

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

CWP-18748-2019

Date of Decision: 12.07.2019

Nafa and another

. Petitioners

Vs.

State of Haryana and others

. Respondents

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

Present: - Mr.Vinod Bhardwaj, Advocate,
for the petitioners.

RAKESH KUMAR JAIN, J.

Petitioners are the residents of Village Dhamtan Sahib, Tehsil Narwana, District Jind, who have prayed for the issuance of a writ in the nature of mandamus to direct the Gram Panchayat to allot land to them for construction of residential houses in terms of Rules 12, 13 and 13A of the Punjab Village Common Lands (Regulation) Rules, 1964 [for short 'the Rules'].

In brief, petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'] was filed by some residents of Village Dhamtan Sahib against 11 persons including the petitioners alleging that they have unauthorisedly encroached upon the Shamlat land for construction of the residential houses. The said petition was allowed by the Assistant Collector, Ist Grade, Narwana on 30.10.2017 holding that the land belongs to the Gram Panchayat, the petitioners are in unauthorized occupation and were thus ordered to be evicted. The petitioners did not challenge the order of eviction by way of an appeal and the said

order become final. Since the possession was not restored by the petitioners, therefore, *CWP No.1266 of 2019* titled as *Narsi and others Vs. State of Haryana and others* was filed in which the following order was passed by this Court on 15.3.2019:-

“The four (4) petitioners namely, Narsi, Dhufa, Bhema, and Suresh, who are residents of village Dhamtan Sahib, Tehsil Narwana, District Jind, had filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, seeking the removal of encroachments by some of the residents of the village from Khasra No.475/1, comprising 12 kanals 21 Marlas of Gair Mumkin passage in the village. Said eviction petition was allowed by the Assistant Collector FirstGrade, Narwana, vide order dated 30.10.2017 (Annexure P1), directing the removal of alleged encroachments. No appeal was filed and thus, has attained finality.

The instant writ petition has been filed seeking a direction to the authorities concerned to restore the possession since the execution petition filed by the petitioners was also not bearing any fruits.

On the directions passed by this Court, Dr. Aditya Dahiya, Deputy Commissioner, Jind, has filed his affidavit dated 12.3.2019, today in the Court, which is taken on record. Copy furnished.

In the affidavit, it is categorically stated that the encroachment by the said persons stands removed.

Counsel for the petitioner, however, disputes the factual situation stating that the Malba still remains at the spot.

In view of categoric stand of the Deputy Commissioner, Jind, the instant writ petition is disposed of as infructuous. However, liberty is granted to the petitioners to pursue the execution in view of the remaining encroachment, if any.”

As a result thereof, the possession of the land, which was in unauthorized occupation of the petitioners was restored to the Panchayat. Therefore, the petitioners have filed an application to respondent No.2/Deputy Commissioner, Jind on 12.4.2019 for the purpose of allotment of land by issuing a direction to the Gram Panchayat on the ground that they belong to scheduled caste and do not have any land for construction of their houses. The petitioners have alleged that respondent No.2 has not decided their application/representation and have approached this Court by way of present petition for seeking a direction.

Learned counsel for the petitioners has submitted that as per Rule 12 of the Rules, the Panchayat may, with the previous approval of the State Government, sell land in Shamlat Deh, vested in it under the Act for the purpose of constructing houses for the inhabitants of the village at the price not less than the floor rates notified by the State Government from time to time and the size of the plot to an individual should not be exceeding 250 sq. yards.

We have heard learned counsel for the petitioners and perused the record with his able assistance. It is well settled that for the purpose of seeking a writ in the nature of mandamus, the petitioners must have a legal right and the respondent to whom direction is sought to be issued must have

a correspondent legal duty. In the present case, as per Rule 12 of the Rules, the petitioners are asking for the allotment of land of the Gram Panchayat without filing any application to it as the only application, which is placed on record, has been made to the Deputy Commissioner, Jind in which the petitioners have prayed for a direction by him to the Gram Panchayat for the allotment of land.

We do not subscribe to the argument raised by learned counsel for the petitioners because the Deputy Commissioner cannot direct the Gram Panchayat in this regard, which is an independent entity, as held by this Court in the case of ***“Gram Panchayat Kokalpur Vs. Joint Director Panchayat, Punjab and others”*** 2011(53) RCR (Civil) 568 and hence the petitioners are required to make a proper application to the Gram Panchayat for the said purpose. Further, it is for the Gram Panchayat to take into consideration as to whether the petitioners deserve allotment of land especially when they have been evicted from the Panchayat land on a petition filed under Section 7 of the Act and the possession had to be recovered from them after filing a writ petition in this Court.

In view of the facts and circumstances of the case, we do not find any merit in the present petition and the same is hereby dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

12.07.2019
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*