

(2014) 05 P&H CK 0596
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 20117 of 2013

Bhagwat Parshad and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-05-2014

Acts Referred:

Citation : (2014) 05 P&H CK 0596

Hon'ble Judges : Hemant Gupta, J; Fateh Deep Singh, J

Bench : Division Bench

Advocate : Lokesh Sinhal, Advocate for the Appellant; Pardeep Singh Poonia, Additional Advocate General, Haryana for Respondent Nos. 1 and 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

Hemant Gupta, J.—The challenge in the present writ petition is to an order passed by the Principal Secretary to Government of Haryana, Development and Panchayats, Department, on 05.08.2013 declining the exchange of land of the petitioner with the land of the Gram Panchayat.

2. On 06.03.1981, Gram Panchayat passed a resolution for exchange of its 3 Kanal 17 Marlas of land out of Khasra No. 2/21 with the land measuring 5 Kanals out of Khasra No. 7//6/1 owned by the petitioners. In pursuance of such resolution, the State Government according approval for exchange of land on 27.06.1982. The petitioners claim to have constructed their houses on the land measuring 700 sq. yards after the sanction was granted by the State Government, whereas the other land is being used for the ancillary activities.

3. It was on 21.12.1983, the Panchayat passed another resolution for cancellation of earlier resolution of exchange. Such resolution of cancellation of earlier resolution was accorded approval by the State Government on 18.06.1984. The said approval was set aside by this Court on 27.02.2012 for the reason that no opportunity of hearing was granted to the petitioners. The matter

was remitted to the Government to pass a fresh order in accordance with law after notice to the petitioners. It is thereafter the impugned order has been passed on 05.08.2013.

4. The learned Principal Secretary to Government of Haryana has taken into consideration the report of the Deputy Commissioner dated 13.11.2012 reporting that the market value of Panchayat land is Rs. 80 lakh per acre whereas, the value of the land of the present petitioners is Rs. 70 lakh per acre. Thus, the Government did not agree for the proposal of the exchange of land. It may be noticed that there is no whisper or finding that there is any fraud or misrepresentation on the part of any of the parties to the exchange.

5. We find that the entire action of the Panchayat and that of the State Government in cancelling the resolution of exchange suffers from patent illegality and irregularity. The resolution of exchange was accorded approval by the State Government. After the approval was granted, the ownership of the land stands transferred. Such transfer cannot be set aside or cancelled only on the basis of another resolution passed by the Gram Panchayat. There is no provision of setting aside of transfer of immovable property under the Transfer of Property Act, 1882 or under the Punjab Village Common Lands (Regulation) Act, 1961. Though, there is a provision to undo an act in the same manner as an act is to be performed in terms of the General Clauses Act, 1897 but such provision will not empower the Gram Panchayat or the State Government to cancel a transfer of immovable property as the rights and interests are created after the exchange is sanctioned by the State Government.

6. Apart from the said fact, we find that the basis of the order is as if the State Government is considering approval of exchange for the first time but in fact it was considering the cancellation of exchange. We find that the land measuring 5 kanals of the petitioners is more valuable than the land of the Panchayat even as per valuation given in the order. The land of the petitioners values Rs. 43,75,000/- @ Rs. 70 lakh per acre, than the land of the Panchayat values at Rs. 38,50,000/- at the rate of Rs. 80 lakh per acre.

7. Therefore, neither in law nor in equity the resolution of cancellation of exchange passed by the Gram Panchayat as approved by the State Government is sustainable in law. Consequently, the order dated 05.08.2013 is set aside.

8. The writ petition is thus allowed.