
(2008) 05 P&H CK 0099
In the Punjab And Haryana At Chandigarh

Bhagwan Sarup and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Punjab Panchayati Raj Act, 1994 — Section 23

Citation : (2008) 151 PLR 374 : (2008) 3 RCR(Civil) 492

Hon'ble Judges : Vijender Jain, C.J.;Jaswant Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Jaswant Singh, J.

C.M. No. 6579 of 2008

Application is allowed. Additional affidavit dated 1.4.2008 on behalf Harbans Lal, Sarpanch, Gram Panchayat village Sambhalki is taken on record.

C.M. No. 6587 of 2008

1. Application is allowed. Counter affidavit dated 2.4.2008 to the additional affidavit dated 1.4.2008 of Harbans Lal, Sarpanch, Gram Panchayat village Sambhalki is taken on record.

2. The present writ petition in the form of Public Interest Litigation has been filed by 29 petitioners, who are residents of village Sambhalki, Tehsil & District S.A.S. Nagar, Mohali. They have, inter-alia, prayed for quashing of impugned order dated 19.10.2007 (Annexure P. 14), recommendations/proposal dated 20.4.2007 (Annexure P. 12), assessment reports regarding market value dated 24.9.2007 and 17.10.2007 (Annexure P. 13 collectively) vide which shamlat land measuring 80 kanals, 6 marlas situated in the revenue estate of village Sambhalki. Tehsil & District S.A.S. Nagar, Mohali has been approved to be exchanged with the land measuring 48 bighas, 4 biswas (80 kanals, 10 marlas) owned by respondent No. 12 in village Raipur Khurd. Tehsil & District S.A.S. Nagar, Mohali. Further prayer

has been made for quashing the impugned resolution dated 15.7.2006 (Annexure P.4) vide which respondent No. 6-Gram panchayat village Sambhalki, has decided to exchange the abovesaid shamlat land with the land of respondent No. 12 Colonizer.

3. Facts giving rise to the matter in controversy are that respondent No. 6-gram panchayat village Sambhalki, Tehsil & District S.A.S. Nagar, Mohali (hereinafter to be referred as "gram panchayat") was the owner of land measuring 80 kanals, 6 marlas comprised in the revenue record as detailed in para No. 2 of the writ petition situated in revenue estate of village Sambhalki, and the land being "shamlat deh" was vested in the gram panchayat. Vide resolution dated 15.7.2006 (Annexure P.4) passed by the gram panchayat, it was decided that the said shamlat land of the gram panchayat be exchanged, because the entire land surrounding it had been sold out and there was no source of water available for the said land and there was only once source of income by way of auction of that land, which was not being done. Therefore, members of the gram panchayat resolved that this land be exchanged with some other better land so that the gram panchayat should get some income therefrom and it was further resolved that the said shamlat land measuring 80 kanals, 6 marlas should be exchanged with the land situated in village Raipur Khurd, Tehsil & District S.A.S. Nagar, Mohali total area measuring 48 bighas, 8 biswas (80 kanals, 10 marlas) owned by respondent No. 12-colonizer. Therefore, the exchange of the abovesaid land was recommended to respondent No. 2-Director, Rural Development and Panchayat. Government of Punjab for necessary action.

4. It is necessary to mention here that it was recorded in the resolution that same was acceptable to all the members of the panchayat and it bears signatures/thumb impressions of Harbans Singh respondent No. 7 (Sarpanch), Santosh Kumari, respondent No. 8 (Member), Suresh Pal, respondent No. 9 (Member), Som Nath, respondent No. 11 (Member) and Harsharan Kaur (Panchayat Secretary).

5. It is further necessary to mention here that the land measuring 106 kanals, 18 marlas of gram panchayat village Sukhgarh, Tehsil & District S.A.S. Nagar, Mohali was also resolved to be exchanged by the gram panchayat of village Sukhgarh against the land measuring 107 kanals, 10 marlas situated in village Raipur Khurd owned by respondent No. 12.

6. It is apparent from the record that before taking any action by the Government of Punjab on the abovesaid proposals in both the cases, residents of village Sukhgarh and Sambhalki filed two different writ petitions challenging the resolutions passed by the respective gram panchayats and when those writ petitions bearing C.W.P. No. 15587 of 2006 titled Randhir Singh and Ors. v. State of Punjab and Ors. C.P.W. No 15587 (relating to village Sukhgarh) and C.W.P. No. 16096 of 2006 titled Bhagwan Sarup and Anr. v. State of Punjab and Ors. C.P.W. No. 16096 of 2006 (relating to village Sambhalki) came up for hearing before this Hon"ble Court, the same were disposed of with a direction vide order dated

30.5.2007 (Annexure P.11). The relevant extract is reproduced here below:

Thereafter, District Development and Panchayat Officer, S.A.S. Nagar vide his Letter No. 2229 dated 27.9.2006 further recommended this proposal along with his comments to Divisional Deputy Director, Panchayats, Patiala Department of Rural Development and Panchayats, Punjab and Divisional Deputy Director Panchayats, Patiala Department of Rural Development and Panchayats, Punjab vide his Letter No. 3499 dated 9.10.2006 further recommended this proposal to the Director, Rural Development and Panchayats, Punjab and this proposal is now under consideration with the Government and it will be decided in accordance with law.

For the last two dates of hearing, counsel for the respondent is seeking time for the State to take final decision in the matter. We direct the respondents to pass a final order in this regard in accordance with law within a period of four weeks from the date of the receipt of copy of this order after taking into consideration all the relevant aspects of the matter

7. In pursuance of the directions dated 30.5.2007, matter was put up before appropriate authority and Secretary, Department of Rural Development and Panchayat, Punjab recommended on file that the exchange should be rejected as the same is not in the interest of panchayat. The matter, as required under the rules of business, was further submitted to the Rural Development Panchayat Minister, who after careful consideration of the matter, vide order dated 30.7.2007, ordered that the value of the land of both the panchayats i.e. Sambhalki and Sukhgarh as well as land of the private colonizers respondent No. 12 situated in village Raipur Khurd be got re-assessed from a committee, of which the Deputy Commissioner, Mohali was nominated as Chairman so that no one should suffer any loss. It was further ordered that the committee should submit its report within one and half months. The relevant extracts from the order dated 30.7.2007 (Annexure P.5) containing the conclusions of the Minister are, for ready reference, reproduced below:

After perusing this case, I have come to the decision that although Grain Panchayats, B.D.P.O. Kharar, D.D.P.O. Mohali, Divisional Deputy Director have recommended the exchange of the said land and the Deputy Commissioner has declared the value of the land to be same, but as per the report of the Chief Town Planner, the lands of the Panchayats fall in Sector 85 of the Master Plan and are declared residential/commercial and the land of the private party falls in Sector 84, which is reserved for institutions. Therefore, the land of the Panchayats, being residential/commercial, would be costlier at present time also and the land of the private party, being reserved for institutions, would be cheaper. Therefore, I order that the land of both the Panchayats and land of Private Colonizer situated in Raipur Khurd be got re-assessed from the following Committee so that no one should suffer loss. The Deputy Commissioner would be the chairman of the said Committee and the Committee would submit its report within 1-1/2 months.

8. In pursuance of the said order dated 30.7.2007 of the Minister, a committee headed by the Deputy Commissioner, S.A.S. Nagar, Mohali comprising of five other members was constituted. The said committee in its meeting held on 19.9.2007 fixed the market value of the land vested in the gram panchayat as well as the land of colonizer-respondent No. 12 as under:

- i) Raipur Khurd Rs. 60 lacs per acre land of respondent No. 12
- ii) Sambhalki Rs. 59,83,680/- per acre land of gram panchayat Sambhalki
- iii) Sukhgarh Rs. 58,69,760/- per acre land of gram panchayat Sukhgarh

Accordingly, a report dated 24.9.2007 was submitted to the Secretary, Rural Development Panchayat for consideration and approval.

9. The said recommendation indicating that the exchange was liable to be allowed since the rate of the land in all three villages was equal was approved by the Secretary, Department of Rural Development and Panchayat, Punjab as well as by the Rural and Development Panchayat Minister on 17.10.2007 (Annexure P.13). Accordingly, the Government of Punjab vide orders dated 17.10.2007/19.10.2007 (Annexure P.14) granted approval/sanction as required under Rule 5 of the Punjab Village Common Land (Regulation) Rules, 1964 (hereinafter referred to as 1964 Rules) for the exchange of land of the gram panchayat of village Sambhalki measuring 80 kanals, 6 marlas with the land measuring 48 bighas, 4 biswas i.e 80 kanals, 10 marlas owned by colonizer-respondent No. 12 in village Raipur Khurd. Hence, the present writ petition.

10. Respondents No. 6 to 11 and respondent No. 12-colonizer, upon notice have filed their respective replies. Respondents No. 1 to 5 i.e State authorities have, however, chosen not to file any reply.

Respondents No. 6 to 11 while filing their replies through Harbans Lal, Sarpanch of village Sambhalki submitted that the exchange of land has been conducted in the interest of inhabitants of the village after following due procedure of law. It has been stated that the resolution dated 15.7.2006, which decided the said exchange of land was passed by way of majority after serving upon due notices on all the members of the gram panchayat as required u/s 23 of the Punjab Panchayati Raj Act, 1994. No loss to the panchayat has been caused. Rather exchange is beneficial, as the fertile land has now been transferred and the land so transferred had already been given on lease for three months at the rate of Rs. 3,700/- per acre accruing total revenue of Rs. 37,000/- to the gram panchayat for the said three months only. It has been stated that the gram panchayat's meeting had been held on 19.5.2006, 8.6.2006 and 15.6.2006 for the auction of exchanged shamlat land of the gram panchayat but no bidder came forward and therefore the auction could not be conducted. It has been further submitted that the District Land Price Fixation Committee had been constituted as per para No. 13 of the letter dated 13.3.2000 (Annexure R.2 with the written statement of respondents No. 6 to 11) by the Department of

Revenue, Government of Punjab, which, inter alia, provides for determination of market value of the lands under acquisition in the District.

11. It has been stated that the value of the said Shamlat land and the land to be exchanged has been found to be of equivalent value by the District Prize Fixation Committee as well as by the specially constituted committee to re-assess market value.

It is further stated that the land of the gram panchayat could not be used for any other purpose than agriculture in view of the Punjab New Periphery Control Act, 1952. As per the master plan, the same fell in the residential zone in Sector 85 of S.A.S. Na-gar, Mohali and as per the policy, minimum 100 acres of land is required to be owned by a single entity to get its use converted into residential/plotted colony on payment of conversion charges of approximately Rs. 50 lacs per acre, so the gram panchayat due to lack of funds is unable to get its use converted to residential. Hence the same shamlat land can only be used for agricultural purposes by the panchayat. The land, which is now sought to be exchanged is situated in the institutional zone and as per the policy of the Government, minimum 10 acres of land is required to be owned by single entity to get its use converted for institutional purposes for nominal conversion charges.

12. Therefore, the gram panchayat, since it owns minimum 10 acres of land, can get its use converted into institutional with nominal conversion charges or can continue to use it for agricultural purposes and generate revenue from it.

13. Respondent No. 12-Colonizer in its separate written statement has more or less reiterated the contentions raised by respondents No. 6 to 11 in their written statement. Further a copy of the resolution dated 14.10.2006 has been appended as Annexure R.2, in which the earlier resolution dated 15.7.2006 (Annexure P.4) passed by the gram panchayat has been reaffirmed.

14. Petitioners have filed replication to the written statement filed on behalf of respondents No. 6 to 11.

15. This Court vide order dated 26.3.2008 had directed respondent No. 6-gram panchayat to file an affidavit as to how much is the distance between the land which was given by the Gram Panchayat, with the land which the Gram Panchayat has received in exchange and their relative, location; (ii) whether any auction of the shamlat den land of the Gram Panchayat was ever tried to be conducted by the respondents and the documents in support thereof; (iii) exact measurement of the land which has been received in exchange in lieu of the land of the Gram Panchayat; and (iv) whether the land in exchange is one piece of land or in different khasra numbers.

16. In pursuance of order dated 26.3.2008, additional affidavit dated 1.4.2008 of Harbans Lal on behalf of respondent No. 6-gram panchayat has been filed and has been taken on record vide separate order.

17. In the said affidavit dated 1.4.2008, it has been, inter-alia, submitted that as

per record of the gram panchayat, auction on subsequent dates i.e 19.5.2006, 8.6.2006 and 15.6.2006 was conducted and despite due publicity nobody came forward to bid for the shamlat land, copy of the auction notices/resolutions indicating auction notices have been annexed as Annexures R. 13 to R. 16. It has further been submitted that after approval for exchange of land by the Governor of Punjab vide impugned order dated 19.10.2007 (Annexure P. 14), the mutation were affected in the revenue records and physical possession of land was taken upon. True translated copies of the jamabandis dated 27.12.2007 and jamabandi dated 28.12.2007 indicating the mutation entries in the revenue record are annexed herewith as Annexure R.17 and R.18 respectively. It is further submitted that the distance between the pieces of land exchanged is 500 meter approximately and their relative location is clearly depicted in the map as Annexure R.19.

18. Shri Vikas Behl, learned Counsel for the petitioners has primarily raised twofold contentions:

Firstly it was argued that the exchange of land is against the interest of the inhabitants of the village (a) as the market value of the shamlat land being exchanged by the gram panchayat is much more than market value of the land being taken in exchange; and (b) as some members of the panchayat. who were signatories to the resolution dated 15.7.2006 have specifically filed affidavits dated 27.9.2006 (Annexures P.6 to P.8 herein) in this Hon'ble Court in the earlier writ petition filed by the inhabitants of the village bearing CWP No. 16096 of 2006 to the effect that their signatures had been obtained by misrepresenting the facts and thus the said exchange is in violation of Rule 5 of 1964 Rules.

The second limb of the argument of learned Counsel for the petitioners was that the decision of the Government permitting the exchange of land suffers from non-application of mind as the detailed reasons for rejecting the proposal given by the Secretary, Rural Development and Panchayats in his recommendations dated 11.7.2007 (as contained in Annexure P.5) have been ignored without any cogent basis.

19. On the other hand, Shri Ashok Aggarwal, learned Senior Advocate has argued that the action of the respondents is in strict conformity with the requirement of Rule 5 of 1964 Rules. He has further argued that in the facts of the case as pleaded on record, it is absolutely clear that it is in the interest of the inhabitants of the gram panchayat that the said exchange took place as fertile land fetching revenue has been exchanged for a barren and uncultivable shamlat land of the panchayat, besides the same being situated in the Institutional Zone and thus capable of being put to a much more meaningful use. He has further argued that this concept, as advanced by the petitioners, of determination of marketable value/price of this shamlat land, falling within the residential zone of Sec-tor-85, Mohali, on the premises that this land has free marketable title in common parlance is highly misplaced and misdirected as this shamlat land was incapable in law (under the 1961 Act) of being freely sold.

20. In rebuttal, Sh. Vikas Behl, Advocate for the petitioners has placed reliance on Sub Section 5 of Section 5 of 1961 Act as also Rule 12 of 1964 Rules to argue that the land could be sold for any purpose and hence fetch marketable value and thus the arguments on behalf of the respondents were misconceived and without any basis.

21. We have heard the learned Counsel for the parties and perused the record carefully.

22. Before we proceed to deal with the matter, it is necessary to reproduce relevant extract of Section 5 of Punjab Village Common Land (Regulation), Act, 1961 (For short "1961 Act") and Rules 5 and 12 of 1964 Rules, which are reproduced hereunder:

Section 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 utilized or disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed:

Provided xxx xxx

Provided xxx xxx

Provided xxx xxx

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) xxx xxx xxx

(5) Notwithstanding anything contained in the preceding subsections, no land vested or deemed to have been vested in a Panchayat under this Act shall be disposed of by way of sale, gift or exchange so as to leave with the Panchayat, culturable area, which is less than fifty per cent of the total culturable area vested or deemed to have been vested in the Panchayat.

Rule 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 Government, transfer any land in shamlat deh by exchange with the land of an equivalent value;

Provided that where the land is required, in connection with the Integrated Rural Development Programme sponsored by the Government the Panchayat may, with the approval of the Collector, transfer any land in shamlat deh by exchange with the land of an equivalent value.

Rule 12. Purposes for which land may be sold.-

[Sections 5 and 15(2)(f)] - (1) A panchayat may, with the previous approval of

the Government, sell land in shamlat deh vested in it under the Act for:

- i) the purpose of constructing building for Block Samiti office or any department of or institution recognised by the Government;
- ii) the purpose of any industrial or commercial concern; or
- iii) executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village.
- iv) residential purpose of the inhabitants of the village.
- v) for the purpose of financing the construction of building for schools and for veterinary and civil dispensaries in the Sabha area.

23. A perusal of Section 5(1) reproduced hereinabove indicates that gram panchayat can dispose of land vested in it for the benefit of the inhabitants of the village in the manner prescribed. The manner has been prescribed under Rule 5 of 1964 Rules, which provides the following conditions, which are required to be fulfilled for exchange of shamlat land:

- i) A resolution by the panchayat, being representative of the inhabitants of the village, indicating the opinion/decision that the exchange of land is necessary for the benefit of the inhabitants of the village.
- ii) The land should be of equivalent value.
- iii) Value to be determined by the revenue/competent authorities.

24. A perusal of the resolution dated 15.7.2006 indicates that the gram panchayat had resolved that their shamlat land, which was not being auctioned, because the entire land surrounding it had been sold out and there was no source of water for that land, be exchanged with some other better land so that some income could be derived therefrom. It further resolved that 80 kanal and 6 marla of their described shamlat land be exchanged with the land situated in village Raipur Khurd Measuring 42 Bighas and two biswas. Resolution dated 15.7.2006 (Annexure P.4) was passed after following due procedure prescribed under the Punjab Panchayati Raj Act, 1994.

25. Although a reference has been made to the affidavits dated 27/28.9.2006 (Annexures P.6 to P.8) filed by the members of the gram panchayat to show that their signatures on the resolution dated 15.7.2006 were obtained by misrepresenting the facts but the said members do not deny that they had participated in the passing of the said resolution.

26. The resolution dated 15.7.2006 was re-affirmed vide another resolution dated 14.10.2006 (Annexure R.2) passed by the gram panchayat.

27. Still further, respondents have placed on record affidavits of the same three members dated 29.1.2007 (Annexure R.4), 8.12.2006 (Annexure R.5) and 7.12.2006 (Annexure R.6) respectively wherein those very members have stated

that their earlier affidavits dated 27/28.9.2006 were obtained by misrepresentation regarding the contents of the same. They have further said that both the resolutions dated 15.7.2006 and 14.10.2006 are in the interest of the villages and were passed after due deliberations and free from any influence. Therefore, there is no relevance of Annexures P.6 to P.8.

28. It is apparent from the perusal of auction notice/ resolutions (Annexures R.13 to R. 16) that despite due publicity nobody was coming forward to bid for the said shamlat land. Petitioners have not been able to show that the said shamlat land, which is barren and uncultivable, had fetched any revenue to the panchayat at any time. It has been shown by the respondents that the exchanged piece of land is fertile land and the gram panchayat is getting income from the same. It is further apparent from the record that the shamlat land of the gram panchayat and the exchanged land of respondent No. 12 are of equivalent value. The District Land Price Fixation Committee, which provides for determination of market value/price of the lands under acquisition in the district, had in its meeting dated 28.8.2006, determined the market price of both the pieces of land in village Raipur Khurd and village Sambhalki to be exchanged and held the same to be of equivalent value. It is further apparent from the record that the Secretary, Rural Development and Panchayat in his recommendations dated 11.7.2007 (as contained in Annexure P-5) had recommended the rejection of the proposal of the said exchange and on consideration of the same, the Rural Development and Panchayat Minister, after careful consideration of the matter had vide his order dated 30.7.2007 ordered the value of the lands to be re-assessed by a specially constituted committee. The market value of the said lands was re-assessed by the specially constituted committee and the said committee in its meeting held on 19.9.2007 re-affirmed the value earlier assessed by the District Land Price Fixation Committee. The equivalent value of the two exchanged pieces of lands situated in Village Sambhalki and Raipur Khurd, so determined was accepted by the same very Secretary Rural Development and Panchayat and thereafter Government of Punjab vide its order dated 17/19.10.2007 (Annexure P-4) granted approval/sanction as required under Rule 5 of the 1964 Rules. It is further not disputed that even mutation in the revenue records has been effected and the physical possession of the land has been exchanged.

29. Admittedly, the shamlat land of the panchayat, as per the Master Plan, fell under the residential zone of Sector 85, Mohali and therefore, the only permitted land use was for residential purposes. The change of land use from agriculture could only be granted for residential purposes. Rule 12 of the 1964 Rules (reproduced hereinabove) indicates that panchayat may, with the previous approval of the government, sell its shamlat land for certain purposes as enumerated therein. Since in the facts of the present case the land fell within the residential zone, therefore, the land could be sold by the panchayat only for purposes permitted under Rule 12 Sub Clause 4 i.e residential purposes of the inhabitants of the village.

30. It can be inferred from the facts of the case that the gram panchayat never considered it as a necessary or viable option, since it chose through its resolutions dated 15.7.2006 (Annexure P-4) and 14.10.2006 (Annexure R-2) to resort to the other option of exchange of land so as to generate income from it. Therefore, the decision of the panchayat to exchange the land cannot be termed as to be against the interest of the inhabitants of the village. The further reference by the counsel for the petitioners to Sub Section 5 of Section 5 to show that the land could be sold in the manner projected by the petitioners is also misplaced as the same only puts an embargo on the panchayat to the effect that it cannot sell, gift or exchange its shamlat land being used for a particular purpose i.e. culturable area (culturable area is not defined under the Act) so as to reduce the said shamlat land being used for the same purpose to be less than 50%. We have our doubt that the word "culturable area", is the right word. However, to clarify the doubt, apart from the published books by private publishers, we have also perused the original gazette notification issued by the Government regarding Sub Section 5 of Section 5 but to our surprise, we find the word "culturable area" present in the statute. However, it should be read as cultivable area or culturable area will not affect the controversy in question.

31. Thus, in view of the above discussion, it is clear in the facts of the case that conditions prescribed under Rule 5 of 1964 Rules had been met while permitting the said exchange of land. Therefore, contentions raised by counsel for the petitioners, which on first brush looked attractive, are rejected being devoid of any substance.

For the reasons stated above, the writ petition is dismissed with no order as to costs.