

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.

CWP-26823-2021

Reserved on: 25.01.2023

Pronounced on: 03.02.2023

Sohan Lal 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: None for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab with
Ms. Gagandeep Kaur, BDPO Khuian Sarwar.

Mr. A.K.Khunger, Advocate
for respondents No. 6 and 7.

SURESHWAR THAKUR, J.

Factual Background

1. The petitioners made a representation, as becomes enclosed in Annexure P-2, to the BDPO Khuhian Sarwar, at Abohar. The above representation was made on 26.11.2021. The representation (Supra), encloses grievances that Jagsir Singh son of Hans Raj and Binder Singh son of Hans Raj, residents of village Kallar Khera, are in illegal possession of panchayat land, and, despite the representations awakening Raj Kumar, Sarpanch of the village (supra), to draw action against the above purported encroachers, upon the panchayat land, yet

the Sarpanch concerned, failing to initiate any legal action against the encroachers concerned.

2. It appears that since representation/Annexure P-2 remained unassigned, therefore the petitioners were led to cast the instant petition before this Court.

3. The prayer made in the instant petition, is for a mandamus being issued upon respondent No. 3, to take action and decide representation/Annexure P-2, while initiating action against the pardhan/sarpanch of the Gram Panchayat concerned, under Section 20 of the Punjab Panchayati Raj Act, 1994, for his derelicting in performing his lawful duties, and or, his failure to draw any action upon the encroachers concerned, despite an intimation being made to him, by the petitioners.

4. The petition was listed before this Court, on 16.03.2022, and then the hereinafter extracted orders were made thereons:-

“ Petitioners have approached this Court with a grievance that private respondents No.6 and 7 have encroached upon the gram panchayat's land, which was reserved for Hadda-Rorhi of the village. The Sarpanch of village Kallar Kehra – respondent No.5 has not initiated any step for removal of the said encroachment. When nothing was done, petitioners had submitted a representation dated 26.11.2021 (Annexure P-2) to the Block Development and Panchayat Officer, Khuhian Sarwar at Abohar, but without any response.

Learned counsel for the State, on instructions from Jaswant Singh, Block Development and Panchayat Officer, Khuhian Sarwar, submits that the demarcation of the land will be carried out within a period of two weeks from today and thereafter, a decision on the representation dated 26.11.2021 (Annexure P-2) will be taken within a further period of two weeks. On this basis, he prays for an adjournment. Prayer made by the learned counsel for the State is accepted.

Adjourned to 09.05.2022.”

5. Subsequently on 09.05.2022, this Court was led to make the hereinafter extracted order/directions.

“ Learned counsel for the State, on instructions from Sh. Dalip Singh, Panchayat Secretary, has informed the Court that the demarcation could not be carried out till date, firstly, on an apprehension of there being a law and order situation and secondly, it has further been informed that the revenue staff, i.e. Kanungo and Patwari, has gone on strike on 04.05.2022 which is likely to last till 15.05.2022.

Considering the submissions made by the learned counsel for the State, none of these two grounds, as have been put forth by the counsel, is acceptable, firstly, the statement of the counsel for the State on 16.03.2022 in Court was that the demarcation of the land will be carried out within a period of two weeks from the date of the order, which period expired on 30.03.2022. After that, till the above-referred to revenue staff had gone on strike, there was more than a month to comply with the statement, as was made by the counsel for the State on instructions, but the authorities simply slept over the matter.

Taking care of the law and order situation is the responsibility of the State, if the authorities are unable to comply with the orders which have been passed by this Court and which they, in any case under law, are mandated to do, immediate strict action need to be taken against the persons responsible for not carrying out the mandate of the Statute and the orders of the Court.

Earlier also, in another case i.e. LPA No. 786 of 2021, vide order dated 11.11.2021, time was sought by the State counsel to file affidavit of the Director, Rural Development and Panchayat, Punjab, with regard to action taken against the Panches in that matter and submitting report to Two Members' Committee constituted by the aforesaid Director and the case was posted for 07.02.2022. But on that date also, no such affidavit was filed. Thereafter also, on 03.03.2022, affidavit detailing action taken against the Panches and Two Members' Committee's report was not filed and adjournment was sought for that purpose and thereafter, when nothing was done, Director was directed to appear in person in Court on 17.03.2022 at 10:00 A.M. to explain his conduct.

On 17.03.2022, Mr. Manpreet Singh, Director Rural Development & Panchayat Department, Punjab, appeared in Court and filed an affidavit with regard to action taken in the matter and assured the Court that there will be no abrasion/delay on the part of the Department in future and compliance report of Court orders will be ensured prior to the date fixed by this Court not only by his office but the subordinate offices as well.

In another case i.e. CWP No. 21373 of 2021, vide order dated 29.03.2022, affidavit of the Director, Rural Development and Panchayat, Punjab, was filed, which showed the pathetic affairs at the level at which the order, mentioned in that affidavit, was passed and then on asking of State counsel, Mr. Rahul Bhandari, the then Secretary,

Department of Rural Development and Panchayat, Punjab, had come present in Court and acknowledged some abrasion on the part of the Department and assured to take remedial steps to be taken for putting the things right.

Despite the aforesaid assurances handed out to the Court, such conduct and inaction on the part of the Rural Development and Panchayat Department, Punjab, shows that the Department and its officers/officials are deliberately and purposely taking the observation and orders of the Court lightly.

Let the Financial Commissioner, Rural Development and Panchayat Department, Punjab-respondent No. 1 be present in Court on the next date of hearing to explain the non-compliance of the undertaking, which was given to the Court in the form of a statement/order passed by this Court, by the department which has been observed over a period of time.

List on 13.05.2022.

Copy of this order be also sent to the Chief Secretary, Government of Punjab, for information and necessary action.”

6. On 13.05.2022, this Court had proceeded to draw the hereinafter extracted order.

“ In compliance of the order passed by this Court on 9th May, 2022, Ms. Seema Jain, Additional Chief Secretary, Rural Development and Panchayat, Punjab has come present in person and has filed her status report by way of an affidavit dated 12/13th May, 2022 along-with annexures which is taken on record.

The Additional Chief Secretary has stated that taking cognizance of the order passed by this Court Block Development and Panchayat Officer, Khuian Sarver has been charge sheeted for major penalty. Show cause notices under Section 20 of the Punjab Panchayati Raj Act, 1994 has been issued to the Sarpanch, Gram Panchayat Kallar Khera, Block Khuian Sarver, District Fazilka vide letter dated 12th May, 2022. Further action will be taken by the Director, Rural Development and Panchayats.

She has detailed various steps which she had already initiated and she intends to initiate further, so that working of the department can be streamlined. Assuring the Court once again that such in-action/delay shall not occur in future, she states that she needs four weeks time to respond and file a detailed affidavit with regard to the steps taken for streamlining the working of the department especially the cases which are pending in the Courts including the Hon'ble High Court.

Prayer is granted.

Further steps in accordance with law be processed with including filing of the petition under Section 7 of

Punjab Village Common Lands (Regulation) Act, 1961 against 46 persons who have been found to be encroachers as per the demarcation carried out by the revenue authorities.

List for consideration on 14th July, 2022.”

7. A reading of the above extracted orders, as made by this Court reveals that this Court was pained at the indolence of the authority concerned, to initiate action on the representation (Supra), as made by the representationist.

8. Moreover, a careful reading of the above made orders, also reveals, that this Court was pained at the delays, as made by the authorities concerned, in making demarcation(s) of the petition lands, which became described in the revenue records as *hada rori*, and, were hence meant for keeping there the carcasses of livestock of the villagers, and, obviously were not meant for any user than the above user thereof(s).

9. The order drawn by this Court on 13.05.2022, reveals that the BDPO concerned, has been charge-sheeted for the imposition upon him of a major penalty, and, also that a show cause notice under Section 20 of the Punjab Panchayati Raj Act, 1994, has been served upon the Sarpanch of the Gram Panchayat Kallar Khera, Block Khuian Sarver, District Fazilka.

10. Through the above made order, directions were even made upon the respondents concerned, to streamline the functioning of the Department. Even on 14.07.2022, the learned State counsel, on instructions from the Officer concerned, had intimated that the process with regard to the strengthening and reshuffling of the Department concerned, at the Head Office, shall be completed within a period of four weeks, and, also intimated that the further action to be taken at

the district levels, for the appointment of Nodal Officer(s), in each district, has already been taken. Furthermore, the process with regard to the filling up of the vacant posts of Legal Assistant in each district, was intimated, to be completed within three to four months. The said order also reveals, that eviction proceedings have been initiated by the respondents concerned, against the persons who have been found to encroach upon the panchayat land.

11. Moreover, a reading of the affidavit placed on record and sworn by Mr. Gurpreet Singh Khaira, IAS, Director, Rural Development and Panchayat, SAS Nagar, Mohali Punjab, reveals, that in respect of the strengthening of the legal branch of the Head Office, One Law Officer and three Legal Assistants, have been appointed through an outsourcing agency, and that one Nodal Officer, has been appointed in all districts, with a direction upon them, to remain in direct touch with the legal branch of the Department, and, also ensure that timely apposite compliances are made, but under the supervision of Additional Deputy Commissioner (Development), and, the District Development and Panchayat Officer. However, in respect of appointment of one Legal Assistant at each district, on an outsourcing basis, the relevant process is stated to be yet under completion, and, that in the above regard some time was asked to be granted to the Department.

Final order of this Court.

12. Though the order, as made by this Court on 14.07.2022, becomes complied with, in respect of strengthening of the Department concerned, at the Head Office, besides also appears to become complied with, in respect of action being taken for the appointment of

Nodal Officers in each district, but yet since the filing of the affidavit on 31.10.2022 hence upto now, no compliance, has been made to the further direction of this Court, as made upon, the respondents concerned, to appoint one Legal Assistant, at each district, nor the finalization(s) of the processes, as became embarked upon, for the making of such appointments, has been revealed to be completely done, at the instance of the respondents concerned. Therefore, this Court is constrained to direct the respondents concerned, to within three months from today, make compliance with the order made by this Court on 14.07.2022, inasmuch as, it relates to appointment of a legal assistant for each district on an outsource basis.

13. Though as above stated, it is revealed, on affidavit that after the holding of demarcations in respect of the encroached upon panchayat land, qua the relevant motion under the relevant statutory provision, hence becoming initiated against the encroachers concerned. However, it is not yet certain whether the said initiated motion, before the Competent Authority has become consummated. Therefore, the said motion be ensured to be promptly completed within two months from today, but after affording an opportunity of hearing to all concerned.

14. It is further clarified that even if any demarcation of the suit lands, has been conducted under the orders of this Court, yet the encroachers concerned, may be permitted to raise an objection, in respect of the validity of such demarcation report(s), and, on such objections being raised, the learned Collector concerned, shall decide them through a speaking order. It is but also necessary that the demarcation report shall be ensured to be lawfully tendered into evidence by the author thereof, and, also shall also be ensured to be

proven in accordance with law.

15. Disposed of alongwith all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

03.02.2023
kavneet singh

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