

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

CWP No.3992-2021

Date of Decision : 2.6.2023

YUSUF AND OTHERS

.....Petitioners

VERSUS

STATE OF HARYANA AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Ms. Meghna Nehra, Advocate for the petitioners.
Mr. P.P.Chahar, DAG, Haryana.
Mr. Sachin Kumar Chhokar, Advocate for
Mr. N.K.Chhokar, Advocate and
Mr. Vikram Singh, Advocate for respondent No.4.
Mr. Brijeshwar Singh, Advocate for respondent No.5.

KULDEEP TIWARI. J.

1. Village Indri Nawabgarh and Meharka, Tehsil and District Nuh have single Gram Panchayat i.e. Gram Panchayat, Indri, Hadbast No.197. The petitioners are the residents of village Nawabgarh and approached this Court for seeking quashing of proposal dated 18.2.2020 (Annexure P-3) passed by Gram Panchayat Indri and approval dated 25.1.2021 (Annexure P-4) accorded by the State Government for sale of its shamlat land measuring 55 acres 0 kanal 6 marlas on the request of Union Home Ministry for the purpose of establishing the Central Industrial Security Force Unit (hereinafter referred to as 'the CISF') on the premise that the resolution passed by the Gram Panchayat is illegal because the reason being that their houses will be demolished in case the sale is allowed to be executed, the only road (rasta leading from Nawabgarh to Qutubgarh) which also lead to the District Headquarter

would be closed, the students studying in the Government Middle School which is running near the abadi of the village would be in danger, the water chamber which is near the abadi of the village and is the only source of the water consumption of the villagers will also demolished and the village pond (Johar) which is used for water consumption for the live stock of the villagers will be affected.

2. This Court while issuing notice of motion passed the following order on 19.2.2021:-

“Learned counsel for the petitioners while referring to order dated 25.01.2021 (Annexure P-4) submits that Additional Chief Secretary to Govt. of Haryana, Development and Panchayat Department, Chandigarh, has approved resolution No. 1 dated 18.02.2020 passed by the Gram Panchayat, Indri, Block and District Nuh for transferring land as per details given in this order for establishing C.I.S.F. Reserve battalion in village Nawabgarh. As per the map (Annexure P-1) placed on record, learned counsel for the petitioners contends that above the school which is in green color shade, there is a pond (jhohar), water chamber, abadi of B.P.L. Even the school has not been given land around it to keep it away from the building of C.I.S.F. He further argues that before executing sale deed by Gram Panchayat, one of the conditions mentioned in the order dated 25.01.2021 (Annexure P-4) was that the land should not be recorded or reserved for Jhohar or Charand. Since the land above the school premises consists of pond (jhohar), water chamber, abadi of B.P.L., this land could not have been made part of resolution for sale to C.I.S.F. as per Rule 12(5) of the

Punjab Village Common Lands (Regulation) Rules, 1964.

Notice of motion.

Mr. Hitesh Pandit, Additional Advocate General, Haryana accepts notice on behalf of official respondents and will file reply justifying how land which is reflected as jhohar, water chamber, abadi of B.P.L. And some land around the school has not been kept vacant while passing resolution for sale of Gram Panchayat land vide order dated 25.01.2021 (Annexure P-4). He will also inform respondent No. 4 in this regard.

List on 26.02.2021.

Notice re: stay as well.”

3. Upon notice, the official respondents filed the reply and put on record the detailed facts which are infact, concealed by the petitioners.

4. A perusal of the reply dated 22.11.2021 filed on behalf of respondent No.1 to 3 and 6 to 8 through BDPO, Indri depicts that the Gram Panchayat Indri infact, owned about more than 450 acres of shamlat land excluding abadi deh. On the request of CISF, the Gram Panchayat Indri passed resolution No.4 dated 16.8.2017, resolution No.7 dated 8.5.2018 and resolution No.2 dated 2.5.2019 for sale of its land measuring 75 acres 3 kanals 13 marlas. The said case for the sale of panchayat land was sent to the State Government through the Deputy Commissioner, Nuh and the State Government accorded its approval to the Gram Panchayat Indri for the sale of its above mentioned land vide order dated 20.8.2019.

5. Thereafter the Union Home Ministry required some more

land for CISF Unit DMRC through Deputy Commissioner, Nuh and BDPO, Indri again demanded land from the Gram Panchayat. On request of the Union Home Ministry, the Gram Panchayat passed resolution No.1 dated 18.2.2020 to give its land measuring 400 kanals 6 marlas (50 acres 0 kanal 06 marlas) and the resolution was sent through the Deputy Commissioner, Nuh for further necessary action. The Gram Panchayat, Indri-respondent No.4 passed the resolution by majority to sell the land and sent the proposal for the recommendation of the Deputy Commissioner, Nuh and in pursuance thereof the Government of Haryana accorded its approval to Gram Panchayat, Indri for sale of its land measuring 50 acres (0 kanal 6 marlas) to CISF vide its order dated 25.1.2021. The value of the land was assessed by the Deputy Commissioner concerned. The State Government accorded the approval to the Gram Panchayat to sell the land for the purpose of establishing CISF reserve battalion on the following terms and conditions:-

- i) The land utilization plan has been prepared as per the provisions of law;
- ii) The proposed land vest in the Gram Panchayat and there is no restrictive passed by any competent Court of law;
- iii) The proposed land is not recorded or reserved for Jhorar or Charand;
- iv) There is appropriate passages/access to the remaining/abutting land of Gram Panchayat;
- v) The resolution for sale of land has been passed by Gram Sabha and the Gram Panchayat by 3/4 "majority of the members of the Gram

Panchayat.

2. The trees standing on the proposed land shall continue to vest in the Gram Panchayat and shall 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 sold 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 by 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.

6. In the reply, the respondents further made averments that the petitioners have not challenged the earlier resolutions No. 4 dated 16.8.2017, No.7 dated 8.5.2018 and No.2 dated 2.5.2019 for sale of the Panchayat land measuring 75 acres 3 kanals and 13 marlas to the CISF by the Gram Panchayat, Indri, therefore, they have no locus standi to now challenge the resolutions passed by the Gram Panchayat for sale of additional land to the CISF.

7. Before We deal with the legality of the sale of the land to the CISF by the Gram Panchayat, it is apt to first note down the objections which the petitioners have raised by filing the present writ petition qua proposal of sale:-

- i) The petitioners have constructed their houses on the land in *khasra No. 202*, killa No.22 which is now being sold through resolution;
- ii) The water chamber which exists in *khasra No.202*, killa No.9 from which the water is being consumed by the whole villager is also included in the approval granted by the State Government;
- iii) The village Johar comprised in *khasra No. 202*, killa Nos.2 and 22 is also included in the impugned approval;
- iv) The kacha rasta which is going from *khasra No.202//22*, 23, 207//1, 10 and 206/15, 17, 22, 23 from village abadi to village Qutubgarh and which further leads to the headquarters of the District is also in the proposal of sale and:
- v) The cremation ground which is in *khasra No. 192*, killa No.14 is also being proposed to be sold.

8. After examining record and the reply on affidavit filed by the respondents concerned, it depicts that the averments made by the petitioners are infact against the record. So far as the first objection raised by the petitioners with regard to the land comprised in *khasra No. 202*, killa No.22 which has been allotted to the inhabitants of the villagers, who are below poverty line, is also included in the proposed sale is concerned, is infact against the record. Infact, out of mustil and killa No.202//22 (8-0), only 5 kanals 17 marlas land was notified for the CISF and the rest land measuring 2 kanals and 3 marlas belonging to below poverty line have not been included for sale to the CISF and is still with the beneficiaries of the registered plot holders of the villagers.

9. So far as the second objection of the petitioners is concerned,

that there is a water chamber in mustil and killa No.202//9, the same is also against the record. Infact there is no water tank or chamber in the above said *khasra Number*. The drinking well and pond exists in *khasra No.26* and *256* respectively which are very well recorded in the *jamabandi* for the year 2015-16 which is annexed as Annexure R-8/2.

10. The next contention of the petitioners is that the land which is gair mumkin Johar comprised in *khasra No. 202//2* and *22* is also not correct because as per the revenue record, the above said land is not reserved for any pond. Infact the Gram Panchayat, Indri has about 11 ponds in the revenue estate No.197 and the Gram Panchayat is leasing out the ponds for fisheries from time to time and no part of any pond comes within the proposed land for sale to the CISF.

11. The contention of the petitioners that the cremation ground which existed in *khasra No. 192* killa No.14 is also being proposed to be sold and approved by the State Government was infact against the record as the Gram Panchayat has neither given the land in mustil and killa No.192//14 to the CISF nor the State Government accorded its approval for its sale vide impugned resolutions passed by the Gram Panchayat concerned.

12. Even 3.5 acres of land has been left near the abadi deh of village Nawabgarh for further development activities. Therefore, in view of the specific reply supported by the revenue records, the factual averments made by the petitioners are totally incorrect. Rather it seems that the present petition has been filed with an ulterior motive which needs to be deprecated. This Court could have dismissed this petition

only on the ground that not only the petitioners have suppressed the material facts but also filed the present petition with incorrect facts. However, considering that the land belongs to the Gram Panchayat concerned, and it has been decided to be sold to the Home Ministry for the purpose of establishing a CISF unit. We have also examined the illegality of the resolutions (Supra) and subsequently the approval accorded by the State Government. There is no dispute that the land is shamlat deh which vests with the Gram Panchayat. The Section 5 of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act of 1961') prescribed the regulation of use and occupation of the land vested or deemed to have been vested with the Gram Panchayat. The relevant extract of Section 5 of the Act of 1961 reads as under:-

“XXXX

All lands vested or deemed to have been vested in a panchayat under this Act, shall be utilized or disposed of by the panchayat, for the benefit of the inhabitants of the village concerned in the manner prescribed :

XXXX”

13. Rule 12 framed under the Act of 1964 i.e. Haryana Village Regulation Rules, 1964 prescribed the purpose of which the shamlat land may be sold in pursuance of Section 5 of the Act of 1961. The relevant extract of Rule 12 of the Act of 1964 reads as under:-

“12. Purposes for which land may be sold:- (1) A Panchayat may, with the previous approval of the government, sell land in shamlat deh vested in it under

the Act.

xxxx”

14. Sub clause 2 of Rule 3 of Rules 1964 prescribed the purpose of use of the land in the shamlat land vested in the Gram Panchayat. The relevant extract of sub clause 2 of Rule 3 of Rules, 1964 reads as under:-

“(2) 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 following purposes;

- (i) Model Farm;
- (ii) Seed Farm;
- (iii) Nursery Garden or any other horticulture purpose;
- (iv) Production of food, fibre or fodder crops;
- (v) Dairy Farm;
- (vi) Grazing of cattle;
- (vii) Tree plantation or any other purpose related to forestry;
- (viii) Dying and tanning of skins and hides;
- (ix) Storage of fuel, fodder and/or grain;
- (x) Brick kilt-is extraction of shora, sand stones, kanker, bajri or other minerals defined in the Punjab Minor Mineral Rules, 1964;
- (xi) Cremation or burial ground;
- (xii) Manure pits;
- (xiii) Public latrines, and/or urinals;
- (xiv) Pathways, roads, drains or water channels.
- (xv) Play nds Parks or Children’s Parks or Batwaris; S
- (xvi) Leasing out, for the purpose of abadi, to a family having insufficient housing ;accommodation or for the purpose of industrial project approved by the Government;
- (xvii) School building, School Library or any other structure for educational purpose;
- (xviii) Maternity or First-aid Centres;
- (xix) Hospital or dispensary;
- (xx) Veterinary Hospital or Dispensary;
- (xxi) Vehicle Park;

- (xxii) Panchayat-ghar or Jhanjghar or Community Centre;
- (xxiii) Ponds and Fisheries;
- (xxiv) Wells, hand-pumps, Water Works, or any other Water Lifting device.
- xxv) Leasing out for cultivation or
- (xxv-a) Thrashing floor; or
- (xxvi) Any other kindred common purpose with the approval of the Panchayat Samiti.”

15. A conjoint reading of Section 5 of the Act and Sub Clause 2 of Rule 3 of the Rules, 1964 makes it crystal clear that the Gram Panchayat with the previous approval of the State Government can sell the shamlat land for the purpose mentioned in Sub Clause 2 of Rule 3 to Government Department or its undertaking/agency at the rate not less than the Collector rate notified by the Government from time to time.

16. We have examined the entire record.

17. The resolutions(Supra) are routed through the Deputy Commissioner, Nuh to the State Government. The Deputy Commissioner assess the price of the land as per the rates and the State Government in pursuance thereof considering that the purpose of that land proposed to be sold is one of the purpose as prescribed under Sub Clause 2(3) of Rules, 1964 and accordingly granted the approval. Above all the CISF has to perform the sovereign duty, therefore, we do not find that the proposed approval by the State Government suffers from any illegality or violation of any Rules/Regulations framed under the Act of 1961.

19. In view of the above stated legal facts and the legal proposition, we do not find any merit in the present *lis*. Therefore, the same is, hereby, dismissed.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

2.6.2023

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Whether speaking/reasoned.

:

Yes/No

Whether Reportable.

:

Yes/No