

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

1. CWP-7355-2007(O&M)

Mishra Singh and anotherPetitioners

vs.

State of Punjab and othersRespondents

2. CWP-20769-2006(O&M)

Pal Singh and othersPetitioners

vs.

State of Punjab and othersRespondents

3. COCP-496-2010(O&M)
Decided on:-29.08.2016

Harinder SinghPetitioner

vs.

Harikesh Sidhu and othersRespondents

CORAM HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE DR.SHEKHER DHAWAN

Present: Mr.Rakesh Gupta, Advocate for the petitioners
in CWP-7355-2007 and COCP-496-2010
and for respondents no.5 and 6 in CWP-20769-2006.
None for the petitioners in CWP-20769-2006.
Mr.Gaurav Garg Dhuriwala, DAG, Punjab.
Mr. Harkirat Singh, Advocate
for respondent-Gram Panchayat
assisted by Onkar Singh Panchayat Officer.
Mr. M.K.Singla, Advocate for respondent no.5.

MAHESH GROVER, J(ORAL)

By this order we shall dispose of the above mentioned two writ

action.

The facts are being extracted from CWP-7355-2007.

The petitioners in this writ petition are residents of village Harigarh Gahla Tehsil Moonak, District Sangrur.

For the purposes of irrigation a “minor” was constructed to bring water from Bakhra Main Canal (hereinafter called 'BMC' for short) to the village of the petitioners and another village Maha Singhwala.

To get this minor constructed, the villagers had been persisting with the Government for some time who expressed inability on account of lack of funds. Thus, the village continued to be deprived of irrigation and drinking facilities even though their area fell within 4 ½ kms from the BMC. Eventually, the officials of the Irrigation Department told the members of the village that in case they can offer their land they will be in a position to construct the minor to facilitate irrigation.

In this way, six kanals of land belonging to the petitioners in village Harigarh Gahla was utilized by the Irrigation Department for construction of the minor to benefit the entire village. The entire land of the petitioners was bifurcated but they relented by giving their land for the benefit of the entire village.

The Panchayat passed a resolution requesting the petitioners for exchange of the land in question to give him Panchayat land comprised in khata no.154/455 mustil No. 34//2 (5-10), 3 min (0-10) as per jamanbandi for the year 2002-03. A Resolution to this effect dated 05.09.2005 is appended to the petition as Annexure P1. This exchange could have been affected in accordance with Rules particularly Section 5 of the **Punjab**

Village Common Lands (Regulation) Rules, 1964 which are extracted
here below:

“Section 5.

**Regulation of use and occupation, etc. of lands
vested or deemed to have been vested in
Panchayat-**

(1) All lands vested or deemed to have been vested in a panchayat under this Act, shall be utilized 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 culturable area of land in *shamilat deh* of any village, so vested or deemed to have been vested in a panchayat is in excess of two-thirds of the total of that village (excluding abadi deh), then culturable area upto the extent of two-third of such total area shall be left to the panchayat and one half of the remaining

culturable area of *shamilat deh*, shall be utilized for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining culturable area shall be utilized for distribution to the small landowners of that village by the Collector in consultation with the panchayat, in such manner as may be prescribed.]

(2) The area of *shamilat deh* to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultation with the panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2) issue to any panchayat such directions as may be deemed necessary.

[(4) Nothing contained in the third proviso to sub-section (1), and in subsection (2) and sub-section (3) shall apply to the “Hilly area”.]

[(5) Notwithstanding anything contained in the preceding sub sections, on land vested or deemed to have been vested, in a panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to leave with the panchayat,

culturable area which is less than fifty percent of the total culturable area vested or deemed to have been vested in the panchayat.]

**Rule 5 of The Punjab Village Common Lands
(Regulation) Rules, 1964**

Exchange of land :

[Sections 5 and 15 (2)(f) of the Act].

A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with the prior approval of the Government, transfer any land in shamlat deh by exchange with the land of an equivalent [Value.]

[2 *****]

As far as the Panchayat is concerned, they followed up the resolution with affidavits and other necessary documents seeking approval of respondent no.3 which was further referred to the Block Development and Panchayat Officer (hereinafter called 'BDPO' for short). An exercise was conducted to look into the rateable value of both the lands which were found to be comparable.

The land of the petitioners thus, stood utilized but their grievance now is that the exchange of land promised by the Panchayat has not taken place and the private respondents to the present writ petition filed CWP-20796-2006 wherein resolution of the Panchyat to exchange land with the petitioner was initially stayed but eventually at the time of admission of the writ petition, the stay was vacated.

Consequently, the state ought to have taken into consideration

the entire facts to grant approval so that the petitioners could be recompensed on account of their land having been utilized for the benefit of the Panchayat.

We may notice that the State has chosen not to file its reply in both the petitions despite the fact that they had been served long time back and the writ petitions came to be admitted in the year 2009. Not only this, the matter was taken up for regular hearing on various dates and atleast on one date an order was passed requiring the BDPO to remain present with the record of the case.

Even though we are informed that the officer came present on one or two occasions but today when the case was taken up there is no presence of the official of the State.

The cumulative effect of all this is that we have been deprived of the stand of the respondent/State regarding the approval of the resolution.

Learned counsel for the respondents, at this stage, would interject to state that the resolution was never approved by the State. Be that as it may, we have been deprived of the reasons of the same as no official stand has been brought to the notice of the Court by filing adequate response. We also deprecate the conduct of the official BDPO in not coming present in the Court. Assuming that he was present on some occasions, it was incumbent upon him to have ensured that the official stand found its manifestation in the reply which could have been filed or the State counsel instructed appropriately.

The private respondents who have filed the Writ Petition bearing No. 20769-2006 evidently are opposed to the exchange on the

thereunder has been violated.

The petitioners in turn have placed on record Annexures P4 and P6. Annexure P4 is a letter from the BDPO to the District Development and Panchayat Officer apprising them of the factual aspect of the utilization of the petitioners' land and the resolution of the Gram Panchayat with a condition that exchange is in public interest and the Collector rate of both the lands is Rs.2.25 lacs per acre. For the purposes of references we may extract the relevant portion of the letter dated 29.09.2005:-

“ The undersigned had visited the spot. The exchange is in public interest. The Collector rate of both the lands is Rs.2.25 lacs per acre. In effecting this exchange none of the villagers or the Panchayat members will personally gain anything. As such the approval be granted for the above mentioned exchange.

*Sd/-
Block Development & Panchayat Officer
Andana at Moonak ”*

The Deputy Commissioner, Sangrur in his communication dated 06.11.2006 opined that the market value of both the lands be fixed Rs.6 lacs per acre to specify this to be a condition for the parties when they approach the Director for exchange in accordance with law. The Gram Panchayat in turn passed another resolution dated 14.05.2007 that the land which was proposed to be given to the petitioners, even though awaiting approval, be not taken back till the final decision of the matter before this Court.

As a consequence thereof the petitioners continue to be in

resolutions and the attempted approval.

The stand of the private respondent no.5 is that the BDPO has rejected the exchange resolution but there is no order on record in either of the petitions.

We also notice that Annexures P4 and P6 appended to CWP-7355-2007 are uncontroverted as they form part of record of CWP-20769-2006 as well.

A perusal of Rule 5 of The Punjab Village Common Lands Regulation Rules, 1955 would reveal that if in the opinion of the Panchayat it is necessary to exchange some land for the benefit of the inhabitants of the village, they may with the prior approval of the Collector transfer any land in Shamlat Deh by exchange with land of an equivalent value.

Evidently the strict language of the law would require a prior approval but in the given case with the persistence of the Gram Panchayat, 6 kanals of the land of the petitioners stood utilized and that too for the benefit of the entire village. Even though seemingly it might be to the detriment of the petitioners as they bifurcated their land. A perusal of Rule 5 would further indicate that where the land is required in connection with the Integrated Rural Development Programme sponsored by the Government, the Panchayat may with the approval of the Collector transfer any land in shamlat deh by exchange with the land of an equivalent value.

There is, thus, no doubt that the land of the Gram Panchayat can be exchanged provided it is of equivalent value and subject of course to the condition that prior approval of the competent authority is required.

Since there is no doubt about the factum of the petitioners possession on Gram Panchayat land pursuant to the resolution as also is the

fact that approval has not been granted, there is nothing which prevents the State from granting a *post facto* approval to the aforesaid exchange particularly when the State itself utilized the land of the petitioners for construction of a “minor”.

The facts have offered a piquant situation where the land of the petitioners stand utilized by the Government for constructing a minor without compensating them and similarly they have suffered at the hands of the Gram Panchayat, even though, they had willfully offered their land for the benefit of the inhabitants of the village.

There can obviously be two solutions, one that petitioners are adequately compensated by the State for utilizing their land and the second that the Gram Panchayat which has given the land to the petitioners in exchange of an equivalent value, through the resolution, be cemented by an approval in accordance with law.

After due consideration, we are further of the opinion that since the petitioners continue to be in possession of six kanals of Gram Panchayat land after having offered their land for utilization for the benefit of the village, the respondent no.1 be mandated to grant a *post facto* approval to the exchange within a period of two weeks' from the date of receipt of certified copy of the order.

It may also be noticed that private respondents, who are also the writ petitioners in CWP-20769-2006 have not come present, therefore, the Civil Writ Petition No. 20769-2006 is dismissed for want of prosecution.

Learned counsel for the petitioners submit that the Contempt Petition No.496-2010 has been rendered infructuous and the same may be disposed of as such.

Ordered accordingly.

(Mahesh Grover)
Judge

August 29, 2016
mamta

(Shekher Dhawan)
Judge

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