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

**CWP-4883-2023 (O&M)**
**Reserved on: 31.08.2023**
**Date of decision : 29.09.2023**

RAMESH AND ORS. -PETITIONERS

VERSUS

STATE OF HARYANA AND ORS. -RESPONDENTS

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

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

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Mr. Puneet Jindal, Sr. Advocate assisted by
Mr. Ravi Malik, Advocate
for the respondent No.4.

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**KULDEEP TIWARI, J.**

1. The petitioners, being alleged proprietors and right-holders of the village concerned, assail the validity of the order dated 13.05.2021 (Annexure P-4), as also the validity of resolutions dated 26.10.2020 (Annexure P-2) and 05.02.2021 (Annexure P-3).

2. Through the resolutions (supra), the Gram Panchayat Village Nayan, Block Madlauda, District Panipat, resolved to transfer the Charand lands of the village concerned, through sale, in favour of the Haryana Vidyut Prasaran Nigam Limited (hereinafter referred to as 'H.V.P.N.L.'), for the construction of a 220 KV powerhouse thereon. Accordingly, the Gram Panchayat concerned expressed its willingness to offer its land measuring 10 acres 18 marlas to H.V.P.N.L. at market value(s). Pursuant to the drawing of

the resolutions (supra), the Deputy Commissioner concerned made his recommendation for sale of lands (supra) in favour of the H.V.P.N.L. Consequently, through an order drawn on 13.05.2021 (Annexure P-4), the State Government, in exercise of the powers envisaged under Rule 12(1)(ii) of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as the 'Rules of 1964'), accorded approval to the sale of the Gram Panchayat's lands (supra) for the purpose, as proposed under resolutions (supra).

3. The petitioners have raised the present challenge, inter alia on the premise, that the petition lands, which are sold to the H.V.P.N.L., were reserved for Charand purposes during consolidation operations in the village concerned, therefore, neither alteration of the nature of the petition lands is permissible, nor their sale is permissible. The sale deeds, as executed in respect of the petition lands, are alleged to be violative of Rule 12 of the Rules of 1964, as also to be violative of the conditions prescribed in the impugned approval order dated 13.05.2021.

4. Before analyzing the validity of the resolutions (supra) and the consequent thereto made approval order (supra), it would be apt to take a glance at Section 5 of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), which is reproduced hereunder.

> ***"5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats.-*** *(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed:*
>
> *Provided that where two or more villages have a common Panchayat, Shamilat Deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village:*

*Provided further that where there are two or more shamilat tikkas in a village, the Shamilat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka:*

*Provided further that where the area of land in shamilat deh of any village so vested or deemed to have been vested in Panchayat is in excess of twenty-five per cent of the total area of that village (excluding abadi deh) then twenty-five per cent of such total area shall be left to the Panchayat and out of the remaining area of shamilat deh an area up to the extent of twenty-five per cent of such total area shall be utilised for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining area of shamilat deh, if any, shall be utilised for distribution to small land owners of that village subject to the provisions relating to [permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade] in consultation with the Panchayat [in such manner and on payment of such amount as may be prescribed]*

*(2) The area of shamilat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultation with the Panchayat and in such manner as may be prescribed.*

*(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2), issue to any Panchayat such directions as may be deemed necessary.*

*[(4) Nothing contained in the third proviso to sub-section (1) and in sub-section (2) and sub-section (3) shall apply to the "hilly area"]*

*[(5) Notwithstanding anything contained in this section, if in the opinion of the State Government, it is necessary to take over, to secure proper management for better utilization for the benefit of the inhabitants of the village concerned any shamilat deh, the Government may by notification take over the management of such shamilat deh for a period not exceeding twenty years:*

*(6) The income from the shamilat deh, the management of which is taken over under sub-section (5), after meeting all charges relating or incidental to the management and utilization, shall be credited to the Gram Fund and utilised for the benefit of the inhabitants of the village concerned.]*

***[(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 Schedules 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.*

***5B. Certain transfers not to affect Panchayat's rights.**- (1) Any transfer of land, gifted, sold, exchanged or leased before or after the commencement of this Act, made in contravention of the prescribed terms and conditions, shall be void and the gifted, sold exchanged or leased land so transferred shall revert to, and revest in the Panchayat free from all encumbrances.*

*(2) The Government or any officer authorized by it may, either suo motu or on application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer, examine the record for the purpose of satisfying himself as to the legality or propriety of any sale, lease, gift, exchange, contract or agreement executed before or after commencement of this Act, if such sale, lease, gift, exchange, contract or agreement is found detrimental to the interest of the villagers and is no longer required in the interest of the Panchayat, the Government may, after making such enquiry as it may deem fit, cancel the same and no separate proceedings under any law shall be required to cancel the sale, lease, gift or exchange. The Panchayat shall be competent to take over the possession of such premises including the constructions thereon, if any, for which no compensation shall be payable.]"*

5. An overview of the above extracted provisions unveil the procedure for utilization and disposal of lands vested in Gram Panchayat for the benefit of the inhabitants of the village concerned in the manner, as prescribed thereunder. Section 5-A empowers Gram Panchayat to gift, sell, exchange or lease the "shamilat deh" lands vesting in it, while Section 5-B prescribes that if any transfer of land, either gifted, sold, exchanged or leased, is made in contravention of the prescribed terms and conditions, the same shall be void, thereby resulting in reversion and revestment of such land in the Panchayat free from all encumbrances. Section 5-B further makes an endowment upon the Government or any office authorized by it, to either suo motu or on application made by any aggrieved, examine the legality of any sale, lease, gift, exchange, contract or agreement, and thereupon, if the

outcome of such sale, lease etc. is found adversarial to the interest of the villagers, to cancel the same. It categorically speaks that no separate proceedings under any law shall be required to make cancellation of such sale, lease etc. It also empowers the Panchayat to thereafter assume possession of such premises, including the construction existing thereon, if any, however, without payment of any compensation.

6. Here, the lands under sale in the instant case, are undisputedly "shamlat deh", which vests in the Gram Panchayat concerned, for all intents and purposes. Moreover, the sale of the petition lands has evidently been made for the benefit of the inhabitants of the village, inasmuch as, for construction of a 220 KV powerhouse by the H.V.P.N.L. Prima facie, we do not find any evident violations in the sale of the petition lands, which has indeed been made after passing of resolutions (supra) by the Gram Panchayat concerned, besides has been properly channelized through the Deputy Commissioner concerned and ultimately, has been approved by the State Government in terms of the relevant rules. As a matter of fact, Rule 12(1)(ii) of the Rules of 1964 authorizes the Gram Panchayat concerned to make sale of "shamlat deh" land for the purposes of setting up infrastructure facilities etc., which are beneficent for the inhabitants of the village, at market rates. It would also be worthy recording here that market price, in terms of Rule 12(1)(ii) of the Rules of 1964, was also determined by the Deputy Commissioner concerned, thereby attaching sanctity of law to the sale.

7. However, if the petitioners yet have any grievance qua violation of any statutory provisions, they may recourse the alternative remedy, as available under Section 5B(2) of the Act of 1961. Since the present writ

petition is a misconceived motion, therefore, the same is dismissed. However, liberty is reserved to the petitioners to access the competent authority by availing the remedy (supra). If the petitioners avail the remedy (supra) and make an application, the competent authority concerned shall make an expeditious decision thereon within six months from the date of its preferment. It is also expected that the competent authority concerned shall comply with the principles of natural justice in making a decision upon the application so preferred before it.

8. All pending application(s) stand disposed of accordingly.

**(SURESHWAR THAKUR)**
**JUDGE**

**(KULDEEP TIWARI)**
**JUDGE**

**29.09.2023**
**devinder**

*Whether speaking/reasoned ? Yes/No*
*Whether reportable ? Yes/No*