

to the utilisation of this area having been specified in Annexure P-2 and it being only shown as a vacant space, the right of the Administration, to my mind, is not in any way restricted in utilizing it in any manner.

(4) In the light of the discussion above, this petition fails and is dismissed but with no order as to costs.

H.S.B.

FULL BENCH

Before P. C. Jain, C.J. S. S. Kang and I. S. Tiwana, JJ.

BISHAMBER DAYAL,—Petitioner.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

C.W.P. No. 2342 of 1985

January 22, 1986.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Sections 2(a) (4) and 4—Punjab Village Common Lands (Regulation) Rules, 1964—Rule 3(2)—Land forming part of a street or lane vesting in the Gram Panchayat as shamilat deh—Gram Panchayat—Whether competent to transfer it or change its user—Construction of a Chaupal on a part of shamilat deh for the benefit of residents of the village—Such construction—Whether a permissible user of such land—Purposes for which shamilat land could be used.*

*Held*, that in view of the provisions of sub-clause (4) of clause (a) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961, the lanes and streets in the *abadi deh* and *oorah deh* are *shamilat deh*. Under section 4 of the Act, all rights, title and interest in *shamilat deh* vest in the Gram Panchayat. By virtue of the provisions of clause (xxii) of sub-rule (2) of Rule 3 of the Punjab Village Common Lands (Regulation) Rules, 1964, the Gram Panchayat can make use of the land in *shamilat deh* vested in it for constructing a village Chaupal. Where title of the land in dispute vested in the Gram Panchayat by virtue of the provisions of Section 4, the Gram Panchayat is entitled to use it in the manner it liked. However, restrictions have been placed on the use of *shamilat* land by rule 3 of the rules made under the Act. It has been provided therein that

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the *shamilat deh* land vested in the Gram Panchayat can be used only in the manner and for the purposes given under rule 3 and one of these purposes is the construction of village Chaupal. Since the streets and the lanes are *shamilat deh* and they vest in the Gram Panchayat, the land under them can be put to any one or more of the uses enumerated in sub-rule (2) of Rule 3. If the Gram Panchayat in exercise of this power reserves a portion of the village street for the construction of a Harijan Chaupal and while doing so it was not actuated by any extraneous or colateral considerations then the same was not only permissible but also laudable. The Act and the Rules empower the Gram Panchayat to convert a portion of the street for any one or more of the purposes given in Rule 3(2).

(Paras 7 and 8)

(Case admitted to Full Bench on July 16, 1985 Division Bench consisting Hon'ble Mr. Justice D. S. Tewatia and Hon'ble Mr. Justice S. S. Kang).

Writ Petition Under Articles 226/227 of the Constitution of India praying that this Hon'ble Court may be pleased to summon the records of this case and after the perusal of the same may be pleased to issue :

- (i) a writ in the nature of certiorari quashing Annexure P-1, P-3 and P-4.
- (ii) a writ in the nature of mandamus directing the respondents to clear the unauthorized encroachment from the thorough fare in dispute;
- (iii) any other writ, order or direction in favour of the petitioner in the peculiar circumstances of the case;
- (iv) filing of certified copies of the Annexures may be dispensed with;
- (v) service of advance notices of motion on the respondents may kindly be dispensed with;
- (vi) cost of this writ petition may also be awarded to the petitioner.

FURTHER, praying that during the pendency of this writ petition, status quo about the possession on the disputed Rasta be also ordered.

S. K. Bansal, Advocate, for the Petitioner.

C. P. Sapra, Advocate, for Nos. 4 to 6 and 8 to 19. Sunil Kumar Mukhi, Advocate, for Respondent No. 3.

## JUDGEMNT

*Sukhdev Singh Kang, J.*

(1) Can a Gram Panchayat transfer a portion of the *Shamilat* land under a street or a lane within the *abadi deh* or *gora deh* vested in it under Section 4 read with Section 2(g) (4) of the Punjab Village Common Lands (Regulation) Act, 1961, or change its user ? is the prestinely legal issue raised in this writ petition. A reference to salient facts is a prefactory necessity.

(2) Bishamber Dayal, petitioner, and six others residents of village Jainpur, Tehsil and District Sonapat, filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (hereinafter called 'the Act') against Smt. Ashi and 15 other residents and Gram Panchayat of their village and pleaded that land measuring 3 Kanals 19 Marlas, comprised in Khasra No. 166 Khewat No. 357/358-Khatauni No. 514-min, was a thoroughfare connecting the *abadi* of the village with the *phirni*. Fifteen/twenty days prior to the filing of the application, the respondents 1 to 6 encroached upon a portion of this thoroughfare and constructed one room and a boundary wall. Similarly, respondents 7 to 16 obstructed the thoroughfare by constructing a room and thus encroached upon six karams of the thoroughfare. The thoroughfare was being used by the residents of the village and the respondents had illegally occupied the same and made encroachments thereon. The Gram Panchayat, respondent No. 17, was not taking any action in the matter. It was prayed that the respondents be ejected from the thoroughfare and the construction made by them be got removed. This application was resisted by respondents. The respondents filed a joint written statement and averred that respondent 1 to 16 had no connection with the disputed land. This land had been given by the Gram Panchayat for construction of Harijan *Chaupal*, on the directions of the Deputy Commissioner. The State Government had also given grant-in-aid for the construction of the *Chaupal*. The Gram Panchayat itself was constructing the Harijan *Chaupal* on the disputed land. The private respondents were assisting the Gram Panchayat. The respondents were not in unauthorised possession of the *shamilat* land. The thoroughfare had not been closed. A 25' wide passage from east to west was left for the use of the villagers.

(3) The parties led their evidence. The applicants examined Kali Ram, Sham Lal, Daya Nand, son of Raghbir and Daya Nand,

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son of Jage Ram and produced site plan and a copy of the *jamabandi*. As against that, the respondents produced Secretary of the Gram Panchayat and Ram Kishan, Sarpanch of the village, as their witnesses. They also tendered copies of the resolution of the Gram Panchayat, dated 2nd of May, 1983, and resolution dated 23rd September, 1983, and a copy of the letter of the Development and Panchayat Officer.

(4) After carefully scrutinizing the evidence of the parties, the Assistant Collector, 1st Grade, Sonapat, came to the conclusion that the Gram Panchayat had passed a resolution on 2nd of May, 1983, permitting the construction of a Harijan Chaupal, in the land, in dispute. This land belonged to the Gram Panchayat. The Gram Panchayat had constituted a committee,—*vide* resolution dated 23rd September, 1983, for the construction of Chaupal. The land had been given by the Panchayat for construction of a Chaupal, which was to be used by all the residents of the village. The respondents were not in unauthorised possession of the land. So, he dismissed the application,—*vide* order dated 8th August, 1984. Dissatisfied, Bishambar Dayal, petitioner, and three others went up in appeal against this order. The Collector heard the learned counsel for the parties at length and examined the record and with a refreshingly detailed order dismissed the appeal. He accepted the plea of the respondents in the written statement that the Gram Panchayat was the owner of the suit land, as also the Chaupal. The Gram Panchayat was constructing the Chaupal with the money received as grant-in-aid from the Government. The Chaupal was not the personal property of the private respondents. The applicants had made an application under Section 97 of the Gram Panchayat Act for cancellation of the resolution of the Panchayat, but the same had been rejected. The Panchayat was competent to give the land for the welfare of the residents and for the common purposes. The applicants had failed to establish that the respondents were in unauthorised possession of the land, in disputes. Aggrieved, they have filed the present writ petition.

(5) At the motion stage, the respondents had resisted the writ petition on various grounds and had relied upon a Division Bench decision of this court in *Khushi Puri and others v. The State of Haryana and others*, (1). The learned counsel for the petitioners had doubted the correctness of this decision. The writ petition

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(1) 1978 Pb. Law Journal 78.

was, therefore, ordered to be heard by a Full Bnch. That is how the matters is before us.

(6) It is contended by Shri S. K. Bansal, learned counsel for the petitioner that Khasra No. 166 was a thoroughfare connecting the village *abadi* with the village *phirni*. The residents of the village used this passage for going out of and coming to the village. Even if this land came to vest in the Gram Panchayat with the operation of Section 4 read with Section 2(g) (4) of the Act, it did not become its owner, only the management of this land was vested in the Gram Panchayat. The Gram Panchayat cannot change the user of this land. It was not competent to transfer any portion of the land forming part of a street or lane to any other person, the resolution dated 2nd May, 1983, passed by the Gram Panchayat reserving this land for construction of the Harijan Chaupal was wholly without jurisdiction. The private respondents to the petition under Section 7 of the Act were in unauthorised occupation of the street and were liable to be ejected under Section 7 of the Act. The Assistant Collector and the Collector acted with material irregularity in the exercise of their jurisdiction by not ejecting the unauthorised occupants and dismissing the petition and appeal of the petitioner and his companions.

(7) This argument has not commended itself to us. In view of provisions of sub-Clause (4) of Clause (g) of Section 2 of the Act, the lanes and streets in the *abadi deh* and *gorah deh* are *shamilat deh*. Under Section 4 of the Act, all rights, title and interest in *shamilat deh* vest in the Gram Panchayat. By virtue of the provisions of clause (xxii) of sub-Rule (2) of Rule 3 of the Punjab Village Common Lands (Regulation) Rules (hereinafter referred as 'the Rules') the Gram Panchayat can make use of the Land in *shamilat deh* vested in it for constructing a village Chaupal. It would be profitable to read the relevant statutory provisions at this stage:—

“The Punjab Village Common Lands (Regulation) Act, 1961:  
Section 2.—Definitions—In this Act unless the context otherwise requires—

- |                              |    |    |    |
|------------------------------|----|----|----|
| (a) to (f) **                | ** | ** | ** |
| (g) 'shamilat deh' includes— |    |    |    |
| (1) **                       | ** | ** | ** |

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(2) \*\* \*\* \*\* \*\*

(3) \*\* \*\* \*\* \*\*

(4) Lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gorah deh.

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Section 4.—*Vesting of rights in Panchayats and non-proprietors.*

(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,—

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at 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 on such date as a panchayat having jurisdiction over that village is constituted;

(b) \*\* \*\* \*\* \*\*

*The Punjab Village Common Lands (Regulation) Rules, 1964.*

Rule 3.—*The manner in which and purpose for which shamilat deh may be used — Section 5 and 15(2) (a) of the Act—*

(1) \*\* \*\* \*\* \*\*

(2) The Panchayat may make use of the land in shamilat deh vested in it under the Act, either itself or through another, for any one or more of the following purposes:—

(1) to (xxi) \*\* \*\* \*\* \*\*

(xxii) Panchayat-ghar, or Janjghar or village Chaupal.

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(8) It is manifest from a perusal of record that the Gram Panchayat was shown to be the owner of the land in dispute. In Jamabandi Exhibit P-2/A, annexed to the petition, it is described as 'Gair Mumkin Rasta within Phirni', Gram Panchayat is mentioned to be its owner. Being a *rasta* within the *abadi deh* it falls within the ambit of expression *shamilat deh* as defined in Section 2(g) (4) of the Act. The title thereof vested in the Gram Panchayat by virtue of provisions of Section 4. The Gram Panchayat was, therefore, entitled to use it in the manner it liked. However, restrictions have been placed on the use of *shamilat* land by Rule 3 of the Rules made under the Act. It has been provided therein that the *shamilat deh* land vested in the Gram Panchayat can be used only in the manner and for the purposes given under Rule 3 and one of these purposes is the construction of village Chaupal. Since the streets and lanes are *shamilat deh*, and they vest in the Gram Panchayat, the land under them can be put to any one or more of the uses enumerated in sub-Rule (2) of Rule 3. In exercise of this power the Gram Panchayat, on the directions of the Deputy Commissioner, reserved a portion of the village street comprised of Khasra No. 166 for the construction of Harijan Chaupal. While so doing the Gram Panchayat was not actuated by any extraneous or collateral considerations; it was motivated by a laudable idea of constructing a Harijan Chaupal, which was to be used by all the residents of the village. The Act and the Rules empower the Gram Panchayat to convert a portion of the street for any one or more of the purposes given in Rule 3(2). A Division Bench of this Court had an occasion to construe the provisions of Sections 2(g) (4), 4 and 5 of the Act and Rule 3(2) of the Rules made thereunder in *Khushi Puri's case* (supra). It was held that the Gram Panchayat could make use of the *shamilat deh* land vested in it either itself or through another for the purposes mentioned in Rule 3(2). In that case a part of *Charand* land which was used for grasing cattle had been entrusted to the Forest Department to plant trees, which were to be the property of the Gram Panchayat. This action of the Gram Panchayat had been upheld by the Division Bench. Shri Bansal, learned counsel for the petitioner has raised no contention before us that *Khushi Puri's case* (supra) does not lay down the correct law or that the ratio thereof needs reconsideration by a large Bench. We are in respectful agreement with the ratio of *Khushi Puri's case* (supra).

(9) In fairness to Mr. Bansal it may be mentioned that he had contended that the powers of the Gram Panchayat to manage the

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streets and lanes in the village are analogous to the powers of A Municipal Committee under Section 169 of the Punjab Municipal Act. The Municipal Committee was not entitled to give any person permission to deposit goods for sale on any public street. It cannot lease any portion of public street. In support of this contention he had referred us to *Municipal Committee of Multan vs. Tehba Ram and others*, (2) *Mt. Resham and another vs. Matu Ram and another* (3), *Municipal Committee, Delhi vs. Mohammad Ibrahim*, (4), *Emperor vs. Khushal Jeram*, (5). We are not impressed by this argument. The provisions of Section 169 of the Punjab Municipal Act are not in parimateria with the provisions of Section 4 of the Act. Under the Punjab Municipal Act the title in the land under the public streets does not always vest in the Municipal Committee. It is clear from the perusal of the head note in *Municipal Committee of Multan's case* (supra) that the vesting of the street in the municipal committee does not transfer to it the rights of the owner in the site or soil, over which the street exists. The municipal committee does not own the soil, but it has the exclusive right of managing and controlling the surface of the soil. In this context observations were made that the municipal committee cannot give any person a permission to deposit goods for sale on any public street. In *Mt. Resham's case* (supra), also, the land under the street belonged to private person. It was observed that the ownership of the soil may remain with the plaintiffs, who were private person. Same is the position in *Municipal Committee, Delhi's case* (supra). It was held that mere vesting of a public street or ways in the municipal committee does not make them its personal property. In Bombay case Section 50 of the Bombay District Municipal Act expressly declared that public streets so vested in them shall be applied by the municipal committees as trustees, subject to the provisions and for the purposes of the Act. Since the street had vested in the municipal committee to be used as a street, the municipal committee cannot permit any obstruction therein by a private person. These authorities are of no help to the petitioner.

(10) We are of the considered view that the Gram Panchayat is competent to transfer a portion of the land in a street or a lane within the *abadi deh* or *gorah deh* vested in it and can also change its user.

(2) AIR 1923—Lahore 272.

(3) AIR 1934—Lahore 936.

(4) AIR 1935 Lahore 196.

(5) AIR 1926—Bombay 534.



The question posed at the threshold is answered in the affirmative. We however make it clear that we have only upheld the power of Gram Panchayat to change the user of *shamilat deh* vested in it and transfer thereof for purposes mentioned in Rule 3(2). This, however, does not mean that orders of the Gram Panchayat cannot be challenged even in a suitable case on the ground that it is passed *mala fide* or is based on extraneous considerations or it is otherwise against law.

(11) This writ petition is liable to be dismissed on merits also. It is clear from the impugned orders that the private respondents had pleaded before authorities that the Chaupal was being constructed by the Gram Panchayat with funds received from the State Government, for the benefit of the residents of the village. The land beneath and the Chaupal remains the property of the Gram Panchayat; the private respondents had no concern with it; the land had not been transferred to them and they were not in possession thereof. The private respondents have taken the same stand in their written statement to the writ petition. They have reiterated that the Chaupal is being constructed by the Gram Panchayat for the residents of the village; the Gram Panchayat is the owner of the Harijan Chaupal, as well as the disputed land. They were only assisting the Gram Panchayat in the construction of the Harijan Chaupal. So it cannot be stated that the private respondents were in unauthorised occupation of the land in dispute. The authorities had rightly reached this conclusion that they were not in an unauthorised possession of the land in dispute. The application under Section 7 of the Act for eviction of the private respondents had been rightly dismissed.

(12) For the foregoing reasons we find no merit in this writ petition and dismiss the same but with no order as to costs.

N.K.S.

Before R. N. Mittal, J.

AJAIB SINGH,—Petitioner.

versus

BALDEV SINGH,—Respondent.

Civil Revision No. 2781 of 1985

December 2, 1985

Civil Procedure Code (V of 1908)—Section 21(1)—Written statement filed by defendant in answer to the plaint—No objection