

***Before Augustine George Masih & Sandeep Moudgil, JJ.***

**GHANSHAYAM—Appellant**

*versus*

**STATE OF PUNJAB AND OTHERS —Respondent**

**LPA No. 1399 of 2018**

April 04, 2022

***Letters Patent—Clause X—Constitution of India, 1950— Art. 226—Punjab Panchayati Raj Act, 1994— S. 199—Resolution passed by Gram Sabha at meeting held without giving seven days clear notice—Director, Rural Development and Panchayat Department in petition under Section 199 of 1994 Act upheld resolution—Single Bench dismissed writ petition—Participation, discussion and no objection raised with regard to improper service of notice for meeting by any person likely to be affected — The mandatory requirement of statutory seven days notice deemed to have been waived—Appeal dismissed.***

*Held*, that the present intra-Court appeal has come up before this Court against the judgment dated 08.08.2018 passed by the learned Single Judge, dismissing the civil writ petition by upholding the order dated 19.09.2016 (Annexure P-1) passed by the Director, Rural Development and Panchayat, Punjab in an appeal as well as resolution dated 06.02.2015 (Annexure P2) passed by the Gram Sabha.

(Para 1)

*Further held*, that the substantial question of law in the present lis is whether the resolution dated 06.02.2015 (Annexure P-2) passed by the Gram Sabha, if passed in a meeting without giving seven days clear notice, would be rendered illegal and void.

(Para 2)

*Further held*, that the Director, Rural Development and Panchayat Department, Punjab in a petition under Section 199 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as Act, 1994 in short) vide order dated 19.09.2016 (Annexure P-1), upheld the resolution dated 06.02.2015 (Annexure P-2) to be legal and valid and thereafter, the learned Single Judge in the civil writ petition No.24636 of 2016 tested the said order of the Director, Rural Development and Panchayat, Punjab. The writ petition was dismissed vide order dated

08.08.2018, while upholding the order dated 19.09.2016 (Annexure P-1).

(Para 3)

*Further held*, that we are sanguine of the fact that seven days clear notice is required for a general meeting, however, if there is participation and discussion and no objection is raised with regard to the improper service of notice for the meeting therein by a person likely to be affected, the mandatory requirement of statutory notice shall be deemed to have been waived. In the present case, the resolutions have been passed and carried out with full quorum, particularly, the subsequent resolution dated 16.09.2016 (Annexure P-10), vide which the resolution dated 06.02.2015 (Annexure P2) was amended and the technicalities were removed.

(Para 14)

Baldev S. Sidhu, Advocate, *for the appellant*.

Monica Chhibber Sharma, Sr. DAG, Punjab.

Anureet Singh Sidhu, Advocate, for respondent No.6.

### **SANDEEP MOUDGIL, J.**

(1) The present intra-Court appeal has come up before this Court against the judgment dated 08.08.2018 passed by the learned Single Judge, dismissing the civil writ petition by upholding the order dated 19.09.2016 (Annexure P-1) passed by the Director, Rural Development and Panchayat, Punjab in an appeal as well as resolution dated 06.02.2015 (Annexure P2) passed by the Gram Sabha.

(2) The substantial question of law in the present lis is whether the resolution dated 06.02.2015 (Annexure P-2) passed by the Gram Sabha, if passed in a meeting without giving seven days clear notice, would be rendered illegal and void.

(3) The Director, Rural Development and Panchayat Department, Punjab in a petition under Section 199 of the Punjab Panchayati Raj Act, 1994 (hereinafter referred to as Act, 1994 in short) vide order dated 19.09.2016 (Annexure P-1), upheld the resolution dated 06.02.2015 (Annexure P-2) to be legal and valid and thereafter, the learned Single Judge in the civil writ petition No.24636 of 2016 tested the said order of the Director, Rural Development and Panchayat, Punjab. The writ petition was dismissed vide order dated 08.08.2018, while upholding the order dated 19.09.2016 (Annexure P-1).

(4) Aggrieved by the above said orders dated 19.09.2016 and 08.08.2018, the present Letters Patent Appeal has been preferred.

(5) Learned counsel for the appellant contends that the Gram Sabha, Panjkosi, Block Khuian Sarver, District Fazilka passed a resolution dated 06.02.2015 (Annexure P-2) in violation of the provisions of Act, 1994 vide which it was resolved to allot the plots to 213 persons from the land reserved for cremation ground in Khasra No.201 of the Gram Panchayat. The case of the appellant is that as per *jamabandi* for the year 2002-03, the Gram Panchayat is the owner of Khasra No.201 (194-13), wherein it is clearly reflected as *gair mumkin shamshan bhumi* reserved during the consolidation of the village, in support thereof, reference has been made to the *jamabandi* for the year 2002-03 (Annexure P-3) and *missal haquiat* 1963-64 (Annexure P-4).

(6) Learned counsel also submits that in the year 1963-64, a Scheme of consolidation was prepared explaining the terms and conditions, according to which partition of *Shamlat* land owned by the Gram Panchayat measuring 217 kanals 9 marlas out of which 0-10 area is *gair mumkin kabristan*. The rest of the area was averred to be in the possession of shareholders and *gair marusis*. The Scheme further clarifies that the land reserved for common purposes will be reserved by applying a pro-rata cut on the proprietors so the land reserved for common purposes in the name of Gram Panchayat has been left by the proprietors by applying the provisions of Section 16 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as Act, 1948 in short), which should have been entered in the column of ownership of record of rights as (*Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba*).

(7) It is further argued that the management of such land shall be done by the Panchayat of the estate or concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and the benefits of the estate concerned.

(8) Learned counsel for the appellant also submits that the land which was reserved during the consolidation under the Scheme, has not been challenged in any Court of law till date and the Gram Panchayat is not competent to change the nature of the reserved land, which can only be done by filing a petition under Section 42 of the Act, 1948.

(9) Learned counsel for the appellant taking support of the judgment passed by this Court in *Hinduwan Shamshan Bhumi*,

**Toham versus State of Haryana and others**, date of decision 09.05.2012, contended that once the nature of land is to be changed to commercial from *gair mumkin shamshan bhumi*, then it does not remain within the competence of Gram Panchayat to pass any final resolution qua the same, which would only be within the domain of State Government to grant sanction and, therefore, since no approval of the Government has been sought to be quashed. Lastly, the resolution dated 06.02.2015 (Annexure P-2) has been challenged also on the ground that the same has been passed against the Policy dated 17.04.2001 issued by the Government of Punjab and such resolution was also not passed in the required quorum of the Gram Sabha as mandated under Section 5(6) of the Act, 1994.

(10) Heard.

(11) After hearing the learned counsel for the appellant and on perusal of the case file, the legality of resolution dated 06.02.2015 (Annexure P-2) is to be tested in the light of Section 23 of the Act, 1994, which envisages for calling of a meeting by giving seven days' clear notice of the ordinary meeting and three days clear notice of a special meeting.

(12) Admittedly, the meeting was not held as per due notice. A perusal of order dated 19.09.2016 (Annexure P-1) passed by the Director, Rural Development and Panchayat Department, Punjab depicts that the Gram Panchayat was instructed, vide order dated 03.09.2016, to pass a resolution in accordance with law and in compliance thereof, the fresh resolution was passed on 16.09.2016 (Annexure P-10) with full quorum after serving a notice to the Gram Panchayat members and residents. Consequently, resolution dated 06.02.2015 (Annexure P-2) was amended vide fresh resolution dated 16.09.2016 (Annexure P-10).

(13) It is further evident that the Gram Panchayat has passed a resolution for allotment of plots to 213 persons keeping in view the policy dated 17.04.2001 issued by the Government of Punjab. It is also communicated to the Block Development and Panchayat Officer, Khuan Sarver, who recommended further to the District Development and Panchayat Officer, Fazilka and finally was forwarded to the Deputy Commissioner, Fazilka for issuance of *sanads*. It is only after getting the orders for issuance of *sanads* and approval of the concerned Department, Gram Panchayat passed the resolution, which is inconsonance with the instructions of the Government of Punjab.

(14) We are sanguine of the fact that seven days clear notice is required for a general meeting, however, if there is participation and discussion and no objection is raised with regard to the improper service of notice for the meeting therein by a person likely to be affected, the mandatory requirement of statutory notice shall be deemed to have been waived. In the present case, the resolutions have been passed and carried out with full quorum, particularly, the subsequent resolution dated 16.09.2016 (Annexure P-10), vide which the resolution dated 06.02.2015 (Annexure P- 2) was amended and the technicalities were removed.

(15) Similar issue had earlier been examined by this Court in *LPA No.129 of 2011* titled as *Harpal Singh versus Paramjit Kaur and others*, decided on 29.08.2011 and LPA No.1126 of 2011 titled as *Randeep Singh versus State of Punjab etc.*, decided on 15.12.2011, wherein it was held that if notice of required period was not given and in case objection regarding invalid notice was not taken by a person likely to be affected, there would be deemed waiver.

(16) Another aspect, which has also been tested by this Court is qua the preliminary objection raised with regard to the competency of the Gram Panchayat to change the use of land vide resolution dated 06.02.2015 (Annexure P-2). It is in the light of provisions of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act, 1961 in short) and Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as Rules, 1964 in short), we have no doubt that the Gram Panchayat is competent to make use of all its land vested or deemed to have been vested in the Panchayat for the benefit of inhabitants of the village in any manner and for that purpose *shamlat deh* could be used, as Rule 13(A) of the Rules, 1964 categorically empowers the Gram Panchayat with certain stipulations such as previous approval of the Government to use the land for providing a house to the landless workers residing in the Sabha Area, which reads as follow:-

“13-A. Giving of land to landless workers- A Panchayat may, with the previous approval of the Government, give land in Shamlat deh, free of cost, to a landless worker residing in the Sabha Area for construction of a house for his residence; Provided that the landless worker to whom such land is given shall not be entitled to sell, exchange or mortgage it except mortgaging it for the purposes of raising loan to construct a house on it.”

(17) As has already been discussed hereinabove, the Gram Panchayat has identified eligible persons and passed the resolutions dated 06.02.2015 (Annexure P-2) and 16.09.2016 (Annexure P-10) in consonance with the Policy dated 17.04.2001 issued by the Government of Punjab, and once the *Sanads* were got issued only thereafter, to achieve the object of allotment of five marlas plot to each of landless workers, was passed. Even the complaint dated 12.06.2015 made by the appellant was gone into and considered to verify the eligibility of beneficiaries. After conducting such exercise, respondent No.2-Director, Rural Development and Panchayat Department, Punjab dismissed the petition vide order dated 19.09.2016 (Annexure P-1), which was rightly upheld by the learned Single Judge vide its order dated 08.08.2018.

(18) We, therefore, after having given consideration to the statutory provisions and the material on record, do not find any infirmity and illegality in the order dated 08.08.2018 passed by the learned Single Judge to interfere and therefore, uphold the same.

(19) The present appeal as such stands dismissed being devoid of merits.

(20) Since the main appeal stands dismissed, all the pending miscellaneous application(s), if any, will also rendered infructuous.

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*Shubreet Kaur*