(1967) 07 P&H CK 0001

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 33 of 1963

Lakhi Ram		APPELLANT
	Vs	
The Gram Panchayat Gudah		RESPONDENT

Date of Decision: July 10, 1967

Acts Referred:

- Punjab Village Common Lands (Regulation) Act, 1961 - Section 3(1)

Citation: (1968) 1 ILR (P&H) 301 : (1968) 70 PLR 106

Hon'ble Judges: R.S. Narula, J; D.K. Mahajan, J

Bench: Division Bench

Advocate: A.L. Bahri and Ravinder Mohan Suri, for the Appellant; J.N. Seth, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R.S. Narula, J.

The only question argued by Shri Amit Lal Bahri, the Learned Counsel for the plaintiff-appellant in this appeal under clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court dismissing his Regular Second Appeal and maintaining the decree of affirmance of the first Appellate Court dismissing the suit of the plaintiff for a permanent injunction to restrain the respondent Gram Panchayat from interfering with the possession of the appellant over the disputed ghair (marked ABCD in the plan attached to the plaint), which is a part of the abadi deh of the village, relates. to the question of retrospectivity of sub-section (1) of Section 3 of the Punjab Village Common Lands (Regulation) Act (18 of 1961) (hereinafter referred to as the 1961 Act).

2. On the issue of a notice by the defendant-respondent (hereinafter referred to as the Panchayat) u/s 21 of the Punjab Gram Panchayat Act, 1952, the appellant filed the suit from which the present appeal has arisen on the ground that the ghair in

dispute belonged to him and was in his possession and was not situated on any thoroughfare or public place. The alternative plea on which the plaintiff''s claim was based was to the effect that the property in question formed part of the public site of which the plaintiff was entitled to continue to be in possession as a biswedar in the village. The main ground on which the suit was contested by the Panchayat was that the site in dispute vested in it as it was a part of a public thoroughfare and a public place. The first issue framed in the case about the plaintiff being the exclusive owner of the site in dispute has been decided against the appellant at all stages and no more arises in this appeal. On the second issue it was found by the trial Court that a biswedar could not take possession of the public site as it was being used as a thoroughfare. In plaintiff''s appeal against the dismissal of the suit by the trial Court it was held by the first Appellate Court that a particular portion of the site formed part of the abadi deh and was as such a public place which had vested in the Gram Panchayat. Regarding the ghair in dispute it was held that it was a part of the abadi deh and any biswedar of the village was entitled to occupy it. The decree of the lower Court dismissing the suit was, however maintained even in respect of the ghair on the ground that the appellant had failed to prove that he was in possession of the property in question. In the second Appeal before a learned Single Judge of this Court, it was argued on behalf of the appellant that once the site in question had been found to beta part of the abadi deh and the appellant was held to be a biswedar in the village the site could not according to law vest in the Panchayat, and therefore the Panchayat had no jurisdiction to issue any notice to the appellant u/s 21 of the Gram Panchayat Act for the demolition of the structures made by the appellant on the said site. The fate of the second appeal depended, and so does the fate of this Letters Patent Appeal, on the question whether the abadi deh land in dispute had or had not vested in the Panchayat at the time of the issue of the notice u/s 21 of the Gram Panchayat Act. The relevant law in force at that time was admittedly the Punjab Village Common Lands (Regulation) Act (1 of 1954) (hereinafter called the 1954 Act). The plaintiff second appeal was dismissed by the Learned Single Judge on the ground that though the land in question could not have vested in the Panchayat under the 1954 Act itself, it so vested by operation of sections 3 and 4 of the 1961 Act with retrospective effect. The definition of shamilat deh in section 2(g) of the 1961 Act was held to govern even the pre-1961 cases which had arisen after the coming into force of the 1954 Act. An additional argument advanced on behalf of the Panchayat to the effect that the suit for permanent injunction was barred u/s 56 of the specific Relief Act 1877 as proceedings u/s 21 of the Gram Panchayat Act fell within the category of criminal cases, was negatived by the learned Single Judge. The plaintiff having thus been unsuccessful in his second appeal has come up in this further appeal to the Division Bench on a certificate granted by the learned Single Judge.

3. As stated in the opening part of this judgment, the fate of this case depends on the answer to the question whether the following definition of shamilat deh (only

extract quoted) contained in clause (g) of Section 2 of the 1961 Act is or is not deemed to have been transplanted and engrafted into the 1954 Act by operation of Sections 3 and 4 of the 1961 Act. In other words the question is whether land which would form part of shamilat deh according to the definition of that expression in the 1961 Act would be deemed to have vested in the Panchayat under the 1954 Act in spite of the fact that it would not have so vested under the 1954 Act itself if the special definition contained in the 1961 Act would not have been brought in :

2(g) shamilat deh" includes-

(1) lands described in the revenue records as shamilat deh excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, tarafs, parties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gorah deh; and

(5) * * * * *

* * * * *

4. "Shamilat law" has been defined in clause (h) of Section 2 of the 1961 Act to mean the 1954 Act so far as lands comprised in the State of Punjab as it existed prior to its reorganisation on November 1, 1956, are concerned. Sections 3 and 4 (1) of the 1961 Act may be quoted at this stage :

3. (1) This Act shall apply, and before the commencement of this Act, the shamilat law shall be deemed always to have applied, to all lands which are shamilat deh as defined in clause (g) of section 2.

(2) Notwithstanding anything contained in sub-section (1) or section 4, where any land has vested in a Panchayat under the shamilat law but such land has been excluded from shamilat deh as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law and the panchayat shall deliver possession of such land to such person or persons :

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its pin-poses, the rights, title and interest of the panchayat in such land shall hot so cease but the panchayat shall, notwithstanding anything contained in section 10, pay to the person or persons entitled to such land compensation to be determined in accordance with

such principles and in such manner as may be prescribed.

4. (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority all rights, title and interests whatever in the land,-

(a) which is included in the sharmlat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the. commencement of this Act, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the he use owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) * * * * *

(3) * * * * *

In the 1954 Act shamilat deh was not defined. The application of the whole of the 19?4 Act to certain parts of shamilat deh (due to river action and to lands allotted to displaced persons on quasi-permanent basis) had been excluded by the proviso to sub-section (2) of section 1 of that Act.

Section 3 of the 1954 Act was in the following terms :

3. Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement; instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever, in the land-

(a) which is included in the Shamlat Deh of any village, shall, on the appointed date, vest in a panchayat having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village. and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.

By section 16 of the 1961 Act, the 1964 Act has been repealed subject to the usual proviso that anything done or any action taken under the repealed Act shall be deemed to have been done or taken under the corresponding provisions of the 1961 Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under the new Act.

5. The only argument advanced by Shri Bahri on behalf of the appellant is that the use of the word "are" in section 3(1) and of the word "is" in clause (a) of sub-section (1) of section 4 of the 1961 Act shows that the operation of the said provisions was

intended to be prospective only and not retrospective. The submission of the, Learned Counsel is that if retrospectively was intended, the corresponding words which would have been used by the Legislature in the above-said provisions would have been "were" and "was" respectively. It is on this basis that the counsel has vehemently argued that the plaintiff''s appeal should be accepted and it should be held that the site in question not having vested in the Panchayat under the 1954 Act could not form the subject-matter of a notice u/s 21 of the Gram Panchayat Act at the hands of the Panchayat. It is, however, not disputed by Learned Counsel for the appellant that if the question as to the vesting of the property in dispute in the Panchayat is to be decided in accordance with the definition of "Shamilat deh" in the 1961 Act, his client is out of Court on the findings of fact recorded by the Courts below.

6. The question of retrospectively of section 3 (1) of the 1961 Act is not res integra. In Nathu and others v. Ptiran ILR (1932) P&H. 631, it was held by my Lord Mahajan, J. in a very lucid judgment that section 3 of the 1931 Act makes the definition of shamilat deh in clause (g) of section 2 thereof applicable to even those cases which had arisen under the 1954 Act. My learned brother further held that sub-section (1) of section 3 is both prospective and retrospective and, therefore, section 2 (g) has to be read into the 1954 Act to find out which lands are shamilat lands for the purposes of even that Act. In Parbhu etc v. The Gram Panchayat 1963 C.L.J. (P&H.) 267, Pandit, J. held that sub-section (2) of section 3 of the 1961 Act applies in those cases where the land fell within section 2(g) of that Act even since the time when the 1954 Act came into force. To the same effect was the judgment of Shamsher Bahadur, J. in Khaiali Ram v. Subedar Mast Ram (1964) 66 P.L.R. 629. The last judgment which goes against the appellant''s contention is of Shamsher Bahadur, J. in Ram Sukh and others v. The Statt af Punjab (1965) 67 P.L.R. 1047. The learned Judge held in that case that restrospective operation has been given to the definition of shamilat deh by section 3 of 1961 Act and the said definition takes effect from the date of enactment of the 1954 Act. The Learned Counsel for the appellant has not been able to cite any decided case in his favour. In my opinion the correct interpretation of section 3(1) of the 1961 Act as to its retrospectively admits of no doubt whatsoever. If analysed, the said sub-section provides for two things, namely :
(i) that the 1954 Act shall apply (in case of pre-1st November, 1958 Punjab) to all lands which are shamilat deh as defined in clause

(g) of section 2; and

(ii) that even before the commencement of the 1931 Act the 1954 Act (in respect of the same territory) shall be deemed to have applied to all lands which are shamilat deh according to the said definition contained in section 2 (g) of the 1961 Act.

7. No cogent reason has been advanced on behalf of the appellant as to why the second item out of the provision (as analysed above) should not be read and put

into effect. It is not disputed that the shamilat law (the 1954 Act in case of erstwhile Punjab) shall be deemed to have applied to all lands which were shamilat deh as from the date of coming into force of the earlier Act. The contention of Shri Bahri amounts to asking us to ignore in case of the retrospectively the words "as defined in clause (g) of section 2" from the purview of sub section (1) of section 3 of the Act. There is no justification whatsoever for placing such an unnatural and impossible construction on the provision. Moreover, it is obvious from a referance to the other sections in the 1961 Act that the Legislature clearly intended to give retrospective effect to the operation of the definition of shamilat deh to its fullest extent, that is, not only to the extent to which land has been included in shamilat deh which would not have been included in that expression but for the statutory definition; but also regarding land which would have been classed as shamilat deh but is now excluded from that expression on account of the specific provisions made in the statutory definition. Sub-section (2) of section 3 make this clear. Even in sections 7 (1), 7 (2), 8 and 12 of the 1961 Act. the Legislature has consistently referred to shamliat deh of the village "which vestes or is deemed to have been vested in the Panchayat under this Act". If the vesting under the 1961 Act was intended to be prospective only there could be no meaning in repeating in every relevant provision the phrase "or is deemed to have been vested" in the Panchayat under the 1961 Act. I am, therefore, unable to find any error whatsover in the decision of the learned Single Judge on the question in dispute. I respectfully agree with the judgment of my learned brother Mahajan, J. in the case of Nathu and others (supra and of Shamsher Bahadur, J. in Ram Sukh and others (supra) and with the reasoning on which law has been laid down in those cases as to the retrospectivity of section 3 (1) of the 1961 Act. It is, therefore, held that section 3(1) of the 1961 Act has given retrospective effect (with effect from the date of the coming into force of the shamilat law in the respective territories (as defined in section 2 (h) of the 1961 Act)) to the definition of shamilat deh as contained in clause (g) of section 2 of the 1961 Act, and that only such land would be deemed to have been shamilat deh for the purposes of 1954 Act prior to the coming into force of the 1961 Act (after January 9, 1954) which falls within the definition of that expression contained in section 2 (g) of the 1961 Act, irrespective of whether such land could or could not be held to be shamilat deh under the 1954 Act prior to the passing of the 1961 Act. In this state of law, the site in dispute which admittedly falls within the definition of shamilat deh contained in section 2 (g) must be held to have been vested in the Panchayat at the time of service of the "notice u/s 21 of the Gram Panchayat Act on the appellant. That being so, the decision of the learned Single Judge on this main question must be upheld.

8. Mr. J.N. Seth, the Learned Counsel for the Panchayat, wants us to hold that the suit of the plaintiff-appellant was also liable to dismissal on the additional ground that a suit for permanent injunction for restraining the criminal proceedings was barred by section 56 of the Specific Relief Act, 1877, and that proceedings u/s 21 of the Gram Panchayat Act are such criminal proceedings. Counsel has invited our

attention to a recent Division Bench judgment of this Court (Mehar Singh and Jindra Lal, JJ.) in the Gram Panchayat Ponohana v. The Judicial Magistrate, Palwal (1964) 66 P.I.R. 109, wherein, according to Mr. Seth, the view of Shamsher Bahadur, J. in Bansi Lal v. Gram Panchayat Mullana (1962) 64 P.L.R. 892, on this question is said to have found favour with the Bench as against the view of the Grover, J. in Mukh Ram v. The Gram Panchayat C.W. No. 1074 of 1959 decided on 27th October, 1960 which view the learned Judge preferred to follow in his judgment under appeal It is unnecessary to go into this controversy for two reasons. Once it is declared that the site in question had vested in the Panchayat and the appellant had encroached on it without any right, title or interest in the site, his suit has to be dismissed. If on the other hand it was found that the Panchayat had no interest in the land and the site had not vested in it, the Panchayat could be restrained from interfering with the fundamental property rights of the plaintiff (if the plaintiff was found to be the owner of the land) on the ground that the Panchayat''s proceedings u/s 21 of the Gram Panchayat Act would, in such a situation be wholly without jurisdiction. In the view we are taking of the main question argued before us, it is unnecessary to finally pronounce on this additional ground on which the respondent wants us to uphold the dismissal of the appellant''s suit.

9. For the foregoing reasons this appeal fails and is dismissed, but without any order as to costs.

D.K. Mahajan, J.

10. I concur.