

Before Jaswant Singh & Girish Agnihotri, JJ.

JOGINDER AND ANOTHER—Petitioners

versus

STATE OF HARYANA AND OTHERS— Respondents

CWP No. 5079 of 2021

March 9, 2021

Constitution of India, 1950 Article 226 Civil Procedure code, Order 2, Rule 2—Punjab Village Common Lands (regulations) Rules, 1964, Rule 12(4)—Regularization of unauthorized construction of house—Petitioner constructed house on land situated between ‘Lal Dora’ and ‘Phirni’ of village under ownership of gram panchayat —Held concept of co-sharer cannot be claimed for land under unauthorized occupation— Concept of co-sharer is ownership and not encroachers who seek to get their unauthorized possession regularized by evoking provisions of Rule 12(4) - Petition dismissed.

Held that the petitioners constructed their houses on the land situated between 'Lal dora' and 'phirni' of the village which admittedly falls under the ownership of the Gram Panchayat, Village Sirsadi, Tehsil Gohana, District Sonapat. They alongwith one Rohtas submitted a representation to the Gram Panchayat for regularization of their unauthorized construction over the Gram Panchayat land by selling it to them at collector rate under Rule 12(4) of the Punjab Village Common Lands (Regulations) Rules, 1964 (for short "the 1964 Rules"). The Gram Panchayat passed a unanimous resolution on 05.09.2016 deciding to sell the Gram Panchayat land which was in the occupation of villagers since last 30-35 years, on which they had constructed their houses and the lands did not obstruct the passage and fell between the *lal dora* and *phirni* at the collector rate. Since their case was pending before the Government, they approached this Court in CWP No. 14933 of 2017. The said writ petition was disposed of at the initial stage by an order dated 13.07.2017 with a direction to Deputy Commissioner, Sonapat to decide the claim of all the petitioners therein and keeping in view the conditions as prescribed in Rule 12(4) of the 1964 Rules and the judgment dated **06.08.2015** passed by this Court in *CWP No. 10697 of 2014*, titled "*Ram Chander alias Chander Vs. State of Haryana and others*".

(Para 2)

Held that the first and the preliminary issue which arises for our consideration is with regard to the maintainability of the present writ petition. As has been noticed above, the order of the Deputy Commissioner dated 06.10.2020 (**P-8**) was upheld by this Court (P-9) as well as the Supreme Court (P-10) and thus has attained finality. Admittedly, no plea with regard to the encroached land in question, being shared by/in occupation of other persons was ever taken before the Deputy Commissioner, nor was it raised before the Courts in the previous round of litigation. The same is therefore barred by Order 2 Rule 2 of the Code of Civil Procedure as also principle of estoppel.

(Para 9)

Held that, the present writ **petition** is not only frivolous and devoid of any merit, but also gross abuse of process of law, and therefore, the same is dismissed.

(Para 11)

Rishi Malhotra, Advocate
for the petitioners.

Shruti Jain Goyal, Deputy A.G., Haryana

JASWANT SINGH, J.

(1) Present petition has been filed by two petitioners, namely, Joginder and Karamveer for issuance of a writ of *certiorari* to quash the impugned order dated 06.10.2020 (**Annexure P-8**) passed by the Deputy Commissioner, (Panchayat), Sonapat, rejecting their claim for regularization of construction of their houses on the *shamlat* land under Rule 12(4) of the Punjab Village Common Lands (Regulations) Rules, 1964. They have further sought issuance of a writ of *mandamus* for directing the respondents to consider their claim under the said Rule, in the light of various judgments passed by this Court and the Hon'ble Supreme Court.

(2) Briefly encapsulated, the facts of this case are that the petitioners constructed their houses on the land situated between '*Lal dora*' and '*phirni*' of the village which admittedly falls under the ownership of the Gram Panchayat, Village Sirsad, Tehsil Gohana, District Sonapat. They alongwith one Rohtas submitted a representation to the Gram Panchayat for regularization of their unauthorized construction over the Gram Panchayat land by selling it to them at collector rate under Rule 12(4) of the Punjab Village Common Lands (Regulations) Rules, 1964 (for short "the 1964 Rules"). The Gram

Panchayat passed a unanimous resolution on 05.09.2016 deciding to sell the Gram Panchayat land which was in the occupation of villagers since last 30-35 years, on which they had constructed their houses and the lands did not obstruct the passage and fell between the *lal dora* and *phirni* at the collector rate. Since their case was pending before the Government, they approached this Court in CWP No. 14933 of 2017. The said writ petition was disposed of at the initial stage by an order dated 13.07.2017 with a direction to Deputy Commissioner, Sonapat to decide the claim of all the petitioners therein and keeping in view the conditions as prescribed in Rule 12(4) of the 1964 Rules and the judgment dated **06.08.2015** passed by this Court in *CWP No. 10697 of 2014*, titled “*Ram Chander alias Chander versus State of Haryana and others*”.

(3) The Deputy Commissioner, Sonapat after hearing all the three petitioners and perusing the resolution dated 05.09.2016 passed by the Gram Panchayat, Sirsadh, called a report from Block Development & Panchayat Officer (BDPO), Mundalana. The BDPO visited the spot and inspected the site and found that petitioner No. 1 (Joginder) was found to be in illegal occupation of area measuring 757.37 square yards, petitioner No. 2 (Karamveer) was found to be in illegal occupation of area measuring 239.48 sq. yards and another person Rohtas (who is not a petitioner in the present writ petition) was found to be in illegal possession of area measuring 1387.18 square yards. The Deputy Commissioner, Sonapat rejected the claim of the petitioners vide impugned order dated 06.10.2020 (**P-8**) on the ground that as per inspection report of the BDPO, the area occupied by the petitioners is not covered by Rule 12(4) of the 1964 Rules which provides for sale of area upto maximum of 200 square yards. He further held that the petitioners, being rank trespassers are not entitled for being considered under Rule 1(4) in view of the judgment passed by Hon'ble Supreme Court dated **28.01.2011** in *Civil Appeal No. 1132 of 2011*, titled “*Jagpal Singh & Ors. versus State of Punjab & Ors*”.

(4) The petitioners filed CWP No. 17869 of 2020 challenging the order dated 06.10.2020 passed by the Deputy Commissioner, Sonapat, which is also the subject matter of the present petition. This Court after examining the statutory provision as espoused by Rule 12 (4) and the judgment in *Ram Chander and Jagpal Singh's* case (supra), relied upon by the petitioners, vide a detailed judgment dated 10.11.2020 (P-9) upheld the order of the Deputy Commissioner dated 06.10.2020 and dismissed the writ petition being devoid of any merit.

The relevant extract of the judgment (P-9) is reproduced as below:-

“ Rule 12(4) of the Rules, 1964 is relevant for resolving the controversy in the case in hand, which is reproduced as under:-

“Rule 12(1) A Panchayat may, with the previous approval of the State Government, sell land in shamilat deh vested in it under the Act for –

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 passersby, 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].”

On perusal of proviso 4 of Rule 12 of the Rules, 1964, it is apparent that the Gram Panchayat may with the approval of State Government can sell its non-cultivable land in shamilat deh to the inhabitants of the village, who have constructed their houses on or before 31.03.2000 and there should not be any obstruction to the traffic and passersby along with open space upto 25% of the constructed area upto maximum of 200 square yards and the price of the land should not be less than collector rate, which has further been clarified as floor rate or market rate, whichever is higher. While rejecting the claim of the petitioners vide impugned order dated 06.10.2020, it has specifically been mentioned that all the petitioners were called for personal hearing and they were heard. Their statements were also recorded and passing of resolution was also brought to the notice of the Competent Authority i.e. Deputy Commissioner, Sonapat. The petitioners also submitted copy of judgment of Ram Chander’s case (supra). On perusal of the record and the site report, which was verified by visiting the relevant place, the petitioner-Joginder was found to be in illegal occupation of area measuring 757.37 square yards and petitioner-Karamveer was also found to be in illegal occupation of area measuring 239.48 square yards. **All these documents were taken into consideration by the respondent**

authority and by considering the provisions of Rule 12(4) of the Rules, 1964, it was found that the petitioners were in illegal occupation of area more than the required area upto maximum of 200 square yards. Both the petitioners were in possession of land, which was more than 200 square yards. It is also mentioned in the impugned order that the petitioners were found to be trespassers in view of judgment rendered in Jagpal Singh's case (supra). Both the petitioners were in illegal possession in collusion with Gram Panchayat.

(Emphasis Supplied)

(5) The judgment dated 10.11.2020 was carried in appeal before the Hon'ble Supreme Court in SLP (Civil) No. 1829 of 2021. There it was contended, *inter alia*, that the competent authority as well as the High Court have misread and misinterpreted Rule 12(4) of the 1964 Rules. It was submitted that Rule 12(4) does not specify or limit any area with regard to houses constructed and it only creates a limit of 25% open space of the constructed area upto a maximum of 200 square yards. Therefore, even if the total area of the unauthorized occupation is more than 200 square yards, i.e. constructed area plus the open space area, the same is required to be regularized in exercise of powers under Rule 12(4). However, the said contention was rejected by the Hon'ble Supreme Court vide judgment dated 5.2.2021 (P-10) in paras 7 and 8 in the following words:-

“ 7.On a careful reading of Rule 12(4) of the 1964 Rules, **it is apparent that the illegal occupation of the panchayat land can be regularised provided the area of the illegal occupation is up to a maximum of 200 square yards. It includes the constructed area, open space up to 25% of the constructed area or appurtenant area. Therefore, on a fair reading of Rule 12(4), in case of an illegal occupation of the area up to a maximum of 200 square yards including the constructed area, appurtenant area and open space area can be regularised and sold at not less than collector rate (floor rate or market rate, whichever is higher).**

The idea behind keeping the cap of 200 square yards may be that the small area of the lands occupied illegally can be regularised/sold. If the submission on behalf of the petitioners is accepted, in that case, it may happen that

somebody has put up a construction on 195 square yards and is in illegal occupation of 500 square yards area, in that case, though he has encroached upon the total area of about 700 square yards, he shall be entitled to purchase the land under Rule 12(4) of the 1964 Rules, which is not the intention of Rule 12(4). Therefore, the competent authority as well as the High Court both are justified in taking the view that as the respective petitioners are in illegal occupation of the area more than the required area up to a maximum of 200 square yards, they are not entitled to the benefit of Rule 12(4).

8. It is required to be noted that the persons in illegal occupation of the Government Land/Panchayat Land cannot, as a matter of right, claim regularization. Regularization of the illegal occupation of the Government Land/Panchayat Land can only be as per the policy of the State Government and the conditions stipulated in the Rules. If it is found that the conditions stipulated for regularisation have not been fulfilled, such persons in illegal occupation of the Government Land/Panchayat Land are not entitled to regularization. As observed by this Court in the recent decision in the case of State of *Odisha* versus *Bichitrananda Das*, reported in (2020) 12 SCC 649, an applicant who seeks the benefit of the policy must comply with its terms. In the present case, the policy which was formulated by the State Government which culminated in Rule 12(4) of the 1964 Rules specifically contained a stipulation to the effect that the illegal/unauthorised occupation up to a maximum of 200 square yards only can be sold on regularisation and on fulfilment of other conditions mentioned in Rule 12(4) of the 1964 Rules. The petitioners are found to be in illegal occupation of the area of more than 200 square yards. Therefore, one of the conditions mentioned in Rule 12(4) is not satisfied and therefore both, the competent authority as well as the High Court have rightly held that the petitioners are not entitled to the benefit of the provisions of Rule 12(4) of the 1964 Rules. We are in complete agreement with the view taken by the High Court as well as the competent authority. ”

(Emphasis Supplied)

(6) The Hon'ble Supreme Court thus concurred with the view taken by the High Court as well as the competent authority. It is further reiterated the observations and directions made in *Jagpal Singh's case (supra)* with regard to eviction of illegal / unauthorized occupants from the Gram Sabha / Panchayat / Shamlat land.

(7) In the present writ petition, again the order of the Deputy Commissioner dated 06.10.2020 (**P-8**) has been challenged, *albeit*, by introducing a ground which is foreign to the previous litigation. It has been contended before us that the order passed by the Deputy Commissioner, Sonapat is erroneous as he failed to consider a very vital fact that the total area of 757.37 square yards allegedly in occupation of petitioner No. 1 (Joginder) is being actually shared by four co-sharers and each admittedly is in possession of an area less than 200 square yards. Similarly, petitioner No. 2 (Karamveer), who is alleged to be in occupation of area measuring 239.48 square yards, is being shared by two co-sharers and petitioner No. 2 occupies only 141.29 square yards. In support of the said contention, reliance has been placed on **Annexure P- 13** which is an un-dated document claimed to be a re-measurement report of the land in unauthorized occupation of the petitioners, prepared by the Gram Panchayat, Sirsadh.

(8) We have heard learned counsel for the petitioner as also the State Counsel, who is on advance notice, at length and have scrutinized the paper-book.

(9) The first and the preliminary issue which arises for our consideration is with regard to the maintainability of the present writ petition. As has been noticed above, the order of the Deputy Commissioner dated 06.10.2020 (**P-8**) was upheld by this Court (**P-9**) as well as the Supreme Court (**P-10**) and thus has attained finality. Admittedly, no plea with regard to the encroached land in question, being shared by/in occupation of other persons was ever taken before the Deputy Commissioner, nor was it raised before the Courts in the previous round of litigation. The same is therefore barred by Order 2 Rule 2 of the Code of Civil Procedure as also principle of estoppel.

(10) The second issue is whether the concept of co-sharer can be pressed into service to claim consideration for allotment/sale of a land under unauthorized occupation. In our considered view, the answer has to be in negative since the concept of co-sharer is related to ownership and not to encroachers who seek to get their un-authorized possession regularised by invoking provisions of Rule 12(4). Moreover, it is again an admitted fact that it was the petitioners only, who submitted

representation to Gram Panchayat under Rule 12(4) of the 1964 Rules for sale of encroached land in question and none of the alleged co-sharers were a party to either the application or proceedings instituted in this regard claiming their individual rights.

(11) In view of the above discussion, we find that the present writ petition is not only frivolous and devoid of any merit, but also gross abuse of process of law, and therefore, the same is dismissed.

Payel Mehta