
(1986) 01 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 2342 of 1985

Bishamber Dayal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-01-1986

Acts Referred:

Gram Panchayat Act — Section 97
Punjab Municipal Act, 1911 — Section 169, 4
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2, 4, 5, 7
Punjab Village Common Lands (Regulation) Rules, 1955 — Rule 3(2)

Citation : AIR 1986 P&H 203

Hon'ble Judges : Prem Chand Jain, C.J; Sukhdev Singh Kang, J; I.S. Tilwana, J

Bench : Full Bench

Judgement

Sukhdev Singh Kang, J.—Can a Gram Panchayat transfer a portion of the Shamilat land under a street or a lane within the abadi deh or gora deh vested in it under S. 4 read with S. 2(g)(4) of the Punjab Village common Land (Regulation) Act, 1961, or change its user? is the prestinely legal issue raised in this writ petition. A reference to salient facts is a prefactory necessity.

2. Bishamber Dayal, petitioners, and six others residents of village Jainpur, Tehsil and District Sonapat, filed an application under S. 7 of the Punjab Village Common Lands (Regulations) Act, 1961, (hereinafter called "the Act") against Smt. Ashi and 15 other residents and Gram Panchayat of their village and pleaded that land measuring 3 Kanals 19 Marlas, comprised in Khasra No. 166 Khewat No. 357/358-Khatauni No. 514-min, was a thoroughfare connecting the abadi of the village with the phirni. Fifteen/twenty days prior to the filing of the application, the respondent 1 to 6 encroached upon a portion of this thoroughfare and constructed one room and a boundary wall. Similarly, respondent 7 to 16 obstructed the thoroughfare. The thoroughfare was being used by the residents of the village and the respondent had illegally occupied the same and made encroachments thereon. The Gram Panchayat, respondent No. 17, was not taking any action in the matter. It was prayed that the respondent

be ejected from the thoroughfare and the construction made by them be got removed. This application was resisted by respondent. The respondent filed a joint written statement and averred that respondent 1 to 6 had no connection with the disputed land. This land had been given by the Gram Panchayat for construction of Harijan Chaupal, on the directions of the Deputy Commissioner. The state Government had also given grant-in-aid for the construction of the Chaupal. The Gram Panchayat itself was constructing the Harijan Chaupal on the disputed land. The Harijan Chaupal on the disputed land. the private respondent were assisting the Gram Panchayat. The respondent were not in unauthorised possession of the shamilat land. The Private respondent were assisting the Gram Panchayat. The respondents were not in unauthorised possession of the Shamilat land. The thoroughfare had not been closed. A 25 wide passage from east to west was left for the use of villagers.

3. The parties led their evidence. The applicants examined Kali Ram, Sham Lal, Daya Nand son of Raghbir and Daya Nand son of Jage Ram and produced site plan and a copy of the jamabandi. As against that, the respondent produced secretary of the Gram Panchayat and Ram Kishan, Sarpanch of the village, as their witnesses. They also tendered copies of the resolution of the Gram Panchayat dated 2nd of May, 1983 and resolution dated 23rd September, 1983, and a copy of the letter of the Development and Panchayat Officer.

4. After carefully scrutinizing the evidence of the parties, the Assistant Collector, 1st Grade, Sonapat, came to the conclusion that the Gram Panchayat had passed a resolution on 2nd of May, 1983 permitting the construction of a Harijan Chaupal, in the land, in dispute. This land belonged to the Gram Panchayat. The Gram Panchayat had constituted a committee vide resolution dt 23rd Sept. 1983, for the construction of Chaupal. The land had been given by the Panchayat for construction of a Chaupal, which was to be used by all the residents of the village. The respondent were not in unauthorised possession of the land. So, he dismissed the application vide order dt. 8th Aug. 1984. Dissatisfied, Bishambar Dayal, petitioners, and three others went up in appeal against this order,. the Collector heard the learned counsel for the parties at length and examined the record and with a refreshingly detailed order dismissed the appeal. He accepted the plea of the respondent in the written statement that the Gram Panchayat was the owner of the suit land, as also the Chaupal. The Gram Panchayat was constructing the Chaupal with the money received as grant-in-aid from the Government.

The Chaupal was not the personal property of the private respondent. The applicants had made an application under S. 97 of the Gram Panchayat Act for cancellation of the resolution of the Panchayat, but the same had been rejected. The Panchayat was competent to give the land for the welfare of the residents and for the common purposes. The Panchayat was competent to give the land for the welfare of the residents and for the common purposes. The applicants had failed to establish that the respondent were in unauthorised possession of the

land, in dispute. Aggrieved, they have filed the present writ petition.

5. At the motion stage, the respondent had resisted the writ petition on various grounds and had relied upon a Division Bench decision of this court in *Khushi Puri v. State of Haryana*. 1978 Pun LJ 78. The learned counsel for the petitioners had doubted the correctness of this decision. The writ petition was, therefore, ordered to be heard by a Full Bench. That is how the matter is before us.

6. It is contended by Shri S. K. Bansal, learned counsel for the petitioner that Khasra No. 166 was a thoroughfare connecting the village abadi with the village phirni. The residents of the vilalge used this passage for going out of and coming to the village. Even if this land came to vest in the Gram Panchayat with the operation of S. 4 read with S, 2(g)(4) of the Act, it did not become its owner, only the management of this land was vested in the Gram Panchayat. The Gram Panchayat cannot change the user of this land. It was not competent to transfer any portion of the land forming part of a street or lane to any other person, the resolution dt 2nd May, 1983, passed by the Gram Panchayat reserving this land for construction of the Harijan Chaupal was wholly without jurisdiction. The private respondent to the petition under S. 7 of the Act. The Assistant Collector and the Collector acted with material irregularity in the exercise of their jurisdiction by not ejecting the unauthorised occupants and dismissing the petition and appeal of the petitioners and his companions.

7. This argument has not commended itself to us. In view of provisions of sub-clause (4) of Clause (g) of S. 2 of the Act, the lanes and streets in the abadi deh and gorah deh are shamilat deh. Under S. 4 of the Act, all rights, title and interest in shamilat deh vest in the Gram Panchayat. By virtue of the provisions of Clause (xxii) of sub-rule (2) of R. 3 of the Punjab Village Common Lands (Regulation) Rules (hereinafter referred as "the Rules") the Gram Panchayat can make use of the land in shamilat deh vested in it for constructing a village Chaupal. It would be profitable to read the relevant statutory provisions at this stage:--

The Punjab Village Common Lands (Regulation) Act, 1961:

Section 2: Definitions--In this Act unless the context otherwise requires,--

(a) to (f) ** ** *

(g) "shamilat deh" includes-

(1) to (3) xx xx xx xx xx xx xx xx xx

(4) Lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gorah deh.

xx xx xx xx xx xx xx xx xx xx

Section 4: Vesting of rights in Panchayats and non-proprietors.

(1) Notwithstanding anything to the contrary 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 whatever in the land,--(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at commencement of this Act, vest in a panchayat constituted for such village, and where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) xx xx xx xx xx xx xx xx xx xx

The Punjab Village Common Lands (Regulation) Rules, 1964.

Rule 3: The manner in which and purpose for which shamilat deh may be used--
Ss. 5 and 15(2)(a) of the Act-

(1) xx xx xx xx xx xx xx xx xx xx

(2) The Panchayat may make use of the land in shamilat deh vested in it under the Act. either itself or through another, for any one or more of the following purposes:--

(1) to (xxi) xx xx xx xx xx xx xx xx xx xx

(xxii) Panchayat-ghar or janijghar or village Chaupal.

xx xx xx xx xx xx xx xx xx xx

8. It is manifest from a perusal of record that the Gram Panchayat was shown to be the owner of the land in dispute. In Jamabandi Exhibit P2/A annexed to the petition, it is Phirni", Gram Panchayat is mentioned to be falls within the ambit of expression shamilat deh as defined in S. 2(g)(4) of the Act. The title thereof vested in the Gram Panchayat by virtue of provisions of S. 4. The Gram Panchayat was, therefore entitled to use it in the manner it liked. However, restrictions have been placed on the use of shamilat land by Rule 3 of the Rules made under the Act. It has been provided therein that the shamilat deh land vested in the Gram Panchayat can be used only in the manner and for the purposes given under R. 3 and one of these purposes is the construction of village Chaupal. Since the streets and lanes shamilat deh, and they vest in the Gram Panchayat, the land under them can be put to any one or more of the uses enumerated in sub-r. (2) of Rs. 3. In exercise of this power the Gram Panchayat, on the directions of the Deputy Commissioner, reserved a portion of the village street comprised of Khasra No. 166 for the construction of Harijan Chaupal. While so doing the Gram Panchayat was not actuated by any extraneous or collateral considerations; it was motivated by a laudable idea of constructing a Harijan Chaupal, which was to be used by all the residents of the village. The Act and the Rules empower the Gram Panchayat to convert a portion of the street for any one or more of the purposes given in R. 3(2). A Division Bench of this Court

had an occasion to construe the provisions of Ss. 2(g)(4), 4 and 5 of the Act and R. 3(2) of the Rules made thereunder in Khushi Puri's case (1978 Pun LJ 78) (supra). It was held that the Gram Panchayat could make use of the shamilat deh land vested in it either itself or through another for the purposes mentioned in R. 3(2). In that case a part of Charand land which was used for grazing cattle had been entrusted to the Forest Department to plant trees, which were to be the property of the Gram Panchayat. This action of the Gram Panchayat had been upheld by the Division Bench. Shri Bansal, learned counsel for the petitioners has raised no contention before us that Khushi Puri's case (supra) (does not lay down the correct law or that the ratio thereof needs reconsideration by a large Bench. We are in respectful agreement with the ratio of Khushi Puri's case (supra).

9. In fairness to Mr. Bansal it may be mentioned that he had contended that the powers of the Gram Panchayat to manage the streets and lanes in the village are analogous to the power of a Municipal Committee under S. 169 of the Punjab Municipal Act. The Municipal Committee was not entitled to give any person permission to deposit goods for sale on any public street. It cannot lease any portion of public street. In support of this contention he had referred us to Municipal Committee of Multan v. Tehlia Ram AIR 1923 Lah 272, Mt. Resham v. Matu Ram AIR 1934 Lah 936 (1), Municipal Committee, Delhi v. Mohammad Ibrahim AIR 1935 Lah 196 , Emperor Vs. Khushal Jeram, . We are not impressed by this argument. The provisions of S. 169 of the Punjab Municipal Act are not in pari materia with the provisions of S. 4 of the Act. Under the Punjab Municipal Act the title in the land under the public streets does not always vest in the Municipal Committee. It is clear from the perusal of the head note in Municipal Committee of Multan's case (supra) that the vesting of the street in the municipal committee does not transfer to it the rights of the owner in the site or soil, over which the street exists. The municipal committee does not own the soil, but it has the exclusive right of managing and controlling the surface of the soil. In this context observations were made that the municipal committee cannot give any person permission to deposit goods for sale on any public street. In Mt. Resham's case (supra), also, the land under the street belonged to private person. It was observed that the ownership of the soil may remain with the plaintiffs, who were private persons. Same is the position in Municipal Committee, Delhi's case (supra). It was held that mere vesting of a public street or ways in the municipal committee does not make them its personal property. In Bombay case S. 50 of the Bombay District Municipal Act expressly declared that public streets so vested in them shall be applied by the municipal committees as trustees, subject to the provisions and for the purposes of the Act. Since the street had vested in the municipal committee to be used as a street, the municipal committee cannot permit any obstruction therein by a private person. These authorities were of no help to the petitioners.

10. We are of the considered view that the Gram Panchayat is competent to transfer a portion of the land in a street or a lane which the abadi deh or gerah deh vested in it and can also change its user. The question posed at the

threshold is answered in the affirmative. We however make it clear that we have only upheld the power of Gram Panchayat to change the user of shamilat deh vested in it and transfer thereof for purposes mentioned in Rs. 3(2). This, however, does not mean that order of the Gram Panchayat cannot be challenged even in a suitable case on the ground that it is passed mala fide or is based on extraneous considerations or it is otherwise against law.

11. This writ petition is liable to be dismissed on merits also. It is clear from the impugned orders that the private respondent had pleaded before the authorities that the Chaupal was being constructed by the Gram Panchayat with funds received from the State Government, for the benefit of the residents of the village. The land beneath and the Chaupal remains the property of the Gram Panchayat; the private respondent had no concern with it; the land had not been transferred to them and they were not in possession thereof. The private respondent have taken the same stand in their written statment to the writ petition. They have reiterated that the Chaupal is being constructed by the Gram Panchayat for the residents of the village; the Gram Panchayat is the owner of the Harijan Chaupal, as well as the disputed land. They were only assisting the Gram Panchayat in the construction of the Harijan Chaupal. So it cannot be stated that the private respondent were in unauthorised occupation of the land in dispute. The authorities had rightly reached this conclusion that they were not in an unauthorised possession of the land in dispute. The application under S. 7 of the Act for eviction of the private respondent had been rightly dismissed.

12. For the foregoing reasons we find no merit in this writ petition and dismiss the same but with no order as to costs.

Petition dismissed.