

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-15174-1998****Reserved on: 10.10.2023****Date of decision : 18.10.2023**

GOBINDGARH EDUCATIONAL AND SOCIAL WELFARE TRUST

-PETITIONER

VERSUS

STATE OF PUNJAB AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Mr. O.P. Goyal, Sr. Advocate with
Mr. Mohit Soni, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. Nakul Sharma, Advocate
for the respondent No.3- Gram Panchayat.

SURESHWAR THAKUR, J.

1. The gravamen of the lis, as encapsulated in the instant writ petition, is that, through a Resolution made on 28.04.1995, the petition lands comprised in Khasra No.90, 93, 94 and 95, became alienated by the Gram Panchayat concerned, in favour of co-respondent No.2, petitioner herein.

2. The said Resolution, thus leading to the making(s) of alienations of the Khasra numbers (supra), resulted in an appeal under Section 6 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), being instituted thereagainst, by the aggrieved proprietors, over the disputed Khasra numbers (supra), who are impleaded as co-respondents No.4 to 7 hereins. The said appeal succeeded, through the

makings of Annexure P-22, leading the aggrieved therefrom, to institute the instant writ petition before this Court, whereby, a challenge is thrown to Annexure P-22.

3. The challenged Resolution of the Gram Panchayat concerned, and, which has resulted in the making of Annexure P-22, was made in terms of Section 5 of the Act of 1961. Therefore, it is but imperative to extract the relevant sub-section (1) of Section 5 of the Act of 1961, provisions whereof become extracted hereinafter.

“5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats.- (1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed:

Provided that where two or more villages have a common Panchayat, Shamilat Deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village:

Provided further that where there are two or more shamilat tikkas in a village, the Shamilat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka:

Provided further that where the area of land in shamilat deh of any village so vested or deemed to have been vested in Panchayat is in excess of twenty-five per cent of the total area of that village (excluding abadi deh) then twenty-five per cent of such total area shall be left to the Panchayat and out of the remaining area of shamilat deh an area up to the extent of twenty-five per cent of such total area shall be utilised for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining area of shamilat deh, if any, shall be utilised for distribution to small land owners of that village subject to the provisions relating to [permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade] in consultation with the Panchayat [in

such manner and on payment of such amount as may be prescribed]”

4. The above extracted provision bestows a statutory right in the Gram Panchayat concerned to, in respect of all lands vested or deemed to have been vested in the Panchayat under the Act of 1961, thus dispose of such lands but with a rider, that the alienation(s) or disposal(s) of such lands rather being for the benefit of the village proprietary body concerned. Moreover, the manner of disposal or alienation of such shamlat deh lands, is prescribed to be made in the manner, as detailed in the statutory provisions, thus engrafted in Section 5 of the Act of 1961. Therefore, the Gram Panchayat concerned became well enabled to alienate or dispose of shamlat deh lands, but, only for the benefit of the inhabitants of the village concerned, besides in the manner prescribed in the said provision.

5. Imperatively so, the instant alienation(s) or disposal(s), through a Resolution becoming passed by the Gram Panchayat concerned, in terms of Section 5 of the Act of 1961, thus was to be made only when the lands concerned rather were undisputedly shamlat deh lands, and/or, were lands which uncontestedly became vested in the Gram Panchayat concerned. If there was no forthright cogent evidence, vis-à-vis, the lands mentioned in the Resolution (supra), as made in terms of Section 5 of the Act of 1961, thus being owned by the shamlat deh, or, becoming vested in the Gram Panchayat concerned, resultantly, there was no vested statutory leverage in the Gram Panchayat concerned, to make any resolution for alienating those lands, which otherwise fell to the ownership of the proprietors, or, estate holders of the Mohal concerned, thus through allotments being made in their favour by the Consolidation Officer concerned, in the latter preparing a finalized

consolidation scheme.

6. As stated above, the Resolution (supra), as made in terms of Section 5 of the Act of 1961, became challenged through the aggrieved estate holders concerned making an appeal thereagainst, in terms of Section 6 of the Act of 1961, before the learned Collector concerned. The learned Collector concerned, on the said appeal, has made the impugned order. The learned Collector concerned, could make the impugned order, only when there was evidence both cogent and unflinchingly, thus personificatory qua:- (a) the disputed lands evidently falling to the ownership of the shamlat deh, or, becoming evidently vested in the Gram Panchayat concerned; (b) the said alienation, as made to the petitioner herein, was not for the benefit of the village proprietary body concerned.

7. A reading of the discussion made in Annexure P-22, whereby, the impugned alienation made to the petitioner herein, rather became rescinded, besides the consequent thereto sale deeds, as became executed, became also cancelled, rather reveals, that the learned Collector concerned was faced with a situation, whereby, a dispute arose with respect to the disputed lands, falling to the ownership of the shamlat deh, and/or, theirs vesting in the Gram Panchayat concerned. Therefore, but obviously, there was an emergence of a heated and acerbic dispute, with respect to the disputed lands falling to the ownership of the shamlat deh, or, the disputed lands vesting in the Gram Panchayat concerned. Moreover, a reading of the discussion also reveals, that the learned Collector concerned while exercising jurisdiction under Section 6 of the Act of 1961, proceeded to make an inference, whereby, he concluded that the aggrieved appellants before him, became entitled to become conferred

with a declaratory decree of ownership vis-à-vis the disputed lands.

8. The appellate authority concerned also did make the said declaratory decree. The makings of a declaratory decree of title vis-à-vis the aggrieved appellants, before him, was completely barred, as the learned Collector concerned, did not become invested with an able jurisdiction, to make any declaratory decree, vis-à-vis, the disputed lands qua the estate holders concerned. He could make the impugned order, only when there were undisputed and uncontested evidence thus surging forth, rather evidently displaying that the disputed lands, fell to the ownership of the shamlat deh, and/or, became vested in the Gram Panchayat concerned, and, could also thereafter, if evidence emerged, that the petition lands were alienated, through a Resolution of the Gram Panchayat concerned, despite the said alienations being not for the benefit of the village proprietary body concerned, thus make an order for rescinding the said Resolution.

9. However, the learned Collector concerned, without bearing in mind the above confines of his jurisdiction, rather has exceeded his jurisdiction, in yet making a declaratory decree, in favour of the estate holders concerned, declaratory decree whereof was to be pronounced only in a title suit instituted before the learned Collector concerned, in terms of Section 11 of the Act of 1961, arraying therein the Gram Panchayat concerned, as a party/defendant.

10. Since the said declaratory suit never became filed, nor became decreed in favour of the estate holders concerned, thereby the makings of the said declaratory decree by the learned Collector concerned, despite his becoming invested with a limited jurisdiction (supra), has resulted in

erroneous and flawed findings thus becoming recorded by him in the impugned order.

FINAL ORDER

11. In consequence, the writ petition is allowed, and, the impugned order (Annexure P-22) is quashed and set aside, but, leaving liberty to the estate holders concerned to access the appropriate statutory forum/civil court concerned for seeking a declaratory decree of title vis-à-vis the disputed khasra numbers.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

18.10.2023
devinder

Whether speaking/reasoned ? Yes/No
Whether reportable ? Yes/No