

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.14259 of 2012
Date of Decision:-22.12.2015.

Hari Ram and another

.....Petitioners

Versus

State of Punjab and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Abhishek Singla, Advocate for the petitioners.

Mr. Anil Kshetarpal, Senior Advocate with
Mr. P.P.S. Sidhu, Advocate, for LR's of petitioner No.2.

Mr. Rajesh Bhardwaj, Additional A.G. Punjab.

Mr. Harinder Singh, Advocate for respondent No.8.

SURYA KANT, J. (ORAL)

1.) The petitioners are residents of village Chuwarianwali, Tehsil Fazilka and District Ferozepur. They have questioned the decision of the Gram Panchayat of their village in gifting away the land measuring 201 *kanal 6 marla* to respondent No.8-Trust, as also the Government decision dated 9.7.2010 granting approval for gifting 98 *kanal 7 marla* Gram Panchayat land to the said private Trust.

2.) It may be mentioned that respondent No.8 is stated to be a charitable Trust in whose favour the Gram Panchayat passed the Resolution to gift a big chunk of land for establishing an Engineering

college. The State Government vide order dated 15.3.2001 accorded its approval for gifting the entire land to respondent No.8-Trust subject to the following conditions:-

“1) The trust will have to make the institution operation within three years. If it is not so done then the land will revert back to Gram Panchayat. If during said period, some any construction is done by the trust, then trust will be entitled to remove the said construction and if the trust does not remove it then the entire construction etc. will become the ownership of Gram Panchayat.

2) The Trust will use this land only for the said purpose. If the land is used for any other purpose then this will be violation of the allotment for which the allotment of the land may be cancelled.

3) Girls will be given admission on the priority basis in the institution.

4.) The poor children of the village i.e. children of Yellow Card Holders Scheduled Caste will be given free education.”

3.) Some complaints were made and on consideration the above-stated Government order was withdrawn on 3.5.2010. Soon thereafter the State Government passed the impugned order dated 9.7.2010 approving the donation of 98 *kanal* 7 *marla* land of the Gram Panchayat to respondent No.8-Trust for starting the Information Technology College.

4.) The petitioners who are residents of the village have questioned the above-stated gift as well as the Government approval, primarily on the plea that it is detrimental to the interest of habitants as well as Gram Panchayat of the village.

5.) This Court issued *ad interim* directions on 5.7.2013 restraining the respondent-Trust from raising any construction over the land in dispute.

6.) Another self-speaking order was passed on 26.7.2013, the relevant part whereof reads as follows:-

“Respondent No.8-Trust was to raise construction within three years which it failed to do so. Gift of land was cancelled on 3.5.2010. Thereafter, on an application filed qua 98 kanals 7 marlas of land, gift was revived on 9.7.2010. When the above said property, was gifted to the trust, or revived no additional benefit, except as stated above, was given to the Gram Panchayat/its inhabitants. Reading of conditions contained in document (Annexure P2) dated 15.3.2001 indicates that virtually no benefit has been given to the Gram Panchayat or its inhabitants. For the gift of land, no lease amount has been fixed. The land was gifted free without receiving any penny from the respondent No.8. It is only said that girls will be given admission on priority basis. That benefit is not limited for the girls of this village. It is general in nature. It is further said that poor children of the village i.e. children of yellow card holders scheduled caste will be given free education. That also appears to be imaginary. Probably not even a single child from that category may be eligible for admission in the engineering classes.

Under the circumstances, we direct counsel for the Gram Panchayat to file an affidavit of the sarpanch of the village, after verifying from the families of the yellow card holders scheduled caste, as to how many of their children were eligible to get admission in any engineering colleges during the last five years. He shall also state as to how many girls from the village during the last five years became eligible to get admission in such like colleges.

Mr. Harminder Singh, Advocate, appearing on behalf of respondent No.8 is also directed to give detail of the activities of the Trust stating:-

- i) who are its trustees;*
- ii) when the trust was formed; and*

iii) All the activities which were undertaken by the Trust before getting this land as a gift from the Gram Panchayat.

Needful shall be done positively by the next date of hearing.

Adjourned to 13.8.2013.

The Deputy Commissioner, Fazilka shall also file an affidavit as to how many engineering colleges are available in District Fazilka and what is the distance of those colleges from the institution in question. Mr. K.K.Gupta, Additional Advocate General, Punjab will convey the order passed to the Deputy Commissioner concerned.”

7.) On September 15, 2014, this Court take notice of the following facts:-

“The Gram Panchayat of village Churianwali, Tehsil Fazilka, District Ferozepur, gifted its land measuring 98 Kanal 7 Marla in the year 2001 in favour of private Trust – respondent No.8, for a defined public purpose. The Trust appears to have raised structure (still incomplete) but admittedly no Engineering College has been set up.

The Trust has not set up the Engineering College and has now obtained permission from the State Government to start a Degree College.

The very purpose of giving the Gram Panchayat land in gift has thus been frustrated. In these circumstances, the best solution can be that the State Government may take over the land and building to run Government Institute.”

8.) Since the Government expressed its reluctance to take over such college, on November 14, 2014 the Gram Panchayat was directed to apprise the actual market value of the land. The respondent-Trust appears to have expressed its willingness at that stage to purchase a part of the Gram Panchayat land where the building had already been constructed, for

the parties started negotiating. It was in this backdrop that this Court passed the following order on September 10, 2015:-

“2. On instructions from respondent No.8, Mr. Harminder Singh states that the said respondent would be willing to seek refund of the cost of construction incurred by it at the site.

3. Let, learned counsel for Gram Panchayat have instructions as to instead of dismantling the building, why the Gram Panchayat should not pay the cost of construction to respondent No.8 as may be assessed by PWD(B&R) and Architectural Department of Government of Punjab. For the payment of cost of construction, the State Government can accord approval for the sale of a small part of the subject land by way of a public auction to be conducted under the supervision of Deputy Commissioner, Fazilka, as such a recourse would enable the Gram Panchayat; (i) to retain the substantial part of the land; and (ii) the existing structure can be utilised either exclusively for a Girls school or for other public purposes like, Civil Dispensary, office of Gram Panchayat or any other public utility service.”

On September 17, 2015, the following order was passed:-

2. The Deputy Commissioner has in his affidavit averred that the cost of construction of the building raised by the Trust has been got assessed from PWD (B&R) Department and as per their evaluation, the total cost comes to ₹ 360.00 lacs. It is further averred that the land given by the Gram Panchayat to the Trust is 98 kanals 7 marlas and the Collector rate of this land is ₹25.50 lacs per acre.

3. The Gram Panchayat admittedly, does not have sufficient funds to pay the cost of construction to the Trust if its land is ordered to be returned in terms of order dated September 10, 2015. In this view of the matter and as urged by learned counsel for the parties also, that 7 acres land

including those khasra numbers where construction exists, can be allowed to be retained by the Trust on payment of Collector's rate of ₹25.50 lacs per acre to the Gram Panchayat. The rest of the land shall then revert back to the Gram Panchayat.

4. Further, we have seen the site plan (R-2) appended with the affidavit of Deputy Commissioner. We are informed that the construction has been raised by the Trust partly in khasra numbers 13, 18 and 19. If, it is so, 7 acres land to be purchased by the Trust can include khasra numbers 8, 9, 12, 13, 18, 19 and 22 along-with part of khasra No.3, abutting the main road so that the land to be purchased the Trust can have free access from the road. Similarly, khasra No.7 and downwards would be returned back to the Gram Panchayat subject to minor adjustments out of khasra nos. 17 or 23, as the case may be.

5. In the interest of justice, we still accord one more opportunity to the petitioners' or any other interested person to come forward to pay the cost of construction incurred by the Trust as well as the land at a rate higher than or equivalent to the one suggested by the Deputy Commissioner in para No.5 of his affidavit and such offer shall be duly considered by this Court.

6. Learned Senior Counsel for the Trust has reiterated that the Trust is primarily interested in return of the cost of construction incurred by it.

7. The Deputy Commissioner shall be at liberty to find out via media to explore the possibility of selling the structure raised by the Trust including the land underneath, at a rate which should not be less than the Collector rate."

9.) On November 16, 2015, the following order was passed:-

"Mr. Ravinder Singh, Deputy Commissioner, Fazilka is present in Court. He has filed affidavit-cum-status

report with reference to our previous orders and the same is taken on record. As per the averment made in para 5 thereof, he has persuaded the Gram Panchayat as well as the Trust. Both the parties have agreed to sell and purchase two and a half acres land where the building has been constructed along with the passage from the main road measuring at least 50 feet wide at a rate not less than the Collector's rate.

Let the Deputy Commissioner give effect to the agreed terms and conditions mentioned in para 5 of the affidavit and submit a compliance report.”

10.) As may be seen from the orders passed from time to time, the controversy finally culminated into a settlement whereunder the Trust has decided to purchase that 2 ½ acre land from the Gram Panchayat where the building is constructed, along with passage from the main road, at a rate not less than the Collector's rate. The matter has been settled with the intervention of the Deputy Commissioner, Fazilka.

11.) Today, the Deputy Commissioner, Fazilka has filed his status-report-cum-affidavit, *inter-alia*, pointing out that in terms of the previous order, advertisement was issued on 04.12.2015 in three leading newspapers namely, 'The Tribune', 'Rozana Ajit' and 'Jagbani' for the auctioning of land measuring 3 acres 7 *marla* including passage. The reserve price was ₹ 3.90 crores. The auction was fixed on 17.12.2015. However, on the date of auction only one bidder, i.e., respondent-Trust participated who has given a bid of ₹ 3.91 crores.

12.) Learned counsel for the petitioners though do not question the fairness of the procedure adopted by the Deputy Commissioner but seek time to find-out whether there can be any buyer who is willing to offer more than ₹ 3.91 crores for the subject-land.

13.) We have heard learned counsel for the parties and gone through the records.

14.) Taking into consideration the last submission, it is directed that if there is still a willing bidder who did not participate in the auction held on 17.12.2015 but is ready to offer not less than ₹ 4.0 crores for the subject-land, may approach the Deputy Commissioner, Fazilka within one week of issue of this order along with draft of not less than ₹ 2.0 crores to show his bona fide. In case such a person comes forward, the Deputy Commissioner would conduct *inter se* bidding between that person and the respondent-Trust. However, if no one comes forward, the Deputy Commissioner shall proceed further to confirm the auction in accordance with the prescribed procedure.

15.) In the light of the above-mentioned developments which have taken pursuance to the interlocutory orders/directions issued by this Court on different dates, nothing survives in the writ petition for further consideration except that the remaining land shall continue to be owned and possessed by the Gram Panchayat.

16.) Disposed of accordingly.

Dasti.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

December 22, 2015.

sandeep sethi