

CWP No.12185 of 2021

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

(PROCEEDINGS THROUGH VIDEO CONFERENCING)

CWP No.12185 of 2021

Date of Decision: 09.07.2021

Jaswinder Singh

...Petitioner

Versus

State of Punjab & others

...Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Jaswinder Singh Thind, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 22.10.2020 (Annexure P-7) passed by the Collector-cum-District Development and Panchayat Officer, Amritsar, vide which, an application for ejectment of the petitioner filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, from two constructed shops situated in Khasra No.297, owned by Gram Panchayat Gujja Peer, Block Ajnala, District Amritsar – respondent No.4 has been allowed, appeal against which preferred by him has been dismissed by the Director, Rural Development and Panchayat Department, Punjab – respondent No.2 vide order dated 19.02.2021 (Annexure P-8).

2. It is the contention of the learned counsel for the petitioner that a resolution was passed by the Gram Sabha Gujja Peer on 28.12.2010

(Annexure P-1) to the effect that ₹2,50,000/- has been taken from Jaswinder Singh – petitioner as surety and on construction of the two shops, the same were to be given to him on rent at the rate of ₹250/- per month for the small shop and ₹350/- per month for the big shop i.e. ₹600/- per month which was to be paid on yearly basis. The construction of the shops was to be completed and possession thereof handed over to the petitioner on 01.02.2011. The amount of ₹2,50,000/- as deposited by the petitioner as security would be returned in two to three years from the amount which is received from the petitioner for the two shops and the lease money from the *shamland* land. Thereafter, another resolution dated 01.02.2011 was passed by the Gram Panchayat and possession of two shops was handed over to the petitioner for the purpose of grocery, stationery and floor mill etc. Copies of resolution dated 28.12.2010 along with receipt relating to deposit of the amount in pursuance thereto has been appended as Annexure P-1 and the resolution dated 01.02.2011 has been appended as Annexure P-2.

It is asserted by him that the petitioner had been depositing the rent of ₹7200/- every year with the Gram Panchayat and in support of this assertion, reference has been made to the receipts Annexures P-3 to P-5. He, on this basis, asserts that the petitioner since having been regularly paying rent as settled with the Gram Panchayat cannot be said to be in default or arrears of rent. It is also asserted that the petitioner is ready to pay the enhanced rent at the rate of 5% per annum in future.

His contention is that earlier, the respondents had made an effort to evict the petitioner from the shops in question illegally and forcibly, for

which the petitioner had to file a suit for permanent injunction restraining the Gram Panchayat from dispossessing him from these two shops illegally and forcibly. An application under Order 39 Rules 1 and 2 of CPC was preferred, which was allowed vide order dated 05.12.2019 (Annexure P-10) by the Civil Judge (Junior Division), Ajnala, holding that until and unless the resolution is passed by the Gram Panchayat and the disputed shops are put on auction, petitioner being tenant has every right to protect his possession and as such, could not be dispossessed illegally or forcibly except in due course of law. Gram Panchayat was, therefore, restrained from dispossessing the petitioner from the shops in question except in due course of law.

3. Counsel for the petitioner has submitted that the Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, on 18.09.2020 (Annexure P-6) for eviction of the petitioner on the ground that the petitioner was neither paying the rent regularly nor was he increasing rent as per the market rate. It was also pleaded therein that the District Development and Panchayat Officer, Amritsar, had, vide letter dated 14.08.2019 directed the Block Development and Panchayat Officer, Ajnala, to get the shops vacated and give them on rent after public auction. The said application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 has been allowed by the Collector-cum-District Development and Panchayat Officer, Amritsar and eviction of the petitioner ordered on the ground that the earlier allotment of the shops by the Sarpanch of the Gram Panchayat in the year 2011, without holding any auction and that too without permission of any

Competent Authority, was not in accordance with law. The initial allotment of the shops to the petitioner being violative of the statutory provisions, the possession of the petitioner cannot be said to be legal. His further assertion is that the Appellate Authority has also not taken into consideration the fact that the shops were got constructed after receiving an amount of ₹2,50,000/- from the petitioner and therefore, the petitioner cannot be said to be in illegal possession or that he has been wrongly allotted the shops. The rent which has been fixed as per the resolution of the Gram Panchayat is being regularly paid by him and there is no finding by any of the authorities that the petitioner has defaulted in payment of rent or has violated any of the conditions laid down in the resolution of the Gram Sabha, dated 28.12.2010 (Annexure P-1).

Principle of estoppel has also been pressed into service against the Gram Panchayat, Gujja Peer – respondent No.4 as he asserts that once the shops have been allotted to the petitioner though a resolution which has been passed by the Gram Panchayat, he cannot be said to be in illegal possession nor could a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, for eviction be filed by the Gram Panchayat.

On the above basis, prayer has been made for setting aside the impugned orders dated 22.10.2020 (Annexure P-7) passed by the Collector-cum-District Development and Panchayat Officer, Amritsar – respondent No.3 and dated 19.02.2021 (Annexure P-8) passed by the Director, Rural Development and Panchayat Department, Punjab – respondent No.2.

4. We have heard the learned counsel for the petitioner and with

his assistance have gone through the pleadings and the impugned orders as well as the documents which have been placed on record but do not find ourselves in agreement with what has been asserted by him.

5. The basic question which needs to be addressed is the validity of the allotment of the two shops in question on the basis of the resolution of the Gram Sabha dated 28.12.2010 (Annexure P-1) followed by the resolution dated 01.02.2011 (Annexure P-2) of the Gram Panchayat vide which possession was handed over to the petitioner.

This we say in the light of the fact that assuming the said resolutions were passed by the Gram Sabha and the Gram Panchayat of Village Gujja Peer respectively, could the said resolutions be given effect to without the approval of the Competent Authority. The specific findings given by the Collector-cum-District Development and Panchayat Officer, Amritsar and Director, Rural Development and Panchayat Department, Punjab, vide the impugned orders holding therein that the allotment of the shops to the petitioner and that too, without holding any auction which is required to be held in the presence, supervision and approval of the Higher Authorities is unsustainable being violative of the Punjab Village Common Lands (Regulation) Rules, 1964, as also the rules for auction laid down by the Department.

6. Counsel for the petitioner unfortunately has not been able to refer to any of the provisions of the Act or the Rules which would entitle the Gram Sabha or Panchayat to allot the shops on rent without holding any auction. The allotment, if any, and that too in the absence of an auction, requires the sanction and approval of the Higher Authorities which in this

case admittedly has not been obtained by the Gram Panchayat. Therefore, the orders impugned cannot be said to be not in accordance with law.

7. Even otherwise, as per the resolution which has been passed by the Gram Sabha, dated 28.12.2010 (Annexure P-1), shops were to be constructed on the land which admittedly is the ownership by the Gram Panchayat, where, may be, some amount i.e. ₹2,50,000/-, had been contributed by the petitioner. This amount was to be returned to him by the Gram Panchayat without interest from the rent amount of ₹600/- per month for the two shops as also the amount received as lease money from the *shamlat* land of the Gram Panchayat. There was a further mention that the said amount which has been received from the petitioner i.e. ₹2,50,000/- would be returned to him within a period of three to four years, meaning thereby that the petitioner could continue with the possession of the shops till the date amount of ₹2,50,000/- is returned to him.

8. It is an admitted position that the amount of ₹2,50,000/- which has been received from the petitioner by the Gram Panchayat stands returned through five cheques of ₹50,000/- each as is apparent from the order dated 05.12.2019 (Annexure P-10) passed by the Civil Judge (Junior Division), Ajnala, restraining the Gram Panchayat from dispossessing the petitioner from the disputed shops illegally or forcibly except in due course of law. After the receipt of the total amount of ₹2,50,000/-, the Gram Panchayat was to auction the shops for giving the same on rent, which the Gram Panchayat intended to and had asked the petitioner to vacate the same.

The District Development and Panchayat Officer, Amritsar, passed an order

dated 14.08.2019 for auctioning the shops in question so that the Gram Panchayat can fetch higher amount of rent at the market rate. Amount of rent which the petitioner had been paying is pitiable low, this we say, as the market rent as assessed by the Sub Divisional Magistrate (Panchayati Raj), Ajnala, was ₹1965/- per month for the small shop and ₹3145/- per month for the big shop. Once the surety amount of ₹2,50,000/- had been repaid to the petitioner, possession of the shops by the petitioner, would become illegal and therefore, petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, would lie, resort whereto by the Gram Panchayat, Gujja Peer – respondent No.4 cannot be said to be illegal.

9. Petitioner, in the garb of the present writ petition, is not only stalling the process of auction of the shops in question leading to the loss of revenue to the Gram Panchayat, Gujja Peer – respondent No.4, who would get much more revenue than what is being received by it for now but to also continue in illegal possession of the shops in question. It is neither permissible in law nor can the equitable jurisdiction, which is sought to be invoked through the present petition, be exercised in favour of the petitioner.

10. The principle of estoppel which is being sought to be pressed into service by the counsel for the petitioner would not be of any help to him as there can be no estoppel against law. That apart, as held above, even as per the resolution of the Gram Sabha dated 28.12.2010 (Annexure P-1), petitioner would continue as a tenant in the shops in question at the rate which had been fixed through the said resolution till the amount of ₹2,50,000/- was not returned by the Gram Panchayat without any interest,

which part of the resolution with the return of the amount of ₹2,50,000/- to the petitioner through five cheques of amounting to ₹50,000/- each, which fact has also been admitted by the petitioner. This, having been fulfilled, there is no justification as to why the petitioner be allowed to continue his possession over the two shops in questions at the same rate. Further, we do not find any reason as to why the rules, which governed the allotment of shops by way of auction, be not resorted to. No undue benefit can be claimed by the petitioner nor can it be conferred by the Court while exercising its equitable jurisdiction. The prayer of the petitioner is, thus, rejected.

11. In view of the above, finding not merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

09.07.2021
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No