

(2013) 05 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 2113 of 2013

Gram Panchayat Kalesar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 30-05-2013

Acts Referred:

Citation : (2013) 05 P&H CK 0009

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

Rajive Bhalla, J.—The Gram Panchayat of village Kalesar, District Yamuna Nagar has filed this writ petition for issuance of an appropriate writ, order or direction to hold an inquiry into the illegal sale of the shamilat land of village Kalesar. It is also prayed that respondent No. 4 may be restrained from registering a sale deed on the basis of an agreement allegedly executed by respondent Nos. 7 and 8 in favour of respondent Nos. 5 and 6. The facts pleaded and arguments addressed prima facie revealed that shamilat land has been sold and a suit in respect thereof, decreed. The following order was, therefore, passed on 31.1.2013:-

"Counsel for the petitioner submits that though the land, in dispute, is recorded as ownership of Gram Panchayat, Kalesar, respondent Nos. 7 and 8 executed an agreement to sell in favour of respondent Nos. 5 and 6, who, thereafter, filed a suit for specific performance, which was dismissed by Civil Judge (Senior Division), Yamuna Nagar at Jagadhri, on 13.3.2009, inter alia on the ground that the land belongs to the Gram Panchayat and is part of a forest spread over an area of more than 12000 Kanals. The decree was, however, set aside by the Additional District Judge, Yamuna Nagar at Jagadhri, on 10.9.2011 though by recording a finding that the decree is not binding on the rights of a third party, i.e., the Gram Panchayat. It is further contended that taking advantage of the decree passed by Additional District Judge, Yamuna Nagar at Jagadhri, the

decree holder filed an execution application. The Executing Court has appointed a Local Commissioner to execute the sale deed unmindful of the fact that the decree, is inexecutable as the land belongs to the Gram Panchayat.

We have heard counsel for the petitioner, perused the paper book and are rather surprised that the Additional District Judge, Yamuna Nagar at Jagadhri, though conscious of the fact that the land belongs to the Gram Panchayat, has decreed the suit. The Executing Court has gone a step further and appointed a Local Commissioner to execute a sale deed in favour of respondent Nos. 5 and 6.

Notice of motion for 20.3.2013

Shri Narender Kumar, Additional District Judge, Jagadhri, is directed to furnish his comments as to why he decreed the suit relating to land that may be owned by the Gram Panchayat and Shri Vimal Sapra, Civil Judge (Sr. Division), Yamuna Nagar, is directed to furnish his comments for passing order dated 20.9.2011 in execution, though the land, in dispute, may belong to the Gram Panchayat and is part of a forest.

Operation of the impugned judgment and decree dated 10.9.2011 and proceedings before the Executing Court shall also remain stayed till further orders."

2. The Additional District Judge, Yamuna Nagar and the Civil Judge (Senior Division), Yamuna Nagar (executing court) have filed their respective comments. The Block Development and Panchayat Officer, Chhachhrauli has filed a reply supporting the case of Panchayat but has pleaded that as the matter is pending before this Court, he would abide by the order or direction issued by this Court.

3. Counsel for the petitioner-Gram Panchayat submits that land belonging to the Gram Panchayat has been sold by executing an agreement to sell and though the suit for specific performance was dismissed by the Civil Judge (Senior Division), Yamuna Nagar, it has been decreed by the Additional District Judge, Jagadhri. The executing court has called upon respondent No. 4 to register the sale deed. It is pointed out that as the land is "Shamilat Deh", it vests in the Gram Panchayat and, therefore, cannot be sold by any person, whosoever, much less, can an agreement to sell be executed, a suit be filed or decreed. The Gram Panchayat is the only authority empowered to sell "Shamilat Deh" and then also after following the procedure prescribed by the 1961 Act. The agreement to sell, the decree and execution proceedings are null and void. It is further submitted that as a large number of similar sale deeds have been executed by private persons, the Deputy Commissioner should be directed to conduct an inquiry into the sale deeds.

4. Counsel for respondents No. 5 and 6 submits that land in dispute was owned and possessed by proprietors, prior to 4.1.1996 and, therefore, does not vest in the Gram Panchayat. The agreement and the decree passed by the Additional District Judge, Yamuna Nagar are, therefore, legal and valid. It is further

submitted that as the judgment and decree passed by the Additional District Judge, Yamuna Nagar, has been affirmed by dismissal of a Regular Second Appeal, the present writ petition should be dismissed. It is further pointed out that a suit for declaration of title is pending u/s 13-A of the 1961 Act.

We have heard counsel for the parties and perused the record. Gram Panchayat Kalesar is owner of 7748 Kanals of shamilat land, that includes forest land. The land is under the management and control of the Gram Panchayat. Respondent Nos. 7 and 8 executed an agreement to sell land measuring 121 Kanals-16 Marlas, out of this land, in favour of respondent Nos. 5 and 6, who, thereafter, filed a suit for specific performance in respect of 1/36th share out of land measuring 4384 Kanals-19 Marlas as detailed in the petition. The Civil Judge (Senior Division), Yamuna Nagar, dismissed the suit, vide judgment and decree dated 13.3.2009, by holding that as the land stood transferred to the Gram Panchayat, the suit is not maintainable. The appeal filed by respondent Nos. 5 and 6 was allowed by the Additional District Judge, Yamuna Nagar by setting aside judgment and decree dated 13.3.2009 and decreeing the suit, though it was noticed that the land belongs to the Gram Panchayat, which is not a party. Respondent Nos. 5 and 6 filed a petition for execution of the decree and for registration of a sale deed which is pending consideration before the executing court.

5. The land, in dispute, is, admittedly, recorded as "Shamilat Deh Hasab Hissa Halsari", i.e., ownership of the Gram Panchayat. The land came to vest in the Gram Panchayat under the Punjab Village Common Land Act, 1953 and thereafter under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act") u/s 2(g) read along with Sections 3 and 4 of the 1961 Act. It is, therefore, rather surprising that private respondents executed an agreement to sell, filed a civil suit and the Additional District Judge, Yamuna Nagar, decreed the suit. The Additional District Judge, was conscious of the fact that the land is recorded as ownership of the Gram Panchayat, but still proceeded to decree the suit. The only saving grace is that while decreeing the suit, the Additional District Judge has noticed that the Gram Panchayat is not a party. The decree, therefore, does not bind the rights of the Gram Panchayat. The comments furnished by Shri Narender Kumar, Additional District Judge and Shri Vimal Sapra, Civil Judge (Junior Division) have been perused, but we are not inclined to record anything further except to the extent of observing that Shri Narender Kumar, the then Additional District Judge, Yamuna Nagar, should have been careful in the matter. The executing court should have also taken care to peruse the nature of the land before issuing directions to respondent No. 4 to register the sale deed.

6. A plea raised by the respondents that as decree, passed by the Additional District Judge, Yamuna Nagar, has been affirmed in Regular Second Appeal, the writ petition may be dismissed, cannot be accepted. The land is shamilat deh and the Gram Panchayat is not a party to the appeal or civil suit. Even otherwise, as

the agreement to sell and the suit are a fraud on the 1961 Act and rights of the Gram Panchayat, the decree does not bind the Gram Panchayat and, therefore, can only be carried out into execution after the decree holder obtains a declaration of title u/s 13-A of the 1961 Act.

7. In view of the facts narrated above, it is held that till such time as private respondents do not obtain a declaration of ownership, regarding the land in dispute, from a forum of competent jurisdiction, namely, the Collector, exercising powers u/s 13-A of the 1961 Act, no court, much less, an executing court, exercising powers, to execute the decree passed by the Additional District Judge, shall proceed any further in the matter.

8. It is further ordered that till such time as the petition u/s 13-A of the 1961 Act is finally decided, neither respondent Nos. 5 and 6 nor respondent Nos. 7 shall assert any right, title or interest with respect to the land in dispute. The petition filed u/s 13-A of the 1961 Act shall be decided, within three months from receipt of a certified copy of this order.

9. Before parting with this order, it would be appropriate to point out that a large number of sale deeds, Annexures, P-15 to P- 23, have been executed with respect to similar land. It is rather surprising that the Registrar of documents has allowed registration of sale deeds relating to land recorded as "Shamilat Deh". The Deputy Commissioner, Yamuna Nagar at Jagadhri, is directed to hold an inquiry into the execution of the agreement as well as execution of similar sale deeds of Shamilat land and in case it is found that sale deeds have been executed without any right, title or interest, initiate appropriate proceedings, both civil or criminal, in accordance with law.

10. Disposed of accordingly. A copy of this order be forwarded to the Deputy Commissioner, Yamuna Nagar, for appropriate action, within three months of receipt of a certified copy of this order.