(2009) 08 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12339 of 2009

Jaspal Singh Panch APPELLANT

Vs

State of Punjab & Ors. RESPONDENT

Date of Decision : 21-08-2009

Acts Referred:

Contract Act, 1872 — Section 2(A)
Punjab Panchayati Raj Act, 1994 — Section 200, 24

Citation : (2009) 4 Law Herald 3102 : (2010) 1 LLR 321

Hon'ble Judges : Permod Kohli, J

Advocate : Mr. B.S. Jaswal, Advocate. Mr. P.C. Goyal, Addl.AG, Punjab. Mr. T.P. Singh, Advocate., Advocates for appearing Parties

Judgement

Permod Kohli, J. (Oral)

1. The appointment of Arbitrator for spending the grants allocated to the Gram Panchayats, is being resorted to indiscriminately sometime without even issuing a Show Cause Notice and for reasons which are not in germane to the provisions of law. Such orders smell extraneous consideration. Keeping in view a large number of such cases coming to this Court for consideration, vide order dated 17.08.2009, the Director, Rural Development and Panchayats, Punjab, was directed to appear in person before this Court. Shri Gurdev Singh Sidhu, Director, Rural Development and Panchayats Punjab, Chandigarh, is present in person. He has been apprised of the situation and asked to take corrective measures in this regard and also to ensure that the provisions of Section 200 are resorted to strictly in accordance with the spirit of law and not for reasons other than the merit and in consonance with principle of natural justice. Mr. Sidhu has assured this Court that necessary corrective/administrative measures will be adopted in this regard.

2. Coming to the facts of the present case, the impugned order dated 04.08.2009 (Annexure P7), has been passed by the District Development and Panchayat Officer, Amritsar, on the letter of Block Development and Panchayat

Officer, Rayya, dated 03.08.2009, to the effect that the coram of the Gram Panchayat, Niranjanpura, is not complete and Sarpanch Tota Singh has written a letter that the Administrator may be appointed to perform the function of the Panahayat and to spend various grants allocated to it. On that basis, the Block Development and Panchayat Officer, Amritsar, allegedly in exercise of powers under Section 200 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as the Act), appointed Administrator under Section 200 of the Act. Section 200 of the Act reads as under:

?200. Default of duties by the Panchayats. (1) Where a Panchayat makes a default in the performance of any duty other than a judicial function imposed upon it by or under this Act or under any other law for the time being in force,

(i) in the case of a Gram Panchayat, District Development and Panchayat Officer; and

(ii) in the case of a Panchayat Samiti or a Zila Parishad, the Director;

may by an order in writing fix the period, for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from, and incidental to, its performance shall be paid by the Gram Panchayat.

(2) If, in the opinion of the Director a Panchayat has failed or is otherwise incompetent to administer its property, movable or immovable, in the best interests of the Panchayat the Director, after giving an opportunity to the concerned Panchayat of being heard may appoint a person to administer such property for or on behalf of the concerned Panchayat.

Provided that the Director may at any time terminate such arrangement and thereupon the administration of the property shall be resumed by the concerned Panchayat.

(3) A person appointed under subsection (2) shall exercise all such powers of the concerned Panchayat under this Act, other than the judicial powers conferred upon it, or under any other law for the tune being in force, as may be necessary for the management of the property and shall be entitled to receive such remuneration as may be fixed by the Director.

(4) The income from the management of the property referred to in sub section (2) shall be credited to the fund of the concerned Panchayat and all expenses arising from and incidental to the administration of such property, including the remuneration payable to the person appointed under sub section (2), shall be met out of the concerned Panchayat Fund.

(5) If the expenses referred to in subsection (1) are not paid

(i) In the case of a Gram Panchayat the District Development and Panchayat Officer, and

(ii) In the case of a Panchayat Samiti or a Zila Parishad, the Director; may make an order directing the person having custody of the fund of the Panchayat concerned, to make the payment in whole or in part from such fund and if such a person does not comply with the order, recover the amount from the fund of the Panchayat as arrears of land revenue.?

3. Clause (1) of Section 200 of the Act clearly provides that where a Panchayat makes a default in the performance of any duty, the District Development and Panchayat Officer, by an order in writing, fix the period for the performance of the duty and if it is not performed within the period so fixed, he may appoint any other person to perform the duty and direct that the expenses arising from and incidental to its performance shall be paid by the Gram Panchayat. Sub Clause (2) further provides that if in the opinion of the Director, a Panchayat has failed to administer its property, moveable or immovable, in the best interest of the Panchayat, the Director after giving an opportunity to the concerned Panchayat of being heard, may appoint a person to administer such property for or on behalf of the concerned panchayat. The clear mandate of the aforesaid section is that Panchayat concerned is to be provided an opportunity to perform its duty and it is only on failure of the Panchayat to do so after such opportunity is provided that resort to the provisions of this section can be made.

4. In the present case, though a reference is made to the communication of the Sarpanch, but admittedly, the Sarpanch himself does not constitute the entire Panchayat. Panchayat is an elected body comprising of various Panches and Sarpanch. The mandate of Section 200 of the Act requires an opportunity to be provided to an elected body i.e. Panchayat and not to the Sarpanch or any individual Panch. This procedure has not been adopted at all. No opportunity has been afforded to the Panchayat to perform its duty and without providing any opportunity of being heard under the law, provisions of Section 200 (1) of the Act have been invoked. Keeping in view the various orders of similar nature coming to Court, it appears that the only purpose or intention of the officer for appointment of Administrator is to spend money and to deprive the elected body from performing its functions according to law. Such orders are totally illegal and unjustified.

5. Counter affidavit has been filed by the District Development and Panchayat Officer, Amritsar. It is stated that the election of the Gram Panchayat of village Niranjunpura, Block Rayya, District Amritsar, was held on 26.05.2008, wherein seven members were elected. After election of the Panahces,Tota Singh was elected as the Sarpanch of the village. It is further stated that after the elections, the Panchayat has failed to hold any meeting for conducting the development works in the village and when the matter came to the notice of the Block Development and Panchayat Officer, he issued a letter to the Panchayat for convening a meeting. When Sarpanch failed to convene a meeting of the Gram Panchayat, the Block Development and Panchayat Officer convened a meeting of the Gram Panchayat in his office. It is further stated that the said meeting was

attended by four Panches only, whereas Sarpanch Tota Singh and some other Panches remained absent. It is further stated that thereafter the Block Development and Panchayat Officer, issued further notice to the members of the Panchayat for holding meetings, but all the Panches did not attend the meeting and Sarpanch Tota Singh sent a letter dated 01.08.2009 that he is unable to perform the duty of Sarpanch on health grounds. It is further stated that on that basis, the Administrator was appointed.

6. Mr.Goyal, learned Additional Advocate General, Punjab, appearing for the respondents submits that since Sarpanch Tota Singh was unwell and no meeting of the Panchayat could be held for the development of the work of the village, the respondents were constrained to appoint the Administrator.

7. The argument raised by Mr.Goyal does not appeal to me. Such a procedure is contrary to the provisions of Section 24 of the Act, which provides that in the absence of Sarpanch, the Panches can elect a Sarpanch to preside over the occasion and deal with the business. No opportunity was provided to the Panchayat to perform its function.

8. In view of the above circumstances, the impugned order is unsustainable in law. The same is hereby quashed. Petition stands allowed. All the members of the Panchayat are directed to convene a meeting of the Panchayat within a period of two weeks from the date a certified copy of this order is made available to the concerned Panchayat and take measures for the execution of the development work for which the grants have been allocated. On the failure of the Panchayat to do so, the Block Development and Panchayat Offier, after complying with the provisions of Section 200 of the Act, may pass an appropriate order including the appointment of the Administrator. The concerned Block Development and Panchayat Officer, is also directed to ensure that the meeting of the Panchayat is held within the time stipulated above.

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of land within municipal limits and Rs.3 lacs per acre outside the municipal limits up to the distance of 3 Kms. These rates were fixed for village Mamidi, Garhi Gujran and Badhi Majra. However, no documentary evidence in proof was brought on record.

15. The State examined S.P.Sharma, SDO Public health as RW 1 who proved certified copy of sale deeds Ex.R.2 to R.4 and also proved on record site plan Ex.R.1. Certified copy of the sale deeds Ex.P.7 to P.10 were also proved.

16. Learned reference court by placing reliance on the judgment of Hon''ble Supreme Court in the case of G.Narayan Rao Vs. The Land Acquisition Officer 1996 (2) Apex Court Journal 147, held that for want of examination of vendor and vendee sale deeds Exs.P.7 to P.10 and Exs.R.2 to R.4 could not be relied upon. Learned reference court took into consideration the following sale deeds for determining the market value:

Exhibit Village Area Sale consideration Rate per acre

P.1 Badhi Majra 20''x20'' Rs.8,000/ Rs.8,71,287

P.3 Mamidi 24K 9M Rs.8,55,750/ Rs.2,80,000

P.5 Badhi Majra 89 Sq.Yd. Rs.28,000/ Rs.15,19,760

P.6 Badhi Majra 162/3M Rs.50,000/ Rs.4,80,000

17. Learned reference court recorded positive finding that the land in question had potential for utilization for residential purposes. The Land near the town was said to be having potential for being used for residential, commercial and industrial units. The reference court was further pleased to hold that the distance from the town could not be a criterion for categorization, of land for assessing the market value.

18. Learned reference court rejected the sale deed Ex.P.3, for the reason, that this was for quite small piece of land. It was held that when the sale deed with regard to the big chunk was available, the sale deed qua small area was to be ignored. Learned reference court rightly held that when sale deed of big chunk is not available, then that the sale of small piece of land could be considered by filing reasonable price.

19. Ex.P.3 was sale deed which was executed just prior to the issuance of notification under section 4 of the Act. The learned reference court, therefore, took the market value to be Rs.2,80,000/ (Rupees two lacs and eighty thousand only) per acre. The learned court further held that the land purchased by the company was to be taken to be bona fide, as there could be no reason for the company to fix fictitious price for the land purchased, nor it could be possible, as accounts of company are audited. The learned reference court did not accept the plea that the sale deed was undervalued to save the stamp duty. The acquired land was within 3 Kms from municipal limit of Yamunanagar and therefore, the market value was assessed at Rs.2,80,000/ (Rupees two lacs and eighty thousand only) per acre.

20. Plea of some of the land owners that there were trees standing in the land was rejected, as except for the bald statement of some of the owners, there was no other evidence to support this plea.

21. Learned counsel appearing on behalf of the land owners have challenged the award, primarily on the ground that reference court committed an error in treating the land of all villages to be similar. It was the contention of the counsel for the land owners that the sale deeds produced qua land of Badhi Majra, should have been relied upon as village Badhi Majra was near Yamuna Nagar town, whereas village abadi was at a distance. This plea cannot be accepted as the evidence has come on record, that the whole of the acquired land was within 3 Kms of Municipal limits of Yamuna Nagar. The court has assessed the market value on the basis of sale deed which was registered immediately prior to

notification under section 4 of the Act.

22. Learned counsel for the landowners then raised a plea that once the Collector had fixed the rate for registration charges at Rs.3 lacs per acre, it could not be said that the market value was less than the rate fixed by the Collector. The contention raised, therefore, is that the land owners were at least entitled to the Collector''s rate. The plea of the learned counsel for the land owners cannot be accepted in view of the law laid down by the Hon''ble Supreme Court in the case of Jawajee Nagnatham Vs. Revenue Divisional Officer, Adilabad, A.P. Etc. 1994 LACC SC 496, wherein Hon''ble Supreme Court was pleased to lay down as under:

?5. The question, therefore, is whether the Basic Valuation Register is evidence to determine the market value. This court in Special Land Acquisition Officer, Bangalore V. T.Adhinarayan Setty, AIR 1952 SC 429, in paragraph 9 held that the function of the Court in awarding compensation under the Act is to ascertain the market value of the land at the date of the notification under Section 4 (1). The methods of valuation may be (1) opinion of experts; (2) the price paid within a reasonable time in bona fide transactions of purchase of the lands acquired or the lands adjacent to the lands acquired and possessing similar advantages; and (3) a number of years purchase of the actual or immediately prospective profits of the lands acquired. Same was the view in Tribeni Devi and others Vs. Collector of Ranchi, 1972 (3) SCR 208. It was reiterated in catena of decisions vide, Periyar and Pareekanni Rubbers Ltd. V. State of Kerala, 1991 (4) SCC 195 (1991 LACC 227) SC. Therefore, it is settled law that in determining the market value, the Court has to take into account either one or the other three methods to determine market value of the lands appropriate on the facts of a given case to determine the market value. Generally the second method of valuation is accepted as the best. The question, therefore, is whether the Basic Valuation register would form foundation to determine the market value. The India Stamp Act, 1899 provides the power to prescribe stamp duty on instruments, etc. Entry 44 of List III, Concurrent List, of the Seventh Schedule read with Article 254 of the Constitution empowers the State Legislature to amend the India Stamp Act, 1899. In exercise thereof all the State Legislatures including the Legislature of A.P. amended the Act and enacted Section 47A empowering the registering officer to levy Stamp Duty on instruments of conveyance, etc. if the Registering Officer has reason to believe that the market value of the property,covered by the conveyance, exchange, gift release of right or settlement, has not been truly set forth in the instrument, he may refuse registering such instrument and refer the same to the Collector for determination of the market value of such property and the proper duty payable thereon. On receipt of such opinion, he may call upon the vendor as per the Rules prescribed, to pay the additional duty thereon. If the vendor is dissatisfied, he had been given the right to file an appeal and further getting reference made to the High Court for decision in that behalf. Section 47A would thus clearly show that the exercise of the power thereunder is with reference to a particular land covered by the instrument brought for registration. When he has reasons to believe it to be under valued, he should get verified whether the market value was truly reflected in the instrument for the purpose of stamp duty; the Collector on reference could determine the same on the basis of the prevailing market value. Section 47A conferred no express power to the Government to determine the market value of the lands prevailing in a particular area, village, block, District or the region and to maintain Basic Valuation register for levy of stamp duty for Registration of an instrument, etc. No other statutory provision or rule having statutory force has been brought to our notice in support thereof. Whether an instrument is liable for higher stamp duty on the basis of valuation maintained in the Basic Valuation Register, came up for consideration in M/s Sagar Cement Ltd. Mattampalle v. The state of Andhra Pradesh, 1989 (3) ALT 677. B.P.Jeevan Reddy, J, as he then was, considered the question and held that the government has unilaterally fixed the valuation of the lands, the Basic Valuation Register, had no statutory foundation and therefore it does not bind the parties. Neither the Registrar nor the vendor is bound by it.?

23. The learned reference court rightly rejected the sale deed qua small piece of land in view of the fact that sale deed qua big chunk of land was available.

For the reasons stated no ground is made out to interfere with the award passed by the learned Additional District Judge, which is affirmed.

All the appeals are ordered to be dismissed, but with no order as to costs.

