FULL BENCH

Before M. M. Punchhi, Ujagar Singh and A. P. Chowdhri, JJ.

GRAM PANCHAYAT, VILLAGE HARIPURA,—*Petitioner.*

versus

THE COMMISSIONER, FEROZEPUR DIVISION, FEROZEPUE, AND OTHERS,—*Respondents.*

Civil Writ Petition No. 2726 of 1984.

March 14, 1989.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (III of 1973),—*Ss.* 3, 4 & 7—*Punjab Village Common Lands (Regulations) Rules,* 1964—*Rl.* 6—*Transfer of Property Act (IV of* 1882) —*Ss.* 106, 111(*a*)—*Public premises—Eviction of unauthorised occupants—Tenant-lessee in possession of Shamlat land held by a registered trust—after passing of Punjab Village Common Lands (Regulation) Act,* 1953 *such land revesting in Gram Panchayat—However, tenant continuing in possession from year to year for rent-in-cash—Eviction of such tenant as unauthorised occupant—Determination of tenancy—Notice under S.* 106 *of the Transfer of Property Act—Whether necessary—Such tenant—Whether liable to eviction under the* 1973 *Act.*

Held, that it is patent from the reading of section 3 of Punjab Public Premises and land (Eviction and Rent Recovery) Act, 1973 that any person who has entered into possession of a public premises otherwise than under and in pursuance of any allotment, lease or grant, is an unauthorised person deemingly, and may not be so under the provisions of any other law. The opening words of the aforequoted provision are also a pointer that unauthorised occupation of any public premises for the purposes of the Act *qua* a person is deemingly and it is on that basis that the Act works. The explanation specifically makes it clear that for the purpose of clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee. (Para 6).

Held, that two significant factors are noticeable in sub-rule (7); (1) the rent is payable in advance whether the lease in for one year or more than one year, and (2) in either situation, the possession is deliverable to the subsequent lessee (even if he happens to be the same one) when the lessee of the previous year has been allowed a reasonable time to gather and harvest his crops. What emerges from these two factors is that the rent-in-cash which is payable in advance for a particular year *ipso facto* determines the lease by efflux of time of that year. Hence it is to be held that a lease of

immoveable property determines by efflux of time limited thereby is specifically preserved in section 111(a) of the Transfer of Property Act, 1882. So, it is idle to contend that a tenancy from year to year based on payment of advance rent is determinable only by a notice in writing under section 106 of the Transfer of Property Act. Since such tenants-at-will have no right to continue on the land uninterrupted till the lease in their favour was determined in accordance with the Transfer of Property Act. (Para 7).

Held, that a lease in contravention of rule 6 of the Punjab Village Common lands (Regulations) Rules, 1964 is no lease in the eye of law and the Panchayat can resort to the provisions of section 4 of the Public Premises and land (Eviction and Rent Recovery) Act, 1973 seeking eviction of the supposed lessee who comes on the scene without a valid title under sub-rule (1) of Rule.

(Para 8).

Writ Petition Under Articles 226 *and* 227 *of the Constitution of India praying that* :—

(a) *a writ in the nature of* certiorari *for quashing the order Annexure P/4 be issued.*

(b) *Respondent No.* 3 *be held to be in unauthorised possession of the land in question and order of eviction Annexure P/2 be upheld and respondent No.* 3 *be ordered to be evicted in pursuance of the said orders.*

(c) *Any other writ, order or directions which this Hon'ble High Court may deem fit in the circumstances of the case be issued.*

(d) *Filing of certified copies of the Annexure be exempted.*

It is further prayed that the writ petition be accepted with costs.

H. S. Gill, Advocate and J. S. Jhakhar, Advocates, *for the Petitioners.*

P. N. Aggarwal, Advocate, *for the Respondents.*

JUDGMENT

M. M. Punchhi, J. (Oral).

(1) These cases, which are five in number, reveal the typical land-grab resorted to by people occupying panchayat lands which

were meant for the general benefit of the rural inhabitants of the village.

(2) In these five writ petitions, Nos. 2726, 2774, 3797, 3798 and 3799 of 1984, there is a common petitioner, Gram Panchayat of village Haripura, tehsil Fazilka, district Ferozepur. On the opposite side are arrayed three respondents, two being officials and the third contesting one claiming to be a tenant of the panchayat, resisting eviction under the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 'the Act'). Since the facts giving rise to each of them are identical, we would take a broad conspectus of the things emerging from one of the cases.

(3) The land covered in all the five cases was '*Shamlat Deh*' as the expression was known to the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the 'Shamlat Law'). Such land by virtue of the Shamilat Law vested in the gram panchayat. The owners of the Shamilat land, however, adopted a device in writing a memorandum of association of Haripura Trust Committee, Haripura, and had it registered. It was mentioned therein that the General Committee shall consist of 21 members who are the owners of the shamilat which has been transferred to the Trust for the objects mentioned therein. In this way, as goes the statement of Gurdev Singh Patwari in the files of these cases which have been summoned by us, the land was mutated in the name of the Trust in the year 1954. Shortly thereafter, apparently under the same device, the contesting respondents herein were inducted as tenants by the Trust. The Shamilat Law was substituted by a new enactment named as Punjab Village Common Lands (Regulation) Act, 1961, and 'Shamilat Deh' was categorically defined under section 2(g). It was clarified that 'Shamilat Deh' as defined in the latter Act of 1961 would have been the shamilat deh as under the Shamilat Law. Undoubtedly, the lands in question were recorded as shamilat deh prior to their mutation in favour of the Trust and had to be continued as shamilat deh. Therefore, in the year 1957, a corrective mutation was entered and the land was remutated in favour of the Gram Panchayat. While the land stood mutated in the name of the Trust, the contesting respondents claim that their tenancy began under the Trust. In the year 1965-66, consolidation operations took place and the contesting respondents claim that they continued being recorded as tenants under the Gram Panchayat and

that in the Jamabandi for the year 1970-71 each of them is recorded as a tenant on payment of fixed cash rent.

(4) The Gram Panchayat-petitioner filed five separate petitions against the contesting respondents before the Collector, Fazilka, under sections 4 and 7 of the Act. The tenant-respondents, *inter alia*, raised the plea that they were not unauthorised occupants and as such the provisions of the Act were not applicable to their case. Further it was pleaded, though not specifically but inferentially, that the Jamabandi for the year 1970-71 established their tenancy and they could only be ejected in due course of law and not by employing the provisions of the Act. The Collector, however, ordered their ejectment,—*vide* order Annexure P-2 in each respective case. The appeals of the tenants in each respective case were allowed,—*vide* orders Annexure P-4 by the Commissioner, Ferozepur Division, Ferozepur, taking the view that on the face of the entries in the Jamabandi for the year 1970-71 Exhibit PA there remained no further need to prove the status of the tenants since they were recorded as tenants under the Gram Panchayat and a presumption of truth was attached to the entries in the Jamabandi, for which there was no rebuttal. Consequently, he took the view that the tenants could not be evicted by invoking the provisions of the Act and that an eviction petition may have to be required to be preferred under some other law. It is this view of the Commissioner which was challenged in this Court by means of these petitions, which the Motion Bench straightaway admitted to a Full Bench.

(5) We have questioned learned counsel for the parties about the need which impelled the Motion Bench to admit these petitions to a Full Bench. They tell us that it was to test the correctness of the views expressed by this Court in a Single Bench decision of this Court in *Shri Bachna* v. *The State of Haryana and others*, (1), and a Division Bench decision of this Court in *Dhara Singh* v. *The Collector, Kurukshetra and others* (2). And now it is stated by learned counsel for the petitioner that the controversy has further been enlivened by a recent decision of the Supreme Court in *The Gram Panchayat of village Bhaqal* v. *Bachna and others*, (3), whereby decision *Bachna's* case (supra) has specifically been upset

(1) 1982 P.L.J. 377.
(2) C.W.P. 1479 of 1979 decided on September 6, 1979.
(3) 1987 P.L.J. 656.

and this casts reflection on the decision in *Dhara Singh's* case (supra). However, for the view which we are about to take the suggested correctness or otherwise would neither be necessary to be noticed nor tested. So, we start from the beginning, which is the pivotal point on which the order of the Commissioner, Annexure P-4, rests, and that is the Jamabandi entries of the year 1970-71.

(6) Each respective tenant is shown in column No. 5 of the Jamabandi as '*Gair Marusi*', which means a tenant-at-will under the Gram Panchayat. In column No. 9, meant for the rent, the entry is Lagaan Naqdi Rs. 64, fee Killa Saal Tamaam', which when translated means "Rent-in-cash at the rate of Rs. 64 per acre for the whole year". This entry presumptively was taken up from the crop Rabi 1971. Learned counsel for the contesting respondents wants us to literally construe this entry to mean that the rent payable was in cash and it was meant to be from year to year and as long as the tenancy continued and had not been validly terminated by a notice under section 106 of the Transfer of Property Act the tenants had a right to continue over the land and the provisions of sections 4 and 7 of the Act were inapplicable, for they could not be termed as unauthorised occupants. At this stage, it would be useful to at least reproduce herein the provisions of section 3 of the Act, because section 4, whereunder the Collector assumes jurisdiction in an eviction application is governed by the provisions of section 3 :

"UNAUTHORISED OCCUPATION OF PUBLIC PREMISES.

3. For the purposes of this Act, a person shall be deemed to be in unauthorised occupation of any public premises—

(a) where he has, whether before or after the commencement of this Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant; or

(b) where he, being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises ; or

(c) where any person authorised to occupy any public premises has, whether before or after the commencement of this Act,—

(i) sub-let, in contravention of the terms of allotment, lease or grant, without the permission of the State Government or of any other authority competent to permit such sub-letting, the whole or any part of such public premises, or

(ii) otherwise acted in contravention of any of terms, express or implied, under which he is authorised to occupy such public premises.

Explanation,—For the purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee."

It is patent from the reading of the afore-quoted provisions that any person who has entered into possession of a public premises otherwise than under and in pursuance of any allotment, lease or grant, is an unauthorised person deemingly, and may not be so under the provisions of any other law. The opening words of the afore-quoted provision are also a pointer that unauthorised occupation of any public premises for the purpses of the Act *qua* a person is deemingly and it is on that basis that the Act works. The explanation specifically makes it clear that for the purpose of clause (a) a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

(7) Reverting back to the entry of rent in Jamabandi Exhibit PA, it is noticeable that the entry of 'rent-in-cash' is specifically so worded by the revenue authorities so as to conform to sub-rule (7) of rule 6 of the Punjab Village Common Lands (Regulation) Rules, 1964, the relevant extract of which is reproduced below :—

"(7) The leases of cultivable land in shamilat deh shall be auctioned for rent-in-cash at a time to be determined by the District Development and Panchayat officer concerned for his district, to the maximum advantage of the

inhabitants of the village and the annual lease money shall be paid as under :—

(a) for the first year of the lease, one fourth of the annual rent shall be paid by the bidder on the spot and the remaining three-fourth before the possession of the land is delivered to him :

Provided that the possession of the land shall not be delivered by the Panchayat to the lessees concerned earlier than February next. Where in any land uncut or ungathered crops of the previous lessees are standing in any part thereof the possession of that part shall be delivered when the crops have ripened and the person concerned has been allowed a reasonable time to harvest them;

(b) for the remaining years of lease, if any, the annual rent shall be paid in advance in February every year."

Two significant factors are noticeable in sub-rule (7) :

(1) the rent is payable in advance whether the lease is for one year or more than one year, and

(2) In either situation, the possession is deliverable to the subsequent lessee (even if he happens to be the same one) when the lessee of the previous year has been allowed a reasonable time to gather and harvest his crops. What emerges from these two factors is that the rent-in-cash which is payable in advance for a particular year *ipso facto* determines the lease by efflux of time of that year. It is in this light and context that we have to read and interpret the rent entry in the Jamabandi Exhibit PA, which means that the rent was payable in advance at the rate of Rs. 64 per acre for the year in question. Viewed in this light, it would mean that if rent was paid in advance and had been accepted by the Panchayat, then the lease was only for the year in question, determinable by efflux of time. That a lease of immovable property determines by efflux of time limited thereby is specifically preserved in section 111(a) of the Transfer of Property Act. So, it is idle to contend on behalf of the contesting respondents that the Jamabandi in question established a tenancy from year to year determinable only by a

notice in writing under section 106 of the Transfer of Property Act. Therefore, the view taken by the Commissioner in treating the contesting tenant-respondents as tenants-at-will of such a nature that they had a right to continue on the land uninterrupted till the lease in their favour was determined is, in our view, not sustainable in law.

At this juncture, we will revert back to the facts. According to the showing of the contesting respondents, the tenancies in their favour were created by the Trust and when the land was revested in the Panchayat, they continued to be the tenants under the Panchayat. Significantly in their written statements, no terms of the lease created by the Trust in their favour had been categorised or spelled out. The contents of the written statement in that regard were beautifully vague. The sheet-anchor of the case of the contesting respondents was that they had paid rent to the Panchayat and that according to them was itself enough to establish their tenancies. Testing the latter part of the defence, as we have done earlier, it is obvious that the terms of the tenancy were such that advance rent was payable and only for one year. Had ever rent thereafter been offered by the contesting respondents and the petitioner had accepted that rent, then tenancy for one year more was, in that situation, renewed. But here no such pleading is forth-coming on behalf of the contesting respondents that right from 1973 onwards had they ever offered rent to the petitioner Panchayat and it had accepted it. It is in the year 1973 itself that the petitions for eviction were filed by the Panchayat, keeping apart the statement of the Sarpanch of the Panchayat who stated that the rent had stealthily been deposited by the contesting respondents in the bank account of the Panchayat without the specific notice or consent of the Sarpanch.

(8) Rule 6 afore-referred to has also other facets which have to be taken note of. Sub-rule (1) thereof provides that all leases of land in *shamilat deh* shall be by auction, after making publicity in the manner laid down in sub-rule (10). All documents executed in this connection shall be signed by a Sarpanch or in his absence by the Naib Sarpanch or in the absence of both by a Panch performing the duties of the Sarpanch and two other Panches authorised for the purpose by the Gram Panchayat. It is obvious therefrom that the creation of a lease and that too, by public auction has to be authenticated and documented by three persons named therein. It is not a one-man show. Obviously, this rule

has been enacted to protect the interests of the Panchayat, and seemingly in order to undo the vast corruption resorted to by some of the Sarpanches of the Panchayats in passing over the panchayat properties to their favourites and others by underhand means in causing loss to the revenue of the Panchayat, which is meant to be spent for the welfare of the rural population. So, a lease in contravention of rule 6 is no lease in the eye of law and obviously the Panchayat can, in such circumstances, resort to the provisions of section 4 of the Act, seeking eviction of the supposed lessee who comes on the scene without a valid title under sub-rule (1) of rule 6. But here, as has been spelled out earlier, we do not want to enter into this controversy as to whether the lease could be granted orally or under a writing, for, in our view, it is sub-clause (b) of section 3 of the Act which will be applicable to the case of the contesting respondents. Thereunder a person shall be deemed to be in unauthorised occupation of any public premises where he, being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment lease or grant in accordance with the terms in that behalf contained, ceased, whether before or after the commencement of this Act, to be entitled to occupy or hold such public premises. As go the pleadings of the Panchayat, the Panchayat had put to auction the areas involved for lease but the contesting respondents sitting thereon had refused to vacate the areas in favour of the new lessees. Compelled, in these circumstances, if the Panchayat had accepted advance rent in cash from the contesting respondents, that by itself would not take the contesting respondents out of the purview of sections 3, 4 and 7 of the Act, for the leases in their favour had been determined in accordance with the terms of that lease, even though the lease was oral and not reduced to writing. The contesting respondents ceased to be entitled to get or hold the public premises after the efflux of one agricultural year from the payment of lease money last made for the purpose consciously to the Panchayat and to none other.

(9) For the view we have taken, there is no need to refer to any precedent cited by the learned counsel at the Bar. To be fair to the learned counsel for the contesting respondents, we must notice four decisions of the Supreme Court cited with regard to the principle of promissory estoppel. These are :

(1) *Union of India* v. *Indo Afghan Agencies, A.I.R.* 1968 *S.C.* 718;

(2) *Century Spinning and Manufacturing Co. Ltd.* v. *Ulhasnagar Municipal Council,* A.I.R. 1971 S.C. 1021;

(3) *M/s. Motilal Padampat Sugar Mills Co. Ltd* v. *The State of Uttar Pradesh and others,* A.I.R. 1979 S.C. 621; and

(4) *Union of India and others* v. *Godfrey Philips India Ltd.,* A.I.R. 1986 S.C. 806.

Neither have we been able to spell out any promissory estoppel in favour of the contesting respondents; even though conceding on the strength of the Supreme Court decision in *The Gram Panchayat of village Bhaqal's* case (supra) that the Panchayat is a local body, nor have we been able to discern as to what step did the contesting respondents take to their disadvantage so as to invoke the principle of promissory estoppel. Neither have we been able to discover the applicability of rule of estoppel canvassed by learned counsel for the contesting respondents. Even *Raj Kumar Devindra Singh and another* v. *The State of Punjab and others,* (4), is not of any assistance to the contesting respondents inasmuch as the property involved therein before the take over of the Government was in authorised occupation of the contestants and on the acquisition of the State it was held that the occupants did not automatically become unauthorised occupants and that the provisions of the Act were held therein to be inapplicable. Here the position, as is evident, was obviously different. The efflux of time determined the so called tenancy of the contesting respondents.

(10) For the foregoing reasons, we unhesitatingly allow these petitions, quash the order of the Commissioner in each of these cases and restore that of the Collector ordering eviction of the contesting respondents in terms thereof. The Gram Panchayat shall have its costs against the contesting respondents.

(11) We make it, however, clear that the possession be taken from the contesting respondents after they have removed their crops standing on the land in question today, if any, or on the expiry of two months, whichever is earlier, and on the condition that the contesting respondents file an undertaking within three weeks from

(4) 1972 P.L.J. 592.

today that each of them will hand over peaceful and vacant possession of the land as soon as the crops standing on the land are removed or within two months, whichever is earlier. In case, no such undertaking is filed within three weeks before the Registrar (Judicial) of this Court, the petitioner can proceed to take possession immediately thereafter. This order of ours would not absolve the Collector in determining the *mesne* profits due from the contesting respondents which may otherwise be recoverable under the law.

R. N. R.

Before : *M. M. Punchhi and Ujagar Singh, JJ.*

GURDIAL SINGH AND OTHERS,—*Petitioners.*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents.*

Civil Writ Petition No. 9021 *of* 1988 *and Civil Misc. No.* 13597 *of* 1988.

October 6, 1988.

Gram Panchayat Act (IV of 1953)—Ss. 3(a), 4 and 5—Creation of two Sabha areas in one village with two separate Gram Panchayats is permissible under S. 4 of the Act—Expression "in supersession of all previous notifications" used in notification creating separate Gram Panchayats in same village—Effect of non-mentioning of a particular earlier notification while superceding several others stated.

Held, that panchayats are co-related with Sabha areas and a village can have more than one Sabha area and thus more than one Gram Panchayat. Therefore, creation of two Sabha areas in a village is permissible under S. 4 of the Gram Panchayat Act (as applicable to the State of Haryana). The language of the Section is plain and simple.

(Para 3).

Held, that in the event of there being more than one Sabha area therein the name of the village would obviously remain one as it is