

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIHGARH.

Civil Writ Petition No.2191 of 2017
Date of Decision: 13.02.2017

Gurnam Singh and others

..Petitioners

versus

Joint Development Commissioner, Punjab, SAS Nagar, Mohali and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR.JUSTICE RAMENDRA JAIN

Present: Mr. A.S.Salar, Advocate,
for the petitioners.

RAMENDRA JAIN, J.

1. Put pithily, during consolidation, land measuring 842 Bigha-17 Biswa comprising khewat no.105, was left out by imposing a cut for common purposes, while distributing the land measuring 2862 Bigha-10 Biswa entered as “Shamilat Deh Hasab Rasad Arazi Khewat”. Out of the said area, land measuring 244 Bigha-01 Biswa was used for common purposes of the village and remaining land measuring 596 Bigha-16 Biswa was left for common pool and recorded as “Shamilat Deh Hasab Rasad Raqba Khewat”. Mutation No.968 was sanctioned in the name of “Nagar Sabha”. In the meanwhile, the alleged proprietors of the village as well as the Gram Panchayat of the village started asserting their possession over this land of common pool (hereinafter referred to as “the disputed land”). The alleged proprietors of the village filed a civil suit for permanent injunction, which was dismissed on 12.8.1986. However, appeal against the judgment was accepted by the Additional District Judge, Patiala on

25.05.1988, against the Gram Panchayat of village Banera Kalan and other defendants restraining them from putting the land to auction/lease out or forcibly and illegally dispossessing the alleged proprietors from the land in dispute. However, one Kala Singh and others belonging to the scheduled caste category, filed Civil Writ Petition No.26677 of 2014, raising their grievance that the Gram Panchayat of the village was not auctioning the shamilat deh land in accordance with the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the Act”) according to which, 1/3rd of the land had to be reserved for the scheduled caste category. The said writ petition was disposed of vide order dated 24.12.2014 (Annexure P-1) directing the District Development and Panchayat Officer, Patiala and the Block Development and Panchayat Officer, Nabha (respondent nos.3 and 4), to intervene and take an appropriate action in accordance with law. Since the grievance of Kala Singh and others was not redressed, therefore they filed another Civil Writ Petition No.11551 of 2015, which was disposed of vide order dated 28.05.2015 (Annexure P-2) with the direction to the Deputy Commissioner, Patiala, to ensure that adequate protection is provided to the Gram Panchayat and the persons interested who may take part in the auction. In the meanwhile, the Gram Panchayat, Banera Kalan, filed an eviction petition under Section 7 of the Act against some of the alleged proprietors of the village, namely, Bhajan Singh and others, which was accepted by the Collector-cum-District Development and Panchayat Officer, Patiala, vide order dated 17.6.2015 (Annexure P-3) holding that the land in dispute was under the ownership of “Nagar Sabha” vide jamabandi for the year 2008-09, but in the column of cultivation, the names of the respondents were

recorded from which it was evident that they were in illegal possession of the same. Consequently, the order of eviction was passed directing the Block Development and Panchayat Officer, Nabha, to take possession of the disputed land. Being aggrieved, some of the alleged proprietors of the village filed their separate appeals against the abovesaid eviction order dated 17.6.2015 (Annexure P-3), which was dismissed vide order dated 27.8.2015 (Annexure P-4) by the Joint Development Commissioner (IRD), SAS Nagar, Punjab, exercising the powers of Commissioner under the Act. In the meanwhile, Bhajan Singh and 104 others, the alleged proprietors of the village, filed a petition under section 11 of the Act, seeking declaration of their ownership over the disputed land, which was dismissed vide order dated 10.05.2016 (Annexure P-6) passed by the Divisional Deputy Director, Department of Rural Development and Panchayat, Patiala, exercising the powers of Collector, on the ground that the alleged proprietors/petitioners failed to deposit the lease money @ ₹ 26,000/- per acre per year within one month from 25.01.2016 as mesne profits by way of fixed deposit in the name of the Collector/Divisional Director, Department of Rural Development and Panchayat, Patiala, despite affording four opportunities. Thus, it was abundantly clear that the petitioners were not interested to continue with their case. Being aggrieved, out of the one hundred five petitioners, seventy eight persons preferred an appeal under section 11(2) of the Act before the Joint Development Commissioner, Punjab, SAS Nagar, Mohali (exercising the powers of Commissioner under the Act), which too was dismissed vide order dated 19.10.2016 (Annexure P-9) giving reference to the order dated 08.10.2015 (Annexure P-5) passed by this court in Civil Writ Petition No. 19558 of 2015 directing the

petitioners to deposit ₹ 25,000/- as mesne profit per acre per year.

2. By way of the present writ petition, the petitioners under Articles 226/227 of the Constitution of India, have sought quashing the impugned order dated 10.5.2016 (Annexure P-6) passed by the District Development and Panchayat Officer, Patiala (respondent no.2) and also quashing/modifying the order dated 19.10.2016, issued on 02.12.2016 (Annexure P-9) passed by the Joint Development Commissioner (IRD), Punjab, SAS Nagar, Mohali (exercising the powers of Commissioner) dismissing the appeal filed by the appellants.

3. Learned counsel for the petitioners contended that after acceptance of the civil appeal of the alleged proprietors of the village, the appellants have become full fledged owner of the disputed land and, thus, it never vested in the Gram Panchayat nor was it ever "Shamlat Deh" land defined in Section 2(g) of the Act as the same belongs to "Jumla Mushtarka Malkan". That apart, the Additional Director Consolidation of Holding, Punjab, had also, vide his order dated 27.07.1984, directed to enter the mutation of the disputed land as "Jumla Mushtarka Malkan" and then to partition the same by specifying the shares of each khewatdar. The aforesaid two orders were never set aside and were in force till date. Despite this, the respondent-Gram Panchayat obtained an eviction order under section 7 of the Act, dated 17.6.2015 (Annexure P-3) against the proprietors of the village in an illegal manner and the appeals against the same filed by the petitioners were also wrongly dismissed vide order dated 27.8.2015 (Annexure P-4) passed by the Joint Development Commissioner (IRD), SAS Nagar, Punjab, exercising the powers of Commissioner under the Act.

On the basis of the said eviction orders, the Gram Panchayat is threatening

to interfere in peaceful possession of the proprietors/petitioners. Since the question of title of the land in dispute was involved in the instant case therefore, the petitioners were not liable to make any payment in the shape of mesne profit @ ₹ 25,000/- per acre per year. The Divisional Deputy Director, Department of Rural Development and Panchayat, Patiala, vide order dated 10.5.2016 (Annexure P-6), has illegally dismissed the appeal filed by the appellants. Likewise, the Joint Development Commissioner (IRD), SAS Nagar, exercising the powers of Commissioner, vide order dated 19.10.2016 (Annexure P-9) has also illegally dismissed another appeal filed by the alleged proprietors of the village, inasmuch as the same should not have been dismissed on account of non-deposit of mesne profit.

4. After giving our thoughtful considerations to the submissions raised by the learned counsel for the petitioners, we find that the writ petition is completely devoid of any merit, inasmuch as some of the alleged proprietors of the village, namely, Bhajan Singh and others, filed Civil Writ Petition No. 19558 of 2015 before this Court, which was disposed of in the following terms:-

“ 10. Taking into consideration these factors, the Collector is directed to fix the user charges/mesne profits/security for the subject land which shall not be less than ₹ 25,000/- per annum per acre. The petitioners shall be given one month time to furnish that security either in cash or by way of unconditional and irrevocable bank guarantee from the year of institution of eviction petition.

(11) On doing so, status quo re. possession is directed to be maintained till the decision of the petition filed by the petitioner

under Section 11 of the Act.

(12) The Court of Collector before whom such petition is pending is further directed to decide the same in accordance with law expeditiously but not beyond 31.08.2016.

5. Earlier to this also, the petitioners, despite determining their lease amount at Rs.26,000/- per acre per year, did not deposit even a single penny before the Divisional Deputy Director, Department of Rural Development and Panchayat, Patiala, in the petition filed under Section 11 of the Act and thus, the same was dismissed on 10.5.2016 (Annexure P-6). In an appeal filed before the Joint Development Commissioner (IRD) SAS Nagar, exercising the powers of Commissioner, against the order dated 10.5.2016 (Annexure P-6) passed by the Divisional Deputy Director, Department of Rural Development and Panchayat, Patiala, the Joint Development Commissioner (IRD) accepted the appeal filed by the petitioners vide order dated 19.10.2016 (Annexure P-9) on their own undertaking to deposit ₹ 25,000/- as mesne profit per acre per year in the account of the Gram Panchayat and the case was remanded back to the Divisional Deputy Director, Department of Rural Development and Panchayat, Patiala(exercising the power of Collector) with a direction that the case be decided within three months from the date of receipt of a certified copy of this order. The petitioners have challenged the order dated 19.10.2016 (Annexure P-9) passed by the Joint Development Commissioner (IRD), SAS Nagar (exercising the power of Commissioner), whereby nothing adverse was passed against them, inasmuch as on their own undertaking/consent to deposit ₹ 25,000/- as mesne profit per acre per year in the account of the Gram panchayat, the order dated 10.5.2016

(Annexure P-6) passed by the Collector was set aside and they were afforded an opportunity of hearing before the Collector afresh on deposit of the said amount of ₹ 25,000/- as mesne profit per acre per year. Even before this Court on February 07, 2017, learned counsel for the petitioners had sought time to have instruction in the matter as to whether the petitioners were ready to deposit the mesne profits, as fixed by the Collector or hand over the possession of the land to the Gram Panchayat, during the pendency of the application filed under section 11 of the Act. However, today, learned counsel for the petitioners had sought further time to seek instructions from the petitioners whether they were ready to deposit the mesne profits, which, in our considered opinion, is not justified. In view of the factual position, the petitioners, despite directions of this court in CWP No.19558 of 2015, as discussed above, as well as by the Collector, and the undertaking given before the appellate authority in an appeal under section 11(2) of the Act, did not deposit even a single penny towards mesne profit in the account of the Gram Panchayat, which shows their mala fide intention and callous attitude to retain the possession of the land of the Gram Panchayat illegally and unlawfully either on one pretext or the other just to reap the fruits of crops so as to generate the income unauthorisedly for which they cannot be permitted to invoke extra-ordinary writ jurisdiction conferred by Articles 226/227 of the Constitution of India.

6. For the reasons recorded hereinabove, no case is made out for interference by this court in exercise of writ jurisdiction under Article 226/227 of the Constitution of India and as such, finding no merit in the writ petition, the same is dismissed.

7. The registry is directed to bring this order to the notice of the

respondents so as to avoid any concealment of this order by the similarly situated persons, if any, while filing any such petition before this court in future.

(RAMENDRA JAIN)
JUDGE

13.2.2017
VK

(AJAY KUMAR MITTAL)
JUDGE

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| 1. | Whether speaking/reasoned | Yes/No |
| 2. | Whether reportable | Yes/No |