

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

C.W.P. No.4241 of 2008 (O&M)

Date of Decision: September 13, 2018

Jitender Rathee & another

...Petitioners

Versus

State of Haryana & another

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE AMIT RAWAL**

Present: Mr. Rajneesh Malhotra, Advocate
for the petitioners.

Mr. Sushil K. Sharma, Advocate for
Mr. M.L. Sharma, Advocate
for respondent No.2.

Mr. Ankur Mittal, Additional Advocate General, Haryana.

AMIT RAWAL, J.

Petitioners have approached this Court under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari/prohibition/mandamus or any other appropriate writ, order or direction for declaring the amended provisions of Haryana Municipal (Amendment) Act, 1999 to be ultra vires and violative of Articles 31-A of the Constitution of India as the aforementioned amendment infringes their fundamental rights and also for quashing the order dated 29.09.2000 (Annexure P-5), whereby Assistant Collector 2nd Grade changed the ownership of Shamlat Panna Raman Urf 5 Biswas Hasab Rasad Arazi

Khewat from the name of Panchayat to Municipal Council, Bahadurgarh.

It has been averred in the petition that the petitioners are claiming to be in possession of land measuring 5 Biswa Pakka, i.e., 750 sq. yards (Gair Mumkin) in the revenue estate of Bhadurgarh, therefore, they are the co-sharers/proprietors of Shamlat Pana Raman Urf 5 Biswa Hasab Rasad Arazi Khewat. In column No.4 of jamabandi Annexure P-1, it has been described that the land belongs to Shamlat Pana Raman Urf 5 Biswa Hasab Rasad Arazi Khewat and in column No.5, the name of the grand-father of the petitioners has been mentioned as Hissedar, whereas in column No.10, they are shown to be in possession of the land. After the death of grand-father of the petitioners, the suit land was distributed between the legal representatives of Hari Singh including the father of the petitioners and thereafter all the legal representatives suffered a decree in favour of the petitioners giving their share to them, which they inherited from their father Hari Singh, thus, the petitioners are stated to be in possession of land measuring 750 sq.yards since 1969 till today. They have also constructed shops on the site after approval of the site plan.

It has also been averred that in the year 1974, vide Act No.15 of 1974, amendment was caused in Haryana Municipal Act naming it as Haryana Municipal Common Lands (Regulation) Act (15) of 1974. In pursuance of the aforementioned amendment, the land of Shamlat Pana Raman was mutated in the name of Municipal Council, Bahadurgarh. The said amendment was challenged by filing Civil Writ Petition No.2018 of 1974 which was decided by Full Bench of this Court on 28.03.1979 striking down the provisions being unconstitutional. The applicability of Article 31-A (1)(a) of the Constitution was held to be not applicable in the absence of two tests, i.e., amendment should be definitely directed to agrarian reforms

simplicitor and secondly it should be made for ancillary purpose of development of rural economy. It was further held that the aforementioned amended Act violates Article 31-A of the Constitution as it intends to acquire the land of the proprietors without payment of compensation. After the decision of the aforementioned writ petition, the mutations already entered in the name of Municipal Council in respect of Shamlat Panna lands were again corrected in the name of Shamlat Panna.

In clauses (g) and (h) of sub-section (1) of Section 61 of the Haryana Municipal Act, 1973, amendments were made to the effect that the shamlat deh has now vested in respective Municipal Councils without payment of any compensation vide notification dated 21.10.1999. In pursuance thereof, mutations have been sanctioned by the Assistant Collector 2nd Grade without payment of any compensation to the villagers/ proprietors.

Written statement on behalf of respondent No.2- Municipal Council, Bahadurgarh has been filed by pleading that shamlat deh/nazool/deh and mustarka malkan land situated in the municipal limits are being misutilized by some encroachers and in order to prevent the same, Haryana Government decided to make certain amendments in the Haryana Municipal Act, 1973 and Haryana Municipal Corporation Act, 1994, so that the lands defined as “shamlat deh” are vested in and be under the control of the Municipal committee/Municipal Council and Municipal Corporation. The vesting of the land in question with the municipalities as per the amending Act, 1999 is not the acquisition of the land as defined in Article 31-A of the Constitution as the rights of ownership and possession with respect to the land were not with the petitioners but the same were with the Panchayat and

after the amending Act, the same are with the municipalities. No proceedings under the Land Acquisition Act, 1984 were initiated for the purpose of vesting the land with the municipalities, rather it has been done by an Act of Legislature. The construction, if any, raised as alleged by the petitioners is without permission of the competent authority. Since the land which was in the name of the Panchayat has now come under the ownership of the Municipal Council as per the aforementioned amendment automatically, the question of making of payment of compensation does not arise.

Mr. Rajneesh Malhotra, learned counsel representing the petitioners submitted that vesting of the land in favour of the Municipal Committee or Gram Panchayat as per the provisions of 1961 Act as applicable to the Haryana State is wholly against the ratio decidendi culled out by the Full Bench of this Court in **Suraj Bhan and others Versus State of Haryana and others**, 2017 (2) R.C.R. (Civil) 934 as, such procedure has been held to be ultra vires under Articles 300-A and 31-A of the Constitution. No owner of the land can be deprived of ownership and title by deeming provisions of the Act owing to the subsequent developments, particularly when not a single penny of compensation had been paid and, thus, urged for setting-aside the impugned order.

We have heard the learned counsel for the parties, appraised the paper book and are of the view that there is force and merit in the submissions of the learned counsel for the petitioners.

The proposition with regard to the vesting of land into Municipal Committee came to be debated before the Full Bench of this Court in the judgment cited supra, wherein, while carving out legal position

in Para No.218, it has been held as under:-

“(a) The ‘shamlat deh’ lands as mentioned in Section 2 (g) of the VCL Act 1961 are the common lands of the village and are for the common use and benefits of the ‘inhabitants of the village’ as contemplated by Section 5 of the said Act. In Gram Panchayat of village Jamalpur v. Malwinder Singh (supra), it was said that though, the interest of the proprietors of other lands, in ‘shamlat deh’ lands, was incidental to their proprietary interests in those other lands, such interest in the ‘shamlat’ was not a mere appendage to their interest in the other lands and that lands so reserved were zealously guarded as the common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation were recognized as having a share in these reserved plots. It was said, “as a general rule, only proprietors of the village (malikan-deh) as distinguished from proprietors of their own holdings (malikan makbuza khud) are entitled to share in the shamlat deh”. It was also noticed that while it appeared to have been laid down that the right to share in the Village Common Land was an incident attaching to the ownership of agricultural land in the village and that ordinarily those persons who held land on which revenue was assessed and who were cosharers in the ‘khewat’ were entitled to a share in proportion to the revenue paid by them. The ownership of land though was held to be in favour of the landowners; however, the VCL Act 1953 being a measure of agrarian reforms, it was held, would receive the protection of Article 31A of the Constitution;

(b) With the enlargement of the municipal limits by including the ‘shamlat deh’ lands in the Municipal Corporation or Municipal Committee, as the case may be, the characteristics of the ‘shamlat deh’ lands cease to exist and they no longer are for the purpose of any agrarian reforms;

(c) The acquisition of ‘shamlat deh’ lands of the village by enlarging the area of a Municipal Council or a Corporation

deprives the 'inhabitants of the village' of their rights to enjoy the common property of the village. The 'shamlat deh' lands were the common lands of the village for use and enjoyment of the inhabitants and residents of the village. This has been the intent of the VCL Act 1961 as also of the Consolidation Act 1948 as amended from time. These were not for the domain of the public in the urban areas of a Municipality or a Municipal Corporation, as the case may be;

(d) The purpose of reserving lands as 'shamlat deh' or 'Jumla Mushtarka Malkan' was to protect the rights of the holders and owners in the land against the competing claims of others, that is to say to avoid the claims of those who had not contributed towards the common purpose although they were/are entitled to full user and enjoyment of the same. With such lands vesting in a Municipality or a Municipal Corporation they assume the characteristics of a town or urban area with no connection for use and enjoyment for the inhabitants of the village. Their acquisition by the State for the rural economy and agrarian reforms in view of Article 31A (1) of the Constitution, protected the State from the payment of compensation. With the 'shamlat deh' lands now vesting in the Municipality or Municipal Corporation, as the case may be, and thus being a part of a town or an urban area, the protective shield against payment of compensation is no more there. In fact, the concept of 'shamlat deh' is absolutely foreign and alien in the context of an urban or a town area. The very use of the words 'shamlat deh' which is common land of the village for an urban area or a town falling within the limits of a Municipality or a Municipal Corporation is out of context. The town or an urban area may have its own common lands, but the same are not liable to be termed or called as 'shamlat deh' lands for the common use of the inhabitants of the village;

(e) In the event of lands forming part of the municipal limit by the enlargement of the municipal area, the 'shamlat deh' lands, which are recorded in the revenue records as 'shamlat deh'

simpliciter, would not entail as a document for grant of any compensation and the same would escheat to the State and may be taken to be escheated to the State in terms of Article 296 of the Constitution of India;

(f) However, where the lands are identifiable by title, semblance of ownership or vestige of title of a proprietor to the extent of his share by way of a document or by way of revenue records/jamabandis, the owner, so identified, shall be entitled for compensation as per his entitlement. Besides, if the lands come within the exclusionary clauses of Section 2 (g) of the VCL Act 1961, the owner of such lands would be entitled for compensation. It is, however, made clear that the onus to prove the right of ownership, semblance of ownership, vestige of title or that it comes within the exclusionary clauses of Section 2 (g) of the VCL Act 1961 shall be on the person so claiming, which he can establish on the basis of revenue records/jamabandis or other materials. The revenue records to which a presumption of truth is attached would, however, be subject to rebuttal;

(g) The entries in the revenue records carry a presumption of truth, which, however, are rebuttable and can be shown to be wrong by other material (s) on record. The entries, however, in case based on fraud or manipulation of revenue records, the same would not confer any right or title on the person so entered as owner in the records;

(h) The 'Jumla Mushtarka Malkan' lands are distinct and separate from the 'shamlat deh' lands. The ownership and title of the 'Jumla Mushtarka Malkan' lands or the lands recorded as 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba' vest in the proprietary body of the village and not in the Panchayat; however, the management and control of these lands vest in the Panchayats in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 as also the judgment of the Five Judge Bench of the Supreme Court in Ajit Singh's case (supra);

(i) The 'Jumla Mushtarka Malkan' or 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba' lands have been carved out in consolidation proceedings and operations carried out in accordance with the Consolidation Act 1948 and the Consolidation Rules 1949 by imposing a *pro rata* cut on the lands of the proprietors. The cut that has been made is clearly identifiable and discernible as it is so mentioned in the 'Missal Haqiyat' (document of ownership), 'Naksha Haqdarani' (document of share of the proprietors), 'Khatauni Pamaish' (measurement of total land on the basis of its valuation) and 'Khatauni Istemal' (first jamabandi after consolidation which mentions the old khasra numbers and the new khasra numbers). Therefore, where the shares of the proprietors in the 'Jumla Mushtarka Malkan' or 'Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba' lands are identifiable and the land vests in the municipality, then the proprietors would be entitled for compensation to the extent of their share as they are admittedly owners of the same. In Ajit Singh's case (supra), it has specifically been held that the ownership of such land vests in the proprietary body of the village to the extent of its share in the holdings in the village;

(j) The judgment of Five Judge Bench of Hon'ble the Supreme Court in Bhagat Ram's case (supra) invalidating the reservation of certain areas in a consolidation scheme for income of the Gram Panchayat and holding it to defeat the whole object of the second proviso of Article 31A, is applicable for lands that are carved out for common purpose in terms of Section 2 (bb) of the Consolidation Act 1948 and are recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad Raqba', 'Jumla Malkan' or 'Mushtarka Malkan' etc. and is not for lands that are recorded as 'shamlat deh'. This is for the reason that the proprietary body of the village is recorded as owners of the lands recorded in the revenue records 'Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad Raqba', 'Jumla Malkan' or 'Mushtarka Malkan' etc. and only the

management and control vests with the Gram Panchayat in terms of Section 23-A of the Consolidation Act 1948 and Rule 16 (ii) of the Consolidation Rules 1949 while the ownership and title of the 'shamlat deh' lands vests with the Panchayat in terms of Section 4 of the VCL Act 1961. Therefore, the income derived from 'shamlat deh' lands can be used for common purposes while reservation of lands for income of the Panchayat cannot be made in respect of lands carved out for common purposes in a consolidation scheme;

(k) Any observation in Jai Singh's case (supra) and Veer Singh's case (supra) to the extent it is taken as conferring a right, title and ownership in respect of 'Jumla Mushtarka Malkan' lands on the Gram Panchayat would be improper and invalid notwithstanding Section 4 of the VCL Act 1961 in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 and the judgment of the Five Judge Bench of Hon'ble the Supreme Court in Ajit Singh's case (supra);

(l) The definition of 'shamlat deh' as has been defined in Section 2 (g) of the VCL Act 1961 includes 'shamlat deh' simpliciter; besides, 'shamlat tikkas' lands described in the revenue records as shamlat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village. The said terms have been elucidated above and the proprietors having share in these sub-divisions of the village land shall be entitled to compensation as per their share, which is identifiable, but they would not be entitled to any compensation where it is not so identifiable;

(m) At the cost of repetition, it is stated that the documents for the identification of the land would be the revenue records primarily, unless these are shown to be incorrect or are forged or fraudulent or have been invalidated by a competent Court of law;

(n) The requirement for paying compensation for the land that

is acquired and vests with the Municipal Committee or Municipal Corporation, as the case may be, in terms of Section 61 (h) of the Municipal Act 1973 and Section 161 (g) of the Municipal Corpn. Act 1994 shall be read into that effect and compensation shall be paid in accordance with law.”

In such circumstances, we are of the opinion that the respondents cannot claim the ownership and vesting of the land as per the provisions of law applicable without paying compensation, much less it is yet to be established whether the petitioners had acquired any right or title in the property.

Resultantly, the impugned order dated 29.09.2000 is hereby quashed. The entire exercise be undertaken by the State by affording opportunity of hearing to the petitioners vis-a-vis grievance in the writ petition for vesting of the land of the Gram Panchayat or petitioners are entitled to compensation in accordance with law or not. Let this exercise be undertaken as expeditiously as possible preferably within a period of one year.

Writ petition stands disposed off.

(RAJESH BINDAL)
JUDGE

(AMIT RAWAL)
JUDGE

September 13, 2018
ramesh

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No