

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.9279 of 2016 (O & M)
Date of decision:22.08.2017

M/s Rathore Promoters and Developers
Pvt. Ltd. and another

....Petitioners

v.

State of Haryana and others

.....Respondents

CORAM: Hon'ble Mr. Justice S.S.Saron, Acting Chief Justice.
Hon'ble Mr. Justice Avneesh Jhingan

Present: Mr. Ashish Chopra, Advocate
for the petitioners.

Mr. Ashok Singla, Addl.A.G., Haryana
for respondents No.1, 3 to 5.

Mr. Lokesh Sinhal, Advocate
for respondents No.2 and 6.

S.S.SARON, ACJ.

The petitioners-M/s Rathore Promoters and Developers Pvt. Ltd. and another have filed the present petition under Articles 226/227 of the Constitution of India seeking restoration of the *status quo* ante and/or rectification of the land records of the lands/ area owned and possessed by the petitioners situated in the revenue estate of Gawal Pahari, Tehsil Sohna, District Gurgaon in accordance with and in compliance to the orders dated 15.09.2014 and 21.10.2015 passed by the learned Financial Commissioner; besides, also restoration of mutation No.3114 sanctioned in favour of the petitioner No.1 M/s Rathore Promoters and Developers.

A further prayer has been made seeking quashing of the show cause notice dated 03.02.2017 (Annexure P-16) issued by the Municipal Corporation, Gurugram under Section 408-A (1) (b) of the Haryana Municipal Corporation Act, 1994 ('MC Act' - for short) whereby it is alleged that M/s Rathore Promoters and Developers Pvt. Ltd. are in unauthorized occupation of the land measuring 108 kanals 3 marlas as detailed in the said notice in village Gawal Pahari, located within the limits of Municipal Corporation, Gurugram. The unauthorized occupation and illegal construction upon the above mentioned land under the ownership of the Municipal Corporation, Gurugram, it is stated, is in contravention of the provisions of Section 408-A (1) (b) of the MC Act.

A still further prayer has been made seeking quashing of the interim order dated 23.02.2017 (Annexure P-15) passed by the Commissioner, Gurugram Division, Gurugram granting stay the operation of the order dated 02.01.2017 passed by the District Collector, Gurgaon by which mutation No.3249 sanctioned on 18.12.2015 has been held to be *ab initio* void on the representation of M/s Metro Valley Business Park Pvt. Ltd. which was sent by the Chief Secretary, Haryana.

It is further prayed that the Municipal Corporation, Gurugram be directed not to take any steps of getting any mutation recorded in the revenue records which may be prejudicial to the rights and interests of the petitioners in the land owned and possessed by it situated in Gawal Pahari, Tehsil Sohna, Gurugram.

The petitioners claim ownership of the land measuring 108 kanals 1 marla in the revenue estate of Gawal Pahari, Tehsil Sohna,

District Gurgaon as detailed in para 4 of the petition. The said land measuring 108 kanals 1 marla is said to be part of the 'shamlat deh' land measuring 3717 kanals 1 marla in village Gawal Pahari, Tehsil Sohna, District Gurugram. The total shamlat land in village Gawal Pahari measures 6145 kanals 4 marlas. The dispute now is between the Municipal Corporation, Gurugram and several other land owners including the petitioners who claim ownership of various parcels of lands and it relates to the land measuring 3717 kanals 1 marla, which is subject matter of mutation No.3110. The land measuring 108 kanals 1 marla of which the petitioners now claim ownership is part of the aforesaid land measuring 3717 kanals 1 marla.

M/s Rathore Promoters and Developers Pvt. Ltd.-petitioner is engaged in the business of developing real estate, land developments, building and construction; besides, other related activities. D.P.S. Rathore (Petitioner No.2) is an authorized signatory of M/s Rathore Promoters and Developers Pvt. Ltd. (petitioner No.1). The land measuring 108 kanals 1 marla, the ownership of which is now claimed by petitioner No.1 was earlier owned by an entity by the name of R.K. Towers India Private Ltd. The ownership of said M/s R.K. Towers India Private Ltd. was recorded in the revenue records. The Bank of Baroda advanced a loan to one entity by the name of United Soya Products. M/s R.K. Towers India Private Ltd. offered security of the land in question measuring 108 kanals 1 marla as a collateral to secure the repayment of the said loan taken by the United Soya Products.

There was a default by the borrower M/s United Soya Products. The

Bank of Baroda through an action of the Civil Court got a decree in its favour, which entitled it to foreclose the mortgaged land in question. Later the Debt Recovery Tribunals were constituted. Proceedings for execution of the decree that was passed in favour of the Bank of Baroda was initiated before the learned Debt Recovery Tribunal at Jabalpur. In the execution application filed by the decree-holder/Bank of Baroda, the Debt Recovery Tribunal ordered open auction of the land measuring 108 kanals 1 marla, which was owned by M/s R.K. Towers India Private Ltd. which had stood surety for the principal borrower i.e. United Soya Products.

The auction of the land was conducted on 30.05.2012. The bid of the petitioner being the highest was accepted. Sale certificate No. DRT/JBP Varoli/2012 dated 15.06.2012 and sale deed Vasika No.2197 dated 22.0.2012 were executed in its favour. The petitioner, therefore, states that he purchased the land in an open auction through due process of law. The land in question had been mortgaged with the Bank and therefore, it was suffice to assume that the title of the land had been duly verified and confirmed by the Bank at the time of sanctioning the loan against the land in question. The title of the land in question, it is stated, having been verified by the Bank and further the same being offered for sale in a public action monitored by the Court, the petitioner had a genuine assurance and a bona fide belief of there being a clear, undisputed and marketable title of the land in question. It was, therefore, safe for the petitioner to assume that there would be no dispute of ownership and title of the land in question in future, as the same was purchased through the process of the Court.

M/s R.K. Towers India Private Ltd. is said to have purchased the land measuring 108 kanals 1 marla vide three sale deeds executed by a seller namely Bharat Bhushan Bhatia. Said Bharat Bhushan Bhatia had vide sale deeds No.1767, 1768, 1769 and 1770 dated 28.02.1992 purchased land from Zila Singh and Munshi Ram, which was then sold vide three sale deeds to M/s R.K. Towers India Private Ltd. M/s R.K. Towers India Private Ltd. mortgaged the said land measuring 108 kanals 1 marla with the Bank of Baroda in 1993 as collateral security for United Soya Products. On account of default committed by the United Soya Products, a civil suit was filed by the Bank of Baroda against the principal borrower in 1994. A decree was passed in favour of Bank of Baroda, which entitled it to foreclose the mortgage regarding the land measuring 108 kanals 1 marla. However, by that time, the Debt Recovery Tribunals were constituted and the Bank of Baroda filed an execution petition before the Debt Recovery Tribunal at Jabalpur. The learned Debt Recovery Tribunal executed the decree in favour of the bank and ordered sale of the land measuring 108 kanals 1 marla in an open auction for recovering the bank dues. The auction of the land measuring 108 kanals 1 marla was conducted on 10.10.2011. The petitioner M/s Rathore Promoters and Developers Pvt. Ltd. made a bid of Rs.11,00,11,000/- which was accepted by the Debt Recovery Tribunal as highest bid amongst the five bidders.

The Committee which had been constituted for conducting the auction submitted before the Presiding Officer of the Debt Recovery Tribunal that the highest bid for Rs.11,00,11,000/-

seemed to be on the lower side, besides, there was no provision for inter se bidding mentioned in the auction notice. Accordingly, it recommended for getting the property revalued and thereafter, put for resale with the condition of allowing inter se bidding, which was not the term of auction published in the newspapers. The recommendations made by the Committee were accepted by the Debt Recovery Tribunal vide order dated 10.10.2011.

M/s Rathore Promoters and Developers Pvt. Ltd., who are the auction purchaser filed an appeal i.e. Appeal No.273 of 2011 before the Debt Recovery Appellate Tribunal at Allahabad against the order dated 10.10.2011, which was allowed on 30.05.2012. A certificate of sale dated 15.06.2012 was issued in favour of M/s Rathore Promoters and Developers Pvt. Ltd. The Bank of Baroda being satisfied from the proceeds of the auction further granted recovery certificate. The original documents i.e. sale deeds which were in favour of the previous owners of the land were handed over to the petitioners vide letter dated 20.06.2012.

Mutation No.3114 in respect of the said transactions in favour of the petitioner was sanctioned in its favour on 12.07.2012.

Learned counsel for the State has shown the original mutation register with regard to mutation No.3114, which in fact is of land measuring 28 kanals in favour of the M/s Krish Realty Nirman Private Ltd. and it is different from the land measuring 108 kanals 1 marla; besides, it is the stand of the respondents that the copy of the mutation No.3114 which is submitted by the petitioners was never issued by the revenue authorities and therefore, no reliance whatsoever can be placed on the same.

Be that as it may, M/s R.K. Towers India Private Ltd. which had stood as surety for United Soya Products filed a petition (Writ Petition No.8642 of 2012) before the Madhya Pradesh High Court challenging the order dated 30.05.2012 passed by the Debt Recovery Appellate Tribunal at Jabalpur, which was dismissed by a Division Bench of the Hon'ble Madya Pradesh, High Court on 10.09.2012. The possession in respect of the land measuring 108 kanals 1 marla was handed over to the petitioners on 21.09.2012. Mutation No.3114, which was initially sanctioned in favour of M/s Rathore Promoters and Developers Pvt. Ltd. was scored off and mutation No.3108 was reflected in the revenue records in favour of the petitioner M/s Rathore Promoters and Developers Pvt. Ltd. in respect of land measuring 108 kanals 1 marla. Mutation No.3108 that has been shown relates to land measuring 108 kanals 1 marla, which was earlier recorded in the name of M/s R.K. Towers India Private Ltd. The mutation now stands sanctioned in favour of the M/s Rathore Promoters and Developers Pvt. Ltd. (petitioner) on 23.06.2012.

Thereafter on 18.12.2015 mutation No.3249 of the land measuring 3717 kanals 1 marla, which was 'shamlat deh' land, was sanctioned in favour of the Municipal Corporation, Gurugram on the basis of an order passed on 11.12.1986 by Smt. Satwanti Ahlwat, HCS, Assistant Collector Ist Grade, Gurgaon. Against the said order dated 11.12.1986, an appeal was filed before the Collector, District Gurgaon and Shri S.C. Choudhary, IAS Collector, Gurgaon vide order dated 25.05.1987 dismissed the appeal of the appellants Prem Raj and others being baseless. Prem Raj and other land

owners filed revision against the order of the Collector, Gurgaon dated 25.05.1987 before the Commissioner (Appeal), Ambala Division, Ambala.

The appeal was heard by Shri J. K Duggal, IAS Commissioner (Appeal), Ambala Division, Ambala on 20.05.1988. The learned Commissioner after perusal of 'khatuani' No.189 to 194, observed that the same showed that part of the land was under self cultivation and a part of it exceeded 25 per cent of the village land, which vested in the shamlat deh. Land revenue was being paid on 26.01.1950 in case of some khasra numbers as per revenue records. Therefore, he remanded the case to the Collector for deciding the share-holders who owned their shares under individual occupation and had not owned excess of their shares and were paying revenue on 26.01.1950 on the basis of revenue record.

It is to be noticed that Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in Haryana) ('1961 Act' – for short) defines 'Shamlat deh'. Clauses (1) to (5)¹ of Section 2 (g) of the 1961 Act relate to lands which are included in the definition of 'Shamlat deh' and Clauses (i) to (ix) relate to lands which are not included in 'Shamlat deh'.

The District Collector, Gurgaon Shri Harbakash Singh, IAS on 15.02.1989 after remand of the case by the Commissioner (Appeals), Ambala Division, Ambala accepted the appeal of Prem Raj and others against the order dated 11.12.1986 passed by Smt.

1 As it existed at the time of passing the order dated 20.05.1988 by the Commissioner (Appeals), Ambala when proviso to Section 2 (g) below Clause (5) was there which read as follows:- “Provided that Shamlat deh at least to the extent of twenty-five percentum of the total area of the village does not exist in the village”. The said proviso has been omitted in Haryana vide Haryana Act No.9 of 1992 which received the assent of the President of India on 14.01.1992 and was published in the Haryana Gazette (Extra), Legislative Supplement, Part I on 11.02.1992.

Satwanti Ahalawat, HCS, Assistant Collector Ist Grade, Gurgaon and decreed the suit of the plaintiffs with orders that as per provision to clause (5) of Section 2 (g) only 25 per cent i.e. area of 521 bighas out of total area of 2084 bighas 1 biswas vests in the Gram Panchayat, Gawal Pahari and area of 1563 bighas 1 biswa does not vest in the Gram Panchayat.

The Gram Panchayat, Gawal Pahari then filed a revision petition before the Commissioner, Gurgaon Division, Gurgaon and Shri Y.S. Qureshi, Commissioner Gurgaon Division, Gurgaon on 01.08.1990 remanded the matter back to the Collector with the directions to calculate the land of the 'Shamlat deh' and 'jumla malkan' properly and pass a detailed order. The learned Commissioner reached the conclusion regarding the proviso to Section 2 (g) Clause (5) of the 1961 Act and said that it was clear on the basis of the three orders mentioned therein that the proviso to Section 2 (g) Clause (5) was applicable to the whole Section and thus 25% land of 'Shamlat deh' vested in the Panchayat. The land more than that vested in the 'jumla biswedaran' according to their present share. It was held that the Collector, Gurgaon had vide order dated 15.02.1999 incorrectly calculated 25% of the total land of 2081 bighas 1 biswa i.e. 521 bighas vests in the Panchayat and the remaining area belongs to 'jumla malkan'. It was said that in fact 521 bighas was to be deducted from the land measuring 1333 bighas of shamlat deh and not from the whole land i.e. out of 2084 bighas 1 biswa.

The Gram Panchayat, Gawal Pahari then filed Civil Writ Petition No.16719 of 1990 in this Court challenging the order dated

15.02.1989 passed by Sh. Harbaksh Singh, IAS Collector and the order dated 01.08.1990 passed by Sh. S.Y. Qureshi, Commissioner, Gurgaon Division, Gurgaon. The Gram Panchayat relied upon the admission of CWP No.10381 of 1989. The writ petition was admitted on 21.12.1990 and stay was granted in the same terms as in CWP No.10381 of 1989. The effect of the same was that the operation of the order dated 15.02.1989 passed by the Collector, Gurgaon and order dated 01.08.1990 passed by the Commissioner, Gurgaon Division, Gurgaon, were stayed.

Despite the stay granted by this Court on 21.12.1990 on the petition filed by the Gram Panchayat, Gawal Pahari; Shri N.C. Vashisht, IAS, District Collector, Gurgaon on 14.01.1991 in terms of the order of remand dated 01.08.1990 passed by the Commissioner, Gurgaon Division, Gurgaon determined the shares. It was held that the total area of Gawal Pahari is 2084 bighas 1 biswa. According to Goshwara area (Exs.P9, P10 and P11), an area of 1333 bighas vested in the Gram Panchayat. However, according to law, 521 bighas should vest in the Gram Panchayat. Therefore, 812 bighas area, it was held, did not vest in the Gram Panchayat. The suit of the plaintiff Prem Raj and others was decreed.

The Gram Panchayat, Gawal Pahari filed a revision petition before the Commissioner, Gurgaon Division, Gurgaon against the order dated 14.01.1991. The Commissioner, Gurgaon Division, Gurgaon Shri M.D. Asthana, IAS vide his order dated 06.08.1992 in view of the order dated 21.12.1990 passed by this Court in CWP No. 16719 of 1990 whereby the order dated 15.02.1989 passed by Sh. Harbaksh Singh, IAS Collector and the order dated 01.08.1990

passed by Sh. S.Y. Qureshi, Commissioner, Gurgaon Division, Gurgaon were challenged and the petition was admitted, besides, stay had been granted; set aside the order dated 14.01.1991 passed by the Collector. It was ordered that after the said order and after the judgment is passed by this Court in the writ petition, the proceedings be initiated in accordance with law.

After the proviso to Section 2 (g) below Clause (5) had been deleted¹; the Gram Panchayat, Gawal Pahari, passed Resolution No.3, dated 26.5.1993. It was resolved by the Gram Panchayat that according to the order dated 14.01.1991 passed by Sh. N.C. Vashisht, IAS Collector i.e. the District Development and Panchayat Officer, the Gram Panchayat was to get 25% share/land out of the total 'Shamlat deh', therefore, 25% share of the collective panchayat land which was considered to be appropriate may be taken in the possession of the Panchayat so that it may be leased out and development works got conducted. The said order in fact had been passed contrary to the stay granted by this Court on 21.12.1990 in CWP No. 16719 of 1990. As already noticed, the order dated 14.01.1991 passed by the District Collector, Gurugram was set aside by the Commissioner Sh.M.D. Asthana, on 6.8.1992. The petitioner M/s Rathore Promoters and Developers Pvt. Ltd., however, on the basis of resolution of the Gram Panchayat, got Mutation No. 1139 entered in the revenue records, which was sanctioned in their favour on 29.6.1993. A hue and cry was raised regarding the sanction of mutation in favour of M/s Rathore

1 The proviso below clause (5) of Section 2 (g) of the 1961 Act read as follows:- "Provided that shamlat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village." The said proviso was deleted vide Haryana Act No.9 of 1992

Promoters and Developers Private Ltd. The Gram Panchayat, Gawal Pahari, then filed C.M. No. 2292 of 1994 in CWP No. 16719 of 1990 pending in this Court, for stay of the mutation. This Court passed the following order on 18.3.1994:

"Notice in C.M. to be served on the counsel opposite for 28.4.1994.

Respondents 4 to 8 as well as other Biswedars, in question, are restrained from alienating the land in dispute in favour of any person. They as well as their alienees/successors in interest are further restrained from making any construction on the land in dispute.

Dasti."

Another order in the said C.M. was passed on 18.5.1994 which reads as under:

"In this Civil Misc. two reliefs are prayed for: (a) that the respondents should be restrained from alienating the land in dispute, and (b) that they should be restrained from making any construction. Mr. R.K. Aggarwal, counsel appearing for respondents 4 and 5, states that the said respondents undertake not to alienate the land in question or any part thereof till the decision of this writ petition. He further states that the said respondents will not undertake any construction on the land in question till the decision of the petition. In view of the above undertaking, injunction

prayed for on both these counts is granted against the said respondents. Respondents 6 to 8 were served in this Writ Petition and have been proceeded ex-parte. They are hereby restrained from alienating the suit land as well as from making any construction thereon. If any other person claiming to be one of the proprietors in the village starts making construction on the land in dispute, it will be open to the petitioner to make an application for injunction against him. This order has been passed in view of the fact that the respondents have been impleaded in their representative capacity as representing the entire body of village proprietors. The Civil Misc. is disposed of in these terms."

During pendency of the petition i.e. CWP No. 16719 of 1990, in which an order of restraint has also been passed by this Court, one Madan Lal Panch of the Gram Panchayat, filed C.M. No. 28801 of 1997 under Order 23 Rule 1 read with Section 151 CPC for withdrawing the writ petition (CWP No. 16719 of 1990). The writ petition was ordered to be dismissed as withdrawn by this Court on 18.12.1997. The order passed on 18.12.1997 reads as under:

"This application has been filed U/O 23 Rule 1 read with Section 151 CPC seeking permission of the Court to withdraw the writ petition. The application is accompanied by the Affidavit of Sh. Madan Lal, Panch. In view of the

facts stated in the application, the application is allowed and Civil Writ Petition 16719 of 1990 is dismissed as withdrawn.

With this order, both C.M. Nos. 28801 of 1997 and CWP No.16719 stand disposed of."

Thereafter C.M. No. 5678 of 1998 was filed by the petitioner-Gram Panchayat, for recalling the order dated 18.12.1997, by which the writ petition was dismissed as withdrawn. It was submitted in para-5 of the said C.M. that the application dated 07.11.1997 being civil miscellaneous No.28801 of 1997 had been made by counsel for the Gram Panchayat without any instructions from the Gram Panchayat. It was stated that no compromise whatsoever had been entered into with the respondents in the said writ petition as stated in the application. Had there been any compromise, the same would have been attached with the application. It was also stated that Madan Lal, Panch of the petitioner-Gram Panchayat never signed or deposed any affidavit. The affidavit it is stated had been prepared on a blank paper, which was already signed by the petitioner. Besides, Madan Lal, Panch, it is stated, was not competent to file the application to withdraw the writ petition because he was acting on behalf of the Gram Panchayat which was a body corporate and acts through decisions taken by way of resolutions. It is further stated that the Gram Panchayat, had not passed a resolution authorizing Madan Lal, Panch or its Advocate to file such an application and withdraw the writ petition. The petitioner-Gram Panchayat it is further stated was adversely affected by the order dated 18.12.1997 vide which

the writ petition had been dismissed as withdrawn. The Gram Panchayat states that it is a public institution and if the order i.e. the order dated 18.12.1997 passed by this Court was allowed to stand, the petitioner-Gram Panchayat would suffer an irreparable loss and injury. The petitioner, therefore, prays that in the interest of justice the order dismissing the writ petition as withdrawn may be recalled and the writ petition be decided on merits.

This Court on 13.5.1998 recalled the order dated 18.12.1997, dismissing the writ petition as withdrawn. The order dated 13.5.1998 passed by this Court, reads as follows:

- "1. This application has been filed under order 151 CPC for recalling order 18.12.1997
2. That brief facts of the case are that Respondents No. 4 to 8 filed a suit for declaration. In this application, it has been stated that the petitioner Panchayat in fact had never agreed for the withdrawal of the writ petition. Mr. Sharma the Ld. Counsel for the petitioner had also reiterated the stand taken by the petitioner in this application. Accordingly the application is allowed and order dt.18-12-97 is recalled. Consequently CWP No.16719-90 is restored to its original number. CM stands disposed of."

After the said order has been passed, some private land owners namely Sudhir Dhingra and others, filed Letters Patent Appeal No. 363 of 1998, against the order dated 13.5.1998, which restored CWP No. 16719 of 1990. The Letters Patent Bench of this

Court on 14.9.1999 passed the following order:

"Vide order dated 18th December 1997, the application filed by the Gram Panchayat under Order 23 Rule 1 read with Section 151 CPC praying for the withdrawal of the Writ petition was made. The Gram Panchayat thereafter filed another application Civil Misc. No. 5678 of 1998 praying that the order dated 18th December 1997, may be recalled and the writ petition be heard and decided on merits. It is the grievance of the appellant that this order had been made without notice to the appellant who were respondents in the writ petition. Mr. Suvir Sehgal, Advocate learned counsel for the respondent has however expressed certain misgivings as to the manner in which the writ petition had been withdrawn. Without going into merits of this assertion we are of the opinion that the order of 13th May 1998 cannot be sustained because it was made without hearing the appellant. It must thus be quashed. We however direct that the application be decided afresh by the learned Single Bench. We further direct that the parties to the writ petition will not alienate or transfer in any manner the land in dispute till the matter is disposed off by the Single Bench. The appeal is allowed accordingly."

In terms of the above order, the learned Single Judge, was

to decide the matter afresh. Besides, a direction was issued that the parties to the writ petition would not alienate or transfer in any manner the land in dispute till the matter was disposed of by learned Single Judge.

The Gram Panchayat Gawal Pahari, then filed C.M. No.4121 of 2000 in C.M. No. 5678 of 1998 in CWP No.16719 of 1990, praying for withdrawal of C.M. No. 5678 of 1998, i.e. the application for seeking restoration of the writ petition against the order dated 18.12.1997.

The learned Single Judge of this court on 22.9.2000 passed the following orders:

"Prayer made in this application is to withdraw the Civil Misc. Application No. 5678 of 1998.

Mr.Suvir Sehgal, learned counsel appearing on behalf of respondent no.6 states that he is no longer the counsel for respondent No.6. Mr.S.K. Vij, Advocate who had been appearing on behalf of Gram Panchayat too is not present. Mr. A.K. Chopra, learned counsel appearing on behalf of respondents No.9 to 13 states that respondents have no objection if the prayer made in this application is allowed. Since, there is no objection by any of the counsel, prayer made in the application is allowed. Civil Misc. application No. 5678 of 1998 shall stand dismissed as withdrawn."

The Gram Panchayat, Gawal Pahari, then filed three Civil

Miscellaneous Applications No. 300, 301 and 313 of 2006, all dated 31.8.2005. Civil Miscellaneous No. 313 of 2006 was filed making a prayer for recalling the order dated 22.9.2000 by which the writ petition and the application for recalling the order was dismissed as withdrawn. Serious allegations were levelled in the Civil Miscellaneous application regarding the manner in which the writ petition filed by the Gram Panchayat, Gawal Pahari, were withdrawn. This Court on 13.1.2006 dismissed the Civil Miscellaneous by observing that the order dated 22.9.2000 was passed on consent given by the parties.

The Gram Panchayat, Gawal Pahari, against the said order dated 13.1.2006 filed LPA No. 106 of 2006. The LPA was admitted on 24.8.2006 and the following order was passed:

"We have heard the learned counsel for the petitioner and gone through the pleadings very carefully.

We have no hesitation in admitting the appeal.

Admitted.

As an interim measure, we direct that the private respondents shall not alienate nor make any further construction on the land in question."

During pendency of LPA No.106 of 2006, C.M. Nos. 353 and 354 of 2008 were filed by land owners on which the following order was passed on 23.4.2008:

" Letters Patent Appeal 106 of 2006 was admitted on August 24, 2006 and the following interim

direction was passed:

"As an interim measure, we direct that the private respondents shall not alienate or make any further construction on the land in question."

Private respondents in the appeal have been arrayed as respondents 4 to 13.

Applicant Arun Gautam has filed CM 353 of 2008 for seeking to be impleaded as a respondent in the above-mentioned appeal. He has also filed CM 354 of 2008 for a clarification of the above-mentioned order dated October 24, 2006.

The applicant's case is that after CWP 16719 of 1990 was dismissed as withdrawn on September 22, 2000, he had purchased some land in the village. The transaction was after the date of dismissal of the petition but before admission of the appeal. However, the applicant is facing difficulty in getting the sale deed of his land registered. The applicant has now entered into an agreement to sell the property to one Davinder son of Parkash Chand. Therefore, the applicant seeks a clarification that the order dated August 24, 2006 is confined only to the respondents arrayed in the appeal, but is not a general order which shall cover others who are not even parties to Letters Patent Appeal 106 of 2006.

We do not think that any such clarification is necessary because the order is self speaking and is only confined to the parties to the lis.

In view the above, both C.Ms are disposed of."

The LPA No.106 of 2006 was finally disposed of on 5.2.2010 with the following order:

"1. This appeal has been preferred against order of learned Single Judge, dismissing application for recall of earlier order dated 22.9.2000, dismissing the writ petition as withdrawn, on the ground that order was made on the statement counsel for the Gram Panchayat itself.

2. We have heard learned counsel for the appellant.

3. None appears for the contesting parties, some of whom have been served through affixation. The contesting parties are proprietors of the village. Even though some of the proprietors have not been served, since claim of the appellants is only for decision by the Collector on merits, instead of insisting on service of all the proprietors, we proceed to dispose of the matter.

4. Learned counsel for the appellant points out that the writ petition arose out of the proceedings under the Punjab Village Common

Lands (Regulation) Act, 1961 (for short, "the Act") relating to the question of vesting of the shamlat deh (common land).

5. Case of the Panchayat is that order of the Commissioner regarding proportion of disposal of common land was contrary to provisions of the Act, particularly Section 5. When the writ petition came up for hearing, prayer for withdrawal of writ petition was made and the writ petition was dismissed as withdrawn. Thereafter, the Panchayat filed C.M. No. 313 of 2006, stating in para 13 that the land being adjacent to Delhi and very valuable, withdrawal of the writ petition was collusive in connivance of some property dealers with the then Sarpanch. When this fact came to the notice of other members of the Panchayat, resolution was passed to move this Court. No reply was filed to the application.

6. Learned counsel for the appellant submits that since serious allegations of collusion and fraud were made in the application which remained unrebutted, learned Single Judge should have restored the writ petition and decided the same on merits. On merits, he submits that in the impugned order dated 1.8.1990 passed by the Commissioner as appellate authority, the matter has been remanded to the Collector, restricting the scope of

adjudication. The Panchayat should be at liberty to raise all legal contentions and not be bound by the limitation in the order of remand.

7. We find merit in the contention raised. In absence of denial of the allegations of collusion and fraud, we are of view that in the circumstances of the case, it will be in the interest of justice that the matter is considered on merits. Accordingly, we set aside order dated 13.1.1006 in C.M. No.313 of 2006 and recall order dated 22.9.2000, dismissing the writ petition as withdrawn. We are of the view that it will be just and fair that the Panchayat is given opportunity to raise all available legal contentions before the Collector without limitation of conditions in order of remand.

8. Accordingly, we allow this appeal and direct the Collector to take an appropriate decision in the mater in accordance with law after due opportunity to all affected parties.

9. The appellant may appear before the Collector for further proceedings on 26.4.2010.

10. The Collector may take a final decision within six months from the date of receipt of a copy of this order.

11. The appeal is disposed of."

In terms of the above order passed on 5.2.2010, the appeal filed by Gram Panchayat, Gawal Pahari, was allowed and the

Collector was directed to take appropriate decision in the matter in accordance with law after due opportunities to all the affected parties.

The effect of the order of Letters Patent Bench is that now the entire matter has to be decided afresh in accordance with law notwithstanding any order that had earlier been passed including the orders referred to above. After the LPA had been decided and before the matter could be considered by the Collector in consequence of the order of remand, the State Government issued notification dated 20.3.2010. The said notification was issued in exercise of power conferred by Sub Section (3) of Section 3 of the Municipal Corporation Act, whereby the limits of municipal area of Municipal Corporation, Gurgaon now Gurugram, were extended and the extension included the land in village Gawal Pahari as well. It may also be noticed that some Proprietors of the village filed SLP Nos. 13128-29 of 2010, 13124 of 2010 and 13130 of 2010 against the order dated 5.2.2010 passed in LPA No.106 of 2006. During pendency of the SLP, Hon'ble the Supreme Court passed an order dated 26.4.2010 while issuing notice directing the parties to maintain status-quo regarding possession in the meanwhile as it obtained on the said date 26.4.2010.

This would necessarily mean that if the land was in possession of the respondents (Gram Panchayat, Gawal Pahari) they would not alter its character or alienate the same in any manner whatsoever. In case, the land was in possession of the petitioners namely M/s Balprada Promoters Pvt. Ltd., they too, it was ordered, shall not alter its character in any manner whatsoever

or alienate the same to any other person. Order dated 26.4.2010 passed by the Supreme Court reads as under:-

" Permission to file SLPs is granted.

Issue notice, returnable in fourteen weeks.

Dasti, in addition, is permitted.

In the meanwhile, the parties are directed to maintain status quo regarding possession, as it is obtaining today. This would necessarily mean that if the land is in possession of the respondents, they shall not alter its character or alienate the same in any manner whatsoever. In case, the land is in possession of the petitioners, they too shall not alter its character in any manner whatsoever or alienate the same to any other person.

The Registry is directed to send a fax message to the Registrar General of Punjab and Haryana High Court to ensure that the entire records including all miscellaneous application are remitted to this Court through special messenger without any delay."

SLP No.13128-29 of 2010 was thereafter dismissed as withdrawn on 4.2.2011. The said order reads as under:

"This is an application (I.A. 4-5) for withdrawal of the SLPs.

It is stated in the application that since this Court did not stay the proceeding pending

before the District Collector, Gurgaon, the matter was heard by District Collector, Gurgaon, and has passed the final order on 27.7.2010, hence the SLPs have become infructuous.

IAs 4-5 is allowed.

The Special Leave Petitions are dismissed as withdrawn."

In SLP No. 13124 of 2010 learned counsel appearing for the petitioner submitted that the SLP had become infructuous and he may be permitted to withdraw the same, which was allowed on 8.3.2011. SLP No.13130 of 2010 was also dismissed as withdrawn on 26.4.2011.

As already noticed above, the Collector Gurgaon Sh.Rajinder Kumar Kataria, on 27.7.2010 decided the application and rejected the petition under Section 13-A of 1961 Act, on the ground that the area of the Gram Panchayat had vide notification dated 20.3.2010, been included in the Municipal Corporation Gurgaon. Indeed once the area of Gram Panchayat Village Gawal Pahari had been included in the Municipal limits of the Municipal Corporation, Gurgaon now Gurugram, the proceedings under the 1961 Act would not lie and appropriate proceedings in accordance with law would have to be taken in compliance with the order dated 05.02.2010 passed by this Court in LPA No.106 of 2006.

Thereafter, the proceedings and the litigation remained dormant. Then according to the Municipal Corporation, Gurugram Mutation No.3108 was sanctioned from M/s R.K. Tower in favour of M/s Rathore Promoters and Developers Pvt. Ltd. Then mutation

No.3110 was sanctioned in favour of the Municipal Corporation, Gurgaon, on 2.7.2012 in view of the dismissal of the suit on 27.07.2010 by the District Collector, Gurgaon. Thereafter various mutations were sanctioned in favour of one party or the other, which are of no consequence as mutations do not confer any title. The legal position in respect of mutation entries is well settled that it does not confer any title.

Hon'ble the Surpeme Court in Balwant Singh Vs. Daulat Singh, (1997) 7 SCC137 held that mutation of properties in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Reliance was placed on an earlier decision in Sawarni V. Inder Kaur (1996) 6 SCC 223, wherein it was held as follows:

"Mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The learned Additional District Judge was wholly in error in coming to a conclusion that mutation in favour of Inder Kaur conveys title in her favour. This erroneous conclusion has vitiated the entire judgment."

In fact, for correction of entries in the revenue record, a Civil Suit for declaration in terms of Section 45 of the Punjab Land Revenue Act, 1887, is the appropriate remedy. The said Section 45

reads as under:

"45. Suit for declaratory decree by persons, aggrieved by an entry in a record: - If any person considers himself aggrieved as to any right of which he is in the possession by an entry in a record-of-rights or in an annual record, he may institute a suit for a declaration of his right under Chapter VI of the Specific Relief Act, 1877²."

The question whether the parties have any dispute with regard to title or the entries in the revenue records is also liable to be settled in the Civil Court in terms of the above provision as also by way of seeking a declaration in terms of Chapter VI of the Specific Relief Act, 1963.

It may also be noticed that with the land of village Gawal Pahari merging in the Municipal Corporation, Gurgaon, the Civil Court is to determine the same in view of the Division Bench judgment of this Court in Anar Singh Versus Commissioner, Rohtak Division, Rohtak and others, (2014-2) PLR 136. The petitioner in the said case filed a petition under Section 13 of the 1961 Act which was dismissed. During pendency of an appeal, a notification was issued to include the 'sabha' area of the Gram Panchayat within the municipal limits of Municipal Council, Sampla. After issuance of the notification, the Gram Panchayat and 'sabha' area ceased to exist and the land, in dispute in the said case, no longer was amenable to the 1961 Act. Consequently, the Collector and the Appellate

Authority, exercising powers under the 1961 Act had no jurisdiction to decide whether the land vested or did not vest in a Gram Panchayat. It was said that the Appellate authority had, therefore, rightly dismissed the appeal. It was held that the petitioner would, however, have to approach a Civil Court for adjudication of his rights in the 'shamlat deh' of the erstwhile Gram Panchayat.

Therefore, the parties who are affected by the entries in the revenue record or otherwise have a claim to title which is under a cloud, can get their rights determined by way of a civil suit and this Court need not interfere in the same at this stage.

It may also be noticed that according to the Municipal Corporation Gurugram, M/s Rathore Promoters and Developers Pvt. Ltd, had filed a civil suit on 23.10.2012 in which summons were received by the Municipal Corporation, Gurgaon, from the Court of Sh. S.C. Kant, Civil Judge, (Jr. Division) Gurgaon, asking it to appear on 31.10.2012. Photocopy of the summons and the Civil suit for permanent injunction filed by M/s Rathore Promoters and Developers Pvt. Ltd, (petitioners) through its authorised signatory, has been placed on record, which is marked as Mark 'X'. Along with the suit, an application for exemption from issuing notice under Section 80 CPC was also filed, a copy of which has also been filed.

Mr. Chopra, Advocate on instructions from Sh. D.P.S. Rathore, Director of M/s Rathore Promoters and Developers Pvt. Ltd. who is present in Court, states that the suit was filed which was withdrawn on 18.10.2014. However, according to Mr. Chopra, the same would not preclude the petitioner from filing a fresh suit as the same was for permanent injunction only and was not for

declaration of title.

In the circumstances, it would be just and expedient that in case the petitioners feel that their title is under a cloud or it is otherwise aggrieved against the entries in the revenue record, it would have to avail the remedy of filing a civil suit. Keeping in view the disputed questions of facts involved, it would be improper for this Court to go into the same, at this stage. Either of the parties, if so advised, may get their rights adjudicated and determined in case they so desire by way of a civil suit.

In respect of the claim of the petitioners to the land measuring 108 kanals 1 marla, it would have to be adjudicated upon and determined on the basis of the revenue records and the materials placed before the Court. It would have to be considered, if the said land falls within the definition of 'Shamlat deh' as defined in Section 2 (52A) (1) of the Haryana Municipal Corporation Act, 1994. Clauses (1) to (5) of Section 2 (52A) provides for land which are included in 'Shamlat deh' and clause (i) to (ix) relates to the land which are not included in 'Shamlat deh'.

Besides, the case of the petitioners is that the land was purchased in Court auction and therefore, they are bona fide purchasers, without notice express or implied of the true owner. If such a plea is available, the same is also to be raised by the petitioners before the Civil Court.

In the circumstances, the writ petition is disposed of leaving the parties to avail their remedies in the Civil Court.

Till such time the Civil suit is filed and is disposed of, the parties shall maintain status-quo with respect to the land measuring

108 kanals 1 marla. Status-quo shall be maintained in relation to alienation, construction, possession or change of nature of the land.

It is made clear that anything stated or observed herein shall not be construed as an expression of opinion on the merits of the controversy between the parties and learned Civil Court shall consider and decide the suit according to the evidence and materials as produced and available on record before it.

(S.S. SARON)
ACTING CHIEF JUSTICE

(AVNEESH JHINGAN)
JUDGE

22.08.2017
reema/A.Kaundal

Note:-

(a) Whether the order is speaking/reasoned :Yes/No.

(b) Whether the order is reportable :Yes/No.