

CIVIL MISCELLANEOUS

Before Harbans Singh, C.J. and Gurdev Singh, J.

PREM CHAND ETC.,—*Petitioner*

versus

THE STATE OF HARYANA, ETC.,—*Respondents*

Civil Writ No. 1221 of 1971:

May 24, 1971.

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—Sections 3 to 13—Punjab Minor Mineral Concession Rules (1964)—Rules 5 to 33—Punjab Land Revenue Act (XVII of 1837)—Section 42—“Saltpetre”—Whether a minor mineral—Lands in which minor minerals does not vest in the Government—Contract for winning saltpetre in such lands—Whether can be granted by the Government—Vesting of the right to exploit saltpetre in the proprietors of the land—Determination of—Entries in the Wajib-ul-arz—Whether relevant.

Held, that by notification dated 28th January, 1967, saltpetre has been declared as one of the minor minerals under section 3(e) of Mines and Minerals (Regulation and Development) Act, 1957. Hence saltpetre is minor mineral with effect from 28th January, 1967, within the meaning of the Act.

(Para 10)

Held, that there are separate set of rules in respect of the lands in which the minor minerals vest in the Government and of the land in which the minor minerals vest in a person, other than the Government. The provisions of Rules 5 to 33 of Punjab Minor Mineral Concession Rules, 1964, make it clear that the Government can enter into contract for the winning of minor minerals only where the minor minerals vest in the Government. There is no provision either in the Mines and Minerals (Regulation and Development) Act, 1957, or the Punjab Minor Mineral Concession Rules, 1964, which has the effect of vesting saltpetre as a minor mineral in the Government, if apart from the Act and the Rules it does not vest in the Government but vests in some other person.

(Para 13)

Held, that for deciding the question whether the right of exploiting saltpetre in a particular land vest in the Government or the proprietors, the provisions of section 42 of Punjab Land Revenue Act and the conditions of *wajib-ul-arz* of the particular village in which the land is situated will have to be looked into.

(Para 24)

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, prohibition or any other appropriate writ, order or direction be issued quashing the impugned notification No. Glg/SP/Auction/

Prem Chand etc. v. The State of Haryana etc.
(Harbans Singh, C.J.)

682/70-71/8810-A, dated 25th February, 1971, in respect of village Mayoli, tehsil Kaithal, district Karnal, and the respondents be prohibited from auctioning the saltpetre bearing area of village Mayoli and not to dispossess the petitioners and not to interfere in the lawful possession of the petitioners in village Mayoli, and not to confirm the auction. It is also prayed that ad interim injunction and stay order be issued till the final disposal of the writ petition.

ASHOK SEN, ADVOCATE, WITH S. K. JAIN, ADVOCATE, for the petitioners.

J. N. KAUSHAL, ADVOCATE-GENERAL, HARYANA, WITH ASHOK BHAN, ADVOCATE, for the respondents.

HARBANS SINGH, C.J.—This judgment will dispose of Civil Writs Nos: 2559 of 1969, 3575, 3576, 3577, 3640, 3641, 3642 and 3643 of 1970, 10, 1209, 1214, 1215, 1216, 1221, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1317, 1318, 1319, 1320, 1323, 1324, 1328, 1344, 1408, 1416, 1490, 1572, 1616 and 1679 of 1971, as they involve common questions of law and fact.

(2) In all the abovementioned writ petitions the point raised is whether the State Government can under the relevant law and the rules exploit *shora* (saltpetre) found in the soil or on the surface of the lands belonging either to the individuals or to the Gram Panchayats. Civil Writ 1221 of 1971 would be taken as a typical cases where the land belonged to an individual and Civil Writ 1328 of 1971 as a typical case where the land belonged to the Gram Panchayat concerned.

(3) We will first take up Civil Writ 1221 of 1971. On 25th February, 1971, a notification was issued by the Department of Industries, Haryana, notifying for the information of the general public that saltpetre bearing areas in various villages, detailed in that notification, including village Mayoli which is mentioned at serial number 19 and with which village we are concerned in this writ petition, will be put up for auction on 2nd April, 1971, at 10 a.m., in the office of the District Industries Officer, Panipat. The notification also detailed the terms and conditions of the auction with which we are not concerned.

(4) The present writ petition was filed by Prem Chand and another claiming to be the owners in possession of a considerable

area, detailed in paragraph 2 of the writ petition, in village Mayoli. It was alleged that the State was neither the owner of the saltpetre nor had any authority to auction the same. *Inter alia* it was alleged that according to the entries in the Wajib-ul-arz relating to this village, the State is not the owner of the land or of the saltpetre in the land.

(5) In the return filed on behalf of the State, it was not disputed that the petitioners are the owners of the land, but it was urged that the right of ownership of saltpetre vests in the Government, by virtue of the reservations made in favour of the Government by Sharat Wajib-ul-arz prepared in 1904-09 read with sub-section (2) of section 42 of the Punjab Land Revenue Act, 1887, and the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, and the Punjab Minor Mineral Concession Rules, 1964.

(6) A preliminary objection was taken that the writ petition involved intricate questions of fact and, consequently, the extraordinary jurisdiction of this Court under Article 226 of the constitution cannot be invoked, but this objection was not pressed at the time of the arguments and is otherwise without any force in view of the observations made in a similar case by their Lordships of the Supreme Court. Originally the matter, which related to exploitation of saltpetre, came up before this Court in *Om Parkash v. The State of Haryana and others*, (1) but the petition was dismissed *in limine* and the order passed was as under:—

“Following the earlier two Division Bench decisions of this Court in *Dr. Shanti Saroop v. State of Punjab* (2) and *The Punjab Haryana Shora Factory etc. v. Haryana State* (3) we dismiss this petition.”

(7) The two judgments referred to had proceeded on the ground that the High Court would not, in deciding a petition under Article 226 of the Constitution, enter upon disputed questions of fact. This Court had not called upon the State to file an affidavit and did not consider whether the facts raised were complicated or for any other reason it would be inappropriate to try the dispute in the writ petition. In fact, the State filed an affidavit in the Supreme Court

(1) C.W. No. 2559 of 1969 decided on 30th September, 1969.

(2) I.L.R. 1969 (1) Pb. & Hr. 680.

(3) C.W. No. 3405 of 1968, decided on 6th February, 1969.

Prem Chand, etc., v. The State of Haryana, etc.,
(Harbans Singh, C.J.)

and it was observed by their Lordships of the Supreme Court as follows :—

“In this Court the State has filed an affidavit in reply; it does not *prima facie* appear that there were any such complicated questions of fact which would necessitate that the appellant should be driven to a separate suit. It may also be pointed out that in a similar dispute also relating to the grant of the right to win saltpetre by a village Panchayat decided by a Single Judge of the High Court in C.W. No. 1924 of 1969 relief was granted to the applicant. In our view the High Court was in error in summarily rejecting the petition filed by the appellant.”

This writ petition (C.W. 2559 of 1969) received back on remand is also one of the writ petitions laid before us for disposal.

(8) In fact, there are no disputed questions of fact involved in these petitions, because both the parties rely on the Sharat Wajib-ul-arz and all that is necessary is to interpret the relevant conditions in the Wajib-ul-arz of the particular village and to see the effect of the provisions of the Punjab Land Revenue Act and those of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules framed thereunder.

(9) It is contended on behalf of the petitioners that the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Central Act, provide for regulation and development of mines and minerals and if a particular mineral is not vested in the State Government then this Central Act does not proceed to vest the same. So far as the question, whether right to a particular mineral vests in the State Government or in the owner of the land, the matter has to be decided in terms of the Wajib-ul-arz read with section 42 of the Punjab Land Revenue Act. This position was not controverted on behalf of the respondent-State.

(10) So far as the Central Act is concerned, section 3 gives the definitions and *inter alia* clause (e) defines “minor minerals” as follows :—

“ ‘Minor minerals’ means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed

purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"

By notification, dated 28th January, 1967 saltpetre has been declared by the Central Government as one of the minor minerals under section 3(e) of the Central Act. This fact is not being challenged. Saltpetre is, therefore, a minor mineral with effect from 28th January, 1967, within the meaning of the Central Act.

(11) Sections 4 to 13 of the Central Act provide for general restrictions on undertaking prospecting and mining operations, which, however, do not apply, in view of section 14, to minor minerals. Section 15 gives power to the State Government to make rules in respect of minor minerals. It was by virtue of this section that the Punjab Minor Mineral Concession Rules, 1964 (hereinafter referred to as the Punjab Rules), were made by the Governor of the Punjab and published in the *Punjab Gazette, Extraordinary*, Part III, on 2nd May, 1964 (reprinted in 1964 Lahore Law Times, Volume XLIII, page 102). Rule 2(b) of the Punjab Rules defines 'minor mineral' in the same terms as section 3 of the Central Act. Chapter II of the said Rules contains rule 5 to rule 33, and the heading of this Chapter runs as under:—

"Grant of mining leases/contracts/short-term permits in respect of land in which the minerals vest in the Government."

Clause (j) of rule 2 of the Punjab Rules defines 'contract' in the following words:—

" 'contract' means a contract given on behalf of the Government to carry, win, work and carry away any mineral specified therein, through open auction or by inviting tenders for certain specified areas, notified by the Director."

Rules 28 onwards deal with the method of granting such contracts. The heading of Chapter III, containing rules 34 onwards is "Grant of mineral concessions in respect of the land in which minor minerals vest in a person other than the Government."

(12) So there are separate set of rules in respect of the lands in which the minor minerals vest in the Government and of the land

Prem Chand, etc., v. The State of Haryana, etc.,
(Harbans Singh, C.J.)

in which the minor minerals vest in a person, other than the Government. It was urged that in the latter case, the Government has no authority to grant contracts by auction or tender. The Government has power by virtue of rules 34 on wards of the Punjab Rules only to regulate the granting of mining leases, but these leases have to be granted in the name of and by the lessor who would be the person in whom the minor minerals vest. This is clear from rule 37 which runs as follows :—

“Conditions of mining lease.—Every mining lease shall be subject to the following conditions:—

- (i) The provisions of rules 15, 18(3), 20, clauses (i) to (xvi) (xvii) and (xviii) of rule 21(1) and 21(2) shall apply to such leases with the modification that the word “Government” occurring in clauses (ii) to (iv) and (xviii) of sub-rule (1) of rule 21 shall be substituted by the word “lessor”.
- (ii) The lease may contain such other conditions not being inconsistent with the provisions of these rules, as may be agreed upon between the parties.

* * * ”

(13) There is no manner of doubt that the provisions of these rules make it clear that the Government can enter into a contract for the winning of the minor minerals only where the minor minerals vest in the Government. Further it is not the case of the Government that there is any provision either in the Central Act or in the Punjab Rules, which has the effect of vesting saltpetre as a minor minerals in the Government if, apart from the Central Act and the Punjab Rules, it does not vest in the Government but vests in some other person.

(14) We have, therefore, to look to the provisions of the Punjab Land Revenue Act and the conditions in the Wajib-ul-arz of the particular village. Section 42 of the Punjab Land Revenue Act is to the following effect :—

“(1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied;

deserted or waste-land, spontaneous produce or other accessory interest in land belongs to the land-owners, it shall be presumed to belong to the Government.

- (2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the land-owners."

(15) In the present case, the *Wajib-ul-arz*, which is relied upon by both the parties, is of 1904-09 and, therefore, sub-section (2) of section 42 of the Punjab Land Revenue Act would only be applicable.

(16) In addition to the presumption arising under sub-section (2) of section 42 of the Punjab Land Revenue Act reliance was also placed by the learned counsel on the general presumption recognized by their Lordships of the Supreme Court in *Raja Anand Brahma Shah v. The State of Uttar Pradesh and others* (4), at page 1088, that *prima facie* the land-owners are also the owners of the minerals. In *Basheshar Nath v. Commissioner of Income-tax*, (5), their Lordships of the Supreme Court cited with approval the observation of Lord Atkin in *Eshugbayi Eleko v. Officer Administering Government of Nigeria* (6), "that in accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except when he can support the legality of his act before a Court of justice."

(17) It was further stressed on behalf of the petitioners that unlike forest, quarries, building stones, gravels, sand, etc., which were generally treated by the Government as vesting in it, it was the policy of the Government not to treat saltpetre as vesting in the Government. The learned counsel for the petitioners referred to Douie's Punjab Settlement Manual, paragraph 193 at page 96, in support of his contention. Paragraph 193 runs as follows :—

"Saltpetre not treated as Government property.—The question of the rights of Government in saltpetre was raised in 1891 in connection with the settlement of the Hissar District when the Punjab Government held that neither

(4) A.I.R. 1967 S.C. 1081.

(5) A.I.R. 1959 S.C. 149.

(6) 1931 A.C. 662=A.I.R. 1931 P.C. 248

Prem Chand, etc. v. The State of Haryana, etc.
(Harbans Singh, C.J.)

the saltpetre earth nor the educed saltpetre can properly be brought under the term "spontaneous produce or other accessory interest in land" within the meaning of Section 42 of the Land Revenue Act. It was added that Sir James Lyall believed that "in practice the Government nowhere in the Punjab claims proprietary right in saltpetre earth, or a title to a monopoly of the rights of educating saltpetre, though preceding native Governments may have claimed such a title. All that Government claims is the right of regulating or preventing the manufacture." Saltpetre or *shora* must not be recorded, therefore, as Government property in the village administration paper, and any profits which the land-owners derive from it may be taken into account in assessing the land-revenue. If for any reason they are left un-assessed the fact that Government has not abandoned its right to assess them at some future time should be distinctly noted."

The village administration paper, referred to in this paragraph, is called *Wajib-ul-arz*, and this is dealt with in paragraph 295 at page 152 of the Douie's Punjab Settlement Manual. The relevant part of it is as under:—

"The *wajib-ul-arz*, or village administration paper, should be a record of existing customs regarding rights and liabilities in the estate. It should not be used for the creation of new rights or liabilities, or for what may be called village legislation."

Paragraph 296 makes some remarks about the *Wajib-ul-arz* of early settlements and it mentions that such *Wajib-ul-arz* was "sometimes a formidable document but its real value as an evidence of village custom was not always proportionate to its length", and there is a note underneath that "Existing rules on the subject are reproduced in Appendix VIII-E".

(18) Now Appendix VIII-E is given at page lxx (70) in this very Manual and it gives a clear insight as to what matters are expected to be recorded in the *Wajib-ul-arz* and in what order. It reads as follows:—

"(1) The statement of customs respecting rights and liabilities on the estate shall be in narrative form; it shall be as brief

as the nature of the subject admits, and shall not be argumentative, but shall be confined to a simple statement of the customs which are ascertained to exist. The statement shall be divided into paragraphs numbered consecutively, each paragraph describing as nearly as may be separate custom.

- (2) The statement shall not contain entries relating to matters regulated by law, nor shall customs contrary to justice, equity, or good conscience, or which have been declared to be void by any competent authority, be entered in it. Subject to these restrictions, the statement should contain information on so many of the following matters as are pertinent to the estate:—
- (a) Common land, its cultivation and management, and the enjoyment of the proceeds thereof.
 - (b) Rights of grazing on common land.
 - (c) Rights to the enjoyment of sayer produce.
 - (d) Usages relating to village expenses (malba).
 - (e) Customs relating to the irrigation of land.
 - (f) Customs relating to mills, tanks, streams; or natural drainages.
 - (g) Customs of alluvion and diluvion.
 - (h) The rights of cultivators of all classes not expressly provided for by law (for instance, rights to trees or manure, and right to plant trees) and their customary liabilities other than rent.
 - (i) Customary dues payable to village servants, and the customary service to be rendered by them.
 - (j) The rights of Government to any *nazul* property, forests, unclaimed, unoccupied, deserted, or waste lands; quarries; ruins or objects of antiquarian interest,

Prem Chand, etc., v. The State of Haryana, etc.,
(Harbans Singh, C.J.)

spontaneous products, and other accessory interest in land included within the boundaries of the estate.

- (k) The rights of Government in respect of fish and fisheries in streams rivers, etc.
- (l) Any other important usage affecting the rights of land-owners, cultivators or other persons interested in the estate, not being a usage relating to succession and transfer of landed property.

* * * * *

We have reproduced the whole of paragraph 2 in order to indicate the various matters that are covered in the *Wajib-ul-arz*. In the present case we are concerned with clauses (c) and (j) of paragraph 2 mentioned above. Under clause (j) are recorded the rights of the Government to any *nazul* property, forests, waste lands, quarries; etc., etc.

(19) In the writ petition with which we are now dealing, on behalf of the State an extract from the *Wajib-ul-arz* relating to clause (j), i.e., clause 10, has only been produced. From this it appears that the Government relies on the wording of this clause. So far as this village is concerned, the relevant part of clause 10 [corresponding to clause (j)], Annexure 'A' filed by the State Government, is as follows :—

“But *nazul* property, quarries of stones, lime, *kankar* and all kinds of small stones which may be found under or over the land belong to the Government. All *kankar* which has so far been found or will be found in future belongs to the Government.”

(20) On behalf of the petitioners it was urged that the real clause would be clause (c), because saltpetre and other rights in underground water are to be dealt with under this clause. In this respect reference is made to paragraph 356 at page 182 of the Douie's Settlement Manual. The heading of this paragraph is:

“Miscellaneous Sources of Income connected with land.”

The relevant part of this paragraph runs as under :—

“So far we have only been considering the agricultural rental of the soil, but the proprietors may, in addition, derive an income from the spontaneous products of the waste and cultivated lands, from the leasing of water power or the right to extract saltpetre from the soil etc. All such items of profit over and above the agricultural rental are known in settlement language as *sayer* (from the Arabic word *sa'ir* meaning remaining over) or *sewai*. If they are of any importance, they must not be neglected in calculating the net assets. * * * * *

(21) The argument was that it is for the Government to justify interference in the land of the petitioners and there is no presumption that the right in respect of saltpetre vests in the Government and in view of sub-section (2) of section 42 of the Punjab Land Revenue Act, unless such rights specifically vest in the Government, the presumption is that they vest in the proprietor of the land. This presumption could have been rebutted by producing the relevant clause of the *Wajib-ul-arz* dealing with *sayer* rights. In fact, the learned counsel referred to the extract from the *Wajib-ul-arz* of village Hijranwan Kalan filed in Civil Writ 1246. In this extract (Annexure 'A') clause 3 of the *Wajib-ul-arz* of that village has been reproduced and this specifically deals with saltpetre. He, therefore, argued that the fact that in the present petition the State Government has not produced clause 3 of the *Wajib-ul-arz* raises a presumption that the clause in dispute went against the contention of the Government. Consequently, it was urged that in this writ petition it should be held that saltpetre does not vest in the Government.

(22) The facts giving rise to Civil Writ 1328 of 1971 are more or less similar, except that Om Parkash, the petitioner in this case, is a lessee from the Gram Panchayat and the land out of which saltpetre is to be extracted is *Shamilat* land which by virtue of the Punjab Village Common Lands Regulation) Act, 1953 (Act I of 1954) replaced later by the Punjab Village Common Lands (Regulation) Act, 1961, as amended by Punjab Act No. 19 of 1964, vests in the Gram Panchayat. Earlier the *Shamilat* land belonged to all the proprietors *hasab rasad khewat*, i.e., according to the share of the ownership of the land. Under the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Punjab Act of 1961), such

Prem Chand, etc. v. The State of Haryana, etc.
(Harbans Singh, C.J.)

land now vests in the Gram Panchayat. One thing is however, clear that the Punjab Act of 1961 or the earlier Act No. 1 of 1954 in no way vests any right of Shamilat land in the Government, which originally vested in the proprietors.

(23) In Civil Writ No. 1328 of 1971, the land in question is situated in village Malar. Here also only clause 10 of the Wajib-ul-arz has been produced, which does not make any specific mention of the saltpetre.

(24) Mr. Jagan Nath Kaushal, the learned Advocate General, Haryana, frankly conceded the force of the arguments addressed by the learned counsel for the petitioners and urged that only a presumption arises under sub-section (2) of section 42 of the Punjab Land Revenue Act, that where there is no mention in the Wajib-ul-arz, expressly reserving certain rights in the land, then such rights do not vest in the Government but in the proprietor of the land and that this presumption can be rebutted by producing evidence. In the written statement the Government based its claim, apart from the provisions of sub-section (2) of section 42 of the Punjab Land Revenue Act, on the Wajib-ul-arz itself. So it is only the entries in the Wajib-ul-arz that would be relevant for deciding the question whether saltpetre or saltpetre bearing earth vests in the Government. The learned Advocate General, however, prayed for a short adjournment to enable him to produce in Court the original Wajib-ul-arz of the various villages regarding which the writs have been filed. He contended that most of the petitioners and the State relied only on entry 10 (clause 'J') in the Wajib-ul-arz and it was only in a very few cases that the petitioners put in copies of the entry in column No. 3. If in column No. 3 of the Wajib-ul-arz it is found that the rights of exploiting saltpetre vest in the proprietors, then obviously the State would not be in a position to press its claim that these rights vest in the State Government. If, however, the entry in column No. 3 is silent about this matter and there is no entry even in column No. 10, one way or the other, regarding saltpetre, then it would be a question for the Court to determine whether the words used in the entry in column No. 10 impliedly, if not expressly, reserved the rights of exploiting saltpetre in favour of the Government. On the other hand, if entry No. 3 is silent and there is a specific mention, in the entry in column No. 10, that rights in saltpetre vest in the Government then this would be a clear reservation in favour of the Government. Consequently, he urged that time may be

given to him to produce the original Wajib-ul-arz so that the matter may be clarified. We felt that for a satisfactory decision of these writ petitions, it would be useful and, in fact, necessary for us to see the entries in the Wajib-ul-arz of the various villages concerned. The case was, consequently, adjourned and the learned Advocate General, Haryana, produced the Wajib-ul-arz before us.

(25) As detailed above, the entries in the Wajib-ul-arz of various villages fall in three different categories. There are only two villages Panihari and Musaibwala which fall in the third category, namely, where there is no mention in column No. 3 about any income from saltpetre but in column No. 10 saltpetre and saltpetre bearing earth are specifically reserved to the Government in addition to all kinds of quarries of *kankar*, stones, etc. So far as these two villages are concerned; the learned Advocate-General vehemently urged that here the Wajib-ul-arz did expressly reserve these rights to the State Government and there is no entry to the contrary in column No. 3. Original entries of the year 1919-20 were produced and copies have been placed on the relevant files. Civil Writ 1318 of 1971 has been filed by the lessee from the Gram Panchayat, Panihari, and Civil Writ No. 1320 of 1971 by the Gram Sabha, Panihari. Civil Writ No. 1319 of 1971 is filed by the lessee of the land situated in village Musaibwala, which was also auctioned by the Gram Panchayat of Panihari, which had apparently jurisdiction over village Masaibwala. In relation to these three writ petitions, therefore, the saltpetre over the land in dispute is alleged to be vested in the Government.

(26) Mr. R. S. Mital, the learned counsel for the petitioners in these cases, referred to section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 (Punjab Act No. 1 of 1954), hereinafter referred to as Punjab Act of 1954, and section 4 of the Punjab Act of 1961, as subsequently amended, and urged that a reading of these two sections together would show that rights in the Shamilat land vest in the Panchayat notwithstanding anything to the contrary *inter alia* in any custom or agreement. He, therefore, urged that even if the Government had any rights in the Shamilat land, those also vest in the Panchayat.

(27) Section 3 of the Punjab Act of 1954 runs as under:—

“Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding

Prem Chand, etc. v. The State of Haryana, etc.
(Harbans Singh, C.J.)

any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land—

- (a) which is included in the Shamlat Deh of any village, shall on the appointed date, vest in a panchayat having jurisdiction over the village ;
- (b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of the Act vest in the said non-proprietor.”

Subsequently, definition of ‘Shamilat land’ was slightly varied by the Punjab Act of 1961, and section 4 thereof provides as under:—

“(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 whatever in the land—

(e) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and where no such panchayat has been constituted for such village, vest in the panchayat * * * * *

(b) * * * * *

(2) And land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.”

‘Shamilat law’ so far as it is relevant for the purpose of this case, is defined in clause (h) of section 2 of the Punjab Act of 1961 as under:—

“(h) ‘shamilat law’ means—

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953;

(ii) * * * * *

By virtue of sub-section (2) of section 4 of the Punjab Act of 1961, any land which had vested in the Panchayat under the Punjab Act of 1954 "shall be deemed to have been vested in the Panchayat under this Act" and this vesting takes place *inter alia* notwithstanding anything to the contrary contained in any agreement, instrument, custom or usage.

(28) No doubt this provision could give rise to an argument that any rights which vested in the Government by virtue of anything stated in the Wajib-ul-arz or the village administration paper, would also vest in the Panchayat, because the rights vest notwithstanding any agreement, instrument, custom or usage and Wajib-ul-arz must necessarily fall under one or the other of these categories. However, all such doubts stand cleared, because of a subsequent amendment of this Act by the Punjab Village Common Lands (Regulation) Amendment Act, 1964 (19 of 1964), by which section 14-A was added and the relevant part of this section runs as under:—

"Nothing contained in this Act or the Shamilat law shall—

(a) affect or shall be deemed ever to have affected any right of the State Government in the land vested or deemed to be vested in a Panchayat under this Act;—

(b) * * * * *

The argument of the learned counsel for the petitioners, therefore, has no force.

(29) Thus, so far as villages Panihari and Musaibwala are concerned, according to the Wajib-ul-arz, saltpetre and saltpetre bearing earth vest in the Government and, consequently, the notices issued for the auction of the lands by the State Government are valid. Civil Writs Nos. 1318, 1319 and 1320 of 1971 have to be dismissed.

(30) The remaining writ petitions fall in two broad categories. In the first category of cases the entry in column No. 3 of the Wajib-ul-arz expressly provides that the income from saltpetre belongs to the proprietary body and there is no mention whatever regarding saltpetre or saltpetre bearing earth in column No. 10. There can be no manner of doubt that, so far as these cases are concerned, the

Prem Chand, etc. v. The State of Haryana, etc.
(Harbans Singh, C.J.)

State Government has no case whatever and it cannot grant contracts in respect of the winning of saltpetre from these lands. A number of writ petitions fall in this category. Civil Writ 1246 of 1971 relating to village Hijranwan, Civil Writ No. 1247 of 1971 relating to village Kutabdh, Civil Writ 1616 of 1971 relating to village Bhawad, Civil Writ 1679 relating to village Ayalki and Civil Writ 3643 of 1970 relating to village Rania and some of the petitions belonging to this category.

(31) The bulk of the other cases fall in the second category, namely, where there is no mention in column No. 3 of any income being derived by the proprietors and there is no mention in column No. 10 regarding the saltpetre. The learned Advocate-General took Civil Writ 10 of 1971 relating to village Kalpa as a typical case of this category. Here in column No. 3 of the Wajib-ul-arz of the year 1909 it is stated that there is no income of *sayer*. In column No. 10 of the Wajib-ul-arz (Annexure R. 1) what is mentioned is :

"jo kan kankar pathar waghaira zamin ke upar ya neeche ho wo sab malkiat sarkar hain."

(Whatever quarries of *kankar*, stones, etc., may be under or over the land would all belong to the Government.)

(32) It was stated by the learned Advocate-General that same entries are repeated in the year 1963-64 and even in 1969-70. The contention of the learned Advocate-General was that when it is stated generally that all quarries of *kankar* and stones, etc., which may be under or over the land belong to the Government, the word 'etc' added should cover all types of material, which can be found under or over the land, including saltpetre, because this is not specifically reserved for the proprietors. This interpretation completely overlooks the provisions of sub-section (2) of section 42 of the Punjab Land Revenue Act and also of paragraph 193 of the Douie's Punjab Settlement Manual, which give a clear insight to the attitude of the Government so far as saltpetre is concerned. The clear wording of paragraph 193 leaves no manner of doubt that as a matter of policy the Government had decided not to claim any right in the saltpetre or the saltpetre bearing earth and that any income derived from this source could only be taken into consideration for the assessment purposes. The following words used in the above-mentioned paragraph 193 already reproduced were further stressed:—

** * All that Government claims is the right of regulating or preventing the manufacture. Saltpetre or *shora*

must not be recorded, therefore, as Government property in the village administration paper, and any profits which the land-owners derive from it may be taken into account in assessing the land revenue.

* * * * *

(33) This being the case and there being no reservation for saltpetre in favour of the State Government, it is difficult to bring this reservation in the word "wagaira" (etc.). More so when in the *Wajib-ul-arz* of the other villages of the same district and, in fact, in the same tahsil Gohana, in column No. 3 it is specifically mentioned that the saltpetre is auctioned and income distributed amongst the proprietors (see in this respect C.W. 1616 of 1971 relating to village Bhawad, tahsil Gohana, district Rohtak). Thus the Revenue Authorities, who were preparing the *Wajib-ul-arz* in the district were fully conscious of the fact that the rights in saltpetre were distinct from the rights in *kankar* and stones and were normally to be mentioned in column No. 3. This argument of the learned counsel, therefore, cannot be accepted.

(34) There is yet another sub-category which falls in this broad category. These are cases where in the Settlement of 1919 there is no mention in column No. 3 about any *sayer* rights, or it is clearly stated that there are no such rights. There is also no mention of saltpetre in the entry against column No. 10. But in the earlier Settlement of 1880—82 in column No. 3 there was a clear mention that saltpetre and saltpetre bearing earth vested in the Government. The fact that in the subsequent Settlement the saltpetre and saltpetre bearing earth have excluded rather goes to show that in conformity with the general policy of the Government not to claim any proprietary rights in the saltpetre, the *Wajib-ul-arz* was corrected in the subsequent Settlement. In all the cases falling under this broad category, in which there is no mention in column No. 3 of any income from saltpetre being derived and there is no mention in any or in the latest *Wajib-ul-arz* in column No. 10 either, by virtue of sub-section (2) of section 42 of the Punjab Land Revenue Act there would be a presumption that the rights vest in the proprietors and not in the Government. Thus all the writ petitions falling in these two categories have to be accepted and the order of auction issued by the State Government quashed.

Prem Chand, etc. v. The State of Haryana, etc.
(Harbans Singh, C.J.)

(35) There was one peculiar case, which was brought to our notice and that is Civil Writ 3577 of 1970 relating to village Ottu, district Hissar. Here in column No. 3 in the *Wajib-ul-arz* for the year 1919-20 it is mentioned as follows:—

“There is an income of Rs. 100 from saltpetre which is received by the proprietors in proportion to their ownership. There is no other income.”

Thus, there is a clear and specific mention that the saltpetre vests in the proprietors. Surprisingly, however, in column No. 10 of the *Wajib-ul-arz*, the entry is of a similar type as was found in Civil Writs 1318 and 1320 of 1971, relating to village Panihari, dealt with above. The entry runs as follows:—

“The quarries of metals, stones, *kankar*, coal, saltpetre and saltpetre bearing earth which is over or below the land will belong to the State.”

(36) These two entries are obviously contradictory. If the income from saltpetre and saltpetre bearing earth is being received by the proprietors, saltpetre and saltpetre bearing earth could not at the same time possibly vest in the Government. There is no way of reconciling these two entries, but in view of para 193 and of Appendix VIII-E as given in the *Douie's Punjab Settlement Manual*; reproduced above, *sayer* rights relating to saltpetre etc. have to be mentioned in column No. 3 and not in column No. 10 and, consequently, the entry in column No. 3 would supersede the entry in column No. 10. In this case also, the rights in respect of saltpetre and saltpetre bearing earth cannot be said to have been vested in the Government. This writ petition has also to be accepted and the order of auction quashed.

(37) We may now deal with Civil Writ 2559 of 1969, which was summarily dismissed by this Court on the ground that it involved disputed question of fact, which has been remanded back to this Court for decision on merits by the order of the Supreme Court in Civil Appeal No. 2542 of 1969 (*Om Parkash v. The State of Haryana and others*), decided on 16th March, 1970.

(38) This petition has been filed by Om Parkash, a lessee of the land situated in villages Malar and Peoda. The period for which the

lease had been granted and in respect of which this writ petition was filed was from 1st August, 1968, to 31st July, 1970, which period has already passed. Two other writ petitions have been filed by this very Om Parkash for the subsequent period, i.e., Civil Writs 1328 and 1344 of 1971 relating to village Malar. Civil Writ 1572 of 1971 has been filed by Gram Sabha, Peoda, and this writ relates to village Peoda. These three writ petitions, as noticed above, are being accepted. In Civil Writ 2559 of 1969 the possession of the land remained with the petitioner. He had furnished a security of Rs. 58,000 in this case to compensate the State Government in case the decision went against the petitioner and in favour of the State Government. This petition, although, it relates to a period which has already passed, has also to be accepted and the security will stand cancelled.

(39) In view of what has been stated above, Civil Writs 1318, 1319 and 1320 of 1971 are dismissed with costs, while Civil Writs 3575, 3576, 3577, 3640, 3641, 3642 and 3643 of 1970, Civil Writs 10, 1209, 1214, 1215, 1216, 1221, 1246, 1247, 1248, 1249, 1250, 1251, 1252, 1253, 1254, 1317, 1323, 1324, 1328, 1344, 1408, 1416, 1490, 1572, 1616 and 1679 of 1971 and Civil Writ 2559 of 1969 are accepted with costs and the orders of auction quashed.

GURDEV SINGH, J.—I agree.

B.S.G.

APPELLATE CIVIL

Before Gopal Singh, J.

M/S BHIWANI TEXTILE MILLS, BHIWANI,—Appellant.

versus

THE EMPLOYEES STATE INSURANCE CORPORATION,
ETC.,—Respondents.

First Appeal from Order No. 167 of 1970.

May 25, 1971.

Employees' State Insurance Act (XXXIV of 1948)—Sections 51 and 82(2)—Payments of disablement benefit—Liability of the employer for—Whether dependent on the disablement affecting the working or earning capacity of the employee—Finding of fact arrived at by the trial Court—Appeal against—Whether lies to the High Court under section 82(2).