IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.9368 of 2007
Date of Decision :12.6.2007

Sita Ram etc.

….Petitioners

Vs.

Gram Panchayat Ismaila etc.

…. Respondents

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Coram: Hon'ble Mr.Justice S.S.Saron
Hon'ble Mr.Justice Arvind Kumar

Present: Mr.R.S.Mittal, Sr.Advocate with
Mr.Atul Gaur, Advocate for the petitioners.

S.S.Saron,J.

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In this petition under Article 226 and 227 of the Constitution of India, the petitioners seek quashing of the orders dated 9.1.2007 (Annexure P/17), 22.1.2007 (Annexure P/19) and 23.5.2007 (Annexure P/21) passed by the Assistant Collector I- Grade, Rohtak – respondent No.2, the Collector Rohtak –respondent No.3 and the Commissioner, Rohtak Division, Rohtak –respondent No.4 respectively.

The case of the petitioners is that petitioners No.1 and 2 alongwith their three brothers Lachhe Ram, Ramphal and Sube Ram whose legal representatives are petitioners No.3 and 4 and proforma respondents No. 5 to 16 are proprietors and co-sharers in the revenue estate of Village Ismaila (9 Biswa), Tehsil and District Rohtak. Their ownership land was nearly 124 Bighas. The land of the petitioners and

the co-sharers is situated in Thola Jaimalan. Their share in the Shamlat Thola Jaimalan has been more than 50 Kanals of land . In the Jamabandi (Record of Rights) of 1946-47 (Annexure P-1), Khasra Nos.1339, 1340, 1341, 1338, 1320, 1344 and 1345 are recorded as Shamlat Deh Hasab Rasad Arazi Khewat and in possession of the proprietors (Makbuza Malkan).

The consolidation of land holdings in Village Ismaila (9 Biswa) continued from 1951 to 1960. Therefore, no Jamabandi of the village was prepared during the period after 1946-47 till 1960-61. In the Scheme of Consolidation (Anneuxre P-2) it has been mentioned in Item No.3 that there are four tholas in the village including Thola Jaimalan. Each Thola has separate fields and the fields of the Tholas do not intermix with each other. Therefore, during consolidation and repartition, the area of the Thola was to be kept separate. In terms of Item No.4 of the Consolidation Scheme (Annexure P-2), it was provided that in the partition of the Shamlat area, no area of Shamlat Thola or Shamlat Deh would be included. However, these would be given proper shape on the killa lines which was to be adjacent to the present uncultivated land. In the repartition, as a result of consolidation of land-holdings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1947 ('Consolidation Act'- for short), the petitioners and the co-sharers were allotted land measuring 49 Kanals 15 Marlas. It is submitted that the petitioners, their co-sharers and their predecessors-in-interests had brought the land comprised in Khasra Nos. 1339, 1340, 1341, 1338, 1320, 1344 and 1345 under cultivation by means of their hard labour in

breaking the sand domes and irrigating the land. The same was allowed to continue in their possession during repartition at the time of consolidation. The old Khasra numbers as mentioned above, have been assigned new Khasra numbers which are mentioned in the Jamabandi for the year 1960-61 (Annexure P-3) in respect of the land measuring 22 Kanals 18 Marlas. The same entries were repeated in the subsequent Jamabandi for the year 1963-64 (Annexure P-4). It is submitted that the Jamabandis for the year 1960-61 (Annexure P-3) and 1963-64 (Annexure P-4) did not show the land measuring 26 Kanals 17 Marlas due to inadvertence which was however, shown in the Jamabandi of the year 1967-68 (Annexure P-5). In the said Jamabandi (Annexure P-5), the entire area of land measuring 26 Kanals 17 Marlas has been shown in the possession of the petitioners. Thereafter, the entries were repeated in all the subsequent Jamabandis in respect of the entire 49 Kanals 15 Marlas land which was brought under individual separate cultivation by the petitioners and their co-sharers including proforma respondents No.5 to 16. The copies of Jamabandis for the year 1972-73 (Annexure P-6), 1977-78 (Annexure P-7), 1982-83 (Annexure P-8) ,1987-88 (Annexure P-9), 1992-93 (Annexure P-10) and 1997-98 (Annexure P-11) are attached. The Khasra girdawaris from 1997 to 2006 (Annexure P-12) and the latest Jamabndi for the year 2002-03 (Annexure P-13) are also attached. As per the latest Jamabandi, it is stated that the petitioners and their co-sharers have been recorded to be in separate individual cultivating possession of the land measuring 49 Kanals 15 Marlas. The land has been in their cultivating possession before the Gram Panchayat Ismaila (9 Biswa) was

constituted under the Punjab Gram Panchayat Act, 1952. Therefore, according to them, the Gram Panchayat (respondent No.1) could not have acquired any proprietory rights in the above said land because the Shamlat law came into force on 9.1.1954. The petitioners and the proforma respondents have in fact been in individual cultivating possession and recorded as tenants on the land in dispute without paying any rent to the Gram Panchayat, although the entries continue in the names of Lachhe, Ramphal, Suba, Kali Ram and Sita Ram sons of Ram Nath son of Shiv Dayal. The petitioners are shown in the revenue record as ; "*Gair Marusi Billa Lagan Bawajah Sabika Hissedari*" in recognition of their right of possession as co-owners in the village proprietory body. It is submitted that by mere mention of Gair Marusi (Tenant at will), does not affect the foundation of title of the owner. The mutation No.1454 which has been sanctioned in favour of the Gram Panchayat on 19.10.1955 (Annexure P-14A), was without notice to the petitioners or their predecessors-in-interest as admitted by the Patwari in his statement (Annexure P-14) recorded before the Assistant Collector I-Grade while appearing as RW-1. Therefore, it cannot be held that the land of the proprietors of the village including the petitioners had become the property of the Gram Panchayat. In terms of the mutation No.1454 sanctioned on 19.10.1955 (Annexure P-14A), the Shamlat Deh Hasab Rasad Arazi Khewat land which was ownership of all the proprietors jointly including the petitioners, was wrongly mutated in favour of the Gram Panchayat on the basis of letter dated 10.3.1954 without any notice to the proprietors. It is submitted that in the facts and circumstances, the

petitioners are owner of the land measuring 49 Kanals 18 Marlas and respondent No.1-Gram Panchayat has no right to the same. The eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, (as applicable in Haryana) ('1961 Act' - for short) that was filed, was not maintainable and the impugned orders (Annexures P-17, P-19 and P-21) are liable to be quashed.

Shri R.S.Mittal, Senior Advocate appearing with Mr.Atul Gaur Advocate has contended that impugned orders passed by the authorities under the 1961 Act are illegal and arbitrary. The authorities have failed to appreciate that the petitioners have been in individual cultivating possession of the land even in the year 1966-67 as shown in the Jamabandi (Annexure P-1). The entry recorded in the said Jamabandi is '*Shamlat Deh Hasab Rasad Arazi Khewat'* and the possession of proprietors is recorded as 'Makbuja Malkan'. The land was cultivated before 1960-61, which is proved from the Jamabandi of 1960-61 (Annexure P-3). Therefore, it is contended that the petitioners being in individual cultivating possession, cannot be said to be in unauthorized occupation of the land as owners without payment of any rent to the Gram Panchayat or to anybody else. Besides, there was no Gram Panchayat in the village before coming into force the Punjab Gram Panchayat Act, 1952. Therefore, the entry of Shamlat Deh as mentioned in the Jamabandi of 1946-47 reflected the common land of the proprietors of the village. Even in the later entries, the land in dispute is shown as '*Shamlat Deh Hasab Rasad Raqba Khewat*' meaning thereby that it is the common land of the proprietors in accordance with their proprietory

share therein and that every proprietor had a share according to the size of his proprietory holding in the village. The said land, therefore, could not have been mutated in favour of the Gram Panchayat by means of a simple letter received from the Government resulting in the sanction of mutation No.1454 dated 19.10.1955 (Annexure P-14A). In any case, the mutation being without any notice to the petitioners and other proprietors, is without jurisdiction.

We have given our thoughtful consideration to the contentions of the learned Senior counsel and also perused the record. The primary contentions that have been raised are that the land measuring 49 Kanals 15 Marlas does not vest in the Gram Panchayat. It is the ownership of the village Proprietory body and the petitioners are in individual cultivating possession of the same. Besides, the mutation No.1454 dated 19.10.1955 (Annexure P–14A) sanctioned in favour of the Gram Panchayat is illegal as it had been sanctioned even before the constitution of the Gram Panchayat by virtue of the Punjab Gram Panchayat Act 1952 and without notice to the petitioners.

It is appropriate to note that the land in the revenue record has been mentioned as the ownership of the Gram Panchayat. In the revenue record, it is the case of the petitioners themselves that the land is shown as '*Shamlat Deh Hasab Rasad Raqba Khewat*' meaning thereby that it is the common land of the proprietors in accordance with their proprietory share therein and that every proprietor had a share according to the size of his proprietory holding in the village. The position, however, is that the land, in fact, is to be taken as Shamlat Deh (Common

Land of the Village) in terms of the definition of 'Shamlat Deh' as defined under Section 2 (g) of the 1961 Act, which is as follows:-

" 2(g) "Shamlat Deh" includes.

(1) Lands described in the revenue records as Shamlat Deh or Charand excluding abadi Deh;

(2) Shamlat Tikkas;

(3) Lands described in the revenue records as Shamlat Tarafs, Patties, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of village;

(4) Lands used for the benefits of village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the Sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952 excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act.

(4a) vacant land situated in abadi deh or gora deh not owned by any person.

(5) Lands in any village described as Banjar qaudim and used for common purposes of the village according to revenue records. Provided that Shamlat deh at least to the extent of

twenty-five per centum of the total area of the village does not exist in the village;

(6) Lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act, 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act. **Explanation** :- Lands entered in the column of ownership of record of rights as 'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad', shall be Shamlat Dehh within the meaning of this section."

but does not include land which:-

(i) becomes or has become Shamlat deh due to river action or has been reversed as Shamlat in villages subject to river action except Shamlat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi permanent basis to a displaced person;

(ii-a) was Shamlat 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;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before 26th January, 1950, by a person by purchase or in exchange for Proprietory land from a co-sharer in the Shamlat Deh and is so recorded in the Jamabandi or is supported by a valid deed;

(v) is described in the revenue records as Shamlat Taraf, Patti, Panna or Thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village.

(vi) Lies outside the abadi Deh and was being used gitwarbara, manure pit, a house or for cottage industry immediately before the commencement of this Act.

(vii) is Shamlat Deh, of villages included in the fourteen revenue estates called 'Bhojas' of Naraingarh Tehsil of Ambala district.

(viii) was Shamlat deh, was assessed to land revenue and has been in the individual possession of co-sharers not being in excess of their respective shares in such Shamlat Deh on or before the 26th January, 1950; or

(ix) is used as a place of worship or for purposes subservient thereto."(Emphasis added).

A reading of section 2(g)(1) of the 1961 Act shows that the land which is described in the revenue record as 'Shamlat Deh' excluding Abadi Deh is 'Shamlat Deh'. In terms of Section 4(1)(a) of the 1961 Act, it is provided that 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 interest whatsoever in the land which is included in 'Shamlat Deh' of any village and which is not vested in a Panchayat under the 'Shamlat Law' shall at the commencement of the 1961 Act vest in a Panchayat constituted for the said village and where no such panchayat has been constituted for such village vest in the panchayat on such date as panchayat having jurisdiction over that village is constituted. Section 2(g) of the 1961 Act is in two parts. The first part relates to the land which is included in the 'Shamlat Deh' and the second part relates to the lands which are excluded. In terms of clause (iii) which is in the second part of section 2(g) and relates to the lands which are not included as 'Shamlat Deh' it has to be shown for the land to be the ownership of the individual land owners that it has been partitioned and brought under cultivation by the individual land holders before 26.1.1950. It is only then that such land would be excluded from 'Shamlat Deh'. In terms of the exclusion clause (iii) of the second part of Section 2(g) it was open to the proprietors and share holders before the appointed date i.e. 26.1.1950 to partition or bring into cultivation the land of the 'Shamlat Deh'. The land in question admittedly has not been partitioned or brought under cultivation by an individual land holder before 26.1.1950. Therefore, it does not come in the second part of Section 2(g) of the 1961 Act so as to be excluded from 'Shamlat Deh'. In the circumstances, the fact that the land is recorded as 'Shamlat Deh' and it is further mentioned as 'Hasab Rasad Arazi Khewat' is inconsequential as the land has not been shown to be partitioned amongst the proprietors of the village before 26.1.1950 which is the date fixed so as to exclude the land form 'Shamlat Deh'.

Therefore, the land which is recorded as 'Shamlat Deh' in the revenue record, is 'Shamlat Deh' within the meaning of Section 2(g) of the 1961 Act and is to vest in the Gram Panchayat in terms of section 4(i)(a) as referred to above.

Even otherwise the submission that the petitioners are in individual cultivating possession of the land is not tenable as in the Jamabandi for the year 1960-61, a substantial piece of the land except for the land in Rectangle No.92, Khasra No.2 measuring 6 Kanals 8 Marlas and in Khasra No.3 measuring 8 Kanals 16 Marlas, the rest of the land is recorded as 'Banjar qadim' which would mean that it was not cultivable. The land which remains uncultivated for successive period of eight harvests is recorded as 'Banjar qadim'. Therefore, the description of most of the land is shown as lying uncultivated being as 'Banjar qadim'. This dislodges the stand of the petitioners that they or their forefathers are in cultivating possession of the same for the last many years. Besides, the expressions, 'individuals', cultivating possession' and 'respective shares' were considered by this Court in the case of Ram Bahu and others v. Gram Panchayat (Gram Sabha) of Village Indri, 1971 PLJ 487, wherein it was observed as follows:-

> "The use of words and expressions 'individuals', 'cultivating possession' and 'respective shares' would suggest that a co-sharer or a small body or co-sharers should be in separate cultivating possession of lands on individual basis before they can claim the benefit of this exception (i.e. Exception (viii) to Section 2(g) of the 1961 Act). There is further

condition attached that the separate cultivating possession of an individual co-sharer or small body of co-sharers should not exceed his or their due share in the Shamlat land. There is no question of the entire Proprietory body having its 'respective share' in the Shamlat. The Proprietory body would be owning the entire Shamlat on a joint basis and cannot be said to have only a share in the Shamlat. There is no separate cultivating possession of the Proprietory body on individual basis in the capacity of an individual co-sharer or a small body of co-sharers which could claim to be distinct and separate from the Proprietory body so that he or they could have their respective shares in the Shamlat. The plaintiff-appellants are not shown to have been in cultivating possession of any separate parcels of the Shamlat land as co-sharers at the crucial time and there is nothing to stop the Shamlat land from vesting in the defendant-Panchayat on the coming into force of the Act.

The judgment in Ram Bahu's case (supra) was affirmed by a Division Bench of this Court in Tel Ram v. Gram Sabha Manakpur, 1976 PLJ 628 wherein it was also observed that the land if it falls under any of the clauses of Section 2(g), it is sufficient to bring the land within the definition of the word 'Shamlat Deh' and the requirement of clause (I) is applicable to the said land and no further reference to any other clause is necessary to treat the land as Shamlat Deh. Therefore, the land in the present

case having been described as Shamlat Deh, it would come within the ambit of clause (1) of Section 2 (g) of the 1961 Act and is to vest in the Gram Panchayat by virtue of Section 4 (1) thereof. The stand of the petitioners that they are in individual cultivating possession of the land is without any merit.

The other contention of the petitioners with regard to the mutation No.1454 (Annexure P 14/A), sanctioned in favour of the Panchayat without notice to the petitioners is also without basis. The land is to vest in the Gram Panchayat in view of the statutory provisions of the 1961 Act for which no notice is required to be given to the petitioners. The stand that the mutation was sanctioned even before the constitution of the Gram Panchayat, is also misplaced. The Punjab Gram Panchayat Act, 1952 had come into effect in the year 1952 and the mutation was sanctioned on 19.10.1955 i.e. after the Punjab Gram Panchayat Act, 1952 had come into effect. Even otherwise, as has been noticed, it has inter alia been provided by Section 4(I)(a) that the land which is included in the Shamlat Deh on any village and which has not vested in the Panchayat under the Shamlat law shall, at the commencement of the 1961 Act, vest in a Panchayat constituted for such a village and, where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted. Therefore, it is from the date of constitution of the Panchayat that the Shamlat Deh land is to vest in the Panchayat by virtue of Section 4(1)(a) of the

1961 Act. It may also be noticed that before 1961 Act, the Punjab Village Common Lands (Regulation) Act, 1953 was in force i.e. before the date of sanction of mutation No.1454 on 19.10.1955 (Annexure P-14/A). In fact the petitioners own case is that the Shamlat law came into force on 9.1.1954. In the circumstances, the stand of the learned Senior Counsel for the petitioners that the land has vested in the Panchayat before the Panchayat has been constituted, is misconceived .

Learned Senior counsel has also referred to the Full Bench decision of this Court in the case of '*Jai Singh vs. State of Haryana*, (2003-2) PLR 658. The said decision, however, is not applicable to the present case, as the same relates to the land which is of 'Jumla Malkan' or is primarily 'Bachat' land. The land in the said case was recorded as ownership of 'Jumla Mustarka Malkan Wa Digar Haqdaran Arazi Hasab Rasad' whereas the present case is that of 'Shamlat Deh Hasab Rasad Raqba Arazi Khewat' which would mean that the share of the proprietors in the 'Shamlat Deh' land is to the extent of share of their holding in the khewat. The nature of the land being 'Shamlat Deh' does not in any manner cease. Therefore, the reliance placed on Jai Singh's case (supra) is clearly misconceived. The other contention is that the petitioners are recorded as *Gair Marusi Billa Lagan Bawajah Sabika Hissedari'* is also of no significance as it is well known and accepted practice amongst the revenue officials that whenever a person other than the real owner is to be shown in possession, he is

invariably recorded as 'Gair Marusi' (tenant at will of the owner). Such an entry, however, does not confer any right on the petitioners.

In the circumstances, the land is to vest in the Gram Panchayat in view of the statutory provisions of the 1961 Act. All the three authorities i.e. the Assistant Collector I- Grade, Rohtak – respondent No.2, the Collector Rohtak –respondent No.3 and the Commissioner, Rohtak Division, Rohtak –respondent No.4 respectively have concurrently held that law vests in the Gram Panchayat. The findings and conclusions have been arrived at, by the authorities after consideration of the material on record and the same are logical. Therefore, no interference is warranted in exercise of the supervisory writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India so as to dislodge the concurrent findings arrived at by the said authorities.

For the foregoing reasons, there is no merit in the petition and the same is accordingly, dismissed.

(S.S. Saron)
Judge

June 12, 2007
Sd

(Arvind Kumar)
Judge