

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

CWP No. 28026 of 2018 (O&M)

Date of Decision: 18.12.2018

DAVINDER SINGH

..... *Petitioner*

V/s.

**DIRECTOR, RURAL DEVELOPMENT AND PANCHAYATS
(EXERCISING THE POWERS OF COMMISSIONER), VIKAS
BHAWAN, SECTOR 62, MOHALI AND OTHERS**

....*Respondents*

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN.
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL.

Present: Mr. Aditya Dassaur, Advocate,
for the petitioner.

Mr. V.K. Sandhir, Advocate,
for the respondent No. 3.

Mr. Suvir Sheokand, Addl. A.G., Punjab.

RAKESH KUMAR JAIN, J.

The petitioner has prayed for the issuance of a writ in the nature of *Certiorari* for quashing of the order dated 09.03.2017 passed by the District Development and Panchayats Officer-cum-Collector, Panchayat Land, S.B.S. Nagar by which a petition filed under Section 7 of the Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Punjab) (for short 'the Act') by the Gram Panchayat of Village Malikpur, Tehsil Nawanshahr, District S.B.S. Nagar for seeking eviction of the petitioner from the land measuring 16 *marlas* falling in Khewat No. 187/189, Khatoni No. 257, Khasra No. 74 and Khasra No. 96 and 73 being part of Village pond and toilets (*Shamlat deh*) has been allowed and the order dated 24.08.2018 by which the statutory appeal filed by the petitioner has been dismissed by the

Director, Rural Development and Panchayats, Punjab (exercising the powers of the Commissioner).

In brief, the case set up by the petitioner is that a resolution was passed by the Gram Panchayat/respondent No. 3 on 21.12.2011 in which it was resolved that the land falling in Khasra No. 73 (2 Kanal) of village pond and Khasra No. 74 (01 Kanal) of the toilets be exchanged with the petitioner and Jarnail Singh Son of Khazan singh of the land falling in Khasra No. 13//16 to the extent of one kanal out of toilets area falling in Khasra no. 74 and 9 marla out of Khasra no. 73 of the land of pond.

It was also resolved that the case be prepared and sent to the authorities for approval. It is alleged that thereafter another resolution was passed on 24.07.2014 by the Gram Panchayat to the same effect and a copy of the resolution was sent to the DDPO for approval. It is further alleged that on 01.08.2012, BDPO, Nawanshahr wrote a letter to the DDPO, SBS Nagar for necessary approval of the aforesaid resolutions. However, it is an admitted fact that no approval was granted by the Government before any exchange could have taken place between the petitioner and respondent No. 3.

Thereafter, respondent No. 3 filed a petition under Section 7 of the Act for seeking eviction of the petitioner from the land in question on the ground that the same is being occupied by him unauthorizedly (without approval). The petitioner contested the said petition by filing a written statement without raising question of title and ultimately vide impugned order dated 09.03.2017, the petition was allowed by the Collector, holding the petitioner is in unauthorized possession over the land of *Shamlat Deh* (*Gair mumkin pond and gair mumkin toilets*). It was held that the Panchayat

has no jurisdiction to effect exchange without prior approval of the Government.

The appeal filed by the petitioner against the impugned order dated 09.03.2017 was further dismissed by the Commissioner vide impugned order dated 24.08.2018. Aggrieved against the aforesaid impugned orders passed by the Collector and Commissioner respectively, present petition has been filed in which the petitioner has alleged that he had constructed a house over the land in question after the exchange and is not in authorized possession as resolutions had already been passed by the Gram Panchayat for the exchange. He has, thus, prayed that even if the approval of the Government was not obtained prior to the exchange as it is required under Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 (for short 'the Rules'), the same can be granted *ex-post facto* and in this regard he has relied upon a decision of this Court rendered in the case of **Mishra Singh and another** Vs. **State of Punjab and Others**; **2016 SCC Online P&H 8393**. It is also submitted that the petitioner is in possession because of the exchange, he cannot be termed to be in the unauthorized possession even if the exchange has not been approved by the Government.

On the other hand, learned counsel for the respondents have submitted that the Panchayat has no jurisdiction to effect the exchange until and unless there is a prior approval of the Government. In this regard, reference has been made to Rule 5 of the Rules. It is further submitted that the Panchayat cannot use the land of ponds and toilets and has further referred to a decision of the Hon'ble Supreme Court in the case of **Jagpal Singh and Others** Vs. **State of Punjab and Others**; **2011 AIR (SC) 1123**.

We have heard learned counsel for the parties and perused the record with their able assistance.

The issue involved in this case is as to whether the land in dispute had already been transferred by the Gram Panchayat in favour of the petitioner by way of exchange only on the basis of the resolution passed by it or the exchange of the land of *Shamlat Deh* can only be effected with the prior approval of the Government?

It is not a case in which the petitioner had been in possession of the land in question before coming into force of the Act because in that eventuality, Rule 4 of the Rules would have come to his rescue because it is provided therein that if a person has built a house or erected any other structure on any land on the *Shamlat deh*, before the coming into force of the Act, the Panchayat may allow such person to retain possession either by sale or by lease. Rule 4 of the Rules is reproduced as under for the ready reference:-

“4. **Terms for saving existing possession** (Sections 5 an 15(2) if)] —

(1) *Where a person has built a house or erected any other structure on any land 1 the Shamlat deh, before the coming into force of the Act, the Panchayat may allow such person to retain possession of the site by-*

(a) *selling it to him at the market value prevailing at the time of the sale to be determined by the Collector or the officer appointed by him for the purpose; provided that if the person concerned is unable to pay the entire amount immediately, it shall be recovered in such installments to be spread over a period not exceeding five years as may be determined by the Panchayat; or*

(b) *leasing out the site to him at an annual rent to be determined by the Collector or the officer appointed by him for the purpose at the rates prevailing at that time.*

(2) Subject to sub-rule (1), the terms and conditions for sale or lease of land in shamlat deh, shall be determined by the Panchayat.”

However, the present case is related to exchange of land for which Rule 5 is provided under the Rules in terms of Section 5 read with Section 15 (f) of the Act which says that the land vested or deemed to have been vested in a Panchayat under the Act, shall be utilized or, disposed of by the Panchayat for the benefit of the inhabitants of the village concern in the manner prescribed and for the purpose of disposing of for the benefit of inhabitants by way of exchange, Rule 5 provides as under: -

5. Exchange of land / 5 and (5) (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 Government transfer any land in shamlat deh by exchange with the land of an equivalent value.*

Section 2 (d) of the Act defines the “Inhabitant of a village” means a person, whether a proprietor, or non proprietor, who ordinarily resides in the village, provided that temporary absence or absence in relation to employment elsewhere shall not affect his residence in the village.

Section 2 (g) of the Act deals with the land described as “*Shamlat Deh*” and Section 2 (i) of the Act defines “State Government” which means the Government of the State of Punjab.

Rule 5 of the Rules categorically provided that Panchayat has to form an opinion that it would be in the benefit of the inhabitants of the village then it may transfer any land falling in *Shamlat Deh* by way of exchange with the land of an equivalent value but with the **prior approval** of the Government.

The words “**prior approval**” has a great significance to create a check on the exercise of the powers of the Panchayat in disposing of the land vested in the *Shamlat deh*. Since, it has been specifically provided “it is necessary so to do for the benefit of the inhabitants of the village” it is for the the State Government to look into the resolution of the Gram Panchayat to find out as to whether exchange of the land of the Gram Panchayat/*Shamlat deh* would be necessary for the benefit of the inhabitants of the village or the Gram Panchayat has passed the resolution just in order to oblige someone in the village by giving him land of *Shamlat Deh* by way of exchange. Thus, prior approval of the Government is *sine qua non* for the purpose of effecting exchange because in case, prior approval of the Government is not obtained and the Panchayats are allowed to function on their own for the purpose of exchanging the land in the name of convenience, the situation would become chaotic in the villages where land of the pond and toilets like in the present case would be used for some other purposes which has not been approved by the Hon’ble Supreme Court in the case **Jagpal Singh and others** (Supra). For the purpose of prior approval, the Panchayat is required to write to the State Government about the offer of exchange in which it is incumbent upon it to refer to the so called benefit of the inhabitants of the village and also that the Panchayat is not going to suffer any kind of loss. Thereafter, the State Government shall look into the proposal of the Gram Panchayat, would grant or refuse the approval. In case approval is granted then the Gram Pachayat shall formally pass the resolution and on the basis of the same, the matter has to be brought to the notice of the revenue authorities for the purpose of making the entry in the record of rights by way of mutation etc. For example, an inhabitant of the village has the land, though of the same value but

located at the insignificant location whereas the land of the Shamlat Deh, of the same value, has a potential location and is being used for the purpose of common purposes then any person having exerting power can persuade the Panchayat for the purpose of exchange of land which is granted by the Gram Panchayat without prior approval of the Government.

There is another aspect of the matter that when a petition under Section 7 of the Act was filed against the unauthorized occupant of the Panchayat land, the person in possession may raise the question of right, title or interest and if any such question is raised and a prima facie case is made out then the Collector shall direct the person who has raised such question to submit his claim under Section 11 of the Act and till the question is decided, his application filed under Section 7 of the Act remains pending. But if person in possession who had raised the question of right, title and interest failed to submit his claim under Section 11 of the Act within the time prescribed then the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put Panchayat in possession of the land or immovable property over the *Shamlat Deh*.

In the present case the respondents while filing reply to the petition (Annexure P-8) shows that the petitioner has not raised any question of right, title or interest in the land in dispute and had asked the Court of the Collector to stakes away from deciding a petition filed under Section 7 till such question is decided by the competent court in terms of Section 11 of the Act. At no point of time, the petitioner had ever filed any petition for seeking writ in the nature of mandamus impleading the State Government as a party to decide the issue with regard to exchange of land for which the resolutions were being passed by the Panchayat. The petitioner has, thus, not become the

owner of the land in question and was continued to remain in an unauthorized possession on account of the fact that the resolution of exchange was not passed by the Panchayat with the prior approval of the Government which is in clear violation of the provisions of law, much less, Rule 5 of the Rules which cannot be ignored only because of the reason that the petitioner has raised construction of a house over the land in question which vested in the village ponds and toilets (Shamlat deh).

With these observations, we hardly find any ground to interfere in this petition for the purpose of quashing of the impugned orders and as such the writ petition is dismissed though without any order as to costs.

[RAKESH KUMAR JAIN]
JUDGE

December 18, 2018
Ess Kay

[ANUPINDER SINGH GREWAL]
JUDGE

Whether speaking / reasoned :	Yes	/	No
Whether Reportable :	Yes	/	No