

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) NO...28189 OF 2014
(CC NO.2940 OF 2014)

WITH

SPECIAL LEAVE PETITION (C) NO...28195-28196 OF 2014
(CC NO.1707 OF 2014)

RAUNAQ EDUCATION FOUNDATION

..... PETITIONER

VERSUS

STATE OF HARYANA & ORS.

..... RESPONDENTS

ORDER

JUDGMENT

ADARSH KUMAR GOEL, J.

1. Delay condoned. Heard on merits.
2. These petitions have been preferred against the Judgment and Order dated 27th September, 2013 passed in LPA No.1687 of 2013, Order dated 16th September, 2013 passed in LPA No.1618 of 2013 and Order dated 16th December, 2013 passed

in RA LP No.133 of 2013 in LPA No.1618 of 2013 by the High Court of Punjab and Haryana at Chandigarh, upholding the order of the learned Single Judge, declining to interfere with the Order of the Government of Haryana dated 18th September, 1998, resuming land measuring 76 acres 5 kanals and 5 marlas, except land measuring 7 acres left to be retained by the petitioner foundation.

3. The case of the petitioner is that it gave a proposal on 1st April, 1972 to start a educational complex for the benefit of the residents of the State of Haryana. Accordingly, the State of Haryana released

76 acres of land from the Forest Department and acquired the same under the Land Acquisition Act, 1894 vide notifications dated

15th May, 1972 and 28th August, 1972 under Sections 4 and 6 respectively. Award for compensation was given on 21st February, 1973. Possession was delivered to the petitioner on 24th January, 1974 subject to certain conditions including the requirement to make construction within the specific time. Since the land was not utilized as expected, in terms of agreement dated 18th February, 1988 under which the land was given to the petitioner subject to certain conditions, the Village Panchayat sought return of the land by passing a resolution dated 20th October, 1989. On that basis, after due enquiry,

resumption Order dated 18th September, 1998 came to be finally passed after various proceedings holding that the petitioner failed to comply with the conditions subject to which land was given to it. It was held that the petitioner failed to utilize the land for the purpose for which it was given, except a part of it.

4. The petitioner called in question the said order by filing a writ petition. Learned single Judge, after due consideration, did not find any merit in the contentions raised on behalf of the petitioner. It was observed :

"It is appropriate to notice that actual running of the school was the primary consideration of the State of Haryana in allotting 76 acres of land to the foundation. The petitioners have not produced any documents in regard to admission of children, the year in which the admissions were started, the classes in which the admissions were made, the number of children admitted in a particular class, the number of faculty members, their date of appointment, qualifications etc. and above all the performance of the school children in academics or extracurricular activities. It is also doubtful if the school had been affiliated with any educational board. I have no hesitation to hold that the petitioners have intentionally withheld this information as revelation thereof would completely shake their tall claim to start an educational institutions, one of the best in the area to impart quality education.

Admittedly, the petitioners did not start construction of stated third phase by the time, they filed the petition. The joint inspection was conducted in October/November 1997. A Local Commissioner was appointed by this Court in August 1999. Shri Sanjeev Sharma, Local Commissioner inspected the site in the presence of the petitioners and made a detailed report in compliance with order dated 16.08.1999. The petitioners have not challenged the correctness of this report with regard to extent of construction. The joint inspection, in no circumstances, could reveal

something more than what is contained in the report of the Local Commissioner. Under these circumstances, the supply or non-supply of joint inspection report also loses its significance. In other words, no prejudice has been caused to the petitioners for want of supply of joint inspection report.

The petitioners have tried to justify their failure to complete the project for want of adequate funds due to financial difficulties of their funding sources. The possession of land was delivered in January 1974. The foundation should have shown keenness to complete the project at the earliest. It remained silent for 12 years. Thereafter also, it did not complete the project within three years of entering into agreement in February 1988. The plea of inadequacy of funds more than 25 years after their approaching the State of Haryana for allotment of land cannot hold ground. Rather the foundation should have, on its own, surrendered the land to the State of Haryana if it was not able to complete the project due to inadequacy of funds.

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The State of Haryana acquired more than 76 acres of land belonging to the Gram Panchayat, Village Bari. The Gram Panchayat's land necessarily denotes land meant for common purposes of the village. The people of the village have been deprived of the benefits of this common land due to a false promise made by the foundation. As the foundation utterly failed to achieve the object for which the Gram Panchayat was deprived of land of its ownership, no fault can be found in the decision of the State Government. Rather, the officer who passed the impugned order has taken a very liberal and reasonable view of the matter and left 7 acres of land at the disposal of foundation, though the entire land could be resumed. In view of the above, the contention of the petitioners that the impugned order is vitiated for want of supply of documents, joint inspection report or an opportunity of personal hearing is devoid of merit and is accordingly rejected. Similarly, the other plea that resumption order could not be passed in the circumstances of the present case is untenable.

Before parting with this order, it is appropriate to mention that the land resumed by the impugned order has been re-vested in the Gram Panchayat. A mutation has been sanctioned in favour of the Gram Panchayat,

which has been challenged in CWP No.13676 of 2007. The land after resumption would now be available for common benefit of the villagers.

As an upshot of the discussion made hereinabove, the foundation is guilty of using the land for personal gain, failed to complete construction in compliance with terms and conditions of the agreement even uptill 1999 and further defaulted in proving true to its promise/representation made to the State as back as in the year 1972, rather deprived the villagers of huge land meant for their common benefits, therefore, in my considered opinion, allowing the prayer of the petitioners would amount to putting premium on their failures. The petitioners, therefore, cannot be held entitled to relief in exercise of jurisdiction under Article 226 of the Constitution of India."

5. The Division Bench after thorough consideration reiterated the above findings as follows :

"19. Thus, from the reading of the said affidavit also, which had been filed on 26.08.2012, nothing has been brought on record to show that any such utilization has been done regarding the setting up of an educational complex. The affidavit only pertains to the efforts made regarding the administration of the school and does not talk about utilization of the huge chunk of land for any further expansion for the purpose of setting of an educational complex. The site plan which has been attached alongwith the said affidavit goes on to show that there is a proposed boys and girls hostel to be set up, a proposed Apollo Institute of Management and Studies. Thus, the submission of the counsel for the appellants that in pursuance of the interim order passed, the Foundation had complied with the terms of the allotment, is also without any basis. The observations of the Learned Single Judge that the objects for which the land was acquired were not met and the Gram Panchayat was deprived of its ownership due to the false promise made by the Foundation for brining education to the residents of the State of Haryana, are absolutely justified.

20. Another factor which is to be taken into consideration is that in pursuance of the resumption, the Gram Panchayat had also submitted a bank draft of 2,76,548/- vide letter dated 16.10.1998, regarding the

cost of the land which had been resumed and in pursuance of which, mutation had also been entered in favour of the Gram Panchayat. As per the written statement of respondent No.5 - Gram Panchayat, the said amount had been accepted by the appellants and they had taken possession. No replication to the written statement, filed by respondent No.5 - Gram Panchayat, was filed and thus, the Trust has also retained the said amount for all this period.

21. Accordingly, there is no infirmity or illegality in the order of the Learned Single Judge, upholding the resumption, which would warrant interference in appeal. The present appeal is, accordingly, dismissed in limine."

6. When the matter came up before this Court on 24th February, 2014, the following order was passed :

"In the meantime, the petitioner may file additional affidavit indicating how much area of the land is still an open land and what are the nature of construction which have been done by the petitioner after allotment of the land."

The affidavit filed in pursuance of the above order was not found to be satisfactory and on 11th April, 2014, the following order was passed :

"Counsel for the petitioner is directed to file a better affidavit within a period of one week explaining as to how the area which has been alleged not have been used by the petitioner for the school purposes have been utilized and also whether the construction was undertaken after the interim order was passed by the High Court."

7. We have heard Shri Kapil Sibal, learned senior counsel for the petitioner.

8. He submitted that the petitioner is ready and willing to

construct and run a school for 500 poor and under privileged children of the area at its cost, within the time frame as may be laid down and subject to appropriate conditions. The petitioner will bear the education cost, fees etc. of such poor and under privileged children for all times to come.

9. We have bestowed our serious consideration to the proposal put forward. Though any proposal for advancement of poor and under privileged children is welcome but the background of the matter noticed above shows the track record of the petitioner which renders the proposal suspect and in any case land allowed to be retained being enough if the petitioner wishes to carry out the proposal now given, no ground is made out to interfere with the impugned order. The petitioner took prime land of the State and failed to comply with the conditions on which the land was allotted, for a long time. Accordingly, the land stands resumed by the State of Haryana and as per order of the High Court, the land stands re-vested in the Gram Panchayat. Mutation has also been sanctioned in favour of the Gram Panchayat and the land is to be used for the benefit of the villagers.

10. As already noted, the High Court has duly examined all aspects of the matter. On orders of the High Court, an Advocate Commissioner inspected the site in the presence of representative of the petitioner, who reported that in the area

marked "X" no construction was made, as claimed. This report was not even challenged by the petitioner. Having taken huge track of prime public land in the name of advancing the cause of education, it failed to act as per the agreement and put forward the specious plea of lack of funds. The people of the village were deprived of the benefit of the common land due to false promise of the petitioner. Still, 7 acres of land has been allowed to be retained by the petitioner. If the petitioner wants to serve poor and under privileged children as now proposed, it is free to do so on this part of the said land.

11. We also find that the Division Bench considered the contention that construction was raised during pendency of proceedings. It was found that interim order dated 14th May, 2001 permitting construction was subject to result of the writ petition. Moreover, even thereafter no proper utilization of land was shown to have been made, though the brochure of school painted a rosy picture. Thus, the track record of the petitioner is to take private benefit from land of the village, taken over by the State at petitioner's instance to advance education - a public cause. Such individual and private benefit at the cost of public cannot be permitted and is contrary to constitutional values to be followed by the State of advancing welfare of the society. A finding of fact has been recorded by the competent authority about the failure of the petitioner to carry out the

terms and conditions of allotment which finding has been duly upheld, concurrently by the learned Single Judge and the Division Bench. Thus, public interest will not in any manner be advanced by interference by this Court on a mere offer to serve poor children when track record of the petitioner has been to advance individual interest at the cost of the village.

12. We have not been able to discern as to why forest land was acquired, if such land was already vested in the Government. There is nothing to show that the requisite permission was taken for converting forest land for non forest purposes. In **B L Wadhera vs. Union of India**¹, this Court considered the validity of gifting of the village common land for a hospital to Shri Chandra Shekhar, former Prime Minister. Quashing the said decision, this Court observed :

“41. Once the land was found to have been used for the purposes of forest, the provisions of the Indian Forest Act and the Forest Conservation Act would be attracted, putting restrictions on dereservation of the forest or use of the land for non-forest purposes. The Forest Conservation Act, 1980 has been enacted with the object of preventing deforestation. The provisions of the aforesaid Act are applicable to all forests. It is true that “forest” has not been defined under the Act but this Court in T.N. Godavarman Thirumulkpad v. Union of India¹ has held that the word “forest” must be understood according to its dictionary meaning. It would cover all statutorily recognised forest whether designated as reserved, protected or otherwise for the purposes of Section 2(i) of the Forest

Conservation Act. The term “forest land” occurring in Section 2 will include not only the forest as understood in the dictionary sense but also any area regarded as forest in the government record irrespective of the ownership. The provisions of the Forest Conservation Act are applicable to all forests so understood irrespective of the ownership or classification thereof. This Court has issued certain directions and guidelines for the preservation of forest and its produce in T.N. Godavarman case¹ which are not shown to have been implemented by the respondent State.

42. Section 2 of the Forest Conservation Act mandates that no State Government or authority shall make an order directing that any forest land or any portion thereof shall cease to be reserved or any forest land or any portion thereof may be used for non-forest purposes or forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to an authority, corporation, agency or any other organisation owned and controlled by the Government or any such land or portion thereof be cleared of trees which have grown therein — without the prior approval of the Central Government. The gifting of land, in the instant case, cannot, in any way, be termed to be for a forest purpose. Learned counsel appearing for the State of Haryana showed us a government order which had declared the area, covered by gift deeds, as forest prohibiting the cutting of the trees, declared as forest though for a limited period of 25 years. It is submitted that as the period of 25 years was not extended, the land, earlier declared as forest, had ceased to be a forest land. Such a plea is contradictory in terms. The State of Haryana is proved to be conscious of the fact that the land, intended to be gifted, was either the forest land or property of the Forest Department regarding which condition 6 was imposed in its order granting the approval for gifting the land by the Gram Panchayat to the Trust. It is too late now in the day for the respondent State to urge that as notification declaring the land as forest was not extended after initial period of 25 years, the same be deemed to not be a forest land or land used for the purpose of the forest. In the affidavit filed on behalf of the respondents it is specifically stated:

“It is submitted that the State Government had only given approval to the Gram Panchayat for gifting the land. However, while permitting the

Gram Panchayat to gift the land by way of abundant precaution, the State Government had imposed the condition to the effect that the land in question be got released from the Forest Department in accordance with law. The permission given by State Government did not mean at all that the donee or the donor was authorised in any way to divert the user of land in question."

The contradictory pleas taken and stands adopted by the respondent State strengthens the argument of the petitioner that the transaction of making the gifts in favour of Respondent 7 is actuated by considerations other than those specified under the Act and the Rules made thereunder.

43. Learned counsel, appearing for Respondent 7, has submitted that as the land is being utilised for the purpose of the Trust and Shri Chandra Shekhar is not taking any advantage from the said land, the action initiated by way of public interest litigation is not sustainable. There is no doubt that the land has not been utilised by Respondent 7 for any commercial purpose but it is equally true that the land is being utilised for purposes other than those contemplated under the Act and the Rules made thereunder for which the gift was approved to be made by the Gram Panchayat in favour of Respondent 7. We are not impressed with the argument of Respondent 7 that the gifted land was acquired for the purposes of welfare of the people and the upliftment of the inhabitants of the Gram Panchayat. The land appears to be utilised for the personal leisure and pleasure of some individuals including the Chairman of Respondent 7 which cannot be termed to be used for the upliftment of the poor and the oppressed as claimed. It cannot be disputed that in this country the position of the rural poor is worst. According to an assessment about 2/3rds of the rural population which consists of farm workers, small and marginal farmers, poor artisans and the unemployed agricultural labourers are possessed of 15 to 20% of the total available land. The number of owners of land with less than 0.2 hectares is about 29 million. When millions of landless agriculturists are struggling to get some land for feeding their families and protecting their lives, Respondent 7 has manoeuvred to usurp about 600 acres of land, apparently for not any public purpose. It is unimaginable that for the construction of a three-

room dispensary, Respondent 7 would require and the Gram Panchayat as also the State of Haryana would oblige by conferring State largesse of about 271 kanals of land. The shocking facts of the case further disclose that even this three-room dispensary has not been built on the land in controversy. For a reasonable person, as Respondent 7 is presumed to be, the aforesaid land should have been returned to the Gram Panchayat after public controversy had risen culminating in the filing of the present writ petition in public interest. This Court cannot remain a silent spectator where people's property is being usurped for the personal leisure and pleasure of some individuals under the self-created legal, protective umbrella and name of a trust. A politician of the stature of Shri Chandra Shekhar cannot claim to minimise the sufferings of the people by constituting the Trust and utilising the lands taken by it allegedly for the upliftment of the poor and the oppressed. The purpose of the respondent Trust may be laudable but under the cloak of those purposes the property of the people cannot be permitted to be utilised for the aforesaid objectives, particularly when the law mandates the utilisation of the transferred property in a specified manner and for the benefit of the inhabitants of the area, the poor and oppressed and the Scheduled Castes and Backward Classes. We are not impressed with any of the pleas raised on behalf of Respondent 7 that the land was acquired bona fide for the proclaimed object of upliftment of the people of this country in general and of the area in particular. We fail to understand as to how the country can be uplifted by personal adventures of constituting trusts and acquiring hundreds of acres of lands for the purposes of that Trust. It is nothing except seeking personal glorification of the persons concerned."

13. We cannot lose sight of above observations in view of the fact that we are dealing with the issue of allocation of public land to a private entity which requires fair, transparent and non arbitrary exercise of power in the light of mandate of Article 14 read with Articles 39 (b) and (c) of the Constitution. Once it is found that beneficiary of such allotment has abused its position

to its advantage and to the disadvantage of the public, this Court cannot interfere with the fair order passed by a competent authority resuming the land.

14. Thus, the proposal put forward cannot be taken at its face value and cannot be the basis for interfering with the impugned orders. The land has to be utilised by the competent authority in a transparent manner as per applicable policy and law.

The special leave petitions are dismissed.

.....J.
[V. GOPALA GOWDA]

NEW DELHI
October 14, 2014

.....J.
[ADARSH KUMAR GOEL]

JUDGMENT