

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.21916 of 2019
Date of decision: 21.08.2019

Surender and others

....Petitioners

Versus

The State of Haryana and others

....Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ARUN KUMAR TYAGI**

Present: Dr.Parveen Hans, Advocate for the petitioner.

RAKESH KUMAR JAIN, J.(Oral)

The petitioners have prayed for the issuance of a writ in the nature of certiorari for quashing the order of the Collector Bhiwani dated 01.02.2011 by which suit, filed by private respondents No.5 to 9, under Section 13(A) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act') was decreed, order dated 4.8.2014 by which appeal filed by the petitioners was dismissed by the Commissioner, Hisar Division, Hisar and order dated 8.8.2018 by which revision petition filed by the petitioner before the Financial Commissioner, Haryana under Section 13-AA of the Act was also dismissed.

In brief, suit under Section 13-A of the Act was filed for seeking a declaration that the Gram Panchayat is the owner of the land bearing Khewat No.195/193, Khatauni No.381, measuring 140 Kanals 1 marla situated in Dharwanwas, Tehsil and District Bhiwani. The said suit was decreed on 01.02.2011, appeal filed by the petitioners against the said

decree was dismissed on 4.8.2014 and revision petition filed by the

petitioners was also dismissed on 08.08.2018. The case set up by the petitioners is that the suit land, prior to its consolidation was measuring 94 Bighas and 3 Biswas and was not used for common purposes rather it was owned by one Lalji Singh who sold the same by a registered sale deed dated 24.8.1967 but the sale deed was pre-empted by Ram Singh, predecessor-in-interest of the petitioners by way of a suit for pre-emption which was ultimately decreed and possession was delivered to him vide Rapat Roznamcha No.70 dated 2.11.1976 and mutation No.597 was sanctioned in favour of Sh.Ram Singh and mutation No.599 was sanctioned in favour of the petitioners on 03.04.2002 on the basis of their inheritance. It is, thus, submitted that the land in dispute belongs to the petitioners and had never vested in Gram Panchayat.

On the other hand, case set up by the respondents is that the land in question from the time immemorial, was known as *Johar Kharia* which was used for a multiple purpose by the villagers i.e. drinking water for the cattle, preparation of bricks and collection of rain water through its catchment area. It is not denied that pre-emption suit filed by Ram Singh was decreed but it is alleged that the Gram Panchayat was not a party in the civil suit and transfer of the property by one individual to another of the Panchayat land which was being used for common purposes will not change its nature as it is recorded in the revenue record as *Gair Mumkin Johar* and *Uprahan*. It is also alleged that the petitioner or their predecessor-in-interest had never been in cultivating possession of the land in question as it was a *Banjar Kadim* land, used for common purposes, as per revenue record and comes within the definition of *Shamlat deh* in terms of Section 2(g) of the

Act. All the Courts below have decided against the petitioners holding that

the land in dispute is *Shamlat deh*. The findings recorded in this regard by the Financial Commissioner may be reproduced as under:

“It is established law that the relevant date to determine as to whether the particular land is shamlat deh or not is 9th January 1954. As per revenue record, the land in question was recorded as Gair Mumkin Johar and Uprahan on 9th January 1954. The land in question being used for pond and situated within the Sabha Area falls within the ambit of shamlat deh as per provision under clause (4) of Section 2 (g) of the Act. Notwithstanding the sale of land is question by Sh.Lalji Singh and its pre-emption by Sh.Ram Singh, the land in question being used for common purposes of the villages, falls within the ambit of shamlat deh and vests in the Gram Panchayat, as the sale purchase by individuals have no adverse effect on its vesting in the Gram Panchayat. The petitioners have failed to establish that land in question was assessed to land revenue and has been in individual cultivating possession of co-sharers on or before 26th January 1951; or it falls under any other exception clauses of Section 2(g) (5) of the Act. The case law cited by the counsel for the petitioners are not relevant in the present case because these case laws pertain to *Jumla Mustarka Malkan* lands, whereas the land in question is *shamlat deh* under clause (4) of Section 2(g) of the Act and not being Jumla Mustarka Malkan under clause (6) of Section 2(g) of the Act. Both the courts below need not to comment on the decreed suit of pre-emption as the sale of land in question and pre-emption thereof has no relevancy or adverse effect on its being shamlat deh and vesting in Gram Panchayat.”

Learned counsel for the petitioners has vehemently argued and reiterated the stand of the petitioners in regard to the decree obtained by them in pre-emption suit but there is no denial to the fact that the land in dispute was *Shamlat deh* being recorded as *Gair Mumkin Johar* or *Uprahan*

on 09.01.1954.

Thus, in view of the aforesaid facts and circumstances, we do not find any merit in the present petition for the purpose of interference and the same is hereby dismissed. No order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

21.08.2019
Meenu

(ARUN KUMAR TYAGI)
JUDGE

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