

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

CWP-5282-1982 (O&M)
Date of Decision: 05.02.2024

BACHNA RAM AND ANOTHER
...Petitioners

Versus

THE STATE OF PUNJAB AND OTHERS
...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE HARSH BUNGER**

Present : Mr. Kashmir Singh, Advocate
for the petitioners.

Mr. Maninder Singh, D.A.G, Punjab.

Mr. B.D. Sharma, Advocate
for respondent No.3-Gram Panchayat.

HARSH BUNGER, J.

1. Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of *certiorari* for quashing of the eviction petition filed by Gram Panchayat, Dhanoor, Tehsil Samrala, District Ludhiana (respondent No.3) with a further prayer for restraining the authorities from proceeding further with the eviction proceedings and eviction of the petitioners from the land in question.
2. Briefly, respondent No.3-Gram Panchayat, Dhanoor filed an eviction petition under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (here-in-after referred to as 'the Act, 1961') seeking

eviction of petitioner No.1-Bachna Ram from the land in dispute. Present petitioner No.1 appeared in the said petition and submitted his written statement, opposing the prayer of the Gram Panchayat and seeking dismissal of the eviction proceedings.

3. During the pendency of the eviction proceedings, the petitioners have filed the instant writ petition seeking quashing of the eviction petition/proceedings by taking various pleas. The sum and substance of case of petitioners is stated in para 4 of the writ petition, which reads as under :-

“4. That according to the Revenue Records particularly Shajra Nasab upto August, 1947, the Village Dhanoor was wholly Muslim village --- on the migration of all the Muslim proprietors of village Dhanoor to Pakistan in the year 1947, all their interests in the land and property including their share in the Shamlat Deh became evacuee property and vested in the Custodian and subsequently came to be acquired by the Central Government by the operation of law under various enactments. After satisfying the claims of the Claimants, out of the evacuee property largely, the surplus rural evacuee lands and house land including land of the petitioners were sold by the Central Government to Punjab Government with effect from 1.4.1961 vide Government of India, Ministry of Rehabilitation, letter No.3(35)Pol/11-60 L&R dated 3.6.1961, which letter finds mention in definition of “Package Deal Property” under section 2(1) of the Punjab Package Deal Properties/Disposal Act, 1976, and also in the Schedule attached thereto, thereafter, referred as Package Deal Property Act. After the Punjab Government became the owner of surplus evacuee agricultural lands, including Shamlat Deh, which belonged to the Muslims who had migrated to Pakistan, as mentioned above, the State Government, gave land in possession of the petitioners on

lease at the first instance for ten years to the petitioners in the year 1961, with an undertaking that after they made it fit for cultivation, the lease would stand extended and renewed and ultimately the said land would be allotted to them on permanent basis or sold to them on concessional rates. Petitioners brought under cultivation with great efforts and expenses over number of years, the said leased out surplus evacuee land, which was Gair Mumkin and Banjar Qadim. They are in continuous possession of the said land for the last about 20 years.”

4. The petitioners claim that they are in possession of the land in dispute since 1961 onwards and being allottees under the Punjab Utilization of Land Act, 1949; the eviction petition was not maintainable nor respondent No.2 (District Development and Panchayat Officer, Ludhiana) had the jurisdiction to entertain the said eviction petition. The petitioners further claim that they have also moved applications for the purchase of the land in question and the matter was pending before the concerned authorities. The petitioners also claim that the land in dispute is not ‘*Shamlat Deh*’ but an evacuee property; therefore, the eviction petition/proceedings cannot be proceeded with and the same be quashed.

5. Per contra, learned State counsel has submitted that the submissions raised on behalf of the petitioners that the property is an evacuee property and vests with the custodian and not with the concerned Gram Panchayat, already stand settled by the Hon’ble Supreme Court in the case of ***Gram Panchayat of Village Jamalpur vs Malwinder Singh, 1985 AIR (SC) 1394***. It is submitted that since the petitioners are disputing that the land in question is not *Shamlat Deh* and in case, the petitioners have any legal right, title or interest in the land in dispute, then the said issue can be

raised before the concerned authorities under the Act, 1961 and/or the petitioners can file their independent title suit qua the land in dispute in accordance with the provisions of the Act, 1961. It is pointed out that the question of title qua land in question is required to be raised before the concerned/competent Forum/Court as the same would require leading of evidence; however the same cannot be gone into in this writ petition.

Accordingly, prayer for dismissal of the writ petition has been made.

6. We have heard learned counsel for the respective parties and perused the paper book with their able assistance.

7. The instant writ petition was filed in the year 1982. The issue regarding repugnancy between Administration of Evacuee Property Act, 1950 and Punjab Village Common Lands (Regulation) Act, 1953 came to be decided by Hon'ble Supreme Court on 09.07.1985 in the case of ***Gram Panchayat of Village Jamalpur (supra)*** by holding as under :-

“....Eight writ petitions were filed in the High Court of Punjab and Haryana, involving a common question of law as to the alleged repugnancy between the Administration of Evacuee Property Act of 1950 and, the Punjab Village Common Lands (Regulation) Act of 1953 (referred to herein as 'the Punjab Act of 1953').....

*2. The controversy in the writ petitions is between the right of the Gram Panchayats to the **Shamlat-deh** lands situated in those villages which falls within their jurisdiction and, on the other hand, the right of the Rehabilitation Department of the Central Government to allot lands of that description, to the extent of the evacuee interest therein, to persons who migrated from Pakistan to India after the partition of the country. The contention of the Central Government and, of persons to whom its Rehabilitation Department has allotted the **Shamlat-deh***

*lands on their migration to India, is that the interest, in such lands, of the Muslims who migrated to Pakistan is evacuee property which the Central Government has the right to allot under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. On the other hand, the contention of the Government of Punjab of the Gram Panchayats in Punjab and Haryana is that, by reason of the provisions of the Punjab Act of 1953, the interest of all persons, whether Hindus, Sikhs or Muslims, in the **Shamlat-deh** lands stood extinguished and those lands were placed by the said Act under the control and power of the respective Gram Panchayats.*

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5. The question as to the management and preservation of the property left by Muslims evacuees led to the passing of the East Punjab Evacuees (Administration of Property) Act 14 of 1947. That was an Act of the Punjab Legislature, section 4 of which provided that all interests in the property whether movable or immovable, of the evacuees, vested in the Custodian appointed by the State Government. That Act, like similar Acts passed by the other State Legislatures, was repealed and replaced by an Act passed by the Parliament, viz., the Administration of Evacuee Property Act, 1950, to which we will refer as the 'Central Act of 1950'. That Act came into force on April 17, 1950. Section 8(2) therefore provided that, if any property in the State had vested immediately before the commencement of the Act as evacuee property in any Custodian under any law repealed by the Act, that property shall, on the commencement of the Act, be deemed to be evacuee property and shall vest in the Custodian appointed for the State under the Act. As a result of this provision, the interest of all evacuees which had vested in the Custodian under the Punjab Act 14 of 1947, came to be vested in the Custodian appointed under the Central Act of 1950. In the villages which were wholly inhabited by Muslims and from which almost the entire population migrated to

*Pakistan, all the **Shamlat-deh** lands together with the other proprietary lands were declared evacuee property and came to be vested in the Custodian. In the villages which were inhabited both by Muslims and non-Muslims, the proprietary holdings of the Muslim evacuees vested in the Custodian and, along with that, the interest of the proprietors in the **Shamlat-deh** lands, such as it was, also vested in the Custodian.*

6. The point which arises for our consideration and which has been answered in the affirmative by the High Court of Punjab and Haryana is whether, there is any repugnancy between the provisions of the Central Act of 1950 and those of the Punjab Act of 1953.....

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*8. A mere reading of the two sections, namely, section 3 of the Punjab Act of 1953 and section 8(2) of the Central Act of 1950, would show that there is a direct conflict between the two provisions. Under section 4 of the East Punjab Evacuees (Administration of Property) Act 14 of 1947, which came into force on December 13, 1947, all interest in the property, movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. The Central Act of 1950, repealed the East Punjab Act 14 of 1947. Under section 8(2) of the Central Act of 1950, the evacuee property which was vested in the Custodian appointed by the State Government under the repealed Act, was to be deemed to be evacuee property declared as such under the Central Act and became vested in the Custodian appointed under the Central Act. Thereafter came the Punjab Act of 1953 under which, "Notwithstanding anything to the contrary contained in any other law for the time being in force", all rights, title and interest whatsoever in the **Shamlat-deh** lands on any village, came to be vested in the Panchayat having jurisdiction over the particular village. It is quite clear that as a result of this provision, the Custodian appointed under the Central Act of 1950 was divested of the **Shamlat-deh** lands, to the extent of the interest therein of the*

*Muslim proprietors who had migrated to Pakistan. If the Punjab Legislature had not passed the Act of 1953, the Custodian appointed or deemed to be appointed under the Central Act of 1950 could have dealt with the interest of the Muslim evacuees in the **Shamlat-deh** lands as evacuee property, though consistently with the limitations which operated upon that interest. He forfeited that power because the Punjab Act of 1953 extinguished the interests of all persons, whether Hindus, Sikhs or Muslims, in the **Shamlat-deh** lands and vested all rights, title and interest in such lands in the respective Panchayats having jurisdiction over the village. It may be mentioned that the Punjab Act of 1953 was repealed and replaced by an Act of 1961, bearing a similar title. That Act defines the **Shamlat-deh** lands in a slightly different manner but, that difference is inconsequential for resolving the controversy which arise before us.*

9. Having seen that there is a direct conflict between section 8(2) of the Central Act of 1950 and section 3 of the Punjab Act of 1953 on the question of vesting of evacuee property, the question which arises is as to which of these two Acts would prevail.

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*14.In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry No. 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry No. 18 of the State List. The law passed by the State Legislature, being a measure of agrarian reform is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even in so far as **Shamlat-deh** lands are concerned.*

15. In the result, the judgment of the High Court is set aside and this appeal is allowed. There will be no order as to costs..... ”

8. It is apposite to state here that the Act, 1961 came to be amended in the year 1995 so as to validate all the allotments/transfers made prior to enacting of Section 2(g)(ii-a) of the Act, 1961, which came into force with effect from 09.07.1985. Section 2(g)(ii-a) of the Act, 1961 reads as under :-

“2(g)[(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.]”

9. Coming to the case in hand; as regards the plea of the petitioners that the land in question was leased out and/or allotted to them by the Government with an understanding that the lease will be extended and ultimately, the land would be allotted to them on permanent basis or sold to them on concessional rates; it is observed that the petitioners have not placed on record any material/document to *prima facie* show that the land in dispute was ever declared as evacuee property or the said land was allotted/leased to the petitioners or otherwise transferred to them by the Government.

10. Apparently, the Gram Panchayat had initiated eviction proceedings against the petitioners by filing an eviction petition under the Act, 1961. Since the petitioners have claimed that the land in dispute is not *Shamlat Deh*, in our considered view, the said question would be a question of title qua the land in question and the said plea is required to be raised before the authorities under the Act, 1961 in the eviction proceedings already initiated by the Gram Panchayat against the petitioners. In this

regard, it would be gainful to refer to Sections 7 of the Act, 1961, which read as under :-

7. Power to put panchayat in possession of Shamilat deh-

(1) The collector shall, on an application made to him by a panchayat, or by an officer, duly authorised in this behalf by the state government by a general or special order, after making such enquiry, as he may think fit and in accordance with such procedure as may be prescribed put the panchayat in possession of the land or other immovable property in the Shamilat deh of that village which vests or is deemed to have been vested in it under this Act and for so doing the collector may exercise the powers of a revenue court in relation to execution of a decree for possession of land under the Punjab Tenancy Act, 1887.

Provided that if after the receipt of the application and before the Panchayat is put in possession of the land or other immovable property in the shamilat deh, a question of right, title or interest in such land or property is raised by any person and a prima facie case is made out in support thereof, the Collector shall direct the person who has raised such question to submit his claim under section 11 and till the question is so determined, the application shall remain pending:

Provided further that if the person, who has raised the question of right, title or interest, fails to submit his claim under section 11 within the time prescribed under that section, the Collector shall presume that no question of right, title or interest is involved and shall proceed further to put the Panchayat in possession of the land or other immovable property in the shamilat dehs.

(2) An appeal against the order of the collector under sub-section(1) shall lie to the Commissioner and the period

of limitation for such an appeal shall be sixty days from the date of the order appealed against.

11. Apart from the above, in case, the petitioners assert any legal right, title or interest in the land in dispute, then they are well within their rights to file an independent title suit qua the land in question in terms of Section 11 of the Act, 1961, which reads as under:-

11. Decision of claims of right, title or interest in Shamilat deh.-

(1) Any person or Panchayat claiming right, title or interest in any land, vested or deemed to have been vested in a Panchayat under this Act or claiming that any land has not so vested in a Panchayat, may submit to the Collector, within such time, as may be prescribed, a statement of his claim in writing and signed and verified in the prescribed manner and the Collector shall have jurisdiction to decide such claim in such manner as may be prescribed.

(2) Any person or a Panchayat aggrieved by an order of the Collector made under sub-section (1) may, within sixty days from the date of the order, prefer an appeal to the Commissioner in such form as manner as may be prescribed and the Commissioner may after hearing the appeal, confirm, vary or reverse the order appealed from and may pass such as he deems fit.”

12. Learned counsel for the petitioners has further submitted that in somewhat similar circumstances, this Court in ***Hans Raj and others vs The State of Punjab and others, 1980 PLJ 297***, had quashed the direction of the authorities for evicting the similarly circumstanced persons as the petitioners herein; however, in our considered view, the said judgment is not applicable in the facts and circumstances of the present case inasmuch as that in the operative part of the said judgment, it is clearly stated that the authorities

would be within their rights to proceed against the petitioners in those writ petitions in accordance with law.

In the instant case, the Gram Panchayat has already initiated the eviction proceedings under Section 7 of the Act, 1961, which is in accordance with law.

13. In view of the above discussion, we do not find any merit in the instant writ petition and the same is hereby dismissed.

14. Since the main case itself has been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(HARSH BUNGER)
JUDGE

February 05, 2024
gurpreet

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