
(1975) 05 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 23 of 1973

Gram Panchayat Deka Fateh Singh Tehsil Gulha, District
Karnal and another

APPELLANT

Vs

The State of Haryana and others

RESPONDENT

Date of Decision : 02-05-1975

Acts Referred:

Punjab Gram Panchayat Act, 1952 — Section 4

Citation : (1975) 05 P&H CK 0017

Hon'ble Judges : Ajit Singh Bains, J

Bench : Single Bench

Advocate : H.L. Sarin, M/s. Gian Chand Garg and M.L. Sarin with him, for the Appellant; H.N. Mehtani, Deputy Advocate-General, Haryana, Mr. B.S. Malik, for Respondent No. 6, Mr. J.S. Wasu (Mr. S.K. Syal with him), for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh Bains, J.—The brief facts of the case are that vide notification No. EP-KKT-63/91 dated 29th November, 1963, issued u/s 4 of the Punjab Gram Panchayat Act, 1952 (hereinafter called "the Act"), a Sabha area for the village of Gumthala Garhu including the area of rectangle numbers 1 to 301 by the name of Gram Sabha Gumthala Garhu was constituted u/s 5 of the Act. Some population of the village due to congestion moved out and established six habitations at a distance of four miles from the main village. These six habitations are situated within a radius of one mile. It is stated that the residents of six deras were included in Gram Panchayat Gumthala Garhu. Some time afterwards, residents of six deras made an application to the Government for constituting a separate Gram Sabha for them. Consequently, the Punjab Government vide notification No. EP-65/211 dated 16th November, 1965, excluded the area of rectangle numbers 1 to 121 out of the Sabha area of Gram Gumthala Garhu and by notification No. EP-65/212 of the same date, the Government constituted a new Sabha area consisting of the six deras previously in village Gumthala Garhu, and established a Gram Sabha for this area by the

name of Gram Sabha Dera Fateh Singh. Rectangles Nos. 1 to 124 were given to the new Sabha and excluded from the old Sabha. Copies of these notifications are attached with the petition as Annexures "A" and "A 1". Elections to this new Panchayat took place in April, 1966, and petitioner No. 2 was elected as a Sarpanch to which office he still continues to hold. Gram Sabha Gumthala Garhu filed Civil Writ No. 366 of 1967 challenging the notifications (Annexures "A" and "A-1") but the same was dismissed as infructuous by this Court on 13th January 1969 in view of a compromise dated 5th February, 1968, entered into between Gram Sabha Gumthala Garhu and Gram Sabha Dera Fateh Singh. Accordingly to the compromise the income of the Panchayats land reserved for the income of the Panchayats was to be divided between the Panchayats in the ratio of 1/3 : 2/3. One-third was to go to Gram Sabha Dera Fateh Singh, the present petitioner, and two-third to Gram Sabha Gumthala Garhu. Dispute still continued between the two Panchayats. The Block Development and Panchayat Officer, respondent No. 5 issued a letter (translated copy is Annexure "B") in which the petitioner was directed to send a copy of Aks Shajra in duplicate after getting the same prepared from the revenue patwari in respect of Shamilat land belonging to the two Panchayats, that is, Gram Sabha Gumthala Garhu and Gram Sabha Dera Fateh Singh, for the purpose of partition. Another letter (Annexure "E") was issued by the Block Development and Panchayat Officer to the petitioner in which it was mentioned that re tangles 66 & 83 of the area belonging to the petitioner Gram Panchayat Treasuring about 35 acres would be taken out from the Panchayat and given to Gram Panchayat Gumthala Garhu and that the petitioner would be only left with 20 acres 1 kanal and 13 marlas out of 55 acres. This letter is dated 17th March, 1972. It was against these two letters of the Block Development and Panchayat Officer that the present writ was filed by the petitioner. This writ was admitted on 26th March, 1973 and during the pendency of writ petition, two notifications were issued on 19th June, 1973 which are Annexures "F" and "F-1". Vide these notifications, part of the land belonging to petitioner-Panchayat detailed in the notifications was given to respondent No. 7 after taking the same out of the ownership of the petitioner-Panchayat. The petitioner-Panchayat was subsequently allowed to file an amended petition in view of later notification and by the amended petition, the petitioner-Panchayat as challenged the notifications (Annexures "F" & F. 1") alongwith the letters (Annexures "B" and "E").

2. The main contention of the Learned Counsel for the petitioner is that the land comprised in rectangle Nos. 1 to 124 having been given to the petitioner-Panchayat in the year 1965 when the Panchayat was constituted under the Act, that land could not be taken away now by the Government and given to the Gram Panchayat, Gumthala Garhu, that the respondents had no jurisdiction to partition the land without notice to the petitioner. I have carefully given my thoughtful consideration to the contentions raised by the Learned Counsel for the petitioner and the reply made by Shri Wasu, Learned Counsel for respondent No. 7 and the State counsel Shri Mehtani. The impugned notifications have been

issued u/s 4 of the Act which is in the following terms :--

4. Demarcation of Sabha areas.

(1) Government may, by notification, declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more Sabha areas:

Provided that neither the whole nor any part of--

(a) Notified Area u/s 241 of the Punjab Municipal Act, 1911; or

(b) a Cantonment; or

(c) a Municipality of any class;

shall be included in a Sabha area unless the majority of voters in any Notified Area or Municipality of the Third Class desire the establishment of a Gram Sabha in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in Gram Sabha thereafter established, and the Notified Area Committee or the Municipal Committee shall cease to exist :

Provided further that the Government may, in any, particular case, relax the limit of five hundred.

(2) Government may, by notification, include any area in or exclude any area from the Sabha area.

(3) If the whole of the Sabha area is included in a municipality, Cantonment, or Notified Area u/s 241 of the Punjab Municipal Act, 1911, the Sabha shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.

3. From the reading of sub-sections (1) and (2) of section 4, it is evident that the Government has the power and authority to declare any village or group of contiguous villages where the population is not less than five hundred to constitute one or more Sabha areas and that if some part of a Notified Area is to be included in the Sabha Area, then unless the majority of the voters in any Notified area or the municipality of the Third Class desire establishment of Gram Sabha, that area would be included in the Gram Sabha and that by a notification, the Government may include any area in or exclude any area from the Sabha area. From this it is very clear that no land belonging to a particular Gram Panchayat situated in the Sabha area of that Gram Panchayat can be taken away and given to some other Gram Sabha and the Gram Panchayat.

4. Mr. Wasu, Learned Counsel for respondent No. 7, has vehemently contended that area includes land and under sub-section (2) of Sec. 4 any area can be excluded or included from the Sabha area and in this regard he has referred to section 19 of the Punjab General Clauses Act. I am afraid section 19 of the Punjab General Clauses Act can be of no assistance in the facts of this case. It would lead to disastrous consequences if sub section (2) of section 4 is construed

in a manner as Mr. Wasu win"s to construe it. In this regard, it is necessary to refer to section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, which is in the following terms:--

4. Vesting of rights in Panchayats and non-proprietors.--Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interests whatever in the land :--

(a) Which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and, where no such Panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted ;

(b) Which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.

* * *

5. From the reading of this section, it is clear that all rights, title and interests whatever in the land which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall at, the commencement of this Act vest in the panchayat constituted for such village and where no such panchayat has been constituted for such village vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted. The notification in this case was issued in the year 1965 and since then the land now transferred vide the impugned notification to the Gram Sabha Gumthala Garhu vests in the petitioner-panchayat and the petitioner panchayat has become proprietor of the same u/s 4 of the Punjab Village Common Lands (Regulation) Act, 1961 It is not understood as to how this land can be taken away by the respondents u/s 4 (2) of the Act. The petitioner-panchayat has become full owner cannot be divested of its land as has been done in this case u/ s 4 (2) of the Act. The power of the Government u/s 4 of the Act is to declare any area as a Sabha area and to declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more Sabha areas or to include or to exclude any area from the Sabha area. It would mean that the State can abolish the Gram Panchayat of the petitioner and again include it in the Sabha area of Gran Panchayat Gumthala Garhu, respondent No. 7, but it cannot take away some of the land owned by one Panchayat and give it to the other Panchayat No notice was ever given to the petitioner before issuing the impugned notifications. It is a well-settled law that no adverse order can be passed without notice to the effected party. No ether point is urged.

6. For the reasons recorded above, this petition is allowed and the impugned notifications and letters Annexures B & E, "F" and "F 1", are quashed but in the circumstances of this case, there will be no order as to costs.