

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

CWP No.26952 of 2015 (O&M)
Date of decision: February 08, 2017

Ajit Singh

-----Petitioner

Versus

Chhatter Singh and others

-----Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr.Anil Kumar Gahlawat, Advocate
for the petitioner.

Mr.Sandeep Parkash Chahar, Advocate
for respondent No.1.

Mr.Aditya Yadav, Advocate
for respondent No.2.

Mr.Ankur Mittal, Addl. A.G.,Haryana
for respondents No.3 to 5.

HARINDER SINGH SIDHU, J.

1. This petition has been filed praying for quashing the orders dated 2.12.2010 (Annexure P-3) passed by Sub Divisional Officer (Civil)-cum-Assistant Collector 1st Grade, Jhajjar -respondent No.5, whereby, the petitioner has been ordered to be evicted and orders dated 31.01.2012 and 28.02.2014 (Annexures P-4 and P-5) passed by Collector, Jhajjar and Commissioner Rohtak Division, Rohtak (respondents 4 and 3, respectively), upholding the order of eviction passed in proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act').

2. Respondent No.1, a co-villager of the petitioner filed a petition under Section 7 of the Act alleging that the petitioner had encroached upon Panchayat land of village Sundrehti and that he be evicted from the said land. After due enquiry and obtaining report of the Local Commissioner, it was found that the petitioner had encroached upon about 77 square yards comprised in Khasra No.192+355 of Gram Panchayat land and accordingly, vide order dated 2.12.2010 passed by the Sub Divisional Officer (Civil)-cum-Assistant Collector 1st Grade, Jhajjar, he was ordered to be evicted therefrom. The order was affirmed by the Collector and the Commissioner (respondents No.4 and 3), respectively. Aggrieved, the petitioner has filed the present petition.

3. While not disputing the fact of encroachment to the extent as indicated in the impugned orders, Ld. Counsel for the petitioner only submitted that he has been using the land since 1990 and he has constructed two *pucca* rooms and *veranda* besides a kitchen, a cattle-shed and garage thereon. He had purchased the nearby land through a sale-deed dated 20.7.1990 and has constructed his house upon the said land. The land in dispute is part of *Gair Mumkin Gher*. It has never been used for common purposes and because of the construction raised, there is no obstruction of free flow of traffic. He states that he is ready and willing to purchase the land in accordance with Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964, as applicable to the State of Haryana. Reliance has been placed on decisions of this Court in **The Gram Panchayat of village Kalta vs. State of Haryana and another, 2014(4) RCR(Civil)**

page 20 (P&H) DB and Vinod Kumar vs. Assistant Collector Ist Grade,

Kurukshetra and ors, 2014(4) RCR(Civil) page 21 (P&H) DB, to contend that it would be permissible for the Gram Panchayat to sell non-cultivable land to inhabitants of the village, who have raised construction on that land and are in settled possession for long and where there is no hindrance to the free flow of traffic or there is no other detriment to the inhabitants of the village.

4. In the written statement filed on behalf of the Gram Panchayat, it has been asserted that as the petitioner has been found to have encroached upon the Panchayat land, he was rightly ordered to be evicted from the same. It has been further averred that the petitioner is a former Sarpanch of the village and no leniency ought to be shown as any such leniency would have a bad impact on the society.

5. Ld. Counsel for respondent No.1, stated that the petitioner owns 10 acres of agricultural land, besides two tube-wells and a tractor. One son of the petitioner is serving in the Haryana Police. The petitioner has got a well-furnished double storied house to live. Distinguishing the judgments relied upon by Ld. Counsel for the petitioner, he states that the judgments specifically record that the petitioners therein were poor persons. The petitioner on the other hand, is quite affluent. Besides, he has been a Sarpanch of the village and has misused his position to encroach upon the Panchayat land.

6. Having heard Ld. Counsel for the parties, we are of the view that there is no merit in the present petition.

7. Rule 12(4) of the Punjab Village Common Lands (Regulation)

Rules, 1964 is reproduced below:

“12. Purposes for which land may be sold-

(1) to (3) xxx xxx xxx xxx

(4) the Gram Panchayat may with the prior approval of the State Government, sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 13st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate.”

8. No doubt, as per this Rule, it is permissible for the Gram Panchayat, with the prior approval of the Government to sell non cultivable land to inhabitants of village who have raised construction on that land on or before 31st March, 2000 and which does not cause obstruction to traffic. This provision is only an enabling one. Clearly, the petitioner has no right to claim that this land be sold to him in terms of this provision or that the Panchayat is under a corresponding obligation to sell it to him.

9. Hon'ble the Supreme Court in **Jagpal Singh v. State of Punjab, (2011) 11 SCC 396** took serious note of the fact that in large parts of India, village common land had been grabbed by unscrupulous persons using muscle power, money power or political clout to the extent that in many States such land existed only on paper. It deplored any attempt to regularize illegal construction on this land. It was held that even if the encroachers had built houses on the land, they must be ordered to remove their construction and hand over possession of the land to the Gram Panchayat. It was stressed that Gram Sabha land must be kept for the common use of the residents of the village.

10. The Court also held that even where there is a law permitting compounding of unsanctioned constructions, such compounding should only be by way of an exception. Ordinarily, compounding should only be allowed where the land has been leased to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

11. The Hon'ble Court directed the State Governments to prepare schemes to evict illegal occupants from Gram Sabha/ Gram Panchayat land.

The observations of the Court are as follows:

“4. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with their original character, for personal aggrandisement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs. xxx xxx

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13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.

14. The Letter dated 26-9-2007 of the Government of Punjab permitting regularisation of possession of these unauthorised occupants is not valid. We are of the opinion that such letters

are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularised. We cannot allow the common interest of the villagers to suffer merely because the unauthorised occupation has subsisted for many years. xxx

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16. *In Friends Colony Development Committee v. State of Orissa [(2004) 8 SCC 733] this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them. xxx xxx*

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23. *Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”*

12. The petitioner has been a Sarpanch of the village. He is a person of considerable means. He has a respectable land holding. He does not belong to the weaker sections. He does not fall in the exceptions carved out by Hon'ble the Supreme Court. Further the judgments relied upon by Ld. Counsel for the petitioner would not be applicable in his case as the same

were rendered in cases where the petitioners were admittedly poor persons and belonged to weaker sections of society. No similar direction can be issued in the case of the petitioner.

13. The factum of the petitioner being a former Sarpanch cannot be lost sight of. The office of Sarpanch is a position of great respect and honour. There is perhaps no other elective office which witnesses a keener contest among the aspirants. The Sarpanch is the custodian of the interest of the village during his tenure. He is expected to maintain similar exemplary conduct both before and after. It does not behove a Sarpanch to encroach on village common land, whether the encroachment is during or after he demits office. The petitioner has not only encroached on the land but instead of vacating the same, he seeks regularisation thereof. Such conduct cannot be appreciated.

14. Hence, the petition is dismissed with costs of ₹ 10,000/- to be deposited with the office of Advocate General, Punjab.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

February 08, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No