IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.\_\_\_\_\_\_\_\_\_ of 2020

1. Smt. Savita ( aged about 45 years) wife of Munni Lal resident of Gokal-Garh Tehsil and District Rewai ( Haryana )

2. Gulab Singh (aged about70 years )son of Sh. Chander ,resident of Village Gokalgarh,tehsil and District Rewari ----------------Petitioners

**VERSUS**

1. State of Haryana through its Financial Commissioner, Revenue Department Haryana Civil Secretariat Sector-17 ,Chandigarh.

2. Director, Development and Panchayat Department Haryana,

Sector-26, Chandigarh

3. Assistant Collector 1st Grade (S.D.O. Civil) Rewari Tehsil and District Rewari

4. Gram Panchayat , Gokal-Garh Tehsil and Disst. Riwari through it Sarpanch -------------------- Respondents

CHANDIGARH (SURESH AHLAWAT)

DATE: 20.12.2020 ADVOCATE

COUNSEL FOR THE PETITIONERS

CIVIL WRIT PETITION under Articles 226/227 Constitution of India for issuance of Writ in the nature of Certiorari for quashing the impugned summoning order dated 26.11.2020 (Annexure P-5) issued to the petitioners by the respondent no.3 as well as proceeding under Section 10-A of the Punjab Village Common Land Act,1961 titled as Gram Panchayat- Gokal Garh through its Sarpanch v/s Gulab Singh and another which is going on before the Ld. Assistant Collector 1st Grade- Rewari, being entertained without jurisdiction and against the statutory provision of law, hence cannot be allowed to proceed .

It is further prayed that directing to the respondents no.3 not to proceed with proceeding in pursuance of the civil suit filed by the Gram Panchayat (Annexure P-4) during the pendency of the present writ petition.

**RESPECTFULLY SHOWETH**:

1. That the petitioners are citizens of India and they are resident of Haryana and as such they are entitled to invoke extra-ordinary jurisdiction of this Hon’ble Court under Article 226/227 of the Constitution of India by way of present writ petition.

2. That in 1992 the plots measuring 100 Sq. Yds were to be gifted/allotted (grant-in-aid) to poor persons of Scheduled Cast category free of cost , having no residential house/plot under the Scheme launched by Haryana Government. Hence applications were sought from inhabitants of village under the said scheme. On this, the eligible applicants submitted their applications before Gram Panchayat and petitioner no. 2 being an S.C. Category applicant had also applied being eligible under the said scheme . A copy of the S.C. certificate dated 3.10.1968 of the petitioner no.2 (Gulab Singh) issued by the competent authority is attached herewith as **Annexure P-1.**

3. That the petitioner no.2 being a fully eligible inhabitant of the said village got gifted/allotted/grant-in-aid a plot on the basis of terms and conditions measuring 100 Sq. Yds., comprised in Rectangle No.96, Khasra No. 19/1/1/1/3 (0-3), which was allotted on 10.1.1992 vide Deed No.688 registered at page No.187 of Volume 54 in Register No. 4. A true translated copy of allotment letter dated 9.1.1992 with terms and conditions issued by the competent authority to the petitioner no. 2 is attached herewith as **Annexure P-2 .**

4. That after 28 years ,petitioner no.2 sold out this gifted/allotted plot measuring 100 Sq. Yds. to the petitioner 1, who is also resident of the same village on 19.4.2019. in terms of the Rule 13-A of the Punjab Village Common Lands ( Regulation) Rules.1964 that gifted /allotted plots can be sold after 20 years ,whereas plot in question has been allotted to the petitioner no.2 Gulab Singh 28 years back i.e in 1992 . A true translated copy of the said registered Sale Deed dated 19.4.2019 executed between the petitioners is attached herewith as **Annexure P-3.**

**5.** That there due to local politics/groups in the village of the petitioners, Sarpanch of the Village Gram Panchyat wants to harass and humiliate both the petitioners and has grouse to the petitioners, filled the false civil suit / petition for cancellation of the said allotted plot, before the Ld. Collector,1st grade Rewari ( Respondent no.3) under Section 10 –A of the Punjab Village Common Lands Act-1961. In this petition, false allegations leveled against the petitioner no.2 that petitioner no.2 had no legal right to further sell out the so allotted plot. He is not residing at Village Gokalgarh, nor having is residential house at Village Gokalga at the time of allotment of the said plot and further petitioner No. 2 has sold out the so allotted plot in favour of petitioner No. 1 by violating the terms & conditions of allotment. Hence the said allotment dated 10.1.1992 is liable to be cancelled and registration of the sale deed of the said plot declare to be null and void. Whereas, petitioner no.2 /allottee fulfilled all terms and conditions imposed in the allotment letter (annexure P-2). A true translated Copy of the civil suit/ petition dated 27.7.2020 filled by the respondent no. 4 (Sarpanch, Gram Panchayat) in the Court of Assistant Collector 1st grade Rewari ( respondent no.3) is attached herewith has **Annexure P-4.**

6. That on 26.11.2020 respondent no.3 (A.C. 1st G) without considering the law and facts of this case wrongly issued the summoning order to the petitioners for appearing on 13.1.2021. Whereas respondent/collector no.3 had no authority/jurisdiction under the law to cancel /withdraw the allotment/sale deed of the said plot after 28 years or its registration. A true translated copy of the summoning order (petitioner no.1) dated 26.11.2020 is attached herewith as **Annexure P-5.**

7. That the impugned proceedings before the Ld. Assistant Collector 1st grade (respondent no.3) are totally abuse of process of law , illegal, unjust, unwarranted and contrary to the law and deserve to be set-aside inter alia on the grounds mentioned herein below:-

**a) That** plot measuring 100 Sq. Yds allotted/gifted/grant-in-aid to the petitioner no.2 in 1992 on the basis of terms and conditions by the gram Panchayat after conducting the full inquiry that he ( Gulab Singh petitioner no.2 ) is the inhabitant and landless of this village and there is no plot in his name but due to some local differences between the petitioners and present Gram Panchayat, the civil suit has been filed before the Ld. Assitent Collector 1st grade after 28 years, whereas , in the rule 13 and 13-A of the Punjab Village Common Land Rules,1964 which is applicable **in this case, held in Rule 13-A that donee sell his allotted plot before the expiry of a period of 20 years from the date of the gift. For kind perusal of Rule 13 and 13-A**

**Rue -13 :-** A Panchayat may, with the previous approval of the State Government, gift the land in shamilat deh vested in it under the Act for-

(i) the purpose of constructions of houses, laying out common places and providing other amenities under the Model Village Scheme approved by the State Government for the benefit of the inhabitants of the village; and

(ii) residential purpose upto the extent of 200 square yards, to the members of defense forces and paramilitary forces seriously injured and rendered handicapped or to the dependent families of such members killed, in any war or counter insurgency operation during their service, not having sufficient residential accommodation or **to the members of the Scheduled Castes or Backward Classes or economically weaker sections, on the ground of poverty:**

[Provided that gift of land under this rule shall not be made to a person, if he/she or any of his/her family member ever been gifted the land or inherited land gifted by the Gram Panchayat or the State Government.

Explanation.- For the purpose of this rule ‘family’ shall mean a family unit consisting of the individual concerned, his spouse, their un-married sons and daughters and dependent parents:]

Provided further that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned:

Provided further that the concerned Deputy Commissioner or Sub Divisional Officer (Civil), as may be authorized by the State Government, shall be competent to **accord approval for allotment of 100 square yards residential plot out of land in shamilat deh, by way of gift, to the eligible family identified under the scheme, approved by the State Government for purpose of providing house-sites to the Scheduled Castes’, Backward Classes] families and the families living below poverty line].**

**Rue-13-A**

**Terms and Condition of Gift:-**

1. The terms and conditions on which the land under section 5-A and rule 13 may be gifted shall be as under:-
2. **the donee shall not sell, lease, mortgage or dispose of the land in any other manner whatsoever,** before the expiry of a period of twenty years **from the date of the gift:**

Provided that the donee may mortgage the land with any scheduled bank ,Housing board or the Government for the purpose of raising loan for the construction of the house;

**b) The donee shall construct a house on the land within a period of five years from the date of gift,**

**c**) the donee shall use the land for residential purposes and for no other purpose ;and

d) in case of death of the donee ,his legal heir shall be bound by the conditions herein contained.

**2)** In case of breach of any of the terms and conditions specified in sub-rule(1) the Assistant Collector 1st grade shall, after affording a reasonable opportunity of being heard to the donee ,cancel the gift and resume the gifted land. In such an event the done shall not be entitled to any compensation in respect of any development or construction made by him on such land.

**Section 5-A Disposal of the lands vested or deemed to have been vested in Panchayat:-**

**(1) A Panchayat may gift the land in shamilat deh vested in it under this act to the members of Scheduled Casts and backward Classes of the village in which such land is situate on such terms and conditions as may be prescribed.**

**(2) The gift of land in shamilat deh already made shall be deemed to have been made under sub-section (1).**

Therefore, on this score alone the proceedings before the Ld Collector 1st G. are liable to be set-side.

**b)** That respondent no.4 filled the suit for declaration under Section 10-A before the Assistant Collector 1st grade which is also not maintainable because allotted plot in question was gifted to the petitioner free of cost by the Gram Panchayat and in the said section 10-A of the Punjab Village Common Land Act-1961 , it is mentioned that concerned Assistant Collector 1st Grade call the record of the Gram Panchayat regarding sale ,lease ,agreement, gift, exchange or contract for the purpose of satisfying himself as to the legality or propriety of such. Whereas, in this the case, Gram Panchayat filled the civil suit for declaration before the Assistant Collector 1st which is not maintainable before the statutory provision of law

**Section 10-A of the Punjab Village Common Land Act,1961 is reproduced for kind perusal of this Hon,ble Court**

**10-A. Power of Collector to cancel or vary sales or leases, gift ,exchange etc. of lands vested in Panchayats.** –

[10A. (1) Notwithstanding anything contained in this Act or the shamilat law or any other law for the time being in force [the Assistant Collector of the first grade may call for from any panchayat in the area of his jurisdiction] the record of any [sale, lease], [gift, exchange], contract or agreement entered into by the panchayat in respect of any land vested or deemed to be vested in it, whether such [sale, lease], [gift, exchange], contract or agreement is entered into before or after the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1964, and examine such record for the purpose of satisfying himself as to the legality or propriety of such [sale, lease], [gift, exchange], contract or agreement.

(2) Where, on examination of the record under sub-section (1) and after making such inquiry, if any, as he may deem fit [the Assistant Collector of the first grade] is satisfied that such [sale, lease], [gift or exchange], contract or agreement----

(i) has been entered into in contravention of any of the provisions of this Act or the rules made there under; or

(ii) has been entered into as a result of fraud concealment of facts; or

(iii) is detrimental to interests of the panchayat as prescribed; [the Assistant Collector of the first grade] may, notwithstanding anything as aforesaid, cancel the [sale, lease], [gift or exchange], contract or agreement or vary the terms thereof unconditionally or subject to such conditions as he may think fit :

Provided that no order under this sub-section shall be passed by [the Assistant Collector of the first grade] without affording an opportunity of being heard to the parties to the [sale, lease], [gift or exchange], contract or agreement .

(3) Where the terms of any [sale, lease],[gift or exchange], contract or agreement have been varied by [the Assistant Collector of the firs grade] under subsection (2), the variation shall, notwithstanding anything contained in this Act or the shamilat law or in any law for the time being in force, be binding on the parties to the [sale, lease], [gift or exchange], contract or agreement, as the case may be.

(4) Where the vendee, lessee, [donee] or the person with whom a contract or agreement has been entered into by a Panchayat refuses to accept the variation made by [the Assistant Collector of the first grade] under this section in the terms of [xxx] [sales, lease],[gift or exchange], contract or agreement, such [sale, lease], [gift or exchange], contract or agreement, as the case may be, shall be deemed to be cancelled by [the Assistant Collector of the first grade] under this section with effect from the date of such refusal.

(5) Where under this section any sale, lease, [gift or exchange], contract or agreement is cancelled or deemed to be cancelled or its terms are varied, the vendee, lessee, [donee] or the person with whom the contract or agreement has been entered into be assessed by [the Assistant Collector of the first grade] for any loss or damage caused to the vendee, lessee, [donee] or such person which naturally arose in the usual course of things from such cancellation or variation :

Provided that no such compensation shall be given for any remote and indirect loss or damage sustained by reason of such cancellation or variation.

(6) Notwithstanding anything contained in any law for the time being in force, the amount of compensation awarded by [the Assistant Collector of the first grade] under this section shall be payable by the panchayat in the prescribed manner and shall be a valid charge on the sabha fund.

(7) Any party to a [sale, lease], [gift or exchange], contract or agreement aggrieved by any order of [the Assistant Collector of the first grade] made under this section may, within a period of thirty days from the date of such order, appeal to [the Collector] whose decision thereon shall be final.

Therefore ,on this score also the proceeding before the Ld Collector are liable to be set-side.

**c) That** petitioner no. 2 after 28 years sold out the allotted plot of 100 Sq.yd. to the petitioner no.1 on 19.4.2019 vide registered sale deed (Annexure P-3) and at the time of its registration of sale deed , Assistant Registrar neither raised any objection nor conduct the inquiry regarding sale under section 34,35 of the Registration Act,1908. It is settled proposition of law the once a sale deed has been registered ,the registering authority is having no power or authority under the Act,1908 to cancel the registration ,even if an allegation of fraud is alleged, only competent authority is the original Civil Court who have the jurisdiction to cancel the registered sale deed.

**Further**  proceedings before the Assistant Collector 1st grade, are also contrary to the law laid down by this Hon’ble Court  **In the LPA no.647 of 2016 titled as Ganesh versus Smt. Amina and others decided on 26.9.2017, whereby it has been held:-**

‘’ In view of the allegations of the forgery of a document and the contradictory verification reports, this Court is of the opinion that there must be regular trial before the civil court ’’.

Copy of said judgment dated 26.9.2017 passed by the Hon,ble Division Banch of this Court is attached herewith as **Annexure P-6**

Therefore ,on this score also the proceedings before the Ld Assistant Collector1st grade are liable to be set-side.

8. That the main points of law are involved in the present writ petition are as under:-

1. Whether the action of the respondents ,is, totally illegal, arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India?
2. Whether the registered sale deed dated 19.4.2019 (Annexure P-3) can be set-aside by the revenue authority after a long time i.e 28 years which is against the provision of Registration Act-1908 whereas, only civil court having its jurisdiction to cancel it.
3. Whether Assistant Collector 1st grade have the jurisdiction to entertain the petition filled by the gram Panchayat under section 10-A of The Punjab Village Common Land ( Regulation) Act,1961.

iv. Whether great manifest injustice has been done to the petitioner?

**9.** **That** the petitioners has not filed any such or similar writ petition earlier either in this Hon'ble Court or in the Hon'ble Supreme Court of India.

**10.** That there is no other efficacious remedy available to the petitioners except to approach this Hon'ble Court by way of filing the present writ petition. Nor any remedy of statutory appeal or revision is available to the petitioners against the impugned summoning order which is issued to the petitioners without jurisdiction.

**11.** It is, therefore, respectfully prayed that for the submissions made above and to be made at the time of hearing this Hon'ble High Court may summon the record from the respondents and after perusing the same this Hon'ble High Court may be pleased to:-

i) issue a writ in the nature of Certiorari for quashing the impugned summoning order dated 26.11.2020 (Annexure P-5) issued to the petitioners by the respondent no.3 as well as proceeding under Section 10-A of the Punjab Village Common Land Act,1961 titled as Gram Panchayat- Gokal Garh through its Sarpanch versus Gulab Singh and another (Annexure P-4) , which is going on before the Ld. Assistant Collector 1st Grade- Rewari, being entertained without jurisdiction and against the statutory provision of law, hence cannot be allowed to proceed .

ii) It is further prayed that respondents no.3 may kindly be restraint not to proceed with proceeding in pursuance of the civil suit filed by the Gram Panchayat before the Ld. Assistant Collector 1st grade (Annexure P-4) during the pendency of the present writ petition.

iii) Dispense with the filing of true typed copies of Annexures and advance notices upon the respondents keeping in view the urgency of the matter.

It is further prayed that during the pendency of this writ petition, respondents be directed not to interfere in the peaceful possession of the petitioner no.1 being bonafied purchaser of the plot in question.

CHANDIGARH

DATED: 20.12.2020

THROUGH COUNSEL

(SURESH AHLAWAT,Adv )

**VERIFICATION:**

Verified that the contents of above writ petition from para no.1 to 7 & 9 to 11 are true and correct to my knowledge and those of para no. 8 is believed to be true and correct on the basis of legal advice sought from the counsel. No part of it is false and nothing has been concealed therein.

Chandigarh

Dated:-

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND

HARYANA AT CHANDIGARH

CWP No. \_\_\_\_\_\_\_\_\_ of 202

Smt. Savita and another -------------Petitioners

VERSUS

State of Haryana and others -------------- Respondents

Affidavit of Savita ( aged about 45 years) wife of Munni Lal resident of Gokal-Garh Tehsil and District Rewai ( Haryana )

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

1. That the deponent is filing the accompanying writ petition, the contents of which may also be treated as a part of this affidavit.

2. That the deponent is competent to file this affidavit and is well conversant with the facts and circumstances of the case. The averments made in the present writ petition are true and correct to my knowledge. No part of it is false and nothing material has been kept concealed therein.

CHANDIGARH

DATED:

### VERIFICATION: -

Verified that the contents of para no.1 & 2 of my above mentioned affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

DATED:

IN THE HIGH COURT FOR THE PANJAB AND HARYAN

AT CHANDIGARH

C.W.P. No. of 2020

Smt. Savita and another - ----------- Petitioners

VERSUS

State of Haryana and others ----------- Respondents

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1. That the main law points involved in the writ petition are contained in para no. at page no.

2. Relevant Statutes/Rules: Punjab Village Common Land ( Regulation) Act,1961

3 The Constitution of India

4 Caveat petition filled :- No.

Similar case if any **:-** NO

CHANDIGARH  **(SURESH AHLAWAT)**

DATED: 20.12.2020 **ADVOCATE**

**COUNSEL FOR THE PETITIONERS**

SHEDULED CAST CERTIFICATE

This is to certify that Sh. Gulab Singh son of Chander Singh resident of village Gokal Garh, Tehsil Rewari, Distt. Gurgaon in the Haryana State belongs to the CHAMAR Community, which is recognized as SCHEDULED CASTE under the SCHEDULED CASTE.

Sh. Gulab Singh originally reside in village Gokal Garh Tehsil Rewari Distt. Gurgaon . This certificate is being issued on the verification of the Tehsildar Rewari.

Dated Sd-

3.10.1968 Sub Division Magistrate

Rewari

**Summon Versus respondent/witness**

In the Court of Ravinder Yadav HCS/Sub Division Officer (C) Rewari

Gram Panchayat Gokal Garh VERSUS Gulab Singh etc.

**Suit u/s 10 –A of the Village Common Land Act**

Smt. Savita wife of Munni lal resident of Gokal Garh Tehsil and Distt. Rewari.

You have to appear in the court at 10 a.m. in the above said case on **13.1.2021,** otherwise one-sided legal action will be taken against you .

As on 26.11.2020 the court has issued with stamp and signature.

A.C. 1st G.

Rewari

**LIST OF DATED AND EVENTS**

**9.11.992** That in 1992 the plots measuring 100 Sq. Yds were to be gifted/allotted (grant-in-aid) to poor persons of S.C. category free of cost , having no residential house/plot under the Scheme launched by Haryana Government. Petitioner also allotted one plot being fully eligible.

**19.4.2019** . Allotted plot in question sold by the petitioner no.2 to petitioner no.1 vide registered sale deed .

**July-2020** Sarpanch ,Gram Panchayat Gokal-Garh (Rewari) filled the civil suit for declaration under section 10- A of the Punjab Village Common Lands(Regulation) Act,1961 before the Ld. Assistant Collector 1st grade Rewati on the false ground that a petitioner no.2 ( Gulab Singh) obtained the plot in question fraudulently manner and he was not inhabitant of the village at the time of allotment of plot . That allotted plot may be cancelled and registered sale deed 19.4.2019 may be declared null and void. Whereas, Ld. Assistant Collector 1st grade Rewati have no jurisdiction and this is also totally against the statutory provision of law.

**26.11.2020** Ld. Assistant Collector 1st grade Rewati wrongly summoned the petitioners on **13.1.2021** .

Hence this writ petition.

Chandigarh (SURESH AHLAWAT)

Dated: 20.12.2020 Advocate

Counsel for the Petitioners

IN THE HIGH COURT FOR THE PANJAB AND HARYAN

AT CHANDIGARH

C.W.P. No. of 2020

Smt. Savita and another - ----------- Petitioners

VERSUS

State of Haryana and others ----------- Respondents

COURT FEE

Chandigarh (SURESH AHLAWAT)

Dated: 20.12.2020 Advocate

Counsel for the Petitioners