

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

CWP-20034-2017 (O&M)
Date of Decision:02.09.2019

Vinod Kumar and others

. Petitioners

Vs.

State of Haryana and others

. Respondents

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

Present: - Mr.Ashok Kumar Khubbar, Advocate,
for the petitioners.

Ms.Kirti Singh, DAG, Haryana,
for respondents No.1 to 4.

Mr.Amit Kohar, Advocate,
for Respondents No.5 & 6.

None for respondents No.7 & 8.

RAKESH KUMAR JAIN, J. (ORAL)

The brief facts of this case are that Anil Kumar son of Som Prakash filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 [for short 'the Act'] for seeking ejectment of Anand Prakash and Jogmohan sons of Amarnath from the land falling in Khewat No.361, Khatauni No.444, Khasra Nos.72/3-1(8-2), 4/1, 9, 10, 12 and 13/1 situated in village Damla, District Yamunanagar. The respondents in the said petition raised question of title which was decided by the Assistant Collector, 1st Grade vide his order dated 17.12.1997 in favour of the Gram Panchayat holding that the land in dispute is a *gau charand* and vests in the Gram Panchayat. Appeal filed against the said order, by the said respondents, was dismissed by the Collector on 13.10.1998. However, the

Commissioner, vide his order dated 09.11.1999, set aside both the orders dated 17.12.1997 and 13.10.1998. Anil Kumar challenged the order dated 09.11.1999 by way of CWP-1931-2000 which was allowed on 30.05.2013, setting aside the order dated 09.11.1999 passed by the Commissioner, Ambala Division, Ambala. Thereafter, ejectment order was passed by the AC Ist Grade on 18.12.2015, who on his own, recorded his suggestion to the Gram Panchayat that since there are about 250 cows and bulls in the *gaushala*, therefore, the land may be reserved for them. The said order of the AC Ist Grade dated 18.12.2015 was challenged in appeal by the said respondents which was dismissed vide order dated 17.11.2016 holding that the possession of the respondents was unauthorized over the land in dispute and also ordered the Gram Panchayat to take possession of the *gaushala* and look after the cows on its own and in case the appellant therein want to run the *gaushala* he can do the same by transferring it to some other land. Thereafter, the Gram Panchayat passed a resolution dated 11.6.2017 and decided to lease out the land comprising in Khasra No.72//1/21,9 & 10, total land measuring 2 acre, 2 kanal and 18 marla to Lal Badhawa Ram Gaushala Committee Regd. for a period of 33 years. The petitioner challenged the resolution of the Panchayat dated 11.6.2017 before the Deputy Commissioner. The said resolution was not accepted by the Government and was thus not acted upon. A civil suit for permanent injunction was filed by Saurabh Singla s/o Anand Parkash Singla for restraining the Gram Panchayat from interfering in the actual physical possession of the plaintiff. In the said civil suit an application under Order 39 Rule 1 and 2 of the CPC was also filed which was allowed on 21.9.2018 restraining the defendant/Gram Panchayat from dispossessing the plaintiff from the suit land by force except in the due course of law.

Learned counsel for the petitioners has submitted that because of the said injunction, the possession is not being taken from private respondent No.8 though the order of eviction was passed as far as back on 18.12.2015.

Learned counsel for the respondents has submitted that the main reason for not taking possession was the order passed by the Civil Court against which the Gram Panchayat has also filed miscellaneous civil appeal.

We have heard learned counsel for the parties and perused the record.

As per Section 7 of the Act, the Assistant Collector 1st Grade has been empowered to make a summary enquiry in order to find out as to whether the person against whom the application has been filed is in wrongful or unauthorized possession of the land/immoveable property of the Shamilat Deh and if it is found that the possession of the said person is unauthorized then the Assistant Collector 1st Grade could pass the order and put the Panchayat into possession and for doing so the Assistant Collector, 1st Grade may exercise the powers of a Revenue Court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887. The Temporary injunction granted by the Civil Court has no meaning in so far as the possession is to be taken by the petitioner is concerned because the injunction has been granted against the Gram Panchayat not to dispossess illegally and forcibly except in the due course of law. It is not a case where the Panchayat is trying to dispossess from the land in dispute forcibly and illegally but an execution has already been filed by the Gram Panchayat before the AC 1st Grade who has now to act upon the said

execution as a Revenue Court, considering the said order of ejectment as a decree and deliver the possession of the land to the Gram Panchayat.

Keeping in view the aforesaid facts and circumstances, the prayer made in this petition for seeking a mandamus directing that the respondents to deliver the possession of the land in dispute to the Gram Panchayat after taking it back from the private respondents who has already been evicted from it and the said order of eviction had already attained finality. The AC Ist Grade before whom the execution has been filed by the Gram Panchayat, is directed to decide execution application as early as possible, preferably within a period of three months from the date of appearance of parties before him. The period of three months has been fixed keeping in view the order of eviction passed in the year 2015 and the private respondents against whom the order has been passed are sitting over the land in dispute unnecessarily despite there being any right, title or interest vested in the said land. The parties are directed to appear before the Assistant Collector, 1st Grade on 18.09.2019.

Disposed of.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

02.09.2019

Vivek

Whether speaking /reasoned : *Yes/No*

Whether Reportable : *Yes/No*