

(1965) 01 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1507 of 1964

Gram Panchayat Dari and Another

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

Date of Decision : 25-01-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1965) 01 P&H CK 0008

Hon'ble Judges : Grover, J

Bench : Single Bench

Advocate : Meia Ram Sharma, for the Appellant; H.L. Soni, for the Respondent

Judgement

Grover, J.—This is a petition under Articles 226 and 227 of the Constitution in which the facts may be stated.

2. The petitioner is the Gram Panchayat Dari in District Kangra and the allegations in the petition are that the estate of village Kanivara consists of 18 Tikkas which are scattered over a wide area. Shamilat deh of this estate measures about 1,57,000 Kanals. In this area there are valuable slate quarries which have been in possession of the land owners/licensees from the earliest time. In the year 1867 the land-owners granted a lease for extracting slate stone from certain areas to one R. B. Shaw, who continued to work on these quarries under the name of Kangra Valley Slate Company Ltd. Mr. Shaw later on transferred his interests to certain other persons. In the year 1950 the Zamindars of the estate started quarrying slate stone there from the area which was not in occupation of the Kangra Valley Slate Company. The said Company took objections to this extraction and in the year 1953 filed a suit claiming an injunction against the land-holders restraining them from carrying on" quarrying operations. This suit was dismissed by the Senior Sub-Judge, Dharamsala, on 5-7-1954. Meanwhile the Punjab Village Common Lands(Regulation) Act, 1954 (hereinafter called the Act) was enacted. The Kangra Valley Slate Company preferred an appeal in this Court claiming that by virtue of the Act all rights and

interests in the shamilat deh land had not vested in the Gram Panchayat Kaniyara and the Gram Panchayat Dari. This matter came up before the Full Bench of this Court of which I was a member and the decision of which is reported in Kangra Valley Slate Company Ltd. v. Kidar Nath and others (1061) 63 P.L.R. 553.; It was held that section 3(a) of the Act is not limited to the rights, title and interests of proprietors as such, but extends to all persons having the same in the land included in the shamilat deh and further that section 3(a) extends to rights, title and interests in such land even when the same have been acquired from proprietors as such prior to the coming into force of the Act in relation to the particular village. The final decision in the regular first appeal was delivered in 1964 by a Bench consisting of Dulat Acting C. J. and Pandit J., which is reported in The Kangra Valley Slate Company Ltd. v. Kidar Nath and others (1964) 66 P.L.R. 966. The appeal against the decision of the Senior Sub Judge was dismissed. It may be mentioned that the Government was not a party to that appeal, except that a notice was given at the stage of hearing by the Full Bench because the constitutionality of certain provisions was involved.

3. In the petition it is further alleged that the persons who were concerned with the affairs of the Kangra Valley Slate Company were very influential and they stated persuading the District authorities to put obstacles in the way of the petitioner and the lessees to quarry slate stone. On 15th May, 1954 the Deputy Commissioner, Kangra, passed orders that only Khatauni No. 30, Khasra Nos. 40, 60 and 60/1, measuring 182 Kanals 3 Marias belonged to the land-owners and the rest of the area did not belong either to the proprietary body or to any individual owner. He also passed orders that nobody should carry on quarrying operations in the rest of the area. In the year 1962 it is stated that the petitioner leased out about 1200 Kanals of shamilat land in favour of Sarotu Slate Quarry. When the lessees started quarrying operations, the Kangra Valley Slate Company and Forest Society Kaniyara took out proceedings u/s 145 of the Code of Criminal Procedure. It was held in those proceedings that Shri Budhi Singh and others were in lawful possession of the area leased out by the petitioner. In para. 12 it is alleged that the estate of village Kaniyara was scattered over a wide area and for this reason Gram Panchayat Kaniyara was constituted for 10 Tikkas and Gram Fanchayat Dari for the rest of 8 Tikkas. Although at the time of sanctioning the mutation of ownership in favour of two Panchayats the revenue authorities apportioned the land on fifty-fifty basis, yet in revision the Financial Commissioner, Punjab, ordered the apportionment of the shamilat deh area in the ratio of land revenue payable by each Panchayat. In this manner 3041 shares of shamilat deh land were granted to the Gram Panchayat, Dari, as against 2483 shares granted to the Gram Panchayat, Kaniyara. On 15th May, 1964, the Deputy Commissioner passed an order, copy of which is Annexure "B" In this order he held that the ownership of the slate quarries according to the revenue record is that of the Government except the quarries which had been declared at the time of settlement as belonging to the land-owners, viz., Khatauni No. 30, Khasra. Nos. 40, 60 and 60/1 measuring 4 Kanals and 8 Marl is, 16 Kanals and 13. Marias

and 161 Kanals and 2 Marias, respectively. Beyond this no other quarry or mineral belonged to either the village proprietary body or any individual owner.

4. The case of the petitioner in the petition is that according to the entries in the Wajab-ul-Arz for the settlement conducted in 1917-18 rights in slate mines were expressly recorded in favour of the land-owners and, therefore, they now vest in the Panchayat by virtue of the provisions contained in the Act. After referring to section 42 of the Punjab Land Revenue Act it is stated that the slate quarries are expressly mentioned as belonging to the village proprietors and therefore, they now vest in the Gram Panchayat. In short, the case of the petitioner is that the entire shamilat deh area vests in the Panchayat, and therefore, the right of quarrying slate stone belongs to the Panchayat and the order made by the Deputy Commissioner is wholly illegal.

5. In the return submitted by the State the position taken up is that all rights, title or interest in respect of quarrying of slates etc. belong to the State in the lands in dispute except in certain Khasra numbers (the particulars of which are given), which were in the possession of the land-owners and which had been assessed to land revenue and the mines in which had been declared to be the property of the land owners. It has further been stated that the area of quarrying is situated in the "protected forest", declared as such under Chapter IV of the Indian Forest Act. Some part of the land is a "demarcated protected forest", declared vide notifications Annexures R. 2(a) and (b), and the rest is "undemarcated protected forest. The Kangra Valley Slate Company was granted a licence for quarrying of slate in any area in village Kaniyara outside an area of 320 acres known as the "delimited area." The licensees continued to quarry slates up to 1950, when other land-owners started quarrying in an unscientific manner. This led to the anxiety of the Government for requiring a permit for quarrying slates under rule 32(2) of the Rules for the Protected Forests. After 1953 the Panchayat of Kaniyara began to assert its rights in place of the land-owners and it was in those circumstances that the Deputy Commissioner, Kangra, after hearing all the parties concerned gave a decision that the ownership of the slate quarries in Mauza Kaniyara was that of the State, except those quarries, which had been declared first at the time of Settlement of 1890-91 (latter on affirmed in 1917-18) as belonging to the land-owners, viz. in Khatauni No. 30, the total area being 182 Kanals and 3 Marias. It is maintained that the ownership of the quarries of the states, as found by the Deputy Commissioner, is perfectly correct, and is in accordance with the Wajab ul-arz of Tika Chakban Mauza Kaniyara as laid down in the Land Revenue Settlements of 1890-1891 and 1917-18 copies of the relevant entries from the Wajib-ul arz being Annexures R. 1(a) and (b). The State denied the claim of the Gram Panchayat to any rights, title or interest in the slate quarries in dispute.

6. The learned counsel for the petitioner made an attempt to take me through the various documents which have been filed, by both this parties consisting of revenue entries, notifications etc., for the purpose of establishing the case set up

by the petitioner. My attention has also been drawn to the Revised Settlement Report of Kangra Proper of 1897 compiled by Mr. A. Anderson, in which it is stated in paragraph "42 that it had been finally decided that the Government could not assert any rights of ownership in the quarries of Kaniyara because in the records of that village, prepared by Mr. Barnes, it was. distinctly provided that the proprietors of the land were the owners of the Slate quarries. It has also been urged that although by a notification dated the 26th January, 1897 (copy Annexure R. 2(a)), the provisions of Chapter IV of the Indian Forest Act of 1878 were made applicable to the forest waste lands in a village Tika Kaniyara, no notification has been shown to have been issued u/s 29 by which the Government could prohibit from a date fixed in the notification the quarrying of stone etc, from such land, which has been declared as "protected forest".

7. It is obvious from what has been stated above that the real dispute between the parties is one of title, rights and interests in the slate quarries in the land in dispute. It is well known that when a party is asserting that the ownership vests in it and the other is denying these rights and is claiming rights of ownership in itself, the only proper forum, where such disputes ought to be decided, are the ordinary Civil Courts in a regular action. There are so many disputed questions of fact in the present petition that it is not possible nor expedient to decide them in a writ petition, which, it is well settled is not meant for these purposes. The learned counsel for the petitioner says that he is in fact challenging the order of the Deputy Commissioner, but then the order of the Deputy Commissioner is based on the claim of the State that the ownership of the slate quarries vests in the State. It will therefore be necessary to go into the question of title, which as I have already said, is not a matter which can be appropriately decided in the present proceedings. I would, therefore, dismiss this petition on the ground that it is open to the petitioner to have resort to the alternative remedy of a regular suit in which, no doubt, all the points which have been raised in this petition can be agitated and decided. In view of the entire circumstances, there will be no order as to cost?