

(111) (Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10744 of 2021 (O&M)

Date of Decision: 12.10.2021

Gurdev Singh and Another ...Petitioners

Versus

Joint Development Commissioner, Director, Panchayats (IRD), Punjab and
others

... Respondents

CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. O.P Goyal, Sr.Advocate with
Mr.Manjit Singh, Advocate for petitioners

Mr.Ashish Gupta, Advocate
for caveator-respondent no.3/Gram Panchayat

ASHOK KUMAR VERMA, J.

CM-15253-CWP-2021

This is an application filed for amendment of the writ petition.

For the reasons recorded therein, CM is allowed. Amended writ petition is
taken on record.

CWP No.10744 of 2021

1. The petitioners have approached this Court through this petition
invoking extraordinary writ jurisdiction under Articles 226/227 of the
Constitution of India seeking quashment of the impugned order dated
27.09.2013 (Annexure P-11) vide which respondent No.2–Collector

(Panchayat Lands), District Development and Panchayat Officer, Patiala has accepted the petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "The Act of 1961") filed by respondent No.3-Gram Panchayat, Balbehra against the petitioners and the impugned order dated 30.12.2020 (Annexure P-13) vide which respondent No.1-Joint Development Commissioner dismissed the appeal filed by the petitioners against the order dated 27.09.2013 (Annexure-P-11).

2. Having gleaned insight into the paper-book, it transpires that respondent no.3-Gram Panchayat filed a petition under Section 7 of the Act of 1961 for ejectment of the petitioners alongwith one Sapinder Singh from the land comprising in Khewat No.458, Khatauni No.957, Khasra Nos.6//19 (6-19), 20 min (3-16), 21 (8-0), 7//16 (10-9), 13//2 (8-0), 9 (8-0), 12 (8-0), 19 (8-0), 22 (2-0), 6//22 (8-0), total 71 Kanal 4 Marlas, situated at village Balbehra, Block Sanour, Tehsil and District Patiala. In the petition under Section 7 of the Act of 1961, the Gram Panchayat has averred that the land in question was being used for common purpose/benefit of the inhabitants of village Balbehra and the respondents (petitioners herein) are illegally occupying the said land and as such they are liable for eviction/ejectment from the land in dispute. After hearing the parties, vide order dated 27.09.2013 (Annexure P-11), respondent no.2-Collector came to the conclusion that the Gram Panchayat is owner of the land in dispute and the petitioners have encroached upon the said land and as such he directed the petitioners' eviction from the land in dispute and it has been further directed that whosoever has taken the possession unauthorizedly on the land of the Gram Panchayat from time to time, the Gram Panchayat has been directed to take action for the recovery of compensation/costs against the petitioners for

keeping possession on the land unauthorisedly. Aggrieved against the aforesaid order, the petitioners filed an appeal which has also been dismissed vide order dated 30.12.2020 (Annexure P-13) passed by the Commissioner. Hence, the petitioners have approached this Court challenging the impugned orders dated 27.09.2013 and 30.12.2020 (Annexures P-11 and P-13).

3. Learned counsel for the petitioners, *inter alia*, vehemently submits that the impugned orders are wrong and illegal. Learned counsel submits that proforma respondent no.4-Sapinder Singh had purchased the land in dispute from previous owners, namely, Babu Singh and others vide sale deeds dated 09.08.2011 and 12.08.2011 (Annexures P-3 and P-3A) and thereafter, the petitioners purchased the said land from proforma respondent no.4-Sapinder Singh. As such the petitioners are bona fide purchasers of the land in dispute. The Gram Panchayat has totally failed to prove its case as no evidence has come on record to prove that the Gram Panchayat is the owner of the land in dispute. Learned counsel for the petitioners thus submits that the impugned orders are totally wrong and against the law as the same are based on conjectures and surmises.

4. In contrast, learned counsel for the respondent no.3-Gram Panchayat submits that the official respondents no.1 and 2 have acted in accordance with the provision of the Act of 1961. Respondent no.3- Gram Panchayat has been found to be the owner of 71 kanals 4 marlas of land. He submits that earlier aforesaid Babu Singh etc. had filed petition against Gram Panchayat under Section 11 of the Act of 1961 in the Court of Collector/Divisional Deputy Director Panchayats, Patiala which was accepted in their favour vide order dated 22.11.1994 and respondent no.3-Gram Panchayat had filed appeal against the aforesaid order before the Joint

Development Commissioner (IRD) which was decided on 04.04.1996 in favour of the respondent no.3-Gram Panchayat and the aforesaid order dated 04.04.1996 has been duly exhibited as Mark A-2 before the Collector which is apparent from the impugned order dated 27.9.2013. In the said order dated 04.04.1996, it has been held that the Gram Panchayat was the owner of the land in dispute and the said land had been given on lease at the rate of Rs.35 per acre to Babu Singh etc. by the Gram Panchayat which is reflected from the Jamabandis for the years 1978-79 and 1988-89. Aggrieved against the aforesaid order dated 04.04.1996 passed by the Joint Development Commissioner, said Babu Singh etc. filed CWP No.7225 of 1997 titled as Nahar Singh and others vs. Joint Development Commissioner (IRD), Punjab, Chandigarh and others before this Court wherein CM-10195 of 2011 had been filed for withdrawal of the writ petition and the same was dismissed as withdrawn vide order dated 05.08.2011 passed by this Court. Thus, learned counsel for respondent no.3-Gram Panchayat submits that the aforesaid order dated 04.04.1996 passed by the Commissioner holding that the land in dispute belongs to the Gram Panchayat is still in operation as the same has not been set aside and as such it attained finality. Further the land of the Gram Panchayat cannot be sold by private person to another private person. Learned counsel, therefore, submits that the Collector and the Joint Development Commissioner have rightly ordered eviction of the petitioners from the land of the Gram Panchayat.

5. We have anxiously considered the submissions of the learned counsel for the parties and gone through the paper-book.

6. We are not impressed with the submissions of the learned counsel for the petitioners which are gravely misconceived and

misrepresented. It is not disputed that Babu Singh etc. had filed CWP No.7225 of 1997 against the order of ejectment dated 04.04.1996 passed by the Joint Development Commissioner (IRD), Punjab exercising the power of Commissioner. The said writ petition was dismissed as withdrawn vide order dated 05.08.2011. As such on withdrawal of the said writ petition, the order dated 04.04.1996 passed by the Joint Development Commissioner had not been set aside and the same attained finality and remained operative till date. It is also not disputed that in the aforesaid order dated 04.04.1996, it has been held by the Joint Development Commissioner (IRD), Punjab that Babu Singh etc. had been given the land in dispute on lease basis which is mentioned in the Jamabandi for the year 1978-79 and 1988-89. It is settled proposition of law that upon an order not being set aside for a long period of time, it attains finality and upon attaining finality, it becomes operative for all times to come and it matters little as to whether it was erroneous unless it is demonstrated that the finding was obtained by fraud or due to lack of jurisdiction. Vide order dated 04.04.1996, the Commissioner found the land in dispute belonging to Gram Panchayat-respondent no.3 and as such, the said land, once proved to be belonging to the Gram Panchayat cannot be sold by a private person to another private person. The nature of public property cannot be transformed into private property, without prior approval of the government agency to which the property belongs and public property cannot be misappropriated on the plea that private person is *bona fide* purchaser. It is established on record that the land in dispute vests with respondent-Gram Panchayat. We, therefore, find no procedural lapse in the action of the Collector and the Joint Development Commissioner who acted rightly under the provisions of the Act of 1961 ordering eviction of the

petitioners from big chunk of land measuring 71 Kanals 4 Marlas belonging to respondent no.3-Gram Panchayat.

7. In this view of the matter, we are constrained to observe that more often than not, land grabbers and land mafias indulge in sale and purchase of public properties by fraudulent documentation in collusion with notorious persons by hoodwinking and by playing hide and seek game which results in destruction of title of the State in respect of big chunk of public properties and loss to the exchequer which is a sordid and terrible state of affairs.

8. Apart from that, the menace of encroachments on public properties are creeping up day-by-day and creating obstructions to the planned development of the nation. The Hon'ble Supreme Court took serious note of the fact in the case of **Jagpal Singh and others vs. State of Punjab and others**, 2011 Vol. 11 SCC 396 that in large parts of India, village common land had been grabbed by unscrupulous persons using muscle power, money power or political clout to the extent that in many States such land existed only on paper. It deplored any attempt to regularize illegal construction on this land. It was held that even if the encroachers had built houses on the land, they must be ordered to remove their construction and hand over possession of the land to the Gram Panchayat. It was stressed that Gram Sabha/ Gram Panchayat land must be kept for the common use of the residents of the village. In this view of the matter, the Hon'ble Supreme Court observed 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. Regularising such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village.

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23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

The aforesaid propositions have been reiterated by Hon'ble Supreme Court in **Joginder and another Vs. State of Haryana and others**, 2021 (2) R.C.R (Civil) 109.

9. We are of the considered opinion that the aforesaid ratio of law laid down by the Supreme Court is fully applicable to the present case.

10. In view of the foregoing discussions, we find no reason to interfere with the findings of fact recorded by the respondents- Collector and the Joint Development Commissioner in their comprehensive and well-reasoned orders.

11. Consequently, we find no merit in this writ petition which is accordingly dismissed. Consequent upon the dismissal of the writ petition, application(s) pending, if any, shall stand disposed of accordingly.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

12.10.2021
MFK

Whether speaking/reasoned
Whether Reportable

Yes
Yes