

Before K. Kannan, J.

KAPUR SINGH AND OTHERS,—Petitioners

versus

**COLLECTOR-CUM-DISTRICT DEVELOPMENT AND
PANCHAYAT OFFICER, PATIALA**

AND OTHERS,—Respondents

C.W.P. No.10706 of 1991

24th August, 2011

Constitution of India - Art. 226 - Punjab Village Common Lands (Regulation), Act, 1961 - Ss. 2(g) & 2(g)(4) - Punjab Village Common Lands (Regulation) Rules, 1964 - RI.10-A, 10-B & 13-A - Challenge to allotment of property to respondents for housing purpose through resolution of Gram Panchayat on ground that such allotment is a property reserved in consolidation scheme for establishing school.

Held, That the shamlat deh itself contemplates several modes of user and it is not brought through either the principal Act or the Rules that such a change of user cannot be done at all. If the Panchayat, therefore, decides to grant a right of user to the classes of persons approved through the Rules then the fact that it was originally reserved for school will not detract from the power of the Panchayat to make way for such a change of user.

(Para 2)

Further held, that Rule 13-A that prescribes a procedure of previous approval of the Government has been brought through an amendment dated 07.10.1976. However, in this case, the resolution has been passed on 28.05.1973 and the allotment must have been made even before the amendment was brought which is seen from the mutation entries bringing the names of the respondents as allottees from the year 1974 itself. Consequently, it cannot be stated that Rule 13-A applied to the case of the private respondents.

(Para 3)

Manish Gupta, Advocate for P.K. Gupta, Advocate, *for the petitioners.*

Arvind Kumar, Advocate for R.K. Gupta, Advocate, *for the respondents.*

K. KANNAN, J. (ORAL)

(1) The petition is at the instance of the persons who are residents of Village Dera Meer Miran claiming that the alleged allotment of property to respondents No.3 to 19 for housing purposes through a resolution of the Gram Panchayat is not valid since the subject matter of such allotment is a property reserved in the consolidation scheme for establishing a school. The petitioner relies on the revenue entries made through the *Jamabandi* for the year 1958- 59 that describes the property in favour No.145 of an extent of 16-0 *gair mumkin school*. The contention is that the property reserved for school cannot be put to use for any other purpose and the Panchayat resolution purporting to allot the property to landless labourers, who did not have their own house to live in the Village, cannot be valid.

(2) The proceedings of the Gram Panchayat that have resulted in such allotment comes through a resolution passed on 28.05.1973 and it states that as per the scheme of the Government, the lands were being allotted free of cost for use of residential purpose under Rule 10(B) of the Punjab Village Common Lands (Regulation) Rules, 1964. The said rule reads as under:

“10. Land to be used free of charge. [Section 15(2) (g)]— The Panchayat may allow the use of land in Shamilat Deh vested in it free of charge to the inhabitants of the village for any one or more of the following purposes: —

(a) *x x x x x*

(b) *Residential purposes of the members of Scheduled Castes or Backward Classes or landless labourers or tenants or any other deserving person in genuine cases on ground of poverty.”*

The property which the rules provide for user free of charge, for inhabitants of village is *shamilat deh* that vests in the Panchayat. The Act defines *shamilat deh* under Section 2(g), which is an inclusive definition and also contains clauses that exclude certain classes of property which shall not taken as *shamilat deh*. For our purposes, it is necessary to reproduce Section 2(g) (4):

“*Shamilat deh, includes —*

(1) to (3) x x x x x

(4) *lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23-A of the aforesaid Act.”*

It is evident, therefore, the property which is set apart as a school still is *shamilat deh* and read with Rule 10-A, it is possible for the Panchayat to take a decision for use of the property for residential purposes. The *shamilat deh* itself contemplates several modes of user and it is not brought through either the principal Act or the Rules that such a change of user cannot be done at all. If the Panchayat, therefore, decides to grant a right of user to the classes of persons approved through the Rules then the fact that it was originally reserved for school will not detract from the power of the Panchayat to make way for such a change of user.

(3) The learned counsel appearing for the petitioner also points out to me that the property could be given by the Panchayat to land-less labourers only with the approval of the Government and in this case, the resolution does not contemplate such approval at all. It is again to be noticed that Rule 13-A that prescribes a procedure of previous approval of the Government has been brought through an amendment dated 07.10.1976. However, in this case, the resolution has been passed on 28.05.1973 and

the allotment must have been made even before the amendment was brought which is seen from the mutation entries bringing the names of the respondents as allottees from the year 1974 itself. Consequently, it cannot be stated that Rule 13-A applied to the case of the private respondents.

(4) For all the above reasons, if the power to transfer the property in *shamilat deh* could be anchored to rules outlined above, the petitioners cannot have a legal grounding to support the challenge brought through this writ petition.

(5) The writ petition is, accordingly, dismissed.

M. Jain

Before Mehinder Singh Sullar, J.

RAJINDER SINGH BRAR AND OTHERS,—Petitioners

versus

STATE OF-PUNJAB AND OTHERS,—Respondents

C.W.P. No.6443 of 2011

1st June, 2011

Constitution of India - Art. 226/227 - Punjab Cooperative Societies Act, 1961 - S. 26 - Punjab Cooperative Societies Rules, 1963 - R1.23, & RIA & 12 of Appendix C - Bye-Laws - Term of Board of Director expired - Fresh zonal list of voter prepared - Fresh voter list changed - Invite objection to newly proposed zonal list of voter - Whether Joint/Deputy Registrar competent to approve new zonal list of voter for election of Board of Director - Neither Joint Registrar nor Deputy Registrar are independently competent nor have power to approve new zonal list of voter, without following the legal procedure - Moreover, the zonal list cannot be approved even by Registrar without - following mandatory provision - Petition accepted.

Held, That having regard to the rival contentions of the learned counsels for the parties, to me, the obvious answer is in the negative. The Joint/Deputy Registrars were not legally competent to change the zonal list