

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

**Civil Writ Petition No. 8157 of 2020 (O&M)
Date of Decision: 22.01.2021**

Sunil Kumar and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE SANT PARKASH**

Present: Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Ankur Mittal, Additional Advocate General, Haryana
for respondent Nos. 1 to 4 / State.

Mr. G.S. Sandhu, Advocate
for respondent No. 5 – Gram Panchayat.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

The five petitioners, namely, *Sunil Kumar, Sandeep Kumar, Suresh Kumar, Devinder Singh and Baljit Singh*, have filed the present writ petition seeking a writ in the nature of *Mandamus* for directing the official respondents to convert the *Gair Mumkin Johar* situated within the *Abadi Deh* area of Village Jai Singh Pura, Tehsil Assandh, District Karnal into a park instead of converting it into a drainage of waste water of *Abadi Deh*, as the same would result into causing of inconvenience to the entire village.

A perusal of writ petition shows that petitioners claim themselves to be residents of the village and plead that in front of their houses, a *Johar* is located which lies in *Khasra* No. 142 (29-1). It is pleaded that this *Johar* is not being used since long however now the Gram

C.W.P. No. 8157 of 2020 (O&M)

Panchayat is digging *Johar* which will only lead to causing of inconvenience to petitioners and other residents of village as its digging would lead to accumulation of dirty water and thus becoming a reason for spreading of various diseases, especially during rainy season. It is further argued that village already has three more *Johars* and therefore the present *Johar's* usage be discontinued and same be converted into park for the benefit of all residents of village.

On being put to notice, official respondent Nos. 1 to 4 as well as Gram Panchayat - respondent No. 5, have filed their respective written statements.

Respondent Nos. 1 to 4 have filed their written statement through Block Development & Panchayat Officer, Assandh and submitted that the petitioners have not come to the court with clean hands as material facts have been suppressed. As per the written statement, at the time of Consolidation, the *Johar* in question which is comprised in *Khasra* No. 142 (29-1) and 143 was reserved for the welfare and benefit of the inhabitants of the village for drainage of rainy/ waste water of the village. It is also averred that there is no other place for drainage of such water except the *Johars* reserved during consolidation in the village, including the instant one. Further, it is stated that the petitioners are infact encroachers of the land reserved for present *Johar*, who have already been served notices dated 30.05.2020 (**R-1 to R-4**) to vacate the encroachment from Panchayat Land but the petitioners/ other encroachers have not vacated the same till date and instead petitioner No. 4 has filed a Civil Suit No. 314 of 2020 titled as "*Devender Singh Vs. Gram Panchayat Jaisinghpur etc*" claiming himself to

C.W.P. No. 8157 of 2020 (O&M)

be owner in possession. It is thus stated that the present petition is nothing but gross abuse of process of law whereby the petitioners under the garb of the instant writ petition are trying to grab the panchayat land reserved for *Johar*.

Respondent No. 5-Gram Panchayat has also filed its written statement on similar lines with an additional plea that in order to ascertain the nature of possession of petitioners, a demarcation was got conducted on 14.07.2020 (R-5/7) in which it was found that petitioners alongwith others are in illegal possession of land reserved for *Johar*.

To counter the assertions made by respondents, the petitioners have filed their replication to the written statement of respondent Nos. 1 to 4 whereby they have pleaded that except petitioner No. 1, none of the other petitioners are in illegal possession and infact their family members were found in un-authorized possession. Further, the petitioners have also disputed the correctness of the demarcation report by stating that same has been conducted wrongly. However, it is stated that they are ready to vacate any land in their illegal possession.

With these pleadings, the respondents have prayed for dismissal of writ petition.

We have heard learned counsel for the parties at length who have argued in lines of the case set up by them in their respective pleadings and have also scrutinized the record.

Before advertng to the issue involved, it would be apposite to note that before issuing notice of motion in the present case, on 16.06.2020 we had called upon the petitioners to file an affidavit to the effect that they

C.W.P. No. 8157 of 2020 (O&M)

are not in unauthorized possession of any Government/ Panchayat land nor are the defaulters of any Public/Panchayat due.

In compliance of the said order dated 16.06.2020, petitioner No. 2-Sandeep son of Rajdeep filed his affidavit dated 20.06.2020 which reads as under:-

- “ 1. That the petitioners / deponent is not in unauthorized possession of any of the Panchayat / Government land except petitioner No. 1 who is having illegal encroachment over about 8 Marla land to which the petitioner No. 1 is ready to vacate.*
- 2. That the petitioners/deponent is not the defaulters of any dues of the Panchayat/Public.*
- 3. That the petitioners/deponent further undertakes that if it was found at any stage that the petitioners/deponent is in unauthorized possession he will vacate the same. ”*

A bare perusal of the affidavit shows the clever manner in which the petitioners have tried to project themselves to be honest residents of the village and have smartly deposed that in case they are in illegal possession then they are ready to vacate. The manner in which the affidavit has been drafted leaves us with no manner of doubt that the petitioners have tried to mis-lead the Court to protect their illegal possession. Such a conduct is contemptuous in nature to say the least.

Be that as it may, it is evident from the record that:

- (i) The petitioners do not dispute the nature of land and also do not dispute the ownership of Gram Panchayat;
- (ii) Gram Panchayat before initiating the excavation process in Johar passed a resolution no. 01 dated 09.06.2020;
- (iii) From the written statements filed by respondents, it is now clear that petitioners are also in illegal possession

of the land reserved for Johar and to substantiate their claim, respondents have relied upon a demarcation report dated 14.07.2020 (**R-5/7**);

- (iv) A bare perusal of the said report would show that the demarcation has been got conducted by using satellite machine, which is the latest and most accurate instrument for this process. Further, it is evident that all the revenue officials, who possibly cannot have an interest adverse to the petitioners, have carried out the demarcation on the spot and thereafter have come to the conclusion that the petitioners alongwith others are in illegal occupation of Gram Panchayat land reserved for *Johar*.
- (v) On the basis of this demarcation report, notices under Section 24(1) of Haryana Panchayati Raj Act have also been issued to petitioners, to which they have not replied till date.
- (vi) Petitioner no 4 has already filed a Civil Suit No. 314 of 2020 in the court of Additional Civil Judge (Senior Division), Assandh claiming himself to be owner in possession and this suit is still pending consideration.

The above undisputed facts makes it clear that the petitioners have been found to be rank trespassers of panchayat land and the relief sought by them through the present writ petition smacks of apparent *mala fides*. Therefore, we are satisfied that the petitioners, being illegal encroachers of panchayat land, are not entitled to maintain the present writ petition. It is by now settled position of law that a party who approaches the court with unclean hands is not entitled to seek any relief from court of law, much less from court of equity.

C.W.P. No. 8157 of 2020 (O&M)

Even otherwise, on merits, the reasoning given by the respondents for using the *Johar* for waste water disposal seems to be justified as waste water has to be disposed of at some place and before taking such a step, the Gram Panchayat has followed due process of law as a resolution to this effect was passed by it. The Panchayat, being an elected body is competent to take decisions for the benefit of the entire village and such an action cannot be thwarted at the instance of persons like petitioners, who are rank trespassers.

In view of above, finding no merit the present writ **petition** is hereby ordered to be **dismissed**.

Before parting with the judgment, we would like to **direct** the respondents to take immediate steps in pursuance to the demarcation conducted on 14.07.2020 (**R-5/7**) and facilitate the Gram Panchayat to secure possession from all the illegal encroachers by following due process of law.

(JASWANT SINGH)
JUDGE

January 22, 2021
'dk kamra'/vs

(SANT PARKASH)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>