

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 24421 of 2023
Reserved on : 6.11.2023
Date of Decision: 04.12.2023**

Tajinder Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Mr. H.S.Sidhu, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

SUDEEPTI SHARMA, J.

1. The instant writ petition is directed against the concurrently made verdicts of eviction, respectively rendered by the Collector concerned dated 13.6.2022 (Annexure P-1), and, by the Commissioner concerned dated 5.9.2023 (Annexure P-7).

2. The dispute in the present case is regarding the land measuring 01 kanal and 12 marla. In respect of the same, Gram Panchayat, Ghall Kalan, Block Moga – 2, Tehsil and District Moga, moved an application for eviction of the petitioner and others before the District Development and Panchayat Officer-cum-Collector (Panchayat Lands), Moga, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') through Simranjit Singh, Sarpanch. The said eviction application was allowed vide order dated 13.06.2022 after passing a detailed speaking order and taking into consideration the evidence/witnesses produced by both the parties. Further, eviction of the present petitioner and

others from plot of 32 marla common land in the occurrence of the village Ghall Kalan Pati Mehar under Abadi Deh having Khewat No.1073/1021, Khatauni No.1381, Khasra no.283 (593 Kanal), having paved brick road in East (Surak), road in West (Rab), the paved brick road in South was ordered. Further ordered that the plot of Nirmal Singh son of Dalip Singh in North be immediately vacated.

3. The present petitioner went in appeal against order dated 13.06.2022 under Section 7(2) of the Act before the Joint Development Commissioner (IRD) (Exercising the Power of the Commissioner) Rural Development and Panchayats Department, Vikas Bhavan, Sector 62, SAS Nagar (Mohali)-respondent No.2 herein. The same was dismissed vide order dated 05.09.2023 by passing a detailed speaking order. Aggrieved by the same, the petitioner has filed the present writ petition impugning the order dated 13.06.2022 (Annexure P-1) passed by respondent No.3 and order dated 05.09.2023 (Annexure P-7) passed by respondent No. 2.

4. The learned counsel for the petitioner, has vehemently argued before this Court that Collector's Court while deciding the case did not take into consideration Section 7 of the Act. He further contends that the opportunity of being heard was never given to the petitioner and impugned order is silent about cross-examination of any witnesses.

5. So far as contention of the petitioner regarding giving an opportunity of being heard and cross-examination of witnesses is concerned, the decision dated 13.06.2022 (Annexure P-1) has been perused and it is observed that the petitioner has been given sufficient opportunity to prove his case. Relevant portions of order dated 13.06.2022 (Annexure P-1) showing that the petitioner in the present writ petition was given full

opportunity of being heard are reproduced as under :-

“After this, petitioner/applicant Simranjit Singh Sarpanch, Gram Panchayat Ghall Kalan regarding the disputed land on his behalf in favour of himself was produced the witnesses, Mr. Sukhjinder Singh, son of Mr. Tara Singh, Mr. Manpreet Singh, son of Mr. Nachhatar Singh, Mr. Baldev Singh, son of Mr. Kartar Singh, Mr. Gurdit Singh, son of Mr. Joginder Singh, Mr. Tejinderpal Singh Gill son of Mr. Sukhpal Singh, Mr. Tarsem Singh son of Mr. Gurdev Singh, Mr. Gurdeep Singh son of Mr. Sohan Singh, Mr. Navtej Singh son of Mr. Swaran Singh, Mr. Dasmal Singh son of Mr. Major Singh, Mr. Baljinder Singh son of Mr. Pritam Singh, Mr. Sukhpreet Singh son of Mr. Balwant Singh, Mr. Kulmeet Singh son of Mr. Charan Singh, Mr. Mukhtiar Singh son of Mr. Karan Singh, Mr. Jaswant Singh son of Mr. Niranjan Singh, Mr. Balwinder Singh son of Mr. Karnail Singh, Mr. Gurnam Singh son of Mr. Bhajan Singh, Written testimonies of Mr. Sukhmandar Singh son of Mr. Harbans Singh, Mr. Sukhjot Singh son of Mr. Gurdev Singh, Mr. Harbans Singh son of Mr. Milikha Singh, Mr. Hardeep Singh son of Mr. Joginder Singh, Mr. Varinder Kumar Sharman son of Mr. Jai Krishna Sharman, resident of Village Ghall Kalan has presented the written witness. In the affidavit written by the said witnesses, it is written that disputed land in the village is situated in Raika Agward of Ghall Kalan and is in front of Dharamshala. This place is a common place of the whole village and because it is in Agwad Raika, people living in Agwad used to throw garbage here, which caused pollution and diseases. Other than respondents, the rest of the people had requested the present panchayat to clean this pollution and build a park here. The Gram Panchayat and they together removed the dirt from here and cleaned the disputed area and made a wall and put soil and prepared to build a park in cooperation. But the respondents started disrupting the work and filed a case in the civil court and requested that the possession of the respondents be released from the common

land of this village and should be given to the Gram Panchayat. Thereafter, the application filed by Mr. Simranjit Singh Sarpanch, Gram Panchayat Ghall Kalan in his testimony has presented before Hon'ble Court Mr. Arun Suri, PCS, CJ(SD), Moga, copy of the Dewanit dewa (Civil Action/suit) (Ex.P5), Copy of plea by respondent No.1 & 2 (Ex.P6), Copy of plea by respondent No.3 (Ex.P7), Verified Replication (Ex.P8), Copy of verified Order dated 04/10/2019 (Ex P9), Copy of Attested Panchayat Resolution dated 24/09/2019 (Ex.P10), Copy of Attested Application by Block Development and Panchayat Officer Resolution dated 24/09/2019 (Ex.P11), Copy of the Order of District Magistrate Dated 25/09/2019 (Ex P12), Copy of the order of Block Development and Panchayat Officer (Ex.P13), and the action on the spot on dated 26/09/2019 (Ex.P14). Over and above this by closing the verbally his testimony the Sarpanch Simranjit Singh stated that he has to give the documents. The rest of the witnesses he does not want to appear in this case.

Shri. Tejinder Singh (Respondent No.1) son of Mr. Karam Singh son of Gurdayal Singh, resident of Village Ghall Kalan deposed that in his testimony he produced his verified affidavit Ex.RW1/A which is to be read in his testimony. He has come to the court with the original Panchayat letter dated 02/11/2010, the true photocopy of which is Ex.R10 (returned after seeking the original document) and the photo of his Aadhaar card is Ex.R11. The photographs attached in the file as Ex.R12 are of his brother Lachman Singh. Photo Ex.R13 is of his brother Lachhman Singh Nambardar and his son Sukhpreet Singh and in this photograph the house built by Lachhman Singh Nambardar is visible on the yellow coloured portion of the map submitted by the Panchayat. The other photographs are Ex.R14 to Ex.R21, which are shown are related with the interior of the said house and the disputed plot. The Photo copy of the Aadhaar card of his brother Harjit Singh is Ex. R22.

After the evidence/testimony of the appellant and respondents, respondents were given an opportunity to present further evidence or witnesses in their favour.

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The respondents and their counsel were repeatedly given time to present their witnesses, but the respondents were failed to produce any witnesses other than the said witnesses in Court. During the hearing of the case, the respondents and the appellants were given full opportunity to present their arguments and produce evidence. Appellant/Respondents and their counsels were well heard.”

6. A perusal of the above shows that the contention of the petitioner regarding not giving the opportunity of being heard cannot be accepted.

7. Learned counsel for the petitioner further contends that Section 2(g)4(a) of the of the Punjab Village Common Lands (Regulation) Act, 1961 as amended on 07.04.2021 would not be applicable in the case of the petitioner since the *lis* in the case of the petitioner started in the year 2019 and Collector did not give correct interpretation of Section 2(g)4(a) of the Act. For the adjudication of the present case, Section 3 and Section 2(g)4(a) of the Act are reproduced as under :-

“Section 3. Lands to which this Act applies:- (1) *This act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause (g) of Section 2.*

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Section 2(g):- ‘Shamilat deh’ includes:-

(1) *Lands described in the revenue records as Shamilat deh [but excludes abadi deh, unless otherwise expressly provided in this Act]*

(2) *Shamilat tikkas;*

- (3) *Lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used accordingly to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
- (4) *Lands used or reserved for the benefit of the village, community including streets, lanes, playgrounds, school, drinking wells, or ponds within abadi deh or gorah deh;*
- (4a) *Vacant land or plot situated in abadi deh or gorah deh not owned by any person;”*

8. So far as this contention of petitioner is concerned, the same cannot be accepted since the provisions of the Act are very clear. Section 3 of the Act says that “the act shall apply to all lands which are *shamilat deh* as defined in clause (g) of Section 2” and as reproduced above as per clause 2(g) (1) of the Act, *shamilat* includes land described in the revenue records as *shamilat deh*, but excludes *abadi deh*, unless otherwise expressly provided in this Act. Further Section 2(g)4(a) of the Act says that *shamilat deh* includes vacant land or plot situated in *abadi deh* or *gorah deh* not owned by any person.

9. Moreover, the contention of the petitioner that Section 2(g)4(a) of the Act as amended on 07.04.2021 would not be applicable, is also rejected, since the case of the petitioner was decided on 13.06.2022 that is after the amendment dated 7.4.2021. Further the vires of Section 2(g)4(a) are not challenged in the present petition.

10. Consequently, this Court finds no merit in the instant petition, and, is constrained to dismiss it.

11. Accordingly, the instant petition is dismissed. The impugned

orders dated 13.6.2022 (Annexure P-1) and 5.9.2023 (Annexure P-7) are maintained and affirmed.

12. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

December 04, 2023
Gurpreet

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