

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

**208**

**CWP-9512-2016 (O&M)  
Date of Decision : 13.11.2019**

Joginder Singh

... Petitioner

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Sanjiv Gupta, Advocate for the petitioner.

Ms. Kirti Singh, DAG, Haryana  
for respondents No.1 to 6.

Mr. M.L. Saggar, Senior Advocate with  
Mr. Rohit Joshi, Advocate for respondent No.7.

Mr. Vikram Punia, Advocate  
for the private respondents No. 8 to 80.

**RAKESH KUMAR JAIN, J.(ORAL)**

The petitioner is the resident of village Sarsad, District Sonapat, who has prayed for the issuance of a writ in the nature of mandamus, seeking a direction to the official respondents for the implementation of the order of eviction dated 27.03.2001 passed by the Assistant Collector, Ist Grade, Gohana (Sonapat) on the application filed by respondent No.6 (Block Development and Panchayat Officer, Sonapat) seeking eviction of the private respondents from the land measuring 384 acres.

Shorn off unnecessary details, thirty nine applications under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'Act, 1961') were filed by respondent No.6 against the private respondents seeking their eviction on the ground that they are in unauthorized occupation of the *shamilat* land. The said petitions were allowed on 27.03.2001. The private respondents appeals challenging the order of the Assistant Collector Ist Grade, Gohana were dismissed on 22.04.2003. The private respondents also remained unsuccessful in the court of Commissioner because their revision petitions were dismissed on 11.08.2004 but they challenged all the aforesaid orders by way of writ petition No. 6135 of 2006 which was dismissed by this Court on 24.04.2006. The private respondents took their last chance before the Hon'ble Supreme Court by filing SLP (Civil) No.13536 of 2006 which too was dismissed on 25.08.2006.

Then there was a lull for sometime till the petitioner being a resident of the village filed the present petition No. 9512 of 2016 with a prayer to direct the official respondents herein to implement the order of eviction which has attained finality.

The writ petition was initially disposed of by this Court by order dated 16.05.2016 which is reproduced as under:-

*"Petitioner is a resident of village Sarsad, Tehsil Gohana, District Sonapat. He alleges that though the eviction order passed way back on 27th March, 2001 against private respondents No.8 to 80 under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to the State of Haryana, has attained finality but the said order has been put*

*under the carpet not only by the Gram Panchayat but by the District Administration also.*

*It is alleged that the private respondents continue to cultivate the land unauthorizedly thereby causing loss of lacs of rupees per year to the Gram Panchayat. It is further alleged that those who raise their voice against misuse of the Gram Panchayat land have been silenced through criminal acts, including the murder of two residents of the village. The petitioner, thus, seeks a direction to the District Administration and the Gram Panchayat to give effect to the above stated eviction order.*

*Notice of motion to respondents No.1 to 6. Ms. Kirti Singh, Deputy Advocate General, Haryana accepts notice on their behalf.*

*Having heard learned Counsel for the parties, we do not deem it necessary to call upon the private respondents as we are not determining any factual issue with respect to the allegations made by the petitioner. Suffice it to observe that if the eviction order has attained finality and there is no other legal impediment, it becomes imperative upon the Gram Panchayat and the Deputy Commissioner or authorities of the Department of Panchayats, to ensure that the public property like shamlat deh land is not misutilized and is restored for common purposes only, including for generating income of the Gram Panchayat. If the Sarpanch is found to be colluding with the encroachers, the authorities must know their powers or the action which they are competent to take under the Act against an erring Sarpanch. At the same time, such a recourse cannot be taken mechanically without*

*ascertaining the correct facts.*

*We, thus, dispose of this writ petition with a direction to the Deputy Commissioner, Sonapat to constitute a team of officers not below the rank of DDPO/SDM to hold a fact finding inquiry and submit the report to him within two months. If the Deputy Commissioner finds that the Gram Panchayat land is still occupied by unauthorized encroachers against whom eviction order has attained finality, he shall ensure time bound action and to restore the land to the Gram Panchayat with police help, if need be.*

*The needful shall be done within three months after the fact finding inquiry is held."*

The private respondents filed a review application bearing RA-CW-312-2016 in the order dated 16.05.2016 which was dismissed on 21.10.2016. The private respondents then challenged the order dated 16.05.2016 before the Hon'ble Apex Court by way of SLP(C) No. 3449-3450 of 2017 which was granted and converted into civil appeal No. 11757-11758 of 2018. The said appeal was disposed of vide order dated 03.12.2018. The relevant part of the said order is as under:-

*"11. In this case, we find that the High Court issued some mandatory directions to the State in relation to the subject-matter of the proceedings but it was done without hearing the appellants (respondents in the writ petition before the High Court). It is for this reason, we are unable to uphold the impugned order.*

*12. We have not set out the entire factual dispute which led to filing of the writ petition, nor set out the stand taken by the parties against each*

*other before the High Court and nor dealt with any factual issues arising in the case though argued vehemently by both the learned counsel against each other.*

13. *In our view, it is for the parties to raise all their pleas before the High Court to enable it to decide in accordance with law. We, therefore, express no opinion on any of the pleas.*

14. *In view of the foregoing discussion, the appeals succeed and are accordingly allowed. Impugned order is set aside. The writ petition, out of which these appeals arise, is restored to its original number before the High Court.*

15. *Let the writ petition be decided by the High Court after hearing all the parties in accordance with law. Since the matter relates to a large piece of the land, it must be disposed of within six months from the date of this order without allowing any party to seek any adjournment."*

In view of the aforesaid order of the Hon'ble Supreme Court, the case has been listed before this Court for disposal after affording an opportunity of hearing to the private respondents.

During the course of hearing, counsel for the respondents has raised an issue that even in the order dated 16.05.2016, this Court had observed that the eviction order which has attained finality may be implemented if there is no other legal impediment. Counsel for the respondents, had earlier submitted that an application under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'Act, 1948') is pending before the Director Consolidation in which an order of status quo has been

passed.

Pursuant to the aforesaid argument, the following order was recorded by this Court on 05.11.2019:-

*"Learned counsel for the petitioner has submitted that the private respondents herein have already been ordered to be evicted on a petition filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 and the said order has attained finality. This petition was earlier disposed of on 16.05.2016. The aforesaid order was challenged by the private respondents before the Hon'ble Supreme Court on the ground that they were not heard before passing the said order. The Supreme Court allowed the petition filed by the respondents, order dated 16.05.2016 was set aside and the matter has been remanded back to this Court.*

*Counsel for the petitioner has submitted that the respondents are not allowing the authorities to take possession on the ground that an order of status quo has been granted in a petition filed under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948, which is still pending before the Director Consolidation of Holdings, Haryana. It is submitted that the said order is attached by the respondents as Annexure RR/1 dated 28.01.1998 alleged to have been passed in Case No. 16 of 1998.*

*In order to appreciate the controversy, counsel for the State is directed to produce the entire record of the case No. 16 of 1998 which is allegedly pending before the Director Consolidation of Holdings, Haryana on the next*

*date of hearing.*

*Adjourned to 13.11.2019."*

Learned State counsel has today produced the order passed by the Director Consolidation dated 08.11.2019 by which petition filed by private respondents has been dismissed as not maintainable.

Counsel for the petitioner has submitted that since there is no other legal impediment and the order of eviction passed under Section 7 of the Act, 1961 has attained finality, therefore, the private respondents may now be directed to implement the order of eviction passed way back on 27.03.2001 in respect of 384 acres of land which is in unauthorized occupation of the private respondents.

Learned counsel, appearing on behalf of the private respondents, has submitted that the said order still cannot be implemented because the question of title raised by them was not decided by the authorities who had passed the order under Section 7 of the Act, 1961. In this regard, learned Senior counsel appearing on behalf of the Gram Panchayat has pointed out that the question of title was raised by the private respondents and their contention has been rejected. Therefore, it is submitted that it does not lie in their mouth to raise the issue of question of title.

Be that as it may, counsel for the petitioner has submitted that once the validity of the order dated 27.03.2001, passed by the Assistant Collector Ist Grade, Gohana has been tested by authorities like Collector, Commissioner, High Court and the Hon'ble Supreme Court and the said order has been upheld, the private respondents cannot raise this issue that the question of title has not been decided or wrongly decided.

We have heard learned counsel for the parties and after perusal of record, are of the considered opinion that this is one such case in which all efforts have been made by the private respondents to keep their possession on the land as huge as 384 acres, that too, in the NCR, District Sonapat regarding which eviction order was passed about 18 years back. Thus, repelling the arguments raised by the counsel for the private respondents and keeping in view the totality of the facts and circumstances, we direct the official respondents herein to immediately start proceedings to take possession of the entire 384 acres of land about which the order of eviction has already been passed and attained finality. The needful shall be done by the official respondents No.1 to 6 within a period of 15 days from the date of receipt of the certified copy of the order. If the possession is not taken then the petitioner shall be entitled to file contempt petition against the official respondents in terms of the provisions of the Contempt of Courts Act, 1971.

Petition is allowed.

**( RAKESH KUMAR JAIN )**  
**JUDGE**

**( SUVIR SEHGAL )**  
**JUDGE**

**13.11.2019**

pooja saini

*Whether speaking/reasoned?*  
*Whether reportable?*

*Yes/No*  
*Yes/No*