

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-27812-2019 (O & M)

Reserved on: 04.03.2024

Pronounced on: 12.03.2024

GRAM PANCHAYAT VILLAGE MANSA KHURDPetitioner

Versus

STATE OF PUNJAB AND ORS.Respondents

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

Argued by: Mr. Pankaj Garg, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Chandan Singh, Advocate
for respondents No. 3 to 11.

SURESHWAR THAKUR, J.

1. The instant writ petition is directed against the making of order dated 27.03.2019 (Annexure P-2) whereby the Commissioner, Faridkot Division, Faridkot, Punjab remanded the *lis* to the District Development Panchayat Officer, Mansa to decide the case on merits.

2. An application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter for short called as the 'Act of 1961') was filed by the Gram Panchayat, Mansa Khurd against the respondents therein. The petitioner (*supra*) claimed the rendition of a verdict of eviction against the respondents therein.

3. Through an order made thereons, on 13.05.2015 (Annexure P-1), the Collector made a verdict of eviction on the relevant *lis*. The aggrieved therefrom preferred an appeal thereagainst before the Commissioner, Faridkot Division, Faridkot, who through Annexure P-2, made an order of remand of the *lis* to the District Development Panchayat Officer, Mansa, to decide the case on merits by following the principle of natural justice and by following the direction issued by the Hon'ble High Court in case CWP-8060-2005, CWP-9182-1993 and CWP-245-1994.

4. The learned counsel for the petitioner as well as the learned Senior counsel appearing for respondents No. 3 to 11 are ad idem that the Appellate jurisdiction as became exercised by the Commissioner, Faridkot Division, Faridkot was an inapt exercising of appellate jurisdiction, as in terms of Annexure P-3, the appellate jurisdiction was to be exercised by the Commissioner, Panchayat lands, than by the Commissioner, Faridkot Division, Faridkot. Consequently, the order of remand as enclosed in the impugned order (Annexure P-2) is required to be quashed and set aside but irrespective of direction(s) becoming passed by this Court in CWP-8060-2005, CWP-9182-1993 and CWP-245-1994, as the said direction(s) are per incuriam Annexure P-3. Accordingly, Annexure P-2 is quashed and set aside.

5. Be that as it may, the aggrieved from Annexure P-1, may constitute an appeal thereagainst but in terms of Annexure P-3, thus before the Commissioner Panchayat Lands.

6. If the said appeal is time barred, thereupon, the appellants may claim the benefit of Section 14 of the Limitation Act becoming

7. During pendency of the instant writ petition before this Court, since the panchayat has assumed possession of the disputed lands, thereby through an application bearing No. CM-730-CWP-2024 cast under Section 144 of the CPC, the applicants-respondents No. 3 to 11 claim the making of an order by this Court for the restitution of possession to them of the disputed lands.

8. Before proceeding to adjudicate upon the application (supra), it is necessary to go through factual backdrop of the case.

9. The consolidation proceedings took place in the mohal concerned in the year 1954-55. It has been averred that the applicants were entitled to get area as per their share/entitlement out of the bachat land. But inspite of their efforts, they failed to get their rights vindicated and ultimately they filed a petition under Section 42 of the East Punjab Holding Consolidation (Prevention and Fragmentation) Act, 1948 (hereinafter for short called as the 'Act of 1948'). The said petition was disposed of vide order dated 02.05.1988 and the matter was remanded back to the Consolidation Officer with the direction that he should hear the parties, examine the record and the applicants should be correctly shown as Hissedar Kabaj under Shamlat Deh in respect of the above said area.

10. The Consolidation Officer, through an order made on 29.07.1988 (Annexure R-3/2) on the remanded *lis* accepted the said petition. On the basis of the said order, mutation No. 1691 was sanctioned in favour of respondents No. 3 to 11, wherein they were recorded as owners in possession of the land in question.

11. Aggrieved against the above said order, the petitioner-

was dismissed by this Court vide order dated 27.02.1989.

12. Even the Gram Panchayat challenged the order dated 29.07.1988 passed by the Consolidation Officer before the then Additional Director. However, the said appeal filed by the Gram Panchayat was dismissed vide order dated 05.04.1990 (Annexure R-3/6).

13. Subsequently, applicants/respondents No. 3 to 11 got warrant of possession issued from the Consolidation Officer exercising the powers of Assistant Collector First Grade and the possession was got delivered to them in the month of May, 1989 and since then the applicants/respondents No. 3 to 11 are in peaceful cultivating possession of the land in dispute.

14. That about 35 persons in the village also filed CWP-9948-1989 challenging the orders dated 29.07.1988 (Annexure R-3/2). However, the said petition became dismissed by this Court vide order dated 14.02.1991 (Annexure R-3/5) reserving liberty to the petitioners to approach the consolidation authorities for the espoused relief.

15. In view of the afore order, the said villagers filed petition No. 363/95 before the Additional Director, Consolidation. Through an order made thereons, on 05.12.1995, the Additional Director, Consolidation withdrew part of some land from the share of the applicants/respondents No. 3 to 11 and gave the same to the said villagers.

16. Aggrieved against the order dated 05.12.1995, applicants/respondents No. 3 to 11 filed CWP-1576-1996 before this Court which was disposed of vide order dated 20.05.1998 (Annexure

17. The applicants/respondents No. 3 to 11 also filed a civil suit for permanent injunction, wherein, they specifically pleaded that they had become the owner of the land in dispute and the Gram Panchayat be restrained from interfering in their possession. The Gram Panchayat failed to defend the case and was proceeded against ex-parte. The civil suit filed by the applicants/respondents No. 3 to 11 was decreed on 12.01.1991 (Annexure R-3/9), wherein, it was held that the applicants/respondents No. 3 to 11 are owners in possession of the land in dispute and the Gram Panchayat had no right, title or interest in the said suit land.

18. It has been further averred that thereafter the Gram Panchayat in order to oust the applicants/respondents No. 3 to 11 from the land in dispute filed a petition under Section 4 of the Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1973, while concealing the material facts as stated above.

19. Through an order made thereon, on 13.05.2015 (Annexure P-1), the learned Collector-cum-DDPO, Mansa allowed the said ejectment application of the petitioner-Gram Panchayat.

20. The aggrieved therefrom applicants/respondents No. 3 to 11 preferred an appeal thereagainst before the Commissioner, Faridkot Division, Faridkot, who through Annexure P-2, made an order of remand of the *lis* to the District Development Panchayat Officer, Mansa, to decide the case on merits.

21. The petitioner-Gram Panchayat had challenged the afore order (Annexure P-2) before this Court by filing the instant writ petition.

applicants/respondents No. 3 to 11 are owners in possession of the land in question, the Gram Panchayat in order to oust the applicants passed resolution dated 13.06.2015 requesting the DDPO to issue warrant of possession. That possession of the disputed lands was taken by the Gram Panchayat on 15.06.2015 and that too in the absence of applicants/respondents No. 3 to 11. However, it is contended that the said proceedings have been done on papers and no possession was ever been taken from the present applicants/respondents No. 3 to 11.

23. That on 23.10.2023, the petitioner Gram Panchayat had harvested the maize crop in around 18 kanal land out of the total land of 55 K 18 M and forcefully took the possession of the disputed lands.

24. It is contended that the matter is sub-judice before this Court and the petitioner-Gram Panchayat with an ill motive, under the garb of stay order, granted by this Court had taken part of the land belonging to the present applicants/respondents No. 3 to 11, despite the fact that the applicants/respondents No. 3 to 11 rather are in the actual physical cultivating possession of the land in question, which is also depicted from the revenue record.

25. The petitioner-Gram Panchayat were illegally showing that that they have taken the possession on 15.06.2015 but in this regard there is no entry in the revenue record.

26. Consequently, it is contended that the manner of assumption of possession over the disputed lands by the Gram Panchayat is completely unlawful and thereby the application filed under Section 144 of the CPC be allowed.

27. The learned counsel for the applicants-respondents No. 3

to 11 submits, that the eviction orders (Annexure P-1) became

challenged before the Commissioner, Faridkot Division, Faridkot, whereby the latter accepted the said appeal and remanded the *lis* to the Collector concerned for deciding the same on merits. Resultantly, thereby until a binding, and, conclusive decision became recorded, on the apposite eviction petition by the authorities concerned, thereby, the learned Collector concerned was not required to be enforcing the verdict of eviction passed against the applicants/respondents No. 3 to 11, as in the wake of successful execution, being made of the impugned warrants of possession, thereby in case the applicants-respondents No. 3 to 11 succeed, in the relevant eviction petition, thereby, yet obviable multiplicity of litigation, rather may arise from the successful party, but becoming led to seek restoration of possession of the acquired lands, from the decree-holder concerned, to whom such possession becomes delivered, in pursuance to the makings of successful execution of the warrants of possession.

28. Learned counsel for the applicants, has also made reliance, upon the provisions carried in Rule 21 of the The Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as “the Rules of 1964”), provisions whereof become extracted hereinafter.

“21. Eviction. (1) *If, after considering the cause, if any shown by any person in pursuance of notice under rule 20, and any evidence that may be produced and after giving the parties a reasonable opportunity of being heard, the Collector is satisfied that the land or other immovable property specified in the notice served under rule 20 or any part thereof is in unauthorized occupation, the Collector may on a date to be fixed for the purpose make an order of eviction for reasons to be recorded therein, directing that the land or other immovable property, or any part thereof, as the case may be, shall be vacated by a persons who may be in unauthorized occupation thereof, and cause a copy of the order to be affixed on the outer door of a Panchayat Ghar at some other conspicuous place of the estate in which the land or other immovable*

property is situated.

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication, the Collector authorized by him in this behalf may evict that person from and put the Panchayat in possession of the land or other immovable property and may for that purpose, use such force as may be necessary. ”

29. He has attempted to draw the pointed attention of this Court, to the provisions embodied in sub-Rules 1 and 2 of Rule 21 of the Rules of 1964, which but make it incumbent, upon, the learned Collector concerned, to if he becomes satisfied, that in pursuance to a decree, of eviction being passed, therebys the said verdict is required to be enforced, through the unauthorized occupants of the petition property, being directed to be removed therefrom. Resultantly, in term of the said sub rules (supra), the learned Collector concerned, thus shall also proceed to cause a copy of the order of eviction, being affixed on the outer door of the Panchayat Ghar, and, at some other conspicuous place of the estate, in which the land or other immovable property is situated. Furthermore, sub-Rule 2 of Rule 21 of the Rules of 1964, but makes clear speakings, that in case any person refuses or fails to comply with the order of eviction, thus within thirty days of the date of its publication, thus the Collector concerned, or any other officer duly authorized by him, in this behalf, may evict that person from, and, put the Panchayat in possession of the land or other immovable property and may for that purpose, use such force as may be necessary. From the above extracted rules, the learned counsel for the applicants submits, that breach of the mandate (supra), rather is made, as none of the provisions engrafted therein, have been complied with at the instance of the decree-holder concerned, or at the instance of the learned Collector

SUBMISSIONS OF THE LEARNED STATE COUNSEL AND THE LEARNED COUNSEL FOR THE PETITIONER- GRAM PANCHAYAT.

30. The learned counsel for the petitioner as well as the learned State Counsel vigorously argue before this Court, that since there is no pleading made in the instant application, relating to breach being caused to the provisions of sub-rule 2 of Rule 21 of the Rules of 1964. Therefore, he submits that for want of pleadings in the instant application, in respect of the relevant statutory facts, in respect whereof breach, is claimed by the learned counsel for the applicants/respondents No. 3 to 11. Therefore, he submits, that the above argument made by the learned counsel, for the applicants-respondents No. 3 to 11 relating to breach being caused to the provisions of sub-rules 1 and 2 of Rule 21 of the Rules of 1964 rather is a frivolously raised argument, and/or, is not firmly embedded in the relevant factual strata.

ANALYSIS OF THE SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE PARTIES.

31. This Court has incisively made a profound contemplation(s), upon the arguments (supra), as became respectively addressed before this Court by the learned counsel for the applicants-respondents No. 3-11, by the learned counsel for the petitioner-Gram Panchayat and by the learned State counsel.

32. It appears that the warrants of possession became issued by the Collector concerned, only after Annexure P-1 being passed.

33. For the reasons to be assigned hereinafter, irrespective of the pleadings (supra), being made by the Collector in respect of breach being done to the provisions embodied in Sub Rules 1 and 2 of Rule 21

concluded that the argument in respect thereof, is thus rudderless. However, there was yet an imperative necessity of existence on records of this case, an order of satisfaction in terms of the Rules (supra), thus becoming drawn by the Collector. However, the said order is not on record. Therebys though the issuance of warrants of possession without the said order of satisfaction being made by the Collector concerned, did make the said issuance(s) besides execution of the warrants of possession rather to be vitiated. However, since the *lis* amongst the contesting litigants has not finally terminated, as this Court after quashing Annexure P-2, has relegated the applicants/respondents No. 3 to 11 to make an appeal against Annexure P-1, before the Commissioner Panchayat Lands.

34. Consequently, if this Court allows the application and if ultimately the authority (supra), dismisses the claim in the statutory appeal, as becomes raised by the applicants-respondents No. 3 to 11, thereby too, there would be multiplicity of litigation, as therebys the Gram Panchayat concerned would be led to file a petition for seeking restitution of possession qua it of the disputed lands, as become handed over to the applicants-respondents No. 3 to 11, through an order becoming made by this Court.

35. Therefore, this Court refrains from allowing the application CM-730-CWP-2024 and accordingly dismisses it, but leaves liberty to the applicants-respondents No. 3 to 11 to in case they succeed in the statutory appeal, to then claim a further relief that the possession of the disputed lands, be restored to them, but through the applicants-respondents No. 3 to 11 filing an execution petition before the

36. Despite this Court in CWP-28300-2023 titled as 'Parmod Kumar and Others Versus State of Punjab and Others' decided on 21.12.2023, making the above analysis, yet it appears that the decision (supra) has not been complied with. The effect of the non compliance of verdict (supra), is that therebys despite further statutory remedies being accessible by the aggrieved from the verdicts of eviction passed by the Collector concerned, yet the verdict(s) of eviction, thus even without awaiting for the outcome of appeals or revisions thereagainst before the statutory authorities, rather becoming promptly enforced. Resultantly thereby there is obviously an ill sequel of obviabile multiplicity of litigations arising amongst the contesting litigants, inasmuch as, the successful litigant in further appellate or revisional or in writ proceedings becoming leveraged to seek restoration of possession of the disputed lands to him by the earlier decree holder/litigant concerned.

37. In consequence, the Registry of this Court is directed to circulate a copy of this verdict to all the District Collectors in the State of Punjab for their further onward transmissions, thus respectively to the Collectors exercising jurisdiction under the 'Act of 1961' and 'the Rules of 1964' and also to the Appellate Authority(ies) exercising Appellate jurisdiction under the said Act, so that, hereafter there is no occasion of eruptions of the obviabile ill consequences (supra).

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

12.03.2024

kavneet singh

KAVNEET SINGH
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I attest to the accuracy and
integrity of this document

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