

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

1. **CWP-7368-1993**

Decided on : 07.07.2015

Chuhar Singh

.... Petitioner

VERSUS

Joint Director Panchayats, Punjab
and others

..... Respondents

2.

CWP-7150-2004

Avtar Singh and another

.... Petitioners

VERSUS

Director, Rural Development
and Panchayats, Punjab and others

..... Respondents

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

Present: Mr.Vikas Singh, Advocate, for the petitioners.

Mr.P.S.Bajwa, Addl.A.G., Punjab.

RAJIVE BHALLA, J. (ORAL)

By way of this order, we shall decide CWP-7368-1993 which relates to orders of eviction and CWP-7150-2004 which relates to a question of title.

The Gram Panchayat filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as the “1961 Act”), praying for the eviction of Chuhar Singh (since deceased), now represented by his sons Avtar Singh and Kuldeep Singh. The Collector-cum-DDPO, Patiala, allowed the petition, on 28.09.1982. Aggrieved by this order Chuhar Singh filed an appeal which was dismissed, by the Joint

Director Panchayats, Punjab, on 02.07.1985. Chuhar Singh filed CWP-7368-1993 which was admitted.

After admission of CWP-7368-1993, Chuhar Singh filed a petition under Section 11 of the 1961 Act, claiming ownership of land measuring 72 Kanals and 15 Marlas bearing Khewat No. 299, Khatauni No. 626 and Khasra Nos. 2//21 (2-5) 7//11 (1-12) 22//16 (3-0) 11//4 (2-0) 5 (3-10) 21//9 (1-0), 10 (8-0), 11 (8-0), 12 (6-10), 19 (7-0), 20 (8-0), 13 (1-0) 21//18 (8-0), 7//1 (6-13), 10 (7-5) by pleading that as he is a Khewatdar/a shareholder, in possession of *Shamilat Deh*, before 26.01.1950, the land, in dispute, is excluded from the *Shamilat Deh* of the village. Chuhar Singh also pleaded that as the land was *Banjar Qadim* and was never used for common purposes, it does not vest in the Gram Panchayat. The Gram Panchayat filed a reply controverting averments and praying for dismissal of the petition.

The Collector-cum-D.D.P.O, Patiala, granted an opportunity to the parties to adduce evidence. Chuhar Singh produced the following documents:-

Ex. P/1	Jamabandi for the year 1942-43.
Ex. P/2	Jamabandi for the year 1946-47.
Ex.P/3	Mutation No. 972.
Ex. P/4	Khatauni Consolidation.
Ex.P/5	Naksha Haq Dar Var.
Ex.P/6	Consolidation proceedings.
Ex.P/7	Khatauni Pamaish.
Ex.P/8	Missal Haqiat.
Ex. P/9	Jamabandi for the year 1968-69.
Ex.P/10	Jamabandi for the year 1959-60.
Ex.P/11	Jamabandi for the year 1962-63
Ex.P/12	Jamabandi for the year 1968-69.
Ex.P/13	Jamabandi for the year 1973-74.

Ex.P/14	Jamabandi for the year 1978-79.
Ex.P/15	Jamabandi for the year 1983-74
Ex.P/16	Jamabandi for the year 1988-89
Mark A/1	Affidavit of Ved Parkash.
Mark A/2	Statement of Garib Singh.
Mark A/3	Copy of resolution dated 30.03.1994.
Mark A/4	Copy of order dated 24.05.1996 passed by the Assistant Collector of 1 st Grade.

The Gram Panchayat on the other hand, examined Hari Singh, Panch and closed its evidence.

After considering the pleadings and the evidence on record, the Collector-cum-Divisional Deputy Director, Rural Developments and Panchayats, Patiala, allowed the petition by holding that the land, in dispute, does not vest in the Gram Panchayat, as *jamabandi* for the year 1942-43 (Ex.P1) records that the land is *Bajar Qadim*, in possession of proprietors, the land was allotted to proprietors at the time of consolidation and was not used for common purposes. The Collector, however, declared Chuhar Singh owner of khasra nos. 21//9 (1-10) 10 (8-0), 13 (1-0), as Chuhar Singh confined his claim to these khasra numbers.

Aggrieved by this order, the Gram Panchayat filed an appeal. The Director, Rural and Development Panchayats, Punjab, allowed the appeal filed by the Panchayat by holding that Chuhar Singh was not in cultivating possession prior to 26.01.1950 as the land was *Banjar Qadim*. The Appellate Authority also relied upon Ex.P/8, P/9 and P/10, while holding that the land, in dispute, is owned by the Gram Panchayat and also held that as the land was taken on rent by the petitioners, the land vests in the Gram

Panchayat.

The question, that requires adjudication, in these petitions, is whether the land, in dispute, is included in or excluded from the *Shamilat Deh* of the village and, therefore, vests or does not vest in the Gram Panchayat?

Counsel for the petitioners submits that a perusal of the revenue record reveals that, before 26.01.1950, the land, in dispute, is recorded as the ownership of proprietors, was *Banjar Qadim* and was not used for any common purpose. The land, therefore, does not vest in the Gram Panchayat. As regards the finding that the petitioner was a Chakotedar (tenant) of the Gram Panchayat, counsel for the petitioners submits that the entry is incorrect as it is not relatable to any lease created or resolution passed by the Gram Panchayat. Even otherwise, this entry was subsequently deleted, as is apparent from a perusal of later *jamabandies*. As his last argument, counsel for the petitioners submits that there was a delay of 1 year and 2 months in the filing of the appeal by the Gram Panchayat but the appeal was allowed without condoning delay.

Counsel for State of Punjab, who has addressed arguments on behalf of the Gram Panchayat, submits that the petitioners' plea that the land is excluded from *Shamilat Deh* as it was *Banjar Qadim*, relies upon Section 2(g)(5) of the 1961 Act. Even as per the petitioners they were cultivating this land before the coming into force of the 1961 Act, thereby negating the plea that as

the land was *Banjar Qadim* and was not used for common purposes, it is excluded from the *Shamilat Deh* of the village. A perusal of findings recorded in the eviction orders, which are subject matter of CWP-7368-1993 reveal that the petitioners themselves took a stand that they are tenants of the Gram Panchyat and cannot be evicted. The petitioners, therefore, cannot plead that the land, in dispute, does not vest in the Gram Panchayat. The delay in the filing of the appeal has been duly condoned by the appellate authority.

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

As already noticed, the dispute, in the present case, is whether the land, in dispute, is included in or excluded from the *Shamilat Deh* of the village. The petitioners assert that as the land was *Banjar Qadim* and not used for common purposes, it is excluded from *Shamilat Deh* under Section 2(g)(5) of the 1961 Act.

Admittedly, the land, in dispute, was *Shamilat Deh* i.e. the common land of the village. After enactment of the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as the “1953 Act”), the *Shamilat Deh* of a village, came to vest in a Gram Panchayat, without exception. Upon repeal of the 1953 Act, the *Shamilat Deh* of a village could only vest in the Gram Panchayat if it fell within the meaning of *Shamilat Deh* as defined by Sections 2 (g)(1) to 2(g)(5) and would be excluded from *Shamilat Deh* if it fell within any of the exclusion clauses of Sections 2(g)(i) to 2(g)(ix) of

the 1961 Act.

The petitioners primarily rely upon Section 2(g)(5) of the 1961 Act and contend that as the land was *Banjar Qadim* and was not used for common purposes, it does not vest in the Gram Panchayat.

Before proceeding any further, it would be appropriate to point that *Banjar Qadim* is a variety of land that has remained fallow (uncultivated) for eight or more harvests and is included in the *Shamilat Deh* of a village, under Section 2(g)(5) of the 1961 Act, only if it is used as per the revenue record for common purposes.

The land, in dispute, was admittedly described as *Shamilat Deh* and vested in the Gram Panchayat under the 1953 Act. The onus to prove that on the coming into force of the 1961 Act, the land was *Banjar Qadim* and thereafter that it was not used as per the revenue record for common purposes, lay upon the petitioners. The petitioners have not produced any evidence to prove that on the date of coming into force of the 1961 Act i.e. 04.05.1961 the land was *Banjar Qadim*. The petitioners, in fact, assert that during consolidation, in 1955-56, i.e. before enactment of the 1961 Act they were already in cultivating possession, the land was allotted to them. This apart, the entry in *jamabandi* for the year 1959-60, records that the land is being cultivated, thereby negating the petitioners' plea that the land was *Banjar Qadim*. The *jamabandi* also records that the land was taken on *chakota* by the petitioners. The petitioners'

assertion that entry of payment of *chakota* is incorrect as it was subsequently deleted from the revenue record, is irrelevant as the question is not whether the petitioner was a tenant but whether on the date of coming into force of the 1961 Act, the land was *Banjar Qadim*. A perusal of the record and the petitioners' own case before the Collector that they were in cultivating possession, proves that on the date of coming into force of the 1961 Act, the land was being cultivated and was not *Banjar Qadim* so as to be excluded from *Shamilat Deh* under Section 2(g)(5) of the 1961 Act.

The plea that delay of more than one year in filing the appeal, has not been condoned, is factually incorrect. A perusal of the order passed by the appellate authority reveals that though the order may not be happily worded but the question of delay was taken into consideration and the appeal was decided on merits.

Consequently, finding no merit in either writ petition, the impugned orders of eviction and order declaring the Gram Panchayat as owner, are affirmed and the writ petitions are dismissed, but with no order as to costs.

[RAJIVE BHALLA]
JUDGE

07.07.2015
amit rana/shamsher

[AMOL RATTAN SINGH]
JUDGE