

(2009) 03 P&H CK 0253

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 69 of 2006

Jaswinder Singh

APPELLANT

Vs

State of Punjab and
Others

RESPONDENT

Date of Decision: March 17, 2009

Citation: (2010) 1 RCR(Civil) 175

Hon'ble Judges: Tirath Singh Thakur, C.J; Hemant Gupta, J

Bench: Division Bench

Advocate: A.P. Kaushal, for the Appellant; Amol Rattan Singh, AAG, Punjab, with Ms. Sonu Chahal, DAG, Punjab, for the Respondent Nos. 1 to 4, Mr. J.S. Bhandaul, for the Respondent No. 5 and Mr. Arun Bakshi, for the Respondent No. 6, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

Challenge in the present writ petition filed in public interest, is to the approval granted for exchange of land situated in village Daduwal, Tehsil Phillaur, District Jalandhar.

2. The grievance of the petitioner is that during the consolidation proceedings, khasra No. 167 measuring 3 kanals 19 marlas was reserved for Garha Khad (manure pit), but the land measuring 3 kanals 6 marlas out of the said land, has been exchanged with the land measuring 3 kanals 6 marlas owned by respondents No. 6 and 7. The stand of the petitioner is that the land exchanged is reserved for Garha Khad and thus, it cannot be exchanged as there will be no land left for the common purpose of the villagers. It is alleged that the Financial Commissioner, has approved the exchange of Panchayat land measuring 3 kanals 6 marlas situated in khasra No. 167 with the equivalent land owned by respondent Nos. 6 and 7 for the purpose of disposal of the dirty water, which is against the interest of the Panchayat and the inhabitants of the village.

3. In reply filed on behalf of respondents No. 1 to 4, it was pointed out that the Gram Panchayat resolved on 25.05.2005 for exchange of the land. The said resolution was sent to the Block Development and Panchayat Officer, who communicated to the District Development and Panchayat Officer to transfer the said land. The District Development and Panchayat Officer, communicated to the Divisional Deputy Director, Panchayat, for granting permission to the Gram Panchayat to transfer the Panchayat land. The Divisional Deputy Director sought approval from the Director, Panchayat. The Director, Panchayat found some irregularities and the Divisional Deputy Director, was directed to remove the said irregularities. After removal of the irregularities, the approval has been granted in the interest of Gram Panchayat.

4. Learned counsel for the petitioner has vehemently argued that after exchange of the land comprising in khasra No. 167 measuring 3 kanals 6 marlas, no land will be left for the Garha Khad, for the use of the villagers. On 09.01.2009, when the writ petition came up for hearing, learned State counsel was granted time to seek instructions as to whether there will be any land for being used as Garha Khad and whether khasra No. 168 measuring 29 kanals 1 marlas is still available for being used as Garha Khad. An affidavit dated 14.01.2009 has been filed by the District Development and Panchayat Officer, pointing out that sullage water of about 100 houses of Balmiki Basti is disposed of in the land, which is taken in exchange. In khasra No. 167, the Gram Panchayat has land of 3 kanals 19 marlas and now the Gram Panchayat is left with 13 marlas of land in khasra No. 167. The said land is in possession of Swarn Singh son of Pal Singh, unauthorisedly. It has also been pointed out that the land contained in khasra No. 168 measuring 29 kanals 1 marla and khasra No. 169 measuring 11 kanals 10 marlas, total 40 kanals 11 marlas, is reserved for Gair Mumkin Garha Khad. 5-6 kanals of such land is being used for Ruri and sullage water and some of the area is being used for metalled Phirni. Rest of the area has been encroached by the residents of the village. It is also pointed out that nobody from the village has expressed any difficulty with regard to storage of Ruries. It has also been pointed out that the instructions have been issued for the removal of the encroachment on the land reserved for Garha Khad and the future increase in use of manure pits can be met after removal of the encroachments.

5. We have heard learned counsel for the parties and do not find any illegality in the order approving the exchange of land measuring 3 kanals 6 marlas with the equivalent land owned by respondents No.6 and 7. The process of exchange was initiated with the resolution of Gram Panchayat, which has been recommended by the Departmental Authorities and approved by the Financial Commissioner. The argument raised by learned counsel for the petitioner that there will be no land left for Garha Khad for the use of inhabitants, is not tenable, in as much as, land measuring 40 kanals 11 marlas is reserved for Gair Mumkin Garha Khad, though the land measuring 5-6 kanals is actually being used for such purpose. Since, there is no grievance of any of the inhabitants in respect of such use, we do not find that the exchange effected, is against the interest of inhabitants of the village.

6. However, the fact remains that part of land measuring 40 kanals 11 marlas comprising in khasra Nos. 168 & 169 and 13 marlas comprising in khasra No. 167, is alleged to be in an unauthorised possession of some of the villagers, therefore, while dismissing the writ petition, we direct the respondent-authorities to initiate immediate action for removal of encroachment on said common land. Such process be initiated within three months. As and when such process is initiated, the authorities under the Punjab Village Common Lands (Regulation) Act, 1961, shall take a decision thereon, as expeditiously as possible, preferably within a period of one year.

With the said directions, the writ petition is dismissed.