

CWP No. 13334 of 2014
DECIDED ON: SEPTEMBER 17, 2015

.....PETITIONER

VERSUS

.....RESPONDENTS

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- 1. Whether Reporters of Local papers may be allowed to see the judgment?***
- 2. To be referred to the Reporters or not?***
- 3. Whether the judgment should be reported in the Digest?***

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Surya Kant, J. (Oral)

The petitioner has laid challenge to the orders dated April 28, 2010 and July 05, 2012 (P-3 and P-4) respectively whereby, he has been ordered to be evicted from the land measuring about 100 square yards which forms a part of khewat No. 548/415 Khatauni No. 451 Khasra No. 100//1/1/4.9 situated in the

revenue estate of Village Sersa, Tehsil and Distt. Sonapat.

2. The eviction orders have been passed pursuant to an ejectment application filed by the petitioner's brother (respondent No.5) under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana). The petitioner has admittedly constructed his residential house over the encroached land and as per the spot inspection report submitted by the Block Development and Panchayat Officer, Rai (P-6) the said house was constructed many years ago.

3. This is also an admitted fact that as per the revenue record, the land in dispute is recorded as "*Gair Mumkin Abadi*" namely a part of the residential area of the village. The photographs of the house constructed by the petitioner are also appended.

4. Equally undeniable is the fact that the Gram Panchayat of the Village passed a resolution on November 19, 2012 (P-5) and sent it to the Deputy Commissioner, Sonapat for necessary approval, to sell the land in dispute measuring 100 square yards to the petitioner observing that he had been in possession of it from the last 45 years and has constructed a very old residential house. The Gram Panchayat's resolution further recites that there is no other residential house owned by the petitioner.

5. The above-stated resolution of the Gram Panchayat was awaiting approval of the Competent Authority but meanwhile, respondent No.5-brother of the petitioner had been actively pursuing the execution of eviction order, hence the instant writ petition.

6. The State of Haryana and Deputy Commissioner, Sonapat have filed

their written statement *inter-alia* pointing out that in view of the judgment of Hon'ble Supreme Court in “Jagpal Singh & others v. State of Punjab and others; 2011 (1) RCR (Civil) 912, (R-2/1) the Gram Panchayat land cannot be sold to private persons or commercial enterprises as it would amount to jeopardizing the common interest of the villagers.

7. Respondent No.5 has also filed his separate written statement controverting the petitioner's claim tooth and nail and has also opposed the resolution passed by Gram Panchayat. Respondent No.5 has further claimed that petitioner owns another residential house in the village. His learned counsel has placed reliance on a decision of this Court passed in Dalmer Singh v. State of Haryana & others; (2011) 161 PLR 779.

8. We have heard learned counsel for the parties and gone through the record.

9. It may be observed at the outset that the Deputy Commissioner in his reply-affidavit has nowhere averred that the petitioner owns any other residential house in the village. The Gram Panchayat rather has categorically observed that the only residential house of the petitioner is built at the disputed site. In this view of the matter, we have no reason to disbelieve the Gram Panchayat or the State authorities on the said question of fact.

10. The embargo created by Hon'ble Supreme Court against the sale of Gram Panchayat land to individuals or commercial entities has to be appreciated keeping in view their Lordship's observation in para 3 onwards of the cited decision. It is a fact that there are common lands in the village known as “*shamlat deh*” etc. which are meant for public utilities like ponds, school,

hospital, passages, cremation ground or grazing ground for the cattles etc. If such like lands are allowed to be sold, it is obvious that the village community will be deprived of public utilities and in any case, the posterity will face extreme hardship to create such public amenities in future when the villages are bound to witness further expansion.

11. In Dalmer Singh's case supra, this Court strongly disapproved the policy formulated by the State Government for the sale of land to those who had unauthorizedly occupied the evacuee properties or Gram Panchayat land. It may be mentioned that Section 5 of 1961 Act deals with the manner in which the lands vested in Gram Panchayat are to be utilised. The Punjab Village Common Lands (Regulation) Rules, 1964 as applicable to the State of Haryana, have been notified to give effect to the provisions of 1961 Act. Rule 12 of these Rules deals with “*purposes for which land may be sold.*” Sub rule (4) of Rule 12, which has been amended vide notification dated November 14, 2011 i.e. much after the pronouncement of the above-cited decisions, reads as follows:

“The Gram Panchayat may with the prior approval of the State Government, sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate, floor rate or market rate, whichever is higher.”

12. The spirit of the above reproduced rule is that a Gram Panchayat with prior approval of the State Government may sell its non-cultivable land to the inhabitants of the village who have constructed their houses on or before

March 31, 2000 subject to the condition that such construction does not obstruct the traffic and passers-by and subject to further condition that the land to be sold, can be upto a maximum of 200 square yards and at not less than the Collector rate, floor rate or market rate, whichever is higher.

13. Since in the instant case the 100 square yards land where the petitioner is stated to have constructed his residential house is not earmarked or reserved for any common purposes or utilities, the dictum in *Jagpal Singh & others'* case supra would not be attracted. Similarly, the decision of this Court in *Dalmer Singh's* case supra is inapplicable as there, an executive policy permitting sale of big chunks of land in favour of unauthorized occupants on highly concessional rates was rightly held to be detrimental to the interest of larger public as well as the Gram Panchayat. This is not the fact situation in the case in hand.

14. We are thus, of the considered view that (i) if the petitioner does not own any other residential house in the village; (ii) the residential house was constructed by him at the disputed site is prior to March 31, 2000; (iii) the said construction does not obstruct the traffic and passers-by; and (iv) if the petitioner is ready and willing to pay the Collector rate/floor rate or market rate which ever is higher, then there is no impediment against the approval of resolution dated November 19, 2012 (P-5) passed by the Gram Panchayat of Village Sersa.

15. The instant writ petition is accordingly disposed of in the above terms with a direction to the Deputy Commissioner, Sonapat to ascertain the fact situation and if the petitioner is found eligible in terms of sub rule 4 *ibid*, to accord the necessary approval to the Gram Panchayat's resolution and/or forward the same for necessary approval to the Competent Authority. The needful be done

within a period of four months from the date of receipt of certified copy of this order and till such time the demolition shall remain stayed.

**[SURYA KANT]
JUDGE**

**SEPTEMBER 17, 2015
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**[JASPAL SINGH]
JUDGE**