

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Date of Decision:-31.05.2019

CWP No.4423 of 2019

Sampat & Anr.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

AND

CWP No.4435 of 2019

Shish Ram & Ors.

.....Petitioners.

Versus

State of Haryana & Ors.

.....Respondents.

**CORAM:- HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUM KUMAR TYAGI**

**Present:- Mr. Raman Chawla, Advocate for the Petitioners
(in both cases).**

JASWANT SINGH, J.

Vide this common order, we propose to dispose of the
aforementioned two writ petitions as common questions of fact and law are
involved. CWP No.4423 of 2019 has been filed by two petitioners namely
Sampat and Risal Singh both sons of Banwari & CWP No.4435 of 2019 has

Ramall sons of Kurda Ram. For the sake of convenience facts would be taken from CWP No.4423 of 2019.

The instant writ petitions have been preferred by the alleged proprietors of the Village Gurera, seeking quashing of the eviction orders dated 31.03.2011 (**P-6**) passed by Assistant Collector 1st Grade, Siwani; order dated 25.05.2017 (**P-9**) passed by District Collector, Bhiwani; and order dated 01.05.2018 (**P-10**) passed by Commissioner, Rohtak Division, Rohtak, whereby eviction petition filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 1961 Act) by respondent no.6-Gram Panchayat Gurera was allowed.

Learned Counsel for the petitioners has argued that all the authorities below, have failed to consider the effect of the judgment and decree dated 28.03.1998 (**P-11**) passed by Additional Civil Judge(Senior Division), Siwani whereby the Civil Court has already set aside the mutation no.1001 dated 13.06.1965 sanctioned in favour of the Gram Panchayat and has restrained the Gram Panchayat from transferring the land in question in favour of any third party. It is further argued that another case filed by some residences of the village seeking injunction against the petitioners and other persons from using the land in question, on the ground of same being reserved for common purposes, has also been dismissed by Additional Civil Judge(Senior Division), Siwani vide its judgment and Decree dated 15.12.2015 (**P-12**) and, therefore, the petitioners being proprietors of the Village and question of title having not been decided by another court of law, the Authorities below had no jurisdiction to order their eviction.

We have heard learned Counsel for the petitioners at length and

have scrutinized the paper books with his able assistance. However, we are of the view that the instant writ petitions are without any merit and liable to be dismissed.

Before proceeding with the case, it would be apposite to note certain admitted facts which emanate from the record and are not in dispute.

Admittedly, the land in question is part of Khasra No.193 and 76 and the consolidation of the village took place somewhere in the year 1962-63, wherein it was decided by all the villagers as reflected in Clause 4 & 5 of Wazib-Ul-Arz, which was subsequently reflected in the Scheme of Consolidation i.e. *Khatoni Istamal* as well that the land would be reserved as '**Johar (Pond)**' and it was specifically mentioned that any person could graze his animal in this land. Further, in front of the said entries/decision it was mentioned "Noutaud" (i.e. No body can revert back this decision) and thus, the land in dispute became the responsibility of Gram Panchayat, being reserved for the purpose of Grazing the animals and for Pond. Interestingly, Assistant Collector 1st Grade had also observed an important fact whereby the father of the petitioners was a party of the Advisory Committee at the time of consolidation in which the decision was taken to keep the land reserved for common purposes. All these facts were verified by the Authorities below while calling for the Consolidation record and seeking a report from the concerned revenue officer(s). It is also not in dispute that till date no petition raising question of title has been filed before any Court of law, by either of the parties.

Now, in the said background, we would deal with the arguments raised by learned Counsel for the petitioner.

The Counsel has centered his argument around a Judgment and

Decree dated 28.03.1998 (**P-11**), whereby a suit filed by some individuals for declaring the mutation sanctioned in the year 1965 in favour of Gram Panchayat was ordered to be quashed. We are surprised in the manner, the Civil Court had decided the issue concerning and affecting the entire Village. Provisions of Limitation Act were given a complete go-bye. Be that as it may, the Civil Court, at that time had set aside the mutation in favour of Gram Panchayat on the basis of judgment passed by this Court in **Jai Singh Vs. State of Haryana & Ors. AIR 1995 Punjab & Haryana 245**, whereby the amendment carried by State of Haryana in Section 3 was quashed. As per the said amendment, all the lands which were *Jumla Malkan* land, their management and control was to vest with the Gram Panchayat and mutation in favour of Gram Panchayat was to be sanctioned.

However, it is different story that the said judgment was subsequently set aside by the Hon'ble Supreme Court on 06.08.1998 and after a long drawn litigation, the issue was finally set at rest by upholding the amendment made by State of Haryana and holding that *Jumla Malkan* land would in Gram Panchayat. Meaning thereby, the entire premise on the basis of which, the Civil Court had set aside the mutation which stood sanctioned more than 30 years ago, is no more in existence.

However, the Civil Court ultimately held the mutation sanctioned in favour of the Gram Panchayat as bad in the eyes of law and also restrained Panchayat from alienating the land. No other relief was granted and this fact is clear from the decree passed by the Civil Court on 28.03.1998 (**P-11**).

Seen in this background, we are of the view that the argument raised by learned Counsel for the petitioner is without any merit for two

reasons. *Firstly*, a careful perusal of the Judgment and Decree passed by Civil Court would show that it has reverted the land to be that of pre-consolidation period, which as per the Counsel was *Jumla Malkan* land and once that is so, the amendment made by State of Haryana in 1961 Act would come into force, whereby the management and control would vest with the Gram Panchayat and thus, the Panchayat is competent to evict the unauthorized occupant from said land. *Secondly*, the Judgment had **not** set at naught the Scheme of Consolidation as well as the Wazib-Ul-Arz, whereby all the villagers had decided to keep this land for common purposes. Thus, non existence of mutation, which is otherwise only for fiscal purposes, would not *ipso-facto* make petitioners or their forefathers as the owners of the land, being proprietors, as the land in question was decided to be reserved for common purposes in consolidation as well as Wazib-Ul-Arz, which have not been set aside by any Court of law till date.

Hence, seen from any angle, the argument of the Counsel that Civil Court decree protects the status of petitioners as owners/proprietors, is incorrect and, therefore, liable to be rejected.

As far as reliance of Counsel on another judgment and Decree dated 15.12.2015 (**P-12**) is concerned, we are of the opinion that it is a complete mis-reading of the Judgment passed by the Civil Court. A perusal of paragraph no.24 of the judgment would show that the Civil Court has clearly kept the question of title, etc., open by observing that it had no jurisdiction to decide the issue involved in the said suit. Consequently, the dismissal of the said suit, cannot come to the rescue of petitioners at all.

In any case, the usurpers of public property cannot be permitted to scuttle the genuine efforts of the Gram Panchayat to get such properties

vacated from un-scrupulous elements like petitiones and put it to use for the betterment of the Village and its people. Any such objections, if permitted to be sustained, would lead us to a situation where the villagers would be left be no common land to put to use and the Panchayat without any funds to carry out its functions.

In view of the above, finding no merit in both the above mentioned writ petitions, the same are hereby dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

May 31st, 2019
Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>