

CWP No. 15598 of 2019

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. CWP NO. 15598 OF 2019

Ram RajiPetitioner

Versus

Gram Panchayat Village Sisarkhas,
Tehsil Meham, District Rohtak and othersRespondents

And

2. CWP No.15680 of 2019
Date of Decision: 22.07.2019

Balwan SinghPetitioner

Versus

Gram Panchayat village Sisarkhas,
Tehsil Meham, District Rohtak and othersRespondents

CORAM HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present: Mr.D.K.Tuteja, Advocate for the petitioner in both cases.

RAKESH KUMAR JAIN, J (ORAL)

This order shall dispose of two petitions bearing CWP No. 15598 of 2019 and CWP No.15680 of 2019, as the issues involved in both the cases are common. However, for the sake of convenience, the facts are being taken from CWP No.15598 of 2019.

CWP No.15598 of 2019

The petitioner has challenged the order dated 06.05.2016 (Annexure P-1), passed by the Assistant Collector Ist Grade, (for short 'ACIG') Meham by

which an application filed by respondent no.2 under Section 7 of the Punjab

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Village Common Land (Regulations) Act, 1961 (for short 'the Act') for seeking eviction of the petitioner from his unauthorized occupation of the land, bearing Khewat No. 815, Khatoni No. 878, Khasra No. 64/5-6-7 measuring 24 kanals as per jamabandi for the year 2011-12, stated to be owned by the Gram Panchayat Sisarkhas has been allowed and the order dated 04.04.2018 (Annexure P-3), passed by the Collector, Rohtak, by which statutory appeal filed by the petitioner against the order of eviction was dismissed.

In brief, the respondent no.2. filed an application under Section 7 of the Act alleging unauthorized occupation of the petitioner over the Panchayat land. In the said application, notice in terms of Rule 20 of the Punjab Village Common Land (Regulation) Rules, 1964 (for short 'Rules of 1964') was issued and after the appearance of the petitioner, respondent no.2 was called upon to lead his evidence. Respondent no.2 appeared as PW1; produced the evidence; filed affidavit in examination-in-chief and also relied upon the report of demarcation dated 29.11.2014. The petitioner was represented by an Advocate. It is not in dispute that the Advocate did not appear continuously on many dates, therefore, the petitioner was proceeded against ex parte and order of eviction was passed on 06.05.2016 against him.

Aggrieved against the said order, the petitioner filed an application for setting aside the ex parte order of eviction before the ACIG. The said application was also dismissed on 06.10.2016 (Annexure P-2) by ACIG by passing a detailed order, in which it was categorically observed that the petitioner was represented by an Advocate who did not appear many a times but the case was adjourned. Ultimately, the Court had taken the decision to proceed against the petitioner ex

parte and passed the order. The petitioner thereafter filed an appeal and challenged the validity of the order of ACIG concerning the eviction and dismissal of application for setting aside the ex parte proceedings. During the pendency of the appeal, the Collector, Rohtak ordered re-demarcation and he appointed Tehsildar, Meham for that purpose who demarcated the land in dispute in the presence of the petitioner and submitted his report dated 19.12.2017 (Annexure P-7) in which the petitioner was now found in unauthorized possession of about 30 sq. yards of land. The Collector then dismissed the appeal and passed the order that the petitioner is in illegal possession of the land of Panchayat. The petitioner thereafter challenged the order of the Collector by way of revision before the Commissioner, Rohtak Division, Rohtak which was also dismissed on 11.07.2018 (Annexure P-4).

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Learned counsel for the petitioner has submitted that the Court below has erred in not complying with Rule 21 of the Rules of 1964 as the petitioner was not given the prior chance of leading his evidence by respondent no.2 in the application filed by the petitioner under Section 7 of the Act. It is also submitted that before proceeding ex parte against the petitioner, evidence of respondent no.2 has been taken on record. **Rule 21 of the Rules of 1964 (as applicable to Haryana)** is reproduced as under:-

"21. Eviction of unauthorized person. [7 and 15(2)(k)]:- (1) If, after considering the cause, if any, shown by any person in pursuance of notice under rule 20, and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Assistant Collector is satisfied that the land in shamlat deh is in an unauthorized occupation, the Assistant Collector may on a date to be fixed for the purpose make an order of eviction for reasons to be recorded therein, directing that the land in the shamlat deh, shall be vacated by all persons who may be in unauthorized occupation thereof or any part

thereof, and cause a copy of the order to be affixed on the outer door of the Panchayatghar and at some other conspicuous places of the shamlat deh or of the estate in which the land in shamlat deh is situated.

(2) If any person refuses or fails to comply with the order of eviction within thirty days after the expiry of time period of appeal, the Collector or any other officer duly authorized by him in this behalf may evict that person from and take possession of, the land in shamlat deh and may, for that purpose, use such force as may be necessary.”

He has also tried to draw a distinction between Rule 21 of the Rules of 1964 (as applicable to Haryana) and **Rule 21 of the Rules of 1964 (applicable to Punjab)**, which is reproduced as under:-

“21-Eviction (Sections 7 and 15(2)(k)(i)]-(1) *if, after considering the cause, if any, shown by any person in pursuance of notice under Rule 20 and any evidence that may be produced and after giving the parties a reasonable opportunity of being heard, the Collector is satisfied that the land or other immovable property specified in the notice served under Rule 20 or any part thereof is in unauthorized occupation, the Collector may, on a date to be fixed for the purpose, make an order of eviction, for the reasons, to be recorded therein; directing that the land or other immovable property or any part thereof as the case may be, shall be vacated by all persons who may be in unauthorized occupation thereof and cause a copy of the order to be affixed on the outer door of a Panchayat Ghar and at some other conspicuous place of the estate in which the land or other immovable property is situated.*

(2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication, the Collector or any other officer duly authorized by him in this behalf, may evict that person from and put the Panchayat in possession of the land or other immovable property and may for that purpose, use such force as may be necessary.]

Learned counsel for the petitioner has submitted that it is provided in Rule 21 of the Rules of 1964 (as applicable to Haryana) that after the notice under Rule 20 is issued and cause is shown by the person to whom such notice is issued, he has the first right to lead evidence to prove his case that he is not in

unauthorized possession. Though there is no precedent shown by learned counsel

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for the petitioner but we are of the opinion that there is complete fallacy in the submissions made because Rule 21 of the Rules of 1964 (as applicable to Haryana) says that if after considering the cause, if any, shown in pursuance of the notice issued under Rule 20 and any evidence is produced in support of the same and after giving opportunity of being heard, if the ACIG is satisfied that the land in shamlat deh is in unauthorized occupation, the ACIG may on a date to be fixed for the purpose, make an order of eviction. Rule 21 of the Rules of 1964 (application to Punjab) is little different as in the said Rule it is provided that after considering the cause, if any shown by any persons in pursuance of notice issued under Rule 20 and after giving the parties a reasonable opportunity of being heard, the Collector is satisfied that the land or other immovable property specified in the said notice or any part thereof is in unauthorized occupation, the Collector may, on a date to be fixed for the purpose, make an order of eviction. The difference between these two Rules is that in Rules of 1964 (as applicable to Haryana), the word '*person*' is used to whom notice has been given whereas in Rule 21 of the Rules of 1964 (applicable to Punjab) the word used is that "*after giving the parties reasonable opportunity of being heard*".

In our considered opinion, Rule 21 of the Rules of 1964 (applicable to Haryana) and Rule 21 of the Rules of 1964 (applicable to Punjab) only provides that after the evidence is led by both the parties, the ACIG shall have to record his satisfaction that the person against whom the application is filed is either in occupation of shamlat deh or not. Once he finds that he is in unauthorized occupation then he would fix a date on which he would pronounce the order. Otherwise if the argument of the learned counsel for the petitioner is accepted

that the evidence of the defendant is to start first then the whole scheme of the procedure of law would be defeated. Order 18 of the Code of Civil Procedure (for short 'CPC') talks of hearing of the suits and examination of witnesses. Order 18(1) CPC says that the plaintiff has the right to begin unless the defendant admits the facts alleged by the plaintiff and contends that either in point of law or on some additional facts alleged by the defendant the plaintiff is not entitled to any part of the relief which he seeks, in which case the defendant has the right to begin.

Similarly, **Section 101 of the Evidence Act** deals with the burden of proof which lies upon the person asserting the existence of facts. Section 101 of the Evidence Act reads as under:-

"101-Burden of proof.—Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

Thus, Rule 21 of the Rules (applicable to Haryana) and Rule 21 of the Rules (applicable to Punjab) is only regarding the procedure after the evidence is led by the parties and if the ACIG is satisfied about the fact that the person against whom the petition has been filed is in unauthorized occupation then he would pronounce the judgment. It has nothing to do with the submission made by learned counsel for the petitioner that the right to begin the evidence is with the defendant in a petition filed under Section 7 of the Act.

Dealing with the legal question raised by the petitioner, we would now refer to other aspects of the matter.

Counsel for the petitioner has further submitted that the Local Commissioner appointed by the Collector has not measured / demarcated the

land in accordance with the procedure established by law. In this regard he has referred to the Instructions of the Financial Commissioner to contend that the Local Commissioner has to fix pucca points before starting the demarcation of the land.

We have found from both the reports dated 29.11.2014 (Annexure P-6) and 19.12.2017 (Annexure P-7) that the Local Commissioner had fixed the pucca points before starting the process of demarcation of the land in question. Even though the petitioner had filed objections but he did not mention a word about the pucca points and it appears that objections were filed for the sake of it. Therefore, the Collector has rightly observed that the objections were totally without any basis and were rejected.

Last argument of the petitioner is that the application filed by him for seeking setting aside of the order of ACIG, which has been passed ex parte has not been dealt with by the Collector on the file. It may be so but we have dealt with this aspect with the assistance of the learned counsel for the petitioner and have specifically asked him as to why he did not appear before ACIG to which he has not given any satisfactory reason/answer except saying that he is a layman and engaged a counsel who did not appear on his behalf. Once an Advocate is engaged then it is his bounden duty to appear on each and every date. There is also no evidence on record to show that because of the default on the part of the Advocate any action has been taken by him to show his resentment which could have been either by making a complaint to the Bar Association or to the Bar Council who had issued him licence to practice as a lawyer. In view of these facts and circumstances, it appears that the petitioner wanted to stay on this land despite losing the battle in all the Courts below inspite of two reports of

CWP No. 15598 of 2019

demarcation in which he has ultimately been found in unauthorized possession of 30 sq. yards.

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We hardly find any substance in the present petition and the same is,therefore, dismissed though without any order as to costs.

CWP No.15680 of 2019

Since all the facts and documents are same in this petition except that petitioner was found in unauthorized possession of 217 sq. yards of Panchayat land.

In view of the findings recorded in CWP-15598 of 2019, this writ petition is also dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

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Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No