

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

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**CWP No. 7073 of 1995
Date of Decision: 20.9.2018**

Gram Panchayat, Akhtiarpura

.....Petitioner

v.

The Commissioner, Hisar Division and others

.....Respondents

**CORAM HON'BLE MR. JUSTICE MAHESH GROVER
 HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present:- Mr. Kulvir Narwal, Advocate, for the petitioner
 Mr. Gagandeep Singh Wasu, Addl. AG, Haryana

MAHESH GROVER, J. (Oral) :

The Gram Panchayat is before us impugning the order of the Commissioner. While disposing of the petition, the Commissioner had observed as follows -

“5. A perusal of the entire history of the case reveals that the rights of dohli were violated by Smt. Anchi by transferring 40 kanals of land in favour of Siri Chand and Deep Chand who have now relinquished the transfer-lease vide Ex.A-I and A-II. Therefore, Smt. Anchi cannot be deprived of her total share of 94 kanals 14 marla. This type of prayer of the Gram Panchayat qua Dohli Rights on the Shamlat Deh and the findings of the lower Courts are illegal and deserve to be set aside. As to the allegation of the petitioners that village Panchayat had allowed the collusive construction of 60 houses on the land of Johar and land of Gau Charand existing in the name of Dohli of 1887, this Court takes a serious view of this misuse. The division of Gau Charand is illegal from the very beginning. Therefore, the mutation partition in terms building and other encroachment made by the village community is set aside by

this Court suo-motu and such decision was given by me as Commissioner, Rohtak Division, Rohtak, in the case of village Rurki and the same was upheld by the Hon'ble High Court in 1993. The Assistant Collector Ist Grade, Dadri, is directed to go to the spot for physical measurement of spot among the assembly of villagers and pass a final order under Section 7 of the Village Common Lands Act and carry demolition of the houses the owners of which have no right to build, as the doholidars alone have right to use the land according to shart-wazibul arz. This order of this Court must be carried out within 45 days and no stay from civil Court be entertained on the use of title as final authority under the Village Common Lands Act vests with the Assistant Collector Ist Grade, Collector and Commissioner. This is a view finalised as per decision dated 2.9.1993 of ROR No. 224/1990-91 relying on a Supreme Court 1979 PLJ Page 369 and according to which construction of houses on a land of common use is illegal. At the same time, the petitioners shall not be allowed to cultivate Johar portion of the land and it shall continue to be a 'Gau Charand' except in the portic which has already been cultivated for fodder in the past, if any. If the village Panchayat is found guilty of the charge of collusion of silence, it should be dismissed by the Collector, Bhiwani and the Collector has such rights as upheld in Hoshiara v. Commissioner, Rohtak Division, in CWP No. 10805 of 1993 decided by Hon'ble High Court of Punjab and Haryana on 9.5.1994.

Dated : 28.10.94

Sd/-
Commissioner, Hisar Division,
Camp Bhiwani”

Learned counsel for the petitioner had asserted before us that the findings of the Commissioner are wrong as no house exists on the spot. Apart from this, it was contended that the finding recorded in the impugned order of the land being given to doholidar is also incorrect.

During the course of hearing on 15.3.2018, we had asked the State to submit status report to indicate the present ground situation which has since been received and reads as follows -

“In original report is being sent to Ld. DC, Charkhi Dadri with the submission that after the inspection of Revenue Record by the field staff on 14.6.2018 along with Sarpanch Sh. Rohtash of village Akhtiarpura at the spot as per Revenue Record of village Akhtiarpura, vide jamabandi for the year 2015-16, khewat No. 131, khatoni No.154. Land measuring 388 k 3 m was inspected. There is no un-authorised possession on this land. The land being vacant is used by villagers for the purpose of rudi spot and fuel sticks etc. and no body has cultivated this land. This is vacant land on the spot.”

Evidently, the findings of the Commissioner do not correspond to the status report filed by the State. The land being vacant, the Gram Panchayat would be very well within its right to retrieve it and use it for the purpose intended i.e. for grazing cattle. Since the land is vacant, the issue of it being in possession or it having been given to Dohlidar does not manifest itself. The impugned order is, therefore, set aside leaving the petitioner to retrieve the land and use it for the intended purpose.

Disposed of.

(MAHESH GROVER)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

20.9.2018

Ashwani

Speaking/Reasoned
Reportable

Yes/No
Yes/No