

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

CWP No.17869 of 2020

Date of decision: 10.11.2020

(Heard through Video Conferencing)

Joginder and another

..Petitioners

Versus

State of Haryana and others

..Respondents

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

Present: Mr. Anupam Singla, Advocate and
Mr. Rishi Malhotra, Advocate
for the petitioners.

Mr. Raman Sharma, Addl. AG, Haryana.

Daya Chaudhary, J.

Petitioners, namely, Joginder and Karamveer have approached this Court by way of filing the present writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari to quash impugned order dated 06.10.2020 (Annexure P-8) passed by the Deputy Commissioner, Sonapat, whereby, their claim has been rejected in view of direction issued by this Court in CWP No.14933 of 2017 vide order dated 13.07.2017. A further prayer has also been made for restraining the respondents in demolishing and dispossessing the petitioners from the house in dispute.

Briefly, the facts of the case as made out in the present writ petition are that the petitioners earlier along with one Rohtash filed CWP No.14933 of 2017 before this Court, which was disposed of with the

direction to Deputy Commissioner, Sonapat to decide the petitioners' claim as made out in the petition keeping in view the condition as prescribed in Rule 12(4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter called as 'the Rules, 1964') read with the judgment of this Court dated 06.08.2015 rendered in CWP No.10697 of 2014 titled as '**Ram Chander alias Chander vs. State of Haryana and others**'. It was also directed that the final decision be taken within a period of three months from the date of receipt of certified copy of this order.

In pursuance of said directions issued in the earlier petition, the claim of the petitioners was rejected vide order dated 06.10.2020 (Annexure P-8), which is subject matter of challenge in the present writ petition.

Learned counsel for the petitioners submits that the petitioners being residents of village, constructed their respective houses on the small piece of land, which was less than 200 square yards falling between lal dora and firni of the village. Although that land was vested in Gram Panchayat but the petitioners are in continuous possession of said land for the last more than 30-35 years. Learned counsel further submits that as per policy framed by the State Government, in case there was unauthorized possession inside and outside abadi deh and the inhabitants of village, who had constructed their houses on or prior to 31.03.2000 and that there was no obstruction to the traffic and passersby along with open space upto 25% of the constructed area or area upto a maximum of 200 square yards, the construction raised by the villagers will be regularized. Learned counsel also submits that all these facts were mentioned in the representation, which was submitted as per directions issued by this Court in the earlier petition

but still the claim of the petitioners has been rejected, which is contrary to provisions of Rule 12(4) of the Rules, 1964. Learned counsel also submits that the ratio of judgment rendered by Hon'ble the Apex Court in ***Jagpal Singh and others vs. State of Punjab and others, CA No.1132 of 2011*** dated 28.01.2011 has not been taken into consideration whereas the case of the petitioners is squarely covered by the said judgment. Learned counsel also submits that the case of the petitioners should have been considered in view of judgment rendered by Hon'ble the Apex Court in ***Ram Chander vs. Commissioner, Rohtak Division and others, CWP No.13334 of 2014*** decided on 17.09.2015. It is also the argument of learned counsel for the petitioners that land where houses were constructed by the petitioners was not meant for public utility like ponds, schools, hospitals, passages, cremation ground etc. It was sold by the Gram Panchayat by passing a resolution as it was not used for any cultivating purpose. Learned counsel also submits that in similar matters i.e. CWP Nos.17867 and 17884 of 2020, notice of motion has been issued.

Learned State counsel has opposed the submissions made by learned counsel for the petitioners by stating that the impugned order is self-speaking and a detailed finding has been given. As per ratio of judgment in ***Jagpal Singh's case (supra)***, the petitioners are trespassers as they have occupied the land belonging to Gram Panchayat. The constructed area is also more than 200 square yards. The area of each house of the petitioners has specifically been mentioned in the impugned order.

Heard arguments of learned counsel for the parties and we have also perused the impugned order as well as judgment dated 13.07.2017

passed in 14933 of 2017.

Rule 12(4) of the Rules, 1964 is relevant for resolving the controversy in the case in hand, which is reproduced as under:-

“Rule 12(1) A Panchayat may, with the previous approval of the State Government, sell land in shamilat deh vested in it under the Act for –

(4) The Gram Panchayat may with the prior approval of [the State Government], sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passersby, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate [floor rate or market rate, whichever is higher].”

On perusal of proviso 4 of Rule 12 of the Rules, 1964, it is apparent that the Gram Panchayat may with the approval of State Government can sell its non-cultivable land in shamilat deh to the inhabitants of the village, who have constructed their houses on or before 31.03.2000 and there should not be any obstruction to the traffic and passersby along with open space upto 25% of the constructed area upto maximum of 200 square yards and the price of the land should not be less than collector rate, which has further been clarified as floor rate or market rate, whichever is higher. While rejecting the claim of the petitioners vide impugned order dated 06.10.2020, it has specifically been mentioned that all

the petitioners were called for personal hearing and they were heard. Their statements were also recorded and passing of resolution was also brought to the notice of the Competent Authority i.e. Deputy Commissioner, Sonapat. The petitioners also submitted copy of judgment of **Ram Chander's case (supra)**. On perusal of the record and the site report, which was verified by visiting the relevant place, the petitioner-Joginder was found to be in illegal occupation of area measuring 757.37 square yards and petitioner-Karamveer was also found to be in illegal occupation of area measuring 239.48 square yards. All these documents were taken into consideration by the respondent-authority and by considering the provisions of Rule 12(4) of the Rules, 1964, it was found that the petitioners were in illegal occupation of area more than the required area upto maximum of 200 square yards. Both the petitioners were in possession of land, which was more than 200 square yards. It is also mentioned in the impugned order that the petitioners were found to be trespassers in view of judgment rendered in **Jagpal Singh's case (supra)**. Both the petitioners were in illegal possession in collusion with Gram Panchayat.

In CWP Nos.17867 and 17884 of 2020 cited by learned counsel for the petitioners, no law has been settled as these cases are at the stage of notice of motion.

The relevant portion of judgment rendered in **Jagpal Singh's case (supra)** is reproduced as under:-

“13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money

power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized. We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In Friends Colony Development Committee vs. State of Orissa, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an

exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.”

Keeping in view the ratio of judgment rendered in **Jagpal Singh’s case (supra)** and the finding recorded in the impugned order, we are of the considered opinion that the case of the petitioners does not fall within the purview of Rule 12(4) of the Rules, 1964. Accordingly, there is no merit in the contentions raised by learned counsel for the petitioners and the petition being devoid of any merit is, hereby, dismissed.

(DAYA CHAUDHARY)
JUDGE

10.11.2020
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(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes