user in the year 1982. Copy of the Roznamcha Wakayati relied upon by the learned counsel for the petitioners, in fact, shows that after laying pipelines, surface area over the land in respect of which the respondents have acquired right of user reverted back to the land owners. Once, the land has reverted back, then the question of damage to the crops will arise and by virtue of Annexure R.3/5, compensation for damage to such crop has been assessed. If the petitioners are aggrieved against such determination of the amount of compensation for damage to the crops, they are entitled to seek the same from the District Judge. But we do not find that there is any illegality or irregularity in the process of laying of pipelines by the respondents.

(14) Hence, the present writ petition is dismissed.

R.N.R.

Before Hemant Gupta & Jora Singh, JJ.

GURMUKH SINGH AND ANOTHER—*Appellants*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

LPA No, 1322 of 2009

in CWP 12465 OF 2009

8th January, 2009 8.1.2010

Constitution of India, 1950—Art 226—East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948—Sections 18 and 23-A—Punjab Village Common Lands (Regulation) Act, 1961—Section 2(g)—Punjab Village Common Lands (Regulation) Rules, 1964—Rule 3 (2)—State framing schemes for allotment of plots to families of S.C. and living below poverty line—Challenge thereto—Land reserved for common purposes—Such land vests with Panchayat. Since Gram Panchayat is owner of land same can be used for allotting plots in terms of Section 5-A of 1961 Act read with Cl. (xxv) of Sub Rule (2) of Rule 3 of 1964 Rules, providing "residential" as one of purpose of use of shamlat deh land—Appeal dismissed.

Held, that sub-clause (6) was inserted in Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961 by Haryana Act No. 9 of 1992. The land which was reserved for the common purposes of a village under Section 18 of the East Punjab Holding (Consolidation and Prevention of Fragmention) Act, 1948, the management and control whereof vests in the Gram Panchayat under Section 23-A of 1948 Act, were deemed to be Shamlat Deh.

(Para 11)

Further held, that as per jamabandi, Gram Panchayat is reflected to be owner of the suit land and forest department is in possession of the same. Since Gram Panchayat is the owner of the suit land, the same can be used for allotting plots to Schedules Castes and Backward Classes in terms of Section 5-A of the 1961 Act, inserted,—*vide* Haryana Act No. 8 of 2007 read with clause (xxv) of Sub Rule (2) of Rule 3 of the Rules, providing "residential" as one of the purpose of the use of shamlat deh land.

(Para 15)

Vikram Singh, Advocate, *for the appellants*.

HEMANT GUPTA, J.

(1) The challenge in the present Letters Patent Appeal is to the order passed by the learned Single Judge of this Court on 16th November, 2009 whereby a bunch of writ petitions challenging the decision of the State Government communicated on 1st February, 2008, Annexure P-3, framing the Scheme of allotment of 100 sq. yards plots to the families of the Scheduled Castes and to the families living below poverty line, was dismissed.

(2) It is the case of the appellants that while framing a Scheme under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short "the Act"), some part of the land owned by the proprietors, including the appellants herein, was included in the Scheme and reserved for common purposes for the Gram Panchayat like school, cremation ground, dispensary etc. Since the land has been reserved for common purposes by applying cut in the holdings of the proprietors, the State cannot use the same for any other purpose except for common purposes specified in the Scheme. It was pleaded that under

the Act, the ownership continued to vest in the land owners and by impugned action, the property of the appellants have been taken away without payment of compensation. Therefore, such decision is violative of Article 31-A of the Constitution of India.

(3) It may be noticed that consolidation in the villages reserving land for common purposes had taken place in the year 1954 and that there is no challenge to the Scheme reserving land for common purposes. The only challenge is to the policy Annexure P-3 whereby the land reserved for common purposes in the consolidation Scheme is proposed to be allotted to the persons belonging to Scheduled Castes and to the families below poverty line.

(4) The learned Single Judge dismissed the writ petition filed by the appellants along with bunch of other petitions after it was noticed that the Gram Panchayat has passed resolution and sent the list of residents to the State Government for allotment of plots. Learned Advocate General has made a statement before the learned Single Judge that only land of Shamlat Deh as defined in the Punjab Village Common Lands (Regulation) Act, 1961 (for short "1961 Act") shall be utilized for allotment of plots. It also noticed that at least 25% of Shamlat Deh would be reserved for future common needs of the inhabitants of the village.

(5) The learned Single Judge found that the apprehension of the appellants that with the implementation of the Scheme, proprietary rights of the appellants in the common land would be taken away is not tenable as the land which is defined in Shamlat Deh under the 1961 Act alone would be utilized under the Scheme. The court considered Section 5-A of the 1961 Act which empowers the Gram Panchayat to gift, sell exchange and lease, the Shamlat Deh land, to the members of the Scheduled Castes and to the backward class on such terms and conditions, as may be prescribed. The Punjab Village Common Lands (Regulation) Rules, 1964 (for short "the Rules"), also describes the common purpose for which land can be utilized. It includes residential purpose subject to the approval of the State Government. It also held that the land reserved for common purpose vest with the Gram Panchayat in view of sub-clause (6) inserted in Section 2(g) of the 1961 Act by Haryana Act 9 of 1992. Learned Single Judge relied upon judgement of Hon'ble Supreme Court in case reported as

Shish Ram *versus* **State of Haryana (1)** to hold that the land vested in Gram Panchayat can be used for any one or more purposs specified in the Rules and not necessarily the purpose for which the same was reserved in consolidation scheme. With such finding, the writ petition filed by the appellants was dismissed.

(6) Learned counsel for the appellants has vehemently argued that the land reserved for common purposes was out of the land owned by the proprietors such as the appellants. The management of the such land alone vested with Gram Panchayat in view of Section 23-A of the Act. It is contended that the land reserved for a specific common purpose cannot be utilized for another common purpose. It is contended that reservation of land for augmenting the income of the Gram Panchayat in the Scheme, has been found not sustainable in **Bhagat Ram and others** *versus* **State of Punjab (2).** Therefore, allotment of such land to Scheduled Castes and families living below poverty line, is illegal. The appellants are being deprived of their property and that too without payment of any compensation. Therefore, such deprivation of right in the property contravenes Article 31-A of the Constitution of India.

(7) In **Ajit Singh** *versus* **State of Punjab (3)** the Supreme Court was seized of the scope of 2nd Proviso to Article 31-A of the Constitution of India. While considering Rule 16(ii) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (for short "the Rules 1949"), it was held that the land which is reserved for common purposes vests in the proprietary body of estate or estates concerned the management of which shall be done by the Panchayat. It was held that the title of such land vests in the proprietary body and that the management of the land is done by the Panchayat on behalf of the proprietary body. It was held to the following effect :—

> "It will be noticed that the title still vests in the proprietary body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of

(1) AIR 2000 S.C. 2148
(2) AIR 1967 S.C. 927
(3) AIR 1967 S.C. 856

each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate, mentioned above. The proprietors naturally would also share in the benefits along with others.

xx xx xxx

In others words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal, etc, he would not have been able to have them on the fraction of his land reserved for common purposes".

(8) After considering the scheme, it was held that the beneficiary of the modification of rights is not the State, and, therefore, there is no acquisition by the State within the meaning of Article 31-A of the Constitution of India.

(9) Supreme Court in **Bhagat Ram's case** (supra), a judgment delivered on the same day in **Ajit Singh's** case set aside that part of the Scheme by which land reserved solely for income of the Panchayat i.e. 100 Kanals 2 Marlas. It was found to be contrary to second proviso to Article 31-A of the Constitution of India. The scheme was directed to be modified to that extent.

(10) It is not disputed by the appellants that the land was reserved for the common purposes of the village and Gram Panchayat is recorded as owner after applying *pro-rata* cut during consolidation in the year 1954. The relevant extract from the writ petition reads as under :—

"The consolidation of the village took place in the year 1954, *pro rata* cut was imposed upon the land of the proprietors of the village and the land was reserved for the common purposes of the village which ultimately comes in the names of the respondent Gram Panchayat.."

(11) Sub-clause (6) was inserted in Section 2(g) of 1961 Act by Haryana Act No. 9 of 1992. The land which was reserved for the common purposes of a village under Section 18 of the Act, the management and control whereof vests in the Gram Panchayat under Section 23-A of the Act, were deemed to be Shamlat Deh. The legality of such amendment came up for consideration before Full Bench of this court in the Judgment reported

as **Jai Singh** *versus* **State of Haryana (4).** The contention of the writ petitioners was that the land reserved for common purposes has remained unutilized and such Bachat land will vest with the proprietors. The full Bench observed as under :

> "45. The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time. In none of the sections or rules, which have been referred to by us in the earlier part of the judgment, there is even slightest inkling that the scheme envisages only such lands which have been utilized. That apart, in all the relevant sections and the rules, the words mentioned are 'reserved or assigned'. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilized or not.
>
> 47. The contention of learned Advocate General, Haryana that rule 16(ii) dealing with lands reserved or earmarked for common purposes under Section 18(c) would cover all such lands which form part of a scheme to the used for common purposes, shall vest with the State or the Panchayat, as the case may be, has to be accepted.
>
> 48. The lands which, however, might have been contributed by the proprietors on *pro rata* basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the

(4) 2003 (2) PLR 658

proprietors of the village in the same proportion in which they contributed the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Mallkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant difference is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purpose as per the scheme".

(12) In view of the averments reproduced above, the land is proved to the reserved for common purposes. It cannot be said to be Bachat land, in respect of which, the appellants could claim interest in the land. Such land vest with Panchayat, when it is held in Jai Singh's case to the following effect:

"62. In view of the discussion made above, we hold that : ---

(i) sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ;

(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;

(iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership

as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest the Gram Panchayat or the State Government, as the case may be, on the dint of sub-Section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

(iv) All such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilised or not, shall vest with the state Government or the Gram Panchayat, as the case may be even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc.

(13) Therefore, there is no error in the judgment under appeal, when it is held that such land vests with Gram Panchayat being reserved for common purpose during consolidation.

(14) In respect of the argument, that the purpose of common land cannot be changed has been dealt with by Supreme Court in **Shish Ram's case** *(supra)*. It was held that land vesting in Panchayat can be used for any one or more purposes specified in Sub-Rule (2) of Rule 3 of the Rules. The Supreme Court approved the view taken by the Full Bench Judgment of this Court in **Bishamber Dayal** *versus* **State of Haryana and others (5)** and also Division Bench judgment in **Khushi Puri** *vesus* **State of Haryana (6).** It was held.

"5. In Bishamber Dayal's case *(supra)* the Full Bench of the Court had considered and approved the view taken by the Division Bench in Khushi Puri's case. In that regard the Court had held :

"The Act and the Rules empower the Gram Panchayat to convert a portion of the street for any one of 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 (*supra*). It was held that the Gram Panchayat could make use of the

(5) 1986 PLJ 208
(6) 1978 PLJ 78

shamlat 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 appellants that in Bishamber Dayal's case the Full Bench of the High Court had taken a different view than the one which was taken in Khushi Puri's case. 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-Rules (2) or 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 Khushi Puri's case which was upheld by the Full Bench in Bishamber Dayal's case".

(15) As per jamabandi, Annexure P-1, attached with the writ petition, Gram Panchayat is reflected to be the owner of the suit land and forest department is in possession of the same. Since Gram Panchayat is the owner of the suit land, the same can be used for allotting plots to Scheduled Castes and Backward Classes in terms of Section 5-A of the 1961 Act, inserted,— *vide* Haryana Act No. 8 of 2007, read with clause (xxv) of Sub Rule (2) of Rule 3 of the Rules, providing "residential" as one of the purpose of the use of shamlat deh land.

(16) Thus, in view of the above, we do not find that there is any error in the findings recorded by the learned Single Judge which may warrant any interference in intra court jurisdiction.

(17) Dismissed.

R.N.R.