

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

**CWP No.18513-2019
Date of decision: 11.07.2019**

Shakti Singh and others

.... Petitioners

VERSUS

State of Haryana and others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN
HON'BLE MR. JUSTICE ARUN KUMAR TYAGI**

Present : Mr. Sandeep Singh, Advocate for the petitioners.

ARUN KUMAR TYAGI, J.

The petitioners, legal representatives of Jasbir Singh and Rattan Singh have filed the present petition under Articles 226/227 of the Constitution of India for seeking the issuance of a writ in the nature of certiorari for quashing ex parte order dated 31.05.2017 (**Annexure P-1**) passed by the Assistant Collector First Grade, Karnal, whereby ejectment of Jasbir Singh and Rattan Singh from the land comprised in Khewat No.1158, Khatauni No.2052, Khasra No. 519 (7-18) “gair mumkin johar” situated within the revenue estate of village Gonder, Tehsil and District Karnal (hereinafter referred to as ‘the land in dispute’) was ordered, order dated 22.11.2017 (**Annexure P-2**) passed by the Collector, Karnal whereby appeal against order dated 31.05.2017 (**Annexure P-1**) was dismissed and order dated 07.12.2018 (**Annexure P-3**) passed by the Commissioner, Karnal Division, Karnal whereby revision against order dated 22.11.2017 (**Annexure P-2**) was dismissed.

The petitioners have pleaded in the petition that respondents No.4 to 7 had filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') for removal of unauthorised possession of Jasbir Singh and Rattan Singh over the land in dispute. During the pendency of the proceedings, Jasbir Singh died on 07.05.2017 and Rattan Singh died on 26.01.2017 due to illness. The fact of death of Jasbir Singh and Rattan Singh was in the knowledge of respondents No.4 to 7 but they neither informed the Court nor moved any application for impleading their legal representatives and fraudulently procured an ex parte order of ejectment against them on the basis of report of demarcation conducted in their absence. The petitioners filed an application for setting aside the ex parte ejectment order but the Assistant Collector first grade, Karnal refused to receive the application for setting aside ex parte order and asked the petitioners to approach the appellate court. The petitioners filed their appeal before the Collector, Karnal who dismissed the same vide his order dated 22.11.2017. Revision filed against the said order was dismissed by the Commissioner, Karnala Divisional, Karnal vide his order dated 07.12.2018. The petitioners initially filed a revision petition No.ROR 336 of 2019 before the Financial Commissioner, Haryana and during its pendency filed CWP No.13938 of 2019 for seeking the issuance of direction to the Financial Commissioner, Haryana to decide the stay application but subsequently the petitioners withdrew the revision as well as the writ petition. While pleading that the impugned orders have been passed illegally, arbitrarily, without application of judicial mind and without affording an opportunity of being heard to the petitioners, the petitioners have accordingly prayed for quashing of the same.

We have heard learned counsel for the petitioners and perused the record carefully.

Learned counsel for the petitioners has argued that Jasbir Singh died on 07.05.2017 and Rattan Singh died on 26.01.2017, during the pendency of the application but they were wrongly proceeded against ex parte and ex parte ejectment order was passed against dead persons without impleading their legal representatives. Respondents No.4 to 7 were aware about their death but they did not inform the Court and implead their legal representatives and fraudulently procured the ex parte ejectment order. There was sufficient ground for setting aside the ejectment order which has been wrongly ignored by the authorities and the impugned orders are liable to be quashed on this ground.

Learned Counsel for the petitioners has further argued that ejectment of Jasbir Singh and Rattan Singh has been wrongly ordered on the basis of demarcation report dated 29.06.2014 which was conducted at their back without giving any notice to them. Ex parte ejectment order passed against them without giving an opportunity of producing evidence in their favour is also violative of the prescribed procedure and principles of natural justice. The impugned orders are also liable to be quashed on this ground.

On consideration of the submissions made by the learned Counsel for the petitioners with reference to the material on record, we are of the considered view that the impugned orders do not suffer from any illegality and are not liable to be set aside and the writ petition, being devoid of any merit, is liable to be dismissed.

Respondents No.4 to 7 filed the ejectment application under section 7 of the 1961 Act against Jasbir Singh, Rattan Singh and five others

namely Rajpal, Subhash, Bablu, Ramesh and Roop Singh in respect of the land (*Johar* (pond)) in dispute on the basis of demarcation report dated 29.06.2014. On notice Rajpal, Subhash and Ramesh undertook to remove illegal possession while Roop Singh was dropped by respondents No.4 to 7 as being unnecessary. Initially, Jasbir Singh, Rattan Singh and Bablu had appeared through their counsel and filed written statement but did not appear on 20.12.2016 and were proceeded against ex parte vide order dated 23.01.2017. On appreciation of the material on record, the Assistant Collector first grade, Karnal concluded that the land in dispute was reserved for Johar and that Jasbir Singh and Rattan Singh, besides other five persons named above had encroached upon the same and passed the ex parte order dated 31.05.2017 (**Annexure P-1**) for their ejectment. The appeal filed by the petitioners against the order dated 31.05.2017 was dismissed by the Collector, Karnal vide his order dated 22.11.2017 (**Annexure P-2**) and revision against order dated 22.11.2017 was dismissed by the Commissioner vide his order dated 07.12.2018 (**Annexure P3**).

It may be observed that on notice of the application, initially, Jasbir Singh and Rattan Singh had appeared through counsel and filed written statement. However, subsequently Jasbir Singh and Rattan Singh did not appear on 20.12.2016 and 23.01.2017 and were proceeded against ex parte vide order dated 23.01.2017. Jasbir Singh and Rattan Singh did not apply for setting aside of ex parte order dated 23.01.2017 before their death on 07.05.2017 and 26.01.2017, respectively and the ex parte ejectment order dated 31.05.2017 was passed against them without impleading their legal representatives.

The question which first arises for consideration is whether order dated 31.05.2017 is illegal being violative of the prescribed procedure and having been passed against dead persons?

For determining this question it will be appropriate to refer to the relevant statutory provisions.

Section 7 of the 1961 Act, which empowers Assistant Collector first grade to put Panchayat in possession of the land or other immovable property in the shamlat deh of the village, reads as under:-

“7. Power to put Panchayats in possession of certain lands. –

(1) An Assistant Collector of the first grade having jurisdiction in the village may, either suo moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the shamlat deh of that village which vests or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887 :

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

(2) The Assistant Collector of the first grade shall by an order, in writing, require any persons to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorized possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.

(3) The procedure for deciding the questions of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

(4) If any person refuses or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

(5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamlat deh and is ordered to be ejected under sub-section (1), shall be punishable with imprisonment for a term which may extend to two years.”

Rules 20 and 21 of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short “the 1964 Rules”), which lay down the procedure for dealing with ejectment application filed under Section 7 of the 1961 Act, read as under:-

“20. Issue of notice to show cause against order of eviction. [Sections 7 and 15 (2)(k)(1) of the Act] -- If the Assistant Collector of the 1st grade is of opinion that any persons are in unauthorised occupation of or claim interest in the land in shamlat deh situated within his jurisdiction and that they should be evicted, he shall issue in the manner hereinafter provided a notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made.

(2) The notice shall -
 (a) specify the grounds on which the order of eviction is proposed to be made; and
 (b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in shamlat deh, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.

(3) The Assistant Collector shall cause the notice to be affixed [on some conspicuous place] outside the panchayatghar or any other building used as office by the Panchayat and at some conspicuous places of the estate in which the land in Shamlat deh is situated, whereupon the notice shall be deemed to have been duly given to all persons concerned.

{(4) Where the Assistant Collector knows or has reasons to believe that any persons are in occupation of the land' in shamlat deh, then without prejudice to the provisions of sub-rule (3), he may cause a copy of the notice to be served on every such person by delivering or tendering it to that person or by [registered post with acknowledgment due]} .

21. Eviction of unauthorised persons. [Sections 7 and 15(2)(k) of the Act]. –

(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 unauthorised occupation, the Assistant Collector may, on a date to be fixed for the purpose make any order of eviction for reasons to be recorded therein, directing that the land in shamlat deh, shall be vacated by all persons who may be in unauthorised occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door of the Panchayat ghar 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 authorised 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.”

Section 7 of the 1961 Act empowers the Assistant Collector first grade to eject any person in wrongful or unauthorised possession of the land or other immovable property in the shamlat deh, vested or deemed to have been vested in the Panchayat, in accordance with such procedure as may be prescribed. Section 7(3) of the 1961 Act mandates Assistant Collector first grade to decide the question of title raised under proviso to Section 7(1) of the 1961 Act by following the procedure laid down in the Code of Civil Procedure, 1908. However, where no question of title is raised, the proceedings under Section 7 of the 1961 Act have to be tried summarily. Rules 20 and 21 of the 1964 Rules merely prescribe the procedural requirements of issuing show cause notice to the person in unauthorized possession and consideration of the cause shown and evidence produced by him by the Assistant Collector first grade. Though the provisions of the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 have not been specifically made applicable to the ejectment proceedings but the broad

principles of law legislated upon in the Code of Civil Procedure, 1908 and Indian Evidence Act, 1872 being based on justice, equity and good conscience will be applicable.

Order 22 Rule 2-B of the Code of Civil Procedure, 1908, as inserted by this Court vide notification No.GSR 39/C.A.5/1908/S.12257, w.e.f. 11.04.1975 provides as under:-

“The duty to bring on record the legal representatives of the deceased-defendant shall be of the heirs of the deceased and not of the person who is dominus litis.”

Order 22 Rule 4(3) of the Code of Civil Procedure, 1908 as substituted by this Court vide notification No.GSR 39/C.A.5/1908/S.12257, w.e.f. 11.04.1975 reads as under:-

“Where within the time limited by law no application is made under sub-rule (1) the suit shall not abate as against the deceased defendant and judgment be pronounced notwithstanding the death and shall have the same force and effect as it had been pronounced before the death took place.”

The petitioners, who being legal representatives of Jasbir Singh and Rattan Singh were living with them, have neither pleaded nor proved to be unaware of the ejectment application pending against them. On death of Jasbir Singh and Rattan Singh, who were ex parte in the ejectment proceedings, during pendency of the ejectment application, it was for the petitioners being legal representatives of Jasbir Singh and Rattan Singh to bring themselves on record of the ejectment application filed against Jasbir Singh and Rattan Singh and on their failure to do so ex parte ejectment order could be passed against Jasbir Singh and Rattan Singh executable against the petitioners being their legal representatives. In these facts and circumstances of the case, impugned order dated 31.05.2017 cannot be said to be violative of

the prescribed procedure and is not liable to be set aside on the ground of having been passed against dead persons.

The question which next arises is as to whether ejectment order dated 31.05.2017 based on demarcation report dated 29.06.2014 is liable to be set aside on the ground of the demarcation having been conducted without notice and in the absence of Jasbir Singh and Rattan Singh?

In the ejectment proceedings respondents No.4 to 7 produced jamabandi for the year 2006-07 and demarcation report dated 29.06.2014. In jamabandi for the year 2006-07 in column No.2 of ownership entry *jumla malkan hissedaran hasab rasad raqba* was recorded and in column No.5 of cultivation *rafai aam* was recorded while in column No.8 entry *gair mumkin johar* was recorded. In compliance of the order of Naib Tehsildar Nissing on the application of Anita, Sarpanch, Gram Panchayat Gonder, Somnath, retired Kanungo conducted demarcation of the land in dispute. Before conducting demarcation a written notice for informing the parties was given through chowkidars Vikram and Ram Kumar. Demarcation was conducted with reference to the fixed/permanent points in accordance with the instructions issued by the Financial Commissioner, Haryana by locating the same and other khasra numbers as mentioned in the report which were found correct and were not objected to. As per the demarcation report dated 29.06.2014, Jasbir Singh and Rattan Singh were found to have encroached upon the land of the *Johar* (pond) in dispute. The demarcation was conducted after notice to all concerned in the presence of the villagers and the demarcation report is not proved to suffer from any legal infirmity. The demarcation report could not be discarded merely on the ground of absence of Jasbir Singh and Rattan Singh

and even of the petitioners at the time of demarcation, which in the circumstances of the case appears to be intentional.

In Hinch Lal Tiwari Vs. Kamla Devi and others : 2001 (6)

SCC 496, while setting aside order of the Allahabad High Court and restoring the order of the Additional Collector confirmed by the Commissioner for vacation of land of pond encroached upon by construction of houses, Hon'ble Apex Court observed as under:-

“13. It is important to note that material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enable people to enjoy a quality life which is essence of the guaranteed right under Article 21 of the Constitution. The Government, including revenue authorities, i.e. respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.”

In Jagpal Singh and others Vs. State of Punjab and others :

AIR 2011 SC 1123 also, while upholding order for eviction of encroachers from the land of village pond, Hon'ble Supreme Court observed as under:-

“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 villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularisation of possession of these unauthorized 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 regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu, 1999(6) SCC 464* the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores. In *Friends Colony Development Committee v. State of Orissa, 2004(4) R.C.R.(Civil) 787 :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 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.

15. In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

16. The present is a case of land recorded as a village pond. This Court in *Hinch Lal Tiwari v. Kamala Devi, AIR 2001 SC 3215* (followed by the Madras High Court in *L. Krishnan v. State of Tamil Nadu, 2005(4) CTC 1 Madras* held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.

17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc. These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.

19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.”

In the above said case, Hon’ble Supreme Court also issued

directions to all the State Governments in the country to prepare schemes for

eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land for restoration to the Gram Sabha/Gram Panchayat for the common use of villagers of the village.

In the present case Jasbir Singh and Rattan Singh being in unauthorised possession of the land in dispute of *Johar* (pond) of the Village were liable to be and have been rightly ordered to be ejected there-from vide impugned order dated 31.05.2017 passed by Assistant Collector first grade, Karnal affirmed on appeal by the Collector, Karnal vide order dated 22.11.2017 and on revision by the Commissioner, Karnal Division, Karnal vide order dated 07.12.2018 which are executable against the petitioners due to being legal representatives of Jasbir Singh and Rattan Singh. The impugned orders do not suffer from any illegality and are not liable to be quashed.

Accordingly, the writ petition, being devoid of any merit, is dismissed with no orders to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

11.07.2019

kothiyal

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No