

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 15621 of 1996 (O&M)

Date of Decision: 08.4.2024

Ram Kishan Aggarwal (since deceased) through LRsPetitioners

Versus

State of Haryana and othersRespondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE DEEPAK MANCHANDA**

Present: Mr. Roopak Bansal, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana.

SURESHWAR THAKUR, J.

1. In the instant petition, the petitioners seek the quashing of the order dated 20.3.1989 (Annexure P-9) passed by the Collector, Sonapat, whereby the appeal filed by the Gram Panchayat Akbarpur Barota, thus was allowed, and, mutation, in respect of the petition lands, was sanctioned in favour of co-respondent No. 4. The petitioners also seek the quashing of the order dated 9.5.1996 (Annexure P-11) passed by the Financial Commissioner Haryana, whereby the revision petitions preferred by the Gram Panchayat, Akbarpur Barota, became allowed,

Factual background

2. The order, carried in Annexure P-9, passed by the Collector, Sonapat, on 20.3.1989, is the subject matter of challenge in the instant writ petition, whereby the learned Collector concerned, accepted the motion to make the mutation in favour of the Gram Panchayat concerned, and, thereafter sanctioned mutation No. 2472 qua the Gram Panchayat concerned.

3. Prior to the allotments, being made of the petition lands to the allottees concerned, and, in pursuance to the incorporation of Section (ii-a) in Section 2(g) of the Haryana Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961), through an amending Act No. 13 of 1996, the petition lands fell within the inclusionary definition of shamilat deh. Prior to the said amending provision, being inserted in the Act of 1961, through an amending Act No. 13 of 1996, the petition lands being obviously shamilat deh lands, thus they completely vested in the Gram Panchayat concerned. Therefore, the custodian concerned, was not ably empowered to make allotments of the petition lands in favour of the allottees concerned.

4. The said disempowerment of the custodian concerned, but prior to the amended provision becoming validly inserted in the Act of 1961, whereby he became completely disempowered to make allotments of the shamilat deh lands, to the allottees concerned, is banked, upon the judgment rendered by the Hon'ble Apex Court in case titled as ***Gram Panchayat of village Jamalpur versus Malwinder Singh***, and, to which ***Civil Appeal No. 1401(N) of 1973*** is assigned. From a reading of the said decision, it is but clear, that after the coming into force of the Punjab Act of 1953, the custodian concerned, was left with no vestige of jurisdiction to make allotments of shamilat deh lands to the allottees concerned, as the said shamilat deh lands, did rather on migrations of Muslims, from India to Pakistan, became completely vested in the Gram Panchayat concerned.

5. However, through the amending Act No. 13 of 1996, Section (ii-a) became inserted in Section 2(g) of the Act 1961, provisions whereof are extracted hereinafter.

(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after

the commencement of this Act, but on or before the 9th day of July, 1985 ;]

6. The said inserted provision though did assign retrospective validity to allotments made of the shamilat deh lands, by the custodian concerned, but with a cut-off date therein, inasmuch as, the allotments being required to be made before the 9th day of July, 1985. It is pertinent to mention here, that the vires of insertion of provision (supra) through the amending Act No. 13 of 1996, was challenged before this Court, in a case titled as ***Gram Panchayat of village Kum-Kalan versus State of Punjab and others***, and, to which ***CWP No. 4816 of 1996***, is assigned. However, through a decision made on the said petition, this Court had upheld the vires of the said inserted provision hence through the relevant amending Punjab Act No. 8 of 1995, and, Haryana Act No. 13 of 1996. Though the vires of the provision, as challenged in the petition (supra), appertained to the insertion of the relevant amended provision through an amending Act, as, passed by the Punjab Legislative Assembly, but when the phraseology of the above inserted provision in the Haryana Act of 1961, is but similar to the phraseology of the amended provision, inserted in the Punjab Act 1961, through the relevant amending Act. Therefore, the upholding, by this Court in judgment (supra) qua the vires of the insertion of the amended provision, through the relevant amending Act, does also with equal force apply, to the insertion in the Haryana Act of 1961, of provisions similar to the one, as became inserted in the Punjab Act of 1961.

7. It is but relevant to mention the reasons which prevailed upon, this Court to uphold the vires of the amended provisions. The said reasons are enunciated in paragraphs 39, and, 40 of the judgment (supra), paragraphs whereof stand extracted hereinafter.

39. *To the same effect is the judgment of the Hon'ble Supreme Court in The Govt. of A.P. and another v. Hindustan Machine Tools Ltd., AIR 1975 Supreme Court 2037. In that case, it was held as under:-*

“8. We see no substance in the respondent's contention that by redefining the term 'house' with retrospective effect and by validating the levies imposed under the unamended Act as if, notwithstanding anything contained in any judgment decree or order of any court, that Act as amended was in force on the date when the tax was levied, the Legislature has encroached upon a judicial function. The power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively, the one no less than the other. Within the scope of its legislative competence and subject to other constitutional limitations, the power of the Legislature to enact laws is plenary.

9. The State legislature, it is significant, has not overruled or set aside the judgment of the High Court. It has amended the definition of 'house' by the substitution of a new section 2(15) for the old section and it has provided that the new definition shall have retrospective effect, notwithstanding anything contained in any judgment, decree or order of any court or other authority. In other words, it has removed the basis of the decision rendered by the High Court so that the decision could not have been given in the altered circumstances.

10. In Tirath Ram Rajindra Nath v. State of U. P. (2), the Legislature amended the law retrospectively and thereby removed the basis of the decision rendered by the High Court of Allahabad. It was held by this Court that this was within the permissible limits and validation of the old Act by amending it retrospectively did not constitute an encroachment on the functions of the judiciary. (emphasis supplied).

40. *The Hon'ble Supreme Court while dealing with a similar controversy in M/s Utkal Contractors & Joinery (P) Ltd.'s case (supra), regarding competency of the legislature to pass Act retrospectively/ prospectively, observed as under:-*

“14. The next question to be considered is whether the State while purporting to amend the Act has encroached upon the judicial power and set aside the binding judgment of this Court. We do not think that Mr.Nariman was justified in contending so. The principles have been well established in a string of decisions of this Court, and we may briefly summarise as follows:

The legislature may, at any time, in exercise of the plenary power conferred on it by Arts. 245 and 246

of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitation. The rendering ineffective of judgments or orders of competent Courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. Hari Singh v. Military Estate Officer (1973) 1 SCR 515: (AIR 1972 Supreme Court 2205), Govt. of Andhra Pradesh v. Hindustan Machine Tools Ltd. 1975 Suppl SCR 394: (AIR 1975 Supreme Court 2037), I.N. Saksena v. State of M.P. (1976) 3 SCR 237: (AIR 1976 Supreme Court 2250) and Misri Lal Jain v. State of Orissa (1977) 3 SCR 714: (AIR 1977 Supreme Court 1686).”

8. A deep reading of the above extracted paragraphs, do make imminent emergencies, qua the legislature being conferred with a plenary power by Articles 245 and 246 of the Constitution, to render a judicial decision ineffective by enacting a valid law. Moreover, it has also been pronounced therein, that to such an enacted law, retrospectivity can be assigned. Therefore, but obviously the insertion of the provision (supra) to the amending Act No. 13 of 1996, did vest, in the custodian concerned, an able empowerment to allot even shamilat deh lands to the allottees concerned. However, obviously with a rider that such allotments were required to be made on or before the 9th day of July, 1985.

9. A reading of the order passed by the learned Collector, as enclosed in Annexure P-9, and, as became drawn on 20.3.1989, does exemplify, that the learned Collector concerned, did not make any declaration therein, about the incapacity of the custodian concerned, to

make the relevant allotments to the allottees concerned, and, proceeded to, in respect of the allotments made to the allottees concerned, hence annul the mutations, as became sanctioned in favour of the allottees concerned, and, thereafter proceeded to attest the mutations of the lands rather in favour of the Gram Panchayat concerned.

10. Resultantly, when rather all the statutory mandates, as carried in the above statutory provision, became complied with hence at the instance of the writ petitioner. Therefore, also there was no occasion for the Collector concerned, to, through the impugned order cancel the allotments, as were made in favour of the allottees concerned, and, nor was he empowered to mutate the petition lands, in favour of the Gram Panchayat concerned.

Final order

11. In view of the above stated reasons, this Court does find merit in the instant petition, and, is constrained to allow it.

12. Consequently, the instant petition is allowed. The impugned orders are quashed, and, set aside. If the said mutations are earlier entered in favour of the Gram Panchayat concerned, thereupon, the said mutations are cancelled, and, rescinded, also obviously thereupon fresh mutations be attested by the Assistant Collector concerned, but in favour of the allottees concerned.

13. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

April 08, 2024
Gurpreet