

CASE NO.:
Appeal (civil) 4979 of 1995

PETITIONER:
STATE OF HIMACHAL PRADESH

Vs.

RESPONDENT:
TARSEM SINGH AND OTHERS

DATE OF JUDGMENT: 04/09/2001

BENCH:
v.n.Khare, B.N.Agrawal

JUDGMENT:

V. N. KHARE, J.

A large tract of land in village Kungrat, Tehsil and District Una was shamilat land. The proprietors of village Kungrat reserved certain area in Shamilat land for grazing purposes and other such common purposes. Subsequently, the village was partitioned and divided into 14 sub-divisions called Majras. The land measuring 451 kanals 19 marlas which was a shamilat land and used for grazing purposes fell in Majra Dughe. The said pasture land was used by the village community for grazing their cattles. Subsequently, under the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter called the 'Punjab Act'), the said land came to be vested in the Gram Panchayat. However, the village community of Majra Dughe continued to exercise their right of grazing and other such right over the said pasture land. Thereafter, the State of Himachal Pradesh passed an Act known as 'The Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974' (hereinafter referred to as the 'Act'). Under Section 3 of the Act, all rights, title and interests in the land in any estate vested in Panchayat under Section 4 of the Punjab Act vested in the State free from all encumbrances. It is at this stage, the plaintiff-respondents herein, who are the residents of Majra Dughe brought a suit in a representative capacity on behalf of all the residents of the village for declaration that the land in dispute is being used for grazing cattle, cutting fuel wood and for other common purposes and thus it is their easementary right and the defendant-appellant be restrained from interfering in their rights and enjoyment of the said land. The appellant herein, contested the suit. However, the trial court decreed the suit. The appeal preferred by the appellant was substantially dismissed. The High Court also dismissed the second appeal preferred by the appellant. The view taken by the High Court was that under Section 3 of the Act, only the interest and right in the land would vest in the State and easementary right of grazing being over the land the same has not vested in the State under Section 3 of the Act. In that view of the matter, the State has no authority to interfere with the easementary right of the village community. It is against the said judgment of the High Court, this appeal has been preferred.

Learned counsel appearing for the appellant urged that under Section 3 of the Act, the easementary right along with the right in the land has been extinguished and came to be vested in the State free from all encumbrances and the view taken by the High Court is erroneous. On the other hand, Shri

Arvind Kumar, learned counsel appearing for the respondents, relying upon a decision in the case of Megh Raj and another vs. Allah Rakhia and others - AIR (34) 1947 Privy Council 72 urged, that the expressions 'right in the land' and 'right over the land' convey different meanings. According to him, easementary right which is over the land is distinct from right in the land and since only right in the land has vested in the State, therefore, there is no vesting of easementary right in the State.

Before considering the argument, it is necessary to examine the provisions of the Act. Section 3 of the Act runs as under:

"3. Vesting of rights in the State government. - (1) Notwithstanding anything to the contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority all rights, title and interests including the contingent rights, if any, of the landowner in the lands in any estate -

(a) vested in a Panchayat under section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1981) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) except lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or garah deh;

(b) described in the revenue records as shamilat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) ; and

(c) described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and patti in the areas comprised in Himachal Pradesh, immediately before first November, 1966;

shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances."

A perusal of Section 3 of the Act would show that all interests, title and rights in the land vested in the Gram Panchayat stood extinguished and came to be vested in the State free from all encumbrances. The question arises whether easementary right, namely, grazing right and such other rights also came to be vested in the State along with right in the land. Learned counsel for the respondents relying upon a decision in Megh Raj and another vs. Allah Rakhia and others (supra) referred to Entry 21 of List II of Seventh Schedule to Government of India Act, 1935 and Entry 18 of List II of Seventh Schedule of Constitution of India, which run respectively as under:

"Entry 21 - Land, that is to say, rights in or over land, land tenures, including the relation of landlord and tenant, and the collection or rents; transfer, alienation and devolution of agricultural land; land improvement and agricultural loans; colonization; Courts of Wards; encumbered and attached estates; treasure trove."

"Entry 18 - Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant and the collector of rents,

transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

In *Megh Raj and another vs. Allah Rakhia and others* (supra), an argument was raised that the Punjab Restitution of Mortgage Land Act is ultra vires. In that connection, the Privy Council held thus:

"rights in or over land." "Rights in land" must include general rights like full ownership or leasehold or all such rights. "Rights over land" would include easements or other collateral rights, whatever form they might take. Then follow words which are not words of limitation but of explanation or illustration, giving instances which may furnish a clue for particular matters: thus there are the words "relation of landlord and tenant and collection of rents."

In *Atma Ram vs. State of Punjab* - AIR 1959 SC 519, this Court, after referring to Entry 18 of List II of Seventh Schedule of the Constitution of India, held thus:

"....that the Entry read along with Art. 246 (3) of the Constitution, has vested exclusive power in the State to make laws with respect to "rights in or over land, land tenures including the relation of landlord and tenant". The provisions of the Act set out above, deal with the landlord's rights in the land in relation to his tenant, so as to modify the landlord's rights in land, and correspondingly, to expand the tenant's rights therein. Each of the expressions, "rights in or over land" and "land tenures," is comprehensive enough to take in measures of reforms of land tenures, limiting the extent of land in cultivating possession of the land-owner, and thus, releasing larger areas of land to be made available for cultivation by tenants."

In the aforesaid two cases, Entry 21 of List II of Seventh Schedule of Government of India Act and Entry 18 of List II of Seventh Schedule of Constitution of India were relied upon for the purpose of holding that there was a legislative competence while enacting the land Acts. The question whether vesting of all interests and rights in the land free from all encumbrances would also include easementary right was not the subject-matter of decisions and, therefore, said decisions have no application in the present case. Section 3 of the Act provides that, notwithstanding any custom, usage, instrument, agreement or decree of the court all titles, interests and rights in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. Learned counsel when argued that easementary right being over the land has not vested in the State omitted to consider the significance of the expression 'free from encumbrances'. The word "encumbrance" means a burden or charge upon property or a claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. In *Abdul Karim Khan and others. vs. Managing Committee, George High School* - AIR 1936 Allahabad 879, it was held that encumbrance would include easementary right of drainage over the land. In *Rashid Allidina vs. Jiwandas Khemji and another* - AIR (30) 1943 Calcutta 35, it was laid down that the word 'encumbrance' has always been understood to include easementary right. In

Ganga Vishnu Swaika vs. Machine Manufacturing Co. Ltd and another - AIR 1955 Calcutta 503, it was ruled that an easementary right to discharge water on other's land comes within the meaning of encumbrance on the right in the land.

In the aforesaid decisions, it was laid down that the right of easement on land is an encumbrance on the land and once the land vests in the State free from all encumbrances, the easementary right pertaining to that land shall also vest in the State. In *Fruit and Vegetable Merchants Union v. Delhi Improvement Trust* - 1957 SCR 1, this Court while interpreting the words "vest absolutely in the Government free from all encumbrances" occurring in Section 16 of the Land Acquisition Act held as thus : "On the other hand, ss.16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain events, shall 'vest absolutely in the Government free from all encumbrances'. In the cases contemplated by ss.16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession."

Thus where the land vests absolutely free from all encumbrances not only the rights in the land vest in the State but possession of the land also.

In the present case, Section 3 of the Act starts with an non obstante clause. Notwithstanding contained in any law, agreement, instrument, custom or usage or any decree of the court, all rights, title and interests in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. If we accept the argument of learned counsel for the respondents that easementary right being over the land and the same has not vested in the State under Section 3 of the Act, the result would be that the land would carry burden or charge affecting possession, interests and rights in the land. Such a meaning cannot be given to the expression 'free from encumbrances'. When the legislature has used the expression 'free from encumbrances', it means the vesting of land in the State is without any burden or charge on the land, including that of easementary right. We are, therefore, of the view that the consequence of vesting of right in the land free from all encumbrances is that the interest, right and title to the land including the easementary right stood extinguished and such rights vested in the State free from all encumbrances.

For the aforesaid reasons, we hold that under Section 3 of the Act, all rights, title and interests including the easementary rights stood extinguished and all such rights, title and interests vested in the State free from all encumbrances.

Before we part with the case, we cannot overlook the interest of the plaintiff-respondents herein. It is not disputed that the land in dispute is a pasture land and is being used for grazing. Section 8 of the Act provides the purpose for which land vested in the State Government can be utilised. One of the purposes for which such land can be utilised is for grazing the cattles and the State Government is required to allot the same as pasture land. If the purpose of vesting is to provide land to village community for grazing, there is no reason why the land be not be used as a pasture land for grazing. However, we leave this question open to be decided by the State government.

For the aforesaid reasons, we are of the view that the courts below fell in error in holding that the easementary right has not vested in the State. We, therefore, set aside the judgment under challenge. The appeal is allowed. There shall be no order as to costs.

JUDIS