

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

CWP-15744-1995

Reserved on: 08.12.2023

Pronounced on: 16.12.2023

KARTAR SINGH AND ORS.

.....Petitioners

Versus

STATE OF PUNJAB & ORS.

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Argued by: Ms. Simran Kaur Sidhu, Advocate for
Mr. R.P.S.Cheema, Advocate
for the petitioners.

Ms. Monika Jalota, Sr. DAG, Punjab.

Mr. Ish Puneet Singh, Advocate
for respondent No. 3.

None for respondents No. 4 to 7.

SURESHWAR THAKUR, J.

1. Through the instant petition, the petitioners seeks quashing of order (Annexure P-6), as made by the Financial Commissioner and Secretary to Govt. of Punjab, Rural Development and Panchayat Department, whereby, the latter proceeded to accord approval to the resolution dated 21.01.1994 passed by the Gram Panchayat, Bhaini Sidhwan, Tehsil Taran Taran, Block Khadoor Sahib, District Amritsar for exchange of its land, thus with the land of the private respondents, hence for the purpose of path in public interest.

FACTUAL BACKGROUND

2. After the lawful culmination of the consolidation proceedings in the *mohal* concerned, in the year 1954, an area measuring 3 kanal 11 marlas was earmarked as common path (rasta-e-

by the Gram Panchayat, as, it became assigned the revenue designation of *shamlat deh (Gair Mumkin Rasta)*.

3. That one Darshan Singh, respondent No. 7 herein, filed a suit for permanent injunction, to the effect, that the defendant-petitioner no. 8 herein, be restrained from interfering in the peaceful possession of the plaintiff over the suit land. In the said suit, Darshan Singh pleaded, that he had taken the said land from the respondent-Gram Panchayat thus in exchange and in lieu of his land.

4. Further, it was stated therein, that the Gram Panchayat, had passed a resolution on 25.01.1977, to the effect that an exchange had taken place qua the suit land, and, thereby the plaintiffs are using the suit land, as, taken by them in exchange with the land of the Gram Panchayat.

5. The abovesaid suit was contested by defendant-petitioner No. 8, by way of a filing written statement, wherein, it was pleaded that the plaintiff Darshan Singh, is not the owner of the said property and that the respondent-Gram Panchayat, rather was not competent, to allow an exchange of the *Rasta-e-aam*, thus with the land of the said Darshan Singh.

6. During the pendency of the abovesaid suit, petitioners No. 1 to 3 moved an application before the Additional Senior Sub Judge, Tarn Taran, under Order 1 Rule 10 CPC, for theirs being impleaded as parties in the suit, as the applicants owned land in the vicinity of the land owned by plaintiff besides on the plea that the passage in dispute, whereover, the plaintiff in the suit claimed ownership, given the same being the only passage for theirs accessing their land, thus thereby they

are required to be impleaded as such in the suit (supra).

7. However, relief on the aforesaid application filed by petitioners No. 1 to 3, became declined by the learned trial Court. Feeling aggrieved, the applicants-petitioners No. 1 to 3 filed thereagainst Civil Revision before this Hon'ble Court, which was allowed and the parties were directed to appear before the learned trial Court.

8. That yet no further proceedings have been held before the trial Court, at Tarn Taran, thus in the abovesaid suit, as filed by Darshan Singh (respondent No. 7) whereby he claimed relief for rendition of a decree of permanent prohibitory injunction qua the suit path.

9. That one Gurmej Singh (respondent No. 4), had filed a petition under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter for short called as the 'Consolidation Act, 1948') before the Authority concerned, challenging the validity of the earmarking of a common path, thus during the consolidation proceedings. The said petition was disposed of with certain directions. The relevant part of the order is extracted hereinafter.

“ Under these circumstances, I find that spot inspection is necessary for the change of path as proposed by the petitioner and in accordance with mutation No. 598. Therefore, this petition is accepted and the case is remanded to the consolidation Officer with the direction that as per mutation No. 500, the changed path should be implemented in the record and it should be kept in mind that no party should be denied link to his tak. The Consolidation Officer should hear all the interested persons, visit the spot and decide the case strictly in

accordance with the provisions of law and as per Mutation No. 598.”

10. Thereafter, petitioners No. 4 and 5 also filed a petition under Section 42 of the Consolidation Act, 1948, before the authority concerned. The said petition was disposed of through an order made, on 08.11.1994. The relevant part of the order is extracted hereinafter.

*“From the above discussion, I find that the petition of the petitioner is pre-mature one. The case has been remanded vide my order dated 18.5.94 to the Consolidation Officer with the directions that he should visit the spot and after hearing all the interested persons decide the case, strictly in accordance with the provisions of law. **Now the ld, counsel for the respondent undertakes that the petitioner's tak will not be affected in any case from out of Kh. No, 17//5 & 4/3. They will not demand passage through these two Khasra, nos. So while deciding the remand order, the Consolidation Officer should keep this undertaking of the Respondent's counsel in mind and then decide the case.***

11. That thereafter, petitioner No. 2 filed an application before the Additional Director, Consolidation Holdings Punjab, Jalandhar, whereons the learned Court, through its order made on 17.11.1994 (Annexure P-5), issued notice to the respondents and the Consolidation Officer was directed not to decide the remanded case till further orders. The said order is extracted hereinafter.

“Issue notice to respondent for 06.12.94. Consolidation Officer is directed not to decide the remand case till further orders.”

12. The said order has not been stated to become rescinded. Therefore, but naturally the remanded *lis* has not yet been decided through a lawful order being made thereons.

CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS.

13. The learned counsel for the petitioners submits, that despite the pendency of the aforesaid proceedings, the respondent-State had accorded approval to the exchange of 3 kanals – 11 marlas of land thus owned by the Gram Panchayat, despite the same becoming earmarked in the consolidation proceedings, as a common path (rasta-e-aam), for use by the inhabitants of the village.

14. The impugned order would not only amount to elimination of the common path which had been provided in the finalized consolidation scheme, besides the petitioners would be left with no approach road/path to their respective taks/plots, which would be both highly unjust and arbitrary.

15. The provisions of Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 allow exchange of only *shamlat deh* land by the Government, whereas, the disputed land is owned and held by the estate holders of the village proprietary body. There was no certificate of the Government that the exchange was being made for the benefit of the inhabitants of the village.

16. The passage in respect of which illegal exchange, has been ordered, through the impugned Annexure P-6, had been in continuous use by the village holders rather since the finalization of the consolidation process. The Gram Panchayat had no *locus standi* either to make change or alteration in the existing path as became assigned during consolidation process, nor any modification could be made thereof, by respondent No. 1.

17. That inspite of the undertaking, given by the respondent's

counsel, before the Additional Director, Consolidation, while his passing of order on 08.11.1994 (Annexure P-4), wherein, it was stated that the petitioner's Tak would not be affected in any case, from out of Khasra No. 17//5 and 4/3, and that they would not demand passage, through these two killa numbers, yet the contentious exchange has been effected rather through Annexure P-6.

18. Owing to the afore illegal exchange of land, the petitioners concerned have suffered to the extent there being no direct path to their tak/plot. Therefore, the impugned order Annexure P-6, being illegal and unlawful, be quashed and set aside.

REPLY OF RESPONDENTS NO. 1 AND 2

19. The respondent-State in its reply, has submitted, that the authorities below, after making a thorough inquiry and spot inspection, thus recommended the exchange of the disputed land with the land of private respondents. The proposal was under consideration by the Government when complaints were received from petitioner No. 8 and others regarding the exchange of land. The said complaint was sent to the Divisional Deputy Director, Rural Development and Panchayat Jalandhar, for a detailed inquiry. The officer concerned held a detailed inquiry, in the presence of both the parties and recommended the exchange of land, given the same being in public interest. Therefore, sanction for the exchange of disputed land was accorded, the same being in public interest, through invoking the provisions of Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964.

REPLICATION TO THE REPLY FILED BY RESPONDENTS NO. 1 AND 2.

20. The resolution passed by the Gram Panchayat for exchange

of land was maneuvered under pressure and influence of respondents No. 4 to 7. The Officers concerned never made spot inspection with a view to ascertain the views of the inhabitants of the village. The exchange of land, being made by the Gram Panchayat rather is not in public interest at all.

CONTENTION OF THE LEARNED COUNSEL FOR THE RESPONDENT NO. 3-GRAM PANCHAYAT.

21. The learned counsel for respondent No. 3 submits, that the panchayat is fully competent to enter into an exchange of the land in dispute, as the same is owned by the panchayat, as well as, is controlled and managed by it. The said passage is never used by the petitioners or other villagers. The petitioners have no *locus standi* to challenge, the resolution, as well as, the exchange as entered into by the panchayat with the respondents herein.

22. The continuation of the civil suit, as well as, the proceedings, if any, before the Addl. Director Consolidation, rather cast no legal bar, after completion of the codal formalities, thus against the granting of sanction, to the resolution passed by the Gram Panchayat, so long as the land in dispute, vests in Gram Panchayat. The State Government has acted in accordance with law. Therefore, it is argued that the impugned order is valid and legal.

ANALYSIS OF THE SUBMISSIONS AND REASONS FOR ACCEPTING THE SUBMISSIONS OF THE LEARNED COUNSEL FOR THE PETITIONERS AND REJECTING THE SUBMISSIONS OF LEARNED COUNSEL FOR RESPONDENT NO. 3-GRAM PANCHAYAT.

23. Undisputedly, the disputed passage was earmarked as a *share-aam-rasta*, in the finalized consolidation proceedings. The

carving of the consolidation rasta, thus appears to be, so made, prima facie, after making pro rata cuts from the lawfully held estates of the estate holders concerned. Therefore, prima facie, at this stage, though the consolidation rasta was reserved vis-a-vis the panchayat concerned, but prima facie, the reservation so made vis-a-vis the Gram Panchayat concerned, appears to be made for enabling the estate holders to make common user of the consolidation rasta.

24. In consequence, prima facie, the consolidation rasta was required to be ably managed and controlled by the Gram Panchayat concerned, thus for ensuring that the estate holders concerned, become enabled to exercise their easementary rights thereons.

25. Naturally, thereby, there was no absolute vestment of right, title and interest in the Gram Panchayat concerned, nor, prima facie, it was bestowed with any absolute authority to permit its exchange with the respondents concerned.

26. The reason being that since the consolidation rasta became carved after making the proportionate cuts from the lawful estates of the estate holders concerned, thereby on the contentious exchange becoming approved, thereby it would cause prejudice to the rights of common user thereof, by the estate holders concerned, besides thereby the panchayat concerned rather would be not making an able and effective management of the said assigned consolidation rasta. Conspicuously when yet various proceedings are yet sub judice respectively before the Civil Court concerned, and/or before the consolidation authorities concerned. Resultantly when thereby no valid authority ensued in either in the Gram Panchayat or in the approving

exchange till the termination of the above proceedings, thus cannot be said, to be acquiring any force in law.

27. Moreover, in the wake of the exchange, prima facie, the Gram Panchayat concerned would be avoiding to perform its duties of lawfully ably managing and controlling the consolidation rasta.

28. Be that as it may, since a suit is yet subjudice before the learned trial Judge concerned, wherein, one of the private respondents, thus as a plaintiff therein, claimed relief for permanent prohibitory injunction qua the suit passage, thereby it appears that thereby an acerbic contest, rather has emerged inter se the estate holders concerned, in respect of the relevant exchange, rather truncating their rights of easement, as they are/were exercising over the consolidation rasta. Therefore, but naturally, in the wake of the pendency of the said suit, wherein, the estate holders claim right of exercising of easementary rights on the disputed passage. Resultantly neither the resolution, prima facie, could make any conclusion therein, that the said exchange was in public interest nor the approving authority, could well say that the said exchange was in public interest.

29. Moreover, a reading of the above extracted order as made on 17.11.1994 (Annexure P-5), reveals that the Additional Director Consolidation of Holdings, Punjab, Jalandhar, had made a direction upon the Remandee Court, to not proceed to decide the *lis* relating to the contentious rights of the estate holders over the disputed passage.

30. Therefore, it appears that since therebys there is yet a subsisting *lis* engaging the estate holders concerned, and the exchangees besides the Gram Panchayat concerned, vis-a-vis, the

consolidation rasta, and/or of exclusivity of title theretos in the Gram Panchayat or in the private respondents herein.

31. In consequence, until all the disputes (supra) become clinchingly rested through conclusive and binding verdicts becoming respectively passed by the Civil Court concerned, in the suit for permanent prohibitory injunction vis-a-vis the suit passage, as filed by respondent herein, and/or by the statutory authorities concerned, thus, thereupto, reiteratedly, it appears that the authorities concerned, could not accord approval for exchange of the said rasta being made, as thereby the interest of the estate holders, over the suit passage, would be jeopardized. Moreover, rather the approved exchange, prima facie, will not be in public interest.

32. In the wake of the above inferences the exchange, may not be enforced or implemented, thus till binding and conclusive decisions (Supra) are made respectively by the Civil Court concerned and/or by the statutory authorities below.

FINAL ORDER OF THIS COURT.

33. In aftermath, this Court finds merit in the writ petition, and, with the above observations, the same is allowed. The impugned order (Annexure P-6) is quashed and set aside.

34. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

16.12.2023

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