

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-3934-2025 (O/M)

Date of decision : 21.02.2025

Harbans Singh and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Chanderpal Singh Bagri, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Ms. Anu Chatrath, Senior Advocate with
Mr. Ratik Kapur, Mr. Nikhil Singh, Advocates
for respondent No. 7.

..-

..-

HARSH BUNGER, J. (ORAL)

1. Petitioners have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the show cause notices dated 30.01.2023 (Annexure P-1) and 03.12.2024 (Annexure P-3), issued under Section 172-A (1) of the Punjab Municipal Act, 1911 (in short '1911 Act') by the Executive Officer, Nagar Panchayat, Khamano. A further prayer has been made for setting aside the eviction-cum-demolition order dated 09.12.2024 (Annexure P-5), passed by the Executive Officer, Nagar Panchayat, Khamano, alongwith subsequent, consequential and incidental proceedings thereto.

1.1 Other prayers made in the writ petition including issuance of a writ of mandamus for directing respondents to issue a notification as per

proviso of Section 1 (3) of Punjab Abadi Deh (Record of Rights) Act, 2021 (in short '2021 Act') in order to resolve the proprietary rights of abadi deh area; to prepare the record of rights for the land/properties situated in the abadi deh of village Khamano Kalan, District Fatehgarh Sahib; to declare the entire process of demolition and eviction as illegal and null and void; to restore the possession of such land/properties of the petitioners, which have been illegally taken over and demolished by the Nagar Panchayat Khamano, in pursuance to the eviction-cum-demolition order dated 09.12.2024 (Annexure P-5); to reimburse losses caused to the petitioners; to provide compensation to the petitioners and to take penal as well as disciplinary action against the erring officials/employees of the Nagar Panchayat Khamano.

1.2 In the alternative, prayer has been made for directing the respondents to opt legal process for declaring the petitioners as encroachers upon the land of pond within the abadi deh area of village Khamano.

2. Briefly, the petitioners claim that they are lawful owners in possession of the land/properties as detailed in para-3 of the writ petition, either by way of inheritance or by way of sale deeds. The said land/properties are stated to be situated within lal lakir or abadi deh of village Khamano Kalan, District Fatehgarh Sahib. The present writ petition has been filed by the petitioners on the plea that the impugned notices have been issued to them and/or their family members, therefore, they are the affected parties.

2.1 It is the pleaded case of the petitioners that they have not made any kind of encroachment over the land of any pond, as claimed by respondent-Nagar Panchayat. It is stated that infact the Nagar Panchayat had raised boundary wall around the pond in the year 2007, 2008 and 2016 and no issue was ever raised by the Nagar Panchayat questioning the ownership and possession of the petitioners over the land/properties in question. It is further stated that the other inhabitants of the abadi deh area belonging to economically weaker section, scheduled caste and scheduled tribe categories have also constructed their houses over the land in question by availing subsidy under the Pradhan Mantri Awaas Yojna and now, the Nagar Panchayat is alleging those very persons to be illegal encroachers.

2.2 According to the petitioners, the Executive Officer, Nagar Panchayat, Khamano, issued show cause notices to the petitioners on 30.01.2023 under Section 172-A (1) of 1911 Act, alleging that they have made illegal encroachments on the pond area situated within the abadi deh area of Nagar Panchayat, Khamano. The petitioners state that they submitted their respective replies to the aforesaid show cause notices on 02.02.2023 and thereafter, no action was taken against the petitioners till 03.12.2024, when similar show cause notices under Section 172-A (1) of 1911 Act were again issued to the petitioners. The said notices are stated to have been served upon the petitioners on 04.12.2024, however, the petitioners are stated to have submitted their replies on 05.12.2024, wherein they have claimed that they are lawful owners in possession of the land/properties either by way of inheritance or by way of registered

sale deeds. The petitioners contend that the Executive Officer, Nagar Panchayat, Khamano, without considering the replies submitted by the petitioners, proceeded to pass demolition order dated 09.12.2024 (Annexure P-5).

2.3 It is stated by the petitioners that the Hon'ble Division Bench of this Court, vide order dated 03.12.2024 (Annexure P-15), passed in CWP-8850-2022, had directed the respondents to remove the illegal encroachments by following due process of law, however, the land/properties of the petitioners have been illegally destroyed and demolished. The petitioners claim that the Hon'ble Division Bench of this Court passed an order dated 03.12.2024 (Annexure P-15) by believing the wrong averments made in the affidavit dated 27.09.2024, submitted by the Deputy Secretary, Local Government, Punjab and that the respondents have deliberately concealed the factum of proceedings initiated by them under Section 172-A (1) of 1911 Act, from the Hon'ble Division Bench. It is stated that Section 172-A (1) of 1911 Act does not empower the Executive Officer or any other authority to remove illegal encroachment.

2.4 The petitioners state that on 13.12.2024, the Executive Officer and other employees of the Nagar Panchayat, Khamano, came to the spot with heavy police force and machinery to carry out demolition process and despite peaceful protest by the petitioners and other residents of the area, the structures of petitioner No. 1-Harbans Singh were demolished including the gate etc. It is stated that on 13.12.2024 itself, the petitioners herein alongwith others, filed application bearing Nos.

CM-20311-CWP-2024, 20312-CWP-2024, 20313-CWP-2024, 20314-CWP-2024 and 20315-CWP-2024 in CWP-8850-2022, seeking impleadment in the writ petition and also for recalling/modification of interim order dated 03.12.2024 (Annexure P-15), passed by the Division Bench of this Court; which were allowed and the petitioners were added as respondents in the writ petition i.e. CWP-8850-2022, and they were also afforded opportunity to seek remedy before civil court since they claimed that they are owners of land in question. Accordingly, it was directed that till next date of hearing, no further demolition shall take place of the houses of the newly added respondents.

2.5 It transpires that the aforesaid writ petition i.e. CWP-8850-2022 came to be finally disposed of by the Hon'ble Division Bench of this Court, vide order dated 18.12.2024 (Annexure P-18), with the directions to the encroachers including the petitioners to approach any quasi judicial authority or judicial authority within a period of three weeks (i.e. till 07.01.2025) and produce interim/restraint order and in case, they fail to do so, official respondents were ordered to evict them from the land in question and in this regard, compliance report was also sought latest by 21.01.2025.

2.6 The petitioners herein approached the Hon'ble Supreme Court by filing Special Leave Petitions i.e. SLP (C) No. 920-922/2025, which came to be disposed of, vide order dated 09.01.2025 (Annexure P-6), granting liberty to the petitioners to raise all contentions before the proceedings that may be instituted by them pursuant to the order of the High Court.

2.7 The petitioners state that in pursuance to the opportunity granted by the Hon'ble Supreme Court, the petitioners have approached this Court to seek directions to respondent-State to issue a notification under proviso to sub-section (3) of Section (1) of 2021 Act to bring into effect the provisions of the aforesaid Act to the abadi deh area and to resolve the proprietary rights of abadi deh area.

3. When this matter was put up before this Court on 11.02.2025, learned State counsel had sought time to get instructions and assist the Court in this matter and the matter was posted for 18.02.2025.

3.1 On 18.02.2025, an appearance was made on behalf of Nagar Panchayat, Khamano and the matter was adjourned for 21.02.2025.

3.2 Today, learned State counsel as well as learned senior counsel appearing for respondent-Nagar Panchayat, Khamano have appeared and submitted that the present writ petition is an abuse of process of law as the petitioners herein have failed to avail of their remedy in pursuance to the directions issued by the Hon'ble Division Bench of this Court in CWP-8850-2022. It is stated that the Hon'ble Division Bench, vide order dated 03.12.2024 (Annexure P-15), had directed removal of encroachments existing around seven ponds within the area of Nagar Panchayat, Khamano, District Fatehgarh Sahib, as mentioned in the affidavit dated 27.09.2024, filed by Deputy Secretary, Local Government, Punjab, within a period of 15 days. It is further stated that the notices under Section 172-A (1) of 1911 Act were issued to all the encroachers including the petitioners and pursuant thereto, the petitioners alongwith others had filed application bearing No. 20370-2024 in

CWP-8850-2022, seeking their impleadment as respondents No. 11 to 48 in the aforesaid writ petition i.e. CWP-8850-2022. Photocopy of the aforesaid application has been handed over in Court today, which is taken on record subject to all just exceptions. Paras 10 and 17 (1) of aforesaid application read as under :-

“10. That it is humbly submitted that the respondent Nagar Panchayat has illegally issued show cause notices to them u/s 172-A (1) of the Punjab Municipal Act, 1911 alleging that they have to evict their residential houses and other properties as the same are situated on the land belonging to a particular pond whereas till date no demarcation has been done to ascertain whether the applicants have made any encroachment upon the land belonging to any pond as alleged. It is highly unlawful and unjustified that without even ascertaining/identifying whether any land of the pond has been illegally encroached by the applicants or not, the respondent has illegally proceeded to evict the applicants from their only residential houses and other properties.

11 to 16. xxxxxxxxxxx xxxxxxxxxxx

17. That it is hereby brought into the kind notice of this Hon'ble Court that the entire process of eviction and removal of encroachment initiated by the respondent Nagar Panchayat is illegal, wrong and against the canons of law for the reasons stated hereunder :

1. Because the show cause notices dated 30.01.2023 and 03.12.2024 issued by the respondent Nagar Panchayat, Khamano u/s 172-A (1) of the Punjab Municipal Act, 1911 are bad in the eyes of law because section 172-A (1) merely prescribes the quantum of punishment to be inflicted upon a person who have been convicted for making any encroachment upon any land, premises or public

place. The provisions of section 172-A (1) of the Act of 1911 are reproduced hereunder for the kind perusal of this Hon'ble Court :

172-A (1). Punishment for encroachment upon land, premises or public place. Whoever makes any encroachment, by raising a temporary or permanent structure on any land, premises or public place, not being private property whether such land, premises or public place belongs to or vests in the committee or not shall on conviction be punished with simple imprisonment which shall not be less than one month, but which may extend to three years and with fine which may extend to twenty thousand rupees.

In the light of above cited provisions of section 172-A (1), it is humbly submitted that this section nowhere prescribes the procedure to identify whether any person is guilty of encroachment on the public place or premises. There is no such provision to issue show cause notices calling reply from the occupants of dwelling houses alleging them to be illegal occupants. It unambiguously states that the person who has been convicted for making encroachment, would be punished with the punishment prescribed under this section. Needless to mention that before inflicting this prescribed punishment, the accused person has been declared guilty of encroachment by a competent court, tribunal or authority. Hence the proceedings initiated by the respondent Nagar Panchayat against the applicants to remove the alleged encroachment does not sustain in the eyes of law.”

3.3 By referring to the above extracted paras, it is submitted on behalf of official respondents that the petitioners had approached this Court against show cause notices issued under Section 172-A (1) of 1911 Act and considering the totality of circumstances, the Hon'ble

Division Bench of this Court had disposed of writ petition i.e. CWP-8850-2022, vide order dated 18.12.2024 (Annexure P-18), after noticing that none of the newly added respondents No. 11 to 48 (i.e. present petitioners) or any other encroacher had approached the civil court, except two applicants, namely, Gurmeet Singh and Nirmal Singh. It was further directed that in case, any of the remaining encroachers do not obtain and produce interim/restraint order of any quasi judicial or judicial authority within a period of three weeks then the official respondents were directed to evict the remaining encroachers from the land in question and report compliance latest by 21.01.2025.

3.4 It is stated that against the aforesaid order dated 18.12.2024 (Annexure P-18), passed by Hon'ble Division Bench of this Court in CWP-8850-2022, the petitioners approached the Hon'ble Supreme Court by way of SLP (C) No. 920-922 of 2025, which were also disposed of, vide order dated 09.01.2025 (Annexure P-6) by observing in para-6 thereof that since the petitions raise questions of fact, which would require evidence to establish them, the High Court rightly relegated the petitioners to the judicial authority/quasi judicial authority. It is submitted that the Hon'ble Supreme Court extended the time granted by the Hon'ble Division Bench of this Court for obtaining the interim/restraint order by a further period of four weeks and also granted liberty to the petitioners to raise all contentions before the proceedings that may be instituted by them pursuant to the order passed by the High Court.

3.5 Learned counsel for official respondents has further handed over copy of order dated 18.02.2025, passed by the Hon'ble Division Bench of this Court in IOIN-1-CWP-8850-2022 in CWP-8850-2022, which is taken on record subject to all just exceptions and the same reads as under :-

“ In view of the order passed by the Apex Court dated 09.01.2025 upholding the order dated 18.12.2024 passed by this Court and granting further time of four weeks to the alleged encroachers to avail the remedy under law, learned counsel for the State Government is directed to file the present status in regard to the compliance of the order passed by the Apex Court.

List on 06.03.2025.”

3.6 It is submitted that the petitioners instead of availing their remedy, in terms of order dated 18.12.2024 (Annexure P-18) passed by the Hon'ble Division Bench and as upheld by the Hon'ble Supreme Court, have chosen to file the present writ petition with apparent attempt to prolong their encroachment over the land in question and the same is nothing but an abuse of process of law. Accordingly, prayer for dismissal of the writ petition with costs has been made.

4. Heard.

5. In the present case, it is not disputed by the learned counsel for the petitioners that the matter pertaining to unauthorized construction on the village pond within the area of Nagar Panchayat, Khamano, was pending consideration before the Hon'ble Division Bench of this Court in CWP-8850-2022. During the pendency of these proceedings, notices under Section 172 -A (1) of 1911 Act were issued to the encroachers of

the village pond area, including petitioners and/or their family members. On 03.12.2024, the Hon'ble Division Bench of this Court in the aforesaid writ petition (CWP-8850-2022) had directed to Additional Chief Secretary, Department of Local Government, Punjab, to ensure removal of encroachments within a period of 15 days and to submit compliance report. Apparently, fresh notices under Section 172-A (1) of 1911 Act were issued on 03.12.2024 (Annexure P-3 Colly.) to the encroachers including the petitioners, whereupon the petitioners sought impleadment in aforesaid writ petition (CWP-8850-2022) by filing application bearing No. 20312-CWP-2024 on the ground that their houses, are being demolished and they have not been given an opportunity of availing remedy under law. The aforesaid applications submitted by the petitioners and/or their family members were allowed, vide order dated 13.12.2024 and the petitioners were impleaded as under :-

Sr. No.	List of Petitioners in CWP-3934-2025	Details
Petitioner No. 1	Harbans Singh	Impleaded as respondent No. 12 in CWP-8850-2022
Petitioner No. 2	Balwinder Singh	Impleaded as respondent No. 11 in CWP-8850-2022
Petitioner No. 3	Devinder Singh	Impleaded as respondent No. 17 in CWP-8850-2022
Petitioner No. 4	Saranjit Kaur	Wife of Devinder Singh, who was impleaded as respondent No. 17 in CWP-8850-2022
Petitioner No. 5	Jaswinder Kaur	Impleaded as respondent No. 27 in CWP-8850-2022
Petitioner No. 6	Harpreet Singh	Impleaded as respondent No. 25 in CWP-8850-2022
Petitioner No. 7	Jaswinder Kaur	Wife of Harwinder Singh, who was impleaded as respondent No. 29 in CWP-8850-2022
Petitioner No. 8	Devinder Singh	Son of Harwinder Singh, who was impleaded as respondent No. 29 in CWP-8850-2022
Petitioner No. 9	Talwinder Singh	Son of Harwinder Singh, who was impleaded as respondent No. 29 in CWP-8850-2022.

5.1 Vide order dated 13.12.2024 (Annexure P-16), the petitioners were also afforded opportunity to seek remedy before the civil court since they claimed that they are owners of land in question, accordingly, it was directed that till next date of hearing, no further demolition will take place of the houses of the newly added respondents i.e. present petitioners.

5.2 It transpires that the aforesaid writ petition (CWP-8850-2022) came to be finally disposed of by the Hon'ble Division Bench on 18.12.2024 (Annexure P-18) with the directions to the encroachers to obtain and produce interim/restrain order of any quasi judicial or judicial authority within a period of three weeks, failing which, a direction was issued to the official respondents to evict the encroachers from the land in question and to submit compliance report.

5.3 The aforesaid order dated 18.12.2024 was challenged before the Hon'ble Supreme Court by way of SLP (C) No. 920-922 of 2025, which was disposed of, vide order dated 09.01.2025 (Annexure P-6), thereby maintaining the order dated 18.12.2024 (Annexure P-18), passed by the Hon'ble Division Bench of this Court by observing that since the petitions raise questions of fact, which would require evidence to establish them, the High Court has rightly relegated the petitioners to quasi judicial/judicial authority. The order passed by the Hon'ble Supreme Court is reproduced below in extenso as it capitulates the entire factual position of this matter :-

“1. The Division Bench of the Punjab & Haryana High Court at Chandigarh, passed the following order in CWP

No.8850 of 2022 between Kulwant Singh versus State of Punjab on 03.12.2024: -

“Shri Tejveer Singh, Addl. Chief Secretary, Department of Local Government, Punjab, appears virtually. He is directed to ensure that the encroachments existing around seven ponds within the area of Nagar Panchayat Khamano, District Fatehgarh Sahib, as mentioned in the affidavit dated 27.09.2024 filed by the Deputy Secretary, Local Government, Punjab, are removed by 2 following due process of law within a period of fifteen (15) days.

We have our own doubts as to whether the encroachments categorized by the State can fall within the definition of “public premises” under the Punjab Public Premises and Land (Eviction and Land Recovery) Act, 1973.

Shri Tejveer Singh, Addl. Chief Secretary, Department of Local Government, Punjab, is directed to seek proper instructions on the said aspect and ensure removal of encroachment within a period of fifteen (15) days and submit compliance report before the next date of hearing. List on 17.12.2024.”

2. Thereafter, upon an application being filed under Order I Rule 10 read with section 151 of Code of Civil Procedure, 1908, 38 (Thirty-Eight) applicants sought impleadment on the ground that their houses were being demolished and they were not given any opportunity under law. By the order dated 13.12.2024, the Division Bench allowed the said application. It further directed that the matter may be listed again on 17.12.2024 as already directed. It further granted liberty to the newly added respondents to seek remedy before the Civil Court as they were claiming to be the owners of the land in question. It further provided that till the next date

fixed i.e. 17.12.2024, further demolition was stayed. The order dated 13.12.2024 is reproduced hereunder: -

“CM-20311-CWP-2024

For the reasons stated in the 3 application, same is allowed and the main case is taken up today on Board.

CM-20312-CWP-2024

The present application has been filed under Order 1 Rule 10 read with Section 151 CPC read with Article 226 of the Constitution of India for impleading the applicants as respondent Nos.11 to 48, being necessary and proper parties. The applicant No.11 to 48 have sought impleadment on the ground that their houses, which are being demolished and they have not given an opportunity of availing remedy under law.

Miscellaneous Application is allowed and the applicants are ordered to be impleaded as respondents No.11 to 48.

Amended memo of parties, annexed with the application is taken on record.

CMs-20313-CWP-2024, 20314-CWP-2024 and 20315-CWP-2024

List on 17.12.2024.

Till then newly added respondents are afforded opportunity to seek remedy before civil Court, since they claim that they are owners of the land in question. Till next date of hearing, no further demolition shall take place of the houses of the newly added respondents.

In the meantime, State shall also file compliance report of removal of encroachment that has taken

place till today as ordered on the last date of hearing.”

3. The matter was thereafter taken up on 18.12.2024, the Division Bench noticed that another application was filed for impleading three more applicants who were also affected by the demolition exercise. Counsel for Jaswant Singh informed that he had already filed Civil Suit against the apprehended action of eviction as such the High Court permitted him to pursue his remedy in the light of the order dated 13.12.2024. The Division Bench further noticed that the respondents who were added by order dated 13.12.2024 had not approached the Civil Court except the one noted above.

4. It further noticed the status report filed by the State of Punjab dated 17.12.2024 mentioning that 64 (sixty-four) notices were issued to the encroachers asking them to vacate by 12.12.2024. Pursuant to the said notice, 23 (twenty-three) encroachments have been removed. Further removal was stayed in view of the stay order granted on 13.12.2024. The Division Bench, thereafter, disposed of the writ petition with the direction that if the remaining encroachers do not produce interim/restraint order of any Quasi-Judicial or Judicial Authority within a period of three weeks, the official respondents were directed to evict the remaining encroachers and report compliance by 21.01.2025.

5. The effect of the said order was that encroachers were granted protection for a period of three weeks in order to obtain interim protection, then the removal of encroachment would take place. Aggrieved by the aforesaid order, the present SLP has been filed. Order dated 18.12.2024 is reproduced hereunder:

“ORDER

1. *CM-20370-CWP-2024 has been filed for impleading three applicants, namely, Gurmeet Singh, Nirmal Singh and Jaswant Singh as party respondents in the present petition.*

2. *Learned counsel appearing for the aforesaid three applicants/proposed respondents contends that since Gurmeet Singh and Nirmal Singh have already approached this Court, the present application is not pressed so far as both of them are concerned and is, therefore, dismissed to that extent.*

3. *However, the present application is continued to be prosecuted in respect of the third applicant, namely, Jaswant Singh.*

4. *Learned counsel for the third applicant – Jaswant Singh submits that the said applicant has already filed a civil suit against the apprehended action of eviction caused by the official respondents.*

5. *The third applicant – Jaswant Singh is, therefore, free to pursue his remedy in Civil Court which has already been permitted by this Court to the other alleged encroachers by an order dated 13.12.2024.*

6. *This Court on 03.12.2024 with an intent to put an end to the matter had directed that the encroachments over the ponds area, as shown by the State of Punjab in its return/reply dated 27.09.2024, ought to be removed within 15 days.*

7. *Thereafter, several alleged encroachers came to this Court and were allowed to be impleaded as respondents No.11 to 48.*

8. *This Court on 13.12.2024, while protecting the newly added respondent Nos.11 to 48, had afforded them opportunity to seek remedy before the 6 Civil*

Court since the question of possession and title was raised.

9. None of the newly added respondent Nos.11 to 48 or any other encroacher, as informed, has approached the Civil Court except the aforesaid two applicants, namely, Gurmeet Singh and Nirmal Singh in CM-20370-CWP-2024.

10. The State of Punjab has filed status report dated 17.12.2024 stating that 64 notices were issued to the alleged encroachers asking them to evict the land falling under the ponds by 12.12.2024, whereafter 23 encroachments have been removed. But the official respondents stayed their hands with regard to the remaining encroachers in view of the restraint order passed by this Court on 13.12.2024.

11. This Court with a view to putting quietus to this matter disposes of the petition with a direction that in case any of the remaining encroachers do not obtain and produce interim/restraint order of any quasi-judicial or judicial authority with a period of 03 weeks, then the official respondents are directed to evict the remaining encroachers from the land in question and report compliance latest by 21.01.2025.

12. In view of the aforesaid order, all the miscellaneous applications also stand disposed of.”

6. The petitions raise questions of fact which would require evidence to establish them the High Court rightly relegated the petitioners to the Judicial Authority/Quasi Judicial Authority. As the High Court has provided interim protection to the petitioners to approach the Civil Court/Quasi Judicial Authority, we do not find any reason to entertain these petitions under Article 136 of the Constitution.

7. *Learned counsel for the petitioners submits that the observations made by the High Court may influence any Quasi-Judicial Authority or Judicial Authority in taking an independent decision as such it may be clarified that any observation made will not come in the way of the Quasi-Judicial Authority or Judicial Authority in taking an independent decision.*

8. *It is also submitted that some further time may be granted for petitioners to avail appropriate remedy before the Quasi-Judicial Authority or Judicial Authority. Considering the facts and circumstances of the case, without interfering with the impugned order, we dispose of these petitions with the following observations:*

1. *We make it absolutely clear that any observations made in the impugned order will not influence the Quasi-Judicial Authority or Judicial Authority where the matters may be instituted by the petitioners and such proceedings may be decided on their own merits including any interim application that may be filed.*

2. *The time granted by the High Court for obtaining the restraint order/interim order is extended by a further period of four weeks for the petitioners to institute their appropriate proceedings before the appropriate Forum as noted above.*

3. *The parties would be free to raise all contentions before the proceedings that may be instituted by them pursuant to the order of the High Court.*

4. *Even those petitioners who have been evicted prior to 13.12.2024 or even thereafter would also be at liberty to institute appropriate proceedings before the appropriate Forum as directed by the High Court and seek appropriate relief.*

9. Pending application(s), if any, shall stand disposed of.”

5.4 A perusal of the order passed by the Hon'ble Supreme Court would leave no manner of doubt that the petitioners were afforded opportunity to avail their remedy in terms of directions issued by the Hon'ble Division Bench of this Court to approach the civil court/quasi judicial authority to obtain interim protection as they claimed ownership of the land in question and the period of three weeks, as granted by the Hon'ble Division Bench of this Court, was extended by the Hon'ble Supreme Court for further period of four weeks, which already stands expired. Evidently, the petitioners have not availed their remedy as extended to them and now, the present writ petition has been filed, inter alia, for seeking quashing of the notices under Section 172-A (1) of 1911 Act.

5.5 In my considered view, once, the petitioners had approached this Court after having been served with the above referred notices under Section 172-A (1) of 1911 Act and upon consideration of the matter, the Hon'ble Division Bench of this Court afforded them liberty to avail their remedy before the civil court/quasi judicial authority to obtain interim/constraint order in their favour as they claimed ownership of the land in question under their possession and the said orders having attained finality upto the Hon'ble Supreme Court, it does not lie in the mouth of the petitioners to again approach this Court by filing this writ petition on the plea that the notices under Section 172-A (1) of 1911 Act, consequential demolition order and the incidental proceedings are illegal and null and void. The present writ petition is clearly an abuse of process of law at the hands of the petitioners, which is liable to be deprecated.

6. It is also required to be noticed that Hon'ble the Supreme Court in the case of ***Jagpal Singh Versus State of Punjab, 2011 (11) SCC 396***, while dealing with the case of encroachment of village pond by the appellants therein, made the following observations :-

“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. Regularising 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 regularisation 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. v. 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 v. State of Orissa, 2004(4) RCR (Civil) 787 : 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 v. Kamala Devi, AIR 2001 Supreme Court 3215** (followed by the Madras High Court in **L. Krishnan v. 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 regularising the illegal possession. Regularisation 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...”

7. It is required to be mentioned here that during the course of hearing of this petition, learned counsel for petitioners has referred to following judgments i.e. ***Sarup Singh (dead) and another Versus Darshan Singh and another, 2010 (2) RCR (Civil) 799; Rajender Versus Collector, Rohtak, Tehsil Meham, District Rohtak and others, 2012 (3) LAR 583; Jagdish Ram and others Versus Joint Development Commissioner (IRD) Punjab and another (CWP-24505-2015, decided on 08.02.2016); Municipal Council, Kharar Versus A.P.J. Public School and another, 2015 (46) RCR (Civil) 287 and S.P. Shridhar Versus The State of Karnataka by its Secy. to the Department of Public Works and others, 2012 (36) RCR (Civil) 217.***

7.1 I have considered the aforesaid judgments, however, in my view, the same are not applicable to the factual situation obtaining in present case and are distinguishable.

8. Considering the totality of circumstances, I find no merit in the present writ petition and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

21.02.2025
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No