

Municipal Committee Narwana Vs Risala and others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: July 3, 2012

Acts Referred: Punjab Village Common Lands (Regulation) Act, 1961 â€” Section 2

Citation: (2012) 168 PLR 430 : (2013) 1 RCR(Civil) 1008

Hon'ble Judges: Tejinder Singh Dhindsa, J

Bench: Single Bench

Advocate: Akshay Bhan, for the Appellant; Alok Mittal, for the Respondent

Final Decision: Dismissed

Judgement

Tejinder Singh Dhindsa, J.

Plaintiffs Risala and others instituted a suit for possession in a representative capacity against Municipal

Committee, Narwana by pleading that 4/5th share of the suit land measuring 60 kanals 9 marlas situated at Narwana was titled, owned and

possessed by the proprietors of Thola Panchayam consisting of one share each of Patti Ramu, Khandu, Miru, Radar and Dass. It was pleaded that

the defendants had no right or interest in the suit land but in pursuance to the provisions of the Punjab Municipal Common Lands Act, 1974 (herein

after referred to as the 1974 Act), mutation no. 6097 had been sanctioned on 15.7.1976 in favour of the defendants without notice to the plaintiffs.

It was further pleaded that the aforementioned 1974 Act had been declared ultra vires and had been struck down by the High Court and

consequently the plaintiffs" status as owners in possession in suit was restored. It was pleaded that the defendant had been called upon to get the

mutation cancelled but on their refusal and upon the defendant-Committee taking forcible possession of the suit land, the suit had been filed. The

defendant contested the suit in terms of stating that Municipal Committee, Narwana was continuing as owner in possession of the suit land even

prior to the enactment of the 1974 Act by virtue of the provisions of the PEPSU Common Lands (Regulations) Act, 1954 (herein after referred to

as the 1954 Act). It was further stated that the mutation regarding the suit land had been sanctioned on 11.5.1977 in favour of Municipal

Committee, Narwana in pursuance to the provisions of the 1974 Act.

2. Upon the pleadings of the parties, following issues were struck by the Trial Court:-

1. Whether the plaintiffs are owners of the suit property as alleged? OPP.

2. Whether the mutation No. 6097 sanctioned on 15.7.76 in favour of the defendant is illegal, void and not binding on the rights of the plaintiffs?

OPP.

3. Whether the plaintiffs have no locus-standi to file the present suit? OPP.

4. Whether the suit is barred by limitation? OPD.

5. Whether the suit is barred by principle of res judicata? OPD.

6. Relief.

3. The Trial Court vide judgement dated 4.5.1982 returned findings under Issue no. 1 holding the defendant to be having title of the suit land under

the provisions of the 1954 Act as also under the provisions of the Punjab Village Common Lands (Regulations) Act, 1961 holding the suit land to

be Shamlat Deh. Issue no. 2 was decided in favour of the plaintiffs thereby returning finding that the mutation no. 6097 sanctioned on 15.7.1976

was illegal and void and ultimately the suit filed by the plaintiffs was dismissed. Aggrieved of the same, the plaintiffs preferred a civil appeal and

vide impugned judgement dated 1.10.1984 the Additional District Judge, Jind has accepted the appeal and thereby the suit of the plaintiffs for

possession of the land measuring 60 kanals 9 marlas has been decreed against the Municipal Committee, Narwana. Resultantly, defendant-

Municipal Committee, Narwana is in second appeal before this Court.

4. I have heard Mr. Akshay Bhan, learned counsel appearing on behalf of the appellant and Mr. Alok Mittal, Advocate appearing on behalf of the

respondents at length.

5. Learned counsel appearing for the appellant would contend that the suit land was Shamlat Deh and accordingly, it had vested in the Municipal

Committee by virtue of Section 3 sub clause (A) of the 1954 Act and as such the Lower Appellate Court had grossly erred in decreeing the suit of

the plaintiffs as the Municipal Committee had become owner of the land in dispute even prior to the coming into force of the Haryana Municipal

Common Lands (Regulation) Act, 1974. Learned counsel for the appellant would further vehemently contend that u/s 2 sub clause (G) of the

Punjab Village Common Lands (Regulation) Act, 1961 the land belonging to Tholas etc. would also fall within the definition of Shamlat Deh and

accordingly, the ownership had come to vest with the Municipal Committee, Narwana and on such count also the impugned judgement of the

Lower Appellate Court was perverse and unsustainable in law.

6. Learned counsel for the respondents would, however, contend that the concept of Shamlat land as opposed to land belonging to certain Tholas

or Pattis is quite distinct as it is only Shamlat Deh land that would vest in a Gram Panchayat but the land in possession with Tholas/Pattis would not

vest with the Gram Panchayat as the same was owned and possessed by a particular Thola or Patti i.e. consisting of only certain proprietors of the

village.

7. I have considered the respective submissions advanced by learned counsel for the parties and have perused the paper book minutely.

8. Undisputedly, in the record of rights the land in dispute belong to Mustarka Thola Panchayam and in the column of cultivation the words

Makhbooja Malkan were entered which was reflective of the fact that these were only the proprietors of such Thola Panchayam, who were in

possession of such land. Under the provisions of the 1954 Act there is no definition of Shamlat Deh. Accordingly, under the provisions of the 1954

Act only such land which was described as Shamlat Deh in the revenue record would be taken as Shamlat Deh. The land in dispute had not been

described as Shamlat Deh in the revenue records when the 1954 Act came into force in the year 1955 and accordingly, the land in question would

not vest either in the Gram Panchayat or the Municipal Committee. It would be noticed that in the mutation no. 6097 (Ex.P-3) the land in dispute

falling in Khasra no. 666-725-726/1/2 had been described as Mustarka Thola Panchayam and from such name it was mutated in the name of

Municipal Committee, Narwana. From Ex.P-3 itself, it would be clear that certain other land had also been mutated in the name of Municipal

Committee, Narwana but all such lands had been described as Shamlat Deh. The clear inference that has rightfully been drawn by the Lower

Appellate Court is that the land in dispute having not been described as Shamlat Deh in the revenue record would, accordingly, belong to the

Mustarka Thola Panchayam.

9. Even the issue as regards lands belonging to Tholas etc. to fall within the definition of Shamlat Deh u/s 2 sub clause (G) of the 1954 Act came

up for consideration before the Hon'ble Supreme Court in the matter of Gram Panchayat v. Amar Singh (dead) by L.Rs. 2001 (4) R.C.R (Civil)

694 and it had been held in the following terms:-

2. The suit land is described in the revenue papers to be "in possession of the proprietors" of Tholas. Three persons of those Tholas joined

together to institute a suit for declaration to the effect that the suit land was owned and possessed by the plaintiffs and other shareholders of the

Tholas which was being used in the interest of the Tholas and not for the common purpose of the village community, and hence not "shamlat deh" in

order to vest in the Gram Panchayat. The suit ex facie was in a representative character and was instituted against the Gram Panchayat asserting

title to it challenging the purported vesting under the provisions of the Act. The trial court as well as the first appellate court relying on a Single

Bench decision of that Court in *Coop. Society of Improvement of Shamilat Patti Harnam Singh Lambardar of village Khanni v. Gram Panchayat of*

Village Khanni, (1962) 64 PLR 730 non-suited the plaintiffs on the ground that the joint possession of the proprietors of a Patti, Tholas, Panna or

Taraf forming part of the village community, would all the same put such possessed lands within the ambit of "shamlat deh". Since this view was

upset by the Full Bench of the High Court in the above mentioned case, the High Court in the instant matter reversed the decision of the two courts

below primarily being cognizant of the views of the Full Bench extracted hereafter:

There is no evidence on the record to show that the owners of the Patti much less those who are not the owners are using the suit land for any

benefit. The expression "benefit of the village community or a part thereof, cannot be given by any stretch a restricted meaning so as to confine the

benefit to only the owners of the land. Besides, it is also necessary that the entries in the revenue records must show that actually some benefit was

being derived from the use of such land by the village community or a part thereof. Thus, in our considered opinion, the interpretation of sub-clause

(3) in *Coop. Society of Improvement of Shamilat Patti Harnam Singh's case* (supra), cannot bear scrutiny and does not lay down a correct view

of law.

3. The learned Single Judge, bound as he was, had to follow the judgement of the Full Bench. Even otherwise, the definition of "shamlat deh" given

in Section 2 (g) of the Act as extracted in the judgement under appeal, clearly reveals the legislative mandate that shamlat deh would not include

lands which are described in the revenue records as Shamlat, Taraf, Patti, Panna and Thola which are not used according to the revenue record,

for the benefit of the village community or a part thereof, for common purpose of the village. It has been noticed earlier that here the lands are

described to be "in possession of the proprietors of the Tholas" and in their cultivating possession and use. There is no commonality of purpose

disclosed in the revenue entries nor any indication that non-proprietors share the benefit of the land in a common way. The suit lands obviously

would not fall within the ambit of "shamlat deh" so as to get vested in the Gram Panchayat.

The High Court therefore was right in decreeing the suit of the respondent-plaintiffs.

10. Thus, it has been categorically held that in terms of Section 2 sub clause (G) of the Act Shamlat Deh would not include lands which are

described in the revenue records as Shamlat, Patti, Panna and Tholla etc. and which are not being used as per revenue record for the benefit of the

village community or for the common purposes of the village. Accordingly, since the land in dispute had been reflected in possession of the

proprietors of the Thollas, I do not find any infirmity in the impugned judgement and decree passed by the Lower Appellate Court, wherein the suit

of the plaintiffs-respondents has been decreed for possession in respect of land measuring 60 kanals 9 marlas i.e. 1/4th share in Killa no. 666,

725-726/1/2 against the Municipal Committee, Narwana. The present second appeal must, accordingly, fail as it does not raise any question of

law much less a substantial question of law. The appeal, accordingly, is dismissed.

Apeal dismissed.