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

**CWP No.33076 of 2018**

**Date of decision: March 13, 2019**

Gram Panchayat, Nanak Nagri through its Sarpanch

.....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI  
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

**Present:** Mr. Sanjeev K. Virk, Advocate for the petitioner.

Mr. H.S. Sullar, DAG Punjab.

Mr. Sandeep Khunger, Advocate and  
Mr. Naresh Kaushik, Advocate for respondent No.7.

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**A.B. CHAUDHARI, J**

By way of present writ petition, the petitioner through its Sarpanch has sought a writ in the nature of certiorari for quashing the order dated 09.08.2018 (Annexure P-7) passed by the Deputy Commissioner, Kapurthala, respondent No.5, by which partition/division of area of lands and allotment thereof was made between the Gram Panchayat, Nanak Nagri (the petitioner) and the Gram Panchayat Village Chaheru, Tehsil Phagwara, District Kapurthala (respondent No.7).

**FACTS**

2. In the year 1988, the Gram Panchayat Village Chaheru, respondent No.7 was bifurcated and from it, the petitioner Gram Panchayat Nanak Nagri was carved out. The petitioner Gram Panchayat had made a representation in 2010 when the Deputy Director (Development) had taken

up the file, but no action took place. As per Section 3 of the Punjab Panchayati Raj Act, 1994 (for short 'Act of 1994'), assets and liabilities were also required to be divided and the newly carved out petitioner Gram Panchayat was required to be handed over the same. The petitioner Gram Panchayat filed CWP No.15526 of 2016 in this Court and this Court vide order dated 03.08.2016 (Annexure P-1) had directed respondent No.5-The Deputy Commissioner, Kapurthala to decide the issue regarding partition of lands. The Divisional Deputy Director Rural Development & Panchayat, Jalandhar and The Deputy Commissioner, Kapurthala, respondent No.5 then passed orders dated 14.02.2017/21.02.2017 partitioning the property. The partition was also sanctioned in the name of petitioner Gram Panchayat. However, the petitioner raised a grievance that certain portion of the lands allotted to the petitioner Gram Panchayat has been in illegal occupation of village people and then until and unless the same is got vacated, the partition or distribution cannot be made. By the impugned order, 61% of the area of the Panchayat has been allotted to respondent No.7-Gram Panchayat Chaheru and 39% to the petitioner Gram Panchayat-Nanak Nagri. The petitioner Gram Panchayat again filed a petition challenging the order dated 14.02.2017 passed by the Divisional Deputy Director Rural Development & Panchayat, Jalandhar before respondent No.2. Respondent No.2, on 06.04.2017, asked the Divisional Deputy Director Rural Development & Panchayat, Jalandhar to hear both the Panchayats and to make a fresh order.

The land in unauthorised possession of village people first should have been got vacated by filing legal proceedings under the Punjab Village Common Land Act before distribution. The order passed by

respondent No.2 is illegal. The petitioner Gram Panchayat again filed one more petition bearing CWP No.22749 of 2017 challenging passed by respondent No.2 and the said writ petition was decided on 07.11.2017 and this Court directed the Deputy Commissioner, Kapurthala to hear the petitioner as well as all the stakeholders by giving them full opportunity of hearing and then pass a speaking order. Pursuant to the order made by this Court on 09.08.2018, the Deputy Commissioner, Kapurthala has passed the impugned order, which is under challenge in the present writ petition.

### **ARGUMENTS**

3. In support of the writ petition, learned counsel for the petitioner, Mr. Sanjeev K. Virk, vehemently argued that the Deputy Commissioner, Kapurthala did not hear the parties and therefore, the impugned order is in contravention of the order dated 07.11.2017 made by this Court. Learned counsel also argued that the petitioner Gram Panchayat has given only 39% out of the total Panchayat land. According to him, the petitioner Gram Panchayat is entitled to 50% share of the land as per the population. He then submitted that there are some unauthorised occupants on the land; some of which has been included in the share of the petitioner Gram Panchayat. The Gram Panchayat should have been given 50% of the land and not 39% as has been done in the impugned order. Learned counsel then argued that the distribution of the land in issue of the population is incorrect and illegal. He further argued that the distribution ought to have been made equally, i.e. 50% to both the Gram Panchayat. Some of the lands allotted to the petitioner Gram Panchayat being in possession of unauthorised occupants, no partition could have been made unless the unauthorised possession was got vacated

through legal proceedings. Learned counsel therefore, urged this Court to quash the impugned order passed by the Deputy Commissioner, Kapurthala.

4. *Per Contra*, learned State counsel as well as learned counsel for respondent No.7 submitted that the perusal of the impugned order will clearly show that the parties to the proceedings before the Deputy Commissioner, Kapurthala were duly heard. Learned counsel for the respondents submitted that Section 3 of the Act of 1994 itself provides for distribution of land in accordance with population ratio. They relied on the single judge judgment of this Court in the case of **Gram Panchayat Village Mattar Hithar** versus **State of Punjab and others**, 2011 (1) R.C.R. (Civil) 682. Learned counsel also argued that the petitioner has not disputed the population of both the village Gram Panchayats as shown in the impugned order. Learned counsel then submitted that the distribution/partition of the lands between the two village Gram Panchayats has nothing to do with the alleged unauthorised possession on the village common lands. If such an argument is accepted, the same is bound to result into delay when already there is a delay of 21 years after the division of the Gram Panchayats and that has resulted into loss of income to both the village Panchayats. Learned counsel then submitted that the petitioner has not given a single instance in the petition as to the alleged area of land under unauthorised possession. At any rate, according to them, the proceedings for their eviction are bound to be undertaken upon finality of the distribution/ partition in accordance with the impugned order. The petition should not be entertained because unauthorised occupants, if any, would take undue advantage of non-finalization of allotment. The petitioner has been multiplying the litigation at

the costs of development of both the Village Gram Panchayats. Learned counsel for the respondents, therefore, prayed for dismissal of the petition.

### **CONSIDERATION**

5. We have heard learned counsel for the rival parties. We have also perused the entire record as well as the reply filed by the respondents. At the outset we find upon reading of the impugned order that the Deputy Commissioner, Kapurthala has carefully written a detailed order after hearing the contesting parties and recorded findings on facts. We do not think, we would be able to re-appreciate the entire matter and reopen the findings on facts unless they are shown to be perverse. Despite this legal position, we have heard the learned counsel for the petitioner as well as the learned counsel for the respondents on facts of the case and we proceed to record our findings as under.

6. The relevant portion of the Section 3 of the Act of 1994 reads thus:-

***“3. Establishment of Gram Sabha areas. (1) The State Government may, by notification, declare any village or group of contiguous villages with a population of not less than two hundred to constitute a Gram Sabha area:***

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***(3)(i) where any area excluded from any Gram Sabha area under sub-section (2) Is either Included In any other Gram Sabha area or 1,9 constituted Into a new Gram Sabha area, the assets and liabilities of the Grain Panchayat of the Gram Sabha area from which such area is so excluded (hereinafter referred to as the existing Gram Panchayat) shall be apportioned between the successor Gram Panchayats In the manner specified hereinafter. (ii) All lands and all stores, articles and***

*other goods belonging to the existing Gram Panchayat shall, -  
(a) If within the Gram Sabha area of that Gram Panchayat pass on to the successor Gram Panchayat in whose Gram Sabha area they are situated; (b) If outside the Gram Sabha area of that Gram Panchayat be apportioned between the successor Gram Panchayats according to population ratio;*

*xxxxxxx”*

7. The submission made by the learned counsel for the petitioner that the partition/division of the Panchayat lands could not be made on the ratio of population of the two village Gram Panchayats, is misconceived. Sub-Section 3 of Section 3 of the Act of 1994 quoted above provides for such a course of action. Even otherwise, logically and pragmatically, distribution of common lands of the Gram Panchayat will naturally be made in accordance with the population of each Gram Panchayat and there is no reason why ignoring the population ratio, the division should be 50% each which would cause severe prejudice to the Gram Panchayat having larger population. In the present case, the population of the petitioner Gram Panchayat is 1013 as against the population of respondent No.7 Gram Panchayat Chaheru of 1578. Thus, the population of respondent No.7 Gram Panchayat Chaheru is more by 565 persons than the petitioner Gram Panchayat. This fact is not in dispute from the reading of the entire petition and the documents. The submission that still the petitioner Gram Panchayat should have been given 50% of the lands, is therefore, clearly misconceived. The Deputy Commissioner, Kapurthala has verified the said aspect of the matter, that too after obtaining the reports, from the lower officers and the concerned Departments and also after hearing the parties, and has come to

the right conclusion. We quote the following observations from the impugned order which have not been disputed anywhere in the petition:-

*“The report submitted by Two Member Committee and the above mentioned proposal has been thoroughly perused. As per the report letter No.102 dated 02.02.2017 of the office of B.D. P.O. Phagwara attached in the case file, the population of Gram Panchayat Chaheru is 1578 and newly established out of it the population of new Panchayat Nanak Nagri is 1013. Under Section 3 of Rural Panchayati Raj Act 1994, there is a proposal as per population for division of New Gram Panchayat land/property carved out of old Panchayat. Therefore, the division of the land to both the above mentioned Panchayats at the rate of 61% to Gram Panchayat Chaheru and 39% to Gram Panchayat Nanak Nagri. xxxxxxxxxx”*

We, therefore, reject the submission regarding distribution of the land in the ratio of 61% to respondent No.7 Gram Panchayat and 39% to the petitioner Gram Panchayat in accordance with the population ratio.

8. The next submission that the petitioner was not heard is also incorrect as is clear from the following paragraph of the impugned order, which clearly shows that the counsel for the parties appeared before the Deputy Commissioner, Kapurthala and were heard:-

*“On the receipt of the copy of order in this court, both the parties along with counsel appeared in this court, during the proceedings of the court, the Panchayat of Nanak Nagri against the orders dated 06.04.2017 of Financial Commissioner, Government of Punjab, Rural Development and Panchayat Department had filed Civil Writ Petition No.22749 of 2017 in the Hon'ble Punjab and Haryana High Court.”*

Therefore, there is no substance that the petitioner was not

heard.

9. Further submission that the distribution of the lands could not have been made before eviction of the village persons who have been occupying the lands, itself is prejudicial to the interest of both the Gram Panchayats. The reason is until and unless after the division of Gram Panchayats, there is finality to the partition/distribution of lands by an order made by the competent authority, unauthorised persons on the lands, if any, would obviously raise objection to the title. In our opinion, it is only after the finalisation of the order of partition and in this case, the impugned order, the both the village Gram Panchayats would be entitled to file legal proceedings for eviction of unauthorised persons, if any, occupying the Gram Panchayat lands. That apart, reading of the entire petition nowhere shows a single instance of any unauthorised persons occupying the common land of the village lands, and therefore, the said submission is not based on any factual data. At any rate, we must observe that if really there are any unauthorised persons occupying the land of both the Gram Panchayats, the legal course of action for eviction etc. can always be taken by the authorities. But then to say that partition/distribution of the lands between the two Gram Panchayats should not be made that too after 21 years, is insidious and nothing but delaying the proceedings in the matter of partition. We cannot countenance such a stand.

10. Thus, upon perusal of the entire record, even on facts, we do not find any perversity in the impugned order nor the counsel for the petitioner has been able to point out. The impugned order is a detailed order and well reasoned order. Since already valuable 21 years have been lost, the litigation

should have been avoided. We think the petitioner as well as respondent No.7 both ought not to indulge in any further litigation in relation to the subject matter of the petition as the same is bound to hurt the public interest. *Salus populi suprema lex*, public interest is the supreme law.

11. The upshot of the above discussion is that we find no merit in the present writ petition. Hence, the following order is passed:-

**ORDER**

- (i) **CWP No.33076 of 2018** is dismissed;
- (ii) No order as to costs.

**(A.B. CHAUDHARI)**  
**JUDGE**

**(ANUPINDER SINGH GREWAL)**  
**JUDGE**

**March 13, 2019**  
mahavir

Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No