

CWP No.7852 of 2017

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

Sr. No.210

CWP No.7852 of 2017

DATE OF DECISION: February 13, 2020

GHARSI RAM

..PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ashok Goel, Advocate,
for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana,
for respondents No.1 to 5.

Mr. Ashwani Bhardwaj, Advocate,
for respondent No.6-Gram Panchayat.

Mr. R.S. Chahal, Advocate,
for respondents No.7 to 11.

SUDHIR MITTAL, J. (ORAL)

The petitioner and one other person filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) dated 26.03.2013 for eviction of the private respondents from land being used for the common purposes of the village i.e. passage. The said application was allowed vide order dated 11.11.2013 (Annexure P-1) by finding that the private respondents had illegally encroached upon the passage by enclosing parts of the said

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passage within the boundary of their personal houses. An appeal dated 18.12.2013 was preferred before the Collector, Fatehabad, which was, however, dismissed vide order dated 22.05.2014 (Annexure P-2). A further revision was also dismissed vide order dated 06.09.2016 (Annexure P-3). Thereafter, the private respondents filed CWP No.21388 of 2016, which was dismissed as withdrawn vide order dated 17.10.2016 with liberty to the petitioners therein to file applications for purchase of the land in their respective possession.

2. The present writ petition has been filed because the encroachment has not been got removed by the concerned authorities despite representations dated 26.03.2015 (Annexure P-4) and 03.03.2017 (Annexure P-5).

3. In the reply filed on behalf of the State of Haryana, it has been stated that applications for purchase have since been filed by the private respondents, pursuant to which resolution 13.12.2016 has been passed by the Gram Panchayat for sale of the land. The said resolution has been sent to the Deputy Commissioner for approval of the State Government. The private respondents as well as the Gram Panchayat have taken a similar stand in their respective written statements.

4. Learned counsel for the petitioner has submitted that the order of eviction has become final and there is no stay of any higher Court in operation. Thus, the revenue authorities were bound to implement the orders of eviction and to take action upon the representations dated 26.03.2015 (Annexure P-4) and 03.03.2017 (Annexure P-5) submitted by the petitioner. He further submits that the land in dispute is of a common

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passage and the same cannot be permitted to be sold under Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to the State of Haryana). Under the said Rule, only vacant Panchayat land can be sold to an encroacher provided he fulfills the conditions provided in the Rule. Further the land in dispute is being utilized as common passage and if the private respondents are permitted to purchase the land in their unauthorized occupation, it would amount to permitting change of user, which is impermissible in law.

5. Learned counsel for respondent No.6-Gram Panchayat submits that the common passage is 35 feet wide whereas the encroachment made by the private respondents is maximum to the extent of 10 feet. Even if the purchase is permitted, there would be no obstruction in free movement of traffic and thus, the sale is permissible.

6. Learned counsel for the private respondents has placed reliance upon a Division Bench judgment ***Wasan Singh vs. Joint Director Panchayat, Punjab and ors., 2015(36) R.C.R. (Civil) 713*** to argue that land in unauthorized occupation of a resident can be purchased.

7. Regarding the width of the common passage, learned counsel for the petitioner submits that the demarcation report submitted by Area Kanungo pursuant to an order passed by the Assistant Collector 1st Grade during the pendency of the eviction petition has found as a matter of fact that the common passage is only 3 karam wide. This implies that the maximum width of the common passage is 16 feet and keeping in view the encroachment by the private respondents not even 1/3rd of the common passage would be left, in case, they are permitted to purchase the land in

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their unauthorized occupation.

8. Under Rule 12 of the Rules, the Gram Panchayat is entitled to sell shamlat land for the purposes of construction of affordable housing by the Government, setting up infrastructural facilities such as educational institutions, special economic zone projects etc. and for residence of the inhabitants provided the plot to be sold for such a purpose does not exceed 250 Sq. Yds. Obviously, in exercise of the said power, vacant land comprised in shamlat deh can be sold. The said provision is not for the benefit of encroachers of common land being utilized for some other common purpose such as passage. The Division Bench judgment in **Wasan Singh (supra)** relied upon by the learned counsel for the private respondents is not applicable as in the said case encroachment was over shamlat land which was not being used for any other common purpose. Moreover, the demarcation report relied upon by learned counsel for the petitioner makes it abundantly clear that the encroachment is resulting in curtailing the width of the passage to a large extent causing difficulty in the movement of traffic. Under the circumstances, no useful purpose would be served by waiting for a decision of the State Government on the purchase applications filed by the private respondents because land meant for common passage cannot be sold for residential purposes.

9. At this stage, learned State counsel has drawn my attention to sub-rule (4) of Rule 12 of the Rules to argue that the Gram Panchayat is competent to sell its non-cultivable land to inhabitants who have constructed their houses on the same on or before 31 March, 2000.

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10. A reading of the complete sub-rule aforementioned shows that non-cultivable land comprised in shamlat deh can be sold to the inhabitants who have constructed their houses thereon prior to 31 March, 2000 provided it does not result in obstruction to the traffic and passers by. In this case, I have found that the encroachment is causing major obstruction to the traffic and thus, sub-rule (4) cannot help the cause of the private respondents.

11. It is evident that the official respondents are colluding with the private respondents and are permitting them to remain in unauthorized occupation without any good and sufficient cause.

12. Thus, the writ petition is allowed.

13. Respondent No.6-District Collector, Fatehabad is directed to put the Gram Panchayat in possession of the land in dispute within four weeks from the date of receipt of certified copy of this order. Necessary police assistance may also be obtained, if the same is required.

February 13, 2020
Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned **Yes**

Whether Reportable **Yes**