directed to appear in the trial Court for further proceedings according to law on June 6, 1990.

P.C.G.

Before J. V. Gupta, C.J. & R. S. Mongia, J.

STATE OF PUNJAB AND OTHERS,—*Appellants.*

versus

M/S SUBHASH CHANDER,—*Respondent.*

Letters Patent Appeal No. 622 of 1986.

24th August, 1990

Punjab Land Revenue Act, 1887—*Ss.* 31, 32, 33, 41, 42, 44—*Punjab Land Revenue (Special Assessment) Act,* 1955—*Record of rights—Vesting of brick-earth—No specific mention in* Sharait Wajib-ul-arz *in favour of Government—Presumption in favour of landowners—State Government—Whether entitled to charge royalty.*

Held, that in these appeals where there was a record-of-rights earlier to 18th day of November, 1871, as well as a later record of rights after 18th of November, 1871, it will be the later record-of-rights that would prevail and accordingly since there is no specific vesting of brick-earth in the State Government, the brick-earth would vest in the landowners. (Para 15)

Held, that the brick-earth vests in the landowners, the State Government would be entitled to charge revenue under the Punjab Land Revenue (Special Assessment) Act, 1955, but would not be entitled to charge any royalty. (Para 16)

Letter Patent Appeal Under Clause X of the Letter Patent Against the Judgment of Hon'ble Mr. Justice D. V. Sehgal passed in the above noted case on the 18th March, 1986.

H. S. Riar, Sr. D.A.G. Punjab, *for the Appellants.*

H. L. Sibal Sr. Advocate with P. C. Dhiman, Advocate, *for the Respondent.*

JUDGMENT

R. S. Mongia, J.

(1) "This judgment of ours will dispose of L.P.A. No. 516 of 1986 and L.P.As No. 622 to 630 of 1986, which have been filed by

the State of Punjab and L.P.As No. 353 to 361 of 1986 filed by different landowners, against a common judgment of learned Single Judge in C.W.P. No. 894 of 1981, decided on 18th March, 1986, by which 17 writ petitions were decided.

(2) C.W.P. No. 894 of 1981 and most of the connected writ petitions, when earlier pending in this Court, were referred to a Full Bench as there was a conflict between two Division Bench judgments of this Court in *State of Haryana etc.* v. *Mangat Ram, etc.*, 1976 Current Law Journal (Civil) 498, and the *State of Haryana and others* v. *Gram Panchayat, Village Kheri Jamalpur and others,* 1980, Punjab Law Journal 204 as to whether the rival claims of the Government and the landowners over the vesting of brick earth, a minor mineral, must be adjudicated upon only on the basis of the entries in the *Sharait-Wajib-ul-arz* of the revenue estate concerned. The Full Bench,—*vide* its judgment dated 3rd June, 1982 held that the rival claims of the parties over the vesting of the brick earth are not constricted to adjudication only on the basis of entries in the *Sharait-wajib-ul-arz* of the revenue estate and the claim to rebut the presumptions raised in Section 42 of the Punjab Land Revenue Act, 1987 (hereinafter called the Act) by evidence in a Court of law cannot be summarily ousted. Consequently, the writ petitions were dismissed and the petitioners were relegated to the remedy of establishing their claims in appropriate proceedings in a Revenue or Civil Court, if so advised. "The petitioners approached the Supreme Court by means of Special Leave Petitions, which were allowed on 11th April, 1985, and while remanding the cases to this Court, the Supreme Court, *inter alia,* observed as under :—

> "That the order of the High Court under appeal be and is hereby set aside and instead the High Court be and is hereby directed to dispose of the writ petition in accordance with the law after adjudicating upon the question of proper interpretation to be accorded to the relevant entry in Wazib-ul-urz and also after considering the rebuttal evidence that may be required to be led to rebut the presumption under Section 42(2) of the Punjab Land Revenue Act, 1887, the parties herein having agreed before this Court that such evidence shall consist of only documentary evidence and evidence by affidavits and that no oral evidence shall be led."

(3) On remand, those writ petitions as well as some other writ petitions which were filed in this Court after the Full Bench judgment, were heard by a learned Single Judge, who, after allowing the parties, to lead documentary evidence as well as giving them opportunity of filing affidavits, allowed 10 writ petitions, against which L.P.As No. 516 of 1986 and 622 to 630 of 1986, have been filed by the State whereas 9 writ petitions were dismissed, against which the landowners have filed L.P.As. No. 353 to 361 of 1986.

(4) To appreciate the contention of the learned counsel for the rival parties it will be necessary to reproduce Sections 31, 32, 33, 41, 42 and 44 of the Act :—

"*Section* 31 *Record of rights and documents included therein.*—(1) Save as otherwise provided by this Chapter, there shall be record of rights for each State.

(2) The record of rights for an estate shall include the following documents, namely :—

(a) Statements showing, so far as may be practicable—

(i) the persons who are land-owners, tenants or assignees of land revenue, in the estate or who are entitled to receive any of the rents profits or produce of the estate or to occupy land therein;

(ii) the nature and extent of the interest of those persons and the conditions and liabilities attaching thereto,

(iii) the rent. land revenue, rates, cesses or other payments due from and to each of those persons and to the Government.

(b) a statement of customs respecting rights and liabilities in the estate;

(c) a map of the estate; and

(d) such other documents as the Financial Commissioner may, with the previous sanction of the State Government prescribe.

Section 32 *Making of Special revision of record-of-rights.*—(1) When it appears to the Commissioner that a record-of-rights for an estate does not exist, or that the existing record-of-rights, for an estate requires special revision, the Commissioner may by notification direct that a record-of-rights be made or that the record-of-rights be specially revised as the case may be.

(2) The notification may direct that record-of-rights shall be made or specially revised for all or any estate in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of-rights for the estate, but shall not affect any presumption in favour of the Government which has already arisen from any previous record-of-rights.

Section 33 *Annual record.*—(1) The Collector shall cause to be prepared by the Patwari of each estate yearly, or at such other intervals as the Financial Commissioner may prescribe, an edition of the record-of-rights amended in accordance with the provisions of this Chapter.

(2) This edition of the record-of-rights shall be called the annual record for the estate, and shall comprise the statements mentioned in sub-section (2), Clause (a) of Section 31 and such other documents, if any, as the Financial Commissioner may, with the previous sanction of the State Government prescribe.

(3) For the purposes of the preparation of the annual record, the Collector shall cause to be kept up by the Patwari of each estate of register of mutations and such other registers as the Financial Commissioner may prescribe.

Section 41 *Right of the Government in mines and minerals.*—All mines of metal and coal, and all earth oil and gold washings shall be deemed to be property of the Government for the purposes of the State and the State Government shall have all powers necessary for the proper enjoyment of the Government's rights thereto.

Section 42 Presumption as to ownership of forests, quarries and waste lands.—(1) When in any record-of-rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, sponteneous produce or other accessory interest in land belongs to the land-owners, it shall be presumed to belong to the Government.

(2) When in any record-of-rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the land-owners.

(3) The presumption created by sub-section (1) may be rebutted by showing—

(a) from the records or report made by the assessing officer at the time of assessment; or

(b) if the record or report, is silent, then from a comparison between the assessment of villages in which there existed, and the assessment of villages of similar character in which there did not exist any forest or quarry or any such land or interest, that the forest, quarry land or interest was taken into account in the assessment of the land-revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.

Section 44 Presumption in favour of entries in the Records-of-rights and annual records.—An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor."

(5) From the reading of Section 31(a) and (b), it would be evident that *Sharait-Wajib-ul-arz* is included in the record of rights of an estate. We also find that Mr. James Thompson, who was the first Administrator of Punjab, had given directions to the Settlement

Officers who were to prepare record-of-rights and one of the directions was to prepare *Ikrarnamas or Sharait-Wajib-ul-arz* i.e. the Village Administration papers which Mr. Thompson regarded as most important of all the papers for it was intended to show the whole of the constitution of the village. From the above, it is evident that *Ikrarnama* or *Sharait-Wajib-ul-arz* is one of the important document of the record-of-rights.

(6) From the reading of Section 42 of the Act, quoted above, it would be seen that when in any record-of-rights completed before the 18th day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed un-occupied, deserted or waste land sponteneously produced or other accessory interest in the land belongs to landowners, it shall be presumed to belong to the Government. However, this presumption is rebuttable by the landowners as provided under Section 42(3) of the Act. Section 42(2) is in the converse form and provides that when any record of rights completed after 18th November, 1871, it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, but shall be presumed to belong to the landowners. In other words, the presumption is in favour of the landowners, unless in the record-of-right completed after 18th November, 1871, it is expressly provided that the forest, quarry etc. would vest in the Government. This presumption in favour of the landowners is not rebuttable.

(7) We will take up first the Letters Patent Appeals filed by the State Government. It is a conceded position that in these cases, there is no record of rights prior to 18th November, 1871, but there is record of right only after this date. That being so, we are to see whether in the *Sharait-Wajib-ul-arz*, it has been expressly provided under Section 42(2) of the Act. It shall be presumed to be belonging to the landowners and as stated above this presumption is not rebuttable. There is a catina of authorities of this Court, wherein it has been held that unless there is a specific mention to the contrary in the record-of-rights completed after 18th November, 1871, the brick-earth belongs to the landowners. These are *M/s Amar Singh Modi Lal* v. *State of Haryana and others* (1), *Punjab State* v. *Shadi Lal and others* (2), *Punjab State* v. *Jagdish Chander and another* (3), (*M/s Nanak Chand Ghasi Ram* v. *State of Punjab etc.*) (4) and

(1) A.I.R. 1972 Punjab and Haryana 356.
(2) 1985 (1) Land Law Reports 265.
(3) 1983 P.L.R. 695.
(4) R.S.A. 581 of 1983 decided on 3rd November, 1983.

(*Punjab State* v. *M/s Vishkarama and Co. and others*) (5). The *Sharait-Wajib-ul-arz* in all these cases are almost similar. The one in C.W.P. No. 894 of 1981, which was as Annexure R-1 with the written statement, is reproduced below :—

> "In our village there exists no mines of stone or *Kankar* etc. and if in future it is found it shall be the property of the Government. In case any mine of lime, or *Kankar*, cola, or stone etc. appear, it will be the property of the Government.

(8) It would be evident from the above mentioned *Sharait–Wajib-ul-arz* that there is no specific mention that the brick-earth would vest in the Government. In view of sub-section (2) of Section 42 of the Act, the presumption is that it vests in the proprietors of the land. This presumption is not rebuttable under Section 42(3) of the Act.

(9) The learned Senior Deputy Advocate General, Mr. H. S. Riar, appearing on behalf of the appellant State, submitted that the word '*etc*' in the *Sharait-Wajib-ul-arz*, would cover brick earth. We are afraid we cannot agree with the submissions of the learned counsel. Under Section 42(2) of the Act, it has to be specifically provided that such and such mineral would vest in the Government and it has not to be vague otherwise if this word '*etc*' was to include all minerals, then the provisions of Section 42(2) would become redundant. A similar point had arisen in R.F.A. No. 214 of 1972, decided by a Division Bench of this Court on 11th March, 1983, wherein *Wazib-ul-arz* was in the following terms :—

> "At present, but for roads, no other area is held by the Government. If any mines, *Kankar*, etc. may be found or the Government requires any area for any purpose, it may acquire the same on the previous terms and conditions."

(10) After considering the said entry, it was held that according to *Sharait-Wazib-ul-arz*, the brick-earth did not vest in the State. The brick-earth was well known and by no stretch of imagination it could be included in the term 'stone' or '*Kankar*' etc. This was followed by a learned Single Judge in (*M/s Nanak Chand Ghasi Ram* v. *State of Punjab and others*) (6).

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(5) R.S.A. No. 902 of 1973 decided on 16th September, 1982.

(6) R.S.A. No. 581 of 1983 decided on 3rd November, 1983.

(11) Lastly, as far as the above-mentioned appeals are concerned, the learned counsel for the appellants State, submitted that irrespective of the *Sharait-Wazib-ul-arz,* the brick earth is brought on the land of the landowners by river action, and, therefore, in view of the judgment of the Supreme Court in *Bhagwan Dass* v. *State of U.P. and others* (7), the brick earth would vest in the State Government. This very plea was raised by the State before the learned Single Judge, which has been rightly negatived. Firstly, there is no evidence on the record that the brick-earth which is there on the land of the landowners is brought by river action. Otherwise also in *Bhagwan Dass's case* (supra) the matter was not being considered in the light of *Sharait-Wazib-ul-arz* and Section 42(2) of the Act. That being so, *Bhagwan Dass's case* (supra) is of no help to the learned counsel for the State.

(12) For the reasons mentioned above, Letters Patent Appeals Nos 516 of 1986 and 622 to 630 of 1936 filed by the State are hereby dismissed, without there being any order as to costs.

(13) Now coming to the appeals filed by the landowners. In these appeals there was record of rights, which was completed before the 18th day of November, 1871, but another record of rights was prepared after 18th day of November, 1871. There is no dispute on this aspect of the matter. However, in the *Wazib-ul-arz,* which was prepared prior to 18th day of November, 1871, it was silent regarding the vesting of brick-earth in the landowners. In other words, it was not expressly provided that the brick-earth vests in the landowners. Accordingly, a presumption arose in favour of the State Government under Section 42(1) of the Act that the brick-earth would belong to the State Government. Further, in the *Wazib-ul-arz* prepared after November, 1871, it was not expressly provided that the brick-earth would belong to the Government. According to the learned counsel for the appellants that under Section 42(2) of the Act, since in the *Wazib-ul-arz* prepared after 18th day of November, 1871, it was not expressly provided that the brick-earth would belong to the State Government, therefore, the presumption was that it would belong to the landowners and such a presumption is not rebuttal under section 42(3) of the Act. Mr. H. L. Sibal, Senior Advocate, learned counsel for the appellants, argued that the later record of rights should prevail as against the earlier

(7) A.I.R. 1976 S.C. 1393.

record of rights. For this he relied on two judgments, reported as *Ram Dhani and another* v. *L. Nagar Mal and others* (8), and *Sunder Singh* v. *Chhajju Khan* (9). Further, the learned counsel drew our attention to Section 44 of the Act to lay stress on the argument that the entry made in the record of rights in accordance with law for the time being in force or in the annual record in accordance with the provisions of Chapter IV (which starts from section 51 of the Act) shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted. He cited *Durga (Decd.) and others* v. *Milkhi Ram and others*, 1969 Rev. Law Reporter 122, a judgment of the Supreme Court, that the later entry in the *Wajib-ul-arz* should prevail unless the contrary was proved. Since, according to the learned counsel, the later *Wajib-ul-arz* completed after November, 1871, did not specifically mention that the brick-earth would vest in the State Government, the only presumption that could be raised under Section 42(2) of the Act was that the brick-earth vested in the landowners.

(14) Mr. H. S. Riar, learned Senior Deputy Advocate General Punjab (now Additional Advocate General), however, submitted on behalf of the State that under section 32(3) of the Act whenever there was special revision of the record of rights that would not affect any presumption in favour of the Government which has already arisen from any previous record of rights. The argument is that as there was a presumption in favour of the State Government which had arisen because of the record of rights completed prior to 18th of November, 1871, in which it was not specifically mentioned that the brick-earth would vest in the landowners, that presumption would continue even though in the *Wajib-ul-arz* made after 18th November, 1871, it was not specifically provided that the brick-earth would vest in the State Government. On the first reaction this argument seems very plausible, but going little deeper into the matter, we find that there is no force in this argument.

(15) There is nothing on the record to show that the record of rights, including the *Wajib-ul-arz*, which was made after 18th November, 1871, was the one which was prepared under Section 32 of the Act. Section 32(1) of the Act requires a Commissioner to issue a notification directing that a record-of-rights be made or that record-of-rights be specially revised. That being the position, the

(8) 1941 (Vol. 194) Indian Cases 755.

(9) 1934 (Vol. 151) Indian Cases 407.

question of invocation of section 32(3) of the Act by the State Government does not arise. Moreover, we find that Section 42 is a section specifically dealing with the presumption of the vesting of ownership of forests, quarries and waste land. This section provides as to how the presumptions are raised and to what extent these are rebuttal. To our mind, since this section 42 as a special provision dealing with the ownership of forests, quarries etc., the presumption raised thereunder would not be covered by Section 32(3) of the Act. Section 44 of the Act also indicates that an entry made in record-of-rights in accordance with law for the time being enforce shall be presumed to be correct until the contrary is proved. Since by virtue of the latest entry in the *Wajib-ul-arz* prepared after 18th day of November, 1871, the presumption is in favour of the landlowners, that will be taken to be correct till a contrary is proved. For the view we are taking, we hold that in these appeals where there was a record-of-rights earlier to 18th day of November, 1871, as well as a later record of rights after 18th of November, 1871, it will be the later record-of-rights that would prevail and accordingly since there is no specific vesting of brick-earth in the State Government, the brick-earth would vest in the landowners.

(16) Mr. H. L. Sibal, Senior Advocate, learned counsel for the appellants brought to our notice that by the Punjab Land Revenue (Special Assessment) Act, 1955, which says that with effect from the Kharif harvest, 1955 in the State of Punjab and notwithstanding anything to the contrary contained in the Land Revenue Act, the Assistant Collector 1st Grade, shall assess the rates specified in the schedule appended thereto, and in a case of the land being put to use other than non-agricultural purposes like quarry etc., the rate would be much higher. The learned counsel, on the basis of the provisions of the Punjab Act, stressed that since they were being asked to pay revenue on the basis that the land was not being put to agricultural use it went to show that the minor-minerals vested in the landowners and not the State Government. We are afraid that this argument has no force. Firstly, no notice of the State Government has been put on the record or any assessment order by which it could be said that the State Government is taking as if the minor-mineral i.e. brick-earth vested in the landowners. However, as we are holding that the brick-earth vests in the landowners, the State Government would be entitled to charge revenue under the Punjab Land Revenue (Special Assessment) Act, 1955, but would not be entitled to charge any royalty.

(17) For these reasons, we allow the appeals of the land-owners i.e. L.P.As. No. 353 to 361 of 1986 and reverse the judgment of the learned Single Judge to that extent. There will be no order as to costs.

P.C.G.

Before G. R. Majithia, J.

THE ADMINISTRATOR, BHIWANI MUNICIPALITY, BHIWANI, —*Appellant.*

versus

PRABHUDAYAL HIMMATSINGHKA AND OTHERS,—*Respondents.*

Regular Second Appeal No. 1536 *of* 1978.

4th September, 1990.

Punjab Municipal Act, 1911—*S.* 62—*General Clauses Act* (X *of* 1887)—*S.* 10—*Imposition of increase of surcharge tax on octroi duty—Objections under Section* 62(3) *and consideration thereof by the Municipal Committee is mandatory—Non-consideration of objections renders notification invalid—Limitation for filing objections saved by Section* 10 *of the General Clauses Act.*

Held, (following *Raza Buland Sugar Co. Ltd., Rampur* v. *The Municipal Board, Rampur,* A.I.R. 1965 Supreme Court 895), that hearing of objections on merits by the Municipal Committee is mandatory because it lie at the very root of the exercise of power. By imposing this levy (enhanced surcharge tax on octroi duty) the defendant has acted in violation of Section 62(3) of the Act for the reason that the objections made by the plaintiffs were not considered and were turned down in a wrongful manner as having been made after the prescribed period of limitation. In fact, these were filed in time and ought to have been considered before finally settling the proposal. Since there has been violation of mandatory provision of the statute by the defendant-Committee, the final proposal submitted by the Committee was suffering from a serious infirmity, on the basis of which no action could be taken. The issuance of the notification under sub-section (10) of Section 62 of the Act by the State Government will not rectify the patent illegality in the proposal submitted by the Municipal Committee under sub-section (6) of Section 62 of the Act. The consideration of the objection submitted under sub-section (3) of Section 62 of the Act was mandatory before the Committee could finally settle the proposal under sub-section (6) of Section 62. The impugned notification is, thus, illegal. (Para 11)