

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

Civil Writ Petition No.6727 of 2007

Date of Order: 30th March, 2012

Gram Panchayat, Kalwa

...Petitioner

Versus

**The Joint Development commissioner
(IRD), Punjab, Chandigarh and others**

..Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN**

Present: Mr. J.S.Bhandohal, Advocate
for the petitioner

Mr. J.S.Puri, Addl. A.G., Punjab
for respondent no.1.

Mr. P.K.Gupta, Advocate
for respondents no.2 to 7.

RAJIVE BHALLA, J.

The Gram Panchayat of village Kalwa, Tehsil and District Patiala, prays for issuance of a writ of certiorari for quashing order dated 15.02.2007, passed by the Joint Development Commissioner (IRD), Punjab.

The dispute that arises for adjudication is whether the land in dispute is "Shamilat Deh" as defined under Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter

referred to as 'the 1961 Act').

Counsel for the Gram Panchayat submits that the land in question is, admittedly, recorded as “Shamilat Deh” and was being leased out annually, by the Gram Panchayat as reflected in entries of the lease register Exs.R-4 to R-6. The jamabandies for the years 1972-73(Ex.P-11), 1977-78 (Ex.P-12), 1987-88 (Ex.P-14) record payment of Chakota. The finding recorded by the Appellate Authority that as the land in dispute was “Banjar Qadim” on 09.01.1954, it does not vest in the Gram Panchayat is factually and legally incorrect. The finding that the land in dispute is “Bachat Land” contradicts the aforementioned finding and even otherwise as the land is recorded as ownership of the Gram Panchayat, the declaration of ownership issued in the impugned order is illegal, null and void. It is further submitted that for land to be excluded from “Shamilat Deh”, it should be “Banjar Qadim” on the date of enactment of the 1961 Act. As there is no evidence on record that the land was “Banjar Qadim” on the date of enactment of the 1961 Act, the impugned order is illegal and void.

Counsel for the private respondents, on the other hand, submits that the impugned order does not suffer from any illegality much less an error of law. The receipts of rent, allegedly, evidencing, payment of lease amount, by the private respondents' father are entirely irrelevant as the land in dispute does not vest in the Gram Panchayat. It is further submitted that as the land was “Banjar Qadim”, on the date of enforcement of the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as 'the 1954

Act'), the Appellate Authority rightly reversed the order passed by the Collector.

We have heard counsel for the parties and perused the impugned order.

Tara Singh, father of the private respondents, filed a petition under Section 11 of the 1961 Act, claiming that as the land is "Shamilat Deh Hasab Rasad Irazi Khewat" and he is a right holder, in continuous possession before 21.01.1950, the mutation showing ownership of the Gram Panchayat is illegal and should be set aside. Tara Singh also pleaded that as the land has never used for common purposes and is in his possession for a period of 12 years before the enactment of the 1961 Act, it does not vest in the Gram Panchayat. Tara Singh also asserted that as the land was "Banjar Qadim" in 1954, it does not vest in the Gram Panchayat. Tara Singh produced the following documents in evidence:-

"Jamabandi for the year 1949-50 (Ex.P-1), Jamabandi for the year 1949-50 (Ex.P-2), Khatauni Murababandi (Ex.P-3), Khatauni Paimaish (Ex.P-4), Mutation No.515 (Ex.P-5), Jamabandi for the year 1956-57 (Ex.P-6), Missal Haquiat (Ex.P-7), Jamabandi for the year 1959-60 (Ex.P-8), Jamabandi for the year 1961-62(Ex.P-9), Jamabandi for the year 1967-68 (Ex.P-10), Jamabandi for the year 1972-73 (Ex.P-11), Jamabandi for the year 1977-78 (Ex.P-12), Jamabandi for the year 1982-83 (Ex.P-13), Jamabandi for the year 1987-88 (Ex.P-14), Jamabandi for the year 1987-88 (Ex.P-15), Jamabandi for the year

1992-93 (Ex.P-16), Jamabandi for the year 1997-98 (Ex.P-17), Khasra Girdwari 2000 (Ex.P-18)."

The Gram Panchayat, on the other hand, produced the resolution, copy of the lease register for the year 1978-79 (Ex.R-4), lease register for the year 1978-79(Ex.R-5), lease register for the year 1979-80(Ex.R-6) and closed its evidence.

After considering the evidence on record and the arguments addressed for and against the respective pleas, the Collector, dismissed the petition by holding that the private respondents have failed to prove their case. The appeal filed by the private respondents was allowed by holding that the land does not vest in the Gram Panchayat.

A perusal of the impugned orders, reveals that neither the Collector nor the Commissioner made any serious attempt to decide the matter on merits. The Collector has passed a non-speaking order. The operative part of the order reads as follows:-

"Arguments of both the parties were heard and evidence on record was perused with the help of counsels for the parties. In the end after hearing the arguments of Ld. Counsel for the parties and perusing the documentary evidence, I am reached on the conclusion that the petitioner has failed to prove the facts in his petition. So I dismiss the petition of the petitioner."

The Appellate Authority reproduced the arguments, in detail but eventually allowed the appeal without a detailed appraisal of the evidence. The Appellate Authority has committed certain

fundamental errors while holding that the land is excluded from “Shamilat Deh” on the grounds that :-

- (a) *the land was “Banjar Quadim” on 09.01.1954 i.e. on the date of the 1954 Act;*
- (b) *there is no revenue record to show that the land was ever used for the common purposes of the village community;*
- (c) *the revenue record shows the continuous and uninterrupted possession of the private respondents and;*
- (d) *the land, in dispute, is “Bachat Land”*

With the enactment of the 1954 Act, lands described as “Shamilat Deh” whether “Shamilat Deh” simpliciter or followed by expressions like “Hasab Rasad Arazi Khewat”, “Zare Khewat” or “Hasab Rasad Paimana Malkiat”, came to vest in a Gram Panchayat. As the 1954 Act did not provide a comprehensive definition of “Shamilat Deh”, it was repealed and re-enacted as “the 1961 Act”. Section 2(g) of the 1961 Act provides a comprehensive definition of “Shamilat Deh”. Section 2(g)(1) to (5) describes land that shall be “Shamilat Deh” and Section 2(g) (i) to (ix) describes situations in which such land shall be excluded from “Shamilat Deh”. Section 3(1) of the 1961 Act postulates that this Act ('the 1961 Act') shall apply and before the commencement of this Act, the “Shamilat Law”(i.e. the 1954 Act) shall be deemed always to have applied to all lands which are “Shamilat Deh” as defined in Clause-(g) of Section 2 of

1961 Act. Section 3(2)(i) of the 1961 Act provides that where any land has vested in a Gram Panchayat under the Shamilat law (1954 Act) but is excluded from “Shamilat Deh” by Section 2(g) of the 1961 Act, all rights, titles and interest of the Gram Panchayat shall cease and shall be vested in such person or persons in whom they vested before the Shamilat law (1954 Act). Section 4 of the Act provides for vesting of land in Gram Panchayats and protection of possession of non-proprietors.

A conjoint reading of Section 2(g)(i), Section 3 and Section 4 of the 1961 Act, reveals that all land described as “Shamilat Deh” came to vest in Gram Panchayat by virtue of the 1954 Act and only such “Shamilat Deh” is excluded, from vesting in a Gram Panchayat, as it provided for by Section 2(g) or Section 4 of the 1961 Act. The 1961 Act has retrospective operation only to the extent provided by Section 3. Section 3(1) and 3(2)(i) of the 1961 Act reads as follows:-

“3. Lands to which this Act applies.--

(1) *This act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause (g) of section 2”.*

[(2) *Notwithstanding anything contained in sub-section (1) of Section 4,--*

(i) *where any land has vested in a Panchayat under the Shamilat law, but such land has been excluded from shamilat deh under*

clause (g) of section 2 other than the land so excluded under sub-clause (ii-a) of that clause, all rights, title and interest of the panchayat in such land as from the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1995, shall cease and all such rights, title and interest shall vest in the person or persons in whom they were vested, immediately before the commencement of the shamilat law;

(3) XX XX XX XX”

A landowner, claiming that his land is excluded from “Shamilat Deh”, shall be required to prove the ingredients of the exclusion clause, from the date set out, in the clause so invoked. Where, however, an exclusion clause does not set out any date, the landowner could be required to prove the ingredients, of the exclusion clause, as on the date of enactment of the 1961 Act i.e. 4.5.1961.

The private respondents claim that the land is excluded from “Shamilat Deh” as it was “Banjar Qadim” and not used as per the revenue record for common purposes of the village. The Appellate Authority has accepted this plea by holding that as the land was “Banjar Qadim” and not used as per the revenue record for common purposes of the village on 09.01.1954, it is excluded from “Shamilat Deh”. The learned Commissioner lost sight of the fact that Section 2(g)(5) of the 1961 Act, which provides for exclusion of

“Banjar Qadim” from “Shamilat Deh” unlike some other sub-sections, does not prescribe the date on which the land would have to be proved to be “Banjar Qadim”. A person claiming exclusion of his land under Section 2(g)(5) of the 1961 Act, would have to prove that the land was “Banjar Qadim” and not used for common purposes of the village, according to the revenue record as on 04.05.1961 (the coming into force of the 1961 Act). The learned Commissioner has committed an error by holding that as the land was “Banjar Qadim” on 09.01.1954, the date of enactment of the 1954 Act, it is excluded from “Shamilat Deh”.

The Commissioner also failed to take into consideration entries in the lease register produced by the Gram Panchayat. As per the lease register for the year 1978-79, the land in dispute was taken on lease by Joginder Singh (petitioner no.4) son of Tara Singh for one year i.e. 1979-80, Kulwant Singh son of Tara Singh, the original petitioner had taken the land on lease for one year, i.e. 1980-81, Piara Singh son of Raunaq Singh, had also taken the land on lease for one year. Another error committed by the learned Commissioner is that he has held the land in dispute as “Bachat Land”. We have perused the paper book but do not find any evidence to establish that the land is “Bachat Land”, left over after assigning use of land for common purposes, to land taken from proprietors by applying a pro-rata cut on their holdings.

In view of the errors of jurisdiction referred to hereinabove, the writ petition is partly allowed, the order dated 15.02.2007 is set aside and the matter is remitted to the Joint

Development Commissioner (IRD), to decide the matter afresh and in accordance with law, within three months from receipt of a certified copy of this order.

Parties are directed to appear before the Joint Development Commissioner (IRD), on 26.04.2012.

(RAJIVE BHALLA)
JUDGE

March 30th , 2012
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(RAKESH KUMAR JAIN)
JUDGE