
(2009) 07 P&H CK 0204
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 9819 of 2009

Mahabir Singh and others	Vs	APPELLANT
Financial Commissioner, Haryana and others		RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A(1), 13AA, 2(3), 4, 7

Citation : (2011) 3 RCR(Civil) 388

Hon'ble Judges : S.S. Saron, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.S. Saron, J.—This petition under Article 226 of the Constitution of India has been filed seeking quashing of the order dated 26.8.2008 (Annexure-P.5) passed by the learned Financial Commissioner, Haryana (respondent No. 1), the order dated 22.11.2006 (Annexure-P.3) passed by the learned Commissioner, Rohtak Division, Rohtak (respondent No. 2) and the order dated 7.11.2005 (Annexure-P.2) passed by the learned Collector, Rohtak whereby the suit for declaration filed by respondents No. 3 to 8 (respondents No. 5 to 8 being the LR's of Uma Shankar) u/s 13-A of the Punjab Village Common Land (Regulation) Act, 1961 ("Act"- for short) has been decreed in favour of Gram Panchayat, Village Kharawar, Tehsil and District Rohtak (respondent No. 15). The appeal filed by the predecessors-in-interest of the petitioners has been dismissed by the Commissioner, Rohtak Division, Rohtak vide order dated 22.11.2006 (Annexure-P.3) and the revision u/s 13-AA of the Act has been dismissed by the learned Financial Commissioner, Haryana.

2. The dispute between the petitioners and respondents No. 3 to 8 is with respect to land measuring 26 Kanals 11 Marlas which has been described in the Jamabandi for the year 1966-67 in the column of ownership as Shamilat Thola Bajan Hasab Rasad Rakba Khewat". In column 8 as regards the nature of land,

most of the land has been described as "Gair Mumkin Johar" (pond). The authorities under the Act vide their impugned orders have held that the said land vests in the Gram Panchayat (respondent No. 15) and accordingly the suit has been decided in its favour.

3. Learned counsel for the petitioners has contended that though the nature of the land recorded in the revenue records is Gair Murnkin Johar", however, the same does not vest in the Panchayat as there is no "Johar" in existence for the last more than 40 years. Therefore, it is submitted that the orders passed by the authorities are liable to be set aside. In support of his contention learned counsel cites; (i) Gram Panchayat v. Amar Singh (dead) by LRs, 2001 (4) RCR (Civil) 694 (SC); (ii) Bam and another v. Tek Ram and others, 2002(1) RC.R.(Civil) 323 : 2002 (1)PLJ 437 (P&H); (iii) Des Raj and another The Gram Sabha of Village Ladhot and another. 1981 PLJ 300 (P&H) said Amar Singh v. Gram. Panchayat Mundhal Khurd, 1979 CLJ Civ 258 (P&H).

4. After giving my thoughtful consideration to the contentions of the learned counsel for the petitioners and perusing the record, I find no merit in the same. Section 13-A of the Act provides for adjudication of questions of title etc. It is inter alia envisaged the rein that any person claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is Shamilat Deh" or not and whether any land or other immovable property or any right, title or interest the-rein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated. In terms of subsection (2) of Section 13-A of the Act the procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

5. It is in terms of the said provision that respondents No. 3 to 8 (respondents 5 to 8 being the LRs. of Uma Shankar, the original petitioner) filed a suit for declaration that the land measuring 26 Kanals 11 Marlas in the revenue estate of Village Kharawar, Tehsil Sampla, District Rohtak is entered Shamlat in the name of Thola Bajan". In the Jamabandi in the column of ownership it has been recorded as Shamilat Thola Bajan Hasab Rasad Rakba Khewat". It was also submitted that nature of land is recorded as "Gair Mumkin Johar". There is no dispute that the land in the revenue records is recorded in the name of Shamilat Thola Bajan Hasab Rasad Rakba Khewat" and the nature of the land is Gair Mumkin Johar". The only question which is to be seen is whether the same vests in the panchayat. Section 2(g) of the Act provides for the definition of Shamilat Deh". Section 2(g) (3) of the Act reads as under :-

2(g) "Shamilat Deh" includes.

(1)xxxx.xxxx

(2) xx 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 village.

6 A perusal of the above shows that the Shamilat Deh" includes lands described in the revenue re-cords 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 (sic)purposes of village. Once the land in question is included in the definition of Shamilat Deh" in terms of Section 2(g) of the Act, the same is to vest in the Panchayat in terms of Section 4 of the Act, which provides for vesting of rights in Panchayats and non-proprietors. It is provided therein that 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 by any Court or other authority, all rights, title and interests wherever in the land, which is included in Shamilat Deh" of any village and which is not vested in a Panchayat under the Shamilat" law shall, at the commencement of this Act, vest in a Panchayat constituted for such village. The contention of the learned counsel for the petitioner is that there is no "Johar" in the village for the last 40 years. However, in my view, the perusal of the definition of Shamilat Deh" as contained in Section 2(g)(3) provides that if the land is described in the revenue record as Tholas "and is used according to the revenue records for the benefit of village community or part thereof for common purposes of the village, then the same is Shamilat Deh". Therefore, it is to be seen on the basis of revenue records that the land is being used for the benefit of the village community or part thereof for common purpose of the village. The fact whether actually there is a "Johar" or not is not to be gone into and the revenue records are only to be seen for the purpose. In the revenue records admittedly the nature of land as has already been noticed is described as Gair Mumkin Johar". Johar (pond) is admittedly for the common purposes of the village. Therefore, the land which is recorded in the revenue records as "Thola" and is used for common purposes i.e. Johar (pond) is to vest in the panchayat as it is" shamlat deh" within the meaning of Section 2(g) of the Act and such land is to vest in the Panchayat in terms of Section 4 of the Act.

7. The case of Gram Panchayat v. Amar Singh (supra) referred to by the learned counsel for the petitioners would not apply to the present case. In the said case no commonality of purpose was disclosed in the revenue entries nor was there any indication that the non-proprietors of the village share the benefit of the land in a common way. Therefore, even though the land in the said case was described as Shamilat Thola" but it was not used for common purpose. For the land to be "Shamlat Deh" and vest in the Panchayat, the requirement of law is that it should according to the revenue records be used for common purposes. As such the ratio of the said judgment is inapplicable to the present case.

8. In Baru v. Tek Ram (supra) the case was u/s 7 of the Act in which a claim had been made for possession of the land being "Shamilat Deh" which was Gair

Mumkin Johar" in existence for the last 150-200 years and used for common purposes of the villagers for drinking water. The Assistant Collector came to the conclusion that the ownership of the land was not Shamilat Deh" and that the Gram Panchayat was not its owner. The order became final and was never challenged by any other interested person of the village or the Gram Panchayat. Once the order had become final the only inference drawn was that the land in question was not "Shamilat Deh" and as such villagers of the village it was held cannot agitate by saying that it was "Johar" meant for common purposes or that it is Shamilat Deh" and that they have a right to use the same. Therefore, in the said case due to there being no challenge to the order of the Assistant Collector which has become final, this Court held that the land in question was not "Shamilat Deh". As such the ratio of the said judgment is also inapplicable to the present case.

9. In *Des Raj v. The Gram Sabha of Village Ladhot* (supra) the land that was shown in possession of proprietors i.e. *Makbuza Malkan*" it was stated in the plaint that the land was not used according to revenue record for benefit for the village community or a part thereof for common purposes of the village. In the said circumstance it was held that the land did not fall within the definition of "Shamilat Deh" as it was not being used for common purpose of the village. Therefore, the ratio of the said judgment is also inapplicable to the facts of the present case.

10. In *Amar Singh v. Gram Panchayat Mudhal Khurd* (supra) the land in the revenue papers was described as "Shamilat Tholas". It was held that according to the revenue records the land in dispute was the ownership of Shamilat Thola" and in the column of cultivation it was mentioned that it is in possession of the owners. Besides, in the Jamabandi it was not mentioned that the land was being used for the benefit of the village community or part thereof for the common purposes of the village. In the said context it was held that the land which is not used for common purposes of the village would not fall within the ambit of Shamilat Deh".

11. In the circumstances, it may be noticed that the nature of land has to be seen from the revenue records to ascertain whether the land which is described 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 village. If the land is merely described as shamilat, tarafs, pattis, pannas and tholas and is shown not to be used for the benefit of the village community it would not fall within the ambit of Shamilat Deh". However, if it is being used for the benefit of the village community according to the revenue records it would fall within the definition of Shamilat Deh" in terms of Section 2(g) of the Act and would vest in the Panchayat in terms of Section 4 of the Act. In the present case as has already been noticed in the revenue records, the land has been described as *Gair Mumkin Johar*", which is for common purpose of the village community. The fact that there is no "Johar" in existence for the last 40

years as contended by the learned counsel for the petitioners is inconsequential, as in the revenue record the same is mentioned as "Johar", which would mean it is for the benefit of the village community. In terms of Section 2(g) (3) of the Act the land which is recorded as "thola" as in the present case and according to the revenue records is used for common purposes is to be taken as "Shamlat Deh" and is to vest in the Panchayat. What is of essence is the revenue records and not what a party says. Besides, there is nothing to show that the findings and conclusions concurrently reached at by the Collector in his order dated 17.11.2005 (Annexure-P.2), the Commissioner, Rohtak Division, Rohtak in his order dated 22.11.2006 (Annexure-P.3) and the Financial Commissioner in her order dated 26.8.2008 (Annexure-P.5) are in any manner erroneous so as to dislodge the same.

12. In the circumstances there is no merit in the petition and the same is accordingly dismissed.