

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

**CWP No. 10756 of 2015 (O&M)
Date of decision: 08.12.2015**

Suraj Mal and others

....Petitioners

Versus

Financial Commissioner, Haryana and others

.... Respondents

**CORAM: Hon'ble Mr. Justice Surya Kant
Hon'ble Mr. Justice P.B. Bajanthri**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. Whether to be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. S.P.Chahar, Advocate
for the petitioners.

P.B. Bajanthri, J.

In this petition, the petitioner has questioned the validity of orders dated 11.08.2010 (Annexure P-9), dated 26.10.2005 (Annexure P-8) and dated 23.12.2003 (Annexure P-7) passed by respondents No.1 to 3, respectively. The Gram Panchayat, Bhalaut District Rohtak through Social Education and Panchayat Officer, filed a suit under Section 13-A of Punjab Village Common Land (Regulations) Act, 1961 (for short “Act, 1961”) as applicable to State of Haryana. Claim of the petitioner is that as per jamabandi for the year 1987-88, the land comprising Khewat No. 821 Khatauni No. 99821019, Total Kita 62 measuring 679 canals 4 marlas was entered in the revenue record as the ownership of “Thola Doran Hasab Rasab Araj Khewat” and the said land was

used for the 'common purposes' of the village. This land comprises gair mumkin johar, gair mumkin paths, cremation ground, place of worship of Lord Shiva. The rest of the land was described as “Banjar Kadim” and was being utilized by the proprietors and non-proprietors both, as a “charagrah” and for other common purposes and thus the subject land falls within the 'shamilat land'. It thus vests in the gram panchayat of village Bhalaut.

One Bhagat Ram and others hobnobbing with each other, instituted the suit titled as **Bhai Ram and others versus Chander and others** in the court of AC Ist Grade Tehsildar, Rohtak and got the above said land mutated in their names vide order dated 26.02.1991 and 11.04.1991. It was contended by Gram Panchayat that those orders were without any authority of law since the land falls under the definition of 'shamilat deh' and is governed by the Act, 1961, therefore, question of partition and mutation did not arise. Moreover, in the partition proceedings, the Gram Panchayat was not arrayed as party. The Collector Rohtak, framed the following 8 issues in the suit under Section 13-A of the Act, 1961 herein:-

- 1. Whether the land in dispute fall under the definition of shamilat deh or not?OPP*
- 2. Whether the order dated 26.02.1991 and 11.04.1991 passed by the Assistnt Collector Ist Grde, (Tehsildar) and the mutation bearing No. 3957 dated 31.03.1991 are liable to be set aside as per the contents of the suit?OPP*
- 3. Whether the suit was filed beyond limitation?OPD*
- 4. Whether the suit is liable to be dismissed on the ground of non-joinder of necessary parties? OPD*
- 5. Whether the suit is being filed against any deed person?OPD*
- 6. Whether the plaintiff has got no right to file the present suit?OPD*
- 7. Whether the suit become final as per order dated*

26.02.1991 passed in the appeal?OPD

8. Whether the defendants are entitled for the costs?OPD

2. Each of the issues were analyzed with reference to facts of the case, records and provisions of the Act and it was held that the subject land measuring 679 kanals 4 marlas falls under the definition of 'shamilat deh' and vests in the gram panchayat. Accordingly, the suit was decreed.

3. The petitioners feeling aggrieved by the order of Collector, Rohtak preferred appeal before the Commissioner, Rohtak Division, who upheld the Collector. The petitioners preferred revision before the Financial Commissioner, who too confirmed the orders of the Collector and Commissioner and held that the land in question is 'shamilat deh' within the meaning of Section 2 (g)(3) of the Act, 1961. The petitioners being aggrieved by the orders of Collector, Commissioner, and Financial Commissioner, have presented this petition.

4. Learned counsel for the petitioners vehemently contended that the authorities have erred in holding the said land as a 'shamilat land'. The petitioners relied on jamabandi Annexure P1 as well as the extract of Ex.D1/A, Ex.P4, Ex.P8, Ex.P9 Ex.P5 and Ex.P7 relating to jamabandi for the years 1930-31, 1954-55, 1967-68, 1977-78, 1982-83, 1987-88. The total land and type/nature of land as is evident is that 'Banjar kadim' land is more than the 'nehri' therefore, predominately the land is 'shamilat deh'.

5. The land in dispute was shamilat of "thola Doran". The shamilat land of 'Thola' is part and parcel in the 'shamilat deh' of a village, under Section 2(g)(3) of the Act, 1961 as applicable to the State of Haryana. The land in dispute is also recorded as "Banjar Kadim". Therefore, it has to be treated as a 'shamilat deh'. If it was used according to the revenue records for the benefit of entire village community or part thereof, it is evident that the land was

reserved or used for common purposes. The Collector is right in holding that 'Banjar kadim' land cannot be partitioned when the land was “charagah” and used for the common purposes as it vests in the Gram Panchayat.

6. Perusal of the records and decision of the Collector, the petitioner have not made out a case so as to interfere with the order passed by the Collector, vide order dated 23.12.2003 or the subsequent order of the Commissioner or the order dated 26.10.2005 and Revisional Authority order dated 11.08.2010.

7. Accordingly, the petition is dismissed.

(SURYA KANT)
JUDGE

(P.B. BAJANTHRI)
JUDGE

08.12.2015
pooja saini