

ITEM NO.43

COURT NO.5

SECTION IVB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.26502/2010

(Arising out of impugned final judgment and order dated 05/02/2010
in LPA No. 82/2006,05/02/2010 in LPA No.82/2006 passed by the High
Court of Punjab & Haryana at Chandigarh)

SHER SINGH YADAV AND ANR.

Petitioner(s)

VERSUS

STATE OF HARYANA AND ORS.

Respondent(s)

(With interim relief and office report)

WITH S.L.P.(C) No.5137/2011

(With appln.(s) for intervention and office report)

Date: 02/07/2015 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Petitioner(s)

Mr. S.S. Shamsbery, Adv.
Mr. Sandeep Singh, Adv.
Ms. Preeti Bhardwaj, Adv.
Mr. Ishu Prayas, Adv.
Mr. R. C. Kohli, AOR

SLP 5137/11

Dr. J. P. Dhanda, AOR
Ms. Raj Rani Dhanda, Adv.
Mr. Vineet Dhanda, Adv.
Mr. N.A. Usmani, Adv.

For Respondent(s)

Mr. Kapil Sibal, Sr. Adv.
Dr. A.M. Singhvi, Sr. Adv.

Signature Not Verified

Mr. R.N. Karanjawala, Adv.
Ms. Ruby Singh Ahuja, Adv.

Digitally signed by

Chetan Kumar

Date: 2015.07.03

16:57:07 IST

Reason:

Ms. Aakansha Munjhal, Adv.
Ms. Anisha Mitra, Adv.
Mr. Manik Karanjawala, Adv.
for M/s. Karanjawala & Co.

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Mr. Alok Sangwan, AAG
Dr. Monika Gusain, AOR

Mr. Kamal Mohan Gupta, AOR

Mr. Hemant Sharma, Adv.
Ms. Indu Sharma, AOR

UPON hearing the counsel the Court made the following
O R D E R

Learned counsel appearing for the petitioners, criticizing the order passed by the learned Single Judge in writ petition which has received affirmation by the Division Bench in L.P.A. No.69 of 2005 (O&M), have submitted that the High Court has committed a grave error by coming to hold that Rule 5 of the Punjab Village Common Lands (Regulation) Rules, 1964, has been complied with. To substantiate the said plea, learned counsel for the petitioners have drawn our attention to paragraph 3 of the impugned order passed by the Division Bench. The said paragraph reads as follows:

"During the pendency of the appeal before this court, Gram Panchayat passed fresh resolution dated 25.10.1994, whereby it resolved to sell the land in open auction and to exchange the same with the land belonging to respondent No.3 to 8. Again the Gram Panchayat passed a resolution dated 30.5.1997, cancelling earlier resolution dated 25.10.1994 and reviving the resolution dated 29.6.1991. Consequently, the Gram Panchayat again agreed to exchange land with the land belonging to respondent No.3 to 8, copy of which was forwarded to the Government for according necessary approval. Sanction was accorded vide order dated 15.9.1997."

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It is urged by the learned counsel appearing for the petitioners that the Division Bench has also fallen into an error by not taking note of an earlier Division Bench decision rendered in L.P.A. No.239 of 1994 on 16 th February, 1996, wherein it has been held thus:

"From the discussion made above, it is apparent that the order in question passed by the Govt. approving the resolution of the Gram Panchayat for exchange of its land was not passed after complying with the mandatory provisions of Rule 5 of 1964 Rules and therefore the matter is remitted to the Govt. to reconsider approval or otherwise of the resolution passed by the Gram Panchayat strictly in compliance with Rule 5 of 1964 Rules. While taking the matter in hand, the Govt. would hear the contesting parties. The Letters Patent Appeal is, thus, partly allowed giving liberty to the appellants to seek approval of the Govt. afresh in the manner fully indicated above. The result of the Letters Patent Appeal shall follow in Civil Writ Petition Nos.1991 of 1995 and 16487 of 1995."

Dr. Abhishek Manu Singhvi and Mr. Kapil Sibal, learned senior counsel appearing for the respondents, have urged that the purport of the order passed by the earlier Division Bench on February 16, 1996, has to be appropriately understood and when it is understood in the apposite context, it would be clear that there was a remit and it was confined

to that particular resolution. It is urged by them that the Panchayat had passed a separate resolution dated 30th May, 1997, which has been the subject matter of the present litigation and hence, it has no nexus with the earlier resolution. That apart, it is also urged that the Governor, who is the competent authority, had approved the resolution on 15th September, 1997, and, therefore, if there had been any defect, the same has been taken care of. Quite apart from that, it is urged that the original resolution dated

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29th June, 1991, was never set aside by any court and, therefore, the Gram Panchayat was within its authority to pass a fresh resolution on 30th May, 1997

reiterating/reviving the said resolution, for it is the only requirement which has to be done in accordance with rules. It is their further submission that there is no prohibition to reiterate or revive a resolution having a similar nature or character, if it so held as a proposition of law, the Gram Panchayat would become defunct under the statute. In this context, the learned senior counsel appearing for th

respondents have drawn our attention to the paragraphs 3B, 3C, 3D and 3G of the counter affidavit filed by the State Government before this Court to highlight that the mandate of the rule has been duly complied with.

It is apt to note submission advanced by the learned counsel for the petitioner in oppugnation to the submissions urged by the learned counsel for the respondents. It is urged that the petitioners have been unfairly treated by the Panchayat, as well as by the State Government, for the land that had been exchanged by the respondents in lieu of the land that belonged to the petitioners have been acquired by the State Government and no compensation has been paid

Additionally, it is put forth that a Gram Panchayat while passing a resolution under Rule 5, even if it complies with the adjectival law, yet it has to take into consideration the substantive interest of the inhabitants of the village and that having not been taken, the said resolution deserves to be struck down.

Learned counsel appearing for the State shall file the counter affidavit that was filed before the High Court. Needless to emphasize, learned counsel for the parties would be at liberty to address other legal issues, for we have

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recorded certain submissions for convenience.

Let the matter be listed for final disposal on 6th October, 2015, for further hearing.

(Chetan Kumar)
Court Master

(H.S. Parasher)
Court Master