

(1986) 03 P&H CK 0006
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 976 of 1979

Gurdial Singh and ors.

APPELLANT

Vs

State of Punjab and ors.

RESPONDENT

Date of Decision : 27-03-1986

Acts Referred:

Citation : (1987) PLJ 76 : (1987) RRR 486

Hon'ble Judges : D.V.Sehgal, J

Advocate : Rajesh Garg, Advocates., Ajay Mittal, Ashok Bhan, Senior Advocate,,
Advocates for appearing Parties

Judgement

D.V. Sehgal, J.

1. The petitioners claim that they along with others are the owners of land in village Mansa Kalan and are cosharers of Shamilat Deh of the village. This land was either vested in the Gram Panchayat or was under its control when the area of Gram Sabha, Mansa Kalan, was included in the limits of the Municipal Committee, Mansa, respondent No. 2, by virtue of the proviso to Rule 3 of the Punjab Gram Panchayat Rules, 1965 (hereinafter referred to as the Rules), this land reverted to the petitioner and other cosharers of the village who became its owners. However, vide notification dated 7.1.1976 published in the Punjab Government Gazette dated 16.1.1976 (Annexure P.1), the proviso to rule 3 of the Rules was omitted. In pursuance thereto, respondent No. 1 issued instructions dated 30.4.1976 (Annexure P. 2) to all the Presidents of the Municipal Committees and others to acquire control of such lands as were mentioned in the proviso to rule 3 of the Rules and get mutations entered and sanctioned in favour of the Municipal Committees concerned. Following these instructions, mutation Annexure P. 3 was entered and was duly sanctioned in respect of land measuring 732 Kanals 13 Marlas in favour of respondent No. 2, vide Annexure P. 3. The petitioners contend that, by virtue of proviso to rule 3 of the Rules, the said land already stood vested in them and other proprietors of village Mansa Kalan and they could not be divested of this right by subsequent

omission of the proviso to the said rule, by notification Annexure P. 1. They alleged that they came to know about the mutation Annexure P. 3 much later when respondent No. 2 started forcibly taking possession of the land in question. Thus, approaching this Court through the present writ petition, they have sought a writ of certiorari for quashing Annexure P. 1 to P. 3 and a writ of prohibition restraining respondent No. 2 from auctioning the said land.

2. The petition has been contested by respondent Nos. 1 and 2 by filing their separate written statements. It has been asserted by respondent No. 2 that, by virtue of notification Annexure P. 1, the whole of the land belonging to the Panchayat stood vested in it as the whole the Sabha area of village Mansa Kalan has been included in the Municipal Committee. The question of the petitioners being deprived of their vested right to property, according to respondent No. 2, did not arise. The land which previously vested in the Gram Panchayat now stood vested in respondent No. 2 by operation of law.

3. This case earlier came up for hearing on 22.1.1986. Since the pleadings of the parties did not disclose the date on which the area of the Gram Sabha was included in the Municipal Committee, respondent No. 2, for which purpose a notification must have been issued by the State Government, on the request of the learned counsel for the parties to ascertain this data, I had adjourned the case. Now when the case came up for arguments, the information regarding the exact date when the area of village Mansa Kalan was included in the Municipal Committee, respondent No. 2, was not available with either of the learned counsel for the parties. It was, however, admitted on both sides that this area was so included in the Municipal limits long before 7.1.1976 when the notification Annexure P. 1 was issued. On this premises, Mr. Ashok Bhan, Senior Advocate appearing for the petitioners, contended that, by virtue of proviso to rule 3 of the Rules, which was in existence on the date when the area of Gram Sabha, Mansa Kalan, was included in the Municipal Committee, the rights in the lands, in dispute, reverted to the petitioners and the other cosharers of the village. Simply because on a later date, i.e. 7.1.1976, the said proviso to rule 3 of the Rules has been omitted by notification Annexure P. 1, they cannot be divested of their rights in the said land. To appreciate this contention of the learned counsel, it is necessary to reproduce rule 3 of the Rules before its amendment, vide notification Annexure P. 1 :

` Disposal of assets and liabilities of Gram Sabha [section 4(3)] if the whole of the Sabha area is included in a Municipality, Cantonment or Notified area, all rights, obligations, property, assets and liabilities, if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board, N.A.C., as the case may be :

Provided that the land which vests in the Panchayat under the Punjab Village Common Land (Regulation) Act, 1961, or the land, management and control of which vests in the Panchayat under the East Pb. Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, shall revert to the cosharers and owners

thereof."

The rule set out above leaves no manner of doubt that, when whole of the Sabha area is included in a Municipality, the land which vested in the Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961, or the land the management and control of which vested in the Panchayat under the East Punjab Holdings (Consolidation and Presentation of Fragmentation) Act, 1946, was to revert to the cosharers and owners thereof. The omission of the proviso to rule 3 of the Rules by the notifications dated 7.1.1976 (Annexure P. 1) is to operate prospectively. It is settled principle of law that a legislation generally operates prospectively unless it is expressly made applicable with retrospective effect.

4. Mr. Anand Swaroop, learned Senior Advocate, appearing for the respondents, contended that the petitioners have not been able to show as to when the area of village Mansa Kalan was included in the Municipal limits. He further contended that there is nothing on the record to show that village Mansa Kalan, before its inclusion in the Municipal limits was a Gram Sabha and the land, in dispute was in the Sabha area. His last contention is that the petitioners have not given details of the land, in dispute, with specific Khasra numbers and its area.

5. I have not been able to persuade myself to agree to any of the contentions of the learned counsel for the respondents. As regards his first submissions, all that is material in the present case is that the land, in dispute of village Mansa Kalan, had been included within the Municipal limits before the notification dated 7.1.1976 (Annexure P. 1), whereby proviso to rule 3 of the Rules was omitted, came into force. Thus the land which vested in the Panchayats, as described in the said proviso, reverted to the cosharers and owners of the land in the village. As already noticed, it is not disputed that the area of village Mansa Kalan was included within the Municipal limits long before the notification Annexure P1 came into force. The second contention of Mr. Anand Swaroop loses significance when reference is made to the written statement filed on behalf of respondent No. 2. In paragraphs 6 and 13 of the same, it is stated as under :

"6. In view of legal position as enumerated in Annexure P. 1. whole of the land belonging to the Panchayat now stood vested in the answering respondent as the whole of Sabha Area of village Mansa Kalan has been included in the Municipal Committee, i.e., answering respondent.

13. The question of the petitioners being deprived of their property does not arise. The land which was previously vested in the Gram Panchayat, now stands vested in the answering respondent by operation of law."

It is thus admitted by respondent No. 2 in so many words that, before its inclusion in the Municipal limits, village Mansa Kalan was administered by a Gram Sabha. The last contention is also of no avail to respondent No. 2. The land in question is fully described in mutation No. 11902, a translation of the extract of which is appended to the petition as Annexure P. 3, with complete description of Khata, Khatuni, Killas and Kitta numbers and the total area thereof is 732 Kanals

13 Marlas. A perusal of Annexure P. 3 shows that this mutation has been sanctioned at the instance of respondent No. 2 in pursuance of the Government instructions Annexure P.2.

6. As a last resort, the learned counsel for the respondents, raised a contention for which although no foundation has been laid in the written statement, yet deserves to be considered, is that the land described in mutation Annexure P. 3 is shown in the column of ownership as Shamilat Deh Hasab Rasad Zare Khewat. Third discription, according to him, does not bring the land within the fold of the proviso to rule 3 of the Rules, which was omitted vide notification Annexure P. 1. It may be noticed here that the land which vested in the Gram Sabha by virtue of section 4 of the Punjab Village Common Lands (Regulation) Act, 1961, earlier belonged to the Proprietary Body of the village. The management of the land which was reserved for common purpose under section 18(c) of the East Punjab Holdings (Consolidation and Presentation of Fragmentation) Act, 1948, read with rule 16(ii) of the Rules framed thereunder, was given to the Panchayat of the estate concerned but its ownership in the Records of Rights vested is the Jumla Malkan v. Deegar Haqdarani Arazi Hasab Rasad Raqba. The proviso to the rule 3 of the Rules, before its omission, vide notification Annexure P. 1, laid down that the land with the Gram Sabha of either of the two descriptions mentioned above shall revert to the cosharers and owners thereof in the village. Thus, no scope for doubt is left as to the nature of the land in dispute, which was decidedly covered by the proviso to rule 3 of the Rules.

7. Since the notification Annexure P. 1, as observed by me above, is prospective in nature, there is no legal infirmity in it. The instruction Annexure P. 2 would be applicable to the area which is included within the Municipal limits after 16.1.1976 when Notification Annexure P. 1 was published in the Government Gazette. The mutation Annexure P. 3, however, cannot be sustained as it deprives the petitioners and the other proprietors of village Mansa Kalan of the right in the land, in dispute, which had already vested in them before the Notification Annexure P. 1 came into force.

8. Consequently, allowing this petition, I quash the mutation Annexure P. 3 and restrain respondent No. 2 from putting the land, described therein, to auction. The parties are left to bear.