

Darbara Singh and ors. Vs. the State of Punjab and anr.

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Court : Punjab and Haryana

Decided On : May-04-1994

Reported in : (1994)108PLR191

Judge : Jai Singh Sekhon and; H.S. Brar, JJ.

Acts : [Punjab Land Revenue Act, 1887](#) - Sections 5

Appeal No. : Civil Writ Petition No. 11702 of 1993

Appellant : Darbara Singh and ors.

Respondent : The State of Punjab and anr.

Advocate for Def. : J.N. Kaushal, Sr. Adv.,; T.S. Gujral and; G.S. Virk,

Advocate for Pet/Ap. : J.K. Sibal, Sr. Adv. and; R.L. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

Jai Singh Sekhon, J.

1. The pristine controversy involved in this writ petition is whether the shifting of Sub Division and Tehsil Headquarters from Jhunir created on 8th April, 1992 in the newly created District Mansa to Sardulgarh vide order Annexure P2 dated 13th September, 1993 was done in a whimsical manner and without application of mind

under the provisions of Section 5 of the Punjab Land Revenue Act. 1887 (hereinafter referred to as the Act).

2. The brush with the admitted facts in the respective pleadings of the parties is that the Chief Minister of Punjab at the floor of Vidhan Sabha on 26th March, 1992 announced the creation of new District Mansa. It was created vide Notification dated 8th April, 1992 with effect from 13th April, 1992. The Mansa District was created from the erstwhile area of Bhatinda District vide the above mentioned notification. There already existed a sub tehsil at Sardulgarh. However, a tehsil and sub division headquarter of District Mansa were created at Jhunir vide Notification Annexure P-I dated 8th April, 1992. On the representation of the people residing at Sardulgarh or nearby villages Shri Hardial Singh I.A.S. then Financial Commissioner. (Revenue Department) visited the spot on the directions of the Chief Minister Punjab and submitted his report. On the basis of the said report vide notification Annexure P-2 dated 13th September, 1993, the Sub Division and Tehsil Headquarters from Jhunir was cancelled and shifted to Sardulgarh. The petitioners Sarpanches of the village Jhunir, Ghudu Wala, Lalian Bhane Kalan etc. have through this writ petition challenged the shifting of the Sub-Division and Tehsil Headquarters from Jhunir to Sardulgarh vide aforesaid notification, inter alias on the ground of non application of mind and in a whimsical manner contending that all the facts mentioned by Shri Hardial Singh in his report were in existence at the time of creation of Sub Division and Tehsil Headquarters at Jhunir. It was also stressed that Jhunir, is a central place of 79 villages mentioned in para 5 of the petition whereas Sardulgarh is located on one side of the State of Punjab as it is the last village touching the boundary of Haryana State. Reference was also made to a number of preceding reports of the Committee and Commissions set up by the Punjab Government suggesting that Jhunir be made Tehsil-cum-Sub-Division Headquarters. It was also maintained that before taking the decision Annexure P-2. no committee whatsoever was constituted by the Punjab Government at any level and the nominee of the Committee had not consulted or taken into confidence the residents of the villages covered by this Notification. The members of the Panchayats were also not taken into confidence and no opportunity of hearing was afforded to them. The District Administration of Mansa was not even consulted. It was further averred that the provisions of

Section 5 of the Act conferring vast and sweeping powers altering the boundaries of tehsils, district etc. is ultra vires of the Constitution of India and that the Sub Division cannot be shifted or abolished at the mere sweet will, whims and caprice of the Punjab Government. On these premises the petitioners seek the quashment of Notification Annexure P-2 abolishing Jhunir Sub Division and Tehsil Headquarters and shifting the same to Sardulgarh.

3. This petition was resisted by the State through an affidavit of Shri J.L. Sood, Under Secretary to Government, Punjab, Revenue (E) stating that a Reorganisation Committee under the Chairmanship of S. Beant Singh then Revenue Minister, Punjab was constituted in the year 1981. In the second meeting held on 15th October, 1981; the Committee discussed the reorganisation of various districts of Punjab State including Bhatinda District. The Committee decided that out of Bhatinda District a new district of Mansa be created in which Mansa, Budhlada and Sardulgarh Tehsil should be created. It was further decided that Budhlada Sub tehsil should be upgraded as a new Tehsil and Sardulgarh Sub Tehsil being a border area, should also be upgraded as Tehsil. Soon after the creation of new, district of Mansa and Sub Division/Tehsil of Jhunir there was demand to make Sardulgarh as Sub Division/Tehsil in place of Jhunir. On this Shri Hardial Singh, I.A.S. then Chairman of the Reorganization Committee was deputed by the Government to ascertain the wishes of the people of Jhunir Sub Division and Sub Tehsil Sardulgarh regarding the continuance of the headquarters of the Sub Division at Jhunir or shifting it to Sardulgarh. In pursuance of the Government directions, Shri Hardial Singh along with the Deputy Commissioner and other District Officers of the District Mansa toured and heard the arguments of the prominent and respectable people of Jhunir and Sardulgarh areas for and against the proposal of shifting of headquarters of Tehsil/Sub-Division Jhunir to Sardulgarh. Thereafter, in his report dated 17th December, 1992 submitted to the Government, Shri Hardial Singh stated that the case of people of Sardulgarh was more weighty than that of the village Jhunir being converted into Sub Division, on the basis of the grain market Mandi, population and the existence of the Sub Tehsil at Sardulgarh for the last about 18 years. Thus, in his report, Shri Hardial Singh had recommended the abolition of the Sub Division/Tehsil Jhunir and shifting it to Sub Division Sardulgarh. It is further averred that no infrastructure

was provided for functioning of the Sub Division at Jhunir. Thus, the shifting of the headquarters would not result to any unnecessary loss to the exchequer or State or to the people. On the other hand necessary infra-structure is already in existence at Sardulgarh where sub Tehsil exists. The short distance of Jhunir from Mansa Headquarters while that of Sardulgarh being at great distance was also stressed. Along with the return, the notification dated 13th September, 1993 (Annexure P-I) was also appended. In additional affidavit, the State Government had further clarified its stand.

4. In replication filed by Darbara Singh petitioner, the stand of the State is controverted regarding application of mind by Shri Hardial Singh, I.A.S. Chairman of the District Re-Organisation Committee. It was further maintained that there is no building for housing the officers of the Sub Division and Tehsil Headquarter at Sardulgarh, but 20 quarters have been built by the P.W.D. (BAR) at Jhunir for housing the Government officials. Similarly, there is a Patwarkhana building which is installed at the Sub Divisional level with 16 rooms. It was highlighted that the Panchayat of village Jhunir had already passed a resolution placing 8 acres of land at the disposal of the Government which should be adequate for developing new infra-structures.

5. A Division Bench of the Court vide order dated 23rd September, 1993 gave notice of motion to the respondents and granted ad-interim stay qua the operation of the impugned order, Shri Durga Dass, Sarpanch of the Gram panchayat Sardulgarh also moved Civil Misc. Application No.9683 of 1993 under Section 151 Civil Procedure Code for vacation of ex-parte stay order granted on 23rd September, 1993 by this Court, but the Division Bench refused to vacate the same vide order dated October 19, 1993. Subsequently vide order dated November 11, 1993 a Division Bench of this Court allowed the private respondents Shri Durga Dass etc. to appear as interveners, although they were not necessary parties.

6. During the course of arguments, on the written request of Shri J.K. Sibal, learned Senior counsel for the petitioners, the respondents were directed to depute a responsible person to produce the relevant record of the case for ascertaining reasons of creating Jhunir as Sub Division. In pursuance of that order

the State Government has produced a copy of the minutes of the meeting dated 5th April, 1992, which in turn reveals that meeting was held by the Financial Commissioner (Revenue) along with the Deputy Commissioner, Patiala and with other officers on 29th March, 1992 whereas another meeting was held on 31st March, 1992 between State Minister (Revenue) and Commissioner, Patiala Division after joining concerned M.L.As. for creating new Districts. It is further mentioned that on 2nd April, 1992, the Chief Minister also held meeting between the Commissioners of different Divisions and ultimately, it was suggested that in Mansa District, there should be Sub Division at Jhunir comprising 79 villages.

7. We have heard the learned counsel for the parties in detail besides perusing the record very carefully. The provisions of Section 5 of the Punjab Land Revenue Act 1887 empowers the State Government to vary the limits and alter the number of tehsils, district and divisions into which the State is divided. Obviously, this power has been given to the State to effectively administer the collection of revenue and maintain land record as the preamble to the Act clearly shows that the law has been amended with respect to the making and maintenance of records of rights in land, the assessment and collection of land revenue and other matters relating to land and the matters incidental thereto. The preamble reads as under:-

'An Act to amend and declare the Land Revenue Law for the Punjab. Whereas it is expedient to amend and declare the law in force in the Punjab with respect to the making and maintenance of the records of rights in land, the assessment and collection of land revenue and other matters relating to land and the liabilities incidental thereto.... ..

A bare perusal of the same reveals that this law has been enacted to make provisions in respect of records of rights in the land, the assessment and collection of land revenue and other matters relating thereto. Thus, there is absolutely no doubt that the State Government has such power to alter the limits and boundaries of Sub Divisions, tehsils etc. This power cannot be said to be arbitrary, capricious or unbridled as the purpose of enacting the Act clearly circumscribes the same. Moreover, the learned counsel for the petitioner has rightly not pressed that Section 5 be declared ultra vires the provisions of the Constitution.

8. The question then arises whether this Court on writ jurisdiction side had power to examine the creation/shifting of sub division or tehsil by State Government without application of mind in a whimsical and capricious manner. This question is well answered by the Apex Court in B.N. Shankarappa v. Uthanur Srinivas and Ors., A.I.R. 1992 S.C. 836. In that case, the controversy involved the powers of the Deputy Commissioner under Section 4(1) of Karnataka Zila Parishads, Taluk Panchayat Samithis, MandalPanchayats and Nyaya Panchayats Act, 1983. While dealing with the controversy in para 7 of the judgment, the ratio of the earlier decision in J.R. Raghupathy v. State. of A.P., A.I.R. 1988 S.C. 168 was approved as under:-

'...that the ultimate decision as to the place or location ofMandal Headquarter is left to the Government to decide and conferment ofdiscretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the Courts to interfere with the discretion so exercised. This is not to say that the discretion can be exercised in an arbitrary or whimsical manner without proper application of mind or for ulterior or mala fide purpose. If it is shown that the discretion was so exercised it would certainly be open to the Courts to interfere with the discretion but not otherwise.'

9. A bare perusal of the same leaves no doubt that if the concerned authority had exercised in an arbitrary and whimsical manner without application of mind or for ulterior or mala fide purposes and if it is shown that such discretion was suffering from any of these defects, it will be open to the Court to interfere with the same but not otherwise. In the case in hand, the petitioners had not imputed any mala fides to the concerned officials of the State. Their only grouse is that abolishing of the newly created Sub Division cum tehsil at Jhunir in hot haste clearly spells out that the decision was taken in a whimsical manner and without application of mind.

10. In view of the above ratio of the Apex Court, there is no force in the contention of Shri Gopal Krishan Chatrath, the learned Advocate General, Punjab that the Court had no jurisdiction to examine the creation of new districts or sub divisions, as the same was created by the Government in performance of its legislative function enjoined upon it by Section 5 of the Act. He has placed reliance in this

regard in the earlier judgment of the Supreme Court in *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur*, A.I.R. 1980 S.C. 882, wherein the controversy regarding declaration of any area as town area or imposition of octroi in that area was involved under Section 6 of the U.P. Town Area Act, 1914. Earlier in the notification issued there was omission to specify octroi limits. Subsequently, notification was issued rectifying this omission. Under these circumstances, it was held that the above referred provision does not make it necessary expressly or impliedly to follow the principle of *audi alteram partem*. The above referred findings of the Apex Court are not attracted to the facts of the case in hand. There is no dispute that the creation of the district or sub division or changing the boundaries of the existing sub division is the sole prerogative of the Government and such power can be exercised from time to time as held by the Apex Court in bunch of writ petitions, in *Rameshchandra Kachardas Porwal and Ors. v. State of Maharashtra and Ors.*, A.I.R. 1991 S.C. 1127. While dealing with the establishment of principal market and subsidiary markets under the provisions of Maharashtra Agricultural Produce Marketing (Regulation) Act 20 of 1964, but it is not the authority for the proposition that sub markets can be established at the whims or caprice of the Government.

11. For determining whether the State Government has taken the first decision in hot haste in creating Jhunir sub division and tehsil vide notification Annexure P1 dated 8th April, 1992. It transpires that due to non production of the minutes of the meeting held by the various authorities on 29th March, 1992 and 31st March, 1992 and 2nd April, 1992, presumption can be raised at the most that the decision was taken after due application of mind and considering pros and cons of the matter, but this circumstance itself will not debar the government from taking a fresh look at the matter on the representation of the habitants of the area of Sardulgarh, especially when a sub tehsil did exist at the latter place for the last 18 years. The report of Shri Hardial Singh, Financial Commissioner(Revenue)-cum-Chairman of the District Re-organisation Committee reads as under:-

The Chief Minister Punjab ordered me to go to Jhunir and Sardulgarh for having him my opinion/view regarding continuance of headquarters of Jhunir Tehsil/Sub Division of Jhunir or it (headquarters) should be shifted to Sardulgarh. In

compliance thereof I visited Jhunir and Sardulgarh. Deputy Commissioner, Mansa and other officers also accompanied me.

2. People of Jhunir put forth the following arguments for keeping the headquarters of Jhunir Tehsil/Sub Division at Jhunir: -

(1) Jhunir town is located in the centre of the Sub Division whereas Sardulgarh is at its one end.

(2) It becomes difficult to go to Sardulgarh during rainy (flood) season.

(3) For visiting district Headquarters-Mansa one will have to pass through Jhunir, if Sardulgarh is made the Headquarters then one will have to go to Sardulgarh first and then through Jhunir to Mansa.

(4) Panchayat of Jhunir is prepared to provide 18 acre of land for the construction of sub division complex. This land is about one kilometer away from the highway and the area being at a height is not prone to flood.

(5) Jhunir being close to main line of Bhakhra water as per requirements of the sub division would be available.

(6) Jhunir is surrounded by big villages.

3. On my visit to Sardulgarh, the eminent people of the area put forth their arguments in favour of shifting the headquarters of Sub division (Jhunir) to Sardulgarh, whereas Jhunir is a village, Sardulgarh is a very old grain market (Mandi) having population of 25 thousand. It (Sardulgarh) has been functioning as sub tehsil for the last 18 years. There is no need to reproduce the arguments advanced by the eminent people of Sardulgarh as these stood entered in the demand charter submitted by them.

4. After meeting/hearing the eminent people of the Jhunir and Sardulgarh areas I discussed the matter with the Deputy Commissioner and other District Officers of Mansa. Their views were in favour of locating the sub division at Sardulgarh.

5. In view of the opinion of District Administration and after consideration of arguments advanced by both the parties I drew this inference that it would be more useful if the headquarters of the sub division(Jhunir) is shifted to Sardulgarh. It is correct that if Sardulgarh is made the headquarters of the sub division, somevillages will make a request that they may be merged with sub division Mansa which can be acceded to.

6. After touring Mansa District I apprised the Chief Minister of the whole position and he also expressed his opinion that Sardulgarh should be made the headquarters of this sub division.

7. If Financial commissioner Revenue desires that the matter be dis-cussed in the meeting of the District Reorganization Committee, then this matter could be placed before the Committee in its next meeting. The Deputy Commissioner, Mansa and Commissioner of Ferozepur Division may be asked to attend the meeting. But if the Financial Commissioner Revenue feels that there is no need to place the matter before the Committee, then he may take further action in the matter without placing it before the committee.

Sd/-Hardial Singh

Chairman, District

Reorganization Committee, Punjab.

17.12.1992.'

A bare glance through the same leaves no doubt that he has not only consulted the residents of the area, but also has given cogent reasons for shifting the sub division and tehsil headquarters from Jhunir to Sardulgarh. He has also taken the opinion of the District Administration in coming to this conclusion. There is a considerable force in the contention of Shri Jagan Nath Kaushal, Senior Advocate, learned counsel for the intervenes that Sardulgarh had better claim for creation of Sub Division or Tehsil Headquarters, as Jhunir falls at a short distance hardly 13 Kms from Mansa District Headquarters, whereas Sardulgarh is located at 40 kms from Mansa as averred in para 5 of the additional affidavit. This circumstances

clearly justifies the shifting of sub division and tehsil headquarters to. Sardulgarh. No doubt all these factors must have been taken into consideration while creating sub division cum tehsil headquarters at Jhunir by the concerned authorities, but there is reasonable possibility of certain factors having been not noticed by the concerned authorities. Admittedly, so far the State Government has not incurred substantial expenses on the infrastructures of tehsil and sub division headquarters at Jhunir. Consequently, it cannot be said that the impugned order would result in unnecessary expense to the State. Mere factum that the Panchayat of village Jhunir had resolved to give 18 acres of land to the Administration for this purpose is also not material because it is the constitution obligation of the State to spend on the infrastructure i.e. the public buildings for housing sub division and tehsil headquarters.

12. For the reasons recorded above, we find no merit in this writ petition. It is ordered to be dismissed but without any order as to costs.

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