

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

[1] Civil Writ Petition No.63 of 2017
Date of Decision: July 11, 2017

Gautam Malhotra and othersPetitioners
versus
State of Haryana and othersRespondents

[2] Civil Writ Petition No.80 of 2017
Date of Decision: July 11, 2017

Raj PalPetitioner
versus
State of Haryana and othersRespondents

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

Present: Mr.Kanwaljit Singh, Senior Advocate with
Mr.Naresh Kaushik and Mr.Parunjeet Singh, Advocates,
for the petitioners.

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Surya Kant, J. (Oral)

This order shall dispose of Civil Writ Petition Nos.63 and 80 of 2017 as the petitioners in both the cases have laid challenge to the orders dated 23.05.2012, 17.03.2015 and 15.09.2016 whereby they were ordered to be evicted from the suit land pursuant to the eviction proceedings initiated by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act'), as applicable to the State of Haryana. The suit land has been declared as *shamlat deh* duly vested in the Gram Panchayat and the appeal filed by the petitioners against the eviction order as well as the order declaring the Gram Panchayat to be the owner of the land, has been dismissed.

For brevity, the facts are being extracted from CWP No.63 of 2017.

[2] The Block Development and Panchayat Officer, Rai, District Sonipat filed an eviction petition under Section 7 of the Act before the Assistant Collector, 1st Grade, Sonipat, and a separate suit under Section 13-A of the Act seeking declaration that the subject land is *shamlat deh* duly vested in the Gram Panchayat under the 1961 Act and that the petitioners or other residents who were in its unauthorized possession, were liable to be evicted. The suit pertained to the land measuring more than 1173 kanals out of which 156 kanal 16 marla is said to have been purchased in the first case by a Company and its Directors.

[3] It may be observed at the outset that Section 7 of the Act contemplates summary eviction proceedings against a person who is in unauthorized occupation of the Gram Panchayat land. Similarly, title dispute as to whether the land is *shamlat deh* and vests in Gram Panchayat or it belongs to proprietors, is also required to be adjudicated under Section 13-A of the Act by the Court of Collector as the jurisdiction of Civil Court is expressly barred. The core issue in these cases pertains to title dispute, for if the land is held to be *shamlat deh* then the eviction of unauthorized occupants is consequential. We have thus heard learned counsel for the petitioners against their challenge to the decision dated 17.05.2015 rendered by the Court of Collector as well as the appellate order dated 15.09.2016 whereby the Gram Panchayat was declared to be owner of the suit land and appeal preferred by the petitioners against that order has been dismissed.

[4] The foremost question which arises for consideration is whether the land in dispute is *shamlat deh* and vests in Gram Panchayat or it belongs to proprietors of the village?

[5] Section 2 (g) of the Act defines “*shamlat deh*” which includes:

“(1)

(2)

(3)

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area.....; (5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records....”

The aforesaid definition also contains an 'exclusion clause' and according to Clause (iii), if “the land has been partitioned and brought under cultivation by individual land-holders before 26.01.1950 and (viii) was *shamlat deh*, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950”, such land does not fall within the ambit of *shamlat deh*. The Explanation appended to Section 2 (g) of the Act further clarifies that “lands entered in the column of ownership of record of rights as '**Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad**', '**Jumla Malkan**' or '**Mushtarka Malkan**' shall be shamilat deh within the meaning of this Section....”

[6] The declaratory suit under Section 13-A of the Act was filed by the Gram Panchayat. The onus to prove that the land in dispute falls within the definition of *shamlat deh* was thus on the Gram Panchayat. Since the petitioners contested the claim of Gram Panchayat, the Collector formulated the following issues for determination;

“(1) Whether the suit land has been used for common purposes and falls within the definition of *shamlat deh*?;

- (2) Whether the suit land was the *shamlat deh* even before the 1961 Act came into force?;
- (3) Whether the order passed by the Assistant Collector, 1st Grade, Kharkhauda dated 02.02.1998 for partition of the land amongst the proprietors is illegal?;
- (4) Whether the Court of Collector was competent to annul the sale-deeds through which the defendant Nos.1 to 13 purchased a part of the suit land?;
- (5) Whether cause of action has arisen in favour of the plaintiff-Gram Panchayat?;
- (6) Whether the suit was maintainable in the present form?, and
- (7) Whether the suit was defective due to non-impleadment of landlords of the village as party-defendants?..”

[7] The Collector, after discussing the rival contentions at length, answered Issue No.1 in favour of the Gram Panchayat in view of the fact that the land in dispute was mutated in favour of the Gram Panchayat vide mutation No.419 dated 12.02.1955. He further held that the suit land was reserved for 'common purposes' and such land always fell within the definition of *shamlat deh*. The Collector further held that as per the revenue record, the land is under the ownership of Gram Panchayat and the petitioner-defendants have failed to produce any documentary proof that they were ever in cultivating possession of the land for a period of 12 years before the 1961 Act came into force.

[8] Similarly, Issue No.2 was also answered in favour of the Gram Panchayat in view of the jamabandi for the year 1955-56 (Exhibit A-73) in which the name of Gram Panchayat was entered in the column of ownership

and the nature of land was recorded as *gair mumkin*. The Collector further held that most of the land was used as *Charand* (grazing ground) which is also a common purpose and such land always falls within the definition of *shamlat deh*. It was further found that even as per the translated version of the record produced by the petitioners the Gram Panchayat was entered in the column of ownership.

[9] As regard to Issue No.3, namely, the legality of the order of Assistant Collector, 1st Grade, dated 02.02.1998, the Collector held that the said order was challenged before the Commissioner, Rohtak Division who accepted the appeal and set-aside the same. The order of the Commissioner, Rohtak Division was challenged by the proprietors in a revision petition before the Financial Commissioner which was also dismissed. That order has attained finality. The order dated 02.02.1998 relied upon by the proprietors thus having become non-existent, Issue No.3 was also answered in favour of the Gram Panchayat. In the light of these findings, the Collector vide order dated 17.05.2015 decreed the Gram Panchayat's suit.

[10] The aggrieved petitioners and other proprietors preferred appeal(s) before the Commissioner, Rohtak Division who has dismissed the same vide order dated 15.09.2016 reiterating that:-

“.....On perusal of revenue record, it is found that as per jamabandi for the year 1955-56 in the column of owner suit land is recorded as per Panchayat Deh and in the column of cultivator Makbuja Panchayat is recorded and in the column of land type it is recorded as Gairmumkin Johrad, Gairmumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. As such suit land is ownership of Panchayat and

comes within the definition of Panchayat Deh. Appellants has mainly relied that suit land has been purchased from the proprietors of village through registered sale deeds and they are continue in possession as owner. This argument of appellants is without logic because real owner of the suit land is Gram Panchayat and Gram Panchayat never sold the suit land. If any other people have wrongly sold the Gram Panchayat land to some other person in that situation sale deed is not binding on the Gram Panchayat and possession of the appellants cannot be held as legal. Appellant filed appeal against order of Assistant Collector before the Court of Collector. On the land mentioned in that appeal and land in a suit pending under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 before Collector being same, the Collector vide his order dated 20.12.2012 ordered to club both the cases and Collector vide his order dated 17.03.2015 dismissed the appeals of appellants. The Collector in the case has framed issue as per rules on the relevant points and main issue Nos.1 and 2 have been decided after considering record and facts in details. Collector while deciding issue Nos.1 and 2 have given conclusion that on implementation of Punjab Village Common Lands (Regulation) Act, mutation No.419 of the suit land was recorded and sanctioned on dated 10.02.1995 in the name of Gram Panchayat and during scheme istemal suit land was being kept reserved for shamlat work and the

land used for shamlat work comes within definition of Shamlat Deh and vests in the Gram Panchayat. Suit land as per jamabandi of year 1955-56 is recorded ownership as Panchayat Deh and Gairmumkin. Appellants have not produced any evidence before him which may prove that on the suit land they have cultivating possession before application of Punjab Village Common Land Act, i.e., 12 years old from 26.01.1950.....”

[11] We have heard learned counsel for the petitioners at a considerable length and minutely perused the entries in the voluminous record brought by them.

[12] At the cost of repetition, it may be mentioned that any land which is used, reserved or earmarked for 'common purposes' comes within the ambit of *shamlat deh* and it vests in Gram Panchayat. However, if such land has been partitioned amongst the proprietors and they were in individual cultivating possession as on the cut off date of 26.01.1950, namely 12 years before the 1961 Act came into force, such land was liable to be excluded from the definition of *shamlat deh*. While onus was on the Gram Panchayat to prove that the land was either reserved or meant for common purposes or it otherwise fell within the definition of *shamlat deh*, the petitioners could succeed only if they were able to prove that their vendors/predecessors were in individual cultivating possession of the land as on 26.01.1950. All these inter-connected issues are liable to be answered against the petitioners in view of the overwhelming entries in the revenue record. We find from the jamabandi for the year 1909-10 (P-9) that the land in dispute was recorded as *shamlat deh Hasab Rasad Rakba Khewat* and

nature of the land as *Banjar Qadim*. No proprietor has been recorded in its individual cultivating possession, rather in the column of ownership, it is *shamlat deh* which is recorded as owner of the land. In fact, if the nature of land is Banjar Qadim, it necessarily means that it was not cultivable and was never used for agricultural purposes. We have also gone through the Consolidation Scheme consisting of two types of *shamlat deh* lands, namely, (i) lands which were already used or reserved for common purposes and (ii) the lands which were taken from the proprietors of the village on *pro-rata* basis and put in a common pool for common purposes. The land in dispute assuming to be of 2nd category, falls within the definition of *shamlat deh* in view of the fact that it is Banjar Qadim and was never made cultivable and never ever came into cultivating possession of the proprietors. Such land would thus fall within the meaning of *shamlat deh* in view of the Explanation appended to Section 2(g) of the 1961 Act, as applicable to the State of Haryana.

[13] For the reasons afore-stated we do not find any ground to interfere with the impugned orders.

[14] Dismissed.

[SURYA KANT]
JUDGE

July 11, 2017
mohinder

[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether Reportable	:	Yes/No

106 CM Nos.2933 and 2934 of 2017 in
CWP No.63 of 2017

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Gautam Malhota and others versus State of Haryana and others

Present : Mr.Kanwaljit Singh, Senior Advocate with
Mr.Naresh Kaushik and Mr.Parunjeet Singh, Advocates,
for the applicant-petitioners.

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CM No.2933 of 2017

For the reasons mentioned in the application, the same is
allowed subject to all just exceptions and the documents (P-9 to P-18) are
taken on record.

CM stands disposed of.

CM No.2934 of 2017

Dismissed as infructuous.

(SURYA KANT)
JUDGE

July 11, 2017
mohinder

(SUDHIR MITTAL)
JUDGE