

2024:PHHC:138631-DB



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

CWP No.2356 of 2022 (O&M)

Reserved on: 09.08.2024

Date of Decision: 23.10.2024

Sandeep and others

.....Petitioners.

Versus

State of Haryana and others

.....Respondents.

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by:- Mr. Amit Jain, Senior Advocate with
Mr. Chetan Slathia, Advocate
for the petitioners.

Mr. Saurabh Mago, DAG, Haryana
for respondents No.1 to 6.

Mr. Chaman Deep, Advocate
for respondent No.7.

Mr. Babbar Bhan, Advocate
for respondent No.8.

MEENAKSHI I. MEHTA, J.

By filing the instant Civil Writ Petition under Article 226/227
of the Constitution of India, the petitioners have sought the indulgence of
this Court for the issuance of a writ in the nature of certiorari, quashing the
Resolution dated 30.12.2020 (Annexure P-1) passed by respondent No.7-
Gram Panchayat, Village Devsar (for short 'the Gram Panchayat') whereby
the land comprised in Khasra No.461 (for short 'the subject land'), meant



for being used as '*Shamshan Ghat*' (cremation ground), has been decided to be used as the cow-shed (*Gau-Shala*) and the cremation ground has been resolved to be shifted to Khasra No.479 and also setting-aside the order Annexure P-4 passed by respondent No.3 on 06.08.2021 qua the dismissal of the application filed by them (petitioners) under Section 47 of Haryana Panchayati Raj Act, 1994 (for short 'the Act of 1994') as well as the order Annexure P-5, handed down by respondent No.2 on 19.01.2022, regarding the rejection of the appeal moved by them against the order Annexure P-4.

2. Bereft of unnecessary details, the facts, as canvassed by the petitioners in the present writ petition, are that there are 07 cremation grounds in the Village for the total population consisting of 51 '*Thols*', out of which 13 '*Thols*' have been using the cremation ground in Khasra No. 461 (the subject land), as such and in the relevant '*Jamabandi*' also, the above-said land has been described as '*Gair-Mumkin Chhalle*', i.e the land meant for being used as cremation ground. However, vide the impugned Resolution (Annexure P-1), the Gram Panchayat has illegally changed the user of the subject land from cremation ground to cow-shed (*Gau-Shala*) and has shifted the cremation ground to Khasra No.479 and the aforementioned Resolution is perverse and is also adverse to the interest of the villagers at large and has been passed in flagrant violation of Rules 3(2) and 8 of the Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable to Haryana) (for short 'the Rules of 1964') read with Sections 5 and 5-A of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (for short 'the Act of 1961'), just to give undue



advantage/benefit to the supporters of the Sarpanch of the Gram Panchayat, including respondent No.8, who, as per the demarcation report submitted by the concerned revenue official, had encroached upon the land comprised in Khasra Nos.479, 478, 461 and 1180. Moreover, out of 14 panchayat members, who had signed the Resolution Annexure P-1, 11 members have sworn the affidavits specifically deposing therein that they had signed the Proceeding-Book qua the above-referred Resolution dated 30.12.2020 in the month of February 2021, at the instance of the Sarpanch on the pretext that the land falling in Khasra No.478, had been resolved to be used as the cow-shed (*Gau-Shala*).

3. The petitioners have, further, averred that they, along-with several co-villagers, moved an application (Annexure P-3) to respondent No.3 under Section 47 of the Act of 1994 with the prayer to restrain the Sarpanch from changing the nature of the subject land and the inhabitants of the Village had also tendered their respective affidavits against the afore-said Resolution (Annexure P-1) but respondent No.3 did not consider the material available on the file and erroneously, dismissed the above-referred application vide impugned order Annexure P-4. Thereafter, they preferred an appeal before respondent No.2 to challenge the afore-said order but the same has also been wrongly dismissed vide the impugned order Annexure P-5 despite the fact that during the course of its hearing, several villagers had submitted their affidavits regarding the factum of the Sarpanch of the Gram Panchayat having obtained their signatures in the Proceeding-Book in the month of February, 2021.



4. Respondents No.1 to 6, in their joint written-statement, have contested the claim of the petitioners, *inter-alia*, on the grounds that as per Rule 3 of the Rules of 1964, the Gram Panchayat is well within its power to change the user of the ‘*Shamilat*’ land, vesting in it and in fact, the land comprised in Khasra No.478 was being used by the villagers as cremation ground and a shed already existed therein. The Gram Panchayat had filed the applications under Section 7 of the Act of 1961 for seeking the eviction of the persons who had reportedly encroached upon the above-described land and the possession thereof has already been taken back from them in pursuance of the ejectment orders passed by the Competent Authority and the impugned Resolution (Annexure P-1) and the orders (Annexures P-4 & P-5) are perfectly legal and this writ petition is liable to be dismissed. Respondent No.7-Gram Panchayat has also filed separate written-statement wherein it has controverted the claim of the petitioners by making the assertions, similar to the ones as put-forth by respondents No.1 to 6 in their joint written-statement. However, respondent No.8 has not submitted his written-statement.

5. We have heard learned Senior counsel for the petitioners as well as learned State counsel for respondents No.1 to 6, along-with learned respective counsel for respondents No.7 and 8, in the instant writ petition and have also perused the file carefully.

6. Learned Senior counsel for the petitioners has contended that as reflected in the revenue record, i.e the copy of *Jamabandi* Annexure P-2, the land comprised in Khasra No.461 (the subject land) is the ‘*Shamilat*’



land and has been kept for being used as the cremation ground and while passing the Resolution Annexure P-1, the Gram Panchayat did not follow the prescribed procedure for changing the user of the afore-said land. He has further contended that even otherwise, out of 14 panchayat members who had signed the Proceeding-Book qua the above-mentioned Resolution, 11 members had submitted their affidavits to the effect that their signatures had been obtained by the Sarpanch in February, 2021 by mis-representing the facts to them but respondent No.2 had not considered the same at the time of passing the order Annexure P-5 and respondent No.3 had also ignored the crucial fact that during the course of the proceedings in respect of the application filed before him under Section 47 of the Act of 1994, 16 villagers had made their joint statement and 03 more villagers had also got their statements recorded against the afore-said Resolution and thus, it is explicit that the impugned Resolution and both the orders are liable to be quashed/set-aside.

7. Per contra, learned State counsel and learned counsel for respondents No.7 and 8 have argued that Section 5 of the Act of 1961 empowers the Gram Panchayat to utilize or dispose of all the lands, vesting in it, for the benefit of the inhabitants of the Village and respondent No.7- Gram Panchayat has rightly passed the Resolution Annexure P-1 and the impugned orders Annexures P-4 and P-5 have also been passed by the Competent Authorities after taking all the material aspects of the matter into consideration and in accordance with the relevant statutory provisions and it being so, the present writ petition deserves dismissal.



8. Before advertng to the discussion on the merits of the present writ petition, this Court deems it expedient and appropriate to refer to Section 5 (1) of the Act of 1961 and Rule 3 of the Rules of 1964, which read as under:-

“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.

x x x x”

“3. The manner in which and the purposes for which shamilat deh may be used [Sections 5 and 15(2)(a) of the Act] :- (1) The Panchayat shall prepare a land utilization plan of the land in Shamlat deh vested in it under the Act. It shall be the duty of Block Development and Panchayat Officer to assist the Gram Panchayat concerned in the preparation of the said plan. Such plan shall be subject to approval of-

x x x x”

9. Now, coming to the merits of the case, it goes undisputed between the parties that the subject land is ‘Shamilat’ land and vests in the Gram Panchayat. Annexure P-2 is the copy of the ‘Jamabandi’ pertaining to the year 2016-17 wherein the land comprised in Khasra No.461 (the subject land), measuring 04 Kanals, has been described as ‘Gair-Mumkin



Chhalle'. Respondents No.1 to 6 and respondent No.7 as well, in para No.3 (reply on merits) of their respective written-statements, have categorically admitted the factum of the subject land having been reserved as '*Shamshan Ghat*' (cremation ground) during the consolidation of the land holdings. As regards the encroachment on the above-mentioned land, a perusal of the copy of the site-plan, as annexed with the demarcation-report Annexure P-6 (in vernacular) and available at page No.101 in the Paper-Book, reveals that respondent No.8 and several other persons, are shown therein to have encroached upon the land, including the subject land. Though respondents No.1 to 6 and respondent No.7, in para No.8 (reply on merits) of their written-statements, have asserted that the possession of the land under encroachment, has been taken back in pursuance of the order passed by the Competent Authority on the applications moved under Section 7 of the Act of 1961 but however, while deciding the issue qua the legality and validity of the impugned Resolution and the orders in the instant writ petition, we deem it proper to refrain from commenting or expressing our opinion on the afore-referred aspect.

10. Undisputedly, Section 5 of the Act of 1961 confers the power upon the Gram Panchayat to regulate the use and occupation of the land, vested in it, by utilizing and disposing of the same for '*the benefit of the inhabitants of the Village*'. A bare reading of the impugned Resolution Annexure P-1 makes it crystal clear that there is not even a whisper in it about the reason/object for the change of user of the land, including the subject land, as specified therein and also regarding the fact as to how such



change of user would be beneficial to the villagers at large, so as to show/ establish the fulfilment of the above-discussed pre-requisite for exercising the power under Section 5 of the Act of 1961. Then, in his order Annexure P-4 passed qua the dismissal of application Annexure P-3, respondent No.3 has discarded the statements of the villagers, as recorded against the afore-referred Resolution and has merely mentioned that this Resolution has been passed in the interest of public, without even explaining or disclosing as to how it would be so.

11. Further, while dismissing the appeal as preferred to assail the order Annexure P-4, respondent No.2 has observed in the impugned order Annexure P-5 that Khasra No.479 is having more area and in view of the increasing population of the Village, larger area is required for '*Shamshan Ghat*' but as discussed earlier, this fact had never ever been mentioned in the impugned Resolution itself and hence, the same, being an afterthought, cannot be given any weightage at all. Even otherwise, throughout in order Annexure P-5, respondent No.2 has nowhere discussed or commented upon the affidavits, as were tendered by the villagers before him to oppose the impugned Resolution.

12. To add to it, Rule 3 of the Rules of 1964 categorically prescribes the procedure to be complied with/followed, while exercising the power conferred under Section 5 of the Act of 1961 and also describes the purposes for which the Panchayat may make the use of the land of '*Shamilat Deh*' but it is worth-while to point it out here that the impugned Resolution is silent about the aspect of the compliance of the above-said



Rule and respondent No.7-Gram Panchayat has not placed any material on the file/record so as to substantiate the factum of the compliance of the afore-referred Rule at the time of passing the impugned Resolution.

13. As a sequel to the fore-going discussion, it follows that the impugned Resolution Annexure P-1 and the orders Annexures P-4 & P-5, are not legally sustainable. Resultantly, the Civil Writ Petition in hand is, hereby, allowed and the above-mentioned Resolution as well as both the orders are set-aside. However, it is clarified here that respondent No.7-Gram Panchayat will be at liberty to pass a fresh Resolution in accordance with law and while complying with the procedure as prescribed under the relevant Rules.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

October 23, 2024
Yag Dutt

Whether speaking/reasoned: Yes
Whether Reportable: Yes