

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

117

CWP-9145-2024

Date of Decision: 01.05.2024

Yahooda Mohammad

....Petitioner

Versus

State of Haryana and others

....Respondents

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

Present: Mr. Mohammad Arshad, Advocate and
Mr. Nasir Jamal, Advocate
for the petitioner.

Mr. Saurabh Mago, Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. One Sirdar instituted an eviction petition under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as 'the Act of 1961'), against five respondents, one of whom was one Jaan Mohammad @ Jaanu. The said Jaanu was an elected member of the Zila Parishad concerned, and also was the Chairman of the Zila Parishad. On the said eviction petition, a decree of eviction (Annexure P/3) became passed. Annexure P/3 was required to be enforced by the Assistant Collector, thus on an execution petition becoming filed before him, by the decree holder, one Sirdar besides through an order becoming made for issuance of warrants of possession and subsequently on successful execution of the said warrants of possession, an objective satisfaction becoming recorded

by the Assistant Collector concerned, qua the said issued warrants of possession becoming completely and successfully satisfied.

2. However, the said warrants of possession remained unissued nor became executed, despite the fact that even in an appeal becoming raised against Annexure P/3 by the judgment debtor therein i.e. by one Jaanu, yet no order becoming passed by the appellate authority whereby the operation and effect of Annexure P/3 became stayed as such.

3. In other words, through Annexure P/3, thus acquired binding and conclusive effect and was required to be executed as such by the Assistant Collector, through the issuance of warrants of possession, yet it remained unexecuted, and, that too prima facie impermissibly for an elongated spell of almost 20 years, since the passing of the Annexure P/3 and the statutory appeal becoming raised after 20 years therefrom.

4. Be that as it may, it appears that the Deputy Commissioner through passing an order (Annexure P/11), constituted a four members committee, for making an enquiry qua whether the disputed khasra numbers becoming encroached, upon, at the instance of one Jaan Mohammad resident of Akbarpur (Punhana), who as stated supra, was not only the member of the Zila Parishad, but also was the Chairman of the Zila Parishad concerned.

5. The making of Annexure P/11 has been challenged by the learned counsel for the petitioner on the ground, that despite the matter relating to the encroachments becoming made by one Jaan Mohammad (Jaanu), over the disputed lands, thereby there was no occasion for the Deputy Commissioner to yet constitute a committee for determining the disputed fact whether the

said Jaan Mohammad, had made encroachments over the contentious khasra numbers. The said argument is rested on the premise that since the jurisdictionally empowered Assistant Collector concerned, had enquired into and had also passed a decision against the said Jaan Mohammad and others who become impleaded as respondents in the eviction petition, thereby the Deputy Commissioner concerned was completely barred from proceeding to make Annexure P/11.

6. The above made argument before this Court appeals to the judicial conscience of this Court, as the jurisdictional competence to enquire into the contentious factum qua one Jaan Mohammad making encroachments upon the disputed khasra numbers, was solitarily vested with the Assistant Collector concerned, and did not as such vest with the Deputy Commissioner of District Nuh. Therefore, the passing of Annexure P/11 by the Deputy Commissioner, Nuh, whereby he attempted to usurp and assume to himself the jurisdiction of the Assistant Collector also prima facie appears to forestall the furtherings of the apposite execution proceedings against the said Jaan Mohammad, besides appears to forestall the decree holder from successfully executing (Annexure P/3). Resultantly, Annexure P/3 becomes stained with a vice of gross illegality.

7. Though, in the face of the above, this Court is constrained to quash Annexure P/11. Nonetheless, the passing of Annexure P/3, did make Jaan Mohammad, to incur the disqualification, as envisaged in Sections 175 and 177 of the Haryana Panchayati Raj Act, 1994, sections whereof becomes extracted hereinafter:

*“175. No person shall be a Sarpanch 1[* * *] or a Panch or a Gram Panchayat or a member of a Panchayat Samiti or Zila Parishad or continue as such who—*

(a) has, whether before or after the commencement of this Act, been convicted--

(i) of an offence under the Protection of Civil Rights Act, 1955 (Act 22 of 1955), unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his conviction ; or

(ii) of any other offence and been sentenced to imprisonment for not less than six months, unless a period of five years, or such lesser period as the Government may allow in any particular case, has elapsed since his release ; or

(b) has been adjudged by a competent court to be of unsound mind ;or

(c) has been adjudicated an insolvent and has not obtained his discharge; or (d) has been removed from any office held by him in a Gram Panchayat, Panchayat Samiti or Zila Parishad under any provision of this Act or in a Gram Panchayat, Panchayat Samiti or Zila Parishad before the commencement of this Act under the Punjab Gram Panchayat Act, 1952 and Punjab Panchayat Samiti Act, 1961, and a period of five years has not elapsed from the date of such removal, unless he has, by an order of the Government notified in the official Gazette been relieved from the disqualifications arising on account of such removal from office ;or

(e) has been disqualified from holding office under any provision of this Act and the period for which he was so disqualified has not elapsed ; or

(f) holds any salaried office or office of profit in any Gram

Panchayat, Panchayat Samiti, or Zila Parishad ; or

(g) has directly or indirectly, by himself or his partner any share or interest in any work done by order of the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(h) has directly or indirectly, by himself or, his partner share or interest in any transaction of money advanced or borrowed from any officer or servant or any Gram Panchayat ; or

(i) fails to pay any arrears of any kind due by him to the Gram Panchayat, Panchayat Samiti or Zila Parishad or any Gram Panchayat, Panchayat Samiti or Zila Parishad subordinate thereto or any sum recoverable from him in accordance with the Chapters and provisions of this Act, within three months after a special notice in accordance with the rules made in this behalf has been served upon him ;

(j) is servant of Government or a servant of any Local Authority ; or

(k) has voluntarily acquired the citizenship of a Foreign State or is under any acknowledgement of allegiance or adherence to a Foreign State ; or

(l) is disqualified under any other provision of this Act and the period for which he was so disqualified has not elapsed ; or

(m) is a tenant or lessee holding a lease under the Gram Panchayat, Panchayat Samiti or Zila Parishad or is in arrears of rent of any lease or tenancy held under the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(n) is or has been during the period of one year proceeding the date of election, in unauthorised possession of land or other immovable property belong to the Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(o) being a Sarpanch or Panch or a member of Panchayat Samiti or a Zila Parishad has cash in hand in excess of that permitted under the rules and does not deposit the same along with interest

at the rate of twenty-one per centum per year in pursuance of a general or special order of the prescribed authority within the time specified by it; or]

(p) being a Sarpanch 2[* * *] or Panch or a Chairman, Vice-Chairman or member, President or Vice-President or member of Panchayat Samiti or Zila Parishad has in his custody prescribed records and registers and other property belonging to, or vested in, Gram Panchayat, Panchayat Samiti or Zila Parishad and does not handover the same in pursuance of a general or special order of the prescribed authority within the time specified in the order ; or*

(q) has more than two living children : Provided that a person having more than two children on or upto the expiry or one year of the commencement of this Act, shall not be deemed to be disqualified ;

(r) admits the claim against Gram Panchayat without proper authorization in this regard : Provided that such disqualification shall be for a period of six years .

Explanation (1)—A person shall not be disqualified under clause (g) for membership of a Gram Panchayat, Panchayat Samiti or Zila Parishad by reason only of such person,—

(a) having share in any joint stock company or a share or interest in any society registered under any law for the time being in force which shall contract with or be employed by or on behalf of Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(b) having a share or interest in any newspaper in which any advertisement relating to the affairs of a Gram Panchayat, Panchayat Samiti or Zila Parishad may be inserted ; or

(c) holding a debenture or being otherwise concerned in any loan raised by or on behalf of any Gram Panchayat, Panchayat Samiti or Zila Parishad ; or

(d) being professionally engaged on behalf of any Gram

Panchayat, Panchayat Samiti or Zila Parishad as a Legal Practitioner ; or

(e) having any share or interest in any lease of immovable property in which the amount of rent has been approved by the Gram Panchayat, Panchayat Samiti or Zila Parishad in its own case or in any sale or purchase of immovable property or in any agreement for such lease, sale or purchase ; or

(f) having a share or interest in the occasional sale to the Gram Panchayat, Panchayat Samiti or Zila Parishad of any article in which he regularly trades or in the purchase from the Gram Panchayat of any article, to a value in either case not exceeding in any year one thousand rupees.

Explanation (2).-- For the purpose of clause (1), —

(i) a person shall not be deemed to be disqualified if he has paid the arrears or the sum referred to in clause (i) of this sub-section prior to the day prescribed for the nomination of candidates.

177. (1) If any member of a Gram Panchayat, Panchayat Samiti or Zila Parishad—

(a) who is elected, as such, was subject to any of the disqualifications mentioned in section 175, at the time of his election ;

(b) during the term for which he has been elected, incurs any of the disqualifications, mentioned in section 175, shall be disqualified from continuing to be a member, and his office shall become vacant

(2) In every case, the question whether a vacancy has arisen shall be decided by the Director. The Director may give its decision either on an application made to it by any person, or on its own motion. Until the Director decides that the vacancy, has arisen, the members shall not be disqualified under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Director may, within a period of fifteen days from the date

of such decision, appeal to the Government and the orders passed by Government in such appeal shall be final : Provided that no order shall be passed under this sub-section by the Director against any member without giving him a reasonable opportunity of being heard.”

8. To overcome the said disqualification, it appears that he had prima facie accessed the Deputy Commissioner, Nuh, thus for securing the passing of Annexure P/11, which has stated supra, was completely void and ineffective on the ground that the Deputy Commissioner, Nuh, had no jurisdictional competence to usurp the jurisdiction which was vested for the relevant purpose only in the Assistant Collector concerned, and, who had also effectively executed the same.

9. Though, the Director, Panchayati Raj refused to grant relief to Jaan Mohammad, thus on a motion made before him, whereby he attempted to escape from the rigour of the above provisions, wherebys, in the face of his suffering Annexure P/3, he thus became an encroacher upon the panchayat land, and, resultantly purportedly incurred the disqualification as contemplated in the statutory provision supra.

10. However, Jaan Mohammad made an appeal thereagainst on 12.04.2024 before the Secretary concerned. On the said appeal, the Secretary concerned, made an order Annexure P/12 whereby he declared that Jaan Mohammad, thus does not incur the relevant disqualification. Though the said order has remained unchallenged before this Court, but since the verdict of eviction (Annexure P/3), has the consequent effect, of therebys Jaan Mohammad incurring upon himself the disqualification as contemplated in the

provisions supra. In consequence irrespective of no challenge being made to Annexure P/12 as becomes rendered by the Secretary concerned, whereby he reversed the apposite order of the Director concerned, yet the effect of Annexure P/12, may be kept in abeyance till the rendition of a conclusive decree/order on the, prima facie, time barred statutory appeal filed by the said Jaan Mohammad against Annexure P/3. Moreover, if Annexure P/3 acquires binding and conclusive effect, thereupon it shall become the regulatory mechanism for determining the validity of Annexure P/12.

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

(SURESHWAR THAKUR)
JUDGE

01.05.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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