
(2002) 05 P&H CK 0045

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 3846 of 2000

Bhikan

APPELLANT

Vs

Gram Panchayat and Others

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 2

Citation : (2002) 3 RCR(Civil) 222

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—Rameshwar and Bhikan filed suit for permanent injunction against the Gram Panchayat of village Basana, Tehsil and District Rohtak and State of Haryana, restraining the Gram Panchayat from gifting the land bearing khewat No. 200/188, Khatauni No. 331, Rect. and Killa No. 65/2(3-19) situated in the revenue estate of village Basana, to State of Haryana, and further the State of Haryana be restrained from constructing any building thereon. It was alleged in the plaint that the State of Haryana wanted to construct building of Community Health Centre in village Basana. Since that the land in suit was lying "Gair Mumkin gora Muwaishin", the Gram Panchayat gifted the land to the State of Haryana, for the construction of Community Health Centre. The plaintiffs have their houses adjacent to the land in suit. Their grievance is that if Community Health Centre is constructed on the suit land, which is situated in the vicinity of their houses, gates, windows and ventilators of their houses will be closed. It was also alleged in the plaint that the land "Gair Mumkin Gora Muwaishian" cannot be gifted by the Gram Panchayat. In fact, the land was gifted due to the rivalry between the Sarpanch Ram Kumar and the plaintiffs, who did not support him in the panchayat elections. Sarpanch Ram Kumar was bent upon to teach lesson to the plaintiffs whose houses are situated in the vicinity of the land.

2. The defendants contested the suit urging that the land bearing Khewat No.

201/188, khatauni No. 331, Rect and Killa No. 65/2 (3-19) vests in the Gram Panchayat and it has every right to gift the land in suit for the purpose provided in the Punjab Village Common Lands (Regulation) Act, 1961 and the Rules framed thereunder. The Gram Panchayat wants to gift the land for the purpose of building of "Community Health Centre" of the village. The plaintiffs have encroached upon the land of the Gram Panchayat and the plaintiffs are in illegal occupation thereof. They cannot restrain the true owners from making beneficent use of the land. If Community Health Centre is constructed, that would benefit the entire village.

3. On the pleadings of the parties, following issues were framed;-

1. Whether the plot shown by letters ABCD in the site plan attached with the plaint is part of Rect No. 65 Killa No. 2, Khewat No. 200/188, Khatauni No. 331, of village Basana, as alleged in the plaint and is used as "Gair Mumkin Gora Muwaishian" as alleged in the plaint? OPP

2. If issue No. 1 is proved whether the suit land cannot be gifted in any way as alleged in the plaint? OPP

3. Whether the civil court has no jurisdiction to try the present suit? OPD.

4. Whether the suit is not maintainable in the present form? OPD.

5. Whether the plaintiffs, have no locus standi to file the present suit? OPD

6. Relief.

Vide order dated 16.9.1998, passed by Additional Civil Judge (Sr. Division), Rohtak, the suit of the plaintiffs was decreed, restraining the Gram Panchayat from gifting the land in suit to the State of Haryana for the purpose of constructing "Community Health Centre" on it. In view of his finding that land in suit is situated near the pond where people whether their cattle, it was found that the user of the land left for wells and grave yards cannot be changed, particularly, when there is no evidence, that there is no other land vested in the Gram Panchayat in the village where Community Health Centre can be constructed, purpose for which the land was gifted was definitely noble but this land was gifted by Sarpanch Ram Kumar mala fide with a view to harm the plaintiffs, whose houses are situated in the vicinity of this land. It was further found that the land left for "Gair Mumkin Gora Muwaishian" could not be gifted in view of the letter No. 1235 dated 24.2.1993, of the Deputy Commissioner, Rohtak, conveyed to the Panchayat by the Block Development and panchayat officer, Kalanaur vide letter No. 988 dated 6.3.1993. The Gram Panchayat vide resolution No. 2 dated 14.5.1993 again passed a resolution that the land situated near the pond is not so suitable for the construction of "Community Health Centre" and the Gram panchayat offered some other land situated near Sehu Pond for the purpose. It was found that the Gram Panchayat had consented to give some other land for the construction of "Community Health Centre" by passing Resolution No. 2 dated 14.5.1993 Ex.D-5. There was no scope for the

State of Haryana to accord permission to gift the land offered vide resolution No. 2 dated 15.9.1992 Ex.D-6 and again by asking resolution No. 2 dated 14.5.1993 Ex.D-5 consent was withdrawn by the Gram Panchayat, therefore, sanction accorded by the government vide order Ex.D-1 has not legal force.

4. The Gram Panchayat and the State of Haryana took up the matter in appeal, which was allowed by the Additional District Judge, Rohtak, vide order dated 25.9.2000.

5. Appellants Bhikan and Rameshwar have come up in further appeal to this Court against the order of learned Additional District Judge, Rohtak whereby he allowed the appeal of the Gram Panchayat and the State of Haryana and dismissed their suit.

6. I have heard the learned counsel for the appellants/plaintiffs and the learned counsel for the defendants/respondents and have gone through the record carefully.

7. It was submitted by the learned counsel for the appellants that the land in suit was reserved during consolidation proceedings for "Gair Mumkin Gora Muwaishian". It was also submitted that when this land was reserved for the use of cattle during consolidation, the Gram Panchayat had no right to change its user and put it to some other use. It goes without saying that this land vests in the Gram Panchayat, it having been reserved for cattle. Why could not the Gram Panchayat gift this land to the government with a view to its raising the building of "Community Health Centre" on it. Land in suit could be gifted by the Gram Panchayat with the permission of the government to any body. In this case, the Gram Panchayat has gifted the land to the government for the construction of "Community Health Centre". Construction of Community Health Centre in the village is a noble and laudable object. In this act of the Gram Panchayat, no mala fides can be read.

8. Faced with this situation, learned counsel for the appellants submitted that the land reserved in consolidation under Sections 18 and 23-A of the East Punjab Consolidation and Fragmentation of Holdings Act, 1948, does not fall in "shamilat deh". As such, the Gram Panchayat has no right to gift such land. In support of this submission, he drew my attention to Kala Singh v. Commissioner, Hisar Division and Ors. 1984 P.L.J, 169, where it was held that the land reserved for common purpose during consolidation proceedings is not "shamilat den" as defined in Section 2(g). As such, no jurisdiction with the Assistant Collector is vested to entertain application u/s 7. It was held that such land in view of the judgment of the Supreme Court in Bhagat Ram and Others Vs. State of Punjab and Others, belongs to the proprietary body and does not vest in the Gram Panchayat. It is not shamilat deh as defined in Section 2(g) of the Act. The Assistant Collector had no jurisdiction to entertain an application u/s 7 of the Act, for ejectment. "Shamilat Deh" has been defined in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961. It is the case of the appellants

that the suit land had been reserved for common purposes of the village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The disputed land was, thus, "shamilat deh" and could be gifted away by the Gram Panchayat for purposes as are permissible under the law. It is not the case of the appellants that gift of "shamilat deh" was not permissible for the construction of the Community Health Centre. It was held in *Bishamber Dayal v. State of Haryana* (1986) 89 P.L.R. 341 (F.B.) that "shamilat deh" within abadi deh or Gora deh vested in Gram Panchayat u/s 4 of the Punjab Village Common Lands (Regulation) Act, 1961 could be transferred by the Gram Panchayat for purposes mentioned in the Punjab Village Common Lands (Regulation) Rules, 1964. It was held in *Ranjit Singh v. Gram Panchayat, Bahadarpur* (1999) P.L.J. 289 that the Gram Panchayat is competent to change user of the land vested in it for the benefit of public at large even if it is used by the inhabitants of the village for different purpose.

9. Faced with this situation, learned counsel for the appellants has submitted that the appellants have their houses in the vicinity of the land in suit. If Community Health Centre building is constructed on the land in suit, they will suffer diminution of light and air to their houses, their windows and ventilators will be closed. It was submitted that if the doing of any act by a neighbour on his land, is injurious to the next of his neighbour so far as the use of his land by him is concerned neighbour should not be allowed to use his land in that manner. In *Virender Gaur and Others Vs. State of Haryana and Others*, it was held as under:-

"Article 21 protects right to life as a fundamental right. Enjoyment of life and its attainment including their right to life with human dignity encompasses within its ambit, the protection and preservation of environment ecological balance free from pollution of air and water. Sanitation without which life cannot be enjoyed. Any contra acts or actions would cause environmental pollution. Environmental ecological, air, water, pollution etc, should be regarded as amounting to violation of Article 21. Therefore, hygienic environment is an integral facet of right to healthy life and it would be impossible to live with human dignity without a humane or healthy environment. Environmental protection has, therefore, now become a matter of grave concern for human existence. Promoting environment protection implies maintenance of the environment as a whole comprising the man made and the natural environment. Therefore, this is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve the environment man made and the natural environment".

In my opinion construction of "Community Health Centre" on the suit land will not at all be injurious to the interest of the plaintiffs/appellants. The appellants should not put a spoke in the carrying out of this noble and laudable object by the government on the suit land which has been gifted to it by the panchayat. In this Regular Second Appeal, no substantial question of law arises. Additional

District Judge his correctly decided the factual as well as legal aspect of the matter.

10. For the reasons give above, this R.S.A. has to be dismissed being without merit. It is, accordingly, dismissed. No order as to costs.