

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 15052 of 1995(O&M)

Date of Decision:15.12.2022

Mani Ram

.....Petitioner

Versus

The Assistant Collector Ist Grade, Ellenabad and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

HON'BLE MRS. RITU TAGORE

Present: Mr.Ashok Verma, Advocate
for the petitioner.

Mr. Amit Aggarwal, DAG., Haryana
for respondents no. 1 and 2.

Mr. Ajay Jain, Advocate
for respondent no.3.

LISA GILL, J(Oral).

Prayer in this writ petition is for setting aside order dated 18.05.1994, Annexure P-5, passed by the Assistant Collector Ist Grade, Ellenabad, whereby ejectment of the petitioner from the land in dispute was ordered and penalty imposed and order dated 29.08.1995, Annexure P-9, passed by the Collector, District Sirsa, dismissing the appeal filed by the petitioner.

Brief facts necessary for adjudication of the case are that the respondent-Gram Panchayat filed a petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (now Haryana Village Common Lands (Regulation) Act, 1961 as notified on 05.04.2021) (for short 'the 1961 Act'), seeking ejectment of the petitioner from the land in question with the assertion that it was the owner of the land in question and that the petitioner was in unauthorized occupation thereof.

It was contended that the land in dispute was of the share of Muslims in the Shamilat Deh land which had come to the ownership of the Gram Panchayat on the basis of judgment of the Hon'ble Supreme Court in **Gram Panchayat of village Jamalpur Vs. Malwinder Singh, 1985 AIR (SC) 1394**. It was further averred that the land had never been given by the Gram Panchayat to the petitioner herein. Thus, he being in unauthorized possession thereof should be ejected.

Petition was contested by the present petitioner on the ground that it was the custodian department which was owner of the land in dispute and the same had been purchased by the petitioner in accordance with law from the custodian department. The Assistant Collector Ist Grade, Ellenabad, allowed the petition filed by the Gram Panchayat and directed ejectment of the petitioner from the land in dispute and also imposed penalty at the rate of Rs.10,000/- per hectare per annum.

Appeal filed by the petitioner was dismissed by the Collector vide order dated 26.07.1994 on the ground that appeal cannot be entertained in the absence of deposit of the amount of penalty. Revision petition filed by the petitioner was also dismissed on 13.01.1995.

CWP No. 4630 of 1995 was filed by the petitioner, which was allowed by this High Court on 29.03.1995 with a direction to the Collector to decide the appeal filed by the petitioner without insisting upon the deposit of the penal amount. Thereafter, the Collector, Sirsa, vide order dated 29.08.1995, dismissed the appeal filed by the petitioner while upholding order dated 18.05.1994.

Aggrieved therefrom, present writ petition has been filed.

Learned counsel for the petitioner submits that the land in question was earlier under the ownership of the Punjab Wakf Board and the

petitioner was in cultivating possession thereof as a lessee under the Punjab Wakf Board since the year 1970. However, as a result of partition of Khasra No. 176 vide order dated 22.08.1982 passed by the Assistant Collector Ist Grade, land in dispute came to the share of the Custodian. The petitioner, it is submitted has been in continuous cultivating possession of the land in dispute since 1970. It is stated that the petitioner being fully eligible submitted an application under Rule 7 of applicable Rules for sale of surplus rural properties on 16.06.1982 for transfer of this land on reserved price. Petitioner's application was considered and allowed by the Naib Tehsildar (Sales), vide order dated 05.11.1982 for a total sum of Rs. 23,907/- at the rate of 15,000/- per standard acre. Petitioner deposited a sum of Rs.6000/- on the spot as reflected in the receipt dated 05.11.1982. Balance amount was paid in installments which are detailed in para 3 of the writ petition.

Gram Panchayat claims to have become owner of the land in dispute in the year 1985 on the basis of judgment of the Hon'ble Supreme Court in **Gram Panchayat of Village Jamalpur's** (Supra). The custodian department, it is submitted was recorded as the owner of the land in dispute prior to the judgment and continued to be so recorded thereafter as well. Reference is made to the Jamabandies attached with the writ petition.

Punjab Wakf Board, being aggrieved of the transfer of the land in petitioner's favour filed a petition under Rule 11 of the applicable rules for disposal of Package Deal Properties claiming to be owner of the land in dispute on the basis of mutation no. 1135 sanctioned in its favour on 14.12.1977, pleading that the land in dispute was neither part of the compensation pool nor part of the Package Deal of 1961. Petition filed by the Punjab Wakf Board was dismissed by the Settlement Commissioner on 29.06.1994 with a categoric finding that the petitioner had deposited the full

amount of the purchase price of the land in dispute and that he was a bona fide purchaser and his rights had to be protected under the Transfer of Property Act with the transfer of the land in dispute to the Custodian vide mutation no. 1356 having attained finality. The same had never been challenged by the Punjab Wakf Board.

It is submitted that in view of the circumstances as above, ejectment of the petitioner from the land in dispute is absolutely unjustified. It is further submitted that the petitioner had raised the question of title, but without adjudicating the same, ejectment of the petitioner has been ordered in an illegal manner.

Learned counsel for the petitioner refers to the Amendment made in the 1961 Act, whereby clause (ii-a) of Clause (g) (5) of Section 2 was inserted to submit that in any case, the land in question does not fall within the definition of Shamilat Deh as it was purchased on 05.11.1982 before the cut-off date i.e., 09.07.1985. It is thus prayed that this writ petition be allowed and the impugned orders be set aside.

Learned counsel for the respondent-Gram Panchayat argues that the Gram Panchayat is the owner of the land and sale of this land by the custodian department, is *void ab initio* and *nonest* as it was not the owner of the land in question. It is further submitted that the amendment carried out in the 1961 Act in the year 1996 cannot have retrospective effect. It is thus prayed that this petition be dismissed.

We have heard learned counsel for the parties and have gone through the file with their able assistance.

It is an admitted fact that the land in question was validly purchased by the petitioner in the year 1982 in accordance with the then applicable rules. It is not the case of the respondents that the amount in

question has not been paid. Argument raised is that the department not being an owner could not have transferred the land to the petitioner. It is a matter of record that at the time of sale of the land, it was the custodian department, which was reflected to be the owner of the same.

At this stage, it is relevant to refer to Section 2 (g) and Section 3 of the 1961 Act, which reads as under:-

2 (g) "shamilat deh" includes-

- (1) lands described in the revenue records as '[Shamilat Deh or Charand] excluding Abadi Deh;
- (2) shamilat tikkas;
- (3) lands described in the revenue records as shamilat, 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;
- (4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in [clause (liv) of section 2 of the Haryana Panchayat Raj Act, 1994, excluding lands reserved for the common purposes of a village under section 18 of East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereon vests in the State Government under Section 23-A of the aforesaid Act;
- (4a) vacant land situate in abadi deh or gorah deh not owned by any person;
- (5). Lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

Proviso to Section 2 (g) (5) omitted by Haryana Act no. 9 of 1992.

but does not include land which-

- (i) *omitted by Haryana Act no. 9 of 1992.*
- (ii) has been allotted on quasi-permanent basis to a

displaced person;

(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July, 1985;]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recording in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat, 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;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act;]

(vii) *omitted by Haryana Act no. 18 of 1995.*

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or
(ix) is used as a place of worship or for purposes subservient thereto;

(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.”

Emphasis added

“3. Lands to which this Act applies.- (1) This Act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which

are shamilat deh as defined in clause(g) of section 2,

(2) Notwithstanding anything contained in sub-section (1) of section 4,-

(i) where any land has vested in a panchayat under the shamilat law, but such land, other than excluded under sub-clause (ii-a) of clause (g) of section 2, has been excluded from Shamilat Deh as defined in clause (g) of section 2, all rights, title and interest of the panchayat in such land, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law; and the panchayat shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the panchayat shall, notwithstanding anything contained in Section 10, pay to the person or persons entitled to such land, compensation to be determined in accordance with such principles and in such manner as may be prescribed;

(ii) where any land has vested in a panchayat under this Act, but such land has been excluded from shamilat deh under sub- clause (ii-a) of clause (g) of section 2, all rights, title and interest of the panchayat in such land, from the date of allotment of such land by the Rehabilitation Department of the State Government, shall cease and all such rights, title and interest shall vest in the person or persons to whom the land so excluded has been allotted by the Rehabilitation Department of the State Government on or before the 9th day of July, 1985 subject to the condition that-

(a) any sum of money realised by the Rehabilitation Department of the State Government as a result of allotment of such land; or (b) where no money was

realisable by the Rehabilitation Department of the State Government as a result of allotment of such land, the amount of compensation in respect of such land as determined under sub-section (3) by the Collector of the district in which such a land is situated, shall be paid by the Rehabilitation Department of the State Government to the Development and Panchayats Department for onward disbursement to the panchayat to which such shamilat deh belonged.

(3) As soon as may be, on the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1996 the Development and Panchayats Department shall make reference to the Collector of the District to determine the amount of compensation under sub-clause (b) of clause (ii) of sub-section (2) and the Collector of the District shall, keeping in view the market value of the shamilat deh at the time it was allotted, determine the amount of compensation.”

(Emphasis added)

Doubtlessly, Gram panchayat had asserted its right over the land in question after judgment of the Hon’ble Supreme Court in case of **Gram Panchayat of Village Jamalpur** (supra). The relevant amendment in the 1961 Act, inserting clause (ii a) in Section 2 (g) (5) was carried out in the year 1996, probably with a view to curtail litigation, which would have arisen on account of cancellation of allotments and sale of land under various policies of the State. The controversy sought to be raised by learned counsel for the respondent-Gram Panchayat to the extent that the amendment cannot have any retrospective effect, is no longer *res integra*. Full Bench of this Court High Court in **Gram Panchayat of village Kum-Kalan Vs. State of Punjab and others, 2010 (36) RCR (Civil) 747**, considered the said argument and rejected the same. In case of **Gram Panchayat of village Kum-Kalan** (supra), challenge had been raised to the

Amendment Act of 1995 on the following grounds:-

- “(a) that the Amendment Act of 1995 was bad for want of consent of the President,
- (b) that the State Legislature was not competent to nullify effect of the judgment of the Hon’ble Supreme Court in Gram Panchayat of village Jamalpur’s case (supra) by passing Act No.8 of 1995,
- (c) that to give retrospective effect to Act No.8 of 1995 was not within the legislative competence of the State Legislature and
- (d) that Act No.8 of 1995 being repugnant to the provisions of Section 8 of the Administration of Evacuee Property Act 1950 (in short 1950 Act) cannot be sustained.”

It was held as under:-

“36. As per established law, the Legislature has the power to pass an enactment giving it retrospective operation with a view to remove the defect which the Court had found in the previous law. It is only to be seen that any provision made by the Legislature is consistent with the provision of Part III of the Constitution of India. (Refer to AIR 1976 Supreme Court 2254). A similar controversy came up before the Hon’ble Supreme Court in ***State of Haryana and others v. The Karnal Co-op. Farmers’ Society Limited, etc. etc., AIR 1994 Supreme Court 1***. In that case also, exactly similar proposition was before the Hon’ble Supreme Court. Many right holders had got decrees passed regarding shamilat deh land in their favour. The State of Haryana, with a view to negate those judgments and decrees, incorporated an amendment in the provisions of the 1961 Act. The matter went before the Hon’ble Supreme Court and to resolve the controversy, it was held as under:-

26. Haryana State Legislature had the competence to legislate on the subject of common lands in villages, that is, land or immovable property in shamilat deh' of the village was not under challenge. Haryana State Legislature could have, in

exercise of its ancillary amending power, legislated on the subject of 'shamilat deh', retrospectively was also not under challenge. What was under challenge before the High Court was the Haryana State Legislature's power to abrogate the civil courts' decrees and orders granted in favour of certain persons after the coming into force of the principal Act from 4th May, 1961, to the effect that several lands and' immovable properties in villages formerly regarded as 'shamilat deh', were excluded from 'shamilat deh' under the principal Act and that they being in possession or enjoyment of them were their absolute owners, by making a mere declaration under the provisions of the Amendment Act of 1981 that such civil courts' decrees or orders could be disregarded or disobeyed as nullities by the Assistant Collector of First Grade while deciding claims under section 7 and new section 13A of the principal Act that those lands or immovable property were 'shamilat deh' of the village.

27. Under our Constitution no Legislature has the power to abrogate civil courts' decrees or orders or judicial adjudications by merely declaring under a law made by it that such decrees or orders or adjudications are no longer valid or binding on the parties, for such power of declaration would be a judicial function which cannot be encroached upon by a Legislature and the only way by which a competent Legislature can make the judicial adjudications, decrees or orders ineffective is by fundamentally altering the law on which they are based, is well-settled.

28. In **Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality** [1970] 1 SCR 388, a Constitution Bench of this Court considered the

constitutionality of the Gujarat Imposition of Taxes by Municipalities(Validation) Act, 1963, which had validated the imposition of tax declared to be illegal by Courts, and held thus "Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind, for that is (it) tantamount(s) to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

31. Thus, it becomes clear that a Legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial power which cannot be encroached upon by a Legislature under our Constitution.”

37. In the afore-said case, retrospective operation of the amendment did not find favour with the Hon’ble Supreme Court on the ground that it has simply nullified the judgment and decree without altering fundamentals, on the basis of which those judgments and decrees were passed.

38. On the contrary, in the present case, by amendment, the very fundamental basis to exclude land from the definition of shamilat deh land has been altered, based on which, some orders may have been passed in favour of the petitioner Gram Panchayat. The very definition of the

shamilat deh has been altered. Otherwise also, the Gram Panchayat being a statutory body and a creature of the statute and having interest in the land only under the statute, is not competent to lay challenge to the amendment Act as has been done in the present case.”

Arguments as raised were rejected and the amendment carried out in the year 1995 was held to be valid.

Gainful reference can also be made to judgment of this High Court in **Gram Panchayat Vs. Dalbir Kaur and others, 2012 (49) RCR (Civil) 4.**

Keeping in view the facts and circumstances as above, impugned orders are not sustainable. Sale of the land to the petitioner was admittedly carried out validly in terms of the then applicable rules for sale of surplus rural properties, thus there is no question of the said land being included in the definition of ‘Shamilat Deh’. The same has been specifically excluded by way of Section 2 (g) (5) (ii-a) of the Act.

No other argument has been raised.

Accordingly, impugned order dated 18.05.1994, Annexure P-5, passed by the Assistant Collector Ist Grade, Ellenabad and order dated 29.08.1995, Annexure P-9, passed by the Collector, District Sirsa, are set aside.

Writ petition is accordingly allowed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

December 15, 2022.
s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.