

(c) of the Act, whereby the provisions of the Act had been made applicable to the Local Bodies and it was contended that issuance of such a notification by the Central Government was indicative of the fact that the establishments like Local Bodies were covered by section 1(3)(c) of the Act and not by section 1(3)(b) of the Act, otherwise there would have been no necessity of issuing such a notification.

(4) In our opinion, there is no merit in this contention. Perusal of section 1(3) (b) of the Act would show that the Act was to apply to such establishments as were covered by any law relating to establishment and applicable in a given State. Question arises as to what was to happen to an establishment which was not covered by any such law. Such establishments were to fall in section 1(3) (c) and the Act was to become applicable only if a notification was to be issued by the Central Government as envisaged by section 1(3) (c) of the Act. So a notification in question under section 1(3) (c) of the Act would not conclusively indicate that such establishments as are being now covered could not have been covered already by the provision of section 1(3) (b) of the Act.

(5) For the reasons, aforementioned, we hold that all such municipal employees in Haryana as retired after the enforcement of the Act are entitled to payment of gratuity in accordance with the provisions of the Act.

(6) We, therefore, allow these petitions (Civil Writ Petitions Nos. 427 of 1987 and 5450, 6064 and 6663 of 1986) in limine and direct the respondents to pay to the petitioners gratuity within three months from today with 12 per cent interest from the date it became due upto the date of the payment.

R. N. R.

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*Before D. S. Tewatia and S. S. Sodhi, JJ.*

BALJINDER KAUR,—Appellant.

*versus*

GURDAS RAM AND ANOTHER,—Respondents.

*Regular Second Appeal No. 2630 of 1983.*

August 26, 1987.

*Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 13—Suit for permanent injunction in civil court—Allegation of enforcement on public street—Defendant denying the*

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*factum of public street—Gram Panchayat not party to the suit—Jurisdiction of Civil Court to try such a suit.*

Held, that in a dispute between the two strangers before the Civil Court in regard to village street (public street) bar of jurisdiction of civil court cannot be pleaded on the strength of Section 13 of the Punjab Village Common Land (Regulation) Act, 1961. Whether the land is or is not a public street a finding regarding the owner of the land cannot be avoided, even when the suit is for a mere permanent injunction. However, qua the Gram Panchayat, which is not a party to the suit, the declaration that a land is or is not a street is irrelevant, because such a declaration is not binding on the Gram Panchayat. It would always be open to Gram Panchayat to approach the Collector with the allegation that not withstanding what the civil court has pronounced the land, in fact, is a public street and as *shamilat deh* and has been encroached by the respondent and have the obstruction removed, if the Collector on the basis of material adduced before him was to find that the land in question was a public street.

(Paras 9 and 11)

*Regular Second Appeal from the order of the Court of Shri M. S. Luna, Additional District Judge, Hoshiarpur dated 23rd September, 1983 reversing that of Shri S. C. Marwaha, Sub Judge, 1st Class, Dasuya dated 4th November, 1982 accepting the appeal setting aside the decree and judgment of the learned lower Court and dismissing the suit of the plaintiff-respondents and also leaving the parties to bear their own costs.*

R. K. Joshi, Advocate and Shashi Sharma, Advocate, for the Appellant.

M. L. Sarin, Senior Advocate (H. S. Grewal, and Miss Ritu Bahri, Advocates with him), for the Respondents.

#### JUDGMENT

**D. S. Tewatia, J.**

(1) Regular Second Appeal No. 2630 of 1983 (*Baljinder Kaur v. Gurdas Ram*) came up for hearing in the first instance before Goyal, J., who referred the same for decision by a larger Bench, as he appeared to take a view contrary to the one taken by P. C. Jain, Acting Chief Justice (as he then was) in regard to the question as to whether the mere mention of the word 'street' or 'public street' in the plaint in a suit where the plaintiff seeks permanent injunction restraining another person from creating obstruction or encroaching upon the said street through which the plaintiff had

claimed right of passage, constituted the plea that the land was *shamilat deh* in terms of section 2(g) (4) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act'), which had been used by the plaintiff and other villagers as a passage and the defendant sought to encroach thereupon or create an obstruction. The other appeal (R.S.A. No. 888 of 1976—*Charan Singh and others v. Ishar Singh and others*) came up before Pritpal Singh, J. He permitted to be raised for the first time a plea challenging the jurisdiction of the Civil Court on the ground that the same stood barred in view of the provisions of section 13 of the Act and in the wake of earlier reference by Goyal, J., also referred the said appeal to a larger Bench. That is how these two regular second appeals are before us and are being dealt with together.

2. In R.S.A. No. 2630 of 1983 an issue to the jurisdiction of the Civil Court was framed. The plea raised on behalf of the defendant was that the village street in question was not a street. It was the exclusive property of the defendant. In the alternative it was pleaded that since in terms of section 2(g) (4) of the Act all village streets form part of *shamilat deh* and section 13 of the Act creates a bar to the entertainment of any suit on the part of the Civil Court, which involves adjudication of a question as to whether the given land is or is not a *shamilat deh*. So the Civil Court is barred from entertaining the suit.

The first appellate Court held that the suit involved adjudication of the question as to whether the land in dispute was or was not *shamilat deh* and, therefore, Civil Court's jurisdiction was barred in view of the provisions of section 13-A of the Act and dismissed the suit, which led to the filing of the present appeal, in which primarily, as the admitting order would show, the question raised was that the Court below instead of dismissing the suit, should have returned the plaint to the plaintiff to be presented to the Court or Authority competent to take cognizance of the matter and grant the requisite relief to the plaintiffs. When the matter came up for hearing before the learned Single Judge, reference was made to the decision in *Nand Lal v. Mst. Chhottee*, (1) by the appellant's counsel to show that no question regarding adjudication of the fact as to whether the land was or was not *shamilat*

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(1) 1983 P.L.J. 459.

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*deh*, arose from the pleading of the plaintiff where the plaintiff had merely mentioned that the defendant caused the alleged obstruction in the village street, through which he and other villagers had a right of passage. An assertion of such a fact in *Nand Lal's case* (supra) was held by P. C. Jain, J. (as he then was) as not to be raising any question regarding the determination of the fact as to whether the suit land was or not *shamilat deh* and the correctness of this decision was doubted by Goyal, J., as already observed, and he referred the matter to a larger Bench.

3. The facts in *Nand Lal's case* were that the plaintiff and the defendant enjoyed common passage in-between their houses. That passage led to the village pond and ended there. The houses of many other persons also opened in that passage and the defendant had sought to obstruct the same by raising a wall, thereby blocking the passage. The plaintiff sought a declaration that the plaintiff had a right of passage through the street in question and also sought a decree for mandatory injunction directing the defendant to remove the obstruction. The case finally reached the High Court where permission was given to raise the plea that the jurisdiction of the Civil Court was barred in view of the provisions of section 1/3 of the Act. The learned Judge repelled the plea raised on behalf of the defendant-respondent by observing that "A" bare reading of the aforesaid section would show that the jurisdiction of the Civil Court has been barred to entertain or adjudicate upon any question whether any land or other immovable property is or is not *shamilat deh* or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act. A bare perusal of the pleadings would show that none of these questions arise for decision in the instant case. Here the defendant is not allowing the plaintiff to use the passage by blocking the same. The defendant has claimed his ownership in the land. He has not pleaded that the passage vests in the Gram Panchayat. No question regarding the vesting or non-vesting of the land in the Gram Panchayat requires determination in the case. Even no question regarding the nature of the land, i.e., whether the land is or is not *Shamilat deh*, arises on the pleadings of the parties.

4. Before proceeding further with the consideration of the rival contentions, it would be appropriate at this stage to notice the relevant provisions of section 13 of the Act, which are in the

following terms :—

“13. *Bar of jurisdiction* :—

No civil court shall have jurisdiction :—

(a) to entertain or adjudicate upon any question whether :—

(i) any land or other immoveable property is or is not *shamilat deh*.

(ii) x x x

5. The question that really overtakes the question that had been referred to the decision of the larger Bench by Goyal, J. is another question, which is :

“As to whether in a suit to which Gram Panchayat is not a party, can a defendant on the basis of the pleadings successfully raise a question to the jurisdiction of the Civil Court on the strength of section 13 of the Act, where the plaintiff merely seeks to restrain the defendant from obstructing the passage and for removal of the obstruction ?”

6. A Division Bench of this Court in *Bhagu and others v. Ram Sarup and others*, (2) had an occasion to pronounce upon this aspect of the matter. In the plaint the land in dispute was described as ‘*Gali Sheh-re-am*’. I. S. Tiwana, J. who delivered the opinion for the Bench, after noticing that undisputably streets and lanes within the *Abadi Deh* or *Gora Deh* of a village fall within the definition of “*Shamilat Deh*” as per the provisions of section 2(g) (4) of the Act and vest in the Panchayat, held that the implication of section 13 of the Act is that the jurisdiction of the Civil Court is taken away when the *lis* is between the Gram Panchayat and a private person and it related to any of the questions specified in that section. It appears clear that the section would not be operative when the *lis* or the dispute is between two private individuals. Any finding either way in such a dispute is not to affect the interest or title of the Gram Panchayat to the

land in question. In this regard the following observations of the learned Judge deserve noticing :—

- “4. The answer to the controversy raised is apparently dependent on knowing of the true content and scope of the present section 13 of the Act. In the first flush, the language of the section undoubtedly appears to support the stand of the counsel for the appellants, yet on a deeper consideration we find that the same is untenable.
5. In the light of section 9 of the Code of Civil Procedure, a litigant having a grievance of a civil nature undoubtedly has, independently of any statute, a right to institute a suit in some Court or the other unless its cognizance is either expressly or impliedly barred. Though the proposition of law that in interpreting a statute barring the jurisdiction of the civil court one should not necessarily make an attempt to abridge its operation or cut down or modify its objectives with a view to give effect to the rule of interpretation that the ousting of jurisdiction should not be readily inferred is well settled, yet equally well established is the principle that a statute ousting the jurisdiction of a civil Court must be strictly construed (See A.I.R. 1966 S.C. 1718). It is in the light of these principles that the scope and content of section 13 of the Act needs to be examined. The need for the substitution of the present section,—*vide* Haryana Amending Act No. 2 of 1981 is stated in the following words in the Statement of Objects and Reasons :—

“In many places the *Shamilat Deh* has been occupied unlawfully by unscrupulous persons, acting sometimes in collusion with the representative of the Gram Panchayats. To combat this evil certain amendments were made to the Punjab Village Common Lands (Regulation) Act, 1961, in 1974. However, when tested in the High Court of Punjab and Haryana, certain of these provisions were struck down,—*vide* judgment of the Court. The present Bill seeks to remedy the infirmities found by the High Court. It also proposes to make some incidental changes to the Punjab Village Common Lands (Regulation) Act,

1961, to make some of its provisions more explicit so as to ensure more effective implementation.”

This amendment was apparently brought about with a view to save and protect Panchayat land from collusive decrees or to prevent as usurpation of “*Shamilat*” lands. Further, in order to achieve this object rather quickly or in the shortest possible time, the Legislature thought it proper to exclude the jurisdiction of the Civil Court to try questions stated in clauses (a) and (b) of this section. What sort of adjudication is envisaged by this section is also well-indicated by the next following Section 13-A. It is clearly discernible from a combined reading of these two sections that the jurisdiction of the Civil Court is excluded from entertaining or adjudicating upon the questions stated in Section 13 when the *lis* is between a private person and the Panchayat. In other words, it is only when the contest is between the Panchayat and a private person for the determination or adjudication of the questions specified in clauses (a) and (b) of Section 13 that the jurisdiction of the Civil Court is barred. It is obvious that the right, title or claim of a private person to a particular land or immovable property vis-a-vis the Gram Panchayat cannot factually and effectually be settled in the absence of the Panchayat being impleaded as a party to the litigation. Any decree obtained by an individual in his favour, collusively or after a contest, about the properties vesting or deemed to have vested in the Panchayat can never bind the Gram Panchayat in the absence of its being a party to the litigation. The very implication of the word adjudication is to finally determine the rights of the two contestants vis-a-vis the subject-matter of dispute judicially or in a judicial manner. One of the essential traits of “adjudication” is *proprio vigore* binding on and creates rights and obligations between the parties. This can never be done unless the dispute is between the Panchayat and a private individual *qua* the *Shamilat Deh* or any other land or immovable property or any right, title or interest therein and unless the Panchayat in the real party to the litigation. Though the word “entertain” as occurring in the opening part of clause (a) of this section may generally mean “to receive on file or keep on file” yet in the context in which it occurs only means that the Civil Court cannot dispose of the suit or the claim on merits and has to reject it as not maintainable if it relates to any of the questions specified in the section. This is so said by the Supreme Court in *Samarth Transport Company v. The Regional Transport Authority*, A.I.R. 1961 S.C. 93, in the context of Section 68-F of the

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Motor Vehicles Act, 1939 wherein it is laid down that the Regional Transport Authority may by order "refuse to entertain" any application for the renewal of any other permit. So, in a nutshell the whole implication of Section 13 of the Act is that the jurisdiction of the Civil Court is taken away when the lis is between the Gram Panchayat and a private person and it relates to any of the questions specified in this section. It appears clear that the section would not be operative when the lis or the dispute is between two private individuals.

.. .. .  
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In the instant case, it is not the claim of the plaintiff that either the suit property (Plot No. 212) be declared as *Shamilat Deh* or included or excluded from *Shamilat Deh*. All that has been stated by him in the plaint is that the suit land is a "*Gali Sheh-re-aam*" which is only a statement of fact. The denial of this fact by the defendant led to the settlement or determination of the question whether the land in dispute was a *Gali Sheh-re-aam* or a thoroughfare which was being used by the plaintiff as an approach to his house for the last about 30 years. This determination by the trial Court was only ancillary to the prayer or the relief sought by the plaintiff. .. .. "

7. Learned counsel for the defendants, however, argued that the aforesaid judgment had not been approved by their Lordships when a reference to it was made before their Lordships in *Ram Singh and others v. Gram Panchayat Mehal Kalan and others*, (3). That was a case in which the plaintiffs instituted a suit in their representative capacity under Order 1 Rule 8 of the Code of Civil Procedure, seeking a declaration to the effect that were the owners in possession of the suit land along with some others and that the Gram Panchayat, Mehal Kalan, Tehsil Barnala, District Sangrur in the State of Punjab had no sort of right in the suit land and that the suit land had been wrongly shown as belonging to the Panchayat by the entries made in the revenue records which were not binding on the plaintiffs and also sought an injunction restraining the Panchayat from interfering with their possession.

8. As would be seen, that suit was filed against the Gram Panchayat and the question that came up for adjudication was as to whether the land in question was *shamilat deh*. The matter



reached the High Court and the learned Single Judge held that the issue was not triable by the Civil Court. Then the plaintiffs took the matter to the Supreme Court. The Supreme Court sustained the judgment of the High Court and dismissed the appeal. Before their Lordships reference was made to *Bhagu's case* (supra) on behalf of the plaintiffs-appellants in order to justify the maintainability of the suit before the Civil Court. Their Lordships held that the ratio of that judgment was not applicable to the present case. Since the Gram Panchayat, which had been impleaded as a defendant, had raised the plea that the suit land was a part of *Shamilat Deh* and the plaintiffs had no right, title or interest therein, the question had to be decided by the Collector only under section 11 of the Act, as applicable to the State of Punjab (the corresponding provision of the Act as applicable to the State of Haryana being section 13-A).

9. From the above it would be seen that their Lordships while distinguishing the ratio of *Bhagu's case*, impliedly upheld the ratio of that case which was that in a dispute between the two strangers before the Civil Court, in regard to village street (public street), bar of jurisdiction of the Civil Court cannot be pleaded on the strength of section 13 of the Act.

10. Learned counsel for the defendants-respondents, however, sought to argue that where the plaintiff in addition to the relief of permanent injunction also sought a declaration or seeks a declaration to the effect that the land in question is a public street which in other words means that the land in question is a *shamilat deh* in terms of section 2(g) (4) of the Act, it would straightaway involve the adjudication of the question as to whether the land is *shamilat deh* or not, and, therefore, in view of the provisions of section 13 of the Act, the jurisdiction of the Civil Court to entertain the suit is barred.

11. In our view the distinction sought to be drawn by the learned counsel for the respondents between a suit for mere permanent injunction and a suit for a declaration and permanent injunction is not relevant, where the claim made by the plaintiff is that the land is a thoroughfare and he is entitled to pass through it and the defendant be restrained from creating obstruction or remove the obstruction already created and be restrained from doing so in future. The relief sought in such a case is that the defendant be restrained from creating obstruction on the land which is a

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thoroughfare and on which the plaintiff is entitled to pass. Such a relief cannot be granted to him unless it is first held that the land in question is a thoroughfare or not. In other words, whether the land is or is not a public street, a finding regarding the nature of the land cannot be avoided even when the suit is for a mere permanent injunction. However, *qua* the Gram Panchayat, which is not a party to the suit, the declaration that a land is or is not a street is irrelevant, because such a declaration is not binding on the Gram Panchayat as held in *Bhagu's case* (supra). The declaration that it is a public street would inure between the defendant, who endeavoured to encroach upon or had encroached upon it, and the inhabitants including the plaintiff, who by virtue of land being a street (public street) are entitled to pass through it. Even in the face of Civil Court's declaring a given land as being a private property of the defendant and not a public street, it would always be open to the Gram Panchayat to approach the Collector with the allegation that notwithstanding with the Civil Court has pronounced, the land, in fact, is a public street and is *shamilat deh* and has been encroached upon by the respondent, and have the obstruction removed, if the Collector on the basis of the material adduced before him was to find that the land in question was a public street. When a question of title is raised before the Collector, the Collector in terms of section 13-A of the Act is to try the case like a Civil Court and give his finding on the question of title, which would then be binding on the Gram Panchayat.

12. For the reasons afore-mentioned, as already observed, the question as to whether the plaintiff or the defendant had in fact pleaded that the land was or was not *shamilat deh* or whether a mere plea that the land was a public street impliedly amounted to saying that the land was a *shamilat deh*, is not relevant and, therefore, it is not necessary to answer the question raised in the reference order.

13. For the aforesaid reasons, we allow R.S.A. No. 2630 of 1983, set aside the judgment of the Appellate Court and remand the case to the said Court to decide the appeal on merit in the light of our judgment. R.S.A. No. 888 of 1976 is directed to be placed before a Single Judge for decision on merit in the light of this judgment.

No order as to costs.

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S. C. K.