

entitled to it till she attains the age of 21 years or is married, whichever is earlier. About benefits from Police Welfare fund also the Court held that the petitioners and respondents 2 and 3 are entitled to get this benefit in equal shares. Thus, the succession certificate was issued in these terms.

(52) While deciding FAO No. 5-M of 1993 I have held that the decree was wrongly granted in favour of *Rajbir Singh and the said decree is set aside. The consequence is that Suresh Bala continues to be the wife/widow of Rajbir Singh. The lower Court has held that Sapna is the legitimate child of Rajbir Singh and Suresh Bala. In view of these findings, I do not see any reason to interfere with the findings given by the Additional District Judge, Sonapat, while deciding this petition for the grant of succession certificate. Accordingly, this appeal, being meritless, is hereby dismissed.

S.C.K.

Before Hon'ble Ashok Bhan and N.K. Sodhi, J.J.

JAIBIR SINGH AND OTHERS,--Petitioners.

versus

STATE OF HARYANA AND OTHERS,--Respondents

C.W.P. 2413 of 1994

The 8th February, 1996

Constitution of India, 1950--Arts. 226, 227--Punjab village Common Lands (Regulation) Act, 1961--R1. 12--Sale of Panchayati land--Resolution of panchayat for sale of Shamlat deh land--Land surrounded by private colonizers--Government granted approval for such sale--Challenge to sale by tenants that land is being sold for purposes other than those mentioned in Rule 12--Defraud to the public exchequer--Resolution and subsequent permission of State Government set aside.

Held, that a perusal of the provisions would show that Panchayat land is permitted by

law to be disposed of only for the benefit of the inhabitants of the village concerned and that too for any of the three purposes mentioned in Rule 12(1) of the Rules namely, for the purpose of constructing building for Block Samiti office or any department of or any institution recognised by the Government; or for the purpose of any industrial or commercial concern or for executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village. In the present case, all that is said in the resolution of the Gram Panchayat dated 3rd December, 1990 is that since the land is surrounded by private colonizers, it should be allowed to sell the same to those colonizers. This is not a purpose for which panchayat land can be sold under the law.

(Para 8)

Further held, that in our opinion, there has been total lack of application of mind at all levels as the purposes for which panchayat land could be sold were never taken into consideration.

(Para 8)

Further held, that the whole exercise was undertaken only to benefit the surrounding private colonizers whose colonies are surrounding the village and the land in question. The only reason given for granting approval is that the land is surrounding by D.L.F. colony and is lying useless yielding no income to the panchayat. It is not a purpose for which panchayat land can be sold.

(Para 8)

P.S. Patwalia, Advocate, for the Petitioners.

H.L. Sibal, Advocate General, Haryana with
J.S. Duhan, AAG, Haryana for the
Respondents 1 to 5.

Ajai Lamba, Advocate, for the Respondents
No. 6 and 7.

JUDGMENT

N.K. Sodhi, J.

(1) This order will dispose of Civil Writ Petitions 16186 of 1993 and 2413 of 1994 in which common questions of law and fact arise.

(2) Village Nathupur (for short the village) is situated on the Delhi Border and on the highway between Jaipur and Mehroli. It falls in District Gurgaon in the State of Haryana. Land in this village has become prime property and colonizers have built modern colonies in this area one of them being Kutub Enclave which is on two sides of the aforesaid village. This colony has been promoted by one of the leading colonizers known as D.L.F. One side of the village abuts on the Delhi Jaipur Highway and on the other side is the Delhi Mehroli Highway. It is alleged by the Petitioners and not disputed by the respondents that land measuring 4.2 acres in this village was sold in November, 1989 for Rs. 64.55 lacs at the rate of Rs. 15 lacs per acre. Translated copies of some of the sale deeds have been appended as Annexures P2 and P3 with the petition.

(3) Surprisingly only a month thereafter on 18th December, 1989 the Gram Panchayat of the village sold 16 acres of panchayat land to a private company named H.L.F. Private Limited just at the rate of Rs. 5.10 lacs per acre. The allegation is that the land which was worth more than Rs. 3.75 crores was sold for a meagre amount of little more than Rs. 80 lacs to a private colonizer. Again on 3rd December, 1990 the Gram Panchayat of the village as per its resolution No. 45 resolved that the entire panchayat land in the village which was surrounded by the colonizers be sold to them after obtaining approval from the State Government. Details of the land that was sought to be sold were mentioned in the resolution. Significantly, none of the purposes for which the

panchayat land can be sold under the law was mentioned in the resolution nor was it the case of the panchayat that it needed money for any specific purpose or for implementing any of its development schemes/projects. A copy of this resolution is Annexure P-8 with the petition. The matter was referred to the Deputy Commissioner who as per his letter dated 19th May, 1993 recommended the case of the Gram Panchayat to the State Government for granting permission for the sale of its panchayat land. He suggested that it would be appropriate if the land was allowed to be sold in an open auction though the market price of the land as determined by the department was Rs. 5,76,785 per acre. While further action on the resolution dated 3rd December, 1990 was pending, the Gram Panchayat passed another resolution dated 11th May, 1992 proposing to sell another 50 acres of land. The permission of the Government was obtained and the land was sold at the rate of Rs. 7.10 lacs per acre. It is common ground between the parties that consequent upon the two sales made in pursuance of the resolutions dated 18th December, 1989 and 11th May, 1992, the Gram Panchayat collected a total sum of Rs. 4.32 crores which is lying with it in a fixed deposit account. The State Government thereafter considered the resolution of the Gram Panchayat dated 3rd December, 1990 and also the recommendation of the Deputy Commissioner and granted permission to the Gram Panchayat under Rule 12 read with Rule 6(10) of the Punjab Village Common Lands (Regulations) Rules, 1964 (hereinafter called the Rules) to sell 134 Bighas and 16 Biswas of panchayat land in an open auction. This permission was communicated to all concerned as per endorsement dated 3rd November, 1993 a copy of which is Annexure P9 with the writ petition. Petitioners who have taken the land on lease from the Gram Panchayat have filed this petition under Article 226 of the Constitution challenging the resolution of the Gram Panchayat as also the permission granted by the State Government for sale of land

primarily on the ground that it is not being sold for any of the purposes mentioned in Rule 12 and that the respondents are conniving with the Gram Panchayat in defrauding the public exchequer of crores of rupees when the Gram Panchayat is already possessed of sufficient funds. It is also their case that the land is being allowed to be sold only to benefit the private colonizers whose colony surrounds the village.

(4) Respondents in their written statements have controverted the allegations made by the petitioners though it is admitted that the Gram Panchayat is keen to sell its land to the colonizers. It is submitted that the State Government has granted approval in accordance with law and that the petitioners have no right to challenge the sale sought to be made by the Gram Panchayat.

(5) During the course of arguments, we enquired from the Gram Panchayat as also from the State Government as to the purpose for which the land was sought to be sold. Shri Udhmi Ram Sarpanch of the Gram Panchayat filed an additional affidavit dated 14th December, 1994 stating that the sale consideration received on the sale of land by the Gram Panchayat was lying deposited in a bank account as per Government instructions and that the amount was not to be withdrawn as only the interest would be utilised by the Gram Panchayat for its development purposes. It was also stated that since the village was surrounded by the D.L.F. colony, the residents of the village were left with no space to ease themselves as a result of which dirt and insanitary conditions had spread in the village. To meet this situation the panchayat worked out some development schemes for the implementation of which an estimate of Rs. 2 crores was prepared. The development schemes and the estimates prepared by the official agencies are as under :--

| | |
|--------------------------|-------------------|
| (1) Metalling of streets | (1) Rs. 43,91,000 |
| Sewerage : | (2) Rs. 63,52,500 |

| | |
|--------------------------|---------------|
| (2) School building : | Rs. 30,01,400 |
| (3) Library | Rs. 15,93,700 |
| (4) Mahila Mandal Bhawan | Rs. 2,85,400 |
| (5) P.H.C. | Rs. 12,54,700 |
| (6) Panchayat Ghar | Rs. 4,99,800 |

In order to satisfy ourselves whether the State Government had granted permission for sale of the land after taking into consideration all the relevant factors, we directed the State counsel to produce the original files pertaining to the grant of permission to the Gram Panchayat.

(6) We have heard counsel for the parties and perused the original record produced by the State Government. Sale of *shamlat* land vesting in Gram Panchayat is governed by Section 5 of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana (hereinafter called the Act), the relevant part of which reads as under :--

"5. Regulation of use and occupation etc. of lands vested or deemed to have been vested in Panchayats :--

(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed :

.
.

Rule 12 of the Rules prescribes the purposes for which panchayat land may be sold. It reads as under :--

"12. Purpose for which land may be sold :--
(Sections 5 and 15(2) (f) of the Act).

(1) A Panchayat may, with the previous approval of the Government, sell land

in shamilat deh vested in it under the Act for :--

- (i) the purpose of constructing building for Block Samiti office or any department of or institution recognised by the Government;
 - (ii) the purpose of any industrial or commercial concern; or
 - (iii) executing such a scheme as may be a source of recurring income for the benefit of the inhabitants of the village.
- (2) Where it is proposed to sell the land in shamilat deh under sub-rule (1), the panchayat shall forward to Government a copy of its resolution passed by a majority of three-fourth of its members proposing to sell the land through the Panchayat Samiti and Deputy Commissioner stating--
- (a) the area and location of the land proposed for sale;
 - (b) the estimated income from the sale and whether the income would increase, if the land is sold after some years;
 - (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 Government who shall also decide whether the land should be sold in one or more lots and the officer who would be present at the auction;

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

(8) A perusal of the aforesaid provisions would show that panchayat land is permitted by law to be disposed of only for the benefit of the inhabitants of the village concerned and that too for any of the three purposes mentioned in Rule 12 (1) of the Rules namely, for the purpose of constructing building for Block Samiti office or any department of or any institution recognised by the Government; or for the purpose of any industrial or commercial concern or for executing such a scheme as may be a source recurring income for the benefit of the inhabitants of the village. In the present case, all that is said in the resolution of the Gram Panchayat dated 3rd December, 1990 is that since the land is surrounded by private colonizers, it should be allowed to sell the same to those colonizers. This is not a purpose for which panchayat land can be sold under the law. It is also not the case of the panchayat that land was sought to be sold for augmenting its income to be utilised for the benefit of the inhabitants. Again, when the matter was processed at the level of the Deputy Commissioner and the Directorate of Panchayats, no one concerned kept in view the purposes for which panchayat land could be sold and curiously enough the department determined the market value of the land in question at the rate of Rs. 5,76,765 per acre some time in 1992 whereas land adjoining to the one in question had been sold in the year 1989 at the rate of Rs. 15 lacs per acre. When the Government considered the matter regarding grant of approval the market price of the land was again got assessed and the same was determined at Rs. 22,21,588 per acre and finally the Minister Incharge gave approval for the sale of land by an open auction fixing Rs. 22,21,588 as reserve price. The matter was put up before the Chief Minister as well who allowed the sale by open auction according to Rules and directed it

to be conducted in the presence of the Deputy Commissioner after due publicity. However, he said nothing about the reserve price. In the final approval granted, no reserve price has been fixed. It is interesting to notice that at no stage did any of the officers keep in view the purposes as referred to in Rule 12 of the Rules for which the land could be sold. Permission had been granted to the Gram Panchayat in the years 1989 and 1992 for sale of some of its land which it sold and collected a sum of Rs. 4.23 crores which is lying in a fixed deposit account with the panchayat. In our opinion, there has been total lack of application of mind at all levels as the purposes for which panchayat land could be sold were never taken into consideration. Moreover, the Gram Panchayat is possessed with sufficient funds to enable it to implement the development schemes which it proposes to undertake as referred to in the additional affidavit of the Sarpanch of the Gram Panchayat. Even for implementing these schemes rough estimates of the amount required is about 1.5 to 2 crores of rupees. An amount of Rs. 4.3 crores is lying with the panchayat for the last more than 2½ years and that too must have earned a lot of interest. As such, there was hardly any need much less pressing need for the panchayat to sell its land. It appears that the whole exercise was undertaken only to benefit the surrounding private colonizers whose colonies are surrounding the village and the land in question. The only reason given for granting approval is that the land is surrounded by D.L.F. colony and is lying useless yielding no income to the panchayat. It is not a purpose for which panchayat land can be sold. The argument that the sale will be conducted in a fair manner through open auction hardly inspires confidence when we see that the land is geographically surrounded by the D.L.F. colony and that these colonisers alone are the ones likely to purchase the land and get the benefit of the sale which sale, as already observed above, is not permissible under the law.

(9) In the result, we allow the writ petitions, quash the resolution dated 3rd December, 1990 passed by Gram Panchayat and also the permission granted by the State Government for the sale of land. The petitioners shall have their costs which are assessed at Rs. 5,000.

J.S.T.

Before Hon'ble M.S. Liberhan & Sat Pal, JJ

HARI KISHAN--Petitioner

versus

STATE OF HARYANA & OTHERS--Respondents

C.W.P. No. 11587 of 1995

8th January, 1986

Constitution of India, 1950--Arts. 226/227--Land Acquisition Act, 1894--S.18--Declining reference--Question of title--Cannot be determined by Collector--Competent authority is the district Judge--Reference to be made to District judge, where state can raise objection with regard to title.

Held that in view of Section 18 of the Act, the Collector has got no right to determine the title with respect to the property and if any compensation has not been paid to the petitioner, who claims to be owner, it is only the statutory arbitrator i.e. the District Judge, who can determine the rights of the parties i.e. the liability of the State to pay compensation to the claimant. The above view finds full support from Sham Lal and others v. Ujagar Singh (died) represented by his L. Rs. and another wherein it has been observed by the Division Bench of this Court that the land Acquisition Collector has got no judicial power to determine the right and title claim of the petitioner.

(Para 2)