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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-3604-1996
Date of decision:11.01.2024

ZAIL SINGH

...Petitioner

Versus

JOINT DEV. COMMISSIONER (IRD) PUNJAB & ANR.

...Respondents

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

Present: Mr. Vikram Singh, Advocate with
Mr. A.S. Pannu, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab

Mr. V.K. Sandhir, Advocate
for respondent No.2.

SURESHWAR THAKUR, J. (ORAL)

1. The present petitioner becomes aggrieved from Annexure P-3, whereby the Competent Appellate Authority after allowing appeal No.2 of 1995, as became preferred before him, by the Gram Panchayat Mangewal, Tehsil Nabha, District Patiala against Annexure P-2, thus proceeded to after accepting the Gram Panchayat's appeal, rather annul Annexure P-2, whereby the learned Collector concerned, had assigned the espoused declaratory relief, to the present petitioner.

2. Before proceeding to dwell upon, and, also before proceeding to make an adjudication with respect to the validity of the drawing of impugned Annexure P-3, it is deemed imperative to refer to the genesis of

the litigation which erupted amongst the contesting litigants before this Court.

3. In that regard, it is important to refer to a decision made by this Court, on 01.05.2013, respectively upon CWP-1410-1987, and, upon CWP-15771-1995. Both the said writ petitions were respectively instituted by the Gram Panchayat concerned, and, by the present petitioner.

4. The challenge as made by the present petitioner, in the above writ petition, related to the validity of an affirmative order, as became passed by the learned Collector concerned, while exercising jurisdiction under Section 4, 5 and 7 of The Punjab Public Premises and Land Eviction and Rent Recovery Act, 1973 (hereinafter referred to as “the Act of 1973”). The said order was drawn on 27.05.1994. The challenge in appeal as became made thereagainst, but also not yield any successful result. Consequently, through the present petitioner instituting CWP-15771-1995, he made a challenge to the above said orders. Reiteratedly the said challenge failed.

5. On the other hand, this Court while making an adjudication, upon the CWP-1410-1987, as became preferred before this Court, by the Sarpanch of the Gram Panchayat concerned, thus annulled, and, set aside the order, as became rendered by the Competent Authority contemplated, under Section 42 of The East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 (hereinafter referred to as “the Act of 1948”), whereby the said Authority proceeded to re-partition or re-distribute the disputed lands, even after the said disputed lands had earlier been assigned to the Gram Panchayat concerned, thus for the village common purpose.

6. Nonetheless, observations exist in paragraph Nos. 13 and 14 of the common verdict passed on the writ petitions (supra), observations whereof are extracted hereinafter.

“13. During pendency of these writ petition, Zail Singh filed a petition under Section 11 of the 1961 Act, before the Collector, praying for a declaration that the land, in dispute, does not vest in the Gram Panchayat. The Collector allowed the petition but in an appeal filed by the Gram Panchayat, before the Joint Development Commissioner (IRD), Punjab, exercising powers of ‘Commissioner’, (the appellate authority) under the 1961 Act, this order has been set aside on 11.1.1996 by holding that the land in dispute vests in the Gram Panchayat.

14. The question of title having been decided, in favour of the Gram Panchayat, by the Joint Director, Panchayats, in his order passed under Section 1(2) of the 1961 Act, the order passed by the Director, Consolidation, even otherwise does not survive.”

7. A reading of the observations (supra), but make speakings, that since the present petitioner had instituted a declaratory suit under Section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act of 1961”), wherein a declaratory relief of assignment of title to the disputed lands rather was claimed by the present petitioner, besides when the said relief, though became granted to the present petitioner, thus by the learned Collector concerned, yet further it is also manifested therein, that the Appellate Authority proceeded to annul the said declaratory decree passed by the learned Collector concerned. Therefore, as stated (supra), the present petitioner is aggrieved from the impugned order (Annexure P-3), wherebys the declaratory relief, as became assigned to the present petitioner by the learned Collector, through Annexure P-2, became

reversed and annulled. Resultantly, thereby as manifested in paragraph 14 of the common verdict passed, on the writ petitions (supra), it was declared that since the learned Appellate Authority has determined the question of title in favour of the Gram Panchayat concerned, thereby the order passed by the Director, Consolidation rather does not survive.

8. Consequently, thereby writ petition bearing CWP-1410-1987 was allowed, and, order(s) dated 19.07.1985 and 24.09.1986 passed by the Director, Consolidation was set aside.

9. Furthermore as stated (supra), this Court proceeded to also affirm and uphold the concurrently made orders of eviction, as became passed by the learned Collector concerned, while exercising jurisdiction under the Act of 1973, and, which became later affirmed by the Competent Appellate Authority.

10. The upholding of the concurrently made orders of eviction, by the Competent Authorities, as, envisaged under the Act of 1973, led the present petitioner to file a review application within CWP-15771-1995. The reason to prefer the review application (supra), by the present petitioner, was to enable the present petitioner, to ensure, that the present petitioner, who also instituted the present writ petition before this Court, against the drawing of Annexure P-3 by the learned Appellate Authority concerned, whereby the declaratory decree, as became assigned to the present petitioner by the learned Collector concerned, became reversed and annulled, but also becomes enabled to ensure, that till a decision on the present petition, is made, thus may be thereupto the concurrently made orders of eviction against him by the Authorities concerned, thus may not become enforced.

11. This Court while making a decision, upon the said review application had thus, made the hereinafter extracted observations thereins.

“We have heard counsel for the applicant and as the only grievance is that CWP No.3604 of 1996 relating to the question of title is still pending adjudication, dispose of the application by directing that any observation on the question of title, in order dated 01.05.2013 shall not be read to the prejudice of the applicant, while deciding the aforesaid writ petition.”

12. Therefore, but obviously this Court is left open to, irrespective of affirmations made by this Court, to the concurrent orders of eviction, as became respectively passed by the Competent Authorities envisaged under the Act of 1973, make an adjudication with respect to the sustainability of the impugned order of the Appellate Authority (Annexure P-3).

13. In the above regard, it is necessary to refer to the trite factum, that the present petitioner had raised a claim of entitlement to the suit lands, thus on the premise of assignment to him, of the benefit of the apposite savings clause, as cast under Section 2(g)(5) of the Act of 1961, provisions whereof are extracted hereinafter, inasmuch as, the present petitioner, had claimed that, though the petition lands became entered in the revenue records as “Banjar Qadim”, but it was pleaded and it was also contended, that since the Gram Panchayat concerned, had not adequately proven, that the said disputed lands, with the classification of “Banjar Qadim”, did not become used, for the purpose of the village proprietary body. Therefore, it was pleaded, and, also contended, that resultantly the present petitioner, is entitled, to the assignings qua him of the declaratory relief, as became granted through Annexure P-2, and, was purportedly untenably reversed through the impugned order Annexure P-3.

“2(g)(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records”

14. In the above regard, it is important to refer to the discussion which exists in Annexure P-3.

15. The learned Appellate Authority concerned, after traversing through the relevant revenue records, had made a reference, to an entry which existed in the jamabandis relating to the year 1973, wherein, the present petitioner is shown to be holding cultivating possession of the suit lands, as a tenant thereof, and, besides there is thus, therein a further entry, that the rent which he was paying to the Gram Panchayat concerned, becoming comprised in a sum of Rs.10,000/- per annum. Furthermore, there is also a discussion therein, that the said entry was repeated in the jamabandis for the year 1978-79. In addition, there is also a reference in the order as challenged before this Court, that in the jamabandis for the years 1988-89, the possession of the present petitioner over the petition lands, is shown ‘forcible’.

16. Though, the learned counsel for the petitioner submits, that there cannot be any assignment of truth to the said made entries. However, the said argument is completely frail, as a presumption of truth is attached to the entries (supra), which occur in the revenue records. Further the said presumption of truth was required to be repelled by adduction of cogent evidence. However, cogent evidence to repel the said made entries in the revenue records rather remained unadduced by the present petitioner. Consequently, for the lack of adduction of cogent evidence, thus to repel the efficacy of revenue entries (supra), is but that, the entries (supra), do thereby

acquire conclusivity. As but a naturally corollary thereof, the present petitioner cannot contend, that he had any lawful right, title or interest rather as owner over the disputed lands. Further effect thereof, is that, the pleadings (supra), raised upon the premise of savings clause (supra), become completely unhinged, and/or, are deemed to be completely inconsequential.

17. In view of the above made discussion, this Court does not find any merit in the instant petition, and, is constrained to dismiss the same. In consequence, the concurrently made verdict(s) of eviction, if not already enforced, be forthwith enforced. Hence, the instant writ petition is dismissed.

(SURESHWAR THAKUR)
JUDGE

11.01.2024
Ithlesh

(LALIT BATRA)
JUDGE

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