

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 26862 of 2015 (O&M)

Date of Decision: 22.2.2023

Banwari Lal

.....Petitioner

Versus

State of Haryana and others

.....Respondents

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

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

Mr. Raman Sharma, Addl. A.G., Haryana.

Mr. Anoop Kumar Yadav, Advocate for
Mr. Varun Gupta, Advocate
for respondent No. 4.

SURESHWAR THAKUR, J. (ORAL)

1. Though the petitioner was allegedly holding unauthorized possession of 662 square yards of land, rather purportedly owned and possessed by the Gram Panchayat concerned, yet he instituted a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act'), against the Gram Panchayat of village Gadwa (Nehru Nagar) Tehsil Narnaur, District Mohindergarh through its Sarpanch. The said suit became accepted by the learned Collector concerned, through the drawings of Annexure P-1, but to the extent that after depositing the amount as per the policy of the Government, the petitioner can get the ownership of the land. Aggrieved from the above, the Gram Panchayat concerned, instituted an appeal before the competent appellate authority concerned, appeal whereof, became allowed by the appellate authority concerned, vide

order dated 29.8.2014. The petitioner being aggrieved from the above

order, preferred a revision petition bearing ROR No. 171 of 2014-15, revision petition whereof, became dismissed by the competent authority concerned, through an order made thereons on 27.5.2015. Therefore, the petitioner has challenged the above concurrently made orders, through his constituting the instant writ petition before this Court.

2. However, the learned counsel for the petitioner fairly submits before this Court, that he would not be addressing any argument, rather for this Court, being constrained to negate, and, quash the above concurrently made verdicts, against the petitioner. Therefore, but obviously this Court is constrained to uphold and validate the above concurrently made orders. Resultantly, the respondent concerned, becomes entitled to enforce the orders, as became made against the petitioner herein, hence by both the statutory authorities concerned, and, the said enforcement can obviously occur only upon an execution petition, being filed against the petitioner, before the learned Collector concerned.

3. At this stage, it is intimated by the learned State counsel, that the process for enforcing the above concurrently made orders, has been resorted by the competent authority concerned. Nonetheless, the learned counsel for the petitioner, had earlier submitted before this Court, that within the ambit of Rule 12(iv) of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short 'the Rules;'), the petitioner be permitted to avail the benefit of the said rule. However, since the factum of the area, which became occupied, and, that too unauthorizedly by the petitioner, is in excess of the capping limit of 200 square yards, as contemplated in the said rule. Therefore, though this Court through an order made on 13.7.2022, had made a direction, upon the respondent concerned, to consider the sale of the

petition land to the petitioner, but within the domain, and, ambit of Rule 12(4) of the Rules.

4. Today, the respondent(s) concerned, has furnished a reply on affidavit to the petition, which is taken on record. In pursuance to the above directions, the respondents concerned, in the apposite reply hence contend, that the capping limit of 200 square yards is to be strictly construed, and, that naturally when the said capping limit but has been exceeded, inasmuch as the petitioner yet maintaining within his unauthorized possession, and, occupation about 662 square yards of land. Therefore, the privilege of the said rule, cannot be accorded to the petitioner. The challenge to the said declining decision, as made by the competent authorities concerned, is also made, through an amendment being made in the petition. Therefore, the said challenge can be yet considered. However, the said decision, as made by the authorities concerned, in pursuance to the directions (supra), as made by this Court, may not be acceptable to this Court. The reason becomes comprised in the factum, that the capping limit of 200 square yards, within domain whereof, the petitioner may become entitled to receive the benign grace of the relevant rule, though is to be yet maintained for the relevant purpose. However, even if within the said capping limit the petitioner has evidently raised construction, and, but beyond the capping limit, he is still maintaining unauthorized possession, thereupon, the said rule cannot be *stricto sensu* construed to be yet pre-empting the petitioner, after his making evident surrender to the authorities concerned, of the excess unauthorizedly possessed lands, which are beyond the capping limit, from his yet becoming well enabled to receive the grace of the relevant rule.

5. The learned counsel for the respondent concerned, has also

vigorously submitted before this Court, that the Gram Panchayat concerned, has passed a resolution, that if the house of the petitioner, which has been raised on a part of the petition land, and, but has been raised within the capping limit of 200 square yards, yet the same also be not be permitted to be sold to the petitioner, as both the house as well as the space around the house of the petitioner, are being used as a playground by the children of the village concerned.

6. In case the above resolution is accepted by this Court, thereupon the resultant effect would be that, the petitioner would be deprived of his home, which he has raised, but within the capping limit, as becomes prescribed in the relevant clause. The above has to be definitely avoided, as the petitioner, if he has raised the house, he has to be permitted to avail the benefit of the said house, as upon the said house being demolished, he would be deprived of his home, and, obviously he would be deprived of the constitutional right to life, as becomes conferred, upon him, under Article 21 of the Constitution of India. Moreover, also since the spirit of the said rule is also in consonance with the above constitutional right as enshrined in Article 21 of the Constitution of India. Therefore, the said decision to the extent, that it takes to deprive the petitioner of the house, which he has raised on a part of the encroached upon petition land, rather owned and possessed by the Panchayat concerned, thus is quashed and set aside. However, the above is subject to the petitioner forthwith surrendering the land outside the capping limit of 200 square yards, and, whereons he has raised his house. In case the said surrender is not forthwith made, thereupon the quashing of the declining orders, as made by this Court, shall not hold any force, and, vigour.

7. The report in respect of the above shall be made before this Court within two weeks.

8. Moreover, the use and occupation charges in respect of the land, as yet in the unauthorized possession of the petitioner but evidently beyond the capping limit, be also determined forthwith by the competent authority concerned, and, on said determination being made, the said use and occupation charges shall be forthwith deposited by the petitioner.

9. Unless both, the excess unauthorizedly possessed lands are surrendered forthwith, and, the said use and occupation charges are also forthwith deposited, thereupto the sale of the house raised by the petitioner, but within the capping limit of 200 square yards, be not made in his favour.

10. The petition stands disposed of, subject to an intimation qua above, through a CMA being purveyed by the learned State counsel.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 22, 2023
Gurpreet

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