

Before Ram Chand Gupta, J.

GRAM PANCHAYAT VILLAGE PALUWAS,—*Petitioner*

versus

MAHARANA PARTAP CHARITABLE TRUST
BHIWANI AND OTHERS,—*Respondents*

Civil Revision No. 1774 of 2010

25th April, 2011

Constitution of India, 1950—Art.227—Code of Civil Procedure, 1908—O. 39 Rls. & 2 and S. 151—Punjab Village Common Lands (Regulation) Rules, 1964—Rl. 13—Specific Relief Act, 1963—S. 41(b)—Gram Panchayat resolving to gift panchayat land to a trust for running an educational institute—Government approving resolution of panchayat under Rl.13(1)—Revenue authorities sanctioning mutation in favour of trust—Gift deed neither executed nor registered by Gram Panchayat—Gram Panchayat revoking its earlier resolution—Apex Court holding Rl.13(1) as ultra vires, under which rule land was gifted by panchayat and approved by Government—Plaintiffs/Trust seeking relief of mandatory injunction—Courts below granting ad interim injunction in favour of plaintiffs—Civil Court has no jurisdiction to restrain revenue authorities to proceed further as per law—Earlier resolution passed by Gram Panchayat becoming null and void & plaintiffs cannot claim any right in land—Suit filed by plaintiffs not maintainable, hence, not entitled to seek discretionary relief of ad interim injunction—Petition allowed, orders of Courts below set aside and application of plaintiffs for ad interim injunction order dismissed.

Held, that *prima facie*, when suit is not maintainable and civil Court is having no power to restrain the revenue authorities from proceeding further as per law, as no such relief can be granted in view of Section 41(b) of the 1963 Act and hence, when main relief cannot be granted to respondents-plaintiffs, it cannot be said that they are having any right to seek discretionary relief of ad interim injunction. *Prima facie* case is not made out in favour of respondent-plaintiffs, balance of convenience also does not lie in their

favour. Rather the *prima facie* case is in favour of petitioner-Gram Panchayat, balance of convenience also lies in favour of petitioner-Gram Panchayat. Respondents-plaintiffs are also having no right to seek injunction against true owner, i.e. petitioner-Gram Panchayat as Gram Panchayat is still owner of the land in dispute and ownership has not been transferred in favour of respondents-plaintiffs as per law by way of a registered gift deed. Hence, they are having no right to seek injunction against true owner, who are proceeding, as per law, as the proceedings are pending before revenue authorities and before the Government authorities for cancellation/review of earlier mutation and for cancellation of the sanction earlier granted to create gift in favour of respondents-plaintiffs by the Gram Panchayat and show cause notice in that regard was also issued by the Financial Commissioner to respondents-plaintiffs. Hence, the respondents-plaintiffs cannot be permitted to raise further construction over the land in dispute, as *prima facie* their possession over the land in dispute is not legal and they are in unauthorized possession of the same.

(Para 33)

N.R. Dahiya, Advocate, *for the petitioner.*

M.L. Sarin, Sr. Advocate with Nitin Sarin, Advocate *for the respondents.*

K.C. Gupta, DAG, Haryana.

RAM CHAND GUPTA, J.

(1) The present revision petition has been filed under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure (hereinafter to be referred as 'the Code') for setting aside order dated 8th August, 2006, Annexure P1, passed by learned Additional Civil Judge, Senior Division, Bhiwani,—vide which application for ad interim injunction order under Order 39 Rules 1 and 2 of the Code filed by respondents-plaintiffs was partly allowed and the application filed by present petitioner was dismissed as well as for setting aside order dated 6th August, 2009, Annexure P2,—vide which learned Additional District Judge, Bhiwani, allowed the appeal filed by respondents-plaintiffs and dismissed the appeal filed by the petitioner.

(2) I have heard learned counsel for the parties and have gone through the whole record carefully including the impugned orders passed by learned Courts below.

(3) Brief facts relevant for the decision of present revision petition are that a suit for mandatory injunction was filed by respondents-plaintiffs directing petitioner-defendant no. 1 to execute and get registered gift deed in favour of plaintiff no. 1-Trust regarding the land, duly described in the heading of the plaint, total measuring 237 kanals 02 marlas, according to jamabandi for the years 2000-01, situated at village Paluwas, Tehsil and District Bhiwani and further relief for declaration to the effect that resolution No. 1 dated 6th May, 2006 passed by petitioner-defendant no. 1 is illegal, null and void, without jurisdiction and contrary to resolution no. 1 dated 8th August, 2001 passed earlier, and further relief of permanent injunction restraining present petitioner-defendant no. 1 to act upon this resolution and restraining them to reverse and set aside mutation No. 9387 dated 20th December, 2001 regarding gift in favour of respondents-plaintiffs. Trust, has been sought.

(4) It has been averred by respondent-plaintiffs that respondent no. 1 is duly constituted Trust,—*vide* trust deed dated 13th July, 2000. Petitioner-Gram Panchayat passed a resolution dated 8th August, 2001 to give the land in dispute to respondent-Trust by way of gift. Resolution was subject to the approval of the State Government, as per Rules and on the recommendation of Deputy Commissioner, Bhiwani, requisite sanction was granted by the Government of Haryana approving the gift of land to respondent-Trust on certain conditions. Another resolution dated 24th January, 2002 was passed by Gram Panchayat and possession of the land was handed over to respondent-Trust on 19th December, 2001. Mutation bearing No. 9387 dated 20th December, 2001 has also been sanctioned in favour of the respondent-Trust on the basis of approval given by the Government. Since then, respondent-Trust has been continuing in possession of the same and has also raised construction and running an educational institute. Earlier a civil writ petition was filed in this Court by some residents of the village challenging the said resolution of the gram Panchayat and approval granted by the Government gifting the land in dispute to respondent-Trust, however, the said writ petition was dismissed as infructuous in view of amendment in Section 5A of Punjab Village Common Lands (Regulation),

Haryana Amendment Act. The villagers also filed letters patent appeal against the said decision of Single Bench of this Court and, however, the same was also dismissed as infructuous giving them liberty to challenge the vires of the said amended Section 5A of the Punjab Village Common Lands (Regulation), Haryana Amendment Act.

(5) Petitioner-defendant contested the suit as well as injunction application, *inter alia*, on the ground that suit is not maintainable in the present form and that civil Court is having no jurisdiction to try and decide the present suit. It is contended that petitioner-Gram Panchayat is owner of the land in dispute and previous resolution was not validly passed, as per the Acts and the Rules and the land of Gram Panchayat was illegally gifted by the then Sarpanch to respondent-Trust. The said resolution dated 8th August, 2001 has since been cancelled by the Gram Panchayat,—*vide* subsequent resolution dated 6th May, 2006 and that Gram Panchayat is fully competent to cancel an illegal resolution. Counter-claim has also been claimed directing respondents-plaintiffs to hand over the possession of the land in dispute to petitioner-Gram Panchayat and for setting aside the mutation No. 9387, dated 20th December, 2001. Plea has also been taken that as gift deed has not been executed by the Gram Panchayat in favour of respondent-Trust, hence, the mutation sanctioned in favour of Trust is also illegal. It has also been mentioned that part of the land used to be given on contract for cattle fair and remaining land on lease for agricultural purpose by the Gram Panchayat.

(6) Learned trial Court partly allowed the application for ad interim injunction order filed under Order 39 Rules 1 and 2 of the Code by respondents-plaintiffs by observing that respondents-plaintiffs cannot be dispossessed from the land in dispute till the resolution dated 8th August, 2001 is set aside by the Court of competent jurisdiction. However, relief sought by respondents-plaintiffs restraining defendants from setting aside mutation No. 9387 was declined. Application filed by petitioner-defendant restraining respondents-plaintiffs from raising any further construction over the property in dispute was dismissed and they were allowed to raise further construction subject to the condition that they would not claim compensation of the construction so raised by them, if they fail to prove their case on merit.

(7) In appeal filed by all the parties against the said order passed by learned trial Court, learned Additional District Judge, Bhiwani, allowed injunction application filed by respondents-plaintiffs and respondent No. 7 State of Haryana had also been restrained from reviewing mutation No. 9387.

(8) It has been vehemently contended by learned counsel for the petitioner-Gram Panchayat that previous resolution of the Gram Panchayat gifting 237 kanals 02 marlas of Panchayat land to respondent-Trust without any consideration for running an educational institute is illegal and not in accordance with the Punjab Village Common Lands (Regulation) Act 1961, (hereinafter to be referred as 'the Act') as applicable to the State of Haryana, and the Rules framed thereunder. Hence, it is contended that petitioner-Gram Panchayat is fully competent to revoke the said resolution and, in fact, the said resolution was revoked and fresh resolution has been passed. It is further contended that merely on the ground that the previous resolution was approved by the Government, it cannot be said that rights in the land in the dispute has been vested in the respondents-plaintiffs as admittedly, no gift deed has been executed and registered by Gram Panchayat in favour of respondents-plaintiffs and rights in the land in dispute has not been validly transferred in favour of respondents-plaintiffs, as per Section 123 of the Transfer of Property Act (hereinafter to be referred as 'the TP Act'). It is further contended that petitioner-Gram Panchayat is fully competent to revoke the earlier resolution. It is also contended that moreover the earlier resolution gifting the land in dispute to respondents-plaintiffs was passed by Gram Panchayat by acting under Rule 13 of the Punjab Village Common Lands (Regulation) Rules, 1964, (hereinafter to be referred as 'the Rules'), as applicable to the State of Haryana, and, however, the said Rule was held to be unconstitutional being not in accordance with Section 5A of the Act by Hon'ble Apex Court in **B.L. Wadhwa versus Union of India and others**, (1). It is further contended that earlier writ petition filed by some villagers challenging the said resolution of the Gram Panchayat was dismissed by this Court in view of amendment in Section 5A of the Act by the Haryana Government during the pendency of the writ petition before this Court giving liberty to the petitioners to challenge the vires of the said amendment and, however, Section 5A has

again been amended by Government of Haryana *vide* the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 2007, and earlier Section 5A and 5B of the Act have been restored and, hence, it is contended that when earlier resolution is not as per the provision of the Act and the Rules and the same is illegal, petitioner-Gram Panchayat is having every right to cancel the said resolution creating gift in favour of respondents-plaintiffs in an illegal manner.

(9) It is further argued that the mutation was also illegally sanctioned without execution of registration of the gift deed by the Gram Panchayat in favour of respondents-plaintiffs by the revenue authorities and that Gram Panchayat has filed a petition for reviewing the said mutation, on which notice was issued to respondents-plaintiffs and order was passed by competent authority, i.e., Sub Divisional Officer (C), Bhiwani, recommending for cancellation of the said mutation. It is further contended that the matter is still pending before the appellate authority and, however, no order could be passed on account of injunction issued by learned courts below. It is further contended that revenue authorities are competent to pass appropriate order for reviewing the mutation, which was illegally sanctioned.

(10) It has further been contended that in view of legal proposition settled by Hon'ble Apex Court in **Smt. Gontibai (dead) through LRs. and others versus Mattulal (dead) through LRs. (2)**, a gift is complete only when it is registered as per Section 123 of the TP Act and that, as admittedly no gift deed has been executed and registered by Gram Panchayat in favour of respondent-plaintiffs, they have not become owner of the land in dispute and, hence having no right to file the present suit.

(11) It is further contended that respondents-plaintiffs are having no right to seek relief of mandatory injunction under the Specific Relief Act 1963, (hereinafter to be referred as 'the 1963 Act') directing petitioner-Gram Panchayat to execute and register gift deed in their favour and hence, it is contended that very suit is not maintainable. It is also contended that as per Section 41(b) of the 1963 Act, Courts below could not restrain the revenue authorities from proceeding further for cancelling or reviewing the earlier mutation, as the revenue Court is not subordinate to the Civil Court in respect of the matters falling in its jurisdiction. It has also been contended that as petitioner-Gram Panchayat is owner of the land in dispute till today,

respondents-plaintiffs are having no right to seek injunction against the true owner, as possession of respondents-plaintiffs in dispute is without any legal authority and their possession can be said to be an unauthorised one. On the point he has also placed reliance upon **Premjit Ratansey Shah and others versus Union of India and others, (3)**, and **Cotton Corporation of India Limited versus United Industrial Bank Limited and others (4)**.

(12) He has also contended that in a recent judgment rendered in **Jagpal Singh and others versus State of Punjab and others**, passed in Civil Appeal No. 1132 of 2011 @ SLP(C) No. 3109 of 2011, arising out of Special Leave Petition (Civil) CC No. 19869 of 2010, Hon'ble Apex Court has also given directions to all the State Governments in the country for preparing a scheme for eviction of illegal/unauthorised occupation on Gram Panchayat's land and directions have been given that the land must be restored to the Gram Panchayat for the common use of the villagers of the village. Relevant paragraph of the judgment reads as under :—

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.”

(3) 1995 AIR S.C.W. 2425

(4) AIR 1983 S.C. 1272

(13) It is further contended that so far as dismissal of earlier writ petition filed by five villagers in their individual capacity is concerned, the same was dismissed as infructuous and not on merits, in view of amendment to Section 5A of the Act and hence, respondent-plaintiffs cannot get any benefit out of the same.

(14) It is further contended that when the very suit is not maintainable and when the main relief cannot be granted to respondents-plaintiffs, they are not entitled for discretionary relief of injunction. Hence, it is contended that illegality and material irregularity has been committed by learned courts below in allowing the application filed by respondents-plaintiffs for *ad interim* injunction order and in dismissing the application filed by petitioners-defendants.

(15) On the other hand, it has been contended by learned Senior Advocate for the respondents-plaintiffs that this Court in revisional jurisdiction can interfere in the order passed by Courts below only if the power has been exercised by Courts below without jurisdiction or if the order has been passed illegally or with material irregularity and, however, it is contended that impugned order cannot be said to be, in any way, illegal and rather respondents-plaintiffs are having right to protect their settled possession. It is also contended that once resolution has been passed by Gram Panchayat granting gift to respondents-plaintiffs and once the gift has been approved by the Government as per the Rules, defendants are having no right to revoke the said gift and that they are also stopped by their act and conduct from revoking the said gift. Hence, it is contended that respondents-plaintiffs are having right to seek the mandatory injunction against defendants directing them to execute and register the gift deed and they are also having right to get the injunction against defendants restraining them from revoking the mutation already sanctioned in their favour. He has also placed reliance upon a judgment rendered by Hon'ble Apex Court in **The Managing Director (MIG) Hindustan Aeronautics Ltd. Balanga Hyderabad and another versus Ajit Prasad Tarway Manager (Purchase and Stores) Hindustan Aeronautics Ltd. Balanagar Hyderabad, (5)**, on the point that jurisdiction of this Court to interfere under Section 115 of the Code is very limited.

(16) He has also placed reliance upon **M/s Ganpati Shopping Mall Pvt. Ltd. versus State of Haryana and others (6)**, on the plea of promissory estoppel.

(17) He has further contended that once the gift granted, as per resolution of the Gram Panchayat has been approved by the government, the gift is complete and respondents-plaintiffs have become owners of the same. On the point he has placed reliance upon **Isham Singh versus State of Haryana and others (7)**.

(18) Learned Senior counsel has also argued that notification for acquisition of part of the land in dispute has been issued by the State Government and the said notification has been challenged by respondents-plaintiffs by filing a writ petition before this Court and, however, the said notification has not been challenged by petitioner-Gram Panchayat and in the said writ petition, dispossession of respondents-plaintiffs from the land in dispute has been stayed.

(19) Admitted facts of the case are that a resolution dated 8th August, 2001, Annexure P4, was passed by Gram Panchayat,—*vide* which land in dispute measuring 237 kanals 03 marlas of the Gram Panchayat was decided to be given as gift to Maharana Partap Charitable Trust, Bhiwani, free of cost for the purpose of establishing Bhiwani Institute of Technology and Sciences and other such building for the aim of the Trust. The said resolution of the Gram Panchayat was approved by the Government of Haryana,—*vide* order dated 18th December, 2001, Annexure P-6 under Rule 13(1) of the Rules. However, the said Rule, under which the land was gifted by Gram Panchayat to respondents-plaintiffs and which was approved by the Government was held as *ultra vires* by Hon'ble Apex Court in **B.L. Wadhwa's case** (*supra*), on the ground that the same is violative of Section 5A and 5B of the Act. The relevant paragraphs of the same read as under :—

“30. Section 4 of the Act deals with the vesting of rights in Panchayat and non-proprietors. Under Section 5 all lands vested or deemed to have been vested in a Panchayat under the Act shall be utilised or disposed of by the Panchayat for the benefit of

(6) 2007 (1) P.L.R. 43

(7) 1994 P.L.J. 668

the inhabitant of the village concerned in the manner prescribed. Where two or more villages have a common Panchayat, the 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 the area of the land in shamlat deh in any village was vested or deemed to have been vested in a Panchayat is in excess of twenty five percent of the total area of that village (excluding abadi deh) then twenty five percent of such total area shall be left to the Panchayat and out of the remaining area of shamlat deh, an area upto the extent of twenty five percent of such total area shall be utilised for the settlement of landless tenants and other tenants ejected or to be ejected of that village, and the remaining area of shamlat deh, if any, shall be utilised for distribution of the small land-owners of that village, subject to the provisions relating to (permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade) in consultation with the Panchayat (in such manner and on payment of such amount) as may be prescribed. If, in the opinion of the State Government it is necessary to take over to secure proper management for better utilisation for the benefit of the inhabitants of the village concerned any shamlat deh the Government may by notification take over the management of such shamlat deh for a period not exceeding twenty years. Under Section 5A of the Act, a Panchayat may gift the land in shamlat deh, vested in it under the Act, to members of the scheduled castes and backward classes of the village in which such land is situated on such terms and conditions as may be prescribed. The gift of land in shamlat deh, already made, shall be deemed to have been made under Sub-section (1) of Section 5A. Section 5B of the Act prescribed that any transfer of land gifted in pursuance of the provisions of Section 5A, made in contravention of the prescribed terms and conditions, shall be void and the gifted land so transferred shall revert to and revest in Panchayat free from all encumbrances. Sections 5A and 5B of the Act were inserted,—*vide* Haryana Amendment Act No. 25 of 1976 with retrospective effect.

31. Section 15 of the Act authorises the State Government to make rules for carrying out the purposes of the Act. Under Clause (ff) of Sub-section (2) of Section 15 of the Act, the rules made can provide for the terms and conditions on which the land in shamlat deh may be gifted to the members of the scheduled caste and backward classes of Haryana.
32. The Rules were framed in the year 1964. Rule 3 provides that the Panchayat shall prepare a land utilisation plan of the land in shamlat deh vested in it under the Act and it shall be the duty of the Block Development and Panchayat Officer to assist the Gram Panchayat concerned in the preparation of the said plan which shall be subject to the approval of Panchayat Samiti where the area exceeds 100 acres but does not exceed 1000 acres. Under Sub-rule (2) of Rule 3, the Panchayat may make use of the land in shamlat deh vested in it under the Act either itself or through another, for any one or more of the purposes specified therein including the purposes of school buildings, school library or any other structure for educational purposes, maternity or first aid centers and hospital and dispensary. Rule 6, at the relevant time, provided that all leases of lands in shamlat deh shall be auctioned after making publicity in the manner laid down in Sub-rule (10). A detailed procedure regarding auction, admittedly not followed in the present case, has been specified in the said Rule. Rule 10 provides that the Panchayat may allow the use of land in shamlat deh, vested in it free of charge to the inhabitants of the village for the purposes of steeping of hemp or any other plant in ponds, residential purposes of members of the Scheduled Castes or Backward Classes or dependents of the defence personnel killed in any war after the independence of India or landless labourers or tenants in genuine case on ground of poverty and any other suitable common purpose. Rule 13 provides that the Panchayat may, with the previous approval of the Government, gift the land in shamlat deh, vested in it under the Act, for the purposes of hospital, dispensary, or educational or charitable institutions or for such other purposes as may be approved by the Government to be for the benefits

of inhabits of the village concerned. The Panchayat, with the previous approval of the Government, may gift the land in shamlat deh vested in it under the Act, for the purposes of construction of houses, laying out common places and providing other amenities under Model Village Scheme approved by the government for the benefit of the inhabitants of the village. Rule 13A provides that the terms and conditions on which the land under Section 5A may be gifted shall be as under :

“(a) The donee shall not sell, mortgage or dispose of the land in any other manner, whatsoever before the expiry of a period of twenty year from the date of the gift ;

Provided that donee may mortgage the land with any scheduled bank or Housing Board or the government for the purpose of raising loan for the construction of the house ;

(b) the donee shall construct a house on the land within a period of two years from the date of the gift ;

(c) the donee shall use the land for residential purposes and for no other purposes, and

(d) In case of death of donee, his legal heirs shall be bound by the condition therein contained.”

33. It is true that under Sub-rule (2) of Rule 3 the Panchayat can use the land in shamlat deh, vested in it under the Act, either itself or through another, for any or more of the purposes specified therein, but it is equally true that the authority under the aforesaid rule can be exercised only after the utilisation plan of the land in shamlat deh has been prepared under Sub-rule (1) of Rule 3. There is nothing on the record to show that any such utilisation plan was prepared warranting the action under Sub-rule (2). If the recourse was to be held to the aforesaid provisions, the utilisation of the land through an agency other than the Panchayat could be made by leasing out the site and compliance of the conditions specified in Rule 6. No such action appears to have been taken in the instant case.

34. Rule 13 authorises the Panchayat to make a gift for the purposes of hospital, dispensary or education or charitable institutions or for such other purposes as may be approved by the government to the benefits of the inhabitants of the village concerned. Such a gift can be made only with the previous approval of the Government. Rule 13 apparently appears to be beyond the scope of Rule making powers of the State Government inasmuch as the right of the Panchayat to gift the land is circumscribed by the provisions of Sections 5A and 5B of the Act. Clause (ff) of Sub-section (2) of Section 15 authorises the State Government to frame Rules regarding the terms and conditions on which the land shamlat deh may be gifted to the members of the Scheduled Caste and Backward Classes. Section 15 does not authorise the State Government to make Rules with respect to the gift of the land to persons other than those contemplated under Section 5A and 5B of the Act. Any rule which is contrary to the provisions of the Act cannot be given effect to or made the basis of gifting the property, vesting in the Gram Panchayat. It cannot be disputed that the gifts proposed by the Panchayat, approved by the State Government and ultimately made by the Gram Panchayat are in violation of provisions of Section 5A and 5B of the Act read with Rule 13A of the Rules. As the gifts have been made in favour of persons other than those specified in the mandatory provisions of Sections 5A and 5B, the same are *void-ab-initio*. Making of the gift apparently appears to be abuse of the powers vesting in the Panchayat. The State Government appears to have taken a very casual approach in the matter and granted the approval for reasons best known only to it. Non application of the mind of the State government is writ large in the case. The manner in which the Gram Panchayat and the State Government have dealt with the matter shows that they were overshadowed by the towering political personality of Shri Chander Shekhar, Chairman of Respondent No. 7. His giant stature, hovering over the office bearers of the Gram Panchayat and officials of the State Government appears to have factually immobilised them in the discharge of their duties which resulted in their succumbing to heavy weight of the influential respondent.

35. There is no denial of the fact that the Rules under the Act were framed in the year 1964 and Sections 5A and 5B were inserted,—*vide* Punjab Act No. 25 of 1976. Prior to the incorporation of the aforesaid sections, the respondent-State had a right to gift land out of the shamlat deh for purposes as specified in Rule 13 but after the amendment of the Act, Rule 13 became redundant and could not be invoked as its exercise would be against the provisions of the Act, authorising the making of gifts only in favour of the persons specified in the aforesaid two sections.”

(20) In **B.L. Wadhwa's case** (supra) land was gifted by Gram Panchayat under Rule 13 of the Rules and duly approved by the Government and even gift deed was executed by Gram Panchayat, possession was also taken by the person to whom gift was to be given and despite that resolution and the gift deed were held contrary to the mandatory provision of the Act and the Rules being *void ab initio*, it was held that the same would not effect the rights of the Gram Panchayat and that respondent was having no justification to retain any piece of controversial land in his possession and is liable to deliver the possession of the land to the Gram Panchayat. Facts of this judgment are fully applicable to the facts of the present case.

(21) Hence, when the earlier resolution under which right in the land in dispute is claimed by respondents-plaintiffs is not a valid one and not as per the Act and the Rules and when the same is *void ab initio*, it cannot be said that Gram Panchayat is having no right to revoke the said resolution. In fact the Gram Panchayat has passed another resolution dated 6th May, 2006, Annexure P11, which has also been challenged by respondent-plaintiffs in this suit. However, *prima facie* it cannot be said that the said resolution is bad in law.

(22) Mutation of the land in dispute in favour of respondent-plaintiffs has been sanctioned by Revenue Authorities in favour of respondents-plaintiffs without execution and registration of gift deed by the Gram Panchayat in favour of the respondents-plaintiffs under Section 123 of the TP Act and hence, there is force in the argument of learned counsel for the petitioner that respondents-plaintiffs cannot become owners of the land in dispute merely on the ground that resolution was passed gifting the land in their favour by the Gram Panchayat, which was approved by the government and that ownership still vests with the petitioner-Gram Panchayat.

(23) Learned Senior counsel for the respondents-plaintiffs has failed to show to this Court as to under which provision of the 1963 Act, the present suit has been filed seeking mandatory injunction directing true owner to execute and register the sale deed in favour of respondents-plaintiffs. Hence, there is force in the argument of learned counsel for the petitioner-defendant that when the suit itself is not maintainable, respondents-plaintiffs are not entitled for any discretionary relief of injunction.

(24) There is also force in the argument of learned counsel for the petitioner-Gram Panchayat that Civil Court cannot restrain the Revenue Authorities to pass appropriate orders for reviewing the mutation, which was illegally sanctioned in favour of respondent-plaintiffs under Section 41(b) of the Specific Relief Act. Revenue Authorities were proceeding, as per law. Order Annexure P12 was passed by learned Sub Divisional Officer (C), Bhiwani, after giving an opportunity of being heard to respondents-plaintiffs recommending cancellation of earlier mutation No. 9387 dated 20th December, 2001. Though appeal filed against the said order was accepted by learned Collector, Bhiwani and however,—*vide* order Annexure P17, passed by Commissioner, Hisar Division, Hisar, order of Collector was set aside and the case was remanded to Collector, Bhiwani to decide the same afresh by observing that mutation was wrongly sanctioned without gift deed having been executed and registered by Gram Panchayat in favour of respondents-plaintiffs. The matter is still pending with Collector, Bhiwani. However, he could not pass any further order in view of stay granted by Courts below in this case. Perusal of the file shows that show cause notice for cancellation of approval of gift has also been given by Government of Haryana to respondent-plaintiffs, which is Annexure P14. Hence, defendants are proceeding as per law and it cannot be said that they intend to dispossess respondents-plaintiffs from the property in dispute in an illegal manner.

(25) So far as dismissal of earlier writ petition filed by a few residents of Village Palluwas challenging the resolution of Gram Panchayat, sanction of government and subsequent sanctioning of mutation is concerned, the same was not decided on merit and rather the same was dismissed as rendered infructuous in view of amendment in Section 5A of the Act during pendency of the writ petition and, however, opportunity was given to petitioners to challenge the vires of said amended Section 5A of the Act.

However, later on another amendment was made by Government of Haryana.—*vide* amending Act No. 8 of 2007 and the earlier Sections 5A and 5B have been restored. Sections 5A and 5B of the Act, after amendment by Haryana Amendment Act No. 8 of 2007 reads as under :—

“5A **Disposal of lands vested or deemed to have been vested in Panchayat.**—(1) A Panchayat may, on such terms and conditions as may be prescribed, gift, sale, exchange or lease the land in shamlat deh vested in it under this Act to the members of Scheduled Castes and Backward Classes of the village in which such land is situated and to the persons of any other category.

(2) The gift, sale, exchange or lease of land in shamlat deh already made shall be deemed to have been made under sub-section (1).

5B. **Certain transfers not to affect Panchayat’s rights.**—(1) Any transfer of land, gifted sold, exchanged or leased before or after the commencement of this Act, made in contravention of the prescribed terms and conditions shall be void and the gifted, sold, exchanged or leased land so transferred shall revert to and revest in the Panchayat free from all encumbrances.

(2) The Government or any officer authorised by it may, either *suo motu* or on application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer, examine the record for the purpose of satisfying himself as to the legality or propriety of any sale, lease, gift, exchange, contract or agreement executed before or after commencement of this Act, if such sale, lease, gift, exchange, contract or agreement is found detrimental to the interest of the villagers and is no longer required in the interest of the Panchayat, the Government may, after making such enquiry as it may deem fit, cancel the same and no separate proceedings under any law shall be required to cancel the sale, lease, gift or exchange. The Panchayat shall be competent to take over the possession of such premises including the constructions thereon, if any, for which no compensation shall be payable.”

(26) Further even Rule 13 of the Rules, under which earlier resolution was passed by Gram Panchayat has also been amended by Government of Haryana.—vide notification dated 3rd January, 2008 and the amended Rule 13 reads as under :—

“13. **Gift of land. Sections 5, 5A and 15.**—A Panchayat may, with the previous approval of the State Government, gift the land in *shamlat deh* vested in it under the Act for—

- (i) the purpose of construction of houses, laying out common places and providing other amenities under the Model Village Scheme approved by the State Government for the benefit of the inhabitants of the village ; and
- (ii) residential purpose up to the extent of 200 square yards, to the members of defence forces and paramilitary forces seriously injured and rendered handicapped or to the dependent families of such members killed, in any war or counter insurgency operation during their service, not having sufficient residential accommodation or to the members of the Scheduled Castes or Backward Classes or economically weaker sections, on the ground of poverty :

Provided that State Government shall not accord any approval in cases which are not received through the Deputy Commissioner concerned:

Provided further that the concerned Deputy Commissioner or Sub-Divisional Officer (Civil), as may be authorized by the State Government, shall be competent to accord approval for allotment of 100 square yards residential plot out of land in *shamlat deh*, by way of gift, to the eligible family identified under the scheme, approved by the State Government for purpose of providing house-sites to the Scheduled Castes' families and the families living below poverty line.”

(27) As already discussed above, earlier Rule 13 under which earlier resolution was passed by Gram Panchayat has been held *ultra vires* by Hon'ble Apex Court in **B.L. Wadhwa's** case (*supra*). Hence, in view of latest provision of Section 5A and 5B of the Act and in view of latest Rule 13 of the Rules framed under the Act, earlier resolution passed by

petitioner-Gram Panchayat, gifting land in dispute without any consideration for establishing an educational institute to respondent-plaintiffs has become null and void and respondent-plaintiffs cannot claim any right in the land in dispute under the said resolution and the approval of the said resolution by the Government or in view of sanctioning of mutation pursuant thereto.

(28) So far as argument of learned Senior counsel for the respondents-plaintiffs that this Court is having limited powers to interfere in this revisional jurisdiction under Section 115 of the Code or Article 227 of the Constitution of India is concerned, there is no dispute.

(29) However, law has been well settled by Hon'ble Apex Court in **Surya Dev Rai versus Ram Chander Rai and others (8)** that even after amendment in Section 115 of the Code, this Court can interfere in the order passed by the Courts below in its supervisory jurisdiction under Article 227 of the Constitution of India if the error is manifest and apparent on the face of proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law or that a grave injustice or gross failure of justice has occasioned thereby.

(30) In my view, the present is such a case in which interference by this Court is warranted in view of detailed discussion made above.

(31) Insofar as the plea of learned Senior counsel for the respondent-plaintiffs that Government has issued notification for acquisition of part of land in dispute and that the same has been challenged by respondent-plaintiffs by filing a writ petition before this Court is concerned, the said subsequent development is having no effect on the decision of present revision petition.

(32) As already discussed above, petitioner-Gram Panchayat is not intending to take forcible possession of the land in dispute from respondent-plaintiffs. Rather in this suit filed by respondent-plaintiffs, present petitioner-Gram Panchayat has sought relief of possession by way of counter claim. Petitioner-Gram Panchayat is also proceeding as per law for cancelling/reviewing the disputed mutation before the concerned Revenue Authorities.

(33) *Prima facie*, when suit is not maintainable and civil Court is having no power to restrain the revenue authorities from proceeding further as per law, as no such relief can be granted in view of Section 41(b) of the 1963 Act and hence, when main relief cannot be granted to respondent-

plaintiffs, it cannot be said that they are having any right to seek discretionary relief of *ad interim* injunction. *Prima facie* case is not made out in favour of respondent-plaintiffs. balance of convenience also does not lie in their favour. Rather the *prima facie* case is in favour of petitioner-Gram Panchayat. balance of convenience also lies in favour of petitioner-Gram Panchayat. Respondent-plaintiffs are also having no right to seek injunction against true owner. i.e., petitioner-Gram Panchayat as Gram Panchayat is still owner of the land in dispute and ownership has not been transferred in favour of respondent-plaintiffs as per law by way of a registered gift deed. Hence, they are having no right to seek injunction against true owner, who are proceeding, as per law, as the proceedings are pending before revenue authorities and before the Government authorities for cancellation/review of earlier mutation and for cancellation of the sanction earlier granted to create gift in favour of respondents-plaintiffs by the Gram Panchayat and show cause notice in that regard was also issued by the Financial Commissioner to respondent-plaintiffs. Hence, the respondent-plaintiffs cannot be permitted to raise further construction over the land in dispute, as, *prima facie* their possession over the land in dispute is not legal and they are in unauthorised possession of the same.

(34) Learned Additional District Judge has committed illegality and material irregularity in passing the impugned order restraining the revenue authorities from proceeding further from reviewing/cancelling the mutation illegally sanctioned in favour of respondents/plaintiffs. The order on the very face of it is perverse.

(35) Hence, the present revision petition is accepted. Impugned orders passed by learned courts below are set aside. As a consequence thereof, application for *ad interim* injunction order filed by respondents-plaintiffs stands dismissed. Application for *ad interim* injunction order filed on behalf of the petitioner-Gram Panchayat is allowed and respondents-plaintiffs are restrained from raising any further construction and from creating any third party rights in the property in dispute.

(36) However, it is made clear that nothing observed herein shall be construed to have any bearing on the decision of this case on merit by learned trial Court.