CIVIL WRIT

Before D. Falshaw and I. D. Dua, JJ.

MOLU AND ANOTHER,—*Petitioners.*

versus

THE FINANCIAL COMMISSIONER, PUNJAB, AND ANOTHER,—*Respondents.*

Civil Writ No. 769 of 1957

1959

May, 20th

Pepsu Panchayat Raj Act (VIII of 2008 Bk.)—Common land—Meaning of—Pepsu Village Common Lands (Regulation) Act (XV of 1955)—Section 3—Shamlat Deh—Meaning of—Shamlat Deh—Whether ceases to be so if part of it is brought under cultivation by the proprietors.

Held, that "comon land" in the Pepsu Panchayat Raj Act was intended only to apply to land which was actually already being used for the common purposes for the inhabitants of the village, and was not intended to include the whole of the Shamlat Deh.

Held, that "Shamlat Deh" as used in section 3 of the Pepsu Village Comon Lands (Regulation) Act, 1955, does not mean the same thing as "Common Land" in the Pepsu Panchayat Raj Act, 2008 Bk. It has a wider meaning although it is generally translated as Village Common Land. Shamlat Deh does not cease to be such in consequence of the fact that part of it has been brought under cultivation by the proprietors.

Case referred by the Hon'ble Mr. Justice Gurnam Singh to a Larger Bench,—vide *his order, dated 16th September, 1958 for decision of the important questions involved in it and finally decided by the Division Bench Consisting of Hon'ble Mr. Justice Falshaw & the Hon'ble Mr. Justice Dua, on 20th May, 1959.*

Petition under Articles 226 and 227 of the Constitution of India praying that appropriate writs of certiorari or any other writ or direction be issued quashing the order of respondent No. 1, dated 6th July, 1957.

TIRATH SINGH, for Petitioners.

S. M. SIKRI and K. C. PURI, for Respondents.

ORDER

Falshaw, J.

FALSHAW, J.—The facts giving rise to this petition under Articles 226 ad 227 of the Constitution by Molu and Alih Ram, two residents of Uchana Kalan, Sangrur District; which has been referred to a Division Bench by Gurnam Singh, J., are as follows:

By virtue of section 3 of the Pepsu Village Common Lands (Regulation) Act No. 15 of 1955), which came into force on the 4th of March, 1955, all rights, title and interest whatever in the land which was included in the Shamlat Deh of any village vested in the Panchayat of that village. The definition of Panchayat in section 2(f) included a small town committee constituted under section 4 of the Pepsu Small Towns Act. At the time when the Common Lands (Regulation) Act came into force Uchana Kalan was administered by such a Small Town Committee.

The Shamlat Deh of Uchana Kalan amounting to about 1,900 bighas was described in the Revenue records as Shamlat Deh of Taraf Gujjar and Taraf Puran and owned by the two Tarafs in proportion to the holdings of the proprietors in those Tarafs.

In due course the Small Town Committee applied for the mutation of Shamlat Deh land in its name. The mutation application was rejected by the Tehsildar on the ground that the land had already been cultivated by the proprietors and that in these circumstances it did not fall within the definition of "common land" given in the Pepsu Panchayat Raj Act (Act No. 8 of 2008 Bk), in which "common land" was defined as meaning, "land which is not in the exclusive use of any individual and has by usage; custom or prescription been reserved for the common purposes of village community or has been acquired for such purposes".

The order of the Tahsildar was challenged by a member of the Small Town Committee before the Collector in an appeal which the Collector treated as a revision petition as there was no resolution of the Small Town Committee for the filling of an appeal. By his order dated the 24th of September, 1956 the Collector recommended that the order of the Tahsildar be set aside and the mutation effected in favour of the Small Town Committee. The recommendation went to the Commissioner, Patiala, before whom the parties were heard through their counsel. By his order dated the 24th of Decemer, 1956 the Commissioner adopted the recommendation of the Collector and forwarded the case to the Financial Commissioner who, in turn, by his order dated the 6th July, 1957, also after hearing counsel on behalf of the parties, accepted the recommendation.

It may be mentioned that in the meantime in consequence of another Act the Small Town Committee of Uchana Kalan, along with other Small Town Committees, had becomes a third grade Municipality, but it was held that since the Shamlat Deh land had automatically vested in the Small Town Committee when the Act came into force in 1955, this change of status in the body administering the area made no difference, and this point has not now been raised.

The two points which have been raised as grounds for setting aside the order of the Financial Commissioner and holding the recommendation of the Collector adopted by the Commissioner and the Financial Commissioner to be illegal are that firstly the land is not Shamlat Deh, but only Shamlat of the two pattis or Tarafs into which Uchana Kalan is sub-divided, and secondly that in the absence of any definition of Shamlat Deh

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in the Act, the definition of "common land" in the earlier Act by which the management of village commn lands was placed in the hands of the Panchayats should be adopted as was done by the Tehsildar in the present case, and since the land had been cultivated by the proprietors it did not fall within this definition.

On the first of these points there is no material whatever on the record for coming to any finding that the Shamlat land in dispute was exclusively the Shamlat of the two pattis as opposed to Shamlat Deh or common land of the village. In fact the description of it in revenue records appears to contradict this suggestion, and there is no suggestion that there is any separate Shamlat Deh of the whole village as opposed to the Shamlat of the two Tarafs, In my opinion there is no force in this contention.

On the second point the facts are, as stated in the written statement filled on behalf of the Financial Commissioner, that in 1954 a notice was served on the proprietors of the village by the Collector calling on them to bring the Shamlat Deh land, which was still unbroken, under cultivation under the provisions of the local Utilization of Lands Act, failing which proceedings would be taken under the Act to acquire the land. In consequence of this notice the proprietors of the village, including the two petitioners, one of whom represents each of the Tarafs, reclaimed and started cultivating about 1;300 *bighas* out of the land, of which about 600 *bighas* are still shown as *Ghair Mumkin* and about 20 *bighas* as *Banjar Kadim*. It has been contended on behalf of the petitioners that this fact takes at any rate such part of the land as has been brought under cultivation by the proprietors out of the scope of Shamlat Deh on the

assumption that the definition given to "common land" in the earlier Act is the definition of Shamlat Deh, which is not defined in the Act of 1955.

It is however, to be presumed that the persons responsible for drafting and enacting the Pepsu Panchayat Raj Act, which deals with other matters besides the vesting of the management of common land in the Panchayats set up under the Act, deliberately chose the term "common land" in preference to Shamlat Deh and defined it with the purposes of that Act clearly in view and it is a well-established principle of construction that a definition used in one Act is not to be applied in construing another Act unless that Act is directly *in pari materia*; which does not appear to be the case. In fact it would appear that although Shamlat Deh is generally translated as village common land, the two distinct terms were deliberately used in the respective Acts, and the expression "common land" in the Panchayat Raj Act was evidently intended only to apply to land which was actually already being used for the common purposes for the inhabitants of the village, and was not intended to include the whole of the Shamlat Deh. I am therefore of the opinion that the decision of the revenue officers which is challenged in the present petition is correct both on the point that the land in dispute is the Shamlat Deh of Uchana Kalan and also that it does not cease to be such in consequence of the fact that part of it has been brought under cultivation by the proprietors. I would accordingly dismiss the petition, but leave the parties to bear their own costs.

Dua, J.—I agree.

B.R.T.