

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 10889 of 2016 (O&M)

Date of decision: 21.3.2017

Gurmail Singh and others

.. Petitioners

vs

State of Punjab and others

.. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present: Mr. Parvinder Singh, Advocate, for the petitioners.
Mr. P. S. Bajwa, Additional Advocate General, Punjab.
Mr. Harminder Singh, Advocate, for respondent no. 6.
Mr. G. S. Nagra, Advocate, for respondent no.7.
Mr. Ramneek Vasudeva, Advocate, for respondent no.8.

Rajesh Bindal, J.

The petitioners, who are residents of village Kurrari, Tehsil and District S.A.S. Nagar (Mohali) have filed the present writ petition with a grievance that no action is being taken despite repeated representations against respondent no.8- Lions Club Chandigarh Prosperity Charitable Trust, who is raising illegal construction on the land earmarked for cremation ground.

Learned counsel for the petitioners submitted that the land bearing khasra no. 1967/186, measuring 3 bighas 3 biswas, was earmarked for cremation ground, however, the same has been illegally given by respondent no.6- Gram Panchayat to respondent no.8, without following the due process of law. In fact, this was done in connivance with the Sarpanch – respondent no. 7.

On the other hand, learned counsel for the respondents

submitted that the land has not been allotted to respondent no.8, rather it has merely been given for use as a hospital for the welfare of the residents of the village and other nearby areas. The cremation ground was earlier existing in khasra no. 186, however, the same was shifted from there to khasra no. 171, as the abadi of the village has extended upto khasra no.186. In fact, new cremation ground has already been constructed.

It was further argued that Rule 13 of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short, 'the Rules'), will not be applicable in the case in hand as the land has not been allotted to respondent no.8 by way of gift. It has merely been permitted to be used for the purpose of running a charitable hospital in terms of Rule 3 of the Rules. It is for one of the purpose as envisaged in Rule 3(2)(xix) of the Rules. For the purpose, approval of the Panchayat Samiti was taken. A trust-deed was got registered, which clearly means that respondent no.8 is a recognized institution. The trust has been formed for the purpose of running the charitable hospital in the village. Allotment was made in pursuance to application filed by respondent no.8 to the Gram Panchayat as ultimately it is for the benefit of the inhabitants of the village. Government hospital is located at quite a distance. No exception should be taken by the petitioners as they are also of the same village and availing benefit of medical services being provided.

Heard learned counsel for the parties and perused the paper book.

Brief facts, as have come on record, are that on an application filed on 12.3.2015 by respondent no.8 to the Gram Panchayat of village Kurrari, Tehsil and District Mohali, for allotment of land for construction of

a hospital for the inhabitants, the Gram Panchayat passed a resolution on 27.8.2015, after respondent no.8 had undertaken that they will give free treatment to the patients from the village and the surrounding villages. The hospital shall be run on the basis of 'no profit no loss'. Thereafter, permission was sought from the Panchayat Samiti, which was granted vide letter dated 24.9.2015 and a trust-deed was executed on 27.9.2013, which has been signed by both the parties including the Sarpanch and other persons as its members. Some charitable activity is being carried out as is sought to be claimed.

There is no formal letter of allotment for right to use the land issued by the Gram Panchayat to claim that the land was either allotted or gifted to respondent no.8. It is not even the stand of the petitioners that the land has outrightly been gifted, however, the correspondence suggests that it has been given for use as a hospital. Rule 3 of the Rules deals with such a situation. It provides that the Panchayat shall prepare a land utilization plan of the land in *shamlat deh* vested in it. Rule 3(2) of the Rules provides the purpose for which the *shamlat deh* can be utilised and in terms of Rule 3(3) of the Rules, subject to approval of the Panchayat Samiti, a Panchayat may unite with any other body or bodies being a Gram Panchayat, local authority or an institution or branch of institution established for the development of Panchayat and recognised by Government in taking up any of the purpose specified in sub-rule (2) thereof.

In the case in hand, the Gram Panchayat passed the resolution, sent the same for approval of Panchayat Samiti and the same was approved. While granting approval, it was the duty of the Panchayat Samiti to have ensured that due process of law has been followed. However, it has failed to

discharge that burden. Mere approval of the resolution has been granted. Hence, the allotment of land for use as hospital to respondent no.8 cannot be legally sustained. Ordered accordingly.

As far as the contention raised by learned counsel for the petitioners that the land in question falling in khasra no.186 is a cremation ground, is misconceived, for the reason that it has come on record that the abadi of the village has extended upto khasra no. 186, therefore, the cremation ground was shifted to khasra no. 171 with the approval of the authorities.

For the reasons mentioned above, we allow the writ petition. Set aside the approval granted for allotment of land to respondent no.8 for use as a charitable hospital. The matter may be re-considered in terms of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and the Punjab Village Common Lands (Regulation) Rules, 1964. However, considering the fact that respondent no.8 is carrying out charitable activity to provide medical services to the residents of the village in question and the neighbouring villages free of charge, it may continue to provide the same, however, the right to continue will be subject to final decision taken by the authorities after following due process of law.

(Rajesh Bindal)
 Judge

21.3.2017
 vs

(Harinder Singh Sidhu)
 Judge

Whether speaking/ reasoned
 Whether Reportable

Yes/No
 Yes/No