

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

CWP-27703-2013

Decided on : 12.03.2015

Balbir Singh and another

..... Petitioners

VERSUS

**The Director, Department of Rural
Development & Panchayats,
Punjab and others**

..... Respondents

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

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

Mr.Rajinder Goyal, Addl.A.G., Punjab.

**Mr.N.S.Dadwal, Advocate,
for respondent No.3-Gram Panchayat.**

RAJIVE BHALLA, J. (ORAL)

The petitioners pray for issuance of a writ of certiorari, setting aside orders dated 16.02.2010 and 09.05.2013, passed by the Collector-cum-Additional Deputy Commissioner (Development), Fatehgarh Sahib and the Director, Rural Development & Panchayats (exercising the powers of the Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the “1961 Act”), respectively.

Counsel for the petitioners submits that the petitioners are in occupation of the land, in dispute, measuring 4 marlas, since the time of their forefathers. The petitioners demolished their house and

constructed a new house leaving this 4 marlas of land vacant for tethering of their cattle and storage of cow dung. The Gram Panchayat taking advantage of this fact filed a petition under Section 7 of the 1961 Act which was decided against the petitioners but as the petitioners were owners in possession of the land, in dispute, they filed a petition under Section 11 of the 1961 Act, claiming ownership. The petition was dismissed by the Collector. The petitioners filed an appeal which has been dismissed by the Director, Rural Development & Panchayats, Punjab (appellate authority), without considering the fact that the land, in dispute, has been in possession of the petitioners' family for the last 50 years and is an integral part of the petitioners' house. Counsel for the petitioners further submits that as the land was never used for any common purpose and there is no evidence that the land was part of the street, the impugned orders holding that the Gram Panchayat is owner of the land, in dispute, are null and void and may, therefore, be set aside.

Counsel for respondent No.3-Gram Panchayat submits that the land, in dispute, was reserved for a common purpose and is part of a Cooperative Dairy Centre and an Anganwari Centre. The petitioners have encroached upon this land by tethering their cattle and storing cow dung. The impugned orders are legal and valid and may, therefore, be affirmed.

We have heard counsel for the parties and perused the impugned orders.

Admittedly, the land, in dispute, abuts the petitioners' house. The Collector and the appellate authority have recorded concurrent findings of fact that the land, in dispute, was a vacant piece of land left behind for common purposes but the petitioners have encroached upon this land and in the absence of any proof of title much less any evidence of possession before 26.01.1950, the petitioners are not entitled to a declaration of ownership. A relevant extract from the order passed by the appellate authority, reads as follows: -

“After hearing arguments of both the sides and perusing the record I have come to the conclusion that the lower court has decided the matter rightly on the basis of facts. 26 marlas land as per field book of K (kakka), G (Gagga), H (chacha) and Masawi for the year 1963-64 is being used for the common purposes of village. In this land buildings of Cooperative dairy and Anganwari Centres have been constructed. Block Development and Panchayat Officer and Collector have jointly visited the spot and verified the facts and on this basis the Collector has passed the orders in dispute. In the appeal the appellants could not produce any document or proof or plea from which it can be known that they have continuous possession over the suit land since 26 January, 1950. They also cannot produce any proof from showing their possession. During arguments this also brought to the notice that G and 'GH' land is vacant where Gram Panchayat has got constructed the drain. As per report of Kanungo K (kakka), KH (khakha), G (Gagga) is part of Khasra No. 104 which is not owned by private and is being used for the common purposes. The appellants could not produce any document regarding payment of land revenue nor could produce any document before consolidation and after consolidation on the basis of which they can be given benefit. Gram Panchayat is owner of land in dispute. There is no merit in the appeal. So the appeal is dismissed and the impugned orders are restored.”

A perusal of the aforesaid extract reveals that the land, in dispute, as per field book and masawi, was being used for common

purposes of the village. A building of a Cooperative Dairy Centre and Anganwari Centre exist in the land but it appears that as this 4 marlas of land abutted the petitioners houses, they encroached upon this land and began tethering their cattle and storing cow dung. The petitioners have no right, title or interest in the land, in dispute whether proprietary or possessory. It would also be appropriate to point out that this land adjoins the Phirni.

Consequently, finding no merit in the writ petition and no error of jurisdiction or of law in the concurrent findings of fact recorded by the Collector and the appellate authority, the writ petition is dismissed.

[RAJIVE BHALLA]
JUDGE

12.03.2015
Shamsher S.Sabharwal

[AMOL RATTAN SINGH]
JUDGE