

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**Civil Writ Petition No. 12593 of 2015****Date of decision : 11.04.2023**

BAAS EDUCATIONAL TRUST, GBP SCHOOL, GAIRATPUR BAAS

....PETITIONER

VERSUS

THE STATE OF HARYANA AND OTHERS

....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. Neeraj Gupta, Advocate
for the petitioner.

Mr. Raman Sharma, Addl. Advocate General, Haryana.

Mr. Rajinder Chokkar, Advocate
for respondent no. 4.

Mr. Kanwal Goyal, Amicus Curiae.

SURESHWAR THAKUR, J.**FACTUAL BACKGROUND**

1. Some foreign national and retired Army officials constituted the petitioner-Trust, but with a holistic objective to impart education. They in association with the Gram Panchayat, Gairatpur Baas, respondent No.4, started a school for the children of nearby places. Vide resolution dated 13.6.2009, the Sarpanch of Village Gairatpur Baas proposed that the land of the village comprised in Khasra No. 110 (5 killa) acre, be nominated for the educational institution, and, the petitioner-Trust, be appointed for running the

school with the precondition, that the ownership of the building constructed by the above Trust, shall remain vested with the Gram Panchayat. Again on 25.3.2013, a second resolution was passed which was duly recorded in the Panchayat proceeding book, but, with some amendments in the terms and conditions qua construction and running of the school. The important conditions read as under:-

RESOLUTION OF THE PANCHAYAT

“XXX XXX XXX XXX”

2. *Ownership of land of school and building thereon shall vest with the Panchayat.*
3. *Over the land of school neither any commercial activity shall be done nor the same shall be used for any other purpose other than education.*
4. XXX XXX XXX XXX
5. *The income received by the BET shall be spent over good education, nutrition food of children and health facility shall also be provided.*
6. *The BET school shall be responsible for teachers, staff, security of children and building maintenance. The panchayat will provide revenue records to trust after demarcation of land so that the school would obtain recognition from Haryana Government and affiliation from C.B.S.E. or Haryana Board.*
7. *BET shall also provide the whole book of accounts every year to panchayat. The same shall be given on 31 October every year.*
8. *The sarpanch of the panchayat shall be Trustee of BET.*
9. *There will be seven members in the school managing committee, three shall be nominated by Gram Sabha and four shall be nominated by BET. The Chairman of the school committee shall be one of the members nominated*

by BET.

10. *The Panchayat would undertake proceedings to obtain sanction of funds provided under the Right to Education Act, 2009 from Haryana Government and the same shall be transferred to school and for the said purpose, a separate account would be maintained according to RTE, 2009.”*

ACTION ON PANCHAYAT RESOLUTION

2. Thereafter, the apposite resolution was forwarded to the office of Block Development and Panchayat Officer (BDPO), Sohna, District Gurgaon, who further sent it, with the following recommendations, to the Deputy Commissioner, Gurgaon on 14.3.2013:-

“1. It has been resolved by the Gram Panchayat Gairatpur Bass in its resolution No. ___ dated 25th March, 2013 that a school should be established over panchayat land bearing Khasra no. 110 for the area of Gram Sabha.

2. It has also been resolved that that three acres of land should be allotted for use of school.

3. It has also been resolved that Baas Educational Trust shall be appointed for the purpose of construction, running and management of the school. The terms mentioned in the resolution are approved by the Baas Educational Trust and in accordance with the same, school would be established.

The terms in detail are mentioned in the consent letter of Baas Educational Trust, affidavit and in the resolution of the Gram Panchayat. The essential terms are as under :-

- 1. The name of school shall be Gairatpur Baas Panchayat School.*
- 2. The ownership and possession of land and building constructed thereon shall be vested with Gram Panchayat forever.*

3. *No commercial activity shall be done over school land and the same shall be used only for educational purposes.*
4. *No child of Gram Sabha area shall be deprived from admission.*
5. *The Sarpanch of Gram Sabha shall be Trustee of the Trust.”*

3. The recommendations so made by BDPO were further sent by the Deputy Commissioner to the Director General Panchayat, Haryana, Chandigarh and the matter was finally placed before the Additional Chief Secretary, Department of Development and Panchayat, Haryana (respondent no. 1). Respondent No. 1 while referring to the judgment passed by Hon'ble Supreme Court of India, in **Civil Appeal No. 1132 of 2011, decided on 28.1.2011, titled Jagpal Singh and others vs State of Punjab and others**, took a very strong view with regard to transfer of *shamlat* land of Panchayat in favour of a private/commercial undertaking, and, further directed the Deputy Commissioner to clarify the position qua the quarters granting approval for the construction of a school building by the petitioner, over the land of Gram Panchayat, besides, ordered for the removal of the alleged illegal construction, as, made by the petitioner-Trust, but within 15 days thereafter. Thereafter, in compliance with the directions, so passed by respondent no. 1, the Deputy Commissioner, through BDPO, vide letter dated 20.3.2015 (Annexure P/8) directed the removal of the alleged illegal construction over the Gram Panchayat land, wherein, a building over the Panchayat land has been constructed by the petitioner-Trust. Becoming aggrieved from the order dated 4.3.2015 (Annexure P/7) of respondent no. 1 and subsequent orders dated 20.3.2015 (Annexure P/8) and 25.5.2015 (Annexure P/9), thus the petitioner-

Trust approached this Court for the quashing of these orders, and, has sought that a mandamus be made upon the respondents for granting approval for the running of the school to the petitioner-Trust, especially keeping in view the resolution passed by the Gram Panchayat on 13.6.2009 (Annexure P/2).

NO CONSENSUS AD-IDEM AMONGST THE CONCERNED FOR THE SCHOOL BEING HANDED OVER, AND, TAKEN OVER BY THE GOVERNMENT

4. It is not in dispute that on the land in question, the petitioner-Trust has constructed a school and the same is being run by the Trust. Further it is not in dispute that the land upon which the school building has been constructed, falls in Khasra No. 110 measuring 38 kanals 5 marlas, wherein, an old temple and pond existed, and, apart from that 3 acres of land, which is in between villages Gairatpur Bass and Padla, but was evidently earmarked for the construction of the school building by the Gram Panchayat. This Court, on a specific plea raised by the counsel for the petitioner, that they are not claiming any right or ownership in the land in question, had issued notice of motion vide order dated 24.6.2015 to the respondents. The said order reads as under:-

“Learned counsel for the petitioner contends that the land in question has never been transferred to the institute, rather a School was constructed for the welfare of the residents of the village and is running for the said purpose. Even the petitioner has never claimed any right or interest over the land in question, otherwise also petitioner is interested in welfare of the residents of the village. A categoric statement has also been made that the petitioner will not claim any right or ownership in the land in question.

Notice of motion, for 20.07.2015.

Meanwhile, building of the school shall not be demolished.

A copy of this order be given to learned counsel for the petitioner under signatures of the Bench Secretary of this Court.”

5. A short reply thereto was filed by respondents No. 1 to 3, with speakings therein, that the land upon which the school has been constructed, hence is recorded in the revenue record as *gair mumkin johar*. It was further submitted that the Gram Panchayat has not taken any prior approval from the Government for the construction and running of the said school on the Panchayat land. The reply further reiterated, that in view of the judgment passed by the Hon'ble Supreme Court of India in **Jagpal Singh's** case (supra), the land cannot be transferred to the private persons for commercial purposes, and, that there is already a Government Middle School existing in village Gairatpur Bass, and therefore, no second school is required. This Court vide order dated 25.8.2015, directed the State to convey to the Court, about the desirability of a conditional approval, which may ensure, that the management and affair of the school will remain under the effective control of the Gram Panchayat or the District Administration, in such a manner that the larger public interest can be appropriately served through the petitioner school. Pursuant to the directions issued by this Court, the respondent-State filed specific affidavit stating therein, that the State Government is ready to take over the school subject to certain conditions. The order dated 5.5.2016 passed by this Courts read as under:-

“Pursuant to the repeated orders passed by this Court, the State Govt. has agreed to take over the School, subject to certain conditions, enumerated in the

communication dated 3.5.2016, which are to the following effect:-

(1) The Education Department can take over the building of school constructed by the Trust, if deed is made in favour of Govt. School.

(2) In the Govt. Middle School Gairatpur Bass student from village Gairatpur Bass, Khera and Pandala are enrolled and there is no Govt. School in the village Khera and Pandala and Bass Education Trust is situated at a distance of 1.5 KM away from GMS Gairatpur Bass and adjacent to village Khera .5 KM distance. So the Bass Education Trust Gairatpur Bass School can be a new school for the students of village Khera and Pandala.

(3) Govt. Middle School should not be shifted to Bass Education Trust and a school for village Khera and Pandala should be there at Bass Education Trust. Rather 162 students of village Gairatpur will continue seeking education in the GMS itself.

(4) Education Department would be able to avail the services of trust at no cost to maintain the quality education in the school as per provision and rule of Education Department and Haryana Govt. Rules.

Subject to the plea that may be taken by the petitioner, conditions sought to be imposed by the Education Department appear to be reasonable and fair.

List on 25.7.2016 for further consideration.”

FURTHER RESOLUTION OF PANCHAYAT

6. Thereafter, the State Government after consulting the petitioner-Trust filed short reply stating therein, that no consensus ad idem could be reached between the petitioner-Trust and the State with regard to the transferring of management of the school, to the State Government. Rather

the Gram Panchayat passed a fresh resolution on 7.4.2016. The relevant extract thereof reads as under:-

“1. That provision in Village Common Lands Act, 1961, section 5 (1) entitles a Panchayat qua the concerned village, for using and managing the shamlat land as per directions therein. The section 5-A/5-B and the sub rules described, only qua the gift, sale, transfer or lease. Under the Rules of 1964, there is no such provision for the same. It has been clarified in the resolution of Panchayat dated 25-03-2013 that the Gram Panchayat cannot be prohibited from constructing / managing a school while the ownership and possession qua the same remains in the Panchayat and of such immovable property, which is constructed by any other, which is applicable in the present case.

2. The trust has constructed the building of the school out of its own resources and for running the same, not a single penny of the Panchayat is being used. Infact, the school is being run for only the object to provide qualitative education to the students of the area comprising three villages (Bass, Pandala and Khera), and not for any other beneficial purpose of the trust.

3. The school fee of the each student is Rs. 100, 200 and 300 per month, which is as per the economic conditions of the guardians. Only 5% of the total expenditure is being used out of the school fee. The main object of the trust is that no child should remain without the qualitative education. It indicates that there are only 160 students in the Government school of the village while there are 300 students in the Panchayat school, in which 60% are girls students in the school.

4. The school is having high level basic facilities apart from playground, which is being used for arranging the

tournaments etc. for the students. The school is an ideal symbol provides to the Panchayat of the village by the trust.

5. After detailed discussion and deliberation on the forgoing points by the Panchayat:

It was decided that Gairatpur Bass Panchayat is stable on terms and conditions mentioned in resolution dated 25-03-2013 passed by the incumbent Panchayat.

It is reiterated that the school is meant for the all round interests of the children of the village and is within the jurisdiction of the village Panchayat itself and its management in future also should be continued by the trust. The then Sarpanch of the village Panchayat should be ex-officio member of the trust.

The running of the school and its management for the day to day proceedings should be recommended for approval of the same by the State of Haryana also. If the State Government puts in any condition for running of the school by the trust and for effective management of the same, there will be no objection for the same.

For the approval of the Government qua the school which is known as Gairatpur Bass Panchayat school and for seeking recognition of the education department, in a joint venture by independent body it should be initiated as per above discussion.”

7. For the reasons to be assigned hereafter, the orders, as, challenged before this Court, are liable to be annulled.

REASON FOR UPHOLDING THE RESOLUTION OF THE PANCHAYAT, AND, FOR QUASHING THE IMPUGNED ANNEXURES

8. Primarily for the reason, that as imminently clear from a reading of the resolution (supra), which becomes extracted hereinabove, that it does

manifestly suggest that the petitioner-school has been raised on Panchayat land. Moreover, the speakings made in the two resolutions (supra), do also make candid and forthwith suggestions, that the ownership of the petition land(s) shall continue to remain vested in the Gram Panchayat concerned. If so, thus, when there was no necessity for the transfer of the petition land(s) being made, in any mode, known to law, in favour of the petitioner-school, but as a natural corollary, there was no imperative necessity for any approval, in respect thereof, being either asked for, or, being granted to the petitioner-school, by the competent approving authority.

9. Secondarily for the reason, that the petitioner-school is engaged in a holistic purpose, and, as discernable from the resolutions (supra) of the Panchayat, the petitioner-school has not commercialized education, rather it is imparting education on minimal fees, to the students concerned. Moreover, it is also clear from a reading of the resolutions (supra), that the petitioner-school is imparting qualitative education to the students concerned. Therefore, since the petitioner-school is engaged in a holistic purpose of imparting qualitative education, to the students concerned, as also, when as above stated, the ownership of the petition land(s) shall continue to remain vested in the Gram Panchayat concerned. Resultantly, when there is no alienation of the petition land(s), either as owner, or, as a lessee, nor, as a donee, to the petitioner, thus neither the Gram Panchayat concerned, nor, the petitioner-school is required to be accorded any valid approval, for but making lawful alienation(s) of the petition land(s).

STATUTORY DUTIES OF THE PANCHAYAT TO MANAGE THE EDUCATIONAL INSTITUTION EXISTING WITHIN ITS TERRITORY

10. Preeminently also, it is deemed imperative to allude to the

statutory duties, and, functions, which are contemplated in Section 21 of The Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the 'Act of 1994' for short), rather to become performed by the Gram Panchayat concerned. The statutory functions, as contemplated in Section 21(XIII) of the Act of 1994, become extracted hereunder:-

21. Functions and duties of Gram Panchayat.—*Subject to such rules as may be made, it shall be the duty of the Gram Panchayat within the limits of the funds at its disposal, to make arrangements for carrying out the requirements of sabha area in respect of the following matters including all subsidiary works and buildings connected therewith:-*

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XIII. Education including Primary and Secondary Schools

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(1) Promotion of public awareness and participation in primary and secondary education.

(2) Ensuring full enrolment and attendance in Primary and Middle Schools and its management.

11. A reading of the hereinabove extracted relevant provisions of Section 21 of the Act of 1994, do secure a conclusion, that the Gram Panchayats concerned are encumbered with a statutory duty to ensure promotion of public awareness, and, participations in primary and secondary education, besides, are statutorily injuncted to ensure full enrolment, and, attendance in primary and middle schools, and, its management.

12. The salient underlying import of the above encumbered statutory duties, upon the Gram Panchayats concerned, is but, that the Gram Panchayats are to ensure dissemination of education amongst the children of the village

concerned. The above statutory obligation would become fulfilled only when qualitative education is imparted to the children of the villagers concerned. Moreover, the said statutory obligation would also become fully discharged, only when schools co-equal to the rising population of children in the village concerned, are ensured to be established in the Gram Panchayat concerned. Furthermore, when Clause 21(XIII) of the Act of 1994, speaks about the Gram Panchayat concerned ensuring full enrolment, and, attendance in primary and middle schools, and, its management. Therefore the resolution (supra) of the Gram Panchayat concerned, whereby, the petitioner-educational trust was permitted to construct a school on its land, but with a precondition, that the ownership of such land(s) would remain vested in the Gram Panchayat concerned, obviously is but completely within the contours of the statutory duties to be performed by the Gram Panchayat concerned.

ANALYSIS OF RULE 3 OF THE PUNJAB VILLAGE COMMON LANDS (REGULATION) RULES, 1964

13. Conspicuously also, since a reading of the resolution (supra) discloses, that the petitioner-school, which is being managed through a Board of Trustees, numbering about 7 members, of whom, 3 shall be nominated by the Gram Sabha, and, 4 shall be nominated by the BET, and, further that the Chairman of the School Committee shall be one of the members nominated by the BET. Therefore, it appears, that within the domain of Section 21(XIII)(2) of the Act of 1994, the Gram Panchayat concerned has ensured that, thereupon, it makes a complete, and, efficient management of the petitioner-school. Resultantly, also in the making of the resolution (supra), there is no departure from the statutory duties (supra), as become cast upon the Gram Panchayat concerned. As a sequel, it would not be in the interest of the

students, who have been admitted in the petitioner-school, and, who are being imparted qualitative education, that an order for demolition, as challenged before this Court, is being enforced, as thereupon, prejudice would be caused to the academic pursuits of the school-going children in the petitioner-school, especially when they are being imparted qualitative education therein.

14. The additional reason, which prevails upon this Court, to secure a firm conclusion, that the Panchayat land(s), whereon(s), a school has been constructed by the petitioner- educational trust, is not outside the meaningful user of the Panchayat land(s), is borne out from a reading of Rule 3 of The Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter to be referred as the 'Rules of 1964' for short). The relevant Rule 3(2)(xvii) of the Rules of 1964, provisions whereof stand extracted hereunder, speaks about the permissible user of Panchayat land(s), for the purpose of school building, school library or any other structure for educational purpose.

“3. The manner in which and the purposes for which shamlat deh may be used.

XX XX XX

(2) 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:-

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(xvii) School building, school library or any other structure for educational purpose;

XX XX XX”

15. Therefore, since the Panchayat land(s) is but evidently being used for the said specific purpose, thus the user of the Panchayat land(s) for the construction of a school thereon, by the petitioner-education trust, is well

merited, as it does not infringe any of the relevant provisions of Rule 3 of the Rules of 1964, which contrarily permits user of the Panchayat land(s) for the construction of a school building, as has been done thereon, at the instance of the petitioner-educational trust.

16. Be that as it may, it appears, irrespective of the fact that the ownership of the Panchayat land(s) remains vested in the Gram Panchayat concerned, that yet given some portion of the petition land(s) embodying a 'Gair Mumkin Pond', may rather work as an obstacle against the permissible user thereof, at the instance of the petitioner-school. The above impediment is sparked from a judgment of the Hon'ble Apex Court, as rendered in **Jagpal Singh's** case (supra). Though the above impediment, is prima facie workable against the user of a 'Gair Mumkin Johar' land, or, a 'Gair Mumkin Pond' land, for any purpose, other than for the ever existences thereon, of a 'Gair Mumkin Johar' land, or, a 'Gair Mumkin Pond' land. However, on a deep reading of the entire judgment (supra), especially of paragraph 22 thereof, paragraph whereof stands extracted hereunder, it appears that such an interdiction is not fully applicable, where, on such a 'Gair Mumkin Johar' land, or, a 'Gair Mumkin Pond' land, rather a school already exists.

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the

*speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. **Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.***

17. Since, the petitioner school is evidently already existing on the Panchayat land(s), but, in pursuance to the resolutions (supra), as, made by the Gram Panchayat concerned, wherein speakings occur regarding ownership of the Gram Panchayat land yet vesting in the Gram Panchayat concerned. Therefore, if the Gram Panchayat concerned has permitted the construction of a school, on the 'Gair Mumkin Johar' land, or, a 'Gair Mumkin Pond' land, and, when the petitioner-school is existing thereon, thus when the hereinabove extracted paragraph 22 of the judgment (supra), as, made by the Hon'ble Apex Court, assigns latitude to the Government for regularizing an already existing school, dispensary, or, other public utility, on such land(s). Resultantly, the above made exception against the user of 'Gair Mumkin Johar' land, or, 'Gair Mumkin Pond' land, for purpose(s), other than the earmarked purpose(s) thereof, does work in favour of the petitioner, as it has raised the school, which is providing the best qualitative education to the students concerned.

18. As a sequel, it cannot be said, that there is any impermissible change of land user of a portion of the Panchayat lands, at the instance of the

petitioner-educational trust. Contrarily, in the face of the Rule (supra) of the Rules of 1964, this Court deems it fit, and, appropriate, that such a change of land user falls within the exceptions, as carried in paragraph 22 of the judgment (supra) made by the Hon'ble Apex Court, against the change of user of '*Gair Mumkin Johar*' land, or, '*Gair Mumkin Pond*' land, to some other purpose, than the earmarked purpose thereof. It is clarified that, for reason (supra), appertaining to the ownership of the petition land(s) vesting in the Gram Panchayat concerned, thus no approval for any lawful alienation thereof, being accorded by the competent approving authority, is either required to be asked for, nor, is required to be accorded. Significantly, as stated above, for reason (supra), there is no impermissible change of user of the petition land(s), at the instance of the petitioner-educational trust. Therefore, the construction of a school building, as made on the petition land(s), still owned by the Gram Panchayat concerned, does not require qua the said construction being demolished.

19. Be that as it may, it is the bounden obligation of the Gram Panchayat concerned, to ensure an effective control, and, management of the school concerned, especially when it has continued to retain ownership over the petition land(s), whereon, the petitioner-school has been constructed. Though the resolutions (supra) of the Gram Panchayat concerned, speak about the school being managed by a Board of Trustees, comprising 7 members, of whom, 3 shall be nominated by the Gram Sabha, and, 4 shall be nominated by the BET. However, for ensuring that a more effective control over the petitioner-school is assumed, by the Gram Panchayat concerned, it is deemed imperative to direct that the Board of Trustees, though shall comprise of 7

members, but, 4 of them shall be from the Gram Sabha, and, 3 shall be nominated by the BET. Moreover, the Chairman of the School Committee shall also be the Sarpanch of the Gram Panchayat concerned. Furthermore, the funds, or, the income derived by the petitioner-school/education trust, is to be also utilized, not only for aggrandizing the educational activities in the petitioner-school, but, is also to be meaningfully utilized for ensuring further asset(s) building of the school. Therefore, for ensuring that the above meaningful purposes are achieved, rather a direction is required to be made upon the petitioner-school, to ensure the makings of quarterly audits of the incomes, and, funds of the petitioner-school, but by a qualified, and, licensed Chartered Accountant. The audit report shall be placed before the Board of Trustees, who, on scanning the said audit report, shall proceed to, through a Resolution passed, ensure that the proceeds, if any, derived by the petitioner-school, shall become utilized for increasing the assets of the school, and, also for improving the quality of education purveyed to the students.

CONCLUSION

20. In aftermath, this Court finds merit in the instant writ petition, and, the same is **allowed** in the above terms. The orders i.e. Annexures P-7, P-8 and P-9 respectively impugned in the instant writ petition are quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

11.04.2023
'dalbir'/devinder

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