



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

124

CWP-26200-2024**Date of Decision: 20.02.2025**

Sandeep Kumar and others

...Petitioners

Versus

State of Haryana and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present:- Mr. Divyam Singh, Advocate, for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana,
Mr. Svaneel Jaswal, Additional Advocate General, Haryana,
Mr. P.P.Chahar, Sr. Deputy Advocate General, Haryana,
Mr. Saurabh Mago, Deputy Advocate General, Haryana,
Mr. Gaurav Bansal, Deputy Advocate General, Haryana and
Mr. Karan Jindal, Assistant Advocate General, Haryana.

SURESHWAR THAKUR, J. (ORAL)

1. The instant writ petition has been instituted for quashing of the order dated 04.09.2024 (Annexure P-14) passed by the respondent No.2-Divisional Commissioner, Karnal Division, Karnal; order dated 06.02.2019 (Annexure P-9) passed by the respondent No.3-Collector, Panipat; and order dated 16.11.2018 (Annexure P-8) passed by the respondent No.4-Assistant Collector 1st Grade, Panipat.

2. The brief facts of the case are that the petitioners are the successors-in-interest, respectively, of one Shri Chand, and, of one Dhan Singh, both of whom were impleaded as respondents in a petition filed under



Section 7(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (applicable to Haryana) (for short 'the Act of 1961'), before the Assistant Collector concerned, who after holding a trial on the said petition, allowed the same, thus through an order made thereons on 16.11.2018 (Annexure P-8).

3. Aggrieved of the said verdict dated 16.11.2018 (Annexure P-8), the petitioners filed the appeal before the District Collector, Panipat, which was dismissed by the said court vide order dated 06.02.2019 (Annexure P-9) and the said verdict was challenged before revisional authority i.e. the Commissioner, Karnal Division, Karnal, vide the impugned verdict dated 04.09.2024 (Annexure P-14), the revision Court has affirmed and maintained the impugned orders.

4. The learned counsel for the petitioners submits, that the verdict of eviction (Annexure P-8), though became affirmed by the Appellate Authority and the Revisional Authority concerned, through orders made on the relevant statutory appeal and the revision petition, on 06.02.2019 (Annexure P-9) and on 04.09.2024 (Annexure P-14), respectively, yet the said concurrently made orders of eviction, are completely non-est, nor they were enforceable.

5. The learned counsel for the petitioner further submits, that since the demises of the above respective predecessors-in-interest of the petitioners, thus, occurred prior to the institution of the eviction petition (supra), before the learned Assistant Collector concerned, therefore, the application (supra), at its very inception was completely mis-constituted. He further submits, that since the order of eviction, as made on the relevant



petition on 16.11.2018 (Annexure P-8), was made against the deceased litigants, and, as such Annexure P-8 was completely non-est, and/or, was unenforceable.

6. It is also brought to the notice of the Court that earlier also, petitioners had instituted CWP-1291-2024, but since revision petition was dismissed in default and application for restoration was pending before the Revisional Authority, the aforesaid writ petition was disposed of with a direction to decide the application for restoration.

7. Learned State counsel has opposed the submissions of learned counsel for the petitioner and submitted that the order of eviction, as passed by the Assistant Collector concerned and affirmed by the Appellate Authority as well as by the Revisional Authority, is in consonance with law and thus, no interference is warranted.

8. Heard learned counsel for the parties and perused the record.

9. Though *prima facie*, the petition for eviction (supra) was mis-constituted at its very inception, given it being reared against dead persons, thus the decision made on the said mis-constituted petition, but against the dead persons, was *prima facie* non-est, and, void. Though, the Appellate Court concerned, was required to *prima facie* allow the appeal of the successors-in-interest of the deceased litigants, thus on the ground, that the order of eviction (Annexure P-8), was made against dead persons, but it only ordered for substitution of the appellants, through an order made on the relevant application, thus on 28.3.2019.

10. The order of substitution (supra) could be construed to be well made, only if the respective demises of the respective predecessors-in-



interest of the appellants, rather had occurred during the pendency of the appeal. However, when the respective demises, did not occur during the pendency of the appeal, but had occurred even much prior to the institution of the eviction petition. Therefore, after the Appellate Court concerned, making the order of substitution, but only for the purpose of enabling the appellants to negate the ill-effects of Annexure P-8, but yet even after allowing the said substitution for the limited purpose (supra), rather the Appellate Court concerned, rather than setting at naught Annexure P-8, has prima facie proceeded to untenably assign affirmation thereto.

11. For supporting the above inference that substitution of the deceased litigants, by his LRs rather can be made only when the apposite demise occurs, during the pendency of the relevant suit or the relevant appeal proceedings, and, qua the such substitutions are not tenable, if the relevant demise occurs, prior to the institution of the eviction petition, this Court draws sustenance, from the mandate incorporated in Order XXII Rule 3 of the CPC, and, in Order XXII Rule 4 of the CPC, provisions whereof become extracted hereinafter.

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.

(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.



(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant.

(1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.”

12. It but obviously appears that the laying of above mis-constituted petition before the Assistant Collector concerned, rather has happened, thus *prima facie* from the Sarpanch of the Gram Panchayat concerned, who was otherwise required to be holding knowledge with respect to the surviveability of the respondents in the said petition, rather failing to endow the said knowledge onto impleadable respondents in the eviction petition, whereas, his impleading the deceased litigants’ as



respondents. The above negligence could, but have saved time in a valid decision, being recorded, on the eviction petition (supra), inasmuch as, when may be, on the above pervasive stain qua Annexure P-8, being non-est or unenforceable, thus this Court may become ultimately, led to quash Annexure P-8, and, also the concurrent therewith order of the Appellate Court, and, to thereafter direct, the Sarpanch of the Gram Panchayat concerned, to re-institute a well constituted petition for eviction, but against the surviving LR's of the deceased concerned. Significantly, the above was avoidable, and, would have saved the consumptions of time, in the makings of an adjudication on a non-est, thus made order of eviction in the year 2018, besides also on a fresh decision being made on a re-instituted petition.

13. Perusal of the relevant provisions extracted hereinabove and the impugned verdicts leaves no doubt that the impugned orders have been passed in violation of the mandated provisions of the statute and as such the impugned proceedings are *prima facie* non-est, and, void and deserves to be quashed.

14. In view of the above made discussion and findings, the present writ petition is disposed of by setting aside the impugned concurrent verdicts, thus, ordering the eviction of the petitioners from the disputed land. However, the Gram Panchayat concerned is at liberty, if so advised, to file a better constituted petition seeking the eviction of the encroachers from the disputed land, but after arraying the surviving successors-in-interest of the deceased-respondents, who, at the time of filing if the eviction petition before the Assistant Collector concerned, rather were dead. In case such an eviction petition is re-instituted before the Assistant Collector concerned,



then he shall decide the same within a period of six months of its preferment,
but after hearing all the affected persons.

- 15. The petition stands disposed of accordingly.
- 16. The pending applications, if any, also stand disposed of.

(SURESHWAR THAKUR)
JUDGE

February 20, 2025
harish

(VIKAS SURI)
JUDGE

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