

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

CWP-28113-2022 (O&M)

Date of decision: - 01.06.2023

**Vivek Khushlani**

....Petitioner

**Versus**

**State of Haryana and others**

.....Respondent

**CORAM : HON'BLE MR. JUSTICE VIKAS BAHL**

Present:- Mr. Chetan Mittal, Senior Advocate,  
with Mr. Vineet Malhotra, Advocate,  
Mr. Dinesh Arora, Advocate,  
Mr. Vishal Gohri, Advocate,  
and Mr. Kunal Mulwani, Advocate,  
for the petitioner.

Mr. Samarth Sagar, Addl. A.G., Haryana  
for respondents No.1 to 3.

Mr. Amit Bajaj, Advocate, for respondent No.4.

Mr. Amit Jain, Advocate, for the applicant-gram panchayat.

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**VIKAS BAHL, J.**

1. The present writ petition has been filed under Article 226 of the Constitution of India for issuance of writ in the nature of certiorari for setting aside the order dated 08.06.2022 (Annexure P-2) passed by the Deputy Commissioner/respondent No.2 vide which the sale deed dated 06.05.2022 (Annexure P-1) executed by the petitioner in favour of respondent no.4 has been cancelled. A further prayer has been made for setting aside the cancellation deed dated 09.06.2022 (Annexure P-3).

**BRIEF FACTS**

2. Brief facts of the present case are that the petitioner had executed a registered sale deed in favour of respondent No.4 on 06.05.2022

and the office of the Sub-Registrar, Sohna had issued notice dated 27.05.2022 (Annexure P-14) to show cause as to why the said sale deed should not be cancelled. The said notice was not served upon the petitioner as is apparent from the pleadings in para 12 of the writ petition and in its corresponding reply filed by the State and was served only upon respondent No.4 and respondent No.4 had given a detailed reply dated 03.06.2022 (Annexure P-15) to the said notice and the Deputy Commissioner, Gurgaon, vide order dated 08.06.2022 (Annexure P-2), granted permission to cancel the sale deed by relying upon Chapter 5(1)(c) of the Haryana Registration Manual para 159(A), incorporated in the Haryana Registration Manual after para 159, by virtue of notification dated 22.12.2020 on the ground that the land in question was '*Shamilat Deh*'. In pursuance of the permission granted by the Deputy Commissioner vide order dated 08.06.2022 (P-2), cancellation deed has been executed on 09.06.2022 (Annexure P-3) and the land has been ordered to be vested with the gram panchayat. It is the case of the petitioner that an auction by the Rehabilitation Department was held and allotment of the land in question was made in favour of predecessors-in-interest of the petitioner i.e., Bhagwan Dass and Laxmi Narain on 28.10.1964 and the sale certificates dated 13.11.1964 (Annexures P-5 & P-7) were issued by the Rehabilitation Department and warrant of possession had also been issued subsequent to the same, in the year 1964 and mutation was also sanctioned in the year 1965. It is further the case of the petitioner that vide registered sale deed dated 21.08.1985 (Annexure P-8), said Bhagwan Dass and legal representatives of Laxmi Narain had sold the land to M/s Shrikant Chemical Industries Pvt. Ltd., who had, vide two sale deeds, further sold the land in question on 07.05.1991 (Annexures P-10 & P-11) to the petitioner and it is the petitioner who had sold the said land to respondent

No.4 for a valuable consideration vide registered sale deed dated 06.05.2022. Reliance has been placed by the petitioner on sub-clause (ii-a) of Clause (g) of Section 2 of the Punjab Village Common Land (Regulation) Act, 1961 (hereinafter referred as 'Act of 1961'), as is applicable to the State of Haryana, to state that in the said circumstances, the land would not be '*Shamilat Deh*' and thus, the provisions which have been invoked would not apply to the present case. The documents relied upon by the petitioner have not been disputed in the reply filed by the State. Learned State counsel as well as learned counsel for the gram panchayat have opposed the present writ petition and have prayed for dismissal of the same.

**Arguments on behalf of the petitioner:-**

3. Learned Senior counsel for the petitioner has submitted that the order dated 08.06.2022 (Annexure P-2) passed by the Deputy Commissioner, Gurugram/respondent No.2, vide which the sale deed dated 06.05.2022 (Annexure P-1) executed by the petitioner in favour of respondent No.4 has been cancelled by placing reliance upon the notification dated 23.12.2020 (Annexure P-16) issued by the Additional Chief Secretary to Government of Haryana, Revenue and Disaster Management Department, Chandigarh, is absolutely illegal and against law. It is submitted that a perusal of said notification (Annexure P-16), more so, Chapter 5 Clause 1(c), which has been invoked in the present case, would show that the said instructions/notification would apply in a case where the sale is of '*Shamilat Deh*' land, which is vested or deemed to have been vested in the Panchayat Deh under the Act of 1961. It is argued that '*Shamilat Deh*' has been defined in Section 2(g) of the Act of 1961, as is applicable to the State of Haryana, and the exclusionary clause of Section 2(g) enumerates situations/circumstances, which excludes the land from being '*Shamilat*

*Deh*'. Clause (ii-a) of the exclusionary clause has been highlighted in order to show that where '*Shamilat Deh*' land has been allotted to any person by the Rehabilitation Department of the State Government after the commencement of the Act of 1961, but on or before 09.07.1985, then, the same would not be '*Shamilat Deh*' land and once, the same is not '*Shamilat Deh*', then, the sale of such land would not be liable to be cancelled under the instruction/notification dated 23.12.2020 (Annexure P-16) and the impugned order dated 08.06.2022 (Annexure P-2), which has been passed by placing reliance upon the said notification/instruction, would be unsustainable and the cancellation deed dated 09.06.2022 (Annexure P-3) executed in pursuance of order dated 08.06.2022 (Annexure P-2) would be liable to be set aside.

4. Learned Senior counsel for the petitioner has further highlighted the facts of the present case and referred to several documents to show that the allotment made by the Rehabilitation Department of the State Government in favour of the predecessor-in-interest of the petitioner i.e., Bhagwan Dass and Laxmi Narain was much prior to 09.07.1985. The first document which has been referred to is notice (Form No.S-XII) dated 07.09.1964 (Annexure P-25) (at page 6 of application bearing No.CM-9416-CWP-2023), issued by the Naib Tehsildar in connection with the auction of land in question to be held on 28.10.1964. The second document referred to is the Bid Sheet dated 28.10.1964 (Annexure P-26), (at page 7 of application bearing No.CM-9416-CWP-2023), which records that Bhagwan Dass and Laxmi Narain were the highest bidders with respect to a part of the suit land and had given a bid of Rs.700/-. Another document i.e., Bid Sheet 497 dated 28.10.1964 (Annexure P-27) (at page 8 of application bearing No.CM-9416-CWP-2023), has been referred to in order to show that with respect to the

remaining part of the land, said Bhagwan Dass and Laxmi Narain were successful in the auction as they were the highest bidders and they had made a bid of Rs.2000/-. Learned Senior counsel for the petitioner has further referred to the Memorandum of Offer (Form No.XXI-S) dated 28.10.1964, which had been accepted by the Tehsildar (Sales), Gurgaon, as per which, the land in question was purchased by Bhagwan Dass and Laxmi Narain and the terms used in the same would show that a sale with respect to ownership rights had been effected by the Rehabilitation Department in favour of the said persons. Reference has also been made to the Memorandum of Offer with respect to Lot No.2, which had also been accepted by the Tehsildar (Sales), Gurgaon, which is of even date i.e. 28.10.1964 having similar terms and has been annexed as Annexure P-6 (at page 41 of the writ petition). It is further contended that thereafter, two sale certificates dated 13.11.1964 (Annexures P-5 & P-7) were issued by the Department of Rehabilitation, Punjab, certifying that Bhagwan Dass and Laxmi Narain were bona fide purchasers of the property in question, which had been sold by way of public auction held on 28.10.1964. It is stated that the said sale certificates are documents of title, transferring the ownership rights in favour of Bhagwan Dass and Laxmi Narain. Learned Senior counsel for the petitioner has further referred to the Warrant of Possession dated 24.11.1964 (Annexure P-28 & P-29) (at page 9 of application bearing No.CM-9416-CWP-2023), vide which, the possession of both the lots, which is the suit land, was handed over to the said Bhagwan Dass and Laxmi Narain and the same was duly signed by Santram (Member of Panchayat) as well as Dalip Singh & Harep Singh (both Lambardars). It is also submitted that subsequent to the same, even mutation has been entered in the mutation register with respect to the sale of both the lots and the said mutation Nos.1560 and 1562, which have

been duly sanctioned, have been placed on record as Annexures P-23 and P-24. It is stated that from a perusal of the abovesaid documents, it is apparent that much prior to 09.07.1985, the properties in question stood vested with Bhagwan Dass and Laxmi Narain and they became owners of the same for all intents and purposes. It is also stated that thereafter, vide sale deed dated 21.10.1985 (Annexure P-8), the said Bhagwan Dass and legal representatives of Laxmi Narain sold the properties to M/s Shrikant Chemical Industries Pvt. Ltd. for a valuable consideration and the said M/s Shrikant Chemical Industries Pvt. Ltd., vide two registered sale deeds dated 07.05.1991 (Annexures P-10 & P-11), sold the same to the petitioner. It is submitted that the petitioner had verified the title of M/s Shrikant Chemical Industries Pvt. Ltd. and had also perused the sale deed dated 21.10.1985 (Annexure P-8) before purchasing the said land and had, thus, after the purchase of the said land by virtue of the two sale deeds, become owner of the land in question. It is further submitted that a registered transfer deed dated 27.03.2017 (Annexure P-12) was executed by the petitioner in favour of his wife Shefali Khushalani and by virtue of another registered transfer deed dated 25.03.2019 (Annexure P-13), wife of the petitioner had transferred the property back to the present petitioner. It is argued that on 06.05.2022 (Annexure P-27), the petitioner, who was the rightful owner of the property, had sold the same to respondent No.4 for a valuable consideration. It is submitted that the respondent authorities issued a notice dated 27.05.2022 (Annexure P-14) with respect to cancellation of Sale Deed dated 06.05.2022 to which a detailed reply was given by respondent No.4 on 03.06.2022 (Annexure P-15) and the respondent authorities without considering the said reply, passed a cryptic order dated 08.06.2022 (Annexure P-2) granting permission to cancel the sale deed executed by the

petitioner in favour of respondent No.4. It is submitted that the respondent authorities did not issue any notice to the petitioner and did not take into consideration the facts which were apparent from the record to the extent that the Rehabilitation Department had already allotted the land in question to the predecessors-in-interest of the petitioner prior to 09.07.1985 and the petitioner as well as respondent No.4 were bona-fide purchasers of the land in question and on account of the exclusionary clause contained in Section 2(g) of the Act of 1961, as applicable to the State of Haryana, the land was not '*Shamilat Deh*'. It is submitted that although, the instructions (Annexure P-16) which have been issued are absolutely illegal and against law, inasmuch as, no Administrative instruction can supersede the provisions of a Statue, but, since the impugned order in the case of the petitioner is in violation of even the said instructions, thus, the petitioner has not challenged the said instructions and has submitted that even after taking into consideration the said instructions, the impugned order dated 08.06.2022 (Annexure P-2) is not sustainable. Learned Senior counsel for the petitioner has referred to paras No.6 and 7 of the preliminary submissions of the written statement filed by respondent No.3, on behalf of respondents No.1 to 3-State, to highlight the fact that all the documents which have been relied upon by the petitioner have been verified and have been found to be correct by the State. Further, a specific reference has been made to paragraph Nos.4, 5, 6, 8, 9, 10, 11 of the writ petition, in which, averments with respect to the auction having been conducted by the Department of Rehabilitation, Punjab and the mutations having been entered in favour of Bhagwan Dass and Laxmi Narain have been made, which have not been denied in the corresponding paragraphs of the written statement filed by the State. It is stated that on the basis of the said documents on record and

admitted pleadings, it is proved beyond doubt that the predecessors-in-interest of the petitioner Bhagwan Dass and Laxmi Narain were allotted the property by the Rehabilitation Department in the year 1964. Learned Senior counsel for the petitioner has further submitted that the impugned order (Annexure P-2) is cryptic and non-speaking and thus, on the said ground also, the said order deserves to be set aside.

5. Learned Senior counsel for the petitioner has further pointed out that although, the petitioner was the vendor in the sale deed dated 06.05.2022 (Annexure P-1), but no notice has been served upon him and the impugned order has been passed behind his back without granting him any opportunity of hearing or to file reply. It is stated that in paragraph 12 of the writ petition, a specific averment has been made to the said effect and in reply to the said para in the written statement filed by the State, it has been stated that the said averment is matter of record. It is argued that the impugned action thus, also deserves to be set aside on the ground of violation of the principles of natural justice.

6. Learned Senior counsel for the petitioner has further submitted that in the present case, notice of motion had been issued on 07.12.2022 and the operation of the impugned order was stayed by a Co-ordinate Bench of this Court which is in operation till date.

7. In support of his arguments, learned Senior counsel for the petitioner has relied upon a judgment of the Hon'ble Division Bench of this Court in ***CWP-15052-1995*** titled as '**Mani Ram Vs. The Assistant Collector 1<sup>st</sup> Grade, Ellenabad and others**', decided on 15.12.2022, in which, while considering sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961, the Hon'ble Division Bench of this Court had observed that since the allotment had been made in favour of the petitioner therein prior to

09.07.1985, thus, there was no question of the said land being included in the definition of '*Shamilat Deh*' and accordingly, the eviction order against the petitioner therein was set aside. Further reliance has been placed upon a judgment of the Hon'ble Division Bench of this Court passed in "**Puran Vs. Financial Commissioner (Appeals), Punjab**", ***decided on 16.11.1995, reported as 1996(1) R.R.R. 54***, to contend that the sales effected by the Rehabilitation Department even with respect to shamilat land have been recognized by the Act and in case, any action of the Rehabilitation Department in transferring the land is bad, then, the sale in favour of the allottee would not be considered to be bad. It is submitted that although, the said judgment is with respect to State of Punjab, but the provisions as applicable to State of Punjab and State of Haryana clearly show that the said judgment would apply to the facts of the present case also.

**Arguments on behalf of applicant/gram panchayat**

8. Learned counsel for the gram panchayat has moved an application bearing CM-8159-CWP-2023 seeking permission to assist this Court as an intervener and he has been permitted to assist the Court and his arguments have been heard. It is submitted by learned counsel for the gram panchayat that as per the jamabandies which have been annexed from the year 1944-45 till 2020-21, in the column of ownership, the land is shown as '*Shamilat Deh*' Majkur' / '*Panchayat Deh Majkur*' / '*Panchayat Deh*'. It is submitted that in the ownership column neither the predecessors-in-interest of the petitioner, nor the petitioner, nor the respondent No.4 have been shown to be the owners of the property in question. It is further submitted that the names of the said persons is only reflected in the cultivation column i.e., Column No.5 of all the jamabandies and thus, it is apparent that the transfer by the Rehabilitation Department in favour of the predecessors-in-

interest of the petitioner is only with respect to possessory rights and not ownership rights and even, the subsequent sale should be construed as a sale of possessory rights and not of ownership rights as no person can give a better title than he himself possesses. It is also submitted that there is a presumption of truth attached to the entries made in the jamabandies and the said presumption has not been rebutted in the present case. It is stated that for the petitioner to take benefit of the exclusionary clause under Section 2(g) of the Act 1961, it had to be shown that the ownership of the land had been transferred by the Rehabilitation Department in favour of the predecessors-in-interest of the petitioner and since the same has not been proved, thus, the said exclusionary clause would not apply. Learned counsel for the applicant/gram panchayat has further referred to the register of mutation (Annexures P-23 and P-24) and has submitted that even in column No.9, where the name and details of the owner is to be reflected, the name of gram panchayat has been mentioned and it is only in the cultivation column that the name of predecessors-in-interest of the petitioner has been reflected. Learned counsel for the applicant/gram panchayat has made a reference to the reply filed by respondent No.4 to the show cause notice and has submitted that as per paragraph Nos.3.2, 3.4, 3.6, 3.8, 3.12 and 3.14, it has been pleaded by respondent No.4 that as per the jamabandies, he and his predecessors were recorded as owners in possession in the Khanakast column qua the land in question. It is also stated that all the documents would show that the auction in favour of the predecessors-in-interest of the petitioner was only with respect to transfer of possessory rights and not with respect to the transfer of ownership rights and thus, the claim made by the petitioner that his case is covered within the exclusionary clause is devoid of merit. Learned counsel for the applicant/gram panchayat has relied upon the

judgment of a Co-ordinate Bench of this Court passed in “**Bishamber Dayal and others Vs. Duli Chand and others, reported as 2019(4) R.C.R. (Civil) 725**, in support of his argument that a sale of property can also be with respect to transfer of only possessory rights and the same need not necessarily be of ownership rights. It is submitted that at any rate, disputed questions of facts arise in the present case and thus, the present writ petition would not be the appropriate forum for giving an affirmative finding on the said disputed questions of facts. Reference has also been made to the cancellation deed dated 09.06.2022 (Annexure P-3), which has been executed after the passing of the impugned order and it is highlighted that in the same, it has been mentioned that the land shall vest with the panchayat and on the basis of the said submission, it is prayed that the present writ petition deserves to be dismissed.

**Arguments on behalf of respondents No.1 to 3-State**

9. Learned State counsel appearing on behalf of respondents No.1 to 3 has referred to the averments made in the written statement filed by the State, as per which, it has been stated that the Deputy Commissioner had to grant permission to cancel the sale deed on account of the fact that the factum of the land being ‘*Shamilat Deh*’ was not brought to the notice of the sub-registrar initially and when the BDPO, through correspondence, informed the sub-registrar that the said land was ‘*Shamilat Deh*’ land, then, the sub-registrar cancelled the sale deed while exercising the power derived from the notification (Annexure P-16), more so, Chapter 5 Clause (1)(c) which specifically requires that the land, which is ‘*Shamilat Deh*’, and is vested and deemed to have been vested with the panchayat under the Act of 1961 would not be alienated or sold. It is also submitted that the sub-registrar had taken into consideration the reply (Annexure P-15), filed by

respondent No.4, who was the subsequent purchaser from the petitioner and after considering the said reply, the impugned order has been passed. Learned State counsel has fairly submitted that as per the written statement, more so, paragraphs No.4, 5, 6 and 7, the documents which have been relied upon by the petitioner have been found to be correct, but it was in view of the letter issued by the BDPO dated 03.06.2022, in which, the BDPO has stated that the land has been shown as '*Shamilat Deh*', that the action in question was taken. It is argued that in the present case, the notification (Annexure P-16) has not been challenged and once, the land is shown to be '*Shamilat Deh*', thus, the provisions of Chapter 5 clause 1(c) would apply, therefore, entitling the sub-registrar to cancel the sale deed. It is also submitted that as per the stand of the State, the pleas raised by the petitioner to the effect that Bhagwan Dass and Laxmi Narain were owners of the property in question and that the same was purchased by them in auction and was further sold to M/s Shrikant Chemical Industries Pvt. Ltd. and thereafter to the petitioner and then to respondent No.4, is not being disputed. Learned State counsel has also pointed out that unless the amendment/notification (Annexure P-16) is not specifically challenged, no relief can be granted to the petitioner.

**Arguments on behalf of respondent No.4**

10. Learned counsel for respondent No.4 has adopted the arguments raised by learned Senior counsel for the petitioner and in addition to the said arguments, it has been stated that the first sale was executed on 21.08.1985 and the second sale deed was executed on 07.05.1991 and thereafter two transfers deed were also executed in the year 2017 and 2019 and the gram panchayat or the State authorities had never raised any objection to the execution of the said documents, nor had raised any claim

over the property in question. It is submitted that the said documents are registered documents and can only be set aside by the Civil Court. It is further submitted that by virtue of the cancellation deed, the Gram Panchayat has been made the owner of the land in question without taking into consideration the fact that even in case the sale deed dated 06.05.2022 (Annexure P-2) is to be set aside, then also the earlier transactions cannot be set aside as the same were registered documents and were executed in the years 1985, 1991, 2017 and 2019. It is further submitted that the auction had taken place in the year 1964 and there is no challenge to the said auction till date either by the gram panchayat or by any other person. It is stated that before the passing of the impugned order, it is not in dispute that respondent No.4 and his predecessors-in-interest were in possession of the land since the last 55 years and no person has ever claimed any right even qua possession of the same. Learned counsel for respondent No.4 has submitted that he is a bona fide purchaser and the sale deed in his favour was for a valuable consideration and was duly registered by the sub-registrar after having considered all the aspects and the cancellation of the sale deed would amount to review of his earlier orders, which is not permissible in law.

**Arguments in rebuttal on behalf of the petitioner**

11. Learned Senior counsel for the petitioner has submitted that in the present case, it has been proved beyond doubt that the auction in favour of the said Bhagwan Dass and Laxmi Narain transferring the ownership of the property in their favour was validly held and that the said property was further validly transferred by them in favour of M/s Shrikant Chemical Industries Pvt. Ltd. and thereafter, in favour of the petitioner. It is also submitted that the specific averments made in the writ petition have not been disputed in the written statement filed by the State and rather, in paragraph 7

of the preliminary submissions, it has been stated that the documents relied upon and filed by the petitioner are verified and found to be correct. It is argued that learned counsel for the gram panchayat has set up a new case, which is not even the case of the State and that the gram panchayat was not even privy to the original allotment in favour of the predecessors-in-interest of the petitioner. Further reference has been made to para 3 of CM-8159-CWP-2023 where the learned counsel for the gram panchayat has given the details of ownership and the possession of the land in question recorded in various jamabandies. It is submitted that even as per the said chart, the ownership column in the jamabandi for the year 1965-66, which is a jamabandi immediately after the auction/allotment in favour of the predecessors-in-interest of the petitioner, has been left blank. It is argued that even for the subsequent jamabandies for the period 1970-71, 1975-76, 1980-81 and 1985-86, the entry regarding the ownership column has not been produced and the same has been left blank. It is stated that the State has not even disputed the documents showing ownership of the predecessors-in-interest of the petitioner or of the petitioner or of respondent No.4. The registered documents were in existence for the last several decades and the same have not been challenged till date before any Court of law and that the sub-registrar had registered the sale deed in question and after the registration of the same, he had become *functus officio*. It is contended that stamp duty amounting to Rs.1,10,48,000/- had been deposited by the parties i.e., petitioner and respondent No.4 for getting the registration of the sale deed dated 06.05.2022 (Annexure P-1) and the said amount is still with the authorities. It is also stated that after the passing of the impugned order, the gram panchayat has filed a Section 7 petition under the Act of 1961, which has been annexed as Annexure P-21 with CM-7055-CWP-2023 and even in

the said application under Section 7 of the Act of 1961, no plea has been taken with respect to the auction or allotment in favour of the predecessors-in-interest of the petitioner being solely of possessory rights.

**Analysis & Conclusion**

12. This Court has heard learned counsel for the parties and has gone through the paper-book.

13. From the pleadings, arguments raised by learned counsel for the parties and the judgments relied upon by them, the following two questions arise for consideration before this Court: -

- (i) Whether the sale deed dated 06.05.2022 is liable to be cancelled as per the notification dated 22.12.2020 (Annexure P-16) (vide which para 159(A) has been incorporated in Chapter 5 of the Haryana Registration Manual after para 159) in case, the case of the petitioner falls under sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961 and the land in question is not included in '*Shamilat Deh*'?
- (ii) Whether in the facts and circumstances of the present case, the case of the petitioner falls under clause (ii-a) of Section 2(g) of the Act of 1961 or not?

14. This Court proposes to answer the said two questions which arise for consideration in the present case in the succeeding paragraphs.

15. **Question No.1 - Whether the sale deed dated 06.05.2022 is liable to be cancelled as per the notification dated 22.12.2020 (Annexure P-16) (vide which para 159(A) has been incorporated in Chapter 5 of the Haryana Registration Manual after para 159) in case, the case of the petitioner falls under sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961 and the land in question is not included in '*Shamilat Deh*'?**

16. Before answering the said question, it would be necessary to refer to Section 2(g) and Section 3(2)(ii) of the Act of 1961 and certain authoritative judgments on the said aspect. Relevant portions of Section 2(g) and Section 3(2) are reproduced herein below: -

- “(g) *“shamilat deh” includes....*
- (1) *lands described in the revenue records as 1[ Shamilat Deh or Charand] excluding abadi deh;*
  - (2) *shamilat tikkas;*
  - (3) *lands described in the revenue records as shamilat, 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 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 (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purpose 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 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.*
4. [ \* \* \* \* \*
- but does not include land which----*
- (i) *becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat 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 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 land holders before the 26" January, 1950;*
- (iv) *having been acquired before the 26th January, 1950, by a person by or in exchange for proprietary land from a co- sharer in the shamilat deh is so recorded 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 used according to revenue records for the benefit of the village community or a part thereof 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) \* \* \* \* \*]
- (vii) *was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-shares 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;*  

xxx    xxx    xxx    xxx    xxx    xxx    xxx

**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,....*

xxx    xxx    xxx    xxx    xxx    xxx    xxx

- (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 realized by the Rehabilitation Department of the State Government as a result of allotment of such land; or*
- (b) where no money was realizable 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.]”*

A perusal of the above-reproduced Section 2(g) would show that the land which would be included in the definition of ‘*Shamilat Deh*’ has been specifically enumerated. Even the land which is not to be included in the definition of ‘*Shamilat Deh*’ has also been enumerated. Ten circumstances have been mentioned as to when the land is not to be included in the definition of ‘*Shamilat Deh*’. In case, the case of an individual is covered under any of the said ten circumstances, then, in such a situation, the land would not be included in the definition of ‘*Shamilat Deh*’. One such circumstance has been detailed in sub-clause (ii-a) and the said sub-clause stipulates that the land which was ‘*Shamilat Deh*’, but has been allotted to any person by the Rehabilitation Department of the State Government after the commencement of the Act of 1961, but on or 09.07.1985, then, the said land would not be ‘*Shamilat Deh*’. Section 3(2)(ii) provides that in case the land has been excluded from ‘*Shamilat Deh*’ under sub-clause (ii-a) of Clause (g) of Section 2, then, all rights, title and interest of the panchayat in such land from the date of allotment of such land by the Rehabilitation

Department shall cease and the same would vest in the person to whom the said land has been allotted on or before 09.07.1985.

17. Hon'ble Division Bench of this Court in **Mani Ram's case** (*supra*), after considering sub-clause (ii-a) of clause (g) of Section 2 of the Act of 1961 and after also noticing the arguments of the counsel for the gram panchayat therein to the effect that sale of the land in question therein by the custodian department was void *ab initio* and *non est* as it was not the owner of the land in question, came to the conclusion that since the transfer had taken place before the cut off date i.e. 09.07.1985, the land would not be included in the definition of 'Shamilat Deh', as the same had been specifically excluded under Section 2(g)(ii-a) of the Act of 1961 and accordingly, the orders of eviction passed by the authorities in a petition filed by the gram panchayat under Section 7 of the Act of 1961 were set aside. Even in the said case, the plea raised by the petitioner therein was that the land had been transferred in his favour on 05.11.1982 i.e. before the cut-off date. Relevant portion of the said judgment is reproduced herein below: -

*“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.*

xxx xxx xxx xxx xxx xxx

*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.*

xxx xxx xxx xxx xxx xxx xxx

*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.*

xxx xxx xxx xxx xxx xxx xxx

*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.”*

18. Hon’ble Division Bench of this Court in “*The Gram Panchayat, Village Hjarawan Kalan, Tehsil Fatehabad, District Hissar Vs. Dalbir Kaur and others*”, reported as 2012(2) PLR 700, had also observed that the land which was allotted prior to 09.07.1985 would not fall under the definition of ‘*Shamilat Deh*’. Relevant portion of the said judgment is reproduced herein below: -

*“11. We do not find any substance in the argument advanced by learned counsel for the appellant. Undisputedly, after the judgment of the Apex Court in Gram Panchayat of village Jamalpur's case (supra), the provisions of the Act of 1961 were amended. In the definition of 'shamlat deh' contained in Section 2 (g) (5) of the Act of 1961, clause (ii-a) was added, according to which the land which was allotted by the Rehabilitation Department on or before the 9th day of July, 1985, does not fall under the definition of 'shamlat deh' and the said amendment was upheld by a Division Bench of this Court in Gram Panchayat of village Kum Kalan's case (supra). The learned Single Judge, while taking into consideration the said amendment and the judgment of this Court, has rightly set aside the order of the Chief Settlement Commissioner, cancelling the allotment of the land, which was admittedly made before 9th day of July, 1985, because such land does not fall under the definition of 'shamlat deh'.*

*xxx xxx xxx xxx xxx”*

19. From the above-said provisions of law and the above-cited judgments, three principles emerge, which are as follows: -

- (i) In case the land is allotted to any person by the Rehabilitation Department after the commencement of Act of 1961 on or before 09.07.1985 and the same was ‘*Shamilat Deh*’, then, the same would be not be included in the definition of ‘*Shamilat Deh*’ and would not be ‘*Shamilat Deh*’ land.

- (ii) The allotment effected by the Rehabilitation Department even with respect to ‘*Shamilat Deh*’ land has been recognized to be valid.
- (iii) The land which was vested in the panchayat and has been excluded from ‘*Shamilat Deh*’ by virtue of sub-clause (ii-a) of Clause (g) of Section 2 would vest in the person to whom the land has been allotted by the Rehabilitation Department and all such rights, title and interest of the panchayat in such land from the said date shall cease and issue, if any, would remain between the Rehabilitation Department and the Development & Panchayats Department.

20. In the present case, the Deputy Commissioner while passing the impugned order dated 08.06.2022 has relied upon Chapter 5(1)(c) of the instruction No.2050/Reader-1-2020/9238 dated 23.12.2020 issued by the Additional Chief Secretary/Financial Commissioner, Revenue & Disaster Management Department. Learned counsel for the parties have clarified that the correct number of the memo is memo No.2050-STR-1-2020/9238 dated 23.12.2020 (Annexure P-16) and that the said memo is a covering letter enclosing the notification dated 22.12.2020 issued by the Haryana Revenue & Disaster Management Department, vide which, in Chapter 5 of the Haryana Registration Manual, after para 159, para 159(A) has been inserted and it is the Clause 1(c) of the same, which has been relied upon while passing the impugned order. Relevant portion of said Chapter 5(1)(c) is reproduced herein below: -

*“If a document relating to transfer by way of sale, gift, mortgage, exchange, lease or otherwise is registered of '**Shamilat deh**' land vested or deemed to have vested in the Panchayat Deh under the Punjab Village Common Lands (Regulations) Act, 1961 (Punjab Act No. 18 of 1961) or in Municipalities including Municipal Corporations under the Haryana Municipal Act, 1973 (Haryana Act 24 of 1973) and the Haryana Municipal Corporation*

*Act, 1994 (Haryana Act of 1994): Block Development Panchayat Officer, Secretary/Executive Officer/Commissioner, Municipal Corporation/District Municipal Commissioner shall get the cancellation deed registered after seeking approval of the Deputy Commissioner or other superior authority. This parameter shall be applicable for 'shamilat deh' lands illegally partitioned and alienated in the past without getting the title adjudicated under the relevant statute by the competent authority/court, as is applicable."*

A perusal of the same would show that in case the land in question is '*Shamilat Deh*' vested or deemed to have been vested in the Panchayat Deh under the Act of 1961, then, the sale deed executed would be liable to be cancelled. It necessarily follows that in case the land is excluded from the definition of '*Shamilat Deh*' or that it is not included in '*Shamilat Deh*', then, the notification/instructions, which have been invoked in the present case, would not apply and the impugned order as well as the cancellation deed would be liable to be set aside and thus, the first question is answered in favour of the petitioner and against the respondents in the following manner: -

**The sale deed dated 06.05.2022 would not be liable to be cancelled as per the notification dated 22.12.2020 (P-16) in case, the case of the petitioner falls under sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961.**

21. It would be relevant to note that as far as the present issue is concerned, there is no serious contest by the respondents to the said proposition of law and the said question has been culled out and answered only for the purpose of proper adjudication of the present case.

22. **Question 2 - Whether in the facts and circumstances of the present case, the case of the petitioner falls under clause (ii-a) of Section 2(g) of the Act of 1961 or not?**

23. The case of the petitioner to the effect that the land was auctioned and allotted in favour of the predecessors-in-interest of the petitioner i.e., Bhagwan Dass and Laxmi Narain in the year 1964 and is prior to the cut-off date i.e., 09.07.1985, is not disputed by the State and the averments made in the written statement would in fact support the case of the petitioner and it is the learned counsel for the gram panchayat who has raised the argument that the said transfer was only with respect to possessory rights and not ownership rights and thus, the said question is being addressed in detail. The documents on record which will be detailed hereinafter and even the pleadings, would clearly show that the case of the petitioner is covered by sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961 and the gram panchayat who is not even privy to the transactions in question has raised the said plea apparently only to deny the rightful claim of the petitioner. The details of documents alongwith chronological list of dates and events is enumerated herein below:-

| Sr. No. | Dates                                            | Details of documents                                                                                                                                                                                   |
|---------|--------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | 07.09.1964 (P-25) (at page 6 of CM-9416-CWP-2023 | Notice (Form No.S-XII) issued by Naib Tehsildar regarding auction to be held on 28.10.1964                                                                                                             |
| 2       | 28.10.1964 (P-26) (at page 7 of CM-9416-CWP-2023 | <b>(Bid Sheet 645)</b><br>A perusal of the same would show that Bhagwan Dass and Laxmi Narain had given a bid of Rs.700/- for a part of the land in question and were declared as the highest bidders. |
| 3       | 28.10.1964 (P-27) (at page 8 of CM-9416-CWP-2023 | <b>(Bid Sheet 497)</b><br>A perusal of the same would show that Bhagwan Dass and Laxmi Narain had made a bid of Rs.2000/- for the remaining part of the land in question and were the highest bidder.  |
| 4       | 28.10.1964 (P-4) (at page 38)                    | <b>(Memorandum of Offer (Form No.XXI-S) by Bhagwan Dass and Laxmi Narain whereby the bid of Rs.2000/- was offered.</b>                                                                                 |

|   |                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---|-------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                               | <p><b>Schedule of Property: Lot No.1</b></p> <p><b>Accepted by Tehsildar (Sales), Gurgaon)</b></p> <p>A perusal of the said document would show that as per condition No.1 it has been specifically mentioned that the Government will be responsible for any defect in the title and the same shall not annul the sale and the predecessors-in-interest of the petitioner have been addressed as purchaser. The predecessors had also undertaken to pay all rates, cesses, taxes, fees, betterment charges and land revenue etc, for the said property in question and the said offer had been accepted by the Tehsildar (Sales) Gurgoan and from a reading of the whole document, it is apparent that the same is sale of ownership rights and there is nothing indicating that it was a sale of only possessory rights.</p>                                                                                                                              |
| 5 | 28.10.1964 (P-6) (at page 41) | <p><b>(Memorandum of Offer (Form No.XXI-S) by Bhagwan Dass and Laxmi Narain whereby the bid of Rs.700/- was offered.</b></p> <p><b>Schedule of Property: Lot No.2</b></p> <p><b>Accepted by Tehsildar (Sales), Gurgaon)</b></p> <p>A perusal of the said document would show that as per condition No.1 it has been specifically mentioned that the Government will be responsible for any defect in the title and the same shall not annul the sale and the predecessors-in-interest of the petitioner have been addressed as purchaser. The predecessors had also undertaken to pay all rates, cesses, taxes, fees, betterment charges and land revenue etc, for the said property in question and the said offer had been accepted by the Tehsildar (Sales) Gurgoan and from a reading of the whole document, it is apparent that the same is sale of ownership rights and there is nothing indicating that it was a sale of only possessory rights.</p> |
| 6 | 13.11.1964 (P-5) (at page 40) | <p><b>Sale Certificate (Form No.XIV-S) issued by Department of Rehabilitation confirming sale in favour of predecessors-in-interest of the petitioner</b></p> <p>A perusal of the said document would show that the predecessors-in-interest of the petitioner have been addressed as bona fide purchasers of the property in question at a sale by public auction held on 28.10.1964 and the same clearly indicates that it is a sale of</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

|    |                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----|----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                    | ownership rights and there is nothing to suggest that the sale was only regarding possessory rights.                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| 7  | 13.11.1964 (P-7) (at page 43)                      | <b>(Sale Certificate (Form No.XIV-S) issued by Department of Rehabilitation confirming sale in favour of predecessors-in-interest of the petitioner)</b><br><br>A perusal of the said document would show that the predecessors-in-interest of the petitioner have been addressed as bona fide purchasers of the property in question at a sale by public auction held on 28.10.1964 and the same clearly indicates that it is a sale of ownership rights and there is nothing to suggest that the sale was only regarding possessory rights.                         |
| 8  | 24.11.1964 (P-28) (at page 9 of CM-9416-CWP-2023)  | <b>(Warrant of Possession)</b><br><br>Warrant of Possession issued in favour of the predecessor-in-interest of the petitioner duly signed by Santram (member of Panchayat), village Ghamroj and two Lambardars i.e. Dalip Singh and Harep Singh and the said fact clearly shows that the panchayat had knowledge of the said auction/allotment. A further perusal of the said document would show that it has been specifically mentioned that the part of the land in question has been <b>allotted</b> to the predecessors-in-interest of the petitioner.           |
| 9  | 24.11.1964 (P-29) (at page 10 of CM-9416-CWP-2023) | <b>(Warrant of Possession)</b><br><br>Warrant of Possession issued in favour of the predecessor-in-interest of the petitioner duly signed by Santram (member of Panchayat), village Ghamroj and two Lambardars i.e. Dalip Singh and Harep Singh and the said fact clearly shows that the panchayat had knowledge of the said auction/allotment. A further perusal of the said document would show that it has been specifically mentioned that the remaining part of the land in question has been <b>allotted</b> to the predecessors-in-interest of the petitioner. |
| 10 | 09.06.1965 (P-23) (at page 4 of CM-9416-CWP-2023)  | <b>(Mutation No.1560 sanctioned)</b><br><br>A perusal of the same would show that in column No.13, a specific reference has been made with respect to sale through auction as per the order of the Tehsildar with respect to part of the land in question.                                                                                                                                                                                                                                                                                                            |
| 11 | 09.06.1965 (P-24) (at page 5 of CM-9416-           | <b>(Mutation No.1562 sanctioned)</b><br><br>A perusal of the same would show that in column                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |

|    |                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|----|---------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | CWP-2023)                                   | No.13, a specific reference has been made with respect to sale through auction as per the order of the Tehsildar with respect to remaining part of the land in question.                                                                                                                                                                                                                                                                               |
| 12 | 21.08.1985 (P-8) (at page 44)               | <b>(Sale deed)</b><br>Registered sale deed executed by Bhagwan Dass and legal representative of Laxmi Narain in favour of M/s Shrikant Chemical Industries Pvt. Ltd. It has specifically been stated in the said sale deed that the executants of the sale are owners of the land in question and the same has been given on lease to one Surjit Singh Kaushal. It was further mentioned that the purchaser has been made “the owner” of the property. |
| 13 | 10.11.1986 (P-9) (at page 46)               | <b>(Registered deed)</b><br>Registered deed executed by Surjit Singh Kaushal transferring his leasehold rights in favour of the owner M/s Shri Kant Chemical Industries Ltd.                                                                                                                                                                                                                                                                           |
| 14 | 07.05.1991 (P-10 & P-11) (at pages 48 & 51) | <b>(2 Sale Deeds)</b><br>Two registered sale deeds executed by M/s Shrikant Chemical Industries Pvt. Ltd. in favour of the petitioner for a valuable consideration, in which, it has been specifically mentioned that the vendor is the owner of the property in question. <b>The said sale deeds have not been challenged till date.</b>                                                                                                              |
| 15 | 27.03.2017 (P-12) (at page 54)              | <b>(Transfer Deed)</b><br>Registered transfer deed executed by petitioner in favour of his wife in which it has been mentioned that the petitioner is the owner in possession of the land in question.                                                                                                                                                                                                                                                 |
| 16 | 25.03.2019 (P-13) (at page 59)              | <b>(Transfer Deed)</b><br>Registered transfer deed executed by wife of the petitioner in favour of the petitioner transferring the property back to the petitioner and in the same it has been specifically stated that the petitioner will be the exclusive and absolute owner of the land in question. The said document has also never been challenged.                                                                                             |
| 17 | 06.05.2022 (P-1) (at page 27)               | <b>(Sale Deed)</b><br>The sale deed executed by the petitioner in favour of respondent No.4 for a sale consideration of Rs.15,77,94,250/-. A perusal of the same would show that the stamp duty of Rs.1,10,48,000/- has also been paid to the State. It is specifically stated that the vendor                                                                                                                                                         |

|       |                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |                                | is the absolute owner of the property in question and a reference has been made to the various cheques issued for the payment of sale consideration.                                                                                                                                                                                                                                                                                                                          |
| 18    | 27.05.2022 (P-14) (at page 64) | <p><b>(Notice)</b></p> <p>Notice issued by the Sub Registrar, Sohna with respect to the cancellation of the sale deed dated 06.05.2022 on the ground that facts have been concealed by the parties, inasmuch as, in the column of ownership name of Gram Panchayat was mentioned. No plea has been raised in the show cause notice to the effect that the auction sale in favour of the predecessors-in-interest of the petitioner was with respect to possessory rights.</p> |
| 18(a) |                                | <p>In para 12 of the writ petition, it is the case of the petitioner that no notice was ever served upon the petitioner although he was the vendor in the sale deed. The said aspect has not been denied in the corresponding para of the said written statement and the same is stated to be matter of record.</p>                                                                                                                                                           |
| 19    | 03.06.2022 (P-15) (at page 65) | <p><b>Detailed reply filed by respondent No.4 to the above-mentioned show cause notice.</b></p> <p>In the said reply, it had been stated that it has been wrongly stated in the notice that the land belongs to the gram panchayat. The details of all the sale deeds were mentioned in the said reply. A reference had also been made to Section 110 of the Evidence Act, on the aspect of burden of proof as to ownership.</p>                                              |
| 20    | 08.06.2022 (P-2) (at page 34)  | <p><b>(Impugned order)</b></p> <p>The impugned order has been passed by the Deputy Commissioner granting permission for the cancellation of sale deed dated 06.05.2022 by relying upon Clause 5(1)(c) of the instructions No. 2050-Reader-1-2020/9238 dated 23.12.2020 (P-16).</p>                                                                                                                                                                                            |
| 21    | 09.06.2022 (P-3) (at page 35)  | <p><b>(Impugned Cancellation Deed)</b></p> <p>The cancellation deed has been executed and the land has been vested with the Panchayat of village Ghamroj Tehsil Sohna District Gurgaon inspite of the fact that the earlier sale deeds are still in existence. The said cancellation deed was neither signed by the petitioner nor respondent No.4 and the same was executed by invoking the provisions of Chapter 5(1)(c)</p>                                                |

|       |            |                                                                                                                                                                                                                                                                                                                                                                                                              |
|-------|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       |            | of the Haryana Registration Manual para 159(A) which was added vide letter dated No.2050-STR-1-2020/9238 dated 23.12.2020. It was recorded that the land as per the jamabandi was found to be panchyat deh land and it was no where observed that the transfer in favour of the predecessors-in-interest of the petitioner or in favour of the petitioner or respondent No.4 was only qua possessory rights. |
| 21(a) |            | Aggrieved against the said order dated 08.06.2022 and cancellation deed dated 09.06.2022, the present writ petition has been filed.                                                                                                                                                                                                                                                                          |
| 22    | 07.12.2022 | <b>(Stay order)</b><br>Notice of motion was issued by a Co-ordinate Bench of this Court and operation of the impugned order & the cancellation deed (Annexures P-2 & P-3) was ordered to be stayed. The said interim order is continuing till date.                                                                                                                                                          |

24. The above-said documents clearly show that ownership rights have been transferred, first in favour of the predecessors-in-interest of the petitioner and subsequently in favour of the petitioner as well as respondent No.4. The said fact further stands fortified from the pleadings of the parties, more so, the written statement filed by the State. Paragraphs No.6 and 7 of the preliminary objections of the written statement filed on behalf of respondents No.1 to 3/State are reproduced herein below: -

“6. That the basic version of the petitioner in the present petition is that the disputed land was purchased under auction from the Department of Rehabilitation on 12.11.1964 and the entire consideration amount was also paid and the documents of transfer of title were executed by Tehsildar (Sales) as agent of the State Govt. in favour of Bhagwan Das-Laxmi Narayan. It is further the case of the petitioner that Mutation entry No. 1562 dated 09.06.1965 was sanctioned in their favour and their names were entered in Jamabandi 1965-66. The transfer was also recorded in Intkal Register vide Entry No.415/395. The Jamabandi for the years 1970-71, 1980-81 also records their names. The land was

*subsequently transferred and the names of the transferees/owners lastly Mr. VivekKhushlani were recorded in Jamabandi for the year 1995-1996 till 2020-2021. The land was transferred by the petitioner by way of Registered Sale Deed bearing No.1154 dated 06.05.2022 in favour of M/s. Signature Global Business Park Pvt. Ltd.*

***7. That the documents relied upon and filed by the petitioner are verified and found to be correct. That, however, after receiving the letter from the BDPO Sohna vide Sr. No. 1748 dated 03.06.2022 by disputing the title of the land in question, the act of cancellation of sale deed is legal and does not suffer from any infirmity.”***

A perusal of the above-reproduced paragraphs of the written statement would show that the case of the petitioner with respect to the disputed land having been purchased in an auction from the Department of Rehabilitation and the entire consideration having been paid and also the documents of title having been executed by the tehsildar and the mutation entries having been entered and further registration of sale deeds having been executed has been noticed and it has specifically been recorded that the documents relied upon and filed by the petitioner have duly been verified and found to be correct. The reason for cancellation is stated to be letter of the BDPO dated 03.06.2022, a reference of which has been made in the cancellation deed (Annexure P-3), in which, it is apparently mentioned that the land is panchayat deh land by placing reliance on the ownership column of the jamabandi. Once the documents of title clearly establish that the land in question has been auctioned/allotted by the Rehabilitation Department in favour of the predecessors-in-interest of the petitioner, then, merely on the basis of entries in the jamabandi, the registered sale deeds/documents cannot be nullified. It is a matter of settled law that the presumption attached to the entries in the jamabandies is rebuttable and once the petitioner has proved

the documents of title, then, the said presumption stands rebutted. It is also relevant to note that the possession of the predecessors-in-interest of the petitioner as well as of the petitioner and respondent No.4 has been duly reflected in the said jamabandies.

25. In paragraphs No.4 and 5 of the writ petition, it has been specifically stated that the land in question was owned by Bhagwan Dass and Laxmi Narain and the same was purchased by them from the Department of Rehabilitation in an auction and that the sale certificates were issued. In the corresponding paragraphs in the written statement filed by the State, it has been stated that the disputed land is owned by the seller i.e. petitioner and the auction or the ownership of the predecessors-in-interest of the petitioner i.e., Bhagwan Dass and Laxmi Narain has also not been specifically denied. Paragraphs No.4 and 5 of the writ petition and the corresponding paras No.4 and 5 of the written statement are reproduced herein below: -

**“Paras No.4 and 5 of the writ petition are as under:-**

4. *That the land in question was initially owned by Shri Bhagwan Dass and Shri Laxmi Narain sons of Shri Jhandu Ram, both residents of Village Ghomraj Tehsil Sohna, District Gurugram, who had purchased the land in question, being the land comprised in Khewat/Khatoni No.643/627, Rec. No.36, Killa No. 11(4-0), 12/1 (0-6), 12/2 (0-12), 18 (0-19), 19 (7-15), 20 (8-0), 22/1 (6-9), 23 (4-13), 27 (0-14), total field nine measuring 33 Kanal 8 Marla situated at Village Ghamroj, Sub-Tehsil Sohna, District Gurugram, Haryana, from the Department of Rehabilitation on 12.11.1964.*

5. *That Sh. Bhagwan Dass and Sh. Laxmi Narayan purchased the above-described property under auction from Department of Rehabilitation Punjab. The property was put on auction by the Department on which Bhagwan Dass and Laxmi Narayan submitted his memorandum of offer to purchase the property for Rs.2,000/-. A copy of memorandum of offer is annexed*

*herewith as Annexure P-4. The auction was conducted on 28.10.1964 when Bhagwan Dass was declared as the highest bidder. Thereafter, finally on 13.11.1964 a certificate was issued confirming the sale in favour of Bhagwan Dass. A copy of form No.16-S issued by Tehsil (sales) is attached as Annexure P-5. Similar documents were issued with regard to the purchase of other part of property by Bhagwan Dass and Laxmi Narayan are attached as Annexure P-6 and Annexure P-7.*

**Paras No.4 and 5 of the written statement are as under:-**

*4. That Para no.4 of the civil writ petition is wrong and denied. That the disputed land is owned by the seller as per the revenue record but when the dispute was raised by the BDPO Sohna vide above said letter then titled would be decided by the collector in the appropriate proceeding as per the verdict of Hon'ble Supreme Court of India and till the decision, no valid sale deed can be registered as per law.*

*5. That the detailed reply of this para no.5 of the civil writ petition has already been given in above para. Rest of para is informatory, hence needs no reply.”*

26. The averments with respect to the sale deed dated 21.08.1985 have been made in para No.7 of the writ petition and with respect to the sale deed dated 07.05.1991 have been made in para No.8 and with respect to the registered transfer deeds have been made in paras No.9 and 10 and further reference to the registered sale deeds dated 06.05.2022 has been made in para No.11 of the writ petition and in reply to the said paragraphs in the written statement, from paras No.7 to 11 (at page 92 of the paperbook) it has been stated that the same are matter of record and need no reply. Thus, from the facts and circumstances, it is proved beyond doubt that the Rehabilitation Department, had allotted the land vide public auction in favour of the predecessors-in-interest of the petitioner i.e., Bhagwan Dass and Laxmi Narain and had transferred ownership rights to them, regarding which sale certificates were also issued on 13.11.1964 (Annexures P-5 & P-7) and the

possession was also duly handed over to them in the presence of member of panchayat, vide warrant of possession dated 24.11.1964 (Annexures P-28 & P-29) and thus, the said transfer was covered under sub-clause (ii-a) of Clause (g) of Section 2 of the Act of 1961 and the land in question was thus, not '*Shamilat Deh*' and therefore, the authorities could not have by, invoking Chapter 5(1)(c) of the Haryana Registration Manual para 159(A), cancelled the sale deed or executed the cancellation deed.

27. The second question is thus answered in the following terms: -

**The case of the petitioner falls under sub-clause (ii-a) of Section 2(g) of the Act of 1961 and thus, the land in question is not included in the definition of '*Shamilat Deh*'.**

28. There are several other points in favour of the petitioner, which also further the case of the petitioner and the same are being detailed herein below: -

- (i) In para 12 of the writ petition, it has been specifically stated that no notice with respect to the cancellation of sale was ever served upon the petitioner although the petitioner was the vendor in the said sale. In the corresponding para 12 of the written statement, the said fact has not been denied and it has not been averred that any notice was served upon the petitioner. Since the right of the petitioner, who is the vendor was being seriously prejudiced, it was incumbent upon the authorities to have served the notice of cancellation upon the petitioner before passing the impugned order. The said act of the respondent authorities is in violation of the principles of natural justice and thus, the impugned order as well as the cancellation deed deserve to be set aside on the said ground alone.

- (ii) In case, notice had been served upon the petitioner and adequate time had been granted to the petitioner to put forth his case, then, the petitioner could have produced all the documents of title which have been produced on record before this Court and have been found to be correct after verification by the State and the same could have saved the unnecessary harassment caused to the petitioner. The cancellation of the sale deed and vesting of the property with the gram panchayat causes serious prejudice to the rights of the petitioner including any subsequent action to be taken by the purchaser for recovery of money and thus, it was imperative to issue notice to the petitioner.
- (iii) As per the cancellation deed dated 09.06.2022, the land in question has been vested in the gram panchayat of village Ghamroj. It is not in dispute that there were five registered documents which were, the sale deed dated 21.08.1985, two sale deeds dated 07.05.1991, two transfer deeds dated 27.03.2017 and 25.03.2019 executed prior to the registered sale deed dated 06.05.2022. Even in case the sale deed dated 06.05.2022 was to be excluded/cancelled, then also, without the earlier registered documents having been cancelled/set aside, the property could not have been transferred in favour of the gram panchayat. Moreover, the said registered documents had been brought to the notice of the authorities in the reply filed by respondent No.4.
- (iv) The auction was held on 28.10.1964 and the sale certificates were issued on 13.11.1964 and warrant of possession was also

issued on 24.11.1964 and the mutation regarding the same was sanctioned in the year 1965. Admittedly, the predecessors-in-interest of the petitioner as well as the petitioner have been in possession of the land for several decades. Neither the auction carried out by the Rehabilitation Department nor the registered sale deeds executed have been challenged by the gram panchayat or any other authority. No claim has been raised by the gram panchayat prior to the passing of the impugned order even with respect to the possession of the land.

- (v) The impugned order and the cancellation deed is cryptic and non-speaking, inasmuch as, in the reply filed by respondent No.4, several facts including the fact that the gram panchayat was not the owner of the land and that there were registered sale deeds executed with respect to the land in question were mentioned and reliance had also been placed upon Section 110 of the Evidence Act, but none of the said aspects have been taken into consideration while passing the impugned order or while executing the cancellation deed. Section 110 of the Evidence Act is reproduced herein below:-

***“Section 110 of Evidence Act, Burden of proof as to ownership—When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”***

It is the admitted case of the parties including, the gram panchayat that the predecessors-in-interest of the petitioner and the petitioner have been in possession of the land and thus, the burden of proof that the petitioner is not the owner of the land

in question is on the person who affirms that they were not the owners. The documents of title as have been detailed in the chronological chart herein above clearly show that the predecessors-in-interest of the petitioner and the petitioner as well as respondent No.4 are the owners of the property.

- (vi) A perusal of the cancellation deed would show that neither the petitioner nor respondent No.4 were party to the same even though, it is the petitioner and respondent No.4 between whom the sale deed had been executed. Even the stamp fee to the extent of Rs.1,10,48,000/-, which was deposited by the petitioner and respondent No.4 at the time of registration of sale deed dated 06.05.2022, has not been returned.

29. Before parting with the present order, in order to be fair to the learned counsel for the gram panchayat, this Court would like to deal with the arguments and judgment referred to by learned counsel in support of his arguments.

30. The primary argument of the learned counsel for the applicant/gram panchayat is that in the present case only possessory rights have been given to the predecessors-in-interest of the petitioner and in support of his arguments, reliance was placed upon the judgment in **Bishamber Dayal's case (supra)**, to contend that a sale deed could also be executed for transferring only possessory rights. It had been submitted by learned counsel for gram panchayat that the facts as well as the law laid down in the said case are applicable to the present case. This Court has considered the said argument of learned counsel for the applicant/gram panchayat and the same has been found to be devoid of merits. A perusal of the said judgment would show that in the said case the recitals in the sale

deed itself showed that the sale deed had been executed on the basis of entry in the column of possession and that no evidence was produced to establish that the sellers therein were co-owners in the joint khewat. In the present case, the documents with respect to auction/allotment by the Rehabilitation Department and registered sale deeds clearly show that it is the ownership rights, which have been transferred and the said documents of title which have been produced before this Court, have not been denied by the State and thus, the facts of the case of the above-said judgment are not applicable to the facts of the present case. It would be also relevant to note that SLP bearing ***SLP No.22469 of 2019*** has been filed against the said judgment and the same is pending. Moreover, once the documents of title have been produced and the same are stated to be correct by the State in its reply, then, the entry in the jamabandies would stand rebutted. Even a perusal of the jamabandies relied upon by the learned counsel for the gram panchayat would show that in the cultivation column, possession was changing in accordance with the allotment/sales. The chart reproduced in para 3 of CM-8159-CWP-2023 filed by applicant/gram panchayat would show that with respect to the jamabandi for the year 1965-66 which is immediately subsequent to the year in which auction took place i.e., 1964 as well as in the jamabandies for the years 1970-71, 1975-76, 1980-81, 1985-86, the ownership entry has not been produced and the said column of ownership in the chart has been left blank. At any rate, since the original documents of title have been produced, thus, the presumption, if any, stands rebutted. The plea of the learned counsel for the gram panchayat to the effect that only possessory rights have been given, deserves to be rejected also on the ground that the gram panchayat was not a party to the auction proceedings and the State neither in its reply nor in its arguments has stated that the said aspect is

the reason for the issuance of show cause notice or for cancellation of sale deed or for passing of the impugned order. Learned counsel for the gram panchayat has thus tried to raise a plea, which is beyond the reason given by the authorities while passing the impugned order and cancelling the sale deed. Moreover, inspite of the said documents of title being in existence for the last 55 years and the predecessors-in-interest of the petitioner and the petitioner being in possession of the land for several decades, the gram panchayat has neither challenged the auction nor any of the sale deeds nor has claimed any right of possession prior to the passing of impugned order and cancellation deed.

31. Since the documents of title annexed with the present petition have been admitted by the State in its reply and the case of the petitioner is squarely covered under sub-clause (ii-a) of Section 2(g) of the Act of 1961, thus, this Court is of the opinion that there are no disputed questions of facts so as to dissuade this Court from allowing the present writ petition. Moreover, the impugned order has been passed in violation of the principles of natural justice, inasmuch as, no show cause notice has been issued to the petitioner and also in purported exercise of Chapter 5(1)(c) of the Haryana Registration Manual 159(A) and once, this Court has come to the conclusion that the said powers have been wrongly invoked and the right to property of the petitioner and respondent No.4 as enshrined under Article 300-A of the Constitution of India has been infringed, it is incumbent upon this Court to entertain the writ petition and to set aside the impugned action of the respondent authorities.

32. The argument of the learned counsel for the State to the effect that in the absence of challenge to the instruction/notification (Annexure P-16), the present writ petition cannot succeed, also deserves to

be rejected, inasmuch as, even in case the instructions are not set aside, then also, since the land in question is not covered within the definition of '*Shamilat Deh*', the authorities could not have invoked the said instruction/notification to pass the impugned order and to execute the cancellation deed. Thus, even without challenge to the said instruction/notification, the present writ petition being meritorious, deserves to be allowed.

33. Keeping in view the above-said facts and circumstances, the present writ petition is allowed and the impugned order dated 08.06.2022 (Annexure P-2) and the cancellation deed dated 09.06.2022 (Annexure P-3) are set aside.

34. Pending application(s), if any, stands disposed of in view of the above.

**June 01, 2023**  
*naresh.k*

**(VIKAS BAHL)**  
**JUDGE**

Whether speaking/reasoned:-  
Whether reportable:-

Yes  
Yes