

(2017) 02 P&H CK 0275

In the Punjab And Haryana At Chandigarh

Case No : Civil Miscellaneous No. 10456, 10457-Civil Writ Petition 2015, Civil Writ Petition No. 19364 Of 2001

Attar Singh

APPELLANT

Vs

Commissioner, Rohtak Division, Rohtak & Ors.

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 1(a), 2(g), 2(g)(i), 2(g)(ii), 2(g)(iii), 2(g)(iv), 2(g)(v), 2(g)(vi), 2(g)(vii), 2(g)(viii), 2(g)(ix), 2(g)(5), 4, 4(3)(ii), 13A, 13AA, 7

Punjab Holdings (Consolidation And Prevention Of Fragmentation) Act, 1948 — Section 2(bb), 18, 23A

Punjab Gram Panchayat Act 1952 — Section 3

Income Tax Act, 1961 — Section 269SS, 276DD

General Clauses Act, 1897 — Section 6

Code Of Civil Procedure, 1908 — Order 1 Rule 8

Citation : (2017) 02 P&H CK 0275

Hon'ble Judges : S.S. Saron, J;Arun Palli, J;Lisa Gill, J

Bench : Full Bench

Advocate : Mahavir Sandhu, Randhir Singh, S.P. Chahar

Final Decision : Allowed

Judgement

The petitioner Attar Singh filed CWP No.19364 of 2001 for himself being a 'bisweddar' and also on behalf of other proprietors of village Kiloli, Tehsil and District Jhajjar in terms of Order 1 Rule 8 of the Code of Civil Procedure seeking quashing of the order dated 12.11.1999 (Annexure P-6) passed by the Assistant Collector Ist Grade, Jhajjar (respondent No.3), order dated 17.07.2000 (Annexure P-7) passed by the Collector, Jhajjar (respondent No.2) and order dated 25.10.2001 (Annexure P-8) passed by the Commissioner, Rohtak Division, Rohtak (respondent No.1); besides, mutation No.409 dated 28.12.1954 (Annexure P-2) was also assailed.

The petitioner has placed on record Jamabandi for the year 1950-51 (Annexure P-1) in respect of land measuring 1215 bighas 16 biswas in village Kiloli, Tehsil

Jhajjar, District Rohtak, which is subject matter of dispute in the present case. The ownership of the said land is recorded in the name of 'shamlat deh hasab paimana malkiat'. In the column of cultivation it is recorded as 'makbuja malkan'. The break-up of the land has been given as follows:-

Chahi Pukhta Digar

Dehri Dhikli

Dehri

Barani

Bhoor

Banjar Jadeed

Banjar Kadeem

Gair Mumkin

21-10

0-1

72-8

180-17

24-18

1-17

810-2

113-2

According to the petitioner, the land measuring 1215 bighas 16 biswas is the ownership of the petitioner and other proprietors of the village according to their proportionate share in it. However, the Assistant Collector IInd Grade, Jhajjar without giving any notice to the petitioner and other proprietors of the village body wrongly sanctioned mutation No.409 in respect of the said land in favour of 'Gram Pancahyat Deh' on 28.12.1954 (Annexure P-2). The land was mutated in favour of the 'Gram Panchayat Deh' in view of Govt. letter dated 23.02.1954.

The Gram Panchayat, Kiloli initially filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in Haryana) ('1961 Act' - for short) against some of the land owners before the Assistant Collector Ist Grade, Jhajjar on 03.06.1987. The respondents/land owners in the said petition raised objections to the effect that the Gram Panchayat was not the owner of the land in question and they claimed possession over the land for more than fifty years i.e. from the time of their ancestors. The land had remained 'banjar qadim' and the Gram Panchayat had taken an area of 1215 bighas 16

biswas of 'shamlat deh' land in its ownership and possession. It is stated that in fact in the village, the total area of 'shamlat deh' land was 2694 bighas 94 biswas which was more than 25% of the total 'shamlat deh' land area of the village. Besides, question of title was also involved and till the same was not decided, the application was not maintainable. The learned counsel for the applicant-Gram Panchayat (respondent No.5 herein) before the Assistant Collector Ist Grade, Jhajjar, it was observed, could not give satisfactory reply to the said contentions. The objection to decide the question of title was accepted on 20.04.1988 (Annexure P-9). The application was consigned to the record room. It was ordered that regarding the land in dispute, a case be filed under Section 13-A of the 1961 Act, which relates to 'adjudication'. Section 13-A reads as under:-

"Adjudication - (1) Any person or in 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 authorized 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 'shamlat 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 under Section 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)."

The above provision, therefore, provides a complete procedure for adjudication by way of a suit as to whether any land or immovable property is 'shamlat 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 the 1961 Act. Such adjudication is to be done in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated.

It may, however, be noticed that at the time when the order dated 20.04.1988 (Annexure P-9) was passed by the Assistant Collector Ist Grade, Jhajjar, the provisions of Section 13-A were as were applicable at that time and had been inserted by Haryana Act No.2 of 1981. Section 13-A was omitted by Haryana Act No.9 of 1992 and thereafter, Section 13-A and Section 13-AA were inserted by Haryana Act No.9 of 1999 Haryana Govt. Gazettee (Extra) LS dated 10.03.1999.. The above reproduction of Section 13-A of the 1961 Act is as it is at present.

Some proprietors of the village namely Risal Singh and others filed a suit (Annexure P-3) for declaration and permanent injunction regarding the land in question against the Gram Panchayat of village Kiloli (respondent No.5) before the Assistant Collector Ist Grade, Jhajjar (respondent No.3) on 12.07.1988. The said land owners stated that the Gram Panchayat of village Kiloli (respondent No.5) made a wrong statement before the Revenue Officer to the effect that the land in dispute was 'shamlat deh' and therefore, as per law vested in it. Thereafter, mutation No.409 dated 28.12.1954 (Annexure P-2) was sanctioned in favour of Gram Panchayat, Kiloli (respondent No.5) in the absence of the applicants. The land, it was stated, did not vest in the Gram Panchayat (respondent No.5) and neither was it 'shamlat deh' land. The applicants/land owners, it was claimed, were in cultivating possession of the land according to their proportionate share therein as owners. Their possession was intact before 26.01.1950 The date is fixed in clauses (iii), (iv) and (viii) of Section 2 (g) of the 1961 Act for exclusion of the land from the definition of 'shamlat deh' by showing it to be partitioned and brought under cultivation by individual land holders; or having been acquired by a person by purchase or an exchange for proprietary land from a co-sharer in the 'shamlat deh' and is so, recorded in the Jamabandi or is supported by a valid deed; or was assess to land revenue and has been in the individual cultivating possession of the cosharers not being in excess of their respective shares, respectively.

. Besides, the land was 'banjar qadim' and the same was also more than 25% of the total revenue estate of the village The averments regarding the land being more than 25% of the total revenue estate of the village were made as the proviso to clause (5) of Section 2 (g) of the 1961 Act which provides for inclusion of lands in 'shamlat deh' related to lands in any village described as 'banjar qadim' and used for common purposes of the village according to the revenue records envisaged that the 'shamlat deh' at least to the extent of twenty-five per centum of the total area of the village does not exist in the village. The said proviso to clause (5) of Section 2 (g) has since been omitted by Haryana No.9 of 1992 w.e.f. 11.02.1992.. Therefore, it did not vest in the Gram Panchayat, Kiloli (respondent No.5).

The Gram Panchayat, Kiloli (respondent No.5) filed a written statement (Annexure P-4) dated 12.12.1988 to the said suit (Annexure P-3). It was stated that proclamation in the case was affected in the village and the applicants and other respondents were also in know of the mutation proceedings. It is stated that the mutation of the land in question was sanctioned as the land vests with the Gram Panchayat (respondent No.5). The applicants/land owners had forcibly occupied the land in question.

The Assistant Collector Ist Grade vide order dated 12.11.1999 (Annexure P-6) in another suit instituted on 15.03.1999 titled Rissal Singh and others v. Gram Panchayat, Village Kiloli dismissed the claim of the land owners. The Gram Panchayat, Kiloli (respondent No.5) was held as owner of the land in dispute;

besides, mutation No.409 dated 28.12.1954, it was held, was legally and rightly sanctioned in favour of the Gram Panchayat, Kiloli (respondent No.5).

Attar Singh (petitioner) and two others filed an appeal against the order dated 12.11.1999 (Annexure P-6) passed by the Assistant Collector Ist Grade, Jhajjar before the Collector, Jhajjar. The Collector vide order dated 17.07.2000 (Annexure P-7) came to the conclusion that by virtue of mutation sanctioned in 1954 i.e. mutation No.409 dated 28.12.1954 (Annexure P-2), the Gram Panchayat (respondent No.5) was owner of the land in dispute. The possession of the appellants before the Collector, i.e. the landowners was held to be illegal. It was further held that if the land owners had any objection then they were liable to file a case against the said mutation in the competent Court of law. The revision petition filed by Attar Singh before the Commissioner, Rohtak Division, Rohtak along with other cases was dismissed on 25.10.2001 (Annexure P-8).

Another order in the case titled Attar Singh and others v. State of Haryana and others CWP No.15644 of 1991 was passed by this Court on 21.12.1998 (Annexure P-5). In the said petition, an order dated 03.07.1989 was passed by the Assistant Collector Ist Grade, Jhajjar whereby the suit filed by the petitioners/ landowners under Section 13-A of the 1961 Act was dismissed. A challenge was also made to an order dated 13.11.1990 and 26.04.1992 whereby orders of the Assistant Collector were upheld by the Collector, Rohtak and in revision by the Commissioner, Rohtak Division, Rohtak respectively. It was observed that the suit of the petitioners was dismissed solely on the ground that the same could have been filed within five years of the enforcement of the amended Rules which came into force on 12.01.1981. The Assistant Collector Ist Grade, however, held that the suit filed under Section 13-A of the 1961 Act on 13.07.1988 was barred by time.

The counsel for the petitioners Attar Singh and others stated before this Court in the said petition (CWP No.15644 of 1991) that the finding of the Assistant Collector Ist Grade that the suit was barred by time was clearly untenable inasmuch as the cause of action had accrued to the petitioners only when the land in dispute was threatened to be leased out. It was contended that it was only then that the petitioners felt aggrieved and filed a suit under Section 13-A of the 1961 Act.

The learned counsel appearing for the Gram Panchayat (respondent No.5) fairly conceded that the orders were not sustainable in law and the same may be quashed. In view of the fair concession extended by the counsel for Gram Panchayat (respondent No.5), the writ petition (CWP No.15644 of 1991) was allowed and the orders dated 3.7.1989, 13.11.1990 and 23.04.1991 were quashed. The Assistant Collector Ist Grade was directed to take the petition under Section 13-A of the 1961 Act filed by the petitioners on his Board and decide it in accordance with law expeditiously and preferably within six months.

Written statement was filed in the present petition (CWP No.19364 of 2001) on

behalf of respondents No.5 to 21, 23 to 26 and 28. It was stated that the petition had been filed by the petitioner against the impugned orders dated 12.11.1999 (Annexure P-6), dated 17.07.2000 (Annexure P-7) and the order dated 25.10.2001 (Annexure P-8) passed under the 1961 Act. The petition, it was stated, was not maintainable as a pure finding of fact had been recorded by the authorities and there was no jurisdictional error in the impugned orders. It was further stated that it had been held as a finding of fact that the Gram Panchayat, Village Kiloli (respondent No.5) was the owner of the land in question and the suit of the petitioner filed under Section 13-A of the 1961 Act had been dismissed by holding that mutation No.409 dated 18.12.1954 (Annexure P-2) was not liable to be set aside on the point of limitation and the suit of the petitioner was barred by limitation.

It was further stated that the petitioner had wrongly mentioned in Note (iii) of the index of the petition that the present petition was similar to the case of Jai Singh v. State of Haryana CWP No.5877 of 1992, which at that time was pending and has since been decided by the Full Bench on 13.03.2003 and is reported in (2003-2) PLR 658. It was also stated that in fact the said writ petition (i.e. Jai Singh's case) had nothing to do with the controversy in the present case. In the said writ petition (i.e. in Jai Singh's case), the constitutional validity of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1991 (Haryana Act No.9 of 1992) and the mutation changed in favour of Gram Panchayat from the proprietary body of the village was under challenge. However, in the present case the vires of the said Act No.9 of 1992 had not been challenged. Besides, the mutation sanctioned in favour of Gram Panchayat, Kiloli (respondent No.5) on 28.12.1954 (Annexure P-2) was not sanctioned in view of the amendment made vide Act No.9 of 1992. In the present case, the challenge was to the order vide which the suit of the petitioner under Section 13-A of the 1961 Act had been dismissed by the authorities under the Act. The petition, it was alleged, had tried to mislead this Court while mentioning the writ petition number in Jai Singh's case (Supra) in note (iii) of the index of the petition. The petition, therefore, was liable to be dismissed.

In the index of the petition, in note (iii) under the heading, 'any other case', it is mentioned that CWP No.10872 of 2001 was admitted by a Division Bench of this Court on 27.07.2001, which was further ordered to come up after decision of the Full Bench in Jai Singh's case (CWP No.5877 of 1992). Meanwhile, it was ordered that the party would maintain status quo regarding possession as it existed on the said date. Another case i.e. CWP No.11139 of 2001 admitted by the same Division Bench had been mentioned, which was ordered to be heard along with aforesaid CWP No.10872 of 2001 and interim order in the same terms as in that case was also passed. The present writ petition (CWP No.19364 of 2001) was listed for hearing on 12.12.2001 and it was admitted and ordered to be heard along with CWP No.10872 of 2001. The present writ petition was ultimately disposed of on 13.03.2003 by a Full Bench of this Court with the following order:-

"For orders see CWP No.5877 of 1992".

The said order has been passed by the Full Bench on the basis of the order passed in Jai Singh's case (*supra*) (2003-2) PLR 658..

A perusal of the above facts and circumstances show that the land in question has been subject matter of various rounds of litigation; however, no final decision as regards the nature of the land and whether it forms part of 'Shamlat Deh' as defined in Section 2 (g) of the 1961 Act has been effectively taken.

The applicant Attar Singh then filed the present CMs No.10456 and 10457 of 2015 for staying dispossession from the land in question; besides, for recalling the order dated 13.03.2003 passed by the Full Bench in the present petition and for deciding the writ petition on its own merits by passing an appropriate order. The applicant/petitioner stated that he and other proprietors are owners in possession of the land in question since beginning. Therefore, their actual physical cultivating possession is continuing twelve years prior to the year 1953. As such they were entitled to the benefit of Section 4 (3) (ii) of the 1961 Act. Section 4 of the 1961 Act relates to vesting of rights in Panchayat and non-proprietors. It is primarily provided that rights, title and interest whatever in the land which is included in 'Shamlat deh' of any village and which had not vested in the Panchayat under the 'shamlat law' shall on the commencement of the 1961 Act vest in a Panchayat constituted for such village. Sub Section (3) (ii) of Section 4, which is pressed by the petitioner, provides that nothing contained in clause (a) of sub Section (1) and in sub Section (2) shall affect or shall be deemed to ever have affected the rights of persons in cultivating possession of 'shamlat deh', for more than twelve years immediately preceding the commencement of the 1961 Act without payment of rent or payment of charges not exceeding the land revenue and cesses payable thereon.

It is stated that in the present case, the land in question was never leased out or rented by the Gram Panchayat (respondent No.5) and the petitioner and other proprietors had never taken the said land on lease or rent and neither did they pay any charges, therefore, even by way of adverse possession they had also become owners of the land in question.

It is further stated that the case of the petitioner and others is that Gram Panchayat (respondent No.5) had filed an application dated 03.06.1987 against the petitioner and other proprietors under Section 7 of the 1961 Act regarding the land in question and for their ejectment on the ground that they were in illegal possession thereof. The Assistant Collector Ist Grade, however, vide order dated 20.04.1988 (Annexure P-9) dismissed the said application. In the said order dated 20.04.1988 (Annexure P-9), it was observed that in the village the total area of 'shamlat deh' is 2694 bighas 94 biswas which is more than that of the 25% of the total 'shamlat deh' area of the village. Therefore, question of title was involved and till the question of title was not decided the present application was not maintainable.

The Gram Panchayat (respondent No.5) filed a suit under Section 13-A of the 1961 Act before the Assistant Collector Ist Grade. However, proceedings in the said case were consigned to the record room as sine die by the Assistant Collector Ist Grade vide order dated 21.02.1990 with a direction to the Gram Panchayat (respondent No.5) to seek clarification from the office of the Deputy Commissioner as to whether the said suit was maintainable. The Gram Panchayat (respondent No.5), however, neither sought any clarification from the office of the Deputy Commissioner as regards the maintainability of the suit nor got the said suit restored. Besides, it did not file any other suit under Section 13-A of the Act for adjudicating the title of the land in question. The suit filed by the petitioner and other proprietors of the village for deciding the title of the land in question was dismissed by the respondent authorities vide orders dated 12.11.1999 (Annexure P-6), 17.07.2000 (Annexure P-7) and 25.10.2001 (Annexure P-8) passed respectively by the Assistant Collector Ist Grade, Jhajjar (respondent No.3), the Collector, Jhajjar (respondent No.2) and the Commissioner, Rohtak Division, Rohtak (respondent No.1). The said orders were subject matter of challenge in the present petition (CWP No.19364 of 2001).

In the meantime, the State of Haryana amended the provisions of the 1961 Act by way of Act No.9 of 1992 w.e.f. 11.02.1992 whereby the definition of 'Shamlat deh' as contained in Section 2 (g) of the 1961 Act added Clause (6) after Clause (5) to Section 2 (g) of the 1961 Act; besides, an 'Explanation' was also added. These were added to form part of the lands which are included in the definition of 'Shamlat deh' in terms of Section 2 (g) of the 1961 Act. Clause (6) aforesaid provided that lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948) ('1948 Act' - for short), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid 1948 Act. In terms of the 'explanation' the lands entered in the column of ownership of record of rights as, 'Jumla Malkan Wa Digar Haqdararan Arazi Hassab Rasad', 'Jumla Malkan' or 'Mustarka Malkan' were to be 'Shamlat deh' within meaning of said Section 2 (g) of the 1961 Act.

The validity of the insertion of said Clause (6) and its 'explanation' amongst the lands, which are to be included amongst the 'shamlat deh' lands in terms of Section 2 (g) of the 1961 Act, was challenged and the decision was passed by a Full Bench of this Court in Jai Singh's case (supra).

In this process, the impugned orders passed under Section 13-A of the 1961 Act for deciding the title of the land in question as regards the petitioner and other proprietors of village Kiloli was not decided in the present petition, which was simply disposed of on 13.03.2003 in terms of the order passed in Jai Singh' case (Supra).

The Assistant Collector IInd Grade, Jhajjar in compliance with the judgment passed by the Full Bench of this Court in Jai Singh's case (supra) entered mutation No.778 dated 17.10.2004 in favour of the proprietary body of the

village. The said mutation was contested by the Gram Panchayat (respondent No.5) by filing objections. The same was sent to the Assistant Collector Ist Grade being a contested mutation. The Assistant Collector Ist Grade vide order dated 06.06.2006 held the mutation dated 17.10.2004 to be invalid and also held that mutation sanctioned on 28.12.1954 (Annexure P-2) was valid. Appeal against the said order dated 06.06.2006 passed by the Assistant Collector was dismissed by the Collector vide order dated 30.03.2007. The revision petition of the petitioner and other proprietors was also dismissed by the Commissioner on 26.03.2015. The petitioner and other proprietors filed a petition i.e. CWP No.11984 of 2015 in this Court against the aforesaid orders dated 06.06.2006, 30.03.2007 and 26.03.2015 as well as against the mutation dated 28.12.1954 (Annexure P-2).

During the course of hearing in the said petition i.e. CWP No.11984 of 2015, it transpired that the present petition (i.e. CWP No.19364 of 2001) was wrongly decided in terms of the decision in Jai Singh's case (supra). In fact the same was liable to be decided independently and it had no nexus with Jai Singh's case (supra). Resultantly, a Division Bench of this Court in CWP No.11984 of 2015 on 14.07.2015 after perusal of the paper book of the present CWP No.19364 of 2001 observed that it revealed that the petitioner had challenged the orders passed under Section 13-A of the 1961 Act holding that the land was 'shamlat deh' and it vests in the Gram Panchayat (respondent No.5). It was observed that the petitioner got the writ petition (CWP No.19364 of 2001) tagged with Jai Singh's case (CWP No.5877 of 1992) though as already recorded in the order dated 06.07.2015, the writ petition filed by the petitioner had nothing to do with the controversy in Jai Singh's case (supra). It was further observed that the petitioner then got the writ petition disposed of in terms of order dated 13.03.2003 passed in Jai Singh's case (supra), whereby a direction to approach the revenue authorities for changing the mutation from the name of Gram Panchayat (respondent No.5) was issued. The Assistant Collector Ist Grade unmindful of the fact that the order passed in Jai Singh's case (supra) related to 'Jumla Mustarka Malkan' land and the land in the present case was 'shamlat deh' land, set aside the mutation in favour of the Gram Panchayat (respondent No.5). Taking advantage of the said order of mutation, the petitioner filed another petition under Section 13-A of the 1961 Act which was dismissed and was subject matter of the petition i.e. CWP No.11984 of 2015 before the Division Bench. The learned counsel appearing for the petitioner Attar Singh fairly conceded that the present CWP No.19364 of 2001 could not have been disposed of with Jai Singh's case (CWP No.5877 of 1992) (supra). He prayed for time to file an appropriate application in the present CWP No.19364 of 2001 for recalling of the order disposing of the present writ petition. It is in the said circumstances, the present application (CM No.10457 of 2015) has been filed.

Notice of the application was issued to Advocate General, Haryana on 01.10.2015. Notice was accepted on behalf of the State and Gram Panchayat (respondent No.5). Learned counsel for the applicant/petitioner in the present civil misc. application stated that other respondents need not be served as they

claimed rights in the 'Jumla Mustarka Malkan' which is not subject matter of 'shamlat deh'.

This Court on 16.09.2016 asked the learned State counsel to submit the revenue records relating to land measuring 1215 bighas 16 biswas, which was subject matter in issue. The case was then taken up on 02.12.2016 on which date Mr. Randhir Singh, learned Additional Advocate General, Haryana submitted that out of the land measuring 1215 bighas 16 biswas about 140 acres of land had been utilized for various purposes, which could be termed as 'common purposes'. He was asked to give a break-up of the land that had been utilized i.e. the khasra numbers and the kind of lands. Besides, he was also asked to give the details of the kind of land in respect of 1215 bighas 16 biswas i.e. whether it was 'Banjar Qadim', 'Gair Mumkin' or 'Barani' etc. prior to 26.01.1950 or post 26.01.1950.

An affidavit of Shri Pardeep Kaushik, HCS, Sub Divisional Officer (Civil) cum Assistant Collector Ist Grade, Jhajjar has been filed on behalf of respondents No.1 to 4.

It is stated that as per report of the Consolidation Officer cum Tehsildar, Jhajjar in the 'Fard Jamabandis' of the year 1950-51 and 1954-55, land measuring 1215 bighas 16 biswas was owned by Gram Panchayat, Kiloli (respondent No.5) whereas in the 'Farad Jamabandis' of the year 2011-12, the land has been shown to the extent of 1130 bighas 4 biswas. The complete details of land including its kind etc. for the year 1950-51 and 2011-12 are depicted in Annexures R-1 and R-2 respectively. It is also mentioned that out of the aforesaid total land measuring 1215 bighas 16 biswas; land measuring 4 bighas 17 biswas was transferred in favour of the PWD Department vide mutation No.603 dated 24.02.1987. Moreover, land measuring 80 bighas 15 biswas was transferred to Navodya School, Kiloli vide mutation No.672 dated 11.07.1994 from the land comprised in khasra Nos.1799, 1800, 1801 and 1802 min. In this manner, total land measuring 85 bighas 12 biswas has been utilized out of land measuring 1215 bighas 16 biswas. The remaining land measuring 1130 bighas 4 biswas has been depicted in Annexure R-2.

It is further mentioned that out of the remaining land measuring 1130 bighas 4 biswas i.e. 706 acres 3 kanals 0 marla, land measuring approximately 140 acres was being used for 'common purposes' such as School, Veterinary Hospital, 'Johar' (pond), 'Rasta Sare Aam' (common street), Power House, Park, Stadium, Public Toilets, 'Shamshan Ghat', Diggi and Gram Sachivalaya etc. It is also mentioned that out of the above land measuring 140 acres, land measuring 3 bighas 4 biswas comprised in khasra No.1955/222 has been allotted to persons belonging to the members of the scheduled castes of village Kiloli vide mutation Nos.1084 to 1194. The land comprised in khasra Nos.1798, 1797/2 measuring 12 bighas 4 biswas out of the same is owned by the PWD Department for the purpose of road. Further land measuring 28 bighas 9 biswas comprised in khasra Nos.336 'Alif', 1985/583, 897 min, 213, 214, 160-[k, 277, 1683 min is used for the purpose of 'Johar' (pond). Besides, land measuring 26 bighas 8 biswas

comprised in khasra No.34, 291, 437 min, 569, 797, 830, 908/1-3 min, 1128 is used for common 'rasta' (path) in the village. A public park is there in the land comprised in khasra No.1499 measuring 3 bighas 4 biswas; besides, there is a stadium in the land comprised in khasra No.1476 measuring 6 bighas 8 biswas. Land measuring 6 bighas 8 biswas in khasra Nos. 1977, it is stated, is being used for common toilets/'sochalya'. Cremation ground/'shamshan' is there in land comprised in khasra No.329 measuring 1 bigha 12 biswas. There is a 'diggi'/water tank in land comprised in khasra No.1127 measuring 6 bighas 8 biswas and in khasra No.882 measuring 1 bigha 12 biswas. A School as well as a Veterinary Hospital is there in the land measuring 5 bighas 19 biswas comprised in khasra Nos.330, 331, 332, 333, 334. There is a 'Gram Sachiwalya' in land measuring 1 bigha 12 biswas comprised in khasra No.977. It is also mentioned that land measuring 126 bighas 3 biswas comprised in khasra Nos.1803, 1804 and 1805 has been developed by the Border Security Force (BSF) with the permission of the higher authorities. An amount of Rs.20.00 crores on 19.12.2014 and Rs.17.5 crores on 10.09.2015 have been received by Gram Panchayat, Kiloli (respondent No.5) and in its account No.361901000000505 with the Indian Overseas Bank, Branch Jhajjar from the BSF.

The details of property as per 'Fard Jamabandi' of the year 1950-51 have given in Annexure R-1 which is as follows:-.

Total land

Type of land

Measurement in Bigha- Biswa

Measurement Acre-Kanal- Marla

Mutation No. &

other detail

(A)

Cultivatble Land 337

Bighas 15 Biswas

i.e. 211

acre 0

kanal 15

marlas

Barani

188-08

117-6-00

Bhud

25-00

15-5-00

Chahi Pu Digar

46-16

29-2-00

Chahi Dahir

20-03

12-4-15

Dahri Tikli

00-02

0-0-10

Dahri

57-06

35-06-10

Total (A)

337-15

211-00-15

(B)

Non Cultivable Land 878

Bighas 01 Biswas

i.e. 548

acre 06

kanals 15 Marlas

Banjar Zadid

3-08

2-01-00

Banjar Kadim

772-14

482-07-10

Gair Mumkin

101-19

63-5-15

Total (B)

878-01

548-06-15

(A+B)

Total 1215B

16B i.e.

759 A 07 K -00m

Total A+B

1215-16

759-07-00

Besides, details of property as per 'Fard Jamabandi' of the year 2011-12 have been given in Annexure R-2, which is as follows:-

Total land

Type of land

Measurement in Bigha- Biswa

Measurement Acre-Kanal- Marla

Mutation No. &

other detail

(A)

Cultivatble Land 330

Bighas 9 Biswas

i.e. 206

acre 4

kanals 5

marlas

Barani

190-14

119-1-10

Bhud

22-11

14-0-15

Chahi Pu Digar

38-01

23-6-05

Chahi Dahri

13-04

8-2-0

Dahri Tikli

00-02

0-0-10

Dahri

65-17

41-1-15

Total (A)

330-0-9

206-4-05

(B)

Non Cultivable Land 799

Bighas 15 Biswas

i.e. 499

acre 06

kanals 15 Marlas

Banjar Zadid

00-07

0-1-15

Banjar Kadim

696-12

435-3-00

Gair Mumkin

102-16

64-2-00

Mutation No.603 &

672 land

85 B 12 B

Total (B)

799-15

499-6-15

(A+B)

Total 1130 B

04B i.e.

706 A -3 K -00m

Total A+B

1130-04

706-03-00

The question that requires consideration is and which has effectively not been considered is as to whether the village proprietary body is entitled to the land of which they claim ownership rights. Insofar as the land which has been disposed of and for which the Panchayat has received payments and the land which has otherwise been utilized for common purposes, the petitioner and other proprietors would now have no claim. The land in question which has been in dispute measures 1215 bighas 16 biswas as per 'Jamabandi' of the year 1950-51. It is recorded as 'shamlat deh hasab paimana malkiat' and in the column in the ownership it is recorded as 'makbooja malkan'. Land which is recorded as 'shamlat deh' vests with the Panchayat in terms of Section 4 of the 1961 Act which reads as under:-

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

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

(a) which is included in the shamilat deh of any village and which has not vested

in a Panchayat under the shamilat law shall, at the commencement of this Act, vest in Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of the shamilat law, be deemed to have been vested in such non- proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub- section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the -

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953, or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950."

It may be noticed that Section 2 (g) of the 1961 Act, defines 'shamlat deh'. Clauses (1) to (6) of Section 2 (g) relate to land which are included in the definition of 'shamlat deh' and clauses (i) to (ix) relate to those which are not included in 'shamlat deh'. Section 2 (g) of the 1961 Act reads as under:-

"Shamlat deh" includes-

(1) lands described in the revenue records as Shamlat deh or charand excluding abadi deh;

(2) shamlat tikkas;

(3) lands described in the revenue records as shamlat, tarafs, pattis, 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;

Substituted by Haryana Act No.9 of 1992. [(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 common purposes of a village under Section 18 of the East Punjab

Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the 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;

[6]-----

but does not include land which ---

(i) becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

(ii-a) was shamlat deh, but has been allotted to any person by Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July 1985;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for

6 The proviso below clause (5) of Section 2 (g) before its omission by Haryana Act No.9 of 1992 with effect from 11.01.1992 read as follows:-

"Provided that shamlat deh at least to the extent of twenty five per centum of the total area of the village does not exist in the village." proprietary land from a co-sharer in the shamlat deh is so recorded in the Jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamlat taraf, pattis, pannas, and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry immediately before the commencement of this Act;

(vii) [7] -----

(viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamlat deh on or before the 26th January 1950; or,

(ix) is used as a place of worship or for purposes subservient thereto."

In view of the above provisions, it is evident that land which is recorded as

'shamlat deh' vests with the Gram Panchayat of the village and the person or proprietors seeking exclusion of the land from the definition of 'shamlat deh' are to establish their case on the basis of the exclusionary clauses contained in clauses (i) to

(ix) of Section 2 (g) of the 1961 Act.

7. Omitted by Haryana Act 18 of 1995.

The petitioner, therefore, is liable to establish his claim before the Collector under the 1961 Act that his case comes under the exclusionary clauses. The listings of the present petition (CWP No.19364 of 2001) with Jai Singh's case (CWP No.5877 of 1992) (supra) was indeed improper.

In Jai Singh's case (supra), the challenge was to the validity of including land reserved for the 'common purposes' of a village under Section 18 of the 1948 Act, the management and control whereof vested in the Gram Panchayat under Section 23-A of the aforesaid 1948 Act, within the definition of 'Shamlat deh' by adding clause (6) and the 'explanation' amongst the inclusion clauses of Section 2 (g) of the 1961 Act. In other words, lands which were recorded in the revenue records as 'jumla malkan wa digar haqdarani arazi hassab rasad', 'jumla malkan' or 'mushtarka malkan' were to be 'shamlat deh' in terms of Clause (6) to Section 2 (g) of the 1961 Act. In fact these lands had been reserved for 'common purposes' during consolidation proceedings under the 1948 Act by imposing a pro rata cut on the holdings of an owner.

It is to be noticed that there are two kinds of common lands in the villages. One is the 'shamlat deh' lands which were mostly carved out at the time of settlements. These common lands were there before consolidation operations and are independent of the lands earmarked for common purposes during consolidation operations. They are recorded as 'shamlat deh' lands by various nomenclatures. In the case of 'shamlat deh' lands, the ownership and title vests with the Gram Panchayat of the village in terms of Section 4 of the 1961 Act. The other 'common lands' are those which are carved out during consolidation proceedings in the village under the 1948 Act and are used for 'common purposes' as defined in Section 2 (bb) of the 1948 Act. The ownership and title of these lands vest with the village proprietary body and only the management and control vests with the Gram Panchayat. These lands which are reserved for 'common purposes' under the 1948 Act are recorded in the revenue records as 'jumla malkan wa digar haqdarani arazi hassab rasad', 'jumla malkan' or 'mushtarka malkan'.

In Jai Singh's case (supra), the issue was whether the lands reserved for 'common purposes' under the 1948 Act and recorded as such were to be included in 'shamlat deh' lands in terms of clause (6) and its 'explanation' added to Section 2 (g) of the 1961 Act.

In the present writ petition i.e. CWP No.19364 of 2001, this was never the issue

and it has, therefore, indeed wrongly been disposed of in terms of the order passed by the Full Bench in *Jai Singh's case* (supra). Therefore, the order dated 13.03.2003 disposing of the present writ petition (CWP No.19364 of 2001) in terms of the judgment in *Jai Singh's case* (supra) is liable to be recalled.

In the circumstances, the petitioner and other proprietors of the village are liable to raise their claims regarding the land in question regarding the unutilized land not being part of 'shamlat deh' land or in other words being excluded from the definition of 'shamlat deh' being amongst one or more of the exclusionary clauses (i) to (ix) of Section 2 (g) of the 1961 Act before the Collector, Jhajjar. The kind of land that remains to be determined has been depicted in Annexures R-1 and R-2 with the affidavit dated 02.02.2017 of Shri Pardeep Kaushik, Assistant Collector Ist Grade, Jhajjar. The petitioner and other proprietors of the village in case the land is to be excluded from the definition of 'shamlat deh' as contained in Section 2 (g) of the 1961 Act, they are liable to show that the land falls within one of the exclusionary clauses.

Besides, it is to be noticed that the land mostly is 'banjar qadim'. As has already been noticed in the Jamabandi for the year 1950-51 (Annexure P-1), 'banjar qadim' is recorded to the extent of 810 bighas 2 biswas. In terms of clause (5) of Section 2 (g) of the 1961 Act, 'shamlat deh' includes lands in any village described as 'bajar qadim' and used for common purposes of the village according to revenue records. Therefore, the petitioner and other proprietors would be required to show in respect of 'banjar qadim' land that it was not being used for common purposes of the village according to the revenue records and only then would it not come within the meaning of 'shamlat deh'.

The proviso below clause (5) of Section 2 (g) of the 1961 Act has been omitted by Section 2 (b) of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1991 (Haryana Act No.9 of 1992) which was published in the Haryana Gazette (Extra), Legislative Supplement, Part I, dated 11.02.1992. There is no saving clause in the said Haryana Act No.9 of 1992. Therefore, the effect of the omission of the said proviso is that it was never in existence in the statute i.e. the 1961 Act.

In *General Finance Co. v. CIT*, (2002) 7 SCC 1, an income tax assessee received deposits in 1985 which were in contravention of Section 269-SS of the Income Tax Act, 1961 ('IT Act' - for short). They were prosecuted under Section 276-DD of the IT Act for such offence although initiated prior to omission of that Section with effect from 01.04.1989. It was held that prosecution could not be continued after the omission of the said provision and further Section 6 of the General Clauses Act, 1897 ('GC Act' - for short) could not save such a prosecution as Section 6 thereof applies only to repeal and not to omission of a provision. Reliance was placed on two earlier Constitutional Bench decisions of the Supreme Court in *Rayala Corporation (P) Ltd. and M.R. Pratap v.*

Director of Enforcement, New Delhi, (1969) 2 SCC 412 and *Kolhapur Canesugar*

Works Ltd. and another v. Union of India and others, (2000) 2 SCC 536 wherein it was held that Section 6 of the GC Act is applicable to repeal of enactments but not applicable in case of omission.

In the present case, the proviso below clause (5) of Section 2 (g) of the 1961 Act, which provided that 'shamlat deh' at least to the extent of twenty-five per centum of the total area of the village does not exist in the village; has been omitted by Haryana Act No.9 of 1992. The effect, therefore, of the same is different from that of repeal and it is to be taken as if it had not existed. The determination of the lands whether these are 'shamlat deh' or not is to be done on the basis of statutory provisions of the 1961 Act and in case of 'banjar qadim' lands de hors the proviso to clause (5) of Section 2 (g) of the 1961 Act.

In the circumstances, the Civil Misc. application No.10457 of 2015 is allowed and the order dated 13.03.2003 disposing of the present petition (CWP No.19364 of 2001) in terms of the order passed in Jai Singh's case (CWP No.5877 of 1992) (supra) is recalled and the said writ petition is disposed with the direction to the Collector, Jhajjar exercising powers under Section 13-A of the 1961 Act to adjudicate regarding the unutilized land as detailed in Annexures R-1 and R-2 of the affidavit dated 19.01.2017 of Sh. Pardeep Kaushik, SDO (Civil)-cum-Assistant Collector Ist Grade, Jhajjar on the basis of the revenue records and ascertain whether the land falls within the definition of 'shamlat deh' as defined in Section 2 (g) of the 1961 Act and in respect of 'banjar qadim' land for it to fall within 'shamlat deh' it is liable to be ascertained whether it was being used for common purposes in accordance with the revenue records; besides, the proviso below Clause (5) of Section 2 (g) shall be taken to be not in existence.