
(2015) 03 P&H CK 0344
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 4767 of 1986

Mahabir and Others

APPELLANT

Vs

The Commissioner, Ambala Division and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13-A, 2(g), 2(g)(1), 2(g)(3), 2(g)(v)

Citation : (2015) 03 P&H CK 0344

Hon'ble Judges : Rajive Bhalla, J; Amol Rattan Singh, J

Bench : Division Bench

Advocate : Rajinder Chhokkar, for the Appellant; D. Khanna, A.A.G, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.

1. The petitioners pray for issuance of a writ of certiorari quashing orders dated 11.10.1985, 24.4.1984 and 9.4.1985 passed by the Commissioner, Ambala Division, Ambala, the Assistant Collector 1st Grade, Sonapat and the Collector, Sonapat, respectively.

2. Counsel for the petitioners submits that agricultural land bearing rect No. 38, killa No. 19, measuring 8 kanals, situated in village Sandal Kalan, District Sonapat, is, admittedly, shamlat land owned by proprietors of Panna Kaliyan. The petitioners are, admittedly, co-sharers/right-holders in the Panna. Before consolidation, in the year 1956-57, the land formed part of khasra No. 1515 min, 1698 min, 1739 min and 1740 min and was in the exclusive ownership and cultivating possession of the petitioners' predecessors. The entry in the jamabandi for the year 1956-57, describing the land as "banjar qadim charagah" (a pasture), is incorrect and contrary to the preceding entries in the jamabandi. The "sharat wazib-ul-arz" for the year 1956-57 records that cattle belonging to proprietors alone shall be allowed to graze in the shamlat land of

the panna and only as a matter of grace are co-sharers of other Pannas, allowed to graze their cattle, but other residents of the village are not allowed to graze their cattle. The land in dispute is, therefore, "not" used as per the revenue record for common purposes of the entire village community. The land in dispute could only be included in the "shamilat deh" of the village if the Gram Panchayat had proved that, as per the revenue record, the land is used for the benefit of the village community or a part thereof or for common purposes of the village. The Gram Panchayat has not produced any revenue record to discharge this onus. The land, even if it is recorded as a charagah" belongs to proprietors of the panna and as it is not used for the benefit of the village community or a part thereof or for common purposes of the village, it does not vest in the Gram Panchayat. Counsel for the petitioners also contends that as the word "charand" was added in section 2(g)(1) for the first time, w.e.f. 11.11.1971, the land stood already excluded from "shamilat deh" under the 1961 Act, as originally enacted.

3. No one is present on behalf of the contesting respondent-Gram Panchayat.

4. We have heard counsel for the petitioners and perused the impugned orders.

5. The Gram Panchayat (respondent No. 3), filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) (hereinafter referred to as "the Act") praying for the petitioners' ejectment by asserting that the petitioners are in unauthorised possession of "Shamilat Deh". The petitioners filed a reply claiming ownership. The Assistant Collector 1st Grade, ordered the ejectment of the petitioners. The petitioners filed an appeal before the Collector, which was dismissed on the ground that the petitioners are in unauthorised occupation of the land, in dispute, which is a "charand" (grazing ground).

6. The petitioners thereafter filed a petition, under Section 13-A of the Act, claiming ownership on the plea that as land in dispute belongs to a "panna", it is excluded from the "shamilat deh" of the village. The Assistant Collector of the Ist Grade, dismissed the suit. The appeal and the revision filed by the petitioners have also been dismissed by holding that as the land is "charand", it vests in the Gram Panchayat.

7. The question that calls for an answer is whether the land in dispute, which is, admittedly the "shamilat deh" (common land) of a panna, is included in or excluded from the "shamilat deh" of the village?

8. The Assistant Collector of the 1st Grade, the Collector and the Commissioner have recorded concurrent findings of fact that the land in dispute, though recorded as the ownership of Shamilat Panna, Kaliyan, is included in the "shamilat deh" of the village as it is used, as per the revenue record as a "banjar qadim charagah", i.e., a grazing ground. Reliance has been placed upon entries in the "sharat wazib-ul-arz" for the year 1956-57.

9. A perusal of the findings recorded in the impugned orders reveals that the

land in dispute, was the "shamilat deh" (common land) of Panna Kaliyan, the quality of land was "banjar qadim" and it was used as a grazing ground. A panna is a sub division of the family of the original settler of the village, or a division of the village population on the basis of their caste, religion etc. The persons who constitute a panna are co-owners of the common land of a panna, in accordance with their share holdings. The land in dispute is, admittedly, the charand (grazing ground) of panna Kaliyan.

10. Sections 2(g)(1), 2(g)(3) and 2(g)(v) of the Act, that refer to the inclusion of charand (a grazing ground) in the shamilat deh of a village, read as follows:-

"2(g) "shamilat deh" includes-

(1) lands described in the revenue records as shamilat deh or Charand, excluding abadi deh."

(2) XX XX XX

(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) XX XX XX

(4-a) XX XX XX

(5) XX XX XX

but does not include land which --

(i) XX XX XX

(ii) XX XX XX

(ii-a) XX XX XX

(iii) XX XX XX

(iv) XX XX XX

(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."

11. Section 2(g)(1) of the Act postulates that land described as "charand" (grazing ground), shall be included in the "Shamilat Deh" of a village. However, as the land, in dispute, is the common land of a "Panna", it shall only be included in the "shamilat deh" of the village if it fulfills the ingredients of Section 2(g)(3) and would be excluded if it satisfies the ingredients of clause (v) of Section 2(g) of the Act (as applicable to the State of Haryana).

12. Section 2(g)(3) of the Act, postulates that land described in the revenue record as shamilat taraf, pattis, pannas and tholas shall be included in the

"shamilat deh" of a village if they are used according to the "revenue record" for the benefit of the village community or a part thereof or for common purposes of the village". Clause (v) of Section 2(g) of the Act, which is worded in the negative, provides that if the land of a shamilat taraf, patti, panna, or thola is "not" used according to the revenue record for the benefit of the village community or a part thereof or for common purposes of the village, it shall not be included in "shamilat deh".

13. Thus, if a person asserts that the common land of a "Panna", is included in the "shamilat deh" of a village, he is required to prove that it is used according to the "revenue record", "for the benefit of the village community or a part thereof or for common purposes of the village". Per contra, if a person asserts that the common land of a "panna" is "not" included in the "shamilat deh" of a village, it is for such person to prove that the land is "not" used as per the "revenue record" "for the benefit of the village community or a part thereof or for common purposes of the village". The burden to prove inclusion or exclusion, thus, lies upon the person who asserts such a fact.

14. At this stage, it would be appropriate to deal with the true meaning of the expression "for the benefit of the village community or a part thereof, used in Section 2(g)(3) and clause (v) of Section 2(g) of the Act. The said expression came up for consideration before a Full Bench of this Court in Gram Sabha Sadhaur (formerly Dhumma) versus Baldev Singh and others 1977 PLJ 276. After considering Section 2(g)(3) of the 1961 Act, the Full Bench opined as follows:-

"A perusal of sub-clauses (3) to (5) of Section 2(g) clearly provides an insight into the intention of the legislature that all lands described as shamlat Tarafs, Pattis, Pannas, and Tholas are not to be treated as Shamlat deh irrespective of the use to which they are subjected to. Such lands other than Banjar Qadim will come under the category of Shamlat deh and would vest in the Gram Panchayat only if they are being used either for the benefit of the entire village community or a part thereof or for common purposes of the village.

In the case of the lands described as Banjar Qadim the same will be included in Shamlat deh only if they were used for common purposes of the village.

The consequence of these new provisions in the 1961 Act is that the landowners would be deprived of some lands in Shamilat pattis etc. which under the old Act belonged to them. Thus, according to the accepted principles of interpretation, such a provision adversely affecting the owners of the property should be constructed strictly and no attempt should be made to travel beyond the plain meaning of the statute. It cannot be denied that all lands described as Shamlat, Tarafs, Patties etc. are shown in the revenue records in the ownership of the proprietors of the Pattis or Tarafs concerned in accordance with their shares. If the ratio of the decision in Co-operative Society of Improvement of Shamilat Patti Harnam Singh's case (supra), is upheld, then all such lands would have to be

held shamilat deh irrespective of the fact whether the same were being used for common purposes of the village or benefit of the village community or a part thereof or not. That would be doing violence to the clear provisions of the Act. Such an interpretation is neither warranted by the clear language or the provisions nor by the intention of the legislature."

10. XX XX XX

"11. In view of the above discussion, our answers to Question Nos. 1 and 3 are as under:

1 XX XX XX

2. In Co-operative Society of Improvement of Shamilat Patti Harnam Singh's case (supra), the expression "for the benefit of the village community or a part thereof, has not been correctly interpreted. According to the correct interpretation, the benefit must include in its ambit not only the owners of the land of the patti or Taraf concerned, but also the village community as a whole or a part thereof which include all sections of population of the village including the landowners."

(Emphasis supplied)

15. A perusal of above extract reveals that the common land of a shamilat taraf, patti, panna or thola shall be included in the "shamilat deh" of a village, if it is used, as per the revenue record for the benefit of the entire village community as a whole or a part thereof, i.e., for both proprietors and non-proprietors.

16. Thus, for the land in dispute to be included in the "shamilat deh" of the village, the Gram Panchayat was required to prove that the land in dispute is used and the petitioners were required to prove that it is not used for the common purposes of the village.

17. The mode and manner of use of common land of a village, including the common land of a Panna is recorded in a document called "the sharat wazib-ul-arz" also known as the village administration paper. The "sharat wazib-ul-arz" is a part of the record of rights of a village and amongst other matters records the mode and manner of use of the "shamilat deh" and the "shamilat land" of a Panna, Patti, Thola or Taraf. Thus, if the "sharat wazib-ul-arz" or any other relevant revenue record, allows the use of a grazing ground of a Panna by all the residents of a village, the common land of a Panna would be included in the "shamilat deh" of a village under Section 2(g)(3) of the Act.

18. The "sharat wazib-ul-arz" of the village, recorded in year 1956-57, reproduced by the petitioners, reveals the following grazing right in the common land of the Panna:-

"The cattle of the proprietors graze in their panna-wise "charands". The proprietors of a panna have no grazing rights in the charand of the other panna, without its proprietors" permission. In case, through amity or agreement, the

proprietors of a panna, happen to graze their cattle in the charand of other panna, then no pasturage - fee is charged from them. The cattle of this village are not taken to the other estates for grazing purposes and similarly the cattle of the adjoining villages do not visit this village. However, the cattle of the other residents of the village, whether they own lands in the panna concerned or not, do graze and no fee is charged from them."

19. A perusal of the "sharat wazib-ul-arz" reveals that proprietors of a panna may graze their cattle in the grazing ground of another panna with the permission of proprietors of that panna and in case permission is granted, no fee shall be charged. The other residents of the village, may graze their cattle in the pasture of the panna without any fee. The entries in the "sharat wazib-ul-arz" leave no ambiguity that the land, in dispute, which is, admittedly, "charand" (pasture), was and is used for the benefit of the entire village community, including proprietors of the panna, proprietors of other pannas and non-proprietors, thereby fulfilling the ingredient of section 2(g)(3) and including the land in the "shamilat deh" of the village.

20. An argument that as the word "charand" was incorporated in Section 2(g)(1) on 11.11.1971, the land in dispute stood excluded, disregards the fact that the land in dispute is the charand of a Panna which is included in the "shamilat deh" of the village by reason of its user for the benefit of the entire village community under Section 2(g)(3) of the 1961 Act.

21. In view of what has been recorded hereinabove, we have no hesitation in holding that concurrent findings of fact recorded by the Assistant Collector, the Collector and the Commissioner, that the land in dispute is included in the "shamilat deh" of the village, do not suffer from any error of jurisdiction or of law and are, therefore, affirmed.

22. Consequently, the impugned orders are affirmed and the writ petition is dismissed.