

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

**CWP No. 18851 of 2016 (O & M)
Date of Decision:-12.05.2017**

Parminder Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE S.S. SARON

HON'BLE MR. JUSTICE HARI PAL VERMA

Present:- Mr. Jaswinder Singh, Advocate
for the petitioners.

Mr. P.P.S. Thethi, Addl. A.G., Punjab assisted by
Mrs. Rupinder Kaur, Block Development and Panchayat
Officer, Jagraon with additional charge of Sudhar.

S.S. Saron, J.

Learned State counsel has placed on record letter No.233 dated 11.5.2017 issued by the Block Development and Panchayat Officer, Sudhar to the Tehsildar, Raikot relating to demarcation of the land that is alleged to have been encroached upon. The same is taken on record.

The petitioners have filed the present petition under Articles 226/227 of the Constitution of India *inter alia* alleging that obstruction has been caused on the public street ('panchayati gali') originating from Raikot road and running towards Abadi of New Abadi Akalgarh, Tehsil Raikot, District Ludhiana i.e. from the East to West direction for the past more than 40 years by raising a concrete wall six feet in height having length of 159'-6" in front of houses of petitioners No.1 and 2 and having a width of

5'-6" as depicted in the photographs of the site (Annexure P-4 colly.), the jamabandi for the year 1966-67 (Annexure P-8) and survey plan (Annexure P-12) of the village prepared by the Executive Engineer, Panchayati Raj Public Works (C&M) Division, Ludhiana, which have been placed on record.

The petitioner has placed voluminous documents and material on record, which are quite irrelevant. However, what is borne out is that petitioners' allege that land comprised in rectangle No.34, Khasra No.19/2/1, 19/1/2 and 18/1 situated in the revenue estate of New Abadi Akalgarh, Tehsil Raikot, District Ludhiana is owned and possessed by the Gram Panchayat and it has been encroached upon by respondents No.5 & 6. The Halqa Kanungo Sudhar submitted a report dated 30.10.2015 (Annexure P-6) in this regard. It has been alleged that encroachments had been made on the land. The disputed site, it is mentioned, is one 'karam' (5½ feet) wide and seventeen 'karams' (93½ feet) long and is located in khasra No.18, 19/1 and 19/2 of rectangle No.34 on the Northern side. It is stated as regards the disputed site, which is 172 feet (31 karams) towards the Western side a concrete wall had been raised. It is stated by the Kanungo that on going through the records, it was revealed that mutation No.1326 mentions that there is a 'rasta' (passage) of one 'karam' (5½ feet) wide which adjoins rectangle No.34, Khasra Nos.18, 19/1 and 19/2 on Northern side and it has a length of 27 'karams' along rectangle No.34, Khasra No.18 by carving out a supplement of rectangle No.34, Khasra No.18/1 measuring 3 marlas; besides, rectangle No.34, Khasra No.19/1 having length of 32 'karams' and

one 'karam' wide supplement to rectangle No.34, Khasra No.19/1/2 having an area of four marlas and rectangle No.34, Khasra No.19/2 having length of 8 'karam' and width of one 'karam' supplement to rectangle No.34, Khasra No.19/2 by carving out supplement to rectangle No.34, Khasra No.19/2/1 with an area of one marla. In this manner, there is total length of 67 'karams' and width of one 'karam'. It is mentioned that this total area of eight marlas is of 'nehri khal' (canal water course) but the area had come within the 'abadi' (habitation). As such, canal irrigation was not being done and this area was lying vacant, but it had been bifurcated into two parts by raising a concrete wall. It is mentioned that the case inter se the parties was decided by the Additional Civil Judge (Sr. Div.), Jagraon on 30.08.2014, which pertains to land in rectangle No.34, Khasra No.19/1/1/2 (4-9) and 19/2/2 (1-11) having an area of six kanals, which was the ownership of Manjit Kaur wife of Rajinder Singh Litt. The decision had been in favour of Manjit Kaur but the disputed khasra numbers i.e. rectangle No.34, Khasra No.18/1, 19/1/2 and 19/2/1 were not part of the land included in the said case. Land in rectangle No.34, Khasra No.18/1 was lying vacant and on land in Khasra No.19/1/2 Rajinder Singh Litt was in possession; besides, land in Khasra No.19/2/1 was also in possession of Rajinder Singh Litt and he had raised a wall on the land in Khasra No.19/1/2. Therefore, it is the said land from which encroachment it is prayed is liable to be removed.

Notice in the case was not issued as it was considered that the matter regarding encroachments of Gram Panchayat land is to be considered by the competent Court and this Court in exercise of jurisdiction under

Articles 226/227 would not be in a position to go into disputed question of facts which may arise. However, a copy of the petition was given to the learned State counsel to get instructions in the matter.

Learned State counsel has submitted the aforesaid letter dated 11.5.2017, which is addressed by the Block Development and Panchayat Officer, Sudhar to the Tehsildar, Raikot for demarcation of the 'nehri khal' (canal water course). In respect of the demarcation it is mentioned that Gram Panchayat had submitted a copy of the resolution in the office of Block Development and Panchayat Officer, Sudhar for filing a case under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 ('1961 Act' - for short) in respect of land in rectangle No.34, Khasra Nos.18/1, 19/1/2, 19/2/1 and 20/1 that had been encroached upon and was under illegal occupation.

Therefore, the Gram Panchayat, Sudhar has passed a resolution for getting the encroachments of the 'nehri khal' (canal water course) land in new 'abadi', Akalgarh vacated.

In respect of encroachment on Panchayat lands, Hon'ble the Supreme Court in Jagpal Singh and others v. State of Punjab and others, (2011) 11 SCC 396 held that Gram Sabha land must be kept for use of villagers of the village and common interest of the villagers is not to suffer merely because unauthorized occupation had been subsisting for many years. A letter dated 26.09.2007 issued by the State Government in favour of unauthorized occupants was held to be illegal, invalid and without jurisdiction. It was said that the constructions must be removed and

possession be restored to the Gram Panchayat. It was further ordered that all State Governments permitting Gram Sabha land to private persons and commercial enterprises on payment of money were illegal and should be ignored. The State Governments were directed to prepare a scheme for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/poramboke/shamlat land and restore them to the Gram Panchayat.

In the circumstances, in case there has been encroachment of the Gram Panchayat land, then the Panchayat is liable to take action in accordance with law depending upon the kind of land for common purposes. There are primarily two kinds of lands which are for common purposes. One is the 'Shamlat Deh' lands, which vest with the Panchayat under Section 4 of the 1961 Act. The other are the lands are described in the revenue records as 'Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba' ('Jumla Malkan' - for short) lands reserved for common purposes under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ('1948 Act' - for short), the management and control whereof vests in the Gram Panchayat under Section 23 A of the aforesaid 1948 Act. The land is reserved for common purposes by imposing a pro rata cut on the rights of the land holders. In terms of Rule 16 (ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 ('1949 Rules' - for short), these lands for common purposes vest in the proprietary body of the estate or estates concerned and are to be entered in the column of ownership of the

record of rights as 'Jumla Malkan Wa Digar Haqdara Arazi Hasab Rasad Raqba' or 'Jumla Malkan' lands. The ownership of the 'Jumla Malkan' lands vest with the proprietary body of the village although the management and control of the same vest with the Panchayat in terms of Section 23-A of the 1948 Act. Such lands can be used for common purposes as provided for in Section 2 (bb) of the 1948 Act.

It is to be noticed that wherever there are encroachments on public lands the procedure for eviction that is applicable to the particular land is to be followed.

In State of Uttar Pradesh v. Singhara Singh and others, AIR 1964 SC 358 it was said that the where a power is given to do a certain thing in a certain way, the thing must be done in that way or not done at all and that the other methods of performance are necessarily forbidden. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted. The rule adopted in Taylor v. Taylor (1876) 1 Ch D 426 was followed and it was said the rule is well recognized and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted.

In case of encroachments of 'Shamlat Deh' land, the 1961 Act is applicable and in respect of encroachment of 'Jumla Malkan' lands which

have been reserved for common purposes during consolidation proceedings, the 1948 Act and the 1949 Rules are applicable.

Therefore, the Gram Panchayat or the officers of the Block Development and Panchayat Officer are first liable to ascertain as to whether there is indeed encroachment on the land as has been alleged by the petitioners. In case there is encroachment, it is required to be ascertained whether the common land that had been encroached is 'Shamlat Deh' land and in case it is so, procedure for eviction is to be initiated before the Collector under Section 7 of the 1961 Act.

In Gram Panchayat village Sidh v. Addl. Director Consolidation of Holdings, Punjab and others , 1997 (1) PLJ 313 (Supreme Court) the consolidation proceedings were completed in the village in the year 1953-54. Prior to consolidation proceedings, an entry regarding khewat No.78 measuring 1000 bighas, 16 biswas was made in the jamabandi as 'shamlat deh hasab rasad raqba khewat'. After consolidation, the entry in the revenue record was in similar terms. The Additional Director, Consolidation by an order dated 01.05.1990 changed the mutation entry in the revenue record and distributed part of the land amongst the right holders. Hon'ble the Supreme Court held that after the enforcement of the 1961 Act, the question of ownership could only be decided by the Collector under Section 11 of the Act.

The said judgment was followed in Gram Panchayat village Kot Mana v. Addl. Director, Consolidation of Holdings, 1998 (2) PLJ 427 (Supreme Court) wherein the question raised by the Gram Panchayat in the

said case was whether the contesting respondent could have invoked the provisions of Section 42 of the 1948 Act after a period of almost 34 years when consolidation proceedings were completed in the year 1959-60 and they applied under Section 42 of the 1948 Act on 20.1.1994. The said question was not considered by the High Court. It was held that in an identical situation, a Bench of two learned Judges of the Supreme Court in Gram Panchayat village Sidh v. Addl. Director Consolidation of Holdings, Punjab and others (supra) had taken the view that in such circumstances the matter should be remanded to the High Court for a fresh decision.

From the above it follows that in respect of 'shamlat deh' lands which vest in the Gram Panchayat, the procedure provided for removing encroachments is contained in the 1961 Act, which is to be followed.

In the case of 'Jumla Malkan' lands, the provision of the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976 ('1976 Act' - for short) applies. The said Act reads as follows:-

“The Punjab Gram Panchayat (Common Purposes Land) Eviction And Rent Recovery Act, 1976.

(Punjab Act No. 20 of 1976)

[Received the assent of the President of India on the 22nd April, 1976 and was first published for general information in the Punjab Government Gazette (Extra-ordinary) Legislative Supplement, dated the 28th April, 1976.]

An Act to provide for the eviction of unauthorized

occupants from land reserved for common purposes under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the management and control whereof vests in the Gram Panchayat and for certain incidental matters.

Be it enacted by the Legislature of the State of Punjab in the Twenty seventh year of the Republic of India as follows:-

1. Short title and commencement. (1) This Act may be called the Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976.

(2) It shall come into force at once.

2. Definitions. In this Act, unless the context otherwise requires,-

(a) "common purposes land" means land reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act;

(b) "Government " means the Government of the State of Punjab.

3. Application of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 to common

purposes land. Notwithstanding anything contained in any law for the time being in force, the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as the Principal Act) shall apply to common purposes land which shall be deemed to be public premises for the purposes of the Principal Act.

4. Appeal. Notwithstanding anything in the Principal Act, an appeal under Section 9 of that Act in relation to common purposes land shall lie to an officer not below the rank of a Joint Director of Panchayats appointed by the Government for the said purpose who shall be deemed to be the Commissioner under the Principal Act.”

A perusal of the above shows that for common purposes land notwithstanding anything contained in any law for the time being in force, the Punjab Premises and Land (Eviction and Rent Recovery) Act, 1973 ('1973 Act' - for short) known as Principal Act is to apply to common purposes land which are deemed to be public premises for the purposes of the Principal Act i.e. the 1973 Act. Besides, notwithstanding anything in the Principal Act i.e. the 1973 Act an appeal under Section 9 of the 1973 Act in relation to common purposes land shall lie to an officer not below the rank of Joint Director of Panahyats appointed by the Government for the said purpose who is deemed to be the Commissioner under the Principal

Act i.e. 1973 Act. Therefore, in case of encroachments of the gram panchayat lands which are reserved for common purposes under Section 18 of the 1948 Act, then proceedings for eviction are to be initiated in accordance with the provisions of the 1976 Act read with the 1973 Act. This exercise is to be carried out by the Gram Panchayat or the Officer of Block Development and Panchayat Officer in accordance with law. It is to be first ascertained as to whether there are encroachments and in case there are, what is the kind of common land and then apply the proper procedure for removal of the encroachment after giving an opportunity of hearing to those who are alleged to have made the encroachments.

The writ petition is accordingly disposed of.

(S.S. SARON)
JUDGE

May 12, 2016
Vijay Asija/amit

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes