

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

LPA No. 731 of 2013 (O&M)
DATE OF DECISION : 13.10.2015

Gram Panchayat, Uparli Dhamauli

.... APPELLANT

Versus

Union of India and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE HARI PAL VERMA

Present : Mr. Arvinder Arora, Advocate, for the appellant.

Mr. Sudeep Mahajan, Addl. A.G., Haryana,
for respondents No.2 to 4.

Ms. Rupinder Kaur, Advocate, for respondents No.5,6 and 9.

SATISH KUMAR MITTAL, J. (Oral)

Gram Panchayat, Uparli Dhamauli, Tehsil Naraingarh, District Ambala, has filed this intra-court appeal under Clause X of the Letters Patent against the order dated 31.05.2011 passed by the learned Single Judge, dismissing the writ petition (CWP No. 3647 of 1990) filed by the appellant challenging the order dated 07.04.1982 (Annexure P-1) as well as the mutation entry based thereon transferring 337 kanals 8 marlas of land in favour of the Central Government on the assumption of its being evacuee land. The appellant has also challenged the order dated 20.09.2012 passed by the learned Single Judge, whereby the review application (RA No. 32-CW of 2011) filed by the appellant was also dismissed.

When the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'the Act') came into force, mutation of the land in question was entered in favour of the appellant – Gram Panchayat, as under the provisions of the Act, this land being *shamilat deh* vest in the Gram Panchayat. However, in the year 1982, the order, which was impugned in the writ petition, was passed and mutation of this land was made in favour of the Central Government on the assumption that share of the Muslims evacuee in the *shamilat deh* is to be taken as evacuee property. At one point of time, there was a controversy as to whether the share of Muslim evacuee in the *shamilat* land of a village is to be vested in the Gram Panchayat or it is deemed to be evacuee property to be transferred to the Central Government. The Supreme Court in **Gram Panchayat of Village Jamalpur Versus Malwinder Singh and others**, (1985) 3 Supreme Court Cases 661 has held that even *shamilat deh* including the share of Muslim evacuee in the same is to be vested in the Gram Panchayat under the provisions of the Act. Any transfer of such land being share of the evacuee Muslim is invalid. Such land is to be vested in the Gram Panchayat.

During the pendency of the writ petition, the State of Haryana amended the Act by Haryana Act No. 13 of 1996, whereby clause (ii-a) was added to Section 2 (g) (5), which provides that *shamilat deh* does not include the land which was *shamilat deh*, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of the Act, but on or before the 9th day of July, 1985. The

said amendment has been upheld by a Division Bench of this Court in **Gram Panchayat of Village Kum-Kalan Versus The State of Punjab and others**, (2010) 3 RCR (Civil) 729. In view of the aforesaid amendment and the judgment of this Court in **Gram Panchayat of Village Kum-Kalan's case** (supra), all transfers of such land, after the cut off date, by the Rehabilitation Department/State Government, are invalid and liable to be set aside.

During the course of arguments, learned counsel for the appellant submits that all the allotments made after the cut off date have already been cancelled, though those orders have not been implemented and incorporated in the revenue record. In our opinion, for this purpose, the appellant can approach the revenue authorities for correction of the record on the basis of those orders. The appellant can also file an application for setting aside those allotments which have not been cancelled so far, or even to cancel those allotments though made prior to the cut off date, if made on the basis of fraud or by concealment of facts etc.

In view of the aforesaid statement made by learned counsel for the appellant and liberty granted to the appellant, this appeal is dismissed.

(SATISH KUMAR MITTAL)
JUDGE

October 13, 2015
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(HARI PAL VERMA)
JUDGE