

CIVIL MISCELLANEOUS

Before Shamsheer Bahadur, J.

MANOHAR LAL AND OTHERS,—*Petitioners.*

versus

THE SETTLEMENT OFFICER, CONSOLIDATION OF HOLDINGS AND ANOTHER, —*Respondents.*

Civil Writ No. 1264 of 1963.

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948) — S. 2 (bb) — Reservation of land for potters, for canal minors and for providing income to the Panchayat — Whether for common purposes.

1964

October, 13th.

Held, that the concept of “common purpose” in clause (bb) of section 2 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, means “any purpose in relation to any common need, convenience or benefit of the village” and includes some of the specified purposes. The definition is clearly not exhaustive of the purposes which can be regarded to constitute “common need, convenience or benefit of the village.” The land reserved for the convenience of potters cannot be said to be a reservation which is exclusively for the benefit of a few inhabitants of the village. The economy of the whole village might well require the reservation for the elementary and essential need of providing some convenience to the potters. The reservation of land for a canal minor which passes through the village is for the benefit of the village and is valid being for a common purpose. The reservation of land for providing income to the Gram Panchayat is also permissible as “common purpose” in clause (bb) of section 2 of the Act specifically provides the purpose of “providing income for the panchayat of the village concerned for the benefit of the village community.”

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ,

order or direction be issued for the amendment of the consolidation scheme of village Jahajgarh, tehsil Jhajjar, district Rohtak.

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

S. K. KAPUR, ADVOCATE-GENERAL, ANAND SAROOP AND N. N. GOSWAMI, ADVOCATES, for the Respondents.

ORDER

Shamsher
Bahadur, J.

SHAMSHER BAHADER, J.—Manohar Lal and other right-holders of village Jahajgarh in Jhajjar tehsil attacked the scheme for consolidation on many grounds, but out of these only four have now been pressed in arguments before me by their learned counsel Mr. Gour.

The first reservation which, in the submission of the learned counsel, cannot be regarded as valid concerns an area of 8 *kanals* 11 *marlas* for “potters *ava* and for digging earth.” It is canvassed by the learned counsel that land cannot be reserved for any particular class of people as it is the benefit of the entire village which has to be taken into account. The concept of “common purpose” in clause (bb) of section 2 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, means “any purpose in relation to any common need, convenience or benefit of the village” and includes some of the specified purposes. The definition is clearly not exhaustive of the purposes which can be regarded to constitute “common need, convenience or benefit of the village.” The land reserved for the convenience of potters cannot be said to be a reservation which is exclusively for the benefit of a few inhabitants of the village. The economy of the whole village might well require the reservation for the elementary and essential need of providing some convenience to the potters. The reservation is not of a very large area and on principle it is impossible to reach the conclusion that the purpose of reservation does not fall within the definition of “common purpose”.

The next reservation under attack is of 1 *kanal* 13 *marlas* “for colouring skin”. Clause (bb) of section 2 has further been amended by East Punjab Holdings (Consolidation and Prevention of Fragmentation) Amendment and Validation Act, Punjab Act No. 39 of 1963, to include,

inter alia, "tanning places" as the purpose for which a reservation can be made for "common purpose". It is not contested that the land reserved for colouring skin would come within the scope of the purpose as colouring of skin is a process in tanning.

Mr. Gour vehemently presses that the reservation of 18 *kanals* 2 *marlas* for Baghpur minor is clearly a purpose which can rightly be called a purpose of the entire State. The argument of the learned counsel is that the canals and minors are the concern of the State Government and even though a distributory may pass through a village it is the business and responsibility of the State Government to acquire land for this purpose. It is to be observed that Punjab Act, No. 39 of 1963, to which I have already adverted, includes "village watercourses or water-channels" as a purpose falling under the definition of "common purpose". A village watercourse, like a village road, may be flowing out of the village or flowing in from another village. The reservation of land for passage of a watercourse through a village would be protected provided of course it is for the benefit of the village. The governing words of clause (bb) of section 2 that "common purpose" should be related to "any common need, convenience or benefit of the village" are important and the land reserved for a minor especially when the area is 18 *kanals* 2 *marlas* falls within this definition. A watercourse, under sub-section (2) of section 3 of the Northern India Canal and Drainage Act "means any channel which is supplied with water from a canal, but which is not maintained at the cost of the State Government, and all subsidiary works belonging to any such channel." Water channels and watercourses running through a village have been included in the list of "common purpose" in sub-clause (iii) of clause (bb) of section 2 by the Amending Act No. 39 of 1963, and it seems to me that the intention of the legislature is to enable reservations of this kind to be made for common purpose. Further, as I have said before, the area reserved for Baghpur minor is only 18 *kanals* 2 *marlas* and it cannot be conceived that this small area is required for any purpose except that of a watercourse as defined in the Northern India Canal and Drainage Act.

The last item of challenge is an area of 399 *kanals* 3 *marlas* of land "for income of Gram Panchayat". "Common

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purpose" specifically provides the purpose of "providing income for the Panchayat of the village concerned for the benefit of the village community." "It cannot acceptably be urged that mere provision for the income for the Panchayat is not necessarily for the benefit of the village community. There is no allegation that the provision for the income of the Panchayat is not for benefit of the village community, and on behalf of the State there is a statement that all the reservations have been made generally for the village community. It must, therefore, be concluded that the land has been reserved for income for Gram Panchayat for the benefit of the village community.

This petition, therefore, fails and is dismissed. As many of the reservations which have been challenged have only recently been saved by the Amending Act, there would be no order as to cost of this Petition.

B.R.T.