

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.3167 of 2015 (O&M)

Date of Decision: 12.05.2016

Diwan Chand & Ors.

... Petitioners

VS.

State of Haryana & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE A.B. CHAUDHARI**

Present: Mr. JS Mehendiratta, Advocate for the petitioners
Ms. Kirti Singh, DAG Haryana
Mr. AK Chauhan, Advocate for
Mr. Arvind Singh, Advocate for respondent No.5
Mr. Ranjit Saini, Advocate for respondent No.6

SURYA KANT, J. (Oral)

(1) The controversy in this case pertains to the encroachment said to have been made by the petitioners over the Gram Panchayat land. The eviction order dated 30.08.2011 (P11) was passed at the instance of respondent No.6 – the complainant. The appeal and the revision petition preferred against the eviction orders have also been dismissed.

(2) The aggrieved petitioners have approached this Court.

(3) When the matter came up for preliminary hearing on 23.02.2015, it was stated that the land encroached upon by the petitioners is part of the school premises and they are ready and willing to give equivalent vacant land in exchange to the Gram Panchayat out of Khasra No.63 which also adjoins the school premises and which can thus be utilized for the purpose of playground of the school. Keeping in view this offer, notices were issued upon which the respondents have put in appearance and have filed their written statements opposing the petitioners' claim.

(4) As there was a dispute with regard to the total area under occupation of the petitioners, a fresh demarcation was directed to be

submitted under the supervision of the Local Commissioner appointed by this Court. Pursuant thereto, the Local Commissioner has submitted his report which establishes beyond any doubt that the petitioners are under unauthorized possession of the Gram Panchayat land though the area under their occupation varies from person/family to person/family.

(5) Faced with this report, learned counsel for the petitioners made another offer duly recorded in our order dated 25.02.2016 which read as follows:-

“In view of the report submitted by a team of the revenue officials as well as Local Commissioner, the petitioners have been found to be in unauthorised occupation of the Gram Panchayat land, though the area under their occupation is varying. Be that as it may, counsel for the petitioners re-states that while petitioners No. 2 and 3 are ready and willing to give land to Gram Panchayat double of the encroached land, other petitioners are willing to pay its market price as may be got assessed by the Gram Panchayat.

Since a new Gram Panchayat has been recently constituted, let it consider the claim of the individual encroachers on merits and take appropriate decision.”

(6) The Deputy Commissioner, Yamuna Nagar has also filed reply-cum-affidavit pointing out that Rule 12 of the Punjab Village Common Land (Regulation) Rules, 1964 as applicable to the State of Haryana envisages

that the Gram Panchayat may with the prior approval of the State Government sell its non-cultivable land in shamlat deh to the inhabitants of the village who have constructed their houses on or before 31st March, 2000 provided that they do not have any residential house and provided further that the constructed area or an appurtenant area upto a maximum of 200 sq.yards at not less than collector rate i.e. floor rate or market rate, whichever is higher.

(7) The Deputy Commissioner has further appended a list of encroachers whose possession cannot be regularized. Most of the petitioners admittedly fulfill the conditions prescribed under the Rules.

(8) We have heard learned counsel for the parties at a considerable length and gone through the record.

(9) In our considered view, the authorities need to invoke powers under Rule 12 *ibid* and determine the market value of the land to the extent it is under occupation of the petitioners, namely, the land where houses are constructed. Wherever the vacant area can be segregated from the residential house, it can be separated and utilized for earmarked purpose i.e. school premises.

(10) As regard to the land where houses have been constructed by the petitioners, the Gram Panchayat and the Deputy Commissioner can exercise either of the two options, namely, (i) to take land double of the occupied/encroached land from the petitioners wherever they offer such land provided that the market value of such land is not less than the market value of the encroached land; or (ii) the Gram Panchayat may pass resolution whereupon the Deputy Commissioner shall get the market value of the land

assessed and in that case, the petitioners instead of giving double of the land shall be liable to pay such value.

(11) Wherever the area under occupation of the petitioner is more than 200 sq.yards, the Deputy Commissioner may re-ascertain as to how many family(ies) are residing and whether such families are to be treated as 'separate units' or one unit.

(12) The land to be offered by the petitioners must be in close vicinity of the school so that it can be utilized for identified common purpose.

(13) The needful shall be done within four months from the date of receipt of a certified copy of this order. Till then *status quo* shall continue to be maintained.

(14) Disposed of accordingly.

(Surya Kant)
Judge

12.05.2016
vishal shonkar

(A.B. Chaudhari)
Judge