

102

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.9976-C of 2017 in/and
RSA No.185 of 1997
Date of Decision : 09.05.2019

Shyam Sunder and another

..... Appellants

Versus

The Faridabad Complex Administration and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present : Mr. Kulbhushan Sharma, Advocate
for the applicants/appellants.

Mr. Naveen S. Bhardwaj, Advocate
for the respondents.

SUDIP AHLUWALIA, J. (ORAL)

CM No.9976-C of 2017

It has been made out in the application that the facts of the present case are squarely covered by the decision of a Full Bench of this Court passed in “*Suraj Bhan and others vs. State of Haryana and another*”, 2017(2) R.C.R. (Civil) 934.

For the reasons mentioned in the application, the prayer for considering the present appeal in the light of the aforesaid decision is allowed. The main appeal, with the consensus of both the counsel, is taken up on Board for final hearing.

CM stands disposed off.

RSA No.185 of 1997

The original suit was filed on behalf of the appellants, who

claimed to be the proprietors of Mauza Sehatpur. The disputed lands were recorded as “*Shamlat Deh*” in the revenue records. After coming into force of Faridabad Complex (Regulation and Development) Act, 1971, the lands were passed-on from the Gram Panchayat, Palla to Faridabad Complex Administration, as it was at the relevant time.

2. The suit was decreed in favour of the appellants. But the Ld. Lower Appellate Court set aside the decree passed in their favour after observing *inter alia* that *the Ld. Trial Court had fallen into an error by accepting that decision of a Full Bench of this Court passed in “Rajender Parshad and others vs. State of Haryana and others”, 1979 P.L.J 263, was in favour of the plaintiffs.*

3. During the pendency of the present appeal, the earlier decision passed in ***Rajender Parshad's case (supra)*** came up for detailed scrutiny before a Five Judge Bench of this Court in ***Suraj Bhan's case (supra)***. The relevant conclusions of the Larger Bench as applicable to the facts and circumstances of the present case are contained in Items (c), (d), (e) and (f) of Para No.218 of the said judgment, which are set out as below:-

“In view of the above discussion, the legal position that emerges is as follows:-

(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.”

4. The suit was instituted way back on 09.09.1988.

5. Undisputedly, over these years, a lot of construction upon the lands in question has been completed not only by the respondent-authority but also the inhabitants and allottees based over there.

6. Even otherwise, in view of the observations of the Larger Bench in Item (f) of the decision in ***Suraj Bhan's case (supra)***, the surviving actionable right for the appellants now remains confined to their entitlement for compensation, for which clearly the onus at least to the extent of the individual share of various proprietors would lie upon the claimants themselves, although it is not in dispute that the four persons, who had filed the suit claiming themselves to be the representatives of the proprietors of Mauza Sehatpur, were actually among the list of proprietors (Exhibit P-1), as their names can be verified against Item Nos.15, 47, 85

and 99. Their status, of being among the proprietors, was also not disputed before the Ld. Lower Appellate Court.

7. For the aforesaid reasons, the present appeal is allowed in view of the decision relied upon, and its result shall now be governed by the relevant observations covered in para No.218 (f) to the extent that the appellants as well as other proprietors of the village would be entitled to seek compensation in lieu of the disputed lands which have passed on to the respondent-authority instead of getting back possession of the same.

8. With the above observations, liberty is granted to the appellants to approach the Competent Authorities for compensation within a period of one month from the date of communication of this order. In such event, the claims shall be processed in accordance with law and the delay occasioned shall not be detrimental to the case of appellants.

**(SUDIP AHLUWALIA)
JUDGE**

May 09, 2019
rittu

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