

2023 LiveLaw (SC) 163

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
M.R. SHAH; J., B.V. NAGARATHNA; J.**

MARCH 03, 2023

CIVIL APPEAL NOS. 2984-2985 OF 2022 (@SLP (C) NOS. 7279-7280 OF 2022) (@ DIARY NO. 1410 of 2018)

The State of Haryana and Ors. versus Satpal & Ors.

Education - There cannot be any school without playground. Even the students, who study in such a school are entitled to a good environment- Supreme Court directs removal of encroachments near school premises.

Encroachment of Public Land - Supreme Court sets aside HC direction to legalize unauthorized occupations near a school by taking the market value - SC terms the High Court direction unsustainable- Notes that the school has no playground.

For Appellant(s) Mr. Rakesh Mudgal, A.A.G. Mr. Samar Vijay Singh, AOR Ms. Amrita Verma, Adv. Mr. Keshav Mittal, Adv. Ms. Sabarni Som, Adv.

For Respondent(s) Mr. Surender Deswal, Adv. Mr. Abhaya Nath Das, Adv. Mr. S S Bandyopadhyay, Adv. Ms. Beena, Adv. Mr. Rahul Singh, Adv. Mr. V K Shukla, Adv. Ms. Riya Soni, Adv. Mr. Satish Kumar, AOR

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab and Haryana at Chandigarh dated 12.05.2016 in C.W.P. No. 3167 of 2015 and the order dated 21.10.2016 passed in Review application No. 284 of 2016 in CWP No. 3167 of 2015, the State of Haryana and Ors. have preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:-

2.1 At the outset, it is required to be noted that the contesting respondents are in unauthorized possession of the land comprising Khasra Nos. 61/2 and 62, which belong to the Gram Panchayat. On the Application of Sarpanch, Gram Panchayat, a Demarcation was carried out with regard to Khasra Nos. 61/2 and 62 in which the unauthorized possession of the respondents - original writ petitioners has been shown.

2.2 Eviction proceedings were initiated on 25.03.2009 by filing the ejectment application under Section 7(2) of the Punjab Village Common Land (Regulation) Act. Assistant Collector passed the ejectment order dated 30.08.2011 against the contesting respondents.

2.3 Aggrieved by the order dated 30.08.2011, the respondents preferred an appeal before the Collector, Yamuna Nagar, which came to be rejected by order dated 02.05.2012. Further appeal before the Commissioner, Ambala Division also came to be rejected by order dated 04.07.2014.

2.4 The contesting respondents preferred Civil Writ Petition No. 3167 of 2015 before the High Court of Punjab and Haryana for quashing the orders dated 30.08.2011, 02.05.2012 and 04.07.2014.

2.5 When the matter came up for preliminary hearing before the High Court on 23.02.2015, it was stated that the land encroached upon by the original writ petitioners is part of the school premises and they are ready and willing to give equivalent vacant land in exchange, to the Gram Panchayat out of Khasra No.63, which also adjoins the school

premises and which can, thus, be utilized as a playground of the school. On the basis of the aforesaid submissions, notices came to be issued by the High Court in the writ petition.

2.6 It appears that there was a dispute with regard to the total area under occupation of the original writ petitioners, a fresh demarcation was directed to be conducted under the supervision of the Local Commissioner appointed by the Court. Pursuant thereto, the Local Commissioner submitted his report which established beyond doubt that the original writ petitioners are under unauthorized possession of the Gram Panchayat land.

2.7 Faced with the report of the Local Commissioner, the original writ petitioners reiterated / re-stated before the High Court that the original writ petitioner Nos. 2 and 3 are ready and willing to give the land to Gram Panchayat equal to double the extent of the encroached land and other petitioners are willing to pay its market price as may be got assessed by the Gram Panchayat.

2.8 The High Court by the impugned judgment and order dated 12.05.2016 directed the newly constituted Gram Panchayat to consider the claim of the individual encroachers on merits and take appropriate decision. That thereafter, taking into consideration Rule 12 of the Punjab Village Common Land (Regulation) Rules, 1964, directed that 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 31st March, 2000, provided that they do not have any residential house and further provided that the constructed area or an appurtenant area upto a maximum of 200 sq. yards. The said lands were to be sold at not less than the Collector rate, i.e., floor rate or market rate, whichever is higher. The aforesaid writ petition was disposed of with such direction.

2.9 By directing the parties to invoke powers under Rule 12 and determine the market value of the land to the extent to which it is under occupation of the original writ petitioners, namely, the land where houses are constructed and wherever the vacant area can be segregated from the residential house, it can be separated and utilized for earmarked purpose, i.e., school premises, the High Court has disposed of the writ petition in terms of paragraphs 9 to 14, which read as under:-

“(9) In our considered view, the authorities need to invoke powers under Rule 12 *ibid* and determine the market value of the land to the extent it is under occupation of the petitioners, namely, the land where houses are constructed. Wherever the vacant area can be segregated from the residential house, it can be separated and utilized for earmarked purpose i.e. school premises.

(10) As regard to the land where houses have been constructed by the petitioners, the Gram Panchayat and the Deputy Commissioner can exercise either of the two options, namely, (i) to take land double of the occupied/ encroached land from the petitioners wherever they offer such land provided that the market value of such land is not less than the market value of the encroached land; or (ii) the Gram Panchayat may pass resolution whereupon the Deputy Commissioner shall get the market value of the land assessed and in that case, the petitioners instead of giving double of the land shall be liable to pay such value.

(11) Wherever the area under occupation of the petitioner is more than 200 sq.yards, the Deputy Commissioner may re-ascertain as to how many family (ies) are residing and whether such families are to be treated as 'separate units' or one unit.

(12) The land to be offered by the petitioners must be in close vicinity of the school so that it can be utilized for identified common purpose.

(13) The needful shall be done within four months from the date of receipt of a certified copy of this order. Till then status quo shall continue to be maintained.

(14) Disposed of accordingly.”

2.10 That the appellants preferred a Review Application being RA No. 284 of 2016, which was also dismissed *vide* order dated 21.10.2016. The order passed by the High Court disposing of the main writ petition in terms of the above and the order dismissing the review application are the subject matter of the present appeals.

3. Present appeals were heard by this Court on 29.03.2022. This Court passed the following order:-

“The Assistant Collector, Mustafabad is hereby directed to submit a report along with Map/Sketch pointing out the exact measurement of the land bearing Khasra No.61/2 which was earmarked for the School and the playground. In the report, it shall also be mentioned the total area of Khasra No.61/2 and the measurement of the area occupied as School and the area to be used for playground and that whether in the land other than being used for School there are any other encroachers or not other than the respondents herein and the total area occupied by the respondents herein and whether just adjacent to Khasra Nos.61/2 and 62, there is any other land available which can be purchased by the respondents herein and which can be offered to the Panchayat which can be used for the playground.

The aforesaid exercise shall be completed within a period of 10 days from today.

Put up on 19.04.2022.”

3.1 Pursuant to the order passed by this Court dated 29.03.2022, fresh demarcation of the Khasra Nos. 61/2 and 62 of Mauja Magharpur has been undertaken and a report has been filed before this Court. On a perusal of the fresh demarcation, computerized sketch and the encroached site plan, it appears that the building of school is constructed in 3K-0M being part of Khasra No.61/2(7-16) and the remaining area of 4K-16M and Khasra No. 62 (3K-19M) is also illegally possessed by the following people:-

Name & Father's Name	Land
Jagjit Singh S/o Diwan Chand	Approx.26 Marla
Satpal, Paramjit SS/o Sh. Dayal Chand	Approx.17 Marla
Surjit Singh S/o Joginder Singh, Balbir Kaur WD/o Baljit Singh & Davinder Kaur Wd/o Manjit Singh	Approx.26 Marla
Kesar Singh S/o Sh. Sant Singh	Approx.18 Marla
Jeet Kaur Wd/o SH. Gian Singh	Approx.7 Marla
Kanta Rani Wd/o Sujaan Singh	Approx. 6 Marla
Marinder Singh S/o Gian Singh	Approx. 4 Marla
Total Encroachment Area Approx.	Approx. 5 Kanal 4 marla

3.2 It is also found that there is no playground of the school in Khasra No. 62, nor is any panchayati land abutted nearby Khasra No. 62 and the land which is near the above khasra numbers, the same is owned by another person and the said persons are not ready to sell their land. It is found that the said land is at a distance of about 1 km away from Khasra Nos. 61/2 and 62. Thus, from the aforesaid facts, it is established that the original writ petitioners have encroached upon approximately 5 kanal and 4 marla of the land belonging to the Gram Panchayat, which have been earmarked for the school.

3.3 From the fresh sketch/map, it can be seen that the petitioners have encroached upon more than 200 sq.yds. and the High Court has directed to determine the market value of the land, which is under occupation of the original writ petitioners, namely, the land where houses are constructed. The High Court has also passed an order that wherever the

vacant area can be segregated from the residential house, it can be separated and utilized for earmarked purpose, i.e., school premises.

3.4 From the map and sketch, we are of the opinion that the directions issued by the High Court are not capable of being implemented.

4. Having heard the learned counsel for the respective parties and considering the orders passed by all the authorities below and the impugned judgment and order passed by the High Court and even as per the fresh demarcation, it cannot be disputed that the original writ petitioners are in illegal and unauthorized occupation of the Gram Panchayat land to the extent of 5 kanal and 4 marla out of 11 kanals and 15 marla reserved for the purpose of the school. As observed hereinabove, there is no playground at all. The school is surrounded by the unauthorized construction made by the original writ petitioners. Therefore, the unauthorized occupation and possession of the land, which is reserved for the school and the playground, cannot be directed to be legalized. There cannot be any school without playground. Even the students, who study in such a school are entitled to a good environment.

4.1 Under the circumstances, the High Court has committed a very serious error in directing to legalise the unauthorized occupation and possession made by the original writ petitioners on payment of market price. Even the other directions issued by the High Court are not capable of being implemented, namely, to segregate the vacant land from the residential house and which can be separated and utilised for earmarked purpose, i.e., school premises. The unauthorized construction is in such a manner and even some areas are not used for residential purpose and some of the area is covered by vegetation and therefore, it is not possible to segregate and separate the same, which can be used for school premises. There is no other panchayati land and/or other land, which is available, which can be used as school premises / playground. The adjacent land belongs to some private persons and they are not ready to part with their land to be used as school premises / playground.

5. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court and the directions issued (reproduced hereinabove) directing to legalise the unauthorized occupation and possession made by the original writ petitioners on the land, which is earmarked for school premises / playground is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. However, the original writ petitioners are granted 12 months' time to vacate the land, which is occupied by them unauthorizedly and if within one year from today, they do not vacate the lands in question, the appropriate authority is directed to remove their unauthorized and illegal occupation and possession.

With this, the present appeals are allowed to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

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