

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.23504 of 2016 (O&M)

Date of decision: 01.06.2017

Himanshu Walia

.... Petitioner

Versus

State of Punjab and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE S.S. SARON.  
HON'BLE MR. JUSTICE DARSHAN SINGH.

Present: Mr. S.S. Deol, Advocate for  
Mr. Vikram Singh, Advocate for the petitioner.

Mr. PPS Thethi, Addl. A.G., Punjab with  
Mr. Parveen Kumar Singla, Tehsildar, Derabassi,  
Mr. Ranbir Singh, Executive Officer, Municipal Council,  
Derabassi and Mr. Dalwinder Singh, Patwari Halqa, Village  
Madhopur, Tehsil Derabassi, District SAS Nagar.

Mr. Manohar Lall, Advocate with  
Mr. Rajesh Kumar Aggarwal applicant/intervener.

\*\*\*

S.S. Saron, J.

The petitioner Himanshu Walia has filed the present petition in the nature of a public interest litigation under Articles 226/227 of the Constitution of India for directing the official respondents to immediately remove/demolish the illegal structures built by the private builders ATS Golf Meadows (respondent No.10) on the public land i.e. 'be-chirag mouza' which it is stated is a centuries old water channel area ('choe'). It is submitted that any obstructions or constructions over the 'choe' would permanently alter the ecology and geographical nature of the

area and nearby habitats. A further prayer has been made for registering an FIR and arresting the concerned beneficiaries from the illegal acts of raising obstructions and constructions on the natural 'choe'; besides, also allowing the land falling beneath the 'choe' to be used by private builders with the help of officials and elected representatives.

The petitioner states that he is a public spirited citizen and aware about the ecological and geographical aspects of the natural resources of the nation. He travels frequently between Ambala (Haryana) and Dera Bassi (Punjab). He has regularly observed the real estate developments of the area. He observed the misuse of power by ATS Builders (respondent No.10), who in the name of development had encroached upon the 'choe' land which is a natural water catchment area. It has made construction over the same which would endanger the nearby habitants. Therefore, he has invoked the jurisdiction of this Court in public interest to protect the habitat and the public property of the nation from the power hungry private builders and the Government officials which is the result of misuse of power and influence of money.

The petitioner, locals of the area and daily visitors in the month of August, it is stated, found that a very influential and a rich builder had created a wall along the down stream of the 'choe' on the national highway. According to the petitioner, it was a common fact known to the people of the area that ATS Builder and a very close local Akali MLA (Member of the Legislative Assembly), who himself is a builder and holds deep influence over the Municipal and the PUDA (Punjab Urban Development Authority) authorities; besides, the Planning Board, within a short span, on both sides of the downstream of

the 'choe', along the highway raised boundary walls. A bridge was also constructed in between the 'choe' so as to enable the private builders to use this natural 'choe' land exclusively for its private use and after development, market its project by throwing all the laws of the land to the winds.

The petitioner, in the circumstances, submitted an application under the Right Information Act so as to have access to documents, if any, available with the Government officials permitting the use of public land along the downstream of the 'choe'. He also obtained the land records. He found that the modus operandi used by the private builder and the Nagar Council, Dera Bassi (respondent No.8) was very clear from the documents that had been obtained.

The Executive Officer of the Nagar Council, Dera Bassi (respondent No.8) initially wrote a letter dated 22.12.2014 (Annexure P-1) to the Chief Engineer, Drainage and Irrigation Department, Punjab (respondent No.6). A perusal of the said letter shows that it had been issued regarding the cleaning of Dera Bassi stream and constructing the sites along this and for using the remaining area for public facilities. It is mentioned with reference to an earlier letter dated 01.04.2013 of the Superintending Engineer, Patiala Water Drainage Area, Patiala vide which sanction had been granted by the Chief Engineer, Water Drainage and Irrigation Department (respondent No.6) to ATS Private Limited Company on the same pattern. It was prayed that permission may be granted for constructing the above said seasonal stream of the National Highway existing in khasra No.341 and for the remaining area for public facilities. It was made clear that no case had been filed or was pending

Another letter dated 18.02.2015 has been attached with the letter dated 22.12.2014. The letter dated 18.02.2015 is also regarding constructing the sites and for using the remaining adjoining areas for public facilities. It was requested to grant approval for making the blob strong on the downstream of National Highway (khasra No.341) and for using the area for public facilities. In this regard, no information was received by the Municipal Council, Dera Bassi. It was again requested that approval regarding this work be given immediately to the Municipal Council, Dera Bassi.

According to the petitioner, the said letter (Annexure P-1) was issued for seeking approval for using the downstream 'choe' falling in khasra No.341 for public use and for raising solid brick constructions over the same. The said letter, it is stated, does not make any averment for constructing an over bridge over the downstream 'choe' and handing over the same for private use of any private builder.

The next letter dated 24.02.2015 (Annexure P-2) has been written by the Office of Municipal Council, Dera Bassi through its Executive Officer (respondent No.7) to the Chief Engineer, Drainage and Irrigation Department, Chandigarh (respondent No.6). A perusal of the said letter shows that it relates to constructing the site and using the remaining adjoining areas for public facilities. It is stated that in continuation of office letters dated 22.04.2014 (Annexure P-1) and dated 18.02.2015 it was requested by the Municipal Council, Dera Bassi for grant of approval for making the blob strong on the downstream of National Highway (Khasra No.341) and for using the area for public facilities. It was made clear that a sewerage treatment plant was proposed to be installed on the above said place by the Municipal

Council (respondent No.7). It was again requested that approval for installing sewerage treatment plant be granted at the earliest to the Municipal Council, Dera Bassi.

Another letter dated 31.03.2015 has been placed on record. A perusal of the said letter shows that the Executive Officer, Municipal Council, Dera Bassi (respondent No.7) requested the Chief Engineer, Drainage and Irrigation Department (respondent No.6) for grant of approval for making the blob strong on the downstream of the National Highway (Khasra No.341) and for using the area for public facilities. No information had been received by the Municipal Council in this regard. By the said letter, it was requested to grant approval to the Municipal Council, Dera Bassi regarding the above said work at the earliest.

The petitioner alleges that the motive and intent of the above stated exercise was to obtain a blanket approval for ATS Golf Meadows (respondent No.10) to give them a free hand to use the 'choe' land which was finally given by the Municipal Council, Dera Bassi by passing a resolution dated 17.03.2015 (Annexure P-4) without citing any legal provision or public welfare.

In short the contention of the petitioner is that the water channel ('choe') land primarily in khasra No.341 was being encroached by ATS Golf Meadows (respondent No.10) for its own use and marketing of its flats and plots.

At the time of motion hearing on 15.11.2016, Mr. Gaurave Bhayyia Gilohtra, Advocate for the petitioner was apprised that the Registry had raised an objection to the effect that the writ petition be filed according to the directions passed by a Division Bench of this Court

367. The petitioner in compliance with the said objection filed an affidavit (Annexure P-12) in which he simply stated that he is a public spirited person and had no private enmity or private interest of any kind with the builder or any other person. It was, however, observed by this Court in its order dated 15.11.2016 that the judgment in Ajaib Singh's case (supra) inter alia envisaged that the petitioner has to specifically disclose his credentials and his direct or indirect personal motive or interest involved in the case, if any, by way of an affidavit. The expression "specifically disclose his credentials", it was held in Ajaib Singh's case (supra), must, naturally imply that the petitioner has to set-forth what he did for his living, what public interest had he been espousing, the work done by him in that behalf, the particulars of any matter preferred by him as PIL earlier on which the Court had passed orders etc. It could not imply merely writing a sentence that a person is residing in the State, is public spirited and is, thus, filing a PIL.

It was said in the order dated 15.11.2016 passed by this Court that the petitioner had not set-forth as to what he did for his living, as to what public cause had he been espousing, the work done by him in that behalf and the particulars of any matter preferred by him as PIL earlier on which the Court had passed an order. Time was taken by the learned counsel for the petitioner to file another affidavit so as to show his compliance with the requirements of the Division Bench judgment in Ajaib Singh's case (supra) in the context of the Maintainability of Public Interest Litigation Rules, 2010 ('Rules' - for short) framed by this Court.

The petitioner on the adjourned dated i.e. 22.11.2016 filed an additional affidavit to contend that his case fell under Clause 6 (e) of

the Rules. A copy of the petition was, in any case, given to Shri P.P.S. Thethi, Additional Advocate General, Punjab for the State of Punjab so as to enable him to seek instructions. He was asked to verify the revenue records (Annexure P-3) of village Madhopur, Tehsil Dera Bassi, District SAS Nagar. The Patwari of the village was also asked to be present in Court on the adjourned date.

Shri Dalwinder Singh, Patwari village Madhopur appeared in Court on the adjourned date i.e. 02.12.2016. He had brought the revenue records with him and he submitted that the 'Gair Mumkin Choe' flows in khasra Nos.107 and 215 in the revenue estate of village Madhopur. In order to rule out any encroachment of the 'choe' it was submitted by the learned Additional Advocate General, Punjab that a demarcation of the area would be got conducted. It was directed that the Assistant Collector Ist Grade (Tehsildar), Dera Bassi shall get the demarcation of the 'choe' done to ensure that no construction had been raised on the land on which the 'choe' was/is to flow; besides, a report was to be submitted with regard to khasra No.341 viz-a-viz letter dated 22.12.2014 (Annexure P-1) from the Executive Officer, Dera Bassi to the Chief Engineer/Water Drainage Irrigation Department, Chandigarh.

A demarcation of the area was conducted on 19.01.2017, which had been completed. Time was taken to submit the demarcation report and also submit report with regard to khasra No.341 viz-a-viz letter dated 22.12.2014 (Annexure P-1).

The case was then taken up on 21.02.2017 on which date Civil Miscellaneous Application No.2518-CWP of 2017 was filed by one Shri Rajesh Aggarwal for being an intervener in the present petition. He

around 70 bighas in which encroachments had been made by ATS Golf Meadows (respondent No.10) for its private use to attract the customers to buy plots, houses etc. According to Shri Rajesh Aggarwal, the same was in connivance with the Chief Engineer, Drainage and Irrigation Department, Punjab (respondent No.6) and the Executive Officer, Nagar Council, Dera Bassi (respondent No.8). It was submitted that improvements had been made by planting trees, making a bridge etc. which could not be done as the entire track was meant for a seasonal stream ('choe'). The width of the seasonal stream by nature was 40 metres and the builder ATS Golf Meadows (respondent No.10) had reduced it to 10 metres by encroaching 30 metres of land after laying underground cement pipes for draining out natural stream ('choe') water and as such had created ecological disturbances which was against the public interest. The Executive Officer, Dera Bassi and the Chief Engineer, Irrigation Department, Punjab, it was submitted, had misled this Court by quoting khasra No.341 for seasonal stream of National Highway. In fact this khasra number was far away from the seasonal stream and the correct khasra numbers of the seasonal stream of the National Highway were 107 and 215 respectively. In fact in respect of the said land in Khasra Nos.107 and 215 that a report was sought by this Court.

An affidavit of Shri Adarsh Kumar Bansal, Chief Engineer, Drainage and Irrigation Department, Punjab, Chandigarh (respondent No.6) along with the report (Annexure R-6) were filed. It was inter alia submitted that demarcation of khasra Nos.107 and 215 was conducted and it was found that a causeway (bridge) had been constructed by ATS Golf Meadows (respondent No.10) and a Government tube-well had been installed by the Nagar Council, Dera Bassi. Apart from this, a path

had been constructed over some area in these khasra numbers; besides, in some area green grass and some plants had been planted for a Golf Course in khasra No.215 by ATS Golf Meadows (respondent No.10). These were shown in different colours in the enclosed map. Apart from the above, there was no other construction found over khasra Nos.107 and 215. With regard to khasra No.341, it was submitted that as per the revenue records of village Madhopur, the ownership of this area was that of ATS infrastructure and it was located at a distance of about eight 'killas' (measurement of distance in acres) from khasra No.215. During inquiry, it was found that khasra No.341 was situated in village Rauni and was a 'Gair Mumkin Choe'. On inquiry at the spot, it was found that there was no construction in the said khasra number or near to it. A perusal of the site plan which was attached with the report showed Dera Bassi 'choe' was mentioned as 'Gair Mumkin Choe' in khasra Nos.107 and 215.

Shri P.P.S. Thethi, Additional Advocate General, Punjab submitted that there was already an order for channelizing the 'choe'. The work for which was to be carried out by the Municipal Council, Dera Bassi (respondents No.7 to 9). He submitted that he shall inform the Municipal Council, Dera Bassi to come with a report in this regard.

An affidavit of Shri Ranbir Singh, Executive Officer, Municipal Council, Dera Bassi, District SAS Nagar, Punjab (respondent No.8) along with annexures was filed on 15.03.2017. Shri Manohar Lal, Advocate appearing for Shri Rajesh Aggarwal intervener prayed for time to go through the reply.

The case then taken up on 05.04.2017 on which date it was

inter alia observed that the petitioner-Himanshu Walia had filed the

Public Interest Petition seeking directions to immediately remove/ demolish the illegal structure built by a private builder ATS Golf Meadows (respondent No.10) on public land (Be-chirag Mouza) which is a Natural Catchment area and a centuries old Water-Channel (Choe). This Court on 22.11.2016 had asked Sh. P.P.S.Thethi, Addl. A.G. Punjab to get the revenue records (Annexure P-3) of Madhopur verified and also ask the Patwari of village Madhopur, Tehsil Derabassi, District SAS Nagar to be present in Court on the adjourned date i.e. 02.12.2016. The Patwari was present on 02.12.2016 and it was submitted that 'Gair Mumkin Choe' flows in Khasra Nos.107 and 215 in the revenue estate of village Madhopur; besides, in order to rule out any encroachment on the 'choe', a demarcation of the area would be got conducted. Accordingly, it was directed that the Assistant Collector 1st Grade (Tehsildar), Derabassi shall get demarcation of the 'choe' done to ensure that there was no construction; besides, a report was asked to be submitted with regard to Khasra No.341 vis-a-vis letter dated 22.12.2014 (Annexure P-1) from the Executive Officer, Derabassi to the Chief Engineer/Water Drainage, Irrigation Department, Punjab, Chandigarh. In compliance to the said order, the demarcation was carried out and report (Annexure R-6/1 T) was filed with the affidavit of Sh. Adarsh Kumar Bansal, Chief Engineer, Draining and Irrigation Department, Punjab. The demarcation proceedings were carried out in the presence of Himanshu Walia (petitioner). The case was then adjourned to 21.02.2017. On the said date Sh. Rajesh Aggarwal filed CM-2518-CWP of 2017 for being an intervenor. The learned Additional Advocate General, thereafter on 15.03.2017 filed affidavit of Sh. Ranbir Singh, Executive Officer, Municipal Council, Derabassi, District SAS Nagar, Punjab (respondent

No.8). Sh. Manohar Lall, Advocate appearing for the intervenor Sh. Rajesh Aggarwal had taken time to go through the same. Sh. Manohar Lall, Advocate for the intervenor Sh. Rajesh Aggarwal submitted that the 'Choe' had been encroached upon. However, he had not filed any objections before the revenue authorities with respect to the demarcation proceedings conducted on 10.01.2017 (Annexure R-6/1).

A Khasra Girdawari of village Madhopur, SAS Nagar from the year 2008 to 2013 was submitted in which it is *inter alia* stated that Khasra No.215 Min is recorded as ownership of 'Shamlat-deh Hasab Rasad Khewat No.274' and ATS Infrastructure Limited has been recorded in possession in respect of land measuring 19 bighas. The land of Khasra No.215 min is not recorded as under cultivation and it is recorded as 'khali' (vacant); besides, cultivation of some other parcels land is also recorded in respect of Khasra No.215 (min) although the same is mentioned as 'khali' (vacant). It is not understandable as to how vacant land could be recorded as under cultivation of anyone and it is well known that 'possession follows ownership'. In other words in respect of vacant land, it is the owner who is taken to be in possession of the same. Copy of the Khasra Girdawari was given to learned State counsel who took time to verify the same. The intervenor, in the meantime, was asked to deposit a sum of Rs.25,000/- with the Registrar of the Court which was ordered to be kept with him till further directions. The case was adjourned for hearing to 28.04.2017.

On the adjourned date i.e. 28.04.2017, Shri Manohar Lal, Advocate for the intervener filed an additional affidavit of Shri Rajesh Aggarwal, the intervener. The affidavit was regarding land comprising khasra No.215 measuring 19 'bighas' in village Madhopur. Along with

the affidavit, photographs of the 'choe' and copy of 'rapat roznamcha' No.552 dated 18.06.2005 (Annexure A-7) was filed. According to the 'rapat roznamcha' (Annexure A-7) one Yogeshwar Kumar had appeared on 18.06.2005 and submitted an affidavit that possession of khasra No.215 min measuring 19 'bighas' situated in village Madhopur was continuing in his name and he had given the possession to ATS Infrastructure Ltd. Shri Dalwinder Singh, Patwari Halqa, Revenue Estate of Village Madhopur was present and he submitted a copy of 'Girdwari' for the period from kharif 2013 to Rabi 2017, which was taken on record. According to the Girdwari, land comprised in khasra No.215 min measuring 19 bighas was being recorded in the possession of ATS Infrastructure Ltd., New Delhi even though in the column of cultivation it was mentioned as 'khali' (vacant). Therefore, there was no cultivation on the said land. It was observed that in respect of vacant land, the presumption in law is that owner is in possession of the vacant land on the principle 'possession follows title'.

The Supreme Court in State of A.P. v. Star Bone Mill and Fertilizer Co., (2013) 9 SCC 319 held that presumption of title as a result of possession arises only where the facts disclosed that no title vests in any party. Besides, the maxim 'possession follows title' is applicable in cases where proof of actual possession cannot reasonably be expected, for instance, in the case of waste lands, or where nothing is known about possession one way or another.

In the Girdwari that was produced the ownership of khasra No.215 Min was recorded in the name of Nagar Council, Dera Bassi. In the circumstances, the Assistant Collector Ist Grade (Tehsildar), Dera Bassi under whose charge the revenue estate of village Madhopur fell for

the purpose of maintaining, correcting and updating the records was asked to summon the concerned officials of ATS Infrastructure Ltd. and also the Nagar Council, Dera Bassi and carry out proceedings as to whether the khasra girdwari in respect of land comprised in khasra No.215 measuring 19 bighas and other lands which were recorded in the ownership of Nagar Council, Dera Bassi in village Madhopur were to be corrected. In case these were to be corrected the necessary corrections were asked to be carried out subject to the conditions that the entries in the khasra girdwari had not been incorporated in the jamabandi. The case was adjourned to 30.05.2017.

On the said date, an affidavit of Shri Parveen Kumar Singla, Assistant Collector IInd Grade (Tehsildar), Dera Bassi was filed. It was stated that khasra girdwari in respect of land comprised in khasra No.215 measuring 19 bighas had been corrected in the name of Nagar Council, Dera Bassi.

Mr. Manohar Lal, Advocate for the applicant-intervener Rajesh Kumar Aggarwal submitted that there were other lands also which had been encroached upon. He submitted copy of jamabandi of village Madhopur for the year 2012-13. A perusal of the said jamabandi showed that possession of half share of land comprised in khasra No.387/3 and 388 to 396 measuring 36 kanals 9 marlas had been entered in favour of the applicant-intervener Rajesh Kumar Aggarwal. The possession had been transferred in his favour in terms of 'rapat' No.614 dated 29.11.2016. The said land according to the revenue record in fact is recorded in the ownership of Nagar Council, Dera Bassi. The khasra girdwari in respect of the aforesaid khasra numbers of land measuring 36 kanals 9 marlas was mentioned that the land was vacant

('khali'). The intervener Rajesh Kumar Aggarwal was asked to produce the copies of the judgments and decrees, as mentioned in the 'rapat' No.614 dated 29.11.2016, on the basis of which the land had been transferred in his favour; besides, Mr. Manohar Lal, Advocate was also asked to produce the sale deeds in respect of the said land also in Court on the adjourned. Mr. Labh Singh, Clerk of the Nagar Council, Dera Bassi was present and he was asked to ensure that a responsible Senior Officer of the Nagar Council, Dera Bassi should be present in Court on the adjourned date. The case was adjourned to 01.06.2017.

Sh. Manohar Lal, Advocate submitted copies of judgment and decree dated 30.09.2000 passed by the learned Civil Judge (Junior Division), Rajpura in suit No.404 dated 30.10.1987 in which Rajesh Kumar intervener is plaintiff No.3 while Dharamvir and Raj Kishan sons of Salig Ram are plaintiff No.1 and 2; besides, Sant Ram, Jai Singh, Kesar Singh, Mohan Lal, Vijay Kumar and Sohan Lal sons of Rachna Ram are defendants No.1 to 6 and there are other defendants also but the Nagar Council, Dera Bassi which is the owner of the said land measuring 36 kanals 9 marlas comprised in khara No.387/3 and 388 to 396 is not a party. The suit had been filed for possession of ½ share of agriculture land measuring 23 bighas 1 biswas being ½ share out of total land measuring 46 bighas 2 biswas comprised in khasra No.386 to 396 and 882 situated within the revenue estate of 'Bechirag Mouza' Madhopur and for declaration that plaintiffs have half share in the suit land and the share of the defendants No.1 to 6 was 1/6<sup>th</sup> share and the entries in their favour in the jamabandis were wrong.

The photocopies of four sale deeds dated 24.05.1994 have

been submitted by Rajesh Aggarwal intervener, which depict as follows:-

| Seller                                      | Area of land/sale consideration       | Details of land                                                      | Purchaser                       |
|---------------------------------------------|---------------------------------------|----------------------------------------------------------------------|---------------------------------|
| Raj Kishan son of Sulag Ram son of Aasa Ram | 11 Bighas 5 ¼ Biswas<br>Rs.1,80,000/- | Does not relate to land comprised in khasra No.387/3 and 388 to 396. | Rajesh Kumar son of Sardari Lal |
| Dharamvir son of Salig Ram                  | 10 Bighas<br>Rs.1,80,000/-            | -do-                                                                 | -do-                            |
| Raj Kishan son of Salig Ram                 | 10 bighas<br>Rs.1,80,000/-            | -do-                                                                 | -do-                            |
| Dharamvir son of Salig Ram                  | 11 Bighas 6 ¼ Biswas<br>Rs.1,80,000/- | -do-                                                                 | -do-                            |

It is to be noticed that none of the sale deeds dated 24.05.1994, photocopies of which have been filed, relate to the Khasra numbers 386 to 395 and 882 in the revenue estate of 'Bechirag Mouza' Madhopur in respect of which civil suit No.404 of 30.10.1987 was filed and which has been decreed in favour of Dharamvir and Raj Kishan sons of Salig Ram and also the intervenor Rajesh Kumar son of Sardari Lal. Besides, the Nagar Council, Dera Bassi which is recorded as the owner of the land in the Jamabandi is not a party to the said suit.

Sh. Manohar Lal, Advocate appearing for the intervenor, however, submits that in terms of the sale deeds dated 24.05.1994, the share of the owners in the 'shamlat deh' land had also been purchased, therefore, the intervenor Rajesh Kumar as also Dharamvir and Raj Kishan sons of Salig Ram, had a right to the same.

This in fact is an absolutely incorrect approach to the question on the part of the intervenor Rajesh Kumar or for that matter even Dharamvir and Raj Kishan. They have no right to the 'shamlat deh' lands as these lands vest in the Gram Panchayat in view of the provisions of Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 ('VCL Act' - for short). In the Jamabandi for the year 2002-2003 of village Madhopur, the land comprised in Khasras

No.387/3 and 388 to 389 measuring 36 kanals 9 marlas is recorded in the ownership of '*shamlat deh ba-ist sanai mahajarin*'. Besides, in the column of cultivation, it is mentioned that Sant Ram, Sohan Lal, Mohan Lal, Vijay Kumar sons of Rachna Ram in equal shares have sold land to Smt. Karamjit Kaur wife of Pritpal Singh etc. In the remarks column it is mentioned that vide 'rapt' No.260 dated 4.7.2001 in terms of the order of the Civil Court i.e. civil suit No.404 dated 30.10.1987 decided on 30.09.2000, the cultivation of the entire land had been entered in favour of Rajesh Kumar i.e. the intervenor. In fact in the civil suit No.404 dated 30.10.1987, the Gram Panchayat of Madhopur was not a party in whom the land then vested in terms of Section 4 of the VCL Act. The said land now vests in the Nagar Council, Dera Bassi after the extension of the limits of its area. Section 4 of the VCL Act reads as under:-

"4. Vesting of rights in Panchayat 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,-

(a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law<sup>1</sup> shall, at the commencement of this Act, vest in Panchayat constituted for such village, and where no such Panchayat has been constituted for such village,

1 'Shamlat Law' is defined in Section 2 (h) of the VCL Act and relates to lands which immediately before 01.11.1956 were comprised in State of Punjab, and to lands which prior to the said date were part of State of Patiala and East Punjab States Union (PEPSU) to which the Punjab Village Common Lands (Regulation) Act 1953 and the PEPSU Village Common Lands (Regulation) Act, 1954 respectively applied. These Acts were repealed by Section 16 of the VCL Act which came into force from 4.5.1961.

vest 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.

(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, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons who were 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 on such commencement 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."

Therefore, the land in Khasra Nos.387/3 and 388 to 396 measuring 36 kanals 9 marlas then vested in the Panchayat and in case the intervenor or anybody else had any right to claim the same, it could only be done by way of a prescribed procedure i.e. by way of a petition under Section 11 of the VCL Act which relates to decision of claims of right, title or interest in 'shamlat deh'. Section 11 of the VCL Act reads as under:-

"11. Decision of claims of right, title or interest in Shamlat deh.-

(1) Any person or a Panchayat claiming right, title or interest in any land, vested or deemed to have been vested in a panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-Section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form and manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order

appealed from and may pass such order as he deems fit.”

Besides, in terms of Section 13 of the VCL Act the jurisdiction of the Civil Courts is barred. Section 13 of the VCL Act reads as under:-

“13. Bar of Jurisdiction in Civil Courts:-- No Civil Courts shall have jurisdiction--

(a) to entertain or adjudicate upon any question, whether any property or any right to or interest in any property is or is not *shamilat deh* vested or deemed to have been vested in a Panchayat under this Act; or

(b) to question the legality of any action taken by the Commissioner or the Collector or the Panchayat, under this Act; or

(c) in respect of any matter which the Commissioner or the Collector is empowered by or under this Act to determine.”

Therefore, the Civil Court in any case had no jurisdiction to adjudicate upon in the matter in respect of the land measuring 36 kanals 9 marlas comprised in Khasra Nos.387/3 and 388 to 396, which in the revenue records is recorded as '*shamlat deh ba-ist sanai mahajarin*'. It was only the Collector under the VCL Act, who was the competent authority to adjudicate this aspect.

In Gram Panchayat village Sidh v. Addl. Director Consolidation of Holdings, Punjab and others, 1997 (1) PLJ 313 (Supreme Court), the consolidation proceedings were completed in the village in the year 1953-54. Prior to consolidation proceedings, an entry

regarding khewat No.78 measuring 1000 bighas, 16 biswas was made in

the Jamabandi as 'shamlat deh hasab rasad raqba khewat'. After consolidation, the entry in the revenue record was in similar terms. The Additional Director, Consolidation by an order dated 01.05.1990 changed the mutation entry in the revenue records and distributed part of the land amongst the right holders. Hon'ble the Supreme Court held that after the enforcement of the VCL Act, the question of ownership could only be decided by the Collector under Section 11 of the VCL Act.

The said judgment was followed by the Supreme Court in Gram Panchayat village Kot Mana v. Addl. Director, Consolidation of Holdings, 1998 (2) PLJ 427 (Supreme Court) wherein the question raised by the Gram Panchayat in the said case was whether the contesting respondent could have invoked the provisions of Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 after a period of almost 34 years when consolidation proceedings were completed in the year 1959-60 and they applied under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 on 20.1.1994. The said question was not considered by the High Court. It was held that in an identical situation, a Bench of two learned Judges of the Supreme Court in Gram Panchayat village Sidh v. Addl. Director Consolidation of Holdings, Punjab and others (supra) had taken the view that in such circumstances the matter should be remanded to the High Court for a fresh decision.

From the above it follows that the procedure for decision of claims of right, title or interest in 'shamlat deh' lands provided for in Section 11 only is to be followed and the jurisdiction of the Civil Court is

barred by the provisions of Section 13 of the VCL Act.

The intervenor Rajesh Kumar as also the other plaintiffs i.e. Dharamvir and Raj Kishan sons of Salig Ram who instituted civil suit No.404 on 30.10.1987 were liable to raise their claim, if any, under the VCL Act by resort to the procedure provided for under Section 11. At that time, the Gram Panchayat Madhopur had ownership of the land in view of Section 4 of the VCL Act. The land came to vests in the Nagar Council, Derabassi later. In fact it is recorded as 'shamlat deh' even in the Jamabandi for the year 2002-03 of village Madhopur i.e. after the the civil suit was filed on 30.10.1987.

In the circumstances, the decision of the Civil Court in favour of the plaintiffs in Civil Suit No.404 dated 30.10.1987 decided on 30.9.200 is *coram non-judice* i.e. when a suit is brought and determined in a Court which has no jurisdiction in the matter. The judgment of the civil court is to be taken as void and *non est*. It is also void and *non est* and in any case does not affect the rights of the Nagar Council, Derabassi for the reason that it was not impleaded as a party to the suit and those who had been impleaded as parties were sellers of some other land who it is alleged had an interest in the 'shamlat deh' land, the share of which was alleged to have been sold. In fact the sellers had no interest whatsoever in the 'shamlat deh' land after the VCL Act had come into effect and even if they had any interest or for that matter even if the purchasers had any interest that could only be determined by a petition under Section 11 of the VCL Act and by impleading the Gram Panchayat, Madhopur as a party. Therefore, the sellers having no interest in the 'shamlat deh' land could not transfer a title better than they themselves had. A vendor, as is well known, cannot transfer a title or a right, better than what he had over the land.

The position therefore is that the intervenor who is alleging encroachments by others in fact himself has been encroaching on the lands that are recorded in the ownership of the Nagar Council, Derabassi by resorting to filing of a civil suit against his vendor in respect of some other land.

The encroachments in the area particularly of the lands of the Nagar Council, Derabassi does seem to be there. The possession of land in Khasra No.215 measuring 19 bighas in village Madhopur, which is vacant land and is part of the 'choe' was recorded in favour of ATS Infrastructure Limited. According to the affidavit of Sh. Parveen Kumar Singla, Assistant Collector IInd Grade, (Tehsildar), Derabassi, the Khasra Girdawari in respect of the said land has been corrected in the name of Nagar Council, Derabassi.

It is to be kept in view that the lands which are recorded in the revenue records as vacant or 'khali' and are the ownership of the Nagar Council, Derabassi, the possession is liable to be recorded in favour of the Nagar Council, Derabassi. The maxim 'possession follows title' would apply in such cases as held in State of A.P. v. Star Bone Mill and Fertilizer Co. (supra).

In Smail and others v. Gajjan 106 Indian Cases 130 (Lahore): MANU/LA/0725/1927<sup>2</sup> it was held that in the case fallow land 'possession follows title'. In the said case the plaintiffs had filed a suit against the defendant for possession of 25 kanals 11 marlas land on the allegations that they were the owners and that the defendant had taken forcibly possession four or five years before the suit. The defendant replied that the land was his and he had been in adverse possession for

some 40 years. It was held that there was no doubt that the title was that of the plaintiffs. It was, however, observed that there was no crop during the period Rabi of 1913 and Kharif of 1913. This was held to mean the land was lying fallow from 15.11.1912 to 15.11.1913. For the period that the land was fallow, it was held the possession was that of the plaintiffs.

In Bhag Singh v. Arjan Singh, 1982 PLJ 9 (P&H), Bhag Singh filed a suit for possession of land measuring 30 kanals 8 marlas against Arjan Singh and others on the ground that he was the owner and defendants were in illegal possession thereof. The Court noticed that in the khasra girdawari for the period from kharif 1952 to Rabi 1956 in the column of possession, Arjan Singh and others were shown. But insofar as the other entries as to the crop sown, or whether cultivation was being done on the land in dispute, the columns were blank. For the blank entries, where crop is not sown, it was held that it was not shown that the defendants therein had cultivated the land. It was said that in the absence of cultivation it would be presumed that the owner of the land was in possession. In respect of agriculture land, occupation would only be by cultivation. Reliance in Bhag Singh's case (supra) was placed on the Supreme Court judgment in Kashi Bai v. the Sudha Rani Ghose and others AIR 1958 SC 434 which was a case of a coal mine in which defendants had been carrying out mining operations intermittently and the presumption that the defendants continued to be in possession of the coal mine even though no mining operations were carried out would only apply and it was held that whenever the coal mine was not operated it would be deemed that the possession of the mine reverted to the true owner.

Therefore, for the vacant or uncultivated lands, the owner is to be taken as in possession thereof.

The Nagar Council, Derabassi in the circumstances, shall take steps to identify its lands that have been encroached upon and file applications for correction of khasra girdawaris in respect of its lands which are stated to have been encroached upon, besides, shall contest the suits which are stated to have been filed against it. The khasra girdawaris can be corrected by the revenue authorities in respect of only those lands, the khasra girdawaris entries of which have not been entered in the Jamabandi. For correction of entries in the Jamabandi, a civil suit in terms of Section 45 of the Punjab Land Revenue Act, 1887 would have to be filed.

The khasra girdawaris do not form part of the record of rights (Jamabandis). Entries in khasra girdawaris are liable to change from harvest to harvest and these do not confer a quasi permanent status on anyone. If an entry in the khasra girdawaris is found to be wrong or incorrect the procedure for correcting it is provided for in para 9.9 of the Punjab Land Records Manual. However, it is well-settled that when khasra girdawaris entries are incorporated in the Jamabandi, the Revenue Officer is not to change these in a summary proceedings and in such cases the only course open to an aggrieved party is to seek relief from a competent Court by filing a regular civil suit. However, clerical errors in the Jamabandi can be corrected by resorting to the provisions of Para 7.29 of the said Manual, which provides for correction of clerical mistakes in records to be obtained on the 'Fard Badar'.

It is also to be kept in mind that after the extension of the

Madhopur came to vest in the Nagar Council, Derabassi. Therefore, the Collector under the VCL Act would now have no jurisdiction as the VCL Act would be inoperative once the Nagar Council has been constituted.

A Division Bench of this Court in Anar Singh v. Commissioner, Rohtak Division, Rohtak (2014-2) PLR 136 held that where a notification had been issued under the Haryana Municipal Act, 1973 extending the municipal limits to include the sabha area of a Gram Panchayat within municipal limits, then after issuance of a notification under the Municipal Act would bring about the demise of the Gram Panchayat as an administrative unit. Its assets, including its common land (shamlat land) shall vest in a Municipal Committee. The common land of a Gram Panchayat would, therefore, no longer be amenable to or subject to statutory control by any of the provisions of the VCL Act. The Collector and Appellate Authority exercising powers under the VCL Act would have no jurisdiction to decide whether land vests or does not vest in the Gram Panchayat. The petitioner, it was held, would, however, have to approach a civil Court for adjudication of his rights in the 'shamlat deh' or the erstwhile Gram Panchayat.

Therefore in the circumstances, a person after constitution of the Nagar Council, Derabassi who seeks to show that a particular land is not 'shamlat deh' land and did not earlier vest with the Panchayat or does not vest in the Nagar Council, Derabassi would now have to file a civil suit for determination of his rights. The principles on which the rights are to be adjudicated would of course have to be on the basis of the provisions of the VCL Act and the definition of 'shamlat deh' as provided in Section 2 (g) of the VCL Act. As such, for corrections of record of rights (i.e. Jamabandi) a declaratory suit in terms of Section

45 of the Punjab Land Revenue Act, 1887 would now have to be filed and even for determining as to whether the land was 'shamlat deh' land and now vests with the Nagar Panchayat would have to be filed in the Civil Court in view of the ratio of the judgment in Anar Singh's case (supra).

The matter of encroachments of public and municipal lands as also 'shamlat deh' lands has been a concern of all for the last several years. Despite the Courts emphasizing for taking steps to curb the menace nothing substantial has been achieved. Hon'ble the Supreme Court in Jagpal Singh and others v. State of Punjab and others, (2011) 11 SCC 396 issued directions to all State Government to prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/poramboke/shamlat land. It was said that the scheme should provide for speedy eviction of illegal occupants after giving show cause notice and brief hearing. It was also said that illegal encroachments of village/Gram Panchayat lands shall not be regularized. Long duration of occupation or huge expenditure in making constructions thereon or political connections were no justification for regularizing such illegal occupation. In the said case, the appellant had in an unauthorized manner encroached upon the village pond of the Gram Panchayat by filling it and then raising constructions on it. The Collector directed the regularization of the land by recovering its cost, since huge money was spent by the appellant on the land. It was held that the Gram Sabha land must be kept for use of the villagers of the village and the common interest of the villagers is not to suffer merely because unauthorized occupation had been subsisting for many years.

The regularization letter dated 26.09.2007 issued by the State

Government in favour of the unauthorized occupant was held to be illegal, not valid and without jurisdiction. The constructions, it was said, must be removed and possession restored to the Gram Panchayat.

During the hearing it was also said that Rajesh Aggarwal-intervener has filed a suit for declaration to the effect that he is the owner of land measuring 23 bighas and 1 biswa being half share of land measuring 46 bighas and 2 biswas comprised in khasra Nos.386 to 390 and 882 situated within the revenue estate of Becharag Mauza Madhopur, Derabassi, Tehsil Derabassi, District Mohali and other declaration. Mr. Manohar Lall, Advocate on instructions from Rajesh Kumar Aggarwal-intervener submits that the said suit shall be withdrawn by the intervener.

In the circumstances, the present writ petition is disposed of and the Nagar Council, Derabassi is directed to carry out a survey of the entire lands which are recorded in the revenue records as 'shamlat deh' lands and have been encroached upon and file suits wherever necessary for correction of the same and also file for correction of the khasra girdawaris before the revenue authorities, in respect of the girdwaris which have not been entered in the Jamabandis. The judgment of the Civil Court in civil suit No.404 dated 30.10.1987 decided on 30.9.2000 in favour of Rajesh Kumar, intervenor as also Dharamvir and Raj Kishan sons of Salig Ram would be treated as '*coram non-judice*' and *non est*. The amount of Rs.25,000/- deposited by the intervenor Rajesh Kumar with the Registrar, High Court shall be paid as costs to the Punjab Legal Services Authority. The question whether the petitioner has the locus standi to file the petition is, however, kept open to be determined in case a writ petition is filed by him in future.

The writ petition and the intervention application are accordingly disposed of.

(S.S. Saron)  
Judge

(Darshan Singh)  
Judge

01.06.2017  
amit

Note:

1. Whether the order is speaking/reasoned : Yes.
2. Whether the order is reportable : Yes.