

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

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CWP-13738-2017(O&M)
Date of Decision : 27.01.2023

HARVINDER SINGH

.....Petitioner

VERSUS

STATE OF HARYANA & ORS.

.....Respondents

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

Present: Mr. Vikram Singh, Advocate
for the petitioner.

Mr. P.P.Chahar, DAG, Haryana.

Mr. Vishwajeet, Advocate
for respondent No.4.

Mr. Sushil Bhardwaj, Advocate
for respondent No.5.

KULDEEP TIWARI, J.

1. The petitioner approached this Court for seeking quashing of order dated 3.5.2017 (Annexure P-9) vide which his claim for regularizing unauthorized constructions, under Rule 12(4) of the Haryana Village Common Land (Regulation) Rule, 1964 (hereinafter referred to as “**the Rule**”) has been rejected.

2. A perusal of the order shows that the petitioner has made an application before respondent No.2 stating therein, that his fore-fathers have constructed a concrete house, a cattle shed etc. on the land comprised in Khewat No.1022/973, Rectangle No.28, Killa No.24/1/4

(0-2), 24/1/5 (0-2), 24/1/6 (0-2) & 24/1/7 (0-2) and that residential house is being used since his fore-fathers. The above application was declined by respondent No.2 on the ground that the Gram Panchayat has not recommended his claim and rather passed resolution to the effect that they are unable to sell the disputed land to the petitioner. Further respondent No.2 relied upon the instructions issued by Additional Chief Secretary-cum-Financial Commissioner, Development & Panchayat Department, Haryana vide No. SBA-I-2012/35582-602 dated 15.6.2012, instructions whereof were issued pursuant to judicial pronouncement(s), as made by the Hon'ble Supreme Court, and, by this Court containing an expostulate qua non-consideration of the claim to sell/exchange of the Gram Panchayat/Shamlat land to any individual under Rule 12(4) of the Rule.

3. Learned counsel for the petitioner has submitted that the petitioner has neither encroached upon any land used, as, reserved for a pond, and, nor he encroached upon the land which is used or reserved as 'rasta'. He further placed on record a letter memo No.SBA-1-2022/39700-721 dated 26.4.2022 circulated by the Additional Chief Secretary to Govt. of Haryana, Development and Panchayats Department, Chandigarh wherein, now the directions which were earlier issued, have been reconsidered, and, it has been decided that the applications submitted, for regularization of houses constructed unauthorizedly, upon the Panchayat land, may be considered either as per provisions under Rule 5 by way of exchange or under Rule 12(4) of the Rule by way of sale. The relevant extract of the instructions dated 26.4.2022 read(s) as

under:-

“Now the observation of the Hon'ble Supreme Court made in judgment dated 28.1.2011 has been interpreted in various judgments passed by Hon'ble High Court i.e. dated 3.7.2013 passed in CWP No.9790 of 1995, dated 17.19.2015 passed in CWP No.13334 of 2014 and judgements dated 24.11.2017 in civil appeal No.19795-19826 of 2017 and dated 5.2.2021 in SLP No.1829 of 2021 passed by Hon'ble Supreme Court and the State Government has been directed in various cases to consider the applications/proposals of the occupants who have constructed their houses and are covered to be regularized under Rule 12(4) of the Punjab Village Common Land (Regulation) Rules, 1964. Therefore, it has been decided that the applications submitted for regularization of houses constructed unauthorisedly on Panchayat land may be considered either as per provisions under rule 5 by way of exchange or under rule 12(4) of the Punjab Village Common Land (Regulation) Rules, 1964 by way of sale.”

4. In view of the above supervening events i.e. instructions dated 26.4.2022 issued by respondent No.1, we find that the claim of the petitioner can be considered under the relevant Rules and instructions (Supra), as thereupon the earlier imposed embargo, as, became sparked through judicial pronouncement against non-consideration of any claim of any individual under Rule 12(4) of the Rule, rather has been revisited. Therefore, the impugned order dated 3.5.2017 passed by respondent No.2 is, hereby, set-aside and the matter is remanded back to respondent No.2, to reconsider the case of the petitioner strictly in view of Rule 12(4) of

the Rule by passing a speaking order.

5. It goes without saying that if in the present case the petitioner has encroached upon the land reserved/used for pond or upon rasta (path), then he is not entitled to be considered under this Rule. However, a speaking order be passed afresh, upon, the relevant motion, but after giving an opportunity of hearing to all the aggrieved parties. The said speaking order be made within a period of one month upon receipt of copy of this order.

6. Disposed of in the above terms.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

27.01.2023

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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No