantial evidence on record and the fact that there was other material to show that there was litigation inter se the parties and the evidence which was stated to be brought on record was never discussed by the authorities below, we are of the considered opinion that the said orders cannot be sustained. Reliance to this extent can be placed upon the judgment passed by the Apex Court in **M/s Kranti Associates Pvt. Ltd. and another Vs. Shri Masood Ahmed Khan & others, 2010(4) RCR (Civil) 600** that the order should contain reasons.

9. Resultantly, we set aside the orders dated 22.07.1997 (Annexure P-3) and dated 26.03.1998 (Annexure P-4) and remand the matter to the Assistant Collector, Palwal to decide the matter afresh and pass a reasoned order after hearing both the parties. It is open to the Gram Panchayat to file an application in case respondent No.3 or his legal heirs do not contest the eviction proceedings since it is alleged that the land in question belongs to the Gram Panchayat and it is for the Gram Panchayat in principle to ensure that the encroachment of *Shamlat* land does not continue.

10. The present writ petition is disposed of in the above-said terms.

(G.S. SANDHAWALIA)  
JUDGE

25.07.2024  
Sailesh

(MEENAKSHI I. MEHTA)  
JUDGE

|                             |     |    |
|-----------------------------|-----|----|
| Whether speaking/reasoned : | Yes |    |
| Whether Reportable :        |     | No |