

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

CWP-16623-2013

Date of decision: 14.11.2018

Savitri Devi

..Petitioner

Versus

State of Haryana and others

...Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Chirag Wadhwa, Advocate for the petitioner.

Mr. Kiran Pal Singh, AAG, Haryana.

Ritu Bahri, J. (Oral).

The petitioner is seeking writ of certiorari quashing the order dated 08.02.2013 (Annexure P-5) passed by Sub Registrar, Gharaunda, declining to register agreement to sell dated 08.02.2013 and the order dated 26.03.2013 (Annexure P-7) passed by respondent No. 2, whereby appeal has been dismissed by the Deputy Commissioner, Karnal.

The petitioner is a resident of Noorpur Muglan, District Panipat and is in cultivating possession of the land as per the details mentioned in para 2 of the writ petition. The possession of the petitioner and her predecessors is there for the last more than 16 years. Earlier one Ram Kumar son of Manga Ram was owner in possession of this land and vide registered sale deed dated 30.01.2007 (Annexure P-1), sold the land as owner and as a shareholder in the shamlat deh for Rs. 22 lacs. Thereafter, Meharbaan, who purchased the land from Ram Kumar sold it to the petitioner Savitri Devi for Rs.32 lacs as per registered sale deed dated 21.05.2008 (Annexure P-2). After the purchase of this land, mutation was

also entered in favour of the petitioner as per the register of mutation by the Patwari on 20.01.2009 and the Kanungo on 15.02.2009 (Annexure P-3). Thereafter petitioner Savitri Devi was agreed to sell this land for consideration of Rs.50 lacs in favour of one Varinder Kumar as per agreement to sell dated 08.02.2013 (Annexure P-4). As per Section 17 of the Indian Registration Act, the petitioner approached respondent No. 3-the Sub Registrar, Gharaunda to get the agreement to sell registered and vide order dated 08.02.2013 (Annexure P-5), the Sub Registrar, Gharaunda refused to register the agreement to sell. Thereafter an appeal under Section 72 of the Registration Act was filed which had also been dismissed by the Deputy Commissioner, Karnal vide order dated 26.3.2013 (Annexure P-7). While passing the above orders dated 08.02.2013 and 26.03.2013 (Annexure P-5 and P-7), the instructions issued by the Revenue Department dated 08.01.2013 have been made basis for rejecting the case of the petitioner.

Learned counsel for the petitioner has argued that the land in question is in village Ghari Bharal and is shown as shamlat deh as this village is situated on the banks of Yamuna River and due to River Action, the land of this village is shown as shamlat deh but this land has never vested under Gram Panchayat. He has further referred to earlier sale deeds dated 30.01.2007 (Annexure P-1) and 21.05.2008 (Annexure P-2) which have been duly registered. Learned counsel for the petitioner has referred to the report dated 28.05.2013 (Annexure P-8) whereby Halqa Patwari has certified that Savitri Devi wife of Deep Chand r/o Village Noorpur is owner of land measuring 64 Kanal 0 Marla which is river action land. He has further referred to provisions of Section 2(g)(5)(i) of the Punjab Village

Common Land Act whereby exemption has been granted to the land subject to the river action from the definition of shamlat deh.

The petitioner is seeking registration of the sale deed on the following grounds:-

1. That the land does not fall in the definition of shamlat deh as per Section 2(g)(5)(i) as the land is the subject matter of river action and it shall not be covered under the definition of Shamlat Deh.
2. The land has never been used for common purposes and after its partition amongst the proprietary body, is being cultivated by the owners/proprietors. Earlier Ram Kumar being proprietor was under the cultivating possession without any Batai and has made the sale deed (Annexure P-1) and thereafter subsequent purchaser has made sale deed (Annexure P-2) which have been duly registered.
3. As per the report of Halqa Patwari dated 28.05.2013 (Annexure P-8), the petitioner has been recorded as owner of the land measuring 64 K 0 M.

After notice of motion, written statement has been filed by respondents No. 2 and 3. The stand taken by respondents No. 2 and 3 in the written statement is that land in dispute is situated in the Revenue estate of village Ghari Bharal Tehsil Gharaunda and as per the notification, an area measuring 1645 acres comprised in Khewat No. 207 of record of right for the year 2006-07 and previously Khewat No. 206 of the Jamabandi for the year 2001-02, this land has been declared to be land being part of Dikshit Award on account of River Action and as such, the same is subject

to the proceedings under Section 32 of Punjab Land Revenue Act 1887. At present the land is recorded as Shamlat Deh in the column of ownership as per Jamabandi for the year 2006-07 and in the column of cultivation, the names of Manoj Kumar, Vikram Pragan, Ramphal, Ram Kumar, Smt. Chandro, Smt. Savitri, Smt. Santosh D/o Meharbaan and others have been mentioned. The copy of Jamabandi is annexed as Annexure R-3. As per the notification dated 09.08.2011 (Annexures R-1 and R-2), the scheme for consolidation has been made and with respect to the present land of river action, a notification under Section 32 of the Punjab Land Revenue Act 1887 has been issued on 09.08.2011 and by this notification, District Revenue Officer-cum-Settlement Officer will get the measurement of the land as per the rules and regulation, thereafter Shizra Plan is to be prepared and record of rights of the proprietors shall be made available to the public and claims and objections, if any, will be invited. After hearing claims and objections, the process to make final revenue record of rights will be started as per provision of Section 32 of Punjab Land Revenue Act 1887. As per the notification dated 09.08.2011 (Annexure R-1), the proceedings are still in progress. Since the land has not been identified or demarcated, the authorities have rightly refused to register the agreement to sell by passing the orders dated 08.02.2013 and 26.03.2013 (Annexure P-5 and P-7).

However on merits, it is admitted that as per the Jamabandi for the year 2006-07 (Annexure R-3) Ram Kumar has been shown in the cultivating possession of the land and the respondents have specifically denied the registration of the sale deeds (Annexure P-1 and P-2). Hence, registration of the above said land in possession of Ram Kumar and the sale made by him has been duly registered vide sale deed dated 30.01.2007

(Annexure P-1) and thereafter sale made by Meharbaan who purchased from Ram Kumar and sold it to the petitioner Savitri Devi has also been registered vide sale deed dated 21.05.2008 (Annexure P-2). As per the Jamabandi for the year 2006-07 (Annexure P-3), the petitioner has been shown in the cultivating possession of the suit land. On 15.11.2017, the Principal Secretary, Revenue was present in Court and learned counsel for the State has filed a short affidavit dated 15.11.2017 that as per the revenue record i.e. the jamabandi for the year 2016-17, the ownership column of the suit land i.e. 64 K reflects Shamlat Deh and it has been clarified that the report dated 28.05.2013 (Annexure P-8) was not based on the actual position reflected in the revenue record. The report of Halqa Patwai was inadvertently countersigned by the then Sub Registrar-cum-Tehsildar, Gharaunda on 27.06.2013. A show cause notice dated 07.11.2017 (Annexure R-1) has been issued to Shamsheer Singh, the then Halqa Patwari who had signed report (Annexure P-8) to show that the petitioner Savitri Devi was owner of land measuring 64 K 0 M.

After hearing learned counsel for the parties and going through the contents of writ petition and written statement, the present writ petition deserves to be allowed. At the outset, reference can be made to the notification dated 09.08.2011 (Annexure R-1). This notification has been issued subsequent to the Dikshit Award, on account of Alluvion and Diluvium (commonly known as river action land) of shamlat deh land of the villages of district Karnal and as per this notification, rights of ownership of this land have to be given to the land owners and proceedings under Section 32 of the Punjab Land Revenue Act 1887 have to be initiated to make the the record of rights of land. As per the notification dated 09.08.2011

(Annexure R-1) and scheme of consolidation (Annexure R-2), the land in village Garhi Bharal measuring 1645 acres comprising khewat No. 207 has to be declared to the land being part of Dikshit award on account of river action.

The petitioners are also claiming the benefit of Dikshit award and exemption under Section 2(g)(5)(i) of the Punjab Village Common Land Act which reads as under:-

“(5) Lands in any village described as banjar qadim and used for common purposes of the village according to revenue records:

Proviso omitted by Haryana Act No. 9 of 1992

But does not include land which-

(i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or play ground in the revenue records.”

Once the respondents themselves have admitted that per notification dated 09.08.2011 (Annexure R-1) the procedure to transfer the land to the land owners, which is part of the Dikshit award commonly known as river action land, has been initiated. The respondents now cannot take the plea that this land is shamlat deh land. Moreover respondents have not denied the registration of the earlier two sale deeds i.e. one by Ram Kumar in favour of Meharbaan vide sale deed dated 30.01.2007 (Annexure P-1) and another made by Meharbaan in favour of Savitri Devi vide sale deed dated 21.05.2008 (Annexure P-2). Since both the sale deeds have been registered and the petitioner Savitri Devi has been found to be in cultivating possession as per the Jamabandi 2006-07 (Annexure R-3), the respondents cannot take any benefit of the show cause notice dated

07.11.2017 (Annexure R-1) issued to Halqa Patwari who had got countersigned the report by the then Sub Registrar-cum-Tehsildar, Gharaunda. The proceedings initiated on 09.08.2011 by notification (Annexure R-1) are still continuing and have not been finalized.

The writ petition is allowed and a direction is given to respondent No. 3 to register the sale deed (Annexure P-4) keeping in view that the land in dispute as per notification dated 09.08.2011(Annexure R-1) does not fall in the definition of Shamlat Deh since as per the Dikshit Award, this land is known as river action and ownership has to be given to the land owners.

14.11.2018

Divyanshi

**(RITU BAHRI)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No