
(2012) 09 P&H CK 0210
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 10526 of 2012

Nafe Singh

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 169 PLR 365 : (2013) 1 RCR(Civil) 1002

Hon'ble Judges : Jasbir Singh, Acting C.J.; Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Deepak Balyan, for the Appellant; B.S. Rana, Addl. A.G., Haryana for the State, Mr. Kuldeep Tewari for Respondent No. 4, Mr. Sanjeev Bansal for Respondent No. 5 and Mrs. Kiran Bala Jain, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Kumar Jain, J.—We have been observing a great deal of resentment and agitation of the farmers on account of acquisition of their land even for public purpose, but shamilat land is being squandered away by the Panchayats in flagrant violation of the settled law. One such case is brought to our notice by the petitioner, a retired primary Teacher, of village Badhsa, Tehsil Bahadurgarh, District Jhajjar who has tiled the present writ petition in public interest for declaring resolution No. 2 dated 06.01.2010 (P-1) passed by the Gram Panchayat of village Badhsa [for short "the Panchayat"], resolution No. 1 dated 21.09.2010 (P-2) passed by the Panchayat, order No. 93 dated 30.09.2010 (P-3) passed by the Department of Development and Panchayat, Haryana and agreement to sell dated 11.10.2010 (P-4) executed between the Panchayat and Mukta Arts Ltd. (respondent No. 5) as illegal, null and void. The brief skeletal facts of this petition are that resolution No. 2 dated 06.01.2010 (P-1) was passed by the Panchayat for providing 20 acres of land in Khasra No. 1231 at the market rate, to respondent No. 5 for opening of International Films and Television Institute and Multi Media Complex [for short "institute"] near the land of All India Institute

of Medical Sciences [for short "AIIMS"]. Copy of that resolution was sent to the Deputy Commissioner, Jhajjar through District Development and Panchayat Officer, Bahadurgarh for necessary action. The Deputy Commissioner, Jhajjar assessed the market value of the disputed land at Rs. 20,46,458/- per acre but keeping in view the floor rate of land in District Jhajjar at the rate of Rs. 16 lacs per acre, it was assessed at the rate of Rs. 24,96,000/- per acre with annual annuity at the rate of Rs. 30,000/- per acre per year and increase of Rs. 1,000/- per year for 33 years. The total amount of compensation including the amount of annuity was Rs. 8,02,80,000/-.

2. The Panchayat then passed resolution No. 1 on 21.09.2010 (P-2) deciding to divide value of the land to be paid by respondent No. 5, into 7 equal installments. On 30.09.2010, order No. 93 (P-3) was passed by respondent No. 2 acknowledging approval of the government for sale of the land in dispute on certain terms and conditions.

3. An agreement dated 11.10.2010 (P-4) was entered into between the Panchayat through its Sarpanch and respondent No. 5 and possession was delivered to it on payment of first installment and the sale deed was decided to be executed on payment of the entire sale consideration.

4. According to the pleadings, respondent No. 5 has already paid Rs. 2,98,18,285/- to the Panchayat in two installments and a sum of Rs. 5,04,61,715/- is left unpaid.

5. The case set up by the petitioner is that permission given by the Panchayat or by the government to sell the land in question is in violation of the mandatory provisions of the Punjab Village Common Lands (Regulation) Rules, 1964, as applicable to Haryana, [for short "Rules"] as amended from time to time. It is submitted that the Panchayat may, with previous approval of the government, sell the land vested in shamilat deh for the purposes mentioned in Rule 12(1)(ii) of the Rules but it is incumbent upon the Panchayat to disclose reasons as to why it decided to sell the shamilat land and also requires to prepare plans about utilization of income derived from the sale. It is further argued that Rule 7-A of the Rules also provides that any sale or agreement shall be deemed to be detrimental to the interest of a Panchayat if it is not for the benefit of the, inhabitants of the village.

6. While referring to resolution No. 2(P-1), it is contended that benefit of the people/inhabitants of village, is sine qua non in Rules 7-A and 12(1)(ii) of the Rules, but it is conspicuous by its absence in this case. It is also submitted that there is no provision in the Rules for facilitating installments to the buyer in making payment of sale consideration who intends to purchase the land vested in shamilat deh, but by resolution No. 1(P-2), extraordinary concession has been given to respondent No. 5 to pay the sale consideration in 7 equal installments and possession of the land in question has been delivered even at the time of payment of first installment. It is further argued that the amount realized from

sale of the Panchayat land, which is allegedly being used for income of the Panchayat by putting on lease being agricultural land, no plan has been prepared for utilization of its income which violates Rule 12(2)(c) of the Rules. It is further argued that respondent No. 5 had been allotted plot of 20 acres by the government of Maharashtra in Goregaon at Greater Bombay more or less for the same purpose, but on a Writ Petition No. 1826 of 2003 filed by Abdul Hamid Patel and another v. The State of Maharashtra and others, the said allotment has been quashed by the Bombay High Court vide its order dated 09.02.2012 and the SLP filed against the said order has also been dismissed.

7. Respondent Nos. 1 and 2 did not deny the aforesaid facts in their reply, but supported the resolution No. 2(P-1) of the Panchayat and order (P-3) of the Haryana government alleging that sale of 20 acres of land by the Panchayat would enable respondent No. 5 to establish Film and Television Institution in the village which would further help in creating job opportunities to the inhabitants. It is also alleged that in terms of Rule 12(1)(ii), the government is competent to accord permission for sale of shamilat land for infrastructure facilities, educational institutions, Special Economic Zone projects and Industrial Development and as the Institute to be set up by respondent No. 5 would spread education in the area, therefore, the agitation of the petitioner is misconceived.

8. Respondent No. 5 has also placed on record its written statement by way of CM No. 12805 of 2012, which is allowed and the reply is taken on record. It is averred that the answering respondent has one model institute operational in Film City, Mumbai since 2006. It is further alleged that an Expression of Interest was submitted to the government of Haryana, upon which it received a communication (R-5/1) on 23.07.2009 from the office of Chief Administrator, HUDA about the prevailing market rate in the area. Thereafter, the proposal was sent to the Director, Department of Development of Panchayat and the Gram Panchayat, after examining benefit of the villagers, passed resolution No. 2 dated 06.01.2010 (P-1) and an order dated 21.04.2010 (R-5/2) was passed by the government. It is averred that the petitioner has suppressed the fact that a Civil Suit titled as "Balbir Singh and another v. State of Haryana and others," was earlier filed in the Court of Additional Civil Judge (Senior Division), Bahadurgarh challenging the agreement dated 11.10.2010 (P-4) impleading respondent No. 5 as a defendant but as the plaintiffs in that case remained unsuccessful in getting temporary injunction on 13.03.2012, this writ petition has been filed. It is also alleged that the averments made in the Civil Suit as well as the present writ petition are similar, therefore, the writ petition is not maintainable in its present form.

9. It would be highlighted at this stage that on 29.05.2012, when notice of motion was issued, status quo with regard to land in question was ordered to be maintained. It was ordered that neither possession of the land should be delivered to the respondent No. 5 nor any documents of lease, transfer etc. be executed by the Panchayat in favour of respondent No. 5 without specific

permission of this Court.

10. During the course of hearing, learned counsel for the petitioner has extensively referred to the pleadings of this case and also the provisions of the Act and the Rules, whereas counsel for the State as well as respondent No. 5 have supported the documents Annexures P-1 to P-4.

11. Undoubtedly, the land in dispute is shamilat deh which has been sought to be sold by the Panchayat, with approval of the government, by entering into an agreement to sell with respondent No. 5. The question is as to whether the entire deal satisfies the provisions of the Act as well as the Rules or not?

12. Shamilat deh is defined in Section 2(g) of the Act. Section 5 of the Act provides that all lands vested or deemed to have been vested in the Panchayat under the Act shall be utilized or disposed of by the Panchayat for the benefit of inhabitants of the village concerned in the manner prescribed. Section 15 of the Act empowers the State government to make Rules by way of notification in the official Gazette to carry out the purposes of the Act which includes Section 15(2) (f) i.e. the manner and the circumstances in which the land is sold. Rules 7A and 12 of the Rules need a special mention and hence, both are reproduced hereunder:-

7A. Sale, gift, exchange, transfer, alienation, lease contract and agreement detrimental to the interests of Panchayat, sections 5B(2), 10A(2)(iii) and 15(2).- Any sale, gift, exchange, transfer, alienation, lease, contract or agreement shall be deemed to be detrimental to the interest of a Panchayat if,-

(i) it has been granted or made, as the case may be, otherwise than by following the procedure laid down for grant of lease or making of sale, gift, exchange, transfer, alienation, contracts and agreements by the Panchayat; or

(ii) it adversely affects any of the development schemes of the Panchayat; or

(iii) it has resulted or is likely to result in a loss to the Panchayat; or

(iv) it is benami; or

(v) it is not for the benefit of the inhabitants of the village.

12. Purposes for which land may be sold. Sections 5 and 15(2)(f).- (1) A Panchayat may, with the previous approval of the State Government, sell land in shamilat deh vested in it under the Act for-

(i) the purpose of constructing affordable houses by Government agency or Government owned Companies or Board or Corporation for the inhabitants of the concerned village or office, building of Panchayat Samiti, Zila Parishad or of any Government department, Government owned companies and Public Sector Undertakings, at the rate not less than the floor rates notified by the State Government from time to time.

(ii) the purpose of setting up infrastructure facilities, educational institutions,

Special Economic Zone Projects and Industrial Development, units of public utility nature as may be approved by the State Government to be for the benefit of inhabitants of the village at the rate not less than the market rate;

(iii) the purpose of residence to the inhabitants of the village not less than the floor rates notified by the State Government from time to time for a size of a plot to an individual not exceeding 250 square yards:

Provided that the vendee shall not sell or dispose of the land in any other manner whatsoever, before the expiry of a period of twenty years from the date of the sale:

Provided further that land shall revert back to the Gram Panchayat if it is used for the purpose other than it was sold:

Provided further that the State Government may impose such other terms and conditions as it may deem fit for such sale.

(2) Where it is proposed to sell the land in shamilat deh under sub-rule (1), the Panchayat shall forward to State Government a copy of its resolution passed by a majority of the three-fourth of its members proposing to sell the land through the Deputy Commissioner stating-

(a) the area and location of the land proposed for sale;

(b) the estimated income from the sale;

(c) the reasons as to why the Panchayat wants to sell the land and the plans for utilization of the income from the sale.

(3) The publicity for sale of land in shamilat deh by auction shall be made by the Deputy Commissioner in accordance with the procedure laid down in sub-rule (10) of rule 6 on receipt of the approval of the State Government who shall also decide whether the land shall be sold in one or more lots and the officer who shall be present at the time of auction:

Provided that nothing contained in this sub-rule shall apply to the sale of shamilat land for the purposes specified in clause (i) and (ii) of sub-rule (1).

(4) The Gram Panchayat may with the prior approval of (the State Government), sell its noncultivable land in shamilat deh to the inhabitants of the village who have constructed their houses on or before the 31st March, 2000, not resulting in any obstruction to the traffic and passers-by, along with open space upto 25% of the constructed area or an appurtenant area upto a maximum of 200 square yards at not less than collector rate.

13. A bare reading of Section 5 of the Act provides that the land vested or deemed to have been vested in the Panchayat can be disposed of if it is in the benefit of inhabitants of the village concerned. Similarly, Rule 7A(v) also provided that any sale, if it is not in the benefit of the inhabitants of the village, shall be deemed to be detrimental to the interest of a Panchayat and under Rule

12(1)(ii) of the Act, the Panchayat is empowered, with the previous approval of the State Government, to sell the shamilat deh vested in it under the Act, for the purpose of setting up infrastructure facilities, educational institutions, Special Economic Zone Projects, Industrial Development and units of public utility if it is for the benefit of inhabitants of the village. The intention of the Legislature is writ large that whenever it is decided by the Panchayat to sell the land vested in shamilat deh, not only the Panchayat but also the State Government, who is to approve the act of the Panchayat before such land is sold, has to form an opinion that it is indeed for the benefit of the inhabitants of the village because land vested in shamilat deh is used by the entire village for its common purposes and prior approval of the State Government is provided to ensure that it may not be sold for a song by the members of the Panchayat either under pressure or out of greed, detrimental to the interest of the inhabitants of the village.

14. Ironically, not a word has been said in resolution No. 2(P-1) by the Panchayat while taking decision for transferring 20 acres of land to respondent No. 5, situated adjacent to the land of the AIIMS, that it is for the benefit of inhabitants of the village. Similarly, in the order Annexure P-3, the State Government has also not highlighted any benefit of the inhabitants of the villagers on account of sale of shamilat land except for mentioning that employment to the local inhabitants of the village shall be provided on priority basis. During the course of hearing, the Court asked counsel for the Panchayat about the purpose of the sale of land to which he replied that Panchayat is not getting substantial amount in leasing out the land for agricultural purposes. It was also enquired from the counsel as to whether the Panchayat is in need of money and the amount of two installments alleged to have been received has been invested in some programme to which he replied that the said amount is kept in the fixed deposits in the bank.

15. Shri Ranbir Singh, Sarpanch of the Gram Panchayat, who is present in the Court, has been asked about his plans to spend the amount realized by sale of the land in question. He replied that it would be used for the development of village but no precise answer was given, rather he admitted that recently 350 acres of shamilat land has been sold to AIIMS for Rs. 48 crores, out of which Rs. 10 crores were received before the agreement (P-4) and Rs. 10 crores thereafter and are lying deposited in the bank in fixed deposit. He also admitted that there is a senior secondary school, Panchayat Ghar, Angan Wari etc. in the village and the Panchayat have no plans to use the said amount. In these circumstances, the question arises as to why the land in question has been agreed to be sold if the Panchayat had already so much of money in its bank accounts lying unutilized in fixed deposits.

16. Rule 12(2)(c) of the Rules talks of the reasons to be disclosed by the Panchayat while forwarding its resolution, passed by majority of the three-fourth, to the State Government while seeking approval and also its plans for utilization of the said income.

17. To our utter surprise, resolution No. 2 (P-1) is totally silent about the reasons because of which the Panchayat had decided to sell shamilat land to respondent No. 5, rather all that has been said in the resolution is that a decision has been taken to sell the land, but neither the reasons nor the plans of utilization of the income from the said sale has been sent to the State Government while seeking its permission and, in turn, the State Government, while passing order Annexure P-3 has also not considered the mandatory provisions of Rule 12(2)(c) of the Rules as to what is the reason for the Panchayat to sell the land of the shamilat deh and what are the plans of the Gram Panchayat to utilize the said income. The amount alleged to have been received so far from respondent No. 5 is admittedly lying in the bank in fixed deposits for want of plans for utilizing the same. Meaning thereby, the Panchayat has acted as an ordinary individual and not as an elected representative body of the entire village while entering into the contract of sale with respondent No. 5 and has totally violated the provisions of Rule 12(2)(c) of the Rule.

18. We have also noticed one interesting part of this transaction where Panchayat has passed resolution No. 1(P-2) describing the sale consideration as compensation and divided it into 7 equal installments enabling the vendee (respondent No. 5) to purchase it in 7 years but obtained possession at the time of payment of the first instalment.

19. Counsel for the State and respondent No. 5 has miserably failed to indicate any provision either from the Act or the Rules wherein such type of power has been given to the Panchayat to sell shamilat land in instalments. The resolution No. 1 Annexure P-2 is inequitable and is not in consonance with any provisions of law.

20. Looking from another angle, agreement Annexure P-4 has been entered into between the Panchayat and respondent No. 5, a company involved in production of cinema. There is no agreement with respondent No. 6 which is also a company and is allegedly involved in setting up educational institutions. In the absence of an agreement between the Panchayat and respondent No. 6, it is highly improbable to even think that respondent No. 6 is going to consume the land in question.

21. It is also one of the arguments of counsel for the petitioner that in such type of cases, the sale of the land of shamilat land should be by way of auction. In this regard, he has made a reference to the observation made by the Supreme Court in case Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others, which reads as under:-

65. What needs to be emphasized is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well

defined policy, which shall be made known to the public by publication in the Official Gazette and other recognized modes of publicity and such policy must be implemented/executed by adopting a nondiscriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The distribution of largesse like allotment of land, grant of quota, permit licence etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favoritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.

66. We may add that there cannot be any policy, much less, a rational policy of allotting land on the basis of applications made by individuals, bodies, organizations or institutions dehors an invitation or advertisement by the State or its agency/instrumentality. By entertaining applications made by individuals, organizations or institutions for allotment of land or for grant of any other type of largesse the State cannot exclude other eligible persons from lodging competing claim. Any allotment of land or grant of other form of largesse by the State or its agencies/instrumentalities by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favoritism and/or nepotism violating the soul of the equality clause embodies in Article 14 of the Constitution.

22. Insofar as the objection of respondent No. 5 that Balbir Singh had filed civil suit challenging the agreement Annexure P-4 and remained unsuccessful in getting interim injunction is concerned, suffice it to say that the said suit was not filed by the present petitioner and once the matter has been brought to the notice of this Court in public interest, it is for the Court to see as to whether the instrumentalities of the State and the elected body of the democratic set up, may be at the lowest level i.e. Panchayat, is discharging its solemn duties in accordance with the law or not. We are also not impressed with the argument of counsel for respondent No. 5 that by opening a film institute, any employment would be generated to cater the needs of inhabitants of the village.

23. In the end, we would also deal with this submission made by counsel for the petitioner that in the past, respondent No. 5, who had been allotted 20 acres of land for the same purpose at Goregaon in Greater Bombay, had to eat a humble pie when CWP No. 1826 of 2003 was allowed by the Bombay High Court as the said transaction was held to be illegal. In that case, entire land was resumed to the Municipal Corporation, Mumbai.

24. Keeping in view the facts and circumstances discussed here-in-above, the present writ petition has been found to be meritorious and is hereby allowed, the resolution No. 2 dated 06.01.2010 (P-1), resolution No. 1 dated 21.09.2010 (P-2), order No. 93 dated 30.09.2010 (P-3) and agreement to sell dated 11.10.2010 (P-4) are held to be illegal and are hereby quashed. Consequently, the Panchayat is directed to return the amount of two installments received from respondent No. 5 in terms of agreement Annexure P-4, allegedly lying deposited

in the fixed deposits, with interest accrued thereupon forthwith and respondent No. 5, who is alleged to be in possession of the disputed land, is directed to deliver actual physical possession of it to the Panchayat forthwith.