

In the High Court of Punjab and Haryana at Chandigarh

Date of decision: 16.2.2015

1. CWP No.7860 of 2003

Karma

.....petitioner

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

2. CWP No.8060 of 2003

Giano and others

.....petitioners

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

3. CWP No.8061 of 2003

Satbir Singh and another

.....petitioners

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

4. CWP No.11007 of 2003

Dhanpati and others

.....petitioners

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

5. CWP No.11020 of 2003

Chander Bhan and others

.....petitioners

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

6.

CWP No.11008 of 2003

Chander Bhan and others

.....petitioners

versus

Commissioner Rohtak Divn.Rohtak and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr.Vikram Singh, Advocate,
for the petitioners in CWP No. 7860, 8060, 8061
of 2003.

Mr.Rajbir Sehrawat, Advocate,
for the petitioner(s) in CWP No. 11007, 11008 and 11020
of 2003

Mr.R.K.S.Brar, Addl.A.G.Haryana.

Mr.Harkesh Manuja, Advocate,
for respondent No.4-Gram Panchayat.

Raj Mohan Singh, J.

1. Vide this common order, we propose to decide aforesaid six writ petitions as common question of law is involved in these cases. The facts are taken from CWP No. 7860 of 2003.

2. Petitioner assails the order dated 8.1.2002 (Annexure P-7) passed by Collector, Panipat, whereby the appeal of the respondent-Gram Panchayat was accepted as well as the order dated 14.11.2002 (Annexure P-9) passed by the Commissioner, Rohak Division, Rohtak, whereby his revision was dismissed thereby maintaining the order dated 8.1.2002.

3. The predecessors-in-interest of the petitioner were in cultivating possession of land comprised in Khewat No.105, Khatauni

No. 150/145, Rectangle No.10, Killa No.2, 9, 10, 11 and 12 and

Rectangle No. 53 killa No.9/2 situated in revenue estate of village Joshi Tehsil and District Panipat according to jamabandi for the year 1981-82.

4. Petitioner claimed that the aforesaid land had been in cultivating possession of his predecessors-in-interest much before the year 1937-38. According to revenue record viz. jamabandi for the year 1941-42, the predecessor-in-interest, namely, Ramanand was shown to be in possession of the land as *hissedar*. The land was recorded as '*shamlat deh hasab rasad khewat*'. Possession of Ramanand was shown to be *hissedar* and the kind and nature of the land was depicted in the relevant column as '*Badami Meharwal, Wahi, Badami Majrooaa*' etc. (terms related to cultivable nature of land).

5. According to *shajra nasab* (pedigree tree) of the village, Ramanand was shown as grandfather of the petitioner. In the subsequent jamabandis for the year 1954-55 and 1961-62, the petitioner was shown to be in possession in the capacity of *hissedar*. The land was recorded to be '*shamlat deh hasab rasab khewat*' (joint land according to the shares in the land). The column of cultivation was in the name of the petitioner with the entry "*khudkhast* (self cultivation) and *Maqbuza* (occupied land) Karma s/o Ghasi (*hissedar*)". The kind of land was shown to be '*banjar kadami thoor*' (old waste land, not cultivated for the last more than eight harvests).

6. Petitioner also alleged that at the time of consolidation the old khasra numbers were replaced by new khasra numbers and his possession was recorded and upheld by the consolidation

authorities. The petitioner filed petition under Section 13 of the Act seeking declaration of his title in the aforesaid land. Petitioner claimed that his possession through his predecessors-in-interest has been recorded since more than 50-60 years in the revenue record and the land does not vest under Section 2 (g) of the Act in panchayat as '*shamlat deh*'. The land was never used for any common purpose of the village community. The possession of the petitioner through his predecessors-in-interest was continuous, open, hostile and was more than 12 years at the time of commencement of the Act. The claim of the petitioner was contested by the Gram Panchayat. The Gram Panchayat claimed that the land stood vested in panchayat as '*shamlat deh*' with the aid of Section 2 (g) (5) of the Act.

7. The Assistant Collector 1st Grade, Panipat tried the title suit after following proper procedure. Petitioner got examined Hawa Singh, Halqa Patwari, as PW-1, himself as PW-2 and Daya Singh, Lambardar, as PW-3, besides leading voluminous evidence in the form of Ex.P-1 to Ex.P-18. On the other hand, respondent-Gram Panchayat got examined Roshan Lal, Panch, as RW-1, Prem Singh, Gram Secretary, as RW-2 and Dharam Singh, Patwari, as RW-3. The Assistant Collector 1st Grade, Panipat vide judgment and decree dated 30.4.1999 (Annexure P-6) decreed the suit.

8. Gram Panchayat filed appeal against the aforesaid order before Collector, Panipat, who accepted the same vide order dated 8.1.2002 thereby declaring the land to be shamlat deh, capable of vesting in the Panchayat.

9. Petitioner remained unsuccessful in revision before the Commissioner, who dismissed the same vide order dated 14.11.2002. That is how the orders passed by the Collector, Panipat and the Commissioner, Rohtak Division Rohtak are under consideration in the present writ petition.

10. We have heard the arguments of both sides and have also perused the record.

11. Section 2 (g) of the Act is necessary to be highlighted:-

“(g) "shamilat deh" includes-

(1) lands described in the revenue records as shamilat deh excluding abadi deh;

(2) xx xxxx 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;

(4) xxxx xxxx xxxxxx.

(5) lands in any village described as bonjar qadim and used for common purposes of the village according to revenue records;

(i) xxx xx xx

(ii) xxx xx xx

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) xxx xx xx

(v) xxx xx xx

(vi) xxx xx xx

(vii) [-----].

(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; or

(ix) is used as a place of worship or for purposes subservient thereto;”

12. Section 4 of the Act reads as under:-

"4. Vesting of rights in Panchoyats and non-proprietors. -

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,-

xxxxx xxxxx xxx

(2) xxxxx xxxxx xxx

(3) Nothing contained in clause (a) of sub-section (1)and in sub-section (2) shall affect or shall be deemed ever to have affected the-

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedors, Butimars,

Bosikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before, the 26th January, 1950."

13. The first jamabandi produced before the Assistant Collector 1st Grade was of the year 1937-38, which depicted the same position as in the jamabandi for the year 1941-42. In the said jamabandi, the grand father of the petitioner (according to *shajra nasab Annexure P-3*) was shown to be in cultivating possession. The word 'cultivating possession' herein assumes significance in view of the fact that some of the land was shown to be *chahi* (irrigated from well) and *majrooaa* (cultivable land), while remaining land was shown to be *badami Meharwal and Wahi*. In the subsequent jamabandi of the year 1961-62, the same entry remained in the column of ownership, whereas, the name of the petitioner appeared in the column of cultivation showing him to be in possession as *khudkhast and maqbooja* Karma son of Ghasi (*hissedar*). In the column of 'khasra number', the land was shown to

be *Majrooaa badami* and in the next column of 'kind of land', the land was shown to be *banjar kadami thoor*. Petitioner challenged the incorporation of mutation in the name of Gram Panchayat by way of title suit on the ground that the land was not capable of vesting in Panchayat as *shamlat deh* on the basis of revenue entries at the relevant time and on the basis of legal position involved in the case.

14. Before the Assistant Collector 1st Grade, petitioner besides adducing revenue record in the form of jamabandis from the year 1937-38 to 1986-87, relied upon *naksha haqdarwar* (Ex.P-15), khatoni measurement (Ex.P-17) and khatoni consolidation (Ex.P-18). The said documents were relevant in the context of showing that the petitioner was in possession of old khasra numbers and now the new khasra numbers are corresponding to those old khasra numbers. The area of old khasra numbers in possession of the petitioner was duly supplemented in terms of revenue record, wherein same area was shown to be allotted by way of new khasra numbers. The execution of material documents viz. *naksha haqdarwar, khatoni paimesh and khatoni consolidation* were duly exhibited and proved.

15. The Scheme of Consolidation (Ex.P-16) further revealed that the total area of the village was partitioned. The partition of the shamlat deh was also sanctioned, according to which petitioner was given possession of new khasra numbers against his entitlement over old khasra numbers. The aforesaid documentary evidence was corroborated by PW-1 Hawa Singh, Patwari, who had deposed according to revenue record in favour of the petitioner that the

petitioner was in cultivating possession of the land according to jamabandi for the year 1941-42. No girdawari was ever recorded in the name of Gram Panchayat nor the land was ever given on lease. Petitioner never paid any rent or tax apart from the land revenue. The continuous possession of the petitioner was testified for the last 50 to 60 years. PW-3 Daya Singh, Lambardar, also testified on these lines and corroborated the factum of ownership of the petitioner over the land. This witness further deposed on the factum of partition of the land according to their respective shares and that the land was never used for any common purpose. Petitioner also appeared as PW-2 and led the evidence in affirmative.

16. Learned counsel for the respondent-Gram Panchayat has argued that the petitioners or their predecessor-in-interest were never shown to be in individual cultivating possession on account of partition of the land. The status/ nature of possession being in the capacity of co-sharer cannot advance the case of the petitioner inasmuch as that the requirement of law in terms of Section 2 (g) (iii) of the Act is that a person claiming that his land is excluded from *shamlat deh* under Section 2 (g) (iii) of the Act, shall have to prove that (a) the land was partitioned before 26.1.1950 and (b) was brought under cultivation by individual land holder. The recording of name of predecessor as a co-sharer/ *hissedar* clearly negates the plea of partition. If the land was partitioned, predecessor Ghasi would not have been recorded as a co-sharer but as an individual owner. For raising an inference of partition, the names of proprietors would have been recorded in the column of ownership. Since the

land continued to be recorded as *shamlat deh*, therefore, according to learned counsel for the respondent, ingredients of Section 2 (g) (iii) of the Act are not satisfied for want of tangible evidence.

17. Learned counsel further states that plea based upon Section 2 (g) (viii) of the Act requires the petitioners to prove that “*shamlat deh*” was in individual cultivating possession of a co-sharer, but not in excess of his share and after payment of land revenue.

18. Learned counsel for the Gram Panchayat has vehemently argued that there was no evidence of partition on record so as to attract applicability of exclusion clauses of Section 2 (g) of the Act. Learned counsel further argued that the cultivating possession over the land prior to 26.1.1950 cannot be construed lightly. Mere proprietary possession is not sufficient to exclude the land from the ambit of *shamlat deh* under Section 2 (g) (iii) and Section 2 (g) (viii) of the Act. In support of his contention, learned counsel has cited **2012 (3) RCR (Civil) 58** titled **Bundi Ram (deceased) vs. Commissioner, Ambala Division Ambala.**

19. The argument raised by learned counsel for the Gram Panchayat has to be considered in the light of facts and evidence on record. The revenue record of jamabandi for the year 1941-42 or even on 1947-48 reveals Ramanand *hissedar* to be in cultivating possession. The land besides being shown *chahi* was also *Majrooaa badami Meharwal Wahi* etc. In subsequent jamabandi, *khudkhast* of Karma son of Ghasi (*hissedar*) was shown and therefore, apparently such type of entries cannot be presumed to be only proprietary cultivation by any stretch of imagination. Secondly,

the factum of partition was duly corroborated by documentary evidence and Scheme of Consolidation, Ex.P-16, showing partition of total area of village and as per its column No.5, partition of shamlat was sanctioned as per record. Therefore, according to *naksha haqdarwar, khatoni paimesh and khatoni istemal*, Ex.P-15, Ex.P-17 and Ex.P-18 respectively, the possession of new khasra numbers in lieu of old khasra numbers was duly given to the petitioner. This fact was further endorsed by the Patwari, PW-1, and Lambardar, PW-3, deposing that after the partition, the petitioner is in cultivating possession. He never paid any rent except the land revenue. The correct appreciation of the material on record in the context of Section 2 (g) (5), 2 (g) (iii), 2 (g) (viii) and 4 (3) (ii) of the Act thus gives positive tilt in favour of the petitioner to show that he is entitled to the declaration in question.

20. The factual matrix of the case may be lawfully tested at the threshold of legal position. Section 2 (g) (5) prescribes that shamlat deh includes the land described as *banjar kadim* and used for 'common purpose' of village according to revenue records. The proviso to the said section was omitted by Act No.19 of 1976. As on day, the requirement is that the land shown as *banjr kadim* must be under use for common purpose (s) of the village so as to get it vested in Panchayat as '*shamlat deh*'. The revenue record i.e. jamabandi for the year 1961-62 showed the land to be *banjar kadami thoor*. Firstly, the nomenclature of the nature of land does not fully coincide the requirement of *banjar kadim*. Secondly, even if it is so presumed, then also due to its non user for common purposes of the village as

per the revenue record, the land cannot be presumed to have vested in Panchayat as '*shamlat deh*'. The possession of the petitioner through his predecessors-in-interest is proved to be since 1937-38.

21. Factum of partition brought on record vide Scheme of Consolidation (Ex.P-16) and other revenue records creates exception to the rule that even if individual cultivator is shown in possession as *hissedar* that proves his individual cultivation despite the partition having not been given effect in the revenue records. The nature of possession of the petitioner and his predecessors-in-interest was in individual capacity i.e. individual cultivation as *hissedar*, which presupposes partition. Petitioner or his predecessors-in-interest never shown to be in possession collectively along with other co-sharers. Their possession was shown to be individual *hissedar*. The land was never put to any common use for any common purpose of the village community. The revenue record viz. Ex.P-16 i.e. Scheme of Consolidation also projected a case of partition of shamlat land and *naksha haqdarwar, khatoni paimesh and khatoni consolidation*, Ex.P-15, Ex.P-17 and Ex.P-18 respectively, also advance the theory of delivery of possession of new khasra numbers in lieu of old khasra numbers in favour of the petitioner. The consequence of interpretation originated from revenue record was duly supplemented by oral testimonies of Patwari and Lambardar, namely, Hawa Singh and Daya Singh, who appeared as PW-1 and PW-3 respectively. Petitioner was proved to be in cultivating possession since 1937-38. The land was never used for any common purpose. Possession of the petitioner through his predecessors-in-interest was proved to be

in individual cultivating possession of his share. The land was never leased out nor the petitioner had ever paid any rent except the land revenue (In this way the land was proved to be assessed to land revenue). The partition of the land was effected according to consolidation record and delivery of possession of new khasra numbers in lieu of old khasra numbers also stands proved on record. The interpretation arising from Section 2 (g) (5) of the Act is thus not attracted for the land which has not been proved to be used for any common purpose.

20. Similarly, the exclusion clause of Section 2 (g) (iii) of the Act favoured the petitioner inasmuch as the possession of the petitioner and his predecessor was found to be in individual capacity before 26.1.1950.

21. Expressions like *banjar jadid* (not harvested for the last four harvests), *banjar kadim* (not harvested for the last eight harvests) and *gair mumkin* land (not cultivable and used for any other agricultural pursuits) need to be rightly construed and understood. A land which was once cultivated and has not been sown for four successive harvests is classified as *banjar jadid* or new fallow. If it continues to be un-cultivated and the said entries are maintained for the next four harvests, then such land passes into the category of *banjar kadim* or old fallow. The term *gair mumkin* is a barren land. A *banjar kadim* land presupposes that it remained un-cultivated for eight successive harvests. On the strength of this interpretation, learned counsel for the respondent stressed that cultivating possession of the petitioner cannot be presumed. Under Section 2

(g) (viii), the land, recorded as *shamlat deh* would not vest in Gram Panchayat if it was assessed to land revenue and has been in individual cultivating possession of co-sharers not being in excess of their respective shares in *shamlat deh* on or before 26.1.1950. Following conditions are *sine-qua-non* for the applicability of aforesaid provision:-

1. Individual cultivating possession of the co-sharers.
2. Not being in excess of their respective shares
3. Land being assessed to land revenue
4. On or before 26.1.1950.

24. Partition of land and individual cultivating possession of a person are two phenomenon interpretations and this controversy has been caught up in legal imbroglio from the very inception of Vesting Law. It is not un-common that oral partition/ family settlement, if given effect in the revenue record, would have the same force of law as that of partition by metes and bounds. The predecessor-in-interest of the petitioner was shown to be in actual cultivating possession of half of the share of the land and his share was distinct and identifiable in terms of khasra numbers. There was no other person to share the holdings out on the land so mutated in favour of the predecessor. This status if read in conjunction with *naksha haqdarwar* (Ex.P-15), *khatoni paimesh* (Ex.P-17) and *khatoni consolidation* (Ex.P-18) along with Scheme of Consolidation (Ex.P-16) would give clear picture of separation of share(s). The aforesaid documentary evidence was further strengthened by oral evidence of PW-1 Hawa Singh, Patwari and PW-3 Daya Singh, Lambardar.

25. The exclusion clause 2 (g) (viii) of the Act is also attracted for the reason that the column of ownership of the land depicted the land to be *shamlat deh hasab rasab khewat* but the petitioner and his predecessor Ramanand were in cultivating possession as *hissedar* not in excess of any share on or before 26.1.1950.

26. Reverting back to the interpretation of Section 2 (g) (5) of the Act, its necessary ingredients are that (i) the land in question described as *banjar kadim* in revenue record (ii) in revenue records the land in question entered as used for common purpose of the village. The aforesaid proposition stood answered on the basis of revenue record. Even if the land is presumed to be *banjar kadim* (though the facts are appearing otherwise), the land in question was never proved to be used for common purpose of the village community.

27. For the applicability of exclusion clause of Section 2 (g) (iii) of the Act, individual cultivating possession as co-sharer is *sine-qua-non*. Apparently, the possession of the petitioner was shown to be as *hissedar* by name in the jamabandi for the year 1941-42 and even prior thereto, therefore, the said requirement also stood complied with, which again proves that the land in question was not *shamlat deh* according to its status as on 26.1.1950.

28. The interpretation of Section 2 (g) (viii) of the Act is also required to be seen in the present context. According to the testimony of PW-3, the land was assessed to land revenue as the petitioner never paid any rent except the land revenue. The cultivating possession of the petitioner as co-sharer was also

depicted. The ingredients of this exclusion clause i.e. 2 (g) (viii) were duly satisfied. In this view of the matter also the land was fully protected from being labelled as *shamlat deh*.

29. Another feature which is also attached with the land is the interpretation in terms of Section 4 (3) (ii) of the Act. The cultivating possession of the land on the date of commencement of the Act for more than 12 years without payment of rent was proved to the hilt. In this way, the petitioner was also protected under Section 4 (3) (ii) of the Act.

30. The observation of the Collector and the Commissioner that the possession of the petitioner was not proved in the revenue record is totally on account of misreading of evidence. Secondly, the interpretation was wrongly given. Once the *banjar kadim* land was not shown to have been utilised for common purpose, the same does not vest in shamlat deh in Panchayat on the strength of Section 2 (g) (iii) of the Act. The authorities viz. the Collector and the Commissioner have wrongly interpreted this clause by observing that the *banjar kadim* land is not supposed to be in cultivating possession. The petitioner cannot be asked to lead evidence in negative on an issue qua which onus was not upon him. The Collector and the Commissioner also tried to negate the factum of partition of land by misreading the revenue record comprising the Scheme of Consolidation, *naksha haqdarwar*, *khatoni paimesh* and *khatoni istemal*. The bare entries reflected in the jamabandi for the year 1937-38 onwards were erroneously ignored. The oral evidence on record, which was in consonance with the revenue record was also

misread altogether.

31. Resultantly, this Court has no hesitation in holding that the petitioner has successfully proved that the land in question was in individual cultivating possession of his predecessor prior to 26.1.1950. The land in question was never leased out to the petitioner nor the petitioner had ever paid any rent except the land revenue. The petitioner was in possession of the land in question for more than 12 years at the time of commencement of the Act. The cumulative effect of all the interpretations arising out of different exclusion clauses of Section 2(g) and Section 4 (3) (ii) of the Act bring the land in question out of the ambit of vesting in Panchayat as shamlat deh.

32. In view of what has been stated herein above, these writ petitions are allowed. Impugned orders dated 8.1.2002 (Annexure P-7) and 14.11.2002 (Annexure P-9) are hereby set aside and the petitioner is declared to be owner in possession of the land in question and the mutation effected in favour of Gram Panchayat is declared illegal, null and void and not binding upon the rights of the petitioner.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

February 16, 2015
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