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**(1988) 09 P&H CK 0060**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 3289 of 1979**

Jai Ram

APPELLANT

Vs

Assistant Collector, Ist Grade, Dadri

RESPONDENT

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**Date of Decision :** 05-09-1988

**Acts Referred:**

**Citation :** (1989) PLJ 6 : (1989) 1 RRR 78

**Hon'ble Judges :** M.R.Agnihotri, J

**Advocate :** Shri Chandra Singh, Advocate., Advocates for appearing Parties

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## Judgement

M.R. Agnihotri, J.

1. The petitioners are the residents of village Gokal, Tehsil Dadri, District Bhiwani, in the State of Haryana. They claim to be in cultivating possession of 18 Bighas 6 Biswas of pukhta land to the extent of their shares in the Shamilat Deh of the village prior to the year 1940/41, by virtue of which they are entitled to retain and enjoy this land by excluding the same from the purview of section 2(g) (5)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961. Accordingly, they filed an application under Section 13B of the said Act against the Gram Panchayat for the declaration of the aforesaid land as excluded from the definition of "Shamilat Deh" as also for annulling of mutation No. 224, dated 9th March 1956, by virtue of which the land in dispute had been mutated in the name of the Gram Panchayat. This application of the petitioners was tried by the Assistant Collector Ist Grade, Dadri, in which the petitioners examined a number of witnesses besides producing the documentary evidence in support of their claim. However, the learned Assistant Collector dismissed the application on 26th July, 1979, vide Annexure P.1, and it is against this order that the petitioners have approached this Court.

2. In para 2 of the application under Section 13B ibid filed by the petitioners, it was clearly asserted as under :

"That the land described in para No. 1 of the application is agricultural land

totaling 18 Bighas 6 Biswas Pukhta comprised in Khasra Nos. 278/270 (08) 225 (517), 234(010), 235(89), 233(16), 277/227(018), 229(17), 280(37), 279/232(38), 228(010) in khewat Nos. 65 as per the Jamabandi 195354, situate in village Gokal which khewat in Jamabandi 196768 is shown as khewat No. 64 was never used for the common benefit of the village community and the petitioners and the proforma respondents have been cultivating the disputed land as cosharers owners since the times of their ancestors continuously and now also the disputed land is in cultivating possession of the petitioners and proforma respondents which is according to the respective shares of the petitioners and proforma respondents."

The assertion of the petitioners was not denied by the respondent Gram Panchayat. Further, in addition to the testimony of the various witnesses produced by the petitioners, it has also been noticed in para 5 of the impugned order that from copy of the Jamabandi for the Year 194142 and other revenue record it is clear that in the column of ownership of disputed land the entry is "Shamilat Deh" according to their respective shares in their khewat and in the column of cultivation the entry is shown as "possessed by owners".

3. In view of this clear evidence on the record, which has not been rebutted by the respondent Gram Panchayat, the only irresistible conclusion that could be arrived at by the learned Assistant Collector was, that the land in dispute was in possession of the petitioners before 26th January, 1950 and that it stood excluded from the purview of the definition of "Shamilat Deh" as given in section 2(g)(5)(viii) of the Punjab Village Common Lands (Regulation) Act, 1961. The contrary finding arrived at by the learned Assistant Collector is against law and the reliance placed on the judgement is wholly misplaced.

4. Accordingly, the writ petition is allowed and the impugned order dated 26th July, 1979, (Annexure P.1), is quashed. There shall be no order as to costs.