
(2013) 02 P&H CK 0240
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 20957 of 2012

Pehal Singh and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-02-2013

Acts Referred:

Citation : (2013) 02 P&H CK 0240

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

Bench : Division Bench

Advocate : Vikram Singh, for the Appellant; D. Khanna, A.A.G., Haryana for the Respondent Nos. 1 to 3 and Mr. Parminder Singh, Advocate for the Respondent No. 4, for the Respondent

Judgement

Rajive Bhalla, J.—The petitioners pray for issuance of writ of certiorari quashing orders dated 18.6.2012 and 9.10.2012 passed by the authorities affirming Resolution No. 1 dated 12.4.2012. Counsel for the petitioners submits that as the Principal Secretary to Government of Haryana, Department of Panchayats, Chandigarh, has held that there are no guidelines for preparing a utilization plan and it is necessary to issue guidelines, the appeal should have been allowed and not dismissed. It is further submitted that the Gram Panchayat has passed resolution No. 1 on 12.4.2012 without considering Rule 3 of the Punjab Village Common lands (Regulation) Rules, 1964 (hereinafter referred to as "the 1964 Rules").

2. Reply filed on behalf of respondent No. 4 in Court today, is taken on record.

3. Counsel for the Gram Panchayat states that the petitioners should have filed an appeal before the Assistant Collector 1st Grade, u/s 6 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act"), instead of approaching the Principal Secretary to Government of Haryana, Department of Panchayats, Chandigarh.

4. We have heard counsel for the parties and perused the impugned orders as

well as relevant statutory provisions. Sections 5 and 5-A of the 1961 Act regulate the use and occupation of Gram Panchayat land. Section 5 of the 1961 Act provides that land that vests or is deemed to have vested in a Gram Panchayat shall be utilized and disposed by the Gram Panchayat, for benefit of inhabitants of the village concerned in the manner "prescribed". The manner "prescribed" is set out in Rule 3 of the 1964 Rules. Rule 3 of the 1964 Rules requires a Gram Panchayat to prepare a land utilization plan with the assistance of the Block Development and Panchayat Officer and in case the land is more than 100 acres, the plan has to be presented for approval before the Panchayat Samiti and if the land exceeds 1000 acres, it has to be presented, for approval to the Government.

5. Section 6 of the 1961 Act provides that any person aggrieved by an act or decision of a Panchayat, taken u/s 5 of the 1961 Act, may, within thirty days from the date of "such act or decision", file an appeal before the Assistant Collector 1st Grade. A resolution passed by a Gram Panchayat, recording a land utilization plan is an "act or decision" u/s 5 or 5-A of the 1961 Act and, therefore, gives rise to a cause of action to file an appeal u/s 6 of the 1961.

6. As rightly argued by counsel for the Gram Panchayat, the petitioners were required to file an appeal, u/s 6 of the 1961 Act. The petitioners instead filed a petition u/s 47 of the Haryana Panchayati Raj Act, 1994, which was dismissed on 18.6.2012. The petitioners thereafter filed an appeal before the Principal Secretary to Government of Haryana, Department of Panchayats, Chandigarh. The appeal was dismissed and the resolution was affirmed but, at the same time, it was held that as there are no guidelines for preparing a land utilization plan, it is necessary to issue guidelines. In view of this finding, the Principal Secretary should have, before dismissing the appeal, awaited the issuance of guidelines, or directed the petitioners to file an appeal u/s 6 of the 1961 Act. It would also be pertinent to point out that Rule 3(1) of the 1964 Rules was framed u/s 5 of the Punjab Village Common Lands (Regulation) Act, 1961 and, therefore, any act done under rule 3(1) of the 1964 Rules, shall be deemed to be an act done under Sections 5 and 5-A of the 1961 Act. The resolution passed by a Panchayat under Sections 5 and 5-A of the 1961 Act has to be challenged by filing an appeal u/s 6 of the 1961 Act.

7. During pendency of this petition, guidelines have been issued in terms of Rule 3 of the 1964 Rules, vide letter dated 6.11.2012. A relevant extract from the letter reads as under:--

(i) The Gram Panchayat shall convene a meeting as per provisions of law and pass a resolution mentioning therein the details of lands earmarked for various common purposes during consolidation and details of lands actually being used for various common purposes as per the latest revenue record/Jamabandi. The reasons for changing the use of any land, earmarked/being used for a specific common purpose, shall also be mentioned in the said resolution. It shall also be explained in the resolution as to how the purpose shall be fulfilled or which other land shall be used for that purpose of which the land has been proposed to be

converted. Accordingly, a draft land utilization plan shall be prepared with the assistance of the concerned Block Development and Panchayat Officer, for consideration by the Gram Sabha.

(ii) The draft utilization plan prepared by the Gram Panchayat shall be placed in the meeting of the Gram Sabha, called as per provision of law, for its consideration. The suggestions/recommendations made by members of the Gram Sabha shall be included in the proceedings of the meeting.

(iii) The suggestions/recommendations made in the meeting of Gram Sabha to amend the draft land utilization plan shall be considered by the Gram Panchayat in its next meeting and a resolution to finalize the land utilization plan shall be passed in accordance with provisions of law.

(iv) The land utilization plan prepared by the Gram Panchayat shall be forwarded to the competent authority prescribed under rule 3(1) of the Punjab Village Common Lands (Regulation) Rules, 1964 for approval.

(v) The land utilization plan, as approved, by the competent authority shall be final. The prescribed competent authorities are reproduced below for ready reference:--

It is made clear that the total area of land in shamilat deh of the village and not only the area of land proposed to be converted shall be taken for the purpose of approval of the competent authority.

7. The guidelines require a Gram Panchayat and the Block Development Panchayat Officer, to prepare a land utilization plan, in accordance with the statutory provisions of the 1961 Act, the 1964 Rules and the guidelines/instructions issued by the Principal Secretary to Government of Haryana, Development and Panchayats Department, Chandigarh. We, however, do not express any final opinion on the validity of the resolution but as the resolution, recording a land utilization plan, is appealable u/s 6 of the 1961 Act, partly allow the writ petition, set aside the impugned orders and grant liberty to the petitioners to file an appeal u/s 6 of the 1961 Act.