

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

**CWP No.15909 of 2017 (O&M)
Date of decision: 09.08.2019**

Gurdeep Singh and another

.... Petitioners

Versus

State of Punjab and others

.... Respondents

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

Present : Ms. Satpreet Kaur, Advocate
for the petitioners.

Mr. Amit Mehta, Sr. DAG, Punjab
for respondents No.1 to 4.

Mr. R.S. Manhas, Advocate
for respondent No.5.

Mr. S.S. Hira, Advocate
for respondents No.6 to 8.

ARUN KUMAR TYAGI, J.

The petitioners are seeking issuance of a writ in the nature of certiorari for quashing the order dated 04.09.2014 (**Annexure P-4**) passed by respondent No.3-Collector-cum-District Development and Panchayat Officer, Hoshiarpur whereby the petitioners were ordered to be ejected from land comprised in khewat No.24 khatauni No.37 khasra No.36(2-0) situated within the revenue estate of village Sada Araian, Tehsil and District Hoshiarpur and order dated 22.07.2016 (**Annexure P-5**) passed by respondent No.2-Director, Rural Development and Panchayat, Punjab whereby appeal filed by the petitioners against order dated 04.09.2014 (**Annexure P-4**) was dismissed.

The petitioners have averred in the petition that in the year 1972 petitioners No.1 and 2 were allotted plots measuring 5 marlas each in khasra No.24 by respondent No.5-Gram Panchayat, Sada Araian due to being homeless persons. Thereafter, on 21.06.1983 Gram Panchayat, Dhugga passed resolution for exchange of khasra No.24, which belonged to petitioners No.1 and 2 and possession of which was with petitioners No.1 and 2 as they had their residential houses on the same, with khasra No.36. Petitioners No.1 and 2 constructed pucca houses in khasra No.36 where they also installed handpump and fodder cutting machine with engine whereas Gram Panchayat constructed a school in khasra No.24. Respondent No.5-Gram Panchayat, Sada Araian filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short “the Act”) before respondent No.3-Collector-cum-District Development and Panchayat Officer, Hoshiarpur for evicting petitioners No.1 and 2 from khasra No.36. Petitioners No.1 and 2 contested the petition and narrated the facts regarding passing of resolution by Gram Panchayat, Dhugga regarding exchange of khasra No.24 with khasra No.36 and subsequent tearing of the said resolution by the Members of Gram Panchayat in connivance with each other. Respondent No.4-Block Development and Panchayat Officer, Hoshiarpur reported vide his letter dated 26.10.2008 that there was no record of any proceeding from 10.06.1983 to 24.08.1983 and there was no resolution dated 21.06.1983 in the record. Respondent No.3-Collector-cum-District, Development and Panchayat Officer, Hoshiarpur, vide order dated 04.09.2014, ordered ejectment of the petitioners from Khasra No.36 without considering these facts. Appeal filed by the petitioners against the aforesaid order was dismissed by respondent No.2-Director, Rural Development and

Panchayat, Punjab vide order dated 22.07.2016. The petitioners are poor landless labourers who were given the land in dispute and even if the resolution is ignored even then the petitioners are entitled for allotment thereof in view of the Punjab Government letter dated 14.08.2008 and Rule 13-A of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short 'the 1964 Rules'). While pleading that the impugned orders are illegal being against law and facts on record, the petitioners have prayed that the same may be quashed.

On notice, respondents No.1 to 4 have filed reply by way of affidavit of Devinder Singh, Block Development and Panchayat Officer, Hoshiarpur-1 pleading that the averments as to allotment of plots measuring 5 marlas each by respondent No.5-Gram Panchayat, Sada Araian to petitioners No.1 and 2 from khasra No.24 in the year 1972 are factually incorrect. Respondent No.5-Gram Panchayat, Sada Araian had no authority to allot any Gram Panchayat land to the petitioners without prior permission of the Director, Rural Development and Panchayat Department, Punjab Chandigarh. Resolution passed by Gram Panchayat, Dhugga in the year 1983 was not valid. The petitioners filed civil suit for permanent injunction against respondent No.4-Block Development and Panchayat Officer, Hoshiarpur and respondent No.5-Gram Panchayat, Sada Araian, which was dismissed by the Additional Civil Judge (Sr.Divn.), Hoshiarpur vide judgment and decree dated 10.09.2009 and appeal filed against the same was dismissed by the Additional District Judge, Hoshiarpur vide judgment and decree dated 14.10.2011. The petitioners filed RSA No.3079 of 2012 titled as "Kehar Singh and another Vs. Gram Panchayat Village Sada Araian and another" which was dismissed by this Court vide order dated 22.04.2015. The

petitioners have not come to the Court with clean hands as they did not disclose the facts regarding the earlier litigation. The petitioners, being in unauthorised possession of khasra No.36, have been rightly ordered to be ejected from the same and the petition may be dismissed with costs.

Respondent No.5-Gram Panchayat, Sada Araian has also filed reply by way of an affidavit of Balwinder Kaur, Sarpanch and has pleaded that the petitioners did not produce any document showing allotment of plots measuring 5 marlas each by respondent No.5-Gram Panchayat to them. The petitioners did not disclose the facts regarding filing of suit for permanent injunction and also dismissal of the suit as well as first and second appeals. Gram Panchayat had no authority to allot any land of the Gram Panchayat to any one without prior permission of the Director, Rural Development and Panchayat Department, Punjab. The petitioners are in unauthorised possession of the land in dispute and the construction raised by them is also illegal. The petitioners have been rightly ordered to be evicted from the land in dispute.

No reply was filed by respondents No.6 to 8.

We have heard arguments addressed by learned counsel for the parties and gone through the record.

Learned counsel for the petitioners has argued that in the present case respondent No.5-Gram Panchayat, Sada Araian had allotted plots measuring 5 marlas each to petitioners No.1 and 2 in khasra No.24 in the year 1972. Vide resolution dated 21.06.1983 Gram Panchayat, Dhugga exchanged khasra No.36 with khasra No.24. Gram Panchayat constructed school in khasra No.24 and the petitioners constructed their residential houses in khasra No.36. Subsequently, Members of Gram Panchayat in connivance with each other had torn the resolution from the register. Respondent No.3 wrongly

passed ejectment order against the petitioners No.1 and 2 without considering allotment of the land in dispute by respondent No.5-Gram Panchayat, Sada Araian in favour of petitioners No.1 and 2. Respondent No.2 wrongly dismissed the appeal against the said order without application of mind. The impugned orders being against law and facts are illegal and may be quashed.

On the other hand, learned State counsel, learned counsel for respondent No.5 and learned counsel for respondents No.6 to 8 have argued that the petitioners have failed to produce any document/revenue record to prove allotments of plots measuring 5 marlas each to them in khasra No.24 by Gram Panchayat, Sada Araian in the year 1972 and exchange of khasra No.24 with khasra No.36 by Gram Panchayat, Dhugga by passing resolution dated 21.06.1983. There is no such resolution in the record of Gram Panchayat. Gram Panchayat land could not be allotted or exchanged by the Gram Panchayat without obtaining prior permission of the Director, Rural Development and Panchayat Department, Punjab. The petitioners are in unauthorised possession of the land in dispute and have illegally constructed their houses over the same. The petitioners have been rightly ordered to be evicted from the same and are not entitled for any relief.

On perusal of the record and consideration of the submissions made by the learned Counsel for the parties, 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.

In the present case, the petitioners have averred that respondent No.5-Gram Panchayat, Sada Araian had allotted plots measuring 5 marlas each to petitioners No.1 and 2 in khasra No.24 in the year 1972. In Jamabandi

for the year 1988-89 (**Annexure P-2**) respondent No.5-Gram Panchayat, Sada Araian is recorded to be owner of khasra No.24 min (1-6) and 24 min (0-15) and respondent No.5-Gram Panchayat, Sada Araian is recorded to be in possession of khasra No.24 min (1-6) while Sada Ram and petitioners No.1 and 2 Gurdeep Singh and Kehar Singh are recorded to be in possession of khasra No.24 min (0-15). However, the petitioners did not produce copy of any resolution passed and allotment letter issued or gift deed executed by respondent No.5-Gram Panchayat, Sada Araian regarding allotment of plots measuring 5 marlas each out of khasra No.24 to petitioners No.1 and 2.

The petitioners have further averred that subsequently Gram Panchayat, Dhugga by passing resolution dated 21.06.1983 exchanged khasra No.36 with khasra No.24. In support of their case, the petitioners have produced photo-stat copy of resolution dated 21.06.1983 (**Annexure P-1**). In the resolution it was mentioned that the Gram Panchayat of Village Sada Araian had allotted plots to homeless persons namely Kehar Singh, Gurdeep Singh and Sada Ram under the scheme floated by the Government for homeless persons out of khasra No.24 measuring 2 kanal 2 marla which was towards the eastern side of the village on metaled road. It was further mentioned in the resolution that the Gram Panchayat had received a grant of ₹25,000/- for the construction of building of Government Primary School. Accordingly it was unanimously resolved thereby that the plots which were given to homeless persons out of khasra No.24 be given to them in khasra No.36 towards western side, inside the phirni and the plots which were allotted earlier be used for construction of building of Government Primary School.

However, the photo-stat copy of resolution dated 21.06.1983 produced by the petitioners does not bear the signatures/thumb-impressions of the Sarpanch/concerned members of the Gram Panchayat. The petitioners have admitted that pursuant to the inquiry conducted into the Panchayat proceedings during the period between 1982-1992 on application of the petitioners, the Block Development and Panchayat Officer, Hoshiarpur submitted report vide letter dated 26.10.2008 (**Annexure P-3**) that pages No.29-32 were not available and if the Gram Panchayat had passed any resolution during the period 10.06.1983 to 24.08.1983 even that was not available and resolution dated 21.06.1983 was not available in the register. Consequently, the authenticity of resolution dated 21.06.1983 allegedly passed by Gram Panchayat, Dhugga, produced by the petitioners in support of their claim, is itself disputed and their claim is not thereby established.

Even otherwise, the vital question which arises for determination is as to whether the petitioners are in possession of the land in dispute as owners in view of allotment of plots measuring 5 marlas each in khasra No.24 and exchange thereof with plots in khasra No.36 by the Gram Panchayat and the impugned orders for their ejection from khasra No.36 being illegal are liable to be quashed.

In order to determine this question it is also essential to notice the relevant statutory provisions.

Section 5 of the 1961 Act regulates the use and occupation etc. of lands vested or deemed to have been vested in Panchayats and the same reads as under:-

“5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats.—

(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilized or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned **in the manner prescribed:**

Provided that where two or more villages have a common Panchayat, shamilat deh of each village shall be utilized and disposed of, by the Panchayat for the benefit of the inhabitants of that village:

Provided further that where there are two or more shamilat tikkas in a village, the shamilat tikka shall be utilized and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka:

Provided further that where the culturable area of land in shamilat deh of any village, so vested or deemed to have been vested in a Panchayat is in excess of two-thirds of the total of that village (excluding abadi deh), then culturable area upto the extent of two-thirds of such total area shall be left to the Panchayat and one-half of the remaining culturable area of shamilat deh, shall be utilized for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining culturable area shall be utilized for distribution to the small land owners of that village by the collector in consultation with the Panchayat, in such manner as may be prescribed.

(2) The area of shamilat deh to be utilized for the purpose of the third proviso to sub-section (1) shall be demarcated by such officer in consultation with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2) issue to any Panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to sub-section (1) and in sub-section (2) and sub-section (3) shall apply to the "Hilly area".

(5) Notwithstanding anything contained in the preceding sub-sections, no land vested or deemed to have been vested in a Panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to leave with the Panchayat, culturable area which is less than fifty percent of the total culturable area vested or deemed to have been vested in the Panchayat.

Provided that the condition of retaining fifty per cent of the total culturable land vested or deemed to have been vested in the Panchayat shall not be applicable, when such land is disposed of by way of sale, gift or exchange to any of the Department of the State Government or the Board or the Corporation owned or controlled by the State Government.” **(emphasis supplied)**

Rule 5 of the 1964 Rules, which permits Panchayat to exchange any land in shamilat deh with the land of an equivalent value, reads as under:-

"5.Exchange of land [Sections 5 and 15(2) (f) of the Act] –

A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may **with the prior approval of the Government**, transfer any land in shamilat deh by exchange with the land of an equivalent value.”

(emphasis supplied)

Rule 13-A of the 1964 Rules inserted vide the Punjab Amendment Rules, 1976 w.e.f. 07.10.1976 empowers Panchayat to give land in shamilat deh free of costs to a land less worker residing in the sabha area for construction of a house for his residence and the same is reproduced as under:-

13-A Giving of the land to landless worker-

A Panchayat may, **with the previous approval of the Government**, give land in shamilat deh free of cost, to a landless worker residing in the Sabha area for construction of a house for his residence:

Provided that the landless worker to whom such land is given, shall not be entitled to sell, exchange or mortgage it except mortgaging it for the purposes of raising loan to construct a house on it.”

(emphasis supplied)

In view of the above referred statutory provisions, a Gram Panchayat can transfer any land in shamilat deh by exchange with the land of an equivalent value or give land in shamilat deh free of cost to a landless worker residing in a Sabha area for construction of a house for his residence only with prior approval of the Government which is a condition precedent for a valid exchange or gift of such land. Mere passing of the resolution by the Gram Panchayat is not sufficient and does not clothe the transferee with any right title or interest in such land in the shamilat deh. Consequently mere possession of such land by the transferee does not entitle him to protection of law for continuing in possession thereof. **(See Bant Kaur Vs. The Director,**

Department of Rural Development and Panchayats, Punjab, SAS Nagar and others : 2013(1) R.C.R. (Civil) 146).

Respondent No.5-Gram Panchayat, Sada Araian could not allot any plot to petitioners No.1 and 2 out of land in the shamilat deh comprised in khasra No.24 and could not exchange land comprised in khasra No.36 with land comprised in khasra No.24 statedly allotted to petitioners No.1 and 2 without obtaining prior approval of the Government. The petitioners have neither pleaded nor produced any document to prove obtaining of prior approval of the Government by Gram Panchayat for allotment of plots to petitioners No.1 and 2 in khasra No.24 or exchange of land comprised in khasra No.36 with petitioners No.1 and 2 in lieu of land comprised in khasra No.24 statedly allotted to the petitioners No.1 and 2. Any allotment of plots to petitioners No.1 and 2 or exchange of land with them by Gram Panchayat without obtaining of prior approval of the Government was of no legal consequence and did not clothe petitioners No.1 and 2 with any right title or interest in the land in dispute and petitioners No.1 and 2 could not be said to have become owners of the land in dispute on the basis thereof. The petitioners No.1 and 2 filed Civil Suit for permanent injunction in respect of the land in dispute which was dismissed by Addl. Civil Judge (Sr. Divn.), Hoshiarpur vide judgment and decree dated 10.09.2009. Appeal filed by the petitioners No.1 and 2 was dismissed by Addl. District Judge, Hoshiarpur vide judgment and decree dated 14.10.2011. The petitioners filed RSA No.3079 of 2012 in this Court which was dismissed vide order dated 22.04.2015. The petitioners are proved to be in unauthorized possession of the land in dispute and have no legal right to continue in possession thereof.

Therefore, the petitioners are liable to be and have been rightly ordered to be

ejected from the land in dispute. However, the petitioners may, if so desired, apply to Gram Panchayat, Sada Araian for allotting plots out of land in shamilat deh free of costs to them on the ground of being landless worker residing in the area of Sabha area for construction of a house for their residence under Rule 13-A of the 1964 Rules after obtaining previous approval of the Government, but the petitioners, being in unauthorized possession of the land in dispute, cannot even claim allotment thereof under Rule 13-A of the 1964 Rules as a matter of right. As per provisions of Section 5 of the 1961 Act, the Gram Panchayat can dispose of its land as per norms prescribed but Gram Panchayat being independent entity and not being under any legal obligation to allot land to the petitioners for construction of a house for their residence, cannot be forced to allot plots to the petitioners. For a judicial precedent in this regard reference can be made to **Gram Panchayat Kokalpur Vs. Joint Director Panchayat, Punjab and others : 2011(53) R.C.R. (Civil) 568**. In these circumstances, the impugned orders cannot be said to be illegal or against law and facts on record and are not liable to be quashed.

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

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

09.08.2019
Kothiyal

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