

241

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

CWP-762-2018

Date of decision : 09.01.2024

Talwinder Singh and another

.....Petitioners

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Malkeet Singh, Advocate
for the petitioners.

Mr. Arun William, AAG, Punjab.

Mr. Nakul Sharma, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 20.07.2017 (Annexure P-2) passed by respondent No.3 ordering eviction of the petitioners from the land in the dispute and order dated 01.11.2017 (Annexure P-3) passed by respondent No.2 dismissing the appeal preferred by the petitioners in illegal, arbitrary, unwarranted and wrong exercise of jurisdiction through cryptic, non-speaking and order passed in violation of principles of natural justice with the further prayer to direct the respondents to desist from interfering in the possession of the petitioners till the title of the land in question is determined by the competent court of jurisdiction.

Learned counsel for the petitioners has contended that the petitioners are the residents of Village Hetampura and are the original

proprietors of the Village. The consolidation of holdings was carried out in the village prior to the year 1966-67 and the land in question measuring 77 kanals 13 marlas was reserved by applying prorata cut for various purposes of the village. He has submitted that though the land in question was reserved during the consolidation but it was never used for any common purposes and thus, as it remained uncultivated for many years and it became *banjar kadim*. It is submitted that the petitioners and some other inhabitants of the village made the land cultivable in the year 2008-09 and since then the petitioners are in cultivating possession of this land being the proprietors of the village. He has submitted that due to the change of government in the State the Gram Panchayat clandestinely filed petition under Sections 4, 5 and 7 of the Punjab Public Premises (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to 'the Act') against the petitioners for their eviction. He has submitted that learned Collector without appreciating the facts and circumstances of the case decided the case by passing a cryptic order evicting the petitioners vide impugned order dated 20.07.2017. He submits that aggrieved by the same, petitioners filed an appeal before the learned Joint Development Commissioner (IRD). He submits that the petitioners made their submissions taking various grounds contending that the land in dispute is *Jumla Mustarka Malkan* and thus, the respondent-Gram Panchayat had no concern with the same however, the Appellate Court also fallen in error and dismissed the appeal by passing a non-speaking order dated 01.11.2017. It is submitted that the impugned orders are erroneous and have been passed by the authorities below by illegally exercising the jurisdiction. It has been submitted that the authorities below have failed to

appreciate the revenue record and thus, passed the order without ascertaining the ownership of the land. He submits that as per the revenue record, the land is shown to be *Jumla Mustarka Malkan* and thus, as per the law settled, the land is in the ownership of the proprietors of the Village and does not vest in the Gram Panchayat. He submits that the land was neither shown as reserved for any particular purpose during consolidation nor it was ever used for common purposes of the Gram Panchayat but both the authorities below have failed to appreciate the same. He submits that it has been wrongly shown by the respondents-authorities that this land has been auctioned to various people at a higher rate but the average lease amount per acre in the facts and circumstances comes out hardly to be Rs.5,000/-. He submits that the authorities below have miserably failed to appreciate the evidence on record and the law settled and thus, the impugned orders being totally unsustainable in the eyes of law deserve to be set aside.

Learned State counsel however has opposed the contentions raised by counsel for the petitioners and has submitted that the respondents-authorities have decided the case totally in accordance with the evidence on record and the law settled and thus, by no stretch of imagination has exceeded its jurisdiction. He submits that the impugned orders suffer from no illegality whatsoever and thus, the petition being devoid of any merits deserves to be dismissed.

Learned counsel for respondent No.4-Gram Panchayat has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the petitioners have not approached this Court with clean hands. It is submitted that the total land in dispute measuring 77

kanals 13 marlas is recorded as Jumla Mushtarka Malkan Hasab Rasad Rakba Khewatdar. The land in dispute was auctioned by the Gram Panchayat and the income derived from it is being used for the development/common purposes of the Village. He submits that as per law settled, the land which is *Jumla Mushtarka Malkan* is being used for common purposes of the Village and its management and control is with the Gram Panchayat and thus, the Gram Panchayat has every right to auction the land as it is owned by the Gram Panchayat. He has submitted that the petitioners have no *locus standi* as they are the trespassers who have illegally encroached upon the land in dispute. To substantiate his arguments, he has submitted that CWP No.19650-1998 titled as Sube Singh Vs. JDC and others (Annexure R-1) was filed by Sube Singh in this Court and the same was disposed of by this Court vide order dated 21.08.2000. He has submitted that the land in question was leased out by the Gram Panchayat to Sube Singh for five years and subsequently, the said lease deed was cancelled by Gram Panchayat. Assailing the same, Sube Singh approached this Court by way of the above-mentioned petition which was disposed of by this Court. He submits that thereafter this land has been auctioned by the Gram Panchayat every year and the copies of the proceedings books dated 26.05.2004, 02.05.2005, 07.05.2006 and 04.06.2007 have been placed on record. It is vehemently contended by counsel for respondent No.4 that this land was being auctioned continuously till 2007. However, in the year 2008, Joginder Kaur became Sarpanch of the Village who was mother of Onkar Singh and aunty of Rajbir Singh and thus, was related with the petitioners. It is due to the same that Joginder Kaur in connivance with the petitioners

took no steps to dispossess the petitioners from the land in dispute. Thereafter the uncle of the petitioners became Sarpanch of the Village in 2013 but he again did not take any action against the petitioners and thus, shielded them. Resultantly, the ejectment petition was filed through the Administrator. It is submitted that the Gram Panchayat is generating the revenue from the land in dispute and the same is being used for the development work of the Village. It is submitted that possession on the part of the disputed land was already taken over by the Gram Panchayat and thus, the petition is rendered infructuous. He has submitted that the contentions raised by counsel for the petitioners that the petitioners have become owners of the land in dispute being proprietors of the Village is totally misconceived. He submits that the land is being used for the common purposes of the villagers and as per law settled the *Jumla Mushtarka Malkan* land is managed and controlled by the Gram Panchayat and no one else. He submits that the impugned orders have been rightly passed by the authorities below by duly appreciating the evidence on record and the law settled and thus, the same suffer from no infirmity. He has submitted that the petition being devoid of any merits deserves to be dismissed with costs.

Heard. On hearing counsel for the parties and perusing the record, it is evident that the land in dispute measuring 77 kanals 13 marlas is a Jumla Mushtarka Malkan land as per the revenue record. The respondent-Gram Panchayat was auctioning the land and the auction money was used for the development work of the Village. As is evident from the record, the land was given on lease to one Sube Singh and on cancellation of this lease deed, he filed the writ petition i..e CWP-19650-

1998 titled as *Sube Singh Vs. JDC and others* which was disposed of by this Court vide order dated 21.08.2000 and the copy of order has been placed on record by the Gram Panchayat along with the written reply as Annexure R1. The Hon'ble Division Bench had disposed of that petition by observing that the petitioners would be allowed to cultivate the land for the full term ending on February 15, 2001 and thereafter the land shall be released from them. It is further evident from the record that the land is being auctioned every year as is reflected from the true translated copy of the proceedings books placed on record. The contentions raised by learned counsel for the respondent-Gram Panchayat that the elected Sarpanch for the term 2008-2013 being relative of the petitioners did not take any action against them, could not be controverted by counsel for the petitioners. Thus, it is apparent that the land in dispute is being used for the common purposes of the village and the money generated is being used for the development of the village.

In the overall facts and circumstances of the case, this Court does not find any force in the submissions made by counsel for the petitioners that the Gram Panchayat has no concern with the land in dispute. Thus, this Court does not find any perversity in the impugned orders passed. Resultantly, the petition being devoid of any merits is hereby dismissed.

09.01.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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