

CWP No.21004 of 2021 & connected cases

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of decision : 12.05.2022

CWP No.21004 of 2021

Pawan

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(2)

CWP No.21014 of 2021

Balraj

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(3)

CWP No.21017 of 2021

Dharampal

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(4)

CWP No.21018 of 2021

Sukhchain

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(5)

CWP No.21019 of 2021

Subhash Chander

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

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(6)

CWP No.21020 of 2021

Hawa Singh

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(7)

CWP No.21022 of 2021

Sant Ram

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(8)

CWP No.21023 of 2021

Satbir Singh

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

(9)

CWP No.21364 of 2021

Nafe Singh

.....Petitioner

VERSUS

Gram Panchayat Singhpura Kalan and others

....Respondents

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

Present: Mr. T.C. Dhanwal, Advocate for
Mr. Ashish Naik, Advocate
for the petitioners.

Mr. S.P. Chahar, Advocate,
for respondent No.1 – Gram Panchayat.

Ms. Rajni Gupta, Addl. A.G., Haryana.

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AUGUSTINE GEORGE MASIH, J.

By this order, we propose to dispose of nine Civil Writ Petitions i.e. CWP Nos.21004, 21014, 21017 to 21020, 21022, 21023 and 21364 of 2021. Counsel for the petitioners has requested that the facts in these writ petitions are almost the same except for the finding that the area which has been found to have been encroached upon by the petitioners is different in each of these cases and rest of the pleadings and the facts including the orders are the same. Counsel for the petitioners has further submitted that CWP No.21004 of 2021, titled as 'Pawan Vs. Gram Panchayat Singhapura Kalan and others', may be treated as a lead case.

2. Briefly, the facts of CWP No.21004 of 2021 are that according to the petitioner, his forefathers were in possession of the Gram Panchayat land total measuring 508 square yards since more than 40/50 years and are in continuous and uninterrupted possession since then. One Shri Raghubir remained Sarpanch of the village Singhapura Kalan for approximately 30 years and he, after having received payment from the forefathers of the petitioner about 30 years back, had allotted the land in dispute to them. It is, on this piece of land, that the house has been built by the petitioner.

3. On 19.05.2009, because of there being political factionalism in the village, Gram Panchayat Singhapura Kalan, Tehsil and District Rohtak filed an application under Section 7 (2) of the Punjab Village Common Lands (Regulation) Act, 1961, for ejectment of the petitioner and other similarly placed persons including the petitioners in the connected writ petitions. The said application was allowed by the District Development and Panchayat Officer-cum-Assistant Collector 1st Grade, Rohtak – respondent

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No.4 vide order dated 08.08.2011 (Annexure P-2).

4. An appeal was preferred by the petitioner and the other similarly placed petitioners in the connected writ petitions challenging this order of eviction, which came up for consideration before the Collector Rohtak, District Rohtak – respondent No.3, on 23.02.2012, when the findings returned by the Assistant Collector 1st Grade, Rohtak, vide order dated 08.08.2011 (Annexure P-2) were upheld holding therein that the land was *Panchayat Deh* and therefore, the same is vested in the Gram Panchayat, which is its owner in the light of the *jamabandi* for the year 2003-2004 and the petitioner is in illegal possession thereof and therefore, has, rightly been ordered to be evicted leading to the appeal being dismissed vide order dated 23.02.2012 (Annexure P-4).

5. However, in the concluding paragraph, it was observed that the petitioner had constructed his house and was in possession thereof since long. Amenities like drinking water tap and street have been provided by the Gram Panchayat, a lenient and sympathetic view was taken and it was ordered that the petitioner can get the right to own this land by paying the cost thereof to the Gram Panchayat as per rules. The Block Development and Panchayat Officer was directed to send a case regarding fixation of the cost of the disputed land after considering it sympathetically in case request is submitted by the petitioner to pay the cost either to the Gram Panchayat or his office.

6. In pursuance to the said order, resolution was passed by the Gram Panchayat, dated 08.10.2016 (Annexure P-5), wherein Gram Panchayat decided that the amount at collector rate be got deposited from

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the persons who are in unauthorized possession of the Gram Panchayat land and names of 15 persons listed therein. Copy of the resolution was sent to the Deputy Commissioner, Rohtak, through Block Development and Panchayat Officer, with a request to grant permission to the persons mentioned therein to deposit the amount at collector rate.

7. When nothing turned out of the said resolution despite various requests sent by the petitioners, petitioner in the present writ petition as also the other petitioners in connected writ petitions preferred revision petitions against the order dated 23.02.2012 (Annexure P-4) passed by the Collector Rohtak, District Rohtak. The said revision petitions came up for consideration before the Divisional Commissioner, Rohtak Division, Rohtak, when, on considering the facts and circumstances of the case and hearing the counsel for the parties, the same was dismissed on 18.01.2021 (Annexure P-7). Apart from dismissing the revision petition of the petitioners, the observation of the Collector Rohtak, District Rohtak, giving an option to the petitioners to get ownership rights by paying cost of the land at collector rate to the Gram Panchayat, as per rules, was found to be illegal and unfair as also contrary to the judgment passed by the Hon'ble Supreme court in **Jagpal Singh and others Vs. State of Punjab and others**, (2011) 11 SCC 397, where clear directions have been issued to all the State Governments that regularization of unauthorized occupation of the land of the Government or Gram Panchayat/Gram Sabha, in any way, cannot be allowed.

8. It is, in pursuance to the order having been passed in all the cases of the petitioners, through this bunch of nine cases the petitioners

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have approached this Court by way of the above referred writ petitions impugning the said order and in the alternative, praying for a writ of *mandamus* directing the respondents to implement the resolution dated 08.10.2016 (Annexure P-5) passed by the Gram Panchayat allowing the petitioner and other similarly placed persons to pay the amount in view of the order dated 23.02.2012 (Annexure P-4) passed by the Collector Rohtak, District Rohtak – respondent No.3.

9. Learned counsel for the petitioners submits that the petitioners are entitled to the benefit of the resolution dated 08.10.2016 (Annexure P-5) passed by the Gram Panchayat, according to which the Gram Panchayat is ready and willing to part with the ownership of the land which has been alleged to have been encroached upon by the petitioners subject to payment of the value of the land as per the collector rate. He has conceded that despite the passing of the resolution by the Gram Panchayat, no further steps have been taken by any of the authorities to either reject the said resolution or recommend/approval thereof for the change of ownership on deposit of the amount.

10. Counsel for the petitioners had no answer when a question was put by this Court as to how would the resolution of the Gram Panchayat dated 08.10.2016 (Annexure P-5) survive in the light of the subsequent order dated 18.01.2021 (Annexure P-7) passed by the Divisional Commissioner, Rohtak Division, Rohtak – respondent No.2, whereby the revision petition preferred by the petitioners challenging the order dated 23.02.2012 (Annexure P-4) passed by the Collector Rohtak, District Rohtak, has been upheld and their appeal has been dismissed upholding the

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petitioners to be in illegal possession of the Gram Panchayat land which was found to be *Panchayat deh* as per the jamabandi brought on record. The subsequent observation and conferring of ownership right subject to payment of value of the land to the Gram Panchayat at the collector rate has also been set aside in the light of the judgment of Hon'ble Supreme Court in *Jagpal Singh's* case (supra). He, however, contends that since the petitioners are in possession of the land in question for the last more than 40 to 50 years and have built-up their houses thereon, although they are in illegal possession of the Gram Panchayat land, they may be given the benefit of the policies which have been framed by the State Government especially Rules which enable them to pay the amount at the collector rate and get the ownership rights of the said land. When confronted with the facts as to by which policy/instructions/rules is the claim of the petitioners covered, counsel for the petitioners had no answer thereto.

11. On considering the submissions made by the learned counsel for the petitioners, we do not find any merit in the prayer as has been made by the petitioners. As per the finding recorded by the Panchayat authorities, which are based upon the revenue record, the petitioners are admittedly in illegal possession of the Gram Panchayat land and therefore, have no right to continue in possession of the said land especially when the order of eviction has been passed by the Competent Authority, appeal against which has been dismissed, so also the revision. These orders, which have been passed by the authorities, have been found to be in accordance with law and therefore, do not call for any interference.

12. Nothing has come on record which would indicate that any

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amount was deposited by the predecessors-in-interest of the petitioners with the Sarpanch of the Gram Panchayat or the Gram Panchayat. There is no resolution passed in favour of the predecessors-in-interest of the petitioners nor has anything come on record which would indicate that the said land was ever allotted to the petitioner(s), which is the subject matter of these writ petitions. In the absence of there being any record/evidence to that effect, findings as returned by the Panchayat authorities, cannot be faulted with.

13. Having come to the conclusion that the petitioners are in illegal possession of the Gram Panchayat land, the plea which has been put forth by the counsel for the petitioners with regard to the claim of the petitioner(s) that they are entitled to claim ownership of the land in pursuance to the policy/rules/instructions/ regulations, as have been framed by the Government of Haryana, suffice it to say that no such policy/rules/instructions/regulations have been brought on record which would cover the case of the petitioners in their favour. In the absence of any such pleadings and the policy/rules/instructions/ regulations, the prayer of the petitioners cannot be accepted.

14. It would not be out of way to mention here that the Revisional Authority has placed reliance upon the judgment of the Hon'ble Supreme Court in *Jagpal Singh's* case (supra), where, in para 22 of the judgment, it has been held as follows:-

“22. 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/unauthorized

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occupants of 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 regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.” (emphasis is ours)

15. That apart, a Division Bench of this Court in CWP No.26952 of 2015, titled as 'Ajit Singh Vs. Chatter Singh and others', decided on 08.02.2017, while dealing with Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 , framed under the Punjab Village Common Lands (Regulation) Act, 1961, has gone to the extent of saying that the illegal encroachment upon the Gram Panchayat land does not

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confer any right upon the encroacher(s) to claim that the land should be sold to him/them in terms of the provisions or that the Panchayat is under a corresponding obligation to sell it to him/them merely because he/they have been in illegal possession of the said land for a long period of time.

16. In the light of the above, it can be said that the persons in illegal occupation of the Gram Panchayat land cannot, as a matter of right, claim continuance of such illegal occupation for regularization of the said claim nor can such an encroacher be permitted or allowed to claim, as a matter of right, to purchase the land which has been encroached by him/them.

17. Finding no merit in these writ petitions, the same stand dismissed.

18 In the light of the dismissal of these writ petitions, it is held that the petitioners are in illegal possession of the land of the Gram Panchayat and despite orders having been passed by the Competent Authority for eviction of the petitioners from the land in question, till date the possession has not been taken/handed over to the Gram Panchayat. Therefore, immediate steps be taken by the respondents for taking the possession of the land in question which is still in illegal possession of the petitioners.

The above exercise be completed by the official respondents at the earliest and in any case, within a period of four months from today. The compliance report be submitted by the Secretary to Government of Haryana, Department of Rural Development and Panchayat and the Divisional Commissioner, Rohtak Division, Rohtak – respondent No.2

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within a period of four weeks thereafter. Copy of this order be placed on the records of each of the cases and also supplied forthwith to the authorities to whom directions have been issued for submitting the compliance report.

(AUGUSTINE GEORGE MASIH)
JUDGE

12.05.2022
Harish

(SANDEEP MOUDGIL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>