**(2012) 07 P&H CK 0303**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Regular Second Appeal No. 3278 of 1984 (O and M)

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| Municipal Committee Narwana | APPELLANT |
| Vs | |
| Risala and others | RESPONDENT |

**Date of Decision:** July 3, 2012

**Acts Referred:**

- Punjab Village Common Lands (Regulation) Act, 1961 - 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 pro prietors 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 pur ported 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 mush 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.