

CWP No. 16180 of 2020

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

**CWP No. 16180 of 2020
Date of Decision: 05th October, 2020**

Ram Lal ...Petitioner

Versus

The Director Rural Development and
Panchayat and others ...Respondents

**CORAM : JUSTICE S. MURALIDHAR
JUSTICE AVNEESH JHINGAN**

Present : Mr. B.S.Bali, Advocate for the Petitioner.

Dr. S. Muralidhar, J.:

1. This is a second round of litigation involving the present Petitioner who is laying a claim to a piece of land measuring 90 marlas in Village Heon, Tehsil Nawanshahr, District S.B.S. Nagar, which is otherwise in the revenue records shown to be under the ownership of the Gram Panchayat of the said Village which is impleaded as Respondent No.5 in the present petition.

2. The Petitioner's earlier writ petition i.e. CWP No.8937 of 2013 was disposed of by this Court on 31st July, 2013 setting aside the orders dated 15th March 2011 passed by Additional Deputy Commissioner-cum-Collector, Shaheed Bhagat Singh Nagar as well as Commissioner's order dated 21st September 2012 holding that the said orders were contrary to the earlier order dated 16th March, 2005 passed by the Joint Development Commissioner in an appeal filed by the Petitioner under Section 7 (2) of the Punjab Village Common Lands (Regulations) Act, 1961 (for brevity "the Act of 1961"). The operative portion of the order passed by this Court on 31st July, 2013 reads as under:

"In view of the above facts, this Court is of the opinion that orders passed by the Collector dated 15.03.2011 (Annexure P6)

and that of Commissioner dated 21.09.2012 (Annexure P8) are contrary to the order passed by the Joint Development Commissioner earlier on 16.03.2005 (Annexure P4). It was bounden duty of the Collector to decide question of title as per provisions of Section 11 of the Act. The parties should have been given an opportunity to lead evidence to prove their case. The land involved is very less and it has come on record that house of the petitioner exists thereon. If that is so, the authorities below were expected to show kindness to him at the time of taking any harsh decision. Possibility of selling that land to those who were sitting thereon could have been considered/probed.

Under above circumstances, this writ petition is disposed of, orders passed by the Collector dated 15.03.2011 (Annexure P6) and that of the Commissioner dated 21.09.2012 (Annexure P8) are set aside and the matter is remitted to the Collector, SBS Nagar, for fresh decision. Parties are directed to appear before the Collector, SBS Nagar on 14.08.2013.”

5. Following the above order, the Collector i.e. Respondent No.3 once again examined the matter and the operative portion of the said order dated 26th June 2014 reads as under:

“On careful perusal of record came on file, evidence produced by the parties, contentions of counsels for the parties and order dated 31.07.2013 passed by Hon’ble Punjab and Haryana High Court it is found that as per revenue record, original owner of land in question is *Gram Panchayat Deh* and possession is written as Maqbuja Malkaan and Khasra No. 134 in question has been written as *Gair Mumkin Passage*. On perusal of file it is found that this Court had earlier appointed Collector, Shahid Bhagat Singh Nagar who had got conducted demarcation of Khasra No. 86 and Khasra No. 134 by appointing Local Commission. During this demarcation eight persons were found to have encroached upon 19 Marla and Sh. Ram Lal son of Kartar (respondent party), who has encroached upon 2 Marla 8 Sarasahi, is also one of them. It is correct that Special Secretary, Govt. of Punjab, Department of Rural Development and Panchayats, Punjab, Chandigarh vide order dated 04.08.1999 had set aside the suspension of Party No.1 as he was owner of Khasra No. 86, on the basis thereof Deputy Commissioner, Nawanshahar had dismissed the election petition filed against party No.1 But from record placed on file during proceedings of case it is not evident that respondent’s father Sh. Kartara was the owner of land in question and after his death respondent party is owner of this land. If he was original owner of this land then after order dated 04.08.1999 was passed by Special Secretary, Govt. of Punjab, Department of Rural Development and Panchayats, Punjab, Chandigarh, he could have got made entry of his name in revenue record. But in revenue record original owner of land in question is Gram Panchayat Deh and as respondent party Sh. Ram Lal son of Kartara has encroached upon Khasra No. 86 and 134 of Panchayat Land of village Heon,

ownership rights cannot be given to him (Ram Lal). File after compliance and arranging in order be consigned to record room.”

6. Aggrieved by the said order, the Petitioner went an appeal before the Commissioner who has passed the impugned order dated 1st March 2019 (Annexure P-11) and has dismissed the appeal. The operative portion of the said order reads as under:

“After hearing the contentions of counsels for both the parties and perusal of record placed on file I reached on the conclusion that as per record of revenue department the land in question vests in the Gram Panchayat. As per Rule 2(G) of The Punjab Village Common Lands (Regulation) Act, 1961, appellant could not produce any substantial evidence pertaining to his ownership from or prior to 26 January 1950 from which it is evident that Gram Panchayat is not the owner of this land. As per demarcation report, appellant has admitted that he has encroached upon 4 Marla 4 Sarsai area of Khasra No. 86.

Accordingly, any anomaly is not found in order passed by the court below. A short while ago appellant has encroached upon the land in question and after encroachment appellant did not deposit any rent/lease in the account of Gram Panchayat. Hence, appellant’s possession over land in question is proved as unlawful. The land in question vests in the Gram Panchayat. Hence the order dated 26.04.2014 of court below is upheld and appellant’s appeal hereby stands dismissed and Gram Panchayat Heon, Tehsil Nawanshahar, District Shahid Bhagat Singh Nagar is declared as owner of land in question comprised in Khasra No. 86 and 134.”

7. Mr. B.S. Bali, learned counsel for the petitioner has taken the Court through not only the impugned orders but all the earlier orders leading up to the impugned orders. His submission is that the impugned orders in the second round by the Collector and the Commissioner are contrary to the directions issued by this Court on 31st July, 2013 in CWP No. 8937 of 2013.

8. Having considered the above submission and having examined the all the orders placed on record, the Court is unable to agree with Mr. Bali. The impugned order makes it explicit that the adequate opportunity was granted to the Petitioner to produce evidence to substantiate his claim and that he was unable to do so.

9. The position in the revenue record is explicit that the original owner of the land in question is the Gram Panchayat. It is also clear from the record that

CWP No. 16180 of 2020

certain persons including the present Petitioner have encroached upon the land belonging to the Gram Panchayat. The Petitioner was unable to produce evidence as regards his ownership.

10. Mr. Bali, then argued that the Petitioner is in possession of the land and that his representation for release of the land in his favour should be considered by the Gram Panchayat.

11. The Court is unable to accede to the above plea for the simple reason that the factual finding that the Petitioner's possession of the land in question is unlawful as recorded in the order dated 1st March 2019 passed by the Commissioner, is found to be based on the revenue record and the Court is not persuaded to overlook the factual position in that regard.

12. For all of the aforementioned reasons, the Court finds no merit in the present writ petition and is dismissed as such.

(S. MURALIDHAR)
JUDGE

(AVNEESH JHINGAN)
JUDGE

5th October, 2020
Anjal

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No