IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA No. 54 of 2012 (O&M)
Date of decision: 7.5.2014

The Gram Panchayat of Village Bajghera .....Appellant

Versus

The Financial Commissioner (Revenue) Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Shri Ashish Aggarwal, Senior Advocate, with
S/Shri Kulwant Singh & Kartik Gupta, Advocates,
For the appellant.

Mrs. Shubhra Singh, DAG, Haryana, for
fespondent Nos. 1 to 4

Shri Puneet Bali, Senior Advocate, with
Shri Gaurav Sarin, Advocate, for respondent Nos.10 & 11.

Shri Ranjit Saini, Advocate, for respondent No.13.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

HEMANT GUPTA, J.

The present Letters Patent Appeal is directed against an order passed by the learned Single Bench on 15.2.2011 whereby the writ petition filed by the appellant was dismissed as also an order passed in review on 21.10.2011, whereby the review application filed by the appellant after producing additional documents, was also dismissed.

The facts in brief are that one Raj Singh and Mehar Singh filed a petition under section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (for short `the Act'), alleging therein that the Gram Panchayat is owner in possession of the land measuring 2218 kanals and 6 marlas as per the Jamabandi for the year 1994-95 and that respondent Nos. 1 to 8 (some of whom are also the respondents in the present appeal as well) are in unauthorized possession of the same. In such petition, an order was passed on 28.9.1998 to treat the petition under Section 7 of the Act as a regular suit under Section 7(3) of the Act and the non-applicants were ordered to file the plaint/suit. Such suit was dismissed on 27.5.1999 (Annexure R.13/1), holding that the Gram Panchayat is owner and in possession of the suit land. The appeal against the said order was dismissed on 29.11.1999, but the revision petition was allowed by the Commissioner on 16.8.2001 and the matter was remitted back to the Assistant Collector for fresh decision.

The learned Assistant Collector allowed the suit/ petition vide his order dated 20.6.2002 (P.1). He referred to the Jamabandi for the year 1939-40 (Exhibit P.1), which records *Shamlat Deh Makbuja Hasab Rasad Malgujari Mundraja Missal Hakiat* in the column of ownership, whereas in the column of cultivation, the entry of *Makbuja Malkaan.* The Assistant Collector also took into consideration the Jamabandi Exhibit P.2 for the year 1944-45, wherein a similar entry was recorded. The Assistant Collector also considered Exhibit P.3 *Sharat Wazibul Arz*, wherein it is recorded that *Gair Mumkin Gravehyard Rasta* and Pond etc., are not capable of being partitioned and rest of the land is *Banjar Qadim*. It was held that the land is *Banjar Qadim* and not used for common purposes, therefore, the same does not vest with in the Panchayat.

Such order was challenged in appeal before the Collector, Gurgaon. The learned Collector found, in his order dated 18.2.2003 (Annexure P-2), that if in the column of ownership, the entry of Shamlat Deh is recorded then such land would vest in the Gram Panchayat under Section 2(g)(1) of the Act. The extract from the order including the extract from jamabandi for the year 1939-40 (Ex P-1) is as under:-

Sr. No.	Khewat No.	Khatauni No.	Ownership	Cultivation	Total area
1.	156	597	Shamlat Deh Hasab Rasad Malgujari Mundraja Missal Hakiat 1939-40	Makbuja Malkaan	614 Bigha 16 Biswa
2.	-do-	598 to 656	-do-	Cultivation of share-holders	22 Bigha 17 Biswa 16 Biswansi
3.	-do-	657 to 661	-do-	Cultivation of Gair Marusian	7 Biswa
4.	-do-	662	-do-	Makbuja Ahale Chamaran	1 Bigha 4 Biswa
5.	-do-	663	-do-	Saare-aam	13 Bigha 5 Biswa
Total					652 Bigha 9 Biswa 16 Biswansi

5. It is necessary to understand every entry of this jamabandi for the year 1939-40. The entry in the column of ownership of this jamabandi is “Shamlat Deh Hasab Rasad Malgujari Mundraja Missal Hakiat 1939-40”. According to Section 2(g)(1) of the Punjab Village Common Lands Act, if according to column of ownership in the revenue record, the entry is of shamlat deh then such land vests in the Gram Panchayat. In the present case, in the column of ownership, there is entry of Shamlat Deh Hasab Rasad Malgujari. First it is necessary to understand whether there is any difference

between this entry and an entry of only "Shamlat Deh". To understand this issue, it is necessary to refer to this history of shamlat land in the erstwhile State of Punjab prior to the carving out the State of Haryana, provisions of the Punjab Village Common Lands Act and their interpretation by the Hon'ble Punjab and Haryana High Court. So far as the history of shamlat land of villages of this area is concerned, Panchayats were formally established in these villages after independence. Before that Gram Panchayats had no legal entity and the land which was shamlat, was mentioned in the revenue record as shamlat-deh and shamlat patti. Shamlat deh land is that land which was the shamlat of the entire village and shamlat patti land was that land which was the shamlat of a particular patti only. I will first link these two entries to the provisions of Punjab Village Common Lands Act. Shamlat Deh land vests in the Gram Panchayat as per section 2(g)(1) of the Act and Shamlat Patti land vests in the Gram Panchayat as per Section 2(g)(3) of the Act. Basically, there is a lot of difference in these two provisions because the land of shamlat patti vests in the Gram Panchayat only if the land is being used for the common purposes of the village as per the revenue record. Against this, there is no such requirement with regard to shamlat deh land. This implies that shamlat deh land whether it is used for common purposes of village or not, will vest in the Gram Panchayat under all circumstances. This different can be understood then it is considered that the land of shamlat patti is the shamlat of only one patti and the same can vest in the Panchayat only when it has actually been used for common purposes of the village. Evidently, if land of shamlat patti is not being used for common purposes of the village, then such land is considered to be the ownership of the proprietors of that patti. But there was no necessity of imposing such a condition with regard to shamlat deh land in the Act as done so. The reason for the same is that if it had been so, then there would be no shamlat land left for the future requirements of the village. From the above discussion, it is evident that if according to the revenue record, the land is shamlat deh, then it will vest in the Gram panchayat irrespective of whether it has been used for common purposes or not."

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10. From the above analysis, it is evident that by mentioning the basis of share in the shamlat deh in the column of ownership, the nature of shamlat deh does not get

> change. Such land remain shamlat deh and vests in the Gram Panchayat under Section 2(g)(1) of the Punjab Village Common Lands Act. Similarly, the words "Makbuja Malkaan" mentioned in the column of cultivation are so mentioned because there was no other option".

It may be noticed that the learned Collector noticed the Supreme Court judgment in Sukhdev Singh and others v. Gram Sabha Bari Khad and others, 1977 PLJ 150 (AIR 1977 SC 1003). The Collector further noticed that the proprietors whose cultivation existed prior to 26.1.1950 are entitled to bring their claims under the exceptions given in the Act, but since a major chunk of the land is *Banjar Qadim Gair Mumkin*, it does not entitle the proprietors to claim the same to be Shamlat Deh.

Such order dated 18.2.2003 was challenged by way of a revision under Section 13(B) of the Act. The revision was allowed and the order of the Collector was set aside. The learned Commissioner found that the land was not in possession of Panchayat and that the order of the Collector is not sustainable in view of the judgment reported as Jai Singh v. State of Haryana, 2003(2) RCR (Civil) 578 [2003(2) PLR 658]. The Commissioner referred to Section 2(g) of the Act to hold that the land described as *Banjar Qadim* can be deemed to be Shamlat Deh only if it is used for the common purposes. Reference was to Section 2(g)(5) of the Act. The Commissioner set aside the finding of the Collector with one line that the Collector erred in holding that the suit land is covered under Section 2(g) of the Act.

The Panchayat filed a revision before the Learned Financial Commissioner. The same was dismissed by the learned Financial Commissioner holding that the revision is not maintainable. Reference was made to an order dated 24.8.2007 passed by this Court in Civil

Writ Petition No.20032 of 2005 titled as Ashvarya Estate Pvt. Ltd. v. Commissioner, Gurgaon Division and others.

Aggrieved against the order passed by the Financial Commissioner, the Panchayat filed the writ petition out of which the present appeal arises. The claim of the writ petitioner was for issuance of a writ in the nature of Certiorari to quash the order dated 4.4.2008 (Annexure P.4) as well. In the said writ petition on 26.5.2008, the Panchayat was given liberty to place on record supporting documentary evidence. On 9.10.2009, the State Counsel was directed to make available the necessary records. It was on 29.7.2010, the Court recorded the following order:-

> "Counsel for the parties prays for time to place on record relevant revenue documents to enable this Court to prima-facie, form an opinion as to the nature of the land."

However, when the writ petition came up for final hearing before the learned Single Bench, the same was dismissed holding that the revision is not maintainable. The learned Single Bench recorded the following conclusions:-

> "29. Consideration of facts and circumstances of this case clearly establish that proceedings were initiated under Section 7 of the Act. The present petition, however, has been argued on the premise that proceedings had been filed under Section 13-A of the Act and, therefore, no relief can be granted to the petitioner so as to hold that the order passed by the Financial Commissioner (Annexure P-4) is illegal, without jurisdiction or against the provisions of law.
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> 30. Considering the above, I am of the considered opinion that Financial Commissioner has held, for the right reasons, that second revision petition is not maintainable.
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> 31. There is not even a whisper of challenge to the orders passed by the authorities on facts and merits. A limited question of jurisdiction has been raised which has been answered."

The appellant earlier filed a Letters Patent Appeal, but the same was withdrawn on 9.5.2011 with liberty to move an appropriate application for amendment of the writ petition on the ground that sufficient material was brought on record during the proceedings before the learned Single Bench to lay challenge to the orders passed by the authorities under the Act. The said review application was dismissed, inter-alia, observing as under:-

> "44. Considering the law, as laid down above, it transpires that a civil writ petition is a suit which is required to be supplemented with the evidence on which the petitioner chooses to rely, in view of its nature. Not only the facts but also the evidence in proof of such facts have to be pleaded and documents annexed in case of a writ petition. When a writ petitioner raises a point of law which is required to be substantiated by facts, he must plead and prove such facts by evidence which must appear from the writ petition and accompanying documents. If he is a respondent, the facts asserted are required to be proved from the written statement/counter affidavit and supporting documents. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the written statement/counter affidavit, as the case may be, the Court will not entertain the point.
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> 45. Pleadings include documents placed on record as annexures. When a document is placed on record along with a writ petition, it is explained in the body of the writ petition in regard to its relevance and as to why the said document has been placed on record and what ground of challenge emerges therefrom. The respondent thereby is given an opportunity to respond to the pleadings in the writ petition and appended annexures, so as to clarify his stand and point of view."
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> 53. So far as zimni orders are concerned, liberty was indeed given to the petitioner to place on record documents, vide order dated 26.5.2008. An application (CM 14273 of 2010 in CWP 9372 of 2008) was filed for permission to place on record revenue record as Annexures P-6 to P-9. The application was allowed vide order dated 5.10.2010. The application neither

> explains the documents nor shows the reason for reliance thereupon. Merely because the documents were brought on record, would not be sufficient to satisfy the principles of natural justice, which require that the respondents are put to notice of the specific stand of the petitioner in challenge to orders (Annexures P-3 and P-4).
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> 54. The arguments addressed by the counsel then appearing for the writ petitioner have been dealt with in the decision under review. The court, merely because the documents had been placed on record, could not make out a case for the petitioner, because no relevant facts in relation to the documents were pleaded in the writ petition. No relevant notice of the said stand was given to the respondents."

In the present appeal, learned counsel fro the parties are ad-idem that the core issue required to be decided is whether the land in question vests in the Panchayat or not. The assertion of the counsel for the Gram Panchayat is that the land is recorded in the revenue record produced by the private respondents themselves before the Assistant Collector, as Shamlat Deh followed by the expressions "Hasab Rasad Malgujari Mundraja Missal Hakiat" hence, the same would vest with the Panchayat in terms of Section 2(g)(1) read with Section 4 of the Act. Whereas the argument of the learned counsel for the private respondents is that the land is Banjar Qadim and the same, unless reserved and used for the common purposes, will not vest with the Panchayat in view of Section 2(g)(5) of the Act. It may be noticed at this stage that the respondents have not invoked any of the exceptions contained in second part of Section 2(g) so as to exclude the land falling with the expression Shamlat Deh in terms of the first part of Section 2(g) of the Act.

Before considering the arguments, certain statutory provisions need to be extracted i.e Section 2(g)(1), (3) and (5), Exception (viii) and Section 4 of the Act:-

> "2. (g) "*Shamilat deh*" includes

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

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(3) Land described in the revenue records as *shamilat, Tarafs, Pattis Pannas* and *Tholas* and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.

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(5) Land in any village described as *banjar qadim* and used for common purposes of the village, according to revenue records;

[…]

but does not include land which--

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(viii) was *Shamilat deh* was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or….”

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 shamlat deh of any village and which has not vested in a panchayat under the shamlat 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 shamlat law, be deemed to have been vested in such non-proprietor.”

Learned counsel for the appellant argued that land described in the revenue record as *shamilat deh* simplicitor or followed by expressions like *hasab paimana malkiat mundarja shajra nasab or*

hasab hissa andraj shijra nasab or mushtraka jumla malkan hasab rasad raqba khetwdar came to vest with Gram Panchayat with the enactment of Punjab Village Common Lands (Regulation) Act, 1954. He referred to judgment of Hon'ble Supreme Court reported as Sukhdev Singh and others v. Gram Sabha Bari Khad and others' AIR 1977 SC 1003 as also the following judgments:-

1. Tel Ram and others v. Gram Sabha Manakpur and others, 1976 PLJ 628;
2. Shiv Charan Singh and others v. Gram Panchayat Narike and another, 1977 PLJ 453;
3. CWP No.11722 of 1999- Kashmir Singh and others v. Joint Development Commissioner decided on 26.4.2006;
4. CWP 11821 of 1992- M/s Bhanot Leasing Limited and others v. The Commissioner, Gurgaon Division, Gurgaon and others, decided 6.10.2010;
5. Maghi Ram (deceased) through his Legal Representatives and another v. Gram Panchayat, Chirwa and others, 2012 (3) PLR 339;
6. Prem Singh and others v. The Commissioner, Ambala Division, Ambala and others, 2014(1) RCR (Civil) 182

Thus, it is argued that the consistent view of this Court is that such land vests with Panchayat as owner in terms of Section 2(g)(1) read with Section 4 of the Act

On the other hand, learned counsel for the respondents rely upon the Full Bench judgment of this Court reported as Gram Panchayat Sadhraur Vs. Baldev Singh and others, 1977 PLJ 276, and as also on the following judgments:-

1. Gram Panchcayat Kalwa v. The Joint Development Commissioner (IRD), Punjab, Chandigarh and others, 2012(4) RCR (Civil) 250;

2. Gram Panchayat Village Chaura, Block Sanaur, Tehsil and District Patiala v. State of Punjab and others; 2012(4) RCR (Civil) 256;
3. Bhag Singh v. State of Punjab and others, 2012(4) PLR 52;
4. Sunder v. Gram Panchayat Adhoya, 1977 PLJ 305;
5. Lakhi Ram v. The Gram Panchayat Gudah, District Karnal, 1968 PLR 106.

In Tel Ram's case (supra), the Division Bench of this Court was examining the Jamabandi for the year 1946-47 regarding the claim of ownership. Though the judgment does not disclose the entry in the column of the ownership but it appears that the entry is similar to the entry in question. The Court held that such land falls under Section 2(g)(1) of the Act and vests in the Panchayat. It was also held that the appellants could not bring the case within the purview of (clause viii) of the exceptions. The Bench considered the argument that the land is Banjar Qadim and would not vest in the Panchayat unless it is used for common purpose under Section 2(g)(5) of the Act. It was held to the following effect:-

> "5. In the second leg of his arguments, Shri Jawanda contends that the land in question has been shown in the revenue records as banjar qadim and in order to assess as to whether the land could fall under the definition of *shamlat deh*, only clause (5) of Section 2(g) should be looked into. According to this clause, land in the village described as banjar qadim can be deemed to be shamlat deh only if apart from being described as such, the same is used for the common purposes of the village. The contention is that there being no evidence in proof of the fact that land is used for common purposes of the village, the same cannot fall under the definition of *shamlat deh*. The argument is quite fallacious and ignores the definition of *shamlat deh* as contained in the Act. Section 2(g) provides some of the eventualities under which the land can be treated as *shamlat deh* and these are

> contained in clauses (1) to (5). In the case in hand, the requirements applicable to the land in dispute are admittedly covered by clause (1) and in order to bring the same within the defintiin of *shamlat deh*, no further reference to any other clauses is necessary."

Thereafter, the Hon'ble Supreme Court in Sukhdev Singh's case (supra), took into consideration the Jamabandi for the year 1914-15, wherein the land was recorded to be owned by the village Shamlat and in possession of the owners as per the respective shares in the Khewat. The Court held that such land vests in Panchayat.

In another Division Bench judgment of this Court in Shiv Charan Singh's case (supra), the argument of the appellant was that the land in question is covered by the provisions of Section 2(g)(5) and not Section 2(g)(1) of the Act and the land being Banjar Qadim did not vest in the Gram Panchayat. The Court held to the following effect:-

> "7. From the perusal of sub-clause (1) it is evident that *shamlat deh* would include land described in the revenue records as *'shamlat deh'*. The contention of Mr. Ashok Bhan, learned counsel for the appellants, was that the land in dispute was recorded as *banjar qadim*; that under sub-clause (5) only that *banjar qadim* land which was used for common purposes of the village according to revenue records would be *shamlat deh*; that the *banjar qadim* land which is not used for common purposes of the village according to revenue records would not become *shamlat deh* and that sub-clause (5) is a proviso to sub-clause (1) in the sense that any land which is *banjar qadim* and not used for common purposes according to the revenue records would not vest in the Gram Panchayat even if it is recorded in the revenue records as *shamlet deh*. I am afraid. I am unable to agree with this contention of the learned counsel. From the bare perusal of the sub-clauses reproduced above, it would be evident that all the said sub--clauses are independent of each other and describe as to which type of land would be included in the *shamlat deh*. Sub--clause (1) covers the case of land described in the revenue records as

> *shamlat deh*; while sub-clause (5) covers the case of lands in the villages described as *banjar qadim* and used for common purpose of the village according to the revenue records. I agree with Mr. Goyal that sub-clause (5) could cover the cases of lands which may belong to private persons but having been recorded as *banjar qadim* and used for common purposes of the village according to revenue records, would become *shamlat deh*. It is evident that such a case could not fall within the purview of other clauses. To my mind, it is clear that sub-clause (5) was enacted with a definite purpose to apply to the *banjar qadim* land used for the common purposes of the village according to the revenue records even if it belonged to any particular individual or individuals. If this sub-clause had not been added as an independent one, then the village community could have been deprived of valuable right at the sweet will of an individual proprietor. Further, the idea of the legislature seems to be clear that such land should vest in the Gram Panchayat as the same would be properly administered and managed by the Gram Panchayat. Thus, it cannot be said that sub--clause (5) was added by the legislature without any added by the legislature without any purpose. It is also equally clear that in case the legislature had intended to circumscribe the scope of sub-clause (1) by adding sub-clause (5), then sub-clause (5) would not have been added as a separate clause but would have been added as a proviso immediately after sub--clause (1). The manner in which the provisions have been arranged and drafted leave no manner of doubt that all the sub--clauses are independent and do not govern or circumscribe the scope of each other in any manner. In this view of mine. I am supported by a Division Bench judgment of this Court in *Tel Ram* v. *Gram Sabha Manakpur,* 1976 PLJ 628. I do not agree with Mr. Ashok Bhan, learned counsel for the appellants, that the view taken in *Tel Ram's* case does not lay down the correct law."

Thereafter, the matter has come up for hearing before this Court in Kashmir Singh's case (supra), wherein the entire case law was examined and finding returned that such land vests in Panchayat.

In Maghi Ram's case (supra), the Division Bench of this Court, held to the following effect:-

"12. The land, in dispute, was described in the revenue record as "Shamilat Deh Hasab Hissas Mundarza Shijra Nasab" and in possession of "Makbuja Malkan". The expression "Shamilat Deh Hasab Hissas Mundarza Shijra Nasar", denotes ownership of proprietors, in accordance with their share holdings, prior to the enactment of the Pepsu Village Common Lands (Regulation) Act, 1954 (hereinafter referred to as the 'Pepsu Act'). The expression "Makbuja Malkan" denotes possession in common, of the proprietary body, with no particular proprietor in possession of any portion of land, much less, in cultivating possession. Upon enactment of the Pepsu Act, in 1954, land described as "Shamilat Deh" came to vest in a Gram Panchayat, thereby putting an end to the ownership of proprietors, without any exception. The Pepsu Act, was repealed and re-enacted as the 1961 Act. Section 3(1) and 3(2)(i) of the 1961 Act provide that land that was "Shamilat Deh" under the Pepsu Act, shall continue to vest in the Gram Panchayat to the extent and in the manner, provided by Section 2(g) of the 1961 Act.

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13. The vires of the Punjab Village Common Lands (Regulation) Act, 1954, which is para-materia to the Pepsu Act was upheld by a Division Bench of this Court in Hukum Singh Shibba and others v. The State of Punjab and others, AIR 1955 Punjab, 220. The validity of the 1961 Act was upheld by a Division Bench of this Court in Kangra Valley Slate Co., Ltd v. Kidar Nath and others, AIR 1964, Punjab, 503 and thereafter by a Constitution Bench of the Hon'ble Supreme Court in Ranjit Singh v. State of Punjab, AIR 1965 (SC), 632, setting on rest any controversy that with the enactment of the Pepsu Act and the 1961 Act, right, title or interest of proprietors in "Shamilat Deh" stood extinguished in its entirety but stand restored only to the extent such land is excluded from "Shamilat Deh" in accordance with the 1961 Act.

14. Admittedly, the land in dispute was "Shamilat Deh" on the enactment of the Pepsu Act. The land, therefore, vested in the Gram Panchayat in 1954 and can only be excluded from "Shamilat Deh", if it is proved that it falls within any of the sub-sections of Section 2(g) of the 1961 Act, enacted to exclude land from "Shamilat Deh". The petitioners claim exclusion from "Shamilat Deh" under Section 2(g) (iii) of the 1961 Act and are, therefore, required to prove:-

(a) that they were in his possession as proprietors;
(b) the land was partitioned; and
(b) brought under cultivation by individual land owners before 26.01.1950."

In Prem Singh's case (supra), the land was recorded as Shamlat Deh whereas, in the column of possession, the proprietors were recorded to be in possession as per the Sharat-Wajib-ul-Arz. It was held as under:-

"Section 2(g)(1) of the 1961 Act, clearly, provides that land used as "Charand" (pasture) shall vest in a Gram Panchayat. The clauses of Section 2(g) are to be read separately and not collectively as each clause provides for separate situation in which "Shamilat Deh" shall be included or excluded from "Shamilat Deh". Where, however, the land is "Charand", it is included in "Shamilat Deh" by Section 2(g)(1) of the 1961 Act and whether it is described as "Panna, Patti, Thola or is Banjar Qadim" or as any other variety, it would not be excluded from "Shamilat Deh", under any of the other clauses of Section 2(g) of the 1961 Act. Section 2(g)(1) of the 1961 Act is an independent sub- section that postulates an automatic inclusion of "Charand", in "Shamilat Deh". An argument advanced by counsel for the petitioners, based upon a Full Bench judgment of this court titled Gram Panchayat, Sadhraur v. Baldev Singh and another, (supra), that "Shamilat Panna, Patti, Taraf" would only vest in a Gram Panchayat if it is used according to the revenue record for common purposes of all sections of the village population, including proprietors and non-proprietors, in our considered opinion, does not arise in the present case as the land, in dispute, is, admittedly, "Charand". The fact that the "Sharat Waji-Ul-Arz" records that land shall be used by proprietors whereas non- proprietors shall be required to make a fixed payment, clearly indicates that the land was to be used for common purposes of the entire village community. The fact that non-proprietors would be required to pay charges to proprietors, in our considered opinion, is insufficient to raise an inference that the land is excluded from "Shamilat Deh" on the basis of the law laid down in the judgment in Gram Panchayat, Sadhraur v. Baldev Singh and another (supra). This apart, the argument disregards the vesting of "Shamilat Deh", in a Gram Panchayat,

> under the 1953 Act as with the coming into force of the 1953 Act, "Shamilat Deh", of whatever description and nature came to vest in a Gram Panchayat, without any exception. The land, admittedly, being "Charand", vested in a Gram Panchayat, and its management and use no longer depended upon entries in the "Sharat Waji-Ul-Arz". The right to use "Shamilat Deh" was henceforth governed by the 1953 Act, as affirmed and amended by the 1961 Act. The authorities under the 1961 Act have rightly held that as land, in dispute, was, "Charand", the petitioners have no right, title or interest therein. The concurrent findings of fact recorded by authorities under the 1961 Act, do not suffer from any error of jurisdiction or of law, as would require interference."

On the other hand, the judgments referred to by Shri Bali, learned senior counsel, are not applicable to the facts of the present appeal.

In Gram Panchayat Kalwa's case, the writ petition of Panchayat was allowed wherein the Panchayat was claiming that the land vests in the Panchayat under Section 2(g) of the Act. The stand of the respondents therein was that they are in continuous possession before 26.1.1950 and the land is Shamlat Hasab Rasad Arazi Khewat and also a Banjar Qadim. The Court held to the following effect:-

> "11. A conjoint reading of Section 2(g)(1) Section 3 and Section 4 of the 1961 Act, reveals that all land described as "Shamilat Deh" came to vest in Gram Panchayat by virtue of the 1954 Act and only such "Shamilat Deh" is excluded, from vesting in a Gram Panchayat, as it provided for by Section 2(g) or Section 4 of the 1961 Act. The 1961 Act has retrospective operation only to the extent provided by Section 3. Section 3(1) and 3(2)(i) of the 1961 Act reads as follows :-
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> xx xxx xxx"

After holding that the land vests in the Panchayat, it was also found that the respondents are not entitled to the benefit of any of the exceptions. The judgments in Gram Panchayat Kalwa's case (supra) and other judgments, relied upon by Shri Bali, in fact, support the

contentions and arguments of the Panchayat that the land described as Shamlat-deh followed by such other expressions as mentioned therein, vests in the Panchayat on the commencement of the Act.

Similar is the view in Bhag Singh's case (supra) wherein the land was held to be Shamlat land and vesting in the Panchayat. It was also held that the petitioner has failed to show that he was in possession of the land on 26.1.1950. Considering the respective contentions, the Court held to the following effect:-

> "9. A village consisted of and even today consists of land used for cultivation and land used for common purposes. The common land of a village is used and reserved for pastures, roads, ponds, cremation grounds etc. and is generally denoted by the words "Shamilat Deh". The common land was owned by proprietors, in accordance with their share holdings, determined either in proportion to their proprietary land holdings, i.e., "Hasab Rasad Zare Khewat" or in accordance with the land revenue paid, i.e., "Hasab Rasad Paimana Malkiat". The words "Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", merely denoted the manner of calculating share holdings of proprietors, in Shamilat Deh, or Shamilat Patti and had no relevance to the nature of land. The common land belonging to a Patti, a Panna, a Thola, or a Taraf, was represented by the words Shamilat, Patti, Taraf, Panna or Thola, thereby indicating that the land was the common land of a Patti etc. "Shamilat Deh" was generally recorded in possession of proprietors by the words "Makbooja Malkan", i.e., possession in 'common' of the proprietary body, with no particular proprietor in separate possession. Where, however, a proprietor was in separate "cultivating possession" of any part of "Shamilat Deh", his name was so recorded in a particular khasra number or numbers. Shamilat Deh of a village vested in proprietors and was used and managed by them to the exclusion of non proprietors. Shamilat Patti etc. vested in members of the Taraf, Patti, Panna or Thola "Shamilat Deh" or "Shamilat Patti" could be leased, mortgaged, sold and partitioned by proprietors in accordance with their share holdings.
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> 10. The enactment of the Pepsu Act and the Punjab Village Common Lands (Regulation) Act, 1953, collectively, called

> "Shamilat Law" brought about a paradigm shift in the ownership of "Shamilat Deh". "Shamilat Law" was enacted as a measure of agrarian reform so as to break the stranglehold of proprietors and extinguish their proprietary rights by permitting, for the first time, non-proprietors to use common land, without any let or hindrance. By these statutes land described as "Shamilat Deh", came to vest in a Gram Panchayat, without exception. "Shamilat Law" was repealed and enacted as the "1961 Act". Section 2(g)(1) of the 1961 Act defines "Shamilat Deh", to include lands described, in the revenue record, as "Shamilat Deh" subject, however, to certain exceptions set out in Section 2(g) and Section 4 of the 1961 Act.
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> 11. Despite the enactment of Section 2(g) (1) of the 1961 Act, revenue authorities continued to record the expressions "Hasab Rasad Zare Khewat" or "Hasab Rasad Paimana Malkiat" etc. after the words "Shamilat Deh". As already discussed, these expressions do not relate to the nature of the land but denote the proprietary position, before enactment of the Pepsu Village Common Lands (Regulation) Act, 1954; the Punjab Village Common Lands (Regulation) Act, 1953 and the Punjab Village Common Lands (Regulation) Act, 1961, and are, therefore, superfluous. The question has already been answered in two separate judgments namely, Kashmir Singh and Others v. Joint Development Commissioner (IRD), Punjab, Chandigarh and others 2006 (1) L.A.R. 607 and Sita Ram etc. v. G.P. Ismaila etc. (Civil Writ Petition No. 9368 of 2007) recorded by Division Benches, on 20.6.2007."

In Gram Panchayat Chaura's case, in the jamabandi for the year 1944-45, the land was reflected as Shamlat Hasab Rasad Arazi Khewat and the nature of the land was Banjar Qadim. It was the Gram Panchayat, which sought title over the suit land under Section 11 of the Act. The writ petition was allowed by the Division Bench holding that the land vests in the Panchayat.

The Full Bench judgment of this Court in the case of Gram Panchayat Sadhrapur v. Baldev Singh and others, 1977 PLJ 276 is the judgment in respect of the land falling in sub clause (3) of Section

2(g) of the Act, i.e. the land of Shamlat Panna, Patti, and Thola. It was held that such land would vest with the Panchayat only if it is used for the village community or village population. A distinction has been drawn that clause (3) pertains to the residential purpose of the community whereas the land described in the revenue record falling in sub clause (1) is the land of the village. The two clauses operate in different fields, therefore, the land of Patti, Panna, Thola, Taraf and Banjar Qadim falling under sub-section (3) would vest in the Panchayat if it is used for the common purposes. But if the land is described in the revenue record as Shamlat Deh followed by any expressions, the same would vest in the Panchayat in terms of Section 2(g)(1) of the Act.

Thus, the finding recorded by the Commissioner holding that the land does not vest with the Panchayat in terms of Section 2(g) of the Act, is patently illegal and unwarranted. The judgment in Jai Singh's case (supra), referred to by the Commissioner pertains to *Jumla Mustrka Malkan* Land, which came to be vested in Panchayat consequent to the amendment in the Act by Haryana Act No. 9 of 1992. The issue raised and decided in the aforesaid case has nothing in common with the issue arising in the present case.

In view of the above, we find that the land in dispute is proved to be vesting with the Gram Panchayat in terms of Section 2(g)(1) of the Act and that Section 2(g)(5) of the Act has no applicability to the land in question.

At this stage, the other ancillary argument raised by Shri Bali needs to be noticed. It is argued that in the writ petition, the petitioner has not challenged the order passed by the Commissioner, holding that the land does not vest in Panchayat and therefore, no such relief could be granted to the petitioner in the writ petition in the absence of any challenge to that effect.

We may notice that in a writ petition claiming a writ of Certiorari against the orders passed by the quasi judicial authorities, the writ Court does not exercises the original jurisdiction. It exercises supervisory jurisdiction after calling for the records of the subordinate tribunal. The writ court exercises its power of judicial review. In Sant Lal Gupta v. Modern Coop. Group Housing Society Ltd., (2010) 13 SCC 336, the Supreme Court held that the High Court, while issuing the writ of Certiorari, when there is an error apparent on the face of the record, acts in a supervisory capacity. It was held as under:-

> "29. The High Court ought to have considered that it was a writ of certiorari and it was not dealing with an appeal. The writ of certiorari under Article 226 of the Constitution can be issued only when there is a failure of justice and it cannot be issued merely because it may be legally permissible to do so. There must be an error apparent on the face of record as the High Court acts merely in a supervisory capacity. An error apparent on the face of the record means an error which strikes one on mere looking and does not need long drawn out process of reasoning on points where there may conceivably be two opinions. Such error should not require any extraneous matter to show its incorrectness. Such errors may include the giving of reasons that are bad in law or inconsistent, unintelligible or inadequate. It may also include the application of a wrong legal test to the facts found, taking irrelevant considerations into account and failing to take relevant considerations into account, and wrongful admission or exclusion of evidence, as well as arriving at a conclusion without any supporting evidence. Such a writ can be issued when there is an error in jurisdiction or authority whose order is to be reviewed has acted without jurisdiction or in excess of its jurisdiction or has failed to act. While issuing the Writ of Certiorari, the order under challenge should not undergo scrutiny of an appellate court. It is obligatory on the part of the petitioner to show that a jurisdictional error has been committed by the Statutory Authorities. There must be the breach of principles of natural justice for resorting to such a course. (Vide: Harbans Lal v. Jagmohan Saran, AIR 1986 SC 302; Municipal Council, Sujanpur v. Surinder Kumar, (2006) 5 SCC 173; Sarabjit Rick Singh v.. Union of India, (2008) 2 SCC

417; and Assistant Commissioner, Income Tax, Rajkot v. Saurashtra Kutch Stock Exchange Limited, (2008) 14 SCC 171)"

In Prabodh Verma v. State of U.P., (1984)4 SCC 251, a writ of Certiorari was sought for quashing of an Act of the legislature. Examining the scope and nature of such a writ, it was held that the writ of Certiorari can never be issued for such purpose. Discussing the scope of writ of Certiorari, the Court held to the following effect:-

"32. We are concerned here with the writ of certiorari "Certiorari' is a Late Latin word being the passive form of the word "certiorari" meaning 'inform' and occurred in the original Latin words of the writ which translated read "we being desirous for certain reasons, that the said record should by you be certified to us,'. Certiorari was essentially a royal demand for information; the king, wishing to be certified of some matter, orders that the necessary information be provided for him. We find in De Smith's "Judicial Review of Administrative Action", 4th edition, page 587, some interesting instances where writs of certiorari were so issued. Thus, these writs were addressed to the escheator or the sheriff to make inquisitions: the earliest being for the year 1260. Similarly, when Parliament granted Edward II one foot-soldier for every township, the writ addressed to the sheriffs to send in returns of their townships to the Exchequer was a writ of certiorari. Very soon after its first appearance this writ was used to remove to the King's Court at Westminster the proceedings of inferior courts of record: for instance, in 1271 the proceedings in an assize of darren presentment were transferred to Westminister because of their dilatoriness. This power was also assumed by the Court of Chancery and in the Tudor and early Stuart periods a writ of certiorari was frequently issued to bring the proceedings of inferior courts of common law before the Chancellor. Later, however, the Chancery confide its supervisory functions to inferior courts of equity. In "A New Abridgement of the Law", Seventh Edition, Volume II at pages 9 and 19, Matthew Bacon has described a writ of certiorari in these words:-

A CERTIORARI is an original writ issuing out of Chancery, or the King's Bench, directed in the King's name, to the judges or officers of inferior courts,

> commanding them to return the records of a cause pending before them, to the end the party may have the more sure and speedy justice before him, or such other justice as he shall assign to determine the cause.

xx xx xx

36. .....It may be mentioned that under Article 32 of the Constitution, the same power as has been conferred upon the High Courts is conferred upon this Court without any restriction as to territorial jurisdiction but, unlike the High Court, restricted only to the enforcement of any of the rights conferred by Part III of the Constitution, namely, the Fundamental Rights. Referring to Article 226, this Court in Dwarka nath, Hindu Undivided Family v. Income Tax Officer, Special Circle. Kanpur and Anr.: [1965]57ITR349(SC) said:-

> "This article is couched in comprehensive phraseology and it ex-facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. *It can issue writs in the nature of prerogative writs as understood in England but the scope of those writs also is widened by the use of the expression 'nature',* for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart *High Courts can also issue directions, orders or writs other than the prerogative writs.* It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of government in to a vast country like India functioning under a federal structure, such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this article. Some limitations are implicit in the article and others may be evolved to direct the article through the defined channels. (Emphasis supplied)"

In the present case, the learned Single judge in the review application applied the law of pleadings in a writ petition seeking issuance of a writ of Certiorari. We find that the writ jurisdiction of this Court is wide and has different facets. While issuing the writ of Certiorari against the orders of the quasi judicial Tribunal, in exercise of its supervisory jurisdiction, the pleadings are insignificant as it is the record of the subordinate authority or the Tribunal, which is to be examined to find out any error apparent on record. However, when the writ jurisdiction is exercised without any order of inferior Tribunal or authority, it will be the exercise of the original jurisdiction and the pleadings would be relevant. In the present case, it was the order of the authorities, which was made subject matter of challenge in the writ jurisdiction. The records of the Authorities were before the writ Court. The parties were aware of the controversy in respect of title as recorded in an interim order. The documents required to be examined were produced by the respondents herein before the Assistant Collector in proof of their title. The pure question of law is required to be examined. Therefore, on the perusal of the records, the writ Court could issue a writ, which is warranted on the facts of the case.

We find that the order passed by the learned Single Judge in not examining the nature of the land even if it is held that the revision was not maintainable is not sustainable in law. The Panchayat has claimed a writ of certiorari and also for setting aside of the order passed by Commissioner dated 20.11.2003. At the earlier stages of hearing of the writ petition, the records of the case were called. The parties were aware of the controversy between them i.e. whether the land vests with Panchayat or not. It is well settled that a pure question of law can be raised at any stage of proceedings though if a question of fact is raised, the opposite party is required to a notice as a part of the principles of natural justice. In Greater Mohali Area

Development Authority v. Manju Jain, (2010) 9 SCC 157, a plea of fact was sought to raised before the Supreme Court for the first time. It was not permitted by observing:-

> "26. Respondent 1 raised the plea of non-receipt of the letter of allotment first time before the High Court. Even if it is assumed that it is correct, the question does arise as to whether such a new plea on facts could be agitated before the writ court. It is settled legal proposition that pure question of law can be raised at any time of the proceedings but a question of fact which requires investigation and inquiry, and for which no factual foundation has been laid by a party before the court or tribunal below, cannot be allowed to be agitated in the writ petition. If the writ court for some compelling circumstances desires to entertain a new factual plea the court must give due opportunity to the opposite party to controvert the same and adduce the evidence to substantiate its pleadings. Thus, it is not permissible for the High Court to consider a new case on facts or mixed question of fact and law which was not the case of the parties before the court or tribunal below. [Vide *State of U.P.* v. *Dr. Anupam Gupta, AIR 1992 SC 932*, *Ram Kumar Agarwal* v. *Thawar Das, (1999)7 SCC 303*, *Vasantha Viswanathan* v. *V.K. Elayalwar, (2001)8 SCC 133*, *Anup Kumar Kundu* v. *Sudip Charan Chakraborty, (2006)6 SCC 666*, *Tirupati Jute Industries (P) Ltd.* v. *State of W.B, (2009)14 SCC 406* and *Sanghvi Reconditioners (P) Ltd.* v. *Union of India, (2010)2 SCC 733."*

The said principle was reiterated in another judgment reported as National Textile Corpn. Ltd. v. Nareshkumar Badrikumar Jagad, (2011) 12 SCC 695**,**

> "19. There is no quarrel to the settled legal proposition that a new plea cannot be taken in respect of any factual controversy whatsoever, however, a new ground raising a pure legal issue for which no inquiry/proof is required can be permitted to be raised by the court at any stage of the proceedings. [See *Sanghvi Reconditioners (P) Ltd.* v. *Union of India, AIR 2010 SC 1089* and *Greater Mohali Area Development Authority* v. *Manju Jain,* (2010) 9 SCC 157."

The only documents required to be examined were the jamabandis for the years 1939-40 and 1945-46, Exhibit P.1 and P.2 respectively, produced by the respondents themselves. It is the inference in law, on the basis of documents produced by the respondents, which will determine the nature of the land. Therefore, on the basis of the documents produced by the respondents, a finding was returned by the Collector that the land does vest in the Panchayat. The Commissioner gravely erred in law in setting aside such order relying upon Jai Singh's case (supra), which is not applicable to the facts of the present case.

Thus, we find that the order of the learned Single Judge that there is no whisper of challenge to the orders passed by the authorities could not be made a ground to decline the relief of Certiorari when the parties were aware of the controversy in respect of vesting of the land in Panchayat.

Though no argument was raised by Shri Bali in respect of the maintainability of the revision petition before the Financial Commissioner or otherwise, but on an earlier date of hearing, Shri Sarin, learned counsel for the respondents has raised such an argument. Therefore, we deem it appropriate to deal with such argument as well.

In fact, the provisions of the Act, contemplate different channels of appeal and revision in respect of the proceedings in which question of title is raised under Section 7 of the Act and the proceedings in which question of title is raised under Section 13-A of the Act. Proviso to sub-section (1) of Section 7 of the Act, which was substituted by the Haryana Act No.9 of 1992, contemplates that if any question of title is raised in any proceedings, the Assistant Collector of the Ist Grade shall record a finding to that effect and decide the question of title in the first instance. An appeal against

such order is contemplated under sub section (1) of Section 13-B of the Act. The further revision is provided under Section 13B (2) of the Act to be exercised by the Commissioner.

It was by Haryana Act No. 9 of 1999, Section 13-A and 13AA were inserted. Sub section (1) of Section 13AA provides for an appeal against an order passed under Section 13-A of the Act. Sub-Section (2) of Section 13AA provides for suo-motu powers conferred on the Financial Commissioner to call for records of any proceedings pending before or order passed by the Commissioner.

Thus, we find that different procedure has been prescribed for deciding a question of title raised in the proceedings under Section 7 of the Act and the proceedings under Section 13-A of the Act. In the proceedings under Section 7 of the Act, it is the Assistant Collector who decides the question of title in the first instance. The appeal is thus, maintainable before the Collector in terms of sub section (1) of Section 13-B of the Act, whereas the Commissioner has been given power of revision under sub-section (2) of Section 13-B of the Act. On the other hand, an order on the question of title under Section 13-A of the Act is appealable to the Commissioner under sub-section (1) of Section 13AA of the Act and the Financial Commissioner has been given power of revision under sub-section (2) of Section 13AA of the Act. Since, in the present case, it is the Assistant Collector, who has decided the question of title, therefore, the order passed by the Commissioner is final, which could not be disputed before the Financial Commissioner.

Consequently, we find that the order of the learned Single Judge dated 15.2.2011 dismissing the writ petition and the order dated 21.10.2011, dismissing the review application, are not sustainable in law as also the order dated 20.11.2003 passed by the Commissioner. Consequently, the aforesaid orders are set aside, and

that of the Collector dated 18.2.2003 is restored. It is held that the land measuring 2218 kanals and 6 marlas situated in village Bajghera, Tehsil & District Gurgaon, vests with the Panchayat in terms of Section 2(g)(1) read with Section 4(1)(a) of the Act.

The appeal stands allowed in the above terms.

(HEMANT GUPTA)
JUDGE

(FATEH DEEP SINGH)
JUDGE

7.5.2014
ds