

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

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Civil Writ Petition No.4258 of 2020 and
Civil Writ Petition No.7685 of 2021

Date of Decision: April 27th, 2022

Gurmail Singh since deceased through LRs

...Petitioners

Versus

Joint Development Commissioner (IRD), Rural Development and Panchayat
Department, SAS Nagar, Mohali and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE SANDEEP MOUDGIL**

Present: Mr. Ashok Giri, Advocate
for the petitioners.

Ms. Rajni Gupta, Additional Advocate General, Haryana,
for respondents No.1 and 2.

Mr. Munish Gupta, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J.

By this order, we propose to decide two writ petitions which have been preferred by the petitioners i.e. *CWP No.4258 of 2020* titled as *Gurmail Singh since deceased through LRs Versus Joint Development Commissioner (IRD), Rural Development and Panchayat Department and others*, wherein challenge is to the order dated 29.11.2013 (Annexure P-7) passed by the Collector-cum-District Development and Panchayat Officer, Rupnagar-respondent No.2, whereby petition under Section 7 of The Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the '1961 Act') filed by the Gram Panchayat Village Rajemajra, Tehsil and District Rupnagar-respondent No.3, has been accepted *ex parte* as also the order dated 20.11.2019 (Annexure P-11) passed by the Joint Development Commissioner

(IRD), Rural Development and Panchayat Department, Punjab, exercising the powers of the Commissioner dismissing the appeal of the petitioners and in *CWP No.7685 of 2021* titled as *Gurmail Singh since deceased through LRs Versus Joint Development Commissioner (IRD), Rural Development and Panchayat Department and others*, challenge is to the order dated 31.12.2010 (Annexure P-8) passed by the Director, Rural Development and Panchayat Department, Punjab, exercising the powers of the Commissioner, whereby the order dated 30.10.2002 (Annexure P-7) passed by the Additional Deputy Commissioner (Development), Rupnagar, exercising the powers of the Collector declaring the petitioners as the owner of the land, has been set aside.

2. It is the contention of the learned counsel for the petitioners that the impugned orders passed by the Commissioner are unsustainable in the light of the fact that the said orders have been passed without appreciating the fact that the land does not fall within the definition of *shamlat deh* and, therefore, the eviction order which has been passed cannot sustain. He contends that the revenue authorities while dealing with the petition under Section 7 of the 1961 Act have failed to appreciate that the Collector while passing the order dated 29.11.2013 (Annexure P-7) in CWP No.4258 of 2020 of eviction had proceeded in the absence of the petitioners without effecting service upon him. He contends that an order which has been passed without effecting service upon the parties being violative of the principles of natural justice cannot sustain.

3 This contention of learned counsel for the petitioners cannot be accepted in the light of the fact that notice has been duly served upon the respondents and it is not that they were not served, rather *munadi* was

carried out in the village. 16 respondents, who were co-proprietors/villagers of the petitioners, had appeared and filed written response. *Munadi* was subsequently again carried out but the respondents did not appear and it is then that the Collector had proceeded to decide the matter in their absence.

The eviction order has been passed which was challenged before the Commissioner, where it was asserted by the counsel for the petitioners that neither summons were issued nor *munadi* was conducted in the village by the Chowkidar but the Appellate Court, on the basis of the records, came to the conclusion that there was proper service effected upon the respondents. Not only that, on 20.11.2019 when the appeal was being heard, it had come to light that the petition under Section 11 of the 1961 Act had been preferred by the petitioners along with others for declaration to the effect that they were owners in possession of the land in question, which was allowed in their favour vide order dated 30.10.2002 (in CWP No.7685 of 2021), which when challenged by the Gram Panchayat in an appeal, was set aside vide order dated 31.12.2010 (Annexure P-8), which order had not been challenged by the petitioners and had attained finality. Since in the year 2019 the order dated 31.10.2010 passed by the Appellate Authority had attained finality, whereby the Gram Panchayat was declared the owner of the land, there was no reason why the Appellate Authority would have accepted the prayer of the petitioners for setting aside the order of eviction passed against him. Once it is established that the Gram Panchayat was the owner of the land in question and the petitioners and similarly placed persons were in illegal, unauthorized occupation of the Gram Panchayat land, the prayer of the petitioners could not be accepted and has rightly been rejected by the Appellate Authority. The impugned orders of eviction of the

petitioners from the land in question being in accordance with law do not call for any interference and are upheld.

4. As regards the challenge to the order dated 31.10.2010 (Annexure P-8) passed by the Commissioner (Appellate Authority) is concerned, the same is based upon the revenue record and the pleadings which do not call for any interference by this Court, especially in the light of the fact that the petitioner had not been able to establish his possession over the land prior to 26.01.1950 nor was the petitioner able to establish or prove the land which was deducted as a share and proportionate contribution to the common land during consolidation for inclusion in the *shamlat deh*. In any case, the said impugned order which was passed on 31.10.2010 had not been challenged by the petitioner till he filed the present writ petition i.e. CWP No.7685 of 2021 on 01.04.2021, which is after a delay of more than ten years. There is no explanation whatsoever with regard to the inordinate delay on the part of the petitioner in approaching this Court by way of the present writ petition. The writ petition on the ground of delay and laches also deserve to be dismissed.

5. In the light of the above, finding no merit in any of these two writ petitions, we dismiss the same.

(AUGUSTINE GEORGE MASIH)
JUDGE

April 27th, 2022
Puneet

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No