

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

118 CWP-10323-2024
Date of Decision: 15.05.2024

Sunil Kumar
Versus
....Petitioner

State of Haryana and others
....Respondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA

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

Mr. Ankur Mittal, Additional Advocate General, Haryana and
Mr. Saurabh Mago, Deputy Advocate General, Haryana.

Sureshwar Thakur, J. (Oral)

1. In the instant writ petition, the petitioner has asked for the quashing of Annexure P/13 whereby the Director General, Development and Department, Haryana, proceeded to in paragraph 7 of the said Annexure, paragraph whereof becomes extracted hereinafter, thus hold that the petitioner is not an inhabitant of the village.

“7. From the perusal of aforestated facts and provisions under Rule 12(4) of the Rules, 1964, it is revealed that maximum area of land in shamilat de upto 200 sq. yards, along with open space

upto 25% of the constructed area can be allowed to be sold to the inhabitants of the village who have constructed their houses on or before 31.03.2000. In the present case, the petitioner is not an inhabitant of the village and he has encroached upon the land measuring 1 Kanal 8 Marla which is much more than the limit prescribed under rule 12(4) of the Rules, 1964. Moreover, the unauthorized occupation can only be regularized if the land is being used for residential purposes whereas the land in question is being used for commercial purposes. Thus the case of the petitioner is not covered under rule 12(4) of the Rules, 1964 in any manner. Therefore, the resolutions dated 15.11.2008 and 02.09.2011 passed by Gram Panchayat Mandi Khera cannot be recommended for approval of the State Government. Hence the request made by the petitioner for regularization his unauthorized possession over the land measuring 1 Kanal 8 Marla is hereby rejected.”

2. Moreover, in the said paragraph, it was also concluded that the area of the panchayat land encroached upon by the petitioner, is more than the saleable limit(s), as prescribed in Rule 12 (4) of the Punjab Village Common Land (Regulation) Rules, 1964, (as applicable to Haryana), (hereinafter in short to be referred as ‘the Rules of 1964’), Rule 12 (4) provisions whereof becomes extracted hereinafter.

“Rule 12 (4) of the Punjab Village Common Land (Regulation) Rules, 1964, (as applicable to Haryana).

12 (4) The Gram Panchayat may with the prior approval of (the State Government), sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a

maximum of 200 square yards at not less than collector rate {floor rate or market rate, whichever is higher}.”

3. Resultantly, the construction raised by the present petitioner, over the land owned by the Gram Panchayat concerned, became declined to become ordered to become considered to be sold in favour of the present petitioner, through a Panchayat resolution becoming passed and the same being accorded lawful approval by the competent approving authority.

4. The learned counsel for the petitioner, does not controvert, the factum that the maximum cap in respect of construction raised on shamlat deh lands, for thus becoming considered to be directed to be sold to the person, who has unauthorizedly raised the said construction, over shamlat deh, is the one as provided under the Rules of 1964.

5. In consequence, after appreciating the adduced evidence in respect of assigning of the benefit of the said Rule, to the present petitioner, the author of the impugned Annexure P/13, concluded therein, that the construction raised by the present petitioner, upon, the subject lands, was more than the prescribed limit (supra) as embodied in Rule 12 (4) of the Rules of 1964.

6. Furthermore, it was also stated therein that the regularization of the unauthorized construction over the shamlat deh, can be ordered to be done, but only if the construction, is evidently used only for residential purposes, but is not used for commercial purposes, whereas, with the petitioner as stated today at the bar by the learned counsel for the petitioner, rather running a commercial enterprise comprised of eight shops and a dairy booth, thus from the said premises. Resultantly, the asked for relief became declined to the

petitioner.

7. It is also stated in the impugned order that the present petitioner is not an inhabitant of the village, therebys, he acquired the disqualification as contained in the said Rule, inasmuch, as only in respect of the inhabitants of the village, who have raised unauthorized construction on or before 31.03.2000, thereupon, such raised unauthorized constructions are permissible to be released to such inhabitants.

8. However, the definition of inhabitant(s), is enclosed in Section 2 (d) of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter in short to be referred as 'the Act of 1961'), provisions whereof, become extracted hereinafter:

Section 2 (d) of the Punjab Village Common Lands (Regulation) Act, 1961.

"2 (d) "inhabitant of a village" means a person, whether a proprietor, or a non-proprietor who ordinarily resides in the village:

Provided that temporary absence or absence in relation to employment elsewhere shall not effect his residence in the village;"

9. Be that as it may, the learned counsel for the petitioner submits, that he shall swear an affidavit before the author of the impugned annexure, on the subsequent date of hearing, with disclosers therein, that he has converted the non-residential premises, into residential premises. Moreover, he also states that he shall swear and place on record an affidavit with speakings therein, that some part of the unauthorized constructions raised on the shamlat deh lands, thus has been demolished, so that therebys, the limit (supra) as

embodied in the Rules, thus become adhered to. Moreover, the learned counsel for the petitioner further submits that since he was not permitted to adduce evidence, qua his ordinarily residing in the village, thereby he also be permitted to place such evidence on record, before the author concerned, so that therebys he may not incur the apposite disqualification as becomes entailed upon him, that too without leave to adduce evidence thereon being granted to him.

10. In the wake of the above, the impugned order is quashed and set aside and the *lis* is ordered to be restored to its original number. The present petitioner is directed to within a fortnight, thus for the purpose supra, record his personal appearance before the author of the impugned annexure. The said affidavit shall be placed before the author of the impugned annexure and the author of impugned Annexure is directed to, through appointing a Local Senior Revenue Officer concerned, thus ensure that a spot visit becomes made by the said Revenue Officer, thus for ascertaining the truth of the contents of the said affidavit. In case, there is any falsity in the said affidavit, thereupon, it is open to the author of the impugned annexure, to draw such proceedings against the present petitioner as he deems fit in accordance with law. It is also clarified that the author of the impugned annexure shall permit the present petitioner to adduce such evidence, whereby he can demonstrate that within the ambit of the definition assigned to 'inhabitant of a village', in Section 2 (d) of the Act of 1961, he is ordinarily residing in the village concerned. The decision on the remanded *lis* be preferably made within one month hereinafter, but after hearing all the affected persons concerned.

11. Disposed of accordingly along with all pending applications, if any.

(SURESHWAR THAKUR)
JUDGE

15.05.2024
Varinder Prashad

(LALIT BATRA)
JUDGE

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