

Before Sudip Ahluwalia, J.

MUNICIPAL COUNCIL, KHARAR—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

RSA No.2479 of 2017

October 18, 2019

Administration of Evacuee Property Act, 1950—Punjab Village Common Lands(Regulation) Act, 1961—Provisions of 1961 Act prevail over the 1950 Act—Effect—Shamilat Deh could not vest in the Custodian; would fall under ownership of Gram Panchayat—Punjab (Amendment) Act No. 8 of 1995 amended Section 2(g) of 1961 Act—to exclude from Shamilat deh—Land allotted on quasi-permanent basis to displaced person or transferred by sale or by any other manner after the commencement of the Act, but on or before 09.07.1985—Purpose of amendment—To protect allotment of such lands, originally being Shamilat Deh, allotted to displaced persons—Held allotment of Shamilat land prior to 09.07.1985—Statutorily protected.

Held that, it cannot be disputed that on account of decision of Apex Court in **Gram Panchayat of Village Jamalpur** (supra), the provisions of Punjab Village Common Lands (Regulation) Act, 1953 would prevail over the Administration of Evacuee Property Act, 1950, which therefore, would have the effect of ensuring that lands reserved for common purposes/Shamilat Deh could not vest in the Custodian, and would fall under the ownership of Gram Panchayat. However, as a consequence of the aforesaid Judgment, the definition of “Shamilat Deh” was itself extended by way of an amendment to the Punjab Village Common Lands (Regulation) Act, 1961, which sought to exclude certain categories of lands defined as Shamilat Deh in Section 2(g). By way of the Punjab (Amendment) Act No.8 of 1995, it was provided that Shamilat Deh 'does not include land which' – “(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.”

(Para 9)

Further held that, undoubtedly, the purpose behind such amendment was to protect the allotments made in respect of such lands,

which originally being Shamilat Deh, had nevertheless been allotted to displaced persons or otherwise transferred to any person by sale or in any other manner before the 9th day of July, 1985. Admittedly, the allotment in the present case in favour of deceased Assa Singh was way back in the year 1969, and a challenge to the Vires of the 1995 Amendment had been dismissed by the Division Bench of this Court in case '*Gram Panchayat of village Kumbh Kalan versus State of Punjab*'.

(Para 10)

Further held that, the inescapable consequence therefore, is that the allotment in favour of LRs of deceased Assa Singh remains statutorily protected on account of the fact that it was made long before the date of amendment i.e. 9.7.1995, even assuming that it was a Shamilat Deh. On account of this specific legislation to protect all such allotments pre-dating 9.7.1995, there is no way that the allotment of disputed land by the Custodian can be assailed on the ground that it is Shamilat Deh.

(Para 11)

S.S.Narula, Advocate
for the Appellant.

Sandeep Kumar, Senior DAG Punjab
for Respondents No.1 and 2.

Vikas Bahl, Advocate with
Parvinder Singh and Vedika Gandhi, Advocates
for Respondent No.15.

SUDIP AHLUWALIA, J.

(1) This Appeal has been preferred against the Judgment and Decree passed by the Ld. Addl. District Judge, SAS Nagar, Mohali in Civil Appeal No.00077 of 2013 dated 20.12.2016, vide which, the original Judgment & Decree passed by the Ld. Civil Judge (Junior Division) Kharar in Civil Suit No.RT.121 of 2003 dated 17.01.2011 in favour of the present Respondents/Defendants were upheld.

(2) The original Suit was filed by the Appellant for a Declaration that it is the owner of the disputed land described in the Plaint, that the revenue record of village Khanpur showing the said land as Evacuee Property is illegal, null & void, that the land not being composite, Custodian/State Government has no valid Title over the same, and that its allotment made in favour of one Assa Singh is null

and void. In addition, a Decree for Permanent Injunction to restrain the private Respondents from alienating the said land or creating any charge over the same was also prayed for in the Plaint. It may also be mentioned that the Plaintiff in its Plaint had narrated the factual background of its case in great detail and the Ld. Lower Appellate Court has referred to the same in Paras 3 to 6 of its impugned Judgment by noting that -

“3.that suit land as described in the headnote of the plaint, was used for the common purposes by the inhabitants of Village Khanpur H.B. No. 183, Tehsil Kharar. The ownership, jurisdiction and control of all the shamlat lands of village Khanpur including the suit land vested in Municipal Council Kharar vide Punjab Government notification dated 4.3.1975 and as per Rule 4.3 of the Punjab Gram Panchayat Rules, 1965 and the whole of the Gram Sabha area being included in the Municipal Council Kharar, all rights, obligations, property assets and liabilities if any, whether arising out of contract or otherwise, vested in Municipal Council, Kharar. Therefore, the suit land is the ownership of the Municipality Kharar being part of the said shamlat deh land. The plaintiff further submitted that the Municipal Council, Kharar is the legal owner of the suit land and the said land which is a part of the other land is described as Municipal Council, Kharar Vs. State of Punjab & Others 18 ‘Charand’ since the Bandobast done in the village in about 1886-87. Thereafter, the Ld. Court of Lala Raghunath Rai Sahib, the then Assistant Collector Ist Grade, Kharar, District Ambala vide his order dated 30.7.1941 observed the land to be for Nadi, Charand, Gair Mumkin, Rasta, Kabaristan and Sati etc., which as per the ‘Wazibularz’ of the village is ‘Charand Shamlat’ in which the non proprietors and the landless also had grazing rights. In the year 1954, the said Shamlat land was transferred on the basis of the Punjab Village Common Lands (Regulation) Act, 1953 and the transfer was affected vide Punjab Government notification in the name of the constituted Gram Panchayat and hence, Gram Panchayat Khanpur was vested with the jurisdiction and control of the shamlat lands of which the suit land forms a part. The Gram Panchayat was recorded as the owner of the shamlat land which also included the suit land

and the suit land also forms a part of the same. By reasons of The Punjab Village Common Lands (Regulation) Act, 1953, the interest of all the persons whether Hindus, Sikhs or Muslims in the shamlat deh lands stood extinguished and those lands were placed by the said act under the control and power of the respective Gram Panchayats. The Punjab Village Common Lands (Regulation) Act, 1953 was repealed by an Act of 1961 bearing the similar title as Punjab Village Common Lands (Regulations) Act, 1961 and as such, the said lands were treated as reserved for common village purposes. At the time of partition of the country, village Khanpur was inhabited by muslims, and local non-muslim proprietors continued to live in village Khanpur.

4. It was further averred by plaintiff/appellant that The Punjab Village Common Lands (Regulations) Act, 1953 extinguished the interest of all the right holder proprietors of the village in the shamlat land whether they were muslims or non muslims and all such shamlat lands were thus reserved for common purposes of the village and were placed under the jurisdiction and control of the Gram panchayat Khanpur as owner of such properties. Therefore, the shamlat land of village Khanpur which includes the suit land cannot be held as Evacuee Property and thus cannot be governed by the Displaced Persons (Compensation and Rehabilitation) Act, 1954 and thus, the mutations and other entries in the revenue record showing the shamlat land including the suit land as Evacuee Property having been vested in the Custodian/State Government are illegal, void, ab initio, non existing and against the legal rights of the plaintiff, conferring no valid title in favour of the Custodian/State Government and as such, the Custodian/State Government had no power to allot such shamlat land including the suit land in favour of Displaced persons. The shamlat land of village Khanpur is not a composite property and as such, the Custodian/State Government has no valid title over the said Shamlat land. Assuming but without conceding the shamlat land including the suit land of village Khanpur to be composite property, even then the Custodian/State government had no valid title over the same, without first separating the Evacuee interest

therein. Since the entire village was not inhabited by the muslims but there were also Hindu and Sikh proprietors/local owners who had undivided interest in the shamlat land i.e. the composite property, so, without effecting partition of the composite property, the share of the local owners and the evacuee interest in the composite property cannot be separated. Therefore, without first separating the evacuee property in the composite property, no valid title over the shamlat land including the suit land passed in favour of the Custodian/State Government and as such, the allotments made in favour of Assa Singh S/o Khushal Singh (a displaced person) Municipal Council, Kharar Vs. State of Punjab & Others 18 person) by defendants No. 1 & 2 and the subsequent sale of the suit property to the vendees including defendants no. 3 to 14 being without valid and legal title are ineffective, non-existing and against the legal rights of the plaintiff, and as such, are void ab initio conferring no legal or valid title in favour of defendants no. 3 to 14 as the vendees derive no better title than the one Custodian/State Government or Assa Singh had in the suit land. Though the shamlat land including the suit land vests in the Gram Panchayat Khanpur in terms of Punjab Village Common Lands (Regulation) Act but certain influential persons including the legal heirs of Assa Singh in connivance with the revenue officials manipulated the revenue record and wrongly and illegally got the mutation of the shamlat land including the suit land sanctioned in favour of the Custodian/State Government. Thereafter in the year 1969 the legal heirs of Assa Singh S/o Khushal Singh got the shamlat deh land of village Khanpur i.e. the suit land allotted in their favour in lieu of the land abandoned by them in Pakistan. The said allotment in favour of Assa Singh was cancelled by the then Chief Settlement Commissioner Punjab, Jalandhar vide order dated 9.12.1975 and the same finds mentioned in report no. 159 as entered in the jamabandi for the year 1974-75 and thus, the title of the Gram Panchayat over the suit land was deemed to have been restored. The cancellation order of the Chief Settlement Commissioner apart from other was on the ground:-

“That the village Khanpur since it was not wholly evacuee

village and some of the land was owned by the local right holders as well, the allotment of this land without proper partition by the revenue authorities was irregular. It was also held that since the area was 'Gair mumkin Nadi' and 'Gair mumkin Jhand' according to Para Municipal Council, Kharar Vs. State of Punjab & Others 18 no. 31, Chapter VI, Page 155 of the Land Resettlement manual, such lands are excluded from allotment. Moreover, the Gair Mumkin lands especially those situated near to the abadis and of great potential value were not allotable. This land was contiguous to Kharar town and could not be utilized for allotment".

5. The allottee Assa Singh had died much before the allotment and after the allotment, the land was mutated vide No. 2061 in the name of his legal heirs namely Kishan Singh and Bhagat Singh and on the same day, mutation of inheritance vide No. 2062 was sanctioned in favour of the legal heirs of Bhagat Singh who had also died and further, on the same day, the entire land was sold by the heirs of allottee to one Kulwant Kaur and the mutation in that respect bearing No. 2063 is sanctioned. Thereafter, Kulwant Kaur sold ½ share of the land of Assa Singh purchased by her to one Jasbir Singh S/o Ajit Singh as is reflected in the jamabandi for the year 1974-75. Therefore, once the allotment in favour of Assa Singh had been cancelled by the Chief Settlement Commissioner, the sanction of mutation in favour of the legal heirs of Assa Singh and the subsequent sale of the suit land in favour of the vendees including defendants no. 3 to 14 being without legal and valid title are ineffective, non existing against the legal rights of the plaintiff and as such, do not confer any legal title of the suit land in favour of defendants nos. 3 to 14, and the vendees, legal heirs or the subsequent vendees from whom defendants no. 3 to 14 allegedly purchased the suit land, had no better title than what Assa Singh himself had in the suit property. As the Chief Settlement Commissioner Punjab, Jalandhar vide order dated 9.12.1975 cancelled the allotment in favour of Assa Ram and thereafter, symbolic possession of the suit land was wrongly and illegally given by the Assistant Collector 2nd Grade Municipal Council, Kharar Vs. State of Punjab & Others 18 in favour of the legal heirs of Assa Singh and the mutation of the same was

illegally entered in the Jamabandi for the year 1979-80 on the basis of the judgment of Hon'ble High Court which does not exist. The Municipal Council, Kharar or the Gram Panchayats Khanpur were never a part to any writ petition. Though the entire share of Assa Singh was sold by his LRs to Kulwant Kaur but surprisingly again, the symbolic possession was given to the LRs of Assa Singh vide report no. 57 as shown in the jamabandi for the year 1984-85 and in the subsequent jamabandi for the year 1989-90, part of the suit land measuring 39 bighas 18 biswas is shown to be the ownership of one Gobind Ram s/o Shamla Ram but there is no mention in the said jamabandi as to how the said Gobind Ram acquired the title of the suit land and thereafter, vide mutation No. 3642 entered in the jamabandi for the year 1994-95, the LRs of Gobind Ram have been shown to have succeeded to the suit property which is eventually purchased by defendants no. 3 to 14. Therefore, all the entries made in the revenue record in respect of the suit land w.e.f. the date of sanction of mutation in favour of Custodian/State Government and the subsequent allotment in favour of Assa Singh, his legal heirs and the vendees including the defendants no. 3 to 8 are illegal, null and void, non-existing against the legal rights of the plaintiff as the vendees, allottees derive no better title than the Custodian/State Government had in the suit property. Bhajan Singh and others had filed a civil suit which was pending in the court of Sh. RL Chauhan, Civil Judge (Junior Division) Kharar claiming the relief of permanent injunction restraining defendants No. 1 to 13 themselves or through their servants, attorneys, agents and representatives from dispossessing and interfering in the lawful, peaceful, cultivating possession of the plaintiffs over the land measuring 25 Bighas 10 Biswas Municipal Council, Kharar Vs. State of Punjab & Others 18 comprised in Khewat/Khatauni No. 348/425 and Khasra No. 748 (4-5), 751 (4-16), 752 (4-16), 755 (4-16), 756 (6-5) and the land measuring 10 Bighas 17 Biswas comprised in Khewat/Khatauni No. 402/431 and Khasra Nos. 746 (5-8), 747 (5-9) and land measuring 14 Bighas 8 Biswas comprised in khewat/Khatauni No. 398/425 and Khasra Nos. 795 (4-16), 796 (4-16), 799 (4-16) and land

measuring 21 bighas 15 Biswas i.e. 435/630 share in land measuring 32 bighas comprised in Khewat/Khatauni No. 405/435 and Khasra Nos. 767 (4-16), 768 (8-8), 769 (4-16), 470 (4-16), 1380/771 (4-2), 2089/764 (3-2), 2091/765 (2-0), and the land measuring 19 Bighas i.e. 19/96 share in land measuring 4 Bighas 16 Biswas comprised in Khewat/Khatauni No. 404/434 and Khasra No. 766 situated in the area of village Khanpur, Tehsil Kharar as entered in the jamabandi for the year 1994-95 and restraining defendants no. 1 to 13 from sitting on dharna over the public road or the suit land and for Mandatory Injunction directing the defendants No. 14 to 16 to protect the life and property and possession of the plaintiffs over the suit land and not to allow defendants no. 1 to 13, their agents, attorneys, servants, representatives or their family members to interfere and dispossess the plaintiffs from the suit in land in any manner. The plaintiff made an application in the said suit under Order 1 Rule 10 CPC in view of the above said facts as the petitioner was a necessary party and its presence before the Civil Court was necessary for effective and complete adjudication of the dispute and the petitioner's interest by way of possession of the suit land would have been adversely affected as a result of passage of a decree in the said suit but the same was dismissed vide Order dated 16.3.2001. The plaintiff thereafter, approached the Hon'ble Punjab & Haryana High Court challenging the order dated 16.3.2001 by way of Civil Revision No. 2052 of 2001 but the Municipal Council, Kharar Vs. State of Punjab & Others 18 Hon'ble Punjab & Haryana High Court in the aforementioned Civil Revision passed the following order:

“Dismissed with the observation that it will always be open to the Municipal Committee to file a separate civil suit.”

6. The plaintiff further submitted that defendants had also moved an application to the revenue authorities for demarcation of the suit land for which the concerned officials were appointed and in execution of their preconceived plan, they also got the permission of the police protection on a totally misconceived apprehension of law and order problem. Therefore, under the garb of

demarcation of the suit land, they intended to take possession of the suit land unlawfully and without due course of law and descended on the disputed land armed with lethal weapons with their supporters numbering 300-350 and started to burn, demolish and remove the guars, cattle sheds and manure pits of the village and with tractors, they tried to till the disputed land. The said nefarious design was resisted by the villagers who were in possession of the disputed land which is for the common purposes of the villagers and is owned by the plaintiff Municipal Council which resulted in the villagers being fired upon the lethal life taking weapons and 20-25 villagers suffered gunshot injuries. First information reports under various offences and counter FIRs were registered by the police against both the parties. Civil Court in the above mentioned suit for Permanent Injunction of Bhajan Singh and others on an application for demarcation of the suit land moved by the plaintiffs therein (defendants No. 3 to 8 in the present suit) passed wrong and illegal orders dated 4.4.2001 for demarcating the suit land on 17.4.2001 by overstepping its jurisdiction and going beyond the scope of the litigation and the pleadings in the suit. Thereafter, defendants no. 3 to 14 took possession of most of the suit land barring few bighas on the G.T. road which is not binding on the plaintiff Municipal Council, Kharar Vs State of Punjab & Others 18 and has no sanctity in the law. The plaintiff requested the defendants several times to admit the claim of Municipal Council but in vain. Hence, the present suit.”

(3) The Suit was however, contested only on behalf of original Defendants Nos.3 to 8, who in their Written Statement contended inter-alia -

“7. That the suit property was declared as Evacuee Property both under the Displaced Persons (Compensation & Rehabilitation) Act, 1954 and Administration of Evacuee Property Act and the jurisdiction of Civil Court is specifically barred, that the plaintiff claims that it was a shamlat property and vested in the Gram Panchayat, Khanpur and thereafter, in the plaintiff, but under the Punjab Village Common Lands (Regulation) Act, 1953 it is specifically mentioned that as to how to determine as to

whether the property is shamlat or not. The said jurisdiction lies only with the Collector who has specifically been empowered to determine as to whether the property is shamlat or not. The present suit is barred by the principle of res-judicata as the plea of the plaintiff to become a party in a suit filed by Bhajan Singh and others was dismissed and the said decision was upheld by the Hon'ble High Court and that the plaintiff is estopped by its act and conduct to file the present suit, that the suit of the plaintiff is hopelessly barred by limitation. It was submitted that Bhajan Singh, Lakhvinder Singh, Ravinder Kaur, Harnek Singh, Sohan Singh and others are bonafide purchasers of the suit property for valuable consideration. They verified the title of the vendors from the revenue record and were fully satisfied about their genuine title over the property in dispute and thus their Municipal Council, Kharar Vs State of Punjab & Others 18 title and possession is protected under the Transfer of Property Act and general law. It was further submitted that the allotment was originally made by the government in favour of the allottees and subsequent transfers are binding upon the Gram Panchayat/plaintiff and they have no right or locus-standi to challenge the same. Suit land has never been in the ownership of Municipal Council, Kharar as alleged. Defendants no. 3 to 8 submitted that assertions as contained in Para no. 2 of the plaint are vague besides being indefinite. The plaintiff has knowingly not given the description of the land which is alleged to be 'Charaand'. Defendants No. 3 to 8 denied that the Court of A.C. Ist Grade, Kharar vide his order dated 30.7.1941 observed the land to be 'Nadi/Charaand'. Gair Mumkin Rasta Kabristan and Sati etc and as per 'shart Vazbul' of the village and 'Charaand shamlat' in which the known proprietors and the land less have no grazing rights as alleged. It was denied that the Gram Panchayat was recorded as owner of shamlat land which included the suit land in the jamabandi of 1959-60, 1963-64 as alleged. Defendants No. 3 to 8 denied that the shamlat land of village Khanpur including the suit land cannot be held as Evacuee property and cannot be covered by Displaced Persons (Compensation & Rehabilitation) Act, 1954 and thus the mutation and other entries in the revenue record

showing the suit land as Evacuee property having been vested in Custodian/State Government are not illegal, null and void, non existing and against the legal rights of the plaintiff converting no valid title in favour of Custodian/State Government and further that the Custodian/State Government had the power to allot the suit land in favour of Displaced persons as alleged.

9. It was further averred that Civil Court has got no jurisdiction to adjudicate as to whether the suit land can or cannot be declared as Evacuee Property. Defendants No. 3 to 8 further denied that the suit land could not be utilized for allotment as alleged and that Assa Singh died earlier to the allotment as alleged rather, submitted that the suit land was rightly mutated in the name of legal heirs of Assa Singh. Defendants No. 3 to 8 submitted that the suit land has been rightly sold to Kulwant Kaur and to Jasbir Kaur and they denied that the allotment was cancelled by Chief Settlement Commissioner as alleged. Defendants no. 3 to 8 further submitted that the possession was rightly given by A.C. IInd Grade to Assa Singh and the mutations were rightly sanctioned. Municipal Council Kharar and Gram Panchayat Khanpur were not necessary party in this regard nor they had any concern with the suit land. Land measuring 39 Bighas 18 Biswas has been rightly shown to be the ownership of Govind Ram S/o Shiamla Ram and legal heirs of Govind Ram have rightly succeeded to the land of Govind Ram. The answering defendants purchased the land after perusing the revenue record and as such, are bonafide purchasers for consideration and their title is protected by the provisions of Transfer of Property Act. They admitted that they moved application to the revenue authorities for demarcation of the land and the protection of the police was also sought. The answering defendants were already in possession of the land which was owned by them and the villagers were not in possession of the land which was owned by the defendants. Civil Court passed legal and valid orders on 4.4.2001 for demarcation of the suit land and this Court has no jurisdiction and cannot judge the validity and legality of the orders dated 4.4.2001. The answering defendants are the owners and in possession of the suit land right from the date of its purchase and the compromise was

affected on 17.11.2001 validly and rightly. Denying rest of the averments, prayer for dismissal of the present suit was made.”

(4) After completion of Trial, Suit of the Appellant was dismissed by the Ld. Trial Court, since it came to the finding in respect of Issue No.8 framed by it, that the Civil Court had no jurisdiction to try the Suit on account of the Statutory Bar under Section 46 of the Administration of Evacuee Property Act, and consequently the relief sought for by the Appellant/Plaintiff could not be granted. Dismissal of the Suit by the Trial Court was thereafter upheld by the Ld. Lower Appellate Court.

(5) The arguments advanced on behalf of Appellant in assailing the Judgments of both the Courts below are essentially four-fold, though inter-connected with each other. The underlying assertion of the Appellant's side is that the disputed land in question is not proved to have been declared and notified as Evacuee Property, and so it could not have been considered as such under Section 7 of the Administration of Evacuee Property Act, 1950, and consequently could not have been deemed to have vested in the Custodian so as to be dealt with and allotted to any displaced person. Hence, according to the Appellant, the view of the Ld. Courts below that the Civil Court had no jurisdiction to entertain the dispute on account of the Bar under Section 46 of the Administration of Evacuee Property Act, 1950 was misconceived, since the land in question itself was not proved to have been declared as Evacuee Property, or vested in the Custodian under Section 7, nor any such declaration was shown to have been notified by Publication in the Official Gazette or in any other manner as prescribed under Section 7(3) of the Administration of Evacuee Property Act, 1950. Further according to the Appellant, it was also not proved that the property had been declared evacuee prior to 7.5.1954 or that at least the proceedings for declaration were pending on the said date in terms of Section 7-A of the Act.

(6) This Court is however, not convinced with the above contentions raised on behalf of the Appellant. This is so because admittedly the original allotment to the Legal Heirs of Assa Singh by ostensibly considering the disputed property as Evacuee was done way back in the year 1969, which was 34 years before filing of the Suit by the Appellant in 2003. In the interregnum, even the allotment in favour of LRs of Assa Singh was cancelled by the Chief Settlement Commissioner, which order was then challenged by way of CWP

No.6617 of 1975, and the said Writ Petition was allowed on 24.1.1983 i.e. more than 20 years prior to filing of the Suit. This background would go to unambiguously suggest that the High Court had found no fault with the allotment in favour of the Writ Petitioner, which logically would connote that legality of the previous process by virtue of which, the property had been held to be evacuee was not found fault with. In any case, if there had been any such illegality, the same again could have been challenged only by way of an appropriate Writ Petition, since otherwise, the proceedings in relation to Evacuee Property as already seen are barred in a Civil Court. In fact, even academically if a liberty is granted to a litigant to challenge the legality of the proceedings culminating into determination and subsequent allotment of Evacuee Property, "by filing a Civil Suit", even that liberty would mean to apply only for the appropriate Forum whose jurisdiction to entertain the same is not barred by Statute, and a liberty to approach the Civil Court in such circumstances would not actually have any effect of conferring any jurisdiction upon such Court to entertain the dispute, which it otherwise does not possess.

(7) The next contention of the Appellant is that once the allotment in favour of LRs of Assa Singh had already been cancelled in the year 1975, the land in question is presumed to have vested in the Plaintiff/MC, Kharar vide Notification dated 4.3.1975 (Ex.PW1), since the land being originally Shamlat Deh of village Khanpur, Tehsil Kharar automatically stood vested in the Plaintiff by operation of law. This contention again is unconvincing, since admittedly the cancellation of allotment was subsequently set aside in CWP No.6617 of 1975 and therefore, the prior position stood restored. Consequently, there is no question of the land in question having vested in the MC Kharar merely on account of temporary cancellation of the original allotment in favour of the allottees.

(8) It has nevertheless been contended on behalf of the Appellant that even the decision of this Court in CWP No.6617 of 1975 is not helpful to the Respondents, who are the Transferees of the original allottees. This has been explained by contending that the Judgment in the aforesaid Writ Petition was passed by relying upon a Division Bench Judgment of this Court in *Gram Sabha and Gram Panchayat Daba* versus *Chief Settlement Commissioner and Others*¹. But that Division Bench Judgment itself had been negated by a Larger

¹ (1973) PLJ 398

Bench of Supreme Court in *Gram Panchayat of Jamalpur* versus *Malwinder Singh*², which was thereafter followed by a Single Bench of this Court in CWP No.2477 of 1982 “**Gram Panchayat of village Kheri versus State of Haryana**” as a consequence of which, the Shamilat Deh land left by Muslims is to vest in the Gram Panchayat, and the Custodian therefore, has no power to deal with the same in any manner.

(9) It cannot be disputed that on account of decision of Apex Court in **Gram Panchayat of Village Jamalpur** (supra), the provisions of Punjab Village Common Lands (Regulation) Act, 1953 would prevail over the Administration of Evacuee Property Act, 1950, which therefore, would have the effect of ensuring that lands reserved for common purposes/Shamilat Deh could not vest in the Custodian, and would fall under the ownership of Gram Panchayat. However, as a consequence of the aforesaid Judgment, the definition of “Shamilat Deh” was itself extended by way of an amendment to the Punjab Village Common Lands (Regulation) Act, 1961, which sought to exclude certain categories of lands defined as Shamilat Deh in Section 2(g). By way of the Punjab (Amendment) Act No.8 of 1995, it was provided that Shamilat Deh 'does not include land which' –

“(ii-a) was shamilat deh, but, has been allotted on quasi-permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th day of July, 1985.”

(10) Undoubtedly, the purpose behind such amendment was to protect the allotments made in respect of such lands, which originally being Shamilat Deh, had nevertheless been allotted to displaced persons or otherwise transferred to any person by sale or in any other manner before the 9th day of July, 1985. Admittedly, the allotment in the present case in favour of deceased Assa Singh was way back in the year 1969, and a challenge to the Vires of the 1995 Amendment had been dismissed by the Division Bench of this Court in case '*Gram Panchayat of village Kumbh Kalan versus State of Punjab*'.

(11) The inescapable consequence therefore, is that the allotment in favour of LRs of deceased Assa Singh remains statutorily protected on account of the fact that it was made long before the date of amendment i.e. 9.7.1995, even assuming that it was a Shamilat Deh. On

² AIR 1985 SC 1394

account of this specific legislation to protect all such allotments pre-dating 9.7.1995, there is no way that the allotment of disputed land by the Custodian can be assailed on the ground that it is Shamilat Deh.

(12) For the aforesaid reasons, this Court finds no justification to interfere with the decisions of both the Ld. Courts below, the Appeal is therefore, dismissed.

Shubreet Kaur