

**(1982) 11 SHI CK 0002**  
**In the High Court Of Himachal Pradesh**  
**Case No : Civil Revision No. 57 of 1977**

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|--------------------------------|----|------------|
| Gram Sabha Khunyara and Others | Vs | APPELLANT  |
| Major Lal Singh and Others     |    | RESPONDENT |

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**Date of Decision :** 23-11-1982

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151  
Himachal Pradesh Gram Panchayat Rules, 1971 — Rule 37, 38  
Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 3(5)  
Punjab Village Common Lands (Regulation) Rules, 1964 — Rule 6(10), 6(8)

**Citation :** (1982) 11 ILR HP 759

**Hon'ble Judges :** H.S. Thakur, J

**Bench :** Single Bench

**Advocate :** Chhabil Dass, for the Appellant; Inder Singh, for the Respondent

**Final Decision :** Allowed

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## Judgement

H.S. Thakur, J.—The Petitioners by this revision petition have assailed the order of the learned Additional District Judge, Kangra at Dharamsala, dated 6th April, 1977, whereby the order passed by the learned Senior Sub-Judge, Dharamsala, vacating the ad-interim injunction order was set aside.

2. The material facts relevant to decide this revision petition may be stated. The Respondents (hereinafter referred to as the Plaintiffs) filed a suit against the Petitioners (hereinafter referred to as the Defendants), wherein it was contended that Defendants 1 and 2 (the Gram Sabhas) own certain slate quarries and that the Plaintiffs were lessees under them since 1972 and in that capacity they have been extracting slates from the said quarries on payment of rent or in the alternative on payment of "haq-malkana" or royalty at the rate of 8% of the sale proceeds which was subsequently raised to 16%. By a Resolution No. 75 of 13th July, 1975, the aforesaid Gram Sabha constituted a Board styled as "Ghaniara Gablidhar Board" and Defendants 3 to 10 were appointed as its members who were authorised to grant or withhold leases in respect of the slate quarries. The

Defendants 3 to 10 passed a Resolution No. 34 on the same day whereby the quarries as mentioned in the plaint were ordered to be closed for the operation of extracting slates with effect from 15th July, 1975. declaring them as dangerous areas. A notice to this effect was displayed outside the office of the two Gram Sabhas at Ghaniara. According to the Plaintiffs, they were inducted as lessees as a result of a lease deed in 1972 whereby the lease was to commence on the 1st of April and to terminate on 31st of March each year. It is claimed by the Plaintiffs that there was an implied promise to renew the lease and that they have been in possession as such even beyond 31st of March, 1975, on payment of rent to Defendants 1 and 2. The Plaintiffs also contended that the lease is deemed to have been renewed for the year 1976 as the Plaintiffs had been operating the quarries on paying "haq-malkana". The Plaintiffs also averred in the plaint that since the aforesaid resolution of the Board had caused apprehension in their minds that their rights are likely to be invaded by the Defendants, they instituted a suit to the effect that the said resolution of the Board was mala fide, illegal and void and the Plaintiffs are entitled to continue in possession of the mines and extract slates there from as lessees without any hinderance. The Defendants in their written statement resisted the suit and contended that the Plaintiffs were not in possession of the mines as lessees and also asserted that the leases had been terminated on 31st of March, 1975, in accordance with the terms of lease. On this basis, it was contended that the Plaintiffs had no locus standi to file the suit.

3. An application under Order 39 Rules 1 and 2 read with Section 151 of the CPC was also filed by the Plaintiffs for an ad-interim injunction praying that pending the disposal of the suit, the Defendants be restrained from interfering with the working of the slate quarries by the Plaintiffs. An ad-interim injunction order was initially passed but the same was vacated soon thereafter by the Senior Sub-Judge. An appeal against the said order was filed which was decided by the learned Additional District Judge, Kangra at Dharamsala, and the same was allowed.

4. Aggrieved by the said order and judgment of the learned Additional District Judge, the Defendants have filed this revision petition. It may be pointed out that during the pendency of this revision petition, a workable order was passed by this Court on 26th June, 1981, whereby the Plaintiffs were allowed to extract slates from the quarries and to remove the same on certain conditions.

5. During the pendency of the revision petition, an objection was raised on behalf of the Plaintiffs that since the area where the quarries in dispute are situate had vested into Government, under the Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, the Defendants had no locus standi to resist the claim of the Plaintiffs. This objection has been taken on behalf of the Plaintiffs for the first time in this Court. An affidavit controverting this plea has been filed on behalf of the Defendants. It is stated in the affidavit filed by Shri Swarup Kumar son of Shri Tulsi Ram, Member of Gram Panchayat Khunyara that the slate

quarries in dispute have not vested in the State Government and they continue to vest in the Gram Panchayat as decided by the Collector vide his order, dated 24th March, 1980. English translation of the order passed by the Collector has been filed with the affidavit. In the said order, it is observed by the Collector that the Gram Panchayat Dari and Ghaniara had filed writ petitions in the High Court and after the decision of the aforesaid writ petitions, a notice u/s 3(5) was issued to the Panchayats to which they had filed objections. It is further pointed out that keeping in view the judgment of the High Court and after enquiring into facts of the case and after hearing Shri Hari Krishan, Advocate, on behalf of the Panchayats, who had stressed that "gair-mumkin" area, that is, slate quarries cannot be transferred in the name of the State Government keeping in view the aforesaid facts and also after enquiring into the facts and in accordance with the judgment of the High Court, the "gair-mumkin" area like slate quarries or such area where on the spot slate quarries are found, do not fall within the definition of land, and as such, this type of land will continue to remain in the name of Panchayat. This fact has not been controverted by the learned Counsel for the Defendants. Accordingly, this contention of the Plaintiffs cannot be sustained.

6. Numerous contentions have been raised by the learned Counsel for the parties. It is not desirable to give definite findings on all those contentions as that is likely to prejudice either party in the suit. One of such contentions of the Defendants is that the position of the Plaintiffs is that of licensees and not of lessees. Even the nomenclatures relating to the payment in lieu of the use of the land for extracting slates mentioned are: "haq-malkana", "royalty" and "rent". At this stage, it is not proper to give a definite finding on this question.

7. Without considering all the contentions involving disputed questions of fact, I deem it proper to dispose of this revision petition on the assumption that even if the Plaintiffs are assumed to be the lessees as contended by them, whether the so called lease is warranted under the law and rules.

8. It is contended by the learned Counsel for the Defendants that in order to create a lease in respect of lands which vested in the Garam Sabha under the Village Common Lands (Regulation) Act, it is provided by the Punjab Village Common Lands (Regulation) Rules, 1964, that all leases of land in ""Shamlat Deh" shall be auctioned after making publicity in the manner laid down in Sub-rule (10) of Rule 6 of the Rules. It is further provided that all documents executed in this connection shall be signed by a Sarpanch or in his absence by a Panch performing the duties of the Sarpanch and two other Panches of the Gram Panchayat. It is also provided that the publicity to lease, auction programme shall be given 15 days before the date of auction by specifying the description of land, the date, time and place fixed for the auction of lease. Even the publicity through any local vernacular newspapers and where the auction of stone quarries, bajri or other minor minerals etc. is to be held, in addition is to be made through an English newspaper. There are other provisions also for giving a proper publicity. Even under the Himachal Pradesh Panchayat Rules, 1971, the

Gram Panchayat shall not transfer by way of lease, licence, contract or agreement, any immovable property vested in it, except with the previous approval of the Director with such conditions as he may impose. The provisions to this effect are contained in Rules 37 and 38 of the Himachal Pradesh Panchayat Rules, 1971. These provisions do not appear to have been complied with in the case in hand.

9. Almost in an identical case decided by this Court in Civil Revision No. 59 of 1978, on August 7, 1981, V.D. Misra, C.J., ruled as under:

Now a Gram Sabha in which the land in question vested cannot act but by proper resolutions. Under Rule 6(8) of the Punjab Village Common Lands (Regulation) Rules, 1964, the lease has to be in writing and duly executed. In other words, even if there was an oral lease granted by somebody it cannot bind the Gram Sabha which is a statutory body. To that extent, the quarrying of the slates by the Plaintiff was definitely unauthorised and illegal. Simply because the Sabha had collected the royalty on the slates quarried by the Plaintiff, it does not follow that the Plaintiff had legally extracted the slates.

In this decision, it is further observed:

I find that the appellate court fell into the error of concluding from these facts that there was a prima facie case made out by the Plaintiff to show that he was holding a valid and legal lease from the Gram Sabha.

10. For the foregoing reasons and on the strength of the principle laid down in the aforesaid decision, I am of the view that the revision petition deserves to be allowed.

11. Before parting, it may specifically be pointed out that the aforesaid observations are without prejudice to the merits of the suit and are only meant to decide this revision petition. I have deliberately refrained myself from entering into a lengthy discussion on the merits of the case, in order to obviate the possibility of any prejudice being caused to any party in the suit. It is expected that the trial court would take all possible steps to dispose of the main suit as expeditiously as possible, as the same is quite old.

12. As a result of my above discussion, the revision petition is allowed and the order and judgment passed by the lower appellate court is set aside. In the peculiar circumstances, the parties are left to bear their own costs.