

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-10512-2024

Date of Decision: 15.05.2024

Gram Panchayat, Village Jaitpur, (Rajpur), District Yamuna Nagar

....Petitioner

Versus

State of Haryana and others

....Respondents

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

Present: Mr. Rajnish K. Gupta, Advocate
for the petitioner.

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. Saurabh Mago, Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. The genesis of the instant *lis* is embodied in a declaratory suit bearing Case No.42 became instituted on 22.06.2006 before the Collector concerned. The said declaratory suit became instituted by the Gram Panchayat Village Jaitpur (Rajpur) Tehsil Chhachhrauli, District Yamuna Nagar, thus, impleading therein certain respondents/defendants. In the said suit, the petitioner Gram Panchayat claimed the rendition of a declaratory decree in its favour in respect of the suit land. Through a decision made on the said suit, on

31.05.2012, the asked for declaratory decree became assigned to the plaintiff-petitioner Gram Panchayat. The aggrieved therefrom, defendants-respondents instituted statutory appeal bearing No.13 of 2012, before the Appellate Authority concerned, who through a decision made thereon on 27.02.2019, dismissed the said appeal, and, thereby affirmed the declaratory decree as became passed in favour of the plaintiff Gram Panchayat, thus by the Collector concerned.

2. The learned Additional Advocate General, Haryana, states at the bar that a revision petition bearing No.583 of 2018-2019 has been instituted against the said concurrently made decisions, thus respectively by the Collector concerned and by the Appellate Authority concerned, thus, before the Revisional Authority concerned, however, he further submits that the said revision petition has remained undecided.

3. However, the impugned decision as made on the said revision petition, is carried in Annexure P-5/T, and the said decision is reproduced hereinafter:

“Stated that revision petition No.36 dated 18.03.2020 filed by me is fixed for hearing on today i.e. 17.02.2021. Assistant Collector, Ist Grade-cum-District Revenue Officer, Yamuna Nagar vide order dated 11.01.2021 has adjourned the proceedings pending under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961. Therefore, there is no logic to continue with the present revision petition in this Hon’ble Court and thus, I withdraw the present revision petition and the present revision petition be consigned to record.”

4. A reading of the said decision reveals, that since the Assistant

Collector Ist Grade-cum-District Revenue Officer, Yamuna Nagar, has vide order dated 11.01.2021, thus adjourned the proceedings as became embarked upon him, through his recouring the mandate of Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as 'the Act of 1961'), as such, the revisional authority did not deem it fit and appropriate to continue with the said revision petition and resultantly, consigned the said revision petition to the records. Moreover, it is also apparent that the said annexure was a sequel of Annexure P-4/T, contents whereof are reproduced hereinafter:

“File has been presented. Counsel for the parties are present. Counsel for the petitioner has presented the reply to the application and has stated on his behalf that the decision of the land in dispute has already been passed by the court of Ld. Collector, Yamuna Nagar and the appeal thereof has already been dismissed from the court of Commissioner, Ambala Division, Ambala. Hon'ble High Court in its order dated 06.01.2021 has not ordered any stay of proceedings pending in the appeal before the Court of Hon'ble Financial Commissioner. Counsel for the respondent has submitted that on dated 27.02.2020, a revision petition titled as Ramesh Chander Versus Gram Panchayat Rajpur Gohrabani was presented before the court of Commissioner, Ambala for staying the proceedings, which is pending for 17.02.2021 and the Hon'ble High Court in its order dated 06.01.2021 has granted status quo regarding possession over the land in dispute and regarding that an appeal is pending in the Court of Financial Commissioner, Chandigarh for 24.02.2021. Therefore, the proceedings of this case may kindly be adjourned till the decision of the case of ownership. After hearing both the parties and perusing the file, I have come

to the conclusion that till the decision of the court of Ld. Financial Commissioner, the present case is adjourned sine-die. The file after compliance be sent to record room.”

5. To determine the validity of the asked for mandamus by the present petitioner from this Court, relating to the passing of a direction upon the learned Commissioner concerned, to expeditiously decide the said revision petition, besides to determine whether the impugned Annexure P-4/T is required to be quashed, it is necessary to set forth in extenso the facts relevant for the makings of the asked for writ of mandamus or the writ of certiorari, upon the respondent concerned. As stated supra, the revision petition bearing No.583 of 2018-2019 was directed against the concurrently made decrees respectively by the Collector concerned, and, by the Appellate Authority concerned, whereby the Gram Panchayat concerned, was declared to be owner in possession of the suit land.

6. As stated at the bar by the learned Additional Advocate General, Haryana, that during the pendency of the suit (supra) before the Collector concerned, some of the respondents/defendants in the said suit, but made alienation *lis pendens* of the suit land, to certain *alienees*. The said made alienations *lis pendens*, thus led the Gram Panchayat concerned, to institute a petition under Section 7 of the Act of 1961, before the Assistant Collector concerned, whereby the Gram Panchayat concerned, claimed the making of a decree of eviction against the respondents therein.

7. An application was filed by the *alienee lis pendens*, before the Assistant Collector concerned, whereby they claimed relief, that since revision petition bearing No.583 of 2018-2019, is *sub judice*, before the

Revisional Court concerned, thereby till the decision on the said revision petition becomes made by the Revisional Court, rather thereupto, the proceedings embarked upon by the Assistant Collector concerned, upon, the motion laid before him under Section 7 (2) of the Act of 1961, be adjourned sine die.

8. It is stated at the bar by the learned Additional Advocate General Haryana, that the Assistant Collector concerned, proceeded to decline the said request vide Annexure P/2 leading the aggrieved therefrom, to institute Civil Writ Petition No.19 of 2021 before this Court. On the said writ petition, Annexure P/3 became passed.

9. A reading of the said Annexure P/3 reveals, that since an intimation was made to this Court by the learned State counsel, that the Court of the Commissioner has started functioning at Ambala, thereupon, application, if any, to stay the enforcement and execution of the concurrently made declaratory decrees, thus passed against the aggrieved therefrom defendants, be preferred before the Commissioner concerned, so that, a valid decision thereons become made.

10. Be that as it may, a further reading of the said annexure reveals that till a decision becomes made on the said application, the parties were directed to maintain status quo regarding possession. Accordingly, the said writ petition was closed.

11. Annexure P-4/T is recorded on 11.01.2021, which is a date post this Court making Annexure P/3. Through, Annexure P-4/T, the Assistant Collector concerned, adjourned sine die the proceedings, as became embarked

upon, thus on a motion as laid before him under Section 7 (2) of the Act of 1961. The adjourning sine die of the said motion to the considered view of this Court, is completely antithetical to the spirit of the decision made by this Court (Annexure P/3). The reasons for making the said conclusion becomes sparked from the factum, that though, this Court became seized with the grievance of the *alienee lis pendens*, relating to the Assistant Collector concerned, refusing to adjourn sine die, the proceedings as became drawn under Section 7 (2) of the Act of 1961, despite the relevant revision petition directed against the concurrently made decisions in favour to the Panchayat, being *sub judice* before the learned Commissioner, but yet it also appears on a circumspect reading of Annexure P/3, that apparently the said relief did not become granted to the petitioner. Contrarily the relief as became granted to the petitioner rather was limited to the respondents/defendants, in the civil suit concerned, proceedings to make before the Revisional Authority, rather an application for seeking the stayings of the operation of the concurrently made declaratory decrees in favour of the Gram Panchayat concerned. Hence, the Assistant Collector concerned, could not as has been done by him, thus rear any conclusion from the said made order, that thereby he has been restrained from embarking upon further proceedings, in a petition cast under Section 7 of the Act of 1961, nor could he as has been untenably done by him, thus proceed to adjourn the said proceedings sine die. If he has done though his making Annexure P/4/T, thereby he is committed a gross error. Contrarily, he could well do so only if the undertakings of further proceedings thereons, becoming stayed by the learned Revisional Court.

12. Moreover, also the Commissioner concerned, has made an equally infirm order and has also equally misconstrued the impact of Annexure P/3 as became passed by this Court. The reason for making the said conclusion becomes derived from the factum, that the aggrieved judgment debtors, in the declaratory suit were permitted to make an application before the Revisional Court concerned, for thus, seeking the staying of the operation of the declaratory decrees as became passed in favour of the plaintiff/petitioner Gram Panchayat. Therefore, it was but incumbent upon the Revisional Court concerned to, as directed by this Court, thus pass a lawful decision thereons. Contrarily the Commissioner concerned has, but with a complete non application of mind and with his completely avoiding to exercise jurisdiction upon the application for stay or on the revision petition, rather proceeded to make Annexure P/5. The said annexure is thus, erroneously made and is required to be declared to be void and resultantly, it is quashed and set aside.

13. Moreover, the Assistant Collector concerned, in his adjourning sine die the proceedings embarked upon a petition under Section 7 of the Act of 1961, has committed a gross illegality, thereby, the said annexure is also quashed and set aside.

14. Be that as it may, the predominant error, which surfaces in the instant case, is that, though there were alienations *lis pendens*, in favour of the *alienee lis pendens*, but the appropriate mechanism, for a challenge being made to the said alienation *lis pendens*, was not though a petition for eviction becoming instituted against them, before the Assistant Collector concerned.

Contrarily, the appropriate mechanism for determining the validities of such made alienation *lis pendens*, rather was through the Gram Panchayat concerned, instituting an application under Order 1 Rule 10 CPC, before the Collector concerned, for therebys theirs being impleaded, as such, as party defendants/respondents in the civil suit concerned. In case the said had occurred, thereupon on the issues struck on the contentious pleadings of the litigants concerned, rather the *alienees lis pendens*, may have taken to adduce cogent evidence thereons, whereby the acquisition of title by them viz-a-viz the suit property, but *sub judice*, the plaintiffs suit, rather may have become declared to be a valid acquisition, thus on application viz-a-viz them, rather the principle of ostensible ownership, as carried in the Transfer of Property Act, 1882. In case, the said rule had been abided by, thereupon there would have been no necessity for a petition under Section 7 of the Act of 1961, becoming instituted, before the Collector concerned, for therebys the eviction of the said *alienee lis pendens*, becoming asked to be claimed, from the subject lands. Furthermore, the further avoidable ill consequence thereof, but naturally is that, the *alienee lis pendens*, would be led to within the ambit of the proviso 2 Section 7 of the Act of 1961, raise the said plea, whereas, the said plea was only raisable but subsequent, to theirs being impleaded as a party respondents/defendants in the civil suit.

15. The above also would lead to multiplicity of proceedings besides may breach the norms of *res sub judice*, as become enshrined in Section 10 of the Code of Civil Procedure, provisions whereof become extracted herein, especially when thereby the institution of the petition for eviction may become

prima facie estopped.

“10. Stay of suit. - No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in [India) having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India) established or continued by [the Central Government] [and having like jurisdiction, or before [the Supreme Court].

Explanation. - The pendency of a suit in a foreign Court does not preclude the Courts in [India] from trying a suit founded on the same cause of action.”

16. It is but the above lack of adherence to the relevant procedure as contemplated in the Code of Civil Procedure, and, whose provisions are applicable to proceedings drawn under the Act of 1961, that there has been an avoidable multiplicity of proceedings and also an utter confusions has surfaced. Therefore, the said plea is permissible to be raised by the aggrieved judgment debtors/defendants, before the Revisional Court, and, on such a plea, being raised, thereupon, the Revisional Court concerned, may consider the quashing of the impugned decrees, so that on remand of the *lis* to the Collector concerned, thus the said pleas are raised before him. The Revisional Court concerned, is directed to within two months from today, but after hearing all the affected persons concerned, make a lawful decision on all the said permissible pleas, as may become raised before him by the *alienee lis pendens*.

17. Till a lawful decision on the said pleas is made by the Revisional

Court concerned, thereupto, the Assistant Collector concerned, may not proceed to make any further progress on the petition laid before him under Section 7 of the Act of 1961.

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

(SURESHWAR THAKUR)
JUDGE

15.05.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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