

CWP No.20888 of 2023

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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP No.20888 of 2023
Date of Decision: 23.04.2024

Ibrahim

..... Petitioner

Versus

State of Haryana & ors.

..... Respondents

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

Present: Mr. HPS Rahi, Advocate, and
Mr. Khalid Taur, Advocate,
for the petitioner.

Mr. Ankur Mittal, Addl.A.G. Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Talim Hussain, Advocate,
for respondent No.5.

SURESHWAR THAKUR, J. (ORAL)

Factual Background

1. The Sarpanch of Gram Panchayat, Sevaka Block Tauru, District Nuh, issued, upon the petitioners herein notices dated 16.08.2023 (Annexure P-2) and dated 03.09.2023(Annexure P-6) notices whereof became drawn under Section 24(1) of the Haryana Panchayati Raj Act, 1994 (in short 'the 1994 Act'). The contents of the said notices are extracted hereinbelow:-

“Now the village Gram Panchayat has satisfied that Sh. Ibrahim son of Sh. Ajib Shah has encroached on the Gram Panchayat Shamlat land in the house/street. Your are ordered by notice under Section 24(1) of the Haryana Panchayati Raj Act 1994 to remove the obstruction within 7

days w.e.f. 16.8.2023 to 22.08.2023. If you have any objection regarding the order of the Panchayat, then you should appear in front of the Panchayat on 17.08.2023 at 10.30 at Anganwadi (Seema) to give clarification on your behalf. And if any proof is there with you, that too should be presented. If you do not appear on the fixed date, the Panchayat will take further action against you.”

2. Reply to the above notices were given, which are respectively enclosed as Annexure P-5 and Annexure P-7.

3. The Gram Panchayat concerned, further sent whatsapp communication dated 12.09.2023 (Annexure P-8) to the petitioner to remove the possession within one week i.e. upto 19.09.2023, however, prior thereto no valid demarcation became conducted.

Submissions of the learned counsel for the petitioners.

4. The learned counsel for the petitioner submits, that the petitioner cannot be evicted by issuance of notices under Section 24 of 'the 1994 Act', especially when the remedy available to the aggrieved concerned, is to through a petition cast under Section 7 or a petition under Section 13-A of the Haryana Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') before the learned Collector concerned, thus seek eviction of the encroachers concerned, from the disputed land. However, instead of recouring the remedy (supra), as available to the Gram Panchayat concerned, yet notices under Section 24(2) of 'the 1994 Act' have been untenably issued against the petitioner, rather for evicting him from the disputed land(s). Thus, he is led to institute thereagainst the instant writ petition, hence for seeking the quashing(s)/settings aside, of the afore letters (supra), as well as the notice(s)

Inference of this Court.

5. Since this Court while deciding CWP-19864-2020, had summarized the hereinafter principles, which but cover the common thereto(s) questions of law, as are also involved in the present writ petition.

(i) The exercising of jurisdiction by the Gram Panchayat concerned, through recouring the relevant mandate(s) of Section 24 of the 1994 Act, may be a validly adopted recourse, but only when prior to the makings of the apposite notice, a valid demarcation of the sites concerned, is conducted, and, such notice is validly served upon the respondents concerned.

(ii) The consequent thereto drawing(s) of actions against the encroachers concerned, who raise constructions, upon the vacant places within the abadi deh, may also be a validly drawing action(s), but only when even prior thereto a valid demarcation of the sites concerned, is conducted by competent Revenue Officer:

(iii) The proceedings drawn under Section 24 of the 1994 Act, are summary in nature, thus recourse thereto may be avoided by the Gram Panchayat concerned, especially when evidence in respect of the lands concerned, falling within or outside the ambit of the apposite inclusionary clause, is required to be adduced, and, when such evidence may surface, not in summary proceedings, but may surface in fully contested proceedings, launched under Section 7 or 11 of the Haryana Village Common Land (Regulation) Act, 1961.

Conclusion

6. Thus, in view of the above summarized principles, it can be safely concluded, that when the proceedings drawn under Section 24 of 'the 1994 Act', are but summary in nature, and, when but evidence, in respect of encroachments being made upon the petition lands, may not surface in the said summary proceedings, but may surface only in fully contested proceedings, launched under Section 7 or 11 of the 1961 Act. Therefore, the issuance of notice(s) (supra) are construable to be made with the completest lack of application of mind and rather are rendered in a cryptic, slipshod and in an ill informed manner.

Final order of this Court.

7. For the reasons (Supra), the impugned notice(s) (supra), are quashed and set aside. However, the Gram Panchayat concerned, may hence through a petition cast upon under Section 7 or 11 of the Act, before the Collector concerned, hence seek the eviction of the encroachers concerned, from the lands concerned, rather than through the drawings of notices(supra). On such a petition being filed before the Collector concerned, the latter shall but in accordance with law, and, after an opportunity of hearing being given to all the concerned, hence make a decision thereons rather positively within six months of its preferment. Till the said petition becomes instituted, thereupto the parties are directed to maintain status-quo, as of today, in respect of the disputed land. In case, the above petition becomes instituted before the Collector concerned, thereupon the respondents therein, may institute an application therein claiming an apposite interim relief, and, thereons a lawful order shall be promptly passed by the Collector concerned, but after granting an

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quashing of the notice(s) (supra) shall not be construed as an influencing consideration, by the Assistant Collector First Grade concerned.

8. With the afore observations, the petition stands disposed of.

(SURESHWAR THAKUR)
JUDGE

23.04.2024
monika

(LALIT BATRA)
JUDGE

1. Whether speaking/reasoned: Yes/No

2. Whether reportable: Yes/No