
(1996) 05 P&H CK 0208
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition 3474 of 1982

Dhari and Others	Vs	APPELLANT
State of Haryana and Others		RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 5
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 12

Citation : (1997) 116 PLR 655 : (1997) 3 RCR(Civil) 405

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : U.S. Sahni, for the Appellant; C.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioners are the residents of village Pasina Khurd and they have been in possession of about one and a half acres of land within the abadi deh which vested in the Gram Panchayat. According to the petitioners, each one of them is in possession of small plots and they have been using those small plots for storing fuel and manure etc. and some of them have also raised structures. The Gram Panchayat passed resolutions on 29.8.1978, 12.11.1978 and also on 29.11.1978 to sell the said land by plotting it out in open auction to individual persons. The petitioner filed a civil suit, but the same was dismissed on the ground that the Civil Court had no jurisdiction as the land is, admittedly, Shamlat Deh and, therefore, the jurisdiction of the Court is barred. Thereafter, the petitioners made a complaint to the Deputy Commissioner, Karnal, against the Sarpanch of the Gram Panchayat, who with a mala fide intention, got the resolutions passed to put the land in auction only to evict the petitioners from their lands, but nothing happened on the complaints made by the petitioners. The petitioners filed this writ petition challenging the validity of the resolutions passed by the Gram Panchayat to dispose of the said land through public auction.

2. The only point that arises for consideration in this writ petition is whether the

Gram Panchayat is competent to sell the land which is Shamlat and vested in the Gram Panchayat, through public auction.

3. Admittedly, the land measuring about one and a half acres is Shamlat land. The Gram Panchayat passed a resolution on 29.8.1978 to sell the land by plotting out the same through auction and for the purpose of constructing a school with the income thus derived. The same resolution was reiterated by the Gram Panchayat on 12.11.1978 in its meeting vide Annexure P-2. The Gram Panchayat also passed a resolution on 29.11.1978 approving the auction held on 22.11.1978. It is the case of the Gram Panchayat that the Gram Panchayat is within its powers to sell the Shamlat Deh in public auction because the Gram Panchayat intends to use the income derived from the sale of these lands to construct the school building. Section 5 of the Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana reads as follows:-

"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".

4. Thus it is clear that the Gram Panchayat is empowered to dispose of Shamlat land vested in the Gram Panchayat for the benefit of inhabitants of the village in the manner prescribed under the rules. Rule 12 of the Punjab Village Common Lands (Regulation) Rules, 1964 as applicable to the State of Haryana enumerates the purposes for which the land vested in the Gram Panchayat may be sold. Rule 12 of the said rules reads as follows:-

"(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 "curring income for the benefit of the inhabitants of the village.

(2) Where it is proposed to sell the land in shamlat deh under Sub-rule

(1) the panchayat shall forward to Government a copy of its resolution passed by a majority of three-fourth of its members proposing to sell the land through the Panchayat Samiti and Deputy Commissioner stating --

- (a) the area and location of the land proposed for sale;
- (b) the estimated income from the sale and whether the income would increase if the land is sold after some years;
- (c) the reasons as to why the panchayat wants to sell the land and the plans for utilization of the income from the sale.

(3) The publicity for sale of land in shamlat deh by auction shall be made by the Deputy Commissioner in accordance with the procedure laid down in Sub-rule (10) of Rule 6 on receipt of the approval of the Government who shall also decide whether the land should be sold in one or more lots and the officers who would be present at the auction.

Provided that nothing contained in this Sub-rule shall apply to the sale of shamlat land for the purposes specified in clause (i) of Sub-rule (1)".

5. Thus the land in shamlat deh vested in the Gram Panchayat can be sold either for the purpose of constructing building for Block Samiti office or any department of or institution recognised by the Government, or for the purpose of any industrial or commercial concern or executing a scheme as may be a source of recurring income for the benefit of inhabitants of the village. Thus it is clear that the Gram Panchayat is empowered to sell its land only for the specified purposes mentioned in Rule 12 of the Rules. That power has to be exercised only with the previous approval of the Government. Nothing has been placed on record to show that the previous approval of the Government has been obtained before putting the said land in public auction. Further the land under Rule 12 cannot be sold for any purpose other than the purposes mentioned in the said rule. The land in shamlat deh can be used for the purpose of constructing a building for Block Samiti office or any department of or institution recognised by the Government or for the purpose of any industrial or commercial concern or it can be used for executing a scheme as may be a source of recurring income for the benefit of inhabitants of the village. I am, therefore, of the opinion that the resolutions passed by the Gram Panchayat to sell the land vested in the Gram Panchayat are not in accordance with the provisions of the Act and the rules framed thereunder. Therefore, the resolutions passed by the Gram Panchayat on 29.8.1978, 12.11.1978 and 29.11.1978 vide Annexures P-1 to P-3 are liable to be quashed.

6. The writ petition is, accordingly, allowed. The resolutions of the Gram Panchayat vide Annexures P-I, P-2 and P-3 dated 29.8.1978, 12.11.1978 and 29.11.1978 respectively are hereby quashed. However, it is made clear that this will not prevent the Gram Panchayat for taking any proceeding to recover its land from the petitioners in accordance with law as the land admittedly is Shamlat deh. There will be no order as to costs.