

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

CWP-1947-1997

Reserved on: 11.01.2023

Date of decision: 17.01.2023

BAWA SINGH (SINCE DECEASED) THROUGH HIS LRs

...Petitioner

Versus

STATE OF PUNJAB AND ANOTHER

...Respondents

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

Present: Mr. Balbir Singh Jaswal, Advocate
for the applicant/petitioner.

Mr. Paramjit Batta, Addl. A.G., Punjab.

SURESHWAR THAKUR, J.

FACTUAL BACKGROUND

1. The jamabandi appertaining to the writ lands, is carried in Annexure P-1. A perusal of Annexure P-1 underscores the factum, that though in the column of ownership, the writ land, does carry the denomination of Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba, but in the column of classification, it has been designated as Gair Mumkin Hadda Rori. If so, though in the wake of the import of the entry of Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba hence the village proprietary cultivators concerned, do become, to the extent of their lawful land holdings in the Mohal concerned, rather entitled to make cultivating possession of the writ lands, but yet the designation assigned to them in the column of classification, inasmuch as, theirs

being designated as Gair Mumkin Hadda Rori, *prima-facie*, did make them unsuitable for cultivation, as the import of the said entry, is, of theirs being meant for bearing the carcasses of animals.

THE RESOLUTION(S) OF PANCHAYAT

2. On 24.04.1993 the Panchayat approved a resolution, that because of the increase in the size of the abadis the above said land, has neared the abadis,. Therefore, for avoiding any disease spreading amongst the inhabitants of the abadis concerned, hence the apposite approval became granted qua the writ lands, rather being exchanged with the land(s) of the petitioner herein. The resolution carried in Annexure P-2 was sent for further approval to the Block Development and Panchayat Officer Verka, but through the making of Annexure P-7 by the Competent Authority, the asked for approval to Annexure P-2 became meted. The relevant Rule No.5 of The Punjab Village Common Lands (Regulation) Rules, 1964, (hereinafter referred to as “the Rules”) as, governs the permissibility of the making of the said exchanges, becomes extracted hereinafter.

“5. Exchange of land. Section 5 and 15(2)(f): A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may, with the prior approval of the State Government, transfer any land in shamlat deh by exchange with the land of an equivalent (market) value to be determined by the Deputy Commissioner in whose jurisdiction the land is situate:

Provided that State Government shall not accord any approval in case which are not received through the Deputy Commissioner concerned:

xxx”

3. Conspicuously within the ambit of Rule 5 of the Rules, the equivalence(s) of the market value of the writ lands rather with the lands of the petitioner, and, which were to beget an *inter-se* exchange, is, vividly pronounced by Annexure P-3, and, thereafter Annexure P-3, resulted in an order of 23.06.1995 (Annexure P-7), wherethrough the resolution of 24.04.1993, as made by the Panchayat concerned, and, as carried in Annexure P-2, did become meted approval.

4. However, prior to 1995 hence in the year 1994, the Panchayat concerned, had moved a resolution carried in Annexure P-4 hence cancelling the earlier thereto resolution, as, embodied in Annexure P-2. The above resulted in the drawing of Annexure P-5, on 03.05.1994, by the District Development and Panchayat Officer, Amritsar, wherethrough both Annexure P-2 and Annexure P-3, became rescinded. Nonetheless, since the rescinding of Annexure P-2 through Annexure P-5, occurred in the wake of approval thereto becoming not granted by the Competent Authority, but yet when through Annexure P-7, the apposite approval was meted to Annexure P-2, thereupon the order comprised in Annexure P-5 wherethrough Annexure P-2 became rescinded, in the wake of the no approval thereto, becoming granted by the Competent Authority, does obviously, becomes completely insignificant. Thus, Annexure P-5 merges into the order of approval accorded by the Competent Authority, and, as becomes embodied in Annexure P-7.

EVICTIION ORDER EMBODIED IN ANNEXURE P-6 BECOMING PASSED SUBSEQUENT TO THE MAKING OF ANNEXURE P-7

5. Even yet in the wake of the apposite Authority, hence making Annexure P-7, wherethrough approval became meted to the apposite panchayat resolution, as, embodied in Annexure P-2, rather for the proposed *inter-se* exchanges *inter-se* the lands of the gram panchayat with the lands of the

petitioner, hence becoming acted upon, yet the gram panchayat concerned, moved a petition in the year 1994, under, Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (in short “the Act”) rather for seeking the eviction of the petitioner herein from the disputed khasra number, to which khasra No.78 is assigned. On the said petition an order of eviction (Annexure P-6), becoming passed by the learned Collector concerned, on 30.01.1995.

6. It appears that prior to the drawings of Annexure P-7 on 23.06.1995 hence approving the resolution of the panchayat concerned, rather for the relevant exchanges being made hence the order of eviction as becomes embodied in Annexure P-6 did become drawn. However, though subsequent to the drawing of Annexure P-7, the Gram Panchayat concerned, did make a motion embodied in Annexure P-9 to the Financial Commissioner and Secretary to Government of Punjab hence seeking the revocation of Annexure P-7. The above resulted in an order carried in Annexure P-10, becoming made, whose perusal discloses, that the representation of the Gram Panchayat concerned, hence claiming rescission of Annexure P-7 rather becoming accepted.

7. The reason as mentioned therein for rescinding Annexure P-7 becomes comprised in the factum, that since the disputed khasra No.78, became described as Mushtarka Malkan. Therefore, its exchange with the land of the petitioner, is forbidden under Rule 5 of the Rules. In pursuance to Annexure P-10, the Gram Panchayat, has taken to enforce the affirmative order, as, made on a petition cast under Section 7 of the Act, and, which is embodied in Annexure P-6.

8. The petitioner becomes aggrieved from the making of Annexure P-10 and also becomes aggrieved from the effort of the Gram Panchayat concerned, to in its wake cause the completest execution, and, enforcement of

Annexure P-6. Therefore, he is led to institute thereagainst the instant writ petition before this Court.

INTERPRETATION OF THE PROVISIONS OF RULE 5 OF THE PUNJAB VILLAGE COMMON LANDS (REGULATION) RULES, 1964, WHICH BECOMES EXTRACTED HEREINABOVE

9. Though the Rule (supra), facilitates *inter-se* exchanges *inter-se* the lands concerned, with the lands of the petitioner, but the said permissibility may not yet facilitate *inter-se* exchanges, being made in respect of lands described in the revenue records either as Gair Mumkin Zohar or as Gair Mumkin Rasta. Moreover, though the petition land to which khasra No.78, is assigned, is described in the ownership column, as Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba, and, thus would *prima-facie* become amenable for being brought to cultivation, by the cultivators concerned, but in proportion to their other lawful holdings in the Mohal concerned. The natural corollary thereof, is that, the apposite exchange could not occur except with the consent of the cultivators concerned, whose names along with the petitioner occurred in the list of Bartan Daraans, and, who therein hold a common or a joint right with him for making cultivation(s) of the petition lands. Though, the above evidence in respect of the above consent is not existing on record. Nonetheless, it is but pertinent to mention here, that the said exchange was a sequel of both the exchanged lands carrying an equivalent value, besides also it is relevant to allude, to the trite factum, that the authority concerned, in making Annexure P-10, has not borne in mind the classification of Gair Mumkin Hadda also becoming assigned to the writ lands.

REASONS FOR REJECTING ANNEXURE P-10

10. Be that as it may, the import of the classification column of the revenue records hence describing the disputed khasra No.78, as Gair Mumkin

Hadda Rori, is that, it was meant for the keepings thereon of carcasses of the livestock of the villagers. If so, but necessarily the said classification, did not make, the land cultivable, at the instance of the village proprietary body or at the instance of any of the Bartan Daraans concerned, who however in the wake of an entry of Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba, as, existing in the column of ownership, were otherwise entitled to cultivate the disputed khasra number, but only in proportion to such lands, other than the disputed khasra numbers, as, became lawfully held by them in the Mohal concerned.

11. If so, the said entry becomes eclipsed and subsumed within the realm of the entry in the revenue records hence classifying the disputed khasra number as Hadda Rori.

12. As but a natural corollary thereof, the petitioner contends, that owing to the increase in the size of abadis, the said Hadda neared the apposite homesteads, and, is concomitantly causing an imminent danger to the health of the inhabitants concerned. Since the above fact has been accepted by the resolution of the panchayat, as carried in Annexure P-2 and, also when no evidence has been adduced, to bely the said echoed fact therein, besides with the resolution of the panchayat, as carried in Annexure P-2, also ultimately resulting in the initial validating thereto order becoming recorded in Annexure P-7. Therefore, the effect of the above unrebutted echoing, is that, a need arises for balancing the necessity of the inhabitants of the abadis concerned, rather with the right(s) of the villagers concerned, on the disputed khasra number(s), to hence keep thereons the carcasses of their livestock, and/or, to save the inhabitants from theirs incurring diseases given the evident proximity of the writ khasra number to the abadis concerned. However, since it is also not disputed, that the said exchange became acted upon, and, also when it is not controverted,

that after the exchange concerned, being completely acted upon, the carcasses of livestock, are being stacked on the land of the petitioner, which he exchanged with khasra No.78. Therefore, when the purpose for reserving khasra No.78, as the site or a place for stacking the carcasses of livestock, of the village proprietary body, has neither been prejudiced rather has been facilitated by the exchange. Moreover, when as above stated since it is not disputed, that owing to increase in the size of the abadis, the disputed khasra number, has neared the abadis, hence admittedly causing an endangerment to the health of the inhabitants of the abadis concerned.

13. Resultantly, the initially approved exchange through Annexure P-7 was a well considered and insightful permission, and, was not required to be subsequently interfered with.

14. Pre-eminently also when the comparative values of the respectively exchanged lands, was co-equal at the time when the exchange became approved, and, also became put into action, especially when the said stage, is the relevant reckonable stage, for making a conclusion whether the approval fell within the ambit of the Rule (supra), and, obviously when the subsequent increases in the apposite market values rather are not relevant.

15. Importantly the plank for validating Annexure P-10, become rested, only upon an allusion being made to the ownership column of the revenue records, rather carrying an echoing of Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba, but without any allusion being made to the entry in the classification column rather describing the suit khasra no.78, as Gair Mumkin Hadda Rori. Though as above stated, the above rendered the Bartan Daraans concerned, to make cultivation of khasra No.78, but in proportion to their other lawful holdings in the Mohal concerned. However, when the classification

column, as above stated, does carry an echoing of Gair Mumkin Hadda Rori, therefore, the said land was not meant for cultivation nor is cultivable. The entry of Jumla Mustarka Malkan Hakdaran Hasab Rasab Rakba hence enjoys no precedence over nor countervails the entry of Gair Mumkin Hadda Rori.

16. The Authority concerned, which drew Annexures P-5 and P-6, has remained completely mindful, of the necessity to make conjoint reading(s) of entries (supra), and, also remained unmindful qua the further necessity of making a conjoint interpretation, of both the terms, inasmuch as, of Jumla Mustarka Malkan, and also of the term Hadda Rori. In case it had done so, it would have also reached a conclusion which has been arrived by this Court. However, it failed to do so, and, that too, without issuance of any prior notice to the petitioner, especially when as above stated the apposite exchanges had been acted upon, by all concerned, thereupon the petitioner was obviously required to be heard prior to the making of Annexure P-4, whereas, his becoming condemned unheard by the Authority, which pronounced Annexure P-10, does render it to be ridden with a pervasive vice of gross breach being caused to the principles of natural justice.

17. Even otherwise, though Annexures P-6 and P-10, both suffer from gross non-application of mind, and, are also rendered in a slipshod and arbitrary manner, inasmuch as, they ignore the previously made well informed order carried in Annexure P-7, besides Annexure P-10 also appears to untenably review the earlier made approvals, merely on account of the factum, that monetary values of the khasra No.78, is more, than the value of the petitioner's land. However, the above purported reason for making revocation of Annexure P-7, is also vitiated, as there is no evidence on record, suggestive rather for disputing the correctness of the comparative/equivalent evaluations, as made in

Annexure P-2, and, which was but the relevant stage for making their *inter-se* comparative/equivalent assessments, than any subsequent thereto stage. More so, also when the approved relevant exchange also became acted upon after an able validation of a well informed panchayat resolution.

SUMMARIZATION OF PRINCIPLES

- I. Once land is exchanged through a validating order qua a resolution, as, made by the Gram Panchayat, thus it is deemed to well consider the benefit of the inhabitants, as well as, is deemed to mete all the requisites canons, as, carried in Rule 5 of the Rules (supra). Thus, the said validating order, cannot be arbitrarily recalled without complying with the principles of natural justice.
- II. Even if the land is described as Jumla Mustarka Malkan, in the ownership column, but when in the column of classification, it becomes described as Gair Mumkin Hadda Rori. Thus, the effect of a conjoint reading of both the terms, is that, Rule 5 of the Rules (supra), does, not bar the proposed exchange of the apposite lands, if the proposal is carried in a well informed panchayat resolution, which becomes concurred with by the Competent Authority. Moreover, in case in contemporaneity to the making of the validating order vis-a-vis the panchayat resolution, the equivalence or comparative monetary assessments but are verified and are not proven to be false, besides when the health/welfare of the people residing in the vicinity of the disputed khasra number, does become protected, thereupon the said validated resolution is well made. The equivalence of

monetary values of the lands proposed to be exchanged, is the material consideration, besides the endangerments to the health of inhabitants, of the abadis concerned, is to be well considered, as has been done in the instant case, inasmuch as, there is proof in respect of the nearing of the Hadda Rori, to the apposite abadis, whereupon the said nearings would cause endangerments to the health of the inhabitants of the abadis concerned.

III. Since within the ambit of the Rules (supra), the relevant stage for determining the correctness of the apposite comparative/ equivalent market valuations of the lands to suffer an exchange, is the initial stage, and, when at that stage there is no denial to the correctness of the evaluations. Therefore, any subsequent increase in evaluations thereof, is outside, the ambit of the Rules. Predominantly also when in pursuance to the initially made verified, and, undisputed equivalent/comparative monetary assessments of the lands to be brought to exchange, the said has been uncontrovertedly acted upon.

18. In view of the above, there is merit in the petition, and, the same is allowed. The orders respectively carried in Annexures P-6 and P-10 are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

17.01.2023
Ithlesh

(KULDEEP TIWARI)
JUDGE

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