

CWP no. 1094 of 1994(O&M) 1

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

CWP no. 1094 of 1994(O&M)

Date of Decision : 18.01.2018

Babu Ram and others

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Kanwaljit Singh, Sr. Advocate with
 Mr. Harminder Singh Advocate for the petitioners
 Mr. S.S.Narula, Advocate for petitioner no.4
 Ms. Anu Pal, AAG, Punjab
 Mr. N.K.Bansal, Advocate for respondent no.4-Gram Panchayat

MAHESH GROVER, J.(ORAL)

The short question that we have been called upon to answer in the present writ petition is whether the land which has been concededly recorded as Shamlat Patti and not being put to common use of the village, can be included in the definition of Shamlat Deh or not. We need not travel far as the definition of Shamlat Deh under Section 2(g)(5) of the Punjab Village Common Lands (Regulation) Act, 1961 itself clearly answer the question. Section 2(g)(5) is extracted herebelow:-

Section 2(g) Shamlat deh includes:-

1. xxxx

2. xxxx

3. xxxx

4. xxxx

(5) lands in any village described as banjar

qadim and used for common purposes of the village,

according to revenue records.”

The only area that we have to travel to determine whether the land in question being Shamlat Patti is included in the definition of Shamlat land would be to examine if there is material on record to suggest its use for the benefit of the Panchayat. The application filed by the petitioners under Section 11 opens with the following paragraph

“1. That the land as fully mentioned in the head note of the petitioner is shamlat patian and proprietors of different parties have been managing the same since time immemorial. They have been putting the natural growth standing over the move said land to auction and distributed the auction proceeds among themselves.

2. That the respondent has absolutely no right or interest in the land insuit and since times immemorial it never interfered in the proprietary rights of the petitioner in the land in dispute.”

The reply of the Gram Panchayat says nothing except to concede what has been asserted by the petitioners and the same is extracted herebelow:-

“1. It is correct to the extent that the land in dispute is entered as shamlat patti in the revenue record and the village proprietors have been managing the same for the last abut 50 years or so but it vests in the Gram Panchayat and the Gram Panchayat is its owner.”

In the cross-examination the Sarpanch stated as below:-

“It is correct that even since I can remember the

produce on the disputed land is done by the khewatdars without our permission. It is correct that this land is a land of Patti Nagaha, Patti Tarapur and Patti Majri.”

It is conceded before us that apart from the aforesaid there is no material on record to suggest the land being used for common purposes of the village or its inhabitants. The wajib-ul-arz of 1915-1916 records that the Shamlat Deh or Shamlat Patti of the village is being cultivated by the shareholders and the fruits are shared by those who are in possession of the land who would also undertake its management. In this view of the matter, the Collector and the Commissioner went wrong in ignoring what was on record and base their decision on non-existent record and by ignoring the definition as incorporated in Section 2(g)(5). The Commissioner has recorded that the land being Banjar qadim was used to harvest 'Bober grass' for the benefit of the village which is not fortified by any material on record and so conceded before us even by the learned counsel for the respondent.

For the aforesaid reasons, we accept the instant petition and set aside the impugned orders to hold that the land was concededly recorded as Shamlat Patti and was never used for the benefit of the village as per the revenue record (Annexures P-1/A to 1/C).

(Mahesh Grover)
Judge

18.01.2018
rekha

(Rajbir Sehrawat)
Judge

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No