
N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain and S. C. Mital, JJ.

LACHHMAN SINGH,—Appellant.

versus

GULZARI AND OTHERS,—Respondents.

Regular Second Appeal No. 776 of 1974.

November 25, 1983.

Punjab Village Common Lands (Regulation) Act (XVIII of 1961)—Section 2(g) and (h), 3 and 4—Land under a house owned by a non-proprietor within abadi deh—Such land not part of shamilat deh—Ownership in the land—Whether to be deemed to have vested in the non-proprietor on the commencement of the shamilat law.

Held, that the provisions of section 4(1)(b) of the Punjab Village Common Lands (Regulation) Act, 1961 are applicable to land situated within the *abadi deh* (irrespective of the fact that they fall within the definition of *shamilat deh* under section 2(g) of the said Act or not), which is under a house owned by a non-proprietor on or before the commencement of the *shamilat* law as defined in section 2(h) of the said Act. The salient consideration therein is the erection of a house on the land and the factum of its ownership.

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by a non-proprietor. The legislative intent clearly is to give statutory shelter to those non-proprietors who had by their labour erected a shelter over their heads, even though the land on which it stood belonged to the proprietary body or was vested in an individual owner. However, this necessarily had to be prior to the commencement of the *shamilat* law as now defined in the Act by section 2(h).

(Paras 13 and 17).

Ajaib Singh and Kaka Singh vs. The Sub-Divisional Officer and others, 1976 P.L.J. 489.

Raghubir Singh vs. Raja Ram and others, 1965 Current Law Journal 154.

OVERRULED.

(Case referred by a Single Judge Hon'ble Mr. Justice J. V. Gupta to a Division Bench on 10th December, 1982, for the decision of an important question of law involved in this case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice J. V. Gupta again referred the case to a Full Bench on 27th May, 1983. The Full Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain and Hon'ble Mr. Justice S. C. Mital finally decided the case on 25th November, 1983).

Regular Second Appeal from the decree of the court of Shri J. C. Nagpal, Senior Sub-Judge, Sonapat with enhanced Appellate Powers dated the 29th December, 1973 affirming that of Shri H. C. Gupta, Sub-Judge 1st Class, Gohana, dated the 21st day of October, 1972 dismissing the suit of the plaintiff and leaving the parties to bear their own costs.

S. C. Kapoor, Advocate, for the Appellant.

Bhal Singh Malik, Advocate, for the Respondent.

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether the provisions of Section 4(1)(b) of the Punjab Village Common Lands (Regulation) Act, 1961 are applicable to land situated within the *abadi deh* (irrespective of the fact that it falls within the definition of *Shamilat deh* under Section 2(g) of the said Act or not), which is under a house owned by a non-proprietor on or before the commencement of the *Shamilat* law, as defined in

Section 2(h) of the said Act.....is the significant question necessitating this reference to the Full Bench.

2. The facts pertaining to the issue aforesaid may be noticed with relative brevity. Lachhman Singh plaintiff-appellant had brought the suit for possession as an owner averring that way back on the 30th of April, 1935, his father had leased the site to one Giani Teli, a predecessor-in-interest of defendants Nos. 1 to 4 at the rate of Rs. 2 per annum and the said Giani Teli had constructed a house thereon. On the 12th October, 1965, the said Giani Teli sold a part of the site in dispute in favour of respondent No. 5 and delivered his possession to him and thereafter both of them started claiming themselves to be the owners of the whole of the site in dispute. The claim was for a decree of possession of the suit land after removing the construction (malba) thereon.

3. In contesting the suit, the plea of the defendants was that Giani Teli aforesaid, who was the father of defendant No. 1, was the owner in possession of the suit land and had validly sold a part thereof to defendant No. 5. The execution of any rent note or lease deed was denied. It was further pleaded that defendant No. 5 had spent a sum of Rs. 15,000 on the construction of a building on a portion of the suit land sold to him. It was claimed that there had been no partition of the land in the *abadi deh* of village Butana among the proprietors, and Giani Teli aforesaid (and before him even his ancestors) had been occupying the site in dispute as a non-proprietor for a very long time. He thus had become the owner of the site in dispute under his residential house in view of the provisions of section 4(1)(b) of the Punjab Village Common Lands (Regulation) Act, 1961.

4. On the pleadings of the parties the trial Court framed eight issues, the material one being issue No. 6 in the following terms:—

“Whether Giani Teli had become owner of the house under the Village Common Lands (Regulation) Act?”

The trial Court dismissed the suit and its finding on issue No. 6 was that Giani Teli had become the owner of the site in dispute under the provisions of the Punjab Village Common Lands (Regulation) Act. In appeal this finding of the trial Court was maintained. The appellant has come up by way of this Regular Second Appeal.

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5. This appeal originally came up before a learned Single Judge. Before him, it was sought to be argued on behalf of the appellant that section 3(1) of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter called on 1961 Act) controls and limits the somewhat widely couched provisions of section 4(1)(b) and consequently the latter section is either not applicable at all within the *abadi deh* or in any case is attracted only if the same comes within the definition of *shamilat deh* under section 2(g) thereof. Noticing the significance of the question and an apparent conflict of authority within this Court on the point, the matter was directed to be placed before a Division Bench for an authoritative decision. For somewhat similar reasons, the Division Bench has referred the matter for decision by a still larger Bench.

6. Before us, Mr. S. C. Kapoor, the learned counsel for the appellant, argued on section 3(1) literally to contend that the Act could apply only to those lands which were *shamilat deh* as defined in clause (g) of section 2 of the Act. On this premise, it was argued that the threshold test first is—Does the land come within the definition of *shamilat deh* as spelled out in section 2(g)? If it does, then only would the present Act be applicable to it and not otherwise. Consequently, it was argued that here the land was within the *abadi deh* and was in the individual proprietorship of the appellant or his predecessors-in-interest and thus being outside the definition under section 2(g), the provisions of section 4(1) were not at all attracted to the situation. In a nutshell, the argument was that the section 4(1)(b) was subservient to and governed by the primary provision of sub-section (1) of section 3. In support of his stand, the counsel relied heavily on *Raghubir Singh v. Raja Ram and others*, (1) *Tara Chand and another v. The Punjab State and another*, (2) and *Ajaib Singh and Kaka Singh v. The Sub-Divisional Officer, Civil, Kharar and others*, (3).

7. To appraise the aforesaid argument in all its facets, it inevitably becomes necessary to resort to the legislative history of the provisions. It is well settled that the objects and reasons of an Act can be used for the purpose of ascertaining the provisions prevailing at the time the Bill was introduced and the purpose for which it was sponsored. However, it seems unnecessary to delve

(1) 1965 Current Law Journal 154.

(2) 1971 P.L.J. 808.

(3) 1976 P.L.J. 489.

far beyond the statutory codification of the *shamilat* law within the region, beginning first with the Punjab Village Common Lands (Regulation) Act, 1953 (Act No. 1 of 1954) (hereinafter called as the 1953 Act) closely followed by the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter called the 1954 Pepsu Act). Even earlier, it was well recognized that the setting of a body of agricultural artisans such as the village carpenters, blacksmiths, tanners, barbers, washermen etc., was an integral part of the rural economy. Nevertheless, prior to the enactment of the aforesaid statutes, there was contentious litigation with regard to *shamilat* and common lands in village estates. Therein not unoften the proprietary body of the village or the individual landholders were ranged, in somewhat hostility, against the non-proprietors. Apart from individual merits, such cases turned upon the entries in the revenue record of each village estate as also upon the peculiar prevailing customs governing the rights *inter se* of the proprietors as against the non-proprietors. It was to remedy this gravely unsatisfactory state of affairs and, in particular, to provide some modicum of shelter over their heads to the non-proprietors in the village *abadi* that the Legislature was compelled to step in by first enacting the somewhat brief (of 10 sections) Punjab Village Common Lands (Regulation) Act, 1953 (Act No. 1 of 1954). The objects and reasons for the enactment are instructive and deserve notice *in extenso* :—

“When the villages were originally founded it is believed that the *shamlat* was really meant for the use of all the inhabitants of the village. At present the position is that all the *shamlat* is the property of the proprietary body of a village and the rights of non-proprietors are in the shape of grants for certain purposes. Though the non-proprietary classes also presumably settled in villages with the founders thereof and have been rendering essential services to the proprietary body in matters relating to farm operations, they do not enjoy equal rights in the *shamlat* lands and they are not the proprietors of the sites under their houses even in the *abadis*.

It seems that in the course of time conditions to the detriment of Harijans and other similar non-proprietary classes have come into vogue. They feel their position insecure in so far as enjoyment of essential rights in the *shamlat* lands

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is concerned. They should have proprietary rights in the sites of their residential houses. Discontentment over this matter has been expressed by the members of these classes. Government consider that these conditions should no longer exist. It is with a view to giving these classes of residents in villages an opportunity to live with security and self-respect that the proposed legislation is being undertaken. Vide Statement of Objects and Reasons, published in the Punjab Gazette, Extraordinary, dated April 6, 1953."

As a matter of history, it calls for notice that later the Pepsu Village Common Lands (Regulation) Act, 1954, was enforced with effect from March 11, 1955. The said statute was in *pari materia* with the sister statute of Punjab and even the statement of objects and reasons therefor was but a carbon copy of the former. On the 1st of November, 1956, by virtue of States' Reorganisation Act, the States of Punjab and Pepsu were merged but the two sister statutes continued to remain in force in the areas of erstwhile Punjab and Pepsu respectively. Meanwhile, the Punjab Village Common Lands (Regulation) Amendment Bill, 1956 was passed by the State Legislature of the erstwhile Punjab but was not assented to by the President of India. It would appear that certain defects and omissions were experienced from time to time during the administration of the *shamilat* laws and further the Legislature desired to adopt a uniform legislation for the whole of the new State of Punjab, incorporating the provisions of the earlier Punjab and Pepsu statutes. For these reasons, the present Punjab Village Common Lands (Regulation) Act, 1961, was brought on the statute book and, *inter alia*, the statement of objects and reasons therefor stated as under :—

"A comprehensive definition of 'Shamilat deh' with retrospective effect has been provided. The Bill also seeks to utilize the *Shamilat* area in excess of 25 per cent of the total area of a village for the settlement of tenants ejected or to be ejected and for increasing the size of small holdings there, to make arrears of rent of *shamilat* lands recoverable as arrears of Land Revenue; and to authorise summary removal of encroachments on *shamilat* lands."

8. From the above, it would clearly emerge that prior to the enactment of *shamilat* laws in 1954, the existing law was found to be in an extremely unsatisfactory state. There existed no definition of *shamilat deh* nor any uniform law applicable thereto. During the course of time, the rights of the non-proprietors vis-a-vis the proprietary body or the individual landholders had come to be completely eroded to their detriment. *Inter alia*, it was the situation that despite the services rendered by the non-proprietary classes, they were not even proprietors of the sites under their houses within the *abadi deh* and thus felt totally insecure even with regard to a shelter over their heads. On this specific point, the rationale for the remedies sought to be provided by the statute was that an umbrella of shelter and protection should exist for non-proprietors who, from times immemorial, had rendered services to the proprietary body for which they had been extended the concession or the right of erecting houses on the common lands within the *abadi deh*. The particular remedy provided by the Legislature was to recognize in terms this long standing possession and to vesting of such lands under the houses of non-proprietors in them.

9. The stage is now set for adverting to the particular provisions of the 1961 Act which fall for construction. Thereby, *shamilat* law for the purpose of the Act was precisely defined as under :—

“2(h)—‘*shamilat* law’ means—

- (i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953; or
- (ii) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in the State of Patiala and East Punjab States Union, the Pepsu Village Common Lands (Regulation) Act, 1954.”

10. Again, in order to appreciate truly the import of section 4(1)(b) of the 1961 Act, it is instructive and indeed necessary to

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juxtapose it against section 3(b) of the 1953 Act (Punjab Act No. 1 of 1954) :—

1953 Act	1961 Act
<p>3. Vesting of rights in Panchayats and in non-proprietors—Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land—</p> <p>(a) * * * *</p> <p>(b) which is situated in the <i>Abadi Deh</i> of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.</p>	<p>4. Vesting of rights in Panchayats & non-proprietors.</p> <p>(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land—</p> <p>(a) * * * *</p> <p>(b) which is situated within or outside the <i>abadi deh</i> of a village and which is under the house owned by a non-proprietor, shall, on the commencement of the <i>Shamilat</i> law, be deemed to have been vested in such non-proprietor.</p>

11. At the very out-set, it calls for pointing notice that even in the 1953 Act there was no definition of *shamilat deh*. It was only by virtue of section 2(g) of the 1961 Act that a precise and comprehensive definition of the same was enacted. Equally, in the 1953—Act, there was no provision equivalent to the present section 3 of the 1961 Act. It is obvious that certain provisions had to be introduced in the 1961 Act in view of the fact that it was to substitute the earlier *shamilt* law which was to be repealed on its enforcement.

12. Now before construing the afore-quoted provisions it deserves highlighting that the vesting of the land under the houses

owned by non-proprietors in them, is directly related to the cut-off date of January 9, 1954 under the 1953 Punjab Act. Both clauses (a) and (b) of Section 4 fixed the outer limit to the commencement of the *shamilat* law as defined in Section 2(h). As has already been noticed, the very rationale of the statute was the recognition on that particular date of the long standing fact of non-proprietors having been earlier given sites for housing them in lieu of services rendered to the proprietary body, which the legislature wanted to protect and to vest the land under such houses in them. However, it is not as if even after this cut off date also the proprietors of the land would continue to be divested of ownership by any or every non-proprietor and trespasser who may choose to erect a house unauthorisedly on another's land. The provisions of Section 4(1)(a) and (b) of the 1961 Act have consequently to be construed within this basic parameter of the cut of date which is the commencement of the *shamilat* law.

13. Now viewed in the aforesaid perspective of the definition of *shamilat* law under section 2(h) and the categorical cut off date of 9th. January, 1954, the language of section 4(1)(b) is itself plain. The salient consideration therein is the erection of a house on the land and the factum of its ownership by a non-proprietor. The legislative intent clearly is to give statutory shelter to those non-proprietors who had by their labour erected a shelter over their heads, even though the land on which it stood belonging to the proprietary body or was vested in an individual owner. However, this necessarily had to be prior to the commencement of the *shamilat* law as now defined in the Act by section 2(h).

14. It remains to advert to the decisions relied upon by the learned counsel for the applicant. In *Tara Chand's case* (supra), which was a Regular Second Appeal of 1961, the matter was merely remanded back to the trial Court for fresh determination because of the change of law brought by the enactment of the 1961 Act during the pendency of the second appeal in the High Court. The case turned primarily on this ground and the passing observation in paragraph 4 is neither the ratio nor any warrant for the proposition that Section 4(1)(b) of the 1961 Act is not applicable to lands within the *abadi deh*. Indeed, not the remotest reference to this specific section was made by the Division Bench at all. The said case is thus distinguishable.

15. Again, a reference to the Single Bench judgment in *Ajajb Singh and Kaka Singh's case* (supra) would show that the primary

question therein was with regard to the vesting in the Panchayat of land located within the *abadi deh* under clause (a) of Section 4(1) of the 1961 Act. It was not at all a case of the vesting of land under the house of a non-proprietor under clause (b) thereof. The latter provision did not hence come in for construction at all. A passing observation in paragraph-5 of the report was, however, made that *abadi deh* land does not vest either in the Panchayat or in the non-proprietors. As regards the land under the house of a non-proprietor, this observation was in the nature of an *obiter dictum*. But in case it is to be read as a warrant for the proposition that clause (b) of Section 4(1) is not applicable at all to land within the *abadi deh*, then with respect, it is not good law for the reasons recorded earlier and is hereby overruled.

16. As already noticed firm reliance on behalf of the appellant was primarily on the observations of the learned Single Judge in *Raghubir Singh's case* (supra). The observations therein undoubtedly lend support to the stand taken on behalf of the appellant. However, it is plain that the matter was not adequately canvassed before the Bench. The legislative history of the provision and the contextual construction which it requires was not even remotely adverted to. The factum of the cut-off date being the commencement of the *shamilat* law in 1954 was not noticed nor was noticed the rationale of the recognition of long standing consensual possession of non-proprietors over the lands on which they had erected their houses to which, indeed, the legislature intended to grant statutory protection. With the greatest deference and humility, I am of the view that the observations in this context in *Raghubir Singh's case* (supra) do not lay down the law correctly and I hereby overrule the same.

17. To finally conclude the answer to the question posed at the out-set is rendered in the affirmative. It is held that the provisions of Section 4(1)(b) of the Act are applicable to land situated within the *abadi deh* (irrespective of the fact that they fall within the definition of *shamilat deh* under Section 2(g) of the said Act or not), which is under a house owned by a non-proprietor on or before the commencement of the *shamilat* law, as defined in Section 2(h) of the said Act.

18. Now, once it is held as above, then the learned counsel for the appellant was himself very fair in conceding that the matter would be concluded against him and no other point survived for

determination. The appeal is consequently dismissed and the judgments of the courts below are hereby affirmed. In view of the intricacy of the issue involved, we leave the parties to bear their own costs.

Prem Chand Jain, J.—I agree.

S. C. Mital, J.—I agree.

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