

(2012) 11 P&H CK 0056
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 8272 of 2003 (O and M)

Pala Ram and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13A, 13B, 2(g), 2(g)(1), 2(g)(1)(3)(5)

Citation : (2013) 2 RCR(Civil) 1005

Hon'ble Judges : Rekha Mittal, J; Rajive Bhalla, J

Bench : Division Bench

Advocate : M.L. Sarin, Nitin Sarin and B.S. Bedi, for the Appellant; D. Khanna, Addl. A.G., Haryana for the Respondents No. 1 to 5, A.K. Kaushik, Advocate for the Respondents No. 6, Gram Panchayat and S.N. Saini, Advocate for the Respondents Nos. 17, 18, 20 to 23, 25 and 26, for the Respondent

Final Decision : Dismissed

Judgement

Rajive Bhalla, J.

CM No. 4637 of 2012 in CWP No. 8272 of 2003 and CM No. 4640 of 2012 in CWP No. 17386 of 2003

1. Allowed as prayed for

CM No. 4638 of 2012 in CWP No. 8272 of 2003 and CM No. 4641 of 2012 in CWP No. 17386 of 2003

Prayer in this application is to implead the legal representatives of Paltu Ram, proforma respondent No. 16, in CWP No. 8272 of 2003 and petitioner in CWP No. 17386 of 2003, who is stated to have passed away on 11.07.2009.

2. Allowed subject to all just exceptions.

3. Amended memo of parties is taken on record, CWP No. 8272 of 2003

4. By way of this order, we shall dispose of CWP Nos. 8272 and 17386 of 2003 as they involve adjudication of similar questions of fact and law.

5. The petitioners pray for issuance of a writ of certiorari for quashing orders dated 16.03.1999, 11.03.2002, 14.02.2003 and 12.05.2003, (Annexures P-5 to P-8). passed by the Assistant Collector 1st Grade, Panipat, the Collector, Panipat, the Commissioner, Rohtak Division, Rohtak and the Financial Commissioner and Principal Secretary to Government, Haryana, Development and Panchayats Department, Chandigarh, respectively, rejecting their plea, raised u/s 13-B (now Section 13-A) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the "1961 Act") as applicable to the State of Haryana, that the land, in dispute, does not vest in the Gram Panchayat.

CWP No. 17386 of 2003

6. The petitioner, has filed the writ petition without filing an application u/s 13-A of the 1961 Act, but prays that as a suit was filed under Order 1 Rule 8 of the CPC (hereinafter referred to as the "Civil Procedure Code"), by petitioners in CWP No. 8272 of 2003, the Financial Commissioner has erred in dismissing his petition on the ground that he was not a party before the Assistant Collector 1st Grade, Panipat or the Collector.

7. Before we proceed to decide the matter, it would be appropriate to narrate facts that are being taken from CWP No. 8272 of 2003.

8. The petitioners, filed an application u/s 13-B (now 13-A) of the "1961 Act" read with Order 1 Rule 8 of the Civil Procedure Code, averring that as the land, in dispute, is recorded as the joint ownership of proprietors of Panna Madhu, Panna Gulman, and Panna Rajput in the Shamilat Deh of the village, and is not used, as per revenue record for common purposes, it does not vest in the Gram Panchayat.

9. The Gram Panchayat opposed this plea and, in turn, pleaded that as the land is described as Shamilat Deh, and used as Charand (a pasture), Johar (a pond) etc., it vests in the Gram Panchayat.

10. The Assistant Collector 1st Grade, Panipat, framed 11 issues, including one additional issue, and after considering the pleadings and the evidence, held that the land, in dispute, vests in proprietors but dismissed the application on certain other grounds including the ground of maintainability. The petitioners and the Gram Panchayat, filed separate appeals. The Collector, Panipat, accepted the appeal filed by the Gram Panchayat but dismissed the appeal filed by the petitioners, by holding that though the land was originally described as "Shamilat Panna", but as it was used as charand (pasture) etc, it does not vest in proprietors, i.e., the petitioners. A revision filed by the petitioners before the Commissioner, Rohtak Division, Rohtak, was dismissed on 14.02.2003. A further petition filed before the Financial Commissioner and Principal Secretary, met the same fate.

11. Counsel for the petitioners submits that jamabandies prior to the enactment of the Punjab Village Common Lands Act, 1953 (hereinafter referred to as the "1953 Act") and the 1961 Act, clearly record that the land, in dispute, though, Shamilat Deh, is owned by Panna Madhu, Panna Gulman, and Panna Rajput in accordance with their shareholdings. Section 2(g)(3) of the 1961 Act, provides that land, described as tarafs, pannas, pattis and tholas, shall vest in a Gram Panchayat, only, if, it is used as per the revenue record, for common purposes. The revenue entries do not record that the land, in dispute, was used for the benefit of village community or for any common purpose of the village. The land is, therefore, excluded from Shamilat Deh. It is further argued that Lal Singh, Revenue Patwari, has appeared as PW-4, and deposed that land measuring 211 bighas and 13 biswas was cultivated, thereby clearly proving that the land is not Shamilat Deh. It is further argued that as land described as Charand and Johar was being used by co-sharers of the pannas, to the exclusion of all else it cannot be said to be used by the entire village and even if, a part of the land is Charand or Johar, the entire land could not be held to be Shamilat Deh. It is also submitted that as a large chunk of the land, in dispute, is admittedly Banjar Qadim, it does not vest in the Gram Panchayat as it was not used for common purpose of the entire village as held by a Full Bench judgment of this Court in Gram Panchayat Sadhraur (formerly Dhumma) and Gram Sabha Sadhraur (formerly Dhumma) v. Baldev Singh and others, 1977 PLJ 276. Counsel for the petitioners refers to certain entries in the Wajib-ul-arz, to support his argument that the land was not used for common purposes. It is further submitted by reference to Khasra Girdawaries and documents prepared during consolidation, that as Pala Ram was in cultivating possession of Khasra No. 2748, this land was allotted to him during consolidation. The land, therefore, does not vest in the Gram Panchayat.

12. Counsel for respondents No. 17, 18, 20 to 23, 25 and 26 submits that the impugned orders are legal and, valid and even otherwise, as the entire land, in dispute, is used for common purpose of the village, as Charand (a pasture), it does not vest in the petitioners much less in any other individual proprietor of the village. It is further argued that the petitioners' argument that Lal Singh, Revenue Patwari, has deposed as PW-4, that land measuring 211 bighas and 13 biswas was cultivated, is factually incorrect. Pala Ram's plea, of cultivating possession, based upon Khasra Girdawaries, that allegedly record his possession, was duly considered by the Collector and rejected as it was held that these entries are suspicious.

13. Counsel for the Gram Panchayat submits that as the Collector and the Commissioner have recorded concurrent findings of fact that the land, in dispute, is Shamilat Deh, the writ petition should be dismissed. It is further submitted that the land, in dispute, is admittedly, Shamilat Deh and, though recorded, as the shareholdings of Panna Madhu, Panna Gulman, and Panna Rajput, vests in the Gram Panchayat as it is Banjar Qadim and used as per the revenue record as Charand and Johar etc. It is also argued that land used as Charand is included in

Shamilat Deh u/s 2(g)(1) of the 1961 Act and as there is no evidence that the land was cultivated before the enactment of the 1953 or the 1961 Acts, the mere fact that the land may have been cultivated thereafter, is irrelevant.

14. We have heard counsel for the parties, perused the impugned orders, the relevant documents, the jamabandies, and the Wajib-ul-arz, etc. appended as Annexure P-1 (in CWP No. 17386 of 2003) and also other relevant documents produced during the hearing of the case.

15. The jamabandi for the year 1945-46 records that the land, in dispute, is Shamilat Deh and out of seven shares, panna Madhu has two shares, Panna Gulman has three shares and Panna Rajput has two shares. It is, therefore, beyond dispute that the land is Shamilat Deh but was owned, according to their shareholdings by members of the above pannas. The proprietors of Panna Rajput, were Muslims and, admittedly, migrated to Pakistan upon partition of the country. The land of Panna Rajput was, therefore, allotted to displaced persons. The dispute, in the present case, relates to the land of other two pannas, named, Panna Madhu and Panna Gulman.

16. The 1953 Act was enacted as a measure of agrarian reform to vest ownership and management of Shamilat Deh in a Gram Panchayat and to ensure that non-proprietors, who had no rights in Shamilat Deh or were allowed to use Shamilat Deh land at the whim of proprietors, were henceforth allowed to use land reserved for common purposes. The "1953" Act, declared that land described as Shamilat Deh, would vest in a Gram Panchayat. The 1953 Act did not draw any distinction between various types of Shamilat Deh or make any exception for Shamilat Taraf, patti, panna and thola. The 1953 Act was repealed on 04.05.1961 and re-enacted as the 1961 Act. Section 2(g)(1) to (5) of the 1961 Act, defines land that is included in Shamilat Deh whereas Sections 2(g)(i) to 2(x) set out the circumstances in which land that shall be excluded from Shamilat Deh. Section 3 of the 1961 Act provides that land, that has vested in the Gram Panchayat, under the 1953 Act, shall continue to so vest, except to the extent excluded u/s 2(g) of the 1961 Act. It is, therefore, apparent that if Shamilat Deh has vested in a Gram Panchayat, under the 1953 Act, it shall continue to so vest except if it is excluded by any sub-section of Section 2(g) of the 1961 Act.

17. The question that requires consideration is whether the land, in dispute, which is, admittedly, Shamilat Deh but recorded as shareholding of specific pannas is included or excluded from Shamilat Deh? Section 2(g)(1)(3)(5) and (v) of the 1961 Act read as follows:-

2(g) "Shamilat Deh" includes:-

(1) land described in the revenue records as [Shamilat Deh or Charand] excluding abadi deh;

(2) xxx

(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) xxx

(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 land which:-

(i) xxx

(ii) xxx

(ii-a) xxx

(iii) xxx

(iv) xxx

(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:

[(vi)] xxx

(vii) xxx

(viii) xxx

(ix) xxx

18. Section 2(g)(1) of the 1961 Act provides that Shamilat Deh shall include land described, in the revenue record, as Shamilat Deh or Charand (a pasture). Section 2(g)(3) of the 1961 Act, however, provides that land described, in the revenue record, as Shamilat tarafs, pattis, pannas and tholas. shall be included in Shamilat Deh if it is used, according to the revenue record, for benefit of the village community or a part thereof. Section 2(g)(5) of the 1961 Act provides that Shamilat Deh shall include land described as Banjar Qadim if it is used for the common purposes of the village, according to the revenue record. Section 2(g)(v) of the 1961 Act provides that the land described, in the revenue record, as Shamilat, Taraf, Pattis, Pannas and Tholas shall not be included in Shamilat Deh if it is not used, according to revenue records, for benefit of the village community or a part thereof. A conjoint appraisal of these provisions reveals that they provide for inclusion or exclusion, of land, in Shamilat Deh. The subsections of Section 2(g) of the 1961 Act have to be read independent of one another, with each clause providing for a separate situation of inclusion or exclusion of land from Shamilat Deh. Where, however, the land is Charand (a pasture), it shall be included in Shamilat Deh u/s 2(g)(1) of the 1961 Act, irrespective of whether it is ordinary Shamilat Deh or Shamilat Deh of a taraf, patti, panna or thola. Section 2(g)(3) and (v) of the 1961 Act, which provide for inclusion or exclusion of land

of Shamilat tarafs, pattis, pannas and tholas, apply where the land is not Charand (a pasture) and is not used for common purposes of the village.

19. The petitioners claim that as the land, in dispute, is the ownership of different pannas and is in cultivating possession of different proprietors, it does not vest in the Gram Panchayat. The plea, in our considered opinion, is contrary to the facts as a major portion of the land, in dispute, is Banjar Qadim and is used as Charand (a pasture) and Johar (pond) by the village community. A finding to that effect recorded by the Collector after appraising the revenue record, in a great degree of detail, reads as follows:-

16...the suit filed by the appellants in the trial court relates to Khewat No. 149, Khatoni Nos. 516, 619, 623, 624 and 625, as shown in jamabandi for the year 1945-46. A bare perusal of jamabandi for the year 1945-46. PW-5/5 and PW-5/11 produced on the record of trial court establish that all the aforesaid numbers are entered in the column of ownership of "Shamlat Deh Hassab Hissa Zail Panna Madho two shares, Panna Gulman three shares and Panna Rajputan two shares, total seven shares and in the column of cultivation, Khatoni No. 506 is in possession of owners and nature of land is "Banjar Qadim". In Khatoni No. 616, there is entry of "Gair Marusi" in favour of Ramdhari son of Mam Chand, resident of Khandra and area which is Johar", which has been shown on payment of Rs. 45/- per year on lease. Khatoni No. 623 is "Charand" and the area is "Gair Mumkin Reh" and Banjar Qadim and Khatoni No. 624 Charand" through Baru son of Kummi, Caste Gujjar, resident of the Village and in the capacity of "Gair Marusi". Only land measuring 3 bighas is "Barani" and is in the column of revenue record, the entry is without payment of rent on account of Nautaur. Similarly, in Khatoni No. 625, it is "Chrand Majkor" through Kalia son of Daya Ram, Caste Gujjar, resident of the Village, Gair Marusi, area 1 bigha 10 biswas barani and in the column of revenue record, the entry is Gair Marusi Besharah Malkaan, Bila Malkaan, meaning thereby out of all the aforesaid numbers, only land measuring 4 bighas 10 biswas is being cultivated.

xxx As per revenue record, the land in dispute is "Shamlat Deh" and "Banjar Qadim" or this land has not been cultivated by any person, but the cattle of the whole village graze and thus, used for common purposes of the village. This fact has been admitted by AW-1 and AW-2 themselves in their statements.

xxx Out of this land measuring 6669 kanals 5 marlas is Gair Mumkin Thor, 3 kanals 10 marlas is Gair Mumkin, 14 kanals brani, 80 kanals 5 marlas Nahari Thoor, 114 kanals Nahari. Similarly, Khatoni No. 582, 582/1, 583, 584 have been shown to be on lease and Khatoni No. 721, total area of which 1352 kanals is "Charand", meaning thereby at the time of institution of the suit, most of the land was "Banjar Qadim" and Gair Mumkin Thoor" and was not being cultivated and the land which was being cultivated was on lease under panchayat.

19. xxx According to jamabandi for the year 1945-46, Ex. PW-5/5 and 5/11, the land in dispute is shown as Banjar Qadim and it is being used as grazing ground.

Only 4 bighas 10 biswas of land was being cultivated. 17 bighas 17 biswas land, which was "Johar" (Pond), was in possession of Ram Dhari as a lessee.

20. The petitioners have not been able to point out any error in these findings or rebut them by referring to any revenue entries.

21. Faced with these findings, counsel for the petitioners confined his prayer, in the petition, to claim ownership of 211 bighas and 13 biswas of land, which is alleged to be in cultivating possession of proprietors. Counsel for the petitioner submits that as PW-4 Lal Singh, Revenue Patwari, has deposed that 211 bighas and 13 biswas of land is in cultivating possession of proprietors, the land is excluded from Shamilat Deh. A perusal of the deposition of the Revenue Patwari, appended with the writ petition, reveals that he has not deposed that 211 bighas and 13 biswas of land was being cultivated by proprietors much less by the petitioners. In fact, during his cross examination, Lal Singh, Revenue Patwari, has clearly stated that only 12 bighas and 13 biswas of land was being cultivated. A relevant extract from his cross examination, reads as follows:-

xxx

Out of the area in this Khewat, cultivable: 21 bighas 13 biswas, Banjar Zadid: 5 bighas 14 biswas, 15 biswas, Banjar Qadim is 2416 bighas-15 biswas and 2 bighas-8 biswas, Gair Mumkin 6604 bighas-17 biswas, 2 bighas-5 biswas. From the jamabandi 1945-46 till January 1953, no jamabandi was prepared.

22. The land, in dispute, was, therefore, not in cultivating possession of any proprietor of any panna. The Jamabandi for the year 1945-46, bears out this finding. In addition, as, the land, in dispute, was used as Charand (a grazing ground) and Johar (a pond) etc., and both are common purposes of a village, it cannot be excluded from Shamilat Deh, whether u/s 2(g)(3) or (V) of the 1961 Act. It would be appropriate to once again point out that "Charand" is included in Shamilat Deh by Section 2(g)(1) of the 1961 Act.

23. The point that remains is whether this land was being cultivated by Pala Ram, as alleged, and whether it should be excluded from Shamilat Deh? The petitioners have, in our considered opinion, failed to substantiate, their plea for want of any clear and cogent evidence with respect to the cultivating possession of Pala Ram. The mere fact that this land was allotted to Pala Ram during consolidation, is irrelevant as Khasra Girdawari relied by Pala Ram to prove his cultivating possession, is highly suspicious and, even otherwise, contradictory. The entries in Khasra Girdawaries have been dealt with in detail by the Collector, Panipat while rejecting this plea and holding that the Khasra Girdawaries are suspicious. The finding recorded by the Collector, reads as follows:-

32. In order to prove points Nos. 1 and 2, Paltu produced Ex. R-2/11 to Ex. R-2/15, according to which Paltu claimed to be in cultivating possession of Khasra No. 2748. As per Ex. R-2/11, Khasra Girdawari, it is clear that in Kharif 1946 total area of Khasra No. 2748 was 58 bighas 10 biswas, which was "Banjar

Qadim, and in column of cultivation, it was "vacant" and there is no entry of any crop. In Rabi 1947, there is no entry regarding area, but it is "vacant". In Kharif, 1947, 38 bighas 10 biswas of land was "Banjar Qadim" and 20 bighas of land was under "Charri" but according to Wattar column of cultivation is "vacant" and Wattar which has been made, brings the name of Paltu as cosharers in Rabi 1948, but the column of crop is "vacant". After two crops in Rabi 1950, there is Gram on 200 bighas of land and thereafter, the land is recorded as "Banjar Qadim" and "Banjar Zadid" "Banjar Qadim" does not become cultivable suddenly, but after "Banjar Qadim", it is "Banjar Zadid" and "Barani" and thereafter, it becomes cultivable. But in this case, adverse entries have been made. First of all, after "Banjar Qadim", crop of "Charri" and after two crops vacant land and thereafter, the crop of Gram and thereafter, the land being "Banjar Qadim" is unbelievable. Therefore, the entries in revenue record appear to be suspicious. As per Ex. R-2/12, in Kharif 1953, crop "Charrk" has been shown on 3 bighas of land and in Ex. R-2/13, Rabi 1956, about 3-4 bighas of land has been shown under cultivation. It is, therefore, clear that cultivation, which has been shown prior to Kharif 1953 is suspicious. In Ex. R-2/14, it is clearly written that entries are not legible and Wattars have been cut.

24. The petitioners' contention that this land was cultivated by proprietors, remains unsubstantiated for reference to any part of the relevant jamabandi. A perusal of the jamabandi reveals that Khatauni No. 619, records that land measuring 17 bighas and 17 biswas, is in possession of Ram Dhari resident of Khandra, as Gair Maroosi Khatauni No. 624, records that land measuring 3 bighas is in possession of Baru and Khatauni No. 625 records that land measuring 1 bighas and 10 Biswas in possession of one Kalia. A total of 22 bighas and 7 biswas of land, are under cultivation. The petitioners have not been able to refer to any revenue document to prove that persons, recorded in cultivating possession, were proprietors or members of any panna or related to the petitioners or their predecessors.

25. Another argument that as mutation recording that the land, in dispute, belongs to the Gram Panchayat, records that an area measuring 211 bighas and 13 biswas is in cultivating possession, the land is excluded from Shamilat Deh. The argument, in our considered opinion, cannot be accepted. Mutation No. 1184 dated 27.12.1961, whereby the land was recorded as the ownership of the Gram Panchayat, does not record that 211 bighas and 13 biswas land was being cultivated. A copy of the mutation has not been appended but we have carefully perused the impugned orders and find no reference to the fact that 211 bighas and 13 biswas of land was cultivated at any time. It appears that this land may have been cultivated after the land came to vest in the Gram Panchayat, i.e., after enactment of 1953 Act and the 1961 Act. The petitioners apparently seek to take benefit of land being cultivated by individuals after the land came to vest in a Gram Panchayat but cannot be allowed any such benefit.

26. An argument has also been raised on the basis of a Full Bench judgment in

Gram Panchayat Sadhraur's case (supra), that as the land is Banjar Qadim, it is excluded from Shamilat Deh. The petitioners have disregarded the fact that the land is described as "Charand" and "Johar" and, therefore, vests in the Gram Panchayat u/s 2(g)(1) of the 1961 Act and not under provisions relating to vesting of Banjar Qadim. The Full Bench judgment may have applied if this land had not been used for any common purpose of the village but as the factual position is to the contrary the judgment in Gram Panchayat Sadhraur's case (supra), does not help the petitioners in any manner.

27. In view of what has been stated hereinabove, the writ petition is dismissed by holding that the land, in dispute, though described as Shamilat panna, vests in the Gram Panchayat, as "charand" and "Johar", and, therefore, cannot be excluded from Shamilat Deh. The writ petition is accordingly dismissed.

28. No order as to costs.

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29. The petitioner did not file a suit for declaration of title but as he is prima-facie a member of the panna, he had a right to file a revision before the Financial Commissioner. However, as the writ petition filed by other proprietors has been dismissed by holding that the Gram Panchayat is owner of the land, in dispute, the writ petition must also meet the same fate.

30. Dismissed. No order as to costs.