(2010) 05 P&H CK 0277

In the Punjab And Haryana At Chandigarh

Nirmal Singh and Others — APPELLANT

Vs

Additional Director of Panchayats and Others — RESPONDENT

Date of Decision : 12-05-2010

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 11

Citation : (2010) 159 PLR 208

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—All the above writ petitions contain the challenge to the orders passed by the Assistant Director (Panchayats), Chandigarh, exercising powers of the Commissioner under the Punjab Village Common Lands Regulations Act of 1961 (hereinafter called ''the Act''). The authority was disposing also the cross-appeals filed by private individuals in the Gram Panchayat Saifalpur in so far as the order of the Collector''s orders rejected the claim to ownership of a portion of the properties. The order under challenge before the Commissioner had been earlier issued by the Collector while disposing of the petition u/s 11 of the Act. By the first order of the Collector, out of an extent of 47 kanals and 14 marlas, 24 kanals of extent of lands in various khasra numbers had been treated as shamlat deh and the balance of 123 kanals and 14 marlas had been treated as properties held by various claimants as their private lands. In the appeal preferred before the Commissioner, the orders of the Collector had been set aside to the extent to which the private owners'' rights had been recognized and they were also held to vest in the panchayats. On a finding that all the properties were shamlat deh, the writ petitions are, therefore, at the instance of all the private individuals, whose respective claims to the properties had been wholly rejected. 1 have heard the counsel for the respective petitioners as well as the counsel Shri Manohar Lall, Amicus Curiae, to present the contentions raised on behalf of the panchayat.

2. The contention on behalf of the writ petitioners is that the Collector had

correctly considered the effect of the entries in the jamabandi for the years 1951, 1952 onwards, where under Column No. 4 against the entry of name and description of owner, it had been entered as shamlat deh, Hasab Hissas Paimana Haqiat. The expressions in vernacular is explained by the learned Counsel as meaning ''properties of the proprietors as per their share''. Against Column No. 5 describing the name and description of the cultivator, it has been entered that the owners are in possession. The learned Counsel for some of the petitioners would urge that the jamabandi entries are normally prepared 4 years earlier and, therefore, the entry relating to the year 1951-52 must be understood as the status on land 4 years earlier that is, prior to 1950 and if the private individuals had been shown to be persons in possession, it should only be held that the property had vested with the panchayat. It has also been contended by the learned Counsel that as per the definition of the expression ''shamlat deh'' as contained u/s 2(g), any land in a village described as banjar qadim and used for common purpose of the village according to the revenue records would also be shamlat deh, but in this case, since the user for common purpose had not been established, the property described as banzar qadim must be taken as not coming within the category of shamlat deh.

3. While the jamabandi entries in all the writ petitions pertained only to year after 1931, 1952, the learned Counsel appearing for the petitioner in Civil Writ Petition No. 10881 of 1989 would refer to the jamabandi entries for the year 1960-1961 Bikarami Samat and say that the word ''Bikarami'' related to the reckoning of the year as per the local calendar which corresponds to Gregorian Calendar year 1903/1904. In the above writ petition, the entry in column No. 4 refers to "Shamlat Deh according to scale of Ownership rights as per shajra Nasab". The same document also refers in column No. 13 under "remarks" that the mutation Nos. 3 & 4 pertained to "disputed ownership". All the counsel appearing for the petitioners make a ground of the fact that the panchayat had not established its ownership or possession at any time but the Commissioner had wrongly accepted the contention raised on behalf of the panchayat that it had been periodically leasing out the properties for common use of the villages without an ista of proof for the same. The learned Counsel would urge that the only properties that are used for the common purposes of the village and described as banjar qadim would qualify for a categorization of shamlat deh and similarly only shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community could to be included in shamlat deh and that the Commissioner had wrongly applied the definition u/s 2(g)(1) for coming to the conclusion that it was shamlat deh.

4. The learned Counsel Shri Manohar Lall, Amicus Curiae, urged that the Commissioner correctly applied the definition of the expression u/s 2(g) as falling within Clause (1) and if the jamabandi had described the property to fall within the revenue entry shamlat deh excluding abadi deh, unless the possession of any of the persons as proprietors could be shown for the year prior to 26.01.1950, the property must only be taken as vesting in the panchayat. The governing

provision shall be only to Classe 2(g)(1) and not to Cause 2(g)(3) or 2(g)(5) and being mutually exclusive of the other classifications, the latter clauses shall not applied. The learned Counsel Shri Manohar Lall also points out that the Punjab Village Common Lands (Regulations) Act of 1961 replaced the Act called the Punjab Village Common Lands (Regulation) Act of 1953 and Pepsu Village Common Lands (Regulations) Act of 1954 after the merger of Pepsu with Punjab. The earlier Acts had applied to all transactions after 26.01.1950 and the date therefore obtained relevance that if none of the private parties could show their possession and the jamabandi entry referred to the properties as shamlat deh, it was irrelevant that the jamabandi entries also contained reference to the property being in the possession of the proprietors as per their share.

5. Both the counsel referred extensively to the decisions Of this Court and the Hon''ble Supreme Court in support of the respective contentions. The learned Counsel Mr. G.S. Nagra refers to a decision in Joginder Singh and Ors. v. The Director, Consolidation of Holdings Punjab and Ors. 1988 V.L.J. 535 in support of his contention that the land described in the records-of-rights prior to consolidation as banjar and banjar qadim in individual cultivating possession of Khewatdars and in column of cultivation recorded as in possession of Malkan (owners) while in column pertaining to assessment recorded as Bila Lagan Bawajah Kabza Sab Ka Hissedari (without payment of rent being In possession of co-sharers) does not fall within definition of Shamilat Deh in possession in Section 2(g). The learned Counsel also refers to a still later ruling in Gram Panchqyat Gram Sabha Village Ugani, Tehsil Rajpura, District Patiala v. State of Punjab 1997 (3) R.C.R. 79, which held that if the respondent is shown as owner before 1950 of the land recorded as Shamlat Deh Hasab Hissas Palmana Malkiat Mudarqa Sajar Nasar Bandobasti, it does not vest with the panchayat, since such terms themselves do not mean that the land vests in Gram Panchayat as shamlat deh. In such circumstances it must only be taken that the gram panchayat failed to prove that the land was shamlet deh vested in it. He also refers to the fact that yet another person in the same village in relation to another property by name Mehar Singh had laid a claim to the property which was also claimed by the very same panchayat as vesting in the panchayat. But the Commissioner, while disposing of an appeal filed by the Gram Panchayat, held that the land had not at any time been leased by the gram panchayat and that it had also not proved that the land had been given to it by the Consolidation Department. Finding that the private individual was in possession of the property prior to 26.01.1950, he had rejected the claim of the panchayat on the ground that the land in the nature of shamlet deh Hasab Hissas Palmana Malkiat could not vest in the Panchayat. This decision was also upheld by this Court in Civil Writ Petition No. 8094 of 1996 when the writ petition filed by the Gram Panchayat was dismissed. This decision of the High Court must be immediately seen to have been merely dismissed summarily without any reasoning but the learned Counsel would still rely on it to show that at the previous time when the panchayat was trying to contend that yet another item of property in the same village Saifalpur

as having vested in it and that it had been leasing out the property for the benefit of the villagers, it had been rejected by the competent authority and affirmed by the High Court.

6. The learned Counsel Shri Gurcharan Singh has referred to several decisions to contend that the mere description of a property as shamlat deh in jamabandi would not vest the property with the panchayat when it is accompanied with entry of possession of proprietors on transfers prior to 26.01.1950. The learned Counsel refers to a Full Bench decision of this Court in Gram Sabha, Sadhraur v. Baldev Singh and Ors. 1977 P.L.J. 276, that dealt with the relative scope of Sub-clauses (3) and (5) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act of 1961. The Full Bench, answering the questions of law, which among others addressed the issue whether banjar qadim land falling in shamlat taraf or shamlat patti would be governed by Sub-clause (5) of Section 2(g) or Sub-clause (3) and whether the proviso after Sub-clause (5) only governed this sub-clause or the previous four sub-clauses also. The Full Bench had answered the questions by affirming that Sub-clause (5) being a specific provision was restricted only to lands shown as banjar qadim in revenue record and the pre-requisite before such a land could be held to be as shamlat deh to vest in gram panchayat must be to establish that according to entries in revenue record, the same was being used for common purpose of the village. Unless this conclusion was reached banjar qadim could not be held to vest in gram panchayat. Referring to the application of Section 2(g)(3), the Full Bench held that the expression "for the benefit of the village community or a part thereof 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 would include all sections of population of the village including the landowners. The Full Bench ruled that the provisions cannot be given restricted meaning so as to confine the benefit only to the landowners and that the entries in revenue record must show that actually some benefit was being derived from the use of such land by the village community or a part thereof. A land described as banjar qadim would be included in shamlat deh if only it was used for common purposes of the village. In a subsequent judgment rendered by the Division Bench of this Court in Om Parkash v. The Assistant Collector, 1st Grade Narnaul and Ors. (1992) P.L.R. 97, this Court held that the entry in jamabandi in column of ownership as shamlat deh Hisab Hissa Malkiat with the name of owner, does not show that the land was being used for common purposes but was in possession of the proprietors and a mutation sanctioned in favour of the gram panchayat could not be taken that the land vested in the gram panchayat. In Sarvshri Teja Singh v. Gram Panchayat (Gram Sabha) Halqa Boran 1984 P.L.J. 17, this Court had held that before a property could be taken as falling with Section 2(g)(5), two requirements were to be fulfilled: (i) the land must be described as banjar qadim; and (ii) it should be used for common purposes. A mere fact that the land recorded as banjar qadim could not be itself sufficient to hold land as shamlat deh.

7. Shri Dhaliwal appearing for some of the petitioners also refers to several

decisions to the effect of entries in jamabandi and the requirement of proof of possession of panchayat before it affirms any particular land as vesting in the panchayat as shamlat deh. In Kaka Singh v. Additional Director of Consolidation, Punjab 2001 (4) R.C.R. 14, a Division Bench of this Court held that in the absence of any record to show that the land in dispute although showed the mutation entry in favour of panchayat, it had nothing on record to show that the property was only as shamlat deh. In Bachna (Died) through L.Rs v. Gram Panchayat, Mehmoodpur Jattan and Ors." 2005 (4) R.C.R. 789, this Court held that a Collector cannot declare the land to be vested in panchayat without there being any evidence of ownership of the panchayat. A mere assertion that the property was in its possession without any documentary evidence could not be held to be vested in the panchayat. He also refers to the decision of the Hon''ble Supreme Court in Gram Panchayat v. Amar Singh (Died) by L.Rs. 2001 (4) R.C.R. 694, that held that the lands described in revenue records to be "in possession of the proprietors of the tholas" in their cultivating possession and use and when no commonality of purpose had been disclosed in revenue entries nor any indication that non-proprietors enjoyed the benefit of the land in any common way, it would not fall within the definition of the shamlat deh. A mere mutation entry in favour of gram panchayat with regard to land, which was consistently shown in records of rights as belonging to proprietors, would not vest the property in panchayat, said a decision of a Division Bench in Gurjant Singh and Anr. v. Commissioner, Ferozepur Division, Ferozepur and Anr. 2000 (2) P.L.J. 7.

8. All these decisions go to show that a mere classification of property as banjar qadim would not give rise to a presumption that the property as shamlat deh. These decisions are also authority to the view that the properties referred to as tarafs, pattis and tholas do not also establish their character as shamlat deh, unless it is also established that the village community or a part thereof had the benefit of such a land. To respond to these contentions, the decisions referred to by Shri Manohar Lall would obtain immediate relevance, for, in my view, the answer to this controversy involved in the writ petition lies in appreciating the revenue entries and the applicability of the relevant provision of the Act, The Hon''ble Supreme Court was typically considering a situation like what obtains in the batch of cases, in Sukhdev Singh and Ors. v. Gram Sabha Bari Khad and Ors. 1977 P.L.J. 150. The Hon''ble Supreme Court was considering an entry of a land recorded in jamabandi as shamlat deh which also included an entry that the land was in possession of owners as per respective shares in khewat. The Hon''ble Supreme Court held that a mere entry that a land had been in possession of owners as per their share did not detract from the nature of land as shamlat deh. The Hon''ble Supreme Court held that for the essential requirement for exclusion of land for shamlat deh, the land should have been acquired by purchase or in exchange for proprietary land from a co-sharer in shamlat deh and a land that is not acquired by purchase or in exchange from any sharer in the shamlat deh, would not be covered by proviso (iv) to Section 2(g). The Hon''ble Supreme Court was dealing with the case where there was an entry in jamabandi of the

year 1914-1915 where the property was described as shamlat deh and the persons, who were staking a claim, were seeking the applicability of the proviso to Sub-clause (iv) of Section 2(g), which reads as follows:

(iv) having been acquired before 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed.

The Hon''ble Supreme Court held as follows:

...The fact that even then it was recorded in the ''Jamabandi'' as ''shamlat deh'' shows that that particular character of the land was recognised even as far back as 1914-1915, and it could not detract from that nature of the land merely because it was further stated in the ''jamabandi'' that it was in the possession of the owners "as per respective shares in khewat". Secondly, the aforesaid Sub-clause (iv) requires that in order to be excluded from the category of "shamlat deh", the land should have been acquired by "purchase or in exchange for proprietary land from a co-sharer in the "shamlat deh". Then there is the further fact that the appellants have not been able to prove that the suit land was recorded in the ''jamabandi'' as having been so acquired; and they have not been able to produce any valid deed of purchase or exchange from any such cosharer.

We are therefore unable to think that the view taken in the impugned judgment of the High Court requires reconsideration.

9. He also would refer to other Bench decisions of this Court in Shiv Charan Singh and Ors. v. Gram Panchayat Narike and Anr. 1978 R.L.R. 33, which held that the banjar qadim land which is used for common purposes of village falls within shamlat deh. In Tel Ram and Ors. v. Gram Sabha Manakpur and Ors. 1976 P.L.J. 628 a Division Bench of this Court held that all classes in Section 2(g) Clauses (1) to (5) were independent to each other and recourse to any one clause ought to be to the exclusion of other. If the land would fall under any one of the clauses, it was sufficient to bring the land within the definition of the word "shamlat deh". If a requirement of Clause (1) was only that the property must be treated as shamlat deh and referred as such, and the land was also shown as banjar qadim in revenue records, it was not necessary to prove that the banjar qadim land was used for common purposes of the village.

10. In my view, the definition of "shamlat deh" under the Act obtains enormous relevance and it is, therefore, reproduced as under:

(g) "Shamilat Deh" includes.

(1) Land described in the revenue records as Shamilat deh excluding abadi deh.

(2) Shamilat Tikkas.

(3) Land 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.

(4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playgrounds, school drinking wells, for ponds within abadi deh or gora deh and,

(5) Lands in any village described as Banjar Qadim and used for common purposes of the village, according to revenue records.

But does not include

(i) ....

(ii) to (ix) ....

11. If, in this case, any one of the petitioners had been shown to have been in possession prior to coming into force the Act on 26.01.1950, by reference to the fact that the property had been described as banjar qadim, it would have been taken as an evidence of the fact that the property had not been put to common use of the village. Similarly, any reference to the property by a specific tholas and shown as having been exclusively enjoyed, there having been no benefit to the village community, it would attract the classification brought u/s 2(g)(3). If the panchayat is able to show that the revenue records merely recorded the property as shamlat deh and no other entry was there in the jamabandi, then the applicability of Section 2(g)(1) would become unexceptional. In fact it is with reference to Section 2(g)(1) that the Commissioner came to the conclusion that if the jamabandi had shown the property as shamlat deh and none of the private individuals had shown their possession for any date prior to 26.01.1950, no further proof was necessary for the panchayat to claim that the property had become vested in it. In my view, the approach of the Commissioner had been rather too simplistic in assuming that if there was a reference in column No. 4 describing the name and description of the owner as shamlat deh and that immediately called for the applicability of Section 2(g)(1). In all the decisions, where alongside the entry of shamlat deh, there was also an entry of Hasab Hissas, Paimana Haqiat and the name of the owner had been mentioned. In this case, in none of the documents filed on behalf of the petitioners, is there any reference to the name of the owner. Even in the document which the learned Counsel for the petitioner in Civil Writ Petition No. 10881 of 1989 contended that the jamabandi entries that had been filed in Court referred to Bikarami. 1960-61 corresponding to 1914-1915, there was merely a reference to the scale of ownership as per Shajra Nasab but contained no reference to any owner''s name. If there has been any jamabandi entry referring to the name of the proprietor alongside the entry shamlat deh prior to 26.01.1950, in my view, it would conclude the issue to find that the property did not vest in the panchayat and that it was not shamlat deh. In this case, the Commissioner found that even apart from the entry that the property was shamlat deh, it upheld the contention of the panchayat that the property had been used for the benefit of the villagers by leasing it out for various years. No document of lease was produced nor was any such assertion of right through auction established. The learned Counsel Mr.

Nagra referred to the statement of certain persons claiming as proprietors, had been recorded as follows:

At present the village consists of four Tholas namely Thola Majra Walan Ka 3-1/2 ploughs Thola Dondu Ka 5-3/4 ploughs Thola Bahr Kan 4-3/4 ploughs Thola Gola Ka 5 ploughs are proprietors of 19 shares (ploughs).

It is not known from which place and when their ancestors came to this place and when did they partition the land as above and it is also not known from whom this land was acquired and in what manner. Because the holding of the proprietors is not according to any defused share even now, hence, in future, the scale noted above will indicate their share in the joint land (shamlat) and the revenue will be paid by proprietors according to their land possession. The joint land measuring 1106B-13B is partible. Hence nature of village (Bhaiya Chara) is Ghair Mukammal.

12. I do not find any reference to the statement in the order of the Commissioner. The Commissioner had merely stated in his order that the Sarpanch had given evidence that the land had been leased out and the money had been properly accounted for in the panchayat funds. He also states in the order that since the present respondents (private individuals) had been on unauthorized possession since quite a number of years, the panchayat has not been able to lease out the land. He has referred in his order that the records are leasing out to various persons, had been shown before the Lower Court and that the Lower Court had verified his statement by comparison with the record. The Commissioner had, therefore, held that it was clear that the gram panchayat had been leasing out the land. Since no records of such leases are available before the Court and that the Commissioner had only observed that the records had been produced and compared before the Lower Court. I have also examined the order of the Collector. I do not find any such observation in any part of the order of the Collector. If there had been any statement recorded or any document produced that the lands had been leased out by the panchayat at the time when the Act was brought into force to establish the common use of the property that would clinch the issue in favour of the panchayat. On the other hand, if any one of the petitioners had shown himself to be in possession of the property before 26.01.1950 alongside even the entry of shamlat deh but in the capacity as a proprietor or as a transferee from proprietor, it would show that the property belonged only to such a private individual and did not vest in the panchayat. I find the documents and evidence as considered by the Commissioner to be inadequate to take a definite view in the matter. The order of the Commissioner has been rendered without considering of the statement given on behalf of the alleged proprietors. The Commissioner''s order does not also refer to a claim by some of the petitioners as being the cultivators in the capacity as the proprietors and particularly, as found in Civil Writ Petition No. 10881 of 1989. I, therefore, set aside the order of the Commissioner and remand the matter to the Lower Appellate Court for consideration of (i) any documentary evidence of lease of the

lands by the panchayat as contended by the panchayat; (ii) whether there exists any proof of possession of any proprietor in his capacity as a proprietor or as a transferee from proprietor, other than as a member of the public deriving a common benefit along with the other villagers, in respect of the property prior to 26.01.1950. These two aspects shall be considered in the light of how the Collector had upheld the contention of the panchayat to certain portions of the property and upheld the claims of some other portions to the private individuals asserting rights as proprietors or successor-in-interest of such proprietors. The decision shall be taken by the Commissioner after affording an opportunity to the respective parties to adduce such additional evidence as they may find necessary relating to the period before 26.01.1950 only as well as documents pertaining to the period prior to coming into force the 1961 Act. No opportunity shall be given for adducing any evidence for any later period. The parties shall appear in person or through their counsel on 28.05.2010 before the Lower Appellate Court.

13. All the writ petitions are disposed of on the above terms. There shall be however no directions as to costs. I place on record my sincere appreciation to Shri Manohar Lall, Amicus Curiae, who assisted this Court on delicate question of facts and law touching upon these batch of cases.

