
(1994) 07 SHI CK 0027

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 244 of 1989

State of Himachal Pradesh

APPELLANT

Vs

Tarsem Singh and Others

RESPONDENT

Date of Decision : 01-07-1994

Acts Referred:

Easements Act, 1882 — Section 4

Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 — Section 3, 3(1), 3(2), 3(3), 8

Punjab Village Common Lands (Regulation) Act, 1953 — Section 3

Punjab Village Common Lands (Regulation) Act, 1961 — Section 10, 2, 3, 4, 4(1)

Citation : (1995) 1 ShimLC 199

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : M.L. Chauhan, Assistant Advocate General, for the Appellant; H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

Kamlesh Sharma, J.—Respondents 1 to 5 are the residents of Majra Dughe, village Kungrat, Tehsil and District Una. They filed civil suit in a representative capacity on behalf of all the residents of Majra Dughe, in which the trial Court passed decree for declaration that the land measuring 451 kanals 19 marlas as described in the heading of the plaint, except Khasra Nos. 1082, 1083 and 1087 which are in possession of Hazara Singh as a tenant (hereinafter called land in dispute), is being used as Charand for grazing cattle, cutting grass, taking fuel wood and for other such common purposes by the residents of Majra Dughe and the State of Himachal Pradesh was restrained from interfering in their such rights and enjoyment, and also to allot the said land to other persons in accordance with the Scheme of Himachal Pradesh Village Common Lands (Vesting and Utilisation) Act, 1974 (Act No. 18 of 1974) In the appeal filed by the State of Himachal Pradesh the decree of the trial Court was affirmed but its findings that the land in dispute had not vested in the State of Himachal Pradesh, were

reversed. Hence, the present regular second appeal by the State of Himachal Pradesh.

2. There is no dispute between the parties that the land in dispute and some other land situated in village Kungrat was Shamlat land as described in the revenue record since 1913-14. The proprietors of village Kungrat partitioned the Shamlat land and reserved some area for grazing purpose and other such common purposes. On partition the whole of the land in village was divided in 14 Sub-divisions called Majras. The land in dispute falls in Majra Dughe. In an earlier suit filed by the residents of another Majra Dhalu, it was finally decided that over the land in dispute the residents of Majra Dughe have exclusive rights of grazing etc. On coming into force of Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter called the Punjab Act of 1961), the land in dispute vested in the Gram Panchayat but the residents of Majra Dughe continued exercising their rights of grazing and other such rights over the land in dispute. Thereafter, Act No. 18 of 1974 came into force and the land in dispute was recorded in the ownership of the State of Himachal Pradesh. Apprehending that the State of Himachal Pradesh might allot the land in dispute to landless persons in accordance with the Scheme framed under Act No. 18 of 1974 and residents of Majra Dughe might lose their rights over the land in dispute they filed the civil suit, out of which the present appeal has arisen.

3. The State of Himachal Pradesh resisted the suit and took number of preliminary objections. On merits, its case was that the land in dispute had vested in the State of Himachal Pradesh free from all encumbrances including the grazing and other such rights of residents of Majra Dughe under the provisions of Act No. 18 of 1974, as such, the land in dispute could be allotted to landless persons in the Scheme formulated under Act No. 18 of 1974. This defence did not find favour with both the Courts below.

4. This Court has heard learned Counsel for parties and gone through the record. Shri M.L. Chauhan, learned Assistant Advocate General and Shri H.K. Bhardwaj, learned Counsel appearing for the Respondents have jointly stated that there is no dispute between the parties to the extent that the land in dispute being Shamlat land had vested in the Gram Panchayat under the Punjab Act of 1961 and thereafter in the State of Himachal Pradesh under Act No. 18 of 1974. According to them, the substantial question of law arising in the appeal is whether the grazing rights and other such rights of residents of Majra Dughe over the land in dispute had also extinguished with the vestment of land in Gram Panchayat u/s 3 of Punjab Act of 1961 and thereafter in the State of Himachal Pradesh under Sub-section (1) of Section 3 of Act No 18 of 1974. They have jointly stated that this substantial question of law may be decided instead of the one which was framed at the time of admission. They have admitted that land in dispute does not fall in any of the exceptions provided in Sub-section (2) of Section 3 of Act No. 18 of 1974 and the answer to substantial question of law depends upon the interpretation of Section 3 of the Punjab Act of 1961 and

Section 3(1)(a) of Act No. 18 of 1974. Section 3 of Punjab Act of 1961 is:

3. Lands to which this Act applies.-

(1) This Act shall apply, and before the commencement of this Act, the shamilat law shall be deemed always to have applied, to all lands which are shamilat deh as defined in Clause (g) of Section 2.

(2) Notwithstanding, anything contained in Sub-section (1) of Section 4, where any land has vested in a Panchayat under the shamilat law but such land has been excluded from shamilat deh, as defined in Clause (g) of Section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be re-vested in the person or persons in whom they vested immediately before the commencement of the shamilat law and the Panchayat shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the panchayat shall, notwithstanding anything contained in Section 10, pay to the person or persons entitled to such land compensation to be determined in accordance with such principles and in such manner as may be prescribed.

The relevant portion of Section 3(1)(a) of Act No. 18 of 1974 is:

3. Vesting of rights in the State Government.-

(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 including the contingent interest, if any, of the landowner in the lands in any estate-

(a) vested in a Panchayat u/s 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh u/s 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) except lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gar ah deh ;

(b)...

(c)...

shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances.

5. The import of these provisions in both the Acts is that all rights, title and interests of the land owners in the Shamilat land in any estate stand extinguished and all such rights, title and interests stand vested in the Gram Panchayat and thereafter in State Government free from all encumbrances, 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 etc. etc. The question for determination is, whether all rights, title and interests in the Shamlat land which are liable to extinguish before its vestment in the Gram Panchayat and thereafter in State Government free from all encumbrances, include the grazing rights and other such rights which are in the nature of easementary rights. In other words, whether the grazing right and other such rights are the rights in the land or the rights over the land?

6. The provision of Punjab Act of 1961 has been interpreted by Division Bench of this Court in Gram Panchayat Dhagiar v. Changru Ram and Ors. ILR 1978 HP 434. The learned Judges making the distinction between the rights in the land and rights over the land referred to a Privy Council judgment in Megh Raj v. Alla Rakhia AIR 1947 PC 72, wherein their Lordships had stated that, "Rights in land must include general rights like full ownership or leasehold or all such rights. Rights over land would include easements or other collateral rights, whatever form they might take." Relying upon these observations of Privy Council, the learned Judges of this Court further explained that:

Easement rights cannot be construed as rights "in" the land so far as the servient tenement is concerned. Easement is defined by Section 4 of the Indian Easement Act as a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of certain other land not his own. This definition clearly conveys the idea that the easement right is a right owned by the owner of the dominant tenement over the servient heritage. The disputed land in this case is servient heritage and the easement right of grazing, which the Respondents own, is the right over the disputed land. u/s 3 of the Punjab Village Common Lands Act, 1953, what vests in the Panchayat is right, title and interest "in" the land and not "over" the land....

7. This interpretation equally holds good for interpreting Sub-section (1) of Section 3 of Act No. 18 of 1974. Further, applying this interpretation to the present case, the lands or the residents of Majra Dughe which they possess either in their capacity as owners or tenants, are the dominant tenement and the land in dispute is a servient heritage, and their grazing rights and other such rights are in the nature of easementary rights which are rights "over" the land in dispute and not "in" the land in dispute and these were not liable to vestment in the Gram Panchayat and thereafter in the State Government.

8. Shri Chauhan, learned Assistant Advocate General, has tried to distinguish the judgment in Gram Panchayat Dhagiar v. Changru Ram and Ors. (supra) on the ground that the language used in Section 3 of the Punjab Act of 1961 is different than the language used in Section 3(1) of Act No. 18 of 1974. He has urged that the vesting of the land in dispute in State Government was absolute. Referring to later part of Sub-section (1) of Section 3 that, "all such rights, title and interests

shall vest in the State Government free from all encumbrances", Shri Chauhan has argued that the rights over" the land in dispute also stand extinguished and vested in State Government.

9. This Court does not find any substance in the argument of Shri Chauhan and it is rejected. The use of the word "such" in the later part of Sub-section (1) of Section 3 makes it clear that later part is to be read with the earlier part which refers to rights in the land and not over the land. The words "free from encumbrances" have also been used in respect of rights in the land and not independently referring to any other burden, liability, charge or interest attached to the land. The word "encumbrance" may have different meaning in different context but in the present case it has been used in respect of rights in the land.

10. In the result, this Court holds that despite difference in the language of Section 3 of the Punjab Act of 1961 and Section 3 of Act No. 18 of 1974 only rights "in" the land stand extinguished and vested in State Government and the rights "over" the land in dispute remain intact. Had the Legislature intended to take over the grazing rights and other such lights, which are rights over the land, they would have not provided in Sections 8 and 8A of Act No. 18 of 1974 that out of the land vested in the State Government an area not less than fifty per cent will be utilised for grazing purpose or other common purpose of the inhabitants of an estate. It cannot be the intention of the Legislature that the Shamlat land which is already being used for grazing purpose by the residents of an estate in exercise of their easementary rights should first vest in State Government on payment of compensation as provided under Sub-section (3) of Section 3 of Act No. 18 of 1974 and thereafter again reserved for utilizing it for the common purpose of grazing etc. Therefore, the interpretation of Sub-section (1) of Section 3, as given hereinabove, duly fits-in in the Scheme of Act No. 18 of 1974.

11. The result of above discussion is that there is no merit in this appeal and it is dismissed and the decree awarded by the courts below is affirmed. There is no order as to costs.