Before Jaswant Singh & Sudhir Mittal, JJ.

GAUTAM MALHOTRA AND OTHERS—*Petitioner*

versus

STATE OF HARYANA AND OTHERS—*Respondents*

CM No. 13945-CWP of 2020 in/and

RA-CW No. 221 of 2018 in CWP No. 63 of 2017

December 21, 2020

(A) ***Constitution of India, 1950—Arts.226 and 227—Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana)—S.2(g)—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1942—Purchase of Shamlat deh by Petitioner—Impermissible, Presumption—Shamlat Deh vests with Panchayat— Landowner to lead evidence of his definitive share in shamlat land—Absence of evidence of such revenue record, consolidation record—Review application dismissed.***

Held that, admittedly, the land in question was purchased by the writ petitioners on the basis of revenue record. Qua this revenue record/mutation, a definitive finding has been recorded by the authorities below that it was wrongly updated by the officials and it was subsequently corrected as well. Not only this, even during the course of arguments, the counsel for the applicant has admitted, as is evident from his argument no.6, that the land in question was recorded as Shamlat Deh vide mutation no. 419 dated 10.02.1955 in favour of Gram Panchayat. As held by the authorities as well as this court in judgment dated 11.07.2017, the land was reflected as Shamlat Deh in Jamabandi for the year 1909-10 as well and there is no rebuttal to the said finding. Once it is held that property is Shamlat Deh then no individual has any right to sell of the Shamlat land, which belongs to the Village. It is settled position of law that no vendee can have a better title than its vendor.

(Para 19)

Further held that, admittedly, consolidation proceedings are carried out in view of the provisions contained under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1942 which has provided a complete mechanism for carrying out the process. The applicants were required to bring the entire record from concerned

authority and identify their land earmarked at the time of consolidation. This was required to be done by proving the same before the authorities below and establish the nature and character of their land. Neither the said record has been appended with the writ petition nor before the authorities below to enable the State/opposite party to rebut its contents. Consequently, the isolated documents cannot be considered for adjudicating the claim raised by applicants, being not only an incomplete document requiring evidence but also carrying no presumptive value in the eyes of law.

(Para 20)

Further held that, in Suraj Bhan's case, the Hon'ble Full Bench had considered the various natures of 'Shamlat Land' and had laid down as to nature of ownership of the proprietors of village and also a mechanism of their acquisition by Municipal Authorities.

(Para 21)

Further held that, a landowner is required to lead evidence of his definitive share in the shamlat land by way of revenue record etc. to prove his share in the shamlat land. In the absence of said evidence, there is a presumption of any land recorded as Shamlat Deh to have vested with the Panchayat after coming into force of 1953 Act (now replaced by 1961 Act). In the present case, neither there is any pleading nor any evidence has been led which could persuade us to take a different view from the one already taken in the judgment dated 11.07.2017. Thus, this argument is also rejected.

(Para 22)

(B) ***Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) – S.2(g)(5)(i) – Land recorded as Banjar Kadim (non- cultivable), Gair mumkin Johrad, Gair mumkin Rait, Gair mumkin Rasta, Banjar Kadim and Sailab – Not subject to river action – Not covered by exception under Section 2(g)(5)(i).***

Held that, the argument that the land in question is subject to river action (of river Yamuna) and therefore it falls within the exception carved out under section 2(g)(5)(i), is completely misplaced. It is evident that in the revenue record for the year 1909-10, the land is recorded as "*Shamlat Deh Hasab Rasad Rakba Khewat*" and the nature of land is recorded as "Banjar Kadim" i.e non-cultivable land. Meaning thereby, the land was never under river action as alleged. Even if it was, no individual owner was shown to be in its individual cultivating possession so as to enable him to claim any right over the said land. Similarly, as per Jamabandi for the year 1955-56, the land is recorded

as Gair mumkin Johrad, Gaimumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. This nature of land also does not mean that the land of petitioners was under river action. Even if it was so, the ownership always remained with the Gram Panchayat from times immemorial and it never came under ownership of any individual. Thus, selling off of Gram Panchayat land to a private individual is not possible unless it is sold as per provisions of Act, 1961. The Wazib-Ul-Arz as referred to by the review applicants in their review application also does not support their case, as it does not anywhere prove that it relates to the land bought by review applicants.

(Para 23)

(C) ***Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to Haryana) – Procedure – Evidence – Unauthorized report qua non preparation of Jamabandi – Such unknown procedure deprecated.***

Held that, a perusal of report dated 25.06.2018 shows that the signatory had got the revenue record translated from a retired patwari and then testified regarding non-preparation of Jamabandi. This kind of report and procedure is unknown. We deprecate the practice of revenue officers regarding giving reports in such an un-authorized manner.

(Para 24)

Ashish Aggarwal, Sr. Advocate, assisted by
Nitin Kaushal, Advocate
for the applicants - review petitioners.

Shruti Jain Goyal, D.A.G., Haryana

JASWANT SINGH, J.

(1) The review applicants have filed the present application bearing **CM No. 13945-CWP-2020** for restraining the respondents from changing the nature and character of the land during pendency of the review application by ordering *status quo*.

(2) At the time of hearing,learned Senior Counsel for the applicants–review petitioners has expressed his willingness to argue the matter on merits, to which the State Counsel has no objection and therefore we proceed to decide the review application itself by pre-poning the date of hearing of the **main review** from **16.02.2021 to today** in view of the consent given by both the parties.

(3) Learned Senior Counsel for the review applicants has made

the following submissions:-

1st Argument: That the applicants have purchased land measuring 156 Kanal 16 Marlas in the year 2010 on the basis of registered sale deeds after scrutinizing the revenue record and therefore they are *bonafide* purchasers of the land.

2nd Argument: That finding of this Court in its judgment dated 11.07.2017 **(Annexure A-2)** that the land in question was reserved for common purposes during consolidation, after imposing *pro rata* cut on proprietors and is therefore *'Shamlat Deh'* is factually incorrect in view of the list appended with the writ petition as **Annexure P-6** reflecting the land from which cut was imposed for use of common purposes.

3rd Argument: The land in question is *'Shamilat Deh Hasab Rasad Khewat'* and thus not a simplicitor *Shamlat Deh* and the proprietors have a share in the same and does not vest in Gram Panchayat. Reference in this regard has been made to Full Bench judgment of this Court in ***Suraj Bhan Vs State of Haryana and others,*** **2017 (2) RCR (Civil) 934 (FB)**.

4th Argument: No finding has been returned as the land in question is subject to River Action and is excluded from *Shamilat Deh* under Section 2(g)(5)(i) of the Act, 1961. This fact is apparent from the Wajib-Ul-Arz of 1909 and 1965-66 (P-16 and P-15 respectively) and Consolidation Scheme where it is recorded that river action land has to be distributed to the proprietors. It is stated that land bought by petitioners is subject to river action as no *Jamabandi* was prepared from 1943 till 1974 as per report dated 25.06.2018 prepared by revenue official **(Annexure A-4 Colly)** and jamabandi was prepared only with effect from 1983-84 after the land was retrieved.

5th Argument: The relevant date for determining *Shamlat Deh* is 09.01.1954, however the findings recorded by all the authorities and this court are on the basis of *Jamabandi* for the year 1955-56, which is incorrect.

6th Argument: The mutation No. 419 dated 10.02.1955 in favor of Gram Panchayat is on the basis of Government letter which is illegal and cannot be sustained.

(4) We have heard learned counsel for the applicants-review petitioners at length and have perused the paper book. However, we are of the view that present review is devoid of any merit, and therefore liable to be dismissed.

(5) The short question involved for consideration of this Court is as to whether the land in question, which is otherwise described as *"Shamlat Deh Hasab Rasad Rakba Khewat"* in the revenue record, falls within the exceptions carved out under Section 2(g) of the Punjab Village Common Lands Act, 1961 (for short 'The Act, 1961') (as applicable to Haryana) or not?

(6) A perusal of the record shows that there are total four petitioners and they are subsequent purchasers of total land measuring 156 Kanals 16 Marlas situated at Village Dahisara, Tehsil and District Sonipat. Their landholdings have been detailed under paragraph No. 3 (internal page 7) of the review application.

(7) It is seen that Block Development and Panchayat Officer, Rai, District Sonipat, had filed an eviction petition under Section 7 of the Act, 1961 as also a separate suit for declaration of title under section 13-A of the Act, 1961. The suit pertained to 1173 kanals out of which 156 Kanals 16 Marlas has been purchased by petitioner-Company and its Directors.

(8) At the first instance, the District Revenue Officer-cum-Assistant Collector, 1st Class Sonipat allowed the suit filed under Section 7 of the Act, 1961 vide its detailed order dated 23.05.2012 **(P-1)** and held as follows:-

> " After examination of all the documents that have come on record it transpired that according to the Revenue Record the ownership in respect of land in dispute vest with Gram Panchayat Dahisara, which was being put to use for common purposes, whereupon the respondents are in occupation of the same in an illegal manner. The respondents are saying that the land in dispute has been purchased vide a registered sale deed, so they cannot be evicted from their possession because the owner of the land is Gram Panchayat Dahisara and the land in question was never sold by the Gram Panchayat to the respondents nor let out or leased it and in the eventuality of any other person sold the land of Gram Panchayat in wrongful manner, in such condition the above mentioned sale deed does not

> bound to Gram Panchayat. Therefore, the averment as made by the respondent, cannot termed them to be the lawful owners of the land in dispute. That the Authority placed on record by the Law Officer of the Panchayat i.e. L.J.R. 2007 (1) Page 17 wherein Shamlat Deh Hasab Rasab Raqba Khewat is considered as Shamlat Deh (Common Land). Shamlat Deh vests with the Gram Panchayat the above mentioned authority squarely covered the controversy in the present case. Apart from that Report of Tehsildar Sonipat dated 14.03.2011 also the possession of the respondents proved to be as illegal. That Gram Panchayat had filed a Civil Writ Petition No. 2188 of 2011 before the Hon'ble Punjab & Haryana High Court at Chandigarh, wherein the Hon'ble Punjab & Haryana High Court has stayed the operation qua the respondent No. 6 to raise any construction. Keeping in view of the above mentioned facts, the possession of the respondents proved be as illegal. "

(9) However, it is the Collector, Sonipat who decided the title suit in accordance with provisions contained under Section 13-A of the Act and allowed the suit for declaration filed by BDPO, Rai on 17.03.2015 **(P-2)** by framing the following question of law:

> "Whether the land in dispute is used for common purposes, and falls in the definition of common land (Shamlat Deh)?"

(10) The said question has been answered by the Collector by holding the land to be *"Shamlat Deh"* by making the following observations:

> "The onus to prove this point of debate is upon the plaintiff. After the implementation of Punjab Village and Common Land, the Mutation No. 419, dated 12.02.1955 the entry of the same was made and sanctioned in the name of Gram Panchayat on the basis of Act, itself. At the time of its use itself, the land in dispute was reserved for common purposes. The land which is being put to use for common purposes, the same falls under the definition of common land and vests with Gram Panchayat. On the basis of the revenue record placed on record by the plaintiff, the owner of land in dispute is Gram Panchayat and falls under the definition of common land. The defendants have not place on record any documentary proof which can substantiate the fact that 12 years prior to implementation of Punjab Village

> Common Land Act, they were in occupation of the land in question, therefore, this point of debate is being allowed in favour ofthe plaintiff and against the defendants."

(11) It was also held by the Collector that the land in question was put to use as *Shamlat Deh* even prior to enforcement of Act, 1961 by holding as follows:-

> " The onus to prove this point of debate was upon the plaintiff. The plaintiff as per Annexure A-73, i.e. Jamabandi for the year 1955-56 the name of Gram Panchayat is mentioned in the column of owner and is Gair Mumkin. Other relevant revenue record placed on record by the plaintiff also the land in dispute was Gair Mumkin and most of its portion was used as Pasture and had been used for the common purposes. The land of pastures also falls under the definition of common land and vests with the Gram Panchayat. According to the documents placed on record by the defendants in Hindi versions, in the columns of owner, the name of Gram Panchayat is mentioned. The defendants failed to place on record any concrete proof which may substantiate the fact that the land in dispute was not put to use for common purposes. Therefore, this point of debate is also being allowed in favour of the plaintiff and against the defendants."

(12) Aggrieved against the order dated 23.05.2012 **(P-1)**, the present review applicants-writ petitioners filed an appeal before the Commissioner, Rohtak. The said appeal alongwith three other appeals were dismissed by Commissioner, Rohtak by passing a common order dated 15.09.2016 **(P-3)** by holding as follows:

> "On perusal of revenue record it is found that as per Jamabandi for the year 1955-56 in the column of owner suit land is recorded as per Panchayat Deh and in the column of cultivator Makbuja Panchayat is recorded and in the column of land type it is recorded as Gairmumkin Johrad, Gairmumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. As such suit land is in ownership of Panchayat and comes within the definition of Panchayat Deh. Appellants has mainly relied that suit land has been purchased from the proprietors of village through registered sale deeds and they are continue in possession as owner. This argument of appellants is without logic because real owner of the suit land is Gram Panchayat and Gram Panchayat never sold the

> suit land. If any other people have wrongly sold the Gram Panchayat land to some other person in that situation sale deed is not binding on the Gram Panchayat and possession of the appellant cannot be held as legal. Appellant filed appeal against order of Assistant Collector before the court of Collector. On the land mentioned in that appeal and land in a suit pending under section 13-A of the Punjab Village Common Land (Regulation) Act 1961 before collector being same, the Collector vide his order dated 20.12.2012 ordered to club both the cases and collector vide his order dated 17.03.2015 dismissed the appeals of appellants. The collector in the case has framed issue as per rules on the relevant points and main issue No.1 and 2 have been decided after considering record and facts in details. Collector while deciding issue No.1 and 2 have given conclusion that on implementation of Punjab Village Common Lands (Regulation) Act, mutation No.419 of the suit land was recorded and sanctioned on dated 10.02.1995 in the name of Gram Panchayat and during scheme istemal suit land was being kept reserved for shamlat work and the land used for shamlat work comes within definition of Shamlat Deh and vest in the Gram Panchayat. Suit land as per jamabandi of year 1955-56 is recorded ownership as Panchayat Deh and Gairmumkin. Appellants have not produced any evidence before him which may prove that on the suit land they have cultivating possession before application of Punjab Village Common Land Act i.e. 12 years old from 26.01.1950. ”

(13) Simultaneously, the order dated 17.03.2015 **(P-2)**, was also put to challenge by the present review applicants-writ petitioners by filing an appeal before the Commissioner, Rohtak. The said appeal alongwith four other appeals were also dismissed by Commissioner, Rohtak by passing a common order on dated 15.09.2016 **(P-3)** by holding as follows:-

> “I have heard the arguments of Ld. Counsel for both the parties and have carefully perused the record available on file. On perusal of revenue record it is found that as per Jamabandi for the year 1955-56 in the column of owner suit land is recorded as per Panchayat Deh and in the column of cultivator Makbuja Panchayat is recorded and in the column

> of land type it is recorded as Gairmumkin Johrad, Gairmumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. As such suit land is in ownership of Panchayat and comes within the definition of Panchayat Deh. On perusal of file and lower court records it is clear that collector in the case has framed issue as per rules on the relevant points and main issue No. 1 and 2 have been decided after considering record and facts in details. Collector while deciding issue No.1 and 2 have given conclusion that on implementation of Punjab Village Common Lands (Regulation) Act, mutation No. 419 of the suit land was recorded and sanctioned on dated 10.02.1995 in the name of Gram Panchayat and during scheme istemal suit land was being kept reserved for shamlat work and the land used for shamlat work comes within definition of Shamlat Deh and vest in the Gram Panchayat. Suit land as per jamabadi of year 1955-56 is recorded ownership as Panchayat Deh and Gairmumkin. Appellants have not produced any evidence before him which may prove that on the suit land they have cultivating possession before application of Punjab Village Common Land Act i.e. 12 years old from 26.01.1950. The Collector on issue No. 3 has also clearly concluded that respondent No. 1 against order of Assistant Collector appealed to Commissioner Rohtak Division, Rohtak and Commission Rohtak Division has accepted the appeal of respondent No. 1 and as per order of Commissioner Rohtak Suit was again recorded in the name of Gram Panchayat. Proprietors filed an executive appeal before the court of Financial Commissioner and that also have been dismissed. From this it is established that order passed by Assistant Collector was illegal. ”

(14) It is evident that the said orders were put to challenge in the present writ petition, which came up for preliminary hearing on 11.07.2017 whereby vide a common judgment, two writ petitions (CWP Nos. 63 & 80 of 2017) were dismissed by holding the land to be Shamlat Deh. The relevant portion of the findings in para-12 returned by this Court are as follows:-

> **“ 12.** At the cost of repetition, it may be mentioned that any land which is used, reserved or earmarked for 'common purposes' comes within the ambit of shamlat deh and it

> vests in Gram Panchayat. However, if such land has been partitioned amongst the proprietors and they were in individual cultivating possession as on the cut off date of 26.01.1950, namely 12 years before the 1961 Act came into force, such land was liable to be excluded from the definition of shamlat deh. While onus was on the Gram Panchayat to prove that the land was either reserved or meant for common purposes or it otherwise fell within the definition of shamlat deh, the petitioners could succeed only if they were able to prove that their vendors/predecessors were in individual cultivating possession of the land as on 26.01.1950. All these inter-connected issues are liable to be answered against the petitioners in view of the overwhelming entries in the revenue record. We find from the jamabandi for the year 1909-10 (P-9)that the land in dispute was recorded as shamlat deh Hasab Rasad Rakba Khewat and nature of the land as Banjar Qadim. No proprietor has been recorded in its individual cultivating possession, rather in the column of ownership, it is shamlat deh which is recorded as owner of the land. In fact, if the nature of land is Banjar Qadim, it necessarily means that it was not cultivable and was never used for agricultural purposes. We have also gone through the Consolidation Scheme consisting of two types of shamlat deh lands, namely, (i) lands which were already used or reserved for common purposes and (ii) the lands which were taken from the proprietors of the village on pro-rata basis and put in a common pool for common purposes. The land in dispute assuming to be of 2nd category, falls within the definition of shamlat deh in view of the fact that it is Banjar Qadim and was never made cultivable and never ever came into cultivating possession of the proprietors. Such land would thus fall within the meaning of shamlat deh in view of the Explanation appended to Section 2(g) of the 1961 Act, as applicable to the State of Haryana. ”

(15) That aggrieved against the said judgment, the present review applicants-writ petitioners filed SLP(C) No. 26663 of 2017 in which following order was passed:-

> “Learned counsel appearing for the petitioners pray for withdrawal of these petitions with liberty to approach the

High Court by way of filing review petitions.

Prayer is allowed.

Accordingly, the special leave petitions are dismissed as withdrawn with the liberty aforesaid.

Needless to state that in case the petitioners fail before the High Court, they are permitted to approach this Court once over again challenging the main order/s as well as the order passed in the review petitions. ”

(16) Now the present review application has been filed.

(17) The facts of the case, as enumerated above show that there is a concurrent finding of fact recorded in favor of the respondents that the land in question is *Shamlat Deh*. At this stage, we must also make ourselves conscience of the fact that we are sitting in a review of the judgment dated 11.07.2017 **(A-2)** already passed by this Court and not hearing the matter as if we are sitting in appeal. The parameters of the review are very limited as envisaged under section 114 read with Order 47 Rule 1 of CPC. The Hon'ble Supreme Court in the case of reported in ***Lily Thomas*** versus ***Union of India***[1], held that a Review Application is for a correction of mistake and not for substitution of views. A point which may be a good ground for an Appeal need not be a good ground for an application for Review. Thus, an erroneous view of evidence or of law is no ground for a Review, though, it may be a good ground for an appeal. In case the present application is seen in the light of the above, the review applicants have not been able to prima facie show that said finding is incorrect.

(18) **Be that as it may**, even if the arguments are evaluated on merits, the same are completely misplaced.

(19) **1st Argument -** Admittedly, the land in question was purchased by the writ petitioners on the basis of revenue record. Qua this revenue record/ mutation, a definitive finding has been recorded by the authorities below that it was wrongly updated by the officials and it was subsequently corrected as well. Not only this, even during the course of arguments, the counsel for the applicant has admitted, as is evident from his argument no. 6, that the land in question was recorded as *Shamlat Deh* vide mutation no. 419 dated 10.02.1955 in favor of Gram Panchayat. As held by the authorities as well as this

[1] AIR 2000 SC 1650

court in judgment dated 11.07.2017, the land was reflected as *Shamlat Deh* in *Jamabandi* for the year 1909-10 as well and there is no rebuttal to the said finding. Once it is held that property is *Shamlat Deh* then no individual has any right to sell of the *Shamlat* land, which belongs to the Village. It is settled position of law that no vendee can have a better title than its vendor. Hence the argument that applicants are bona-fide purchasers is without any basis and consequently rejected.

(20) **2nd Argument:** The reliance upon list **Annexure P-8** (a one page photocopy) by referring to an isolated document alleged to be prepared during consolidation proceedings to show the list of land used for common purposes, is neither here nor there. Admittedly, consolidation proceedings are carried out in view of the provisions contained under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1942 which has provided a complete mechanism for carrying out the process. The applicants were required to bring the entire record from concerned authority and identify their land earmarked at the time of consolidation. This was required to be done by proving the same before the authorities below and establish the nature and character of their land. Neither the said record has been appended with the writ petition nor before the authorities below to enable the State/ opposite party to rebut its contents. Consequently, the isolated documents cannot be considered for adjudicating the claim raised by applicants, being not only an incomplete document requiring evidence but also carrying no presumptive value in the eyes of law.

(21) **3rd Argument**: This argument is being noticed only to summarily discard the same. A bare perusal of the paragraphs relied upon by the Counsel from ***Suraj Bhan's case (supra)*** makes it clear that same are not even remotely applicable to the facts of present case. In Suraj Bhan's case, the Hon'ble Full Bench had considered the various natures of 'Shamlat Land' and had laid down as to nature of ownership of the proprietors of village and also a mechanism of their acquisition by Municipal Authorities. The counsel for the review applicants has taken us through paragraphs no.218 .(e), (f), (h), (i), (l) and (k). We have gone through these paragraphs and find that paragraphs no. (h), (i) and (k) refer to Jumla Mustarka Malkan Lands, which is not involved in the present case and paragraph (e) and (l) merely depict the manner in which a land which comes within municipal limit would be acquired. As far as paragraph (f) is concerned, we find that this paragraph completely demolishes his case. Apart from this it would be fruitful if we also reproduce sub-paragraph

(a) as well, which makes the law even more clear. Thus sub-paragraphs (a) and (f) reads as under:-

> "(a) The 'shamlat deh' lands as mentioned in Section 2 (g) of the VCL Act 1961 are the common lands of the village and are for the common use and benefits of the 'inhabitants of the village' as contemplated by Section 5 of the said Act. In **Gram Panchayat of village Jamalpur v. Malwinder Singh (supra)**, it was said that though, the interest of the proprietors of other lands, in 'shamlat deh' lands, was incidental to their proprietary interests in those other lands, such interest in the 'shamlat' was not a mere appendage to their interest in the other lands and that lands so reserved were zealously guarded as the common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation were recognised as having a share in these reserved plots. It was said, "as a general rule, only proprietors of the village (malikan-deh) as distinguished from proprietors of their own holdings (malikan makbuza khud) are entitled to share in the shamlat deh". It was also noticed that while it appeared to have been laid down that the right to share in the Village Common Land was an incident attaching to the ownership of agricultural land in the village and that ordinarily those persons who held land on which revenue was assessed and who were cosharers in the 'khewat' were entitled to a share in proportion to the revenue paid by them. The ownership of land though was held to be in favour of the landowners; however, the VCL Act 1953 being a measure of agrarian reforms, it was held, would receive the protection of Article 31A of the Constitution"
>
> (f) However, where the lands are identifiable by title, semblance of ownership or vestige of title of a proprietor to the extent of his share by way of a document or by way of revenue records/jamabandis, the owner, so identified, shall be entitled for compensation as per his entitlement. Besides, if the lands come within the exclusionary clauses of Section 2 (g) of the VCL Act 1961, the owner of such lands would be entitled for compensation. It is, however, made clear that

> the onus to prove the right of ownership, semblance of ownership, vestige of title or that it comes within the exclusionary clauses of Section 2 (g) of the VCL Act 1961 shall be on the person so claiming, which he can establish on the basis of revenue records/jamabandis or other materials. The revenue records to which a presumption of truth is attached would, however, be subject to rebuttal"

(22) A perusal of the same as well as other paragraphs make it clear that a landowner is required to lead evidence of his definitive share in the s*hamlat* land by way of revenue record etc. to prove his share in the *shamlat* land. In the absence of said evidence, there is a presumption of any land recorded as *Shamlat Deh* to have vested with the Panchayat after coming into force of 1953 Act (now replaced by 1961 Act). In the present case, neither there is any pleading nor any evidence has been led which could persuade us to take a different view from the one already taken in the judgment dated 11.07.2017. Thus, this argument is also rejected.

(23) **4th Argument**: A perusal of the record shows that the authorities below as well as this court had not given any finding qua this argument because this point was never seriously contested by the review applicants. Be that as it may, we proceed to deal with this argument as well. The argument that the land in question is subject to river action (of river Yamuna) and therefore it falls within the exception carved out under section 2(g)(5)(i), is completely misplaced. It is evident that in the revenue record for the year 1909-10, the land is recorded as "Shamlat Deh Hasab Rasad Rakba Khewat" and the nature of land is recorded as 'Banjar Kadim" i.e non-cultivable land. Meaning thereby, the land was never under river action as alleged. Even if it was, no individual owner was shown to be in its individual cultivating possession so as to enable him to claim any right over the said land. Similarly, as per Jamabandi for the year 1955-56, the land is recorded as Gair mumkin Johrad, Gaimumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. This nature of land also does not mean that the land of petitioners was under river action. Even if it was so, the ownership always remained with the Gram Panchayat from times immemorial and it never came under ownership of any individual. Thus, selling off of Gram Panchayat land to a private individual is not possible unless it is sold as per provisions of Act, 1961. The Wazib-Ul-Arz as referred to by the review applicants in their review application also does not support their case, as it does not anywhere prove that it relates to the

land bought by review applicants.

(24) As far as reference has been made to document **Annexure A-4 Colly**, we are of the opinion that same cannot be relied upon as neither it was part of lower court record nor was produced at the time of decision of writ petition. Further, it does not mention the designation of the person who has made such an entry. Not only this, we are surprised in the casual manner in which such a report has been given by a revenue officer by not even following the due procedure. A perusal of report dated 25.06.2018 shows that the signatory had got the revenue record translated from a retired *patwari* and then testified regarding non-preparation of Jamabandi. This kind of report and procedure is unknown. We deprecate the practice of revenue officers regarding giving reports in such an un-authorized manner.

(25) Besides, it is a matter of evidence that whether the land was under river action, as the *jamabandis* place on record by review applicants for the year 1983-84 also show it to be *Shamlat Deh* with its nature as *Chahi* and not *Banjar Kadim*. In view of the above, this argument is also rejected.

(26) **5th Argument:** It is clear from the findings returned by the authorities below as also by this Court that revenue record, as far back as 1909-10 was considered while adjudicating the issue involved. Thus to say that only jamabandi for the year 1955-56 was considered, is factually incorrect.

(27) **6th Argument:** The plea raised is without any basis. Mutation was sanctioned way back on 10.02.1955 and in case the predecessor in interest of petitioners was aggrieved then he/she could have very well challenged the mutation at that point of time. However, the said mutation was never put to challenge by any person and therefore now the applicants cannot be permitted to challenge the same after a lapse of more than 5 decades.

No other point was either raised or argued.

(28) In view of the above, the present **application** seeking **review** of the judgment dated 11.07.2017 (A-2) is **dismissed.**

(29) Since the main review application has been decided, no orders are required to be passed in the pending miscellaneous applications, and the same also stand disposed of.

Shubreet Kaur

Civil Writ Petition No. 63 of 2017
Date of Decision – July 11, 2017

Kanwaljit Singh, Senior Advocate with
Naresh Kaushik and Parunjeet Singh, Advocates
for the petitioners

SURYA KANT, J.

(1) This order shall dispose of Civil Writ Petition Nos.63 and 80 of 2017 as the petitioners in both the cases have laid challenge to the orders dated 23.05.2012, 17.03.2015 and 15.09.2016 whereby they were ordered to be evicted from the suit land pursuant to the eviction proceedings initiated by the Gram Panchayat under Section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short, 'the Act'), as applicable to the State of Haryana. The suit land has been declared as *shamlat deh* duly vested in the Gram Panchayat and the appeal filed by the petitioners against the eviction order as well as the order declaring the Gram Panchayat to be the owner of the land, has been dismissed.

(2) For brevity, the facts are being extracted from The Block Development and Panchayat Officer, Rai, District Sonipat filed an eviction petition under Section 7 of the Act before the Assistant Collector, 1st Grade, Sonipat, and a separate suit under Section 13- A of the Act seeking declaration that the subject land is *shamlat deh* duly vested in the Gram Panchayat under the 1961 Act and that the petitioners or other residents who were in its unauthorized possession, were liable to be evicted. The suit pertained to the land measuring more than 1173 kanals out of which 156 kanal 16 marla is said to have been purchased in the first case by a Company and its Directors.

(3) It may be observed at the outset that Section 7 of the Act contemplates summary eviction proceedings against a person who is in unauthorized occupation of the Gram Panchayat land. Similarly, title dispute as to whether the land is *shamlat deh* and vests in Gram Panchayat or it belongs to proprietors, is also required to be adjudicated under Section 13-A of the Act by the Court of Collector as the jurisdiction of Civil Court is expressly barred. The core issue in these cases pertains to title dispute, for if the land is held to be *shamlat deh* then the eviction of unauthorized occupants is consequential. We have thus heard learned counsel for the petitioners against their challenge to the decision dated 17.05.2015 rendered by the Court of Collector as well as the appellate order dated 15.09.2016 whereby the Gram

Panchayat was declared to be owner of the suit land and appeal preferred by the petitioners against that order has been dismissed.

(4) The foremost question which arises for consideration is whether the land in dispute is *shamlat deh* and vests in Gram Panchayat or it belongs to proprietors of the village?

(5) Section 2 (g) of the Act defines *"shamlat deh"* which includes:

> "(1) .....
>
> (2) .....
>
> (3) .....
>
> (4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area.....; (5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records "

The aforesaid definition also contains an 'exclusion clause' and according to Clause (iii), if "the land has been partitioned and brought under cultivation by individual land-holders before 26.01.1950 and (viii) was *shamlat deh,* was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950", such land does not fall within the ambit of *shamlat deh.* The Explanation appended to Section 2 (g) of the Act further clarifies that "lands entered in the column of ownership of record of rights as **'Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad', 'Jumla Malkan' or 'Mushtarka Malkan'** shall be shamilat deh within the meaning of this Section "

(6) The declaratory suit under Section 13-A of the Act was filed by the Gram Panchayat. The onus to prove that the land in dispute falls within the definition of *shamlat deh* was thus on the Gram Panchayat. Since the petitioners contested the claim of Gram Panchayat, the Collector formulated the following issues for determination;

> "(1) Whether the suit land has been used for common purposes
>
> and falls within the definition of *shamlat deh?;*

(2) Whether the suit land was the *shamlat deh* even before the 1961 Act came into force?;

(3) Whether the order passed by the Assistant Collector, 1st Grade, Kharkhauda dated 02.02.1998 for partition of the land amongst the proprietors is illegal?;

(4) Whether the Court of Collector was competent to annul the sale-deeds through which the defendant Nos.1 to 13 purchased a part of the suit land?;

(5) Whether cause of action has arisen in favour of the plaintiff- Gram Panchayat?;

(6) Whether the suit was maintainable in the present form?, and

(7) Whether the suit was defective due to non-impleadment of landlords of the village as party-defendants?.."

(7) The Collector, after discussing the rival contentions at length, answered Issue No.1 in favour of the Gram Panchayat in view of the fact that the land in dispute was mutated in favour of the Gram Panchayat vide mutation No.419 dated 12.02.1955. He further held that the suit land was reserved for 'common purposes' and such land always fell within the definition of *shamlat deh.* The Collector further held that as per the revenue record, the land is under the ownership of Gram Panchayat and the petitioner-defendants have failed to produce any documentary proof that they were ever in cultivating possession of the land for a period of 12 years before the 1961 Act came into force.

(8) Similarly, Issue No.2 was also answered in favour of the Gram Panchayat in view of the jamabandi for the year 1955-56 (Exhibit A-73) in which the name of Gram Panchayat was entered in the column of ownership and the nature of land was recorded as *gair mumkin.* The Collector further held that most of the land was used as *Charand (*grazing ground) which is also a common purpose and such land always falls within the definition of *shamlat deh*. It was further found that even as per the translated version of the record produced by the petitioners the Gram Panchayat was entered in the column of ownership.

(9) As regard to Issue No.3, namely, the legality of the order of Assistant Collector, 1st Grade, dated 02.02.1998, the Collector held that the said order was challenged before the Commissioner, Rohtak Division who accepted the appeal and set-aside the same. The

order of the Commissioner, Rohtak Division was challenged by the proprietors in a revision petition before the Financial Commissioner which was also dismissed. That order has attained finality. The order dated 02.02.1998 relied upon by the proprietors thus having become non-existent, Issue No.3 was also answered in favour of the Gram Panchayat. In the light of these findings, the Collector vide order dated 17.05.2015 decreed the Gram Panchayat's suit.

(10) The aggrieved petitioners and other proprietors preferred appeal(s) before the Commissioner, Rohtak Division who has dismissed the same vide order dated 15.09.2016 reiterating that:-

> ".....On perusal of revenue record, it is found that as per jamabandi for the year 1955-56 in the column of owner suit land is recorded as per Panchayat Deh and in the column of cultivator Makbuja Panchayat is recorded and in the column of land type it is recorded as Gairmumkin Johrad, Gairmumkin Rait, Gairmumkin Rasta, Banjar Kadim and Sailab. As such suit land is ownership of Panchayat and comes within the definition of Panchayat Deh. Appellants has mainly relied that suit land has been purchased from the proprietors of village through registered sale deeds and they are continue in possession as owner. This argument of appellants is without logic because real owner of the suit land is Gram Panchayat and Gram Panchayat never sold the suit land. If any other people have wrongly sold the Gram Panchayat land to some other person in that situation sale deed is not binding on the Gram Panchayat and possession of the appellants cannot be held as legal. Appellant filed appeal against order of Assistant Collector before the Court of Collector. On the land mentioned in that appeal and land in a suit pending under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 before Collector being same, the Collector vide his order dated 20.12.2012 ordered to club both the cases and Collector vide his order dated 17.03.2015 dismissed the appeals of appellants. The Collector in the case has framed issue as per rules on the relevant points and main issue Nos.1 and 2 have been decided after considering record and facts in details. Collector while deciding issue Nos.1 and 2 have given conclusion that on implementation of Punjab Village Common Lands (Regulation) Act, mutation No.419 of the

> suit land was recorded and sanctioned on dated 10.02.1995 in the name of Gram Panchayat and during scheme istemal suit land was being kept reserved for shamlat work and the land used for shamlat work comes within definition of Shamlat Deh and vests in the Gram Panchayat. Suit land as per jamabandi of year 1955-56 is recorded ownership as Panchayat Deh and Gairmumkin. Appellants have not produced any evidence before him which may prove that on the suit land they have cultivating possession before application of Punjab Village Common Land Act, i.e., 12 years old from 26.01.1950 "

(11) We have heard learned counsel for the petitioners at a considerable length and minutely perused the entries in the voluminous record brought by them.

(12) At the cost of repetition, it may be mentioned that any land which is used, reserved or earmarked for 'common purposes' comes within the ambit of *shamlat deh* and it vests in Gram Panchayat. However, if such land has been partitioned amongst the proprietors and they were in individual cultivating possession as on the cut off date of 26.01.1950, namely 12 years before the 1961 Act came into force, such land was liable to be excluded from the definition of *shamlat deh.* While onus was on the Gram Panchayat to prove that the land was either reserved or meant for common purposes or it otherwise fell within the definition of *shamlat deh*, the petitioners could succeed only if they were able to prove that their vendors/predecessors were in individual cultivating possession of the land as on 26.01.1950. All these inter-connected issues are liable to be answered against the petitioners in view of the overwhelming entries in the revenue record. We find from the jamabandi for the year 1909-10 (P-9)that the land in dispute was recorded as *shamlat deh Hasab Rasad Rakba Khewat* and nature of the land as *Banjar Qadim.* No proprietor has been recorded in its individual cultivating possession, rather in the column of ownership, it is *shamlat deh* which is recorded as owner of the land. In fact, if the nature of land is Banjar Qadim, it necessarily means that it was not cultivable and was never used for agricultural purposes. We have also gone through the Consolidation Scheme consisting of two types of *shamlat deh* lands, namely, (i) lands which were already used or reserved for common purposes and (ii) the lands which were taken from the proprietors of the village on *pro-rata* basis and put in a common pool for common purposes. The land in dispute assuming to be of 2nd

category, falls within the definition of *shamlat deh* in view of the fact that it is Banjar Qadim and was never made cultivable and never ever came into cultivating possession of the proprietors. Such land would thus fall within the meaning of *shamlat deh* in view of the Explanation appended to Section 2(g) of the 1961 Act, as applicable to the State of Haryana.

(13) For the reasons afore-stated we do not find any ground to interfere with the impugned orders.

(14) Dismissed.

Gautam Malhota and others versus State of Haryana and others

CM No.2933 of 2017

(1) For the reasons mentioned in the application, the same is allowed subject to all just exceptions and the documents (P-9 to P-18) are taken on record.

(2) CM stands disposed of.

CM No.2934 of 2017

(3) Dismissed as infructuous.