

Before S. S. Kang, J.

KAKA SINGH,—Petitioner

versus

COMMISSIONER, FEROZEPURE DIVISION, FEROZEPURE
AND OTHERS,—Respondents.

Civil Writ Petition No. 951 of 1982.

May 1, 1984.

Punjab Public Premises and Land (Eviction and Rent Recovery) Act (XXXI of 1973)—Sections 2(e) (i), 4 and 5—Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 13-B—Unauthorised occupation of Panchayat Land—Application by Gram Panchayat for ejection of the occupant under sections 4 and 5 of the Public Premises Act—Such application—Whether not maintainable in view of section 13-B of the Common Lands Act—Public Premises Act—Whether a special Act for the purposes of eviction.

Held, that no doubt section 13-B of the Punjab Village Common Lands (Regulation) Act, 1961, lays down that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law but that does not mean that the application of the provisions of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973, has been impliedly taken away. The Regulation Act deals with number of subjects pertaining to *shamilat* land and *abadi deh*. It does not deal only with the eviction of unauthorised persons on the *shamilat deh*. So far as the *shamilat* land is concerned, the Regulation Act can be termed as special Act but so far as the question of eviction is concerned, the Public Premises Act shall be taken to be special Act because that Act only deals with the eviction from public premises. The subject of ejection of unauthorised persons from the public premises has been specially taken care of by the Public Premises Act and it being the special Act will govern the application for eviction of unauthorised persons from the *shamilat* land. The object and purpose in framing section 13-B of the Regulation Act was to lay down that any action taken or decisions made under the provisions of the Regulation Act shall have effect. However, section 13-B does not expressly or by necessary implication lay down that ejection proceedings from *shamilat deh* could not be taken from the Public Premises Act. Any land including the *shamilat* land belonging to the panchayat is public premises in view of clear definition given in section 2 of the Public Premises Act. Under sections 4 and 5 of that Act persons in unauthorised occupation of *shamilat* land can be evicted therefrom. The application of the Gram

Panchayat is, therefore, maintainable under sections 4 and 5 of the Public Premises Act for the ejection of an occupant who is in unauthorised occupation of the land.

(Paras 7, 8 and 9)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased to:—

- (i) *issue a writ in the nature of certiorari and/or any other writ, direction or order quashing the Annexures 'P-2' and 'P-3' respectively.*
- (ii) *to dispense with the requirement of filing the original/certified copies of the Orders Annexures 'P-2' and 'P-3';*
- (iii) *Waive of the serving of notice of motion on the respondents in view of the urgency of the matter and paucity of time.*
- (iv) *It is further prayed that during the pendency of this petition, the operation of the impugned orders Annexures 'P-2' and 'P-3' be stayed and the petitioner may not be ejected.*
- (v) *Award the costs of the petition to the petitioner.*

Ravinder Chopra, Advocate, for the Petitioner.

I. S. Vimal, Advocate, for Respondent No. 3.

Nemo, for others

JUDGMENT

Sukhdev Singh Kang, J. (Oral)

(1) Whether an application under sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1973 (hereinafter referred to as 'the Act') by the Gram Panchayat for the eviction of a person in unauthorised occupation of its lands is not competent and not maintainable in view of the provisions of section 13-B of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Regulation Act') is the spinal question raised in this writ petition.

(2) The Gram Panchayat of village Loolwai filed an application under sections 4 and 5 of the Act for the ejection of Kaka

Kaka Singh v. Commissioner, Ferozepore Division, Ferozepore
and others (S. S. Kang, J.)

Singh, petitioner, from 10 *marlas* of land out of Khasra No. 538, measuring 4 *Kanals* 10 *marlas* situate in village Loolwai and belonging to it. It was alleged in the application that Kaka Singh was in unauthorised occupation of the land, in dispute, which was *shamilat deh* and had vested in the Gram Panchayat. In reply to the notice issued by the Collector, Kaka Singh filed a written statement and pleaded *inter alia* that the application was not maintainable. The land, in dispute, did not fall within the definition of the 'public premises', as defined in the Act. The panchayat was estopped from filing the application, because a previous suit filed by it had been dismissed by the civil Court on August 18, 1980. The land, in question, was not owned by the panchayat. It had been allotted to one Lachhman Singh *alias* Lachhman Dass for the purpose of *abadi* and *roori* (manure pit) at the time of consolidation of holdings in the village. Kaka Singh had purchased this land from the above-mentioned Lachhman Dass on 11th December, 1984. It adjoins his house and he had raised a compound wall thereon. He had also constructed a bath-room and prepared mangers for the cattle.

(3) The Gram Panchayat produced the *jamabandi* for the year 1975-76 in respect of Khasra No. 536. According to this record Khasra No. 536, measuring 4 *Kanals* 10 *marlas* was mutated in the name of the Gram Panchayat,—*vide* Mutation No. 1689. It was *shamilat deh*. The Collector did not accept the evidence led by Kaka Singh that he had purchased the land, in dispute, from Lachhman Singh *alias* Lachhman Dass on 11th December, 1964, *inter alia* on the ground that there was no evidence to conclude that Lachhman Dass *alias* Lachhman Singh was the owner of the land in dispute. The sale deed produced by Kaka Singh, petitioner, evidence the transfer of this land for Rs. 270 was not admissible in evidence because it was not a registered document and related to the transfer of the moveable property, worth Rs. 100. Lachhman Dass above-mentioned had been allotted only a plot of 6 *marlas*. It did not bear Khasra No. 536 and in fact was a different piece of land. The Collector held that Kaka Singh, petitioner, was in an unauthorised occupation of the land and he, therefore, ordered his eviction.

(4) Dissatisfied with the orders of the Collector, Kaka Singh filed an appeal and the same was dismissed by the Commissioner, Ferozepore Division, Ferozepore,—*vide* his order, dated

20th January, 1982. The learned Commissioner came to the conclusion that the land, in dispute, was *shamilat deh*. It belonged to the Gram Panchayat and was 'public premises' as defined by section 2 (e) (i) of the Act. Kaka Singh was in unauthorised occupation thereof. The provisions of the Act were applicable to the land, in dispute. Proceedings under the Act were competent in relation to the land, in dispute. He did not find any merit in the appeal and dismissed the same. Aggrieved the petitioner Kaka Singh filed the present writ petition.

(5) Mr. Ravinder Chopra, the learned counsel for the petitioner, has argued that admittedly the land, in dispute, had been entered in the revenue record as *shamilat deh*. The Punjab Legislature had in 1961 enacted the Regulation Act which is a complete Code with regard to the village common land popularly called *shamilat deh*. An elaborate procedure for the vesting of village common lands in the Gram Panchayat, their management, ejection of unauthorised occupants therefrom, right to transfer and utilization thereof and other cognate provisions has been enacted in this Act. Mr. Chopra has drawn my attention to the various provisions of the Regulation Act. Section 2(g) of the Act gives definition of the '*shamilat deh*'. Section 3 of the Act lays down that this Act shall apply to all lands, which are *shamilat deh*. Section 4 of the Act vests ownership of the *shamilat deh* of the village in the Gram Panchayat. It lays down that any land, which is included in the *shamilat deh* of any village shall vest in a panchayat constituted for such a village. The lands vested in the panchayat, according to section 5 of the Act, shall be utilized for the benefit of the inhabitants of the village. Section 7 of the Act enacted the procedure for putting the panchayat in possession of *shamilat deh* of the village which had come to vest in it. Section 13-B of the Act lays down that the provisions of this Act shall have effect notwithstanding anything to the contrary in any law, or any agreement, instrument, custom or usage, or any decree or order any court or other authority. Rule making power is contained in section 15 of the Act, in exercise whereof the Punjab Village Common Lands (Regulation) Rules, 1964, have been framed. According to rules 20 and 21, the Collector on an application under section 7 of the Act may issue a notice in writing, calling upon the person concerned to show cause why an order to put the panchayat into possession of the land or other immovable property vested in the panchayat should not be made and after recording evidence and holding such enquiry, as may be

Kaka Singh v. Commissioner, Ferozepore Division, Ferozepore
and others (S. S. Kang, J.)

necessary, if he is satisfied that any person is in unauthorised occupation of the land may order the eviction of such person.

(6) The Act received the assent of the President of India on June 29, 1973, and was deemed to have come into force on the 27th day of November, 1959. The Act was framed to provide for the eviction of unauthorised occupants from the 'public premises' and for certain incidental matters. Sub-section (e) of section 2 of the Act defines the 'public premises' to mean any premises belonging to, amongst others, a panchayat and under clause (d) of this section 'premises' means any land, whether used for agricultural or non-agricultural purposes or any building or part of a building. Section 3 of the Act provides that any person who has entered into possession otherwise than under and in pursuance of any allotment, lease or grant shall be deemed to be in unauthorised occupation. Under section 4 of the Act, if the Collector is of the opinion that any person is in unauthorised occupation of public premises situate within his jurisdiction and that he should be evicted, the Collector shall issue a notice in writing calling upon such person to show cause why an order of eviction should not be made. Under section 5 of the Act, if after considering the cause shown by any person in pursuance of a notice under section 4 of the Act and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard the Collector can order the eviction, if satisfied, that such a person is in unauthorised occupation of the public premises. Section 9 of the Act gives the person aggrieved by the order of the Collector the right of appeal. Under section 15 of the Act, the jurisdiction of the court to entertain any suit or proceedings in respect of eviction of any person is barred.

(7) It is patent from a perusal of the provisions of the Regulation Act that it has been enacted to consolidate and amend the law relating to *shamilat deh abadi deh*. It defines the *shamilat* land. It vests the *shamilat* in the panchayat. It provides for regulation, use and occupation of the land vested in the panchayat and ancillary matters. A provision has been made in section 7 of the Regulation Act authorising the Collector to put the panchayat into possession of the *shamilat* land after following the prescribed procedure. Under section 9 of the Regulation Act any income accruing from the use and occupation of the lands vested in the panchayat is to be credited to the panchayat fund. The Collector

has been vested with the power under section 11 of the Regulation Act, for determining the claims that the land has not been vested in the Panchayat. Section 13 of the Regulation Act takes away the jurisdiction of the civil court to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not *shomilat deh* vested in the panchayat or to question the legality of any action taken by the Commissioner or the Collector under the Regulation Act. No doubt section 13-B of the Regulation Act lays down that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any other law but that does not mean that the application of the provision of the Act has been impliedly taken away. As noticed, the Regulation Act deals with number of subjects pertaining to *shamilat* land and *abadi deh*. It does not deal only with eviction of unauthorised persons on the *shamilat deh*. So far as the *shamilat* land is concerned, the Regulation Act can be termed as special Act but so far as the question of eviction is concerned, the Act shall be taken to be special Act, because that Act deals only with the subject of eviction from public premises.

(8) Mr. Chopra has very fairly admitted that the special enactment will exclude the application of general law. The counsel for the petitioner, therefore, was at pains to argue that the Regulation Act is a special Act related not only to the *shamilat deh*, but even the eviction therefrom. This contention cannot be accepted. As noticed earlier, the Regulation Act deals with many subjects. The subject of ejection of unauthorised persons from the public premises has been specially taken care of by the Act. So in that sense that will be the special Act and it will govern the application for eviction of unauthorised persons from the *shamilat* land.

(9) The object and purpose in framing section 13-B of the Regulation Act was to lay down that any action taken or decisions made under the provisions of the Regulation Act shall have effect. For example, the question as to whether a particular piece of land was *shamilat deh* or not if determined by the Collector, in exercise of the powers under the Regulation Act shall be conclusive. However, section 13-B of the Regulation Act does not expressly or by necessary implication lay down that ejection proceedings from *shamilat deh* could not be taken under the provisions of the Act. Any land including the *shamilat* land belonging to the panchayat is public premises in view of clear definition given in section 2 of the Act. Under sections 4 and 5 of the Act persons in unauthorised occupation of *shamilat* land can be evicted therefrom. So, the Gram

Kaka Singh v. Commissioner, Ferozepore Division, Ferozepore
and others (S. S. Kang, J.)

Panchayat was fully justified in filing an application under sections 4 and 5 of the Act for ejection of the petitioner.

(10) Mr. Chopra also contended that *shamilat deh* was not public premises as envisaged by section 2 of the Act. This argument has only to be stated to be rejected. Section 2 of the Act clearly lays down that any land belonging to the Gram Panchayat is public premises. *Shamilat deh* definitely belongs to the Gram Panchayat and so squarely falls within the definition of 'public premises'.

(11) Procedure for eviction from the *shamilat deh* or other panchayat's land under both the Regulation Act and the Act is almost similar. Right to appeal is also the same. Procedure for determination of the dispute is also the same. The petitioner has not been able to show that the procedure for ejection under section 5 of the Act is not in any way less favourable or more harsh to the petitioner. It is not shown that prejudice has been caused to the petitioner by recourse to the proceedings under the Act and not the Regulation Act. To my mind the whole argument is academic. It has been established in due enquiry held by the competent officer that the land, in dispute, belongs to the Gram Panchayat. The petitioner singularly failed to establish that he was the owner of this land. The *jamabandi* for the year 1975-76 depicts the land to be the property of the Gram Panchayat. The petitioner, therefore, was clearly in unauthorised occupation of the land, in dispute, and he has been rightly ordered to be evicted therefrom. His appeal has also been rejected.

In fairness to Mr. Chopra he has relied upon a single Bench decision of this Court reported in *Pritam Singh v. The Collector (B.D.P.O.), Patiala and another* (1) to contend that *shamilat deh* is not public premises. However, this judgment does not say any such thing. All that has been stated is that "Common purposes land" is public premises and is village common lands under the Regulation Act. This observation, however, does not mean that *shamilat* land and village common lands are not public premises.

(12) No other point has been urged.

(13) For the foregoing reasons, I do not find any merit in this petition and the same is dismissed with cost. Counsel fee Rs. 200.

N.K.S.