

(2003) 10 P&H CK 0076
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9537 of 2001

Kishan Singh

APPELLANT

Vs

State of Punjab

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Citation : (2004) 2 LJR 614 : (2003) 2 PLJ 467 : (2004) 1 PLR 717 : (2004) 1 RCR(Civil) 135

Hon'ble Judges : V.K.Bali, J and Jasbir Singh, J

Advocate : Mr. Anil Shukla, Advocate. Mr. R.K. Battas, Advocate and Mr. P.C. Chaudhary, Advocate., Advocates for appearing Parties

Judgement

V.K. Bali, J.

1. Kishan Singh and three others, the petitioners herein, hailing from village Shampura, Tehsil and District Ropar, without pleading that they were also proprietor of the village and their land was subjected to prorata cut to carve out a chunk of land for common purposes, have filed this petition challenging resolution dated 2.12.1999, resolving to gift land measuring 108 Kanals to Sant Baba Maan Singh Charitable Trust, the sixth respondent herein, as also order dated 9.4.2001 vide which, the Government accorded sanction to the resolution of the Gram Panchayat dated 2.12.1999. They have also called in question resolution dated 17.4.2001 gifting further piece of 30 kanals of Shamlat land to the same very respondent.

2. Brief facts, as have been projected in the present petition, are that consolidation proceedings were carried out in village Shampura and land measuring 157 kanals was reserved for Pasture, Toba, Hada Rori, Than Mata Rani etc. Jamabandi for the year 199596, Annexure P1, has been relied upon to state that the land was provided for common purposes after applying prorata cut on the holdings of the proprietors of the village. For the same purpose, reliance has also been placed on the consolidation proceedings, Annexure P2, dated 3.5.1952. It is then pleaded that the Gram Panchayat, Shampura, the fifty respondent

herein, passed resolution gifting 108 kanals of Shamlat land to the sixth respondent to establish academy. The land proposed to be gifted, it is further pleaded, is Pasture (Charand) carved out after applying prorata cut on the holdings of the proprietors. Aggrieved by the resolution aforesaid, the petitioners made representation, Annexure P4 dated 6.1.2000, mentioning therein that the land is being gifted to the sixth respondent for establishing academy/college, although many institutions, Government as well as private, were already in existence within a radius of one kilometre from the village. Representation, Annexure P4, was followed by representations, Annexures P5 and P6, dated 8.8.2000 and 28.2.2001, respectively. The Government, it is then pleaded, granted the sanction for gifting 78 kanals of land to the sixth respondent vide order, Annexure P7, dated 4.4.2001. In the close vicinity of the sanction order, Annexure P7, the fifth respondent passed by another resolution, Annexure P8, dated 17.4.2001, gifting 30 kanals of Shamlat land to the same very respondent. Even though, it is pleaded, the earlier resolution, Annexure P3, pertains to 108 kanals of land whereas sanction was accorded to gift only 78 Kanals. Resolution, Annexure P3, order, Annexure P7 and subsequent resolution, Annexure P8, have been stated to illegal, arbitrary and unconstitutional primarily on the ground that the land in question was carved out after applying prorata cut on the holdings of the proprietors of the village during the consolidation proceedings and by virtue of Section 23A of the Consolidation Act, such land would vest in the Gram Panchayat for managerial purposes whereas, the proprietors shall continue to be owners of the land. The other ground challenging the resolutions and the order, as referred to above, is that there was no necessity for establishing an educational academy/college when there were so many such like institutions already existing in the close vicinity of the land, subject matter of dispute.

3. Pursuant to the notice issued by this Court, three sets of written statements, one on behalf of respondents 1 to 4, another by respondent No. 5 and yet another by respondent No. 6, have been filed, seriously opposing the cause of the petitioners. Objections raised in the written statements filed on behalf of different respondents, as mentioned above, are similar. Reference to the pleadings made in the written statement filed on behalf of respondent No. 6 is only being made so that the judgment is not unnecessarily burdened. It has, inter alia, been pleaded in the written statement filed on behalf of respondent No. 6 that the petition is misconceived and mala fide and has been filed by withholding complete and the facts. Before filing the present petition, it is pleaded, co-villagers filed a civil suit for permanent injunction against the Gram Panchayat challenging the same transfer on the very same allegations. In fact, one of the plaintiffs is real brother of petitioner No. 1 herein. The Civil suit was filed as far back as on 12.1.2000 in the Court of learned Additional Civil Judge (Senior Division), Ropar. When the plaintiffs in the said suit could find no way to obtain any relief, they got it dismissed as having become infructuous stating before the Court that the land had already been transferred and construction had already been carried out. They had the opportunity to amend the plaint as it was

only a subsequent event and continue with it. However, as mentioned above, they withdrew the suit. It is then pleaded that the present petition has been filed after a long gap when the civil suit aforesaid had been filed, which was well within the knowledge of the petitioners and filing of civil suit was purposely not disclosed to this Court while filing the present petition. It is then pleaded that challenge is to the transfer of Banjar Qadim land by the Gram Panchayat vide its resolution dated 21.12.1999, sanctioned by the Government on 4.4.2001, whereon huge school building has already come up with about 400 students on board. The students from the village are even being given free education. The land was Banjar Qadim since consolidation and yielding very meagre income to the Gram Panchayat by sale of wild reeds. Resolution passed by the Gram Panchayat is stated to be unanimous consistent with the demand of the whole village and Government in Local Self Government Department, after examining viability and benefit of the project, in the interest of the welfare of the village community, granted sanction for donation of the land vide order dated 4.4.2001. The petitioners, it is stated, have failed to show any damages suffered by them. It is then pleaded that the conception of common purpose stands changed with modern times and donation of part of Shamlat land for urgent need of modern education to the residents of the village cannot be said to be inconsistent with the purpose of reservation of this land, namely, welfare of its residents, in one form or the other, with change of times. This village stands converted into a town and establishment of this prestigious institution has not only raised the value of the property of this village but cluster of the villages all around. Insofar as, assertions of the petitioners pertaining to the land being not owned by the Gram Panchayat, being not Shamlat Deh is concerned, it has been pleaded that the land was reserved as Pasture (Charand) and it was carved out of holdings of the proprietors and that being so, the proprietors could not be the owners of the land. The property is Shamlat Deh, i.e., belonging to whole of the village vesting with the Gram Panchayat as representative of the entire village community. Out of total Shamlat land of 142 kanals 8 marlas, only 78 kanals is sought to be used in the present case for a public purpose, namely, establishment of an idea ultra modern educational academy in which the students particularly of this village, would be trained in educational system for modern needs to compete with urbanised studies in model schools. Lacs of rupees have been spent on building and infrastructure and also on modern instruments in the Science Block just gratis by Baba Maan Singh a Saint. The builder, it is further stated, has no personal interest in it. The academy, it is stated, sponsored and controlled by Baba Maan Singh, a Saint, devoted to service and welfare of such academies, spending crores of rupees coming as donations from his disciples and followers, with no personal benefit to him in any form. The names of few of his welfare activities have been mentioned as under :

"a. Sant Isher Academy, Urnai Road, Pehowa. It has 9.25 acres of land covered by buildings with facilities of Library and Physics, Chemistry, Biology, Computer Laboratories. It has 96 teachers and 24 non teaching staff. It imparts education

upto +2 stage and has shown hundred percent result (wth no failure). At present there are 2106 students being imparted education in this institution. Till date approximately Rs. 10 crores have been spent and further enhancement of other facilities are pegged at Rs. 30 crores more. It is imparting education upto +2 stage covering all the four streams i.e. Non Medical, Medical, Arts and Commerce. Students from about 54 villages around are admitted for education. A photographs showing the premises is attached as annexure R4.

b. B.M.S.D. Giandeep Vidyalaya, Guhla Road, Pehowa, another school introduced by Baba Mann Singh. It has total area of 7.5 acres. It imparts education to 725 students of about 50 villages surrounding it. Its students have arisen up in sports at National level competitions. Rupees 1.5 crores have already been spent on this institution with a total budget of 10 crores. It has as a total staff of 36 teachers.

c. A hospital is also being constructed at Pehowa which is still at initial stage with a total budget of around 10 crores. A photograph showing the initial construction of the hospital at Pehowa is attached as Annexure R 5.

d. Govt. Hospital, Badhni Kalan (Moga). The building of this hospital was completely dilapidated so much so that staff refused to sit inside it. The local people of Badhni Kalan formed their Health Committee and approached Sant Baba Mann Singh Charitable Trust for building up this building and other facilities afresh. Till date approximately Rs. 1.5 crores have been spent on this building and approximately Rs. 50 lacs more are required for completion of this project. This hospital on completion would serve General Public of about 25 villages surrounding it. It is also pertinent to mention here that not even a single penny is being taken from the Govt. and the hospital after completion would be handed back to the Govt. A resolution of the Local Health Committee is attached herewith as annexure R6. A photograph of the hospital under construction is also attached as Annexure R7.

e. So far as the present academy is concerned construction has already commenced and is midway. The institution has started imparting to primary level students. 339 students coming from about 72 (villages) surrounding this institution. Twentyone students of this very village are also among them and as per conditon of transfer they are being imparted free education. The academy has at present 19 persons on teaching staff and 17 persons as non teaching staff. Till now Rs. 1.6 crores have been spent with the total budget of Rs. 14 crores. Apart from it a Paediatrics and Gynal hospital is also to be constructed along with this academy. A photograph showing surrounding of the building under construction as well as the other land is attached as annexure R8. A close view of the building is attached as annexure R9. Another photograph showing the school prayer assembly of children is attached as annexure R10.

These photograph amply show the public charity work carried out by the respondent No. 6. These facts adorned with a cardinal fact that not even a single

penny has been taken from the Govt. for carrying out the aforesaid works, purely as charity."

4. It is then pleaded that present litigation is sponsored in nature since the replying respondent has undertaken to impart free education to the children of this very village. There are about 5 to 6 private schools around this village, who are zealous (jealous ?) of its progress and development. Now after the construction of primary wing, the villagers have withdrawn their children from these conventional schools and sent them to this academy. These private schools are now apprehending that with the construction of middle and matric wing of this academy, their schools may suffer irreparable set back. It is then pleaded that the petitioners have acquiesced in the construction of the building of the academy, as they kept quiet when the construction was in progress.

5. The petitioners have not filed replication to the written statement filed on behalf of any of the respondents.

6. We have heard the arguments of learned counsel representing the parties and examined the records of this case. From the pleadings of the parties, as culled out, we find no substance in the only contention raised by learned counsel representing the petitioners, during the course of arguments, that the land is not Shamlat Deh as defined under Section 2(g)(1) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') and, therefore, the Gram Panchayat had no jurisdiction whatsoever to gift this land to the sixth respondent and that being so, sanction to the gift given by the Government shall have also to be held illegal. According to the showing of the petitioners themselves, the land after prorata cut was applied on the holdings of the proprietors, during the consolidation proceedings was earmarked for common purposes. Once again, as per the showing of the petitioners themselves, the land in dispute was shown as a Pasture (Charand), which is certainly a common purpose. This land was not earmarked or kept apart for the income of the Gram Panchayat. That being so, judicial precedents relied upon by learned counsel representing the petitioners in *Pritam Singh v. Collector, Patiala*, 1980 PLJ 438, *Gram Panchayat v. Additional Director, Consolidation of Holdings*, 1993(1) Recent Revenue Reports 15 and *Mange Ram v. Collector, Sonapat*, 1986 Recent Revenue Reports 637, are wholly irrelevant for the purposes of deciding the controversy in issue. As mentioned above, the present land was earmarked for common purposes after applying a prorata cut on the proprietary holdings of the landowners. In the consolidation scheme, the land has been earmarked as Pasture (Charand). This land was not earmarked or kept apart for income of the Gram Panchayat. Such land would clearly be covered under the definition of Shamlat Deh as given in Section 2(g)(1) of the Act. From the pleadings made in the written statement, it is clear that the proprietors having the same interest or may be a better interest as the petitioners have, not stated themselves to be proprietors whereas, those who have filed civil suit were the proprietors of the village, which was withdrawn on the ground that the Government had accorded

sanction. There was no necessity at all to withdraw the suit simply because the resolutions had been accorded sanction by the Government on 4.4.2001. At the most, they might have requested to amend the plaint. The apart, as mentioned above, the petitioners have not even claimed themselves to be the proprietors of the village, who might have contributed the land towards common purposes. Still further, the land even now is to be put to common use, where the students of the village would be imparted free education. A most modern educational academy, which has since already been established by constructing the building and admitting the students, who are being imparted education, has to be termed as a public purpose, beneficial to the village community. It is rather surprising to note as to why the petitioners are taking up this issue which may ultimately benefit their children as well. In this context, therefore, it appears that the objection raised in the written statement that the present litigation is a sponsored one, appears to be correct.

7. Before we may part with this order, we would also like to mention that gift has been challenged at a stage when college building has already been constructed and an amount of Rs. 1.6 crores has since already been spent and further that the gift is to a Saint, who has not only taken up the cause of the students in village Shampura but in other areas also, as would be clear from the list of activities carried out by him, as given in the written statement and which has been reproduced above in this judgment as well.

Finding no merit in this petition, we dismiss the same with costs, quantified at Rs. 5,000/.