

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

1. Civil Writ Petition No. 37677 of 2019(O&M)
Date of Decision: November 09 , 2022.

Dev Raj and others PETITIONER(s)

Versus

State of Punjab and others RESPONDENT (s)

2. Civil Writ Petition No. 5549 of 2020(O&M).

Harpreet Singh and others PETITIONER(s)

Versus

State of Punjab and others RESPONDENT (s)

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS.JUSTICE RITU TAGORE**

Present: Mr. Sumeet Mahajan, Senior Advocate with
Mr. Saksham Mahajan, Advocate and
Ms. Rabani Attri, Advocate
for the petitioners.

Mr. Sandeep Jain, Addl.AG, Punjab
for respondents No.1 to 3 and 5.

None for respondent No.6.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This order shall dispose of CWP No.37677 of 2019 (Dev Raj and others v. State of Punjab and others) and CWP No.5549 of 2020 (Harpreet

Singh and others v. State of Punjab and others) which are taken up together for hearing on request and with consent of learned counsel for the parties.

The petitioners in both the abovenoted writ petitions claim that they were allotted plots measuring 300 sq. yards at different points of time in the year(s) 2002, 2004 and 2005. They further pray for quashing of notice dated 18.12.2019 and subsequent notice dated 31.01.2020 being additionally challenged in CWP No.5549 of 2020.

For the sake of convenience facts are being extracted from CWP No.37677 of 2019.

It is submitted that respondent-Gram Panchayat had earlier filed petitions under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act') seeking eviction of the petitioners from the plots in question. The said petitions were decided vide separate orders of even date i.e. 25.09.2017, clearly concluding that the present petitioners were allotted the land in question in accordance with law and that they are reflected as owners thereof in the revenue record. The petition was accepted only to the extent that in case any of the petitioners are in possession of excess of the area allotted to them, they are liable to be evicted.

It is submitted that in an absolutely illegal manner, another petition under Section 7 of the Act has been instituted by the respondent-Gram Panchayat and impugned notice dated 18.12.2019 (Annexure P13) was issued, which is not sustainable in the eyes of law. Learned senior counsel for the petitioners submits that at best it was open to the authorities to have a fresh demarcation carried out and in case any of the petitioners were found to be in possession of land in excess of that allotted to them, necessary action could have

been taken for their eviction without filing of any fresh petition/application under Section 7 of the Act.

Order dated 25.09.2017, it is stated, was not challenged either by the Gram Panchayat or by any other person. Learned counsel further refers to reply dated 01.12.2021 in CWP No.37677 of 2019 filed on behalf of respondents No.1 to 3 and 5, wherein it is admitted that the plots in question were allotted to the petitioners.

It is pointed out by learned senior counsel for the petitioners that reply has not been filed in CWP No.5549 of 2020 despite various opportunities, however, petitioners in the said writ petition are identically situated. Order dated 25.09.2017 was passed qua the petitioners therein as well, which is almost identical to the order(s) dated 25.09.2017 passed in respect to the petitioners in CWP No.37677 of 2019. It is asserted that none of the petitioners in CWP No.5549 of 2020 are in possession of land in excess to the one which was duly allotted to them in accordance with law. It is, thus, prayed that both the writ petitions be allowed.

Learned counsel for the State while referring to reply dated 01.12.2021 in CWP No.37677 of 2019 affirms that the plots measuring 300 sq. yards were indeed allotted to the petitioners. Though no reply has been filed in CWP No.5549 of 2020, there is indeed nothing on record to disbelieve the stand of the petitioners therein and neither has anything to the contrary, pointed out. It is submitted that the respondent-authorities have no objection in case construction is raised on the allotted plots and action would be taken only in respect to the excess area, if any, in possession of the petitioners.

We have heard learned counsel for the parties and have gone

through the files with their able assistance.

It is not denied by learned counsel for the State that order dated 25.09.2017 was not challenged by the respondent-Gram Panchayat and the same has, in fact, attained finality. It is apparent that plots measuring 300 sq.yards were allotted to the petitioners on deposit of the amount at Collector's rate. Mutation of the plots was sanctioned in their names. It is specifically observed in order dated 25.09.2017 passed by the Collector (Panchayat Land), DDPO, Patiala in the petition under Section 7 of the Act filed by the respondent-Gram Panchayat that possession of the petitioners over land allotted to them in accordance with law is not to be disturbed and that they can be evicted only if they are found in possession of land in excess of the area allotted to them. It was directed that possession of the excess area may be taken as per rules.

Learned counsel for the State is unable to deny that till date no demarcation of the area has been carried out to ascertain whether the petitioners are in possession of the area in excess of the land allotted to them. In the reply dated 01.12.2021 filed in CWP No.37677 of 2019, while acceding that the plots were allotted to the petitioners therein, it is stated that at a subsequent stage, some of the villagers/allottees encroached upon the area which was in excess to the allotted land and it is in this view of the matter that petition under Section 7 of the Act was filed against 54 persons including the petitioners. Notice(s) dated 18.12.2019 were served upon the petitioners and that these notices were issued only with a view to ascertain illegal encroachment of the Gram Panchayat land. Para 11 of the preliminary submissions of reply dated 01.12.2021 reads as under:-

“11. That later on some villagers/allottee encroached upon more

shamlat land than the allotment made to the said persons. Apart from this, some other villagers encroached upon the shamlat land. Thereafter, Gram Panchayat Sahib Nagar @ Thehri, filed petition u/s 7 of the Punjab Village Common Lands (Regulation) Act, 1961 before the Collector/DDPO, Patiala for eviction of various illegal possessors over shamlat land. So notice dated 18-12-2019 was served upon various persons residents of Sahib Nagar @ Thehri, Tehsil and District Patiala for hearing the petitioners and their versions, so that further proceedings can be conducted in the matter by the Collector/DDPO, Patiala. **These notices were issued only to ascertain the position of illegal encroachers over the Panchayat land. The respondent no.3 has no intention to dispossess the persons, who have been allotted plots as per policy of the Government of Punjab and by getting the amount determined as per collector rate deposited.** No order of ejectment was passed by the respondent no.3. Aggrieved by the notice dated 18-12-2019 sent by the Collector/DDPO, Patiala, the petitioners have challenged the same through present writ petition, the same is premature and is not maintainable.” **(emphasis added)**

Details of the particulars of land allotted to the petitioners is attached alongwith this reply dated 01.12.2021 as Annexure R7. It is specifically stated therein that the authorities have no objection to raising of construction over the allotted plots and that only if they are in possession of area in excess of the allotted area, the illegal encroachment would be removed. It is further stated that most of the petitioners have submitted documentary proof of allotment of the plots and payment of cost thereof alongwith the copies of the revenue record and that no action would be taken without affording proper opportunity of hearing to the parties.

Keeping in view the facts and circumstances as above, it is apparent that the authorities without conducting proper demarcation of the area, have proceeded to issue notice dated 18.12.2019 in a routine manner. Notice could not have been issued under Section 7 of the Act only with a view to ascertain whether any of the noticee(s) were in illegal possession of the Gram Panchayat Land. It was incumbent upon the authorities to have first identified the illegal encroachers and then take action in accordance with order dated 25.09.2017 passed by the Collector (Panchayat Land), DDPO, Patiala. Needless to say, in case any of the illegal encroacher who was not party to the proceedings which had culminated on 25.09.2017, necessary action could be taken against the said person in accordance with law.

In the given factual matrix notice dated 18.12.2019 (Annexure P13) is not sustainable and is, accordingly, set aside.

It is directed that respondent No.2-Deputy Commissioner, Patiala shall ensure carrying out of demarcation of the land allotted to the petitioners within six weeks from receipt of certified copy of the order by associating the petitioners in both the writ petitions and all other concerned/affected persons. In case the petitioners are found to be in possession of area in excess of the land allotted to them, it is apparent from reading of order(s) dated 25.09.2017 as well as the specific stand of the petitioners before this Court, that respondent-Gram Panchayat is entitled to take action against them for their eviction without having resort to proceedings under Section 7 of the Act.

At this stage, it is pointed out that petitioner No.17-Surjit Singh in CWP No.37677 of 2019, as per reply dated 01.12.2021 has not deposited the amount due from him. Be that as it may, we do not deem it appropriate to go

into the said question in present proceedings, leaving it open to the respondents to take appropriate action in this regard.

Furthermore, in respect to the petitioners in CWP No.5549 of 2020, this order shall not be construed to vest the petitioners therein with any right in case allotment of plots to them is not in accordance with law.

Both the writ petitions are disposed of in the abovesaid terms.

**(LISA GILL)
JUDGE**

November 09 , 2022.
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**(RITU TAGORE)
JUDGE**

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