APPELLATE CIVIL

Before Shamsher Bahadur and R. S. Narula, JJ.

NAND LAL AND OTHERS,—*Appellants.*

versus

GRAM SABHA JANTI KALAN AND OTHERS,—*Respondents.*

Regular First Appeal No. 143 of 1964

February 17, 1969.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—*Section* 2(*g*)—*"River action"—Meaning of—Land coming under river water on account of floods—Such land—Whether subject to river action.*

Held, that the expression "river action" is usually qualified according to its nature by the term 'erosion', 'accretion' and 'avulsion'. The expressions 'erosion' and 'accretion' are applied to the process by which land is sucked into the channel by the inset of a river at one place and fresh land exposed at another by its retirement. The word 'avulsion' describes what takes place when part of an estate is transferred in recognizable condition from the right to the left bank of the main channel of a river or *vice versa.* (Para 6)

Held, that there being no statutory provision to the contrary either in the Punjab Village Common Lands (Regulation) Act, 1954, or in the Punjab Village Common Lands (Regulation) Act, 1961, land which is not subject to alluvion, diluvion or avulsion but which merely comes under river water on account of floods during some period in a year cannot be said to be subject to "river action" within the meaning of the first exception to clause (g) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961. (Para 6)

Regular First Appeal from the decree of the Court of Shri Pritpaul Singh, Sub-Judge, 1st Class, Sonepat, dated the 31st day of March, 1964.

GANGA PARSHAD JAIN, G. C. GARG, & SATYA PARKASH JAIN, ADVOCATES, for the Appellants.

P. S. DAULTA, ADVOCATE, for the Respondents.

JUDGMENT

NARULA, J.—The true scope and correct construction of the expression "river action" as used in the first exception to the statutory definition of *"shamilat deh"* contained in clause (g) of section 2 of the Punjab Village Common Lands (Regulation) Act (18 of 1961) (hereinafter called the 1961 Act) calls for decision in this Regular First Appeal against the judgment and decree of the Court of Shri Pritpal Singh, Subordinate Judge, 1st Class, Sonepat, dated March 31, 1964. The material facts giving rise to this appeal are not in dispute and may be noticed at this stage.

(2) Villages Janti Khurd and Janti Kalan have a common Gram Panchayat and Gram Sabha which are known as Gram Panchayat Janti Kalan and Gram Sabha Janti Kalan. Agricultural land measuring 590 Kanals 13 Marlas situate within the area of village Janti Khurd, tahsil Sonepat, district Rohtak, was entered in the relevant revenue records as part of *shamilat deh* of the said village. The whole of the said land was and continues to be in the possession of plaintiff-appellants and defendant-respondent No. 10 as co-sharers. After the enforcement of the Punjab Village Common Lands (Regulation) Act, 1953 (1 of 1954) (hereinafter called the 1954 Act), the ownership of the land in dispute was entered in the name of the Gram Panchayat of village Janti Kalan, and mutation No. 146 in respect of that entry was sanctioned on February 10, 1955. On March 16, 1963, the appellants filed the suit from which this appeal has arisen in the Court of the Subordinate Judge at Sonepat for a declaration to the effect that the plaintiff-appellants and defendant-respondent No. 10 were the absolute owners of the land in suit (details of which are given in paragraph 2 of the plaint), and that no rights relating to the said land had vested in the Gram Panchayat and, therefore, defendant-respondents 1 to 9 had no right to dispossess the plaintiffs from the land in question either forcibly or by any other means. The various grounds on which exemption from the vesting of the land in dispute (though recorded as a part of the *shamilat deh*) in the Panchayat was claimed, were set out in paragraph 4 of the plaint. Out of those grounds, only the first and the second ground are now relevant. These are set out below :—

"(a) Janti Khurd is not a separate village, but is a *pana*, i.e., sub-divison of village Janti Kalan. The said village is situate on the bank of river Jamuna. The entire area of the village including the land in suit is flooded every year with the water of river Jamuna. On account of floods, there are alluvions and diluvions in the area of the village. The land in dispute, along with other area of the village remains under the action of river Jamuna. The land in dispute is not entered in the revenue record as pasture, pond or playground or reserve for any common purpose rather it is entered as *shamilat deh*.

(b) The plaintiffs and defendant No. 10 have been cultivating the land in suit since before the 26th January, 1950. Even severally they have never been in possession of the

land in suit more than their own share. Land revenue is levied on the land in suit."

(3) The suit was resisted by defendant-respondents Nos. 1 to 9, who are the Gram Sabha and the Gram Panchayat of village Janti Kalan and the various members of the said Panchayat. From the pleadings of the parties, the trial Court first framed certain preliminary issues relating to the maintainability of the suit which were all disposed of in favour of the plaintiff-appellants by the order of the trial Court, dated August 20, 1963. The following issues on merits were then framed on August 21, 1963 :—

"(i) Whether the plaintiffs are the owners in possession of the land in suit?

(ii) Whether the land in suit has not vested in Gram Panchayat constituted in the villages for the reasons stated in the plaint?

(iii) Whether the plaintiffs are estopped from bringing this suit by their acts and conduct."

By its judgment under appeal the trial Court held that the plaintiffs were in possession of the disputed land. The claim under the first exception to section 2(g) of the 1961 Act was repelled as it was held that the land was not subject to "river action". The claim of the plaintiff-appellants under exception (viii) to clause (g) of section 2 was allowed in respect of the land which satisfied the requirements of that exception. As a result, a declaratory decree, as claimed, was passed in favour of the plaintiff-appellants against defendant-respondents Nos. 1 to 9 in respect of that portion of land to which exception (viii) applied, but the suit as regards the rest of the land was dismissed. Parties were left to bear their own costs.

(4) Not satisfied with the decree of the trial Court, the plaintiffs have come up in this appeal to contest the finding of the trial Court on issue No. 2. Section 3 of the 1954 Act provides that all rights, title and interests whatever in the land which is included in the *shamilat deh* of any village, shall, on the appointed date, vest in a Panchayat having jurisdiction over the village. The land in dispute was deemed to have vested in the respondent-Panchayat under the abovesaid provision. The expression "*shamilat deh*" was not defined in the 1954 Act. In section 2(g) of the 1961 Act "*shamilat deh*" was defined to include five different categories of land unless any part of those lands fell within any one or more of the nine

exceptions carved out in the definition. After stating that "*shamilat deh*" includes lands of the five kinds enumerated therein, section 2(g) provides :—

"but does not include land which :—

(i) becomes or has become *shamilat deh* due to river action or has been reserved as *shamilat* in villages subject to river action except *shamilat deh* entered as pasture, pond or playground in the revenue records;

(ii) to (vii) * * * * * * * * *

(viii) was *shamilat deh*, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such *shamilat deh* on or before the 26th January, 1950; or

(ix) * * * * * *"

It has already been held by a Division Bench of this Court (Mahajan, J., and myself) in *Lakhi Ram* v. *The Gram Panchayat Gudah* (1), that the definition of *shamilat deh* contained in the 1961 Act applies with retrospective effect to the expression "*shamilat deh*" as used in the 1954 Act.

(5) The finding of the trial Court regarding the extent of the land which is exempt from being treated as *shamilat deh* under exception (viii) has not been questioned before us in this appeal by either side. The only question which we are called upon to decide in this appeal is whether the rest of the land is exempted under exception (i) or not. The facts on which that decision has to be given are no more in dispute. It is admitted that no part of the land in question is subject to either alluvion or diluvion or avulsion. It is proved from the documentary evidence contained in copies of various entries in the *roznamcha waqiati* marked Exhibits P. 9 to P. 12 that river water floods the land in dispute during monsoon, but recedes after the floods, and thereby damage is caused to the standing crops, if any. According to the appellants this by itself amounts to "river action". On the other hand the case of the contesting respondents is that the mere sporadic flooding of land by the river does not make the land subject to "river action". Whether the land in dispute is exempt under the first exception

(1) I.L.R. (1968) 1 Pb. & Hra. 301=1968 P.L.R. 106,

referred to above or not would depend upon the answer to the following questions :—

(i) Whether the land which is merely overrun by river water during floods can be said to be subject to "river action" or not ? and

(ii) If the answer to the first question is in the affirmative, did the land in quesion "become *shamilat deh* due to river action"? or

(iii) Has the land in dispute "been reserved as *shamilat*" in the village in question "subject to river action"?

Of course it is not claimed by either party that the *shamilat deh* in dispute was entered in the revenue records as pasture, pond or playground.

(6) The phrase "river action" has neither been defined in the 1954 Act, nor in the 1961 Act. In paragraphs 409 to 411 of the Punjab Land Administration Manual compiled by Sir James McC. Douie, K.C.S.I., I.C.S., as revised in 1931; it is stated that :—

(409) "Riverain law is concerned with the effect on rights in land of river action, which is usually qualified according to its nature by the terms erosion, accretion and avulsion."

It is then stated that the expressions "erosion" and "accretion" are applied to the process by which land is sucked into the channel by the inset of a river at one place and fresh land exposed at another by its retirement. "The loss and gain thereby caused are respectively described as diluvion and alluvion." (Paragraph 410). The word "avulsion" is stated in paragraph 411 of the abovementioned compilation to describe what takes place in the Punjab when part of an estate is transferred in a recognizable condition from the right to the left bank of the main channel of a river or *vice versa*. Once again the appellants do not dispute that if the meaning of the expression "river action" is confined to what is so-called by Sir James McC. Douie in his abovementioned compilation, the finding of the trial Court on this part of issue No. 2 is correct. Mr. Ganga Prashad Jain, the learned counsel for the appellants, however, contended that there is no warrant for importing into the meaning of the expression "river action" used in the 1961 Act, the restricted meaning of that phrase which found favour with Sir James McC. Douie in his compilation. We are unable to agree with this submission of Mr. Ganga Parshad Jain. The description and definition of "river action" given by Sir James McC. Douie (as referred to above)

is, in our opinion, comprehensive enough to include all kinds of river action in the absence of any statutory provision to the contrary. As there is no such statutory provision either in the 1954 Act or in the 1961 Act, we would hold that land which merely comes under river water on account of floods during some period in a year cannot be said to be subject to river action within the meaning of the first exception to clause (g) of section 2 of the 1961 Act.

(7) Moreover, there is no evidence on the record of this case to show the land in question became *shamilat deh* on account of its being subject to river action. In order to bring any land within the first statutory exception the river action and the becoming of the land as part of *shamilat deh* have to be connected as cause and effect. There is nothing on the record of this case to substantiate that condition precedent for the applicability of exception (i). The appellants must, therefore, fail on this short ground even if we were to hold that the mere flooding of the land would make it subject to river action. The appellants did not make any specific claim in the trial Court under the second part of the first exception. Even if they were to be permitted to do so now, our answer to question No. (iii) posed by me above would also be against the appellants as there is no plea in their plaint to the effect that the land in question was "reserved" as *shamilat* in the village. All that is stated in the plaint is that the land has been "entered" as *shamilat*. We, therefore, uphold the entire finding of the trial Court on issue No. 2.

(8) Mr. Jain then tried to argue that the appellants should be permitted to raise for the first time at this stage the plea of their being entitled to the declaration claimed by them on account of their having been in adverse possession of the land in dispute. We are unable to accede to this request of the learned counsel as this kind of a plea of fact cannot be allowed to be raised in the appeal when it was not raised in the pleadings and was neither pressed into issue in the trial Court nor dealt with in the judgment of the Court below.

(9) No other point having been argued in this case by the appellants, the appeal fails and is accordingly dismissed. In the circumstances of the case, however, parties are left to bear their own costs.

SHAMSHER BAHADUR, J.—I agree.

R. N. M.