

Babu Ram & Ors vs Gram Sabha Buhavi & Anr on 6 April, 1988

Equivalent citations: 1988 AIR 1085, 1988 SCR (3) 436, AIR 1988 SUPREME COURT 1085, 1988 SCC (SUPP) 485, 1988 PUNJ LJ 310, (1988) 1 PUN LR 683

Author: Misra Rangnath

Bench: Misra Rangnath, M.M. Dutt

PETITIONER:

BABU RAM & ORS.

Vs.

RESPONDENT:

GRAM SABHA BUHAVI & ANR.

DATE OF JUDGMENT 06/04/1988

BENCH:

MISRA RANGNATH

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MISRA RANGNATH

DUTT, M.M. (J)

CITATION:

1988 AIR 1085 1988 SCR (3) 436

1988 SCC Supl. 485 JT 1988 (2) 21

1988 SCALE (1) 640

ACT:

Punjab Village Common Lands (Regulation) Act, 1961: ss. 13(a) (i), 13(a) (ii) and 13B-Effect of amendment by Haryana Act 2 of 1981 omitting s. 13B with retrospective effect-Civil Court barred from adjudicating upon question whether any land or immovable property is or is not Shamilat deh-Shamilat deh in adverse possession-Civil Court whether has jurisdiction to determine ownership.

HEADNOTE:

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Section 13B of the Punjab Village Common Lands (Regulation) Act, 1961 inserted therein by the Haryana Act 34 of 1974 mandated transfer of all suits pending in any civil court against the panchayat relating to the question as to whether the suit land was excluded from the ambit of shamilat deh, to and institution of fresh proceedings in

such cases before the Assistant Collector having jurisdiction over the village.

The suit filed by the appellants for a declaration that they were the owners of the land in dispute in their possession and that the respondent Gram Sabha had nothing to do with the same, was transferred by the trial court to the Assistant Collector under s. 13B of the Act. The revision application filed by them was dismissed by the High Court.

During the pendency of the appeal by special leave in this Court the Act was further amended by Act 2 of 1981 deleting s. 13B with retrospective effect from November 12, 1974. Amended s. 13(a) barred jurisdiction of civil courts to entertain or adjudicate upon the question (i) whether any land or other immovable property is or is not shamilat deh, and (ii) whether the suit land vests or does not vest in the Panchayat.

It was contended for the appellants that there was no dispute as to the question whether the suit land was shamilat deh or not. The only question that has to be decided in the suit was whether the appellants had acquired title to the suit land by adverse possession, and therefore, s. 13(a)(i) was not applicable.

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Dismissing the appeal,

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HELD: The suit instituted by the appellants cannot be heard and disposed of by the civil court. The Assistant Collector to whom the suit has been transferred has jurisdiction to dispose of the same in accordance with the provisions of the Act as amended. [440AB]

The trial court had transferred the suit to the Assistant Collector on a finding that the controversy between the parties related to the question as to whether the suit land was excluded from the ambit of shamilat deh as defined in s. 2(g) of the Act. The said finding has not been challenged either before the High Court or in the special leave petition. Therefore, the civil court will have no jurisdiction to try the suit instituted by the appellants involving the decision on the question as contained in s. 13(a)(i) of the Act. [439F-G]

Even assuming that s. 13(a)(i) is not applicable and that the question to be decided in the suit is whether the appellants had acquired title to the suit land which is Shamilat deh within the meaning of s. 2(g) of the Act, still the civil court will have no jurisdiction to try the suit in view of s. 13(a)(ii) of the Act, for the question would be whether the suit land vests or does not vest in the Gram sabha. [439H, 440A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1951 of 1978.

From the Judgment and order dated 27.4.1977 of the Punjab and Haryana High Court in Civil Revision No. 869 of 1975.

Harbans Lal and S. K. Mehta for the Appellants. Ashok Grover for the Respondents.

The Judgment of the Court was delivered by DUTT, J. In this appeal by special leave the appellants have challenged the constitutional validity of section 13B of the Punjab Village Common Lands (Regulation) Act, 1961, hereinafter referred to as 'the Act'.

Section 13B of the Act, as it stood before its amendment, provides inter alia that all suits pending in any Civil Court in respect of any land or other immovable property wherein relief has been claimed on the ground of its being excluded from shamilat deh under clause (g) of section 2 or on any of the grounds mentioned in sub-section (3) of section 4 of the Act against the Panchayat, shall stand transferred to and the fresh proceedings for seeking relief on the aforesaid grounds shall be instituted before the Assistant Collector of the First Grade having jurisdiction over the village wherein the land or other immovable property is situate.

The appellants have filed a suit before the Subordinate Judge, First Class, Kurukshetra, for a declaration that they are the owners of the land in dispute measuring about 124 acres in their respective possession and the respondent Gram Sabha Buhavi has nothing to do with the same. The learned Subordinate Judge, transferred the suit to the Assistant Collector, First Grade, Thanesar, under section 13B, upon a finding that the controversy between the parties relates to the question as to whether the suit land was excluded from the ambit of shamilat deh, as defined in section 2(g) of the Act. The appellants, being aggrieved by the said order of transfer, filed an application for revision against the same before the Punjab & Haryana High Court. The High Court by the impugned judgment dismissed the revisional application and upheld the order of the learned Subordinate Judge transferring the suit to the Assistant Collector under section 13B of the Act. Hence this appeal by special leave.

It is not necessary for us to consider the constitutional validity of section 13B of the Act, as during the pendency of the appeal in this Court, the Act was amended by the Haryana Act 2 of 1981. Section 5 of Act 2 of 1981 omitted sections 13A of 13B from the Act with retrospective effect from November 12, 1974, that is to say, the date on which they were inserted in the Act by the Haryana Act 34 of 1974. Section 4 of Act 2 of 1981 amended section 13 of the Act. The amended section 13 provides as follows:

"S. 13. Bar of jurisdiction-No Civil Court shall have jurisdiction

(a) to entertain or adjudicate upon any question whether

(i) any land or other immovable property is or is not shamilat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine, or

(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act."

In view of the fact that section 13B has been omitted with retrospective effect, the question of the constitutional validity of that section is no longer relevant. The only question that now arises is whether the Civil Court has jurisdiction to hear the suit instituted by the appellants. Section 13(a)(i), as substituted by Act 2 of 1981, takes away the jurisdiction of the Civil Court to entertain or adjudicate upon any question whether any land or immovable property is or is not shamilat deh.

It is, however, submitted by Mr. Harbans Lal, learned counsel appearing on behalf of the appellants, that there is no dispute as to the question whether the suit land is shamilat deh or not. The appellants admit that the suit land is shamilat deh. The only question that has to be decided in the suit is whether the appellants have acquired title to the suit land by adverse possession. Accordingly, it is contended that section 13(a)(i) is not applicable and Civil Court will have jurisdiction to decide the suit instituted by the appellants.

It has been already noticed that the learned Subordinate Judge transferred the suit to the Assistant Collector on a finding that the controversy between the parties related to the question as to whether the suit land was excluded from the ambit of shamilat deh, as defined in section 2(g) of the Act. The said finding of the learned Subordinate Judge has not been challenged either before the High Court or in the special leave petition. In our view, therefore, the Civil Court will have no jurisdiction to try the suit instituted by the appellants involving the decision on the question as contained in section 13(a)(i) of the Act.

Even assuming that section 13(a)(i) is not applicable and that the question to be decided in the suit is whether the appellants have acquired title to the suit land which is shamilat deh within the meaning of section 2(g) of the Act, still the Civil Court will have no jurisdiction to try the suit in view of section 13(a)(ii) of the Act, for the question would be whether the suit land vests or does not vest in the Gram Sabha. In the circumstances, we are of the view that the suit instituted by the appellants cannot be heard and disposed of by the learned Subordinate Judge, and the Assistant Collector to whom the suit has been transferred by the learned Subordinate Judge has jurisdiction to dispose of the suit in accordance with the provisions of the Act as amended.

For the reasons aforesaid, this appeal is dismissed. There will, however, be no order as to costs. The Assistant Collector is directed to dispose of the suit as expeditiously as possible.

P.S.S.

Appeal dismissed.

