SUPREME COURT OF INDIA

Shish Ram

Vs.

State of Haryana

C.A.N1941 of 1997

(S. Saghir Ahmad and R. P. Sethi, JJ.)

05.05.2000

JUDGEMENT

SETHI, J.:-

1. Holding that the land described as "charand" is included within the definition of "Shamilat-deh" as defined under Section 2(g) of the Punjab Village Common Lands (Regulations) Act, 1961 (hereinafter referred to as "the Act") and relying upon its earlier Division Bench judgment in the case of Khushi Puri v. State of Haryana, 1978 Punj LJ 78 the High Court dismissed the writ petition filed by the appellants praying for issuance of directions prohibiting the Gram Panchayat from leasing out the charand land and to keep land measuring 541 kanal and 2 marlas reserved as charand for grazing up (of) cattles. The High Court also did not consider it proper to grant the prayer of the appellants seeking declaration that the land reserved for charand during consolidation could not be used for the income of the Gram Panchayat as it stood allegedly deducted from the lands of the proprietors. Not satisfied with the judgment of the Division Bench of the High Court, the appellants have filed the present appeal with the submission that the reservation of charand land for the income of Gram Panchayat violated Article 31-A of Constitution of India as was the ratio of the this Court in Bhagat Ram v. State of Punjab, (1967) 2 SCR 165 : (AIR 1967 SC 927). It is further submitted that without paying any compensation at the market value to the proprietors of the village, the land

could not vest in the Gram Panchayat. The reservation of Charand land for the income of Gram Panchayat allegedly in breach of Section 5 of the Act is stated to be illegal. The leasing out has been alleged to be in contravention of the grazing rights of the proprietors and non-proprietors of the village.

2. There is no doubt that the appellants are the inhabitants of village Khajuri, Tehsil Jagadari, District Yamuna Nagar, Haryana. It is also not disputed that the land, the subject matter of the litigation being shamilat deh is vested in the Gram Panchayat. It has also to be noticed that after the vesting of the land in the Gram Panchayat, none of the inhabitants of the village raised any objections regarding its vesting for a period of about 34 years. It is also on record that some land out of shamilat deh land was being leased out to the proprietors of the village since the year 1976 and none of the inhabitants raised any objection. From the counter affidavit filed on behalf of the respondents it appears that many of the family members of the appellants, particularly, the brother of the appellant No. 1 had themselves been taking the land in dispute on lease without raising any objection.

3. Learned counsel appearing for the appellants relying upon a Full Bench judgment of the Punjab and Haryana High Court in Bishamber Dayal v. State of Haryana, 1986 Punj LJ 208 : (AIR 1986 Punj and Har 203) submitted that the Gram Panchayat was not entitled to lease the land or use it in the manner it like without following the procedure and subject to the restrictions placed on its use by the Punjab Village Common Lands (Regulations) Rules, 1964 (hereinafter referred to as "the Rules"). Referring to Rule 3(2), the learned counsel submitted that the Gram Panchayat could use the land in shamilat-deh vested in it under the Act either itself or through another for anyone or more of the purposes specified therein. One of the purposes referred to in Clause (vi) is 'grazing of animals'. Learned counsel appearing for the respondents drew our attention to Clause (xxv) of Sub-rule (2) of Rule 3 which authorised the Gram Panchayat to use the land for the purposes of leasing out for cultivation. He also drew our attention to the Division Bench judgment of the High Court in Khushi Puri's case (1978 Pun LJ 78) (supra) wherein it was held:

"It is provided by Rule 3(2) of the Punjab Village Common Lands (Regulation) Rules, 1964, that the panchayat could make use of the land in shamilat deh vested in it either itself or through another for the purposes related to forestry. It cannot, therefore, be gainsaid that the plantation of trees was such a purpose for which the land could not be utilised by the panchayat. Whatever rights the panchayat had for the management of the land devolved upon the Administrator and there is, therefore, no basis for this contention made by the learned counsel for the petitioners that the Administrator acted beyond his powers."

4. In Salig Ram v. Maksudan Singh, 1965 Cur LJ 711 the High Court had earlier held: ". . . that the panchayat has a right to use the shamilat deh vested in it under the 1954 Act either itself or through another person in any of the manners set out in that rule. Similar rules are stated to have been framed under the Act. This shows that except to the extent to which the statutory rules indicate,

there is no fetter on the power of the panchayat to use the shamilat deh which vests in it under the Act for any of the specified purposes it likes and it is not necessary that what was grazing land out of the shamilat deh previous to such vesting, must continue to be such."

5. In Bishamber Dayal's case (AIR 1986 Punj and Har 203) (supra) the Full Bench of the Court had considered and approved the view taken by the Division Bench in Khusi Puri's case (1978 Pun LJ 78). In that regard the Court had held (at Pp. 205-06 of AIR):

"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 (1978 Pun LJ 78) (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 grazing 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 larger Bench. We are in respectful agreement with the ratio of Khushi Puri's case (supra).

6. We do not agree with the submission of the learned counsel of the appellant that in Bishambar Dayal's case (AIR 1986 Punj and Har 203) the Full Bench of the High Court had taken a different view than the one which was taken in Khushi Puri's case (1978 Pun LJ 78). The High Court appears to have consistently held that the land vesting in the Gram Panchayat can be used for any one or more of the purposes specified in Sub-Rule (2) of Rule 3, leasing out for cultivation being one of the purposes. We find no reason to disagree with the High Court and in fact approve the position of law settled by it in Khusi Puri's case which was upheld by the Full Bench in Bishamber Dayal's case.

7. Learned counsel for the appellants then tried to make a distinction between the charand land and the shamilat deh. In support of his contentions he referred to Annexures I and II wherein the land, the subject matter of the dispute has been defined to be charand land. The definition of shamilat deh provides that it shall include "lands described in the revenue record as shamilat deh or (charand-in Haryana) excluding abadi deh". Relying upon the Khushi Puri's case (1978 Pun LJ 78) the High Court in the impugned judgment was, therefore, right in holding that there did not exist any distinction between the charand and shamilat deh and the contention of the appellants that the charand could not vest with the Gram Panchayat under the Act was based upon wrong assumptions.

8. Reliance placed by the learned counsel for the appellants upon the judgment in Bhagat Ram's case (AIR 1967 SC 927) is misplaced besides being without any basis. Despite our insistence, the learned

counsel for the appellants could not refer to any averments in the writ petition filed in the High Court regarding the alleged violation of Article 31-A of the Constitution.

9. We are also of the opinion that the present petition though filed in a reprsentative capacity, yet was not a bona fide action inasmuch as the appellants and their relations having accepted the position of law and earlier at times taking the benefit of lease-hold rights could not have recourse to the legal proceedings after having failed to get the lease in their favour or in favour of their relations. The delay in approaching the court also remained unexplained.

10. There is no merit in this appeal which is accordingly dismissed but without any order as to costs.

Appeal dismissed.