

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH**CWP-6337-2018****Reserved on: 13.09.2023****Date of decision : 29.09.2023**

ASHOK KUMAR AND ANR.

-PETITIONERS

VERSUS

STATE OF HARYANA AND ORS.

-RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**Present : Mr. R.S. Kundu, Advocate
for the petitioners.Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.Mr. Yashwant Attri, Advocate and
Mr. Rahul Verma, Advocate
for the respondent No.3.Mr. Inderjit Sharma, Advocate
for the respondent No.4.

KULDEEP TIWARI, J.

1. The instant writ petition accentuates the ill employment of exercise of jurisdiction, as assumed by the respondent No.2-Director (Consolidation) concerned, while surpassing the original jurisdiction bestowed in him. The respondent No.2- Director (Consolidation) concerned, through an order made on 26.03.2008 (Annexure P-9), upon Case No.208/2007, as instituted under Section 42 of The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the 'Act of 1948'), allowed the exchange of land, which is undisputedly a 'Gair Mumkin Rasta' and vests in the Gram Panchayat concerned, with the land of private

respondent No.3 herein.

3. The rendition of order dated 26.03.2008 (Annexure P-9) triggered the petitioners to march towards this Court through instituting the instant writ petition, thereby, assailing the validity of the order (supra), inter alia on the ground, that Section 42 of the Act of 1948 does not confer any jurisdiction upon the respondent No.2- Director (Consolidation) concerned, to allow the exchange of land of Gram Panchayat with any private individual.

4. The petitioners have filed this writ petition respectively in the capacity of a lessee to the extent of 1/3 share, and, owner to the extent of 1/3 share, of the land comprised in Khewat/Khatoni No.986min/1192, Rect. No.38, Killa No.21(3-2), 22(8-0), 23(8-0), Rect. No. 39, Killa No.1(2-9), 2(8-0), 3(8-0), total measuring 37 Kanals 11 Marlas, situated in the revenue estate of Village Janoli, Tehsil and District Palwal.

5. The facts, as averred in the writ petition, are that a passage bearing No.169min and 220, which leads to the fields of the petitioners, was provided to the estate-holders of the village concerned, at the time when consolidation operations were held in the village concerned. On 07.12.2017, the respondent No.3, a private company, while claiming to have purchased about 75 acres of land in the village concerned from the respective owners, filed an application under Section 42 of the Act of 1948 before the respondent No.2- Director (Consolidation) concerned, seeking transfer of the passage (supra) in its favour and in lieu thereof, it offered to transfer the land under its ownership in favour of the Gram Panchayat concerned for carving out a new passage. The transfer of passage (supra) was asked for, on the premise, that it has become redundant and defunct. The passage (supra) was offered to be

indemnified by the respondent No.3 through providing its own land from Killa No.38//3/2, which adjoins the area of the Gram Panchayat concerned.

6. It is interesting to note that the then Sarpanch of the village concerned had, unhesitatingly and delightedly, conceded to the proposal of the respondent No.3 by extending her “No Objection”. Based upon the uncontested factum of the passage (supra) being redundant and defunct, as also the “No Objection” coming from the Gram Panchayat concerned, the respondent No.2- Director (Consolidation) concerned allowed the application (supra), through drawing the impugned order dated 26.03.2008 (Annexure P9).

7. The order dated 26.03.2008 (Annexure P9) caused grievance to the petitioners, inasmuch as, upon transfer of the passage (supra) in favour of the respondent No.3 herein, the alleged solitary means of access to their land has been snatched, thereby depriving them of their easementary rights.

8. Upon notice of the present motion, the respondent No.3 filed its reply, thereby primarily challenging the locus standi of the petitioners. It is averred in the reply that the respondent No.2- Director (Consolidation) concerned did not exceed his jurisdiction while passing the order (Annexure P-9), as he did not indeed made any order for exchange of lands. Rather through the said order, which is founded upon “No Objection” of the Gram Panchayat concerned, the respondent No.2 had merely allowed the merger of a redundant and a defunct passage in the estate of the respondent No.3, as it fell amidst the estate of respondent No.3, and that too, after making indemnification of the said transferred passage, from the holdings of the respondents No.3, in favour of the Gram Panchayat concerned. Moreover, the

B.D.P.O. concerned also filed a reply, on behalf of the respondent No.4, in the same terms.

9. We have analyzed the submissions made by the learned counsels appearing for the parties and have also perused the record.

10. At the outset, the first and foremost conclusion, as emanates while traversing through the record available on file, is that the present case is not merely a case of closure of a redundant and defunct passage, or, assigning such a passage to a person who was not assigned any passage at the time of consolidation operations, rather it is a sheer case of transfer of Gram Panchayat lands, existing in the nature of a 'Gair Mumkin Rasta', in favour of a private individual, by way of exchange.

11. Moreover, we do not have any hesitation to hold that the respondent No.2- Director (Consolidation) concerned, does not have the competent jurisdiction to pass an order alike the one, as impugned in the instant writ petition. Since the transferred land herein, vests in the Gram Panchayat concerned, by virtue of its being undisputedly a 'Gair Mumkin Rasta', therefore, the power to effect the exchange of Gram Panchayat property lies with the Gram Panchayat concerned, as per the provisions of Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to Haryana) (hereinafter referred to as the 'Rules of 1964').

12. Now, before we plunge into the legal issues involved in the case in hand, we deem it exigent to make a brief survey of the hereinafter extracted relevant provisions of law, inasmuch as, Section 42 of the Act of 1948, Section 5 of the Haryana Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the 'Act of 1961'), and, Rule 5 of the Rules of 1964.

Section 42 of the Act of 1948

42. Power of State Government to call for proceedings:- *The State Government may at any time for the purpose of satisfying itself as to the legality or propriety of any order passed, scheme prepared or confirmed or repartition made by any officer under Act, call for and examine the record of any case pending before or disposed of by such officer and may pass order in reference thereto thinks fit:*

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration."

Section 5 of the Act of 1961

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.]”*

Rule 5 of the Rules of 1964

5. Exchange of land. Sections 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 shamilat deh by exchange with the land of an equivalent 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 cases which are not received through the Deputy Commissioner concerned:

Provided further that for the purpose of allotment of residential

plots to the eligible families identified under the scheme approved by the State Government, to allot house-sites to the Scheduled Castes [Backward Classes] families and the families living below poverty line, the concerned Deputy Commissioner or Sub-Divisional Officer (Civil), as may be authorized by the State Government, shall be competent to accord approval for transfer any land in shamilat deh, by way of exchange, with the land of equivalent [market] value.]”

13. A reading of the above extracted provisions elucidates that Section 42 of the Act of 1948 confers powers on the State Government to examine the legality of any order passed, scheme prepared or confirmed or repartition made by any officer under the Act of 1948. However, Section 42 can never be assumed to empower the Director (Consolidation) to, in exercise of powers vested in the State Government, grant any permission for exchange of lands of Gram Panchayat with any private individual.

As a matter of fact, the requisite procedure for disposal of lands vested in Gram Panchayat is prescribed in Section 5 of the Act of 1961, which unambiguously stipulates the utilization and disposal of such lands by the Gram Panchayat concerned indeed for the benefit of the inhabitants of the village concerned in the manner, as prescribed thereunder.

Moreover, the verbatim conditions for exchange of land by Gram Panchayat are expounded in Rule 5 of the Rules of 1964, according to which, if a Gram Panchayat deems the exchange of land necessary for the benefit of the inhabitants of the village concerned, it may proceed to, with the prior approval of the State Government, transfer shamlat deh land by exchange with the land of a co-equivalent value, to be determined by the Deputy Commissioner concerned.

14. Here is a case, where the Director (Consolidation) concerned,

merely on the basis of an application moved by a private company, as also upon the “No Objection” given by the then Sarpanch of the Gram Panchayat concerned, has accorded approval for exchange of Gram Panchayat’s land, through the impugned order (Annexure P-9). However, he did so in utter transcendence of his statutory jurisdiction and also without ascertaining the benefit of the inhabitants of the village concerned.

15. Gainful reference, to corroborate the above conclusion qua ill assumption of jurisdiction by the Director (Consolidation) concerned, can be borrowed from **CWP-16183-2011**, titled **“Pale Ram V/s State of Haryana and ors.”**, Decided on: 01.03.2013. The relevant paragraph of the judgment (supra) is reproduced as under:-

“10. A perusal of order passed by the Director Consolidation reveals that he has not assigned any reasons for condoning the delay of 40 years while accepting the plea of the contesting respondents. The order passed by the Director Consolidation, in our considered opinion, is illegal and nonest as it suffers from an assumption of jurisdiction that did not vest with him, ignored the delay of four decades in filing the petition under Section 42 of “the 1948 Act”, and reduced the area of a public road to legalise the encroachments made by the respondents.”

15. It is only a statute, which confers jurisdiction upon the Court of law and same has to be decided within the limits of authority and not beyond it. Lack of necessary subject jurisdiction bars a court from deciding such a suit. If a court having lack of subject jurisdiction, tries and decides a lis, such a decision would become a nullity and would be hit by the doctrine of “*coram non judice*”.

16. Reiteratedly, the Director (Consolidation) concerned does not have the jurisdiction to allow the exchange of land, rather the statutory

jurisdiction vests in the authority, as contemplated under the hereinabove extracted provisions. Therefore, since the impugned order (Annexure P-9) is indisputably made by an authority, which lacked the jurisdictional competence to make it, therefore, such a decision is tainted with the vice of jurisdictional competence and is a nullity in the eyes of law.

17. Moreover, the then Sarpanch of the Gram Panchayat concerned, who conveyed a “No Objection” to the asked for transfer of passage, also did not have the competence to give such “No Objection” without passing any valid Resolution and without recording a satisfaction qua such transfer of Gram Panchayat’s land to be the sole purpose beneficial for the inhabitants of the village concerned.

18. This Court, in **CWP-24994-2018**, titled **“Ishwar Singh V/s State of Haryana and ors.”**, Decided on: 15.02.2023, has recorded an observation that the expression “benefit of inhabitants of the village” does not imply the benefit of a handful villagers amongst the entire population of the village concerned, rather it connotes the benefit of the entire village proprietary body.

The relevant extract from the judgment (supra) is reproduced as under:-

“.....On perusal of the resolution dated 2.11.2012, Annexure P/2, passed by the Gram Panchayat, respondent no. 7, we do not find any plausible reasons assigned in resolution which reveals that the exchange was proposed for the benefit of inhabitants of the village. The word “benefit of inhabitants of the village” does not mean for the benefit of one or two persons amongst the inhabitants, but is for the benefit of entire village proprietary body.....”

14. As a conspectus to the hereinabove made discussions, the writ petition is allowed and the order dated 26.03.2008 (Annexure P-9) is set aside, being unsustainable in the eyes of law. However, in case the respondent No.3

requires a passage, it may approach the appropriate court/forum, through filing a suit for necessity by way of prescription, as the hereinabove discussed remedy resorted by the respondent No.3 was totally a misconstituted remedy.

(SURESHWAR THAKUR)
JUDGE
29.09.2023
devinder

(KULDEEP TIWARI)
JUDGE

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