

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

**Civil Writ Petition No. 27522 of 2013
Date of Order: 09.03.2015**

Kundan Singh and others

..Petitioners

Versus

The State of Punjab and others

..Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

**Present: Mr. Malkeet Singh, Advocate,
for the petitioners.**

**Mr. Rajinder Goyal, Addl.A.G., Punjab,
for respondents no.1 to 3.**

**Mr. V.K.Sandhir, Advocate,
for respondent no.4.**

RAJIVE BHALLA, J (Oral)

The petitioners pray for issuance of a writ of certiorari quashing order dated 09.05.2013 (Annexure P-8), passed by the Director, Rural Development and Panchayat, Punjab (exercising the powers of Commissioner), whereby the appeal, filed by the Gram Panchayat, has been allowed.

Counsel for the petitioner submits that vide order dated 07.11.2012, passed in Civil Writ Petition No.13260 of 2012, the Appellate Authority was directed to demarcate khasra no.82(min) and determine which part of khasra no.82(min) is "Abadi Deh" and which part is reserved for a cremation ground. A perusal of the order passed by the Appellate Authority reveals that it has not demarcated khasra no.82(min) or determined which part of the 32 kanals and 8

marlas, is the cremation ground and which part is 'Abadi Deh'. The writ petition may be allowed, the impugned order may be set aside and the Appellate Authority may be specifically directed to conduct demarcation.

Counsel for the Gram Panchayat submits that concededly, part of this land is reserved for a cremation ground for Harijans. The onus to establish which part of the land is cremation ground and which part of "Abadi Deh", lies upon the petitioners. The petitioners have, however, failed to adduce any evidence to prove the aforesaid fact, thereby disentitling them to any relief.

We have heard counsel for the parties, perused the impugned order.

The petitioners, who are sixteen in number, are unfortunately once again before us seeking the same relief as was granted in Civil Writ Petition No.13260 of 2012 (**Kundan Singh and others v. Director, Rural Development and Panchayat, Punjab and others**), decided on 07.11.2012. The petitioners laid challenge eviction orders by asserting that eviction orders have been passed without determining the exact dimensions of "Masaan Adharmi" (cremation ground) and "Abadi Deh" situated in Khasra No.82(min), total measuring 32 Kanals 8 Marlas. After considering the petitioners' submissions, the order passed by the Director, Rural Development and Panchayat, Punjab (the appellate authority), was set aside and the matter was remitted by directing the Appellate Authority to decide the appeal afresh. The operative part of the order reads as follows:-

“We have heard counsel for the parties, perused the impugned orders as well as order passed by the Collector and have no hesitation in allowing the writ petition and setting aside the order passed by the Appellate Authority. The Gram Panchayat filed a petition for eviction by alleging that the petitioners are in possession of a part of land measuring 32 kanals and 8 marlas situated in khasra no.82(min). The Collector dismissed the petition on the ground that as land, in dispute, falls within Abadi Deh, the Gram Panchayat cannot seek eviction without demarcation of the land, in dispute. The Appellate Authority, however, accepted the appeal filed by the Gram Panchayat, set aside the order passed by the Collector and held that as jamabandi for the year 2003-04, records khasra no.82(min) measuring 32 kanals and 8 marlas as “Masaan Adharmi”, i.e., the land is reserved for a cremation ground and, therefore, vests in the Gram Panchayat. The Appellate Authority lost sight of the fact that the entire land, measuring 32 kanals and 8 marlas is not “Masaan Adharmi”, i.e., a cremation ground. The Appellate Authority was required to determine which part of 32 kanals 8 marlas, is reserved to be used as “Masaan Adharmi”. The Appellate Authority was, therefore, required to order demarcation of khasra no.82(min), and only after

ascertaining the exact area of “Masaan Adharmi”, decide whether the petitioners are in possession of any portion of the land reserved as “Masaan Adharmi”.

In this view of the matter, the writ petition is allowed, the impugned order is set aside and the matter is remitted to the Director, Rural Development and Panchayat, Punjab (exercising the powers of 'Commissioner' under Punjab Village Common Lands (Regulation) Act, 1961), for deciding the appeal, afresh and in accordance with law.

Parties are directed to appear before the Director, Rural Development and Panchayat, Punjab, on 07.01.2013, who shall decide the appeal within six months from the above said date.”

A perusal of the above extract reveals that the Appellate Authority was directed to order demarcation of Khasra No.82(min) and only after ascertaining which part of the 32 kanals and 8 marlas was reserved for use as “Masaan Adharmi” (cremation ground) decide the appeal. The Appellate Authority has, however, either intentionally or by oversight, failed to comply the order and has dismissed the appeal without ordering demarcation of the land.

We, however, desist from recording any adverse opinion against the officer, but while partly allowing the writ petition and setting aside the impugned order, direct the Director, Rural Development and Panchayat, Punjab (exercising the powers of

'Commissioner' under Punjab Village Common Lands (Regulation) Act, 1961), to decide the appeal afresh and in accordance with law, after taking into consideration directions with respect to demarcation issued in order dated 07.11.2012, passed in Civil Writ Petition No.13260 of 2012.

Parties are directed to appear before the Director, Rural Development and Panchayat, Punjab, on 20.04.2015, who shall decide the appeal, within three months from receipt of a certified copy of this order.

(RAJIVE BHALLA)
JUDGE

March 09, 2015
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(AMOL RATTAN SINGH)
JUDGE