

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

[1] Civil Writ Petition No.10319 of 2014 (O&M)
Date of Decision: February 29, 2016

Gurcharan Singh and othersPetitioners

versus

State of Punjab and othersRespondents

[2] Civil Writ Petition No.8949 of 2015 (O&M)
Date of Decision: February 29, 2016

Mohinder SinghPetitioner

versus

State of Punjab and othersRespondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT.
HON'BLE MR.JUSTICE P.B.BAJANTHRI.

Present: Mr.Rakesh Chopra, Advocate and
Mr.Rajbir Singh, Advocate, for the petitioners.
Mr.Rajesh Bhardwaj, Additional AG, Punjab.
Mr.J.S.Bhandohal, Advocate for respondent No.4.

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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?

Surya Kant, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.10319 of 2014 and 8949 of 2015 as common questions of law and facts are involved in both the cases.

[2] For brevity, the facts are being extracted from CWP No.10319 of 2014.

[3] Petitioner Nos.1 & 2 and proforma respondent No.5 are sons of Sadha Singh. They have laid challenge to the order dated 18.03.2013 passed by the Director, Rural

CWP No.10319 of 2014 and
CWP No.8949 of 2015.

[2]

Development and Panchayats-cum-Appellate Authority under the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the 1961 Act'), directing them to make good the loss of Rs.3,40,000/- said to have been caused to the Gram Panchayat due to forcible and illegal retention of possession of the Gram Panchayat land.

[4] The primary contention of the petitioners is that the land in dispute, statedly owned by the Gram Panchayat, was in exclusive possession of their brother (Mohinder Singh-proforma respondent No.5) and it is so evident from the findings returned by the Civil Court vide judgment and decree dated 13.10.1998 (P-8) which was filed by Mohinder Singh against the Gram Panchayat and some residents of the village. Reliance is also placed on the Civil Court decree dated 27.03.2004 (P-10) whereby the suit for declaration and mandatory injunction filed by the respondent-Gram Panchayat to set-aside the earlier Civil Court judgment and decree dated 13.10.1998 in favour of Mohinder Singh-proforma respondent No.5, was dismissed. Similarly, they rely upon the judgment dated 24.02.2003 of Sub Divisional Judicial Magistrate, Amloh (P-8/A) acquitting them and their brother (Mohinder Singh) in a case under Sections 148/447/ 506/323/149 and 427/149 IPC, wherein also the controversy pertained to forcible possession of the land in dispute.

[5] On this premise, it is contended that since the petitioners were never ever in physical possession of the suit land and their brother Mohinder Singh also relinquished the possession more than a decade back, the impugned orders levying penalty of Rs.3,40,000/- as damages on the petitioners for causing loss to the Gram Panchayat are unsustainable in

law. The petitioners assert that when their possession on the Gram Panchayat land is not proved, the question of depriving the Gram Panchayat of its income from such shamlat land does not arise.

[6] Having given our thoughtful consideration to the rival submissions, we do not find any merit in the above-stated plea taken by the petitioners.

[7] It may be noticed that in its recovery petition filed under Rule 20-A of the Punjab Village Common Lands (Regulation) Rules, 1964, Gram Panchayat sought recovery of Rs.40.00 lacs from the petitioners and their brother Mohinder Singh. The Gram Panchayat has categorically averred in para-3 that all of them took possession of the land from the Gram Panchayat on lease-hold basis through a public auction but thereafter refused to surrender vacant possession for years.

[8] The petitioners filed a joint written-statement alongwith their brother Mohinder Singh maintaining that their father Sadha Singh was in possession of the land as per his share in the shamlat land. It is obvious that after the death of their father, the petitioners alongwith their brother Mohinder Singh jointly succeeded to that possession.

[9] The petitioners are also guilty of concealing material facts. They have in a very selective manner disclosed in para-7 of the petition that earlier their predecessors/they had filed a declaratory petition under Section 11 of the 1961 Act claiming ownership rights over the suit land and the same was dismissed. Those orders have attained finality. Instead of giving full particulars of those orders, the following passing reference has been made:-

“.....Said Sadha Singh had already died, during

the pendency of proceedings before respondent No.2 and petitioners and respondent No.5 are his sons and as such, he is not impleaded as party to this civil writ petition and moreover no relief is being claimed against him. Petition by the petitioners and respondent No.5 u/s 11 of the Punjab Village Common Lands (Regulation) Act, 1961 has been declined against which the petitioners intend to file civil writ petition.....”

[10] It is thus revealed that petitioners' father filed a petition under Section 11 of the 1961 Act for declaring him owner of the suit property which was dismissed by the Court of Collector. The eviction proceedings filed by the Gram Panchayat, on the other hand, succeeded and the predecessor-in-interest of the petitioners (their father) was ordered to be evicted. As they retained possession of the shamlat land forcibly, the Gram Panchayat got registered a criminal case against them under Sections 323, 506, 427, 447 148 & 149 IPC. It was in these circumstances that the loss caused to the Gram Panchayat due to forcible retention of possession has been assessed and a recovery of Rs.3,40,000/- has been imposed on the petitioners.

[11] The plea that the petitioners had handed-over possession of the land in dispute to the Gram Panchayat about 13-14 years back and no user charges/mesne profit/damages can thus be recovered from them, is ex-facie false. The petitioners have been resisting their dis-possession till 23.7.2013 when the Gram Panchayat finally took-over the possession. The damages have been assessed for the period

CWP No.10319 of 2014 and
CWP No.8949 of 2015.

[5]

the petitioners or their predecessor-in-interest remained in actual physical possession of the Gram Panchayat land. Since the issue regarding retention of forcible possession is purely a question of fact which has been concurrently answered against the petitioners, no case to interfere with the impugned orders is made out.

[12] Dismissed.

[SURYA KANT]
JUDGE

February 29, 2016
mohinder

[P.B.BAJANTHRI]
JUDGE