

(1996) 01 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1747 of 1982

Gram Panchayat	Vs	APPELLANT
The State of Haryana and Others		RESPONDENT

Date of Decision : 12-01-1996

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1953 — Section 3
Punjab Village Common Lands (Regulation) Act, 1961 — Section 4(2)

Citation : (1996) 112 PLR 757 : (1996) 3 RCR(Civil) 131

Hon'ble Judges : T.H.B. Chalapathi, J

Bench : Single Bench

Advocate : C.R. Dahiya, for the Appellant; Bharat Bhushan, for the Respondent

Final Decision : Allowed

Judgement

T.H.B. Chalapathi, J.—The petitioner namely Gram Panchayat, Kharkra filed this writ petition challenging the order of Tehsildar (Sales)-cum-Assistant Collector Ist Grade, Hisar dated 27.7.1981, whereby the Tehsildar (Sales) directed the portion of Shamilat deh and change of mutation in favour of Custodian.

2. The village Kharkra is a revenue proprietary village consisting of both Hindus and Muslims. Both the Hindus and Muslims jointly owned Shamilat deh of a total extent of 2181 kanals 10 marlas of land in the village comprising in several killa numbers. Some of the Muslim proprietors of the village have been migrated to Pakistan after partition. Thereafter, the entire Shamilat deh land of the extent, of 2181 kanals and 10 marlas which was Shamilat deh was mutated in the name of the Gram Panchayat. In the impugned order, the Tehsildar (Sales) directed the Block Development Officer, Barwala to partition the property and enter the name of the Custodian in regard to the share of Muslim evacuees in Shamilat land. This order obviously came to be passed because of the decision of this court in Gram Sabha and Gram Panchayat v. Chief Settlement Commissioner reported in 1973 P.L.J. 398, wherein it has been held that the share of the evacuees in the Shamilat of the village from which Muslims evacuees have migrated vested in the

custodian by virtue of Sections 7 and 8 of the Administration of Evacuee Property Act of 1950 and that the Punjab Village Common Lands (Regulation) Act, 1954 did not divest such share of the evacuees and such share which has vested in the Custodian would not be mutated in the Panchayat.

3. It is now to be seen whether the land which has been vested in the Gram Panchayat by virtue of Shamilat law can be divested from the gram panchayat and partition of the same and the share of the Muslims evacuees could be mutated in the name of Custodian. The State of Punjab passed the Punjab Village Common Lands (Regulation) Act, 1953. u/s 3 of the said Act notwithstanding any thing contrary in any other law for the time being in force all rights and interest, whatsoever, in the land which is included in the Shamilat deh of any village shall on the appointed day vest in the panchayat having jurisdiction over the village. Thus by virtue of Section 3 of 1953 Act all the land included in Shamilat deh had been vested in the Gram Panchayat. But this Court in the decision referred to above took the view that u/s 8(2) of the Administration of Evacuee Property Act, 1950 the interest of the Muslim evacuees vests in the Custodian. This controversy has been finally decided by the Supreme Court in Gram Panchayat v. Malwinder Singh and Ors. 1985 P.L.J. 463. According to the said decision, the Punjab Village Common Lands (Regulation) Act, 1953 would prevail in the State of Punjab over the Central Act of 1950 even if so Shamilat deh land are cancelled. Thus the Supreme Court has held that the Shamilat deh land though the evacuees had a share in it vests and continues to vest in the Gram Panchayat by virtue of Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953. The 1953 Punjab Act was replaced by Punjab Village Common Lands (Regulation) Act, 1961. u/s 4(2) of the said Act any land which is vested in the Gram Panchayat under Shamilat law shall be deemed to have been vested in the panchayat under 1961 Act. Therefore, the land which has been vested in the gram panchayat by virtue of Punjab Village Common Lands Act, 1953 continues to be , vested in the Gram Panchayat even after 1961 Act. Therefore, there is no question of transferring or mutating the land which has already been vested in the gram panchayat in the name of the Custodian. The same view is also taken by a learned single Judge of this Court in Gram Panchayat v. State of Haryana 1994 P.L.J. 347, wherein his Lordship has observed as following:-

"That being the law, there is no choice but to set aside the mutation order passed by the Revenue Officer vide which the land vested in Gram Panchayat and so recorded as Shamilat deh was wrongly transferred and mutated in favour of the custodian department."

Thus it is clear that when once the land is vested in the gram panchayat under the provisions of Punjab Village Common Lands (Regulation) Act, 1953, there is no question of divesting the gram panchayat from the said land and repartition the same so as to mutate the share of the evacuees in the name of the Custodian. Thus I am of the view that the impugned order passed by the

Tehsildar (Sales) dated 27.7.1981 is liable to be set aside. Accordingly the said order is; hereby quashed.

4. The writ petition is accordingly allowed, but in the circumstances of the case, there will be no order as to costs.