

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

202 CWP No.26306 of 2023
Date of Decision: 26.02.2024

SatpalPetitioner
Versus
State of Haryana and othersRespondent

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

Present: Mr. Ram Bhati, Advocate for
Mr. Naresh Kumar, Advocate for the petitioner.

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

Sureshwar Thakur, J. (Oral)

1. The eviction petition bearing No.11/VCL dated 11.06.2019 (Annexure P-2) became instituted against one Satpal and one Narender at the instance of Gram Panchayat of village Brah Khurd, Tehsil and District Jind. On the said eviction petition, an order became rendered on 18.10.2021, whereby the eviction petition (supra), preferred by the Gram Panchayat concerned, became decreed.
2. The said petition was constituted under the provisions of Section 7 (2) of the Punjab Village Common Lands Act, 1961 (hereinafter in short referred to as the Act of 1961).
3. Earlier to the instant writ petition becoming instituted before this Court, a person who was interested in the disputed land, given his being

assigned the rights of common user thereof, in the consolidation scheme, thus, instituted Civil Writ Petition bearing No.19996 of 2023, for thereby this Court, making a direction upon the decree holder concerned, to forthwith institute an execution petition, for therebys enforcing the verdict of eviction.

4. In the operative part of the order made on the said petition on 12.09.2023, operative part whereof become extracted hereinafter, it was directed that the Sarpanch of the Gram Panchayat concerned, only if the verdict of eviction has acquired finality binding and conclusive effects, thus forthwith instituting an execution petition before the learned Assistant Collector concerned.

“In consequence, the present petition is disposed of, but with a direction, upon, the Sarpanch of the Gram Panchayat concerned to, in case Annexure P-1 has attained binding and conclusive effect, thus forthwith institute an execution petition before the learned Assistant Collector concerned, for enforcing Annexure P-1, who shall thereafter, in accordance with law, make a lawful expeditious decision thereon, but after hearing all the affected persons concerned.”

5. It appears that the impugned order of eviction has been passed in terms of the above extracted operative portion of the order, as occurs in a decision made on the petition (supra), on 12.09.2023.

6. Be that as it may, an incisive reading of the said operative part discloses that until and unless the verdict of eviction passed against the judgment debtors concerned, thus acquires finality conclusivity, thereupon alone the verdict of eviction is required to be completely and successfully enforced against the judgment debtors concerned.

7. However, it appears that on the date when the said orders were passed by this Court, there was no intimation with the learned Additional Advocate General, that a statutory appeal (Annexure P-5) has been raised thereagainst at the instance of the aggrieved from the verdict of eviction, passed by the learned Assistant Collector concerned.

8. Necessarily thereby, the verdict of eviction did not, thus, acquire binding and conclusive effect nor in terms of the operative part as carried in the judgment drawn by this Court on the writ petition (supra), thus, the verdict of eviction was amenable for becoming completely and successfully enforced against the judgment debtors concerned.

9. Nonetheless, it appears that for want of any stay being granted against the verdict of eviction passed by the Assistant Collector concerned and which led the aggrieved therefrom to prefer Annexure P-5, before the Appellate Authority concerned, that thereby the learned Assistant Collector concerned, while functioning as an Executing Court, thus, has proceeded to draw the impugned warrants of possession against the judgment debtors concerned. Though the said drawing of warrants of possession is required to be undone through this Court, rather restraining their successful efficacious execution against the judgment debtors concerned, but since the remedy of appeal has been accessed by the aggrieved judgment debtors, before the Appellate Authority concerned. Therefore, even if no stay has been granted by

the Appellate Authority concerned on the relevant application cast within the appeal, thereupon rather than this Court, proceeding to quash the warrants of possession, the remedy available to become recoured by the present petitioner is to file, if not already filed, an application before the Appellate Authority concerned, seeking therebys staying of the operation of the verdict rendered by the learned Assistant Collector concerned, qua which a challenge has been laid before it, at the instance of the aggrieved.

10. Be that as it may, in the larger interest of justice, the operation of impugned warrants of possession shall remained stayed, but only subject to the said application seeking stay of the operation of the impugned verdict of eviction being filed within a week before the Appellate Authority concerned, who shall on receiving the said application, shall draw lawful orders thereons, but after hearing all affected persons concerned. Moreover, the Appellate Authority concerned is also directed to within three months from today, make a lawful decision upon the statutory appeal (supra), but after hearing all affected persons concerned. In addition, in case there is no validly drawn demarcation report, thereby the Appellate Authority concerned, rather than ordering for spot inspection of the relevant site and for ordering for the correction of the records prepared by the Consolidation Officer concerned, especially when in respect of making corrections thereof, rather it has no jurisdiction, thus, may proceed to order for a valid demarcation being conducted by an empowered revenue officer concerned. Subsequently, it may

permit the author of the said demarcation report to step into the witness box to prove the same in accordance with law.

11. Disposed of along with all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

26.02.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No