

Punjab-Haryana High Court

Baljit Singh vs State Of Punjab And Others on 2 February, 2021

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16613-2020

Date of Decision:-02.02.2021

Baljit Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH

Present:- Mr. V.K. Jindal, Senior Advocate with
Mr. Akshay Jindal, Advocate
for the petitioner.

Mr. Atul Nanda, Advocate General, Punjab, with
Mr. I.P.S. Doabia, Addl. A.G., Punjab.

Mr. Munish Jolly, Advocate, for respondents No.7 & 8.

Mr. Puneet Bali, Sr. Advocate, with
Mr. Vibhav Jain, Advocate and
Mr. Uday Agnihotri, Advocate
for respondents No.9 & 10.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of COVID-19 Pandemic.

The petitioner being the inhabitant and Sarbrahi Lambardar of village Drari, Tehsil and District S.A.S. Nagar, Mohali has come forward to challenge the order dated 9.6.2020/10.6.2020 (Annexure P-6) passed by respondent No.2 whereby approval has been accorded by the Government for the exchange of Shamlat land of village Drari admeasuring 42 Kanals 8 Marlas with the land belonging to respondent No.9 admeasuring 42 Kanals 8 Marlas, inasmuch as the Shamlat land belonging to Gram Panchayat of village Drari being of very high commercial value as it was abutting the 200 feet wide PR-9 road going towards the Mohali International Airport, whereas the land belonging to respondent No.9 being away from the said road and low lying and prone to flooding was less valuable. The petitioner has also sought direction for quashing the resolutions dated 23.7.2019 (Annexure P-3) and 4.12.2019 (Annexure P-4) passed by the Gram Panchayat of village Drari regarding exchange of aforesaid Shamlat land with the land of respondent No.9. As per the petitioner, the said action of the Gram Panchayat was totally illegal being in violation of Rule 5 of Punjab Village Common Lands (Regulation) Rules 1964 (hereinafter referred as 'the Rules of 1964') and the aforesaid resolutions were passed for extraneous consideration in order to give undue benefit to respondent No.9.

On notice of motion, contesting respondents appeared through their respective counsels.

Short reply by way affidavit of Ms. Seema Jain, IAS, Financial Commissioner, Rural Development and Panchayats, Punjab was filed on behalf of respondent No.2. In the said affidavit, it was specifically stated that the approval for exchange of Panchayat land was granted under Rule 5 2 of 14 (3) CWP-16613-2020 of the Rules of 1964, after following the prescribed procedure and guidelines. The approval was granted by the Government while taking into consideration the fact that the Collector rate, Market rate and Chhant rate of both the lands under exchange were equal. In the said affidavit, it was further submitted that as per the site inspection report, the land of Gram Panchayat was low lying and includes 15 meters of 'no construction zone' on both sides of the road. The resolutions passed by the Gram Panchayat were self-explanatory. As per the said resolutions the land of the Gram Panchayat which was got bifurcated due to construction of PR-9 road, would now be consolidated as a big chunk of land and thus beneficial for the Gram Panchayat. The respondent No.2 in its affidavit has also challenged the locus standi of the petitioner to file the present writ petition.

Respondents No.7 & 8 i.e. Gram Panchayat of the village filed separate written statement on the same lines, justifying the exchange of its land with the land belonging to respondent No.9.

Respondent No.9 & 10 filed joint written statement resisting the claim of the petitioner. They have also taken the plea that the petitioner is having no locus standi to challenge the exchange of the land in question, as there was no illegality in the same.

We have heard the counsel for the parties.

Mr. V.K. Jindal, learned Senior Advocate, appearing on behalf of the petitioner submitted that the land of the Gram Panchayat is abutting 200 feet wide PR-9 road which leads to International Airport Mohali. The said land is having great commercial potential. The Government has already 3 of 14 (4) CWP-16613-2020 planned to change the land use from agriculture to industrial zone in the said area along PR-9 road, as is evident from Annexure P-11 which is relating to amendment of Master plan/Zonal plan of S.A.S. Nagar, Mohali. The learned Senior Counsel further contended that on the contrary the land belonging to respondent No.9 which is to be given to the Gram Panchayat in exchange is situated behind half acre to 6 acres from the aforesaid PR-9 road and thus having no commercial potential. The land of the Gram Panchayat which is to be given in exchange to respondent No.9 is much more costlier having commercial and industrial potential. The learned Senior Counsel further contended that the lands to be exchanged are not of an equivalent value and thus the alleged exchange of land is contrary to the provisions of Rule 5 of the Rules of 1964. The learned Senior Counsel further submitted that the alleged exchange of land is not for the benefit of the inhabitants of the village. The Gram Panchayat passed resolutions Annexures P-3 & P-4 just to help respondent No.9 who is a private developer, having partnership with the real brother of the sitting Cabinet Minister of Punjab. It was further argued on behalf of the petitioner that the aforesaid exchange of land is not in the interest of Gram Panchayat and the inhabitants of the village. The petitioner being the permanent resident and voter of the village, has every right to challenge the said exchange of land, which is based on some extraneous consideration. To substantiate his argument, the learned Senior Counsel on behalf of the petitioner has placed reliance on *Ishwar Singh & Ors. vs. State of Haryana and Ors.*, 2016(3) R.C.R. (Civil) 248 wherein the Division Bench of this Court annulled the exchange of the land belonging to Gram Panchayat with the land belonging to some private persons. Reference 4 of 14 (5) CWP-16613-2020 was also made to judgement dated 6.2.2009 passed by the Single Bench of this Court in CWP-5585-2008 (O&M) titled as *Sucha Singh & Ors. vs. State of Punjab & Ors.*, wherein also the resolution passed by the Gram Panchayat permitting exchange of its land with some private land was set aside.

On the other hand, learned Advocate General, Punjab while referring to site plan Annexure R-3, contended that both the lands involved in the exchange are situated in village Drari. The land of the Gram Panchayat which is to be exchanged, is situated on the southern side of PR-9 road which is going towards International Airport Mohali. The said land belonging to Gram Panchayat is triangular in shape and is shown in yellow colour in Annexure R-3. It was further contended that one link road passes through the said land of Gram Panchayat. Apart from this, as per approved Master Plan of SAS Nagar, 5 meters green buffer and 10 meters physical setbacks are proposed on the either side of PR-9 road, which also includes the aforesaid land of Gram Panchayat. The learned Advocate General, Punjab further submitted that in this manner strip having width of 15 meters, abutting PR-9 road has to be kept vacant in the front portion of the land of Gram Panchayat, meaning thereby that the aforesaid 15 meters wide strip of land is of no utility to the Gram Panchayat. The learned State counsel further argued that with the construction of PR-9 road, the land of the Gram Panchayat was divided into 2 portions as is clearly visible in Annexure R-3. With the said division, the utility of land of Gram Panchayat was also reduced. However, with the proposed exchange of land, the entire land of Gram Panchayat would be converted into one big piece of land, having 5 of 14 (6) CWP-16613-2020 better utilization. The learned Advocate General, Punjab on behalf of the State further contended that as per the inspection report submitted by Sub-

Registrar Mohali dated 11.5.2020 Annexure R-9/13, the land belonging to Gram Panchayat is low lying and is water logged and thus is of no use to the Gram Panchayat. It was further contended that both the lands involved in the exchange were having same Collector Rate and same potential. The Gram Panchayat passed resolutions Annexures P-3 and P-4 while keeping in mind its interest as well as the interest of the inhabitants of the village including that of the petitioner. The learned State counsel further argued that even the State Government before granting approval to the exchange of land, considered all the aspects favouring the Gram Panchayat. Further, inspection reports were called from the field officers to go into the ground realities. Only thereafter, order Annexure P-6 was passed by the Government in accordance with the provisions of law and as per the guidelines issued by the Government. While concluding his arguments, learned Advocate General, Punjab further contended that the petitioner was not having any right to challenge the aforesaid action of the Punjab Government as well as the resolutions passed by the Gram Panchayat.

The counsel for respondents No.7 & 8 also argued on the same lines and referred to Bhagwan Sarup and Ors. vs. State of Punjab and Ors. 2008(3) R.C.R. (Civil) 492 wherein the Division Bench of this Court upheld the exchange of Panchayat land with the land of private persons of an equivalent value, as it was for the benefit of the inhabitants of the village. He further contended that resolutions passed by the Gram Panchayat could be challenged under Section 199 of the Punjab Panchayati Raj Act 1994 6 of 14 (7) CWP-16613-2020 (hereinafter referred as 'Act of 1994'). However, the petitioner has not availed the said alternative efficacious remedy and as such the present writ petition is not maintainable.

Mr. Puneet Bali, Sr. Advocate, appearing on behalf of respondents No.9 & 10 while reiterating the arguments forwarded by the learned Advocate General, Punjab, further submitted that resolutions Annexures P-3 & P-4 were passed by the Gram Panchayat of the village while taking into consideration all the aspects including the benefit of the inhabitants of the village. Presently, the land of the Gram Panchayat is lying bifurcated in two parts and with the exchange of land, the Gram Panchayat would get one big piece of land which could be used by it in much more beneficial manner. The learned Senior Counsel on behalf of the private respondents further contended that the low laying and water logged land of Gram Panchayat is of no use and is not of any benefit to the residents of the village. Even otherwise as per the master plan, the land of the Gram Panchayat abutting PR-9 road to the extent of 15 meters width is to be left for green buffer and setbacks and thus would be of no use, for it.

The learned Senior counsel for the private respondents No.9 & 10 further contended that the Gram Panchayat passed resolutions Annexures P-3 & P-4, for the benefit of the entire village, without any political pressure or interference. It was further contended that even the State Government while granting approval Annexure P-6, took into consideration the entire aspects and accorded approval without any political consideration. On the contrary, the petitioner has moved this Court with oblique motive in order to hamper the development works being carried out by the Gram Panchayat.

It was further contended that the petitioner failed to avail the alternative remedy of the statutory appeal against the impugned actions of the Gram Panchayat and the State under Section 6 of the Punjab Village Common Lands (Regulations) Act 1961 (hereinafter referred as 'Act of 1961').

We have considered rival submissions made by the counsel for the parties.

Admittedly both the lands to be exchanged having equal areas, are situated in village Drari, Tehsil and District SAS Nagar Mohali. The identity of both said lands is not disputed and they are fully detailed in site plan (Annexure R-3). Petitioner-Baljit Singh is permanent resident of village Drari. Respondent No.9-Paras Mahajan is partner of respondent No.10-Lanchaster Infrastructures Associate, which deals with real estate.

As per Annexure R-3, the land which was sought to be given by the Gram Panchayat in exchange, is abutting 200 feet wide PR-9 road, which approaches the Mohali International Airport. The said PR-9 road is shown in red colour, while the aforesaid land of the Gram Panchayat is depicted in yellow colour in Annexure R-3. The land belonging to respondent No.9, which the Gram Panchayat would get in exchange, is shown in green colour in the site plan. The said land of respondent No.9 is not abutting PR-9 road and is rather at distance of half to six acres from the said road. This fact is also established from the perusal of letter dated 3.3.2020 (Annexure R-6) sent by Director Rural Development and Panchayat Department, Punjab to Deputy Commissioner, SAS Nagar. In the said letter, it was also clarified 8 of 14 (9) CWP-16613-2020 that the market rate of two acres of land adjoining to the road could be same but the market rate of land which is at a distance of more than two acres from the said road, could not be the same. The operative part of the letter (Annexure R-6) reads as under:-

"As per revenue record/Aks Shajra latha, the front portion of Shamlat land of Gram Panchayat, Daidi is adjoining with newly constructed 200 ft. airport road. Whereas the land owned by private party is far away behind half acre to 6 acres from the 200 ft. airport road. However, the market rate of 2 acres of land adjoining to the road can be same, but the market rate of more than 2 acres faraway lands cannot be same."

As per Annexure R-3, the drain meant for disposal of sewage is abutting the land of respondent No.9 on its north-eastern side and is shown in purple colour in Annexure R-3. The existence of the said drain abutting the land of respondent No.9 is also established from the perusal of resolution Annexure P-3, which was passed by the Gram Panchayat of the village. The sewage drain emitting foul smell may be a permanent source of nuisance for the adjoining land owners. At the same time, as per Annexure R-3, the said drain meant for disposal of sewage water is at a distance of more than 6 acres from the land of the Gram Panchayat, which is proposed to be given by it in exchange to the respondent No.9. This clearly shows that the private colonizer/developer i.e. respondent No.9 intends to get rid of his land, which is unfit for residential purpose being near to the aforesaid drain.

In lieu of the said land, he would get the prime land abutting 200 feet wide PR-9 road, having high commercial and industrial potential. The entire process of 9 of 14 (10) CWP-16613-2020 exchange of land smacks of mala fide as its real purpose is to give benefit to the colonizer/developer who would later on sell the same in the shape of plots/flats/houses at exorbitant rates.

As per the respondents, the land of the Gram Panchayat which is to be given in the exchange, is low lying and water logged. However, resolutions passed by the Gram Panchayat Annexures P-3 & P-4 are silent regarding this fact, which came into picture only for the first time in the third Inspection Report dated 11.5.2020 submitted by the Sub-Registrar, SAS, Nagar, Mohali (Annexure R-9/13). Even in the approval Annexure P-6 given by the State Government there was no mention that the land of the Gram Panchayat was having disadvantage of being low lying and water logged. We are of the view that there is no valid material in the shape of photographs or otherwise, available on the record to substantiate the inspection report Annexure R-9/13.

As per the respondents, the land of the Gram Panchayat, which was sought to be given in exchange to respondent Nos. 9 and 10 has got certain disadvantages/limitations. One link road passes through the said land. As per the respondents, 15 feet wide strip in the shape of buffer zone is to be kept in front of the said land, where no construction could be raised. We are of the view that the above discussed encumbrances/limitations would pass over to respondent No.9, at the time of the proposed exchange. It means that respondent No.9 would get the exchanged land along with aforesaid encumbrances. So, respondent No.9 would be having same disadvantages qua the said land, which are presently faced by the Gram Panchayat. The respondents have failed to explain as to how a private 10 of 14 (11) CWP-16613-2020 developer has become interested in exchange of land, in case, it is not beneficial for him.

Rule 5 of the Rules of 1964 which governs such type of exchange of land reads as follows:-

"Exchange of land [Sections-5 and 15 (2) (f) of the Act] - A Panchayat, if it is of opinion that it is necessary so to do for the benefit of the inhabitants of the village may with the prior approval of the Government transfer any land in shamilat deh by exchange with the land of an equivalent value:"

As per the said provision of law, it was necessary for the Gram Panchayat to apply its mind and to satisfy itself that the exchange in question is for the benefit of the inhabitants of the village, however, no such satisfaction was recorded by it while passing the impugned resolutions. The land which the Gram Panchayat intends to give to respondent No.9 by way of exchange has got much more commercial and industrial potential than the land which the Gram Panchayat will get in exchange. The land owned by the Gram Panchayat is of much more potential and value than the land of respondent No.9, even if their Collector Rate is same. As per Annexure P- 11, the Government has already approved the change of land use from agriculture to industrial in the land in question belonging to Gram Panchayat which is abutting PR-9 road. The development activities have already started in the said area which is situated on the PR-9 road going towards the Mohali International Airport. So, it cannot be said that it is a case of exchange of two lands having equivalent values.

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In view of the fact that 200 feet wide PR-9 road has divided the Panchayat land into two parts, we find that the same has increased the potential value of the said land which is now abutting both sides of the road leading to Mohali International Airport. So, the plea taken by the respondents that the utility and value of land belonging to Gram Panchayat was diminished due to construction of PR-9 road, which divided it into two parts, appears to be totally misplaced and could not be accepted.

The Gram Panchayat of the village being democratically elected by the inhabitants of the village is under duty to watch the interest of the inhabitants of the village. In the case in hand the Gram Panchayat has failed to show that the proposed exchange of land is for the benefit of the residents of the village. Anybody who has been prejudicially affected by the aforesaid acts or omissions committed by the Gram Panchayat could invoke writ jurisdiction, even though he may not have proprietary interest in the subject matter. As the petitioner was not party to the impugned proceedings, he was having no right to challenge the same by filing statutory appeal, as has been suggested by the counsel for the respondents. Also the existence of alternative remedy is not an absolute bar on the jurisdiction of the High Court under Article 226 and is a rule of discretion and self-imposed limitation rather than that of law as has been held by the Hon'ble Apex Court in Civil Appeal No.9317 of 2019 titled as M/s Shiur Sakhar Karkhana Pvt. Ltd. vs. State Bank of India decided on 4.12.2019. So, in the present case, the petitioner being vigilant citizen and inhabitant of the village was competent to challenge impugned actions of Gram Panchayat in 12 of 14 (13) CWP-16613-2020 the present writ petition, even if he has not availed the alternative remedy (if any), available to him under the law.

In the light of the above, we are of the view that the Resolutions passed by the Gram Panchayat as well as decision of the State Government, according its approval, to the exchange of land are detrimental to the interest of the inhabitants of the village. The Gram Panchayat land is abutting 200 feet wide PR-9 road which approaches the Mohali International Airport and is highly valuable being useful for industrial as well as commercial purpose, as compared to the land which the Gram Panchayat would get in its exchange from the private developer. Viewed from any angle, the exchange of the land of the Gram Panchayat cannot be justified, it being only for the benefit of the private developers i.e. respondents No.9 and 10 and thus it cannot be sustained.

The facts of the case law referred on behalf of the respondents No.7 and 8 are entirely different from that of the present case as in the said case, it was found that the exchange of land was in the interest of the inhabitants of the village, which is not so in the present case.

In result, the present writ petition is allowed, the impugned Resolutions (Annexure P-3 and Annexure P-4) passed by the Gram Panchayat permitting exchange of its land are set aside, being in violation of statutory provisions of law. A writ in the nature of Certiorari is also issued for quashing the order (Annexure P-6) passed by the Government permitting the exchange of land of the Gram Panchayat.

02.02.2021
Gaurav Sorot

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

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Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No

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