

JOGINDER AND ANOTHER

A

v.

STATE OF HARYANA AND OTHERS

(Special Leave Petition (Civil) No. 1829 of 2021)

FEBRUARY 05, 2021

B

**[DR. DHANANJAYA Y CHANDRACHUD AND
M.R. SHAH, JJ.]**

Punjab Village Common Lands (Regulation) Rules, 1964 – Regularization of the illegal occupation – Petitioners, who are the residents of Village, encroached upon the panchayat land and constructed the houses – The Government of Haryana framed a policy regarding sale of panchayat land in unauthorised possession – The r.12(4) was incorporated in the 1964 Rules in terms of the notification dated 03.01.2008, which authorises Gram Panchayat to sell its non-cultivable land to the inhabitants of the village who have constructed their houses on or before 31.03.2000, subject to fulfilment of the conditions mentioned in r.12(4) of the 1964 Rules – As per r.12(4) of the 1964 Rules, the construction of the house on the panchayat land must have been put on or before 31.03.2000 – It must be a non-cultivable land; does not result in any obstruction to the traffic and passer-by and the illegal occupation/constructed area shall be up to a maximum of 200 square yards and then only the same can be regularised/sold – The petitioners submitted the application before the competent authority and requested to sell the lands occupied by them illegally and unauthorisedly, in exercise of powers u/r. 12(4) – Their application was rejected as they were in illegal occupation of the area admeasuring more than 200 square yards – Writ petition filed by the petitioners was dismissed – On appeal, held: On a careful reading of r.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 – The competent authority as well as the High Court both are justified in taking the view that as the respective petitioners were in illegal occupation – 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

C

D

E

F

G

H

- A *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.*
- B *Jagpal Singh v. State of Punjab, (2011) 11 SCC 396 : [2011] 2 SCR 250; State of Odisha v. Bichitrananda Das, (2020) 12 SCC 649 – referred to.*

Case Law Reference

C	[2011] 2 SCR 250 (2020) 12 SCC 649	referred to referred to	Para 3 Para 8
---	---------------------------------------	----------------------------	------------------

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 1829 of 2021.

From the Judgment and Order dated 10.11.2020 of the High Court D of Punjab and Haryana at Chandigarh in CWP No. 17869 of 2020.

Rishi Malhotra, Adv. for the petitioners.

The Order of the Court was passed by

M.R. SHAH, J.

- E 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.11.2020 passed by the High Court of Punjab and Haryana at Chandigarh in Civil Writ Petition No. 17869 of 2020, by which the High Court has dismissed the said writ petition preferred by the petitioners herein, the original writ petitioners have preferred the F present special leave petition.

2. That the petitioners who are the residents of Village Sarsad, Tehsil Gohana, District Sonepat encroached upon the panchayat land and constructed the houses. It is not in dispute that the lands on which the petitioners have constructed the houses vest in the Gram Panchayat.

- G That in the year 2000, the Government of Haryana framed a policy regarding sale of panchayat land in unauthorised possession inside outside the Abadi Deh. The Government of Haryana also amended the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as the ‘1964 Rules’) and issued a notification dated 1.8.2001 in this regard. Thereafter, in the year 2008, Rule 12(4) was incorporated in the

H

1964 Rules in terms of the notification dated 03.01.2008, which authorises Gram Panchayat to sell its non-cultivable land in Shamlat Deh to the inhabitants of the village who have constructed their houses on or before 31.03.2000, subject to fulfilment of the conditions mentioned in Rule 12(4) of the 1964 Rules. Rule 12(4) of the 1964 Rules, which is relevant in the present case, reads as under:

A

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

B

(4) The Gram Panchayat may with the prior approval of the State Government, sell its non-cultivable land in shamlat 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 passer-by, along with open space up to 25% of the constructed area or an appurtenant area up to a maximum of 200 square yards at not less than collector rate [floor rate or market rate, whichever is higher].”

C

Thus, as per Rule 12(4) of the 1964 Rules, the construction of the house on the panchayat land must have been put on or before 31.03.2000. It must be a non-cultivable land; does not result in any obstruction to the traffic and passer-by and the illegal occupation/constructed area shall be up to a maximum of 200 square yards and then only the same can be regularised/sold.

D

3. The petitioners herein submitted the application before the competent authority along with the resolution of the concerned panchayat and requested to sell the lands occupied by them illegally and unauthorisedly, in exercise of powers under Rule 12, more particularly Rule 12(4) of the 1964 Rules. After giving an opportunity of personal hearing, the competent authority, i.e., Deputy Commissioner, Sonepat on perusal of the record and the site report, which was verified by visiting the relevant place and having found that the petitioners are in illegal occupation of the area admeasuring more than 200 square yards, i.e., 757.37 square yards in case of the petitioner-Joginder and 239.48 square yards in case of the petitioner-Karamveer, rejected the said application. The order passed by the competent authority rejecting the application of the petitioners came to be challenged by the petitioners before the High Court. By the impugned judgment and order, the Division Bench of the

E

F

G

H

- A High Court has dismissed the said writ petition. While dismissing the writ petition, the High Court has also considered the decision of this Court in the case of *Jagpal Singh v. State of Punjab, reported in (2011) 11 SCC 396*, by which this Court directed 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 the villagers of the village.
- B 4. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the original writ petitioners have preferred the present special leave petition.
- C 5. Learned counsel appearing on behalf of the petitioners has vehemently submitted that both, the competent authority as well as the High Court have misread and misinterpreted Rule 12(4) of the 1964 Rules. It is vehemently submitted that only in a case where the constructed area is more than 200 square yards, bar under Rule 12(4) of the 1964 Rules shall be applicable. Therefore, according to the learned counsel for the petitioners, even if the total area of the unauthorised occupation is more than 200 square yards, i.e., constructed area plus the open space area, the same is required to be regularised in exercise of powers under Rule 12(4). It is submitted that in the present case, as such, there was no specific finding by the competent authority as to how much was the area over which the houses of the petitioners have been constructed and how much was the open space area. It is 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 up to a maximum of 200 square yards. It is submitted that therefore the cases of the petitioners squarely fall within Rule 12(4) of the 1964 Rules. It is submitted that in the present case, even the Gram Panchayat also passed a resolution which was placed for consideration before the competent authority.
- G 5.1 It is further submitted that even the High Court has materially erred in relying upon the decision of this Court in the case of *Jagpal Singh (supra)*. It is submitted that in the case of *Jagpal Singh (supra)*, this Court did not consider Rule 12(4) of the 1964 Rules.
- H 6. We have heard the learned counsel appearing on behalf of the petitioners at length.

7. It is to be noted that the competent authority after giving an opportunity of personal hearing to the writ petitioners and on perusal of the record and the site report which was verified by visiting the relevant place found that petitioner no.1 – Joginder was in illegal occupation of the area admeasuring 757.37 square yards and petitioner no.2 -Karamveer was found to be in illegal occupation of the area admeasuring 239.48 square yards, rejected the prayer of the petitioners to sell the land in exercise of powers under Rule 12(4) of the 1964 Rules. The competent authority has specifically observed and held that the conditions mentioned in Rule 12(4) of the 1964 Rules have not been satisfied. The submission on behalf of the petitioners, noted hereinabove, that the cap of 200 square yards shall be with respect to constructed area only and not to open space or an appurtenant area has no substance and cannot be accepted. 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

A

B

C

D

E

F

G

H

- A 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 v. Bichitrana 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.

- 9. At this stage, the decision of this Court in the case of *Jagpal Singh (supra)* is required to be referred to. In the said decision, this Court had come down heavily upon such trespassers who have illegally encroached upon on the Gram Sabha/Gram Panchayat Land by using muscle powers/money powers and in collusion with the officials and even with the Gram Panchayat. In the said decision, this Court has observed that “such kind of blatant illegalities must not be condoned”. It is further observed that “even if there is a construction the same is required to be removed and the possession of the land must be handed back to the Gram Panchayat”. It is further observed that “regularizing such illegalities must not be permitted because it is Gram Sabha land which must be kept for the common use of the villagers of the village”. Thereafter, this Court has issued the following directions:

- G “23. 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

H

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.”

In view of the above also, the prayer of the petitioners for regularization of their illegal occupation of the panchayat land cannot be accepted.

10. In view of the above and for the reasons stated hereinabove, the present special leave petition deserves to be dismissed and is accordingly dismissed.

Ankit Gyan

Appeal dismissed.