

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

CWP No.19558 of 2015 (O&M)

Date of Decision: 08.10.2015

Bhajan Singh & Ors.

... Petitioners

VS.

Joint Development Commissioner, Punjab & Anr. ... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE P.B. BAJANTHRI

Present: Mr. SD Sharma, Sr. Advocate with
Mr. SS Salar, Advocate for the petitioners

Mr. Rajesh Bhardwaj, Addl. AG Punjab

Mr. Vikas Singh, Advocate for respondent No.2

SURYA KANT, J. (Oral)

(1) The question that arises for consideration in this case is whether the Gram Panchayat is entitled to seek execution of the eviction order passed against the petitioners under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 when their declaratory petition claiming ownership *qua* the same land filed under Section 11 of the said Act is pending adjudication before the Court of competent jurisdiction?

(2) There is indeed no controversy that the eviction proceedings under Section 7 are summary in nature and the authority is justified in passing the impugned order on the basis of *prima facie* finding that the land is *shamlat deh* and it vests in favour of Gram Panchayat.

(3) As regards the title dispute between the proprietors and Gram Panchayat, the same can be resolved only through a declaratory petition to be filed under Section 11 of the 1961 Act as the jurisdiction of the Civil Court is expressly barred. It is true that the petitioners have filed the declaratory petition at a belated stage but taking into consideration all the attending circumstances, it appears that the equity and the cause of justice can be well balanced by directing time-bound disposal of such proceedings and till then the petitioners' possession can be protected conditionally.

(4) Suffice it to observe that if the petitioners furnish cash security or bank guarantee, it would cause no severe prejudice to the Gram Panchayat, for in the event of dismissal of their declaratory petition, such amount can be released in favour of Gram Panchayat to set off the losses suffered by it during the interregnum. However, if the petitioners succeed in their petition, the security amount can be refunded to them.

(5) What should be the amount of security per annum and per acre? We gave opportunity to learned counsel for the parties to assist us to fix an estimated amount in this regard.

(6) An affidavit filed on behalf of the Gram Panchayat today asserts that the annual lease amount of such like land is not less than ₹35,000 to ₹40,000 per acre.

(7) Mr. Vikas Singh learned counsel for the Gram Panchayat has also handed over a chart suggesting that in village Fatehpur which is 2 kms. away, Gram Panchayat land was leased out @ ₹30,500/- per year in 2012-13.

(8) Learned counsel for the petitioners controverts the above-stated claim as according to him the Gram Panchayat land in the adjoining village, namely, Banera Khurd has been recently leased out and that rate of lease can be the guiding factor in the instant case also.

(9) Having heard learned counsel for the parties, we dispose of this writ petition with a direction to the Collector before whom Section 11 petition is pending, to verify the lease amount of the Gram Panchayat land of villages Fatehpur, Banera Kalan and/or the adjoining villages within a period of one month from the date of receipt of certified copy of this order and compare the nature of such land with the land in dispute.

(10) Taking into consideration these factors, the Collector is directed to fix the user charges/*mesne* profits/security for the subject-land which shall not be less than ₹25,000 per annum per acre. The petitioners shall be given one month time to furnish that security either in cash or by way of unconditional and irrevocable bank guarantee from the year of institution of eviction petition.

(11) On doing so, *status quo re.* possession is directed to be maintained till the decision of the petition filed by the petitioner under Section 11 of the Act.

(12) The Court of Collector before whom such petition is pending is further directed to decide the same in accordance with law expeditiously but not beyond 31.08.2016.

(Surya Kant)
Judge

0810.2015
vishal shonkar

(P.B. Bajanthri)
Judge