

(2011) 02 P&H CK 0227
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 18088 of 2010 (O and M)

Gurcharan Singh and Others

APPELLANT

Vs

The State of Punjab and Others

RESPONDENT

Date of Decision : 22-02-2011

Acts Referred:

Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6(6)

Citation : (2011) 02 P&H CK 0227

Hon'ble Judges : Ranjan Gogoi, C.J.;Augustine George Masih, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ranjan Gogoi, C.J.—Having regard to the subject matter involved, the Court is of the view that final order in this Public Interest Litigation should be passed. This order has been passed in the presence of the learned Counsel for all the contesting parties except the Respondent No. 7-Gram Panchayat. However, the written statement filed on behalf of the said Respondent has been duly taken note of.

2 The grievance raised in the writ petition, filed as a Public interest Litigation, is with regard to a decision taken by the Respondent No. 7 to fell 53 numbers of trees standing on the shamlat deh land of village Dharamgarh, Tehsil Rajpura, District Patiala. According to the Petitioners, all the said trees are mature trees providing shade and protection to the inhabitants of the village particularly the elders whenever such persons want come in the open. In fact, according to the Petitioners, a resolution was taken by them that if the Gram Panchayat had taken a decision to fell the trees to obtain revenue out of the sale thereof, the Petitioners would be ready to provide financial support to the Gram Panchayat.

3. Of the various written statements filed in this case, it is the written statement filed by the Respondent No. 7 which would be required to be primarily noticed. The Gram Panchayat, apart from questioning the locus of the Petitioners to file

the present Public Interest Litigation on the ground that they belong to another village, has also claimed a power to fell the trees by virtue of the provisions contained in Rule 6 (6) of the Punjab Village Common Lands (Regulations) Rules, 1964. In the written statement filed, the Gram Panchayat has further stated that the decision to fell the trees had been taken to make the land covered by the trees fit for cultivation (Paragraph No. 4) and thereafter, the Forest Department was requested to make an assessment of the value of the trees. On such valuation being made upon auction of the trees was made and the bid submitted by one Amandeep Singh was accepted. According to the Gram Panchayat, two pipal trees, out of 53 trees, have already been felled though in another part of the written statement (paragraph No. 3 of the reply on merits), it has been stated that all the trees have been felled.

4. We have given our anxious consideration to the contentions advanced. There can be no manner of doubt that trees and forests, which are gifts of nature, have to be protected against human depredation and exploitation. This is precisely why the legislature has stepped in and has enacted the Forest (Conservation Act) 1980 and several other protective laws to preserve such gifts of nature.

5. In the present case, Rule 6(6) of the Rules under which power has been claimed by the Gram Panchayat to auction the trees is only in respect of surplus and useless trees. The power conferred, therefore, is contingent on a determination to be made that the trees that are to be felled are surplus and useless trees. We have perused the written statement filed by the Gram Panchayat to find out whether any process of verification by which the trees in question have been identified to be useless and surplus had been made by the Gram Panchayat. Reading the written statement we do not find that any such exercise has been carried out by the Gram Panchayat. Rather in para No. 4 of the preliminary reply contained in the written statement of the Gram Panchayat, the stand taken is that the land covered by the trees is required for cultivation and, therefore, a decision was taken to auction the trees.

6. It is our considered view that having regard to the powers available to the Gram Panchayat under Rule 6 (6) of the Rules, no decision to auction the trees and fell the same could have been taken by the Gram Panchayat on the reasons shown in the written statement. We, therefore, allow this Public Interest Litigation, set aside the decision of the Gram Panchayat to auction and fell the trees and make it clear that no trees within the jurisdiction of the Gram Panchayat will be felled except in accordance with the procedure prescribed of the Rules and after due compliance of the requirements spelt out therein.

7. The auction purchaser, who is now debarred from felling the trees auctioned, will be entitled to proportionate refund of the amount deposited by him. The same be paid to him forthwith.