

IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH.

Regular Second Appeal No.1654 of 1986  
Date of Decision: 22.7.2015

Madan Lal @ Madan Mohan and others ..Appellants

versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Fateh Saini, Advocate, for the  
appellants.

Mr. Ravi Pratap, AAG, Haryana,  
for respondent nos. 1 to 3.

Mr. J.L.Malhotra, Advocate,  
for respondent no.7.

RAJIVE BHALLA, J. (ORAL)

The appellants challenge judgment and decree dated 15.3.1986, passed by Additional District Judge, Hisar, dismissing their suit and their appeal.

Counsel for the appellants submits that the appellants accept the finding recorded by the trial and the first appellate court that the suit was not maintainable but as the land in dispute was clearly recorded as “shamilat deh”, the question whether the land vests in the Custodian, the proprietors, the Gram Panchayat or the allottees, from the Custodian, may be left open to be determined and decided by the Collector, exercising the power under Section 13-A of

the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act") (as applicable to Haryana).

Counsel for the appellants prays that while affirming the findings that the suit was not maintainable, liberty may be granted to the appellants, to approach the Collector, by filing an appropriate petition under Section 13-A of the 1961 Act.

Counsel for respondent no.7, who claims to have purchased the land in dispute from an allottee of the Rehabilitation Department, states that as his title has been affirmed by the courts below, the question of ownership of the land in dispute no longer survives. The appeal may be dismissed in its entirety without any liberty to the appellants, to avail any remedy, whether under the 1961 Act or otherwise.

Counsel for the State of Haryana submits that though the land was "shamilat deh" but as it was allotted to respondent no.7's vendee, the allotment is protected by Section 2(g)(ii-a) of the 1961 Act and, therefore, granting liberty to the appellants, would be meaningless.

I have heard counsel for the parties and perused the impugned judgments and decrees.

A perusal of the facts reveals that the land in dispute was recorded as "shamilat deh" and appears to have been owned by muslim proprietors who migrated to Pakistan. The land was declared evacuee property and allotted to various persons, including the vendee of respondent no.7. Both the courts below have held that in view of Section 36 of the 1954 Act, the suit is not maintainable, but

while holding, as above, disregarded the fact that the land in dispute was “shamilat deh” and, therefore, any question about any rights, title or interest in the land in dispute was to be decided by the Collector, exercising power under Section 13-A of the 1961 Act. The courts below also ignored that jurisdiction of civil courts is barred by Section 13 of the 1961 Act.

At this stage, it would be appropriate to point out that a dispute, whether the share of muslim migrants in the “shamilat deh” of a village, vests in the Rehabilitation Department or the Gram Panchayat, was settled by the Supreme Court in Gram Panchayat of village Jamalpur versus Malwinder Singh and others, 1985 PLJ 463. by holding that the provisions of the Punjab Village Common Lands (Regulation) Act, 1953 (repealed and then replaced by the 1961 Act), shall prevail over the Central Acts, thereby clearly holding that the share of muslim migrants in the “shamilat deh” of the village shall vest in a Gram Panchayat. The State of Haryana has, however, enacted Section 2(g)(ii-a) of the 1961 Act, to protect allotments made before 9<sup>th</sup> July, 1985.

The courts below have rightly held that the suit was not maintainable, being barred by provisions of the East Punjab Evacuees (Administration of Property) Act, 1947, the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, but while doing so, ignored that the land in dispute was “shamilat deh” and, therefore, jurisdiction to decide whether it is “shamilat deh” or protected from inclusion in “shamilat deh” by Section 2(g)(ii-a) of the 1961 Act vests in the Collector and their jurisdiction was

barred by Section 13 of the 1961 Act.

The suit filed by the plaintiffs-appellants, as conceded by counsel for the appellants, was not maintainable. The appeal is, therefore, dismissed but with liberty to the appellants, to approach the Collector, exercising power under Section 13-A of the 1961 Act, by filing an appropriate petition, to determine whether the land is included in the "shamilat deh" of the village or protected by Section 2 (g)(ii-a) of the 1961 Act. In case, such a petition is filed, it shall be considered and decided after serving notices upon all parties concerned, within a period of six months of its filing. The parties are restrained from alienating the property or creating any third party interest, during pendency of the petition under Section 13-A of the 1961 Act. The appeal is, accordingly, dismissed, with no order as to costs. Decree sheet be prepared accordingly.

22.7.2015  
VK

( RAJIVE BHALLA )  
JUDGE