

(2012) 03 P&H CK 0092

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 4495 of 1985 (O and M)

Bundi Ram (deceased) through his LRs

APPELLANT

Vs

Commissioner, Ambala Division Ambala and others

RESPONDENT

Date of Decision : 13-03-2012

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 18, 23A

Punjab Land Revenue Act, 1887 — Section 2(g), 59(1)(D), 59(I)(d)

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 2, 2(g), 2(g)(1), 2(g)(i)

Citation : (2012) 3 RCR(Civil) 58

Hon'ble Judges : Rajive Bhalla, J;Jora Singh, J

Bench : Division Bench

Advocate : M.L. Sarin and Mr. S.N. Saini, for the Appellant; Arvind Singh, Advocate For the Respondent No. 3 and Gram Panchayat, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.—By way of this order, we shall decide CWPs No. 4494, 4495, 4496, 4497 of 1985 and 4521 of 2005, as they involve adjudication of the common questions of fact and law. Facts necessary for adjudication are being taken from CWP No. 4495 of 1985 and CWP No. 4521 of 2005. The petitioners pray for issuance of a writ in the nature of certiorari to set aside orders dated 29.05.1984 and 29.01.1985, passed by the Collector, Ambala and the Commissioner, Ambala Division, Ambala, respectively, holding that the land in dispute vests in the Gram Panchayat.

2. CWP No. 4521 of 2005 has been filed by another set of proprietors, praying for the same relief, though without approaching the "Assistant Collector u/s 13A of the 1961 Act but as it was ordered to be heard along with the other writ petitions, it is being taken up for consideration.

3. The question that calls for an answer is whether the land in dispute vests in

the Gram Panchayat or in the petitioners. The petitioners assert, their ownership and exclusion of the land in dispute from Shamilat Deh on the pleas that (a) the land in dispute though "Shamilat Deh Hasab Hissas Biswat" in possession of "Makbuza Malkan" before 1950 was in cultivating possession of proprietors before 26.1.1950 and (b) as it becomes or became Shamilat Deh due to river action, or was reserved as Shamilat Deh in a village subject to river action. The petitioners, rely upon Sections 2(g)(i)(iii) and (viii) of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana (hereinafter referred to as the "1961 Act")), in support of their arguments.

4. The petitioners filed an application, u/s 13A of the 1961 Act, before the Assistant Collector, Ist Grade, Naraingarh, for a declaration that the land in dispute does not vest in the Gram Panchayat. The petitioners examined various witnesses, produced jamabandi for the year 1945-46, a copy of the Sharat Wajib-ul-arj Mark A-4 and other revenue documents (appended as annexures in CWP No.4521 of 2005). The petitioners also pointed out that the land was originally mutated in the name of the Gram Panchayat but the mutation was subsequently cancelled and restored to the name of "Shamilat Deh Hasab Hissas Biswat". The Gram Panchayat denied these facts and pleaded that the land belongs to the Gram Panchayat.

5. The Assistant Collector, framed issues and after grant of an opportunity to parties to lead evidence and address arguments, allowed the application by holding that the land does not vest in the Gram Panchayat as it is subject to river action and was in possession of proprietors in 1945-46.

6. The Gram Panchayat filed an appeal. The Collector, Ambala, accepted the appeal and set aside the order passed by the Assistant Collector, by holding that the land was not created by river action, and as the petitioners are not recorded in cultivating possession before 1950, it vests in the Gram Panchayat. A revision filed by the petitioners before the Commissioner, Ambala Division, Ambala, was dismissed.

7. Counsel for the petitioners submits that jamabandi for the year 1945-46 records the ownership of "Shamilat Deh Hasab Hissas Biswat" i.e., the proprietary body and possession of Makbuja malkan. The Assistant Collector, therefore, rightly held that as proprietors were in possession before 26.1.1950, the land is not Shamilat Deh. The Collector and the Commissioner have, committed an error in reversing this findings, on the erroneous premise that the petitioners have not been able to prove their cultivating possession before 1950. It is further submitted that jamabandi for the year 1945-46 records that the land is a gair mumkin nadi. The Sharat Wajib-id-arjs, prepared from time to time appended with the petition and various miscellaneous applications clearly record that loss of land due to river action will be made good from Shamilat Deh. It is, therefore, clearly proved that Shamilat Deh was created by river action and reserved for making good any loss of land due to river action. The land in dispute is, therefore, excluded from Shamilat Deh. Reliance for this argument is placed

upon a judgment in "Punjab State v. Gram Panchayat, Mallah, 1978 PLJ, page 138, wherein it was held that as land is recorded as a "gair mumkin nadi" (a river), it is excluded from Shamilat Deh.

8. Counsel for the petitioners further submits by reference to facts pleaded in CWP No. 4521 of 2005 that the land is managed by a "Choe Committee" formed by the proprietors. The land in dispute has never been used or reserved for any common purpose. The mutation from "Shamilat Deh Hasab Hissas Biswat" to "Panchayat Deh" was rectified by the government and restored to "Shamilat Deh Hasab Hissas Biswat", thereby proving that the land is not Shamilat Deh. It is further argued that as a petition u/s 13A of the Act has to be decided like a civil suit, the appellate and revenue authorities were required to record issue-wise findings. A perusal of the impugned orders reveal that neither the appellate nor the revisional authority have recorded any issue-wise findings. Reliance for this argument is placed upon the following judgments :-

1. Santosh Hazari Vs. Purushottam Tiwai (Dead) by Lrs., 179;
2. Madhukar and Others Vs. Sangram and Others,
3. Smt Harjit Grewal and others v. Dr. Vinod Kumar Batra and others, 2010(5) R.C.R.(Civil) 340 : Vol CL VIII-(2010-2) PLR, 235; and
4. State Bank of India and Another Vs. Emmsons International Ltd. and Another,

9. Counsel for the Gram Panchayat submits that the petitioners cannot claim ownership of this land or its exclusion from Shamilat Deh on the basis of jamabandi for the year 1945-46. The petitioners, have failed to prove, as required by Section 2(g)(iii) of the Act, that the land was partitioned and brought under cultivating possession by individual land owners before 26.01.1950, or was assessed to land revenue. The petitioners have not proved that the land was in individual cultivating possession of co-sharers not being in excess of their respective shares on or before 26.01.1950 as required by Section 2(g)(viii) of the Act. The jamabandi for the year 1945-46 reveals that most of the land is a "gair manikin nadi" (a river) and, therefore, can not be in cultivating possession much less of the petitioners. The words "Maqbuza Malkan" denote proprietary possession and not cultivating possession as required by sections 2(g)(iii) and (viii) of the Act. Even otherwise, the petitioners have not produced any evidence on record to establish that they ever cultivated this land prior to 1950. It is also pointed out that in the petition filed u/s 13A of the Act, the petitioners have made a specific averment that they have been in possession of the land in dispute from 1953, thereby nullifying their argument that they were in cultivating possession prior to 1950. It is further submitted that it is true that a seasonal rivulet (a choe) called Bauli, passes through the revenue estate but this alone does not raise an inference that the land in dispute was created by river action or reserved as Shamilat Deh in a village subject to river action for making good any loss to the holdings of proprietors. It is submitted that in a revenue estate, subject to river action, revenue authorities are required to maintain a record

under Chapter-6 of the Haryana Land Records Manual, to keep track of such land. A revenue officer also keeps a special record with respect to such land u/s 59(1)(D) of the Punjab Land Revenue Act, 1887. The petitioners have failed to adduce any such record before authorities under the Act or before this court. The judgments referred by the petitioners relate to civil suits and therefore, are not applicable to adjudication before a revenue officer. It is further submitted that the judgment in Punjab State v. Gram Panchayat, Mallah, 1978 PLJ, page 138 (supra) does not lay down the correct law as mere reference to land as a "gair mumkin nadi", without producing the revenue documents, as provided by the land records manual, does not raise an inference that the land was created by river action. It is also submitted that though the land is "Shamilat Deh Hasab Hissas Biswat", it no longer vests in the proprietors as after enactment of the Punjab Village Common Lands (Regulation) Act, 1953 and the Punjab Village Common Lands (Regulation) Act, 1961, Shamilat Deb, vests in a Gram Panchayat.

10. We have heard counsel for the parties, perused the paper-hook, the revenue record, the impugned orders appended with the petitions and various applications and documents filed from time to time.

11. Before proceeding to record our opinion on the questions posed by the parties, it would be appropriate to briefly trace, and nature of Shamilat Deh and the history of its vesting in a Gram Panchayat.

12. A revenue estate consists of two types of land, proprietary and common land. The latter variety of land was put to common use of residents of a village and its ownership vested in proprietors, in the entire village, or the pattidars etc. depending upon the nature of they land. For example, if the land was "Shamilat Deh Charand" (a pasture), the entire village could use it to graze their cattle but where the owners were members of a Patti, a taraf, a panna or a thola and the land was recorded as a Shamilat Patti etc., the shareholders of the patti, etc. were entitled to use this land, to the exclusion of all else. The ownership/share in Shamilat Deh, was determined, according to the extent of proprietary land holdings or land revenue paid and was generally recorded as "Shamilat Deh Hasab Hissas Paimash Malkiat," Shamilat Deh Hasab Rasad Raqba Khewat", Shamilat Deh Hasab Hissas Biswat" etc. The possession of land in Shamilat Deh, was generally recorded as "Makbuja Malkan", i.e., the possession of the proprietary body, in common. The proprietors were entitled to sell, mortgage, lease and partition the land as complete owners. If a particular shareholder was in individual cultivating possession, or in possession through his tenant or the land was mortgaged, a separate khatoni, was carved out in the record of rights, to reflect such separate cultivating possession of such co-sharer, his tenant or mortgagee.

13. The enactment of the Punjab Village Common Lands (Regulation) Act, 1953 and the Pepsu Village Common Lands (Regulation) Act, 1954, lead to a paradigm shift in the ownership and user of Shamilat Deh. The 1953 and 1954 Acts provided that land described as Shamilat Deh shall vest in a Gram Panchayat.

The 1953 and 1954 Acts were, however, repealed and enacted as the Punjab Village Common Lands (Regulation) Act 1961, (hereinafter referred to as the "1961 Act"). The 1961 Act defines Shamilat Deh and by way of section 2(g) provides for vesting and exclusion of land from Shamilat Deh. Section 2(g) of the 1961 Act reads as follows :

2 Definitions" XXX

(g) "shamilat deh" includes -

(1) lands described in the revenue records as shamilat deh excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat 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;

(4) lands used or reserved for the benefit of the village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village u/s 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 u/s 23A 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;

but does no include land which -

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

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

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

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

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recording in the Jamabandi or is supported by a valid deed.

(v) is described in the revenue records as shamilat, taraf, pattis, pannas, and thola and 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, house or for cottage industry immediately before the commencement of this Act;

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(viii) was shamilat 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 shamilat deh on or before the 26th January, 1950; or

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

(6) lands reserved for the common purposes of a village u/s 18 of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat u/s 23A of the aforesaid Act.

Explanation. - Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarar Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh within the meaning of this section;

14. Section 2(g) (1) to (5) Act describe land that is included in Shamilat Deh whereas sections 2(g)(i) to (ix) of the 1961 Act describe land that is not so included. Section 3 of the 1961 Act provides the land that vested in a Grain Panchayat under the 1953 or 1954 Acts shall continue to vest in a Gram Panchayat, subject, however, to any exceptions carved out u/s 2(g) of the 1961 Act. Section 3 of the 1961 Act reads as follows :

Section 3 :- Lands to which this Act applies. -(1) this Act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause (g) of section 2

(2) Notwithstanding anything contained in subsection (1) of section 4.

(i) where any land has vested in a Panchayat under the shamilat law, but such land, other than excluded under sub-clause (ii-a) of clause (g) of section 2, has been excluded from shamilat deh as defined in clause (g) of section 2, all rights, title and interest of the panchayat in such land, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law; and the panchayat shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the panchayat shall, notwithstanding anything contained in Section 10, pay to the person or persons entitled to such land, compensation to be determined in accordance with such principles and in such manner as may be prescribed; (ii)

where any land has vested in a panchayat under this Act, but such land has been excluded from shamilat deh under sub-clause (ii-a) of clause (g) of section 2, all rights, title and interest of the panchayat in such land, from the date of allotment of such land by the Rehabilitation department of the State Government, shall cease and all such rights, title and interest shall vest in the person or persons to whom the land so excluded has been allotted by the Rehabilitation Department of the State Government on or before the 9th day of July, 1985 subject to the condition that -

(a) any sum of money realised by the Rehabilitation Department of the State Government as a result of allotment of such land; or

(b) where no money was realisable by the Rehabilitation Department of the State Government as a result of allotment of such land, the amount of compensation in respect of such land as determined under sub-section (3) by the Collector of the district in which such a land is situated, shall be paid by the Rehabilitation Department of the State Government to the Development and Panchayats Department for onward disbursement to the panchayat to which such shamilat deh belonged.

(3) As soon as may be, on the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1996 the Development and Panchayats Department shall make a reference to the Collector of the District to determine the amount of compensation under sub-clause (h) of clause (ii) of sub-section (2) and the Collector of the District shall, keeping in view the market value of the shamilat deh at the time it was allotted, determine the amount of compensation.

15. Section 4 of the 1961 Act provides for vesting of rights in Panchayat and non-proprietors and reads as follows:

Section 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 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 such- section (2) shall affect or shall be deemed ever to have affected the-

(i) existing rights, title or interests 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, Basik-huopahus, Saunjidars, Muqarrirdars;

(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.

16. The petitioners rely upon Sections 2(g)(i), (iii) and (viii) of the Act to support their pleas that the land in dispute is not Shamilat Deh. Sections 2(g)(i), (iii) and (viii) of the Act, have already been reproduced in the preceding paragraph.

17. The first question that arises for adjudication is whether the land in dispute, was in possession of the petitioners, prior to 1950, in terms of sections 2(g)(iii) and (viii) of the Act, so as to exclude it from Shamilat Deh. Section 2(g)(iii) of the Act, requires the petitioners to prove, that the land was partitioned and brought under cultivation by individual land owners before 26.01.1950. We have perused jamabandi for the year 1945-46 and are unable to discern any entry that would indicate the cultivating possession of the petitioners, much less after partition of the land. The jamabandi for the year 1945-46 records the possession of "Makbuja malkan," i.e. possession of the entire proprietary body, in common, with no particular co-sharer in possession of any particular portion of the land, much less in cultivating possession. We would, at this stage, clarify that it is "cultivating possession" and not mere "proprietary possession" that excludes land from Shamilat Deh, u/s 2(g)(iii) and (viii). The land in dispute is, admittedly, described as a gair mumkin nadi, or banjar kadim (uncultivated old fallow) and only three Khasras No. i.e. 56 (3-14), 57 min (1-10), 58 (28-7) are recorded as bag barani i.e., an orchard but without recording the possession of any individual proprietor, much less any of the petitioners. It is, therefore, apparent that the revenue record, produced by the petitioners, does not prove that the petitioners were in "cultivating possession" prior to 26.01.1950 so as to exclude, the land in dispute, from Shamilat Deh, but, in fact, establishes the contrary, i.e., the vesting of this land in the Gram Panchayat.

18. Section 2(g)(viii) of the Act, is another exclusion clause. It requires the petitioners to prove that the land was Shamilat Deh, was assessed to land revenue and has been in the individual cultivating possession as co-sharers not being in excess of their respective shares on or before 26.01.1950. The

petitioners have failed to adduce any evidence to prove their individual cultivating possession or the possession of co-sharers/proprietors not in excess of their respective shares. As referred to above most of this land is gair mumkin nadi or banjar kadim. A Bair mumkin nadi i.e. a river cannot be in cultivating possession of individual proprietors. It is, however, conceivable that during the dry season, the river bed may be used for cultivation but this alone would not exclude the land from Shamilat Deh. Furthermore, the absence of any entry in the jamabandi or a khasra girdawari to prove such possession, persuades us to hold that the petitioners were not in cultivating possession as required by Section 2(g)(viii) of the Act.

19. A significant pointer to the falsity of the petitioners' claim that they were in cultivating possession before 26.1.1950 is available in the order passed by the Assistant Collector. The Assistant Collector, while allowing the petition in favour of the petitioners, has recorded a finding, on the basis of pleadings, that the petitioners claim possession from 1953, thus putting paid to any argument or plea that the petitioners were in individual cultivating possession after partition or in cultivating possession as co-sharers, before 1950.

20. The next point that requires consideration is whether the land is excluded from Shamilat Deh by virtue of Section 2(g)(1) of the Act which provides "for exclusion of land that becomes or has become Shamilat Deh due to river action or is recorded as Shamilat Deh in a village subject to river action. A person who invokes the provision of Section 2(g)(i) is required to prove by clear, cogent and reliable evidence, particularly by reference to the revenue record, that :

(a) the land becomes or became Shamilat Deh due to river action; or

(b) has been reserved as shamilat in villages subject to river action.

21. In support of their plea that the land is not Shamilat Deh, the petitioners contend that as river Bauli passes through the village, the land is recorded as a Bair mumkin nadi and the Wajib-ul-arjs record that in case of loss of land by river action, land shall be made good from Shamilat Deh it clearly establishes that the land in the village is subject to river action, reserved for making good the land that is lost to river action and, therefore, does not vest in the Gram Panchayat. It is also contended that the land is managed by a "Choe Committee" and not by the Gram Panchayat.

22. A large number of perennial rivers and seasoned rivulets (called "Choes") traverse the State of Haryana. Over a period of time, these rivers and rivulets change their course submerging existing and creating fresh tracts of land called "alluvion" and "diluvion". A revenue officer posted in a revenue estate, where land is subjected to "alluvion" and "diluvion", is required, by Standing Order No. 26 issued by the Financial Commissioner in accordance with Section 59(1)(D) of the Punjab Land Revenue Act, 1887, to keep a record of lands affected by river action. Chapters-6.1 and 6.5 of the Manual, read as follow :-

6.1. When estates affected by rivers or torrents have assessments of land revenue which are fixed for terms of years, it is condition of the settlement, in default of a special agreement to the contrary, that such assessment are liable to revision when the lands of the estates are injured or improved by the action of water or sand. Such revisions are governed by section 59(I)(d) of the Land Revenue Act, 1887, and by the following general rules :-

(i) where land of an estate paying land revenue is injured or improved by the action of water or sand, the land revenue due on the estate under the current assessment shall be reduced or increased in conformity with the instructions issued from time to time in this behalf by the Financial Commissioner, vide appended I to the Land Administration Manual.

(ii) In every such case the distribution of the land revenue over the holdings of the estate shall be revised, so as similarly to reduce or increase the sum payable in respect of the holding in which the land that has been injured or improved is situated.

6.2 (Deleted)

6.3 xxx

6.4 The tahsil office kanungo should be required to maintain a simple list of villages liable to increment or decrement of area by the action of river, hill-torrent or swamps, to enable him to satisfy himself that diluvion files of such villages are prepared in due course."

6.5 The Collector should submit for confirmation of assessments by the Financial Commissioner, Revenue, a statement in the form below, showing the net changes caused by alluvion and diluvion. These statements should be forwarded to the Financial Commissioner, Revenue, for confirmation by the 1st May. On receipt of such confirmation the new assessments will take effect.

1

2

3

4

5

6

7

8

9

District

Teh.

River

Gross increase of assessment due to alluvion, etc. (including jagir)

Gross decrease of assessment due to diluvion etc. (including jagir)

Net increase: (khalsa) to be collected as Fluctuating revenue

Net decrease (khalsa) to be remitted

Net amount of increase or decrease to be shown in the revenue roll of the following agricultural year

Remarks

23. In order to claim the benefit of section 2(g)(i) of the 1961 Act, the petitioners are required to prove that land becomes or has become Shamilat Deh due to river action or that land in Shamilat Deli was reserved in a village subject to river action. The best evidence to prove the ingredients of section 2(g)(i) is the record maintained by revenue authorities, u/s 59(1)(D) of the Punjab Land Revenue Act, 1887, read with Chapters 6.1 and 6.5 of the Haryana Land Records Manual recording land affected by diluvion and land created by alluvion and the list of villages where land is subject to river action.

24. The petitioners have not produced the above record and must, therefore, suffer the consequences of an adverse inference. The mere fact that a seasonal rivulet passes through the revenue estate or that the land is recorded as a gair mumkin nadi, in our considered opinion, does not raise an inference that the land has become or becomes Shamilat Deh due to river action or was reserved in a village subject to river action. We would also like to point out the words "gair mumkin nadi" refer to a river and not to land created by river action.

25. The petitioners also contend that the land is exempted u/s 2(g) (i) of the Act, as the Wajib-ul-arj records that if land is lost to river action, it shall be made good from Shamilat Deh, thereby establishing not only river action but also that Shamilat Deh was reserved in a village, subject to river action. As referred to the preceding paragraphs, the mere existence of a river or a rivulet in a revenue estate does not raise an inference that proprietary lands were lost due to river action. An entry in the Sharat Wajib-ul-arj, as to the manner in which land, subject to river action is to be made good, does not raise an inference that land in the present case "becomes or has become Shamilat Deh" due to river action or that land in Shamilat Deh was "reserved" for making good any loss of proprietary land, by river action. The petitioners were required to produce the record maintained by revenue authorities in accordance with chapter 6.1 to 6.5 of the Haryana Land Records Manual to prove that the land in dispute was created by river action, there was loss on account of river action to proprietary holdings and that Shamilat Deh, in the revenue estate was reserved for making good loss in holdings of proprietors, by river action. In the absence of any such record or

evidence, the mere fact that the Wajib-ul-arj records that ownership and possession would remain unchanged despite alluvion and diluvion, or that land lost to river action would be made good from Shamilat Deh, does not raise an inference that the land in dispute is excluded from Shamilat Deh. The mere existence of a river and an entry in the Wajib-ul-arj, may be a pointer to the fact that land in the village at some stage in the past was subject to river action but this cannot be the sole basis for holding that the land in dispute becomes or has become Shamilat Deh due to river action or that land in Shamilat Deh was reserved for making good loss in proprietary holdings, by river action.

26. The judgment Punjab State v. Gram Panchayat, Mallah 1978 PLJ page 138 (supra), has been pressed into service by the petitioners, to contend that if land is described as a gair mumkin nadi, it is excluded from Shamilat Deh u/s 2(g)(i). With due respect to the opinion recorded, by a learned Single Bench, it does not lay down the correct position in law. The relevant provisions of the Punjab Land Revenue Act and paragraphs of the Land Records Manual, requiring authorities to maintain records of alluvion and diluvion, were not brought to the notice of the Court. This apart, if an entry of "gair mumkin nadi" were to raise an inference that land vests in proprietors, all rivers, river beds and their banks, would vest in proprietors, thus, divesting the State of its rights. We, therefore, have no hesitation, in holding that in the absence of any revenue record to establish that the land becomes or has become Shamilat Deh due to river action, or that it was Shamilat Deh reserved to make good loss in land due to river action, the land in dispute can not be excluded from Shamilat Deh and, vests in the Gram Panchayat u/s 2(g)(1) read with Sections 3 and 4 of the Act.

27. An argument addressed by counsel for the petitioners that the appellate and the revisional authorities should have recorded an issue-wise finding though prima facie correct, would entail remand of the case to fulfill a mere formality, leading to unnecessary delay in the matter which has been in a state of litigation for the last three decades, particularly when nothing else remains to be adjudicated. In view of what has been stated hereinabove, we find no reason to accept the arguments raised by the petitioners and hold that the land in dispute is Shamilat Deh and vests in the Gram Panchayat under Sections 2(g)(1) read with Sections 3 and 4 of the Act. Consequently, we dismiss the writ petitions but with no order as to costs.