

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

104 CWP-8706-2024
Date of Decision: 20.04.2024

Ganga Ram (deceased) through LR
Versus
....Petitioner

State of Punjab and others
....Respondents

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

Present: Mr. Ashish Pal Kaushal, Advocate
for the petitioner.

Mr. Eklavya Darshi, Deputy Advocate General, Punjab.

Sureshwar Thakur, J. (Oral)

1. Through the instant writ petition, the present petitioner seeks the making of mandamus upon the appellate authority concerned, seized with an application Annexure P/8, whereby the present petitioner asked for relief for staying the operation of Annexure P/6, thus during the pendency of the statutory appeal Annexure P/7.
2. Before proceedings to delve into or adjudicate upon the merits of the writ claim, it is deemed appropriate to refer to the facts relevant for a decision being made on the writ claim.
3. The predecessor in interest of the present petitioner, one Ganga Ram, instituted a claim under Section 11 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as 'the Act of 1961'), before the Collector, Rupnagar, whereby he asked for the

assigning of a declaratory decree in respect of the suit lands, as become described in the headnote of Annexure P/6. The said declaratory claim was asked to be made against the impleaded therein respondent i.e. the Gram Panchayat of Village Palata, Sub Tehsil Nurpur Bedi, District Ropar, through its Sarpanch. The Collector, through making a decision (Annexure P/6) upon the said suit, proceeded to in respect of 49 Kanals 14 Marlas comprised in Khewat No.77, Khatauni No.100, Khasra Nos.31, 363, 366, 367, 368, 399/19/1, 9, 12/2, 19/1, 400/19, 20, 404/3 and 416/15/1, thus declare the predecessor in interest of the present petitioner to be the lawful owner of the said Khasra numbers. However, it appears that the said assigning of the declaratory relief, was only in respect of 49 Kanals and 14 Marlas of land comprised in Khewat and Khasra numbers (supra), whereas, the declaratory claim, as become laid before the Collector concerned, by the predecessor in interest of the present petitioner, rather was in respect of land measuring 58-12 Kanals. Therefore, but obviously the Collector concerned, in his making Annexure P/6, assigned the declaratory decree only in respect of part of the suit claim and did not assign the espoused declaratory decree rather to the fullest extent, qua the predecessor in interest of the present petitioner.

4. It is fairly stated today before this Court by the learned counsel for the petitioner, that Annexure P/6 remained unchallenged either at the instance of the Gram Panchayat, arrayed as respondent in Annexure P/6, nor Annexure P/6 became challenged at the instance of the predecessor in interest of the present petitioner, namely Ganga Ram, who was prosecuting the said claim as plaintiff/petitioner. Therefore, Annexure P/6, but acquires conclusivity.

5. If so, the consequence of assigning conclusivity to Annexure P/6, is that, the predecessor in interest of the present petitioner namely one Ganga Ram abandoned his claim in respect of lands beyond 49 Kanals 14 Marlas, comprised in Khewat and Khasra numbers (supra). It appears that the above abandonment of claim by the predecessor in interest of the present petitioner in respect of lands beyond 49 Kanals 14 Marlas, as comprised in Khewat and Khasra numbers (supra), led one Gurdial Singh to, on 23.04.2021 institute a petition under Section 7 of the Act of 1961, seeking thereby the eviction of the successors in interest of one Ganga Ram from that part of the suit land, in respect whereof rather a declining decree, thus became rendered.

6. Through a decision made on the said application, thus on 03.11.2023 Annexure P/11, the Collector concerned, after in the relevant paragraph thereof, paragraph whereof becomes extracted hereinafter, though inferred, that the petitioner in the said eviction petition namely Gurdial Singh, is disempowered to well constitute a petition under Section 7 of the Act of 1961, thus on the ground, that he is neither authorized by the Gram Panchayat, nor is an officer to file the said petition, and, resultantly, the Collector concerned, appears to thereby conclude that the said petition was not as such maintainable.

“Respondent Hari Krishan etc. have filed an application dated 06.10.2023 through their counsel, in which they requested that as per order dated 14.03.2023 passed in CWP NO.25676 of 2019 titled as “Bhupinder Singh Versus State of Punjab” passed by Hon’ble Punjab and Haryana High Court, (2023 (3) LA Herald (P&H), it has mentioned that petitioner Gurdial Singh has no right to file the present petition because he has no right to file

the present petition under Section 7 of Punjab Village Common Land (Regulation) Act, 1961 and the petitioner is also not authorized by the Gram Panchayat or any officer to file the present petition, therefore the present petition is not maintainable, so this petition be dismissed.”

7. Be that as it may, though through the operative part of Annexure P/11, operative part whereof becomes extracted hereinafter, the Collector concerned, rather proceeded to make a direction, upon, the Block Development and Panchayat Officer, Noorpur Bedi, to appoint an officer or to direct the Sarpanch of the Gram Panchayat concerned, to institute an application seeking therebys the cancellation of mutation No.479 dated 28.06.1988, whereby right, title and interest became conferred, upon, the predecessor in interest of the present petitioner, in respect of the entire lands, which find mention in the headnote of Annexure P/6.

*“As per the revenue record presented by the petitioner and application filed by the respondents, I am agreed with their pleas. Petitioner Gurdial Singh is not entitled to file the present petition, hence this petition is dismissed. As per order dated 30.05.1998 passed by District Development and Panchayat Officer–cum–Collector Rupnagar, *** but on the basis of order dated 21.09.1987 of Collector–cum–District Development and Panchayat Officer Rupnagar, the respondents have got sanctioned the mutation in their favour. Therefore the Block Development and Panachayat Officer, Noorpur Bedi is hereby directed that while appointing any officer or through Gram Panchayat, the case be filed in the competent court of cancellation of mutation No.479 dated 28.06.1988.”*

It appears that the said directions were made only on the premise that ex facie the predecessor in interest of the present petitioner namely one

Ganga Ram rather had abandoned his right to make a challenge to Annexure P/6, whereby only in respect of 49 Kanals 14 Marlas of lands, a declaratory decree was rendered in his favour, but no declaratory decree was rendered in respect of lands in excess of the said area measuring beyond 49 Kanals 14 Marlas. Therefore, in respect of such excess land or lands measuring 49 Kanals 14 Marlas, thus, eviction petition (supra) became instituted.

8. Annexure P/11 has now been challenged at the instance of the successor in interest of one Ganga Ram, through theirs raising a statutory appeal thereagainst, before the appellate authority concerned. To the said statutory appeal Annexure P/7 is assigned. The said statutory appeal appears to be time barred, inasmuch as, it has been filed on 24.01.2024, whereas, it was required to be filed as such on 04.12.2023. Therefore, within the said statutory appeal, an application has been filed under Section 5 of the Limitation Act by the aggrieved from Annexure P/11, whereby they seek an order from the appellate authority, thus to condone the happening of the above minimal delay, in thus theirs filing a statutory appeal against Annexure P/11.

9. Prima facie even qua the above minimal delay, the appellate authority concerned, may rather without striking issues and also without asking for the litigant concerned, to adduce the apposite evidence on the said issue, thus proceed to condone the said minimal period of delay.

10. Having set forth the background of the case, especially the trite prima facie factum qua despite rather, the petition under Section 7 of the Act of 1961, being ill constituted, thus on the score qua prima facie it was ill made by one Gurdial Singh, whereas, the said application was to be well laid only by the BDPO concerned, or by the Sarpanch of the Gram Panchayat

concerned, or by any other officer authorized to do so. Resultantly, though prima facie it appears that the conclusion as made in Annexure P/11, that one Gurdial Singh rather could not well constitute a petition under Section 7 of the Act of 1961, thus was legally, but ultimately in Annexure P/11, the Collector concerned, has yet proceeded to direct the BDPO concerned, to either appoint the Sarpanch of the Gram Panchayat concerned, or some other officer concerned, to move an application for cancellation of the relevant mutation, thus on the ground, that the unimpugned Annexure P/6 has assigned right, title qua the predecessor in interest of the present petitioner, only in respect of 49 Kanals of lands, whereas, the suit claim, as declared in Annexure P/6, was in respect of land measuring 58 Kanals 12 Marlas. Therefore, in respect of land in excess of 49 Kanals, it appears that through Annexure P/11, the Collector concerned, was led to make the order (supra).

11. Without commenting upon the fact whether the said part of Annexure P/11, is made beyond the jurisdictional competence of the Collector concerned, especially when the said argument is permissible to become raised before the appellate authority concerned, this Court deems it fit and appropriate to make a mandamus, upon, the appellate authority concerned, to not only decide the jurisdictional capacity of the Collector concerned, thus in his making the said direction, but also this Court is led to make a mandamus, upon, the appellate authority concerned, to after condoning the above minimal delay of 7 days, which has occurred in the institution of the statutory appeal directed against Annexure P/11, thus to make a lawful decision on the application seeking stay of operation of Annexure P/11, in so far as, thereby the said direction has been made upon the BDPO concerned, or the Sarpanch

of the Gram Panchayat concerned, or any other officer to cancel the relevant mutation. The statutory appeal is directed to be decided within a period of three months from today, but after hearing all the affected persons concerned. It is left open to the appellate authority to also objectively consider whether after its making of objective decision about the prima facie jurisdictional incapacity of the Collector in making the above said direction in Annexure P/11, to subsequently make such orders, as deemed fit in accordance with law, whereby the Gram Panchayat becomes enjoined to institute the apposite execution petition, besides the judgment debtors i.e. the successor in interest of one Ganga Ram, who is the present petitioner may become permitted, thus to raise all objections relating to the bar of limitation becoming attracted against the institution of the execution petition besides qua its successful execution.

12. Till the decision on the said application is made within a fortnight from today, thereupto the parties are directed to maintain status quo as of today in respect of the disputed property. Moreover, the statutory appeal be also decided within three months from today, but after hearing all the affected persons concerned.

13. Disposed of accordingly along with all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

20.04.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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