
(2020) 09 P&H CK 0287

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11290 Of 2020

Dayal Singh And Another

APPELLANT

Vs

State Of Haryana And Others

RESPONDENT

Date of Decision : 29-09-2020

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 145(1), 482
Haryana Minerals (Vesting Of Rights) Act, 1973 — Section 2(h), 3(1), 4(1)
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2(g)(iii), 2(g)(Viii)
Constitution Of India, 1950 — Article 226

Citation : (2020) 09 P&H CK 0287

Hon'ble Judges : S. Muralidhar, J; Avneesh Jhingan, J

Bench : Division Bench

Advocate : Vibhor Bansal, Ankur Mittal, Sandeep Moudgil, Shailander Jain

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. Two residents of Village Sukhdarshanpur, Sub-Tehsil Barwala, District Panchkula viz., Shiv Dayal Singh and Satpal, have filed this writ petition seeking the following reliefs:

a) A writ in the nature of mandamus directing the respondents to stop the mining operations being done illegally in the land Khasra No. 48 of Village Sukhdarshanpur, Sub Tehsil Barwala, Distt. Panchkula without there being any valid or legal authority or permission in this behalf as the Auction dated 11/12th April, 2018 have been conducted and Letter of Intent dated 31.05.2015(Annexure P-7) has been issued with regard to Khasra No. 48 Min which does not even exist in the Revenue Record of Village Sukhdarshanpur and also for causing huge damage to environment and ecology of the area.

b) Further issue a writ of in the nature of mandamus directing the Respondent No. 8 to vacate the land in Khasra No. 48 Village Sukhdarshanpur and for paying

damages/compensation to the landowners for conducting illegal Mining Operations in Khasra No. 48 and also restoring the land in Khasra No. 48 to its original condition/shape as it was before the start of mining operations.

c) Issue any other suitable writ, order or direction which the Hon'ble Court deems fit and appropriate in the peculiar facts and circumstances of the case, may also be issued in favour of the Petitioners.

d) Filing of certified copies of Annexures P-1 to P-13 and true typed copies of Annexures P1 to P-5 and 8, P-12 and P-13 may kindly be exempted in the interest of justice.

e) Permit the Petitioners to file attached Annexures in the enclosed form, font, size and margin.

f) Writ Petition be allowed with cost in favour of the Petitioners.

g) It is further prayed that during the pendency of this writ petition the mining operations on the mining site in Khasra No. 48, Village Sukhdarshanpur, Sub Tehsil Barwala, District Panchkula may kindly be stayed and the respondent No. 8 may be restrained from lifting/transporting the minerals extracted in an illegal manner from the land in Khasra No. 48 in Village Sukhdarshanpur in the interest of justice.

2. As mentioned in para 19 of the present writ petition, the Petitioners had earlier filed CWP No. 9672 of 2020 in this Court, which was dismissed as withdrawn by an order dated 13th July, 2020. The said order reads as under:

"Learned counsel for the petitioners prays for permission to withdraw this petition with liberty to file fresh one with same cause of action as some facts have not been mentioned in the petition.

Allowed as prayed for. Dismissed as withdrawn with aforesaid liberty."

3. On 6th August, 2020, the following order was passed by this Court in the present writ petition:

"1. Notice of motion.

2. Mr. Deepak Balyan, Additional Advocate General, Haryana accepts notice on behalf of Respondent Nos. 1 to 7.

3. Issue notice to Respondent No. 8. Notice dasti in addition.

4. The specific allegation of the Petitioners is that Respondent No. 8 is carrying on illegal mining in Khasra No. 48 in village Sukhdarshanpur, contrary to the terms of the mining lease granted to it.

5. Mr. Deepak Balyan seeks time to obtain instructions. On the next date of hearing, he will also inform the Court on the status of compliance with the order dated 4th February, 2019 passed by this Court in CRM-M-4984- 2019, directing

that status quo to be maintained qua the very land in question.

6. If the local authority, which will inspect the site, finds that there is any stock of minerals, the same should not be allowed to be removed till further orders of the Court.

7. List on 19th August, 2020."

4. It must be noticed at this stage that CRM-M-4984 of 2019 under Section 482 of the Code of Criminal Procedure ('CrPC') was filed in relation to proceedings drawn up by the order dated 6th September, 2018 of the Sub-Divisional Magistrate, Panchkula ('SDM')/Respondent No. 4 under Section 145 (1) of Cr PC on a complaint arising from a dispute in connection with possession over shamlat deh land in the village Sukhdarshanpur, filed in the local police station.

5. Thereafter, the order dated 6th September, 2018 was challenged before the Additional Sessions Judge, Panchkula by way of a revision petition. That revision petition came to be dismissed by an order dated 10th October, 2018.

6. It appears that during the pendency of the aforementioned proceedings before the SDM, some of villagers, other than the Petitioners, filed an application dated 1st October, 2018 before the SDM, seeking permission to harvest paddy crops in in Khasra Nos. 48 and 49 in village Sukhdarshanpur. By an order dated 9th October, 2018, the SDM appointed the Naib Tehsildar-cum-Executive Magistrate Barwala as the Receiver. It was specifically directed that the Naib Tehsildar act as the custodian of the standing crops falling in Khasra Nos. 48 and 49 in village Sukhdarshanpur and sell the crops after following due procedure.

7. The order dated 9th October, 2018 of the SDM, Panchkula was also challenged by way of a revision petition before the Additional Sessions Judge, Panchkula. That revision petition was dismissed by an order dated 29th October, 2018.

8. Thereafter, CRM-M-4984 of 2018 was filed in this Court challenging the orders dated 10th October 2018 and 29th October, 2018 of the Additional Sessions Judge, Panchkula. The petition also prayed for quashing the kalendra dated 18th May, 2018 submitted by the local police before the SDM in the proceedings under Section 145 (1) of CrPC. On 4th February 2019, the learned Single Judge of this Court, while issuing notice of motion in the said petition, directed status quo, as it existed on that date, to be maintained by the parties.

9. In response to the notice of motion issued in the present petition on 6th August, 2020, the Director General, Mines and Geology, Haryana filed an affidavit dated 20th August, 2020 on behalf of Respondent Nos. 1, 2 and 7.

10. A short reply was filed on behalf of Respondent No. 8 i.e. Partner in M/s. Shiv Enterprises, C-14, TDI City, Panipat, Haryana stating, inter alia, that the Respondent No. 8 was the successful bidder in the e-auction held on 11th/12th April, 2018 for mining contract/mineral concession qua land in two villages viz., Shamtoo and Sukhdarshanpur in Khasra No. 55 Min. and 48 Min., ad- measuring

37.38 hectares, situated in Sukhdarshanpur Block/PKL., B-13 in District Panchkula. The mining period was fixed for 7 years. Thereafter, a Letter of Intent ('LOI') (Annexure P-7) was issued in favour of Respondent No. 8 on 31st May, 2020. The said reply also referred to the fact that the State Environment Impact Assessment Authority, Haryana had issued an environmental clearance on 22nd May, 2020, on an application dated 30th July, 2018 filed by Respondent No. 8. It is stated that a public hearing was held at the site on 4th December, 2019, whereby the general public was invited for giving suggestions and objections in the office of the Chairman, Haryana State Pollution Control Board, SCO-13, Sector-6, Panchkula. It is further stated by Respondent No. 8 in the aforesaid reply that the mining concession rights over the land in Khasra No. 48 Min. in village Sukhdarshanpur vests in Respondent No.1/State of Haryana in terms of Section 3 (1) of Haryana Minerals (Vesting of Rights) Act, 1973 and Tule 62 of the Haryana Minor Mineral, Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 as amended. It is contended that mining the operations were being carried out by Respondent No. 8 in the abovementioned mining area in terms of the relevant rules.

11. In para 4 of the aforesaid affidavit Respondent No. 8 inter alia avers as under:

"It is pertinent to mention here that admittedly as per the Jamabandi of Village Sukhdarshanpur, Hadbast No.2, Tehsil Barwala, District Panchkula for the years 2018-19, the Khasra No. 48 ad-measuring 329 Kanal 19 Marlas, is being shown in the ownership of "Shamlat Deh Hasab Rasab Arazi Khewat Wasi Deh" and the cultivation thereof is being shown in occupation of the entire proprietary body. The entry in column No.8 for the said Khasra number of the said Jamabandi (Annexure P-6) is being shown as a "Gair Mumkin River". There is no further evidence on record to prove the individual cultivating possession of the petitioners, as being the alleged proprietors (landowners) of the village for excluding the same from being falling in the definition of Shamlat Deh, in terms of Section 2(g) (iii) and 2(g) (viii) of the Punjab Vilalge Common Lands (Regulation) Act, 1961. Such a land vests in Village Panchayat of Village Sukhdarshanpur, by virtue of Section 2(g) read with Section 4(1) of the said Haryana Act. As such, no notice was required to be served upon the Petitioners being alleged proprietors before taking possession of the same for mining operations." (emphasis in original)

12. On 21st August 2020, this Court passed the following order:

"1. Having perused the short affidavit filed on behalf of the Respondents No. 1, 2 and 7 and the separate reply filed on behalf of the Respondent No. 8, it is still not clear whether the status quo order passed by this Court in CRM-M-4984-2019 did not cover the land on which mining is stated to have taken place between 10th and 30th June, 2020. The Court, accordingly, directs that the Respondent Nos. 1, 2 and 7 will place on record a rough site map which will clearly indicate the area where the mining has taken place and area covered by

the aforementioned status quo order of this Court.

2. Additionally, the record of CRM-M-4984-2019 be requisitioned for the next date.

3. The Court reiterates the order dated 6th August, 2020.

4. List on 8th September, 2020."

13. Thereafter, on 7th September 2020, the Joint Commissioner, Municipal Corporation, Panchkula (Respondent No.5) filed a status report by placing on record certain photographs and referring to the letter dated 1st September, 2020 wherein the Executive Engineer, Municipal Corporation, Panchkula, stated that upon personally visiting the site on 31st August, 2020 in village Sukhdarshanpur, the stock of mineral was found to be in the same position as on 21st August, 2020.

14. On 17th September, 2020, the Director General, Mines and Geology, Haryana (Respondent No. 2) filed a detailed affidavit on behalf of Respondent Nos. 1, 2 and 7, wherein, inter alia, it has been stated in paras 8, 10 and 11 as under:

"8. That is respectfully submitted that as far as the auction by which the mining contract/mineral concession was granted over an area of 37.38 hectares in Village Sukhdarshanpur and Shamtoo, the auction of the same was held on 11/12th April, 2018 and the mining contract was granted for a period of 7 years. The area of contract is situated in the riverbed of which area measuring 9.29 hectares (185 Kanal 15 Marla) falls in Khasra no. 48 Min. of Village Sukhdarshanpur and the area measuring 28.09 hectares (561 Kanal 16 Marla) is situated in Khasra No. 55 Min. of Village Shamtoo, District Panchkula. The environmental clearance by the State Environment Impact Assessment Authority Haryana (SEIAA) competent authority under EIA notification dated 14.09.2006 of the Ministry of Environment and Forest, Climate Change, Government of India was granted on 22.05.2020 to the Respondent No. 8, who after obtaining consent to establish/operate from the HSPCB, commenced mining operations on 10.06.2020. The operations got closed on 30.06.2020, as the time in the Riverbed is not permissible during 1st July to 15th September.

9. It is respectfully submitted that in order to comply with the directions passed by this Hon'ble Court vide order dated 21.8.202-0, the Mining Officer, Panchkula and Senior Surveyor of the Department were deputed to visit the site to ascertain the area where the respondent no.8 undertook the mining between 10th and 30th June, 2020. They were directed to depict the said area over the site plan/aks Shajra submitted by Naib Tehsildar Barwala while giving his report about the standing crop with the individual name and the area. Accordingly, the team inspected the site, depicted the mined area in the same plan. For the kind consideration of this Hon'ble Court, the individual area showing the crop and the mined area in Khasra no. 48 has been shown in Pink and Yellow colour respectively. Besides the same, another layout plan has been prepared depicting

the entire area covered by the report of the Naib Tehsildar Barwala to be individual possession/standing crop in Pink colour has been prepared. True copies of both the layout/sketch are being annexed herewith as Annexures R-1 and R-2 for the kin consideration of the Hon'ble Court.

10. That it is respectfully submitted that the perusal of Annexure R-1 reveals that out of two petitioners in the present petition, Shiv Dayal Singh is shown to be in possession of 10 Kanal land, though the said area is not even part of contract area but it falls within 250 mtrs. from a nearby bridge and the same being restricted area for mining is not at all mined. This area is not even abutting the area where the mining has taken place between 10th-30th June, 2020.

11. That as far as the Petitioner No.2 is concerned, his name was neither mentioned in the Kalendra filed by the SHO nor in the report of Naib Tehsildar none of the ten Petitioners in CRM-M-4984 of 2019 as per the said report of Naib Tehsildar, Barwala have been shown in possession of any piece of land falling in Khasra No. 48."

15. This Court has heard the submissions of Mr. Vibhor Bansal, learned counsel for the Petitioners, Mr. Ankur Mittal, learned Additional Advocate General, Haryana, Mr. Shailander Jain, learned Senior Advocate appearing on behalf of Respondent No. 8 and Mr. Sandeep Moudgil, learned counsel appearing for Respondent No. 5.

16. Referring to a report submitted by the Naib Tehsildar, Barwala, which is dated 17th July, 2020. Mr. Vibhor Bansal, learned counsel for the Petitioners maintained that there is, in fact, land only in Khasra No. 48 and there is no Khasra No. 48 Min., as claimed by the Respondents. This contention is seriously contested by Mr. Shailander Jain, learned Senior Advocate for Respondent No. 8, who submits that in fact the land in Khasra No. 48 Min. is carved out of the larger area of land in Khasra No.48.

17. The Court is of the view that this issue clearly gives rise to disputed questions of fact. Further, from the affidavit filed on behalf of Respondent Nos. 1, 2 and 7 on 17th September, 2020, it appears that the Mining Officer, Panchkula and a Senior Surveyor of the Department visited the site. They have depicted the area covered by the mining contract with reference to the site plan/Aks Shajra submitted by the Naib Tehsildar, Barwala. These have been placed on record. There is no rebuttal by the Petitioner of the above contention on the basis of the record. These disputed questions cannot, therefore, be further examined in the present writ petition under Article 226 of the Constitution.

18. The statement of the Director General, Mines and Geology, Haryana on affidavit that the land to the extent of 10 kanals, shown to be in the possession of Petitioner No.1, is neither a part of the contract area nor abuts the area stated to have been mined between 10th and 30th June, 2020, has also not been able to be rebutted by Mr. Vibhor Bansal, learned counsel for the Petitioners. In fact, the further assertion by Respondent Nos. 1, 2 and 7 that none of the 10

Petitioners in CRM-M-4984-2019 have been shown to be in possession of any piece of land shown in Khasra No. 48, as per the report of the Naib Tehsildar, Barwala, has also not been able to be rebutted.

19. Mr. Vibhor Bansal then urged that there is an illegality in the e-auction that was held on 11th/12th April, 2018 for grant of the mining contract, since the provisions of the Haryana Minerals (Vesting of Rights) Act, 1973 and the Rules framed thereunder were not followed. According to Mr. Bansal, in the earlier writ petition CWP No. 9672 of 2020, such challenge was in fact raised, but not permitted by the Court to be proceeded with. He submits that the order dated 13th July, 2020 dismissing the said petition as withdrawn, recorded the liberty granted to the Petitioners "to file a fresh petition with the same cause of action since some facts have not been mentioned in the petition".

20. In the first place, it is seen that the prayers made in this petition do not raise any challenge to the validity of the allotment made to Respondent No. 8 through e-auction. There is nothing to show that the Petitioners were precluded from raising such a challenge in this petition. Consequently, the Court is not prepared, in the absence of any prayer in that regard, to permit the Petitioners to question the grant of the mining contract in favour of Respondent No. 8, pursuant to the e-auction held on 11th/12th April, 2018.

21. There is also merit in the contention of Mr. Ankur Mittal, learned Additional Advocate General, appearing on behalf of the State of Haryana, that the area being Gair Mumkin Nadi i.e. a river running over the land in question, the mining concession rights over the land in question actually vested in the State. The land itself has been recorded as Shamlat Deh in the village Sukhdarshanpur.

22. As already noted, the area covered by the mining contract is situated in the river bed, of which an area of 9.29 hectares falls in Khasra No. 48 Min. of village Sukhdarshanpur and an area of 28.09 hectares in Khasra No. 55 Min. of village Shamtoo, District Panchkula. Environmental clearance has been granted by the State Environment Impact Assessment Authority, Haryana and consent to establish and operate the mine has been obtained from the Haryana State Pollution Control Board. In the circumstances, the Court is not inclined to entertain the plea of the Petitioners regarding the legality of the grant of mining contract to Respondent No. 8.

23. For all the aforementioned reasons, the Court finds no reason to accede to any of the prayers made in the present petition. The petition is accordingly dismissed. The interim order dated 8th September, 2020 hereby stands vacated.