

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

(1)

**Regular Second Appeal No.2537 of 1985 (O&M)
Date of Decision: July 21, 2016.**

Pona and others

.....APPELLANT(s).

VERSUS

Dhoola(deceased) through his LR Surat Singh and others

.....RESPONDENT(s).

(2)

CWP No. 11323 of 1994 (O&M)

Dhulla(deceased) through his LR Surat Singh

.....PETITIONER.

VERSUS

Financial Commissioner, Haryana & others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Argued by: Mr. Alok Jain, Advocate
for the appellants in RSA-2537-1985.

Mr. Vishal Sodhi, Advocate
for the respondents in RSA-2537-1985 and
for the petitioner in CWP-11323-1994.

Mr. Ram Tilak Redhu, D.A.G. Haryana
for respondents No.1 to 4 in CWP-11323-1994.

Mr. V.K. Jain, Senior Advocate with
Mr. J.L. Malhotra, Advocate
for respondent No.5 in CWP11323-1994.

SURINDER GUPTA, J.

RSA-2537-1985

This is appeal by defendants Pona and others, residents of

village Chulkana Tehsil and District Sonapat, against the judgment and decree passed by Additional District Judge, Karnal, whereby the suit of the plaintiffs-respondents was partly decreed and they were held entitled to protect their possessory rights over the suit land and the defendants-appellants were restrained from dispossessing the plaintiffs from the disputed property except in due course of law.

2. The suit land is 86 kanals 6 marlas as fully defined in para 1 of the plaint. The plaintiffs alleged that they are owners in exclusive cultivating possession of the suit land since 1950 to the knowledge of all including the defendants without payment of any rent. The entries in the revenue record showing their possession as *gair marusi* are wrong and against facts. Being in continuous and open possession to the knowledge of all, they have acquired title over the suit land by way of adverse possession.

3. The defendants filed application for partition of the suit land along with other land of *Pana Jaidan* before Assistant Collector 1st Grade, Sonapat. The suit land could not be partitioned as per terms of *Wazib-ul-arz*. Despite having knowledge of this fact, defendants entered into conspiracy to forcibly dispossess the plaintiffs. It is alleged that application filed by defendants seeking partition of the land before the Assistant Collector 1st Grade was not maintainable and the plaintiffs have the right to protect their possession over the suit land.

4. The plaintiffs also sought permission to file suit in representative capacity for and on behalf of owners of *Pana Jaidan*. The relief sought by the plaintiffs in the suit as mentioned in para 11 of the plaint reads as follows:-

“11. That it is, therefore, prayed that a decree in

favour of the plaintiffs against the defendants, restraining the defendants from getting the land partitioned and from interfering into the cultivating possession as owners of the land in suit of the plaintiff, permanently, in any way by show of force or violence, along with the costs of the suit on the grounds given in the plaint. Any other relief that the hon'ble Court may deem fit be also awarded to the plaintiff.”

5. The defendants contested the claim of plaintiffs in the written statement, inter-alia pleading that the plaintiffs are not in possession of the suit land jointly but they are recorded to be in possession of same separately and over separate killa numbers. They also raised objection that area of land bearing killa no.157/8min (2-0) is not in possession of any of the plaintiffs and killa No.157/15 min measuring 3 kanals 4 marlas does not exist. The possession of the plaintiffs over the suit land is as cosharers, as such, they could not seek the declaration of their title over the same by way of adverse possession.

6. The defendants further pleaded that suit land is partible and defendants have got right to get it partitioned. Suit land along with other land of *Pana Jaidan* of the village measuring 338 kanals 2 marlas was wrongly mutated in the name of *Gram Panchayat*, Chulkana. Proprietors of *Pana Jaidan* filed civil suit against *Gram Panchayat*, which was decided in their favour and mutation was sanctioned in favour of proprietors of *Pana Jaidan* as “*Shamlat Pana Jaidan Hasab Rasad Raqba Khewat*”. The plaintiffs were also party to that suit, as such, cannot plead that the suit land does not belong to *Pana Jaidan* and that they have become owner of it by adverse possession. Any entry in *Sharat Wazib-ul-arz* that suit land cannot be partitioned is wrong in fact and in law and has no binding effect on the parties. The

defendants have resorted to possible legal mode of partition by initiating partition proceeding before the revenue authorities. It is the plaintiffs, who were creating trouble in getting the suit land partitioned by filing applications one after the other and were not allowing the defendants to proceed with the same. All the remaining averments in the plaint were contested, controverted and denied.

7. Pleadings of the parties led to the framing of issues as follows:-

- (1) Whether the plaintiffs have become owners by way of adverse possession, if so to what effect? OPP
- (2) Whether the suit land is not partible? OPP
- (3) Whether the suit is bad on account of mis-joinder of causes of action? OPD
- (4) Relief.

8. Learned Sub Judge 2nd Class, Sonapat while dismissing the suit of the plaintiffs recorded the finding on issue No.1 that they have failed to prove their adverse possession over the suit land. While answering the second issue, '*whether the suit land is not partible*', learned Sub Judge, observed as follows:-

“But in my considered opinion, the said oral evidence led by the defendants not sufficient to prove that the purposes for which it was kept i.e. for '*charand*' is no more there. However, seeing the fact that the property of Pana Jadan including the suit land has already been broken by its co-sharers, it shall be more convenient and for better interest of the co-sharers of the Pana Jadan that the same should be partitioned in between the proprietors of Pana Jadan.”

9. With the above observations, the suit of the plaintiffs was dismissed.

10. In the first appeal, learned Additional District Judge, Karnal

affirmed the finding of learned Sub Judge on issue No.1. However, on issue No.2, he did not agree with learned lower Court and observed that the revenue Court having exclusive jurisdiction to decide the matter, had already held that the disputed property was impartible and civil Court has no jurisdiction in the matter by virtue of bar of Section 158(xvii) of the Punjab Land Revenue Act, as such, no finding on this issue is required to be given. With the above observations, learned first Appellate Court accordingly modified the findings of learned Sub Judge.

11. Not satisfied, the defendants have preferred this regular second appeal against the judgment of first Appellate Court.

12. I have heard learned counsel for the parties and have perused the paper book and record of the Courts below with their assistance.

13. The dispute in this appeal revolves around the fact as to whether the suit land is partible under the terms of *Wazib-ul-arz* placed on file as Ex.P13. This is no more in dispute that the plaintiffs are in possession of the suit land. Their plea of attaining ownership by way of adverse possession stood discarded and the judgments of the Courts below to this effect has attained finality.

14. It is not disputed that suit land as per terms of *Wazib-ul-arz* of Mauja Chulkana, Tehsil Sonapat, District Rohtak (now District Sonapat) was reserved for *charand*. As per Section 2 (g)(1) of Punjab Village Common Lands (Regulation) Act, 1961 as applicable to Haryana (later referred to as 'Village Common Lands Act'), *Shamilat deh* includes land shown as *charand*. The definition of *Shamilat deh* as amended vide Haryana Act No.43 of 1971 has retrospective effect from the date of coming into force of 'Village Common Lands Act' in the year 1961. Section 13-D of Village Common

Land Act specifically provides that the provisions of this Act shall have over-riding effect. Section 13-D reads as follows:-

“13-D. Provisions of this Act is to be over-riding.--The provisions of this Act shall have effect notwithstanding anything to the contrary contained in law, agreement, instrument, custom, usage, decree or order of any court or other authority.”

15. The appellants-defendants have set up a case that the suit land is partible and the appellants-defendants have got a right to get it partitioned. The plea raised by the appellants-defendants to this effect in para 2 of the written statement reads as follows:-

“2. That Para No.2 of the plaint as stated is wrong and denied. The land in suit is partible and the defendants have a right to get it partitioned. The land in suit including other land belonging to *Pana Jaidan* of the village measuring to the extent of 338 Kanals 2 Marlas was wrongly mutated in the name of the Gram Panchayat Chulkana upon which the proprietors of the Pana filed a civil suit in the civil court at Sonapat against the Gram Panchayat and the same was decided in favour of the proprietors of the Pana and the mutation was sanctioned in favour of the proprietors of Pana Jadan as 'Samlat Pana Jadan Hasab Rasad Raqba Khewat'. The plaintiffs were also a party to that suit and thus the plaintiffs now cannot be heard to say that the land in suit does not belong to Pana Jadan and that they have become owners by adverse possession. A certified copy of the judgment and decree of that suit will be produced later on. Any entry in the *Sharat Wazib-Ul-Urz* regarding the fact that the land in suit cannot be partitioned is wrong in fact and in law and the same if any has no binding effect upon the parties, at this stage because the very purpose i.e. 'Pasturage' for which the land in suit was sought to be reserved has been foiled by the plaintiffs themselves. The circumstances have changed. The clause in the *Sharat Wazib-Ul-Urz* is in the nature of an agreement can no longer be

maintained as it is being contested by large section of the co-sharers. All the land since stands broken. The cattle utility meant for agricultural purpose has since been replaced by mechanical means i.e. thrashers, tubewells, tractors and Crashers etc. in the field of rural economy and hence the land in suit is partible.”

16. During the course of arguments, reference was made to the judgment (Ex.D1) dated 18.01.1968 passed by Sub Judge 1st Class, Sonapat, whereby the suit filed by respondent-plaintiff Dhoola, defendant No.6 Sonda and other proprietors of *Pana Jaidan* of village Chulkana, was decreed for declaration that land measuring 314 kanals 8 marlas situated in village Chulkana was wrongly vested in *Gram Panchayat* and plaintiffs of that suit were declared as its owners. That case pertain to *Banjar Kadim* land and the plaintiffs in that case including the appellants have alleged that *Banjar Kadim* land was not being used for common purposes of the village as per the entry in the revenue record, as such, cannot vest in *Gram Panchayat*. The claim of the plaintiffs was admitted on the basis of entry in the revenue record pertaining to *Banjar Kadim* land. It is no more in dispute that no decree was allowed with regard to the land bearing khasara Nos.156/13, 18 and 157/8min which is subject matter of this suit.

17. The present suit does not relate to *Banjar Kadim* land, but subject matter of this suit is land which as per the terms of *Wazib-ul-arz* was reserved for *charand*. Regarding the *Banjar Kadim* land, Section 2(g)(5) is relevant which provides that “***Shamilat* land includes land in any villages described as *Banjar Kadim*, used for common purposes, according to revenue record**”. It was not subject matter before the civil Court in the earlier suit, copy of judgment of which is Ex.D1 that suit land was reserved as *charand*, as such, any observation made in that suit, is not relevant for the

purpose of decision of this case.

18. Learned counsel for the appellant has argued that though the suit land was reserved as *charand* but it is no more in use as *charand* and the very purpose for which it was reserved, has lost significance in view of the fact that the agriculturists have resorted to be mechanised farming and as such, there is no use for keeping any land reserved as *charand*. Secondly, it falls within the domain of civil Court to decide as to whether the suit land is partible as it involves question of title which the revenue Court is not competent to answer. Reliance has been placed on the observations of ***Mela Vijay Dashmi Sabha Vs, Amar Nath and Anr. 1995(3) R.R.R. 584, Sheo Nath and Ors Vs. Giani and Ors, 1930 AIR (Lahore) 513***, and the observations made by the Financial Commissioner regarding this very land on a revision petition titled as ***Dhoola Vs. Pauna alias Pawan Singh and others 1985 PLJ 155***.

19. Learned counsel for the appellants has further argued that when the land is not being used as *charand* and this land was taken from the proprietors of the village, there is no purpose of keeping it as *charand*. For the proper use of this land, it will be better to allow the proprietors to seek partition of the same.

20. Learned counsel for the respondents-plaintiffs has argued that this point has already been set at rest by the Financial Commissioner vide judgment dated 20.12.1984 in between parties which was reported in case ***Dhoola Vs. Pauna alias Pawan Singh and others (supra)*** that the land in suit is not partible. The order of the Financial Commissioner further confirmed and followed by Financial Commissioner, Haryana while disposing of ROR No.224 of 1991 vide order dated 02.09.1993 has not been

challenged by the plaintiffs who were party to that proceedings, as such, the same has attained finality and this matter cannot be re-agitated in this suit. The question as to whether the suit land is partible is to be decided by the revenue Courts.

21. Two substantial questions of law arise for consideration in this appeal are as follows:-

(i) Whether the jurisdiction of Civil Court in this case to decide as to whether the suit land is partible or not is barred under Section 158(2)(17) of Punjab Land Revenue Act?

(ii) Whether the land which vests in Gram Panchayat as per provisions of Village Common Lands Act, can be allowed to be partitioned at the behest of proprietors of the village?

Substantial question No.(i):-

22. Financial Commissioner, Haryana, while deciding the dispute between the parties regarding the suit land, in case “*Dhoola Vs. Panna alias Pawan Kumar (supra)*” observed in para 7 that partition of the land earmarked for *charand* is not permissible as per terms of *Wazib-ul-arz*. However, in para 5 and 6, learned Financial Commissioner appears to have accepted that such matter should be decided by the Civil Court. Paras 5 to 7 of the order passed by Financial Commissioner are reproduced as follows:-

“5. It has been laid down in a number of rulings that a clause in the *wajib-ul-arz* prohibiting partition is a good and sufficient cause to refuse the application for partition. In *Sheo Nath v. Giani, AIR 1930 Lahore 513*, it has been held that the question whether any such land was not liable to partition in accordance with an entry in the *wajib-ul-arz* was a question of title and should be decided by the Civil Courts. Therefore the legal position appears to be that whereas a revenue officer may refuse partition under section 115 of the Land Revenue Act, he has no authority to allow partition in case a contrary provisions exists

in **wajib-ul-arz**. In such cases the matter should be referred to the Civil Courts. The observations of the Commissioner in his order dated 14.10.1983 that the land having lost its character of '**charand**' having been brought under cultivation, the prohibition in the **wajib-ul-arz** ceases to be applicable, is untenable. Such an argument will encourage encroachment on common lands and will lead to precisely the situation which has been sought to be prevented by the **wajib-ul-arz**. The condition prohibiting partition is absolute and cannot be treated to have been waived or modified by the mere act of some of the co-sharers bringing any portion of the common land under cultivation.

6. However, a perusal of the partition application and the **wajib-ul-arz** shows that the following areas are not included in the **wajib-ul-arz** : 89/24/2, 24/3, 24/4, 24/5, 24/6, 24/7; 25/1, 25/2, 25/3; 131/9, 12, 13, 17 to 25; 147/1 to 4, 5. Therefore if the respondents are keen they may ask for the partition of this land. However while proceeding with such request the revenue officers are well advised to keep in mind the provisions of sections 112 and 115 of the Land Revenue Act since this land also appears to criss- cross with the common land of other Panas in the village.

7. It has been alleged that the petitioners are in possession of an area in excess of their share and they have encroached on the **shamlat** land. In such cases the remedy for getting this area vacated lies under section 150 of Punjab Land Revenue Act which lays down that where any land has been reserved for common purposes and any co-sharer has encroached on this land the revenue officer may on the application of any other co-sharer eject the encroaching co-sharer from the land and forbid repetition of the encroachment. Therefore, the grievance of the respondents can be removed by resorting to proceedings under section 150 of Land Revenue Act. As far as the partition proceedings are concerned they cannot be allowed to proceed in respect of tracts of area which have been earmarked for '**charand**' and are not partitionable in terms of the **wajib-ul-arz**. The partition proceedings can be continued only in respect

of such areas as are not covered by the prohibition laid down in the *wajib-ul-arz*. I accordingly accept the revision petition and remand the case to Tehsildar Sonapat for further action in the light of the earlier discussion.”

23. The purpose of quoting the above observations of Financial Commissioner is that the matter was not finally set at rest. The Financial Commissioner decided the matter with the observation that the revenue officer may refuse the partition under Section 115 of Punjab Land Revenue Act but has no authority to allow partition in case a contrary provision exists in *Wazib-ul-arz*. In such cases, the matter should be referred to the Civil Court. This answers the argument advanced by learned counsel for respondent-plaintiff that the matter has been finally set at rest by the Financial Commissioner.

24. In case of *Sheo Nath and Ors Vs. Giani and Ors (supra)*, Full Bench of Lahore High Court was to pronounce its opinion on following question of law:-

“In the last Settlement, on an agreement between all the village proprietors and with the approval of the Settlement Officer, a certain area out of the village shamilat was set apart for pasture, which was to continue to be joint and impartible. This agreement was duly recorded in the *Wazib-ul-arz*. A few years later some of the proprietors applied for partition of the area, and the Revenue Officer ordered partition, overruling the objection raised by some of the other proprietors that the land was not liable to partition in accordance with the aforesaid entry in the *Wazib-ul-arz*. Thereupon the objectors instituted a suit in the Civil Court for a declaration that the land could not be partitioned. Is the question involved one of title and can it be determined by Civil Courts, or is it exempt from their jurisdiction under Section 158(2)(17) Land Revenue Act?”

25. On perusal of law on the point, it was answered as follows:-

“Answer to this reference is that the question involved is one of title and is not excluded from the jurisdiction of civil Courts by Section 158(2)(17), Punjab Land Revenue Act.”

26. From the above discussion, it is clear that the matter falls within the domain of civil Court to decide as to whether the suit land is partible or not. Learned first Appellate Court has committed grave error while observing that only the revenue Court has jurisdiction to decide such matters. First substantial question of law is answered in favour of appellants-defendants.

Substantial question No.(ii)

27. The suit land was reserved for *charand* and as per provisions of Section 2(g)(1), land described in the revenue record as *charand* is included in *shamilat deh*. Section 4 of the Act describes vesting of right relating to *shamilat deh* in *Panchayat* and reads as follows:-

“4. (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,----

(a) which is included in the *shamilat deh* of any village and which has not vested in a panchayat under the *shamilat law* shall, at the commencement of this Act, vest in panchayat constituted for such village, vests in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the *abadi deh* of a village and which is under the house owned by a non-proprietor, shall on the commencement of the *shamilat law*, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the *shamilat law* shall be deemed to have been vested in the panchayat under

this Act.”

28. About the right vested in *Gram Panchayat* relating to land reserved for common purpose as per *sharat Wazib-ul-arz*, a Division Bench of this Court in case ***Khushi Puri and others Vs. The State of Haryana and others 1978 PLJ 78***, observed in para 6 and 7 as follows:-

“6. The main grievance of the petitioners, however, is that by plantation of trees the land for grazing purposes has been materially reduced. In this connection, the only point for determination is whether the petitioners had retained any such grazing rights in the land on account of which the gram panchayat could not put the land to any other use. The *shamilat deh* has been defined in the Punjab Village Common Lands (Regulation) Act, 1961, in such a manner as to include lands described in the revenue record as *shamilat deh* or *charand* excluding *abadi deh*. It means that in case *shamilat deh* has vested in the panchayat the *charand* would also be considered to have been so vested. By virtue of section 3, clause (a) of the Punjab Village Common Lands (Regulation) Act (1 of 1954), notwithstanding anything to the contrary contained in any other law for the time being in force and notwithstanding any agreement, instrument, custom or usage or decree or order of any Court or other authority, all rights, title and interest whatever in the land which is included in the *shamilat deh* of any village shall on the appointed date vest in a panchayat having jurisdiction over the village. Thereafter it was provided in section 4 of Act No. 1 of 1954 that all land vested in the panchayat shall be utilised or disposed of by the panchayat for the benefit of the inhabitants of the village concerned. Whatever land had previously vested in the gram panchayat was re-vested under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961. In view of these provisions, the grazing rights in the *shamilat deh* land were not at all saved for any of the residents of Bodha.

7. It is provided by rule 3(2) of the Punjab Village Common Lands (Regulation) Rules, 1964, that the panchayat could make

use of the land in *shamilat deh* vested in it either itself or through another for the purposes mentioned therein. There is a mention of tree plantation or other purposes related to forestry. It cannot, therefore, be gainsaid that the plantation of trees was such a purpose for which the land could not be utilised by the panchayat. Whatever rights the panchayat had for the management of the land devolved upon the Administrator and there is, therefore, no basis for this contention made by the learned counsel for the petitioners that the Administrator acted beyond his powers.”

29. In the aforesaid case, reference was also made to the observations made in case ***Salig Ram and others Vs. Maksudan Singh and others*** 1965 ***Current Law Journal*** 711, wherein it was observed as follows:-

“Held, that the panchayat has a right to use the *shamilat deh* vested in it under the 1954 Act either itself or through another person in any of the manners set out in that rule. Similar rules are stated to have been framed under the Act. This shows that except to the extent to which the statutory rules indicate, there is no fetter on the power of the panchayat to use the *shamilat deh* which vests in it under the Act for any of the specified purposes it likes and it is not necessary that what was grazing land out of the *shamilat deh* previous to such vesting, must continue to be such.”

30. From the above discussion, it is clear that the suit land vests in Gram Panchayat and shall be utilised or disposed of by the Panchayat for the benefit of residents of the village concerned. Allowing the partition of such land will be against the provisions of Village Common Lands Act and also divest the authority conferred on the Gram Panchayat under the above Act.

31. Learned counsel for the appellants while referring to Section 112 of Punjab Land Revenue Act, has argued that the partition of any grazing ground can be refused if in the opinion of revenue officer, partition of such property is likely to cause inconvenience to the cosharers, or other persons

directly or indirectly interested therein, or shall diminish the utility thereof to these persons. In this case, no such partition was refused on any of the above ground by the revenue authorities.

32. On giving a careful thought to the provisions of Section 112 of Punjab Land Revenue Act, 1887, I find that the same is not applicable to the facts of the present case. Refusal by the revenue authorities to partition the land on any of the ground as mentioned in Section 112 is not the subject matter of this case.

33. On consideration of the facts of the case and law on the point, I am of the considered opinion that it is not a case where the appellants can be allowed to seek partition of the land reserved for *charand* under the *Wazib-ul-arz*, which now as per the provisions of Village Common Lands Act, vests in *Gram Panchayat*. A point has been raised that the possession of the land is with the respondents-plaintiffs and it is not being used as *charand*. The plaintiffs have failed to prove their title and their possession is unauthorised and all remedies available under law can be availed against them to oust them. With above observations, second substantial question of law is answered against the appellants.

34. As a sequel of my discussion above, this appeal has no merits. Though the findings of the first Appellate Court on issue No.2 have not been approved, still for the reasons recorded while deciding second substantial question of law, the appeal filed by the appellants has no merits.

35. Dismissed.

36. Keeping in view the facts and circumstances of the case, the parties are left to bear their own costs.

CWP-11323-1994

37. Petitioner Dhulla (since deceased, now represented by his legal representative) seeks writ of certiorari for quashing of order dated 20.03.1991 (Annexure P-3) passed by Commissioner, Rohtak Division, Rohtak and orders passed by Financial Commissioner, Haryana dated 01.07.1994, whereby orders passed by Assistant Collector Ist Grade, Panipat and District Collector, Karnal were set aside and case was remanded to Assistant Collector Ist Grade, Panipat for taking action towards removal of encroachment of petitioner over the land of village Chulkana reserved for *charand* (pasture), as per terms of *Wajib-ul-arz*.

38. Financial Commissioner, Haryana vide order dated 02.09.1993 (Annexure P-1) followed the earlier order dated 20.12.1984 passed by Financial Commissioner, Haryana and directed that the entire land measuring 726 *kanals* and 8 *marlas* earmarked for *charand* in *Wajib-ul-arz* be maintained as *charand* and no application in respect of this land for partitioning it would be entertained by the Revenue Officers. (This order has not been challenged by writ petitioner).

39. Petitioner has challenged the above order of Financial Commissioner dated 01.07.1994 with the averment that while passing above orders Financial Commissioner ignored the contention of petitioner that application under Section 150 of the Punjab Land Revenue Act, 1887 (later referred to as 'the Act of 1887') was not maintainable as the land being *Shamilat deh* vests in *Gram Panchayat*. The ejectment from *Shamilat deh* can only be made at the instance of village *panchayat* under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (later referred to as 'the Act of 1961'). Respondent no. 5-Pawan Singh, who initiated the proceeding for removal of encroachment has no *locus standi* to move the

present application under Section 150 of 'the Act of 1887'. Another plea was taken by petitioner that he was in possession of land in dispute for more than 12 years and this fact was proved by the order of Additional District Judge, Karnal dated 27.04.1984, as such, his possession is protected under Section 4 of 'the Act of 1961'. Even otherwise only *Gram Panchayat* can seek dispossession of petitioner from the *Shamilat* land alleged to be in his possession.

40. Respondent no. 5-Pawan Singh in his reply defended the order passed by Financial Commissioner, Haryana *inter alia* pleading that the land in possession of petitioner was reserved for common purpose i.e. *charand*. Petitioner has nowhere averred that the land vested in *Gram Panchayat* in his reply before the revenue authorities. Financial Commissioner was justified in discarding the contention of petitioner that land vested in *Gram Panchayat* being *Shamilat deh*. The plea of petitioner that his possession has become legal and valid as it was for a period of 12 years prior to commencement of the Act of 1961 or Pepsu Village Common Lands (Regulation) Act, 1954 has no basis. The land is reserved for common purpose i.e. *charand*. Father of petitioner and respondents no. 6 to 8, namely; Harbans Singh son of Jagga alongwith three more proprietors of '*Pana Jadan*' had filed Civil Suit in Civil Court, Sonapat against *Gram Panchayat* of Village Chulkana and claimed in that suit that suit land and some other land does not vest in *Gram Panchayat* and is owned and possessed by plaintiff i.e. proprietary body of '*Pana Jadan*' of village Chulkana. The said suit was decreed in favour of proprietors of village Chulkana who were held to be owner of suit land. In view of the judgment in Civil Suit No. 415/1 titled as "*Sundha Ram and others vs. Gram*

Panchayat, Village, Chulkana” decided on 18.01.1968 by the Court of then Sub Judge Ist Class, Sonapat, the land does not vest in *Gram Panchayat*.

41. I have heard learned counsel for the parties and perused the paper-book with their assistance.

42. Before proceeding further, it will be relevant to have a note of the fact that the petitioner appears to be not aggrieved by order dated 02.09.1993 passed by the Financial Commissioner. The entire challenge in this petition is to order dated 01.07.1994 (Annexure P-2). The relief sought by petitioner as mentioned in concluding para of writ petition reads as follows:-

“It is, therefore, respectfully prayed that in the facts and circumstances of the case and the interest of equity, justice and fair play, this Hon'ble Court may be pleased to call for the record of the case and be further pleased to:-

(a) issue a certiorari for quashing the order dated 01.07.1994 passed by respondent no. 1 (Annexure P-2) and order dated 20.03.1991 (Annexure P-3) passed by respondent no. 2 and further for the issuance of a writ in the nature of mandamus directing respondents no. 1 to 5 not to dispossess the petitioner from the land in dispute.

(b) issue any other appropriate writ, order or direction which this Hon'ble Court may deem fit, and proper in the facts and circumstances of the case.

(c) dispense with the requirement of filing the certified copies of the Annexures and serving of advance copies of notice of the respondents.

(d) record of the case may be summoned and perused.

(e) costs of this writ petition be awarded in favour of the petitioner and against the respondents.”

43. It is evident from reliefs sought by the petitioner that he is not claiming any relief or has groused qua order of Financial Commissioner dated 02.09.1993.

44. Vide order dated 01.07.1994, Financial Commissioner, Haryana ordered as follows:-

“However, a co-sharer is entitled to move an application for removal of encroachment on this land to a revenue officer under Section 150 of the Punjab Land Revenue Act. If the petitioners had moved their application before the Assistant Collector with this intention, they cannot be faulted. It is the duty of the Assistant Collector to proceed to determine the encroachment and take action for removal thereof and forbid repetition of such encroachment in future. As this land has(sic is) not vested in the village panchayat under the Punjab Village Common Lands (Regulation) Act, 1961, the objection raised by the learned counsel for the respondents are not relevant. This revision petition is, therefore, accepted and the matter (sic is) remanded to the Assistant Collector for taking action towards removal of encroachments and maintaining this land as charand as laid down in the wazib-ul-arz.

45. Section 150 of the Act of 1887 deals with prevention of encroachment of common land. Under Section 7 of the Act of 1961, “an Assistant Collector of 1st Grade having jurisdiction in the village, may either suo moto or on an application made to him by a Panchayat or an inhabitant of the village.....after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the *shamilat deh* of that village which vests or is deemed to have been vested in the *panchayat* under this Act and put the *panchayat* in possession thereof”. It is clear from the perusal of above

provision of Section 7 that the Assistant Collector may proceed suo moto to remove the encroachment or he can also proceed on an application of any inhabitant of the village. In this case, Pawan Kumar-respondent No.5 is also resident of village Chulkana and is competent person to move application under Section 7 of the above Act.

46. Financial Commissioner, Haryana has given direction to the Assistant Collector for taking action towards removal of encroachment and maintaining the land in question as per the terms of *Wazib-ul-arz*. The Assistant Collector is competent to proceed in the matter and no fault can be found in the direction as given by the Financial Commissioner in his order dated 01.07.1994.

47. The plea raised by the petitioner that the application can be filed under Section 7 of the Act of 1961 and not under Section 150 of the Act of 1887 call for outright rejection. It is not the prerogative of the encroacher of public property that under which provision he should be ousted. It is for the authority competent under law to see under which provision unauthorised encroachment is to be removed. The cases have been noticed where *Gram Panchayat* under the pressure of political, police influential persons and some time for self interest of office bearer of *Panchayat* ignore such type of unauthorised encroachments and take no action. This is why the Legislature to its wisdom has authorised even an inhabitant of village and *Panchayat* authorities to move an application under Section 7 of Village Common Lands Act. The revenue authority while deciding the application has to see the spirit and the relevant claim and not the section under which it has been filed, particularly when the Assistant Collector is competent to take suo moto action to remove the encroachment. While deciding RSA No.2537 of 1985,

it has been held that the land in dispute is not partible and possession of petitioner over this land is unauthorised.

48. In view of my above discussion, this writ petition has no merits and the same is dismissed.

July 21, 2016.
Sachin M.

(SURINDER GUPTA)
JUDGE

Whether to be referred to the Reporters: [√]
Yes/No