

(2012) 11 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7961 of 2008 (O and M)

Des Raj and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 2(g), 3

Citation : (2013) 2 RCR(Civil) 1002

Hon'ble Judges : Rekha Mittal, J;Rajive Bhalla, J

Bench : Division Bench

Advocate : Mahavir Sandhu and Rajesh Garg, for the Appellant; Deepak Girotra, AAG, Haryana for the Respondents No. 1 to 4, Rajesh Garg, Advocate for the Respondent No. 5 in C.M. No. 799 of 2012 and Mr. R.N. Lohan, Advocate for the Respondent No. 8, for the Respondent

Judgement

Rajive Bhalla, J.—By way of this order, we shall dispose of CWP Nos. 7961 of 2008 and 2800 of 2010, as they involve adjudication of common questions of fact and law. For the sake of convenience, facts are being taken from CWP No. 7961 of 2008. The petitioners pray for issuance of a writ of certiorari for quashing orders dated 30.06.2006, 14.08.2007 and 07.04.2008, passed by the Collector, Panchkula, the Commissioner, Ambala Division, Ambala, and the Financial Commissioner, Haryana, respectively.

2. The dispute, in the present case, is whether the land, in dispute, vests in the Gram Panchayat or in the petitioners. The petitioners have based their plea of ownership primarily on an argument that as the land was Shamilat Patti and is not used according to the revenue record for common purposes of the village, it does not vest in the Gram Panchayat.

3. Counsel for the petitioner submits that jamabandies for the years 1905-1909, record the ownership of Shamilat Taraf and Patti. The column of cultivation, records the possession of various proprietors. The Sharat Wajib-ul-arz, for the years 1905-1909, records that proprietors shall be responsible for management

and control of "Shamilat Deh" and that land in village Bitna is subject to river action, by river Kaushalya. It is further submitted that as jamabandies for the years 1945-46 and 1953-54, record that the land is "Shamlat Deh Hassab Hissa Mundarja Paimana Hakiat", in possession of Makbuja Malkan, it does not vest in the Gram Panchayat. It is further submitted that the land, in dispute, was not reserved during consolidation for any common purpose and as it was Shamilat Bachat, in possession of the petitioners it does not vest in the Gram Panchayat whether u/s 3 of the Pepsu Village Common Lands Act, 1954 (hereinafter referred to as the "1954 Act") or under the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the "1961 Act").

4. Counsel for the petitioners also submits that the Assistant Collector IInd Grade, Kalka, has erred in entering mutation in the name of the Nagar Sabha, Bitna, on the basis of sub-section (6) of Section 2(g) of the 1961 Act, which provides that land created during consolidation shall henceforth be included in Shamilat Deh. The petitioners, therefore, filed CWP No. 18744 of 1998, challenging the vires of Act No. 9 but the writ petition was disposed of with liberty to file a petition u/s 13-A of the 1961 Act. The petitioners filed a petition u/s 13-A of the 1961 Act, which was dismissed without considering the revenue record or that the land is Shamilat Patti, and does not vest in the Gram Panchayat. The appeal and the revision have also been dismissed summarily without considering the revenue record, the provisions of the 1954 Act, the 1961 Act, orders passed during consolidation, provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act") and that the land was never reserved for any common purpose.

5. Counsel for the Gram Panchayat submits that the land, in dispute, is not Shamilat Patti as it is clearly recorded as "Shamlat Deh Hassab Hissa Mundarja Paimana Hakiat", in jamabandies for the years 1945-46 and 1953-54, and, therefore, vests in the Gram Panchayat u/s 3 of the 1954 Act. It is further argued that the petitioners' plea that the land was in cultivating possession of the land owners is belied as entries in these jamabandies do not record the cultivating possession of any proprietor much less the petitioners. The argument that the land, in dispute, was not reserved for any common purpose during consolidation, is incorrect as Shamilat Deh vests in a Gram Panchayat under the 1954 Act and the 1961 Act and not under the Consolidation Act. The plea that the land, in dispute, was not reserved for any common purpose, disregards the fact that the land is Shamilat Deh i.e. the common land of village. It is further submitted that Act No. 9 of 1992 relates to Jumla Mushtarka Malkan i.e. land created during consolidation after applying a prorata cut on the holdings of proprietors whereas the land, in dispute, is Shamilat Deh and was, therefore, rightly mutated in the name of Nagar Panchayat, Bitna, by the Assistant Collector, IInd Grade, Kalka. The petitioners approached this Court by way of CWP No. 18744 of 1998 by concealing the nature of the land. It is further submitted that findings recorded

by authorities under the 1961 Act that the land vests in the Gram Panchayat are legal and valid.

6. Brahman Sabha, Pinjore, through its president Sh. Vijay Kumar Sharma, respondent No. 7, has filed a reply pleading that 19 biswas of land situated in Khasra No. 238 was purchased by the Brahman Sabha from one Murari Lal vide registered sale deed dated 31.07.1997, duly recorded in jamabandi for the year 2001-02. It is prayed that and as Khasra No. 238 is not mentioned in the jamabandi, the Brahman Sabha has been wrongly impleaded, as a party. It is further submitted that as the land, in dispute, does not vest in the petitioners, the writ petition may be dismissed.

CWP No. 2800 of 2010

7. The petition has been filed by one Ram Partap. Counsel for the petitioner prays that as challenge in the main writ petition is to the vesting of the land, in dispute, in the Gram Panchayat, he adopts arguments raised by counsel for the petitioners in CWP No. 7961 of 2008.

8. We have heard counsel for the parties, perused the impugned orders and find no reason to issue the writ as prayed, much less to hold that authorities under the 1961 Act have committed any error of jurisdiction or of law, while holding that the land, in dispute, vests in the Gram Panchayat.

9. The contention that as jamabandies for the years 1905-09, describe the land, in dispute, as Shamilat Taraf and Patti in possession of proprietors and the relevant Wajib-ul-arz records that this land shall be managed by proprietors, the land, in dispute, is excluded from Shamilat Deh, in our considered opinion, is misconceived and contrary to the record and the law. It is true that jamabandies for the years 1905-09, record that the land, in dispute, is Shamilat Taraf and Patti, but as on the date of coming into force of the 1954 Act, jamabandies for the years 1945-46 and 1953-54 record that the land is "Shamlat Deh Hassab Hissa Mundarja Paimana Hakiat," the land, in dispute, was, clearly Shamilat Deh and not Shamilat patti or taraf. The mere fact that the land, in dispute, may have been recorded as Taraf or Patti in jamabandies for the years 1905-09, is irrelevant as relevant jamabandies, for the years 1945-46 and 1953-54, clearly record that the land is "Shamlat Deh Hassab Hissa Mundarja Paimana Hakiat". The argument that as the land is "Shamlat Deh Hassab Hissa Mundarja Paimana Hakiat" and in possession of Makbuja Malkan, it is excluded from Shamilat Deh, is incorrect. The common nature of land is determined by the expression "Shamilat Deh" and not by the expression "Hassab Hissa Mundarja Paimana Hakiat". The latter expression denotes the manner of calculating the shareholding of proprietors in Shamilat Deh prior to its vesting in a Gram Panchayat. The expression "Makbuja Malkan" refers to the possession in common of the proprietary body with no particular proprietor being in exclusive possession. A reference in this regard may be made to the judgments in "Kashmir Singh and others v. Joint Development Commissioner (IRD), Punjab,

Chandigarh and others" 2006(1) LAR 606 (P & H DB) "Bakhshish Singh v. State of Punjab and others" 2011(1) LAR 460 (P & H) and "Sita Ram etc. v. Gram Panchayat Ismalia etc." 2008(1) LAR 358 (P & H DB). The land, is thus clearly Shamilat Deh, and came to vest in the Gram Panchayat under the 1954 Act and the 1961 Act.

10. The argument that as the land, in dispute, was not reserved during consolidation for any common purpose, it is Shamilat Bachat in possession of the petitioners, in our considered opinion, has been raised without any basis whether in law or in fact. The expression "Shamilat Bachat" is unknown to law. Shamilat Deh, is land that is used for common purposes of a village before consolidation and vests in a Gram Panchayat u/s 3 of the 1954 Act and under Sections 2(g) and 3 of the 1961 Act. The Consolidation Act, neither creates nor vests Shamilat Deh in a Gram Panchayat and merely empowers consolidation authorities to delimit the Shamilat Khewat, in accordance with valuation assigned to the land. The expression "Bachat" pertains to land left over after common purposes land known as Jumla Mushtarka Malkan, created during consolidation and has nothing to do with "Shamilat Deh".

11. As regards the mutation sanctioned in favour of the Nagar Panchayat, suffice it is to state that it was recorded on the basis of a statutory declaration made by the 1954 Act, that land described as Shamilat Deh shall vests in a Gram Panchayat. Even otherwise, as the source of the Gram Panchayat's title is the 1954 Act, the recording of mutation, in favour of the Gram Panchayat cannot, be said to be illegal.

12. It would also be necessary to point out that the petitioners in their attempt to confuse the issue and somehow link the land, in dispute, to land created during consolidation, filed CWP No. 18744 of 1998, challenging the vires of Act No. 9 of 1992. The land is Shamilat Deh and was, therefore, not adversely affected, by any provision of Act No. 9 of 1992. The writ petition was, therefore, rightly disposed of by granting liberty to the petitioners to file a petition u/s 13-A of the 1961 Act.

13. A perusal of the impugned orders, in our considered opinion, reveals that officers, exercising power under the 1961 Act, have recorded clear, cogent and concurrent findings of fact that the land, in dispute, is Shamilat Deh and vests in the Gram Panchayat under the 1954 Act and u/s 2(g) of the 1961 Act and is not excluded from Shamilat Deh by any exclusion clause(s) enacted by Section 2(g) of the 1961 Act. The petitioners' attempt to deprive the Gram Panchayat of its title has been rightly repelled by the Collector, the Commissioner and the Financial Commissioner.

14. As regards the replies filed by respondents No. 7 and 8, suffice it to state that if there is any dispute regarding Khasra No. 238 which respondents No. 7 and 8 claim to have purchased by way of sale deed dated 31.07.1997, they may seek adjudication of their rights in accordance with law. In view of what has been

stated hereinabove, we affirm the impugned orders and dismiss the writ petitions, but with no order as to costs.