

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 22388 of 2016

Date of Decision: 22.11.2019

BALBIR SINGH

... *Petitioner*

VS.

JOINT DEVELOPMENT COMMISSIONER (IRD), AND OTHERS

...*Respondents*

**CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr. S.S. Swaich, Advocate,
for the petitioner.

Mr. Shreesh Gupta, Senior DAG, Punjab.

Mr. Joginder Sharma, Advocate,
for respondent No. 4.

RAKESH KUMAR JAIN, J. (Oral)

The petitioner has challenged the orders dated 07.10.2013 (Annexure P-5) passed by the District Development and Panchayat Officer-cum-Collector(Panchayat Land), Rupnagar by which an application under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (for short “the Act”) filed by respondent No. 4/Gram Panchayat has been allowed.

Counsel for the petitioner, *inter alia*, contends that an application under Section 7 of the Act was filed by the Gram Panchayat on the ground that the petitioner is in unauthorized possession over the land of pond which is included in the definition of *shamlat*. It is submitted that the land in dispute is stated to be *abadi deh (lal lakir)* but no concrete evidence has been led by the Gram Panchayat to prove that the land in dispute, on which the petitioner is in occupation, is a part of a pond. In this regard he has drawn our attention to a letter dated 27.08.2013 written by the Block

Development and Panchayat Officer (BDPO), Roopnagar to District Development and Panchayat Officer-cum-Collector (Panchayat Land), Rupnagar in which the BDPO has averred that even after the inspection of the spot he was not clear as to whether the land in dispute belongs to the Gram Panchayat or it belongs to the party concerned. He has, thus, suggested that it would be proper to decide the case on the basis of the evidence produced by the parties. It is submitted that no evidence was led by the Gram Panchayat except the site plan to prove that the land in dispute is a pond on which the petitioner is in unauthorized occupation and the Collector passed the order of eviction against the petitioner only on the basis of the personal inspection though without recording any finding as to how he came to the conclusion that the land in dispute is a pond (*tobha*).

It is further submitted that the Commissioner had also passed the same order and further observed that it was for petitioner to produce the allotment letter of the land to prove that he is in the permissive possession of the said land.

Counsel for the petitioner has vehemently argued that as per Section 7 of the Act, the application filed by the Gram Panchayat can be maintained only if the land in dispute is a *shamlat* and the petitioner is in unauthorized possession.

It is further submitted that in case the land in dispute is not *shamlat* or the petitioner is not in unauthorized possession or is in permissive possession of the land of *shamlat*, the application under Section 7 of the Act shall not be maintainable.

Counsel for the petitioner though argued vehemently but could not point out any evidence to show on record that the land in dispute has been identified as a pond after examining the evidence by the Court below.

After hearing counsel for the parties and after taking into consideration the aforesaid facts and circumstances, we are of the concerned opinion that the Courts below have erred in passing the order of eviction against the petitioner on conjectures and surmises. Since, it is a matter where the person in possession has been thrown out from the land upon which he has constructed his house, the Court should have been sure to hold that property in dispute is actually a pond and by assigning cogent reasons for the same.

In view of the aforesaid facts and circumstances, there is no other way but to remand this case back to the Collector to decide it again on the basis of the evidence to be led by the parties for which we are granting one more opportunity.

Thus, the writ petition is allowed and the impugned order(s) is hereby set aside. Parties are directed to appear before the Collector on 16.12.2019. The Collector shall provide adequate number of opportunities to both the parties to lead their respective evidence to prove that the land in dispute is shamlat being used for common purposes or otherwise.

(RAKESH KUMAR JAIN)
JUDGE

November 22, 2019

Ess Kay

(SUVIR SEHGAL)
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>