(116) (Proceedings through V.C.)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21611 of 2021 (O&M)

Date of Decision: 26.10.2021

Raghubir and another ...Petitioners

Versus

Collector District Rewari and others ... Respondents

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

HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr.P.R.Yadav, Advocate for the petitioners

Mr.Raman Sharma, Addl.A.G., Haryana

ASHOK KUMAR VERMA, J.

1. The petitioners have approached this Court through this petition invoking extraordinary writ jurisdiction under Articles 226 of the Constitution of India Challenging the orders dated 17.03.2020 (Annexure P-9) passed by the Assistant Collector, 1st Grade Kosli allowing the application made by respondent no.4 under Section 7 of the Punjab Village Common Land (Regulation) Act 1961 (as applicable to the State of Haryana) (for short," the Act of 1961") and the order dated 14.09.2021 (Annexure P-11) passed by Collector, District Rewari dismissing appeal filed against the order dated 17.03.2020 whereby the illegal constructions made by the petitioners alongwith proforma respondents have been directed to be demolished by clearing the passage and the possession has been

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directed to be handed over to respondent no.3- Gram Panchayat, Daroli, Sub Tehsil Dahina, District Rewari

2. A gamut of facts as culled out from the paper-book is that respondent No.4-Smt.Kaushalya filed an application under Section 7 of the Act of 1961 wherein respondent no.3-Gram Panchayat, Daroli has been said to be the owner in possession one Kitta Rasta comprised in Khewat No.254, Khatoni No.351 measuring 7 Marla Gair Mumkin Rasta *Sare-Aam* situated in Village Sub Tehsil Dahina, District Rewari, in view of jamabandi for the year 2012-13. Respondent No.4 further averred that the petitioners alongwith proforma respondents No.5 to 7 have been in illegal possession of the aforesaid rasta by raising constructions over it and they have blocked it for which a demarcation through a Local Commission was done at the spot on 14.10.2018, according to which they have been found to be in illegal possession by encroaching upon the land of the Gram Panchayat thereby raising boundary walls. The said application was allowed vide order dated 17.03.2020 (Annexure P-9) passed by the Assistant Collector 1st Grade, Kosli and the illegal constructions raised by the petitioners alongwith proforma respondents No.5 to 7 were directed to be demolished and the passage was directed to be got cleared. It has also been directed that in case the respondents do not hand over the possession to the Gram Panchayat within 30 days, then with the help of the police the possession of the disputed land be taken and be handed over to the Gram Panchayat.

3. Aggrieved against the aforesaid order the petitioners alongwith proforma respondents No.6 and 7 filed appeal before Collector, District Rewari which has also been dismissed vide order dated 14.09.2021

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(Annexure P-11). Hence, the petitioners approached this Court against the aforesaid impugned orders (Annexures P-9 and P-11).

4. Learned counsel for the petitioners, *inter alia,* submits that the action of the official respondents is illegal, without jurisdiction and against the principle of natural justice. Learned counsel submits that the petitioners have been condemned unheard as the impugned orders have been passed only on the basis of demarcation report dated 14.10.2018 wherein, although name of the petitioners and some of the proforma respondents have been mentioned, but there are no signatures of any of the petitioners or proforma respondents. Learned counsel also submits that the demarcation report was got prepared by respondent-Smt. Kaushalya Devi in connivance with the retired Kanungo as Local Commission. Learned counsel further submits that an ejectment of a person under Section 7 of the aforesaid Act cannot be ordered only on the basis of the demarcation report prepared at the back of the aggrieved party/parties and that too without following the provisions delineated in High Court Rules and Orders Vol-1 Chapter 1-M under the head “Hadd Shikni”. Learned counsel for the petitioners also submits that the same issue is pending adjudication in civil appeal filed by respondent no.4-Smt. Kaushalya Devi. Proforma-respondent no.6 herein had earlier filed a Civil Suit No. CS/157/2016 titled as Krishan Kumar Vs. Ishwar and another in the Civil Court at Rewari and afroesaid respondent-Smt.Kaushalya who was original applicant, was also respondent no.2 in the said suit and vide judgment dated 23.05.2018, the trial court permanently restrained her from taking possession of the land in dispute and aggrieved against the judgment of the Civil Court, Smt.Kaushalya Devi filed appeal

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which is pending adjudication on 10.01.2022 before the learned Additional District Judge, Rewari.

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

6. We are not inspired by the submissions of learned counsel for the petitioners. Undoubtedly, from a glance of the record, it appears that Khewat No.254, Khatoni No.351, Khasra No.201- Gair Mumkin rasta situated in areas of village Daroli is in the ownership of Gram Panchayat Daroli as per Jamabandi for the year 2012-13 and the demarcation of disputed rasta was carried out by the Local Commission on 14.10.2018 after prior notice to all concerned. It is also not disputed that at the time of demarcation, signatures of village Chowkidar, Panch and other responsible persons are available on attendance sheet. The demarcation was conducted through the latest technology i.e. GDPS Machine after searching survey stones. In the aforesaid demarcation report, illegal possession of the petitioners as well as proforma respondents has been clearly shown over the disputed Rasta. It is also not disputed that the lower Court has made spot inspections of the disputed Rasta. Furthermore, the petitioners have been heard before the Assistant Collector Ist Grade, Kosli and the Collector District Rewari, while passing the impugned orders Annexure P-9 and P-11, respectively. In such situation the submissions of the counsel for the petitioners that they have been condemned unheard, has no leg to stand. In this view of the matter, we are of the considered opinion that there is no violation of principle of natural justice as the petitioners have been duly heard.

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7. So far as the submission of the learned counsel for the petitioners with regard to jurisdiction of the Civil Court is concerned, is misconceived and misrepresented. From a perusal of the judgment and decree dated 23.05.2018 passed by the Civil Judge (Jr.Division), Rewari (Annexure P-7), it is crystal clear that the common passage belongs to the Gram Panchayat of the village. It is further to be noticed that in the civil suit, the Gram Panchayat has not been impleaded as a party, despite the fact that the common passage belongs to it which itself shows that the petitioners alongwith others are hand in glove in illegally encroaching upon the land of the Gram Panchayat.

8. The submission of the learned counsel for the petitioners that the procedures as delineated in the High Court Rules and Orders Vol-1 Chapter 1-M under the head “Hadd Shikni” have not been followed, is also gravely misconceived. There is no dispute with the aforesaid provisions. From a perusal of the aforesaid provisions under the head of "Hadd Shikni" in the High Court Rules and Orders Vol-1 Chapter 1-M, it is apparent that it applies to "Hadd-Shikni" suits and other suits of boundary disputes of land falling within the jurisdiction of a Civil Court which has no application to the facts of this case as the present case belongs to illegal encroachment of shamilat deh land at the hands of the petitioners and proforma respondents and in view of the provisions of Section 7 of the Act of 1961, the Collector has ample powers to direct removal of illegal encroachments upon the shamilat deh land. In the present case, a demarcation through a Local Commission was already made at the spot on 14.10.2018 and it has been established that the disputed land is shamilat deh land belonging to the Gram Panchayat, the Assistant Collector 1st Grade, Kosli has rightly acted by

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passing the impugned order under the provisions of the Act of 1961. We find no procedural lapse on the part of the revenue authorities. Furthermore, there is nothing on record to show that the petitioners are owner of the land in dispute and in the absence of any such cogent material and evidence on record in favour of the petitioners and proforma respondents and once it is crystal clear that the Gram Panchayat is the owner of the land in dispute, the Gram Panchayat must be put to possession of the said land. In this view of the matter, we find no reason to interfere with the findings of fact recorded by the revenue authorities in their comprehensive and speaking orders.

9. Moreover, 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

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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."

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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.

10. 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. In view of the above, we find no illegality and impropriety in the impugned orders passed by the revenue authorities/officials respondents.

11. Consequently, we find no merit in this petition which is accordingly dismissed.

(ASHOK KUMAR VERMA)
JUDGE

(AUGUSTINE GEORGE MASIH)
JUDGE

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Whether speaking/reasoned Yes
Whether Reportable Yes

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