

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
OA No. 459 of 2023**

Charan Singh & Another

...Applicants

Versus

State of Punjab and Others

...Respondents

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Rural Development and Panchayat,
Punjab.
Applicant

Through

Divyam Nandrajog
Advocate for the Respondent/Applicant

Place:

Chd.

Date:

6 NOV 2023

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Affidavit of Dilraj Singh Secretary
Rural Development and Panchayat
Punjab (Respondent No. 3).

I the above named deponent do hereby solemnly affirm and declare as under:-

1. That it is submitted that Section 7 has been specifically added in the Punjab Village Common Lands (Regulation) Act, 1961 to remove the illegal encroachments over the panchayat land / shamilat land through gram panchayat or officer authorised by the government. The said provision is as under:-



"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

Dilraj Singh

in possession of the land or other immovable property in the shamilat deh of that village which vested 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 the execution of a decree for possession of land under the Punjab Tenancy Act, 1887:

Provided that if after receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat deh.

(2) An appeal against the order of the Collector under subsection (1) shall lie to the Commissioner and the period of



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limitation for such an appeal shall be sixty days from the date of the order appealed against."

2. That in this regard, the Collector is to see and satisfied himself about the prima facie ownership / title of the land and if he satisfied, the said person has encroached upon the panchayat land then he passes the ejectment order. It is pertinent to mention here that the ownership of village ponds is vested with the gram panchayat and it is written as "Gair Mumkin Chappar" in the Jamabandi. Therefore, the encroachment over the pond land is fully covered under Section 7 of the Act and the Collector is fully competent to pass the ejectment orders in such cases.
3. That in this regard, the gram panchayat Alamgir (Respondent No. 5) has filed Case No. LDH/DDPO/SEC/2024/00058 - Gram Panchayat Alamgir Versus Kushwinder Singh and Others and Case No. LDH/DDPO/SEC/2024/000529 - Gram Panchayat Alamgir Vs Nazar Singh and Others in the court of District Development and Panchayat Officer-cum-Collector Ludhiana under Section 7 of Punjab Village Common Lands (Regulation) Act, 1961 and the same are now fixed for hearing on 12.11.2024.



A handwritten signature in blue ink, appearing to be "Darshan Lal", written in a cursive style.

4. That in view of the above, it is humbly submitted that the illegal encroachment on the village pond can only be removed through ejectment proceedings filed under Section 7 of Punjab Village Common Lands (Regulation) Act 1961 and the court of Collector is fully competent to get the encroachment removed by passing an order under the said section. It is pertinent to mention here that the Hon'ble Apex Court has also held in Civil Appeal No. 1132 of 2011 - Jagpal Singh Versus State of Punjab on 28.01.2011 that encroachment from the village ponds be removed by the competent authorities as village pond is a essential component in the village life. Copy of order dated 28.01.2011 is annexed as **Annexure R-1**.

I identified the deponent who has signed / thumb marked in my presence
Signature

chd

6 NOV 2024



Deponent



Verification:-

Verified at New Delhi on day of November, 2024 that all the averments made hereinabove are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

chd

6 NOV 2024



Deponent

Certified That above Statement made on Oath/S.A. before me at Chandigarh
 BY.....
 Son/Daughter/Wife of.....
 Resident of.....
 Teh..... Distt.....
 Identified by.....
 entered at Sr. No. 9288 Page No. 189
 Date 6/11/24

ATTESTED
 DARSHAN LAL
 OATH COMMISSIONER
 CHANDIGARH

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1132 /2011 @ SLP(C) No.3109/2011
(Arising out of Special Leave Petition (Civil) CC No. 19869 of 2010)

Jagpal Singh & Ors. .. Appellant (s)

-versus-

State of Punjab & Ors. .. Respondent (s)

JUDGMENT

Markandey Katju, J.

1. Leave granted.
2. Heard learned counsel for the appellants.
3. Since time immemorial there have been common lands inhering in the village communities in India, variously called gram sabha land, gram panchayat land, (in many North Indian States), shamlat deh (in Punjab etc.), mandaveli and poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved. There were no doubt some exceptions to this rule which permitted the Gram Sabha/Gram Panchayat to lease out some of this land to landless labourers and members of the scheduled castes/tribes, but this was only to be done in exceptional cases.

4. The protection of commons rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of villagers were lost by such vesting. Thus, in *Chigurupati Venkata Subbayya vs. Paladuge Anjayya*, 1972(1) SCC 521 (529) this Court observed :

"It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. The rights of the community over the suit lands were not created by the landholder. Hence those rights cannot be said to have been abrogated by Section 3) of the Estates Abolition Act."

5. What we have witnessed since Independence, however, is that in large parts of the country this **common village land has been grabbed by unscrupulous persons** using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community. This was done with active connivance of the State authorities and local powerful vested interests and goondas. This appeal is a glaring example of this lamentable state of affairs.
6. This appeal has been filed against the impugned judgment of a Division Bench of the Punjab and Haryana High Court dated 21.5.2010. By that judgment the Division Bench upheld the judgment of the learned Single Judge of the High Court dated 10.2.2010.
7. It is undisputed that the appellants herein are neither the owner nor the tenants of the land in question which is recorded as a pond situated in village Rohar Jagir, Tehsil and District Patiala. They are in fact trespassers and unauthorized occupants of the land relating Khewat Khatuni No. 115/310, Khasra No. 369 (84-

4) in the said village. They appear to have filled in the village pond and made constructions thereon.

8. The Gram Panchayat, Rohar Jagir filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 to evict the appellants herein who had unauthorizedly occupied the aforesaid land. In its petition the Gram Panchayat, Rohar Jagir alleged that the land in question belongs to the Gram Panchayat, Rohar as is clear from the revenue records. However, the respondents (appellants herein) forcibly occupied the said land and started making constructions thereon illegally. An application was consequently moved before the Deputy Commissioner informing him about the illegal acts of the respondents (appellants herein) and stating that the aforesaid land is recorded in the revenue records as Gair Mumkin Toba i.e. a village pond. The villagers have been using the same, since drain water of the village falls into the pond, and it is used by the cattle of the village for drinking and bathing. Since the respondents (appellants herein) illegally occupied the said land an FIR was filed against them but to no avail. It was alleged that the respondents (appellants herein) have illegally raised constructions on the said land, and the lower officials of the department and even the Gram Panchayat colluded with them.
9. Instead of ordering the eviction of these unauthorized occupants, the Collector, Patiala surprisingly held that it would not be in the public interest to dispossess them, and instead directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents (appellants herein). Thus, the Collector colluded in regularizing this illegality on the ground that the respondents (appellants herein) have spent huge money on constructing houses on the said land.
10. Some persons then appealed to the learned Commissioner against the said order of the Collector dated 13.9.2005 and this appeal was allowed on 12.12.2007. The Learned Commissioner held that it was clear that the Gram Panchayat was colluding with these respondents (appellants herein), and it had not even opposed the order passed by the Collector in which directions were issued to the Gram

Panchayat to transfer the property to these persons, nor filed an appeal against the Collector's order.

11. The learned Commissioner held that the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents, whether Jagirdars or anybody else. Photographs submitted before the learned Commissioner showed that recent attempts had been made to encroach into the village pond by filling it up with earth and making new constructions thereon. The matter had gone to the officials for removal of these illegal constructions, but no action was taken for reasons best known to the authorities at that time. The learned Commissioner was of the view that regularizing such kind of illegal encroachment is not in the interest of the Gram Panchayat. The learned Commissioner held that Khasra No. 369 (84-4) is a part of the village pond, and the respondents (appellants herein) illegally constructed their houses at the site without any jurisdiction and without even any resolution of the Gram Panchayat.
12. Against the order of the learned Commissioner a Writ Petition was filed before the learned Single Judge of the High Court which was dismissed by the judgment dated 10.2.2010, and the judgment of learned Single Judge has been affirmed in appeal by the Division Bench of the High Court. Hence this appeal.
13. We find no merit in this appeal. The appellants herein were trespassers who illegally encroached on to the Gram Panchayat land by using muscle power/money power and in collusion with the officials and even with the Gram Panchayat. We are of the opinion that such kind of blatant illegalities must not be condoned. Even if the appellants have built houses on the land in question they must be ordered to remove their constructions, and possession of the land in question must be handed back to the Gram Panchayat. Regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of villagers of the village. **The letter dated 26.9.2007 of the Government of Punjab permitting regularization of possession of these unauthorized occupants is not valid. We are of the opinion that such letters**

are wholly illegal and without jurisdiction. In our opinion such illegalities cannot be regularized.

We cannot allow the common interest of the villagers to suffer merely because the unauthorized occupation has subsisted for many years.

14. In *M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu*, 1999(6) SCC 464 the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs.100 crores. In *Friends Colony Development Committee vs. State of Orissa*, 2004 (8) SCC 733 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.
15. **In many states Government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.**
16. The present is a case of land recorded as a village pond. This Court in *Hinch Lal Tiwari vs. Kamala Devi*, AIR 2001 SC 3215 (followed by the Madras High Court in *L. Krishnan vs. State of Tamil Nadu*, 2005(4) CTC 1 Madras) held that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. The Court ordered the respondents to vacate the land they had illegally occupied, after taking away the material of the house. We pass a similar order in this case.
17. In this connection we wish to say that our ancestors were not fools. They knew that in certain years there may be droughts or water shortages for some other reason, and water was also required for cattle to drink and bathe in etc. Hence they built a pond attached to every village, a tank attached to every temple, etc.

These were their traditional rain water harvesting methods, which served them for thousands of years.

18. Over the last few decades, however, most of these ponds in our country have been filled with earth and built upon by greedy people, thus destroying their original character. This has contributed to the water shortages in the country.
19. Also, many ponds are auctioned off at throw away prices to businessmen for fisheries in collusion with authorities/Gram Panchayat officials, and even this money collected from these so called auctions are not used for the common benefit of the villagers but misappropriated by certain individuals. The time has come when these malpractices must stop.
20. In Uttar Pradesh the U.P. Consolidation of Holdings Act, 1954 was widely misused to usurp Gram Sabha lands either with connivance of the Consolidation Authorities, or by forging orders purported to have been passed by Consolidation Officers in the long past so that they may not be compared with the original revenue record showing the land as Gram Sabha land, as these revenue records had been weeded out. Similar may have been the practice in other States. The time has now come to review all these orders by which the common village land has been grabbed by such fraudulent practices.
21. For the reasons given above there is no merit in this appeal and it is dismissed.
22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. **The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal**

act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

23. Let a copy of this order be sent to all Chief Secretaries of all States and Union Territories in India who will ensure strict and prompt compliance of this order and submit compliance reports to this Court from time to time.
24. Although we have dismissed this appeal, it shall be listed before this Court from time to time (on dates fixed by us), so that we can monitor implementation of our directions herein. List again before us on 3.5.2011 on which date all Chief Secretaries in India will submit their reports.

.....J.
[Markandey Katju]

.....J.
[Gyan Sudha Mishra]

New Delhi;
January 28, 2011