

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1461 of 2006 (O&M)

Date of Decision: 14.11.2017

Ved Singh & Ors.

... Petitioners

VS.

Gram Panchayat, Nainetalpur & Ors.

... Respondents

**CORAM: HON'BLE MR.JUSTICE SURYA KANT
HON'BLE MR.JUSTICE SUDHIR MITTAL**

Present: Mr. Gaurav Mohunta, Advocate
Mr. Sailender Singh, Advocate
for the petitioners

Mr. SP Chahar, Advocate for Gram Panchayat

Mr. D.Khanna, Addl. AG Haryana

SURYA KANT, J. (Oral)

(1) This order shall dispose of CWP No.1461 of 2006; and CWP No.15566 of 2015 as the point in issue involved in both the writ petitions is common in nature. Though the facts are mainly extracted from CWP No.1461 of 2006 but a brief reference to the relevant facts from CWP No.15566 of 2015 is also made.

(2) The petitioners are residents of village Nainetalpur, Tehsil and District Sonapat. They claim themselves to be co-sharers and in cultivating possession of the land belonging to *thola* Bhagirath measuring 227 kanal 8 marla situated within the revenue estate of their village. It is averred that the aforesaid land is in their cultivating possession from the time of their forefathers and it is so reflected in the entries made in the jamabandi for the years 1935-36, 1939-40, 1943-44 and onwards.

(3) Since the Gram Panchayat was asserting its claim *qua* the land in dispute having vested in it, the petitioners filed a suit for declaration under

Section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana, seeking ownership and possessory rights over the land in dispute. Their suit having been dismissed by Collector, Sonapat vide order dated 13.02.2001, they went in appeal which was also dismissed by Commissioner, Rohtak Division vide order dated 02.09.2005. Both these orders are under challenge in the instant writ petition in which the parties were directed to maintain *status quo re*: possession on 31.01.2006.

(4) It is broadly an admitted fact that as per the revenue record starting from the jamabandis for the year 1909-10 onwards, the land in dispute is shown to be under the ownership of “*shamlat thola bhagirath hasab rasad rakba khewat makbuja malkan*”, namely, co-sharers/joint owners are shown to be in its physical possession. At the same time, the extracts of the jamabandis like 1909-1910 (P1), 1935-36 (P2), 1939-40 (P3) and 1943-44 (P4) reveal that nature of some of the khasra nos., i.e. part of the land is recorded as *gair mumkin johar* (village pond), *gora* (public passage), *gair mumkin charand* (grazing ground) etc. etc. Similarly, some of the khasra Nos. are recorded as *nehri* (i.e. cultivable land which is duly irrigated).

(5) The revenue record further reveals that the co-sharers are shown in individual possession of specific khasra Nos. For example, Chandan s/o Hans Ram is duly recorded in possession of old khasra No.862 measuring 1 kanal 5 marla and the nature of land is *nehri*. He is also recorded in possession of khasra No.865 (2 kanal 11 marla) and so is Ram Saroop s/o Munshi shown in possession of khasra No.866 measuring 2 kanal 17 marla. These have been referred to by us on illustrative basis.

(6) The authorities below have turned down the ownership claim of the petitioners primarily on the ground that the land in dispute is recorded to be

meant for common purposes like *charand*, *johar* and passage etc. and being owned by '*thola*' hence it vests in Gram Panchayat under Section 2(g)(1) of the 1961 Act.

(7) We have heard learned counsel for the parties at a considerable length and gone through the revenue entries with their able assistance.

(8) In our considered view, the approach of Collector as well as of the Appellate Authority in the manner they have proceeded to decide the controversy is totally erroneous in law. Section 2(g) of the 1961 Act as applicable to the State of Haryana defines *shamlat deh* and the lands which fall in its sub-clauses (1)(2)(3)(4)&(5) all are included within the definition of *shamlat deh*. Section 2(g)(3) reads as follows:-

“2(g) “*shamlat deh*” includes ----

(1) xxxx xxxx

(2) xxxx xxxx

(3) *lands described in the revenue records as shamlat, 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”*

(9) It may thus be seen that the lands which are described in revenue records as *shamlat, tarafs, pattis, pannas and THOLAS* and which are used, according to the revenue record, for the benefit of village community or for common purposes of a village, such land stands included in *shamlat deh*. Suffice it to mention that the lands which are recorded as *shamlat deh* vests in the Gram Panchayat under Section 4 of the 1961 Act.

(10) It is evident that not every land which is recorded as owned by *thola* can be *shamlat deh*. It must qualify the twin test of, namely, (i) that such land is used for the benefit of village community or for common purposes of village; and (ii) the land is being used for the benefit of village community or

for common purposes and is duly recorded in the revenue record. Unless both the conditions are satisfied, *thola* land cannot be included in *shamlat deh*.

(11) If the entries in the revenue record especially jamabandis (P1 to P4) are critically analysed in the light of the definition reproduced above, it emerges out that while some of the khasra Nos. are mentioned in the revenue record being used for benefit of village community such as *johar* (pond), *gora* (public passage), *charand* (grazing ground) etc. but there are some other khasra Nos. which are recorded as *nehri*, namely, irrigatable land and are in the individual cultivating possession of co-sharers in *thola* land. It may be difficult to include such khasra Nos. within the definition of *shamlat deh* as in terms of the revenue record, these Khasra Nos. are not being used for ‘common purposes’ or for the ‘benefit of village community’.

(12) In the light of the varied nature of land from one khasra No. to another, the authorities below ought not to have made sweeping observations merely on the basis of definition of *shamlat deh* or the fact that the expression “*thola*” has been used in sub-clause (3) of Section 2(g) of 1961 Act. In other words, the Collector was obligated to examine the nature of land khasra No.-wise and then determine as to how much land of *thola*, as per the revenue record, is being used for ‘common purposes’ or for the benefit of ‘village community’ and how much land is in individual cultivating possession of proprietors of *thola* land. There is no gainsaying that the land which falls in the later category cannot be termed as *shamlat deh* whereas the first category of land will fall within the ambit of *shamlat deh* and it vests in Gram Panchayat.

(13) The revenue record of the entire land of *thola* Bhagirath measuring 227 kanal 8 marla is not before us. Similarly, the land in the connected case was under the ownership of *thola* Nandwa of the same village and the total area

of that land is 266 kanal 4 marla. The revenue record of the entire land of thola Nandwa is also not available for our consideration. Nevertheless, we lay emphasis on the fact that the entire land of two *tholas* which are subject matter of these writ petitions is neither in cultivating possession of the co-sharers nor is recorded in the revenue record as meant for the benefit of 'village community' or for 'common purposes' of village. The controversy thus can be put to rest only when the prescribed authority deals with the land of each khasra No. and determines its nature at the relevant time.

(14) The subsequent change in the entries of revenue record in favour of Gram Panchayat may not be the solitary factor to tilt the matter in favour of Gram Panchayat. The consistent revenue record before and after conceptualization of "*shamlat deh* lands" (in 1953) will be the litmus test to resolve the controversy.

(15) In the light of the above discussion, we are of the view that the impugned orders cannot sustain as the matter requires afresh adjudication at the hands of Collector, Sonapat, strictly in the light of the observations made hereinabove.

(16) For the reasons afore-stated, the writ petitions are allowed; the impugned orders dated 13.02.2001 & 02.09.2005 (in CWP No.1461 of 2006) and impugned orders dated 12.12.2012 & 20.03.2015 (in CWP No.15566 of 2015) are set aside and the matters are remitted to the Collector, Sonapat to decide the same afresh in accordance with law and in the light of the observations made hereinabove. For the purpose of determining the nature of each khasra No. of *thola* lands, the Collector may either *suo motu* summon the entire revenue record or permit the parties to lead supplementary evidence consisting of entries in the revenue record without any supporting oral

evidence. Let the matters be decided within six months from the date of receipt of certified copy of this order. Till then, the parties are directed to maintain *status quo qua* the land in dispute.

(17) Parties are directed to appear before the Collector on 04.12.2017.

(Surya Kant)
Judge

14.11.2017
vishal shonkar

(Sudhir Mittal)
Judge

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes
Yes