with Appeals, Confirmation, Reference and Revisions and one may also argue that the power to re-consider the order passed in section 517 may be implicit in the Court of Appeal, confirmation, reference or revision. But the, insertion of section 520 in Chapter XLIII in the sequence in which it occurs is understandable and is not without justifiable reasons. And then assuming—without expressing any considered opinion—such a power to be necessarily implied in a Court of Appeal, Confirmation, Reference or Revision dealing with the main case, it is by no means rare to find instances when such powers are inserted in statutes by way of abundant caution to remove any possible doubt.

With these observations, I agree with the order passed by my Lord the Chief Justice.

B.R.T.

APPELLATE CIVIL

Before Daya Krishan Mahajan, J.

NATHU AND OTHERS,—*Appellants.*

versus

PURAN AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1764 of 1961.

1962

April, 2nd

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—S. 3—Meaning and scope of—Shamilat land—Nature of—Date for determination of—Whether 9th of January, 1954 when Act I of 1954 came into force or 4th May, 1961, when Act 18 of 1961 came into operation.

Held, that section 3 of Punjab Village Common Lands (Regulation) Act (18 of 1961) makes the Act applicable to all lands which are *Shamilat Deh* as defined in clause (g) of section 2. It further provides that before the commencement of this Act the *Shamilat Deh* law shall be deemed to

have applied to all lands which are *Shamilat Deh* as defined in clause (g) of section 2. *Shamilat* law, according to its definition in section 2(h), is Punjab Village Common Lands (Regulation) Act, 1953 (I of 1954). The sub-section is both prospective and retrospective and sectoin 2(g) has to be read in the 1954 Act to find out which lands are *Shamilat* lands for the purposes of that Act.

Held, that the time when the nature of the *Shamilat* land is to be determined for the purposes of either the 1954 Act or the 1961 Act is the 9th of January, 1954, the date of commencement of the *Shamilat* law as defined in section 2(h) (Act I of 1954) and not 4th of May, 1961, the date of the commencement of the 1961 Act.

Regular second appeal from the decree of the Court of Shri Mohan Lal Jain, Senior Sub-Judge, with enhanced appellate powers, Rohtak, dated 21st October, 1961, modifying that of Shri K. D. Mohan, Sub-Judge, 1st Class, Sonepat, dated 28th April, 1961, which dismissed the plaintiffs' suit and granting the plaintiffs a perpetual injunction restraining the defendants-respondents from interfering with the plaintiffs' right of grazing their cattle and taking dry fuel wood from the land in dispute and from further cultivating the land as shown in jamabandis Exhibits P. 1 to P. 7, excepting the land as mentioned in the copy of the mutation Ex. D. 1, etc.

H. L. SARIN, ADVOCATE, for the Appellants.

U. D. GOUR, ADVOCATE, for the Respondents.

JUDGMENT

Mahajan, J. MAHAJAN, J.—This second appeal is directed against the decision of the Senior Subordinate Judge, Rohtak, reversing on appeal the decision of Subordinate Judge 1st Class, Sonepat, dismissing the plaintiffs' suit.

The plaintiffs came to Court on the allegation that the land in dispute which, admittedly, excepting 45 *kanals* 10 *marlas* is *shamilat* of *panas* Baiban, Parmanand, Badro, Bola and Rayan and *thullas* Kirpa and Jati. According to the *wajib-ul-arz* the area specified therein was reserved for grazing

and it was further provided that the land so reserved would not be broken up or partitioned. As the defendants who are the proprietors of these respective *panas* threatened to break up the land the present suit was filed by persons other than the proprietors principally on the basis of *wajib-ul-arz* for injunction restraining the defendants from breaking up the land or otherwise interfering with the rights of the plaintiffs to graze their cattle or to carry fuel wood from the suit land. The defendants denied that the land in dispute was so reserved for the purpose of grazing cattle by the village people and further averred that part of the suit land had been in actual cultivation of the proprietors for a number of years and as such the suit for injunction was not maintainable. Number of other pleas including the plea of limitation were raised but it is not necessary to notice them because the only question that was debated in the lower appellate Court and before me pertains to the applicability of the Punjab Village Common Lands (Regulation) Act 18 of 1961 to the land in dispute. The lower appellate Court has come to the conclusion that the Act applies and the land in dispute is *shamilat* land within the meaning of section 2(g) of the Act and as such the plaintiffs are entitled to a decree. The defendants who are the proprietors and are dissatisfied with the judgment of the lower appellate Court have come up in second appeal to this Court.

So far the facts go there is no dispute now. Land admittedly is *shamilat* of the respective *panas* and *thullas* as already stated above. It was reserved for grazing purposes in the *wajib-ul-arz* of the village. With regard to 45 *kanals* 10 *marlas* out of the suit land the plaintiffs no longer lay any claim as the same has been sold by the proprietors to third parties. That most of the land in dispute was cultivated by proprietors jointly from *kharif* 1952 to *rabi* 1960, and whatever land is not cultivated is *banjar* and is either a pond or grazing ground at the time of the institution of the suit.

The lower appellate Court has not drawn any distinction between that part of the *shamilat* land

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which has been cultivated by the proprietors and held the same to be covered by the definition of *shamilat deh* as set out in section 2(g) of the Act.

The contention of the learned counsel for the appellants, i.e., the proprietors, is that whatever land has been cultivated by them at the time when the Act came into force, i.e., on the 4th May, 1961, would not be *shamilat* because it is excluded by Clause (v) of section 2(g).

On the other hand it is argued by the learned counsel for the respondents that only *shamilat* lands which had been brought under cultivation before the enactment of Punjab Village Common Lands (Regulation) Act, 1953, which came into force on the 8th January, 1954, are excluded from the purview of the definition of *shamilat deh* in section 2(g) of the Act and any lands that have been brought under cultivation thereafter are not so excluded.

In order to appreciate the respective contentions it will be proper to examine various provisions of both the Acts. Punjab Village Common Lands (Regulation) Act 1953, Punjab Act 1 of 1954, as already stated, came into force on the 8th January, 1954. It did not define *shamilat deh*. In section 3 which is in these terms it vested in the Panchayat and in the non-proprietors *shamilat deh* and *abadi deh* :—

[His Lordship read section 3 and continued:]

Section 5 of the Act which is in these terms respected certain possession for certain purposes:—

[His Lordship read section 5 and continued:]

This Act was repealed by the Punjab Village Common Lands (Regulation) Act 18 of 1961. For the First time *shamilat deh* was defined in section 2(g) in these terms :—

[His Lordship read section 2(g) and Continued:]

Shamilat law was defined in section 2(h) as under :—

> (1) 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.

The sole controversy in the appeal rests on the interpretation of section 3 and it will also be proper to notice section 4 for a complete decision of the matter. Sections 3 and 4 are in these terms:—

> [His Lordship read sections 3 and 4 continued:]

Section 8 is more or less on the same pattern as section 5 of the repealed Act.

Coming back to the contention of the learned counsel for the appellants it will be noticed that the point that requires determination is a short one indeed. Both sides are agreed that the land in dispute was *shamilat panna* or *thola* before 8th of January, 1954, and that the 1954 Act did not vest it in the Panchayat. It is only by virtue of the definition of *shamilat deh*, as enacted in section 2(g) of the 1961 Act, that the land in dispute would vest in the Panchayat. It is in this situation that the learned counsel for the appellants contends that the relevant time to determine as to what land out of the suit land is covered by the definition of *shamilat deh* as defined in section 2(g) of the 1961 Act, is the time when the 1961 Act came into force. Whatever land comes within the definition would certainly vest in the Panchayat and the rights, title and interest of the plaintiffs will come to an end in the same, whereas the learned counsel for the respondents contends that the relevant time for this purpose is the time when the 1954 Act came into force. In other words the controversy is as to the true meaning and scope of section 3 of the 1961 Act. Section 3 makes the 1961 Act applicable to all lands which are *shamilat deh*, as defined

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in clause (g) of section 2. If it had stopped here the contention of the learned counsel for the appellants would be correct. But it goes further and provides that "before the commencement of this Act the Shamilat law shall be deemed always to have applied to all lands which are *shamilat deh* as defined in clause (g) of section 2". Shamilat law according to its definition in section 2(h) is the 1954 Act. Therefore, this sub-section is both prospective and retrospective for it cannot be disputed that the definition of *shamilat deh* will take effect under the 1961 Act from the date of its enforcement, but this provision does not stop here as already noticed. It goes further and provides that the definition of *shamilat deh* in section 2(g) will be deemed to have always applied to the 1954 Act. Therefore, section 2(g) by this deeming provision has to be read in the 1954 Act, to find out what lands are *shamilat* lands for the purposes of that Act.

This takes me to sub-section (2) of section 3, on the basis of which it was strenuously contended by the learned counsel for the appellants that it cannot be held that the definition of *shamilat deh* in section 2(g) is to be taken into account while determining what land is *shamilat deh* under the 1954 Act. The argument is that certain lands are excluded by this definition from the category of *shamilat deh* though those lands had vested in the Panchayat under the 1954 Act, and if this definition is to be read as part of 1954 Act, those lands are automatically excluded from vesting and therefore, there was no necessity for providing further divesting under the 1961 Act as has been done in section 3(2). Therefore, it is urged that the definition of *shamilat deh* in section 2(g) cannot be held to have been intended to apply to the 1954 Act by section 3(1) of the 1961 Act. To my mind this argument appears to be wholly untenable. Sub-section (2) of section 3 provides that where any land had vested in the Panchayat under the 1954 Act but such land is excluded by definition of *shamilat deh*, as given in section 2(g), all rights, title and interest of the Panchayat as

from the commencement of the 1961 Act will cease and such rights, title and interest shall get revested in person or persons in whom they vested immediately before the commencement of the 1954 Act. Looking at the plain meaning of sub-section (2) it cannot be said that it in any way controls the meaning of sub-section (1). By introducing the definition of *shamilat deh* as in section 2(g) of the 1961 Act in the 1954 Act, certain anomalies were bound to occur. The definition includes certain types of *shamilat* land and excludes others. Thus certain *shamilat* lands which had vested in the Panchayat under the 1954 Act would get excluded and others which were excluded under that Act would get vested. This inclusion and exclusion would by reason of the definition have retrospective effect, and would effect vested rights. It was for this reason that section 3(2) and section 4 were enacted. Section 3(2) divests the Panchayat of the *shamilat* land which could not vest in it from the commencement of the 1961 Act whereas section 4 vests the Panchayat with the *shamilat* land which had not vested in it under the 1954 Act from the commencement of 1961 Act though it would have been otherwise by reason of the definition in section 2(g) of 1961 Act being made applicable to the 1954 Act. Thus it would be apparent that section 3(2) and section 4(1) of the 1961 Act were enacted in order not to make the vesting or divesting of land retrospective. These provisions have nothing to do with the question as to at what point of time a *shamilat* land is to be determined as falling within the ambit of section 2(g). That in any event must be commencement of the 1954 Act. This conclusion is irresistable from the language of section 3(1). The question as to what lands are *shamilat* land for the purposes of 1954 Act of which the 1961 Act is a continuation is one matter and when those *shamilat* lands will vest in the Panchayat is another matter. Therefore, in my opinion the time when the nature of the *shamilat* land is to be determined for the purposes of either the 1954 Act or the 1961 Act is the 9th of January 1954, the date of commencement of the *shamilat* law as defined in section 2(h) and not the date of the commencement of the 1961 Act.

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Now coming back to the present case, it is apparent that the Courts below have not approached the matter on this basis. Therefore, it is necessary to remand this case to the trial Court to determine what land out of the land in dispute falls within the definition of *shamilat deh* as given in section 2(g) on 9th January, 1954. Whatever land falls within the definition as given in section 2(g) must be held to be *shamilat* land and with regard to that land the plaintiffs would be entitled to the decree. Whatever land falls outside the definition, with regard to that land the plaintiffs' suit will be liable to dismissal.

The only other contention that remains to be noticed is an objection raised by the learned counsel for the appellants that the lands having vested in the Panchayat, the plaintiffs have no right to file the present suit. So far this objection is concerned, it was not taken in either of Courts below and, in my view, the same cannot be now allowed to be raised in second appeal. I would, therefore, repel this contention. In any case, in order to do effective justice between the parties it would be proper that the trial Court impleads the Panchayat as a proper party in these proceedings so that the rights of the parties are effectively and conclusively determined for all times to come.

The result, therefore, is that the decision of the Courts below is maintained on all matters excepting one, namely, as to what land out of the suit land is *shamilat deh* according to the definition of the same in section 2(g) of the 1961 Act. The appeal is, therefore, partly allowed and the case is remitted to the trial Court for the determination of this matter. The parties are directed to appear in the trial Court on the 23rd April, 1962. The trial Court will allow them a further opportunity to lead such evidence as they are minded with regard to the matter which it will now have to determine. The costs will be costs in the cause.

K.S.K.