

(2013) 11 P&H CK 0082
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 16554 of 2010

Anar Singh

APPELLANT

Vs

Commissioner, Rohtak Division and Others

RESPONDENT

Date of Decision : 08-11-2013

Acts Referred:

Citation : (2014) 174 PLR 136

Hon'ble Judges : Rakesh Kumar Jain, J; Rajive Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—The petitioner prays for issuance of a writ of certiorari quashing order dated 10.3.2010, passed by the Commissioner,

Rohtak Division, Rohtak, dismissing his appeal on the ground that as the land, in dispute has fallen within territorial limits of Municipal Council

Sampla, District Rohtak, the petition u/s 13A and as a consequence, the appeal u/s 13AA of the Punjab Village Common Lands (Regulation) Act,

1961 (as applicable to Haryana) (hereinafter referred to as the "1961 Act"), is no longer maintainable. The petitioner, alleging that the land, in

dispute, does not vest in Gram Panchayat, Sampla, filed Civil Writ Petition No. 14867 of 2004, praying that the petitioner and other proprietors of

the village, be declared owners. The petitioner placed reliance upon a Full Bench judgment of this Court in Jai Singh and Others Vs. State of

Haryana, . The writ petition was dismissed as withdrawn on 2.11.2004 with liberty to the petitioner to pursue his remedy u/s 13A of the 1961 Act.

The petitioner filed a suit u/s 13A of the 1961 Act before the Collector, Rohtak, on 1.3.2005, claiming that the land, in dispute, does not vest in

the Gram Panchayat. The Collector dismissed the suit on 29.5.2007. Aggrieved by this order, the petitioner preferred an appeal before the

Commissioner. In the meanwhile, pursuant to a notification issued under the Haryana Municipal Act, 1973 (hereinafter referred to as "the

Municipal Act"), the Sabha area of Gram Panchayat, Sampla, came to be included within the territorial limits of Municipal Council, Sampla. The

Commissioner dismissed the appeal by holding that as the land has fallen within territorial limits of Municipal Council, Sampla, the suit and the

appeal are no longer maintainable.

2. Counsel for the petitioner submits that the suit was filed before the land in dispute came to fall within territorial limits of Municipal Council,

Sampla. The mere fact that during pendency of proceedings, the land, in dispute, has fallen within municipal limits, would not oust jurisdiction of the

Collector to determine, whether the land, in dispute, is or is not "Shamilat Deh". It is further submitted that the question, in hand, is not, whether the

land, in dispute, has come to vest in Municipal Council, Sampla but whether the land, in dispute, is "Shamilat Deh", as only if the land, in dispute, is

Shamilat Deh", would it vest in the Gram Panchayat and thereafter in the Municipal Council, under the Haryana Municipal Act, 1973 (hereinafter

referred to as the "Municipal Act") read along with Section 7 of the Haryana Panchayati Raj Act, 1994. (hereinafter referred to as the "Panchayat

Act"). Counsel for the petitioner further submits that a perusal of Section 13A read along with Section 13B of the 1961 Act, reveals that the only

authority, empowered to decide whether a parcel of land is or is not "Shamilat Deh", is the Collector exercising power u/s 13A of the 1961 Act,

The jurisdiction of all other authorities, including a Civil Court, is barred. The mere inclusion of the sabha area of the Gram Panchayat in the area of

the Municipal Council, does not divest the Collector or the Appellate Authority of power to decide whether land is or is not "Shamilat Deh" and

whether it vests or does not vest in a Gram Panchayat and as a consequence in the Municipal Council. It is prayed that the impugned orders may

be set aside and the Appellate Authority may be directed to decide the appeal on merits.

3. Counsel for Municipal Council, Sampla, submits that the appeal has been rightly dismissed. Section 7 of the Panchayat Act provides that if the

sabha area of a Gram Panchayat is included within the area of a Municipal Council, a Gram Panchayat shall cease to exist. The Gram Panchayat

having ceased to exist and the land having vested in the Municipal Council, the 1961 Act is no longer applicable and the Appellate Authority,

exercising power under the 1961 Act, can no longer exercise power under the 1961 Act. The only forum, empowered to decide a dispute, after

the land has vested in a Municipal Council, is a civil Court. The mere fact that the land may or may not have been ""Shamilat Deh"", is irrelevant for

the purpose of deciding the forum, which would now decide the dispute. The land, in dispute, has fallen within limits of Municipal Council, Sampla,

pursuant to notification dated 6.4.2007 and, therefore, vests in the Municipal Council.

4. We have heard counsel for the parties, perused the impugned orders as well as relevant statutory provisions.

5. The parties do not dispute that the Gram Panchayat has ceased to exist and the land in dispute has come to vest in the Municipal Council

6. The question that arises for adjudication is, the effect of a notification issued under the Municipal Act, extending municipal limits to include the

sabha area of a Gram Panchayat within municipal limits, upon proceedings pending under Sections 13 & 13A of the 1961 Act.

7. At this stage, it would be appropriate to point out that we are not dealing with the repeal or amendment of an enactment, or the omission of a

provision but the effect of extension of municipal limits to include the sabha area of a Gram Panchayat, upon proceedings pending u/s 13 or 13A of

the 1961 Act.

8. An answer to the question posed, would require consideration of the Scheme of the 1961 Act, particularly Sections 13, 13A, 13B, Sections

2(22-B), 61(h) of the Municipal Act and Section 7A of the Panchayat Act, which read as follows:--

13 Bar of Jurisdiction.--No civil court shall have jurisdiction.--

(a) to entertain or adjudicate upon any question whether--

(i) any land or other immovable property is or is not shamilat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a

Panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue Court, officer or authority empowered to do so under this Act.

13-A Adjudication.--(1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development

and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf,

claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may

file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable

property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction

in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the

proceedings u/s 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits under Sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908 (5 of 1908).

13-B. Appeal and revision.--(1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days

from the date of order passed under sub-section (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as

may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit;

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7, is deposited with the

Collector.

(2) The Commissioner may, suo motu {or on an application made to him by any person aggrieved by an order passed under the proviso to sub-

section (1) of section 7 at any time} call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him

for the purpose of satisfying himself as to the legality or propriety of the

proceedings or order and pass such order in relation thereto as he may deem fit.

2(22B) of the Haryana Municipal Act, 1973

Shamilat Deh"" includes--

(1) lands described in the revenue records as shamilat Deh or shamilat Tikkas;

(2) lands described in the revenue records as shamilat Tarafs, Pattis, Pannas or Tholas and used according to revenue records for common

purpose or for the benefit of the community or a part thereof;

(3) lands described as Banjar Qadim and used for common purposes according to revenue records;

(4) lands used or reserved for the benefit of the community including streets, lanes, playgrounds, schools, drinking wells or ponds;

and

(5) lands belonging to the Gram Panchayat of village the Abadi Deh of which has been included in a municipality and where the Panchayat consist

of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi. Deh of which has been included in a

municipality,

but does not include land which--

(i) has been allotted on quasi-permanent basis to a displace persons;

(ii) has been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954) or has been treated as

evacuee property under the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) or is of composite nature in which evacuee

and non-evacuee shares have not yet been separated;

(iii) has been partitioned and brought under cultivation by individual land holders before the 26th January, 1970;

(iv) having been acquired before the 26th January, 1970, by a person by purchase 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 Tarafs, Pattis, Pannas or Tholas and is not used according to revenue records for common

purposes or for the benefit of the community of part thereof;

(vi) lies outside the Abadi Deh and is used as Gitwar, Bara, Manure-pit or house or for cottage industry;

(vii) was shamilat Deh, was assessed to land revenue and has been in the individual cultivating possession of cosharers not being in excess of their

respective shares in it on or before the 26th January, 1970;

(viii) is used as a place of "worship" or for purposes subservient thereto; and

(ix) belongs to the Gram Panchayat of a village the Abadi Deh of which has not been included in a municipality and where the Panchayat consists

of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has not been included in

a municipality; [inserted by Haryana Act No. 17 of 1999].

61 (h) of the Haryana Municipal Act, 1973 Property vested in committee.--

(1) XX XX XX

(a)XXXXXX

(b)XXXXXX

(c) XX XX XX

(d) XX XX XX

(e)XXXXXX

(f)XXXXXX

(g) XX XX XX

(h) belongs to the Gram Panchayat of a village the Abadi Deh of which has not been included in a municipality and where the Panchayat consists of

more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has not been included in a

municipality; [inserted by Haryana Act No. 17 of 1999].

Section 7 of the Haryana Panchayati Raj Act, 1994 Titled Sabha Area Establishment and Constitution of Gram Sabha and Gram Panchayats

6. Demarcation of sabha area.--(1) The Government may, by notification, declare any village or a part of a village or group of contiguous villages

with a population of not less than five hundred to constitute one or more sabha areas:

Provided that Government may in exceptional cases, by reasons to be recorded in writing, relax the limit of population of 500:

Provided further that neither the whole nor any part of a-

(a) municipality constituted under the Haryana Municipal Act, 1973;

(b) cantonment;

shall be included in a sabha area unless the majority of voters in any municipality desire the establishment of a Gram Panchayat in which case the

assets and liabilities, if any, of the municipality shall vest in the Gram Panchayat and the municipality shall cease to exist.

(2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.

(3) Government may, by notification, include any area in or exclude any area from the sabha area.

(4) if the whole of the sabha area is included in a municipality or a cantonment, the Gram Panchayat shall cease to exist and the assets and liabilities

of it shall vest in the municipality or cantonment, as the case may be.

(5) XX XX XX

9. A Gram Panchayat was constituted as an administrative unit, under the Punjab Gram Panchayat Act, 1952, capable of holding property,

situated within the sabha area, now repealed and replaced by the Haryana Panchayati Raj Act, 1994. The land held by a Gram Panchayat includes

common land. The 1961 Act was enacted to vest ""common land""/"" Shamilat Deh"" of a village in a Gram Panchayat. Section 2(g) of the 1961 Act,

defines ""Shamilat Deh"", whereas Sections 3 and 4 thereof, provide for vesting of Shamilat Deh, in a Gram Panchayat, as defined under the Punjab

Village Common Lands (Regulation) Act, 1953, the Pepsu Village Common Lands (Regulation) Act, 1954 and Section 2(g) of the 1961 Act.

10. Section 13 of the 1961 Act prohibits any court or forum, other than the Collector, authorised in this behalf, from entertaining or adjudicating

upon any question, whether any land or other immovable property is or is not ""Shamilat Deh"" and whether any land or other immovable property

or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat.

11. Section 13A of the 1961 Act provides that any person or a Panchayat claiming right, title or interest in any land or other immovable property

vested or deemed to have vested in the Panchayat under the 1961 Act, may file a suit for adjudication whether a parcel of land and other

immovable property is ""Shamilat Deh"" or not etc. Section 13B of the 1961 Act provides for an appeal against an order passed u/s 13A of the 1961 Act.

12. Section 7(4) of the ""Panchayat Act"", provides that upon inclusion of the sabha area of a Gram Panchayat in municipal limits, the Gram

Panchayat shall cease to exist and its assets and liabilities shall vest in a Municipality. Section 2(22B) of the Municipal Act defines ""Shamilat Deh.

Section 61(h) of the 1973 Act provides that ""Shamilat Deh"", shall vest in a Municipality.

13. A conjoint appraisal of these provisions reveals that any person including a Gram Panchayat seeking a declaration that the land has or has not

vested in a Gram Panchayat, is required to file a suit u/s 13A and then an appeal u/s 13B thereof. The Collector and the Appellate Authority,

empowered to decide this dispute exercise power under the 1961 Act and in relation to land that is or is deemed to be ""Shamilat Deh"".

14. After issuance of a notification under the Municipal Act, including the sabha area of a Gram Panchayat, within municipal limits, Section 7(4) of

the Panchayat Act comes into play and provides that the Gram Panchayat shall cease to exist and its assets and liabilities shall vest in a

municipality. Thus, after issuance of a notification under the Municipal Act, section 7(4) of the Panchayat Act, brings about the demise of the Gram

Panchayat, as an administrative unit and provides that its assets, including its common land, shall vest in a Municipal Committee. The common land

of a Gram Panchayat is, therefore, no longer amenable to or subject to statutory control by any provision of the 1961 Act. The land is henceforth

governed by provisions of the Municipal Act. Another consequence of section 7(4) of the Panchayat Act is that a Collector, exercising power u/s

13A of the 1961 Act, or an Appellate Authority, hearing an appeal u/s 13B of the 1961 Act, can no longer declare whether that land vests or does

not vest in a Gram Panchayat. The mere fact that land was ""Shamilat Deh"" under the 1961 Act or that Sections 2(22-B) and 61(h) of the

Municipal Act use the words ""Shamilat Deh"", would not empower a Collector, appointed under the 1961 Act, to exercise power with respect to

land, that has ceased to be part of a sabha area, ceased to be amenable to provisions of the 1961 Act. The fact that the Municipal Act may not

provide a forum for deciding whether land was or was not ""Shamilat Deh or whether it vested or did not vest in a Gram Panchayat cannot confer jurisdiction upon the Collector, or the Appellate Authority, exercising powers under the 1961 Act, to entertain such a dispute or to adjudicate a pending petition or appeal after the Gram Panchayat has ceased to exist and the land has vested in a Municipal Council. The petitioner filed a petition u/s 13 of the 1961 Act which was dismissed. During pendency of an appeal, a notification was, admittedly, issued to include the sabha area of the Gram Panchayat within municipal limits of Municipal Council, Sampla. After issuance of the notification, the Gram Panchayat and the sabha area have ceased to exist and the land, in dispute, is no longer amenable to provisions of the Panchayat Act or the 1961 Act. The Collector and the Appellate Authority, exercising powers under the 1961 Act, have no jurisdiction, to decide whether land vests or does not vest in a Gram Panchayat. The Appellate Authority has, therefore, rightly dismissed the appeal. The petitioner would, however, have to approach a civil court for adjudication of his rights in the Shamilat Deh of the erstwhile Gram Panchayat. In view of what has been recorded hereinabove, we affirm the order passed by the appellate authority and dismiss the writ petition.