

CWP No.15531 of 2021

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

(PROCEEDINGS THROUGH VIDEO CONFERENCING)

CWP No.15531 of 2021

Date of Decision: 13.08.2021

Sushil Kumar

...Petitioner

Versus

Commissioner, Gurugram Division, Gurugram & others

...Respondent

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

Present: Mr. Rao Ajender Singh, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been filed by the petitioner challenging the order dated 28.01.2020 (Annexure P-7) passed by the Assistant Collector 1st Grade, Kosli – respondent No.3 allowing the application of Gram Panchayat, Khurshid Nagar – respondent No.4, filed for eviction of the petitioner from the illegally occupied land of the gram panchayat, which is the village pond and common passage leading to the same being used by the villagers creating hindrance in the public use of the same, whereupon he had forcibly erected a tin shed; challenge has also been posed to the order dated 14.10.2020 (Annexure P-9) passed by the Collector, District Rewari – respondent No.2, whereby the appeal preferred by the petitioner challenging the order of the Assistant Collector 1st Grade, Kosli, stands dismissed as also the order dated 29.07.2021 (Annexure P-10) passed by the Commissioner, Gurugram Division, Gurugram – respondent No.1 dismissing the revision

petition preferred by him.

2. It is the contention of the learned counsel for the petitioner that the Gram Panchayat, Khurshid Nagar, is not the owner of the land, from where the petitioner is being sought to be evicted. He asserts that the land in question is situated within the *abadi deh* and therefore, there is no revenue record, however, the ancestors of the petitioner had been in possession of the said land. His contention is that in the absence of any revenue record or the evidence to the effect that the petitioner has encroached upon the gram panchayat land as alleged, the order of eviction could not have been passed. He asserts that the Assistant Collector 1st Grade, Kosli, has passed the order dated 28.01.2020 (Annexure P-7) relying upon the report of the Block Development and Panchayat Officer, Nahar, dated 08.11.2019, copy whereof is appended as Annexure P-6, which clearly spells out that in the absence of the revenue record, it could not be ascertained as to what area of the village pond and to what extent, there has been encroachment by the petitioner. Similar is the position with regard to the passage. He, on this basis, submits that the order of eviction of the petitioner could not have been passed when it was not possible to ascertain as to whether there is encroachment upon the common passage or the village pond and the extent to which such encroachment, if any, is there, could be ascertained. His contention is that the gram panchayat had not been able to show that it was the owner of the land in question or it vested in the gram panchayat nor has anything been brought on record which would indicate that the said land, which is the subject matter of the present case, was being used for public purpose. On this basis, it is asserted that the impugned orders passed by the

authorities under the Punjab Village Common Lands (Regulations) Act, 1961, cannot sustain and deserve to be set aside.

3. We have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the pleadings and the records of the case.

4. The basic argument on the part of the petitioner is that the report of the Block Development and Panchayat Officer, Nahar, dated 08.11.2019 (Annexure P-6) does not give the complete dimension of the encroachment nor does it spell out the extent of encroachment, if any, on the village pond or the public passage because of want of the revenue record, which according to him, has been made the basis for eviction of the petitioner by the authorities under the Punjab Village Common Lands (Regulations) Act, 1961. There is a basic fallacy in this argument which has been raised by the learned counsel for the petitioner. Perusal of the report of the Block Development and Panchayat Officer, Nahar, dated 08.11.2019 (Annexure P-6) would indicate that there is indeed encroachment upon the land of the village pond as well as the public passage, however, in the absence of the revenue record, the extent of encroachment could not be ascertained by the said authority. It is not in dispute that along with the application preferred by the Gram Panchayat, Khurshid Nagar, under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961, a site plan was appended, which depicted a public *johar*, which according to the gram panchayat, was existing since the establishment of the village and all villagers were using the same. Similarly, passage joining the above said village pond was the common passage, on which encroachment has been

made by the petitioner. Report of the Block Development and Panchayat Officer, Nahar, dated 08.11.2019 (Annexure P-6) clearly establishes that there is indeed a village pond to the South of the land, on which the petitioner had constructed a tin shed, although the report indicates that the said construction of tin shed was old and the said shed was in poor and dilapidated condition. The factum that there was indeed a pond adjacent to the land, which was said to have been encroached upon by the petitioner, belies the fact and assertion of the petitioner that there was no pond in existence at the site. The factum of there being a common passage also is apparently culled out from the said report. The said assertion of the petitioner, thus, on facts is found to be unjustified and in fact, false.

5. That apart, counsel for the petitioner has overlooked a vital aspect which has been clearly mentioned in the order dated 28.01.2020 (Annexure P-7) passed by the Assistant Collector 1st Grade, Kosli, where after referring to the report of the Block Development and Panchayat Officer, Nahar, wherein the extent of encroachment could not be ascertained, the said authority had personally inspected the spot. On visiting the spot, the findings have been recorded by the said authority, according to which the land in question is indeed a pond and the encroachment of the petitioner upon the land of the village pond is clearly visible. He has found that at the spot, illegal encroachment on the part of the petitioner on the land shown in red colour and marked as 'ABCD' in the site plan. In the absence of the revenue record, as the land is in *abadi deh*, site inspection by the said authority was the appropriate step to ascertain the truth. There is nothing on the record either before the Appellate Authority or the Revisional Authority

which would indicate that the spot inspection report of the Assistant Collector 1st Grade, Kosli and the findings as recorded by the said Assistant Collector 1st Grade, could be dented.

6. Counsel for the petitioner, as is apparent from his argument, had emphasized upon the report of the Block Development and Panchayat Officer, Nahar, dated 08.11.2019 (Annexure P-6) and nothing has been said with regard to the spot inspection report culled out by the Assistant Collector 1st Grade, Kosli. Since it has come on record that the land in question was a village pond, so is the position with regard to the common passage, the order of eviction as passed by the authorities under the Punjab Village Common Lands (Regulations) Act, 1961, cannot be said to be not in accordance with law as the said land would be a *shamlat deh* land, as per the definition under the Punjab Village Common Lands (Regulations) Act, 1961.

7. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

13.08.2021
Harish

(ASHOK KUMAR VERMA)
JUDGE

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