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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

**CWP-13018-2022 (O & M)
Date of Decision : 21.03.2023**

PAL SINGH AND ANOTHER

.....Petitioners

Versus

STATE OF PUNJAB AND ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. Kanwaljeet Singh Derabassi, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. J.S.Bhandohal, Advocate
for respondent No. 4.

Mr. Kulwinder Singh, Advocate and
Mr. M.S.Bhatti, Advocate
for the applicant/respondent No. 5.

SURESHWAR THAKUR, J. (Oral)

CM-16685-2022

1. The application for impleadment of the applicant as respondent No. 5 in the instant writ petition is allowed, and, the amended memo of parties, as annexed with the application, is taken on record.

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2. The petitioners instituted the instant writ petition before this Court with a prayer that a mandamus be made upon co-respondent No. 2, to make a speaking decision upon legal notice dated 06.05.2022, notice whereof becomes enclosed in Annexure P-4. In the said legal notice, the newly impleaded applicant, and, other unauthorized occupants were

alleged to make encroachment upon khasra No. 592, 903, and, further respondent No. 4-Gram Panchayat allegedly encroached the middle of khasra Nos. 1021, 1046, 1026, 1028, for providing a shortcut passage to his party men. The said khasra numbers are averred in the petition to be owned and possessed by the Gram Panchayat concerned.

3. When the instant petition came up for hearing before this Court, on 02.06.2022, the hereinafter extracted order was made by this Court.

“ Learned counsel for the State to seek instructions with reference to the communications which have been placed on record by the petitioners, according to which, no action is being taken for stopping/removal of the encroachments. Even the letter addressed to the Gram Panchayat endorsed on 27.12.2021 (Annexure P-3) for initiating proceedings under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 against the encroachers, has not been complied with till date.

List on 12.07.2022.

In case the assertions made in the writ petition are correct, appropriate steps in accordance with law be initiated, whichever is required, either against the Gram Panchayat or under the Punjab Village Common Lands (Regulation) Act, 1961.”

4. Moreover, even on 12.07.2022, this Court had made the hereinafter extracted order.

“ Learned counsel for the State informs the Court that earlier a notice was given by the Sarpanch of the Gram Panchayat for removal of encroachments on 22.06.2022 and thereafter, on 07.07.2022. The justification for issuance of the second notice for removal of encroachments could not be given by the counsel for the State as the same is not supported by either the statutory provisions or the instructions issued by the Department in this regard. It appears that despite last order dated 02.06.2022, passed by this Court, the queue which was given therein has not been

taken by the official concerned i.e. the Director, Rural Development and Panchayat Department.

Let he be present in Court on 18.07.2022, when he has already been invited to be present in another case i.e. CWP No.9867-2022.

Adjourned to 18.07.2022.”

5. Moreover, a perusal of the order recorded by this Court on 18.07.2022, order whereof becomes extracted hereinafter discloses, that the respondent concerned, had made an intimation to this Court that encroachments on land comprised in khasra No. 592 and 903 were removed on 16.07.2022, and, that in removal of the said encroachments, police assistance was also asked for and was provided. The vacant possession of such lands has been declared in the affidavit to have been handed over to the Gram Panchayat concerned.

“In pursuance to the order passed by this Court on 12.07.2022, Mr. G.S. Khaira, Director, Rural Development and Panchayat Department, Punjab, is present in Court. An affidavit of the Block Development and Panchayat Officer, Tehsil Dera Bassi, District SAS Nagar, dated 18.07.2022, has been filed in Court, which is taken on record.

It has been stated in the affidavit that the encroachments on the land comprising in Khasra Nos.592 and 593 were removed on 16.07.2022. Police assistance was also provided for removal of the illegal encroachments. The vacant possession of the land has been handed-over to the Gram Panchayat and photographs in this regard have been appended along with the report as Annexure R-2 as Annexure R-1 being the possession report. Counsel for the State, with reference to para 5 of the said affidavit, submits that action has been initiated against the Sarpanch under Section 20 of the Punjab Panchayati Raj Act, 1994, by issuing him a show cause notice, to which response is awaited and on receipt of the same, decision shall be taken thereon.

Copy of the said status report has been handed-over to the learned counsel for the petitioner, who disputes the

factum that the encroachments on the land in question have been removed and possession thereof has been handed-over to the Gram Panchayat. He prays for some time to seek instructions and make submissions.”

6. The learned counsel for the newly impleaded applicant/respondent No. 5 submits that the purported eviction, as made of the applicant from the above said khasra numbers is an illegal eviction, as the same is not preceded by any valid, binding and conclusive order, as, made by the Collector concerned, while his trying a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short hereinafter call 'the 1961 Act'). If so, it is open to the newly impleaded applicant/respondent No. 5 to institute a title suit under the relevant statutory provisions before the Collector concerned, seeking restoration to him, of purportedly illegally assumed possession, if any, of such lands by the Gram Panchayat concerned.

7. Since, the purported eviction, if any, as made from the writ khasra numbers 592 and 903, is after the locking of the gate installed in front of the purported *gair mumkin rasta/phirni* at the instance of the applicant herein is concerned, thus, we permit the newly impleaded applicant/respondent No. 5 to raise all such pleas before the learned Collector concerned, by filing a title suit under Section 11 of 'the 1961 Act'. Upon doing so, the latter shall decide the title suit within six months but after hearing all affected persons concerned, and, shall also consider the plea of the applicant/respondent No. 5, regarding illegally locking of the door installed at the instance of the applicant/respondent concerned.

10. In consequence, with the above reserved liberty, to the newly impleaded applicant, the writ petition is closed. Disposed of with the above observations alongwith all pending application, if any.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

21.03.2023

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