

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-1256 of 2017

Date of Decision:- 08.02.2017

Gurdev Singh Lambardar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE S.S.SARON
HON'BLE MR. JUSTICE DARSHAN SINGH

Present:- Dr. Rau P.S.Girwar, Advocate,
for the petitioner.

S.S.Saron, J.

Sh. Gurdev Singh Lambardar has filed the present petition under Articles 226/227 of the Constitution of India seeking issuance of a mandamus to respondents No.2 to 5 to take immediate and appropriate action against respondents No.7 to 17 who it is stated are in illegal possession of the public/panchayat land situated in Village Takoran, Hadbast No.52, Tehsil Pehowa, District Kurukshetra. It is further prayed for directing respondents No.7 to 17 to vacate the said public land and penalise them for misuse of public/panchayat land for a long time and for directing respondents No.2 to 5 to explain as to why they have not taken any action against the guilty private respondents No.7 to 17 despite several complaints/representations dated 26.09.2016 (Annexure P-3), dated 26.09.2016 (Annexure P-4), dated 26.09.2016 (Annexure P-5) and dated 10.10.2016 (Annexure P-6) made by the petitioner.

According to the petitioner, the said land which is in unauthorized occupation of respondents No.5 to 17 had been allotted for use of general public works for the villagers. Therefore, the said respondents are liable to vacate the same.

The petitioner in Para No.III of his petition has stated that there is no other alternative, effective and speedy statutory remedy available by way of an appeal or revision except to invoke the extraordinary writ jurisdiction of this Court under Articles 226/227 of the Constitution of India.

On the last date of hearing i.e. 25.01.2017 when the case was taken up for hearing it was recorded in the order that was passed that the petitioner had a remedy under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in Haryana) ('the Act'-for short). Section 7 of the Act reads as under:

“7. Power to put Panchayat in possession of certain lands.-- (1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamilat deh

of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:” (Emphasis added)

It is not in dispute that the petitioner is an inhabitant of village Takoran, Hadbast No.52, Tehsil Pehowa, District Kurukshetra where the illegal encroachments of the Panchayat land are alleged to have been made. In terms of the above Section 7 of the Act, an inhabitant of the village is also entitled to apply before the Assistant Collector of the First Grade to put the Panchayat in possession of land.

Learned counsel appearing for the petitioner, however, has stated that in terms of Rule 16 of the Punjab Village Common Lands (Regulation), Rules 1964 (as applicable to Haryana) ('the Rules'-for short) it is primarily the Panchayat which can sue. Rule 16 of the Rules reads as follows:

“16. Procedure where panchayat sues or is sued in its representative capacity. - [Sections [15(2)(h)]. -

(1) The panchayat shall by a resolution to be recorded in the proceeding book, appoint its sarpanch or any other panch to contest any suit filed by or against the panchayat. The sarpanch or panch so appointed shall file a copy of the resolution duly attested by the sarpanch under the seal of the panchayat in the court

along with other documents.

(2) The actual expenditure incurred in the defence of the case shall be chargeable to the funds of the panchayat.

(3) The sarpanch or panch so appointed shall not be competent to compound or admit claim of the party suing the panchayat without prior authorization by the panchayat by a resolution in writing passed in a meeting specifically called for the purpose [and prior approval of Block Development and Panchayat officer concerned]. If any decree or order is passed by the court as a result of fraud, misrepresentation, concealment of facts or collusion with the opposite party, the sarpanch or panch shall be personally liable for the loss caused to the panchayat.”

The above, Rule 16 relates to a case where the Panchayat is to contest any suit filed by it or is filed against it, in which case the Panchayat is to pass a resolution and it is to be recorded in the proceedings. In terms of the resolution that is passed, a Sarpanch or the other Panch is to be appointed to contest any suit filed by a Panchayat or against it. Therefore, the provision of Rule 16 is confined to the Panchayat where it is sued or it is to sue. Section 7 of the Act, however, is independent of Rule 16 and an inhabitant of the village, like the petitioner, can file an application before an Assistant Collector of the First Grade for putting the Panchayat in possession of the panchayat land.

According to learned counsel for the petitioner, despite the

representations Annexures P-3 to P-6, no action has been taken by the officials of the Rural Development and Panchayat Department.

It may be noticed that the representation (Annexure P-3) is addressed to the Deputy Commissioner, Kurukshetra, the representation (Annexure P-4) is addressed to the District Development and Panchayat Officer, District Kurukshetra, the representation (Annexure P-5) is addressed to the Block Development and Panchayat Officer, Pehowa, District Kurukshetra and the representation (Annexure P-6) is address to the Principal Secretary-Cum-Commissioner, Department of Panchayat and Development. The mere filing of representations would not be of much use as it is a petition that is to be filed in terms of Section 7 of the Act before an Assistant Collector exercising such powers under the Act. The language of Section 7 of the Act is clear and an inhabitant of the village can file such a petition for putting the Panchayat in possession of the land which is stated to be under unauthorized occupation of anyone.

The Hon'ble Supreme Court in State of Uttar Pradesh v. Singhara Singh AIR 1964 SC 358 has held that the principle that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that the other methods of performance are necessarily forbidden applies to judicial officers. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. When a statute confers a power on certain judicial officers, that power can obviously be exercised only by those officers. No other officer can exercise that power, for it has not been given to him.

Therefore, the petitioner is liable to follow and adopt the procedure which the law provides and all other methods are forbidden.

In terms of Section 7 of the Act, any villager can approach the Collector to protect the interest of 'shamlat' land vested in the Gram Panchayat and *locus standi* is not restricted to an officer of the State Government. As such, where the petitioner has an alternative remedy it would be just and expedient that he first exhausts the said remedy by filing an appropriate petition in terms of Section 7 of the Act before the Assistant Collector concerned. It is needless to mention that in a petition filed before the Assistant Collector First Grade by an inhabitant of the village, the persons stated to be in illegal or un-authorized occupation of land are to be arrayed as parties and notices issued to them and they can be heard in support of their case, besides, documents and evidence can be produced on record. This exercise can more appropriately be carried on before the Assistant Collector concerned and it would be inexpedient for this Court to go into the same.

In the circumstances the writ petition is disposed of leaving it to the petitioner, if so advised, to file an appropriate petition under Section 7 of the Act before the Assistant Collector concerned.

(S.S.SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

February 08, 2017
mohan

Whether speaking /reasoned

Yes / No

Whether Reportable

Yes / No