

NOTIFIED AREA COMMITTEE AND ANR.

V.

DES RAJ AND ORS.

AUGUST 8, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

Punjab Gram Panchayat Rules, 1965/Punjab Village Common Land (Regulation) Act, 1953—Proviso to Rule 3/Section 3(a)—Land included in shamilat deh and vested in the Gram Panchayat concerned by virtue of S.3(a)—Whether got divested by virtue of the Proviso to Rule 3—Held : The proviso did not operate qua the lands vested in the Gram Panchayat.

Certain lands used for common purposes but were shown as shamilat deh afterwards came to be vested in the Gram Panchayat concerned pursuant to what has been provided in S.3 of the Punjab Village Common Land (Regulation) Act, 1953. The land was mutated in the name of the appellant in accordance with Haryana Municipal Common Land (Regulation) Act, 1974. Since the said Act was declared void by a Full Bench of the Punjab & Haryana High Court, the respondents-earlier owners of the land - filed a suit seeking declaration that the said land got reverted to them. The trial Court dismissed the suit. Plaintiffs preferred an appeal and it was allowed by the Additional District judge. The High Court dismissed the second appeal. Hence this appeal by the Committee.

The respondents-plaintiffs contended that for the appellant to claim vesting of the land in it, the whole of the Sabha area must have been included in it, that the omission of the proviso by notification dated 22nd December, 1976 could not alter the position inasmuch as the area had been declared to be part of the notified area on 6.10.75 and so the proviso operated by its own force on that date because of which its omission later on could not alter the legal position.

Allowing the appeal, this Court

HELD : 1. The only effect of non-inclusion of the whole of the area of a Gram Panchayat is that the jurisdiction of the concerned Notified Area Committee shall get reduced and would be confined to the part included. In the present case there is nothing to show that the part of the

A Gram Panchayat in which the suit land is situate had not been included in the territorial area of the appellant-committee. [570-E-F]

2. The Addl. District Judge took the view that as the 1953 Act was repealed, vesting of the land in the appellant can be said to be only under the 1961 Act because of the proviso to section 16. This was a wrong view to be taken because the proviso speaks of things done or action taken under the 1953 Act and allows them to continue in force unless and until superseded by anything done or any action taken under the 1961 Act. This proviso does not apply to rights which got vested by operation of the 1953 Act. These are protected by section 4(c) of the Punjab General Clauses Act, 1898, according to which, the repeal of an enactment does not affect, inter alia, any right acquired under the repealed enactment. As in the present case the Gram Panchayat had acquired the right under the 1953 Act, its repeal by 1961 Act did not in any way affect the right which the Gram Panchayat had acquired over the lands in question. So, the proviso did not operate qua the lands at hand. [571-C-E]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No.7018 of 1995.

E From the Judgment and Order dated 12.8.1991 of the Punjab & Haryana High Court in R.S.A.No. 1179 of 1991.

S.M. Ashri for the Appellant.

S.P. Goyal, Rajiv K. Garg and N.D. Garg for the Respondents.

F The Judgment of the Court was delivered by

G **HANSARIA. J.** The point for determination in this appeal is as to whether land included in shamilat deh which had come to be vested in the concerned Gram Panchayat by virtue of section 3(a) of the Punjab Village Common Land (Regulation) Act, 1953 (for short, 'the 1953 Act') got divested because of what has been mentioned in the proviso to Rule 3 of the Punjab Gram Panchayat Rules, 1965, framed in exercise of powers conferred by Punjab Gram Panchayat Act, 1952 (hereinafter the 'Panchayat Act').

H 2. The facts lie in narrow compass and are not disputed. The same are that the lands with which this appeal is concerned were being used, to

start with, for common purposes like 'gair mumkin rasta' and 'gao charand', but were shown as shamilat deh afterwards and came to be vested in the concerned Gram Panchayat pursuant to what has been provided in section 3 of the 1953 Act. Pursuant to what was provided in Haryana Municipal Common Land (Regulation) Act, 1974, the land was mutated in the name of the appellant. As that Act, however, came to be declared void by a Full Bench of Punjab and Haryana High Court, the respondents, who were the owners of the lands earlier, filed a suit seeking declaration that the said land got reverted to them because of what has been mentioned in the aforesaid proviso. The suit was dismissed by the trial court, whereupon the plaintiffs preferred an appeal which came to be allowed by Addl. District Judge, Karnal. On the appellant approaching the High Court in second appeal, the same came to be dismissed in limine. Hence this appeal under Article 136 of the Constitution.

3. There being no dispute as to the vesting of the land pursuant to 1953 Act in the concerned Gram Panchayat, all that we are required to decide is whether the stand of the plaintiffs- respondents that the same got reverted to them pursuant to what has been mentioned in the aforesaid proviso is correct or not.

4. To decide the aforesaid question, let Rule 3 of the Punjab Gram Panchayat Rules, 1965 be noted, which reads as under:

"If the whole of Sabha area is included in Municipality, cantonment or notified area all rights, obligations, property, assets and liabilities if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board or Notified Area Committee as the case may be.

Provided that the land, which vests in the panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 or the land management and control of which vests in the panchayat under the East Punjab Consolidation and Prevention of Fragmentation 1948 shall revert to the co-sharers and owners thereof."

5. The respondents' first contention is that for the appellant to claim vesting of the land in it, the first requirement is that the whole of the sabha area must have been included in it. It is then urged that even if this part of the requirement be held to be satisfied, because of what has been stated

A in the aforesaid proviso, the land did revert to them. The further leaf of
 this argument is that the omission of the proviso by notification dated 22nd
 B December, 1976 cannot alter the position inasmuch as the area of village
 Gudha, in which the land is admittedly situate, had been declared to be
 part of notified area on 6.10.75; and so, the proviso operated by its own
 force on that date, because of which its omission later on could not alter
 the legal position.

6. Insofar as the first contention is concerned, Shri Ashri, learned
 counsel appearing for the appellants, brings to our notice what has been
 stated in sub-section (2) of section 8 of the Panchayat Act, which is in the
 C following language :-

"If the whole of the area of a Gram Panchayat is included in
 municipality, cantonment, notified area or small town area, the
 Gram Panchayat shall cease to exist and its assets and liabilities
 shall be disposed of in the manner prescribed. *If a part of such*
 D *area is so included, its jurisdiction shall be reduced by that part.*

(Emphasis added)

This shows that the only effect of non-inclusion of the whole of the area of
 E a Gram Panchayat is that the jurisdiction of the concerned Notified Area
 Committee shall get reduced and whole be confined to the part included.
 As in the present case there is nothing to shows that the part of the Gram
 Panchayat in which the suit land is situate had not been included in the
 territorial area of the appellant-committee, the first contention advanced
 F on behalf of the respondents, which had found acceptance with the courts
 below, cannot be regarded as legally sound.

7. The second question is whether the aforesaid proviso can be called
 in aid by the respondents. It is apparent that the proviso deals with the
 land which had come to be vested in the panchayat under the Punjab
 G Village Common Land (Regulation) Act, 1961, whereas the lands at hand
 came to be vested in the concerned panchayat by the force of 1953 Act. It
 is because of this that a submission was advanced on behalf of the appel-
 lants before the learned Addl. District Judge that the proviso has no
 operation. This contention was, however, not upheld because of what has
 H been provided in section 16 of the 1961 Act which reads as below :

"Repeal and Saving - The Punjab Village Common Lands (Regulation) Act, 1953 and the Pepsu Village Common Lands (Regulation) Act, 1954 are hereby repealed: A

Provided that anything done or any action taken under any law so repealed shall be deemed to have done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act." B

8. The learned Addl. District Judge took the view that as the 1953 Act was repealed, vesting of the land in the appellant can be said to be only under the 1961 Act because of the proviso to section 16. According to us, this was a wrong view to be taken because the proviso speaks of things done or action taken under the 1953 Act and allows them to continue in force unless and until superseded by anything done or any action taken under the 1961 Act. This proviso does not apply to rights which got vested by operation of the 1953 Act. These are protected by section 4(c) of the Punjab General Clauses Act, 1898, according to which, the repeal of an enactment does not affect, *inter alia*, any right acquired under the repealed enactment. As in the present case the Gram Panchayat had acquired the right under the 1953 Act, its repeal by 1961 Act did not in any way affect the right which the Gram Panchayat had acquired over the lands in question. So, the proviso did not operate qua the lands at hand. C D E

9. The aforesaid being the legal position, we hold that what has been stated in Rule 3 of the Punjab Gram Panchayat Rules either in its main part or in the proviso can not be called in the aid by the respondents to claim reversion of the lands to them. The contrary view taken by the two courts below is not sustainable in law. F

10. The appeal is, therefore, allowed by setting aside the impugned judgment as a consequence of which the suit filed by the respondents stands dismissed. In the facts and circumstances of the case, we, however, leave the parties to bear their own costs. G

G.N.

Appeal allowed.