

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

**CWP No.18972 of 2019 (O&M)
Date of decision: 04.09.2019**

Jagbir

.... Petitioner

Versus

State of Haryana and others

....Respondents

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

Present : Mr. Amit Arora, Advocate for the petitioner.

ARUN KUMAR TYAGI, J.

CM No.10603 of 2019

The prayer in the present application filed under Section 151 C.P.C. is for placing on record the Panchayat Resolution dated 26.06.2008 (**Annexure A-1**).

The application is allowed for the reasons mentioned therein and the aforesaid document is allowed to be placed on record as '**Annexure A-1**'. Registry is directed to place the same at appropriate place and paginate the paper book.

CWP No.18972 of 2019

The petitioner has filed the present petition seeking issuance of a writ in the nature of certiorari for setting aside the order dated 05.09.2016 (**Annexure P-1**) passed by the Assistant Collector First Grade, Rohtak whereby application filed by respondent No.4-Suraj Mal under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act') was allowed and the petitioner was ordered to

be evicted from land comprised in Khasra No.246//11/15 situated within the revenue estate of village Bhalaut vested in respondent No.5-Gram Panchayat, Bhalaut; order dated 08.03.2017 (**Annexure P-2**) passed by the Collector, Rohtak whereby appeal filed against order dated 05.09.2016 was dismissed and order dated 19.09.2018 (**Annexure P-3**) passed by respondent No.2-the Commissioner, Rohtak Division, Rohtak whereby revision filed against order dated 08.03.2017 was dismissed.

The petition has been filed on the averments that the petitioner is not in unauthorized possession of any land or street vesting in Gram Panchayat, Bhalaut. Ejectment Order has been passed on demarcation report which has no value in the eyes of law. The Courts below have not appreciated resolution No.3 dated 26.06.2008 (**Annexure A-1**) passed by respondent No.5-Gram Panchayat, Bhalaut. The impugned orders are illegal, against facts and law and therefore, the same may be set aside.

Learned Counsel for the petitioner has argued that Gram Panchayat, Bhalaut passed the resolution No.3 dated 26.06.2008 that both the passages comprised in Khasra No.251/20 and 246//11/15 having the width of 33 feet and 22 feet respectively leading from north to south of the village had been demarcated number of times but the area thereof could not be demarcated as per the measurements in record and if the passages are cleared without considering the length and width of the plots, large number of houses have to be demolished. Since both the passages vest in the Gram Panchayat, Bhalaut, it was resolved with the consent of Paana Majra Thola Begraj and for the benefit of the inhabitants of the village that the width and passage comprised in Khasra No.251/20 be reduced from 33 feet to 16 feet and all the concerned persons shall release land measuring 16 feet out of the plots adjoining the passage comprised in Khasra No.246//11/15. The

resolution dated 26.06.2008 (**Annexure A-1**) passed by Gram Panchayat, Bhalaut was not taken into consideration by the Courts below which ordered eviction of the petitioner from the land in dispute on the basis of alleged demarcation report which had no value in the eyes of law. The petitioner is not in unauthorized possession of any passage owned by respondent No.5-Gram Panchayat, Bhalaut. While assailing the impugned orders as being illegal and against facts and law learned Counsel for the petitioner vehemently prayed for indulgence of this Court for setting aside the same.

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

Respondent No.4-Suraj Mal filed application under Section 7 of the 1961 Act for eviction of the petitioner claiming him to be in unauthorized possession of part of 4 Karams/22 feet wide passage comprised, in Khasra No.246//11/15. In the course of hearing on the application the Girdawar Halka was appointed as Local Commissioner who submitted demarcation report dated 01.07.2011. Thereafter, Assistant Collector First Grade, Rohtak also inspected the land in dispute on 28.07.2016. The petitioner was found to be in illegal possession of part of passage comprised in Khasra No.246//11/15 owned by the Gram Panchayat. Accordingly, the petitioner was ordered to be ejected from the land in dispute forming part of passage comprised in Khasra No.246//11/15. The petitioner has challenged the correctness of the demarcation report dated 01.07.2011 of Girdawar Halka but the petitioner has not produced copy of the above said demarcation report and has not produced any material to show that the petitioner filed any objections or produced any evidence challenging the correctness of the

above said demarcation report before the Courts below and has miserably failed to substantiate his plea and establish that the demarcation report suffered from any material defect or legal infirmity and was, due to that reason, not of any legal value.

The petitioner has heavily relied upon resolution No.3 dated 26.06.2008 (**Annexure A-1**) passed by Gram Panchayat whereby respondent No.5-Gram Panchayat, Bhalaut had resolved to reduce the width of passage comprised in Khasra No.251/20 from 33 feet to 16 feet with the rider that all the concerned persons will release land measuring 16 feet out of their plots adjoining passage comprised in Khasra No.246//11/15. Even though, the Gram Panchayat has authority to change user of land reserved/utilized for common purposes for the benefit of inhabitants of the village but the Gram Panchayat cannot reduce the area of passage carved out during consolidation for regularizing unauthorised encroachments over the same merely on the ground of the number of such encroachers being very large and therefore the abovesaid resolution suffers from patent illegality. Since the above said resolution, due to reducing of area of the passage comprised in Khasra No.251/20 from 33 feet to 16 feet and relinquishment of area measuring 16 feet of the plots adjoining passage comprised in Khasra No.246//11/15 by the concerned persons also involved exchange of land owned by Gram Panchayat with land owned by such persons, the above said resolution could be implemented only with the prior approval of the Government under Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 and in the absence of prior approval of the Government, the above said resolution is of no legal significance and consequence and does not accord any legitimacy or support to the claim of the petitioner. Even otherwise, in the absence of any material to show that

the resolution was approved by the competent authority and implemented accordingly, the same cannot be accorded any legal sanctity so as to provide any right to or confer any benefit on the petitioner.

The petitioner being in un-authorized possession of part of land comprised in Khasra No.246//11/15 has no legal right to continue in possession thereof and has been rightly ordered to be evicted there from by the Competent Authorities in accordance with law and the impugned orders do not suffer from any illegality and are not liable to be set aside.

Accordingly, the writ petition, being devoid of any merit, is dismissed.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

04.09.2019
Kavneet Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No