

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 9566 of 2021 (O&M)

Date of Decision: 07.06.2021

Labh Singh and Others

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Sanjeev Patiyal, Advocate
for the petitioners.

Mr. Pankaj Gupta, Additional Advocate General,
Punjab, for respondent No.1 to 6.

Mr. Munish Jolly, Advocate
for respondent No.7.

Anil Kshetarpal, J.

1. The petitioners herein are all the elected office bearers of Gram Panchayat Saini Majra. On 28.01.2021, the Director-cum-Secretary, Department of Village Development and Panchayat, Punjab, has suspended them from the respective offices of Sarpanch and Panches in exercise of powers under Section 20 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as “the 1994 Act”). The correctness whereof has been assailed in this writ petition.

2. In the considered view of this Court, the following questions arise for consideration:

I. Whether by inserting Section 42A in the East Punjab
Holdings (Consolidation and Prevention of

Fragmentation) Act, 1948 (hereinafter referred to as “the 1948 Act”), the proprietors of the village stand divested of the ownership of *"Jumla Mushtarka Malkan Wa Digar Haqdarani Arazi Hassab Rasad Rakba"* land.?

If the answer to question No.I is in negative, then the second question, which arises for consideration is-

II. Whether the proprietors are entitled to the amount of sale Consideration/compensation of *"Jumla Mushtarka Malkan Wa Digar Haqdarani Arazi Hassab Rasad Rakba"* land?

If the answer to question No. I is in negative and question No.II is in positive, then the question arises for consideration is-

III Whether the decision of the Gram Panchayat to distribute the amount of sale consideration amongst the proprietors of *"Jumla Mushtarka Malkan Wa Digar Haqdarani Arazi Hassab Rasad Rakba"* land is an act of mis-management of the property of the Gram Panchayat?

3. **Question No.1:-**

Rule 16 (ii) of The East Punjab Holdings (Consolidation and Prevention of Fragementation) Rules, 1949, provides that the proprietary rights in respect of the land reserved for common purposes of the village by imposing pro-rata cut on the land holding of the owners at the time of consolidation of holdings shall continue to vest in the proprietary body of the estate or estates concerned and it shall be entered in record of rights as

Jumla Malkan Wad Digar Haqdarani Arazi Hasab Rasad Raqba

(hereinafter for short 'Jumla Mustarka Malkan Land'). It would be appropriate to note that way back in the year 1965, a five Judges Bench of the Hon'ble Supreme Court in ***Ranjit Singh and Other v. State of Punjab and Others AIR 1965 SC 632***, expounded that the land so carved out by imposing a pro-rata cut under Section 18 read with Section 23A of 'the 1948 Act' for common use of the villagers would not result in divesting the ownership of the proprietors or proprietary body. The validity of Section 23-A of 'the 1948 Act' was upheld keeping in view the fact that the Punjab is an agrarian State and there is no divesting of the title. Subsequently, another five Judges Bench of the Supreme Court in ***Ajit Singh v. State of Punjab and Another AIR 1967 SC 856***, after examining the question with reference to Article 31A of the Constitution of India, again held that the proprietors would continue to be the owner of the property and there is no divesting of the title. The Supreme Court in ***Bhagat Singh and Others v. State of Punjab and Others AIR 1967 SC 927***, held that reservation of the land by imposing a pro-rata cut for the income of Gram Panchayat is not valid. Thereafter, once again the aforesaid question came to be considered by a Full Bench of this Court in ***Parkash Singh v. Joint Development Commissioner, Punjab 2013 SCCOnline Punjab and Haryana 26809***. While discussing ancillary issue of the nature and manner of vesting of *Jumla Mushtarka Malkan* in a Gram Panchayat vis-a-vis Proprietors, the bench noticed various types of common land. The bench also noticed that the common land of the village can be divided into three categories, namely *Shamlat Deh*, which existed prior to the consolidation of holdings and before enactment of the Punjab Village Common Lands (Regulation) Act, 1953, the

Pepsu Village Common Lands (Regulation) Act, 1954 and the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as “the 1961 Act”). The second type of land was covered by “*Shamlat -Taraf, Patti, Panna and Thola*” which vests in the Gram Panchayat, only if the land is used for common purposes of the village. It was also held that 'the 1961 Act', however, does not enact any provision declaring the land reserved as *Jumla Mushtarka Malkan* as “*Shamlat Deh*”. After noticing the difference between *Shamlat Deh, Abadi Deh*, private land in the individual / joint ownership, the land recorded as “*Shamlat- Taraf, Pattis or Thola*” and *Jumla Mushtarka Malkan* land in the revenue record, the bench declared that the ownership of the *Jumla Mushtarka Malkan* land does not vest in Gram Panchayat and the ownership thereof continues to vest in the proprietary body. In para 114, the Bench, after relying upon the judgments passed in *Ajit Singh (supra)*, *Bhagat Ram (supra)* and *Johri Mal v. Director Consolidation, AIR 1967 SC 1568*, held that the ownership of *Jumla Mushtarka Malkan* land does not vest in the Gram Panchayat. There is another judgment by a five Judges Bench of this Court in *Suraj Bhan and Others v. State of Haryana and Another 2017 (2) PLR 605*. The Bench, after examining the question in the context of vires of the **Haryana Municipal (Amendment) Act, 1999** (hereinafter referred to as “the 1999 Act”), held that the proprietorship of the *Jumla Mushtarka Malkan* Land continues to vest in the proprietary body.

4. However, learned State's counsel duly assisted by the counsel representing respondent No.7 has insisted that in view of Section 42A, inserted by the Punjab Act No. 6 of 2007 in the 1948 Act, the proprietary

body stands divested of the title of the *Jumla Mushtarka Malkan* Land. Hence, it becomes important to carefully examine the provision of Section 42A, which is extracted as under:-

42A. Prohibition to partition the land reserved for common purposes. - Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgment, decree, order or decision of any court, or any authority, or any officer, the land reserved for common purpose whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized for common purposes”.

On plain reading of the provision, it is apparent that the legislative intent behind providing embargo to partition the land reserved for common purpose is to debar the division of land till it is being used or capable of being used for common purposes. 'The 1948 Act' is an Act to provide for the consolidation of the agriculture holdings and to prevent fragmentation thereof. The ancillary purpose of 'the 1948 Act' is to assign or reserve fresh parcels of land for common purposes of the village, if the land for common purpose is found insufficient. This ACT does not provide for acquisition or divesting or confiscation or seizure or impounding or appropriation or annexation of the proprietary rights. In other words 'the 1948 Act' is not a expropriatory legislation. In that context, if the provisions of Section 42A are literally examined, it becomes apparent that the legislative intent was not to divest the proprietary body of its title and vest the same in gram panchayat.

If the argument of State's counsel is accepted, the provision most likely

would be rendered unconstitutional in view of the provisions of Article 31A of the Constitution of India, which provides that no one can be deprived of the property if it is within the ceiling limit without payment of the compensation. No doubt, now the right to property is not a fundamental right, however, still continues to be a constitutional right in view of Article 300A of the Constitution. In view of the foregoing discussion, in the considered opinion of this Bench, the conclusion is inescapable. Section 42A does not take away the title of the proprietor. Hence, the answer to Question No.1 is in negative. It is declared that Section 42A does not take away the title of the proprietary body in the land reserved for common purposes at the time of consolidation under Sections 18 & 23A of 'the 1948 Act'. However, the control and management of such land would continue to vest in Gram Panchayat or the State Government till it is used or capable of being used for common purposes of the village.

5. Question No. II:-

Once it is established that the land reserved for common purposes under Sections 18 & 23A of 'the 1948 Act' is not capable of being used for common purposes of the village, then the title which continues to vest in the proprietor, but had become dormant, stands revived. Still further, once the aforesaid common land has been sold, the compensation/consideration thereof is required to be paid to the proprietary body in the ratio of their entitlement. In fact, the Gram Panchayat is not entitled to sell or transfer such land. However, the aforesaid question is not being decided because it does not arise in the present case. Hence, it is declared that if such common land, as reserved under Section 18 read with

Section 23A of the 1948 Act, is the subject-matter of acquisition or sale, the amount of compensation/sale consideration is liable to be paid to the proprietor and not to the Gram Panchayat or to the State.

Before this Bench takes up Question No.III, it would be appropriate to notice certain facts.

FACTS:-

This case stems out from the conflict between the office bearers of Gram Panchayat, Saini Majra, which is located on the outskirts of Chandigarh on the one hand and the bureaucracy of the State of Punjab on the other hand . The Greater Mohali Area Development Authority (hereinafter referred to as “GMADA”) has started developing a township under the name of New Chandigarh. The GMADA as well as the private colonizers/developers purchased the agricultural land of various villages located in the surrounding areas. In the writ petition, it has been alleged that the Altus Space Builders has purchased the land in patches in the area of village Saini Majra interspersed with agriculture farm lands of the villagers for construction of a residential colony. The conflict dates back to the year 2017. It is alleged that the Altus Space Builders, after having purchased the land in patches, started barricading the common paths which hindered the path of the farmers resulting in filing of a Civil Suit in Kharar, Case No. 55, dated 03.07.2017, in which interim protection was granted in favour of the villagers. The developer was restrained from interfering in the common passages in any manner till the disposal of the suit. On 01.11.2017, the elected representatives of the Gram Panchayat passed a resolution seeking permission of the State Government to sell the land measuring 12 acres 2

kanals & 17 marlas which was previously under Gair Mumkin Rastas (Paths) while noting that on account of the mega projects of Omaxe company/Altus Space Builders, the land under these common passages has been rendered useless for the residents of the village. Thereafter, another resolution was passed on 09.02.2018 seeking permission to sell 9 kanals 10 marlas land while noticing that the aforesaid revenue rastas have come in the mega projects of Greater Punjab Officers Co-operative House Building Society and Altus Space Builders Private Limited. Thereafter, yet another resolution was passed by the elected office bearers of the Gram Panchayat, Saini Majra on 01.06.2018 expressing no objection to acquisition of various pieces of land measuring 138 kanals 15 marlas. This included the land measuring 28 kanals 15.5 marlas recorded as *Shamlat Deh* in the revenue record, whereas 9 kanals 15 marlas land recorded as *Jumla Mushtarka Malkan Wa Digar Haqdarani Hassab Rasad Rakba*. The dispute is with respect to the transfer of the amount of sale consideration of Jumla Mustarka Malkan land. On 13.12.2018, the Hon'ble Governor of the State granted approval to sell land measuring 38 kanals 10½ marlas (*Shamlat Deh*-28 kanals 15.5 marlas and *Jumla Mushtarka Malkan Wa Digar Haqdarani Hassab Rasad Rakba*-9 kanals 15 marlas), at the rate of ₹2,05,00,000/- per acre in view of the demand of the Land Acquisition Collector, Urban Development Department, Sahibzada Ajit Singh Nagar and recommendation of the Field Officers for the purpose of constructing VR-5 road as per master plan of New Chandigarh to the Urban Development Department/GMADA. On 13.01.2020, ₹9,87,20,000/- was deposited in the bank account of the Gram Panchayat. On 16.01.2020, a meeting of the officer bearers of the

Gram Panchayat is alleged to have been called, wherein the officer bearers(the petitioners herein) although came present and attended the meeting but did not mark their attendance. The Panchayat Secretary reported that they have also refused to get the sale deed registered. On 10.02.2017, on being summoned, the officer bearers appeared before the District Development and Panchayat Officer (hereinafter to referred as “DDPO”), S.A.S. Nagar and stated that they do not want to execute the sale deed as the land belonging to the proprietor lies ahead of these pathways who would face difficulty. It was further stated that the compensation for the pathways should be given to the proprietors.

8. On this development, the competent authority nominated the Block Development and Panchayat Officer (hereinafter to referred as “BDPO”) to act as an Administrator of the Gram Panchayat and pursuant thereto on 28.02.2020, two separate sale deeds were executed and registered. The first sale deed is with respect to shamlat deh land measuring 28 kanals 15.5 marlas, whereas the other sale deed is with respect to *Jumla Mushtarka Malkan Wa Digar Haqdaran Hassab Rasad Rakba* land measuring 9 kanals 15 marlas. Clause 7 of the sale deed with respect to *Jumla Mushtarka Malkan Wa Digar Haqdaran Hassab Rasad Rakba* land measuring 9 kanals 15 marlas makes an interesting reading, which is extracted as under :-

“7. Whereas if there is any dispute about the ownership of said land or any type of dispute with anyone, then the sole responsibility to solve the dispute will be of transferor. If the transferor gets involved in any type of litigation, then he along

will bear all the expenditures and will keep the transferee protected. Expenditure may be fixed by Chief Administrator GMADA (S.A.S. Nagar, Mohali) whose decision will be final”.

9. It is alleged that a meeting of the Gram Sabha which includes all the residents of the village was held on 31.08.2020 wherein the Sarpanch was authorized to distribute the amount of sale consideration ₹ 2,94,84,062/- received with respect to the sale of land belonging to *Jumla Mushtarka Malkan* to the various proprietors. Pursuant thereto, on 17.10.2020, an agreement was signed between the Gram Panchayat and the proprietors for distributing the aforesaid amount. Thereafter, the proprietors filed a Civil Writ Petition No. 18321 of 2020 against the Gram Panchayat for getting the amount released, however, the writ was dismissed as withdrawn on 03.11.2020. Thereafter, another memorandum of understanding was signed between the Gram Panchayat and the proprietors agreeing to distribute the sale proceeds of *Jumla Mushtarka Malkan* land. Thereafter, the proprietors filed a civil suit under Order XXXVI Rules 4 and 5 CPC seeking a decree in terms of an agreement dated 09.11.2020. The Sarpanch entered appearance and filed the written statement on behalf of the Gram Panchayat admitting the claim made in the suit. The case was, thereafter, taken up in the Mega Lok Adalat on 12.12.2020 and on the statement of the Sarpanch, the order was accordingly passed. On 28.10.2020, another meeting of the office bearers of the Gram Panchayat took place under the Chairmanship of the Sarpanch (petitioner No.1 herein) in which Vide resolution No. 2, Gurmukh Singh was nominated to operate the joint account and facilitate distribution of the amount among the proprietors. Thereafter, on 14.01.2021 the

proprietors sent a notice to the Manager of the bank for payment in terms of the Lok Adalat's order dated 12.12.2020 which resulted in bank informing the Panchayat Secretary, who further informed the BDPO. On 19.01.2020, the BDPO taking the decision of the elected representatives of the Gram Panchayat to be an attempt to embezzle the amount, requested the DDPO to appoint an Administrator in order to challenge the orders of the Mega Lok Adalat in the High Court. The DDPO, on 21.01.2021 appointed the BDPO, Majri as Manager of the Gram Panchayat. It would be noted here that pursuant to order dated 21.01.2021, the Gram Panchayat through the BDPO has filed a writ petition in the High Court assailing the correctness of the order passed by the Civil Court in the Mega Lok Adalat on 12.12.2020 in which while issuing notice of motion, the distribution of amount has been put on hold vide order dated 11.02.2021. Thereafter, vide order dated 28.01.2021, the entire body of elected representatives (Namely The Sarpanch and all the Panches-the writ petitioners herein) were suspended in exercise of powers under Section 20(5) of the 1994 Act. The aforesaid two orders have been assailed in the writ petition. Pursuant to notice of motion, a detailed written statement by way of an affidavit contesting the writ petition has been filed. The petitioners have highlighted that the officials have taken away the land at a much lesser amount then the current market value. It has further been pointed out that the Gram Panchayat has no authority to sell the land belonging to the proprietary body recorded in the revenue record as *Jumla Mushtarka Malkan* . It has further been pointed out that under the Land Acquisition Act, 1894, a notification under Section 4 was issued on 17.05.2013 for acquiring a small parcel of the land from the

village and the Court of the Additional District Judge assessed the market value at the rate of ₹3,50,32,000/- as on 17.05.2013, whereas the land has been purchased by the GMADA forcibly at the rate of ₹2,05,00,000/- per acre through afore referred to two sale deeds. On the other hand, the writ petition is defended by the respondents. It is claimed that the order passed is in accordance with law.

Arguments of Learned counsels and discussion by the Bench

10. On careful reading of the order (Annexure P1) dated 28.01.2021 suspending the petitioners, it becomes apparent that the petitioners have been suspended broadly on three grounds. First, the petitioners refused to execute the sale deed inspite of the permission granted by the Hon'ble Governor vide memo dated 18.12.2018. Secondly, the petitioners authorized the Sarpanch to contest the Court case and passed a resolution on 28.12.2020 which is against the interest of the Gram Panchayat. Third, the office bearers gave statement in the Civil Court as well as in the Lok Adalat admitting the claim made in the suit and facilitating the embezzlement of ₹ 2,94,84,062/-.

11. On 27.05.2021, after hearing arguments of learned counsel, the judgment was reserved while granting liberty to the learned counsels to forward their written arguments on the official email of the Court. Pursuant thereto, separate detailed written arguments have been sent through email by learned counsels representing the petitioners , the State of Punjab as well as respondent No.7. Written arguments on behalf of the State of Punjab run in 39 pages. The copies of all these written arguments shall form a part of the judgment as Annexures "A", "B" and "C".

12. In para 2 of the written arguments forwarded by the learned

counsel for the State of Punjab, it has been contended that since, there is no challenge to the sale deeds, therefore, the writ petition is not maintainable. The argument of the State's counsel, no doubt, is correct with regard to absence of challenge to the sale deeds. However, that itself does not affect the maintainability of the writ petition particularly when the petitioners have only assailed the correctness of the orders of suspension and appointment of an administrator.

13. Next argument of the State in para 3 of the written arguments is with respect to the non-impleadment of GMADA as a party respondent. At the cost of repetition, both the sale deeds are not under challenge and therefore, the GMADA is not required to be impleaded as a party.

14. Next argument of the State in para 4 of the written arguments is with regard to alternative remedy of appeal against the order passed by the Director. No doubt, there is an alternative remedy, however, that itself is not a ground to dismiss the writ petition. Under Article 226 of the Constitution, the High Court is required to exercise the extraordinary writ jurisdiction. The normal practice of relegating the parties to the alternative remedy is a self-imposed restriction, however, there is no absolute bar. In the facts of the case, particularly when the petitioners are facing the bureaucracy of the State as a whole because the road is leading to a colony which is being developed by the officers of the State, as also a developer, relegating the petitioners to an alternative remedy would not be an appropriate step.

15. Next argument of learned counsel for the State in para 5 of the written arguments is with respect to pendency of writ petition i.e. Civil Writ Petition No. 3155 of 2021. It would be noted here that it is not in dispute that

in the aforesaid writ petition pending before the Division Bench, the order passed by the Lok Adalat has been challenged. Therefore, the matter before the Division Bench is different. It has been next contended that the petitioners claim relief in Civil Writ Petition No. 3155 of 2021. That writ petition has been filed by the Gram Panchayat through the officials of the State, i.e. BDPO as Administrator. Still further, the order of suspension is not the subject matter of adjudication in the aforesaid writ petition. The petitioners are alleged to have been impleaded as respondents in the aforesaid writ petition. In the facts of the case, the pendency of the earlier writ petition cannot be treated as bar to the maintainability of the present writ petition.

16. Next argument of learned State counsel under para 6 is to the effect that if the order is quashed, it would become difficult to administer the Gram Panchayats. It may be noted here that the officers of the State are labouring under wrong impression about their role in administering Gram Panchayat. They do not have jurisdiction to administer the Gram Panchayats. Part XI of the Constitution of India, which was inserted by the Constitutional (73rd Amendment) Act, 1992 w.e.f. 24.04.1993, deals with the Panchayats, Clause (d) of Article 243 defines the Panchayat, which reads as under:-

“243D. Definitions:- In this part, unless the context otherwise requires:-

XXXX XXXX XXXX XXXX XXXX

(d) “Panchayat” means an institution (by whatever name called) of self- government constituted under article 243B,

for the rural areas”

It is apparent from the reading of the definition itself that the Parliament has envisioned Panchayats to be an institution of self-government constituted under Article 243B for the rural areas. Still further, Article 243A deals with Gram Sabha. It has been provided that a Gram Sabha shall exercise such powers and perform such functions at the village level as the Legislature of a State may, by law, provide. Article 243B provides for constitution of the Panchayats. Still further, on careful reading of Article 243G, it is apparent that the State is expected to enact law in such a manner which would enable the Gram Panchayat to function as an institution of self-government. Article 243G is extracted as under:-

“243G. Powers, authority and responsibilities of Panchayats.—*Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—*

(a) the preparation of plans for economic development and social justice;

(b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule”.

17. 'The 1994 Act' has been enacted after the enforcement of Part XI of the Constitution. Therefore, the provisions of 'the 1994 Act' have to be read in accordance with the constitutional scheme with respect to the Panchayats. On plain reading of the Act, it is apparent that the State has only been given some right to regulate the working of the Panchayats but no right to administer the Gram Panchayats. Hence, there is no substance in the submission.

18. Next argument of learned counsel for the State is that the resolution dated 01.06.2018 has not been challenged by anyone. On careful reading of the resolution dated 01.06.2018, it is apparent that the elected representatives of the Gram Panchayat had expressed their no objection to the acquisition of the land by GMADA for public purpose. There was no decision to seek permission to sell the land through private negotiations. Hence, there is no requirement of challenge to the resolution. Still further, the Gram Panchayat is a body corporate and the resolution is only a method to convey its decision, which is subject to further change, if any.

19. Next argument of learned counsel for the State is in para 11(v) to the effect that since the office bearers had refused to execute and register the sale deeds while passing a resolution authorizing its representative to execute the sale deeds, therefore, the State was compelled to appoint an Administrator and get the sale deeds registered. It would be noted here that the office bearers had taken a decision in the interest of the Gram Panchayat. In view of the Constitutional scheme, the officers of the State have no jurisdiction to compel the office bearers of the Gram Panchayat to act in a particular manner which may be prejudicial to its interest. The sale deeds

were proposed to be executed at the rate of ₹2,05,00,000/- in the year 2020, whereas the market value of a small piece of land of the same village, which was subject-matter of the compulsory acquisition was declared to be, as on 17.05.2013, at the rate of ₹3,50,32,000/- per acre. Thus, the office bearers were/are well within their rights to refuse to pass a resolution on the command of the officers of the State and register the sale deed at a price comparatively lesser than the market price.

Next argument of learned State counsel is in para 11(xii), 11(xiv) and 11(v). Thus, the State has tried to draw attention of the Court to the procedural irregularities committed. It would be noted here that in the facts of the case when the entire bureaucracy representing the State machinery was bent upon to force the elected representatives to part with the property of Gram Panchayat at a much lesser price and in an illegal manner, such steps taken by the representatives of the Gram Panchayat cannot be called illegal. These violations, at the most, can be called procedural irregularities but does not amount to misconduct or against the interest of the village. At the cost of repetition, it would be noted that on 16.01.2020, a meeting of the office bearers of the Gram Panchayat was held under the Chairmanship of the Block Development and Panchayat Officer. The DDPO had instructed the Gram Panchayat to execute the sale deeds. The petitioners refused to sign the proceedings. Still further, all the elected members of the Gram Panchayat appeared before the DDPO and made a statement on 10.02.2020 refusing to execute the sale deeds. Antagonized by the aforesaid development, the DDPO appointed its own official as the Administrator to get the sale deeds executed and registered. On other hand

the petitioners were given show cause notices. In these circumstances, it would not be appropriate to expect from them to send the decisions taken through various resolutions or agenda of the meeting in advance to the Officers of the State Government. It would be noted here that the elected members of the Gram Panchayat are not the employees or subservient of the officers. As per Article 243A of the Constitution, the Gram Sabha is entitled to exercise such powers and perform such functions at the village level as the state's legislature is entitled with respect to the area of the State. On careful reading of memorandum of understanding dated 09.11.2020, it is apparent that a meeting of the Gram Sabha consisting of all the residents was held and the decision was taken to distribute the sale proceeds with respect to the *Jumla Mushtarka Malkan* land to its proprietors.

Learned counsel representing the State has drawn attention of the Court to the alleged violation of the Rules. The first violation is with respect to Rule 4(2) of the Punjab Panchayati Raj (Gram Panchayat) Rules, 2002 (hereinafter referred to as “the Rules, 2012”), which is extracted as under:-

“4. Acquisition and transfer of property by the Gram Panchayat.-

- (1) XXXX XXXX XXXX XXXX XXXX
- (2) *All contracts on behalf of a Gram Panchayat shall be entered into in the name of the Gram Panchayat and all documents executed in this connection shall be signed by the Sarpanch, Panchayat Secretary and one other Panch authorized by the Gram Panchayat through its resolution. The*

draft of all documents to be executed by or in favour of a Gram Panchayat shall, before execution, be scrutinized and approved by the Block Development and Panchayat Officer and the Gram Panchayat Fund shall not be liable under any contract not so approved”.

Sub Rule 1 of Rule 4 talks about the purchase and sale by a Gram Panchayat which is not the case here. The Gram Sabha has only passed a resolution to distribute the sale proceeds of Jumla Mushtarka Malkan land, ownership whereof vest in the proprietary body. Thus, in fact, the Gram Panchayat has no jurisdiction to keep the amount. As regards, Sub Rule 2, it would take colour from the main Rule i.e. Rule 4 which is with regard to purchase and sale of the property of the Gram Panchayat. Therefore, the phrase used “all contracts” would take its meaning from Sub Rule 1, which is with reference to acquisition and transfer of the property by the Gram Panchayat. Still further, in the facts of the case, if the Gram Sabha had sought approval from the BDPO, it would have been impracticable, particularly when the officers of the Department of Panchayat appear to be labouring under a wrong impression about the ownership of the *Jumla Mushtarka Malkan* land. Still further, the violation of Sub Rule 4 is not a ground to suspend all the elected representatives of the Gram Panchayat. The second argument of learned counsel is with regard to the violation of Rule 8, which provides that the copy of the resolution is to be sent by the Gram Panchayat along with the comments of the Panchayat Secretary to the BDPO. It would be noted here that the Panchayat Secretary is the employee of the State. As per Rule 8, it is the Panchayat Secretary,

who is responsible for maintaining the record. It was for the Panchayat Secretary to send the resolution to the BDPO with the comments. Still further, Rule 20 does not lay down that on every minor violation or mistake of the elected representative, they would invite the wrath of suspension.

21. Next argument of the State that memorandums of understanding were signed by the Sarpanch in his individual capacity is factually incorrect. The memorandums of understanding were signed by the Gram Panchayat through its Sarpanch. It is noticed in the memorandum of understanding dated 17.10.2020 that all the elected representatives have authorized its Sarpanch to negotiate, sign all the documents and settle the issue of payment of sale proceeds to the proprietors. Still further, on careful reading of agreement dated 09.11.2020, it is apparent that a meeting of all the residents of the village was held on 31.08.2020 and the Sarpanch was authorized. Hence, there is no substance in the contention of the State.

22. Next argument of the State is with respect to the office bearers having colluded with the residents. As already discussed, there is no collusion and the elected office bearers of the Gram Panchayat had taken a decision in accordance with the law. Section 30 of 'the 1994 Act' do enable the elected representatives to take steps for promotion of unity and harmony amongst all the sections of the society in the village. Once it is settled law that the amount representing the land owned by the "*Jumla Mushtarka Malkan*" is required to be paid to the proprietors, there is no error in the decision of the Gram Panchayat. The same is the answer to argument under para 11(xxiv). Still further, it has been pointed out in this very para that the statement of the Sarpanch is in violation of Rule 16 of the Punjab Village

Common Lands (Regulation) Rules, 1964 (hereinafter referred to as “the Rules 1964”). At the cost of repetition, it is well settled that the *Jumla Mushtarka Malkan* land is not covered by the Punjab Village Common Lands (Regulation) Act, 1961 or the Rules framed thereunder. Still further, the meeting of the Gram Sabha which was attended by all the residents did authorize the Sarpanch. Still further, the elected body of all the representatives of the Gram Panchayat have filed the writ petition. Thus, there is unanimity amongst them. Therefore, there is no substance in the arguments.

23. Next argument of learned State counsel in para 20(v) is required to be noted and rejected summarily because the civil suit under Order XXXVI pre-supposes an agreement between the parties. Thus, the suit is required to be decided expeditiously, particularly when the parties do not chose to contest in the Court also.

24. Next argument of the State in para 27(i) is to the effect that the office bearers are bent upon to misappropriate the property and the Panchayat Secretary was not informed in view of Rule 8 of the 2012 Rules. It would be noted here that in the facts of the case, there is no misappropriation of the amount and in fact the amount does not belong to the Gram Panchayat. On the other hand, it belongs to the proprietors and the decision has been taken to transfer the amount to the proprietors.

25. Next argument of the State is in para 11(xxxv) which already stands answered while examining the Constitutional scheme under para 6 of the written arguments. Similar is the position with regard to argument under para 12 which stands answered while dealing with the procedural

irregularities.

26. Next argument of the State is to the effect that if the writ petition is allowed, it would put a seal of approval on the illegal action of the elected members of the Gram Panchayat. It would be noted here that there is no illegal action and consequently, the argument suffers from fundamental flaw.

27. Next argument of the State is with regard to the interpretation of Section 42A of 'the 1948 Act', which has already been discussed in para 3 above, hence, need no repetition.

28. Next argument of the State is in para 21 with reference to the opinion of the Advocate General. It would be noted here that on careful reading of Annexure R-17, it is apparent that the attention of the Advocate General was drawn to the well settled position of law to the effect that the proprietorship of the *Jumla Mushtarka Malkan* land continues to vest with the proprietors and not with the Gram Panchayat or the State.

29. Next argument of the State is in para 22, wherein it is contended that any adjudication on the sale deeds would entail challenge to the validity of Section 42A of 'the 1948 Act' which has already been upheld. It would be noted here that the argument suffers from fundamental flaw. This Bench is not adjudicating about the validity of the sale deeds. Still further, Section 42A does not authorize the State to get the sale deeds executed with respect to the land described as *Jumla Mushtarka Malkan* from the Gram Panchayat.

30. In para 23 of the written arguments, it is contended that the Civil Writ Petition No. 3155 of 2021, which is pending before the Division Bench, would become infructuous. In the considered view of this Bench, the

aforesaid contention suffers from basic fallacy. In the aforesaid writ petition, the Gram Panchayat, through its Administrator (BDPO), has challenged the decision of the Lok Adalat which is not the subject-matter of dispute in the present case.

31. Next argument of the State is with respect to the validity of order (Annexure P-2). It is being contended that if the order (Annexure P-2) is quashed, Civil Writ Petition No. 3155 of 2021 would be treated to be improperly filed. It would be noted here that this Bench does not intend to examine the validity of order (Annexure P-2), which is only a decision of the DDPO to authorize the BDPO, Majri, to initiate the proceedings. Since, the writ has already been filed and entertained, therefore, this Bench has no doubt that the Division Bench would examine its validity.

32. Last argument in para 24 of the written arguments of the State is with regard to the issue of distribution of the sale proceeds. It is contended that the distribution of the sale proceeds is not a subject-matter in issue in the present writ petition. The argument is correct. This Bench is not expressing any opinion on the correctness of the decision to distribute the sale proceeds particularly when the matter is already pending before the Division Bench in Civil Writ Petition No. 3155 of 2021.

33. It would be noted here that in para 18 of the written arguments, the State has admitted that the issue of rights of the *Jumla Mushtarka Malkan* are not under challenge in the present writ petition. Hence, the discussion by the Bench is only in the context of examining the issue of alleged misconduct by the office bearers.

34. It may further be noted that the order suspending the petitioners

was passed on 28.01.2021. The State filed its reply on 23.05.2021. However, there is no assertion that after suspending the petitioners, any further steps were taken by the Director. The suspension of the elected office bearers cannot be kept pending and it is only an interim stage in order to safeguard the interest of the Gram Panchayat for the time being before a final decision is taken. Section 20 provides that the Director shall be entitled to remove the elected representatives after inquiry or trial. The representatives are elected for a period of five years. Therefore, in the interest of public, it is desirable to expeditiously conclude the inquiry or the trial. However, in the present case, no steps appear to have been taken.

Still further, on careful reading of Section 20, which entitles the Director to remove or suspend a Sarpanch or Panch, it is apparent that before passing the order of suspension, the Director must be satisfied that such elected representative appears to be guilty of misconduct in the discharge of his duties or whose continuance in the office is undesirable in the interest of public. In the facts of the case, the State has failed to draw attention of the Bench to any such action on the part of the office bearers.

From the facts noticed above, it is apparent that the BDPO/DDPO/Director, Department of Development and Panchayat, Punjab have practically forced or rather snatched the land in question from the Gram Panchayat. At the cost of repetition, the resolution dated 01.06.2018 does not even resolve to sell the land through a sale deed. What has been resolved is to consent to the acquisition of the land as per the provisions of the relevant Land Acquisition Act.. Still further, it is apparent that the Hon'ble Governor fixed the price of ₹2,05,00,000/- unilaterally. It is neither

the part of the resolution dated 01.06.2018 nor there is any indication from the order passed by the Government as to how and in what manner the price was determined. In case of a sale deed, the price of the land agreed to be sold is determined by the parties to the transaction and cannot be unilateral. Still further, the Gram Panchayat while passing the resolution never requested the Hon'ble Governor to grant permission to sell. It would be noted here that the resolutions dated 01.11.2017 and 09.02.2018 pertain to different parcels of the land and are not related to the land sold vide sale deeds dated 28.02.2020. In such circumstances, the question is that 'is it unfair on the part of the vendor which is a constitutional body to expect the market rate of the property sought to be transferred by way of sale' ? No doubt the Central & the State Governments have the power of eminent domain under various Acts/Statutes to compulsorily acquire the land in the public interest even when the owner objects. However, in all such acts, the acquiring authority is required to pay the market rate. Under such Statutes, ordinarily there is a provision for determination of the market value of the land acquired through an independent agency, namely the Court or the Arbitrator.

36. It would be noted here that in the written statement, the State has taken a stand that under Section 85 of 'the 1994 Act', all the common lands vest in the Panchayat, however, at the time of virtual hearing or in the written arguments, this contention was not pressed. Therefore, this Bench does not find it appropriate to examine the same.

Learned counsels representing the respondents have not pressed any other point.

37. In view of the foregoing discussions, this Bench is of the considered view that continuance of the order of suspension dated 28.01.2021 would not be in the interest of the residents of the village and, therefore, it is set aside. Accordingly, the writ petition is allowed.

38. The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

June 07, 2021

“DK”

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No