

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

CWP No.11630 of 2020

Date of Decision: 17.09.2020

Charan Singh

....Petitioner

Versus

State of Haryana and others

....Respondents

**CORAM :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr. Abhilaksh Grover, Advocate
for the petitioner.

Mr. Deepak Balyan, Addl. A.G., Haryana.

DAYA CHAUDHARY, J.

Petitioner-Charan Singh has approached this Court by way of filing the present petition for issuance of a writ in the nature of *certiorari* for quashing of impugned notice dated 15.06.2020 (Annexure P-11), orders dated 13.07.2020 (Annexure P-9), 03.03.2020 (Annexure P-7) passed by the Commissioner, Gurugram Division, Gurugram and District Collector, Gurugram, respectively and order dated 04.09.2018 (Annexure P-4) passed by the Sub Divisional Officer-cum-Assistant Collector, Ist Class, Gurugram (North), whereby, the order of eviction under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (here-in-after referred to as 'the Act, 1961) was passed against him and thereafter, the appeal and revision were also dismissed. A further prayer has also been made for staying the operation of said orders.

Briefly, the facts of the case, as made out in the present petition, are that respondent No.5 filed an application under Section 7 of the Act, 1961 mentioning therein that the petitioner along with proforma

respondents No.7 to 11 had taken an illegal possession of the land belonging to *Gram Panchayat* which was adjoining to the land of the petitioner. The Assistant Collector Ist Class, Gurgaon (North) accepted the said application by holding that the land in dispute was of *Gram Panchayat* and was in illegal possession of the petitioner and proforma respondents.

Aggrieved by said order dated 04.09.2018 passed by the Assistant Collector Ist Class, Gurgaon (North), petitioner and proforma respondents filed revision petition which was dismissed being not maintainable as they were having remedy to file an appeal. Thereafter, an appeal was filed by the petitioner and proforma respondents before the District Collector, Gurugram, which was dismissed vide order dated 03.03.2020 and thereafter, the said order was challenged by way of filing the revision petition which was also dismissed vide Order dated 13.07.2020.

All the above said orders dated 04.09.2018 (Annexure P-4), 03.03.2020 (Annexure P-7), 13.07.2020 (Annexure P-9) and notice dated 15.06.2020 (Annexure P-11) are subject matter of challenge before this Court in the present writ petition.

Learned counsel for the petitioner submits that all the Courts/authorities below have not taken into consideration while rejecting the claim of the petitioner that the question of title should have been decided at the first instance as per proviso to Section 7(3) of the Act. Learned counsel also submits that the findings recorded by the authorities below are based only on the demarcation report dated 08.09.2015 and no notice was given to the petitioner as well as proforma respondents. While deciding the issue, in dispute, no revenue record was relied. It has also been

argued by learned counsel for the petitioner that the spot inspection was also undertaken on 28.08.2018 by the Tehsildar Gurugram, who reached at the spot but it was not stated in the report dated 28.08.2018 that the said land vested with the *Gram Panchayat*. Learned counsel also submits that the Commissioner should have remanded the matter back to the Collector in view of the new information which was supplied by the petitioner i.e *shijra khasra paimaish* which shows that the *Gram Panchayat* was not having any interest in the said land. Both the authorities in appeal as well as in the revision have dismissed/rejected the claim of the petitioner without giving any findings. Learned counsel further submits that the question of title was involved and the same should have been decided as per provisions of Section 7 of the Act, 1961 but it was not decided. At the end, learned counsel submits that the stand taken by the petitioner in the reply was also not taken into consideration while rejecting his claim by various authorities.

Learned counsel for the petitioner has relied upon the judgment of this Court in case ***Gram Panchayat of Village Bajghera vs Financial Commissioner (Revenue) Haryana and others 2014(3) RCR (Civil) 269*** in support of his arguments.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the detailed findings have been recorded while passing the said orders by the authorities concerned and hence, it cannot be said that the arguments and reply filed by the petitioner as well as by the *Gram Panchayat* were not taken into consideration. Learned State counsel further submits that the petitioner and proforma respondents have encroached upon *Gram Panchayat's* land which was adjoining to the land of the petitioner. The petitioner and proforma

respondents were allotted a residential plot in *Mustatil No.25, Killa No.12/1* measuring 0 *kanal* 8 *marla*. Said plot was in a triangle shape and just to make it square, the adjoining land which belongs to the *Gram Panchayat* was encroached by the petitioner. Learned State counsel also submits that the petitioner and the proforma respondents did not raise the question of title and also did not produce any document/evidence proving their ownership. The spot inspection report dated 28.08.2018 was prepared by the Office of Naib Tehsildar Kadipur, wherein, it was clearly mentioned that the petitioner and proforma respondents had constructed temporary roof (Tin shed) and house in *Abadi Deh* which was owned by Gram Panchayat. It was also mentioned therein that there was a small pond on the spot. At the end, learned State counsel submits that the issue was decided under Section 7 of the Act, 1961 on the basis of evidence produced by both the parties by relying upon the demarcation reports dated 08.09.2015 and 28.08.2018.

Heard the arguments of learned counsel for the parties and we have also perused the impugned orders dated 04.09.2018 (Annexure P-4), 03.03.2020 (Annexure P-7), 13.07.2020 (Annexure P-9) and notice dated 15.06.2020 (Annexure P-11).

As per findings recorded by the District Collector, Gurugram, the *nishandehi* report dated 08.09.2015 came on record by the then Naib Sadar Kanoongo, Gurugram and Naib Tehsildar, Kadipur and Spot Inspection report of Block Development and Panchayat Officer, Gurugram dated 28.08.2018 was also available. It was found that as per *nishandehi* done by the then Naib Sadar Kanoongo, Gurugram dated 08.09.2015 and as per spot report of Naib Tehsildar, Kadipur and Block Development and Panchayat Officer, Gurugram dated 28.08.2018, *Khewat No.8/8, Khatoni*

No.10, Mustatil No.25, Killa No.12/1 (0-8) was the property of the petitioner. Adjoining to the land of the petitioner, the land of the *Gram Panchayat* was there which was part of *Abadi Deh* of the Village. The petitioner had taken the illegal possession of that land just to make his plot in the square shape. The petitioner could not produce any evidence that he was owner of total 400 yards area. Even it was not his case that there was any mistake or inadvertently it was done. It has also come in the spot inspection report dated 28.08.2018 that petitioner-Charan Singh and proforma respondents had constructed house with Tin-shed, whereas, that land was a part of *Abadi Deh*. The Commissioner, Gurugram Division, while dismissing the revision petition filed by the petitioner has categorically held that no issue of title had been raised and there was nothing on record on the file of the lower authorities that at any point of time, the question of title was raised. However, it has been mentioned that the photocopy of the *shijra khasra paimaish* was attached with the revision petition for the first time and there was no relevancy of the same as the petitioner failed to prove that the land, in dispute, was the same which had been shown in the *shijra khasra paimaish*. By considering these facts, the revision petition was dismissed.

The relevant order dated 13.07.2020 passed by the Commissioner, Gurugram Division is reproduced as under :-

“ By plain reading of the earlier order dated 18.07.2019, it is abundantly clear that the earlier matter was dismissed by this court being not maintainable under section 13-B(2) of the Act as no order under proviso to sub section 1 of section 7 had been passed by the Assistant Collector Ist Grade, Gurugram. After dismissal of the previous revision petition the petitioner challenged the said

order of the Assistant Collector Ist Grade, Gurugram dated 4.9.2018 before the Collector, Gurugram by way of appeal. The Collector, Gurugram vide his order dated 3.3.2020 had dismissed the appeal wherein also no issue regarding the title had been raised and proved prima facie on the basis of documents.

In view of the above discussions, I find that there is no document available on the trial court file to ascertain the fact regarding raising of question of title having being raised and proved prima facie in order to necessitate passing of an order under the proviso to sub section 1 of section 7 of the Act by the Assistant Collector Ist Grade, Gurugram. Further, the photocopy of the shijra khasra paimaish which had been attached with the present revision petition have also been brought on record for the first time nor they are of any relevance in the matter as it failed to prove that the land under dispute is the same which had been shown in the shijra khasra paimaish. Therefore, there is no reason or ground to interfere in the impugned orders of the lower courts and the revision petition is dismissed being not maintainable.

Moreover, admittedly, the petitioner and the proforma respondents were owner of 08 marlas, which is approximately 240 yards, whereas, the construction was raised upon 400 yards as per reports dated 08.09.2015 and 28.08.2018. It is not disputed that the petitioner and the proforma respondents have raised construction over more than the land belonging to them. Accordingly, the title of the land of the petitioner and the proforma respondents over 08 marlas is not disputed. It was for the petitioner and the proforma respondents to prove their ownership of the land of approximately

400 yards but nowhere before the authorities below, they could prove that they were owner of the land of approximately 400 yards.

Accordingly, we do not find any illegality/irregularity in the orders passed by the authorities concerned, which are subject matter of challenge before this Court in the present writ petition.

In view of the above, the present writ petition, being devoid of any merit, is hereby dismissed.

(DAYA CHAUDHARY)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

17.09.2020
gurpreet

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No