

Subedar Munshi Ram and another *v.* State of Haryana and others  
(F. C. Jain, J.)

24 of the Act, as also by the Government under section 33 of the Act, were quashed. Mr Cheema, learned counsel appearing for the respondents has referred to *Shrimati Balwant Kaur wife of Sardar Charanjit Singh Mann v. Chief Settlement Commissioner (Lands), Jullundur*, (2), but it is noteworthy and this fact is even conceded by Mr Cheema, that in the said authority, the Bench was not seized of the point as to whether it was within the competence of the Central Government to frame Rule 104, by virtue of the powers conferred under section 40 of the Act, nor was this point even discussed in the judgment. In this view of the matter, the Full Bench authority is of no avail in so far as the point in controversy in the present Writ Petition, is concerned. As regards the *vires* of Rule 104, I am in respectful agreement with the view expressed by the Chief Justice in the Delhi case. This being the only point which has been mooted in the present Writ Petition, the same succeeds and the impugned orders, i.e., Annexures 'E' and 'F', passed by the Settlement Commissioner (with the delegated powers of Chief Settlement Commissioner) as also Annexure 'G' passed by the Joint Secretary to the Government of India, are quashed.

3. The matter shall go back to the Chief Settlement Commissioner or his Delegate, if any, who shall consider the Revision Petition of the petitioners on merits. There will be no order as to costs of this Writ Petition.

S.C.K.

FULL BENCH

Before S. S. Sandhawalia, C.J., P.C. Jain and S. S. Kang, JJ.

SUBEDAR MUNSHI RAM and another,—*Petitioners*

*versus*

STATE OF HARYANA and others,—*Respondents.*

Civil Writ Petition No. 8740 of 1976.

August 2, 1979.

*Punjab Village Common Lands (Regulation) Act (18 of 1961)*

(2) A.I.R. 1964 Pb. 33.

as amended by Haryana Act 34 of 1974—Sections 2(g), 4(3) and 13-B—Civil suits against Panchayat for exclusion of certain lands and properties from *Shamilat-deh*—Whether to be transferred to the Assistant Collector—Relief of injunction prayed for—Whether would make the suit triable by Civil Court.

*Held*, that only such suits which had been instituted in the civil courts against the Panchayat for exclusion of certain lands or other properties from *Shamilat deh* under section 2(g) or on any of the grounds mentioned in section 4(3) of the Punjab Village Common Lands (Regulation) Act, 1961 alone could be transferred to Assistant Collector. (Para 3).

*Held*, that the fact that relief of injunction has also been prayed for, would not make such a suit triable by the civil court in case the said suit is against the Panchayat and in which relief has been claimed on the ground that the land be excluded from *Shamilat-deh*. (Para 3).

(The Full Bench has held that there is no conflict between the two Division Bench judgments of this Court in *Karnal Co-operative Farmers Society Ltd. v. Gram Panchayat 1976 P.L.J. 237* and *Digh Ram v. State of Haryana and others 1977 P.L.J. 446*).

*Civil Writ Petition under Article 226 of the Constitution of India praying that the writ petition be allowed and the following reliefs be granted to the petitioners :—*

- (i) that the records of the case be called for and the orders Annexures P-2 and P-3 be quashed by issuing a writ of certiorari or mandamus or any other writ, order or direction befitting the circumstances of the case ;
- (ii) that Section 13-B of the Punjab Village Common Lands Act as applicable to Haryana be struck down as unconstitutional ;
- (iii) that the petitioners dispossession from the disputed property be stayed till the final decision of the writ petition ;
- (iv) Costs be allowed to the petitioners.

Janinder Kumar, Advocate, with Yogesh Kumar Sharma, for the Petitioner.

A. S. Nehra, Additional A.G.

Ashok Aggarwal, Advocate, for respondent No. 8.

I. C. Jain, Advocate, for the respondent No. 4 and 5, for the respondents.

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### JUDGMENT

*Prem Chand Jain, J.*

(1) This judgment of ours would dispose of C.W.P. No. 8740 of 1976 (*Munshi Ram, etc. vs. State of Haryana, etc.*). C.W.P. No. 5178 of 1978 (*Diwan Singh, etc. vs. State of Haryana, etc.*) and S.A.O. No. 54 of 1977 (*Teja, etc. vs. Jit Ram, etc.*) as common question of law arises in all these cases. It appears that at the time of motion hearing of the aforesaid cases, it was projected by the learned counsel for the petitioners/appellant that there was a conflict between the two Division Bench judgments of this Court in *The Karnal Co-operative Farmers Society Limited vs. Gram Panchayat* (1) and *Digh Ram v. State of Haryana and others* (2), with regard to the interpretation of section 13-B as added by Haryana Act No. 34 of 1974 in the Punjab Village Common Lands (Regulation) Act (18 of 1961) (hereinafter referred to as the Act). As is evident from the order of the Bench in C.W.P. No. 8740 of 1976, dated 6th of April, 1977, a conflict was apparently found in the two aforesaid Division Bench judgments, with the result that the matter was referred to a larger Bench and that is how we are seized of the matter.

(2) Before I advert to the merits of each case, I propose to deal with the alleged conflict as was tried to be brought out by the learned counsel for the petitioners/appellant as the time of hearing.

(3) It was contended that in *Karnal Co-operative Farmers Society's case*, the view taken by the learned Judges of the Division Bench was that only such suits which had been instituted in the civil courts against the Panchayat for exclusion of certain lands or other properties from *Shamilat-deh* under section 2(g) or on any of the grounds mentioned in section 4(3) of the Act alone could be transferred while in *Digh Ram's case* (to the decision of which I was a party), it has been held that section 13-B provides for all claim based on the ground of any land or other immovable property being excluded from *Shamilat-deh*. The relevant observations in *Karnal Co-operative Farmers Society's case* read as under:—

“A reading of this section shows that the suits pending in civil Courts against the Panchayats, wherein relief has been claimed on the ground that the land be excluded from *Shamilat-deh*, shall be transferred to the Assistant Collector 1st Grade. Emphasis has been laid by Mr. Anand

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(1) 1976, P.L.J. 237.

(2) 1977, P.L.J. 446.

Swaroop, on the words 'excluded' and 'against the Panchayat', which I have underlined in the section reproduced above. It is noteworthy that the suits which are contemplated to be transferred from the Civil Court, to the Assistant Collector 1st Grade, must have two ingredients, namely, (1) it should be for exclusion of the land from the Shamilat-deh, and (ii) it should be against the Panchayat. In case any suit does not contain the aforesaid ingredients, it cannot be transferred by the Civil Court to the Assistant Collector 1st Grade. It is a well known principle of interpretation of statutes that where the grammatical construction is clear and manifest, that construction ought to prevail unless there is some strong reason to the contrary. In case the language of the statute is unambiguous, the Court must give effect to it, and it has no right to extend its operation in order to carry out the supposed intention of the legislature. It is the duty of the Court to take the statute as it stands and to construe its words according to its natural significance. The intention of the Legislature is to be given effect as expressed in the words used in the statute. No outside consideration can be called in aid to find that intention. In the above section, in my view, the words used by the legislature, are clear and unambiguous. They cannot be interpreted in such a way that all the cases relating to the Shamilat-deh, pending in the civil Court, shall be transferred to the Assistant Collector 1st Grade. If the intention of the Legislature has been to that effect, the language of the section would have been different. In my view, section 13-B covers only such suits which have been instituted in the Civil Courts against the Panchayat for exclusion of certain lands or other properties from Shamilat-deh under section 2(g) or on any of the grounds mentioned in section 4(3) of 1961 Act. A suit instituted by a Gram Panchayat for declaration to the effect that certain land should be included in Shamilat-deh, is not covered by the provisions of the aforesaid section".

While in *Digh Ram's case*, the relevant observations to which our attention was invited, are in the following terms:—

To seek support for his contention as raised under this point, the learned counsel has referred to the provisions of

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section 37(2) of the specific Relief Act. It is submitted that a relief of injunction is not provided for under the Village Common Lands Act and the suit in the present case being one for injunction, the matter could be adjudicated upon only by a Civil Court. Reference is made in this behalf to *Angnu v. Mahabir and another* (3) and *Illinka Venkatavya v. Adi Kishtayya* (4). These authorities are, however, distinguishable even on facts. In the Allahabad case, both the parties conceded that the forum for the suit was the Civil Court and not the Revenue Court. It was held that if the Revenue Court was not competent to grant all the reliefs prayed for, the suit would lie only in a Civil Court. Similarly, in the second case, the Court was seized of the Hyderabad Tenancy and Agricultural Lands Act, and it was held that section 99 of the Act would operate as a bar to the jurisdiction of the Civil Court only if the case is of such a nature as is required to be settled by the authorities mentioned in the Act. In the present case, section 13-B of the Amendment Act, however, provides for all claim based on the ground of any land or other immovable property being excluded from *Shamilat deh*. The fact that the colour of injunction is spread over the basic relief sought for, as envisaged under section 13-B, would not make any material difference, nor would it oust the Assistant Collector from determining the dispute and granting relief, if called for. The petitioner fails on this point also."

After giving my thoughtful consideration to the entire matter, I find that the judgment in *Digh Ram's case* so far as it deals with the interpretation of section 13-B of the Act, is not being read in the right perspective, and that an imaginary conflict is sought to be projected. What was argued before the Bench was that under section 13-B, a suit for perpetual injunction was not within the competence of the Revenue Court and the jurisdiction of the Civil Court could not be barred for such a suit and it is on that point that the above reproduced observations were made. From the said observations, it cannot

(3) A.I.R. 1954 All 768.

(4) A.I.R. 1956 Hyderabad 192.

be spelt out at all that section 13-B has been interpreted so as to embrace within itself any suit or proceeding against the Gram Panchayat. What has been held in *Digh Ram's* case is that this fact that relief of injunction has also been prayed for, would not make such a suit triable by the Civil Court in case the said suit is against the Panchayat and in which relief has been claimed on the ground that the land be excluded from *Shamilat-deh*.

(4) In this view of the matter, I hold that the judgment in *Digh Ram's* case does not run counter to the decision of the Division Bench in the *Karnal Co-operative Farmers Society's* case with respect to the interpretation of section 13-B of the Act.

(5) It was also sought to be argued by Mr Jinendra Kumar, learned counsel that the entire section 13-A has been struck down, section 13-B should also meet the same fate as sub-sections (5) and (7) of section 13-A have been embedded in section 13-B. What was sought to be argued by the learned counsel was that sub-sections (5) and (7) of section 13-A having been struck down, could not be read in section 13-B and that in this situation, section 13-B becomes unworkable in the absence of the procedure prescribed under sub-section (5) or (7) of section 13-A.

(6) This contention of the learned counsel need not be gone into on merits and is liable to be rejected straightaway in view of the judgment in *Digh Ram's* case and another recent Division Bench judgment in *Latur Singh and others vs. The Collector, Karnal and others* (5).

(7) In the ordinary course, the petitions/appeal would have been sent back to the learned Single Judge for disposal on merits, but we did not adopt that course and decided to hear the petitions/appeal on merits also.

(8) Now I would deal separately with the merits of each case. CWP No. 8740/1976.

(9) In this petition, Subedar Munshi Ram and Hari Singh have challenged the legality of the order passed by the Assistant Collector 1st Grade, Jhajjar, dated 8th of June, 1976 and the judgment of the

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Collector, Rohtak, dated 6th of September, 1976 (copies Annexures P/1 and P/2, respectively). The admitted facts of the case are that in September, 1973, Bhola Ram, respondent No. 8, filed an application before the Gram Panchayat, respondent No. 4 for the removal of the encroachment on the thoroughfare made by the petitioners. The application was allowed by the Gram Panchayat and the order for the removal of the encroachment was passed. But on revision, the said order was set aside by the Judicial Magistrate 1st Class, Jhajjar and the case was remanded for fresh decision. On remand, the case was tried by another Panchayat. On consideration of the material, the Gram Panchayat found itself incapable of deciding the case and directed respondent No. 8 to seek his remedy in an appropriate court.

(10) Thereafter, respondent No. 8 filed a suit for mandatory injunction against the petitioners in the Court of Subordinate Judge, Jhajjar for the removal of the encroachment. During the pendency of the suit, the Punjab Village Common Lands Act was amended in its application to Haryana and sections 13-A and 13-B were introduced with the result that the suit was transferred to the Assistant Collector 1st Grade, Jhajjar for trial by the learned Subordinate Judge. The Assistant Collector tried the suit on merits and ultimately decreed the same,—*vide* his order dated 8th of June, 1976. The petitioners' appeal before respondent No. 3 was also dismissed,—*vide* order dated 6th of September, 1976 by the Collector.

(11) On the facts narrated above, it is evident that the suit which was transferred by the learned Subordinate Judge to the Assistant Collector 1st Grade, was the one which had been filed by Bhola Ram, respondent No. 8 for permanent injunction restraining the petitioners from making any encroachment on the alleged thoroughfare. From the averments made in the plaint, it is evident that the suit filed by Bhola Ram did not satisfy the two ingredients, i.e., that it was not a suit for the exclusion of the land from *Shamilat Deh* and that the same had not been filed against the Gram Panchayat. In this situation, legally the suit could not be transferred by the learned Subordinate Judge for trial to the Assistant Collector 1st Grade.

(12) Faced with this situation, it was contended by the learned Additional Advocate General that the petitioners are not entitled to any relief as the order by which learned Subordinate Judge transferred the suit to the Assistant Collector 1st Grade, has not been challenged by the petitioners.

(13) To me, this objection appears to be untenable. Under the Act, the Assistant Collector had no jurisdiction to try the suit which was transferred by the learned Subordinate Judge and in this situation, the order of the Assistant Collector Ist Grade would be nullity. Further, it is wrong to say that the order of transfer passed by the learned Subordinate Judge has not been questioned by the petitioners. In the petition, besides challenging the Constitutional validity of section 13-B, it has been specifically pleaded that the suit could not legally be transferred from the Court of the Subordinate Judge because in the suit, no relief had been claimed by the plaintiffs against the Gram Panchayat on the ground that the immovable property concerned was excluded from the *Shamilat Deh* under section 2(g) of the Act or on any other grounds mentioned in subsection (3) of section 4 of the Act. No other point was urged on either side.

(14) In view of the aforesaid discussion, I allow this petition, set aside the order of the Assistant Collector Ist Grade, Jhajjar dated 8th of June, 1976 and the judgment of the Collector, Rohtak, dated 6th of September, 1976 (copies Annexures P/1 and P/2, respectively) and also the order of the learned Subordinate Judge by which the suit was transferred to the Assistant Collector for trial, and direct the learned Subordinate Judge to register the case and thereafter proceed to decide the same in accordance with law. In the circumstances of the case, I make no order as to costs.

(15) The parties through their learned counsel have been directed to appear before the learned Subordinate Judge on August 27, 1979. C.W.P. No. 5178/1978.

(16) Diwan Singh and others have filed this petition for the quashing of the order of the Assistant Collector 1st Grade, Rohtak dated 9th of June, 1978 by which the suit of the petitioners under section 13-B of the Act was dismissed and the application filed by the Gram Panchayat under section 7 of the Act was allowed and the petitioners were ordered to be ejected from the land in dispute in case they did not vacate the same within 10 days of the passing of the order.

(17) In this petition, the petitioner filed a suit under section 13-B of the Act and rightly so as the suit of the petitioners was against the Gram Panchayat and for the exclusion of the land from



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*Shamilat deh* the ownership of which was claimed by them. In this situation, the suit was triable by the Assistant Collector Ist Grade and it was rightly decided by him.

(18) The only other point that was debated before us was that no appeal is provided against the judgment of the Assistant Collector and on that score section 13-B deserves to be struck down as unconstitutional. The argument on the face of it appears to be fallacious. The legislature designedly did not provide that provisions of sub-section (9) of section 13 would also be applicable to the decisions made under section 13-B of the Act. The right of appeal is a statutory right and if it is not so provided in the statute, then a litigant cannot claim that right or plead that on that ground the provision is unconstitutional.

(19) This view of mine finds full support from the latest Division Bench judgment of this Court in *Latur Singh and others versus Collector, Karnal and others*, (5 supra).

(20) No other point was raised in this petition.

(21) In view of the aforesaid discussion, I find no merit in this petition and consequently dismiss the same but without there being any order as to costs.

(22) Teja and Sadhu filed a suit for grant of perpetual injunction restraining the defendants from interfering in any manner whatsoever in the legal and peaceful possession and ownership of the plaintiffs in the land in dispute and also to the effect that the order passed by the Gram Panchayat under section 21 of the Gram Panchayat Act is void and without jurisdiction. The suit was contested by the defendants. The defendants alleged that the land in dispute was a public place, and that the Civil Court had no jurisdiction to try the suit. On the issues which were framed on the pleadings, the parties led evidence. The trial Court on consideration of the entire evidence found no merit in the claim of the plaintiffs and accordingly dismissed their suit. Feeling aggrieved from the judgment and decree of the trial Court, the plaintiffs filed an appeal.

(23) The learned District Judge, who heard the appeal, found that the issue regarding the jurisdiction of the Civil Court was not framed. However, he allowed the arguments to be advanced on that

matter and ultimately held that the suit was not triable by the Civil Court with the result the judgment and decree of the trial Court was set aside and the case was remanded to the trial Court for transferring the same to the Assistant Collector Ist Grade for deciding the matter in accordance with law. Dissatisfied from the order of remand passed by the learned District Judge, the present appeal has been filed.

(24) It was contended by the learned counsel for the appellants that the suit was triable by the Civil Court and that the provisions of section 13 or 13-B of the Act were not applicable. I am afraid, I am unable to agree with this contention of the learned counsel. From the admitted facts, it is evident that the suit has been filed by the appellants against the Gram Panchayat for the exclusion of the land in dispute from *Shamilat deh*. The appellants claim themselves to be the owners-in-possession of the property. In this situation, the learned District Judge was justified in deciding the question of jurisdiction and in remanding the case to the learned Subordinate Judge for transferring the same to the court of the Assistant Collector Ist Grade.

(25) In this view of the matter, I find no merit in this appeal and consequently dismiss the same but without there being any order as to costs. The parties through their learned counsel have been directed to appear before the trial Court on August 27, 1979.

S. S. Sandhawalia, C.J.—I agree.

S.C.K.

Before S. S. Sandhawalia, C.J. and Harbans Lal, J.

NAGENDER SINGH CHOHAN,—Petitioner.

versus

STATE OF HARYANA and another,—Respondents.

Civil Writ No. 3555 of 1976

April 20, 1979.

*Haryana Ceiling on Land Holdings Act (26 of 1972)—Sections 3, 7 and 9(2)—Determination of the eligibility of the son of a land-owner to a separate unit of land—Date of majority of the son to*