

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

**(i) CWP-25676-2019 (O&M)
Date of Decision: 14.03.2023**

BHUPINDER SINGH AND OTHERS

-Petitioners

Versus

STATE OF PUNJAB AND OTHERS

-Respondents

(ii) CWP-30035-2019

JAGGA SINGH AND OTHERS

-Petitioners

Versus

STATE OF PUNJAB AND OTHERS

-Respondents

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

Argued by: Mr. Nandan Jindal, Advocate
for the petitioners (in both the cases).

Mr. Maninder Singh, DAG, Punjab.

Mr. Gurmanpreet Singh, Advocate
for the respondent No.6.

Mr. Vishal Goel, Advocate
for the respondent No.7.

KULDEEP TIWARI, J.

1. As common questions of law and facts arise in both these writ petitions, therefore, they are being decided and disposed of by this common judgment. For brevity, the facts are being extracted from CWP-

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25676-2019.

2. Initially, the writ petition, CWP-25676-2019, was filed by total nine petitioners, however, petitioner Nos.4, 6, and, 8 chose to withdraw the petition, and, consequently, the writ petition qua these petitioners was ordered to be dismissed as withdrawn, vide order dated 30.09.2019. Therefore, this writ petition survives only qua petitioner Nos.1 to 3, 5, 7 and 9.

FACTUAL MATRIX

3. In pursuance of Rule 13-A of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as the 'Rules of 1964' for short), the Government of Punjab formulated a policy dated 17.04.2001, thereby empowering Gram Panchayats to, with the prior approval of the State Government, allot plots to landless/houseless workers, from *shamlat deh* land, vesting in the Gram Panchayat concerned, for construction of houses thereon by such persons. To carry out the above exercise of allotment of plots, the policy (supra) enunciates the calling of a meeting by the Gram Panchayat concerned, to identify the eligible persons for allotment of free plots, and, thereupon pass a resolution in this regard. The resolution so passed by the Gram Panchayat concerned, containing the details of beneficiaries for allotment of plots, is then required to be placed before the Block Development and Panchayat Officer concerned, who shall after verifying all the documents, forward the case to the District Development and Panchayat Officer concerned. The District Development and Panchayat Officer shall further forward the case, along with its recommendation, before the Deputy Commissioner of

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the district concerned, for taking a final decision thereon, as the policy (supra) authorizes the Deputy Commissioner to accord approval on behalf of the State Government. The eligibility criteria, as prescribed in the policy (supra) is extracted hereunder:-

“1. Which person shall be entitled under this scheme.

(i) The beneficiary taking benefit under this scheme should be resident of the considered Gram Sabha Area.

(ii) Beneficiary who is given plot under this scheme, he should not have his own house or place for constructing house.

(iii) The person taking benefit under this scheme should be married.

(iv) The beneficiary should be belonging to houseless, Scheduled Caste, Rai Sikh or Christian community.”

It is apt to record here that the policy (supra) was partially amended on 29.05.2001, and thereafter, it was again amended on 23.12.2011, whereby person(s) belonging to Backward Class category were also brought within the domain of eligibility criteria for allotment of free plots.

4. In pursuance of the policy (supra), the respondent No.6, i.e. Gram Panchayat of Village Dughaat, Tehsil and District Patiala, had passed a Resolution dated 25.11.2013, for allotment of 5 marla plots to the landless/homeless persons(s) of the Village, who fulfilled the requisite eligibility criteria, as laid down in the policy (supra). Initially, the respondent No.6 had passed a Resolution in favour of total 74

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beneficiaries, which was forwarded by the respondent No.5, i.e. B.D.P.O., Patiala, to the respondent No.4, i.e. D.D.P.O., Patiala, vide letter No.4565/S.E.P.O. dated 01.07.2016. The respondent No.4 had forwarded the proposal for allotment of such plots to the respondent No.3, i.e. Additional Deputy Commissioner (Development), Patiala, who constituted a Committee for verification of eligibility of the beneficiaries. Upon such verification being done by the Committee concerned, only 55 beneficiaries were found eligible, out of total 74 beneficiaries. Accordingly, vide order dated 14.07.2016, the respondent No.3, in exercise of powers as conferred upon him, by virtue of Rule 13-A of the Rules of 1964, had granted approval for allotment of 5 marla plots to total 55 beneficiaries, who were found eligible by the Committee. In pursuance of the approval (supra), Sanad(s) were issued on 12.07.2016, by the respondent No.5, thereby making allotment of 5 marla plots each in favour of various eligible beneficiaries.

5. Thereafter, one Nachhattar Singh (respondent No.7), and, Kashmir Singh had filed a civil suit, in representative capacity, under Order 1 Rule 8 CPC, seeking declaration qua Resolution dated 25.11.2013, as passed by the defendant Nos.1 and 2 therein, to be illegal, null and void, and, also seeking permanent injunction for restraining the defendants therein from dealing with the suit land, either by carving out plots, or, by allotting them to any person. While entertaining the civil suit (supra), the learned Civil Court found irregularities in the allotment of plots on account of allotment to ineligible persons, and, also went on to decide the issue of jurisdiction in favour of the plaintiffs therein, and,

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ultimately decreed the civil suit, vide judgment and decree dated 06.09.2017.

6. On the strength of such judgment and decree dated 06.09.2017, the private respondent No.7 had preferred a petition, under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961' for short), before the respondent No.4, i.e. Collector-cum-D.D.P.O, Patiala, seeking eviction of the respondents therein, i.e. 74 beneficiaries as recorded in the Resolution dated 25.11.2013 of the Gram Panchayat concerned. While relying upon the judgment and decree (supra) of the civil court, wherein Resolution dated 25.11.2013 of the Gram Panchayat concerned was annulled, the respondent No.4, vide the impugned order dated 28.02.2018, had ordered the eviction of the respondents therein from the land in dispute, including the present petitioners who were fully eligible for allotment of plots. Aggrieved by such eviction, as ordered upon the petition (supra), the petitioners challenged the impugned order of eviction, before the statutory appellate authority, i.e. respondent No.2, however, the appeal met the same fate and became dismissed, vide impugned order dated 23.01.2019. In consequence thereto, the respondent No.5 had issued warrants of possession on 03.06.2019, thereby directing the petitioners to hand over the vacant physical possession of the 5 marla plots, allotted to them, till 06.06.2019. Therefore, the eviction order (supra) caused pain, and, consequently compelled the petitioners to invoke the inherent jurisdiction of this Court, as envisaged under Article 226/227 of the Constitution of India, for quashing of the eviction order dated

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28.02.2018, order dated 23.01.2019, and, the warrants of possession dated 03.06.2019. Hence, the petitioners are before this Court challenging the orders (supra).

7. Before we examine the legality of the orders, as challenged before us, there is another vital aspect, which needs consideration. One Subhash Chand, resident of Village Dughaat, had approached this Court by filing CWP-12827-2016, seeking setting aside of the Resolution dated 25.11.2013, whereby plots were proposed to be allotted to beneficiaries, who were already having houses, and, were ineligible, as per the policy. This Court, vide order dated 12.07.2016, had directed the Deputy Commissioner concerned to inquire into the representation(s) of the petitioner therein, and, to decide the same expeditiously as possible. Thereupon, the Deputy Commissioner concerned got the matter inquired into from the Additional Deputy Commissioner (Development), Patiala, who found 19 beneficiaries to be ineligible, out of 55 beneficiaries, who were already approved by the office of Additional Deputy Commissioner (Development), Patiala, and consequently, cancelled the allotments made to these 19 ineligible allottees, vide order dated 10.03.2017. On the basis of this report, the Deputy Commissioner, Patiala, had passed a speaking order, vide Endorsement No.435-37, dated 17.03.2017, thereby making absolute the cancellation of allotment in favour of 19 ineligible allottees, and, held only 36 allottees to be eligible for such allotment. This order of the Deputy Commissioner came to be passed in compliance of the direction, as issued by this Court in CWP-12827-2016.

SUBMISSIONS BY COUNSELS OF THE PARTIES

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8. We have heard the learned counsels for the parties at length. The learned counsel for the petitioners has made twofold submissions. Firstly, he submitted that in the State of Punjab, the petition under Section 7 of the Act of 1961, as filed by private person(s), was not maintainable, as they had no right or authority vested in them to initiate any such proceedings under Section 7 of the Act of 1961. His second submission is that now, in pursuance of order dated 12.07.2016, passed by this Court in CWP-12827-2016, the Deputy Commissioner concerned has passed a speaking order, wherein only 36 persons have been found eligible for allotment of 5 marla plots, as per the policy framed by the State Government. This group of 36 eligible persons comprises of the present petitioners as well, therefore, they are well entitled for allotment of plots, however, this aspect has not been considered by the respondents concerned while passing the impugned orders of eviction, therefore, the impugned orders are not sustainable. Furthermore, the speaking order dated 17.03.2017, as passed by the Deputy Commissioner concerned, was not challenged before the civil court, therefore, all the 36 persons, who have been found eligible for allotment in the order (supra) of the Deputy Commissioner, are entitled to retain the plots allotted to them. The respondent No.6- Gram Panchayat, in its reply, has also lend support to the case set up by the petitioners.

9. On the other hand, the learned counsel for the respondent No.7 stated that, since the learned civil court has already set aside the Resolution dated 25.11.2013, passed by the Gram Panchayat concerned, therefore, the eviction order passed against the petitioners, by the

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competent authority, is valid and lawful. He further stated that until and unless, the operation of the judgment and decree dated 06.09.2017, as rendered by the civil court, remains in force, and, is not set aside by a competent court of law, the validity of the eviction order (supra) cannot be challenged before this Court.

ANALYSIS

10. Upon hearing the rival submissions made by learned counsels for the parties, we are of the opinion that the following vital issues emerge for consideration:-

(i) Whether the statutory authority concerned could have assumed jurisdiction upon a petition under Section 7 of the Act of 1961, instituted by private person(s), thus ordering eviction of the petitioners ?

(ii) Whether the petitioners are entitled to allotment of 5 marla plots, in view of order dated 17.03.2017 passed by the Deputy Commissioner concerned ?

11. Before dealing with the first legal issue, at the outset, we would like to take a glimpse of Section 7 of the Act of 1961, which is reproduced hereunder:-

“7. Power to put panchayat in possession of Shamilat deh- (1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land

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or other immovable property in the Shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

(2) An appeal against the order of the collector under sub-section(1) shall lie to the Commissioner and the period of limitation for such an appeal shall be sixty days from the date of the order appealed against.

7A. Commissioner under this Act to exercise powers under Punjab Act 31 of 1973- For the purposes of appeals under section 9 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act,1973 hereinafter referred to be the said Act in relation to lands vested or deemed to have been vested in a panchayat under this Act, the Commissioner under this Act shall be deemed to be the Commissioner under the said Act.”

Perusal of the above extracted Section clearly indicates that a private respondent has no *locus standi* to institute a petition under Section 7 of the Act of 1961, before the Collector concerned. This Section empowers only the Panchayat concerned, or, an officer duly authorized on its behalf by the State Government by a general or special order, to initiate the proceedings under Section 7. The Collector can exercise jurisdiction in a petition cast under Section 7 of the Act of 1961, only if it is validly instituted by a competent party, as enunciated in this provision of the Act. This Court had an occasion to deal with a similar issue in **CWP-26936-2022**, titled “**Suba Singh V/s State of Punjab and**

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others”, wherein it already stands held that if the Collector concerned chooses to invalidly exercise jurisdiction upon an ill constituted petition under Section 7 of the Act of 1961, instituted by a party other than the one duly empowered under this Section, the order made thereon would become stained with the pervasive vice of completest lack of able jurisdiction, and, thus would be completely void.

12. Therefore, in view of the afore discussed propositions of law, the private respondent No.7 had no locus standi to institute a petition under Section 7 of the Act of 1961, and, equally the Collector concerned had no jurisdictional competence to entertain the same, however, the Collector concerned invalidly assumed and exercised jurisdiction upon such ill constituted petition, therefore, the impugned order of eviction is not legally sustainable and deserves to be set aside.

13. So far as the second issue is concerned, we find force in the submissions made by the learned counsel for the petitioners. This Court vide order dated 12.07.2016, passed in CWP-12827-2016, had directed the Deputy Commissioner, Patiala, to enquire into the representations of the petitioners therein, and, to decide the same expeditiously. Thereupon, the Deputy Commissioner concerned had examined the case of each person individually, and, vide a speaking order dated 17.03.2017, he had found only 36 persons eligible for allotment of 5 marla plots. The said order dated 17.03.2017 was not challenged before the civil court, therefore, the persons so found eligible in the order (*supra*), are entitled to retain the plots allotted to them.

CONCLUSION

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15. Therefore, we find merit in the present writ petition, and, accordingly the same is **allowed** and the orders impugned herein, i.e. **orders dated 28.02.2018, 23.01.2019**, and, the **warrants of possession dated 03.06.2019** are ordered to be **set aside**, being unsustainable. To avoid multiplicity of litigation, rather than remanding back the matter to the authorities concerned, we deem it appropriate to issue directions to the respondent Nos.3 and 4, or, the competent authorities concerned, to:-

- (i) make allotment(s) of the 5 marla plot(s) to all the beneficiaries, as have been found eligible by the Deputy Commissioner concerned in its order dated 17.03.2017;
- (ii) cancel the allotment(s), if any, made in favour of any person(s), who has been found ineligible in the order (supra) of the Deputy Commissioner concerned;
- (iii) initiate eviction proceedings under the statutory provisions of law against such ineligible person(s), who has been allotted plot(s);
- (iv) the above exercise shall be carried out, but, preferably within a period of three months, so as to avoid any further delay in providing the eligible homeless/landless persons with a shelter.

List this case after three months for perusal of the report to be submitted by the State of Punjab qua compliance of the above directions.

(SURESHWAR THAKUR)
JUDGE

14.03.2023
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(KULDEEP TIWARI)
JUDGE

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