
(2014) 05 P&H CK 0495

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 22756 of 2013 (O&M)

Gram Panchayat, Bari Karoran

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 28-05-2014

Acts Referred:

Citation : (2014) 4 RCR(Civil) 316

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Puneet Bali, Senior Advocate and Mr. Vibhav Jain, Advocate for the Appellant; Alok Jain, Addl. Advocate General, Punjab and Mr. Brijeshwar Singh Kanwar, Sr. Standing Counsel for UOI, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.—This is an application filed by the petitioner for disposal of the present writ petition in consonance with the judgment dated 21.5.2014 passed by the Hon'ble Supreme Court in Civil Appeal Nos. 4682-4683 of 2005(Annexure P/20).

2. Averments contained in the application are taken on record which are to be examined for disposal of the writ petition and the application accordingly stands disposed of.

CWP-22756-2013:

3. The present writ petition lays a challenge to the two notifications both dated 13.8.2010 (Annexures P/8 and P/9) to the extent they impose what are alleged to be necessary restrictions with regard to use of land which is de-notified under the Punjab Land Preservation Act, 1900 (hereinafter to be referred to as "the PLPA"). Certain other consequential reliefs are also being sought including acceptance of building plans of inhabitants of the area of Naya Gaon. A relief is also sought for implementation of the Final Master Plan-2021 A.D. providing for a road from PGI to Village Kaimbala passing through villages Karoran and Kansal and a road from Khuda Ali Sher to Kaimbala side as per map (Annexure P/14).

The petitioner also seeks de-notification of the remaining area falling in the revenue estate of villages Karoran and Nada from the list of forest areas and, thus, removal of restrictions, regulations and prohibition imposed under Sections 4 and 5 of the PLPA.

4. Post completion of pleadings, on 4.3.2014, we had opined that it would be appropriate to await the final view of the Hon''ble Supreme Court in Civil Appeal Nos. 4682-4683 of 2005, referred to aforesaid. This was in the context of the stand taken in the affidavit of Financial Commissioner & Principal Secretary to Government of Punjab itself averring that since the Division Bench of this Court in CWP-1134-2004, decided on 12.10.2004 had categorically held that all areas notified under the PLPA are forest areas and attract the provisions of the Forest (Conservation) Act, 1980 and also the Indian Forest Act, 1927, as also by reason of the pending appeals before the Hon''ble Supreme Court, i.e., Civil Appeal Nos. 4682-4683 of 2005, the present petition ought not to be entertained.

5. The affidavits filed on behalf of Ministry of Environment & Forests referred to certain directions passed by the Hon''ble Supreme Court and the averments of the State Government that the Expert Committee constituted by the State Government included cultivated/habitation areas closed under the PLPA in the list of forest areas only because they were included in the Annual Administrative Reports of the department as such were taken note of. It is also averred in the affidavit on behalf of Conservator of Forest that the appropriate course of action would be to await the judgment of the Hon''ble Supreme Court in Civil Appeal Nos. 4682-4683 of 2005.

6. The judgment has since been delivered, as noted aforesaid. The question to be examined is as to what is the effect of the judgment. A perusal of the said judgment shows that the Hon''ble Supreme Court has proceeded to examine the opinion of the High Court whereby latest entries of revenue record were discarded and records of Forest Department were taken into account to hold that the land in question was forest land. The Hon''ble Supreme Court did not agree with this conclusion of the High Court that the land notified u/s 3 of the PLPA and regulated by prohibitory directions notified under Sections 4 and 5 thereof is forest land. It opined that land which was notified u/s 3 of the PLPA and regulated by orders of the Local Government under Sections 4 and 5 may or may not be forest land.

7. In a nutshell, the ratio of the judgment of the Hon''ble Supreme Court is that whether a land is a forest land or not would depend on the land records and merely because the land is notified u/s 3 of the PLPA would not ipso facto make it forest land. The second limb is that the land has to be recorded as forest land as on 25.10.1980 irrespective of its classification or ownership.

8. If we may say, the complete ground reality has changed in view thereof and learned Additional Advocate General cannot dispute the proposition that an exercise would have to be carried out by the State Government now to identify

such land as is forest land as per the revenue record which he claims would take some time. He, however, states that insofar as the main notifications are concerned, which are predicated on the notification(s) under the PLPA, there would have to be segregation of land between forest land and non forest land.

9. The aforesaid course of action is something which cannot be disputed even by learned senior counsel for the petitioner who submits that the impugned notifications would only apply to such of the land which would be forest land. It is his case that the land in question, involved in the present proceedings, is not forest land, an aspect which would have to be verified by the State Government.

10. We, thus, dispose of the writ petition in the following agreed terms:

(i) It is for the State Government to proceed to identify the forest land in terms of the parameters laid down by the Hon'ble Supreme Court in Civil Appeal Nos. 4682-4683 of 2005 titled as B.S. Sandhu vs. Government of India and others, decided on 21.5.2014 based on the revenue record and the test laid therein;

(ii) The notifications would in substance apply only in case the land in question is forest land in the revenue record;

(iii) Insofar as land of the petitioner is concerned, the aforesaid exercise be carried out to take a call on whether what is alleged by the petitioner, i.e., it is not forest land is correct or not and a reasoned decision be communicated to the petitioner on or before 03.07.2014, as prayed by learned Additional Advocate General;

(iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really pathetic on account of all development works having stopped; and

(v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorisedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.

11. The petition accordingly stands disposed of.

12. List for compliance on 11.07.2014.