

CWP-16118-2024

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

CWP-16118-2024

Reserved on: 06.02.2025

Date of Decision : 25.02.2025

DAULAT RAM (SINCE DECEASED) THROUGH HIS LRs

...Petitioner

V/S

JOINT DEVELOPMENT COMMISSIONER (IRD) AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Present : Mr. Harinder Sharma, Advocate for the petitioner.

Mr. Dharminder Singh Lamba, DAG, Punjab.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner has prayed for the issuance of a writ in the nature of Certiorari, seeking thereby the quashing of the order dated 05.08.2015 (Annexure P-1), passed by respondent No.2 in the proceedings launched against the petitioner under the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 'the Act of 1973'), as well as of the order dated 20.03.2024 (Annexure P-3), as passed by respondent No.1, whereby the appeal preferred by the petitioner against Annexure P-1 became dismissed.

2. The brief facts of the case are that in the year 1973-74, a piece of land measuring 5 Marla comprised in Khasra No.16//10, Hadbast No.189,

situated within the revenue limits of Village Kaulpur, Block Hajipur, Tehsil Mukerian, District Hoshiarpur was allotted to Shri Amir Chand (father of the petitioner) whereons the allottee constructed a residential house. After his demise, the petitioner (who also died) had renovated the said house and had constructed shops on the ground floor, whereas, on the first floor, he had constructed a residential accommodation.

3. It is averred in the petition that owing to some party faction in the village and as the petitioner and his family had been supporting respondent No.5-Manjit Singh, as the Sarpanch in the village, thereupon the Panchayat Officer of the Gram Panchayat-respondent No.4, filed an application before respondent No.2 under Sections 3, 4 and 5 of the Act of 1973, seeking the eviction of the petitioner from the land allotted to his father, by the Gram Panchayat, in the year 1973-74.

4. Apparently, the said allotment was made on the ground that he was a poor and a landless person.

5. Vide order dated 05.08.2015, passed by respondent No.2, the apposite application became allowed, and an order of eviction from the land measuring 10 marla comprised in Khasra No.16//10, Hadbast No.189, as per jamabandi for the year 2008-09, thus became passed against the present petitioner, relevant portion whereof becomes extracted hereinafter.

“Learned counsels have been heard. After considering the case of the applicant, I have arrived at a conclusion that because of respondents No.2 and 3 poor and landless, 5-5 marla plots were allotted to them by the Gram Paqnychayat in the year 1973-74. This plot was allotted to them with the conditions that neithr the respondents can sell this plot nor can they transfer it to anybody. Rather he can live there in by constructing his house. In case the respondent does not construct his house in the aforesaid land then

this land shall be taken by the Panchayat. Respondents No.2 and 3 have illegally transferred their plots to respondent No.1 and have thus violated the aforementioned condition. They have not raised any construction on the disputed land. Therefore, the case of the applicant is accepted. Order of eviction is passed against the respondents/legal heirs from the land measuring 10 marla comprised in Khasra No.16//10, Hadbast No.189, as per jamabandi for the year 2008-09 are ordered to give possession of the disputed land to the Gram Panchayat within 30 days. In the event of not handing over the possession, it shall be taken through Police. Order pronounced. File be consigned to record room after the process.”

6. The petitioner assailed the said order through his instituting an appeal under Section 9 of the Act of 1973, but the said appeal became dismissed by respondent No.1 and the order of eviction as passed by respondent No.2 became upheld, operative part whereof becomes extracted hereinafter.

“Ld. Counsels for both the parties are given ample opportunity of hearing, the pleadings put by them duly heard, record brought on case file is gone through and written statements are examined, from which it reveals that plot measuring 5 Marla was allotted by Gram Panchayat to father of appellant under Section 13(a), Punjab Village Common Lands (Regulation) Act, 1961. As per Punjab Government Policy dated 17.4.2001 and condition No.4 of allotment letter, the beneficiary, having allotted Plot under said scheme, will have to raise construction of house within a period of three years and in the event of doing so, the said plot shall be withdrawn from him by Gram Pamchayat. The beneficiary cannot further sell out or transfer the said plot to anyone. He can borrow loan for raising construction of house over said plot. In such cases, strict instructions have been issued to the department by Hon’ble Punjab and Haryana High Court, so that benefit of Govt. Policies may be provided to needy persons and stern legal action may be taken against the party committing violation of relevant terms & conditions. It is apparently clear from report, produced on

27.11.2013 by the Block Development & Panchayat Officer, Hoshiarpur that land in dispute, comprised in Khasra No.16/10, was allotted to father of appellant (being home-less person) for construction of house, on which, three shops have been constructed by Manjit Singh son of Sardara Singh, which are coming in possession of Manjit Singh son of Sardara Singh and appellant is living somewhere else. Hence by doing so, the present appellant has violated condition No.4 regarding allotment of plot measuring 5 Marla, allotted in favour of his father. Moreover, appellant has violated Section 13(1) Punjab Village Common Lands (Regulation) Act, 1961. Ld. Court below has correctly passed the order as per rules. Hence I do hereby upheld the order passed by Ld. Court below and dismissed the present appeal, filed by appellant.”

7. Though, it was necessary to extract the appositely breached conditions of allotment. However, this Court finds that neither the breached conditions of allotment has been placed on record by the respondent concerned, nor it has been in extenso reproduced in the concurrently passed orders by both the authorities below.

8. On the contrary, there is only a reference that condition No.4 of the allotment letter became breached. The said condition has again not been reproduced in extenso, and with envisagings therein, that the present petitioner was required to be raising construction over the allotted plot, thus within three years after the said allotment being made in favour of his father, failing which the allotment shall be withdrawn from him by Gram Panchayat. Furthermore, there is also a reference in the order impugned that the beneficiary was barred to sell or transfer the plot to anybody. However, he was permitted to borrow loans through mortgaging the subject plots.

9. Though, it is not disputed that the petitioner was eligible for the subject allotment being made in his favour. However, the dispute which emerges, is that, qua the terms and conditions of the allotment becoming

breached inasmuch as, despite the petitioner became forbidden to alienate the subject plot yet the subject plot being alienated to the alienee concerned. However, for adequately proving the said fact, thus the respondents, were required to initially prove that the subject alienations was caused through a deed of conveyance becoming executed vis-a-vis the alienee by the concerned allottee. Moreover, subsequently the said deed of conveyance was required to be both tendered and proven in accordance with law. Necessarily also there was an imperative requirement that the alienee becomes impleaded as a party-respondent in the eviction petition. Though the alienee became impleaded but the deed of conveyance did not become tendered into evidence.

10. Be that as it may, for the purported alienee being construed to be, in breach of the terms and conditions of the allotment made to his alienor rather assuming unlawful possession over the subject plots, thus required the alienee being cogently established to be in fact an alienee, thus through the deed of conveyance executed in his favour by his vendor rather becoming tendered into evidence.

11. Since the said deed of conveyance did not become tendered into evidence, therebys there was no alienation, as such, of the subject plots to the purported alienee. Therefore, when as such there was no breach of the terms and conditions of the apposite allotment, thereupons, the mere report of the BDPO that shops have been constructed over the disputed lands, and, though assumingly the said construction may not be raised at the instance of the petitioner, whereas, the same may have been raised by the purported alienee concerned, yet the said purported alienee, when has not acquired title through a deed of conveyance, therebys he is deemed to be only a licensee

under the present petitioner. Resultantly, when there is no bar in the terms of allotment letter, against an allottee inducting a licensee into the premises, so that, thereupon he can aggrandize his income whereby he can minimize his poverty, especially when the subject plots are allotted to those, who are marginalized sections of the society. In sequel, the earnings yielded from subject constructions raised over the subject plot, even if assumingly at the instance of the licensee concerned, but cannot be deemed to be barred.

12. Now assuming that the learned Single Bench of this Court in CRM-M-34318, titled as 'Jagga Singh V. The State of Punjab', had made the hereinafter extracted directions and which appear to be obeyed by both the learned Courts below.

“In terms of the order dated November 25, 2011 passed by this Court, learned counsel for the State submitted that information has been received from the department of Rural Development and Panchayats and it has been found that out of total 24 plots situated in Village Albelpura District Sangrur, allotted to the landless labourers by the Panchayat free of costs, seven original allottees are living there whereas the remaining seventeen allottees have either transferred, exchanged or parted with the possession of the plots for consideration, in violation of the terms and conditions of letter of allotment. Similar can be the position with regard to the plots allotted in other villages in the State.

Let the matter be inquired into by the Director, Rural Development and Panchayat, Punjab, Chandigarh, who shall inquire into the matter within a period of 3 months from today and shall place the report before this Court on or before March 28, 2012.”

13. However, for all the stated reasons (supra), the obedience thereto was to be made, but only when there was a transfer of the subject plot, through a deed of conveyance. However, when there is no transfer deed placed on record rather when there is only a purported licence created by the

present petitioner vis-a-vis the licensee concerned, creation whereof is not barred. Resultantly, when therebys there is an endeavour on the part of the petitioner(s) who are the marginalized sections of the society, to aggrandize their income. In sequel, therebys too, the impugned orders are ridden with a vice of gross misinterpretation of the relevant conditions besides also with the vice of gross misapplication thereto onto the subject construction, as such, both the impugned orders are quashed and set aside.

14. Even otherwise, though this Court had barred the allottees from breaching the condition. However, the said passed order appears not to delve into the facet of the constitutionality of the relevant terms and conditions.

15. In aftermath, there is merit in the instant writ petition, and, the same is allowed, after quashing and setting aside both the impugned orders.

(SURESHWAR THAKUR)
JUDGE

25.02.2025

(VIKAS SURI)
JUDGE

Ithlesh

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