



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

CWP-35173-2024
Date of Decision: 10.01.2025

Amandeep Kaur and othersPetitioners

Versus

State of Punjab and othersRespondents

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

Present: Ms. Puja Chopra, Advocate for the petitioners.
Mr. Maninder Singh, Sr. Deputy Advocate General, Punjab.

Sureshwar Thakur, J. (Oral)

1. Certain village proprietors, who claimed rights in shamlat deh land owned by the Panchayat deh, had filed Civil Writ Petition bearing No.29954 of 2022 titled as “Alamgir Khan Vs. Sukhwinder Singh Tiwana”. In the said writ petition relief was claimed that illegal and unauthorized occupations over shamlat deh land, rather were made by certain encroachers.
2. On the said writ petition, the hereinafter extracted mandamus was passed upon the respondent concerned.

“1. The writ petition is disposed of with a direction to the BDPO concerned, to forthwith institute a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, before the Collector concerned. However, preceding the institution of the said petition for eviction, the authorized officer concerned, shall conduct a valid demarcation of the petition lands.



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2. *On such a petition becoming instituted before the Collector concerned, the latter shall after hearing all affected persons concerned, shall make a lawful decision thereons but within six months from its institution.*

3. *Disposed of.”*

3. The learned Senior Deputy Advocate General, Punjab places, on record an order rendered by the learned Contempt Bench of this Court, contents whereof become reproduced hereinafter. Reading of the hereafter extracted order reveals, that post the passing of the supra mandamus, by this Court, an eviction petition cast under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as ‘the Act of 1961’), became instituted against the present petitioners and which ultimately resulted in a decree of eviction being passed against the present petitioners.

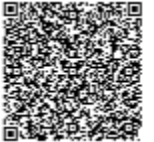
“Learned State Counsel informs that the proceedings arising out of Section 7 of the Punjab Village Common Land (Regulation) Act, 1961 have already culminated and the process of removing the encroachment shall be concluded within a period of fifteen days from today.

List on 12.11.2024.

It is made clear that in case the needful is not done, the officer concerned shall join the proceedings through video-conferencing and would be liable to pay litigation costs to the petitioner(s) to the tune of Rs.50,000/- from his/her own pocket.

To be shown in the Urgent List.”

4. Since the present petitioners, did not avail, the remedy of challenging the same through filing a statutory appeal thereagainst. As such,



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the persons interested in the shamlat deh, thus instituted a contempt petition before this Court, and on the said contempt petition, the above order became rendered.

5. Now post the passing of the decree of eviction by the learned Collector concerned, while exercising jurisdiction under Section 7 of the Act of 1961, and also without the said verdict of eviction becoming challenged in a statutory appeal becoming raised thereagainst, at the instance of the aggrieved therefrom, rather before the appellate authority concerned yet the learned counsel for the petitioners argued with much vehemence, that since in the Civil Writ Petition No.29954 of 2022, the present petitioners remained unarrayed as respondents, thereby the supra rendered order has caused breach to the principles of natural justice. This Court takes the strongest objection exception to the above argument, as the non impleadment of the present petitioners, in the said petition, especially when the ill consequences as may arise, from the non impleadment of the present petitioners, in the earlier writ petition, did become uncontrovertibly erased, through theirs becoming impleaded as parties in the eviction petition supra. However, yet the learned counsel for the petitioners, rather submits that since, therein also the said petitioners became proceeded against *ex parte*. As such, she continues to submit with much vehemence that as such there was still non adherence to the principles of natural justice.

6. This Court again takes strong exception, to the said submission, and is of the profound view, that in case the present petitioners, who were arrayed as respondents in the said eviction petition, thus were proceeded



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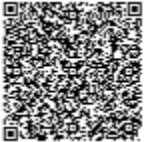
against *ex parte*, thus despite theirs' not being validly served, yet the said was a ground to be taken either in an application filed under Order 9 Rule 13 before the learned Collector concerned, seeking thereby the setting aside of the order whereby the present petitioners were proceeded against *ex parte*, or in a statutory appeal being filed thereagainst. However, none of the said recourses remained adopted. Resultantly, the supra argument is devoid of merit.

7. Significantly, since the said remedies remained unavailed at the instance of the present petitioners, therefore, the said argument is reiteratedly of no worth and is rejected.

8. For all the above stated reasons, since the remedy of appeal remains unavailed, which however if can still be availed, be availed, so that thereby the decree of eviction passed by the learned Collector concerned, can be attempted to be reversed, besides when thereby the action for contempt against drawn against the statutory authorities concerned, arising from non execution of the decree of eviction, can till the makings of the decision on the statutory appeal, but can become foreclosed.

9. Last but not the least, even without the present petitioners availing the remedy of appeal against the verdict of eviction drawn by the Collector concerned, they have prima facie availed the remedy of filing a civil suit seeking thereby the rendition of a decree of declaration besides seek rendition of a decree of permanent prohibitory injunction *viz-a-viz* the disputed lands.

10. Prima facie the availment of the said remedy is a misconstituted



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remedy as there is a statutory bar created under Section 13 of the Act of 1961 against the institution of a suit in respect of shamlat deh lands, which is the genre of the instant disputed lands.

11. Therefore, it appears that only on account of repeated misadvises and miscounsellings, thus the present petitioners recouring misconstituted remedies. As such, this Court is of the profound view, that the petitioners be advised to withdraw the civil suit and they be advised to file a statutory appeal against the verdict of eviction. In case the said statutory appeal is time barred, thereupon on an application cast under Section 14 of the Limitation Act becoming appended therewith, thus the relevant delay be considered to be condoned.

12. At this stage, the learned counsel for the petitioners submits, that the said statutory appeal shall be filed within a period of one month. Consequently, the petitioners are directed to after withdrawing the civil suit supra, thus institute within a fortnight, rather a statutory appeal before the appellate authorities, and till the filing of the statutory appeal, the parties are directed to maintain *status quo* in respect of the petition lands.

(SURESHWAR THAKUR)
JUDGE

(VIKAS SURI)
JUDGE

January 10, 2025
Varinder

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No