

CWP No.17681 of 2022

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.17681 of 2022

Date of decision : 10.08.2022

Prithvi Pal Singh Grewal (deceased) through LRs

.....Petitioner

VERSUS

State of Punjab and others

....Respondents

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

Present: Mr. Akashdeep Miglani, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

In this writ petition, challenge is to the order dated 04.03.2022 (Annexure P-7) passed by the District Development and Panchayats Officer, Ludhiana, exercising the powers of the Collector under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as '1961 Act'), whereby eviction of the petitioners has been ordered by allowing the application preferred by the Gram Panchayat Village Butahari, Tehsil Dehlon, District Ludhiana – respondent No.4, and the order dated 17.11.2021 (Annexure P-13) passed by the Director, Rural Development and Panchayats Officer, exercising the powers of the Commissioner under the 1961 Act, whereby the appeal preferred by the petitioners has been dismissed.

2. It is the contention of the learned counsel for the petitioners that the order of eviction, which has been passed by the Collector under the 1961 Act, is not in accordance with law as on the remand of the case by the

Commissioner vide order dated 14.06.2019 on an appeal filed by the Gram Panchayat challenging the order dated 30.07.1966, vide which the application preferred by the Gram Panchayat under Section 7 (1) of the 1961 Act, for eviction of the original possessor of the land, namely, Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh, has been decided by the impugned order dated 04.03.2020 (Annexure P-7) by the Collector without there being any fresh evidence led by the Gram Panchayat to contradict the findings as recorded in the order dated 30.07.1966. In the absence of any fresh evidence having been led by the Gram Panchayat, the findings could not have been reversed holding the possession at the hands of Prithvi Pal Singh Grewal, the predecessor-in-interest of the petitioners, to be illegal. Counsel has further contended that even the remand order dated 14.06.2019 is not sustainable as there was an inordinate delay on the part of the Gram Panchayat in filing the appeal on the part of the Gram Panchayat after a period of 15205 days, which inordinate delay has not been explained. When confronted by this Court as to whether the said order of remand, as passed by the Commissioner on 14.06.2019, had been challenged by the predecessor-in-interest of the petitioners or the petitioners, the answer is in the negative.

3. His further submission is that the factum of the possession being established of the predecessor-in-interest of the petitioners stood confirmed by the judgment dated 03.08.2016 passed by the High Court in Regular Second Appeal No.3886 of 2009 preferred by Prithvi Pal Singh, predecessor-in-interest of the petitioners, wherein it was held that the appellant – plaintiff was in possession of the land and therefore, resort to

taking the possession by the Gram Panchayat would be in accordance with law but not by forcible interference or dispossession. His submission is that the findings as have been returned by the Collector which have been affirmed by the Appellate Authority vide order dated 17.11.2021 (Annexure P-13) is not sustainable as the same are not based upon proper appreciation of the pleadings and the law. His submission is that the predecessor-in-interest of the petitioners came in possession of the land on the basis of agreements to sell which were entered into by Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh, who were in cultivating possession of the land. These four agreements to sell, one agreement dated 02.02.1983 and three agreements dated 19.11.1984, have been appended as Annexures P-3 to P-6. It is, on this basis, Nahar Singh, father of Prithvi Pal Singh Grewal, came in possession of land and develop the same after spending a huge amount. He also got installed an electric tubewell in his own adjacent land so that the land in question could be irrigated and it could give good crop. He, on this basis, contends that it cannot be said that the possession of the petitioners is illegal once they have got agreements to sell in their favour from Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh. Counsel, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

4. We have considered the submissions made by the learned counsel for the petitioners and with his assistance have gone through the pleadings, records of the case as also the impugned orders.

5. Briefly, the facts are that the land in question originally belongs to the Gram Panchayat. It is initially an old site of brick-kiln measuring 31

kanals and 16 marlas bearing khewat No.1079/1039, khatauni No.1153, khasra No.55//18/3, 21/1, 21/2, 22/1, 22/2, 23/1, 23/2, 60//1/1, 61//4/3, 5/2, 6/2, 7/1, village Butahri. In the year 1965-66, Gram Panchayat Butahri filed an application under Section 7 (1) of the 1961 Act for ejectment of Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh. The said application of the Gram Panchayat was dismissed by the Assistant Collector 1st Grade, Ludhiana, vide order dated 30.07.1966. As per the pleadings on the part of the petitioners, no steps were taken by the Gram Panchayat for filing an appeal against the said order. In due course of time, Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh filled-up this barren land which was initially an old site of brick-kiln and started cultivating the said land. All three of them died around 1978 and their LRs were never married and left the village handing over the possession of the land in question on execution of agreements to sell (one agreement dated 02.02.1983 and three agreements dated 19.11.1984) to Nahar Singh son of Harnam Singh son of Lal Singh, copies of which have been appended as Annexures P-3 to P-6 along with the writ petition. These agreements to sell did indicate that some consideration had changed hands and the possession was taken of the land in question. Petitioners assert that they had put in lot of money and have also installed a tubewell although on their own land but adjacent to the land in question to make it more fertile so that they could get better yield. Possession of Nahar Singh, predecessor-in-interest of the petitioners, continued on the land.

6. In the year 1993-94, as per the pleadings of the Gram Panchayat, possession of the land in question was taken from Nahar Singh

and the land was given on lease by way of auction. Against these proceedings, Nahar Singh filed a civil suit on 20.05.1993 against the Gram Panchayat Butahri for seeking permanent injunction on the basis of long and settled possession which was dismissed by the Civil Judge (Junior Division) on 27.08.2008, appeal preferred by Nahar Singh against the said judgment was dismissed by the Additional District Judge on 03.10.2009. Against this order, an appeal was preferred before the High Court i.e. RSA No.3886 of 2009, which was decided by this Court vide order dated 03.08.2016 (Annexure P-8), whereby the appeal was allowed by setting aside the judgments and decree passed by both the Courts below and decreeing the suit of the appellant-plaintiff. A finding was also returned by the High Court in the Regular Second Appeal that the appellant – plaintiff was claiming possession by virtue of an agreement to sell which does not confer title but the possession stood reflected and established. The Court also proceeded to observe that the possession continues with the unauthorized persons including the plaintiff on the Gram Panchayat land. Since no documentary evidence was placed on record to show that the auctioneer had actually been put into possession by the Gram Panchayat after holding auction in the year 1993-94, the Gram Panchayat could take possession in accordance with law but not by forcible interference or dispossession. It was further clarified that in essence, the Gram Panchayat is not precluded from taking possession in accordance with law.

7. In the year 2008, after the dismissal of the civil suit filed by Nahar Singh, Gram Panchayat Butahri through its Manager, filed an appeal against the order dated 30.07.1966 of the Assistant Collector 1st Grade

before the Court of Commissioner-cum-Joint Development Commissioner, Mohali. In the light of the findings given by the High Court, the Appellate Authority has proceeded to condone the delay in filing the appeal of Gram Panchayat Butahri and remanded the case to the Collector. It was ordered that after giving full opportunity of hearing to both the parties and on the basis of the revenue record, pass fresh orders to the effect whether the petitioners herein had purchased the land from Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh as per law or not? It may be added here that this order of remand dated 14.06.2019 passed by the Commissioner in the appeal preferred by the Gram Panchayat had never been challenged by the petitioners or their predecessor-in-interest, which order has attained finality.

8. In pursuance to the said remand order, the Collector issued notice to both the parties to put forth their pleadings. On the basis of the pleadings and revenue records which included the jamabandi and the khasra girdawaris, a finding was returned that the Gram Panchayat is the owner of the land in question. In the column of cultivation, Nahar singh was entered to be in possession as *gair marusi*, which means that the possession is illegal as it is not supported by any lease deed or document. The agreements to sell which were placed on record as per the findings of the High Court in the Regular Second Appeal did not confer any title upon Nahar Singh or his LRs i.e. the petitioners. They being, therefore, in illegal possession, their eviction has been ordered vide order dated 04.03.2020 (Annexure P-7).

9. Apart from this, since the predecessor-in-interest of the

CWP No.17681 of 2022

petitioners i.e. Prithvi Pal Singh Grewal remained in illegal possession of the land in the ownership of the Gram Panchayat and had deprived of the Gram Panchayat from income despite being the owner, compensation amounting to ₹950 per marla for three years for 31 kanals and 16 marlas has been assessed at ₹6,04,200/- with the shamlat land of the Gram Panchayat. Appeal, which has been preferred by the petitioners, has been dismissed by the Appellate Authority, where again the petitioners have not been able to establish their ownership as the documents which have been placed on record are mere agreements to sell and that too of the land of which Puran Singh, Kapur Singh and Ralla Singh sons of Bishan Singh were not owners and were merely in possession of the land, that too illegally by handing over the possession to the predecessor-in-interest of the petitioners Nahar Singh by virtue of the alleged agreements to sell which has led to illegal possession having been handed over to the petitioners who have stepped into their shoes.

10. The findings, therefore, as recorded by the Revenue Authorities vide the impugned orders cannot be faulted with as the same are based upon the proper appreciation of the pleadings, evidence on record as also the fact. The writ petition being devoid of any merit, stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

10.08.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No