

CASE NO.:
Appeal (civil) 4145 of 2001

PETITIONER:
Gram Panchayat, Village Kum Kalan

RESPONDENT:
State of Punjab & Ors

DATE OF JUDGMENT: 11/02/2008

BENCH:
Dr. Arijit Pasayat & P. Sathasivam

JUDGMENT:
JUDGMENT

CIVIL APPEAL NO. 4145 OF 2001

P. Sathasivam, J.

1) This appeal is directed against the judgment and order dated 24.05.2000 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 4816 of 1996 in and by which the Division Bench dismissed the writ petition filed by the appellant herein.

2) Gram Panchayat, Village Kum Kalan, Tehsil and Dist. Ludhiana through its Sarpanch, has filed the above appeal. According to the appellant, the mutation of the land in dispute which is Shamlat Deh measuring 242 kanals 11 marlas was sanctioned in favour of the Gram Panchayat. Earlier the Punjab Village Common Lands (Regulation) Act, 1953 was amended by Punjab Act No. I of 1954 and definition of Shamlat Deh was given in Section 2(g) of the said Act and the provisions of the Amended Act were made applicable w.e.f. 09.01.1954 retrospectively. In the Jamabandi, for the year 1965-66, Gram Panchayat has been described as the owner. Similarly, in the year 1970-71, Gram Panchayat was shown as the owner.

3) The dispute arose regarding the applicability of the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and the provisions of the Administration of Evacuee Property Act, 1950. The matter was taken to this Court and by order dated 19.03.1975, this Court granted stay of the allotment of the land to the displaced persons. In spite of the stay orders of this Court, the land was allotted to Savitri Devi, Widow of Bal Mukund, respondent No.7 herein and the Gram Panchayat-appellant herein was compelled to file Civil Writ Petition No. 3560 of 1976 in the High Court of Punjab & Haryana challenging the allotment of the Shamlat Deh land in favour of Savitri Devi. By order dated 23.08.1985, the High Court quashed the allotment of Savitri Devi-respondent No.7 herein.

4) In the year 1985, this Court settled the question regarding repugnancy of provisions of the Punjab Village Common Lands (Regulation) Act, 1961 with the provisions of the Administration of Evacuee Property Act, 1950, in the case of Gram Panchayat of village Jamalpur vs. Malwinder Singh & Ors., PLJ 1985 463 = (1985) 3 SCC 661. In this case, the State of Punjab took the stand that by reason of the Punjab Village Common Lands (Regulation) Act, 1953 as amended in 1961, the interest of the persons in the Shamlat Deh lands stood extinguished and the Shamlat Deh lands

were fully placed in the control and power of the Gram Panchayat and in view of the above judgment, C.W.P. No. 3560 of 1976 was allowed by the High Court and the allotment of land made in favour of Savitri Devi was quashed. This order of the High Court dated 23.08.1985 was not challenged before this Court and it became final.

5) In the year 1994, the Gram Panchayat filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 read with Sections 5 & 7 of the Punjab Panchayats Act before the Collector, respondent No.5 herein. On 08.05.1995, the State of Punjab amended the Punjab Village Common Lands (Regulation) Act, 1961 thereby validating and legalizing the illegal and invalid allotment of land of the Gram Panchayat to the displaced persons with the intention of abrogating the judgment passed by this Court in Gram Panchayat of village Jamalpur vs. Malwinder Singh & Ors. (supra) and the Collector was given the powers in view of the amended provisions to ignore the judgment of this Court.

6) On 25.03.1996, the Gram Panchayat filed C.W.P. No. 4816 of 1995 in the High Court for quashing the notification dated 08.05.1995 and also for striking down the provisions of the Amendment Act No. 8 of 1995 being ultra vires of the Constitution of India and violative of the Punjab Village Common Lands (Regulation) Act, 1961 as it has set at naught and abrogated the validity of the judgment passed by this Court. On 24.05.2000, the High Court dismissed C.W.P. No. 4816 of 1995 filed by the Gram Panchayat. Since the High Court has not considered the relief prayed for in the writ petition, the Gram Panchayat filed the present appeal.

7) We heard Mr. S.D. Sharma, learned senior counsel, for the appellant and Mr. J.S. Wasu, learned senior counsel, Mr. Rajeev Sharma and Mr. Ajay Pal, learned counsel for the respondents.

8) Learned senior counsel appearing for the appellant, by drawing our attention to various enactments, amendments brought in by the Punjab Government as well as the earlier orders of this Court, contended that Amendment Act 8 of 1995 and the Notification are null and void and cannot be sustained. According to him, in spite of the specific grounds particularly that the Amendment Act nullifies the judgment of this Court, the High Court failed to take note of the same and committed an error in not advertng to any of their challenge.

9) In order to appreciate the grievance of the appellant, it is useful to refer the impugned order passed by the High Court which is as under:

"We heard the learned counsel for the parties. It is admitted case that the allotment in favour of Savitri Devi was cancelled by the High Court on account of the judgment of the Supreme Court in Gram Panchayat of Village Jamalpur vs. Malwinder Singh & Ors., 1985 P.L.J. 463. to tide over the effect of the judgment, an amendment was made in the Punjab Village Common Lands (Regulation) Act, 1961, by amendment Act No. 8 of 1995, and by this amendment all transfers of land made prior to the judgment of the Supreme Court had been held to be valid. In this view of the matter, the basis of the order canceling the allotment of Savitri Devi no longer subsists. We, therefore, find no merit in the petition. Dismissed."

10) It is relevant to refer the relief prayed for in the writ petition by the Gram Panchayat. The prayer is as under:

"Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of writ in the nature of certiorari or any other appropriate writ order or direction, as

deemed fit in the circumstances of the case quashing the notification No. 8-LEG/95 dated 8.5.1995 Annexure P-9 and strike down the provisions of the amendment Act No.8 of 1995 being ultra vires of the Constitution of India and violative of the Act as it has set at naught and abrogated the validly rendered judgment of the Hon'ble Supreme Court of India and the order passed by this Hon'ble Court vide Annexure P-6."

It is clear that after setting out various grounds, the Gram Panchyat has prayed to issue writ of certiorari to quash the Notification dated 8.5.1995 and also to strike down the Amendment Act No. 8 of 1995 as ultra vires of the Constitution of India as well as the earlier judgment of this Court.

11) In the impugned judgment, after merely recording the fact of Amendment Act No. 8 of 1995 was brought in the Punjab Village Common Lands (Regulation) Act, 1961 and concluding that the basis of the order canceling the allotment of Savitri Devi no longer subsists, dismissed the writ petition filed by the Gram Panchayat. As rightly pointed out by the learned senior counsel appearing for the Gram Panchayat, the High Court has not considered the relief/challenge made in the writ petition. In other words, in the judgment, the High Court has not dealt with the point in issue, namely, whether the Amendment dated 8.5.1995 (Amendment Act No. 8 of 1995) made by the State of Punjab has been validly made or not. The abovementioned order of the High Court goes to show that practically no reason was indicated with reference to the challenge to the Amendment Act. The dismissal of the writ petition in such summary manner without adverting to their relief prayed for without indicating any reason is clearly indefensible. This Court in series of decisions held that reasons introduce clarity in an order and failure to consider the relief/challenge in the writ petition and the absence of reasons render the High Court judgment unsustainable. In view of the fact that the High Court has not considered the challenge as to the validity or otherwise of the Amendment Act and the Notification thereon, we have no other option except to set aside the impugned order and remit the same to the High Court for fresh disposal.

12) In view of the aforesaid, we set aside the impugned order of the High Court and remit the matter for fresh disposal in accordance with law by a reasoned order, particularly, with reference to challenge made in the writ petition. We make it clear that we have not expressed any opinion on the merits of the case. Inasmuch as the Gram Panchyat has approached the High Court as early as in 1996, we request the High Court to dispose of the writ petition as expeditiously as possible not later than 30.8.2008.

13) The civil appeal is allowed to the extent mentioned above. There shall be no order as to costs.