

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

**CWP No. 21413 of 2019
Date of decision: 24.09.2019**

Gurdev 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 : Mr. Sukhjit Singh, Advocate for the petitioners.

ARUN KUMAR TYAGI, J.

The petitioners have prayed for the issuance of writ in the nature of certiorari for quashing of order dated 19.01.2016 (**Annexure P-1**) passed by respondent No.3 and order dated 21.09.2018 (**Annexure-P2**) passed by respondent No.2.

The respondent No.4 filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act') for seeking ejectment of the petitioners and Joginder Singh from land measuring 0 kanal 4 marlas comprised in Khasra No.143 situated in the revenue estate of village Ladiyan, Tehsil Banga, District S.B.S. Nagar (hereinafter referred to as the land in dispute). The petitioners filed their reply to the application and denied encroachment. The respondent No.3 vide his order dated 19.01.2016 (**Annexure P-1**), allowed the petition and ordered ejectment of the petitioners and Joginder Singh from the land in dispute. The appeal filed by the petitioners against the above-said order was dismissed by respondent No.2 by his order dated 21.09.2018 (**Annexure-P2**).

The petitioners have challenged the impugned orders on the grounds that the impugned orders were passed without following the prescribed procedure and holding any enquiry and conducting proper demarcation and the Courts below have overlooked the fact that in 1980 respondent No.4-Gram Panchayat, Ladiyan had carved out a passage from the land of the petitioners comprised in Khasra No.142 and in exchange gave equal area from Khasra No.143 vesting in it to the petitioners. The petitioners have accordingly prayed that the impugned orders dated 19.01.2016 and 21.09.2018 being illegal may be quashed.

We have heard the learned Counsel for the petitioners and gone through the record.

Learned Counsel for the petitioners has argued that houses of the petitioners as well as other persons are situated in Khasra No.142. In 1980, respondent No.4 had carved out a passage from the land of the petitioners comprised in Khasra No.142 because there was no passage for the villagers residing in that area and in exchange it had given equal area to the petitioners from land comprised in Khasra No.143 which vested in it. The fact regarding the exchange was in the knowledge of the Gram Panchayat and the villagers. The petitioners also submitted affidavit dated 20.03.2019 (**Annexure P-3**) to the Gram Panchayat asking it to get the factum of exchange reduced in to writing. The Courts below have wrongly ignored the exchange and accepted the demarcation report dated 07.05.2013 which is against the factual position and possession of the petitioners on the land in dispute. The Courts below also did not consider demarcation report dated 29.08.2013 regarding demarcation conducted under the order of the Deputy Commissioner, Shaheed Bhagat Singh Nagar according to which no encroachment of the petitioners was found on the land in dispute. The

impugned orders are against law and facts and therefore, the same may be quashed.

Admittedly, the land in dispute, which forms part of Khasra No.143 described in the revenue record as rasta sare aam vests in Respondent No.4. Respondent No.4 filed the application under Section 7 of the 1961 Act for eviction of the petitioners and Joginder Singh claiming them to be in unauthorized possession of the land in dispute on the basis of demarcation report dated 07.05.2013. The petitioners challenged the correctness of the demarcation report dated 07.05.2013 by filing objections and claiming the same to be contrary to subsequent demarcation report dated 29.08.2013 but the petitioners have not produced copies of the demarcation reports dated 07.05.2013 and 29.08.2013 and have not produced any other material in support of the objections filed against the demarcation report dated 07.05.2013 and have failed to substantiate and establish that the demarcation report dated 07.05.2013 had suffered from any material defect or legal infirmity adversely affecting its credibility and rendering the same devoid of any legal significance. Therefore, the demarcation report dated 07.05.2013 has rightly been accepted by the authorities in proof of un-authorized possession of the petitioners and Joginder Singh over the land in dispute.

The petitioners have claimed that in 1980, the respondent No.4 had carved out a passage from land of the petitioners comprised in Khasra No.142 and in oral exchange gave equal area comprised in Khasra No.143 vesting in it to the petitioners. However, the petitioners have not produced copy of any resolution passed by respondent No. 4 regarding any such transaction of exchange. Section 5 (1) of the 1961 Act, which regulates the use and occupation etc. of lands vested or deemed to have been vested in

Panchayats, provides that all lands vested or deemed to have been vested in a Panchayat under the 1961 Act, shall be utilized or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed. Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964, which permits Panchayat to exchange any land in shamilat deh with the land of an equivalent value, provides that a Panchayat, if it is of the 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. In view of these statutory provisions, a Gram Panchayat can transfer any land in shamilat deh by exchange with the land of an equivalent value only with prior approval of the Government which is a condition precedent for a valid exchange 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 and mere possession of such land by the transferee does not entitle him to the protection of law for continuing in possession thereof and reference in this regard can be had to a decision of this Court rendered in the case of **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.4 could not enter into any transaction of exchange without the prior approval of the Government. The petitioners have neither claimed nor produced copy of any order passed by Punjab Government according approval to the same. Even if respondent No.4 be assumed to have entered into any transaction of such exchange with the petitioners, even then in the absence of approval of the same by the Government, no such exchange would confer any right in the

land in dispute upon the petitioners and Joginder Singh, entitling them to continue in possession of the land in dispute.

Thus, the petitioners, being in illegal possession of the land in dispute having no legal right to continue in possession thereof, have rightly been ordered to be ejected therefrom and the impugned orders do not suffer from any illegality.

Accordingly, the writ petition being devoid of any merit is dismissed. No costs.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

24.09.2019
Kavneet Singh

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No