

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

CWP 2032 of 2018 (O&M)

Date of decision:03.04.2019

Belivers Church,Dhumaspur,Gurgaon

.....Petitioner

v.

Divisional Commissioner, Gurugram Division and others

.....Respondents

Coram: **Hon'ble Mr.Justice Jaswant Singh**
 Hon'ble Mr.Justice Arun Kumar Tyagi

Present:- Mr.Ashok Aggarwal,Senior Advocate assisted by
 Mr.Alok Jain,Advocate and
 Mr.Gurminder Singh,Senior Advocate assisted by
 Ms.Harpriya Khaneka,Advocate for the petitioner

Mr.Lokesh Sinhal,Addl.AG Haryana for official
respondents 1 and 3

Ms.Neha Sonawane,Advocate for
Ms.Amrita Garg,Advocate for respondent no.2/Zila Parishad,
Gurgaon

None for private respondent no.4.

Jaswant Singh,J.

1. **CM No.2066/2018** has been moved on 8.2.2019 under Order 39 Rules 1 and 2 CPC by the applicant/petitioner for restraining the respondent authorities from dispossessing the peaceful possession of the applicant/petitioner or altering its nature in any manner during the pendency of the petition.

CM No.5529/2018 has been moved by the State Archeology and Museum Department,Haryana under Order 31 Rule 4 CPC for vacation of interim injunction order dated 12.1.2018.

CM 8492/2018 has been moved by the petitioner for placing on

record replication to the written statement of respondent no.2-Zila Parishad,Gurugaon. The said CM is allowed. Replication taken on record.

CM 9801/2018 has been moved by the petitioner for initiating appropriate proceedings under Section 340 of the Code of Criminal Procedure,1973 against Dr.Parveen Kumar,Director General, Archeology and Museum Department,Haryana, Chandigarh for committing the offences punishable under Section 182,191,193,196,209 IPC

2. Petitioner-Believers Church,Dhumaspur,Gurgaon by way of present writ petition under Articles 226/227 of the Constitution is seeking quashing of the impugned order dated **31.10.2017 (P-5)** passed by Divisional Commissioner,Gurugram-respondent no.1 whereby earlier order dated **29.3.2016 (P-3)** passed under Section 42 of East Punjab Holdings (Consolidation and Prevention of Fragmentation)Act,1948 (for short the 1948 Act) permitting exchange of land was reviewed by him at the behest of respondent no.2-Zila Parishad,Gurugram without issuing any notice to the petitioner and allegedly without possessing any power of Review under the 1948 Act. Further prayer was to stay the operation of impugned **order P-5.**

3. Briefly noticed the facts of the instant petition are that petitioner is running an Eastern Tradition Church and Kindergarten School (upto 4th Class) under the name and style of “St. Johannes School” having purchased land measuring 15.5. acres in Village Dhumshpur and 14.5 acres in Village Bhondsi from M/s Proagro Seed Company Ltd., after obtaining CLU from Government of Haryana. It is averred that a defunct *Baoli* (source of water) in dilapidated/defunct condition existed in khasra no.246 in the middle of the land owned by the petitioner which was not being used

by General Public. The said defunct Baoli, surrounded by weeds etc. became a breeding ground for reptiles and animals thereby causing hindrance and obstruction in the smooth running of the School and posing a danger to children.

4. Accordingly, petitioner with a view to exchange equivalent land owned by it in lieu of said defunct Baoli, comprised in khasra no.246, moved an application dated 25.1.2016 under Section 42 of the 1948 Act before respondent no.1 wherein State was impleaded as a party respondent. After summoning records, Respondent no.1-Commissioner,Gurugam passed order dated **29.3.2016 (P-3)** in purported exercise of Section 42 of 1948 Act,whereby the applicant/petitioner was permitted to exchange 2 kanals of land owned by District Board/Haryana State comprised in Khewat No.1653 Killa no.246 situated in Dhumaspur/Badshahpur and 1 kanal 6 marlas of land forming a *sare-aam-rasta* owned by Municipal Corporation,Gurgaon comprised in khewat No.1653 Killa No.5 i.e. total land measuring 3K6M with 3K6M of land owned by the petitioner in Khewat No.440,Killa No.165/11/2. The said order was implemented in revenue records with the sanction of mutation no.9782 dated 21.4.2016 by Assistant Collector,Second Grade, Gurugram vide **Annexure P-4**.

5. Thereafter, one Ashok Kumar,claiming to be a resident of Village Badshahpur challenged the said order dated **29.3.2016 (P-3)** and mutation **9782 (P-4)** by filing CWP 22652/2016 before this Court. During the pendency of the said petition, respondent no.2-Zila Parishad preferred application dated 25.1.2017 seeking review of the order dated 29.3.2016 (**P-3**) and the same was allowed by respondent no.1 vide impugned order dated 31.10.2017 (**P-5**). Consequent upon passing of said order **P-5**, CWP

22652/2016 filed by aforesaid Ashok Kumar was dismissed as infructuous by this Court vide order dated 11.12.2017(**P-6**). leaving it open for the parties to agitate the related issues.

6. It is in these circumstances that petitioner has filed the instant petition challenging impugned order dated 31.10.2017 (**P-5**).

7. The stand of the petitioner before this Court was that it was ready and willing to compensate the Municipal Corporation/District Board and State Authority by giving more land in case it is found that the value of said land under exchange is inadequate as compared to the one which the petitioner society had received.

8. It transpires that during the course of hearing of the present petition the Archeology Department of Haryana by virtue of a separate application got itself impleaded as a party respondent by contending that the disputed land described as *Baoli* (source of water), in fact is of historical importance and had proceeded to issue a notice of demolition dated 16.2.2018, which the petitioner had seriously contested by asserting that the site in dispute was neither an ancient monument declared as a protected monument by the Central Government under the Ancient Monuments Preservation Act,1904 nor an Ancient Monument declared as such under Section 2(a) or the area declared to be an 'Archaeological Site and Remains' under Section 2(d) declared as Protected Monument/Protected Area under the provisions of Ancient Monuments and Archaeological Sites and Remains Act,1958 nor declared as an Ancient and Historical Monument under the Punjab Ancient and Historic Monuments and Archaeological Remains and Sites Act,1964. It was claimed that the land in dispute was in a total defunct/dilapidated and utter neglected condition and had become a

breeding ground for reptiles and animals being surrounded by weeds, shrubs and plants causing a serious danger to the school children.

9. After issuance of notice of motion, on 12.2.2018 the following order was passed by this Court:-

“ Learned counsel for the applicant submitted that portion of the land bearing khasra No.246 measuring 2 kanals was exchanged by the applicant with the District Board in terms of the order dated 29.3.2016 passed by the Commissioner, as the aforesaid portion of land falls within the land owned by the applicant. As against that, the applicant had given in exchange 3 kanals 6 marlas of land forming part of Khasra No.165//11/2 and 11/3 on one side of its land. The applicant is still ready and willing to compensate the Corporation/State further by giving more land, in case it is found that value of the land given in exchange to the applicant is more than the value of the land, which has been given to the Corporation/State. It is for the reason that on the total about 29 acres of land, there exists Church, girls school and hostel etc.

After issuance of notice of motion on 30.1.2018, the authorities have started demolition without even waiting for the next date of hearing, which is 16.2.2018.

Notice in the application to the non-applicants for the date already fixed in the main petition.

Ms. Tanisha Peshwaria, Deputy Advocate General, Haryana, who is present in Court, accepts notice on behalf of respondents No.1 and 3.

On 30.1.2018, though notice of motion was issued for 16.2.2018 and record of the case was also required to be produced in court, but the date being short, dasti process was not directed. As service on behalf of respondents No.1 and 3 has been effected in court today, let respondent No.2 be served by dasti process only for the next date of hearing.

In the meantime, status quo regarding the property in question shall be maintained.”

10. Keeping in view holistic resolution of the rival factual contentions, all the contesting parties i.e. Zila Parishad, Municipal Corporation, Gurgaon and Archaeology Department, Haryana agreed before

this Court at the time for hearing on 18.7.2018 for a fresh decision by the Commissioner by passing a speaking order after granting hearing to them. The Court further directed the Commissioner to pass a speaking order and apprise the Court about the action against the defaulting parties. For ready reference the operative portion of the interim order dated 18.7.2018 reads as under:-

“ All the contesting parties before us have readily agreed to a fresh decision by the Commissioner in this regard provided a holistic approach is adopted by him qua all the concerns raised by the disputants.

In view of the above, we direct the Commissioner to hold the proceedings afresh and take into consideration conflicting interests of the parties before us i.e. petitioner, Zila Parishad, Municipal Corporation, Gurugram and the Archaeological Department of Haryana and pass a speaking order after hearing them. We do not intend to dispose of the instant petition and choose to keep it pending to await the report of the Commissioner in order to lend conclusivity and avoid unnecessary procedures.

Let all the aforesaid parties appear before the Commissioner on 9.8.2018. The matter shall be decided positively by the Commissioner within a period of six weeks from the date of appearance. We make it clear that no untoward adjournment shall be granted to either of the parties and in case anyone of them tries to delay the matter, the Commissioner would be at liberty to submit a report to this Court in this regard upon which appropriate orders shall be passed against the defaulting party.

List again on 26.9.2018.

Till the date fixed, none of the parties shall alter the nature of the land.”

11. Thereafter on next date of hearing i.e. 5.3.2019 the following order was passed:-

“ At the time of hearing today, the State counsel points out that a fresh order dated 23.8.2018 stands passed by the Divisional Commissioner, Gurugram Division, in exercise of the powers under Section 42 of the Consolidation and Prevention Act, 1948, in

compliance of the directions passed by this Court on 18.7.2018.

Learned counsel for the State states that the learned Commissioner has now rightly observed that the *lis* involved in this case with regard to exchange of land owned by Zila Parishad is not covered under the scope of provisions of the Consolidation Act, 1948. Hence the initial order itself was *void ab initio* being without jurisdiction.

At this stage, counsel for the Zila Parishad points out that a fresh resolution has been passed by the Zila Parishad with regard to exchange of 02 kanals of land in khasra no. 246 recorded as *gair mumkin baoli* with some alternative land to be provided by the petitioner's society. He states that such a recourse is permissible in view of the provisions of the Section 144 of Haryana Panchayati Raj Act, 1994 read with Rule 21 Sub Rule 4 and 5 of the Haryana Panchayati Raj Rules, 1995. The proposal for an exchange would be considered by a Committee and report sent to the State Government for prior approval before the actual exchange is sanctioned.

In view of the aforesaid correct position disclosed before this Court for the first time, it is evident that no further adjudication is required in the present writ petition. However, at this stage, learned senior counsel for the petitioner has pleaded for an accommodation for two weeks' only to seek necessary instructions from his client.

Adjourned to 3.4.2019.

To be taken up in the urgent list".

12. At the time of resumed hearing today, Mr. Lokesh Sinhal has produced a copy of the order dated 23.8.2018 passed by the Commissioner, Gurgaon, which is taken on record as Mark-A in terms of the directions passed by this Court on 18.7.2018. The claim of the Archeology Department, Haryana for seeking possession of the land in question has been rejected by holding that the site in question has not been notified under any enactment as a site of historical, religious and social importance. The claim of the petitioner for protecting the interest of small children studying in school has been upheld with liberty for seeking exchange under

the relevant statutory provisions with the competent authority. The Administration has been directed that the area comprising the passage leading to *Baoli* (source of water) should not become a thoroughfare.

13. The petitioner by way of CM 5172/2019 has placed on record minutes of meeting dated 27.2.2019 of Zila Parishad, Gurugram as well as undated report of 5 Members' Committee constituted by Zila Parishad, Gurugram as Annexures P-21 and P-22.

Application is allowed. The minutes of the meeting of Zila Parishad, Gurugram dated 27.2.2019 and report of 5 Members' Committee is taken on record as Annexures **P-21** and **P-22**. As per said report both sides i.e. Petitioner and Zila Parishad have mutually agreed to exchange the *Baoli* (source of water) with the land held by petitioner. The said report P-22 reads as under:-

“The above mentioned constituted committee, under Chairmanship of Shri Dharmender Khatana, Zila Parishad Ward No.2, after detailed discussion on the aforementioned issue with local residents, held a meeting on 8.3.2019 with Management of Believers Church. During the Meeting, Chairman Shri Dharmender Khatana, Zila Parishad Ward No.2, with unanimous approval of all the members of the Committee, offered a verbal proposal to Management of Believers Church that if Management of Believers Church agrees to offer 2000 Square Yards piece of land to Zila Parishad Gurugram in lieu of 1210 square yards land of *Bawdi* at Dhumaspur, then Committee may agree for transfer/exchange of 1210 square yards land accordingly.

That the management of Believers Church consented to the above mentioned proposal without any pre-condition and the land 1210 square yards land of Dhumaspur Bawdi bearing Khasra no.246 which is under the ownership of Zila Parishad is agreed to be transferred with 2000 square yards from land bearing Khasra No.165//11 (East-North) village Dhamaspur under the ownership of Management of Believers Church.

That the Committee recommends for transfer/exchange of

land between Zila Parishad Gurugram and Management of Believers Church as per above mentioned arrangement of terms and conditions.

Report is hereby presented to Chairman,Zila Parishad,Gurugram.

14. In the light of aforesaid development,learned counsel for the petitioner prays for permission to withdraw the petition with liberty to parties to take appropriate steps before Appropriate Authority to help materialize aforesaid mutually agreed stand between the parties in the interest of school children.

15. In view of the above, the present writ petition is dismissed as withdrawn with liberty as prayed for. The Appropriate Authority having jurisdiction to permit such exchange would do the needful within a period of six months from today.

Conceded possession of petitioner over the land in question would not be retrieved,if need be, except in due course of law.

The writ petition having been dismissed as withdrawn with liberty aforesaid, no orders are required to be passed in the applications noticed above.

(Jaswant Singh)
Judge

03.04.2019.
joshi

(Arun Kumar Tyagi)
Judge

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No