

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Civil Writ Petition No. 20862 of 2016

Date of decision : March 03, 2023

MITHA SINGH AND OTHERS

....PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS

....RESPONDENTS

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

Present : Mr. N.P.S. Mann, Advocate, for the petitioners

Mr. Paramjit Batta, Additional Advocate General, Punjab
for respondent Nos. 1 to 7

Mr. B.S. Sewak, Advocate, for respondents Nos. 8 to 10

KULDEEP TIWARI, J.

1. The present case is the best example of how nepotism and prevalence of corruption, at the grassroot level of administrative hierarchy, can deprive the poor of this country from their basic entitlements and defeat the very object of any benevolent scheme floated by the State. This is the fourth round of litigation before this Court either by the petitioners or by the respondents, only to determine the eligibility of the petitioners under the scheme floated by the Government of Punjab for allotment of 5-5 marla plots to the members of the Scheduled Caste category and other poor landless labourers. Since this case has a long chequered history, therefore, in order to give

quietus to the dispute once and for all, it is now imperative for us to deal with the facts in detail.

FACTUAL ASPECTS

2. Rule 13-A of the Punjab Village Common Lands (Regulation) Rules, 1964 (in short, the Rules of 1964) framed under the Punjab Village Common Lands (Regulation) Act, 1961, authorises the Gram Panchayats within the State, with the previous approval of the State Government, to allot plots from *Shamlat Deh* land, free of costs, to landless workers, residing in the Sabha area, for construction of their respective houses thereon for residential purposes. In pursuance of the Rules of 1964, the State of Punjab had framed a benevolent scheme dated 17.4.2001 (Annexure P/1) for allotment of free 5 marla plots to eligible persons, i.e. members of the Scheduled Caste families and other poor families, for construction of houses thereon. The scheme (supra) makes it mandatory for the Gram Panchayats to convene a meeting of the Gram Sabha concerned, for identification of the eligible persons for allotment of free plots, and, thereafter, pass a resolution in favour of such eligible persons, whose claims shall be further verified at various levels, by various authorities prescribed for this purpose, under the scheme (supra). The following eligible criteria was prescribed under the scheme (supra):-

“1. Which person will be entitled under this scheme:-

1. The beneficiary under this scheme should be the resident of the concerned Gram Sabha Area.

2. *The beneficiary to whom the plot is to be given under this scheme, he should not have his own house or land for construction of his house.*
3. *The beneficiary under this scheme should be a married person.*
4. *The beneficiary should be of houseless, Scheduled Caste, Rai Sikh or Christian Community.”*

3. The Gram Panchayat, respondent No. 8, with an objective to extend the benefit of the scheme (supra), had called a general meeting (*Aam Ijlas*) of the Gram Sabha of Village Dadheri on 27.6.2006, wherein, Resolution No.3 came to be passed for allotment of 5 marla plot(s) to the landless/homeless person(s) of the village, who fulfilled the requisite eligibility criteria, as laid down in the scheme (supra). Originally, the Gram Panchayat concerned had passed a Resolution in favour of total 66 beneficiaries, allegedly belonging to poor strata of the village. The Resolution so passed was forwarded to the respondent No.6, Block Development and Panchayat Officer, Amloh, who subsequently forwarded it to the District Administration, from where it was forwarded to the Sub Divisional Magistrate, Amloh, for verification, through inquiry, with regard to eligibility of all the 66 beneficiaries. Upon such an inquiry being conducted by the authority (supra), a positive recommendation was made only qua 41 beneficiaries who were found eligible as per the instructions and guidelines of the government, whereas, 25 beneficiaries were found ineligible for the purpose of allotment of plot(s). Taking into account this

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report of the Sub Divisional Magistrate concerned, Sanad(s) were issued on 16.11.2006, by the respondent No.4, i.e. Additional Deputy Commissioner (Development), Fatehgarh Sahib, thereby making allotment of 5 marla plots each in favour of 41 eligible beneficiaries. However, the mutation(s), in favour of such allottee(s), could not be entered, on account of a complaint being moved in respect of the irregularities, as committed by the then Sarpanch Soma Kaur, alleging therein that she had made recommendation for allotment of 5 marla plots, vide the Resolution (supra), only in favour of her relatives, or, the persons closely related to her, whereas, none of the persons so recommended is actually eligible, or, fulfills the requisite criteria, as prescribed under the scheme. Also, some of the villagers preferred a petition under Section 199 of the Punjab Panchayati Raj Act, 1994, (in short, the Act of 1994), before the respondent no. 2, i.e. Director, Rural Development and Panchayats Department, Punjab, seeking cancellation of the Resolution (supra) passed by the Gram Panchayat. After giving due notice, and, affording opportunity of hearing to all concerned, vide order dated 30.10.2007, the respondent No.2 had ordered cancellation of the Resolution No. 3 dated 27.6.2006.

4. Feeling aggrieved with the order dated 30.10.2007, passed by the respondent no. 2, the petitioners made a successful motion before this Court, by filing Civil Writ Petition No. 19222 of 2009, titled as “Mitha Singh & another Vs. State of Punjab & others”, whereupon, this

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Court, vide order dated 3.8.2010, had directed the respondent no.3 – Deputy Commissioner, Fatehgarh Sahib, to re-examine the case of each allottee on merit, and, finalize the same in consonance with the scheme after affording opportunity of hearing to all concerned. The relevant extract of order dated 3.8.2010 reads as under:-

“Taking overall perspective in view and granting due sanctity to the broad consensus arrived at between the parties, as noticed in this order, the Deputy Commissioner, Fatehgarh Sahib, is directed to examine the case of each allottee on merits and finalize the same in consonance with the scheme (Annexure P1) after affording an opportunity of hearing to all the concerned. The allotment of the plots shall abide by the final outcome of the enquiry, to be undertaken by the Deputy Commissioner, Fatehgarh Sahib, who shall conclude the same within a period of six months from the date of receipt a certified copy of this order.

Till the conclusion of the enquiry, status quo shall be maintained.

With the observations made above, the present writ petition is disposed of.”

5. Upon remand of the matter to the respondent No.3, i.e. Deputy Commissioner, Fatehgarh Sahib, two different inquiries were conducted. However, finding both these inquiries contradictory to each other, the respondent No.3, vide order dated 31.03.2011, had made a recommendation to the respondent No.2, i.e. Director, Rural

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Development and Panchayats Department, Punjab, that, rather than cancelling the Resolution No. 3 dated 27.6.2006 in its entirety, only those Sanads shall be cancelled which have been issued in favour of beneficiaries, who were found ineligible in inquiry conducted by the Sub Divisional Magistrate concerned, while the Sanads issued in favour of the beneficiaries, who were found eligible in such inquiry, shall be kept as is.

6. This order dated 31.3.2011 passed by the Deputy Commissioner, Fatehgarh Sahib was challenged by respondent Nos.9 and 10 by filing CWP No. 3201 of 2012, titled "Hardeep Singh and another vs State of Punjab and others". A Coordinate Bench of this Court, vide order dated 24.7.2012, had remanded the case back to the Deputy Commissioner concerned to conduct a fresh inquiry, and, take action as per policy of the Government. The relevant extract of the order (supra) reads as under:-

"In view of the statement made by the State counsel, we dispose of this writ petition with direction to the Deputy Commissioner, Fatehgarh Sahib to conduct an enquiry regarding entitlement of all the beneficiaries recommended by the Gram Sabha and take action as per policy of the State Government. Needful be done within two months from the receipt of copy of this order."

7. In compliance of the above extracted order, the respondent No.3 had again conducted a fresh inquiry, and, had examined the claim

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of each and every individual, whose name was recommended vide Resolution No. 3 of the Gram Panchayat concerned, as per the eligibility criteria prescribed in the scheme (supra), and thereupon, vide order dated 12.10.2012, he found only 1 person, out of 66 beneficiaries, eligible for allotment. Such a finding, as contained in the order (supra), led the petitioners to again launch a challenge before this Court, by filing CWP No. 17812 of 2014, titled as “Mitha Singh and others Vs State of Punjab and others”. This Court, vide order dated 01.09.2014, had directed the respondent No. 2 to decide the legality of order dated 12.10.2012, as passed by the Deputy Commissioner concerned, and, liberty was given to the petitioners to file an appropriate appeal before respondent No. 2. Consequently, the respondent No. 2 had examined the entire issue afresh, but, found no merit in the appeal so filed, and, held that the Deputy Commissioner concerned, after evaluating the scheme (supra) and claim of each individual, had passed a lawful order and therefore, vide its order dated 23.05.2016, he affirmed the order dated 12.10.2012, as passed by the Deputy Commissioner.

8. Now this is the fourth round of litigation, where the petitioners, feeling aggrieved with the order dated 23.5.2016, as passed by respondent No. 2, have filed the present writ petition, seeking quashing of the order (supra).

SUBMISSIONS MADE BY COUNSEL FOR THE PARTIES

9. The learned counsel for the petitioners has relied upon the Resolution (supra) of the Gram Panchayat concerned to submit that the same cannot be annulled under the proceedings under Section 199 of the Act of 1994. He further submitted that once the '*Sanad*' had been issued in favour of the petitioners, they became owner of the plots and therefore, they cannot be deprived of their right of property, by simply cancelling the resolution, as passed by the Gram Sabha, under the provisions of Section 199 of the Act of 1994. He further stated that the Deputy Commissioner concerned has not taken into consideration the report of S.D.M. Amloh, dated 25.9.2006, vide which petitioners were found eligible under the scheme (supra).

10. On the other hand, the learned counsel for the respondent-Gram Panchayat concerned and the learned State counsel, in a similar voice, stated that the present case is the best example of arbitrary and illegal act of the then Sarpanch, who had through resolution (supra), allotted plots to all ineligible persons, and, mostly to her own close relatives. They further submitted that the Deputy Commissioner concerned had, in pursuance of the directions of this Court, examined the eligibility of each and every person, as recommended under Resolution No. 3, and, found only one person eligible, as all others were found to be already possessing a house, or, land in the village. They even stated that the petitioner no. 1, namely, Mitha Singh, who claimed to be a permanent resident of village Dadheri, in fact, is a

permanent resident of Mandi Gobindgarh, Tehsil Amloh, where he is registered as a voter of Vidhan Sabha Constituency-056 Amloh, and, he also has a valid voter ID card issued on the said address. It was further submitted that he is not a landless person, rather, possesses landed property in village Nasrali.

ANALYSIS

11. We have examined the present matter in its entirety, as well as, the impugned orders passed by the competent authorities concerned. It is indisputable that for any resolution which is passed by a Gram Panchayat or a Gram Sabha, under the scheme floated by Rule 13-A of the Rules of 1964, the approval of State Government is mandatory. Therefore, it is well within the domain of competent authority concerned either to accept, or, to reject the resolution which becomes so passed by a Gram Sabha. Any resolution passed by a Gram Sabha, recommending therein the names of beneficiaries, is to be accepted, or, rejected by the competent authority prescribed under the scheme (supra). Therefore, the argument, as made by learned counsel for the petitioners, that the resolution (Supra) passed by the Gram Sabha cannot be annulled, under the provisions of Section 199 of the Act of 1994, is not acceptable, for first amongst the other simple reasons that, the Resolution (supra) was passed by the Gram Sabha concerned, under the scheme (supra), floated under the provisions of Section 13-A of the Rules of 1964, which requires acceptance or

rejection by the competent authority, as prescribed by the State Government. Secondly, a number of inquiries were conducted on different occasions, and, this case was remanded back thrice by this Court. The Deputy Commissioner concerned, vide its order dated 12.10.2012, had examined the eligibility of each and every person, recommended under the Resolution (supra) of the Gram Panchayat, and, had ultimately concluded that only one person is eligible, while rest all were ineligible. We, while examining the issue under writ jurisdiction, cannot decide the disputed questions of facts, which have already been considered and decided by the competent authority concerned. The petitioners could not cite any instance to indicate that the inquiry, as conducted by the Deputy Commissioner concerned, is not in consonance with the facts on record.

12. During the pendency of the present writ petition, this Court had, vide order dated 09.02.2017, ordered the petitioners to disclose as to how many relatives of the then Sarpanch were there in the proposed list, for allotment of 5 marla plots, and also in the list of beneficiaries, to whom the plots were finally allotted. The petitioners had filed their additional affidavit disclosing therein that 26 numbers of close relatives of the then Sarpanch were allotted plots. Be that as it may, we do not want to decide the disputed questions of facts under writ jurisdiction, as we find do not find any infirmity, illegality or error in the orders dated 12.10.2012, and, 23.5.2016, passed by the respondent Nos. 3, and, 2

respectively. Therefore, we dismiss this writ petition and uphold the aforesaid orders dated 12.10.2012 and 23.5.2016.

13. However, one aspect which needs consideration is that in all the four rounds of litigation, the only issue which was determined, was the eligibility of the persons, whose names were recommended by the then Sarpanch through Resolution No. 3. As mentioned above, the Sarpanch had arbitrarily, and, with intent to give benefits to her nears and dears, recommended the names of ineligible persons. However, the eligibility of other deserving inhabitants of this village, whose names were not recommended by the Gram Panchayat, was never considered. The scheme (supra), as floated by the State Government, was with an object to ensure every family right to a dignified life with basic necessities i.e. house. The right of adequate housing is a human right. Housing is a right, not a commodity, rather, having adequate shelter for living is a right protected under Article 21 of the Constitution of India. Therefore, we deem it appropriate to issue the following directions to the respondent-State:-

“(a) The Director, Rural Development and Panchayats Department, Punjab is directed to appoint an Administrator of the Gram Panchayat of village Dadheri only for the purpose of implementation of the scheme dated 17.4.2001. The Administrator shall, after making adequate publicity in the village (by way

of *Munadi*) or publication in newspapers and by affixing notice on conspicuous places, invite applications from the landless workers and thereafter, independently, examine the eligibility of the claims and recommend their names to the State Government, as per the procedure prescribed under the scheme dated 17.4.2001, within a period of two months. The State Government shall, on receipt of such recommendation, decide the recommendations of the Administrator within two months thereafter. The State of Punjab is directed to submit its report, within a period of four months to this Court.

List this case after four months for perusal of report to be submitted by the State of Punjab.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

March 03, 2023
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No</i>
<i>Whether Reportable ?</i>	<i>Yes/No</i>