

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

Civil Writ Petition No.16579 of 1990

Date of Order: 29th June, 2015

Bant Singh and others

..Petitioners

Versus

Additional Director, Panchayats, Punjab and another.

..Respondents

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

**Present: Mr. Gurcharan Singh, Advocate,
for the petitioners.
Mr. P.S.Bajwa, Addl.A.G.,Punjab,
for respondent no.1.
None for respondent no.2-Gram Panchayat.**

RAJIVE BHALLA, J.

The petitioners pray for issuance of a writ of certiorari quashing order, dated 09.07.1990 (Annexure P-5), passed by the Additional Director, Panchayats, Punjab, Chandigarh (exercising the powers of the Commissioner), holding that the land, in dispute, vests in the Gram Panchayat and ordering the petitioners' eviction from land measuring 1 kanal 18 marlas bearing khasra no.18/2 of Rect. No.35.

Counsel for the petitioners submits that, admittedly, jamabandi for Samvat 1996-97 (1940-41), records that Khasra No.125 and 423, measuring 1-2 Bighas, described as "Chahi" and "Dakar" i.e. cultivated land are "Shamilat Deh Hasab Rasad Raqba Khewat", in cultivating possession of one Harnama son of Chetu, a co-sharer. The petitioners' father Rakha Singh, who was also a co-sharer purchased the private land of Harnama, along with his share in "Shamilat Deh",

vide sale deed dated 26.02.1959, Ex.PA. After consolidation, Harnama son of Chetu was allotted khasra no.18/2 (1-18), standard kanals, from Rect. No.35, in lieu of pre-consolidation numbers 125 and 423. The Naksha Haqdarwar Ex.P3, khatauni Paimash Ex.P-5, jamabandi for the year 1958-59 and all other revenue documents, prove that as the land, in dispute, was in cultivating possession of Harnama, a co-sharer, prior to 26.01.1950, in accordance with his share holding and on payment of land revenue, it is excluded from the "Shamilat Deh" of the village by Section 2(g) (viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the 1961 Act'). The Collector, therefore, rightly held that the land, in dispute, does not vest in the Gram Panchayat but the Appellate Authority has without examining the revenue record or recording any cogent reasons held that as the land is "Shamilat Deh" it vests in the Gram Panchayat. The findings recorded by the Appellate Authority that Harnama was not the owner of the land, in dispute or that he was an unauthorised occupant, are contrary to the revenue record. A perusal of the revenue record, particularly jamabandi for the 1940-41, reveals that Harnama is recorded as a co-sharer, in possession through Waryam Singh, "Gair Marusi", thereby fulfilling the ingredients of Section 2(g)(viii) of the 1961 Act.

No one has put in appearance on behalf of the Gram Panchayat but as we have perused the reply, are not inclined to wait for the Gram Panchayat.

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

The Gram Panchayat, filed a petition, under Section 7 of the Act, seeking the petitioners' eviction from the land, in dispute by pleading that the petitioners are in unauthorised possession of land belonging to the Gram Panchayat. The petitioners, in turn, filed an application under Section 11 of the 1961 Act, claiming that the land, in dispute, does not vest in the Gram Panchayat. After considering the evidence on record, the Collector held that as the land, in dispute, is excluded from "Shamilat Deh", under Section 2(g)(viii) of the Act, the Gram Panchayat has no right to evict the petitioners. The Gram Panchayat filed an appeal. The Additional Director, Panchayats, reversed the order passed by the Collector by holding that the land in dispute is recorded as the ownership of the Gram Panchayat and as Harnama son of Chetu, the vendor of Rakha Singh, (the petitioners' father) was not in possession prior to 26.01.1950 and is recorded as an unauthorised occupant, after 1950, the land vests in the Gram Panchayat.

The question that calls for an answer is whether the land, in dispute, is excluded from the "Shamilat Deh" of the village, under Section 2(g)(viii) of the Act?

Admittedly, jamabandi for the year 1996-97(Samvat) equal to the Georgian year 1940-41, records that the land, in dispute, is "Shamilat Deh Hasab Rasad Zaire Khewat", i.e. the common land of the village, owned in common by proprietors, in accordance with their respective share holdings. The "Shamilat Deh" of a village came to vest in a Gram Panchayat under the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as 'the 1954 Act'). The

1954 Act was, however, repealed and replaced by the 1961 Act, which provides, by Section 2(g), a detailed definition of the expression “Shamilat Deh”. Section 2(g)(1to5) of the 1961 Act provide the circumstances in which land shall be included in the “Shamilat Deh”, of a village, whereas sub-sections (i to ix) provide the circumstances in which land shall be excluded from the “Shamilat Deh” of a village. Section 3 and 4 of the 1961 Act provide that land that has vested in a Gram Panchayat under the 1954 Act shall continue to so vest except if it is excluded from the “Shamilat Deh” under Section 2(g) of the 1961 Act.

The petitioners, in order to succeed are required to prove, by cogent evidence that the land in dispute is excluded from “Shamilat Deh” by reference to any of the exclusion clauses enacted by Section 2 (g) of the 1961 Act. The petitioners rely upon Section 2(g)(viii) of the 1961 Act, to support their plea of exclusion, of the land, in dispute, from the “Shamilat Deh” of the village. The petitioners contend that as jamabandi for the year 1940-41 records Harnama son of Chetu, a proprietor, in cultivating possession of the land, in dispute, in accordance with his share holding, prior to 26.01.1950, the land is excluded from the “Shamilat Deh” of the village.

Before examining the jamabandi and recording our opinion, it would be appropriate to reproduce Section 2(g)(viii) of the 1961 Act, which reads as follows:-

“Section 2(g) “shamilat deh” includes—

1. XX XX XX
2. XX XX XX
3. XX XX XX
4. XX XX XX

5. XX XX XX

but does not includes-

(i) XX XX XX

(ii) XX XX XX

(ii-a) XX XX XX

(iii) XX XX XX

(iv) XX XX XX

(v) XX XX XX

(vi) XX XX XX

(vii) XX XX XX

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

(ix) XX XX XX

Section 2(g)(viii) of the Act, excludes land from the “Shamilat Deh” of a village if it was (a) in the individual cultivating possession of a proprietor; (b) not in excess of his share holding; (c) was assessed to land revenue; (d) on or before 26.01.1950.

A perusal of the evidence on record reveals that the ownership column of jamabandi for the year 1940-41 records that the land in dispute is “Shamilat Deh Hasab Rasad Zaire Khewat”. The cultivation column of the jamabandi records Harnama son of Chetu, “Hissedaran Marfat Waryam Singh son of Jata Singh Gair Masuri” i.e. Harnama son of Chetu, co-sharer, in cultivating possession of khasra no.125-423, through Waryam Singh son of Jata Singh etc. The nature of the land is “Chahi” and “Dakar”, a variety of cultivable land. The land is also assessed to land revenue, thereby fulfilling all the ingredients of

Section 2(g)(viii) of the 1961 Act. At this stage, it would be appropriate to point out that during consolidation, khasra no.18/2 of Rect. No.35, was allotted to Harnama son of Chetu, in lieu of Khasra No.125-423 and Rakha Singh, the petitioners' father, purchased Harnama's private land with the latter's share in the "Shamilat Deh", vide registered sale deed dated 26.02.1959, Ex.PA.

The Collector accepted these documents and held that the land, in dispute, is excluded from the "Shamilat Deh" of the village but the Additional Director, Panchayats, has rejected these documents by holding that the land is recorded as the ownership of the Gram Panchayat and as Harnama is recorded as an unauthorised occupant, the land vests in the Gram Panchayat. The findings so recorded, are both factually and legally incorrect.

The Additional Director, Panchayats, has while holding that the land vests in the Gram Panchayat and ordering the petitioners' eviction, ignored Section 2(g)(viii) and disregarded entries in jamabandi for the year 1996-97 (Samvat), relatable to Georgian Calendar year 1940-41, that record Harnama son of Chetu Hissedar (co-sharer) in cultivating possession of khasra no.125-423, through Waryam Singh, on payment of land revenue, before 26.01.1950. The finding recorded by the Additional Director Panchayats that Harnama son of Chetu is an unauthorised occupant is apparently based upon the words "Gair Marusi" recorded against the name of Harnama, in the post consolidation jamabandies. The Additional Director Panchayat lost sight of the fact that as Consolidation authorities recorded the ownership of the Gram Panchayat in order to implement the statutory

vesting of “Shamilat Deh” in a Gram Panchayat, under 1954 Act, the possession of Harnama had to necessarily be recorded as “Gair Marusi” i.e. a person in possession. The use of the word “Gair Marusi”, in the context of the present case, does not indicate that Harnama son of Chetu was an unauthorised occupant. The finding that the petitioners have not produced any evidence that Harnama sold the land to the petitioners' father is also contrary to the record. The petitioners tendered sale deed dated 26.02.1959, Ex.PA, into evidence, before the Collector. The sale deed has not been denied or controverted by the Gram Panchayat and was in fact relied by the Collector while holding that the petitioners' father had purchased this land from Harnama. The evidence on record, therefore, proves that the land, in dispute was in cultivating possession of a proprietor, in accordance with the share holding, on payment of land revenue, before 26.01.1950.

A question may, however, legitimately arise whether the petitioners have been able to link the land in dispute to the land recorded in possession of Harnama son of Chetu in jamabandi for the year 1940-41. A perusal of the order passed by the Collector reveals that the petitioners have produced all relevant consolidation documents, namely, khatauni Ishtemal Ex.R-1, Naksha Haqdarwar, Ex.R-2, proceeding of Consolidation Ex.R-3, Khatauni Paimash, Ex.R-4, Missal Haqiat , Ex.R-5, a copy of jamabandi for the year 1958-59 Ex.R-6, to prove that the land, in dispute, was allotted to Harnama son of Chetu, in lieu of his share in the “Shamilat Deh”, which was in his cultivating possession prior to 1950. The fact that Harnama was recorded as “Gair Marusi” in post consolidation jamabandies is

irrelevant, as it is this very parcel of land i.e. khasra no.18/2 of Rect. No.35, which was allotted to him in lieu of the land in his possession as a proprietor prior to consolidation, duly proved by reference to consolidation documents.

Consequently, we have no hesitation in holding that as the land, in dispute, was in cultivating possession of Harnama son of Chetu before 26.01.1950, in accordance with his share holding and on payment of land revenue, it is excluded from the "Shamilat Deh" of the village, under Section 2(g)(viii) of the Act and having been purchased by Rakha Singh, the father of the petitioners, while purchasing the private land of Harnama, does not vest in the Gram Panchayat. The findings recorded by the Additional Director, Panchayats, that the land, in dispute vests in the Gram Panchayat, is both factually and legally incorrect and must, therefore, be set aside.

In view of what has been recorded hereinabove, the writ petition is allowed, order dated 09.07.1990, passed by the Additional Director, Panchayats, is set aside and order dated 30.01.1986 passed by the Collector, is restored, but with no order as to costs.

(RAJIVE BHALLA)
JUDGE

29th June, 2015
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(AMOL RATTAN SINGH)
JUDGE