

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

1.

CWP No. 13647 of 1992(O&M)
Date of Decision:06.02.2023.

Jai Karan and others

.....Petitioners

Versus

State of Haryana and others

..... Respondents

AND

2.

CWP No. 13944 of 2004(O&M)

Raj Singh and another

.....Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Adarsh Jain, Advocate
for the petitioners.

Mr. B.R.Mahajan, Advocate General, Haryana
with Mr. Raman Sharma, Addl.AG., Haryana.

Mr. M.K.Sood, Advocate
and Ms. Nitika Goel, Advocate
for respondent no.3.

LISA GILL, J.

This order shall dispose of CWP Nos. 13647 of 1992 and 13944 of 2004, as both the writ petitions involve an identical question for adjudication and were hence taken up for hearing and adjudication together at request and with consent of learned counsel for the parties.

CWP No. 13647 of 1992, has been filed seeking quashing of Section 15 of the Faridabad Complex (Regulation and Development) Act, 1971 (for short 'the 1971 Act) being ultra-vires the Constitution of India with a further direction to the respondents to revert back the *Shamilat* Deh land of village Pali to the petitioners and others and restraining the respondents from interfering in the possession of the petitioners.

Notice of motion in CWP No. 13647 of 1992 was issued on 14.10.1992 and dispossession of the petitioners was stayed. The said writ petition was admitted on 19.11.1992 to be heard along with CWP No. 1952 of 1991. Ex parte stay granted on 14.10.1992 was vacated while observing as under:-

“Admitted.

To be heard along with CWP No. 1952 of 1991.

To be listed for final hearing within three months from today.

We have heard the learned counsel for the parties on the question of stay. It has been argued by Mr. Anand Swroop, learned counsel for respondent no.3 that the land in dispute vested in the Panchayat in the year 1953 and even mutation was sanctioned in the year 1956 and that the petitioners are not in possession of any part of the land. This position has been disputed by the counsel for the petitioners.

Without going into this controversy, this Court is disinclined to grant stay because any stay to be granted by us would come in conflict with the directions issued by the

Hon'ble Supreme Court in Writ Petition No. 4677 of 1985 with T.C (C) No. 75-89/91 W.P. (C) No. 521/87 and T.P. (C) No. 245-50/91, M.C. Mehta etc. Vs. Union of India, decided on 15th of May, 1992.”

It is pertinent to note, at this stage, that the Hon'ble Supreme Court in **M.C.Mehta etc., Vs.Union of India, 1991 SCC (2)353**, directed that the mechanical stone crushers established/ operating in the area of Lal Kuan, Anand Parbat, Rajokri, Tughlakabad and in any other area of Union territory of Delhi, shall stop operating/ functioning with effect from August 15, 1992. Direction was passed in respect to certain areas in the State of Haryana, as well. In view of the information supplied by the Town and Planning Department, Government of Haryana to the effect that new 'crushing zone' had been approved at village Pali, the competent authority was directed by the Hon'ble Supreme Court to demarcate and allot sites for stone-crushers vide draw of lots or any other fair and equitable method. It was further directed that additional land in or around the crushing-zone be provided, in case, the land in question is not sufficient to accommodate the stone-crushers affected by its orders. The exercise was directed to be completed and plots offered to the stone crushers within a period of six months.

Application filed by the petitioners in this writ petition i.e., CM-12522 of 2004 in CWP No. 13647 of 1992 for restraining the Municipal Corporation from selling the land, was dismissed on 26.07.2004. Writ petition was adjourned sine die on 12.09.2013 to await decision of CWP No. 314 of 2001.

CWP No. 13944 of 2004, has been filed by two of the proprietors of village Pali for quashing proceedings dated 21.05.2004 insofar as it pertains to grant of 700 Acres of land to the Ministry of Defence and for

setting aside those provisions of the 1971 Act and the Haryana Municipal Corporation Act, under which the land in question has vested firstly with the Faridabad Complex Administration and thereafter with the Haryana Municipal Corporation with a further direction to the respondents to restore the land belonging to the proprietors of the village and for restraining the respondents from interfering in the possession of the petitioners and to refrain from transferring the same to any third party.

Notice of motion in CWP No. 13944 of 2004 was issued on 01.11.2004 with notice re: stay. Status quo regarding the property was directed to be maintained by the parties as on 01.03.2005. The Haryana Environmental Management Society and Haryana State Pollution Control Board, were impleaded on 01.05.2006. This writ petition was directed to be taken along with CWP No. 12312 of 2005 and ultimately admitted on 09.10.2007 to be heard along with CWP No. 13647 of 1992 while CWP No. 12312 of 2005, was decided on 30.11.2007. The matter was then adjourned *sine die* to await decision of CWP No. 314 of 2001.

CWP No. 314 of 2001 was dismissed on 19.05.2022 with the following order being passed:-

“Learned counsel for the parties fairly concede that the matter is squarely covered by the judgment dated 07.04.2022, passed by the Supreme Court, whereby a bunch of appeals, the lead case being Civil Appeal No.6990 of 2014 (The State of Haryana through Secretary to Government of Haryana Vs. Jai Singh and others), was dismissed.

Accordingly, the present writ petition stands dismissed, in terms of the aforesaid judgment, passed by the Supreme Court.”

CWP No. 12312 of 2006, relates to mining lease being granted to the petitioners therein and part of the land sought to be leased out

by the Haryana Municipal Corporation, Faridabad to the Haryana Environmental Protection Society, for development of Common treatment, storage and disposal facility of hazardous waste on 30.11.2007. Notification dated 27.05.1997, under the Hazardous Waste (Management and Handling) Rules, in respect to the land in question as well as lease for development of the treatment plant was set aside. Perusal of order dated 30.11.2007 passed in CWP No. 12312 of 2006, reveals that the same would have no bearing as such for adjudication of the present writ petitions.

Petitioners in CWP No. 13647 of 1992 claim to be residents of village Pali, Tehsil and District Faridabad and owners of land in the said village. It is stated that the petitioners and other right holders owned land in the revenue estate of Village Pali in their personal khewat and their rights in the Shamilat land was according to 'Hasab Rasad Kabza' from time immemorial. Gram Panchayat of village Pali was duly constituted under the Punjab Village Common Lands (Regulation Act) 1953 (for short 'the 1953 Act'). Reference was made to the partition of Shamilat Deh as per the 1953 Act, which was then repealed by the Punjab Village Common Lands (Regulation) Act) 1961 (for short '1961 Act'). The Shamilat Deh of village Pali, it is stated was mutated in the name of Gram Panchayat as sanctioned on 25.03.1956 by the Assistant Collector IIInd Grade. Land measuring 19954 Kanals 2 Marlas of the proprietors was mutated in favour of the Gram Panchayat. It is pleaded that with the coming in force of the 1961 Act, the land ought to have been restored to the proprietors but entries in favour of the Gram Panchayat continued.

As per notification dated 01.06.1992, the entire area of Gram Sabha Pali was included within the Faridabad Complex Administration, Faridabad, by virtue of Section 2 (h) of the 1971 Act. The Faridabad

Complex Administration, it is stated tried to take forcible possession of the Shamilat Land. Claim of the Faridabad Complex Administration, is on the basis of Section 2 (h) and Section 15 of the 1971 Act. As per Section 15 of the 1971 Act, all the properties i.e., movable or immovable and assets belonging to the Municipal Committees and Gram Panchayat of the Municipalities and Sabha areas as specified in Schedule I of the 1971 Act, shall vest in the Administration. Section 15 of the 1971 Act, which has been challenged on the ground that Shamilat Deh of village Pali, could not have been transferred under the 1971 Act as it is not related to governing of rural economy and neither an agrarian reform legislation, reads as under:-

“15. Vesting of immovable property. - All property, movable or immovable, and assets belonging to the Municipal Committees and Gram Panchayats [of the municipalities and Sabha areas respectively specified in Schedule 1 of this Act] shall vest in the Administration.”

The agricultural rural property, it was stated can be utilized only for the benefit of rural people and cannot be directed towards development of the urban economy at the cost of rural economy and that too without providing any compensation to the owners of the land. Land in question, it was stated has in-fact been acquired without any compensation to the proprietors of the village. It was submitted that a stone crushing zone, has been wrongly established on a part of the land in exercise of powers under Section 2 (b) of the Haryana Regulation and Control of Crushers Act, 1991 (for short ‘the Crushers Act’). It was stated that subsequently, vide notification dated 19.06.1993, part of the land, excluding the land wherein the stone crushing zone was set up, was withdrawn from the area of Faridabad Complex Administration with the Gram Panchayat again being reconstituted/re-established. Entries in favour of the Gram Panchayat in the revenue record in respect to the land in dispute, even before the same was

included in the Faridabad Complex Administration, it was stated were contrary to the provisions of law. The said land, it was submitted should revert back to the proprietors of the village as it was never used for any common purpose.

Written statement on behalf of respondent no.3 has been filed in CWP No. 13647 of 1992 denying and controverting the averments in the writ petition to the extent that petitioners are entitled to restoration of the property in question. It is asserted that land in question being Gram Panchayat property was validly transferred firstly to the Faridabad Complex Administration succeeded by the Municipal Corporation. Establishment of the crushing zone, it is stated has been created in the Shamilat land area of village Pali in terms of order dated 15.05.1992 in Writ Petitions (Civil) No. 4677/85 with T.C (C) No. 75-89/91 W.P. (C) No. 521/87 and T.P. (C) No. 245-50/91, passed by the Honb'ble Supreme Court. It is further stated therein that there is no question of any *mala fides* in part of the land again being notified in favour of the Gram Panchayat which was re-established vide notification dated 01.06.1992.

Separate written statements have been filed on behalf of respondents no.2 and 3 in CWP No. 13944 of 2004 controverting the claim of the petitioners therein.

Learned counsel for the petitioners argued that the land in dispute is Thok Shamilat Land, comprised of 5 Pattis, situated in village Pali and this land was never used for any common purposes, therefore the same never vested in the Gram Panchayat or the Faridabad Complex Administration or the Municipal Corporation Faridabad. Learned counsel argued that in-fact action of the authorities is contrary to the observations of the Hon'ble Supreme Court in para 43 of case of **the State of Haryana**

through **Secretary to Government of Haryana Vs. Jai Singh and others, 2022 (2) RCR (Civil) 803** and that rural land cannot be used for the inhabitants of the Municipal area as per decision of the Hon'ble Supreme Court as detailed in para 104 of **Jai Singh's** case (Supra). It is thus prayed that these petitions be allowed.

Learned counsel for the respondents while controverting the arguments raised on behalf of the petitioners submitted that action of the authorities is in accordance with law and there is no ground whatsoever for setting aside Section 15 of the 1971 Act. The land in question fully vested in the Gram Panchayat and it is contended that the same cannot under any circumstances revert to the proprietors of the village. Decision to transfer 700 acres of land to the Ministry of Defence, it was stated was unimpeachable having been taken in the interest of the defence of the Nation. Ministry of Defence is not even arrayed as party to the writ petition. It is thus prayed that these writ petitions be dismissed.

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

It is a matter of record that Shamilat Deh land of village Pali, was mutated in favour of the Gram Panchayat in the year 1956. The revenue record reflects the land to be Shamilat Deh vesting in the Gram Panchayat. Thereafter, notification dated 19.06.1993 was issued by the State of Haryana, pursuant to which Shamilat land of village Pali vested in the Faridabad Complex Administration and thereafter in the Municipal Corporation, Faridabad. Argument raised on behalf of the petitioners is that first and foremost, the land in question could not have been transferred to the Faridabad Complex Administration or the Municipal Corporation, Faridabad and furthermore, the land being Thok Shamilat comprised of 5 Pattis was

never used for a common purpose. Thus, in any case, it has to revert back to the proprietors of the village.

Arguments raised by learned counsel for the petitioners are devoid of any merit keeping in view the settled position of law. It is pertinent to note that Shamilat Deh Land i.e., common land of the village, is defined in Section 2 (g) of the 1961 Act, which reads as under:-

“ 2 (g) “Shamlat Deh” includes.

- (1) Lands described in the revenue records as Shamlat Deh or Charand excluding abadi Deh;
- (2) Shamlat Tikkas;
- (3) Lands described in the revenue records as Shamlat Tarafs, Patties, 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 village;
- (4) Lands used for the benefits of village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the Sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952 excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and revention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act.
- (4a) vacant land situated in abadi deh or gora deh not owned by any person.
- (5) Lands in any village described as Banjar qaudim and used for common purposes of the village according to revenue records. Provided that Shamlat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village;
- (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. **Explanation :-** Lands entered in the column of ownership of record of rights as ‘Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad’, shall be Shamlat Deh within the meaning of this section.”

but does not include land which:-

- (i) becomes or has become Shamlat deh due to river action or has been reversed as Shamlat in villages subject to river action except Shamlat deh entered as pasture, pond or playground in the revenue records;
- (ii) has been allotted on quasi permanent basis to a displaced person;
- (ii-a) was Shamlat 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 26th January, 1950, by a person by purchase or in exchange for Proprietary land from a co-sharer in the Shamlat Deh and is so recorded in the Jamabandi or is supported by a valid deed;
- (v) is described in the revenue records as Shamlat Taraf, Patti, Panna or 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 gitwarbara, manure pit, a house or for cottage industry immediately before the commencement of this Act.
- (vii) is Shamlat Deh, of villages included in the fourteen revenue estates called ‘Bhojas’ of Naraingarh Tehsil of Ambala district.

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

Until and unless, the land in question falls under any of the exclusion clauses, the same has to be treated as Shamlat Deh. It is useful to refer to Section 3 and 4 (1) (a) of the 1961 Act which are reproduced as under:-

“3. Lands to which this Act applies.-

- (1) This act shall apply and before the commencement of this Act the Shamlat Law shall be deemed always to have applied to all lands which are shamlat 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 shamlat law, but such land, other than excluded under sub-clause (ii-a) of clause (g) of section 2, has been excluded from Shamlat 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 the this Act, shall cease and all such rights, title and interest shall revested in the person or persons in whom they were vested immediately before the commencement of the shamlat 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 utilized 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 Government of Punjab 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 a 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 or transferred

determine the amount of compensation.

4. Vesting of rights in Panchayat and non-proprietors.—

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land,--

(a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;”

At this stage, it is relevant to refer to a judgment of a Division Bench of this High Court in **CWP No. 9368 of 2007, titled Sita Ram etc., Vs. Gram Panchayat Ismaila etc., decided on 12.06.2007**, wherein it was observed as under:-

“A reading of section 2(g)(1) of the 1961 Act shows that the land which is described in the revenue record as ‘Shamlat Deh’ excluding Abadi Deh is ‘Shamlat Deh’. In terms of Section 4(1)(a) of the 1961 Act, it is provided that notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatsoever in the land which is included in ‘Shamlat Deh’ of any village and which is not vested in a Panchayat under the ‘Shamlat Law’ shall at the commencement of the 1961 Act vest in a Panchayat constituted for the said village and where no such panchayat has been constituted for such village vest in the panchayat on such date as panchayat having jurisdiction over that village is constituted. Section 2(g) of the 1961 Act is in two parts. The first part

relates to the land which is included in the 'Shamlat Deh' and the second part relates to the lands which are excluded. In terms of clause (iii) which is in the second part of section 2(g) and relates to the lands which are not included as 'Shamlat Deh' it has to be shown for the land to be the ownership of the individual land owners that it has been partitioned and brought under cultivation by the individual land holders before 26.1.1950. It is only then that such land would be excluded from 'Shamlat Deh'. In terms of the exclusion clause (iii) of the second part of Section 2(g) it was open to the proprietors and share holders before the appointed date i.e. 26.1.1950 to partition or bring into cultivation the land of the 'Shamlat Deh'. The land in question admittedly has not been partitioned or brought under cultivation by an individual land holder before 26.1.1950. Therefore, it does not come in the second part of Section 2(g) of the 1961 Act so as to be excluded from 'Shamlat Deh'. In the circumstances, the fact that the land is recorded as 'Shamlat Deh' and it is further mentioned as 'Hasab Rasad Arazi Khewat' is inconsequential as the land has not been shown to be partitioned amongst the proprietors of the village before 26.1.1950 which is the date fixed so as to exclude the land from 'Shamlat Deh'. Therefore, the land which is recorded as 'Shamlat Deh' in the revenue record, is 'Shamlat Deh' within the meaning of Section 2(g) of the 1961 Act and is to vest in the Gram Panchayat in terms of section 4(i)(a) as referred to above."

The mention of land as Hasab Rasad Khewat, is thus clearly not relevant in the given facts and circumstances. Furthermore, reliance by learned counsel for the petitioners on the judgment of Hon'ble Supreme Court in **Jai Singh's** case (supra), to contend that the Gram Panchayat land cannot be transferred to a Municipality or Municipal Corporation, is devoid of any merit. To the contrary, it has been categorically held in the said decision that after whole or part of the Panchayat area comes within the

Municipal limits and the Panchayat ceases to exist, the land would vest with the Municipality and will not revert back to the proprietors. Reference had been made by learned counsel for the petitioners to Para 43 of **Jai Singh's** case (supra), which reads as under:-

43. A reading of the aforementioned judgments and the history of the shamilat deh (common land) in the State of Punjab, including State of Haryana, shows that the common land for the purposes of the present appeals falling in Section 2(g)(1) and (6) of the 1961 Act as amended by the Amending Act can be broadly classified into three categories:

(i) shamilat deh recorded in the ownership of the Gram Panchayat prior to consolidation which vests unequivocally with the commencement of the Punjab and PEPSU Act.

(ii) land for common purposes reserved during the process of consolidation by applying pro-rata cut from the holdings of the proprietors, not necessarily falling within the permissible ceiling limits under the land ceiling laws.

(iii) common purposes land reserved by pro-rata cut within the permissible limits as per the land ceiling laws, the management and control of which vests with the panchayat.”

In respect to the third category of land as above, it has been held by Hon'ble Supreme Court in **Jai Singh's** case (Supra) as under:-

“63. Thus, in respect of the land taken from the proprietors from their permissible ceiling limits, it is the management and control alone which would vest with the panchayat. The management and control include leasing of land and use of the land by non-proprietors, Scheduled Castes and Scheduled Tribes etc. which is for the benefit of the village community. Therefore, vesting

under Section 4 would be limited to management and control. It is pertinent to note here that for the land taken from the proprietors by applying pro-rata cut from the permissible ceiling limits of the proprietors, management and control alone vests with the Panchayat but such vesting of management and control is irreversible and the land would not revert to the proprietors for redistribution as the common purposes for which land has been carved out not only include the present requirements but the future requirements as well. Such land would not be available for sale so as to confer title on the purchaser in view of the fact that the Panchayat is not the full owner of the land but while exercising control and management, it is duty bound to safeguard the land for the benefit of the village community.

64. The Panchayat will not have title over the land but as part of management and control, the panchayat is at liberty to put the land for the use for the common purposes. Such common purposes as defined under Section 2(bb) of 1948 Act are interchangeable and also can be used for any other common purposes. It is to be noted that common purposes are ever evolving, they are not fixed in time. With the change in time and expectations of the village community, common purposes have to be given wider meaning in view of the object of such reservation of land. Therefore, though the panchayat has management and control in respect of the land which was carved out from the land falling within the ceiling limits, the panchayat would have complete control over the said part of the land. The word 'vesting' appearing in Section 4 has to be read down to mean that management and control of such land alone would vest in the panchayat.

65. In **Shish Ram & Ors. v. State of Haryana & Ors. (2000) 6 SCC 84**, an argument was raised that the land reserved for a particular common purpose can be used only for the said purpose. This Court held that a land vesting in the Gram Panchayat can be used for any one or more of the purposes. It was held as under:

“6. We do not agree with the submission of the learned counsel of the appellants that in Bishamber Dayal case [1986 Punj LJ 208 : AIR 1986 P&H 203 (FB)] the Full Bench of the High Court had taken a different view than the one which was taken in Khushi Puri case [1978 Punj LJ 78 : 1978 Rev LR 443] . The High Court appears to have consistently held that the land vesting in the Gram Panchayat can be used for any one or more of the purposes specified in sub-rule (2) of Rule 3, leasing out for cultivation being one of the purposes. We find no reason to disagree with the High Court and in fact approve the position of law settled by it in Khushi Puri case [1978 Punj LJ 78 : 1978 Rev LR 443] which was upheld by the Full Bench in Bishamber Dayal case [1986 Punj LJ 208 : AIR 1986 P&H 203 (FB)].”

66. Having said so, though the land vests with the Panchayat, but such land should be utilized only for common purposes for the benefit of village community. Such benefits to the village community is not limited to traditional benefits of the village community i.e., land for grazing of cattle, dumping of dead animals, schools and hospitals but also the activities which would be required in future, keeping in view the modernization of the village economy which will ultimately for the benefit of the village community.

67. Therefore, we affirm the conclusions No (i) and (ii) arrived at by the Full Bench in Jai Singh II, though for different reasons. The finding in para 218 (k) in Suraj Bhan is set aside for the reasons recorded above. There is no challenge to Conclusion No. (iv) in the order of Jai Singh II, therefore, the same stands affirmed as well.

68. With respect to the conclusion no. (iii) by the Full Bench in Jai Singh-II, it was observed that the land which has been cultivated by the proprietors on pro-rata cut and which have not been earmarked for any common purpose, commonly called as Bachat land, shall not vest with the Gram Panchayat. We are unable to agree with such conclusion. The land reserved for

common purposes was reserved for the requirement of village community in praesenti and in future. If the land has not been put to use for any common purpose soon after the consolidation and/or thereafter, it cannot be said to be a Bachat land. The land mass is not going to increase but the requirement of the people and the expectations of the village community is ever expanding. Therefore, even if any land reserved for common purposes is not actually being put to any common purpose, it cannot be termed as a Bachat land and thus open for the purpose of repartition amongst the proprietors sought.”

Though, there is no pleading to this effect, learned counsel for the petitioners at the time of arguments urged that the land in question which has been reserved by a pro rata cut, is within the permissible limits of the proprietors as per the land ceiling law, therefore, it should revert back to the proprietors. It is to be noticed that neither is there any pleading to this effect nor any document on record to substantiate this argument on behalf of the petitioners. This argument is thus rejected being devoid of any merit.

It is a settled position of law that vesting of Gram Panchayat land in a Municipality due to extension of the municipal limits is beyond the pale of challenge on the ground as sought to be raised in this writ petition as it has been clearly held by the Hon’ble Supreme Court in **Jai Singh’s** case (**Supra**) that vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the Municipality. Similarly, the contention that non-transfer of the entire area to the Gram Panchayat on its reconstitution, is also devoid of any merit. There is indeed no fiat that it is only the whole of the area which is to merge with the Municipality. Furthermore, the question of any impediment for utilization of the land by the Municipal Corporation, also does not arise. The question

whether the land so reserved not being put to use or utilized for common purpose would entail its reversion to the proprietors has been answered in negative by the Hon'ble Supreme Court in **Jai Singh's** case (**supra**).

All the above arguments raised on behalf of the petitioners including that until and unless, an agrarian reform is involved, the land in question should revert back to the proprietors, has also been succinctly answered in the negative by the Hon'ble Supreme Court in **Jai Singh's** case (**Supra**). Relevant Paras thereof reads as under:-

“103. The Section 7(4) of the Panchayati Raj Act, 1994 is to be read with the provisions of the 1973 Municipal Act. However, both the statutes had undergone extensive changes after the insertion of Part IX and IX A in the Constitution empowering the third tier of the democratic set up. The Panchayati Raj Act contemplates vesting of property of Gram Panchayat with the municipality, whereas the Municipal Act takes into its ambit the properties which were vesting with Panchayat. The 1973 Municipal Act contemplates that even if part of the property of Gram Panchayat is included in the Municipal Limits, it would vest with the municipality. Thus, the word ‘whole’ appearing in Section 7(4) of Panchayati Raj Act does include part of the Gram Panchayat area coming within the municipal limits. It is the same view which was taken by this Court in a Notified Area Committee, Sirhind.

104. Thus, if the whole or part of Gram Panchayat area is included in the municipal limits, the land reserved for common purposes as part of agrarian reforms would stand vested with the municipality. Such vesting is not a part of agrarian reforms but shall be on account of extension of municipal limits. When the municipal limits are extended, the residents of the Panchayat also became residents of the municipality. The common purposes of the village community prior to extension of the municipal limits would be deemed to be common purposes for which land can be utilized by the municipality. Therefore, such

vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the municipality.

105. The argument of the proprietors that if whole of the Sabha area merges with the municipality, only then there can be vesting of land reserved for common purposes with the municipality is untenable. Such an argument would lead to anomalous results. The title, right and interest of the property cannot be held in abeyance. There has to be continued control and management over the land reserved for common purposes under the 1948 Act. Therefore, even if a part of Sabha area is merged into the municipality, the municipality will have control over the land so reserved for the erstwhile village community which will now form part of the urban area. In view thereof, we do not find any merit in the argument raised on behalf of the proprietors and dismiss the writ petitions filed by them while allowing the appeals of the State.

106. The argument of the proprietors that the land which is not capable of being used for common purposes of the inhabitants of a particular village shall be reverted to the proprietors is untenable and unsustainable. The land has been put to common pool by applying pro-rata cut. Once pro-rata cut has been applied, the management and control of such land vest with the Panchayat. There is no question of reverting the land to the proprietors. As discussed above, the land which is not part of the permissible limits under the land ceiling laws stand acquired and vested with the Panchayat in terms of judgment of this Court in Ranjit Singh. However, in respect of the land forming part of permissible limits of the proprietor under the land ceiling laws, the management and control vest with the Panchayat. Neither the 1961 Act nor the 1948 Act contemplates redistribution of land to the proprietors. It is an irrevocable act which cannot be undone. Therefore, once land vest with the Panchayat, it can be used for tcommon purposes of the community and will never revert back to the proprietors.”

It is thus evident that merely because the Shamilat land has not been put to use for common purposes, by itself, cannot form the basis for restoration of the property to the proprietors of the village. It is to be reiterated that there is no pleading or any material on record that the pro-rata cut was from within permissible limits of land ceiling of the proprietors.

Keeping in view the facts and circumstances as above, we find that learned counsel for the petitioners is unable to point out any ground whatsoever which calls for interference by this Court in the present writ petitions.

No other argument has been raised.

Both the writ petitions are accordingly dismissed.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

February 06, 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.