

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-6308-1998
Reserved on: 18.04.2024
Date of Decision : April 29, 2024

GRAM PANCHAYAT

...Petitioner

Versus

THE JOINT DEVELOPMENT COMMISSIONER (IRD), PUNJAB,
CHANDIGARH AND OTHERS

...Respondents

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

Present: Mr. K.S. Dadwal, Advocate
for the petitioner.

Ms. Anu Chatrath, Addl. A.G., Punjab with
Mr. Kashmir Singh, Advocate

Respondents No.3 to 5 (ex-parte)

SURESHWAR THAKUR, J. (ORAL)

1. The Gram Panchayat Village Dudiana Khurd, on 21.10.1993 instituted a petition for eviction, cast under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) against respondents No.3 to 5.
2. Through a decision made on the said eviction petition, on 22.08.1996 (Annexure P-1), the Collector concerned, proceeded to grant the espoused decree of eviction to the Gram Panchayat concerned. The learned Collector concerned, after hearing the arguments concluded, that the

Panchayat is the owner of the land in dispute, because the respondents did

not produce any document or entry/mutation/jamabandi in support of their ownership of the land in dispute. As such, the petition for eviction, as became cast on behalf of the Panchayat was allowed, and, the Panchayat was declared to be the owner of the land in dispute, and, the respondents No.3 to 5 were directed to vacate their illegal possession from the land in dispute.

3. The decreeing of the panchayat's eviction petition, led the aggrieved therefrom, to institute an appeal thereagainst, before the learned Joint Development Commissioner concerned, who after reversing the decision (Annexure P-1), thus allowed the apposite statutory appeal, through his making an order on 16.03.1998. Learned Commissioner concerned, while allowing the appeal observed that the Panchayat stakes its ownership on the basis of Jamabandi for the year 1989-90.

4. Perusal of the said jamabandi shows that 'Abadi Deh' stands entered in the column No.4, and in the column of 'Cultivation', 'Abadi Deh' is mentioned. Through this, the Gram Panchayat claimed that the disputed land is being utilized for the common purpose of the villagers and for their welfare. The Panchayat cited witnesses, who testified that the lands belong to the Panchayat and the present respondents No.3 to 5 are in illegal possession thereof. The present respondents No.3 to 5 also produced their witnesses before the learned Collector concerned, out of whom Sansari Lal, Shri Darshan Singh, and Diwan Singh, besides others, also appeared before the Commissioner concerned. They gave statements against the Panchayat and have stated that the present respondents No.3 to 5 are in possession of this land for the last many years. The Panchayat did not produce any

concrete document from which it could be proved that this land is still being used for the common purpose.

5. Both the parties admit that according to the jamabandi for the year 1989-90, the land in dispute was 'Shamlat' but afterwards the said land came under 'Abadi Deh', which does not fall under the definition of 'Shamlat' under Section 2(g) of the Act.

6. Feeling aggrieved from the order dated 16.03.1998, as passed by the learned Commissioner concerned, the Panchayat concerned, has approached this Court through its instituting the instant writ petition.

7. Though, in the revenue records, the disputed lands are recorded as Abadi Deh, but since open spaces within the Abadi Deh, but are also included in the definition of Shamlat Deh. Therefore, for disabling the Panchayat concerned, from claiming any right whatsoever in the constructed abadi concerned, as existing on abadi land, he was required to adduce evidence suggestive that the area of his abadi, as raised on the Abadi Deh, does not extend outside the said raised abadi, and, or does not extends into open spaces in the abadi land, which however fall within the definition of Shamlat Deh. Even if the private respondents did not do so, yet when the Panchayat concerned, was enjoined to prove that beyond the domain of the abadi raised by the private respondent(s) in the Abadi Deh, he had encroached upon open lands, in the Abadi Deh. Moreover, when proof in respect of the above fact was required to be adduced only through a validly prepared demarcation report, besides the said demarcation report becoming proved by the author thereof, stepping into the witness box. However, though a demarcation report was obtained, but from a perusal of the record, it does not appear, that the author of the demarcation report stepped into the

witness box, so as to prove that the private respondents, beyond the domain of the abadi raised by them, in abadi land yet made encroachments, on open spaces within the abadi land, and, thereby they had also encroached over the lands owned by the Panchayat concerned.

8. Resultantly, for want of valid proof rather in the above manner, being adduced *qua* the demarcation report, as became drawn by the Demarcating Officer concerned, thereupon, the conclusions, as became arrived in Annexure P-1, whereby the Panchayat's petition for eviction was decreed, rather thus were completely infirm. Moreover, the reversal of Annexure P-1 through the drawing of Annexure P-2 by the learned appellate authority, is also likewise infirm, as even the said verdict is not well founded, upon, a validly drawn demarcation report, besides a validly proven demarcation report through the author thereof stepping into the witness box.

9. Be that as it may, in the larger interest of justice, for ensuring that only for want of a validly drawn demarcation report, thus the encroachers, upon the disputed lands, rather do not enjoy the benefits of the purported illegal encroachments as made thereons.

10. Resultantly, after allowing the instant writ petition, this Court quashes the order Annexure P-1, and, the impugned order Annexure P-2, besides makes an order of remand to the Assistant Collector, concerned, who shall after restoring the lis to its original number, thus proceed to order for a fresh valid demarcation of the disputed site, thus being made by an empowered revenue officer. The report in respect of the said freshly made demarcation, shall be personally tendered into evidence by the Demarcating Officer concerned, besides shall also be ensured to be proven in accordance

with law. The decision on the remanded *lis* shall be positively made within 3 months hereafter, but after hearing all affected persons concerned.

(SURESHWAR THAKUR)
JUDGE

29.04.2024
Ithlesh

(LALIT BATRA)
JUDGE

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