

PETITIONER:
MUNICIPAL COMMITTEE SIRHIND

Vs.

RESPONDENT:
PARSHOTAM DASS AND OTHERS

DATE OF JUDGMENT: 15/02/1996

BENCH:
G.B. PATTANAIK (J)
BENCH:
G.B. PATTANAIK (J)
RAMASWAMY, K.

CITATION:
JT 1996 (2) 504 1996 SCALE (2)351

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

G.B. PATTANAIK, J.
Leave granted.

This appeal by way of special leave is directed against the judgment of Punjab and Haryana High Court in Regular Second Appeal No. 1187 of 1989 arising out of a suit against the defendant Municipal Committee for a declaration that the land entered in Khewat No. 391 measuring 321 Kanals 14 Marlas and in Khewat No. 392 measuring 1197 Kanals 5 Marlas in village Brahman Majra, Tehsil Sirhind as fully described in para A and B of the plaint are the properties of the plaintiffs and they are the khewatdars and defendant should be permanently enjoined from dispossessing the plaintiffs.

The plaintiffs' case in nutshell is that they are khewatdars of village Brahman Majra and they filed the suit in representative capacity under Order I Rule 8 C.P.C. It was alleged that Khasra No. 391 and 392 measuring 321 Kanals 14 Marlas in Khewat No. 392 measuring 1197 Kanals 5 Marlas respectively are 'Shamlat deh' and it was under Nagar Panchayat. By a Notification dated 18.9.1968 the Municipal Limits of Sirhind Municipality was extended covering a part of Gram Sabha area of Nagar Panchayat and the disputed area came under the Municipal Limits. It is further averred that Gram Sabha of the village having been abolished, the lands in question reverted to the original khewatdars under the proviso to Rule 3 of the Gram Panchayat Rules, 1965 (hereinafter referred to as 'the Rules'). When Punjab Government acquired a portion of the said land for construction of godown for storing foodgrains, an award was passed on 19.3.1977 by Collector, Patiala and thereafter the reference having been made to the District Judge under Section 30 of the Land Acquisition Act, the said District Judge determined the compensation to be payable to the plaintiffs even though the defendant - Municipal Committee also claimed compensation. The said decision therefore operates as res judicata against the defendant in the

present proceeding. It was also further averred that mutation was ordered in favour of the plaintiffs by the Collector by Order dated 8.8.1975. A revision being carried out by the Municipal Committee, the Financial commissioner set aside the said order by his order dated 13.5.1982 and directed mutation in favour of Municipal Committee and therefore the plaintiffs filed the suit for the relief as already stated. The defendant - Municipal Committee in the written statement took the stand that the disputed property though 'Shamlat deh' was a part of Gram Sabha. But on and from the date of issuance of notification extending the Municipal limits of Sirhind over the area, it formed a part of the Municipality and therefore the Municipal Committee has right, title and interest to the land. It was also further averred that the compensation amount having been awarded in favour of the plaintiffs on a finding that the acquired land forms a part of plaintiffs proprietary interest, the principle of res judicata will not apply. On these pleadings the learned Trial Judge framed as many as 7 issues and on issues 1 to 3 came to conclusion that the plaintiffs are the khewatdars of village Brahman Majra, and are owners of the suit land and the ownership of the land vests with the proprietor of the village and not in the Municipal Committee. On issue no. 4 the Trial Judge found that the question of title to the suit land has finally and conclusively been decided by the learned Additional District Judge, Patiala in reference under Section 30 of the Land Acquisition Act and the said decision operates as res judicata in the present proceedings. On issue No. 6 the learned Trial Judge came to hold that valid notice under Section 49 of the Punjab Municipal Act had been duly served upon the defendant before filing of the present suit. With these findings the suit having been decreed. The defendant carried the matter in appeal. The learned Additional District Judge, Patiala confirmed the findings of the Trial Judge and dismissed the appeal. The defendant - Municipal Committee then carried the matter to the High Court in Second Appeal and the same having been dismissed, the defendant - Municipal Committee has approached this Court.

Learned counsel for the appellant contended that on the admitted position that the disputed land was a part of 'Shamlat deh' and was owned by Gram Panchayat of village Brahman Mavira by operation of law it stood vested in Sirhind Municipality on and from the date the notification was issued extending the Municipal Limits of Sirhind Municipality. The Courts below committed serious error in applying proviso to Rule 3 of the Gram Panchayat Rules and directing revesting of the title with khewatdars. The learned counsel also contended that in the proceedings under Section 30 of the Land Acquisition Act the court having specifically found that the acquired land belonged to the proprietor. It was not necessary for the court to examine the question as to whether 'Shamlat deh' vests in the Municipality or not and any finding on that score is without jurisdiction and therefore it does not operate as res judicata in the present proceedings. Lastly learned counsel submitted that under the provisions of the Punjab Municipal Act, 1911 the disputed property became a part of Sirhind Municipality and therefore Municipal Committee of Sirhind is the real owner and courts below was in error in declaring the plaintiffs - khewatdars to be the owner of the disputed property.

Mr. K. Madhava Reddy, learned senior counsel appearing for the plaintiffs - respondents on the other hand contended that under the provisions of The Punjab Village Common Lands

(Regulation) Act, 1961 (hereinafter referred to as 'the Common Lands Act'), any land which vests in Panchayat under the shamilat law, the right, title and interest in the same gets revested in the person or persons in whom they were vested immediately before the commencement of the shamilat law and therefore the title vests in the plaintiffs and not in the Municipality.

In view of the rival stand of the parties and on the admitted position that the disputed land was 'Shamlat deh' and had formed a part of Gram Sabha, the question for consideration is whether the said land vested with the Municipality by virtue of provisions contained in the Punjab Municipal Act 1911 and The Punjab Gram Panchayat Act, 1952 or it revested with the khewatdars under the The Punjab Village Common Lands (Regulation) Act, 1961? The answer to the aforesaid question depends upon scrutiny and analysis of different provisions of the Punjab Municipal Act, 1911, The Punjab Gram Panchayat Act, 1952 and The Punjab Village Common Lands (Regulation) Act, 1961. It would also be necessary to examine the provisions of Gram Panchayat Rules, 1965 as courts below have decided the question by applying proviso to Rule 3 of the aforesaid Rules. Under the Gram Panchayat Act the expression 'Sabha' is defined in Section 2(mm) to mean a Gram Sabha established under Section 5. The expression 'Gram Panchayat' is defined in Section 2(g) to mean the Panchayat constituted under Section 6. The expression 'Sabha area' is defined in Section 2(mmm) to mean an area declared to be a sabha area under Section 4. Under Section 4 occurring in Chapter II the State Government is empowered by notification to declare any village or group or contiguous villages with a population of not less than one hundred to constitute A sabha area. Sub-Section (2) of Section 4 empowers the State Government by notification to include any area or exclude any area from the Sabha area. Sub-Section (3) of Section 4 provides for the consequences of issuance of notification u/s 4(2) which is extracted hereinbelow in extenso:

"If whole of the Sabha area is included in an urban estate to which the provisions of the Punjab Municipal Act, 1911 are applicable or in a City, municipality cantonment or notified area under any law for the time being in force, the Sabha and the Gram Panchayat for that area shall cease to exist and the assets and liabilities of the Gram Panchayat, shall be disposed of in the prescribed manner.

But a contention has been advanced which found favour with the courts below that unless the whole land of the Sabha area is included in an urban estate under the provisions of Punjab Municipal Act, then no vesting of the Sabha area with the municipality. We are unable to accept this contention since the expression 'whole' in sub-Section (3) of Section 4 of the Punjab Gram Panchayat Act must be held to be including a 'part' and therefore if a part of the Sabha area is included within the municipal limits then that part of the Sabha area becomes a part of the municipality and it ceases to be a part of the Gram Panchayat. Section 8 of the Gram Panchayat Act stood deleted from the Gram Panchayat Act in the year 1962. Section 4(3) extracted above was added to the Punjab Gram Panchayat Act with effect from 14.7.1978. The Punjab Gram

Panchayat Rules, 1965 had been framed in exercise of power under Section 101 of the Punjab Gram Panchayat Act by the State Government. Rule 3 is the rule for disposal of assets and liabilities of Gram Sabha. The said rule provides that if the whole of the Sabha area is included in a municipality cantonment cite, urban estate or notified area rights, obligations, property, assets and liabilities, if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board (Municipal Corporation, Chief Administrator or Notified Area Committee, as the case may be).

Section 3 of the Rules together with the proviso is extracted hereinbelow in extenso:

"Disposal of assets and liabilities of Gram Sabha, Section 4(3): If the whole of Sabha area is included in a municipality cantonment or notified area, all rights, obligations property assets and liabilities if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee cantonment board and/or N.A.C. as the case may be.

Provided that the land which vests in the Panchayat under the Punjab village Common Lands (Regulation) Act, 1961 or the land management and control of which vests in the Panchayat under the East Punjab Holdings (Consolidations and preventions of fragmentation) Act, 1948 shall revert to the co-sharers and owners thereof."

Under the Punjab Municipal Act, 1911 chapter II deals with the procedure for constituting municipalities. Section 4(2) provides for defining the limits of the local area of the municipality by issuance of notification. Section 4(9) empowers the State Government by notification to constitute a Municipal Committee. Section 5 of the Act empowers the State Government to alter the limits of the municipality. Sub-Section (6) of Section 5 provides the effect of an area being included in the municipality. Sub-Section (6)(e)(iii) of Section 5 provides that all properties, movable and immovable, together with all interests of whatsoever nature and kind therein, vested in the Municipal Committee or notified area committee, as the case may be, of such local area, immediately before the aforesaid date, shall vest in the successor Municipal Committee. Section 56 provides that all property situated within the municipality shall vest in and be under the control of the committee.

A combined reading of the aforesaid provisions of the Gram Panchayat Act, the Rules made thereunder and the Punjab Municipal Act unequivocally indicate that on and from the date of issuance of a notification extending the municipal limits over a part of the sabha area that part of the sabha area forms a part of the municipality and it is the municipality on whom right, title and interest over the area vests. It is difficult to accept the reasoning advanced by the courts below that only when the entire sabha area comes within the municipal limits then the property vests and not otherwise. In our considered opinion

the expression 'whole' in Section 4(3) of the Gram Panchayat Act brings within its sweep also a part of the sabha area and therefore the disputed properties in the case in hand which originally formed a part of sabha area of village Brahman Majra having been included in municipal limits of Sirhind Municipality by notification dated 18.9.1968, it is the municipality on whom the right, title and interest of the property vested and it never revested at the khewatdars as found by the courts below. The courts below including the High Court not only committed error in interpreting Section 4(3) of the Gram Panchayat Act but also committed error in relying upon proviso to Rule 3 of the Gram Panchayat Rules since on the date when the notification was issued extending the municipal limits of Sirhind Municipality on 18.9.1968 Section 4(3) of the Gram Panchayat Act was not in force and therefore the Rule 3 could not have operated upon. As has been stated earlier Section 56 of the Municipal Act and Section 4 of the Gram Panchayat Act make the legislative intention clear that when a part of the sabha area gets included within the municipal limits of any municipality the property comprised therein vests with the Municipal Committee. In this view of the matter the plaintiffs who were the original khewatdars cannot claim the property in question and it is the municipality which continues to be the owner of the disputed property.

In this connection it would be appropriate to notice the arguments advanced by Mr. Madhave Reddy, the learned counsel for the respondents. The learned counsel urged that the property being admittedly a 'Shamlat deh', by virtue of Section 3 of the Punjab Village Common Lands (Regulation) Act, 1961, which has been given retrospective effect, the 'Shamlat deh' property stand reverted to khewatdars. Section 3(2) of Punjab Village Common Lands (Regulation) Act, 1961 is extracted hereinbelow in extenso:

"(2) Notwithstanding anything contained in sub-section (1) of section 4--

(i) where any land has vested in a Panchayat under the shamlat law, but such land has been excluded from shamlat 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 shamlat law;

(ii) where any land has vested in a Panchayat under this Act, but such land has been excluded from shamlat 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 Lands (Regulation) Amendment Act., 1995, shall, cease, and all such rights, title and interest shall on or before the 9th

day of July, 1985, re-vest 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) any sum of money realised by the Rehabilitation Department of the Government of Punjab as a result of allotment or transfer of such land shall alongwith interest at the rate of three per cent payable from the date of such allotment or transfer; or

(b) where no money was realisable by the Rehabilitation Department of the Government of Punjab as a result of allotment or transfer of such land, the amount of compensation in respect of such land as determined by the Collector of the District in which such a land is situated alongwith interest at the rate of three per cent payable from the date of allotment or transfer, as the case may be; 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 shamlat deh belonged."

Sub-section (2) of Section 3 would be attracted only when land vested in Municipal Committee Sirhind has been excluded from 'Shamlat deh' as defined in clause (g) of Section 2 of the said Act. Section 2(g) has 9 exclusion clauses but there is not an iota of materials on record and in fact the case in hand has not been examined from that angle to establish that the disputed property stood excluded from 'Shamlat deh' by operation of any of the sub clauses which excludes from the definition of 'Shamlat deh' in Section 2(g). In that view of the matter the contention of Mr. Madhava Reddy cannot be sustained.

The courts below erroneously came to conclusion that the findings of the court in the earlier proceeding under Section 30 of the Land Acquisition Act would operate as res judicata, since on examination of the orders of the court under Section 30, we find that positive finding have been arrived at to the effect that the disputed land which had been acquired belong to the claimants and not the Municipal Committee. In view of this finding it was not necessary for the court to examine the question of title of Municipal Committee and therefore anything stated on that score is wholly without jurisdiction and as such the findings thereon cannot operate as res judicata in the present proceeding.

In the aforesaid premise the judgement and decrees of the courts below are set aside. It is held that the Municipal Committee Sirhind is the proprietor with whom the disputed land vested. The plaintiffs suit accordingly stand dismissed. This appeal is allowed but in the circumstances without any order as to costs.

JUDIS