Before Jasbir Singh,
Jaswant Singh &
Gurmeet Singh Sandhawalia, JJ.

HARBANS SINGH AND OTHERS—*Petitioner*

versus

DIRECTOR, RURAL DEVELOPMENT AND PANCHAYAT PUNJAB AND OTHERS—*Respondents*

CWP No. 22719 of 2012

July 28, 2014

Punjab Village Common Lands (Regulation) Act, 1961 (as amended by Punjab Act No. 19 of 1976) - Ss. 2 (g) and 4 (3)(ii) - Shamilat deh - Gram Panchayat claimed ownership of agricultural land on the basis of mutation, jamabandi etc. - Petitioners claimed to be in possession of the disputed land since 1950 and in view of the exclusion clause, it did not fall within the definition of Shamilat - Vesting of rights of Panchayats in Shamilat lands got crystallized, by operation of law on the date of commencement of the 1961 Act - If any person was to assert for exclusion, it had necessarily to be in relation to the date of commencement of the Principal Act of 1961 - Exclusion clause - To be construed from the date of commencement of the 1961 Act and not thereafter - The words 'immediately before commencement of this Act' used in clause (ii) of section 4(3) after amendment of 1976 means the Principal Act of 1961 - A person claiming the protection of his rights, should be in cultivating possession of shamilat deh for more than 12 years immediately preceding the commencement of the Act of 1961 i.e. 4.5.1961, without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon - Reference answered.

Held, that a bare perusal of the entire Section 4 reproduced hereinabove clearly reveals that the same starts with a non-obstantive clause thereby crystallizing the rights, title and interest of Panchayats and non-proprietors in the shamilat deh at the commencement of the Act of 1961, however, Sub-Section (3) is an exclusion clause in favour of certain categories of persons and clause (ii) thereof is regarding the

protection of rights of persons in cultivating possession of shamilat deh for more than 12 years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon and which in our considered opinion, from the very beginning, is to be construed from the date of commencement of the Act, 1961 and not thereafter. It is, thus, evident that vesting rights of Panchayats in Shamilat lands got crystalized, by operation of law on the date of commencement of 1961 Act, i.e. 4th of May 1961, and if any person was to assert his claim for exclusion, it had necessarily to be in relation to the date of commencement of the Principal Act of 1961.

(Para 8)

Also held, that it is crystal clear that the Amendment of Clause (ii) of Section 4 (3) of 1961 Act, effected by the Act No. 19 of 1976, is clarificatory in nature.

The contention of the counsel for the petitioners that the period of twelve years is to be reckoned preceding/from the amendment of 1976 cannot be accepted as it is apparent that the same was neither the proposal of the Government nor the intention of the legislature while amending the Principal Act as that would render the whole purpose of the amendment redundant and ineffective besides totally militating against the scheme of vesting of Shamilat land in the Panchayat under Section 4 of 1961 Act on the date of enforcement of the Principal 1961 Act.

(Para 8)

Further held, that in view of the above, it is, therefore, apparent that the words "immediately before the commencement of this Act" used in clause (ii) of Section 4 (3) after amendment of 1976 means the Principal Act of 1961 and thus, a person, who is claiming the protection of his rights, should be in cultivating possession of shamlat deh, for more than 12 years immediately preceding the commencement of the Act of 1961 i.e 4.5.1961 without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

(Para 10)

Sarjit Singh, Sr. Advocate, Jagdev Singh, Advocate and S.S Dinarpur, Advocate, *for the petitioners.*

Rajinder Goyal, Addl. A.G., Punjab, Kanwaljit Singh, Sr. Advocate, and I.P.S. Mangat, Advocate, for the respondent.

JASWANT SINGH, J.

(1) A Division Bench of this Court vide order dated 30.5.2013 while hearing the above mentioned two writ petitions bearing CWP No.22719 of 2012 and CWP No.23015 of 2012 noticed that there is an apparent conflict of opinion between two Division Bench judgments of this Court on the issue involved and passed the following order:

> "As there is an apparent conflict of opinion between two Division Bench judgments of this Court in "**Jagir Singh Versus Gram Panchayat, Village Mirzapur and others**", CWP No.3182 of 1985, decided on 19.09.1988, and " **Gram Panchayat Pangaltu Versus The State of Haryana and others",** CWP No.18122 of 1995, decided on 19.02.2013, as to date of applicability of Section 4(3)(ii) of the Punjab Village Common Lands (Regulation) Act, 1961, it would be appropriate that the matter be placed before Hon'ble the Acting Chief Justice, for constituting a larger Bench, if deemed appropriate. A copy of this order be placed on the file of connected case."

Accordingly, the matter has been ordered to be listed before this Full Bench by Hon'ble the Chief Justice.

(2) Before proceeding further, it would be appropriate to examine both the conflicting judgments separately, which is as under:

(i) So far as the judgment passed in CWP No.3182 of 1985, decided on 19.09.1988 titled as **Jagir Singh Versus Gram Panchayat, Village Mirzapur and others** reported in **1989 PLJ 494** is concerned, the same was regarding an interpretation of Section 2 (g)(vi) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter to be referred as "the Act") as amended by the Haryana Act No. 2 of 1981, as the matter pertained to State of Haryana. In that case, Gram Panchayat of Village Mirzapur filed an application under Section 7 (2) of the Act before the Assistant Collector for ejectment of Jagir Singh from 9 marla in Khasra No.156 and 3 kanal 17 marlas in Khasra No.158 in dispute, which was opposed

by raising a dispute of *title*. It was further pleaded by said Jagir Singh that he had constructed a house over the land in dispute long time back and by virtue of Section 2 (g)(vi) of the Act, it stood excluded from the definition of *Shamilat deh*, however, the contention regarding construction of house upto the extent of area measuring 9 (nine) marla comprised in Khasra No.156 was accepted by the learned Assistant Collector, but regarding the remaining land measuring 3 kanal 17 marlas, it was held that the same is a *shamilat* and was not falling within the exception clause, thus, the eviction order was passed.

Aggrieved against the order of learned Assistant Collector regarding exemption of 9 marla land, the Gram Panchayat filed an appeal before the learned Collector, who accepted the same while ordering the eviction of Jagir Singh from 9 marlas land also. Jagir Singh filed a revision before the learned Commissioner but remained unsuccessful and ultimately, the writ petition was filed by said Jagir Singh before this Court regarding 9 marla land only and there was no challenge regarding land measuring 3 kanal 17 marlas.

The learned Division Bench noticed that Section 2 (g)(vi) of the Principal Act reads as under:

> "2(g)(vi)- "Shamilat deh" or "Charand" includes ..... but does not include land which ..... lies outside the abadi deh and is used as *gitwar, bara,* manure pit or house or for cottage industry;"

Learned Division Bench further noticed that abovesaid clause (vi) above quoted was later on substituted by Haryana Act No.2 of 1981 by the following clause :

> "(vi) lies outside the *abadi deh* and was being used as *gitwar, bara,* manure pit, house or for cottage industry, **immediately before the commencement of this Act**."

After taking into consideration the amendment of 1981, learned Division Bench came to the conclusion that clause (vi) has been substituted w.e.f the date of amending Act, when it was published in the Gazette on 12.2.1981 by virtue of Section 4 of the Amending Act whereas the other provisions of the Amending Act were substituted w.e.f 4th day of May 1961. Thus, the learned Division Bench came to the conclusion that the clause (vi) is amended prospectively whereas rest of the amendment is retrospective.

Keeping in view the facts of the case that the petitioner Jagir Singh had constructed his house more than 20 years ago before the enforcement of the Amending Act (i.e 1981) the writ petition was allowed and the orders of the learned Collector and that of the Commissioner were quashed.

(ii) However, in an identical case of **Gram Panchayat Pangaltu Versus The State of Haryana and others",** decided on 19.2.2013 in CWP No.18122 of 1995, situated in the State of Haryana wherein private respondent No.4 therein was found to have constructed his house 20 to 25 years before coming into force the Act No.2 of 1981, a Division Bench of this Court came to the conclusion that the word "this Act" referred in the Amending Act means the Punjab Village Common Lands (Regulation) Act, 1961 and not Act No.2 of 1981 and thus, the learned Division Bench was of the view that respondent No.4 therein has not produced any evidence that his house was constructed prior to 4.5.1961 i.e the date of commencement of 1961 Act and it further came to the conclusion that the learned Collector has misread the Section 2 (g)(vi) of the Act.

It is noteworthy to mention here that as far as applicability of 1961 Act in State of Punjab is concerned, Clause (vi) of Section 2 (g) of the Act of 1961 was amended by way

of Punjab Act No.19 of 1976 on account of certain difficulties, which had arisen due to the passing of judgments by this Court including one reported as **Jagdev Singh and Ors. Vs. The Commissioner, Ambala Division and Ors. 1976 PLJ Page 118** wherein it has been held that in view of the exclusion clause as contained in Section 2 (g)(vi) of the Act, the land lying outside abadi deh and which is used as house etc is excluded from the operation of the Act. Consequently, clause (vi) of the Parent Act was substituted by way of an amendment Act 1976 in the State of Punjab in the following terms:

> "(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry **immediately before the commencement of this Act**."

Thereafter, a similar amendment was made in the State of Haryana by way of an Amendment Act No.2 of 1981, which has already been reproduced and discussed hereinabove.

(3) In the present cases i.e CWP No. 22719 of 2012, the petitioners, who are the legal heirs of original respondent Nos.5 & 15, have laid challenge to the impugned order dated 17.5.2012 (P.1) passed by respondent No.2-Divisional Deputy Director Rural Development and Panchayat-cum-Collector vide which a petition filed under Section 11 by the Gram Panchayat Arnoli, Tehsil and District Patiala has been accepted and the Gram Panchayat has been declared as owner of the agricultural land measuring 108 bigha 12 biswas and the same was affirmed by the learned Commissioner-respondent No.1 while passing the impugned order dated 2.11.2012 (P.2) thereby dismissing the appeal of the petitioners.

The Gram Panchayat is claiming the ownership on the basis of mutation dated 28.5.1959 as well as the revenue record i.e jamabandi etc whereas the petitioners are claiming that they are in possession of the land in dispute since 1950, therefore, the land in dispute does not come

within the definition of *Shamilat* in view of exclusion clause under the provisions of Section 2 (g) Act of 1961.

Similarly, in CWP No. 23015 of 2012, ***Ujagar Singh and others v. Director Rural Development,*** the land in dispute is the same as in CWP No. 22719 of 2012, which has been filed by the remaining original respondents in the proceedings initiated against them under Section 11 of the Act of 1961 by the Gram Panchayat.

(4) Learned counsel for the petitioners has argued that the Amending Act of 1976 thereby inserting the the words "immediately preceding the commencement of this Act" in clause (ii) Sub-Section (3) of Section 4 means the Amending Act i.e Punjab Act No.19 of 1976 and not the Parent Act of 1961 as the Amendment relates to the substantive law, which is always prospective until and unless made applicable retrospectively and a substantive law cannot be applied retrospectively merely by presumptions. It is further argued that although the High Powered Committee in its recommendations dated 29.1.1975 preceding to the Amendment of 1976 postulated for addition of the words "at the commencement of the Principal Act" but it seems that the same was not accepted by the legislature, which is clear from the Amendment Bill No.7-PLA of 1976 wherein the words "immediately preceding the commencement of this Act" were inserted resulting into the Amendment Act, 1976. Reliance is placed upon a judgment of Hon'ble Supreme Court reported as ***Shyam Sunder and another v. Ram Kumar and another(1).***

On the other hand, it is submitted on behalf of the State of Punjab that the intention of the Legislature was to add the amended provisions including Clause (ii) of Sub-Section (3) of Section 4 w.e.f 4.5.1961 i.e the date on which, the Principal Act of 1961 was enforced as the same is clear from the recommendations dated 29.1.1975 of the High Powered Committee on Panchayati Raj-Amendments in the Punjab Village Common Lands (Regulation) Act, 1961 thereby proposing certain Amendments in the Act of 1961.

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(1) AIR 2001 SC 2471

Learned counsel appearing for the Gram Panchayat has contended that the Amendment in question is only a clarificatory in nature, which deals with a procedural law thereby incorporating the period of 12 years of Limitation and that cannot be construed to be an Amendment in substantive law and thus, the same is to be applied from the date of commencement of the Act of 1961 and not from the Amendment of 1976.

(5) Parties are *ad idem* that the land in dispute is agricultural land situated in village Arnoli, Tehsil and District Patiala, Punjab and as such Clause (vi) of Section 2(g) of the Amending Act No.2 of 1981 in the State of Haryana has no relevancy at all as the said Clause reproduced above is only dealing with the exclusion of the land from the definition of *shamilat*, which lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, but the said Clause does not relate to **agricultural land**.

Similarly, as reproduced above, in the State of Punjab also, Clause (vi) of Section 2(g) by way of an Amendment Act, 1976 is *pari materia* to the provisions for the State of Haryana and is dealing with the exclusion of an area from the definition of *shamilat*, which lies outside the abadi deh and was being used as gitwar, bara, manure pit a house or for cottage industry and as such the same does not deal with *agricultural land*.

Thus, this aspect seems to have been missed by learned Division Bench while placing reliance on both the aforesaid judgments i.e ***Jagir Singh's case*** **(supra)** as well as ***Gram Panchayat Pangaltu's case*** **(supra)** and has no relevancy to the controversy raised in the present writ petitions, which are in respect of *agricultural land* recorded as Shamilat situated within the State of Punjab and there is no *lis* between the parties regarding *gitwar, bara, manure pit, house or cottage industry.* Nevertheless, since reference has been made on a specific legal issue, we are thus inclined to examine and answer the same.

(6) From the entire gamut, it is clear that the dispute is regarding the applicability of Clause (ii) of Sub-Section (3) of Section 4 as to whether the said clause has been made applicable from the date of

Amendment of 1976 or from the enforcement of the Principal Act of 1961.

In our opinion, the relevant provision for adjudication of the matter in controversy and for protection of rights of persons like the petitioners pertaining to the agricultural land, who are claiming exclusion from *shamilat deh* is Section 4 (3) (ii) of the Act of 1961, which after the amendment of Punjab Act No.19 of 1976 reads as under:

> "**4. Vesting of rights in Panchayat and non-proprietors.-**
>
> (1) ** ** **
>
> (2) ** ** **
>
> (3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the:
>
> (i) ** ** **
>
> (ii) rights of persons in cultivating possession of shamilat deh, for more than twelve years [*immediately preceding the commencement of this Act*] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon; " (Emphasis supplied)

Prior to amendment of 1976, the clause (ii) of Section 4 (3) of the 1961 Act was as under:

> "(ii) rights of persons in cultivating possession of shamlat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;"

The Amendment of Clause (ii) of Section 4 (3) of 1961 Act was effected by way of Section 3 of Punjab Act No.19 of 1976, which reads as under:

> "3. Amendment of Section 4 of Punjab Act 18 of 1961.-In Section 4 of the Principal Act, in sub-section (3), in clause (ii), between the words "twelve years" and "without payment", the words "immediately preceding the commencement of this Act" shall be inserted."

(7) As noticed above, prior to the Amendment of 1976, recommendations were made by the High Powered Committee, on Panchayati Raj-Amendments in the Punjab Village Common Lands (Regulation) Act, 1961 on 29.1.1975 (placed by the State and taken on record vide order dated 23.8.2013) and the relevant part of the same reads as under:

> "**3**. The Recommendations of the Committee have been examined by the Government and proposals for amendments in the Act are submitted as under:
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> 1. ** ** **
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> 2. DEFINITION OF SHAMLAT DEH LANDS-
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> 2.1 to 2.4 ** ** **
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> 2.5. The Committee was of the view that the exceptions provided in sub-clauses (v) and (vi) create confusion and as such the purpose needs to be made more clear. With this end in view it was recommended that sub-clause (v) should be omitted **and sub sub-clause (vi) reworded so as to confine the scope of exception to the lands described as gitwar, bara manure pit, house or used for cottage industry which existed on the date of commencement of the Principal Act**."
>
> 2.6 ** ** **
>
> 3. VESTING OF RIGHTS IN PANCHAYATS - Sub-section (1) of Section 4 of the Act vests all rights, titles and interests, whatever in the land which is included in shamlat deh of any village in the Gram Panchayat constituted for such village. Sub-section (3), however, provides certain exemptions. According to that clause (ii) safeguards the rights of persons in cultivating possession of shamlat deh for more than 12 years. This clause is generally mis-understood and as such it results in excluding the land in shamlat deh which has been under adverse possession of any person for a period of 12 years even after the enforcement of the Principal Act. The intention of the legislature had been to provide safeguard only to those persons who had been in cultivating possession of the shamlat deh land for more than 12

years before the commencement of the Act. It was therefore recommended by the Committee to make the provision more clear on this point by adding the words "**at the commencement of the principal Act**" suitably in this sub- clause so that the persons occupying the shamlat land without any authority after the commencement of the Principal Act may be got ejected and the land vacated for vesting thereof in the Panchayats.

4 to 9. ** ** **

4. ** ** **

5. ** ** **

6. ** ** **"

The proposal was put before the Council of Ministers and thereafter, the bill No.7-PLA of 1976 was passed by the Punjab Vidhan Sabha on 11.2.1976, which ultimately resulted into the Amendment Act of 1976 thereby inserting the word "immediately preceding the commencement of this Act".

A careful perusal of the recommendations made by the High Powered Committee, Bill No.7 and Section 3 of the Amendment Act No.19 of 1976 leaves no manner of doubt that the words "immediately before the commencement of this Act" were incorporated and related to clause (ii) of Section 4 (3) of the Principal Act and not to the Act No.19 of 1976.

(8) Still further, as prior to the Amendment of 1976 also, the vesting of rights in lands included in Shamilat deh in Panchayats was governed by Section 4 of the Act of 1961 and un-amended provisions reads as under:

"4. **Vesting of rights in Panchayats and non-proprietors.-** (1) 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 of any court or other authority, all rights, title and interests whatever in the land,

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamolat

law shall, **at the commencement of this Act**, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest in the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamolat law shall be deemed to have been vested in the panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the—

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basik-huopahus, Saunjidars, Muqararidars;

(ii) **rights of persons in cultivating possession of shamilat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon**.

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950." (Emphasis supplied).

A bare perusal of the entire Section 4 reproduced hereinabove clearly reveals that the same starts with a non-obstantive clause thereby crystallizing the rights, title and interest of Panchayats and non-proprietors in the shamilat deh **at the commencement of the Act of 1961**, however, Sub-Section (3) is an exclusion clause in favour of certain categories of persons and clause (ii) thereof is regarding the protection of rights of persons in cultivating possession of shamilat deh for more than 12 years

without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon and which in our considered opinion, from the very beginning, is to be construed from the date of commencement of the Act, 1961 and not thereafter. It is, thus, evident that vesting rights of Panchayats in Shamolat lands got crystalized, by operation of law on the date of commencement of 1961 Act i.e 4th of May 1961, and if any person was to assert his claim for exclusion, it had necessarily to be in relation to the date of commencement of the Principal Act of 1961. Since there appeared to be some confusion regarding the interpretation of the aforesaid exclusion clause, including by the Courts, it necessitated issuance of a clarification, resulting into aforesaid recommendations of the High Powered Committee to the effect "**at the commencement of the Principal Act**". This clause is generally mis-understood and as such it results in excluding the land in shamlat deh which has been under adverse possession of any person for a period of 12 years even after the enforcement of the Principal Act. The intention of the legislature had been to provide safeguard only to those persons who had been in cultivating possession of the shamlat deh land for more than 12 years before the commencement of the Principal Act. It was therefore recommended by the Committee to make the provision more clear on this point by adding the words "**at the commencement of the principal Act**" suitably in this sub-clause so that the persons occupying the shamlat land without any authority after the commencement of the Principal Act may be got ejected and the land vacated for use thereof by the Panchayats."

Therefore, in this view of the matter, it is crystal clear that the Amendment of Clause 2 (ii) of Section 4 (3) of 1961 Act effected by the Act No.19 of 1976 is clarificatory in nature. The benefit sought to be solicited by the counsel for the petitioners by urging that while effecting the amendment, the legislature had omitted to incorporate the word "Principal Act" as recommended by the High Powered Committee to suggest that the amendment is with effect from the date of promulgation of 1976 Act is, thus, wholly misplaced. This view is further fortified by the bare reading of Section 3 of the Amending Punjab Act No.19 of 1976 reproduced hereinabove in para 6, which clearly ordains that in Section 4 of the Principal Act, in Sub-Section (3) in Clause (ii) between the words

"twelve years" and "without payment" the words "immediately preceding the commencement of this Act" shall be inserted, meaning thereby that such insertion was relatable to the date of enforcement of the Principal Act of 1961 and not of 1976 Act, otherwise the legislature would have so specified. The contention of the counsel for the petitioners that the period of twelve years is to be reckoned preceding/from the amendment of 1976 cannot be accepted as it is apparent that the same was neither the proposal of the Government nor the intention of the legislature while amending the Principal Act as that would render the whole purpose of the amendment redundant and ineffective besides totally militating against the scheme of vesting of Shamilat land in the Panchayat under Section 4 of 1961 Act on the date of enforcement of the Principal 1961 Act.

(9) To be fair to the learned counsel for the petitioners, the judgment in the case of **Shyam Sunder's case (supra)** has to be dealt with. There is no quarrel regarding the proposition of law reiterated in the said judgment that a statute, which affects the substantive right has to be held prospective unless made retrospective either expressly or by necessary intendment and all explanatory/clarificatory legislations are retrospective. However, the same does not advance the cause of the petitioners rather supports the plea of the respondents in the light of the aforesaid categoric finding that the said amendment by way of 1976 Act is only clarificatory and does not, in any manner, affect any substantive rights or bestow any fresh substantive right.

(10) In view of the above, it is, therefore, apparent that the words "immediately before the commencement of this Act" used in clause (ii) of Section 4 (3) after amendment of 1976 means the Principal Act of 1961 and thus, a person, who is claiming the protection of his rights, should be in cultivating possession of shamlat deh, for more than 12 years immediately preceding the commencement of the Act of 1961 i.e 4.5.1961 without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

Reference is answered accordingly.

The writ petitions to be listed before the Division Bench to be decided in view of the Reference answered hereinabove.

V. Suri