

Bejore A. L. Bahri, J.

GRAM PANCHAYAT VILLAGE BASHAMBERPURA,—Petitioner.

versus

SARDARA SINGH AND ANOTHER,—Respondents.

Civil Revision No. 887 of 1988

July 29, 1988.

Code of Civil Procedure (V of 1908)—S. 115 and O. 39, Rls. 1 and 2—Punjab Village Common Lands (Regulation) Act (XVIII of 1861)—Ss. 2(g)(i), 7 and 13—Punjab Public Premises and Land (Eviction and Rent Recovery) Act (III of 1973)—Ss. 2(e), 4, 5 and 15—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Ss. 23-A(b) and 44—Eviction from public premises—Unauthorised occupant—Land vested in Gram Panchayat and reserved for common purposes—Such land not described as *Shamilat Deh*—Eviction from *Shamilat Deh*—Whether can be ordered under Village Common Lands Act—Remedy of Gram Panchayat—Whether only under the Public Premises Act—Defence of possession by unauthorised occupant—Whether sustainable in a civil Court—Bar to jurisdiction—Injunction restraining dispossession—Whether can be issued.

Held, that the land not recorded as *Shamilat deh* which vests in the Gram Panchayat as such under Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 and therefore, the Gram Panchayat could not get unauthorised occupant of such land evicted under Section 7 of the said Act. The land which is surplus during consolidation proceedings or reserved for common purposes comes under the management of the Gram Panchayat. The Panchayat can get unauthorised occupants from such land evicted under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act.

(Para 4)

Held, that if the property from which the Gram Panchayat wanted unauthorised occupants to be evicted formed *Shamilat deh*, provisions of Sections 7 and 13 of the Punjab Village Common Lands (Regulation) Act, 1861 would be attracted and civil court will have no jurisdiction to entertain suit on behalf of such occupants.

(Para 5).

Held, that the land reserved for public welfare purposes (common purposes) comes under the management of Panchayat and thus vests in the Panchayat under Section 23-A(b) of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act as defined under Section 2(e) of the Public Premises and Land (Eviction and Rent Recovery) Act.

(Para 6).

Held, that if an order of eviction is passed under Sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, no court shall have jurisdiction to entertain any suit in respect of such eviction of any person who is in unauthorised occupation of the public premises, as provided under Section 15 of the said Act. The suit of the present kind after order of eviction has been passed by Collector (D.D.P.O.) would be barred. Thus it cannot be said that merely because the respondent-plaintiffs are in possession, though unauthorised, of such public premises they can approach the Court to defend their possession when they are being evicted in due course of law by the Gram Panchayat. Hence it was held that an injunction cannot be issued in respect thereof.

(Para 6)

R. K. Joshi, Advocate, for the Petitioner.

Suresh Amba, Advocate, for the Respondents.

JUDGEMENT

A. L. Bahri, J.

(1) This revision petition has been filed by the defendant-Gram Panchayat of Village Bashamberpura against order of Additional District Judge, Amritsar dated December 15, 1987 whereby appeal filed by Sardara Singh and another, plaintiffs, against order dated January 8, 1987 passed by Sub Judge IIInd Class, Amritsar was accepted and *ad interim* injunction order was issued against the Gram Panchayat restraining it from dispossessing the plaintiffs Sardara Singh and another from the suit property till decision of the suit on merits.

(2) Sardara Singh and another claimed to be in possession of the suit land for the last about 40 years. The land was reserved for the proprietors of the village community including the plaintiffs who were as such co-sharers in the suit land. Ownership of the Gram Panchayat over the suit land was denied. The land was never used for common purposes for which it was reserved. The order passed by the Collector (D.D.P.O.), Amritsar dated August 19, 1985 directing ejectment of the plaintiffs was also challenged as illegal, void and without jurisdiction. The Gram Panchayat contested the suit and denied ownership of the plaintiffs over the suit land. It was also denied that plaintiffs had raised some construction. The possession of the plaintiffs for 40 years was denied. It was only in July, 1984 that some building was raised by Sardara Singh and another. Immediately, the Gram Panchayat took legal remedy by approaching

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the Collector (D.D.P.O.), Amritsar who ordered ejectment of Sardara Singh and another on August 19, 1985 from the suit land. The land was reserved for common purposes of the village and thus was owned by the Gram Panchayat. It was reserved for the school of the village during consolidation proceedings in 1959-60. Till then, the land was being managed by the Gram Panchayat. On the application for the grant of *ad interim* injunction, the trial Court declined to grant the injunction and dismissed the same on January 8, 1987. This order was set aside in appeal. Hence, this revision petition by the Gram Panchayat.

(3) Copy of Jamabandi for the year 1979-80 of the suit land has been shown. Under the column of ownership, the entry reads as under:—

“JUMLA MUSHTARKA MALKAN WA DEEGAR - HAQ
DARAN ARAZI HASAB RASAD RAQBA”

(jointly owned by the owners and other right-holders in
proportion to their respective areas of land.)

Under the column of cultivation, the entry is “RAFAEY-AAM” (public welfare purposes). Under the column of kind of land, the entry is GAIR MUMKIN (uncultivable land)—School.

(4) From the aforesaid entries, it is clear that in the revenue record, land is not recorded as *shamilat deh* which vests in the Panchayat as such under section 4 of the Punjab Village Common Lands (Regulation) Act and, therefore, Gram Panchayat could not get unauthorised occupant of such land evicted under section 7 of the said Act. Land which is surplus during consolidation proceedings or reserved for common purposes comes under the management of the Gram Panchayat. The Panchayat can get unauthorised occupants from such land evicted under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. The aforesaid distinction has been brought out in judicial decision. *Mange Ram and others v. The Collector, Sonapat and others* (1). It was a case of eviction of an unauthorised occupant or a number of proprietary body from the land which belonged to the proprietary body of village reserved for common purposes. Administration of

(1) 1986 P.L.J. 406.

such land vested in the Panchayat under the Consolidation Act. It was held that such land did not form part of the *shamilat deh* as defined under section 2(g) (1) of the Punjab Village Common Lands (Regulation) Act and eviction of unauthorised occupant could not be ordered under section 7 of the said Act. Gram Panchayat could take appropriate proceedings under the provisions of Punjab Public Premises and Land (Eviction and Rent Recovery) Act.

(5) If the property from which the Gram Panchayat wanted unauthorised occupants to be evicted formed *shamilat deh*, provisions of sections 7 and 13 of the Punjab Village Common Lands (Regulation) Act would be attracted and civil Court will have no jurisdiction to entertain suit on behalf of such occupants. In this respect, reference may also be made to the decisions of the Supreme Court in *Ram Singh and others v. Gram Panchayat Mehal Kalan and others* (2), *Babu Ram and others v. Gram Sabha Buhavi and another* (3) and *Ishar Singh v. Badan Singh* (4). Even in the case of *shamilat deh* which vests in the Panchayat, proceedings under sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act could be initiated for evicting the unauthorised occupant as held by Kang J. in *Kaka Singh v. Commissioner, Ferozepore Division* (5).

(6) In the present case, in the revenue record land is not described as *shamilat deh*. However, in view of the entry in the *jamabandi* for the year 1979-80, as reproduced above, the land was jointly owned by the owners and other right-holders in the village. It was reserved for public welfare purposes (common purposes) i.e. school during consolidation proceedings. Such land comes under the management of Panchayat and thus vests in the Panchayat under section 23-A(b) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act and such land would be public premises as defined under section 2(e) of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act. Section 44 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act bars institution of civil suits with respect to matters which the State Government or any officer under the said Act is empowered to determine, decide or dispose of. Further, if an order

(2) 1986 P.L.J. 636.

(3) 1988 P.L.J. 310.

(4) 1988 P.L.J. 26.

(5) 1985(2) P.L.R. 53.

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of eviction is passed under sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, no Court shall have jurisdiction to entertain any suit in respect of such eviction of any person who is in unauthorised occupation of the public premises, as provided under section 15 of this Act. Suit of the present kind after order of eviction has been passed by the Collector (D.D.P.O.), Amritsar on August 19, 1985 *prima facie* would be barred. Thus, it cannot be said that merely because the respondent-plaintiffs are in possession, though unauthorised, of such public premises they can approach the Court to defend their possession when they are being evicted in due course of law by the Gram Panchayat.

(7) In the facts and circumstances of the present case, there is no question of balance of convenience being in favour of the plaintiff-respondents. The lower appellate Court thus was not justified in setting aside the well-considered order of the trial Court dismissing miscellaneous application filed under Order 39, Rules 1 and 2 read with section 151 of the Code of Civil Procedure declining to grant the *ad interim* injunction during pendency of the suit. This revision petition is, therefore, accepted. The order of the lower appellate Court is set aside and that of the trial Court is restored. However, there will be no order as to costs.

R.N.R.

Before Ujagar Singh, J.

DHAN RAJ THAPAR AND OTHERS,—*Petitioners.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Cr. Misc. No. 2204-M of 1988.

August 31, 1988.

Indian Penal Code (45 of 1860)—Ss. 406, 420 & 498-A—Code of Criminal Procedure (II of 1974)—S. 482—Matrimonial disputes compromised by money settlement—Divorce by mutual consent—Husband under compromise delivering draft in the name of third party for payment to wife—Draft encashed—Factum of such payment pleaded