

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

CWP-1160-1989

Decided on : 14.07.2015

Daya Nand and others

... Petitioners

VERSUS

**The Commissioner, Hissar Division,
Hissar and another**

.... Respondents

CORAM: **HON'BLE MR. JUSTICE RAJIVE BHALLA**
HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: **Mr.A.K.Ahluwalia, Advocate, for the petitioners.**

**Mr.D.Khanna, Addl.A.G., Haryana,
for respondent No.1.**

Mr.S.P. Chahar, Advocate, for respondent No.2.

RAJIVE BHALLA, J. (ORAL)

The petitioners pray for issuance of a writ of certiorari, quashing order dated 25.10.1988, passed by the Commissioner, Hissar Division, Hissar, allowing a revision filed by the Gram Panchayat (respondent No.2 herein), thereby setting aside the order passed by the Collector, Rohtak and as a consequence, holding that the Gram Panchayat is owner of the land, in dispute.

Counsel for the petitioners submits that the land, in dispute, is recorded as the ownership of “Panna Bebyan Hasab Rasad Khewat Makbuza Malkan”, thereby proving that the land is owned by proprietors, in accordance with their shareholdings. Mutation No.2041, dated 11.08.1965, recording that the land vests in the Gram

Panchayat, is, illegal and contrary to the record. The Shamilat land of a Panna may be included in the Shamilat Deh of a village, under Section 2(g)(3) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the “1961 Act”), but as the Gram Panchayat has failed to prove the ingredients of Section 2(g)(3) of the 1961 Act, the Assistant Collector, Ist Grade, Rohtak, rightly held that the land, in dispute, vests in the proprietors of Panna and not in the Gram Panchayat. The appeal filed by the Gram Panchayat before the Collector, Rohtak, was rightly dismissed on 23.12.1986 but the Commissioner, Hissar Division, Hissar, has, reversed these orders without assigning any clear or cogent reasons or referring to the contents of the jamabandi, particularly jamabandis that record that the land, in dispute, is the ownership of “Panna Bebyan”, owned and possessed by proprietors, in accordance with their shareholdings. The Commissioner, has while reversing the orders passed by the Assistant Collect, Ist Grade and the Collector, merely relied upon Mutation No.2041, dated 11.08.1965, and held that as the mutation was not challenged for 22 years, the petitioners cannot be allowed to raise a plea of ownership. Counsel for the petitioners further submits that as a mutation neither confers nor divests title, a person aggrieved by a mutation, may prove his ownership and in case it is found that the mutation does not reflect the true position regarding ownership, a person cannot be non-suited for failure to challenge a mutation. The

finding that the petitioners have no *locus standi* to challenge the mutation, is incorrect as the petitioners, are recorded as proprietors in the “Fahrisat Ashmaya” (Annexure P/1). The Gram Panchayat having failed to prove that the land, in dispute, was used according to the revenue record for the benefit of the village community or a part thereof for common purposes of the village, as required by Section 2 (g)(3) of the 1961 Act, the impugned order reversing the orders passed by the Assistant Collector, Ist Grade and the Collector, may be set aside.

Counsel for the Gram Panchayat (respondent No.2), while conceding that delay in challenging the mutation, is irrelevant, submits that the question that requires an answer is whether the land, in dispute, is included or excluded from the Shamilat Deh of the village, under Section 2(g)(3) of the 1961 Act. The wazib-ul-arz for the year 1956-57, clearly records that the land, in dispute, was used for grazing of cattle by proprietors and non-proprietors i.e. a common purpose. The land, in dispute, therefore, fulfills the ingredients of Section 2(g)(3) of the 1961 Act and is included in the Shamilat Deh of the village and vests in the Gram Panchayat.

We have heard counsel for the parties, perused the impugned order, orders passed by the Assistant, Collector, Ist Grade, the Collector, the relevant sharat-wazib-ul-arz and the revenue record.

The dispute, in the present case, is whether the land, in

dispute, is included in or excluded from the Shamilat Deh of the village and vests or does not vest in the Gram Panchayat?

Admittedly, the land, in dispute, is the Shamilat land of “Panna Bebyan” and on the relevant date was “Banjar Qadim”. The petitioners, as per the “Fahrisat Ashmaya” are proprietors of the Panna. The land, in dispute, would, therefore, vest in the Gram Panchayat only if it is used as per the “revenue record” for the benefit of the village community or a part thereof or for common purposes of the village as required by Section 2(g)(3) of the 1961 Act, which reads as follows: -

“2(g) “Shamilat deh” includes: -

- (1) xxx xxx xxx
- (2) xxx xxx xxx
- (3) lands described in the revenue records as shamilat tarafs, pattis, 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 the village.”

The Assistant Collector and the Collector have after a “purported” examination of the revenue record, held that the land does not vest in the Gram Panchayat as it is not used for any common purpose but while holding as above, failed to examine the most crucial document i.e. the sharat-wazib-ul-arz, which records the mode and manner of user of the Shamilat Deh land of a Panna. The Commissioner has reversed these orders but by holding that as the petitioners have failed to challenge Mutation No.2041, dated 11.08.1965 etc., the land, in dispute, vests in the Gram Panchayat,

disregarding the fact that a mutation neither divests nor confers title and, therefore, delay in challenging a mutation is irrelevant for the purpose of adjudication of a question of title under Section 13 of the 1961 Act. The Commissioner also ignored that a petition filed under Section 13-A of the 1961 Act, seeking a declaration that the land does not vest in the Gram Panchayat, inhere a challenge to the mutation. The learned Commissioner also held that the petitioners have no locus standi to file a petition under Section 13-A of the 1961 Act, disregarding the entry in “Fahrisat Ashmaya” which records them as proprietors, rendering his order legally flawed.

The Assistant Collector, Ist Grade, the Collector and the Commissioner having failed in their duties to examine the revenue record particularly the wazib-ul-arz and record findings based thereon, we were faced with a dilemma whether to remand the matter or to examine the revenue record and record our findings for or against the parties but as remitting the matter would prolong this litigation that commenced almost three decades ago, it was deemed appropriate to adopt the latter course. The petitioners and the State of Haryana were, therefore, directed by order dated 29.06.2015, based upon order dated 05.10.2013, to produce the relevant sharat-wazib-ul-arz, so as to ascertain whether the land, in dispute, was reserved and/or used for common purposes.

The petitioners and the State of Haryana have both filed translated copies of the wazib-ul-arz for the year 1956-57 in Urdu

but before we record our findings, it would be appropriate to point out that the words “revenue record” used in Section 2(g)(3) of the 1961 Act refer to documents that are part of the record of rights or any other document prepared by revenue authorities. The sharat-wazib-ul-arz, also called the village administration paper, records the customs and laws prevalent in a revenue estate, including rights, in Shamilat Deh and in the Shamilat land of a Taraf, Patti, Pana or Thola and may, the situation so demanding, record the grazing rights in such land. A wazib-ul-arz is a part of the record of rights (revenue record), prescribed by Section 31 of the Punjab Land Revenue Act, 1887. A presumption of truth, though rebuttable, attaches to entries in the record of rights under Section 44 of the Punjab Land Revenue Act, 1887. The wazib-ul-arz, as already recorded, is a part of the record of rights and, therefore, relevant for determining whether the Shamilat land of a Panna is used for common purposes.

Reverting to the facts of the present case. The land, in dispute, is admittedly, the Shamilat land of “Panna Bebyan” and, therefore, belonged to proprietors according to their shareholdings but would be included in the Shamilat Deh of the village and as a consequence, would vest in the Gram Panchayat only if it is used as per the “revenue record” for common purposes, as provided by Section 2(g)(3) of the 1961 Act.

A relevant extract from the wazib-ul-arz for the year 1956-57, produced by the parties, reads as follows: -

“Shamlat Panna, the cattle of Panna are grazing without any consideration of proprietors and non-proprietors. In the land gair Majrua Shamlat Thola, the cattle of the owners are grazing. In land of Majrua, after harvesting the crop, after one month the cattle of every person are not grazing without consideration rather the cattle of the owners only are grazing.”

A perusal of the aforesaid extract reveals that the Shamlat land of “Panna Bebyan” is used by the entire village community whether members of the proprietary body or not, for grazing their cattle, thereby leaving no ambiguity that the land, in dispute, which is the Shamlat land of “Panna Bebyan” was used as per the revenue record (wazib-ul-arz, for the year 1956-57), for the benefit of the village community or a part thereof or for common purposes of the village as required by Section 2(g)(3) of the 1961 Act. The petitioners are unable to refer to any other entries in the record of rights (the revenue record) or any other revenue record to rebut the presumption of truth attached, by Section 44 of the Punjab Land Revenue Act, 1887 to entries in the record of rights, of which the sharat-wazib-ul-arz is an important part. We, therefore, have no hesitation in holding that the land, in dispute, which is the Shamlat land of “Panna Bebyan” is included in the Shamlat Deh of the village and vests in the Gram Panchayat.

Consequently, we hold that the land, in dispute, is the

Shamlat Deh of the village Gram Panchayat but for reasons entirely

different from the reasons recorded by the Commissioner and dismiss the writ petition.

**[RAJIVE BHALLA]
JUDGE**

14.07.2015
shamsher

**[AMOL RATTAN SINGH]
JUDGE**