

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

109

CWP No.5580 of 2019
Date of Decision: 06.05.2019

Dinesh and another

.....Petitioners

Versus

Commissioner Rohtak Division, Rohtak and others

.....Respondents

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

Present : Mr. R.S. Malik, Advocate for the petitioners.

Mr. Rajeev Doon, AAG, Haryana.

JASWANT SINGH, J. (ORAL)

The two petitioners-Dinesh and Rakesh sons of Balraj, residents of Village Atayal, Tehsil Sampla, District Rohtak have invoked writ jurisdiction of this Court under Article 226 of the Constitution of India and sought quashing of order dated 19.09.2018 (**Annexure P-8**) passed by the revisional authority/Commissioner, Rohtak Division; appellate order dated 26.02.2018 (**Annexure P-6**) passed by the Collector, Rohtak and the order dated 21.11.2016 (**Annexure P-2**) passed by the Assistant Collector 1st Grade, Sampla, District Rohtak, whereby the petitioners have been ordered to be ejected on the application filed by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 from 141 sq. yds. of land comprised in *khasra* Nos.4360 and 4361 out of total measuring 9 *biswe* and 6 *biswasi* recorded in the ownership of Gram Panchayat being *shamlat* land. The said finding is based on the spot inspection dated 09.08.2016 conducted in the presence of both the

parties by the Court of first instance i.e. Assistant Collector 1st Grade, Sampla. The said spot inspection is further fortified by the demarcation report dated 20.11.2017 (**Annexure P-5**) conducted by the Sub Divisional Officer (Civil), Sampla in compliance of the orders passed by the Collector, Rohtak with regard to identification of the encroachment of the *shamlat* land comprised in aforesaid two *khasra* numbers as also the other *khasra* numbers.

At the time of initial hearing on 25.03.2019, this Court was not inclined to interfere on the merits of the findings of encroachment, however, an alternative prayer was made on behalf of the petitioners for consideration of allotment of the aforesaid unauthorised area, upon which it is claimed that a house stood constructed prior to 2000 in terms of the provisions of Rule 12 Sub Rule 4 of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short, "1964 Rules").

Learned State counsel was directed to seek report from the Block Development and Panchayat Officer concerned with regard to alternative claim for allotment in the light of the aforesaid Rules.

At the time of resumed hearing today, affidavit dated 04.05.2019 of Sh. Rajkumar Sharma, Block Development and Panchayat Officer, Sampla, District Rohtak, along with site plan, photographs and *Muntkhib Khewat* appended as Annexures R-1 to R-4/T, has been filed in Court. In para 3 of the affidavit it is averred that a spot inspection in the presence of the office bearers of the Panchayat was conducted by the deponent/Block Development and Panchayat Officer on 25.04.2019 and 30.04.2019. It was found that the house constructed by the petitioners in their unauthorised occupation to the

extent of 141 sq. yds. in *khasra* Nos.4360 and 4361 is about 8 to 10 years old. It was further found that both the petitioners have another residential house in the *abadi* of the Village Atayal.

In view of the said averments supported by the Annexures, it is evident that the petitioners would not be entitled for allotment of 141 sq. yds. in their possession in terms the Rule 12 Sub Rule 4 of the 1964 Rules.

Faced with this situation, counsel for the petitioners has argued that his clients would be willing to exchange land of equal or more value with the Gram Panchayat in lieu of aforesaid unauthorised construction.

This Court in the present petition is unable to examine or accept such plea. If the law permits such an exchange, the petitioners would have their remedy in view of the relevant provisions of law.

In view of the above, no case for invoking the writ jurisdiction is made out.

Dismissed.

(JASWANT SINGH)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

06.05.2019
Vinay-I

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No