

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Date of decision: 10.12.2018

(1) CWP No. 15337 of 2016 (O&M)

Prem Singh & Ors.Petitioners

Vs.

State of Haryana & Ors. ...Respondents

(2) CWP No. 18450 of 2016 (O&M)

Joginder Pal Singh & Ors.Petitioners

Vs.

State of Haryana & Ors. ...Respondents

(3) CWP No. 24661 of 2016 (O&M)

Kamla & Ors.Petitioners

Vs.

State of Haryana & Ors. ...Respondents

(4) CWP No. 24658 of 2016 (O&M)

Sukhbir Singh & Ors.Petitioners

Vs.

State of Haryana & Ors. ...Respondents

(5) CWP No. 9228 of 2017 (O&M)

Jagdish Singh & Ors.Petitioners

Vs.

State of Haryana & Ors. ...Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Vikram Singh, Advocate, for the petitioners.
(in C.W.P No. 15337 of 2016)

Mr. Harkesh Manuja, Advocate, for the petitioners.
(in C.W.P Nos. 24658, 24661 and 18450 of 2016 &
9228 of 2017)

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Lalit Batra, J. (Oral)

Vide this judgment we shall dispose of five civil writ petitions impugning the legality of order dated 14.07.2015 of Commissioner Rohtak Division, in terms of which revision filed by Gram Panchayat – respondent has been accepted and resultantly orders dated 20.11.1985 and 07.08.1986 passed by Assistant Collector, Ist Grade and Collector respectively have been set aside. Since common questions of law and facts are involved in the above said civil writ petitions, these are being disposed of by this common order.

2. Briefly the facts of the instant case are that the suit land in all these cases was *shamlat* land even before consolidation. Petitioners' name appeared in some places in the column of possession of *shamlat* land before the operation of Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter to be referred as 'Act, 1953'). After the commencement of consolidation process suit land was kept under the ownership of Gram Panchayat. Petitioners got that portion of *shamlat* land under their ownership, which was within their share as proprietors. Petitioners had filed civil suit wherein Sarpanch of Gram Panchayat had given concurrence to their claim on *shamlat* land and as a result of which consent decree was passed on 31.07.1963. However, later on Gram Panchayat contested the above said matter the consent decree was set aside vide judgment and decree dated 16.01.1968. Though liberty was granted to initiate a fresh suit from that stage but it was never revived by the petitioners. Instead of that petitioners preferred appeal before District Judge but the same was dismissed on 28.04.1968. Thereafter, no further appeal or revision was filed against the order of

District Judge nor ever Civil Court proceedings initiated from the stage of collusive consent given by the then Sarpanch. After the commencement of Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, w.e.f 12.02.1981 (hereinafter referred to as 'Act 1980'), the petitioners filed applications under Section 13-A before the Assistant Collector, Ist Grade for declaration that suit land did not vest in Gram Panchayat and in fact said land vested in them. Assistant Collector Ist Grade vide order dated 20.11.1985, disposed of above said applications adjudicating that suit land does not vest in Gram Panchayat. Feeling aggrieved, Gram Panchayat preferred appeals before Collector but those appeals were dismissed on 07.08.1986. Then Gram Panchayat filed revisions before Commissioner, who remitted the case to Assistant Collector, Ist Grade, to check as to whether the petitioners were in cultivating possession before consolidation. Against said remand order Civil Writ Petitions No. 8386 to 8392 of 1987 were filed in the High Court, wherein vide order dated 04.08.2008, remand order dated 25.06.1987 passed by Commissioner was set aside and further Commissioner was directed to decide those cases afresh. On 28.01.2009, Commissioner remitted all those cases to Collector for examining revenue record and deciding the said cases afresh. Then another set of Civil Writ Petitions were filed in the High Court, wherein vide order dated 24.12.2010 cases were remitted to Commissioner for deciding the same afresh. Then Commissioner dismissed the revision on 30.01.2013. Thereafter, both Gram Panchayat as well as petitioners filed Civil Writ Petitions No. 26310 of 2013, 26314 of 2013, 26330 of 2013, 26335 of 2013, 26336 of 2013, 26337 of 2013, 26512 of 2013 and 27840 of 2013, wherein all those cases were remitted back to Commissioner for decision and vide order dated 14.07.2015, revisions of Gram Panchayat have been accepted, which led to the instant civil writ petitions.

3. Learned counsel for the petitioners at the very outset have argued that

instead of getting requisite standard kanals and marlas of land, petitioners have got less

area in terms of standard kanals and marlas. They further submitted that by virtue of provisions of Section 4(3)(ii) of Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as 'Act 1961'), as petitioners had been in cultivating possession of suit land for more than 12 years before enactment of said Act without payment of rent or any other charges not exceeding the land revenue, cesses payable thereon. In this scenario above said land could not vest in Gram Panchayat. Learned counsel for the petitioners further took assistance of provisions of Section 2(g)(viii) of Act 1961, to get exclusion of suit land from *shamlat deh* as the said land remained in individual cultivating possession of petitioners and it was never used or reserved for common purpose.

4. After having gone through the pleadings as well as material placed on record, we are of the considered opinion that instant writ petitions are devoid of merits and to substantiate said findings, reasons are enumerated as under:-

- i) Proceedings of previous civil suits and applications under Section 13-A of Act 1980, pertain to same matter directly and substantially in issue that whether suit land vests in Gram Panchayat or not. In civil suits, petitioners lost when collusive decree was set aside, its appeal was dismissed and no further appeal/revision was preferred. Civil suit was finally dismissed by Appellate Court in October 1968 but the same was not challenged for almost fifteen years. Furthermore, after the decision of District Judge, jurisdiction of High Court was not barred by any other law. Order dated 28.10.1968 was never challenged. Thereafter fresh suit under Section 13-A of Act 1980 was filed. Though proceedings under Section 145 Cr.P.C were pending during intervening period but those proceedings which only applied to maintain law and order by attaching a property and further with a scope to get the dispute adjudicated through Civil

under Section 145 Cr.P.C do not create any embargo for a litigant to pursue settlement of title in the Court of competent jurisdiction. Apart from that no application for condonation of delay was moved in all the above said applications under Section 13-A of Act 1980. Though provisions of Section 13-A of Act 1980 entitle a person to file suit for adjudication before Assistant Collector, Ist Grade within a period of two years from the date of commencement of Act 1980, but said amendment did not revive the cause of action which had already been adjudicated or had become time barred. To this effect reliance can also be placed on ruling **Krishan Kumar alias Krishan Singh Vs. Commissioner Hisar Division, Hisar and Ors.,** 2010 (33) RCR (Civil) 62 wherein Hon'ble Supreme Court has observed as under:-

“A careful reading of the provisions contained in Section 13-A of the Amendment Act, would go to show that a suit for adjudication as to whether any land or immovable property is shamlat deh or not and whether any other land or immovable property or any right, title or interest therein vests or does not vest in a Panchayat can be filed within two years of coming into force of the Amendment Act. The provisions of Section 13-A clearly and unambiguously provides only for filing of suits claiming the reliefs set out therein within a period two years from the date of Amendment Act. There is no provision nor any can be read or implied in Section 13-A to revive a cause of action, which has already been adjudicated.”

Petitioners lost their claim on 16.01.1968, when their collusive decree was set aside. They also lost in appeal on 28.10.1968. Further they did not pursue the remedy of reviving the litigation from the stage of collusive admission made by the then Sarpanch. Nor they preferred appeal or revision impugning the legality

of judgment dated 28.10.1968 and as such above said matter had attained finality and became time barred, thus, due to enactment of provisions of Act 1980 i.e Section 13-A of said Act, petitioners are not entitled to pursue the matter afresh. Section 13-A of Act 1980 does not revive the cause of action which is already time barred.

ii) A bare perusal of provisions of Section 2(g)(viii) of Act 1961 i.e. exclusion clause postulates that the land being *shamlat* was in individual cultivating possession of co-sharers, not being in excess of their respective shares in such *shamlat deh* on or before 26.01.1950. To seek exemption on the ground of Section 2(g)(viii) of Act 1961, the petitioners are required to prove (1) that they are proprietors in the village; (2) suit land is *shamlat deh*; (3) suit land was assessed to land revenue on 26.01.1950; and (4) suit land was in cultivating possession of petitioners not in excess of their respective shares as on or before 26.01.1950. Even though in one of the cases petitioners are claiming land in excess of their respective shares but in respect of other cases it is not explicitly written in the petitions but those cases fall in the similar line. There is nothing on the record to show that what was their share in *shamlat deh* as on 26.01.1950 and as to how much land they were in possession as on 26.01.1950. It is the stand of Gram Panchayat that precisely the excess share in the *shamlat deh* is being claimed by all the petitioners through these petitions and this aspect has not been disputed by the petitioners. In this scenario above said exemption is not available to the petitioners.

iii) Section 4(3) (ii) of Act 1961 prescribes that a person in cultivating possession of *shamlat deh* of village and his cultivating possession should be for a period of 12 years immediately preceding the commencement of Act 1953 and he

charges not exceeding the land revenue and cesses payable thereon. In this manner, exemption of Section 4(3)(ii) of Act 1961 requires proof of cultivating possession over the *shamlat* land on the date of commencement of Act 1953 and not on commencement of Act 1961. In terms of revenue record linkage between suit land and old numbers is not established even a perusal of *jamabandi* of the year 1935-36, khasra numbers produced by petitioners, nomenclature thereon was of “*Shamlat Deh*”. Therefore, all such lands have already vested in Gram Panchayat prior to commencement of Act 1961. Thus, plea of exemption under Section 4(3)(ii) of Act 1961 is not available to the petitioners. Since in the instant case suit land was *shamlat* land prior to enactment of Act 1961 on or even Act 1953, the exempting clause under Section 4(3)(ii) of the Act will not be applicable to the instant case. The exception under clause (ii) of sub-Section 3 of Section 4 of the Act is applicable to only such lands which come to vest in the Panchayat under the provisions of the Act and not to any other land. To this effect reliance can also be placed on ruling of this Court in case *Pat Ram Vs. Gram Panchayat Katwar and Ors.*, 2008 (9) RCR (Civil) 252.

- iv) Though petitioners have claimed private partition of *shamlat* land before trial Court but such claim was not proved. In case there was any private partition of *shamlat* land, then it would have been reflected in the revenue record where, different khewats would be prepared for different co-sharers. However, suit land was *shamlat* land even before consolidation. Just because somebody is recorded in column of possession of some portion of *shamlat* land, it cannot be inferred that there was indeed a private partition. Petitioners have failed to prove the plea of private partition by adducing any evidence. Agricultural land

and final document of partition is called *Sanad Takseem* i.e. instrument of partition. Even in case of private partition it has to be incorporated in the revenue record under Section 123 of above said Act and again instrument of partition under Section 121 of said Act is to be prepared. *Sharat-wazib-ul-arj* is neither a document nor instrument of partition which can prove private partition amongst co-sharers. In the absence of any such document like instrument of partition or incorporation in revenue record, plea of private partition is not tenable. To this effect reliance can also be placed on ruling of this Court “*Amarjit Singh Vs. State of Punjab & Ors.*, 2012 (67) RCR (Civil) 886”.

- v) Though possession of petitioners was on *soyam* type of land, which is medium quality of land, comprising mostly *eight anna or ten anna* land but they raised claim mostly on *four anna banjar* land and at some places on *two anna* land. This kind of tactics is being applied usually in consolidation cases so as to claim specific killa numbers of smallest valuation, so that when converted into standard acres, one used to get almost three to five times the area of land. During the era of consolidation value of land was being judged in terms of irrigation facility therein and type of soil. Further value of land also varied due to its location. Further, during consolidation proceedings litigants used to claim that part of Gram Panchayat land which had least valuation, so that they can get maximum area of land. In this manner, litigants used to get three to five times more area of land by claiming *two anna or four anna* of land. In the instant case as well, petitioners while having possession of mostly *eight anna* and *ten anna* land, they claimed mostly *four anna banjar qadim* land of Gram Panchayat. Further petitioners could not explain why instead of *barani* land on which they were asserting cultivating possession before consolidation, as to

could not be in individual cultivating possession. If the land has not been harvested for four successive crops and has not be sown then such land is classified as *banjar jadid* or new fallow. If it continues to be uncultivated and the said entries are maintained for next four harvests then such land comes under the category of *banjar qadim* or old fallow. The aforesaid terminology shows that *banjar qadim* land is land which remains uncultivated for eight preceding harvests. Thus, nomenclature of land as *banjar qadim* negates the plea of self-cultivating possession of the petitioners of suit land as on 26.01.1950. To this effect, reliance can also placed on ruling of this Court in case “**Gram Panchayat Village Mullepur Vs. Prem Singh & Ors.** 2015 (4) RCR (Civil) 28.

vi) Further, grievance of the petitioners is that they could not get excess share in *shamlat deh*, on which they had cultivation before consolidation. Every petitioner did not get his excess share in the *shamlat deh*, which petitioners claimed to be cultivating prior to consolidation. There is no explanation on the record to show that why the petitioners want to get transferred back the excess share of *shamlat deh* after several years in order to deprive Gram Panchayat and collectively deprive other co-sharers, who have got less than what was due in *shamlat deh*. Petitioners were duty bound to prove that they were entitled to keep possession of excess land than their share in *shamlat deh*. To prove above-said aspect, scheme of consolidation is a necessary document and since fraction of that document has been placed on the record which does not prove the entitlement of the petitioners for getting land more than their share. It is also not explained as to why petitioners want to keep part of *shamlat* land, which was in excess of their share. Whenever, any co-sharer gets ownership of *shamlat* land in excess of his share, then rights of other co-sharers get affected.

Further due to vesting of *shamlat* land in Gram Panchayat, which also belongs to non-proprietors of village and then by claiming ownership of excess share, the rights of such non-proprietors also get affected. Apart from that suit land was not “*Jumla Mushtarka Malkan*” land created during consolidation. In fact suit land was *shamlat deh* even before consolidation. Thus, it is also contrary to accepted principle to give proprietary rights by consolidation authorities over *shamlat* land in possession of co-sharers in excess of their shares.

vii) Even giving land to petitioners which was *shamlat* land prior to consolidation to the extent of their shares is also improper. In the instant case main dispute pertains to suit land, which is extra land of *shamlat deh*, which petitioners are claiming in excess of their share. There is no dispute with respect to land which has been given in lieu of old numbers after consolidation. Any co-sharer in possession over some part of the *shamlat* land after consolidation cannot become owner of said land irrespective of his possession being in excess of share in the *shamlat* or within the share. When allotted numbers to petitioners were *shamlat deh* prior to consolidation, law does not permit consolidation authorities to give such *shamlat* land before consolidation to petitioners. In view of provisions of Section 3(a) of Act 1953, any land which is included in the *shamlat deh* of any village, shall on the appointed date, vest in a Panchayat only. In view of above, land which was allotted to petitioners before consolidation, it has already vested in Gram Panchayat by operation of Act 1953. Therefore, neither *Sharat-wazib-ul-arj* which is only a customary use manual nor consolidation scheme can legalise the conversion of *shamlat* land and vest it in the petitioners. Issue pertaining to the aspect as to whether suit land is allotted to petitioners through consolidation, it is observed that in the

Panchayat. Presumption of truth is attached to entries of *jamabandi* as per provisions of Section 44 of Punjab Land Revenue Act 1887. However, the petitioners have failed to lead evidence to rebut the presumption which can prove that consolidation authorities allotted the suit land to the petitioners. Since no order of consolidation authorities was brought on record, which can rebut the *missal haqiyat*, thus, the petitioners have failed to prove their claim of getting suit land during consolidation.

viii) Petitioners were required to prove as to in what manner suit land belong to them. It was incumbent upon the petitioners to prove and to connect old khasra numbers with new khasra numbers with respect to land which they did not get it from the consolidation authorities and further vesting of said land in Panchayat has been disputed by them. On the other hand, petitioners have provided documents only to connect old khasra numbers with new khasra numbers with respect to land which was already under their ownership and there is no dispute with regard to land which the petitioners already got after consolidation in lieu of *shamlat* land under possession. In the instant case connection of old khasra numbers with suit land was required but to prove said aspect no cogent evidence was led. On the other hand, *missal haqiyat* shows that claimed suit land is almost *banjar qadim*. Earlier most of the *banjar qadim* suit land was under the ownership of Gram Panchayat and mostly the suit land did not come from any other ownership through dislocation by consolidation process. Documents placed on the record at the instance of petitioners depict nature of said land as *barani* i.e. cultivable land. In all the cases major portion of land has been *barani* land, whereas suit land is mostly *banjar qadim* land and as discussed earlier law is well settled that *banjar qadim* land cannot be considered to be under cultivating possession. In this manner, neither

connection of suit land with old khasra numbers nor cultivating possession over suit land is proved.

5. As a sequel to above-said findings, there is no reason to deviate from the findings recorded by Commissioner vide order 14.07.2015 and as such said order is sustained and resultantly instant civil writ petitions being devoid of merits are dismissed.

(MAHESH GROVER)
JUDGE

(LALIT BATRA)
JUDGE

December 10, 2018

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Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No