(1986) 02 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 3622 of 1981

Gram Panchayat APPELLANT

Vs

Additional Commissioner Ferozepur and Others RESPONDENT

Date of Decision : 25-02-1986

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 10(7), 10A, 10A(7), 16(7)
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 5

Citation : (1986) 2 ILR (P&H) 459

Hon'ble Judges : I.S. Tiwana, J

Bench : Single Bench

Advocate : Gulshan Sharma, for the Appellant; G.S. Chawla, A.G. for State, N.L. Dhingra, for Respondent Nos. 3 to 5 and Ravinder Chopra, for the Respondent

Final Decision : Dismissed

Judgement

I.S. Tiwana, J.—In this petition against the order of the Additional Commissioner, Ferozepur, dated July 24, 1981 (Annexure P. 6) u/s 10-A(7) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, the Act), the following factual matrix is not in dispute.

2. In pursuance of a scheme known as ''Integrated Rural Development Programme'', the State Government decided to establish a focal point in village Tibbi Khurd, forming part of the area of the Petitioner Gram Panchayat. Since in order to implement the scheme the Government wanted the Panchayat to provide a suitable site close to a metalled road free of compensation, the Petitioner as also the Block Development and Panchayat Officer approached various landowners of the village having lands adjoining to a Pacca road for exchanging that land with the land of the Panchayat. Respondent Nos. 3 to 5 conjointly swore an affidavit on October 28, 1978, offering their land along the road to be exchanged with the land of the Panchayat. The details of the land offered are duly mentioned in this affidavit; copy of which is Annexure P 2. Vide

resolution dated November 15, 1978 (copy Annexure P. 3), the Petitioner Panchayat resolved to exchange its land with that of various landowners including the above noted Respondents and for this purpose approached the Collector, Ferozepur, to accord the necessary. approval to the exchange. The Collector,--vide his letter, dated November 22, 1978 (Annexure P. 4) conveyed his sanction in terms of Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964 as amended in 1978. With the completion of the formalities of this exchange a number of focal point buildings, such as, Grain Market, Co-operative Bank, Civil Hospital, Veterinary Hospital, offices of the Agriculture Inspector, Cooperative Societies, residential quarters of the staff, godowns for storage of bags to the extent of 50,000, Post Office, Water Supply Scheme and Petrol Pump, etc. were constructed on the land along the road at a fabulous cost of lacs of rupees. The above-named three Respondents, realising the. potentiality their exchanged land had gained, moved an Application u/s 10-A of the Act before the Collector, Ferozepur, with the assertion that the above-noted exchange was not only violative of the provisions of the Act and the Rules, but they had been defrauded too in entering into that exchange with the Petitioner Panchayat. They, wanted the nullifying of the exchange and restoration of the possession of their land to them. The Collector on enquiry found no substance in these allegations of these Respondent sand dismissed their, application. However, on appeal under Sub-section (7) of this section, the Additional Commissioner, Ferozepur, as already indicated, set aside this order and directed the Petitioner to surrender possession of certain part of the land (on which according to the Additional Commissioner no construction, had been raised) to these Respondents. For passing this order the Additional Commissioner recorded these two conclusions:

(i) No prior approval of the State Government for entering into this exchange was obtained by the Panchayat, and

(ii) the above-noted Respondents had surrendered double the area than the one they had in exchange from the Panchayat; so they were defrauded to enter into this exchange.

Having heard the learned Counsel for the parties, I find that not only the above two conclusions of the Additional Commissioner are wholly unwarranted but the very appeal before him u/s 10(7) of the Act was not competent.

3. So far as the first conclusion of the Additional Commissioner is concerned, he completely lost sight of the proviso to Rule 5--the violation of which rule was noticed by him--which was added to the rule by way of amendment in 1978. This proviso reads thus:

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 shamilat deh by exchange with land of an equivalent value.

The requirement of this proviso, i.e., ''prior approval of the Collector'' completely stood fulfilled in the instant case. This approval Was granted by the Collector, Ferozepur,--vide Ms communication, Annexure P.-4.

4. So far as the second conclusion of the Additional Commissioner is concerned, the same besides being conjectural is based on straining of the facts available on record. It is no doubt true that the land surrendered by the Respondents was almost double to the one they got from the Panchayat, yet it was found by the Collector and also is so depicted by the revenue record that it was inferior in quality to the one they got in exchange. As per averments in paragraph 4 of this petition, the Khasra Girdawari Register shows that these Respondents could not raise any Kharif crop in this land with effect from the year 1975 on account of its being Kallar infested. The land which had been surrendered by the Panchayat to these Respondents was Nehri land and was much more productive than the land it got in exchange from the Respondents. Otherwise also, it is not clear as to on account of what suppression of facts or material the Respondents stood defrauded. As already indicated, they had sworn an affidavit on October 28, 1978 offering their land in exchange to that of the Panchayat. Nothing but greed appears to be the motivating force behind their claim. Anyway, I find, this conclusion of the Additional Commissioner as totally unsustainable.

5. So far as the maintainability of the appeal before the Commissioner u/s 16(7) of the Act is concerned, one of the essential conditions for the same was that the Appellant before him should have been a person aggrieved. A Division Bench of this Court in Sohan Singh and Ors. v. Shri Surjit Singh. Sodhi Commissioner Patiala Division, Patiala and Ors. 1973 P.L.J. 71 while examining meaning and scope of this sub-section has held that a person can be said to be aggrieved by an order if that order worsens his position from the one held before the order was passed. If it does not, then that person cannot be said to be aggrieved. This precisely was the position of the Respondents when their application u/s 10-A of the Act was dismissed by the Collector. Their position had not worsened in any manner by the dismissal of that application and they could not style themselves as persons aggrieved by that order. In Sohan Singh''s case (supra), the land was leased by the Gram Panchayat and a regular lease deed was executed. However, the Collector suo motu issued a notice to the lessees u/s 10-A of the Act to show cause why the lease of the land in their favour should not be cancelled as it was detrimental to the interests of the Panchayat. After hearing the lessees and the Sarpanch the Collector enhanced the rate of rent but maintained the period of lease. The Gram Panchayat, filed appeal before the Commissioner which was accepted and the lease was cancelled. This was challenged on the ground that the Gram Panchayat was not an aggrieved party from the decision of the Collector and thus no appeal lay to the Commissioner at the instance of the Gram Panchayat. As already pointed out, this plea of the lessees, was accepted and it was held by the Division Bench that the Gram Panchayat was not an aggrieved party as the order of the Collector had not worsened its position in any manner. I am thus satisfied that the ratio of this judgment completely covers the contention of the learned Counsel for the Petitioner that the appeal before the

Additional Commissioner was not maintainable.

6. For the reasons recorded above I allow this petition and set aside the impugned order of the Additional Commissioner, Anneure P. 6, with costs which I determine at Rs. 1,000. However, since no relief has been claimed against Respondents 6 to 8, the petition qua them stands dismissed but with no order as to costs.