

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

CWP-4501-1987 (O&M)
Date of Decision: 05.02.2024

JAGTA RAM (DECEASED) THROUGH HIS LRs.
AND OTHERS

...Petitioners

Versus

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. Amrik Singh, Advocate
for respondent No.3.

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 the eviction order dated 18.03.1986 (Annexure P-1) passed by the District Development and Panchayat Officer (here-in-after called as 'DDPO-cum-Collector'), Ludhiana, upon an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (here-in-after referred to as 'the 1961 Act') filed by respondent No.3- Gram Panchayat, Rahimabad Kalan, Tehsil Samrala, District Ludhiana.

Petitioners further seek quashing of order dated 28.11.1986 (Annexure P-2) passed by the Joint Director, Panchayat, Punjab, Chandigarh (exercising the powers of Commissioner under the Act, 1961); whereby, the

appeal preferred by them against the eviction order dated 18.03.1986 has been dismissed.

2. Briefly, Gram Panchayat Village Rahimabad Kalan, Tehsil Samrala, District Ludhiana, filed an eviction petition under Section 7 of the 1961 Act against the petitioners seeking their eviction from the land in dispute on the plea that the Gram Panchayat is the owner of land in question and the petitioners herein are in its unauthorized possession.

3. The afore-said eviction petition was contested by the petitioners herein on the plea that the petitioners had taken land on lease from the Government for a period of ten years and had made the said land cultivable in the year 1961 and since then, they have been in cultivating possession thereof. It is further submitted that on the expiry of the allotment period, the petitioners had also applied to the Rehabilitation Department at Jalandhar for the purchase of said land and that matter is *sub-judice* as yet and the rights, claim, title and interests of the petitioners stand unaffected. It was stated that the petitioners had no relations with the Gram Panchayat as that of landlord and the tenant cultivator as they never paid any rent/batai to the Gram Panchayat and no auction was ever held as regards this land by the Gram Panchayat and neither any notice was served upon them by the Gram Panchayat for vacating the disputed land.

4. The learned Collector-DDPO, Ludhiana vide order dated 18.03.1986 (Annexure P-1), ordered eviction of the petitioner from the land in dispute.

5. Being dissatisfied with the afore-said eviction order dated 18.03.1986 (Annexure P-1), the petitioners preferred an appeal before the Joint Director, Panchayat, Punjab (exercising the powers of Commissioner

under the Act, 1961); however, the said appeal came to be dismissed along with other appeals vide order dated 28.11.1986 (Annexure P-2).

6. In the afore-mentioned circumstances, the petitioners have filed the instant writ petition before this Court.

7. Learned counsel for the petitioners submits that the impugned orders are wrong, illegal and arbitrary and the same have been passed without appreciating the facts/evidence placed on record as well as the law on the issue. Learned counsel for the petitioners submits that the land in dispute is not covered under the definition of *Shamilat Deh* as the said land was allotted to the petitioners under the Punjab (Utilization of Lands) Act, 1949 (in short 'the 1949 Act') with the assurance by Government that they would get the land on nominal price and made owners thereof. It is, therefore, contended that the action of respondents under Section 7 of the 1961 Act is wholly without jurisdiction. It is submitted that the land in question, is covered under the provisions of Package Deal Property (Disposal) Act, 1976. It is further submitted that the right, title and interest of the petitioners are protected under Section 4(3)(1) and Section 4(3)(2) of the 1961 Act. Petitioners have placed reliance upon a judgment rendered by this Court in case titled as *Hans Raj and others vs The State of Punjab and others (Civil Writ Petition No.2280 of 1971*, decided on *04.03.1980*). Another submission has been raised on behalf of the petitioners that they have become owners by way of adverse possession.

Accordingly, it is prayed that the impugned orders be quashed.

8. Per contra, learned State counsel has opposed the prayer made on behalf of the petitioners by submitting that as per the revenue records, the land in dispute is reflected as ownership of Gram Panchayat and the

petitioners have no right, title or interest in the same. It is submitted that earlier the petitioners had filed a ***Civil Writ Petition No. 1778 of 1983, inter-alia***, seeking quashing of the eviction proceedings initiated against them by the then Gram Panchayat Rahimabad under Section 7 of 1961 Act; however the said writ petition was dismissed as withdrawn on 24.08.1985. Therefore, it is contended that there is no dispute as regards the maintainability of eviction petition under Section 7 of the 1961 Act by Gram Panchayat against the petitioners qua land in dispute. It is submitted that the petitioners have been rightly ordered to be evicted from the land in dispute by the authorities under the 1961 Act, especially when the petitioners had failed to raise a question of right, title or interest in such land/property and also to make out a prima facie case in support thereof. It is further submitted that the issue regarding repugnancy between Administration of Evacuee Property Act, 1950 and Punjab Village Common Lands (Regulation) Act, 1953, 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***. Accordingly, prayer for dismissal of the writ petition has been made.

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

10. As regards the maintainability of eviction proceedings qua the land in dispute by Gram Panchayat Rahimabad against the petitioners under the provisions of the 1961 Act is concerned, it is not disputed before us that the petitioners had earlier filed ***Civil Writ Petition No. 1778 of 1983, inter-alia***, seeking quashing of the eviction proceedings initiated against them by the then Gram Panchayat Rahimabad under Section 7 of 1961 Act; however the said writ petition was dismissed as withdrawn on 24.08.1985.

11. 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.....”

12. As regards the plea of the petitioners that the land in question was leased out/allotted to them by the Government with an assurance that they would get the land on nominal price and that their possession is protected under section 4(3) of 1961 Act; 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 allotted/leased to the petitioners or otherwise transferred to them by the Government. Neither before the authorities under the 1961 Act nor before this Court, the petitioners have placed on record any

material/document to substantiate their plea that their possession is protected under section 4(3) of 1961 Act. Section 7 of the 1961 Act reads 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 Shamilatdeh 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.

13. In terms of the first proviso to Section 7(1) of the 1961 Act, it is envisaged 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. Therefore, it is not on the mere raising of a question of title or making an averment that a question of title is involved that the Collector is to refer the parties to get their titled decided under Section 11 of the 1961 Act. In fact, it is to be proved *prima facie* on the basis of documents/material, that a question of title is really involved. Since the petitioners have failed to show that the land in question was ever allotted / leased to them by government and/or that they fulfil the conditions / requirements of Section 4(3) of the 1961 Act so as to claim protection of their possession; no relief can be granted to them.

14. Reliance placed by petitioners on the decision rendered in *Hans Raj's case (supra)*, is misplaced, 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 initiated eviction proceedings under Section 7 of the 1961 Act against the petitioners in accordance with law and eviction order (Annexure P-1) was passed, which

was further upheld by the Appellate Authority under the 1961 Act.

15. In view of the above discussion, we do not find any merit in the instant writ petition and the same is hereby dismissed and the eviction orders (Annexures P-1 and P-2) are upheld .

16. 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