IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1). CWP-21697-2019 (O&M)
Date of Decision: 13.09.2022

NAND LAL AND OTHERS ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

2). CWP-22455-2019 (O&M)

RAJINDER SINGH AND ANOTHER ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

3). CWP-22463-2019 (O&M)

GURMAIL SINGH AND OTHERS ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

4). CWP-21699-2019 (O&M)

TARSEM LAL AND OTHERS ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

5). CWP-21701-2019 (O&M)

JAMUNA ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

6). CWP-21702-2019 (O&M)

RAM KRISHAN SINGH AND ANOTHER ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

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7). CWP-21703-2019 (O&M)

BHAGAT RAM AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

8). CWP-21704-2019 (O&M)

GOPAL DASS AND ANOTHER ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

9). CWP-21705-2019 (O&M)

JASWANT RAI AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

10). CWP-21706-2019 (O&M)

PRITAM KAUR THROUGH HER LRS. ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

11). CWP-21707-2019 (O&M)

GOKUL DECEASED THROUGH HIS LRS AND ANOTHER

..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

12). CWP-21708-2019 (O&M)

BHAG SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

13). CWP-21709-2019 (O&M)

HARBHAJAN SINGH ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

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14). CWP-21712-2019 (O&M)

GURCHARAN SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

15). CWP-21714-2019 (O&M)

POORAN AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

16). CWP-21715-2019 (O&M)

RANJIT SINGH ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

17). CWP-21716-2019 (O&M)

OM PARKASH (DECEASED) THROUGH HIS LRS AND ANOTHER
..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

18). CWP-21717-2019 (O&M)

AJMER SINGH ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

19). CWP-21718-2019 (O&M)

WARIYAM SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

20). CWP-21719-2019 (O&M)

AMARJIT KAUR AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

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21). CWP-21730-2019 (O&M)

BHAJAN SINGH ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

22). CWP-21732-2019 (O&M)

ASSA RAM AND ANOTHER ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

23). CWP-21735-2019 (O&M)

MOHINDER SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

24). CWP-21738-2019 (O&M)

HARI SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

25). CWP-21773-2019 (O&M)

MILKHI RAM AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

26). CWP-21775-2019 (O&M)

RAMESH SINGH AND ANOTHER ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

27). CWP-21776-2019 (O&M)

HARBHAJAN SINGH AND OTHERS ..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS ..... Respondent(s)

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28). CWP-21845-2019 (O&M)

VED PARKASH @ PARKASH AND OTHERS ..... Petitioner(s)
Versus
STATE OF PUNJAB AND OTHERS ..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Aditya Jain, Advocate and
Mr. Arjun Kundra, Advocate
for the petitioners.

Mr. Sandeep Jain, Additional A.G. Punjab.

Mr. H.K. Brinda, Advocate
for respondent no.4.

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LISA GILL, J.(Oral)

This order shall dispose of all the above mentioned 28 writ petitions as they arise out of common order dated 16.12.2014, passed by the Collector-cum-Additional Deputy Commissioner (Development), Rupnagar and order dated 26.12.2018, passed by Joint Development Commissioner, Exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961. With the consent and at request of learned counsel for the parties, all the writ petitions are taken up together for hearing and decision.

Prayer in all the writ petitions is for setting aside order dated 16.12.2014, passed by the Collector-cum-Additional Deputy Commissioner (Development), Rupnagar and order dated 26.12.2018, passed by the Joint Development Commissioner, Exercising the powers of Commissioner under the Punjab Village Common Lands (Regulation) Act, 1961. Facts for the sake of convenience are taken from CWP-21697 of 2019.

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Learned counsel for the petitioners submit that all the petitioners are in fact owners in possession of the land in question, situated at village Attari, Tehsil Anandpur Sahib, District Rupnagar, Punjab and they derive title from their predecessors in interest who are claimed to be owners in possession of the land since the year 1942. Learned counsel for the petitioners submits that respondent no.4 – Gram Panchayat Attari, Tehsil Anandpur Sahib, District Rupnagar filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'), seeking ejectment of the petitioners in the year 2011. Learned Collector, Rupnanagar vide order dated 13.06.2012 (Annexure P-1), however directed the parties to file a petition under Section 11 of the Act and it was further ordered that so long as petition under Section 11 of the Act is not decided, petition under Section 7 of the Act is adjourned sine-die. Petitioners in all the writ petitions, it is claimed, filed petitions under Section 11 of the Act in July, 2014, which were taken up together and dismissed on 16.12.2014 by the Collector-cum-Additional Deputy Commissioner (Development), Rupnagar on the ground of being barred by limitation. It is stated that appeals filed by the petitioners were also dismissed on 26.12.2018 even though the matter was remanded to the Collector-cum-Additional Deputy Commissioner in the appeals filed by identically situated persons as the petitioners vide order date 07.04.2016, Annexure P-5. It is stated that petitioners had duly filed an application dated 24.05.2016, Annexure P-6, for disposal of their appeals in the same terms as order dated 07.04.2016 but the same was not even adverted to in impugned order dated 26.12.2018. Aggrieved therefrom present writ petitions have been filed.

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Learned counsel for the petitioners submits that impugned orders are absolutely illegal, arbitrary and clearly discriminatory. Similarly situated persons had also filed petitions under Section 11 of the Act, which were dismissed as time barred by similar order dated 16.12.2014, however learned Commissioner-cum-JDC, Rural Development and Panchayat Department, Punjab vide order dated 07.04.2016 (Annexure P-5) and even subsequent order dated 16.01.2019 (Annexure P-7) accepted the appeal/s of said persons and remanded the matter to respondent no.2 with a direction to decide the same like a civil suit by framing issues and granting opportunity to the parties to lead evidence and thereafter pass fresh order within six months. It is contended that it is not understandable as to how and on what basis this discrimination has been meted out to the petitioners, who are identically situated as the persons whose appeals were allowed on 07.04.2016. Petitions under Section 11 of the Act filed by said similarly situated persons are stated to be still pending adjudication. It is thus prayed that impugned orders dated 16.12.2014 and 26.12.2018 be set aside and petitions filed by the petitioners under Section 11 of the Act may also be directed to be decided on merits after remanding the same to respondent no.2.

Learned counsel for respondent no.4, while opposing the writ petitions, has argued that petitions under Section 11 of the Act, filed by the petitioners are time barred and cannot be entertained in terms of Rule 21-A of the Punjab Village Common Lands (Regulation) Rules, 1964. He submits that no application for condonation of delay had been filed by the petitioners, therefore, the impugned orders are in order and should be upheld.

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We have heard learned counsel for the parties and have gone through the files.

It is a matter of record that vide order dated 13.06.2012 learned Collector ordered that "parties are directed to file petition under Section 11 of the Punjab Common Lands (Regulation) Act, 1961. So long as petition under Section 11 is not decided, present case (under Section 7) is adjourned sine die." Petition under Section 11 of the Act was filed by the petitioners albeit in the year 2014. However, learned counsel for respondent no.4 is unable to deny that petitioners are indeed identically situated as the petitioners whose appeals have been accepted vide orders dated 07.04.2016 (Annexure P-5) and 16.01.2019 (Annexure P-7). Furthermore said petitions under Section 11 of the Act are verified to be still pending adjudication. Learned counsel is unable to point out any distinction which led to dismissal of the petitioners' petitions on the ground of limitation despite order dated 07.04.2016 being brought to notice of Appellate Authority. It is relevant to note that while accepting the appeal of similarly situated persons, learned Commissioner vide order dated 07.04.2016 has observed as under:-

> "After hearing arguments of counsels for both the parties and perusal of record of lower court, I have come to the conclusion that as per settled law, petition under section 11 of the Act was to be decided like civil suit, which has not been done because neither issues were framed on the basis of pleadings of both the parties, nor full opportunity was given to lead evidence, nor the appellant was given opportunity to produce above mentioned jamabandies, nor the revenue record prior to 1950 or thereafter or record of

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> consolidation was perused, whereas record is available on file of lower court and said record was required to be discussed in the order. Therefore, while agreeing with the arguments of appellant, I set aside impugned order dated 16.12.2014 and remand the case to lower court with a direction to decide the present petition like a civil suit by framing the issues and giving opportunities to the parties to lead evidence as per law and pass fresh order within six months."

Furthermore, in the subsequent order dated 16.01.2019, learned Commissioner while setting aside order dated 16.12.2014 has duly noted contention of the respondents regarding filing of petition under Section 11 of the Act after initiation of eviction proceedings besides non filing of formal application for condonation of delay and has proceeded to remand the matter to the Collector-cum-Additional Deputy Commissioner (Development), Rupnagar for a decision afresh.

It is relevant to note that learned Joint Development Commissioner (IRD), Punjab, vide impugned order dated 26.12.2018 observed that sufficient reasons for condonation of delay were not set forth and she then proceeded to dismiss the appeal on merits without framing of any issues or affording an opportunity to the parties to lead evidence. Moreover, in the given circumstances, we find no ground whatsoever for discrimination being meted out to the petitioners, who are undeniably identically situated as the persons whose appeals were accepted and whose petitions under Section 11 of the Act are admittedly still pending

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adjudication. Appeals of such persons undeniably stemmed out of order dated 16.12.2014. In this view of the matter, impugned orders are un-sustainable, hence set aside. Accordingly, impugned orders dated 16.12.2014 and 26.12.2018 are set aside while directing that petitions filed by the petitioners under Section 11 of the Act are remanded to the Collector-cum-Additional Deputy Commissioner (Development), Rupnagar, to be decided in accordance with law, after affording due opportunity to all the concerned/affected parties.

It is brought to our notice that petitions under Section 11 of the Act, filed by the similarly situated persons as the petitioners are still pending adjudication despite time bound directions. It is directed that the competent authority shall decide all the pending petitions as well as the petitions under Section 11 of the Act, filed by the petitioners, expeditiously and definitely within a period of six months of receipt of certified copy of this order.

All the writ petitions are disposed of accordingly.

Photocopy of this order be placed on the files of the connected cases.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

13.09.2022
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No

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