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

CWP-10393-2018

Reserved on: 05.03.2025

Pronounced on: 01.04.2025

GURJEET SINGH

.....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. G.P.S.Bal, Advocate
for the petitioner.

Mr. Maninder Singh, Sr. DAG, Punjab.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Brijesh Khosla, Advocate
for respondent No. 4.

Mrs. Raman Rekhi, Advocate
Mr. C.L.Premy, Advocate
Ms. Amarjit Kaur, Advocate
for respondent - Gram Panchayat.

None for respondents No. 5 to 8.

SURESHWAR THAKUR, J.

1. Through the instant writ petition, the petitioner herein
prays for the hereinafter extracted reliefs.

*“Civil Writ Petition under Article 226/227 of the
Constitution of India for the issuance of an appropriate
writ in the nature of Certiorari/Mandamus or such other
appropriate writ, order or direction declaring the action of
the respondent authorities in proceeding to sell the prime*

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shamlat land of the Respondent Gram Panchayat measuring 46 kanals 7 marlas (43-18 marlas gair mumkin Drain, 0-9 marlas Gair Mumkin Rasta and 2-0 as Abhi), to a private colonizer/developer, as illegal, arbitrary, malafide, motivated and in contravention of Rule 12-A of the Punjab Village Common Lands (Regulation) Rules, 1964 ; and for quashing order Annexure P-6 (dated 16.02.2017).

Further for issuance of an appropriate writ in the nature of prohibition restraining the respondent authorities and the Respondent Gram Panchayat from selling the aforesaid land to respondent No. 4 – private company/colonizer and further restraining the respondent No. 4 from carrying out any work in the disputed area during the pendency of the writ petition.

Factual Backdrop of the case.

2. The Gram Panchayat Village Papri, Block Kharar, District SAS Nagar (Mohali) owned 46 kanals 7 marlas of land comprised in Khewat No. 57, Khatoni No. 61, Khasra No. 24 (43-18), Khatoni No.66, Khasra No. 48(0-9) and Khatoni No. 67, Khasra No. 14//21 (2-0) situated in Village Papri, Tehsil and District SAS Nagar (Mohali).

3. Out of this 46 kanals 7 marlas land, 43 kanals 18 marlas of land is *gair mumkin drain (Nalla)* and 0-9 marlas land is *Gair mumkin rasta (passage)* and 2 kanals 0 marlas is *Abhi*.

4. Rule 12-A of the Punjab Village Common Land (Regulation) Rules, 1964 (hereinafter for short called as the 1964 Rules) was amended on 02.05.2014 permitting sale of *Shamlat Land*,

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to any Government Department, Board, Corporation or local authority.

The said Rule becomes extracted hereinafter.

“12-A Transfer of land by sale

(1) Notwithstanding anything contained in these rules, any Panchayat, with the previous approval of the State Government, may transfer the shamlat land vested in it by way of sale to any Government Department, Board, Corporation or local authority for their own projects or schemes or for the projects sponsored or aided by the State Government, having not less than fifty percent share in such projects, on such rates as may be determined by the Committee constituted in clause (2) of Sub-Rule (3-A) of Rule 6.

Provided that :-

(i) the State Government and the Gram Panchayat concerned, on the recommendations of the sponsoring department, are satisfied that such transfer of Shamlat land or the terms and conditions of such transfer of the said land, is in public interest and is also in the interest of the Gram Panchayat concerned.”

5. The said Rule became further amended by the State of Punjab on 20.01.2016. The relevant amendment becomes extracted hereinafter.

“2. In the Punjab Village Common Lands (Regulation) Rules, 1964, in rule 12-A, after sub-rule (1) and the proviso relating thereto; the following sub rule shall be added namely;

(2) The abandoned paths (rastas) or watercourses (khals) not under use in shamlat deh failing in all Government licensed projects, may also be transferred by sale in accordance with the laid down procedure.”

6. The Janta Land Promoters Private Limited, Mohali (a private limited company) addressed a communication dated 04.07.2016

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to the District Development and Panchayat Officer, Mohali, stating that it was interested in buying the aforesaid land at Collector rate.

7. On receiving the supra communication from the respondent company, Ajaib Singh Sarpanch, Gram Panchayat Papri, called a meeting of the Gram Sabha and therein passed a resolution dated 12.07.2016 proposing to sell the disputed lands to the respondent company. Thereafter, a five member Committee under the Chairmanship of Deputy Commissioner, Mohali, assessed the rate of the subject lands as Rs. 3 crore per acre. The relevant extract of the proceedings recorded in the meeting held on 21.09.2016 (Annexure P-5) become extracted hereinafter.

“ xxxxx

Tehsildar/Mohali stated that as per record of last two years no sale purchase of agricultural land has taken place in village Papri. It will be appropriate to fix Collector rate of shamlat land of Papri at Rs.3,00,00,000/- (Rupees three crores).

Representative of Janta Land Promoters Limited stated that such rate is not prevalent in that area. District Development and Panchayat Officer SAS Nagar vide his letter No. 2138 dated 09/08/2016 wrote to S.D.O. Irrigation Department to make the position clear whether it will be proper to keep the Nalla at the present place or not. In that connection he, vide his office letter No. 219 dated 10/08/2016, stated that there is no need to keep the Nalla at that place because this Nalla has already been made underground by Janta Land Promoters Limited, therefore, there remains no justification of this Nalla.

After considering the whole matter the Chairman keeping in view the consent of all members and Sarpanch Gram Panchayat

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Papri decided to determine Rs. 3,00,00,000/- (Rupees three crores) (lumpsum) per acre.

xxxx”

8. The Punjab Government vide order dated 16.02.2017 (Annexure P-6) granted approval for sale of the subject land at Rupees three crores per acre to respondent No. 4.

9. The Sarpanch of the Gram Panchayat executed an agreement dated 20.03.2017 in favour of respondent No. 4 by accepting Rs. 50 Lakh as earnest money and gave possession of the subject lands to the respondent Company. However, no sale deed in respect of the subject lands became executed. Representations were made against the sale of the subject lands.

10. It is apt to mention here that one Bachan Singh had filed CWP-17366-2017 before this Court against the above mentioned sale. The said writ petition became disposed of by this Court vide order dated 08.08.2017. The relevant part of the said order becomes extracted hereinafter.

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Having heard learned counsel for the petitioner and considering the gravity of allegations made against the Sarpanch but without expressing any views of merits of the allegations for the reason that we have not heard the respondents at this stage, this writ petition is disposed of with a direction to the Deputy Commissioner and DDPO, SAS Nagar, Mohali to immediately take cognizance of the petitioner's allegations and if any enquiry is pending against the Sarpanch, let the same be concluded within 60

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days. Similarly, the matter regarding execution of warrants of possession issued in favour of the Gram Panchayat or for the recovery of the amount against the respondent-builder be taken up and needful be done within two months from the date of receiving a certified copy of this order. In case the petitioner finds that the authorities are not taking any action for the recovery of amount, liberty is granted to him to file a fresh petition.”

11. Now in the said regard the contents of Annexure R/4-8 are extracted hereinafter.

“In reference to the observations at noting page 21 of Hon'ble Rural Development Panchayat Minister, while sending a copy of the complaint received from Sh. Bachan Singh and all Khewatdars the DDPO, SAS Nagar vide letter dated 08.02.2018 was requested to give his comments after examination of the facts stated in the representation.

The DDPO, SAS Nagar while sending a report through PUC in reference to the letter dated 08.02.2018 of the Department has requested that the sale of this land is being affected as per policy of the department. This sale can only be made to a company, in whose projects duly approved by the GMADA, the revenue Rastas/Khals owned by the Gram Panchayats falls. Therefore the sale of this land cannot be made through open auction. A Committee for price fixation has been constituted under rule-6 (3A)(2) of the Punjab Village Common Land (Regulation) Act 1964. Accordingly the price has been fixed by the committee in a meeting held under the Chairmanship of Deputy Commissioner. DDPO, SAS Nagar has also stated that the allegations of mala-fide and connivance/not taking any action against the Sarpanch is wrong and unbounded. In this regard it has been stated that the 'warrant of possession' issued on 08.08.2016 has been completely executed and the land shown in the warrant of possession at this moment is in the possession of Panchayat. It has also been stated that the enquiry in the complaints against the Sarpanch is going on and the Tehsildar Mohali has been requested to identify illegal possession stated in the said complaint. The Tehsildar has fixed three times for this demarcation but the demarcation could not be done

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due to pre-occupation of revenue officials. After getting early demarcation, and accordingly further necessary action will be taken...”

12. When this case was listed for hearing before this Court on 04.10.2023, the hereinafter extracted order was passed.

“ 1. xxxx

2. On the subsequent date of hearing, the learned State counsel is directed to ensure, that all the records relating to the finalization of the consolidation scheme, if any, which became drawn in respect of the Mohal concerned, where the petition lands are located, besides the *wajib-ul-arz* relating to the petition lands be ensured to be placed on record through the custodian of the said records.”

13. In compliance to the said order, affidavit of Sh. Baljinder Singh Grewal, DDPO, SAS Nagar, Mohali/respondent No. 2 became filed appending therewith the *wajib ul arz* and the consolidation scheme. The relevant contents of the affidavit filed by the DDPO, SAS Nagar becomes extracted hereinafter.

“2. The perusal of the “*Wajib-ul-arz*” qua the village in question would reveal that there was no river, stream or pond around the village. Copy annexed herewith as Annexure R-2/I. However, that there was a “**Ganda Nala**” in private land which belonged to private owners, Paragraphs No. 5, 6 & 7 of *Wajib-ul-arz* reads as under :-

“5. There is no river, stream or pond in the vicinity of our village.

6. In this village (Dah-Hja), there is a drainage channel for dirty water, which is the property of individual owners, and there is no watermill (Gharat) or flour mill (Chakki).

7. xxxx

The village in question has a longstanding seasonal *choi* (ephemeral stream) that originates from Chandigarh and

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continues through to the adjacent villages. This choi serves as the primary drainage channel for the area and has flowed through the village since time immemorial. The seasonal choi remains in existence today, flowing naturally without any obstructions.

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That the copy of the 'Mutation (Intkal)' for village Papri, Hadbast No. 269, Tehsil Kharar, District Ambala, copy of Mutation is annexed herewith as Annexure R-2/III indicates in column No. 11 that Khasra No. 24 contains a "Ganda Nala" with an area of 43 Kanal and 18 Marla, and the ownership is recorded in the name of the 'Gram Panchayat'.

14. Moreover, the letter dated 17.10.2017 (Annexure R4/10) issued by the Chief Engineer, Department of Irrigation is required to be alluded to, relevant contents whereof become extracted hereinafter.

"To

*The Principal Secretary, Government of Punjab,
Department of Irrigation (Irrigation Works Branch)
Chandigarh.*

Memo No. 3517-18/3 drainage/2017

Dated : 17.10.2017

Subject : Regarding sale of land belonging to the Gram Panchayat Papri, Block Kharar, District Sahibzada Ajit Singh Nagar to J.L.P.L. Company.

xxxx xxxx

There existed an abandoned drainage channel for irrigation at some distance crossing the Railway line at the spot. In this channel treated/un-treated water was being used for irrigation cultivators of village Chachu Majra and Manauli through S.T.P. many years ago. Now on account of construction of colonies by the private Colonizers at the site, there is absolutely no need of water as there is no place for irrigation but now the GMADA has laid 4' diameter underground No. 2 Hume Pipe Lines by crossing the Airport road from left to right. The flow of water was diverted through heavy super passage channel on Chai Nullah through Sump-well in the year 2015 so that the water can be used by the farmers of villages Seo Patto,

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Matran and Karoran for irrigation of their crops. For proof the photographs of the old abandoned irrigation nullah and the new nullah diverted by the GMADA alongwith site plan are enclosed herewith. Now this old irrigation channel has been completely damaged, which is now not being used for irrigation. Therefore, there appears no need of this Nullah because there will neither be any effect on the natural flow nor any problem will be faced by the nearby people. This old irrigation nullah has been built opposite to the natural flow. Otherwise by removing/levelling, the natural flow will run smoothly and it will not adversely affect the people their problem will be solved. If this land is sold/transferred by the Director, Rural Development and Panchayat Department, Punjab to any department/agency then this Department (Water Drainage) will have no objection and the Superintending Engineer, Drainage Circle, Patiala has also made recommendation for issuance of No Objection Certificate.”

Inferences of this Court.

15. The primary contention of the learned counsel for the petitioner, is that, 43 kanals 18 marlas of land which is a drain could not be proposed to be sold as the natural flow of water passing through the drain will get obstructed.

16. However, a perusal of the contents of the the letter dated 17.10.2017, issued by the Irrigation Department reveals, that GMADA has laid underground pipelines, by crossing the airport road from left to right. The old irrigation channel has been completely damaged, which is now not being used for irrigation. Further, the Chief Engineer/Water Drainage in the said letter has stated that there appears no need of this nullah/drain because there will be no effect on the natural flow of the water nor any problem will be faced by the nearby people. Therefore, the argument supra raised by the counsel for the petitioner becomes rejected.

17. The further argument raised by the counsel for the petitioner is that the approval dated 16.02.2017 (Annexure P-6)

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accorded by the Governor of Punjab, to the resolution of the Gram Panchayat concerned, is a defective approval, and, was not in accordance with the procedure laid down in Section 12 (A) of the 1964 Rules. Now, in the said regard, Rule 12-A of the 1964 Rules become re-extracted hereinafter.

12—A *Transfer of land by sale :-*

(1) Notwithstanding anything contained in these rules, any Panchayat, with the previous approval of the State Government, may transfer the Shamlat Land vested in it by way of sale to any Government Department, Board, Corporation or local authority for their own projects or schemes or for the projects sponsored or aided by the State Government, having not less than fifty percent share in such projects, on such rates as may be determined by the Committee constituted in clause (2) of sub-rule (3-A) of rule 6 :

Provided that :

(i) the State Government and the Gram Panchayat concerned, on the recommendations of the sponsoring department, are satisfied that such transfer of Shamlat Land or the terms and conditions of such transfer of the said land, is in public interest and is also in the interest of the Gram Panchayat concerned;

(ii) the sponsoring Department, shall also certify that the land sought to be transferred, shall commensurate with the requirements of the project or scheme, and the same is an essential component for the implementation of such project ;

(iii) the transferee, shall not use such land for any other purpose, other than those for which it has been transferred. However, if the circumstances warrant that the said land is to be used, for any purpose other than the purpose, for which it was transferred, in that case, permission of the State Government shall be obtained for such other use of the said land; and

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(iv) *the possession of the land, shall be handed over to the transferee, only after payment of the total sale price to the Gram Panchayat concerned.]*

(2) The abandoned paths (Rastas) or watercourses (khals) not under use in shamlat deh falling in All Government licensed projects, may also be transferred by sale in accordance with the laid down procedure.]

18. A perusal of Rule 12A (2) would reveal that the abandoned paths or watercourses not under use in *shamlat deh* can be transferred by sale in accordance with the laid down procedure.

19. Further, the resolution (Annexure P-4) of the Gram Panchayat Papri becomes extracted hereinafter.

Resolution Number was submitted and it was resolved that some shamlat land of the village comes in the Nalla but for the present since last many years water has not come in this dirty Nalla. Around this land Janta Land Promoter Limited Company, has developed area in between Sectors 82 and 66-A and construction is being raised around this place. This land is total baron and land is lying banjar. Gram Panchayat unanimously agreed to pass a resolution to sell this land to Janta Land. This land is comprised in Khasra No. 14/21/(2-0), 24(43-18), 480-9) total measuring 46 K-5M. After selling the above land whatever amount will be received will be spent for the development of village for making streets, drains, community centre and street lights etc. So vide this resolution Block Development and Panchayat Officer is requested to determine the D.C. Rate of this land so that proposal may be prepared to sell the above land. This resolution is approved by all the members.

20. Thereafter, a five member Committee vide meeting dated 21.09.2016 (Annexure P-5) held under the Chairmanship of the Deputy

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Commissioner, Mohali assessed the rate of the subject lands as Rs. 3 crore per acre.

21. A perusal of the resolution (supra) would reveal that the subject land though is a drain (nallah) but yet water has not entered in the said drain for the last several years, wherebys, the said drain is an abandoned or a dis-functional drain, therebys, the approval to the resolution (supra), as granted by the State Government does not require any interference. Moreso, when the said approval has not been challenged.

22. In addition, the echoings as made in the letter dated 17.10.2017 (Annexure R4/10) issued by the Office of Chief Engineer/Drainage, Department of Irrigation, Punjab, reveal, that GMADA has laid underground Hume Pipes, and the flow of water has been diverted. Moreover, in the said letter, the Office of the Chief Engineer/Drainage stated that there appeared no need of the said drain, nor it will effect the natural flow of water, therebys, the approval granted by the Hon'ble the Governor of Punjab vide order dated 16.02.2017 (Annexure P-6) to the resolution (Annexure P-5) for selling the subject lands at the rate of Rs. 3 crores per acre, is an apt approval besides has been made in accordance with the procedure ordained in Rule 12-A of the 1964 Rules.

Final Order of this Court.

23. In aftermath, this Court finds no merit in the writ petition and with observations above, the same is dismissed.

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24. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

01.04.2025		(VIKAS SURI)
kavneet singh		JUDGE
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No