(2014) 01 P&H CK 0229

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 16421-2008 (O and M)

Piara Singh and Others APPELLANT

Vs

State of Punjab and Others RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:
Constitution of India, 1950 — Article 226, 243G, 243H, 40

Citation : (2014) 1 RCR(Civil) 996 : (2014) 1 RCR(Rent) 967

Hon'ble Judges : Sanjay Kishan Kaul, C.J;Arun Palli, J

Bench : Division Bench

Advocate : Deepak Sibal, Advocate in C.W.P. No. 16421 of 2008, Mr. Baltej Singh Sidhu, Advocate in C.W.P. No. 22272 of 2010, Mr. Sarjit Singh, Senior Advocate, Ms. Amarjit Kaur, Advocate in C.W.P. No. 16494 of 2012, Mr. Dhirinder Chopra, Advocate for the Applicant No. 5 in C.W.P. 16494-2012 and Mr. Kulvir Narwal for Mr. M.P.S. Mann, Advocates for the Intervenor in C.W.P. No. 16494-2012, Advocate for the Appellant; Ashwani Talwar, Additional Advocate General, Punjab, Mr. Sunil Kumar Vashisht, Assistant Advocate General, Punjab for the Respondent No. 1 and 2 in C.W.P. No. 16421-2008, for Respondent No. 1 in C.W.P. No. 22272-2010 and for Respondents No. 1 to 4 in C.W.P. No. 16494-2012, Ms. Sonia G. Singh, Advocate for the Respondent No. 3 in C.W.P. No. 16421 of 2008, Mr. S.S. Toor, Advocate for the Respondent No. 4 in C.W.P. No. 16421 of 2008, Mr. V.K. Sandhir, Advocate for the Respondent No. 2 in C.W.P. No. 22272-2010, Mr. Vikas Chatrath and Mr. Sandeep Bansal, Advocate for the Respondent No. 3 in C.W.P. No. 22272-2010, Mr. Puneet Bali, Senior Advocate, Mr. Ankur Lal, Advocate for the Respondent No. 6 in C.W.P. 16494-2012, Mr. Sanjiv Sharma, Senior Advocate, with Mr. Vikram Vir Sharda, Advocate for the Respondent No. 7 in C.W.P. No. 16494-2012, Mr. Rohit Khanna, Advocate for the Respondent No. 8 in C.W.P. No. 16494-2012 and Mr. Dhanesh Ralhaan, Advocate for the Respondent No. 9 in C.W.P. No. 16494-2012, Advocate for the Respondent

Judgement

Sanjay Kishan Kaul, C.J.—The Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the 1953 Act) was brought into force in the historical context of the shamlat land. The common land is stated to have been owned by the proprietors and was used by all the proprietors for grazing and fire wood etc. The result was that non-proprietors did not have any rights. Not only that, it is primarily to assist in establishment of certain rights of these non-proprietors that the 1953 Act was brought into force as apparent from the statement of object and reasons. It has been recorded therein that when the villages were originally founded it is believed that the shamlat was really meant for use of the inhabitants of the village, while the position at the time of enactment of the 1953 Act was that the shamlat became property of the proprietary body of a village, while the rights of non-proprietors were in the shape of grants for certain purposes. These non-proprietors had settled in the villages and had been rendering essential services to the proprietary body in matters relating to farm operations and yet did not enjoy equal rights in the shamlat lands. It became, thus, detrimental over a period of time to these non-proprietors especially the Harijans. Such people did not even have proprietary rights in the sites of their residential houses resulting in discontentment and it is with a view to give these classes of residents in the villages an opportunity to live with security and self-respect that the 1953 Act was enacted. This Act was thereafter repealed and substituted by the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Act). In exercise of powers u/s 15 of the said Act, the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter referred to as the Rules) were notified as applicable to Punjab. We now proceed to deal with the salient provisions of the said Act and the Rules in the context of the three petitions which have been filed before us the facts of which will be recapitulated thereafter. This is so as there are common issues arising qua interpretation of the provisions of the said Act and the Rules.

LEGAL POSITION:--

2. Since the factual controversy relates to the use of shamlat deh land by seeking to give rights in the same to such parties, the relevant Section 5 is being reproduced hereunder:--

5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats (1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed:

Provided that where two or more villages have a common Panchayat, shamlat deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village.

Provided further that where there are two or more shamlat tikkas in a village, the shamlat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka:

Provided further that where the cultivable area of land in shamlat deh of any village, so vested or deemed to have been vested in a Panchayat is in excess of two-thirds of the total of that village (excluding abadi deh), then culturable area upto the extent of two-thirds of such total area shall be left to the Panchayat and one-half of the remaining culturable area of shamlat deh, shall be utilised for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining culturable area shall be utilised for distribution to the small land owners of that village by the collector in consultation with the Panchavat, in such manner as may be prescribed.

(2) The area of shamlat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultation with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or Sub-section (2) issue to any Panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to sub-section (1) and in sub-section (2) and sub-section (3) shall apply to the "Hilly area".

(5) Notwithstanding anything contained in the preceding sub-sections, on land vested or deemed to have been vested in a panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to leave with the Panchayat,'' culturable area which is less than fifty percent of the total culturable area vested or deemed to have been vested in the Panchayat.

(emphasis supplied)

3. We may notice at this stage that there have been certain crucial amendments both in the Act and the Rules in the year 1976. Punjab Act No. 19 of 1976 carried out the amendments to the said Act. The insertion of the third proviso to Sub-section (1) as also the insertion of Sub-section (5) is as a result thereof. The proportional utilization and restriction on use of the shamlat deh land, thus, forms an integral part of the third proviso to Sub-section (1). Sub-section (5) begins with a "notwithstanding" clause qua the preceding sub sections and, thus, permits the shamlat deh land vested in the Panchayat to be dealt with by way of sale, gift or exchange, but to the extent of fifty percent of the total culturable area. In order to keep a check on land, which may be dealt with by the Panchayat, a complete mechanism has been provided u/s 10A of the said Act which empowers the Collector to cancel or vary leases etc. of lands vested in Panchayat. Thus, any of the aggrieved persons could actually have moved the Collector u/s 10A of the said Act, but we are faced with these petitions under Article 226 of the Constitution of India in effect seeking relief''s of cancellation of leases.

4. Now coming to the said Rules in the context of Section 5 of the said Act discussed aforesaid and the power to make rules conferred u/s 15 of the said Act, more particularly qua the manner and circumstances in which such land may be disposed of, transferred or sold (Section 15(2)(f) of the said Act), the Panchayat has been conferred with necessary powers under Rules 5 and 6 of the

said Rules. Rule 5 deals with exchange of land, while Rule 6 deals with leases by auction. The relevant provisions of Rule 6 are being reproduced hereunder:--

6. Leases to be by auction. [Sections 5 and 15(2)(f) of the Act]-

(1) Subject to the provisions of sub-rule (1) of rule 4, all leases of land in shamlat deh shall be by auction after making publicity in the manner laid down in sub-rule (10). All documents executed in this connection shall be signed by a Sarpanch or in his absence by a panch performing the duties of sarpanch and two other Panches authorized for the purposes by the Gram Panchayat.]

Provided that -

(a) one-third of the cultivable land proposed to be leased, shall be reserved for giving on lease by auction to the members of the Scheduled Castes only and, if on two different dates fixed for auction no such person is forthcoming or the Panchayat Samiti refused to confirm the auction under clause 2(a)(i) the reservation shall cease to have effect.

(2) Lease of land in shamlat deh already under plough shall not be given for a period exceeding three years, while that of land, not under plough and infested with trees bushes, etc. may be given for a period not exceeding seven years to the highest bidder. The auction shall be subject to the approval of:-

(3) All lands vested in a Panchayat may be leased out by auction or on such terms and conditions, as may be agreed upon between the parties up to the period of 33 years for industrial, commercial, educational or professional purposes with the prior approval of the State Government.

(emphasis supplied)

5. The main controversy arises from Sub-rule (3) of Rule 6 of the said Rules which permits Panchayat land to be leased out by auction or "on such terms and conditions, as may be agreed upon between the parties" for certain specified purposes i.e. industrial, commercial, educational or professional. This is subject to two conditions: the maximum period of such lease can only be 33 years and there has to be prior approval of the State Government.

6. The contention advanced by the petitioners is that there is no issue qua lease by auction, but a very wide power is sought to be conferred when the said Rule leaves it to the two parties to agree upon the terms and conditions.

7. The aforesaid controversy really does not survive now as qua mutual transactions a policy decision taken by the State of Punjab has been placed before us in terms whereof the only method adopted would be by open auction. This policy decision is sought to be brought into force immediately and it has been stated that necessary amendments would be made to the Rules. Learned Additional Advocate General for the State of Punjab has stated that the time period envisaged for the same is about two-three months. In fact, the submission advanced on behalf of the petitioners was that it could be auction or

any other transparent methodology, but not an absolute discretion to the two parties. In our view, this puts to rest the controversy.

8. The second limb of the controversy relates to the period for which such lease can be granted and as to how much of the shamlat deh area of the Panchayat can be so given away.

9. In the aforesaid context, a reference was made to Section 5 of the said Act, but in our view, there is no ambiguity qua that aspect, as Sub-section (5) would prevail which puts restriction of fifty percent of the total culturable area and would, thus, naturally apply even where the land is sought to be dealt with under Sub-rule (3) of Rule 6. Similarly, a reference was made to proviso (a) of Sub-rule (1) of Rule 6 of the said Rules, but then once again there can be no quibble over the proposition that one-third of the cultivable land portion proposed to be leased out by auction would be kept for the members of the Scheduled Caste community alone.

10. The other provision referred to in the context of the aforesaid controversy is Rule 9 of the said Rule which reads as under:--

9. Maximum area to be leased out. [Sections 5 and 15(2)(f) of the Act]-

(1) The Panchayat shall not lease cultivable land in Shamlat Deh to a person.

[(a) [---]

(b) already holding lease under any other Panchayat:

Provided that the maximum area of land in Shamlat Deh to be leased to a person shall not exceed ten acres at any time.

(2) Except with the prior permission of Panchayat Samiti, the Panchayat shall not lease more than one acre of land in Shamlat Deh for residential, industrial, or commercial purposes near the village abadi to any one person.

(emphasis supplied)

11. In our view, the said restriction of area would also prevail and is not in conflict with any other provision on account of the fact that it in effect deals with the grant of leases for cultivation and must be understood in that context. We are unable to accept the submission of Mr. Deepak Sibal, learned counsel for the petitioners that Rule 9 would imply that even where land is being given for the specified purposes under Sub-rule (3) of Rule 6, not more than 10 acres of land can be passed on to a single person. The object of Rule 9 is to ensure that no monopoly of cultivation takes place in one individual and that is why a disqualification is provided if the person is already holding lease under any other Panchayat and the second restriction is in the form of a proviso that the land lease would not exceed 10 acres. This is to ensure fair distribution of Panchayat land for purposes of cultivation.

12. The reference was also made to Rule 12-A of the said Rules and to the extent

it is necessary we reproduce the same as under:--

12-A. Transfer of land - Notwithstanding anything contained in these rules, a Panchayat may, with the previous approval of the State Government, transfer the Shamlat Land vested in it by the ways and subject to the terms and conditions, mentioned below;-

By way of lease upto fifty percent of the culturable area of Shamlat Land, vested in a Panchayat upto a period of 33 years to any corporation, company, body corporate or any legal entity, whose projects or schemes have been approved and sponsored by any of the Administrative Departments of the State Government under any law or policy, notified by the State Government.

Provided that:--

(i) both the Panchayat and the State Government, on the recommendations of the sponsoring department, are satisfied that such transfer, and the terms and conditions thereof, are in public interest as well as in the interest of the Panchayat;

(ii) xxx

(iii) xxxx

(iv) xxxx

(v) xxxx

(vi) the rate of lease shall be fixed by the State Government after taking into consideration, the price of the land and other relevant factors. The lease would initially be for a period of 33 years but thereafter renewable in public interest.

(emphasis supplied)

13. The aforesaid provision, in our view, applies in a different context permitting fifty percent of the culturable area of the shamlat land to private entities whose projects or schemes have been approved and/or sponsored by any of the administrative departments of the State Government under any law or policy notified by the State Government. The same has to be in public interest as well as in the interest of Panchayat, as for lease of this nature under proviso (vi), the rate is to be fixed by the State Government after taking into consideration the price of the land and other relevant factors and the lease is to be initially for a period of 33 years, but thereafter renewable in public interest.

14. The first aspect on which this was assailed by Mr. Deepak Sibal was that why should the rate of lease be fixed by the State Government when the Constitution of India now envisages devolution of power on the Panchayats under Article 40 read with Article 243G and Article 243H of the Constitution of India. To our mind, the answer is apparent from the wording of the provision itself, as there is a system of check and balance envisaged therein. The land so leased out has to be for a scheme or project approved or sponsored by the government. It has to be

in public interest as well as in the interest of Panchayat. The power of fixing rate of lease has been given to the State Government towards this check and balance process.

15. The other aspect assailed was that though the lease has to be initially for a period of 33 years, it can be converted into a perpetual lease as it is capable of being renewed in public interest. In fact, what is pleaded is that there should be restriction of time period.

16. We are unable to agree to the aforesaid contention for the reason that it is not mandatory that it must be renewed after 33 years, but certainly if public interest envisages that it ought to be renewed, it can be so renewed. In fact, taking a cue from the facts of one of the cases where a power grid sub-station has been set up by the Punjab State Power Corporation, it can hardly be expected that a sub station would be removed which provides the essential service of electricity to the village.

17. That brings us to an end of the aspect of the provisions of the said Act and the Rules. Before proceeding to deal with the facts of each case, we may notice that the common aspect is that in relation to the matters there has been a proposal/resolution of the Panchayat which in turn has been examined by the State Government and found its approval. The Panchayats are the parties who have supported what has been done. That being the position, the question which would arise would be whether at the behest of certain residents of the village, the decision ought to be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India keeping in mind the purpose for which the lease has been made.

CWP-16494-2012

18. In this case, land measuring 21.26 acres situated in village Sanauli, Tehsil Dera Bassi, District S.A.S. Nagar has been given on lease for a period of 33 years to respondent No. 6 vide a lease deed dated 03.12.2010. The land has been leased out to set up G.D. Goenka International School. It is not in issue that the land leased out is less than fifty percent of the shamlat deh land.

19. One of the main controversies which arose qua this lease was in respect of the period for which the lease was granted. It was alleged by the petitioner that a fraudulent attempt had been made to give a lease for 99 years contrary to the provisions of Sub-rule (3) of Rule 6 of the said Rules.

20. The lease was applied for 33 years and was granted for the same period with the approval of the State Government. In the document maintained in the office of the Registrar, the period mentioned was 99 years, which has been subsequently corrected on 05.04.2013 an aspect noticed in the order dated 09.04.2013. This, however, led to an inquiry by the Vigilance Bureau. It may also be added that the matter got more complicated by reason of the fact that this was not a case where the land had been auctioned, but the arrangement was

based on a private negotiation which was permissible as per the existing Sub-rule (3) of Rule 6 of the said Rules. The Vigilance Bureau submitted its report. The finding as filed in an affidavit affirmed on 23.11.2013 and placed before us is that there was a bonafide mistake while putting down the period of 99 years and there has been no criminal conspiracy between J.L.T. Educational Foundation Trust and the revenue authorities. Departmental action has already been taken against the negligent officials. Be that as it may, even in law, it cannot have gone beyond 33 years in view of the provisions of Sub-rule (3) of Rule 6 of the said Rules.

21. Learned senior counsel appearing in this matter, however, sought to derive some mileage from the observations made in this report qua the background of the J.T.L. Educational Foundation Trust - its charitable and educational activities. The J.T.L. Educational Foundation Trust had been granted the lease which in turn had tied up with G.D. Goenka Private Limited for the purpose of setting up of a world class educational institute. In our view, that would not be material because that was not the scope of inquiry initiated by the Vigilance Bureau. Not only that, the rates as suggested by the Panchayat for grant of lease were in fact enhanced by the State Government at the stage of grant of approval alongwith the requirement of periodic increase of five percent every year. This has also to be understood in the context that the activity envisaged was of education and not that a mall was being set up.

22. No doubt, the aforesaid has not been through the process of auction, but the then existing Rule permitted so, which is now sought to be modified. Should this Court interfere under Article 226 of the Constitution of India because no auction was held?

23. In order to answer this query, some dates are relevant. The application by a trustee was submitted on 22.04.2010 seeking land from the Panchayat for a period of 33 years to establish an educational institution. The Panchayat passed resolution on 06.07.2010 acceding to the request and approval was granted by the State Government on 21.10.2010 with the lease deed being executed and registered on 03.12.2010. The said concern/respondent No. 6 is stated to have spent about Rs. 8 Crores already in construction carried out on the same. The petition was filed in August, 2012, almost two years after the alleged cause of action arose. Not only that, the petitioner is stated to be an Advocate by profession who is the owner of the adjoining land and did not raise any objection when this construction was coming up right in front of his eyes.

24. Learned senior counsel for respondent No. 6, in fact, draws strength from a decision of the Division Bench of this Court in LPA 1825 2011 titled as Rakesh Chahar and another v. State of Haryana and others decided on 27.09.2011 where in similar circumstances the Gram Panchayat as per a memorandum of understanding had granted lease of land for establishing an integrated sports academy and this decision was sought to be challenged after two years. The learned Single Judge dismissed the writ petition. The Division Bench vide the

aforesaid judgment affirmed the same by observing as under:--

After hearing learned counsel for the appellants, we do not find any illegality in the impugned order. The Gram Panchayat is competent enough to lease out its land. The Punjab Village Common Lands (Regulation) Rules, 1964 empower the Gram Panchayat to lease out its land. It has also been held in Rajbir Singh v. State of Haryana and others, CWP No. 9180 of 2009, decided on 16.11.2009, that Gram Panchayat can use its land as per the directions issued by the Government of Haryana, even after changing the use of the land as per the parameters laid down by the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as ''the Act'') and Rules framed thereunder. If the petitioners being residents of the village are having any grouse against leasing out of the land of the Gram Panchayat to respondent No. 5 for 33 years, they have effective remedy u/s 10-A of the Act to get the lease cancelled. The petitioners have not availed this remedy. Therefore, in our view, the learned Single Judge has rightly dismissed the writ petition, filed by the appellants.

25. In essence, the facts of that case are quite apposite to the facts of the present case. The arrangement with the Gram Panchayat is as per the then existing Rules. The construction was carried out right in front of the eyes of the petitioner who is certainly an educated person fully familiar with law being an Advocate himself and yet a considerable investment had gone in when the decision was sought to be assailed in a Public Interest Litigation after two years. This would almost amount to a blackmail of the investors.

26. In view of the discussion on the aspect of the Rules and our finding thereon, there is no cause for interference in the facts of the present case qua the existing grant of lease.

27. In fact, learned senior counsel for the petitioner fairly conceded that if the policy is implemented for the future and Rules amended, there will be no grievance in times to come, but prayed to set the clock back even qua the alleged cause of action raised in the petition where the action has been taken highly belatedly after about two years disentitling the petitioner to any relief on that ground alone apart from any other reason.

28. At this stage, learned senior counsel for respondent No. 6 states that the original title documents are in possession of the Vigilance Bureau in pursuance to directions of the Court and the same be released since the inquiry itself is completed and placed before the Court which forms part of our consideration. We, thus, direct the Vigilance Bureau to release the original title documents to the respective parties.

29. The matter, however, does not end at this as in the present proceedings an all encompassing order was passed on 09.04.2013 to the effect that no further lease deed would be executed in terms of the said Rules and further that the lease deeds which stood executed, construction would not be raised except in cases where the land had been leased out in favour of the government

department/statutory body or Corporation owned by the government. This order was, however, modified on 12.08.2013 to the extent that the State Government will not naturally call upon the parties to whom allotment has been made to fulfill their obligations arising from the interim order which was, however, not vacated pending consideration of the matter.

30. Some of the affected parties were impleaded as respondents No. 7 to 9, while others were permitted to intervene. As informed, practically all of them have been given allotments arising from a notification of the State of Punjab formulating a New and Renewable Sources of Energy (NRSE) Policy, 2012 published in the gazette on 26.12.2012. The objective of this policy is to reduce pollution and make clean and renewable energy available to the public at affordable rates for which Punjab Energy Development Agency is a nodal agency which invited bids under an open and transparent system of "discount on tariff based competitive bidding". Here the allotment is, thus, based on the bid basis and solar plants are sought to be set up by the respondents before us, while other interveners are setting up other non-conventional plants of renewable energy resources. There is stated to be of course another case of construction of school which is by allotment. In some of the cases, lease has been granted, while in other cases, allotment has been made and identification done, but lease deeds have not been executed on account of the interim orders passed by this Court.

31. It is, in fact, these persons who were seeking protection against consequence of non-compliance as they stated that the interim orders had put them in difficulty on account of the fact that they had furnished bank guarantees and were required to do the needful within a time bound manner.

32. We clarify that in so far as such persons are concerned, there is no impediment now standing in their way and the parties are free to proceed in pursuance to the prior arrangements with a caveat that the government authorities should extend their time periods by the period for which the interim orders were in operation.

33. Thus, this petition stands dismissed with the interim orders being dissolved.

CWP-16421-2008

34. The petitioners here claim to be marginal landless farmers of village Beer Pind, Block Nakodar, District Jalandhar and are aggrieved by the sanction/lease of 30 acres of shamlat land in favour of respondent No. 4 for setting up of bio-mass based power generation project on built, operate and own basis. Respondent No. 4 is carrying out the exercise in collaboration with the Punjab Energy Development Agency. In this case also the leasing out does not breach the limit of fifty percent, nor is there any breach of the said Act and the Rules in terms of the law enunciated by us aforesaid. The stand of the Gram Panchayat/ respondent No. 3 is that, in fact, the petitioners are such persons who are encroaching upon the land and against whom even eviction orders have been passed, but they have refused to vacate the land. The exercise carried out by the

Gram Panchayat is stated to be for the benefit of the village and is after the approval by the State Government. The exercise here also is, however, on a negotiation basis and not through an auction.

35. In view of the discussion aforesaid, this petition is also dismissed.

CWP-22272-2010

36. The lease in this case is to the Punjab State Transmission Corporation Ltd. a wholly owned company of the Government of Punjab which has set up a 400 KV sub station at village Goniana, Tehsil and District Muktsar. This sub station is for evacuation of power generated by upcoming thermal power plant near Talwandi Saboo which in turn is dependent on this sub station. The absence of the sub station would deprive transmission to consumers of the State. The lease of the land was for 31 acres, but ultimately only 21 acres was utilized in view of the interim orders since the lease of 31 acres would have breached the fifty percent limit envisaged u/s 5 of the said Act.

37. The aforesaid is the case which we have already cited as an example, while there can be no objection to the shamlat deh land being utilized for such purpose as also on the aspect of time period being permitted to be taken beyond the period of 33 years. The respondents have also stated that other than Baj Singh - petitioner No. 13, none of the other petitioners have even taken any land on lease from the Panchayat and petitioner No. 13 has subsequently taken compensation.

The facts of the present case, thus, do not justify any interference by this Court whatsoever.

Dismissed.

CONCLUSION:--

38. The result of the aforesaid discussion is that all the three petitions stand dismissed and all interim orders stand vacated. The State Government to take steps to amend the Rules as per the assurance given to the Court. We, however, clarify that this does not preclude any case from being examined where it is obtained by fraudulent means or the land is not put to use for the purpose it has been taken as in that eventuality the government would take necessary action.

Parties are left to bear their own costs.

