

pre-emption on the persons of the category in which the mother and the collaterals fell, was omitted. It was further provided that no Court would pass a decree in a suit for pre-emption whether instituted before or after the commencement of the Punjab Pre-emption (Amendment) Act which was inconsistent with the provisions of the Act. In view of the aforesaid provision, the learned Judge dismissed both the suits holding that even if the vendee had not filed any appeal against the decree, the appellate Court would set aside the decree in appeal filed by the rival pre-emptor by having recourse to its powers under Order XLI Rule 33 of the Code of Civil Procedure, for the reason that an appeal is a rehearing of the suit and any change in law that takes place during the pendency of the appeal has to be taken into account while deciding the appeal. From the observations it is evident that the learned Judge relied on Order XLI Rule 33 of the Code. In the present case, the aforesaid provision is not applicable as suit has been ordered to be revived by the trial Court. In *Nawabkhan Abbaskhan's* case (supra) the externment order was struck down under Article 226 for the reason that it violated the rule of *audi alteram partem*. Thus the question for determination in that case was absolutely different. In my view, the ratio in both the cases is not applicable to the present case.

(8) For the aforesaid reasons, I accept the revision petition, set aside the order of the trial Court and hold that it had no right to restore the suit of the Isher Singh respondent. No order as to costs.

H.S.B.

Before I. S. Tiwana, J.

DALIP SINGH AND OTHERS,—*Petitioners*.

*versus*

CHANDIGARH ADMINISTRATION AND OTHERS,—*Respondents*.

Civil Writ Petition No. 3989 of 1985.

September 27, 1985.

*Punjab Capital (Development and Regulation) Building Rules, 1952—Rule 3(b) and Schedule I—Zoning Plan specifying area as vacant space—Said vacant space—Whether can be utilized by the*

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*Administration for constructing Community Centre—Distinction between the term 'Open space' and 'Vacant space'—Explained—Such vacant space—Whether can be utilized by the Administration in any manner.*

*Held*, that the area in question was not specified as open space in the Zonal Plan and as such the Administration can utilize the same in a most useful manner without effecting anybody's rights. The Administration is therefore competent to build a Community Centre in the said open space.

(Para 3)

*Held*, that every space lying vacant in any sector can not be treated as open space so as to challenge the action of the Administration if it desires to utilize and allow constructions on that vacant space. If the area in question had been specified as open space it could be said that the Administration was not entitled to use the said area for construction purposes or in other words could not change the user of the same. In view of the fact that the area was shown as vacant space and no purpose with regard to the utilization of this area having been specified the right of the Administration could not in any way be restricted in utilizing it in any manner.

(Para 3)

*Petition under Article 226/227 of the Constitution of India praying that :*

- (i) *a writ of Certiorari/mandamus or any other appropriate writ, order or direction be issued declaring the action of the respondents in utilising the open space in front of the residential line of the petitioners' houses as illegal, arbitrary without jurisdiction and against the principles of natural justice and equitable estoppel.*
- (ii) *filing of certified copies of Annexures P-1 and P-2 may be dispensed with,*
- (iii) *servng of advance notices to the respondents may be dispensed with,*
- (iv) *costs of the petition may also be awarded to the petitioners.*

*It is further prayed that pending the writ petition the construction of Janiaher in the area in question in front of the residential line of the petitioners, be stayed.*

Arun Jain, Advocate, for the Petitioner.

Ashok Bhan, Sr. Advocate with Amarjeet Singh, Advocate, for the Respondent.

## JUDGMENT

*I. S. Tiwana, J. (oral)*

(1) The petitioners who have constructed their houses in Sector 20-A (in the line bearing House Nos. 150 to 161) of Chandigarh, complain of the violation of the zoning plan (Annexure P. 2) meant for that Sector, by the Chandigarh Administration in proposing to construct a community centre/Janjghar in the open space lying between 'V-4' road and the street 'A-1' running in front of their houses. According to the petitioners, the respondent authorities have no right to construct any building on this open space as in the zonal plan referred to above no specific provision was made with regard to the utilisation of that area. The area concerned is marked as 'A' in the copy of the zonal plan (Annexure P-2). The primary claim of the petitioners is that since the construction of their houses was subjected to frame control drawing and architectural control sheets in the light of Rule 3(b) read with Schedule I of the Punjab Capital (Development and Regulation) Building Rules, 1952 and they were not allowed to have the architectural design of their choice, on account of the fact that their houses are facing or abutting on the 'V-4' road, the Chandigarh Administration is under a similar obligation or liability to not to use the open space lying between their houses and the 'V-4' road. Their case further is that the construction of a Janjghar in front of their houses would be a source of continuous nuisance to them. On the other hand, the case of the respondent Administration is that the design or the construction of the petitioners' houses was subjected to drawing and architectural controls on account of the fact that their houses abutted on street 'A-1' and not for the reason that these houses were facing 'V-4' road. It is also maintained on its behalf that as there was no specification of the use of the area marked 'A' in the zoning plan Annexure P-2, the Administration is at liberty to utilise the area in the most suitable manner as this does not involve any violation of the zoning plan. Having heard the learned counsel for the parties I find it difficult to accept the contentions advanced by the learned counsel for the petitioners.

(2) As already pointed out above, the firm case of the petitioners is that the construction of their houses was subjected to the frame control drawing and architectural control sheets on account of the fact that they faced or abutted on 'V-4' road and were thus deprived of a free utilisation of their sites in matters of construction of their

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houses according to their choice. This stand of theirs stands negatived by the plea of the respondents read in the light of the zoning plan, Annexure P-2, wherefrom it is clear that their houses actually abut on 'A-1' street and it is on account of this that the construction of their houses was regulated by the drawing and architectural control sheets. This stand of the learned counsel for the respondents appears to be well supported by the following notes which exist on the zoning plan, Annexure P. 2 :—

1. *Frame Control*.—Residential buildings constructed on sites except site Nos. 1 to 12 on street 'A-1' shall conform to all restrictions and stipulations contained in drawing Nos 3 and 6 of Job No. 197, attached to this plan.
2. *Architectural Control*.—Plot Nos 1 to 12 on street 'A-1' shall follow the architectural control as per Drg. No. 29 of Job No. 33.

It is not a matter of dispute that plots Nos 1 to 12 which are referred to in these notes are the plots on which Houses Nos. 150 to 161 have been constructed.

(3) Further I find weight in the contention of the respondent Administration that since in the zoning plan Annexure P-2, the area in question was not specified as open space, the Administration can utilise the same in a most useful manner without affecting anybody's rights. A distinction between 'open space' and 'vacant space' has been drawn in somewhat similar circumstances by a Bench of this Court in *M/s Aggarwal Timber Store and others v. The Chief Commissioner, U.T., Chandigarh and others* (1), wherein it has been observed that "every space lying vacant in any sector cannot be treated as 'open space' and on that ground a resident of this town has no cause of action to challenge the action of the authorities if they desire to utilize and allow construction on those vacant spaces". In a nut shell the case of the Administration is that had the area marked 'A' in Annexure P-2 been specified as open space, some argument could be raised by a resident of the city that the Administration cannot use the area for construction purposes or, in other words, cannot change the user of the same. No purpose with regard

(1) CW 3027/69, decided on 27th March, 1970.

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