

THE HIGH COURT OF MADHYA PRADESH

WRIT PETITION No. 7865 / 2021 (PIL)
GRAM PANCHAYAT DHOOMA Vs. STATE OF M.P.
WRIT PETITION No. 8517 / 2021 (PIL)
RAGHVENDRA PRATAP SINGH Vs. STATE OF M.P.

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W.P. No.7865 / 2021

(GRAM PANCHAYAT DHOOMA VS. STATE OF MADHYA PRADESH AND OTHERS)
With

W.P. No. 8517 / 2021

(RAGHVENDRA PRATAP SINGH VS. STATE OF MADHYA PRADESH AND OTHERS)

Coram: Hon'ble Mr. Justice Mohammad Rafiq, Chief Justice
Hon'ble Mr. Justice Sujoy Paul, Judge

- **Presence** : Mr. Shitala Prasad Tripathi, Advocate for the petitioner and Mr. Brahmatt Singh, Government Advocate for the State in W.P.No. 7865/2021.

Mr. Kamal Bhan Vishwakarma, Advocate for the petitioner and Mr. Ashish Anand Bernard, Dy. Advocate General for the State in W.P.No. 8517/2021.

Whether approved for reporting: YES

Heard through Video Conferencing.

O R D E R (Oral)
(09.06.2021)

Per: Mohammad Rafiq, Chief Justice:

01. These two Writ Petitions have been filed as Public Interest Litigation with a similar grievance about the encroachment on the public land seeking a direction to the respondent – State authorities to remove such encroachment and restore the public land to its original position.

02. W.P.No. 7865/2021 (PIL) has been filed by the Gram Panchayat Dhooma through its Sarpanch Smt. Gulsam Bai, with regard to land of Khasra No. 491 Area 0.78 hectare; Khasra No. 492/1 Area 3.22 hectare, Khasra No. 90 area 9.30 hectare, Khasra No. 410/1 area 0.82 hectare, Khasra No. 411 area 0.82 hectare, Khasra No. 499/4 area 0.17 hectare, Khasra No. 469 area 0.02 hectare, Khasra

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No. 464 area 0.17 hectare, Khasra No. 670 area 0.20 hectare, Khasra No. 383 area 0.30 hectare, Khasra No. 50 area 0.30 hectare and Khasra No. 141 area 9.9 hectare situated at Resham Kendra Village Dhooma, Patwari Halka No. 15, R.N.M. Dhooma, Tehsil Lakhnadon, District Seoni (M.P.).

03. According to the petitioner all the aforementioned parcels of the land fall within the jurisdiction of Gram Panchayat Dhooma. Since these plots of land are appurtenant to National Highway No.7 and are having commercial utility, several persons from outside villages have raised *Kachcha* houses / huts thereupon and started living there. Few local persons have also made illegal encroachment and constructions by use of stones and *moram*. The Gram Panchayat periodically takes the steps to remove the encroachment but the trespassers again occupied the land. Gram Panahcyat passed a resolution on 4/10/2018 by unanimous vote for removing these encroachments and submitted application before respondent No.2 – Collector, Seoni and respondent No.3 – Sub-Divisional Officer, Lakhnadon requesting them to remove the encroachments from the public land, but no action has been taken. In these circumstances, the Gram Panchayat by resolution dated 4/6/2019 authorised the Sarpanch to file the present Public Interest Litigation. Reliance has been placed on the judgment of the Supreme Court in Jagpal Singh and others Vs. State of Punjab and others reported in **(2011) 11 SCC 396** and it was argued that the State Government has in compliance of this judgment of the Supreme Court on 18/3/2011 issued a Circular to all the Divisional Commissioner, Commissioner Land Records and Settlement and all the Collectors for removal of illegal encroachments from the public land and restore possession of all such public land to the Gram Panchayat but this Circular has not been effectively

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implemented.

04. W.P.No. 8517/2021 (PIL) has been filed by Raghvendra Pratap Singh, resident of Village & Post Ganjan Tehsil Rampur Baghelan, District Satna. It is stated therein that the petitioner is aggrieved by the inaction on the part of the State authorities in not being able to remove the encroachments over the Government land bearing Khasra No. 458 and 459, situated at Village Ganjan Tehsil Rampur Baghelan, District Satna. The land in question has been recorded as the land of pond in revenue record. Water of such pond is being used by the villagers for the last more than 50 years for their household purposes as well as for their cattle. The land has always been recorded as pond in the revenue records of the Government but now large number of encroachments have come up on the land. Some of the encroachers have constructed boundary walls and houses. These people have protection of political persons and, therefore, the District Administration is not taking any interest in removal of their encroachments. It is argued that the petitioner submitted a representation on 17/11/2020 and thereafter another representation on 11/1/2021 to the Collector, Satna, with the request that the land of pond / *talab* should be freed from the trespassers and all the encroachments should be removed. However, no action has been taken by the authorities.

05. This Court is inundated with large number of writ petitions, styled as public interest litigation, from almost all the Districts of the State, with allegations of encroachment over the 'nistar land' / 'charnoi' / 'gocher' / 'pasture land' / land of 'pond', 'talab' / 'river' / 'river bed' / 'public way' / 'shamshan' / 'kabristan' etc. In all such petitions, common allegation is that despite repeated complaints / representations to the concerned revenue officers, no steps are taken

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by them to remove the encroachment. This results in number of writ petitions being filed by the complainants / representationists before this Court. This Court has been passing orders in such matters requiring the respective District Collectors and other revenue authorities to examine the factual content of the allegations and take steps to remove the encroachments so as to secure such land.

06. In order therefore to provide a State wide solution to this ever persisting problem, we deem it appropriate to direct the Chief Secretary of the State to devise a permanent mechanism, which should be functional in every district of the State where the concerned District Collector should be required to periodically notify for the information of the general public to lodge the complaints / representations with regard to such encroachments with a specially designated Public Land Protection Cell (for short 'PLPC') for rural areas. The PLPC should be headed by District Collector and function under his direction and supervision with an officer of the rank of Tehsildar as its Member Secretary and such other Officers as its Members as the Government may deem fit to nominate. The PLPC shall get such complaints / representations enquired into by deputing concerned Sub Divisional Officer / Tehsildar / Naib Tehsildar so as to verify whether or not such encroachments have actually taken place on public land. If the allegations are found to be substantiated, appropriate steps in accordance with law be immediately taken for removal of the encroachments and appropriate penal action be also taken against the trespassers. The complaints / representations received in the PLPC should be decided by passing speaking order, informing the respective complainant / representationist about the action taken. This would obviate the necessity of such complainants / representationists approaching this Court directly by way of public

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interest litigation. If this permanent mechanism is put in place, this Court would not be required to directly entertain such public interest litigation and would do so only in the event of inaction on the part of the concerned PLPC.

07. The PLPC aforementioned shall also keep in view the guidelines issued by the Supreme Court in Jagpal Singh & Others Vs. State of Punjab & Others, (2011) 11 SCC 396 wherein all the State Governments of the country have been directed to prepare scheme for eviction of illegal / unauthorised occupants of the Gram Sabha / Gram Panchayat / Poramboke / Shamlat land which should then be restored to the Gram Sabha / Gram Panchayat for the common use of residents of the village. The said scheme should provide for the speedy eviction of such illegal occupants, after giving them a show cause notice and a brief hearing. The Supreme Court further held therein that long duration of the illegal encroachment / occupation of land or huge expenditure in making construction thereon or political connections of trespassers are no justification for regularising such illegal occupation. Regularisation should be permitted only in exceptional cases where lease has been granted under some government notification e.g. to landless labourers or members of Scheduled Castes / Scheduled Tribes or where there is already a school, hospital, dispensary, 'shamshan', 'kabristan' or other public utility of the like nature on the land. Observations of the Supreme Court in Jagpal Singh (supra) thus leaves no manner of doubt that removal of encroachment on all such land is a rule and regularisation an exception and that too in extremely limited number of cases, which only the Government can do by appropriate notification and no other authority.

08. A copy of this order be forwarded to the Chief Secretary of the

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State of Madhya Pradesh, Bhopal for issuance of necessary notification for notifying the permanent body designated as Public Land Protection Cell (PLPC) in every District with the District Collector as its head and a Tehsildar as its Member Secretary, apart from other revenue officers as the Members. This should be given due publicity for information of all the citizens that complaint with regard to encroachment over public land in the rural areas can be made to such authorities which shall be responsible for causing an enquiry into such complaint to be made and taking expeditious action for removal of encroachments so as to protect the public land.

09. With the aforesaid both the writ petitions stand disposed of.

10. A copy of this order be placed in the record of W.P.No.8517/2021.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(SUJOY PAUL)
JUDGE

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