

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-4679-2004

Date of decision : 26.07.2022

Om Parkash and others

.....Petitioners

Versus

State of Haryana and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Sushil Kumar Sharma, Advocate, for
Mr. M.L. Sharma, Advocate,
for the petitioners.

Mr. Deepak Balyan, Addl. Advocate General, Haryana.

RAVI SHANKER JHA, CHIEF JUSTICE (Oral)

Learned counsel for the parties very fairly concede that the Supreme Court, before whom the matter was pending in Civil Appeal No. 6990 of 2014 (The State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others), while passing order on 07.04.2022 has dismissed the writ petition in the following terms :-

*“94. We do not find any merit in the argument that since the State has not challenged the orders in the writ petition filed by the appellant, therefore, the State cannot challenge the judgment of Full Bench in **Suraj Bhan & Ors. v. State of Haryana & Anr. (2017) 2 Punjab Law Reporter 605**. The State is in appeal against the entire judgment rendered by the Full Bench in **Suraj Bhan**. The provisions amending the*

1994 Corporation Act are pari materia with the provisions amending the 1973 Municipal Act. Therefore, the argument that the State has not filed an appeal against the order passed in the writ petition does not merit any consideration since the entire judgment is in appeal.

95. *The fact is that the Full Bench of the Punjab and Haryana High Court in **Rajender Parshad & Ors. v. State of Haryana & Ors.** AIR 1980 P&H 37 has struck down the Haryana Municipal Common Lands (Regulation) Act, 1974 as unconstitutional inter alia on the ground that such Act is not a measure of agrarian reform. The infirmities pointed out by the High Court in **Rajender Parshad** are very well applicable to the amending Statutes amending the 1973 Municipal Act and the 1994 Corporation Act. Therefore, we have no hesitation to affirm the findings recorded by the High Court that the amending statutes amending the 1973 Municipal Act and the 1994 Corporation Act are also unconstitutional as they are not part of the agrarian reforms.*

96. *However, we find merit in the argument raised by Mr.Pradeep Kant that if whole or part of the Panchayat area comes within the municipal limits, and the Panchayat ceases to exist, land would vest with the municipality and will not revert back to the proprietors. The relevant extract from the Haryana Panchayati Raj Act, 1994 reads as under:*

“7. Demarcation of sabha area – (1) The Government may, by notification, declare any village or a part of a village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas:

Provided that Government may in exceptional cases, by reasons to be recorded in writing, relax the limit of population of 500:

Provided further that neither the whole nor any part of a-

- (a) municipality constituted under the Haryana Municipal Act, 1973;*
- (b) cantonment;*

shall be included in a sabha area unless the majority of voters in any municipality desire the establishment of a Gram Panchayat in which case the assets and liabilities, if any, of the municipality shall vest in the Gram Panchayat and the municipality shall cease to exist.

(2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.

(3) Government may, by notification, include any area in or exclude any area from the sabha area.

(4) If the whole of the sabha area is included in a municipality or a cantonment, the Gram Panchayat shall cease to exist and the assets and liabilities of it shall vest in the municipality or cantonment, as the case may be.

(5) If the whole of the sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971, the Gram Panchayat shall cease to exist and its assets and liabilities shall vest in the Faridabad Complex.”

97. Section 2-A of the 1973 Municipal Act deals with classification and constitution of municipalities such as Municipal Committee for a transitional area with population of not more than fifty thousand, Municipal Council for a smaller urban area with population of more than fifty thousand but less than three lacs and the Municipal Corporation for a larger urban area with population of three lacs or more. Section 3 empowers the State Government to propose any local area to be a municipality

under the 1973 Municipal Act. Section 4 empowers the State Government to alter the limits of municipality whereas Section 5 empowers the State Government to exclude any area from the municipality. Relevant provisions from the 1973 Municipal Act read thus:

“3. Procedure for declaring municipality.—(1) The State Government may, by notification, propose any local area to be a municipality under this Act.

(2) Every such notification shall define the limits of the local area to which it relates.

xx xx xx

(10) A Committee shall come into existence at such time as the State Government may, by notification, appoint in this behalf.

4. Notification of intention to alter limits of municipality. —(1) The State Government may, by notification, and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification.

(2) xx xx xx

(4) When any local area has been included in a municipality under sub-section (3), this Act, and, except as the State Government may, by notification, direct otherwise, all notifications, rules; bye-laws, order, directions and powers issued made, or conferred under this Act and in force throughout whole of the municipality at the time, shall apply to such area.

5. Notification of intention to exclude local area from municipally.—The State Government may, by notification, and in such other manner as it may deem fit, declare its intention to exclude from a municipality any local area comprised therein and defined in the notification.”

98. *In the Notified Area Committee, an argument was raised that the land once vested with the Panchayat under the Punjab Act in terms of Section 3(a) of the said Act would be mutated in favor of the appellant after the enactment of the 1974 Act. As the said Act was declared void, it stands revested with the proprietors. Such argument was negated by this Court, though the High Court had accepted such argument. This Court held as under:*

3. *There being no dispute as to the vesting of the land pursuant to 1953 Act in the Gram Panchayat concerned, all that we are required to decide is whether the stand of the plaintiffs-respondents that the same got reverted to them pursuant to what has been mentioned in the aforesaid proviso is correct or not.*

4. *To decide the aforesaid question, let Rule 3 of the Punjab Gram Panchayat Rules, 1965 be noted, which reads as under:*

3. *“If the whole of Sabha area is included in Municipality, cantonment or notified area all rights, obligations, property, assets and liabilities if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board or Notified Area Committee as the case may be:*

Provided that the land, which vests in the panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 or the land, management and control of which vests in the panchayat under the East Punjab Consolidation and Prevention of Fragmentation Act, 1948, shall revert to the co-sharers and owners thereof.

5. *The respondents first contention is that for the appellant to claim vesting of the land in it, the first requirement is that the whole of the sabha area must*

have been included in it. It is then urged that even if this part of the requirement be held to be satisfied, because of what has been stated in the aforesaid proviso, the land did revert to them. The further leaf of this argument is that the omission of the proviso by notification dated 22nd December, 1976 cannot alter the position inasmuch as the area of village Gudha, in which the land is admittedly situate, had been declared to be part of notified area on 6-10-75; and so, the proviso operated by its own force on that date, because of which its omission later on could not alter the legal position.

6. Insofar as the first contention is concerned, Shri Ashri, learned counsel appearing for the appellants, brings to our notice what has been stated in sub-section (2) of Section 8 of the Panchayat Act, which is in the following language:-

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This shows that the only effect of non- inclusion of the whole of the area of a Gram panchayat is that the jurisdiction of the concerned Notified Area Committee shall get reduced and would be confined to the part included. As in the present case there is nothing to show that the part of the Gram Panchayat in which the suit land is situate had not been included in the territorial area of the appellant-committee, the first contention advanced on behalf of the respondent, which had found acceptance with the Courts below, cannot be regarded as legally sound.”

x x

x x

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103. *The Section 7(4) of the Panchayati Raj Act, 1994 is to be read with the provisions of the 1973 Municipal Act. However, both the statutes had undergone extensive changes after the insertion of Part IX and IX A in the Constitution empowering the third tier of the democratic set up. The Panchayati Raj Act contemplates vesting of property of Gram Panchayat with the municipality, whereas the Municipal Act takes into its ambit the properties which were vesting with Panchayat. The 1973 Municipal Act contemplates that even if part of the property of Gram Panchayat is included in the Municipal Limits, it would vest with the municipality. Thus, the word 'whole' appearing in Section 7(4) of Panchayati Raj Act does include part of the Gram Panchayat area coming within the municipal limits. It is the same view which was taken by this Court in a **Notified Area Committee, Sirhind**.*

104. *Thus, if the whole or part of Gram Panchayat area is included in the municipal limits, the land reserved for common purposes as part of agrarian reforms would stand vested with the municipality. Such vesting is not a part of agrarian reforms but shall be on account of extension of municipal limits. When the municipal limits are extended, the residents of the Panchayat also became residents of the municipality. The common purposes of the village community prior to extension of the municipal limits would be deemed to be common purposes for which land can be utilized by the municipality. Therefore, such vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the municipality.*

105. *The argument of the proprietors that if whole of the Sabha area merges with the municipality, only then there can be vesting of land reserved for common purposes with*

the municipality is untenable. Such an argument would lead to anomalous results. The title, right and interest of the property cannot be held in abeyance. There has to be continued control and management over the land reserved for common purposes under the 1948 Act. Therefore, even if a part of Sabha area is merged into the municipality, the municipality will have control over the land so reserved for the erstwhile village community which will now form part of the urban area. In view thereof, we do not find any merit in the argument raised on behalf of the proprietors and dismiss the writ petitions filed by them while allowing the appeals of the State.

*106. The argument of the proprietors that the land which is not capable of being used for common purposes of the inhabitants of a particular village shall be reverted to the proprietors is untenable and unsustainable. The land has been put to common pool by applying pro-rata cut. Once pro-rata cut has been applied, the management and control of such land vest with the Panchayat. There is no question of reverting the land to the proprietors. As discussed above, the land which is not part of the permissible limits under the land ceiling laws stand acquired and vested with the Panchayat in terms of judgment of this Court in **Ranjit Singh v. State of Punjab, AIR 1965 SC 632**. However, in respect of the land forming part of permissible limits of the proprietor under the land ceiling laws, the management and control vest with the Panchayat. Neither the 1961 Act nor the 1948 Act contemplates redistribution of land to the proprietors. It is an irrevocable act which cannot be undone. Therefore, once land vest with the Panchayat, it can be used for common purposes of the community and will never revert back to the proprietors.*

107. We find that the scope of the two provisions under the 1985 Act and 1961 Act are different and distinct. Under the

1985 Act, the Gram Panchayat could seek eviction from unauthorized occupants, the management and control as of the land reserved for common purposes whereof vested in the Gram Panchayat in a summary way where the possession of the occupant was unauthorized. But if there is dispute in respect of the nature of occupation by the occupant or by the panchayat, procedure under the 1961 Act alone can be resorted to as Section 13A of the 1961 Act confers power upon the Collector to decide the question of right, title or interest in any land or immoveable property vested or deemed to have been vested in the panchayat. Therefore, in case of a dispute about the right, title or interest in any land for or on behalf of any person, the remedy under the 1961 Act alone can be exercised. This will include right, title or interest in all the three categories of land i.e., shamilat deh owned by panchayat, shamilat land vested in terms of 1948 Act falling in second category and the land, the management and control whereof is vested with the panchayat, land being within the permissible limits of the proprietor, the management and control of which vest with the panchayat.

108. Consequently, we hold that Act No. 9 of 1992, the Amending Act is valid and does not suffer from any vice of constitutional infirmity. The entire land reserved for common purposes by applying pro-rata cut had to be utilized by the Gram Panchayat for the present and future needs of the village community and that no part of the land can be re-partitioned amongst the proprietors.

109. With the aforesaid discussion and findings, the appeals filed by the State and panchayats are allowed and those filed by the proprietors are dismissed. Consequently, the writ petitions filed before the High Court shall also stand dismissed.”

In terms of the order dated 07.04.2022 passed by the Supreme Court, the petition stands dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

July 26, 2022
ndj

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No