

CASE NO.:
Appeal (civil) 10564 of 1996

PETITIONER:
STATE OF PUNJAB AND ANR.

RESPONDENT:
GRAM PANCHAYAT AND ORS.

DATE OF JUDGMENT: 06/03/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & R.P. SETHI

JUDGMENT:
JUDGMENT

2002 (2) SCR 283

The following Order of the Court was delivered :

This appeal, by special leave, is from the judgment of the Division Bench of the High Court of Punjab and Haryana at Chandigarh dismissing appellant's CWP No. 5436 of 1995 on February 27, 1996, following the judgment of this Court in Gram Panchayat of Village Jamalpur v. Malwinder Singh and Ors., [1985] Suppl 2 SCR 28.

To appreciate the controversy involved in this case it would be necessary to notice the facts giving rise to this appeal. The first respondent filed application before the Development and Panchayat Officer-cum-Collector, Ludhiana (for short, 'the Collector') under Section 7 of the Punjab Village Common Lands (Regulations) Act, 1961 (for short, 'the Act') for possession of the land in dispute on the ground that the land has vested in it and the same was mutated in the name of Panchayat by order of the Tehsildar dated September 4, 1986. Appellant Nos. 2 and 3 contested the claim of the first respondent pleading; that the land belonged to the Government of Punjab and it was allotted in their favour under a package deal in lieu of which the amount was also deposited in the Treasury; that the possession of the land was given to them as per the order of the Tehsildar in the year 1970 and on that basis they have been in possession of the same; that the mutation in the name of Panchayat was done without notice to them, therefore, it is illegal; that by mutation the Panchayat did not become the owner of the land in which there was potato farm which was Government Agency; that the Government of Punjab established the potato farm by spending crores of rupees; that pucca buildings were constructed on the site and 27 crores and 9 electric motors were also installed there; and that there are 12 tractors of the farm on the site. It was further averred that the Government was spending about 10 to 11 lakhs per year on the potato farm.

The Collector, after discussing the evidence placed on record by the parties, pointed out the appellant Nos. 2 and 3 (the respondents therein) had not produced any proof to show that the disputed land was allotted by the Punjab Government or that the potato farm was purchased from the Government; that from the beginning the disputed land was being shown in Jamabandi as shamilar den and on September 4, 1986, the mutation of the land was effected in favour of the Gram Panchayat. With regard to dispute of title to the land it was noted that appellants never brought to his notice that the title dispute should be decided first nor was any application filed for that purpose before him. It was held that the disputed land was owned by Gram Panchayat and in that view of the matter he ordered delivery of possession of the land to the Gram Panchayat. Appellant Nos. 2 and 3 herein filed an appeal against the said order before the Director Rural Development and Panchayat, Punjab (exercising the powers of Commissioner under the Act) (hereinafter referred to as, 'the Commissioner'). The Commissioner, on examining record in the light of the

contentions of the parties, held that the documents brought on record did not link up the case with the land in question and that nothing was placed on record to support the package deal and as to how and when the land was allotted to the Horticulture Department and accordingly dismissed the appeal on January 11, 1995. The correctness of the order of the Commissioner was assailed in the Writ Petition by the said appellants and the State of Punjab, which as stated above, was dismissed by the High Court by the order under challenge in this appeal.

Mr. Shiv, Pujan Singh, the learned counsel for the appellants, has contended that after the amendment of Section 3 by Act 8 of 1995 the land in question stood excluded from the land vested in the Panchayat, therefore, the order of the High Court has to be set aside.

It may be useful to refer to the amended Section 3 of the Act, insofar as it is relevant, which reads as follows:-

"Lands to which this Act applies-

(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) of Section 4-

(i) Where any land has vested in a Panchayat under the Shamilat Law, but such land has been excluded from shamilat deh under clause (g) of Section 2 other than the land so excluded under sub-clause (ii-a) of that clause, all rights, title and interest of the Panchayat in such land as from the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1995, shall cease and all such rights, title and interest shall vest in the person or persons in whom they were vested, immediately before the commencement of the shamilat law.

(ii) where any land has vested in a Panchayat under this Act, but such land has been excluded from shamilat deh under sub-clause (ii-a) of clause (g) of Section 2, all rights, title and interest of the Panchayat in such land, as from the commencement of the Punjab Village Common Land (Regulation) Amendment Act, 1995, shall cease, and all such rights, title and interest shall on or before the 9th day of July, 1985, revert in the person or persons to whom the land so excluded has been allotted or otherwise transferred by sale or by any other manner whatsoever, subject to the condition that-

(a) ***

(b)

shall be paid by the Rehabilitation Department of the Government of Punjab to the Department of Rural Development and Panchayats for onward disbursement to the Panchayat to which such shamilat deh belonged."

By Act 8 of 1995, sub-sections (2) and (3) are inserted in Section 3. But before reading the said sub-sections it would be necessary to notice that by virtue of Section 4 of the Act all rights, title and interest whatsoever in the land which is included in the shamilat deh of any village had vested in the Panchayats except to the extent indicated therein. Clause (g) of Section 2 defines shamilat deh. It is an inclusive definition and is in two parts: the first part enumerates five categories of land which are included within its meaning and the second part excludes as many as ten items of land which would fall outside the ambit of shamilat deh. By the same Amendment Act, (ii-a) is inserted in clause (g) of Section 2 in the list of the excluded items. Now adverting to the provisions of amended Section 3,

we are concerned here with sub-section (2). It opens with non obstante clause and says that notwithstanding anything contained in sub-section (1) of Section 4 (which deals with vesting of rights in Panchayat and non-proprietors), any land which has vested in Panchayat shall cease and all such rights, title and interest will revert in the person or persons in whom they were earlier vested. It has two limbs: (i) deals with a case where the land has vested in a Panchayat under the Shamilat Law but such land has been excluded from shamilat deh under clause (g) of Section 2 (other than the land so excluded under sub-clause (ii-a) of that clause) and as from the commencement of Act 8 of 1995 all rights, title and interest of the Panchayat in such land shall cease and vest in the person or persons in whom they were vested immediately before the commencement of such law; and (ii) provides, where any land has vested in a Panchayat under the Act but such land has been excluded from shamilat deh under sub-clause (ii-a) of clause (g) of Section 2, then as from the commencement of Act 8 of 1995 all rights, title and interest of the Panchayat in such land shall cease on or before July 9, 1985 and revert in the person or persons to whom the land so excluded has been allotted or otherwise transferred by sale or by any other manner whatsoever, subject to the conditions specified in clauses (a) and (b) therein (which are not relevant for the present discussion). Section 3(2)(i) has no application as the land in question does not fall under any of the items excluded under clause (g) of Section 2 other than sub-clause (ii-a). For purposes of application under Section 3(2)(ii), it has to be shown that the land falls within Section 2(g)(ii-a) which reads as follows:

"2(g) 'shamilat deh' includes-

(1) to (5) ***

But does not include land which-

(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985."

This sub-clause excludes the land which was shamilat deh and had been allotted on quasi-permanent basis to a displaced person, or has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of the Act (4th May, 1961) but on or before July 9, 1985. For invoking sub-section (2) of Section 3, quoted above, it has to be shown that the land in question had vested in the appellants immediately before the commencement of the Shamilat Law or has been allotted or otherwise transferred by sale or by any other manner whatsoever. We have pointed out above that the question of dispute as to the title of the appellant was not referred to the competent authority under Section 11 of the Act, but on the application of the Panchayat under Section 7 both the Collector as well as the Commissioner found that the appellant Nos. 2 and 3 had not produced any material or any documentary evidence to show that the land had vested in them or had been transferred by sale or otherwise in their favour. In view of the above findings of fact the said amended provision would have no application.

In Gram Panchayat of Village, Jamalpur 's case (supra), a Constitution Bench of this Court held:

"....The law passed by the State Legislature being a measure of agrarian reform is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village Panchayats will be able to meet the needs of the village Panchayat community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950 even in so far as shamilat deh land are concerned...."

From the above observation of the Constitution Bench judgment it follows that no right can be claimed by the appellants on the basis of vesting of land under the Administration of Evacuee Property Act, 1950 as under the Punjab Act of 1953 shamilat deh would vest in the Panchayat.

It is next contended by the learned counsel for the appellants that the case may be remanded to the Collector to enable the appellants to place necessary material on record. We are afraid we cannot accede to the contention of the learned counsel. As the litigation is pending for more than fifteen years we do not want to put the clock back after such a long time.

It is brought to our notice that with the huge investment of corers of rupees the potato farm has been set up by the State Government in which many persons are working and the Government is spending Rs.10-12 lakhs per year and that the land was handed over to the Horticulture Department of the Government as an agency of the Government; there are constructed buildings and that the appellants would suffer grave hardship if the Panchayat would resort to demolish the same for purposes of taking dispossession. On instructions, the learned counsel for the Panchayat submits that the respondents would lease out the area on which the building of the appellants are existing together with land necessary for ingress or egress to reach the said land. We record this submission.

However, we make it clear that nothing said in this judgment shall preclude the State Government from taking such steps as may be considered necessary to establish its title, if any, to project the farms and the buildings in accordance with law.

Subject to the above observations the appeal is dismissed. There shall be no order as to costs.