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

CWP-2637 of 2018

Date of decision : September 30, 2022

SAHAB KHAN AND OTHERS

...Petitioners

Versus

STATE OF HARYANA AND OTHERS

...Respondents

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Vikram Singh, Advocate
for the petitioners.

Mr. Amit Aggarwal, D.A.G., Haryana.

Mr. Rajesh Lamba, Advocate
for respondent No.3.

HARSH BUNGER, J.

The petitioners, who are residents of Village Terakpur, Gram Panchayat Dhandhuka, Tehsil and District Nuh, have filed this writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* seeking quashing of order dated 30.08.2017 (Annexure P-3), whereby, the Government of Haryana through Principal Secretary to Government, Haryana Development and Panchayats Department has accorded approval to the sale of Gram Panchayat's land measuring 180 kanal bearing Khasra Nos.18//4 (8-0), 5(8-0), 6(8-0), 7(8-0), 13(8-0), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 19(8-0), 22(8-0), 23(8-0), 24(8-0), 25(8-0), 21//1/1 (3-16), 2/2 (7-7), 3(8-0), 4(8-0), 5(8-0), 6(8-0), 7/2 (5-2), 8(4-8), 9/1 (1-15), 22//5 (7-4) as resolved by the Gram

Panchayat Dhandhuka, Block and District Nuh vide its resolution No.1 dated 24.06.2017. It requires mention that there is a common Gram Panchayat for two villages namely, Terakpur and Dhandhuka. The petitioners have also sought setting aside of resolution No.1 dated 24.06.2017 (Annexure P-2), on the ground that the Gram Panchayat has no right/authority to change the nature of Charand land to any other use. A further direction has also been sought for directing the respondents, not to change the nature of the land, in dispute.

It is the submission of the petitioners that resolution No.1 dated 24.06.2017 (Annexure P-2) has been wrongly passed by the *Gram Panchayat*, whereby it has been resolved to sell the land on collector/market rate to the PWD (B&R) department for plantation, as the Gram Panchayat is not competent to divert the usage of the land; which according to the petitioners is 'Charand' land. It is also the submission of the petitioners that the Gram Panchayat is precluded from dealing with *Shamlat* land or land vested in the Gram Panchayat, without preparing a land utilization plan as provided under Rule 3 read with Rule 8 of the Punjab Village Common Lands (Regulation) Rules, 1964 (here-in-after referred to as 'the Rules, 1964').

Upon issuance of notice, the respondents have appeared and filed their respective written statements.

Deputy Commissioner, Nuh has filed written statement on behalf of respondents No.1 and 2, wherein, stand taken is that Gram Panchayat has every right to use, manage and dispose of its land/property in accordance with the Punjab Village Common Lands (Regulation) Act, 1961 (here-in-after referred to as 'the Act, 1961) and the Rules, 1964 framed

thereunder besides provisions of the Haryana Panchayati Raj Act, 1994 and Haryana Panchayati Raj Rules, 1995. It has been further stated that in Village Terakpur, the Gram Panchayat is owner in possession of land measuring 501 kanal-15 marlas and resolution No.1 dated 24.06.2017 has been passed by the said Gram Panchayat to sell its land to PWD (B&R) department for plantation. The said resolution was forwarded to the State Government through Deputy Commissioner, for its approval. Government of Haryana, after considering resolution No.1 passed by the Gram Panchayat as well as recommendation of Deputy Commissioner, gave its approval vide order dated 03.08.2017 (Annexure P-3) to the Gram Panchayat for sale of land measuring 180 kanal of Village Terakpur to PWD (B&R) Department, for plantation. The Collector rate of the said land was fixed at Rs.28 lacs per acre under Rule 12(1) of the Rules, 1964. It is further stated that after taking due approval from the State Government, Gram Panchayat Dhandhuka has executed two sale deeds vide Vasika no.3023 dated 18.10.2017 and Vasika no.3593 dated 04.12.2017 for total land measuring 180 kanals of Village Terakpur. It has also been stated that the Gram Panchayat has already reserved about 40 kanals of land for charand vide its resolution dated 22.05.2017 and considering the population of the village along with number of animals including goats etc. in the village, the Gram Panchayat has sufficient land for pasturing the cattle in the village. Sub Divisional Officer (Civil), Nuh is stated to have enquired the matter and submitted his report vide letter number 2225 dated 15.01.2018, wherein, it is stated that the Gram Panchayat had been leasing out the land in question for agriculture purposes for the last more than 30 years and the same was not being used for pasturing the cattle. With the aforesaid submissions, dismissal of the

writ petition was prayed for.

Gram Panchayat, Dhandhuka (respondent No.3) has filed its separate reply, which is also on the same lines as the written statement filed by the Deputy Commissioner, Nuh. However, it is additionally stated that petitioners have not approached this Court with clean hands as their father used to participate in the auction of the land and was also successful on few occasions. Petitioner No.3 (Shorab) is stated to have himself participated in the auction conducted in the year 1999. Accordingly, *Gram Panchayat* has also prayed for dismissal of the writ petition.

We have heard learned counsel for the respective parties and have also gone through the paper book with their able assistance besides perusing the relevant statutory provisions.

Gram Panchayat is a legal entity, capable of holding and dealing with its property in the manner prescribed by the Act, 1961 and the Rules, 1964. The land reserved and used as a grazing ground (charand) vests in a Gram Panchayat, as *Shamlat deh*, by virtue of Section 2(g)(1) of the Act, 1961, which is extracted below :-

“(1) lands described in the revenue records as shamlat deh excluding abadi deh;”

Section 2(g)(1) of the Act, 1961 makes it abundantly clear that land declared as *shamlat deh* under the Act, 1961, vests in a Gram Panchayat.

Admittedly, land in dispute vests in the Gram Panchayat, which is entitled to deal with the property (land reserved/used as a grazing ground (charand)) in such manner as it deems appropriate but strictly in accordance with the statutory provisions. No deviation or violation thereof in this exercise is permissible.

With regard to the submission that the *Gram Panchayat* is precluded from dealing with *Shamlat* land or land vested in the Gram Panchayat, without preparing a land utilization plan under Rule 3 read with Rule 8 of the Rules, 1964') and also that the sale of land by the *Panchayat* in favour of the Government department for plantation purposes is not covered under the provisions of the Act, 1961 and Rules, 1964, at this stage, it would be appropriate to extract Resolution No.1 dated 24.06.2017 and also the order dated 30.08.2017, whereby, the Government of Haryana through Principal Secretary to Government, Haryana Development and Panchayats Department has accorded approval to the sale of *Gram Panchayat* land. The Resolution No.1 dated 24.06.2017 passed by Gram Panchayat Dhanduka, Block Nuh, District Mewat Nuh reads as under :-

“Resolution No.1: That in the meeting of Gram Panchayat in the presence of Panches, Present Sarpanch told that PWD (B&R) Department has demanded the land from our Panchayat on collector rate/Market value for plantation, which be considered.

After the consideration, Gram Panchayat has decided that Panchayat land village Terakpur area Mustil No.18 Killa No.17 (8-0), 18(8-0), 19(8-0), 22(8-0), 23(8-0), 24(8-0), 25(8-0), Mustill No.21 Killa No.1/1 (3-16), 2/2 (7-7), 3(8-0), 4(8-0), 5(8-0), 6(6-8), 7/2(5-2), 8(4-8), 9/1(1-15), Mustill No.22 Killa No.5(7-4) total area of which 180 Kanal 0 Marla is ready to sold the land on the collector rate/market rate which ever is higher to the PWD (B&R) Department for plantation. Hence Gram Panchayat sent the resolution to the Deputy Commissioner, Mewat through Block Development and Panchayat Officer, Nuh for further necessary action. Resolution passed unanimously.

1. Sd/- Jakir Hussain Sarpanch

2. Sd/- Smt. Pinki
3. Smt. Pooja
4. Sd/- Sanjay
5. Sd/- Shri Jagdish
6. Sd/- Rakesh Kumar
7. Sd/- Vijay Kumar
8. Sd/- Shri Sakil
9. Sd/- Shri Wakil

Sarpanch post-1

Panch-8

Sd/- Jakir Hussain

Sarpanch Gram Panchayat Dhandhuka”

Order dated 30.08.2017 passed by the Department of Haryana,

Development and Panchayats Department reads thus ;

“ Whereas the Gram Panchayat Dhandhuka, Block and District Nuh passed resolution No.1 dated 24.06.2017 for sale of its land measuring 180 Kanal bearing Khasra Nos.18//4 (8-0), 5(8-0), 6(8-0), 7(8-0), 13 (8-0), 14(8-0), 15(8-0), 16(8-0), 17(8-0), 18(8-0), 19(8-0), 22(8-0), 23(8-0), 24(8-0), 25(8-0), 21//1/1(3-16), 2/2(7-7), 3(8-0), 4(8-0), 5(8-0), 6(6-8), 7/2(5-2), 8(4-8), 9/1(1-15), 22//5(7-4) of village Tarakpur for the purpose of Plantation at Village Tarakpur to the PWD (B&R) Department, Haryana.

And whereas, the Deputy Commissioner, Nuh has reported that the collector rate of the proposed land is Rs.28.00 lac (Rupees Twenty Eight Lac) per acre and has recommended the case for approval, vide their letter No.4455/Panchayat, dated 27.06.2017. The proposal of Gram Panchayat Dhandhuka, Block and District Nuh and recommendations of the Deputy Commissioner, Nuh were considered.

Now, therefore, the Governor of Haryana is pleased to accord approval to the Gram Panchayat Dhandhuka for sale of its land measuring 180 Kanal bearing Khasra Nos. as mentioned above to the PWD (B&R) Department, Haryana for the Plantation at Village Tarakpur at the collector rate of Rs.28 Lac (Rupees Twenty Eight Lac) per acre under Rule 12(1) of the Punjab Village Common Lands (Regulation) Rules, 1964 subject to the following conditions :-

1. *Before execution of sale deed, the Gram Panchayat shall ensure that-*
 - (i) the land utilization plan has been prepared as per provisions of law.*
 - (ii) the proposed land vests in the Gram Panchayat and there is no restrictive order*

- passed by any competent court of law.*
- (iii) The proposed land is not recorded or reserved for johar.*
- (iv) There is appropriate passages/access to the remaining/abutting land of Gram Panchayat.*
- (v) The resolution for sale of land is passed by 3/4th majority of the members of Gram Panchayat.*
- 2. The trees standing on the proposed land shall continue to vest in the Gram Panchayat and shall be disposed of by the Gram Panchayat in accordance with the provision of laws as per requirement of the vendee.*
 - 3. The Gram Panchayat will not be responsible for levelling the uneven site or for getting any kind of No Objection Certificate/Clearance Certificate from any other department.*
 - 4. The land shall be used for the purpose for which it is leased and shall not be used for any other purpose.*
 - 5. The vendee shall not further transfer the land.*
 - 6. In case of breach of any of the condition of the vendee, the sale shall automatically be deemed to be cancelled/revoked and land shall revert back to the Gram Panchayat.*
 - 7. This approval order shall be valid to act upon within a period of one year from the date of its issuance.”*

Rule 3 of the Rules, 1964 provides for the manner in which and the purposes for which *shamlat deh* may be used and Rule 8 of the Rules, 1964 provides for use of *shamlat deh* by residents. Rules 3 and 8 of the Rules, 1964 read as under :-

“3. The manner in which and the purposes for which *shamlat deh* may be used [Sections 5 and 15(2) (a) of the Act].--(1) *The Panchayat shall prepare a land utilization plan of the land in Shamlat deh vested in it under the Act. [It shall be the duty of Block Development and Panchayat Officer to assist the Gram Panchayat concerned in the preparation of the said plan]. Such plan shall be subject to approval of -*

- (a) The Panchayat: Where the area exceeds 100 Samiti acres but does not exceed [500 acres];*

[(b) The Zila Parishad :Where the area exceeds 500 acres but does not exceeds 1000 acres;]

(c) The Government :Where the area exceeds 1,000 acres.

[(2) Subject to the approval of competent authority prescribed under the Act or these rules, the Panchayat may [make] use of the land in shamilat deh vested in it under the Act, either itself or through another for any one or more of the following purposes :-

- (i) Grazing of animals ;*
- [(i-a) Gaushala;]*
- (ii) Tree plantation or any other purposes related to forestry;*
- (iii) Dyeing and tanning of skins and hides;*
- (iv) Storage of fuel, fodder and/or grain;*
- (v) Cremation or burial ground;*
- (vi) Manure pits;*
- (vii) Public latrines, and/or urinal;*
- (viii) Drains or water channels;*
- (ix) Playgrounds;*
- (x) Government School building and its library;*
- (xi) Government Hospital or Dispensary, Maternity or First-aid Centres, Veterinary Hospital or Dispensary;*
- (xii) Vehicle parking related to agriculture and incidental purposes;*
- (xiii) Panchayat ghar or Janjghar or Village Chaupal;*
- (xiv) Ponds and Fisheries;*
- (xv) Wells, Hand-pumps, Water works, or any other Water Lifting device;*
- (xvi) Crop thrashing ground;*
- (xvii) Kohloo;*
- (xviii) Cultivation;*
- (xix) Model Farm, Seed Farm, Dairy Farm, Nursery, Garden or any other Horticultural purposes;*
- (xx) Production of food, fiber or fodder crops;*
- (xxi) Stone Crusher, Brick-kilns, Pottery, extraction of shora, sand, stone, kankar, bajri or other minerals defined in the Punjab Minor Mineral (Concession) Rules, 1964;*
- (xxii) Special Economic Zone Projects and Industrial development;*
- (xxiii) Roads, Pathways, Streets, Lanes and Bye-lanes;*
- (xxiv) Recreation Parks, Children's Park and*

- Sports Stadium;*
 (xxv) *Residential;*
 (xxvi) *Educational and knowledge centres including libraries to be set up by non-governmental institutions or individual;*
 (xxvii) *Hospital or Dispensary, Maternity or First-aid Centres, Veterinary Hospital or Dispensary to be set up by non-governmental institution or individual;*
 (xxviii) *Any other kindred common purpose:*

Provided that the use of land for the purposes mentioned under clauses (xix) to (xxviii) shall be with the prior approval of State Government.]

(3) Subject to the approval of Panchayat Samiti, a Panchayat may unite with any other body or bodies being a Gram Panchayat, local authority or an institution or branch of an institution, established for the development of Panchayats and recognised by Government in taking up any of the purposes specified in sub-rule (2).”

Rule 8

“8. Use of shamlat deh by residents [Sections 5 and 15(2)(g) of the Act]-- *(1) The land in shamlat deh declared by the Panchayat by a resolution in writing, as pasturable may be utilized by the residents of the village for ---*

- (a) grazing purposes; or*
- (b) collecting dry fuel-wood from the jungle on terms laid down by the Panchayat.*

(2) Open spaces near the Abadi Deh may, with the previous permission of the Panchayat and in the manner laid down by it be utilized by the inhabitants of the village for thrashing the harvests.

*(3) 2[*****]*

(4) The Panchayat may, if necessary, earmark suitable land for use as manure pits by the inhabitants of the village on such nominal charges as may be fixed by it.

Provided that the Panchayat may exempt a member of Scheduled Caste or Backward Class or any landless labourer or tenant, on the grounds of poverty from the payment of such charges.”

A perusal of the above extracted Rule 3 of the Rules, 1964 would manifest that the concerned *Gram Panchayat* shall prepare a land utilization plan of the land in *Shamlat deh* vested in it under the Act. Rule 3 (2) of the Rules, 1964 provides that subject to the approval of competent authority prescribed under the Act/Rules, the Panchayat may make use of the land in *shamlat deh* vested in it under the Act, either itself or through another for any one or more of the purposes mentioned therein; which includes “tree plantation or any other purpose related to forestry.”

Rule 8 of the Rules, 1964 permits use of *shamlat deh* by residents for the purposes mentioned therein, which includes “grazing purposes.”

In the instant case, the PWD (B&R) department had demanded the land in question from the Panchayat for plantation purposes, which is a permissible change of user under Rule 3(2)(ii) of the Rules, 1964. However, the said use of *shamlat deh* can be done either by the concerned Panchayat itself or through another and there is no question of sale of the land in question for this purpose.

When the above extracted resolution as well as order dated 30.08.2017 passed by the Government according approval for the sale of land by the Gram Panchayat, Dhandhuka in favour of PWD (B&R) department is considered, then it also becomes necessary to consider the provisions contained under Section 5-A of the Act, 1961 which deals with disposal of land vested or deemed to be vested in a *Panchayat*, which read

as under :-

“[5A. Disposal of lands vested or deemed to have been vested in Panchayat.---(1) A panchayat may, gift, sell, exchange or lease the land in shamilat deh vested in it under this Act to such persons including members of Scheduled Castes and Backward Classes on such terms and conditions, as may be prescribed :”

Provided that the lease of land by way of allotment for cultivation purposes may be given for a period upto 99 years only to a person who does not own any land for agriculture on the date of the commencement of this Act and has been the original lessee either under the provisions of the East Punjab Utilisation of Lands Act, 1949 (Punjab Act 38 of 1949) or under the provisions of the Punjab Village Common Lands (Regulation) Act, 1953, for a period not less than seven years and has remained in continuous cultivating possession of the leased land upto the 24th September, 1986, with corresponding entries in the revenue record:

Provided further that the lessee shall make one time payment, as may be prescribed, for the period he remained in cultivating possession without making payment of lease money.

Explanation.--- “Person” for the purpose of this sub-section shall include legal heirs of the original allottee.

(2)The gift, sale, exchange or lease of the land in shamilat deh already made shall be deemed to have been made under sub-section (1).]

[(3)The land in shamilat deh gifted to a department, Board or any agency of the State Government by the panchayat by passing a resolution and without prior approval of the State Government before the 4th April, 2007 shall be regularized by the panchayat by forwarding the said resolution to the State Government for obtaining approval. The State Government may grant approval to such resolution.]”

Further, Rule 12 of the Rules, 1964 prescribes the purposes for

which land may be sold; which reads thus :-

“ 12. Purposes of which land may be sold, sections 5 and 15(2)(f).--- “(1) A Panchayat may, with the previous approval of the State Government, sell land in shamilat deh vested in it under the Act for ----

{(i)the purpose of constructing affordable houses by Government agency or Government owned Companies or Board or Corporation for the inhabitants of the concerned village or office, building of Panchayat Samiti, Zila Parishad or of any Government department, Government owned companies and Public Sector Undertakings, at the

rate not less than the floor rates notified by the State Government from time to time.}

(ii) the purpose of setting up infrastructure facilities, educational institutions, Special Economic Zone Projects and Industrial Development, units of public utility nature as may be approved by the State Government to be for the benefit of inhabitants of the village at the rate not less than the market rate;

(iii) the purpose of residence to the inhabitants of the village not less than the floor rates notified by the State Government from time to time for a size of a plot to an individual not exceeding 250 square yards:

Provided that the vendee shall not sell or dispose of the land in any other manner whatsoever, before the expiry of a period of twenty years from the date of the sale:

Provided further that land shall revert back to the Gram Panchayat if it is used for the purpose other than it was sold:

Provided further that the State Government may impose such other terms and conditions as it may deem fit for such sale[:]

[Provided further that not more than twenty-five percent of the total land in shamilat deh shall be allowed to be sold.]

(2) Where it is proposed to sell the land in shamilat deh under sub-rule (1), the Panchayat shall forward to State Government a copy of its resolution passed by a majority of the three-fourth of its members proposing to sell the land through the Deputy Commissioner stating---

(a) the area and location of the land proposed for sale;

(b) the estimated income from the sale;

(c) the reasons as to why the Panchayat wants to sell the land and the plans for utilization of the income from the sale.

(3) The publicity for sale of land in shamilat deh by auction shall be made by the Deputy Commissioner in accordance with the procedure laid down in sub-rule (10) of rule 6 on receipt of the approval of the State Government who shall also decide whether the land shall be sold in one or more lots and the officer who shall be present at the time of auction:

Provided that nothing contained in this sub-rule shall apply to the sale of shamilat land for the purposes specified in clause (i) and (ii) of sub-rule (1).

(4) The Gram Panchayat may with the prior

approval of {the State Government}, sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate {floor rate or market rate, whichever is higher}.]”

A conjoint reading of Section 5-A of the Act, 1961 and Rule 12 of the Rules, 1964, would make it apparent that the Panchayat may dispose/sell the land in *shamlat deh* vested in it, with the previous approval of the State Government. However, such sale can be made only for the purposes as specified under Rule 12 of the Rules, 1964; namely :-

(i) the purpose of constructing affordable houses by Government agency or Government owned Companies or Board or Corporation for the inhabitants of the concerned village or office, building of Panchayat Samiti, Zila Parishad or of any Government department, Government owned companies and Public Sector Undertakings, at the rate not less than the floor rates notified by the State Government from time to time.}

(ii) the purpose of setting up infrastructure facilities, educational institutions, Special Economic Zone Projects and Industrial Development, units of public utility nature as may be approved by the State Government to be for the benefit of inhabitants of the village at the rate not less than the market rate;

(iii) the purpose of residence to the inhabitants of the village not less than the floor rates notified by the State Government from time to time for a size of a plot to an individual not exceeding 250 square yards:

xxx

xxx

xxx

(4) The Gram Panchayat may with the prior approval of {the State Government}, sell its non-cultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate {floor rate or

market rate, whichever is higher.

It is, thus, clear that the Panchayat can sell the land in *shamlat deh* vested in it under the Act for the abovesaid specified purposes, which does not include sale to a Government department for the purposes of “plantation”, as sought to be done in this case.

In view of the above discussion, we are of the considered view that although the change of user of *shamlat deh* land by the *Gram Panchayat* vested in it under Act, 1961 is permissible including change of user for plantation purposes but such permissible user can be effected either by the *Gram Panchayat* at its own level or through another as envisaged under Rule 3 of Rules, 1964. However, sale of land by *Panchayat* in favour of any Government Department for “plantation” would not fall within the parameters envisaged under Section 5B of the Act, 1961 read with Rule 12 of the Rules, 1964 as applicable to the State of Haryana. It is a settled position that *Gram Panchayat* holds property, in trust, for and on behalf of inhabitants of the village. Though the property vests in the *Gram Panchayat*, it is not at liberty to deal with the same in contravention or beyond the parameters laid down in the Act, 1961 and Rules, 1964. Once the sale of land by the *Panchayat* in favour of PWD (B&R) department for the purposes of plantation is not covered under the provisions extracted above, accordingly, we hold that such sale was not permissible.

Since, the *Gram Panchayat* is entitled to change the user of land under Rule 3 of the Rules, 1964 and change of user of *shamlat deh* land for plantation purposes being duly covered under Rule 3(2)(ii) of the Rules, 1964, which could be done by the *Gram Panchayat* itself or through another, we permit the user of land by PWD (B&R) department for

“plantation purposes” and the arrangement to that extent can carry on with liberty to the parties to work out the necessary modalities. However, the land would continue to vest with the *Gram Panchayat*.

We further direct the Block Development and Panchayat Officer (BDPO) to ensure that the land utilization plan in respect of land in Village Terakpur be prepared (if not already prepared) within a period of one month from the date of receipt of certified copy of this order.

No other point has been argued.

The writ petition is disposed off in the aforesaid terms.

(LISA GILL)
JUDGE

(HARSH BUNGER)
JUDGE

September 30, 2022
gurpreet

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No