

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

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**CWP No.6909 of 2015
Date of Decision: 16.10.2019**

Onkar Singh (deceased) through his LRsPetitioner

Versus

Director, Rural Development &
Panchayat Department, Punjab and othersRespondents

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

Present : Mr. S.S. Dinarpur, Advocate
for the petitioner.

Mr. Amit Mehta, Sr. D.A.G., Punjab
for respondents No.1 and 2.

Mr. Vivek Chauhan, Advocate
for respondent No.3.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 15.06.2012 passed by the District, Development and Panchayat Officer-cum-Collector, Hoshiarpur (for short, "the Collector") vide which an application filed under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, "the Act") by respondent No.3 seeking eviction of the petitioner from the land measuring 16 *Kanal* 17 *Marla* comprised in *Khewat* No.507 *Khatauni* No.577/579/580 *Khasra* No.16//16/1 Min North (4-0), 17/1 Min North (2-2), 14//20/1(1-18), 13//16/1 North (3-7), 16/2(0-13), 17/1 Min North (1-1), 14//20/1 Min (1-8) situated in the revenue estate of Village Dehriwal, *Hadbast* No.28, Tehsil Dasuya, District Hoshiarpur as per *jamabandi* for the year 2007-08 and the order dated 20.02.2015 vide which the appeal filed by the petitioner was dismissed by the Director, Rural Development and Panchayat Department, Punjab (exercising the powers of Commissioner) (for short, "the Commissioner").

Counsel for the petitioner has submitted that it is not in dispute that the land in question, in the revenue record much less *jamabandi* for the year 2007-08 relied upon by the Gram Panchayat, is recorded as the land of *shamlat patti*. It is thus submitted that once the land is recorded in the revenue record as *shamlat patti*, it has to be proved by way of leading evidence by respondent No.3 that the said land was being used by it for the benefit of the village or the part of it for the common purposes of the village. It is further submitted that Section 2(g) defines *shamlat deh* and Section 2(g)(3) provides that "the 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".

It is further submitted that the exclusion clause is provided in Section 2(g)(5)(v) which states that "is described in the revenue records as Shamlat, Taraf, Pattis, Pannas and Thola and not used; according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village".

He has further argued that Section 7 of the Act can be invoked by the Panchayat for the purpose of seeking eviction in case the land in question is *shamlat deh*. It is thus submitted that in order to apply the provisions of Section 2(g)(3) to include *shamlat patti* in the definition of *shamlat deh* it was incumbent upon respondent No.3 to have led the evidence to the effect that the land in question, being part of *shamlat patti*, was used for the benefit of the village community or part of it or for common purposes of the village. He has further referred to the notice of motion order passed by this Court on 10.04.2015 which read as under:

"The question that arises for consideration is whether

the land, in dispute, which is admittedly recorded as "Shamilat Patti" is included in Shamilat Deh. The Gram Panchayat was required to prove that as per the revenue record the land was used for the benefit of the village community or a part thereof or for common purposes of the village. The Gram Panchayat has not adduced any evidence to discharge this onus.

Notice of motion for 28.05.2015.

Parties are directed to maintain status quo with respect to possession, till further orders."

Counsel for the petitioner has further submitted that since thereafter, respondent No.3 could not indicate any evidence from the record or did not bring any evidence on record by way of filing reply to the writ petition which shows that the land in question which is recorded in the revenue record as *shamlat patti* is being used for the benefit of village community or part of it or for the common purposes of the village, therefore, it would not fall within Section 2(g)(3) of the Act and would fall within Section 2(g)(5)(v) of the Act much less in the exclusion clause.

Counsel for respondent No.3, however, has only pressed the findings recorded by the Courts below against the petitioner to contend that the land of *shamlat patti* cannot be partitioned.

In this regard, counsel for the petitioner has submitted that the case is not with regard to the partition of the land in terms of Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 rather the dispute in this case is about the status of the land in question as to whether it is *shamlat deh* or not.

We have heard counsel for the parties and perused the record with their able assistance.

The controversy arose in this case with the filing of a petition under Section 7 of the Act on the basis of a *jamabandi* for the year 2007-

08 in which the land in question has been recorded as *shamlat patti*. The Courts below, without having recourse to provisions of Section 2(g) which deals with the inclusion and exclusion clause of *shamlat deh* have allowed the petition of respondent No.3 and failed to hold as to how the land in question would fall in the definition of Section 2(g)(3) if it is recorded as *shamlat patti* and not being used for the benefit of village or a part of it or being used for the public purposes by the villagers. This argument was noticed by this Court at the time when notice of motion was issued in the petition but thereafter respondent No.3 failed to bring on record either by way of reply or otherwise any evidence to the effect that the land in question is being used for the public purposes though it is recorded as *shamlat patti*.

Thus, in view of the aforesaid facts and circumstances, we are satisfied that there is an error in the orders passed by both the authorities in not deciding the status of the land in question before passing the order of eviction against the petitioner. Accordingly, the writ petition is hereby allowed and the impugned orders are set aside.

(RAKESH KUMAR JAIN)
JUDGE

(ARUN KUMAR TYAGI)
JUDGE

16.10.2019
Vinay

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