

## LETTERS PATENT APPEAL

Before Prem Chand Jain and Gurnam Singh JJ.

SHIV CHARAN SINGH ETC.—Appellants.

versus

GRAM PANCHAYAT NARIKE AND ANOTHER,—Respondents.

Letters Patent Appeal No. 116 of 1974

September 20, 1977.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 2(g) (1) and (2) (g) (5)—Scope of—The two sub-clauses—Whether independent of each other.*

Held, that from a bare perusal of sections (2) (g) (1) and 2(g) (5) of the Punjab Village Common Lands (Regulation) Act 1961, it would be evident that all the said sub-clauses are independent of each other and describe as to which type of land would be included in the *shamlat deh*. Sub-clause (1) covers the case of land described in the revenue records as *shamlat deh* while sub-clause (5) covers the case of land in the village described as *Banjar Qadim* and used for common purposes of the village according to the revenue records. This sub-clause could cover the cases of lands which may belong to private persons but having been recorded as *Banjar Qadim* and used for common purposes of the village, would become *shamlat deh*. This sub-section has been enacted as an independent one for a specific purpose otherwise the village community would have been deprived of a valuable right at the sweet will of the individual proprietor. The manner in which the provisions of section 2(g) have been arranged, leave no manner of doubt that all the sub-clauses are independent and do not govern or circumscribe each other in any manner. (Para 7).

*Letters Patent Appeal Under Clause X of the Letters Patent from the decree of the Court of Hon'ble Mr. Justice Rajendra Nath Mittal, dated the 31st day of January, 1974, dismissing the appeal of plaintiffs-appellants and affirming the decree of the Sub-Judge 1st Class, Sangrur dated the 1st May, 1969, dismissing the suit of the plaintiffs and leaving the parties to bear their own costs.*

Ashok Bhan, Advocate with Vipam Kaushal, Advocate, K. C. Jain, Advocate, for the Appellants.

S. C. Goyal, Senior Advocate with O. P. Goyal, Advocate,—for the Respondents.

## JUDGMENT

*Prem Chand Jain, J.*

(1) Shiv Charan Singh and others have filed this appeal under clause 10 of the Letters Patent against the judgment and decree of the learned Judge of this Court, dated January 31, 1974, by which their appeal was dismissed with costs.

(2) The facts of the case may briefly be stated thus:—

The plaintiffs appellants are joint owners and in possession of the land in dispute. The Naib-Tehsildar, Malerkotla, mutated the land in dispute in favour of Nagar Panchayat Narike,—*vide* mutation No. 78 on the ground that it was *shamlat deh* and vested in the Nagar Panchayat by virtue of the Pepsu Village Common Lands (Regulation) Act, 1954, (hereinafter referred to as the Pepsu Act). It has been averred that the land was not used for common purposes of the residents of the village and was not *shamlat deh*; that the plaintiffs who were in possession of the land continue to be in possession, thereof, as owners even now; that Shiv Charan Singh and Baljit Singh plaintiffs filed an application, dated March 23, 1962, before the Gram Panchayat stating that the land in dispute had been wrongly shown as *shamlat deh*; that thereafter the Gram Panchayat sought the advice of the Block Development Officer, Malerkotla, in that matter; that the said officer informed the Gram Panchayat that the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Punjab Act) were applicable and the Gram Panchayat should apply to the Collector for obtaining possession of the land; and that on the basis of the said intimation the Panchayat (defendant No. 1) wanted to take forcible possession of the land in dispute. On the basis of the aforesaid allegations, the plaintiffs filed a suit for declaration to the effect that the land in dispute was jointly owned and possessed by them and that the same was not *shamlat deh*. They also prayed for grant of permanent injunction, restraining the Panchayat from interfering with their possession or leasing out or transferring the same in any way. The suit was contested by the Panchayat.

(3) On the pleadings of the parties, following issues were framed:—

- (1) Whether the plaintiff is the owner and in possession of the suit land and same is not *shamlat* and as such Gram Panchayat defendant has no concern with it?

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- (2) Whether this Court has no jurisdiction to hear the suit?
- (3) Whether the suit is within limitation?
- (4) Whether the suit is bad for non-joinder of parties ?
- (5) Whether the suit has been under-valued for purposes of Court fees, if so, its effect ?
- (6) Relief."

(4) The trial Court held that the property in dispute was *shamlat deh* and the same has lawfully vested in the Gram Panchayat and that the suit was within limitation. In view of the said findings the suit was dismissed. Feeling aggrieved from the judgment and decree of the trial Court, the plaintiffs preferred an appeal (R.F.A. No. 370 of 1969) in this Court, but did not succeed. The appeal, as earlier observed, was dismissed by the learned Single Judge.

(5) The only contention raised before us by Mr. Ashok Bhan, learned counsel for the appellants, was that the case of the plaintiffs was covered by the provisions of section 2(g)(5) and not 2(g)(1) of the Punjab Act and that the land being *banjar qadim* did not vest in the Gram Panchayat. On the other hand, it was submitted by Mr. S. C. Goyal, Senior Advocate, learned counsel for the respondents, that the provisions of section 2(g)(5) had no applicability to the facts of the case in hand and that the land in dispute which was recorded as *shamlat deh* in the revenue records rightly vested in the Gram Panchayat and that the plaintiff-appellants had no right or title in the same.

(6) In order to judge the correctness of the contentions advanced by the learned counsel for the parties, it would be proper to notice the provisions of section 2(g) which read as under:—

"2. In this Act, unless the context otherwise requires,—

(a) to (f) .....

(g) 'Shamlat deh' or 'Charand' includes:—

- (1) Lands described in the revenue records as 'shamlat deh' or 'charand' excluding the *abadi deh*;

(2) *Shamlat tikkas*;

(3) lands described in the revenue records as *shamlat tarafs*, *pattis*, *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, play grounds, schools, drinking wells, or ponds within *abadi deh* or *gora deh*; and

(5) lands in any village described as *Banjar qadim* and used for common purposes of the village according to revenue records ;

Provided that *shamlat deh*, or 'charand' at least to the extent of twenty-five per centum of the total area of the village does not exist in the village; but does not include land which:—

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\* \* \*"

(7) From the perusal of sub-clause (1) it is evident that *shamlat deh* would include land described in the revenue records as '*shamlat deh*'. The contention of Mr. Ashok Bhan, learned counsel for the appellants, was that the land in dispute was recorded as *banjar qadim*; that under sub-clause (5) only that *banjar qadim* land which was used for common purposes of the village according to revenue records would be *shamlat deh*; that the *banjar qadim* land which is not used for common purposes of the village according to revenue records would not become *shamlat deh* and that sub-clause (5) is a proviso to sub-clause (1) in the sense that any land which is *banjar qadim* and not used for common purposes according to the revenue records would not vest in the Gram Panchayat even if it is recorded in the revenue records as *shamlat deh*. I am afraid, I am unable to agree with this contention of the learned counsel. From the bare perusal of the sub-clauses reproduced above, it would be evident that all the said sub-clauses are independent of each other and describe as to which type of land would be included in the *shamlat deh*. Sub-clause (1) covers the case of land described in

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the revenue records as *shamlat deh*; while sub-clause (5) covers the case of lands in the villages described as *banjar qadim* and used for common purposes of the village according to the revenue records. I agree with Mr. Goyal that sub-clause (5) could cover the cases of lands which may belong to private persons but having been recorded as *banjar qadim* and used for common purposes of the village according to revenue records, would become *shamlat deh*. It is evident that such a case could not fall within the purview of other clauses. To my mind, it is clear that sub-clause (5) was enacted with a definite purpose to apply to the *banjar qadim* land used for the common purposes of the village according to the revenue records even if it belonged to any particular individual or individuals. If this sub-clause had not been added as an independent one, then the village community could have been deprived of a valuable right at the sweetwill of an individual proprietor. Further, the idea of the legislature seems to be clear that such land should vest in the Gram Panchayat as the same would be properly administered and managed by the Gram Panchayat. Thus, it cannot be said that sub-clause (5) was added by the legislature without any purpose. It is also equally clear that in case the legislature had intended to circumscribe the scope of sub-clause (1) by adding sub-clause (5), then sub-clause (5) would not have been added as a separate clause but would have been added as a proviso immediately after sub-clause (1). The manner in which the provisions have been arranged and drafted leave no manner of doubt that all the sub-clauses are independent and do not govern or circumscribe the scope of each other in any manner. In this view of mine, I am supported by a Division Bench judgment of this Court in *Tel Ram and others v. Gram Sabha Manakpur and others*, (1). I do not agree with Mr. Ashok Bhan, learned counsel for the appellants, that the view taken in *Tel Ram's* case does not lay down the correct law.

(8) No other point was urged.

(9) For the reasons recorded above, I find no merit in this appeal and accordingly dismiss the same with costs.

Gurnam Singh, J.—I agree.

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H. S. B.

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(1) 1976 P.L.J. 628.