

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-18359-1997 (O&M)
Reserved on: 01.03.2024
Date of Decision : March 06, 2024

SMT. MURTI DEVI
...Petitioner

V/S

THE STATE OF HARYANA AND OTHERS
...Respondents

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

Present : Mr. Kulvir Narwal, Advocate with
Mr. Satish Kumar, Advocate and
Mr. Shubham Chaudhary, Advocate
for the petitioner.

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

SURESHWAR THAKUR, J.

1. In a lis bearing No.116 VCL, as became constituted under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”), against the respondents therein, thus on the ground that the respondents had made encroachment, upon a *Gair Mumkin Phirni*, thus the Assistant Collector concerned, through a decision made thereons, on 19.07.1995 (Annexure P-3), made the hereinafter extracted directions against the respondents-judgment debtors.

“After hearing the ld. Counsel and as per the perusal of record on the file, I have reached the conclusion that the

respondents house is ancestral which is not in proper in the interest of justice to get it demolished because that may cause damage worth lakh of rupees and he is ready to give passage from the other side adjoining phirni from other plots carved out in consolidation in lieu of the land of passage of phirni beneath his house. By this, none of the parties should have any objection in this way there is no loss to any of the parties. In this regard, the defendant has also made a statement that as per demarcation, report dated 16.03.1994, he is ready to give land equal to beneath his house that of phirni. I agreeing with the statement of the respondent order that as per the demarcation report, the land of phirni which is under his house, equal land from his plots of consolidation be left from the plots and the phirni passage be made good. Order announced. File be consigned to record room after compliance.”

2. A reading of the above extracted portion of Annexure P-3, reveals that the Assistant Collector accepted the statement of the respondent, *qua* his admitting the demarcation report dated 16.03.1994, whereupon, the Assistant Collector concerned, also accepted the further statement of the respondent, that he is ready to give land equal to the *phirni* land rather to the decree-holders concerned. Resultantly, the Assistant Collector concerned, accordingly directed that land equal to the *phirni* land which became encroached upon by the judgment-debtors, thus be given to the decree-holder from the relevant plots owned by the judgment-debtors, so that therebys the deficiency in the *phirni* passage is made good.

3. An appeal became constituted thereagainst at the instance of the aggrieved. On the said appeal bearing No.78 of 1995, Annexure P-4 became rendered, relevant portion whereof becomes extracted hereinafter.

“I have heard both the parties very carefully and also perused the records of the courts below carefully. As per the statement of Nar Singh, respondent dated 19.07.1995 his unauthorised possession over the disputed land is proved. As per the order of Assistant Collector, Ist Grade, the unauthorised possession of the respondent is established. The Assistant Collector, Ist Grade, should have dispossessed the respondent from the land in dispute. Therefore, I accept this appeal and order dispossession of the respondents from the land in dispute. If the respondent wants to hand over the possession instead of the land in dispute within one month to the gram Panchayat, from his plots then he can exchange if the panchayat is ready. If the exchange does not materialise with the gram panchayat then the Assistant Collector, Ist Grade, Bahadurgarh, is directed to get the obstruction removed after one month. Order has been pronounced.”

4. A reading of the above extracted relevant portion of Annexure P-4, reveals that thereby the Collector after accepting the appeal (supra), as became preferred before him, at the instance of the petitioners in Misl No.116 VCL, whereon Annexure P-3, became rendered, thus proceeded to order for the dispossession of the judgment-debtors from the disputed *phirni*. However, a direction is also made therein, that in case the judgment-debtor intends to exchange the land in dispute with her plots, then she can do so, but subject to a panchayat resolution becoming passed. Moreover, it was also directed that if the said panchayat does not pass the said resolution in respect of exchange being made *inter se* the encroached, upon *phirni* land, and, the land owned by the judgment-debtors concerned, thereupon a direction was made, upon the Assistant Collector, Ist Grade, Bahadurgarh rather to ensure that the relevant obstruction becomes removed, within one

month. Annexure P-4 became pronounced, on 30.07.1996, and, the said annexure when has acquired binding and conclusive effect, as it has remained neither challenged nor became reversed, therefore it was required to be most promptly and efficaciously enforced.

5. However, till date no efficacious execution of Annexure P-4 has been made. It appears that the Assistant Collector concerned, as unfolded by Annexure P-5, on his receiving the relevant execution petition, thus made an observation that the apposite execution petition rather is not related to the order of eviction, which is sought to be executed. Consequently, through Annexure P-5, made on 12.06.1997, the Assistant Collector concerned, sought an advise from the Collector concerned, in relation to the demarcation report, which is required to be relied upon, thus for warrants of possession becoming issued against the estate encroached upon, by the judgment-debtors concerned. In pursuance to Annexure P-5, the Collector concerned, (through Annexure P-6), directed the Assistant Collector to proceed in terms of the demarcation report, dated 04.07.1995. Though the said demarcation is appended with CM-18891-1998, and, therein in the apposite *Tatima*, the relevant encroachment becomes depicted. However, since there is finality to Annexure P-4, as neither any challenge has been made thereto nor it has succeeded. Therefore, the echoings as made in the demarcation report as referred to, in the impugned Annexure P-5, demarcation report whereof remains unchallenged, thus also acquire binding and conclusive effect.

6. Importantly, yet in the order of the Collector (Annexure P-4) there occurs a direction that in case the panchayat permits the relevant

exchange(s) *inter se* the encroached upon *phirni* lands, and, the lands of the judgment-debtors concerned, thereupon the order of eviction may not be executed.

7. In the face of the above, and, the panchayat passing resolution No.1 dated 18.03.1996 (Annexure R-2), whereby the offer made by the judgment-debtor for his land becoming exchanged with the *phirni* land became declined, therebys too, it appears that the present petitioner had acquiesced to unauthorized occupation/constructions becoming made, upon the *phirni* land owned by the Gram Panchayat concerned. On the said *phirni* land, the village proprietary body had right of common users thereof. Resultantly, thereby no valid challenge can be made to the impugned annexure (Annexure P-5), whereby a direction has been rendered upon by the Assistant Collector concerned, to execute Annexure P-4 in terms of the demarcation report dated 16.03.1994.

8. Though, in the face of the above, thus the instant petition, does not merit any interference, but the declining resolution made by the panchayat concerned, vis-a-vis the proposal of the present petitioner, to exchange her land with the *phirni* land, rather appears to become rested on the premise that there will be a total blockage of passage to house(s) of Dharam Singh son of Kanhiya. However, it appears that the said resolution may not be supported by the demarcation report. Therefore, if the said ground carried in the dis-affirmative panchayat resolution, thus is not supported by the demarcation report, whereupons there may not be a complete blocking of ingress and egress to Dharam Singh son of Kanhiya, thus to his lands or to his house(s). Resultantly, if the occupation of the

phirni land by the judgment-debtors concerned, falls within the domain of the relevant rules, as such, the panchayat may re-consider the proposal as earlier made by the judgment-debtor for exchange of her land with the *phirni* land. The said panchayat resolution may be passed within one month from today, and, if it is favourable to the judgment-debtor concerned, thereupon, the approving authority may in accordance with law grant approval thereto, but within two months thereafter.

9. Consequently, only upto the period of 3 months from today the execution of Annexure P-4, in terms of demarcation report as referred in Annexure P-5 be deferred, and, on an adversarial panchayat resolution being passed, and, also a decision adversarial to the judgment-debtor being rendered by the approving authority, thereupon the Assistant Collector concerned, is directed to ensure the promptest and efficacious execution of Annexure P-4, thus in terms of the demarcation report as referred in Annexure A-1.

10. Disposed of accordingly.

11. Pending miscellaneous application(s), if any, stand(s), disposed of.

(SURESHWAR THAKUR)
JUDGE

6.03.2024

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

(LALIT BATRA)
JUDGE