

CWP No.16549 OF 2016(O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP No.16549 OF 2016(O&M)

Date of Decision: 26.10.2018

Gram Panchayat

.....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU**

Present Mr.Narender Pal Bhardwaj, Advocate for the petitioner.
Mr. Ankur Mittal, Addl. AG, Haryana.
Mr. Manish Saini, Advocate for
Mr. R.K.Saini, Advocate for respondent no.6.
Mr.R.N.Lohan, Advocate for respondents no.7 and 8.

MAHABIR SINGH SINDHU, J

The present petition has been filed for issuance of a writ in the nature of certiorari for quashing of the impugned Award dated 23.08.2011 (P-3) passed by Permanent Lok Adalat, Ambala, whereby *Shamilat Deh* measuring 6 marlas land has been ordered to be exchanged with the land of the private person i.e respondent no.6 Bahadur Singh.

The dispute is regarding the exchange of *Shamilat Deh* measuring 6 marlas of land comprised in khasra no.90(0-19), with the land of respondent no.6 measuring 6 marlas comprised in khasra no.26//16/2/2(5-5), 17/1(1-7) situated within the revenue estate of village Garnala, bearing H.B No. 44, Tehsil and District Ambala.

Brief facts are that an application under Section 7 of the Punjab Village Common Lands (Regulation), Act, 1961 (for short 'Act of 1961') was filed by the Gram Panchayat against respondent no.6 as well as two

other inhabitants of the village namely i). Charan Dass and ii). Bhana Ram for their ejection being in unauthorized possession of the *Shamilat Deh* comprised in khewat no.290(min), Khatoni no.326(min), khasra no.90 measuring 19 marlas as per Jamabandhi for the year 2006-07. Charan Dass and Bhana Ram denied their unauthorized possession whereas Bhadur Singh, respondent no.6, submitted in his reply that land in dispute is the Abadi Deh and he is in possession of the same for the last 15 years after constructing his house as well as shop and thus the Gram Panchayat has no concern with the same. He further submitted that in view of the Haryana Government notification, the Deputy Commissioner is authorized to accord approval for sale of Panchayat land and he is ready and willing to pay the cost of the land in dispute.

During the pendency of the petition under Section 7 of the Act, an application dated 10.05.2016 was submitted by the Gram Panchayat for demarcation of the land in dispute and Tehsildar Ambala was deputed for this purpose who submitted his report dated 01.06.2016 and according to which, respondent no.6 has been found in unauthorized possession of 6 marlas of *Shamilat Deh* land. Even the Sarpanch of Gram Panchayat got recorded his statement before Asstt. Collector Ist Grade on 22.11.2016 to the effect that respondent no.6 has fraudulently and unlawfully obtained the Award from the Permanent Lok Adalat on 23.08.2011. As per report of Tehsildar, Charan Dass and respondent no.6 were found in unauthorized possession of 9 marlas and 6 marlas of land respectively whereas Bhana Ram has not been found in any unauthorized possession.

In view of the above factual background, the award dated 23.08.2011, passed by Permanent Lok Adalat is the subject matter of

challenge in the present writ petition.

It is argued by learned counsel for the petitioner that as per the provisions of Section 13 of the Act, the jurisdiction of the Civil Court is barred. It is further argued that land in dispute is the *Shamilat Deh* and in view of the provisions of Rule 5 of Punjab Village Common Lands (Regulations) Rules, 1964 (for short 'Rules of 1964'), prior approval of the State Government is necessary for exchange of *Shamilat Deh* but in the present case no such approval has been obtained and as such the impugned award passed by Permanent Lok Adalat is not legally sustainable.

Further argued that respondent no.6 in collusion with the then Sarpanch Gurdev Singh and the Panch Harvinder Kaur, respondents no.7 & 8 succeeded in passing the resolution for exchange of the land in dispute and consequent impugned Award by Permanent Lok Adalat.

On the other hand, learned counsel for respondent no.6 to 8 have opposed the prayer of the Gram Panchayat and submitted that respondent no.6 has given his valuable land in exchange of the *Shamilat Deh* and as such no loss is caused to the Gram Panchayat and the respondent no.6 has already constructed his house as well as shop on land in dispute, therefore, there is no justification to entertain the present writ petition against the impugned award dated 23.08.2011.

Heard both sides and perused the paper book.

Before proceeding further with the matter, it is necessary to extract the relevant part of Rule 5 of the Rules of 1964 which is as under:-

“5. Exchange of land. Sections 5 and 15(2)(f)

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 State Government, transfer any land in

shamilat deh by exchange with the land of an equivalent value to be determined by the Deputy Commissioner in whose jurisdiction the land is situated:

Provided that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned:

Provided xxxxxxxxx”

Perusal of Rule 5, clearly reveals that prior approval of State Government is necessary for exchange of any *Shamilat Deh* but in the present case no such approval has been obtained before passing the impugned Award dated 23.08.2011.

There is no dispute that from 2005 to 2015, respondent no.7 and his wife Balwant Kaur remained as Sarpanch of Gram Panchayat and respondent no.6 is the son of respondent no.7 and he is in possession of the 6 marlas of land which is vested with the Gram Panchayat. It is also not in dispute that when resolution for exchange of land was passed by the Gram Panchayat, the father of respondent no.6, was the Sarpanch.

It is also necessary to mention here that Asstt. Collector Ist Grade has already accepted the petition filed under section 7 of the Act against Charan Dass, who was found in unauthorized possession of 9 marlas of *Shamilat Deh* as per the demarcation report referred above and he was directed to hand over the possession of the same as well as penalty @ ₹ 10,000/- per hectare per annum (R-1) but in view of the pendency of the present writ petition, the petition under Section 7 of the Act against respondent no.6 was adjourned *sine die* till the decision of the present writ petition.

In view of the above, it is apparently clear that respondent no.6

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in connivance with respondents no.7 and 8 got passed the resolution and on the basis thereof, obtained the impugned award from Permanent Lok Adalat which is the infraction of the Rule 5 of the Rules of 1964 and as such not legally sustainable. The prior approval of the State Government in terms of Rule 5 is mandatory for exchange of *Shamilat Deh* and in the absence thereof, the award passed by Permanent Lok Adalat is nonest in the eyes of law. Even there is no determination by the Deputy Commissioner as per Rule 5 of the Rules of 1964 that land which is sought to be exchanged is of equal value.

Consequently, the writ petition is allowed and the impugned Award dated 23.08.2011, passed by Permanent Lok Adalat, Ambala is set aside. As a result thereof, Asstt. Collector Ist Grade is directed to proceed further with the petition pending under Section 7 of the Act against respondent no.6 as expeditiously as possible but strictly according to law and without being influenced by the observations made in the present writ petition.

(RAJESH BINDAL)
JUDGE

(MAHABIR SINGH SINDHU)
JUDGE

26.10.2018
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No