

(2013) 04 P&amp;H CK 0186

**High Court Of Punjab And Haryana At Chandigarh****Case No:** Civil Writ Petition No. 17326 of 2012

Gram Panchayat Village Nauch

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

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**Date of Decision:** April 1, 2013**Hon'ble Judges:** Rekha Mittal, J; Rajive Bhalla, J**Bench:** Division Bench**Advocate:** Ashwani Bura, for the Appellant; D. Khanna, A.A.G. for the Respondents Nos. 1 to 4 and Bharat Bhushan Sharma, Advocate for the Respondent Nos. 5 and 6, for the Respondent**Final Decision:** Allowed

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**Judgement**

Rajive Bhalla, J.

The Gram Panchayat of village Nauch, Tehsil and District Kaithal, has approached this Court for issuance of a writ of certiorari to set aside order dated 24.7.2012 (Annexure P-15) passed by the Commissioner, Ambala Division, Ambala. Counsel for the Gram Panchayat submits that the Commissioner has entertained a revision against an order passed by the Assistant Collector 1st Grade, Kaithal, refusing to recall warrants of possession. The Commissioner, Ambala Division, Ambala, had no jurisdiction, after orders of eviction attained finality with dismissal of Civil Writ Petition No. 9346 of 2012, to direct the Assistant Collector 1st Grade, to re-open eviction proceedings, on the basis of a civil court decree dated 07.1.1969, to decide a question of title and then also without issuing notice to the Gram Panchayat. It is further contended that once an order is passed u/s 7 of the 1961 Act, the Assistant Collector 1st Grade, thereafter, has no jurisdiction to review/recall his order, much less, during execution proceedings.

2. Counsel for the private respondents submits that the civil court decree dated 7.1.1969 was not considered by the Assistant Collector 1st Grade, Kaithal or by the appellate and revisional authorities, while passing orders of eviction. The private respondents have a right to seek recalling of the warrants of possession or orders of

eviction, by filing objections during execution proceedings. The learned Commissioner has, therefore, rightly set aside the order passed by the Assistant Collector 1st Grade, Kaithal, and directed him to decide the matter, afresh, particularly with respect to the question of title.

3. We have heard counsel for the parties, perused the impugned order as well as orders passed u/s 7 of the 1961 Act, order passed in Civil Writ Petition No. 9346 of 2012 and the order passed by the Assistant Collector 1st Grade, Kaithal, dismissing the application for recalling warrants of possession and have no hesitation in holding that the Commissioner, Ambala Division, Ambala, had no jurisdiction to pass the impugned order.

4. The Gram Panchayat filed a petition u/s 7 of the 1961 Act, for eviction of private respondents, from the land, in dispute. The private respondents filed a reply, but did not raise a plea of ownership on the basis of the civil court decree dated 07.1.1969, allegedly, passed in their favour and against the Gram Panchayat. The Assistant Collector 1st Grade, Kaithal allowed the petition on 15.4.2005, by ordering eviction of the private respondents and imposing a penalty of Rs. 10,000/-, per hectare, per year. The private respondents filed an appeal, which was dismissed by the Collector, Kaithal, on 16.8.2005. The private respondents filed a revision, which was dismissed by the Commissioner on 31.1.2006. The Gram Panchayat, filed an execution petition, in which notice was issued to the private respondents. The private respondents filed objections which were dismissed on 6.12.2011. The execution petition was allowed by the Assistant Collector 1st Grade on 06.12.2011 by directing the Block Development and Panchayat Officer, Kaithal, to take possession. The private respondents filed the revision before the Commissioner and during pendency of these revisions, filed an application on 22.2.2012 for recalling warrants of possession, issued vide order dated 6.12.2011. The private respondents pressed into service a civil court decree dated 7.1.1969, passed in Civil Suit titled as Khem Chand and others v. Gram Sabha of village Nauch through its Sarpanch. The revisions filed before the Commissioner were, however, withdrawn.

5. The private respondents, thereafter, filed Civil Writ Petition No. 9346 of 2012 by concealing orders passed in execution proceedings. The writ petition was dismissed on 17.5.2012 on merits, but by granting liberty to the private respondents, to file a suit u/s 13-A of the 1961 Act, for declaration of their title.

6. After dismissal of the writ petition, the private respondents, instead of filing a suit u/s 13-A of the 1961 Act, pressed their application for recalling warrants of possession. The application was dismissed on 29.6.2012. The private respondents, thereafter, filed a revision. The Commissioner, Ambala Division, Ambala, has, allowed the revision, vide order dated 24.7.2012, and though conscious of dismissal of the writ petition, directed the Assistant Collector 1st Grade, Kaithal, to decide the question of title, "if he is competent", by affording an opportunity to parties to lead evidence. Before passing the impugned order, the Commissioner did not issue

notice to the Gram Panchayat.

7. The impugned order, in our considered opinion, is without jurisdiction, null and void for failure to issue notice to the Gram Panchayat, for disregarding the dismissal of the writ petition, ignoring that orders of eviction, have merged into the order dismissing the writ petition and that the Assistant Collector has no jurisdiction to recall, review or reconsider an eviction order whether in execution proceedings or otherwise. This apart, the impugned order is incomprehensible. A relevant extract from the order passed by the Commissioner, reads as follows:

.....Under these circumstances the orders passed by the court below under revision is set aside and this case is remitted to the Assistant Collector 1st Grade, Kaithal with the directions whether he himself is not competent to decide the question of title under these circumstances. If at this stage he is competent to decide the question himself then by affording the opportunity of leading evidence to the parties thereafter the case may be decided on merits. The counsel for the petitioner is directed to appear before the court below on 22.8.2012.

8. A perusal of the above extract reveals that the learned Commissioner was not sure, whether the Assistant Collector 1st Grade, Kaithal, had jurisdiction in the matter, but persisted in directing him to decide the question of title, "if he is competent". A perusal of orders passed u/s 7 of the 1961 Act, particularly, the reply filed by the respondents u/s 7 of the 1961 Act, reveal that the private respondents did not raise any plea based upon the alleged civil court decree dated 07.1.1969. The Assistant Collector, while executing the order of eviction, rightly rejected the application to recall warrants of possession, but the learned Commissioner, for reasons that are neither discernible nor comprehensible, directed the Assistant Collector 1st Grade, Kaithal, who was, admittedly, exercising powers of an executing officer, and has no jurisdiction, to decide a question of title. The impugned order was, admittedly, passed without issuing notice to the Gram Panchayat. In view of what has been stated hereinabove, we have no hesitation in holding that the impugned order is null and void. The writ petition is allowed and the impugned order is set aside, with no order as to costs.