

CWP-8229-2019

Date of Decision: 4th April, 2022

SHRI RAM AND OTHERS

...PETITIONERS

Versus

STATE OF HARYANA AND OTHERS

...RESPONDENTS

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

Present: Mr. P.K.Ganga, Advocate,
for the petitioners.

Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J.

Petitioners, through this writ petition, have approached this Court praying for issuance of a writ of mandamus directing the respondents to allot the land, on which they have illegally extended construction of their residential houses, on collector rates keeping in view Rule 12 (4) of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as '1964 Rules') and in view of the Letters dated 16.10.2000 (Annexure P-1) and 29.11.2000 (Annexure P-2).

2. It is the contention of the learned counsel for the petitioners that in pursuance to Rule 12 (4) of the 1964 Rules, the Gram Panchayat had issued Letters dated 16.10.2000 and 29.11.2000 (Annexures P-1 and P-2 respectively) regarding the sale of the Gram Panchayat land, which is

already in possession of the residents, who had constructed their residential houses, provided they are ready to pay the collector rate.

3. Resolution No. 206 dated 28.02.2002 had been passed by the Gram Panchayat for allotment of the said encroached area to the petitioners and similarly placed persons. The said resolution was forwarded to the Deputy Commissioner and the Deputy Commissioner had returned the same to remove certain objections. Thereafter, a request has been made to the authorities for accepting the resolution of the Gram Panchayat but no decision thereon has been taken till date. Counsel contends that the petitioners are ready and willing to pay the collector rate of the land of the Gram Panchayat which is in their illegal possession so that the land could be allotted to the petitioners.

4. Upon notice having been issued to the respondents-State of Haryana, reply has been filed, wherein it has been mentioned that the Gram Panchayat of Village Ghoranwali, Tehsil Rania, District Sirsa-respondent No. 5 had filed an ejectment application under Section 7 (1) (2) of the Punjab Village Common Lands (Regulation) Act, 1961, on 09.12.2015, which is much after the Letters dated 16.10.2000 (Annexure P-1) and 29.11.2000 (Annexure P-2). The said ejectment application was allowed by the Court of Assistant Collector Ist Grade, Ellenabad vide order dated 21.08.2019 (Annexure R-1), wherein the petitioners have been ordered to be ejected from the land in question.

5. Simultaneously, suit for declaration was preferred by the petitioners for declaration to the effect that they are owners in self-occupation of residential houses constructed over land measuring 3 Kanal 7 Marla comprised in Khasra No. 73, Killa No. 4 (3-7), situated in Village

Ghoranwali, Tehsil Rania, District Sirsa and they had a preferential right of allotment of the above-said plots as absolute owners from respondent No. 5-Gram Panchayat as per the Government Scheme for allotment of residential plots by sale according to the resolution of the Gram Panchayat and the forwarding of the said resolution by the Deputy Commissioner to the Financial Commissioner and Secretary to Government of Haryana. Petitioners have also sought the relief of setting aside the Resolution dated 02.12.2015 passed by the Gram Panchayat taking a decision by passing an ejectment petition. The said civil suit was dismissed by the Civil Judge (Junior Division), Ellenabad vide judgment and decree dated 06.02.2019 (Annexure R-II). The Court had returned a finding that the petitioners were in unauthorized possession of the Gram Panchayat land and, therefore, neither a declaration nor an injunction can be granted in their favour.

6. Learned counsel for the State, on the basis of the orders of eviction and dismissal of the civil suit, contends that no relief can be claimed and granted to the petitioners by this Court especially when they have been declared as unauthorized occupants and in illegal possession of the Gram Panchayat land.

7. Having considered the submissions made by the learned counsel for the parties and on going through the records and pleadings of the case, we are of the considered view that the undisputed facts make it apparent that there is not only an order of eviction which has been passed against the petitioners but there is a Civil Court decree also where they have been found to be in unauthorized illegal possession of the Gram Panchayat land and, therefore, the relief, which is being sought to be claimed and that too, by way of a mandamus, cannot be accepted.

8. We find the present one to be a case of total misuse of process of the Court proceedings and wanting a writ of mandamus contrary to the orders passed by the competent authority as also the decree passed by a Civil Court, which has attained finality, against them. Wanting a Court and that too, a Writ Court to exercise its extra-ordinary writ jurisdiction to grant a relief, which is known to the petitioners, cannot be granted to them as the writ of mandamus can only be issued where there is an established right accrued on the petitioners by some statute, which, in the present case, we find none. We are left with no option but to say that the petitioners have come to the Court with unclean hands especially when the factum of dismissal of the civil suit preferred by the petitioners by the Civil Judge (Junior Division) Ellenabad on 06.02.2019 was in the knowledge of the petitioners, which fact has not been disclosed in the writ petition.

9. We, therefore, dismiss the present writ petition with costs of ₹50,000/- to be deposited with the Punjab and Haryana High Court Lawyers' Welfare Fund within a period of two months from today.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(SANDEEP MOUDGIL)
JUDGE**

4th April, 2022
pj

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