

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

CR 772/2021 (O&M)

Date of decision: 25.01.2023

Mangal Singh and others

.....Petitioners

Vs.

Gram Panchayat Fatehpur Bhagwan

.....Respondent

CORAM: HON'BLE MS. JUSTICE NIDHI GUPTA

Present:- Mr. Nakul Sharma, Advocate for the petitioners
Mr. Rakesh Kumar, Advocate for the respondent

Nidhi Gupta, J

Present revision petition has been filed by the petitioners/ plaintiffs seeking setting aside of the order dated 26.2.2021 (Annexure P-1) passed by Ld. Additional District Judge, Jalandhar whereby Appeal bearing Appeal No. CM/488/2019 filed by the petitioners against order dated 13.6.2019 passed by Ld. Civil Judge (Jr.Div.) Nakodar has been dismissed on the ground of limitation; and further for setting aside/ modifying the order dated 13.6.2019 (Annexure P-2) passed by the Ld. Civil Judge (Jr.Div.) Nakodar whereby while deciding the application filed by the petitioners under Order 39 Rules 1 and 2 CPC for grant of temporary injunction, the respondent was restrained from dispossessing the petitioners from the suit property 'except in due course of law' till the next date.

In order to appreciate the controversy at hand, the chronological

sequence of events of the case, as follows, will be helpful:-

17.4.2002 - Respondent Gram Panchayat filed an application u/s 7 of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred to as 'the Act'), read with Sections 5 & 7 of the Punjab Public Premises Act, for ejectment of the father of the petitioners namely Phuman Singh as well as other persons from the land as fully detailed in the order dated 31.1.2003 Annexure P-3, on the ground that the suit land belonged to Gram Panchayat and respondents therein (father of the petitioners and others) being influential persons had taken illegal and forcible possession of the land in dispute and refused to vacate the possession of the land. Father of the petitioners and others appeared and filed written statement stating therein that they were in possession of the suit land since partition and have installed tube well and constructed their houses. It was further alleged that the land in dispute was *Mushtarka Malkan* land belonging to the proprietors of the village. It was further submitted that the respondent Gram Panchayat had no concern with the land in dispute because the same had never been under the management or control of the Gram Panchayat.

31.1.2003 - The said application was allowed by District Development and Panchayat Officer (for short 'DDPO'), vide order dated 31.1.2003 (Annexure P-3). Against the order dated 31.1.2003 at Annexure P-3 father of the petitioners etc. filed an Appeal u/s 7(2) of the Act which was dismissed by Joint Development Commissioner (IRD) (Exercising the powers of Commissioner) vide order dated 12.1.2005 (Annexure P-4).

2012 - Phuman Singh, father of the petitioners died in the year 2012 and mutation no.922 regarding inheritance in respect of the land in dispute was sanctioned in the name of the petitioners.

11.6.2019 - However, now, after more than 16 years of the passing of the order dated 31.1.2003 (Annexure P-3), DDPO-cum-Collector, Jalandhar at the

instance of the respondent Gram Panchayat, vide order dated 11.6.2019 (Annexure P-5) has issued Warrants of Possession in respect of the land in dispute, of which the petitioners are stated to have been in possession since the last almost 50 years.

13.6.2019 - Petitioners filed a Civil Suit u/s 34 of the Specific Relief Act, 1963 (hereinafter referred to as 'the 1963 Act'), for grant of decree of declaration to the effect that they are owners in possession of the land in dispute; and u/s 3D of the Specific Relief Act sought a decree of permanent injunction to restrain the defendant Gram Panchayat, its attorneys, nominees, agents from leasing out in any manner and interfering in the peaceful and lawful possession of the plaintiffs/petitioners forcibly and illegally over the land in dispute.

Alongwith the suit an application under Order 39 Rules 1 and 2 CPC was filed. The Civil Judge(Jr.Div.) Nakodar vide order dated 13.6.2019 Annexure P-2, granted ad-interim ex-parte injunction restraining the defendant/respondent Gram Panchayat from dispossessing the plaintiffs/petitioners from the suit property, except in due course of law.

25.7.2019 - Petitioners filed an appeal against the order dated 13.6.2019 to modify the said order to limited extent to 'restrain the defendant, its attorneys, nominees, agents from leasing out in any manner and interfering in the peaceful and lawful possession of the appellants/plaintiffs forcibly and illegally over the land in suit'. Since there was a delay of 8 days in filing the Appeal, an application u/s 5 of the Limitation Act was also filed by the petitioners.

26.2.2021 - The application u/s 5 of the Limitation Act filed by the petitioners was dismissed by Ld. Addl. Distt. Judge, Jalandhar, vide impugned order dated 26.2.2021.

It is in this backdrop the present revision petition has been filed seeking relief, as detailed in opening para of this order.

It is submitted by the learned Counsel for the petitioners that in view of the aforesaid facts the Ld. Appellate Court was in grave error in dismissing the appeal of the petitioners only on account of delay of 8 days. It is further submitted that the respondent Gram Panchayat has deliberately misread the order dated 13.6.2019 (Annexure P-2) whereby ad-interim ex-parte injunction was granted in favour of the petitioners and it was directed that the petitioners cannot be dispossessed from the land in dispute except in “due course of law”, and has now initiated execution of warrants of possession.

It is vehemently submitted by learned counsel for the petitioners that the ejectment of the petitioners from the land in dispute had been directed as far back as on 31.1.2003 and execution of the said order has not been sought by the respondents since then. It is stated that it is only now, 16 years thereafter that the respondent has initiated execution proceedings. It is submitted that no reasons have been given explaining the delay. It is further submitted that the petitioners’ suit dated 13.6.2019 under Section 34 of the 1963 Act (Annexure P-6) is pending and therefore, the Id. Court below ought not to have issued warrants of possession in view of this fact. It is further submitted that gross injustice would be caused to the petitioners if the delay is not condoned and the impugned orders are not set aside.

It is vehemently submitted by the learned counsel for the petitioners that application under Section 7 of the Act, read with Section 5 & 7 of the Punjab Public Premises Act was allowed by DDPO-cum-Collector, Jalandhar vide order dated 31.1.2003 (Annexure P-3) and warrants of possession have been issued thereafter only in the year 2019. It is submitted that under

Article 136 of the Limitation Act, 1963, even period for execution of the decree is 12 years, whereas in the present case decree is sought to be executed after 16 years which cannot be permitted. Reliance is placed upon judgment of Hon'ble Supreme Court in **Kashi Ram v Rakesh Arora, Law Finder Doc Id # 55318** to submit that after a period of 12 years decree of ejectment is not executable. It is further submitted that as per law laid down by Hon'ble Supreme Court in **Ram Nath Sao @ Ram Nath Sahu v Gobardhan Sao, Law Finder Doc Id # 5006** delay in filing the application for setting aside abatement should be condoned. Further submits that as per judgment of this Court in **Harmesh Lal and another v State of Punjab and others, Law Finder Doc Id # 634049**, the Collector was directed to keep the petition under Section 7 of the Act in abeyance till the decision of the petition u/s 11 of the Act.

Per contra, it is submitted on behalf of the respondent-Gram Panchayat that the Gram Panchayat has no other land, and the development works of the Gram Panchayat are suffering because the petitioners are in illegal possession of the land in dispute. It is further submitted that the petitioners are co-owners of the suit land which is *Jumla Mushtarka Malkan Va Digar Hakdaran* which is common land of the village meant to be used for common purposes by all the villagers. It is stated that the order dated 31.1.2003 (P-3) categorically records that the petitioners are *Gair Marusi* occupants of the land in dispute and have been paying *Chakota*. It is further submitted that these findings have attained finality as the petitioners' Appeal against order dated 31.1.2003 has also been dismissed vide order dated 12.1.2005. Learned counsel for the Gram Panchayat relies upon the **Khillan v Social Education & Panchayat Officer, Hodel, Law Finder Doc Id # 1648; Hari Kishan v State of Haryana and others, Law Finder doc Id # 634524; Ajit Singh v Joint Development Commissioner and others, Law Finder Doc Id # 73704;** and

State of Haryana through Secretary to Government of Haryana v Jai Singh and others, Law Finder Doc Id # 1967810.

Heard learned Counsel for the parties.

It is not in dispute that the order of eviction of the petitioners from the suit land was passed as far back as 31.1.2003, and the respondent never sought execution of the same for reasons not given. On a specific query put to the learned counsel for the respondent Gram Panchayat as to why the decree dated 31.1.2003 was not executed for 16 whole years, learned counsel is unable to give any explanation, let alone a satisfactory explanation. Admittedly, the petitioners have been in peaceful possession of the land in dispute during this time. No doubt, even under the Limitation Act, period for execution of the decree is 12 years, whereas in the present case decree is sought to be executed after 16 years. Moreover, now the petitioners’ suit under the 1963 Act is also pending.

Accordingly, in view of the above facts, I consider it just and fair to direct the Trial Court to dispose of the Civil Suit in a time bound manner, preferably within 6 months from the date of receipt of a copy of this order. Needless to say, during this period, dispossession of the petitioners from the land in dispute shall remain stayed till decision of the civil suit.

Nothing stated above shall be taken as an expression of opinion on the merits of the case.

(Nidhi Gupta)
Judge

25.01.2023
Joshi

Whether speaking/reasoned	Yes
Whether reportable	Yes/No