(2018) 05 P&H CK 0116

High Court Of Punjab And Haryana At Chandigarh

Case No: Regular Second Appeal No. 497 Of 1995 (O&M)

Faridabad Complex Administration		APPELLANT
	Vs	
Ram Chand (since deceased) through LRs And Others		RESPONDENT

Date of Decision: May 29, 2018

Acts Referred:

- Haryana Public Premises Act, 1972 - Section 4
- Punjab Village Common Lands (Regulation and Development) Act, 1961 - Section 2(g)(i) to (ix), 2(g), 4(1)(2), 4(3)(ii), 2(g)(viii), 13, 13(a), 13(b), 51
- Haryana Municipal Act, 1973 - Section 52
- Code of Civil Procedure, 1908 - Section 80
- Haryana Municipal Committee Act in July, 1980 - Section 4
- Punjab Land Revenue Act, 1887 - Section 44
- Evidence Act, 1872 - Section 35
- Consolidation Act, 1948 - Section 2(bb), 23A
- Constitution of India, 1950 - Article 296

Citation: (2018) 3 RCR(Civ) 328

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Advocate: Ashish Aggarwal, Arvind Seth, Puneet Bali

Final Decision: Dismissed

Judgement

This appeal has been filed against the judgment dated 22.11.1994 passed by the Additional District Judge, Faridabad, dismissing an appeal filed by

defendant-appellant (hereinafter referred to as 'the defendant') against the judgment and decree dated 15.06.1993 passed by the Sub Judge Ist Class,

Faridabad, whereby suit filed by plaintiff-respondents for declaration, has been decreed.

Ram Chand etc.-plaintiffs (respondents herein) (hereinafter referred to as 'the plaintiffs) filed a suit for declaration to the effect that land measuring

104 Kanals 9 Marlas, situated within the revenue estate of village Lakkarpur, Tehsil Ballabgarh, District Faridabad, was owned and possessed by

them as co-sharers in the shamlat deh of village and defendant be restrained from claiming any right or possession thereon. Case set up by the

plaintiffs was that after enactment of the Punjab Village Common Land (Regulation) Act, 1961, the land referred to above was erroneously shown to

have vested in Gram Panchayat, Lakkarpur. Thereafter, mutation entered by the revenue authorities was attested in favour of the Gram Panchayat.

In fact, the land in question was never used for common purposes of the villagers as shown in the revenue records. Possession of the suit property

remained with the plaintiffs as proprietors of Har Do Thok of the village. After the enforcement of Faridabad Companies (Regulation and

Development) Act, 1971, all the revenue estate of village Lakkarpur, including the area of Gram Panchayat, was included in Faridabad Complex

Administration. After enactment of the above said Act, Gram Panchayat, Lakkarpur, ceased to exist. It was further pleaded that before

commencement of this Act, land in dispute was excluded vide notification No.EP/1795 dated 13.01.1972 from the area of Gram Sabha, Lakkarpur.

Thus, the land in question ceased to vest in Gram Panchayat w.e.f. 13.01.1972 and the provisions of Village Common Land Act, 1961 were not

applicable to this land. The Faridabad Complex Regulation and Development Act, 1971, came to force on 15.01.1972. Validity of Haryana Municipal

Common Lands Act 15 of 1974 was challenged before this Court, whereupon whole of the Act had been declared unconstitutional. Plaintiffs had

requested the defendants not to proceed under Section 4 of the Haryana Public Premises Act, 1972 in order to evict the plaintiffs, but they refused to

do so. Hence, the suit.

Upon notice, defendant (appellant) filed written statement, wherein it has been pleaded that jurisdiction of the civil court was barred under Section 13

of the Punjab Village Common Lands (Regulation and Development) Act, 1961 and under Section 51 of Faridabad Complex (Regulation and

Development) Act. It was further pleaded that the suit was bad for want of service of notice under Section 52 of the Haryana Municipal Act, 1973

and under Section 80 CPC. The suit was time barred. It was denied that the plaintiffs were owners in possession of the suit land as recorded in the

latest Jamabandi for the year 1984-85. It was admitted that Gram Panchayat of village Lakkarpur had ceased to exist. All other allegations made in

the plaint were denied and prayer for dismissal of the suit was made.

From the pleadings of the parties, following preliminary issues were framed by the trial Court:-

1. Whether civil court has no jurisdiction to entertain the present suit? OPD

2. Relief.

Trial Court, after hearing learned counsel for the parties, came to a conclusion that jurisdiction of the civil court to decide the controversy involved in

the present suit, was not barred and vide judgment dated 19.02.1992, issue No.1 was decided in favour of the plaintiffs.

Thereafter, following issues were framed by the Trial Court on 23.03.1992:-

1. Whether plaintiffs are owners in possession of the suit land?

OPP

2. Whether the entries in the previous record existing in favour of defendants are wrong and illegal, void and not binding on the rights of the plaintiffs?

OPP

3. Whether the suit is not maintainable in the present form? OPD

4. Whether plaintiffs have no cause of action? OPD

5. Whether suit is bad for want of notice u/s 52 of the Municipal Committee Act, 1973 and Section 80 of the CPC? OPD

6. Whether suit is time barred? OPD

7. Whether Sh. Ramesh Kumar is duly authorized as General Attorney of the plaintiffs? OPP

8. Whether suit is bad for mis-joinder and non-joinder of the necessary parties? OPD

9. Relief.

In order to prove their case, plaintiffs had examined Ramesh Kumar, General Power of Attorney as (PW-1). On the other hand, defendant had

examined Budhi Singh, Patwari as DW-1 and closed its evidence.

Both the Courts have held that jurisdiction of the civil court is not barred, as vide notification dated 13.01.1972, this land had been excluded from the

Gram Sabha and in the suit, Gram Panchayat has not been made a party. Challenge is to the inclusion of said village in the Faridabad Complex, as this

land has become part of the urban locality. The exclusion of village from Gram Sabha had been made vide notification in the Haryana Gazette of

Panchayat Department. Since the land of village Lakkarpur stood excluded from the Gram Sabha, it could not vest in the Faridabad Court Complex

Administration. Hence, the suit could not attract the power of Section 13 of the Punjab Village Common Lands Act. The plaintiffs, in the suit, were

not aggrieved, as to why their land had been excluded from shamlat or Gram Sabha, that is why the Gram Panchayat was not made party to the suit.

Case set up by the defendant (appellant) was that the suit land vests in the Faridabad Complex Administration, which was a creation of statute and it

improves urban area only. The Faridabad Complex was converted into Municipal Corporation and the land in dispute was situated within the limits of

this area and in this backdrop, the plaintiffs could file a civil suit for adjudication of the matter against Faridabad Complex Administration. Moreover,

the provisions of Section 13 (a) and 13 (b) of the Punjab Village Common Lands Act have been omitted by the Haryana Amendment Act No.9 of

1992 w.e.f. 14.01.1992. With the omission of said sections, forum of Assistant Collector, Ist Grade ceased to exist, which was the revenue authority to

decide the dispute between plaintiffs and the Gram Panchayat. Hence, the dispute could now be decided by the civil court. Since the plaintiff did not

claim exclusion of suit land from shamlat deh, jurisdiction of the civil court was not barred. In view of the above observations, issue No.1 was decided

in favour of the plaintiff.

Plaintiffs have produced on record document Ex.P2 i.e. Goswara Malquit Shamlat Deh, Mauja Lakkarpur. As per Misal Haqiat 1939-40 and mutation

No.15, Ram Chand (plaintiff No.1) and Har Chand sons of Wazir were described as the owners. They had 3361/22033 share in the shamlat. Said Har

Chand is father of plaintif Nos.2 and 3 namely Mahipal and Rikhan. Further, as per Ex.P3 i.e. document relating to the Jamabandi for the year 1944-

45 and mutation No.39, the entries were same as appeared in Ex.P2. Ex.P4 is the copy of Jamabandi for the year 1939-40, in which Wazir, father of

Ram Chand and Har Chand along with others were recorded in possession, while entries in the column of ownership were recorded as shamlat deh.

Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9 are copies of Jamabandis for the years 1939-40, 1944-45, 1956-57, 1960-61 and 1964-65 respectively, in which

land was shown as Makbuja Malkan. As per Jamabandi for the year 1967-68 Ex.P10, Ram Chand and Har Chand sons of Wazir were recorded in

the column of possession and Panchayat Deh was recorded in column of ownership. In column No.9, it was recorded as 'Rai Sharah Malkana Ba

Baja Kabja Sabka'. Meaning thereby that the land was being held like owners because of old and previous possession. Lower appellate Court has

observed that persons found in possession were generally recorded as tenants at will by the revenue authorities. For that reason, entry in column No.5

describing the possession as Gair Morusi was not to be readily inferred as proof of tenancy. Column No.9 was relating to rent. Ram Chand and Har

Chand, although were recorded as Gair Morusi, but they were actually not the tenants at will. They were not paying any rent and were holding the

land like owners because of previous possession. Similar were the entries in Jamabandi for the year 1969-70 Ex.P11. Thereafter, in Ex.P12 i.e. copy

of Jamabandi for the year 1974-75, in place of Gram Panchayat, name of Faridabad Complex Administration appeared in the column of ownership.

Entries with regard to possession etc. were similar to the entries contained in the previous jamabandis. In Ex.P13 and P-14, similar entries were made

and those jamabandis related to the year 1979-80 and 1984-85. Apart from Ram Chand, names of Rikhan and Mahipal (plaintiffs) also appeared

therein. Ex.P15 was copy of Jamabandi for the year 1967-68, in which, entry in the column of ownership was shown as shamlat deh Hasab Rasad

Kabza. Various persons in individual cultivation were recorded in the column of cultivation or the entry was khud kasht Maqbooja Malkan. Panchayat

deh appeared in the column of ownership in respect of some killa numbers. Ex.P16 and Ex.P17 were copies of Khasra Girdawari for the period

relating to Sauni 1854 to Haadi 1957. Ex.P21 was the Fehrist Ismai Malkan i.e. list of proprietors as per Missal Haqiat 1939-40. Ram Chand and Har

Chand were shown as proprietors and their share had also been mentioned. Ex.P19 was the copy of mutation No.15, which was sanctioned on

15.06.1945 in favour of Ram Chand and Har Chand. Ex.P20 was the copy of mutation sanctioned on 13.04.1925 in favour of Wazir and Har Kishan

etc. They succeeded Mam Raj. All the above said entries had been continuing from a longtime and the plaintiffs and previous to them their

predecessors-in-interest, had been in individual cultivating possession. They were in possession much prior to 1950. As per provisions of Section 4 (3)

(ii) of Punjab Village Common Lands Act, all those persons, who were in cultivating possession of the land for more than 12 years without payment of

rent or payment of charges not exceeding the land revenue, shall not be affected by the provisions contained in clause (A) of sub section 1 and 2 of

Section 4 of the Act. Plaintiffs were not found to be holding lands in excess of their share in the shamlat land prior to the year 1950. Hence, they could

not be divested of their right of ownership. Further, as per Section 2 (g) of Punjab Village Common Lands Act, possession of co-sharer is protected,

as was held by a Division Bench in Gram Panchayat Sidbari vs. Sukhram Dass and others, 1963 CLJ 507. The object of the said provisions is to

protect the possession of a co-sharer, who was actually cultivating the land.

As per above said evidence, plaintiffs were held to be the proprietors of suit land and they stood excluded from the Gram Sabha vide notification dated

13.01.1972 Ex.P18. The FCA was created vide notification dated 15.01.1972 and it could become the owner in place of the Gram Panchayat only, if

the Gram Panchayat, which was amalgamated, had continued to own the area in question. As per notification dated 13.01.1972 Ex.P18, the area in

question stood excluded from Gram Sabha and reverted to the proprietors. Accordingly, the plaintiffs were held to be the proprietors and the record

showing the FCA as owner, was held to be without any basis. It was held that these entries would not be binding against the rights of the plaintiffs.

The suit was held to be not time barred, as the plaintiffs were served with a notice under Section 4 of the Haryana Municipal Committee Act in July,

1980 and thereafter, the suit was filed within limitation. Ultimately, the suit has been decreed qua land measuring 104 Kanals 9 Marlas after correcting

the mistake in the decree passed by the trial Court, whereby the suit has decreed qua land measuring 140 Kanals 9 Marlas.

Mr. Aggarwal, learned senior counsel for the appellant (defendant) has argued that documents Ex.P2 and Ex.P3 have not been duly proved in

accordance with law. Even, Budhi Singh, Patwari, FCA (DW-1), has not been able to depose with regard to Ex.P2, Ex.P3 and Ex.P21. He has denied

to prove the execution of Ex.P21. In his cross-examination, he had stated that Ram Chand and Har Chand have been wrongly shown to be in

possession as Gair Mumkin bahai, where individual cultivation was carried out. After 1972, the land has been vested in the Faridabad Complex

Administration. He has admitted that in the Jamabandi for the year 1939-40, Ram Chand and Har Chand were shown to be co-sharers. The witness

has further stated that he did not know 'Urdu' language and no translator was examined by the plaintiffs. Even, translator of entire revenue record was

never examined by the plaintiffs.

Learned senior counsel has further argued that the plaintiffs cannot get any benefit of the exceptions of Section 2 (g) (viii) of the Act. Even though the

land was recorded as shamlat deh, the revenue entries did not show that the plaintiffs were in individual cultivating possession. It did not reflect that

they were holding lands in excess of their share in the shamlat land prior to the year 1950. In support of this argument, learned counsel has referred to

the judgments passed in Sukhdev Singh vs. Gram Sabha Bari Khad, 1977 PLJ 15,0 Orion Infrastructure Ltd. vs. Commissioner, Gurgaon Division,

Gurgaon and others, 2012 (3) RCR (Civil) 247, Budha and another vs. State of Haryana and others, CWP No.23589 of 2011 (decided on 08.02.2013),

Gram Panchayat vs. Joint Development, Commissioner, Punjab and others, 2014 (2) PLJ 162,

Mehar Singh vs. The Director, Rural Development and Panchayats Department and another, 2014 (2) 185, T.N. Mahajan vs. M/s Janta Steel and

Metal Co-op. Industrial Society Ltd. and others, 1976 PLJ 631, Shri Shiv Charan Singh and others vs. Gram Panchayat Narike and others, 1977 PLJ

453, Gram Panchayat Nalini vs. State of Punjab, 1992 PLJ 693 and Jarnail Singh (minor) vs. The Joint Director Panchayat, Punjab and another, CWP

No.5745 of 1986. By relying upon the aforesaid judgments, learned senior counsel has submitted that the present appeal deserves to be allowed.

Mr. Puneet Bali, learned Senior counsel for the respondents, has argued that the plaintiffs had led sufficient evidence in the form of Ex.P2 i.e.

Goshwara Malquit Shamlat Deh, Mauja Lakkarpur to show that their predecessors were described as owners of the land in dispute as per Missal

Haqiat 1939-40. They have 3361/22033 share in the shamlat. Further, as per Jamabandi for the year 1944-45 Ex.P3 and mutation No.39, Wazir, father

of Ram Chand (plaintiff No.1) & Har Chand and others were recorded as owners in possession of the land, while entries in the column of ownership

were recorded as shamlat deh. Thereafter, in the Jamabandis for the years 1939-40, 1944-45, 1956-57, 1960-61 and 1964-65, Ex.P5 to Ex.P9, land has

been shown as Makbuja Malkan. As per Jamabandi for the year 1967-68 Ex.P10, in column No.9, it has been recorded Rai Sharah Malkana Ba Baja

Kabja Sabka'. All the above entries show cultivating possession of the predecessors of the plaintiffs and thus, this land is not included in the definition

of Shamlat Deh as per Section 2 (g) (viii) of the Punjab Village Common Lands Act. On this proposition, learned counsel has referred to the

judgments passed in Des Raj and another vs. The Gram Sabha of Village Ladhot and another, 1981 PLJ 300; Joginder Singh and others vs. Director,

Consolidation of Holdings, Punjab and others, (1989) 1 ILR Punjab and Haryana, 64; Gram Panchayat, Ambala vs. Dedar Singh and others, (2004) 12

Supreme Court Cases 111 and Karma vs. Commissioner, Rohtak Division, Rohtak & others, 2015 SCC OnLine P&H 4100. Finally, he has referred to

the judgment passed by Full Bench of this Court in Suraj Bhan and others vs. State of Haryana and another, 2017 (2) PLR 605, wherein it has been

held that proprietary rights of proprietors in 'Jumla Mushtarka Malkan' or 'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba' lands shall

not vest in a Municipal Council/Corporation or Faridabax Complex under Municipal Corporation Act 1994 or Municipal Act 1973 and proprietors

cannot be divested of their proprietary rights in the above said land without payment of compensation by a mere declaration of such inclusion or

vesting of this land in the Faridabad Complex.

Mr. Bali has further argued that all the Jamabandis are reflecting possession of predecessors of the plaintiffs and as per Section 44 of the Punjab

Revenue Act, a presumption of truth is attached to the entries made in the aforesaid Jamabandis. Once, the predecessors of plaintiffs were found to

be in cultivating possession of the suit land, suit land has been rightly held to be excluded from the definition of Shamlat Deh as per Section 2 (g) (viii)

of the Punjab Village Common Lands Act. Entries in the Jamabandis have never been challenged by filing a suit for declaration by the Gram

Panchayat.

After hearing learned counsel for the parties and going through the record, present appeal deserves to be dismissed. The first question to be

considered in the present appeal would be 'whether Ex.P2 i.e. Goshwara Malquit Shamlat Deh, Mauja Lakkarpur and Jamabandi for the year 1944-45

Ex.P3, which shows that predecessors of the plaintiffs were described as owners in possession of the suit land, have been duly proved by the

plaintiffs'.

In the present case, a perusal of Ex.P2 shows that it is a Missal Haqiat of the year 1939-40 and in the column of ownership, name of Har Chand son

of Wazir son of Mam Raj has been recorded and in the column of ownership, it shows self occupation. In the column of Hissa Malik, it reflectes

3361/22033 share. Similarly, in the Jamabandi for the year 1944-45 Ex.P3, in the column of ownership, name of Ram Chand and Har Chand sons of

Wazir has been mentioned. It has been mentioned that they were having 1/4th share, Harkesh son of Mam Raj 1/4th share and Harli son of Mam Raj

Â½ share. In the column of cultivation, it shows Badshai.

The share is reflected as 3361/22033. Budhi Singh, Patwari, while appearing as DW-1 did not dispute the correctness of documents Ex.P2 and Ex.P3.

During examination-in-chief, this witness stated that owner of the suit land is Faridabad Complex and it is under its possession. On this land, there is a

gair mumkin pahar and it is khaali (empty). This land is not under the Gram Panchayat since 1972. In his cross-examination, this witness has

specifically stated that the Jamabandi for the year 1939-40 is as per record. He could not tell as to who was owner of this land. In the Jamabandi for

the year 1950-51 & 1956-57, Panchayat has been shown as owner of this land. A perusal of the cross-examination of DW-1 shows that he has not

disputed the Jamabandi for the year 1939-40 Ex.P4. He has only reiterated that after 1972, it is the Faridabad Complex, which has become owner of

the suit land. He could not dispute that as per Jamabandi for the year 1939-40 Ex.P4, names of Wazir, father of Ram Chand and Har Chand along

with others have been recorded as proprietors. This witness could not dispute the documents Ex.P2 i.e. Goshwara, Ex.P2 and Jamabandi Ex.P3. He

did not bring any record to show that the revenue entries made in Ex.P2 and Ex.P3 and thereafter, in Ex.P5, Ex.P6, Ex.P7, Ex.P8 and Ex.P9 i.e.

Jamabandis for the years 1939-40, 1944-45, 1956-57, 1960-61 and 1964-65 respectively, were ever changed. His mere denying that he could not tell

about the real owner, cannot change the reflection in the name of possession of the proprietors and their shares in the proprietors' land, which have

been continuing since 1939-40 till 1964-65. In all these Jamabandis, predecessors of the plaintiffs have been shown to be in possession reflecting that

they had 3361/22033 share in the Shamlat Deh. Since the revenue entries were never changed, as per Section 44 of the Punjab Land Revenue act,

1887, a presumption of truth would be attached to the entries in the Jamabandis. Hence, both the Courts have rightly returned a finding that

predecessors-in-interest of the plaintiffs were in possession of the suit land, as they were recorded as 'Rai Sharah Malkana Ba Baja Kabja Sabka',

which means that they were like owners of the suit land because of old and previous possession. Their possession has been more than 12 years prior

to 1950. Even if the land was recorded in the ownership of Shamlat Deh, the plaintiffs were in possession qua their shares reflected in these

Jamabandis and hence, their land has been rightly excluded from Shamlat Deh and was held not to be included in the definition of Shamlat Deh as per

Section 2 (g) (viii) of the Punjab Village Common Lands (Regulation) Act, 1961. A perusal of Jamabandi for the year 1967-68 Ex.P10 shows the

same reflection of possession and ownership. Since, the revenue entries were never challenged or altered and no steps were taken to get these entries

changed, they will retain a presumption of truth for the purpose of possession and shares of the proprietors.

Courts below have given a findng that as per entries in the Jamabandis, Ram Chand and Har Chand were recorded as gair marusi and they were not

paying any rent. They were holding the land like owners because of previous possesion. These entries were recorded in the Jamabandi for the year

1969-70 Ex.P11 as well. Ex.P21 is the Fehrist Ismai Malkan (list of proprietors) as per Missal Haqiat pertaining to the year 1939-40. Ram Chand and

Har Chand were shown at serial No.2 as proprietors and their share has also been mentioned therein. Ex.P20 is the copy of mutation sanctioned on

13.04.1925 in favour of Wazir and Har Kishan etc. They had succeeded Mam Raj. All the above evidence was sufficient to give a finding that from a

long time, plaintiffs and their predecessors had been in individual cultivating possession over the suit land. Hence, as per provisions contained in

Section 4 (3) (ii) of the Punjab Village Common Lands (Regulation) Act, 1961, all those persons who were in cultivating possession of shamlat deh on

the date of commencement of the act or for more than 12 years on such commencement without payment of rent or payment of charges not

exceeding the land revenue, would not be affected by the provisions contained in clause (A) of sub section 1 and sub section 2 of Section 4 of this

Act. Section 4 (3) (ii) of the Act is reproduced as under:-

â€œ4. Vesting of rights in Panchayat 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 interest whatever in the land:-

(a) Which is included in the Shamilat deh of any village and which has not vested in a Panchayat under the Shamilat 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 Shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the Shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub section (2) shall affect or shall be deemed ever to have affected the ;-

(i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records are accorded a similar status by

custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years 1[immediately preceding the commencement of this Act]

without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

1. (iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.â€

In the present case, plaintiffs have been rightly granted the benefit of above said provisions, as possession of their predecessors, who were proprietors,

has been shown in the entire documents i.e. Ex.P2 to Ex.P21. The entire evidence shows that they were in possession without payment of rent and

their possession was like that of owners. The main object of giving benefit to the proprietors, who were in long possession, was that they should not be

divested of their right of ownership. The possession of co-sharer, who was actually cultivating the land, should be protected as the main aim of the Act

was to bring out agrarian reforms in the State. A Division Bench of this Court in Gram Panchayat Sidhbari, Tehsil Kangra vs. Sukhram Dass, 1963

PLR 1043 has explained as to how the protection of possession of co-sharer is important to achieve the object of this Act. It has been further

observed as under:-

â€œ15. With regard to the other contention pertaining to clause (viii) of section 2 (g) of the Act, reference has to be made to the General Clauses Act

(Section 11), which is to the effect that where a singular is used in any legislative enactment, it will include a plural and where plural is used it will

include a singular. The object of this provision seems to be to protect the possession of the co-sharer or co-sharers actually cultivating the land. It is

hardly material whether that possession is of one co-sharer or of a number of co-sharers. There is no justification for the proposition that it must be of

all the co-sharers. In the present case, the requirements of clause (viii) are also satisfied. It is no body's case that Mr. Turner or the co-sharers who

relinquished their rights in the land in dispute did so in respect of the land far in excess of their shares, for if that had been so, the grievance would

have been made at the time of mutation or later on at the time of the sale. In my view it will be safe to assume in this case that the condition, that the

land in possession of the defendant is not in excess of the share of Mr. Turner and of the other co-sharers, who gave over the land by gift to Mr.

Turner, is satisfied it is not disputed that the other condition that 41 Kanals 13 Marlas of land is in the individual cultivating possession of the defendant

is also satisfied. Therefore, in my view the Panchayat has no right to the land in dispute in view of the clear provisions of section 2 (g) (vi) and (viii) of

the Act. The suit land falls outside the definition of Shamilat Deh in section 2(g) of the Act and, therefore, does not vest in the Gram Panchayat.â€

The Division Bench judgment referred to by learned counsel for the appellant in Orion Infrastructure's case (supra) cannot be considered in favour of

the appellant. While considering exceptions provided in clauses (i) to (ix) of Section 2 (g) of the Act, it has been observed that if, no evidence has been

led to show that the proprietors were in cultivating possession of the land before 26.01.1950 and the land was assessed to only land revenue, then in

that eventuality, the land would be deemed to be shamlat deh. Similarly, another judgment referred by learned counsel for the appellant in Sukhdev

Singh's case (supra) is not applicable to the facts of the present case as in that case as per jamabandi for the year 1944-45, the land was in possession

of the owners.

In the case in hand, sufficient evidence has been led by plaintiffs-respondents to show that as per Ex.P2 and Jamabandi for the year 1944-45 Ex.P3,

co-sharers were in possession of the land as cultivator on payment of land revenue and their possession has been shown as Malquit Shamlat Deh,

Mauja Lakkharpur. In column No.9, it has been recorded as 'Rai Sharah Malkana Ba Baja Kabja Sabka'. This entry would show that the possession is

like owners and they were recorded in the column of cultivation as khud kasht Maqbooja Malkan. Hence, before 1950, they were in cultivating

possession for the last more than 12 years and their case falls under the category of Section 2 (g) (i) to (ix) of the Act. In the judgment referred to by

learned counsel for the appellant in Budha and another vs. State of Haryana and others, CWP No.23589 of 2011 (decided on 08.02.2013), Division

Bench of this Court was dealing with a sale executed by Kavish Gupta in respect of the land belonging to the Gram Panchayat/Municipal Committee,

hathin. The land, as per jamabandi for the year 1912-13, was recorded as Shamlat Deh Hasab Hissas Arazi Mukbuja. This land was sold by Jawala

Singh etc. in favour of Kavish Gupta. Subsequently, it was sold by Kavish Gupta. The Division Bench has held that after enactment of the Punjab

Vilage Common Lands (Regulation) Act, 1953, this land came to vest in Gram Panchayat, Hathin. The land was, therefore, recorded as Panchayat

Deh. After commencement of the Punjab Village Common Lands (Regulation) Act, 1961, the land continued to vest in the Gram Panchayat.

Jamabandi for the year 1960-61 recorded the cultivating possession of Jawala Singh etc., but the land was recorded as the ownership of

â€œPanchayat Deh.â€ This entry was altered vide mutation No.5291 dated 15.10.1990 to â€œShamlat Deh.â€ Jawala Singh etc. were merely

recorded in possession of the land in dispute as gair mumkin i.e. tenant at will and there was no change in the mutation. Thus, Jawala Singh etc. could

not sell the property in favour of Kavish Gupta. Ultimately, the sale deeds and the mutation were set aside by the Division Bench of this Court and the

writ petition filed by Budha and others was allowed. Even this judgment will not be of any help to the appellant, as in the present case, the proprietors

have been shown to be in possession without payment of rent since 1939-40 as co-sharers and they were not as gair marusi.

Further, the judgments referred by learned counsel for the appellant in Gram Panchayat vs. Joint Development, Commissioner,

Punjab and others, 2014 (2) PLJ 162 and Mehar Singh vs. The Director,

Rural Development and Panchayats Department and another, 2014 (2) PLJ 185 will not be applicable to the facts of the present case, as in those

cases, the revenue entries were recorded as shamlat deh hasab rasad khewat and the land vested in Gram Panchayat as per clause 1 of Section 2 (g)

of the Act. In these cases, the land owners were not held to be in possession 12 years before 1950. In Jarnail Singh (minor) vs. The Joint Director

Panchayat, Punjab and another, CWP No.5745 of 1986 (decided on 20.12.2012, a Division Bench of this Court was considering a case, where in the

column of possession, it was recorded as maqbuja malkan and there was no particular proprietor or individual possession. On the other hand, in the

present case, possession of predecessors of the plaintiffs has been recorded by name being proprietors in cultivating possession.

Finally, in another judgment referred by learned counsel for the appellant in Faridabad Complex Administration vs. Amitabh Adhar, 1999 (2) RCR

(Civil) 451, this Court was considering a case where appeal filed by Faridabad Complex Administration was allowed and the suit of the plaintiff was

dismissed. While allowing the appeal, it was observed that the plaintiffs, in order to bring the case within the exception of Section 2 (g) of Punjab

Village Common Lands (Regulation) Act, 1961, did not lead any evidence to show that they were in cultivating possession of the suit land as co-

sharers. The land, in the revenue record, was shown as banjar qadim and one of the plaintiffs while appearing as PW-4 had admitted that the suit land

had never been cultivated. In view of the admission plaintiff and the fact that the entries in the revenue record showing the land to be barren or

vacant, the plaintiffs were not held to be in possession of the land. Even though the appeal was allowed in favour of the appellant, but a perusal of the

judgment shows that the plaintiffs had not led any evidence to show their cultivating possession over the suit land, whereas in the present case, even

though the land is recorded as gair mumkin pahar, but the possession of co-sharers is prior to 1939-40 as per Goshwara Malquit Shamlat Deh Ex.P2

and jamabandi for the year 1944-45 Ex.P3. As per jamabandi Ex.P3, proprietors i.e. predecessors of plaintiffs, were having 3361/22033 share in the

shamlat land. In all the jamabandis from 1939-40 to 1964-65 Ex.P5 to Ex.P9, they were recorded in the column of possession as Rai Sharah Malkana

Ba Baja Kabja Sabka, which means that the land was being held like owners and was treated as tenant at will by the revenue authorities. Even they

were recorded as gair marusi, they were not tenant at will and were not paying any rent. They were suing the land because of previous possession.

Hence, plaintiffs have been rightly extended the benefit of 1961 Act, as they have led sufficient evidence to show that their predecessors were in

cultivating possession of the land. The land could not be considered as the ownership of Panchayat.

In the present case, plaintiffs have led sufficient evidence that their predecessors were in possession of the suit land without payment of rent and their

possession has to be protected under Section 4 (2) of the Punjab Gram Panchayat Act. Hon'ble the Supreme Court in Gram Panchayat, Ambala's

case (supra) has held that once a concurrent finding of fact is given that the co-sharers were in possession of the suit land and the land was

partitioned prior to 26.01.1950, then the land was covered by the said exclusion clauses of Section 2 (g) of Punjab Village Common Lands

(Regulation) Act, 1961 and was not a shamlat deh land, which could vest in the Gram Panchayat. In para 5 of the judgment, it has been held as

under:-

â€œ5. We have considered the respective submissions made on behalf of the parties. A firm finding of fact has been recorded bases on the evidence

placed before the authorities tht the respondents were in possession and the land was partitioned prior to 26.01.1950. As per the definition of

â€œshamilat dehâ€ contained in Section 2 (g) of the Act and in view of the exclusion clause thereof, it is also stated thereunder which lands are not

included in the said definition. Exclusion clause

(iii) to Section 2 (g) states that the land which has been partitioned and brought under cultivation by individual landholders before 26.01.1950 is not

included within the definition of â€œshamilat dehâ€. Further, even under exclusion clause (viii) to Section 2 (g), if a land was assessed to revenue and

had been in the individual cultivating possession of co-sharers before 26.01.1950, such land is also excluded from the definition of â€œshamilat dehâ€.

Though the specific provision is not referred to in the order of the Deputy Director and the Appellate Authority, a clear finding is recorded that the

land had been partitioned prior to 26.01.1950 and the respondents were in possession of the respective shares. The decision in Sukhdev Singh's case

cited by the learned counsel for the appellant, in our view, does not support the case, having regard to the concurrent findings of fact recorded in the

case on hand. The said judgment of this Court was on the facts of that case, particularly relying upon the admitted jamabandi entry for the year 1914-

15 which was long prior to the Act coming into force. This Court, noticing that certain fact was not controverted in that case, on facts, concluded that

once the land was shown as shamilat deh, its nature could not be altered by change in the entry subsequently. Under the circumstances, we do not

find any good ground or a valid reason to disturb the impugned order. Consequently, the appeals are dismissed.â€

Thereafter, in Joginder Singh's case (supra), a Division Bench of this Court has held that even though the land in consolidation proceedings was

recorded as banjar and banjar qadim in the individual cultivating possession of the Khewatdars and in the column of cultivation, it was recorded as in

possession of Malkan (owners) without payment of rent, it could not vest in the Gram Panchayat and partition of land was rightly ordered by the

Director, Consolidation of Holdings, Punjab. Further, a Division Bench of this Court in Karma's case (supra), had examined the jamabandis of co-

sharers, where the land was shown to be banjar qadim. It was held that a land which was once cultivated and has not been sown for four successive

harvests is a banjar jadid or new fallow. A banjar kadim land presupposes that it remained un-cultivated for eight successive harvests. It was further

held that the Collector and the Commissioner had wrongly interpreted that banjar kadim land was not supposed to be in cultivating possession of the

proprietors. The oral as well as revenue entries showed the possession of the petitioners to be Hissedar and the co-sharers had never paid any rent

exceeding the land revenue. Once, the possession of the petitioner(s) as co-sharers was depicted in the revenue entries, the ingredients of exclusion of

clause 2 (g) and Section 4 (3) (ii) of the Act was satisfied and the land was fully protected from being labeled as shamlat deh. In Des Raj's case

(supra), this Court, while interpreting the entry of maqbooja malkan, observed as under:-

â€œ7. The learned counsel for the appellants then contended that the land in dispute does not fall within the definition of Shamilat Deh under Section

2(g) (3) of the Act which reads thus:

â€œlands described in the revenue records as shamilat, tarafs, pattis, pannas, and tholas and used according to revenue records for the benefit of the

village community or a part thereof or for common purposes of the village.â€

The argument of the learned counsel is that according to the entries in revenue record the land in dispute is shown in possession of the proprietors i.e.

â€œMakbuja Malkanâ€ and therefore, under these circumstances, it cannot be held that the land is being used for the benefit of the village community

or a part thereof or for common purposes of the village. In support of his contention, he has relied on a Full Bench judgment of this Court reported as

Gram Panchayat Sadharaur (formerly Dhumma) and Gram Sabha Sadhraur (formerly Dhumma) v. Baldev Singh and others, 1977 PLJ 276. One of

the questions referred to the Full Bench was that whether the view of law taken in Co-operative Society of Improvement of Shamilat Patti Harnam

Singh Lambardar of village Khanni and another v. Gram Panchayat of village Khanni, 1962 PLR 730, proceeds on a correct interpretation of the

expression, for the benefit of the village community or a part thereof or for common purposes of the village occuring in sub-clause (3) of clause (g) of

section 2 of the Act. In para 7 thereof, it has been held that the interpretation placed on sub-clause (3) of clause (g) of section 2 of this Act given in

Co-operative Society of Improvement of Shamilat patti Harnam Singh's case (supra) cannot bear scrutiny and does not lay down a correct view of

law. It has been further observed that the expression â€œbenefit of the village community or a part thereofâ€ 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.â€

A Full Bench of this Court in Gram Panchayat Sadhraur (Formerly Dhumma) and Gram Sabha Sadhraur (formerly Dhumma) vs. Baldev Singh and

others, 1977 PLJ 276 had interpreted sub clause (3) to (5) of Section 2 (g) of the Punjab Village Common Land (Regulation) Act, 1961 and held as

under:-

â€œA perusal of sub-clauses (3) to (5) of Section 2 (g) clearly provides an insight into the intention of the legislature that all lands described as

Shamlat Tarafs, Pattis, Pannas and Tholas are not to be treatred as shamlat deh irrespective of the use to which they are subjected to. Such lands

other than Banjar Qadim will come under the category of Shamlat deh and would vest in the Gram Panchayat only if they are being used either for the

benefit of the entire village community or a part thereof or for common purposes of the village. In the case of the lands described as Banjar Qadim the

same will be included in Shamlat deh only if they were used for common purposes of the village.

The consequences of these new provisions in the 1961 Act is that the landowners would be deprived of some lands in Shamlat Pattis etc. which under

the old Act belonged to them. Thus, according to the accepted principles of interpretation, such a provision adversely affecting the owners of the

property should be constructed strictly and no attempt should be made to travel beyond the plain meaning of the statute. It cannot be denied that all

lands described as Shamlat, Tarafs, Pattis etc. are shown in the revenue records in the ownership of the proprietors of the Pattis or Tarafs concerned

in accordance with their shares. If the ratio of the decision in Co-operative Society of Improvement of Shamilat Patti harnam Singh's case (supra), is

upheld, then all such lands would have to be held Shamlat deh irrespective of the fact whether the same were being used for common purposes of the

village or benefit of the village community or a part thereof or not. That would be doing violence to the clear provisions of the Act. Such an

interpretation is neither warranted by the clear language of the provisions nor by the intention of the legislature.â€

Further, in a decision given by Hon'ble the Supreme Court in Vishwa Vijay Bharati vs. Fakhrul Hassan and others, (1976) 3 SCC, it has been held that

as per Section 35 of the Evidence Act, 1872, a presumption of truth is attached to the entries made in the revenue record and the Courts should not

embark upn an appellate inquiry into their correctness. This presumption of correctness would apply only to genuine, not forged or fraudulent, entries.

In para nos. 14 and 15 of the judgment, it has been observed as under:-

â€œ14. It is true that the entries in the revenue record ought, generally, to be accepted at their face value and courts should not embark upon an

appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction

may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is

open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to

possessory title.

15. In Amba Prasad v. Abdul Noor Khan, (1964) 7 SCR 800, it was held by this Court that Section 20 of the U.P. Act 1 of 1951 does not require

proof of actual possession and that its purpose is to eliminate inquiries into disputed possession by acceptance of the entries in the khasra or khatauni

of 1356 Fasli. While commenting on this decision, this Court observed in Sonawati v. Sri Ram, (1968) 1 SCR 617 that the Civil Court in adjudging a

claim of a person to the rights of an adhivasi is not called upon to make an enquiry whether the claimant was actually in possession of the land or held

the right as an occupant : cases of fraud apart, the entry in the record alone is relevant.

We have supplied the emphasis in order to show that the normal presumption of correctness attaching to entries in the revenue record, which by law

constitute evidence of a legal title, is displaced by proof of fraud.

In the present case, as per Goshwara Malquit Shamlat Deh, Mauja Lakkarpur Ex.P2 and Jamabandis Ex.P4 to Ex.P11, predecessors of the plaintiffs

have been shown to be in cultivation as as gair marusi in equal shares. It is not the case of appellant-defendant that these entries are result of fraud as

no attempt was made to get the mutation entries changed during al these years. Hence, presumption of truth is attached to these entries and finding by

both the Courts that predecessors of the plaintiffs were in cultivating possession of the suit land being co-sharers as per their shares without payment

of rent, has been rightly given. They were in possession over the suit land (without payment of rent) like owners. Even if, the land was described as

banjar qadim, since it was never used for common purposes by the Gram Panchayat, it would vest in the proprietors.

Hence the judgments cited by learned counsel for the appellant (defendant) will not be of any help to the appellant.

As far as the question of jurisdiction is concerned, after the Faridabad Companies (Regulation and Development) Act, 1971 came into force w.e.f.

15.01.1972, all the revenue estate of village Lakkarpur, including the area of Gram Panchayat, was included in Faridabad Complex Administration.

Therefore, the only remedy available to the plaintiffs was to file a civil suit for declaration that they were owners in possession, as co-sharers, in the

shamlat deh land in village Lakkarpur. This aspect was also considered by a Division Bench of this Court in M/s Ruby Anand and others vs. State of

Haryana and others, CWP No.3527 of 2017 (decided on 22.08.2017), wherein challenge was to the order dated 18.12.2015 passed by the Tehsildar,

Tehsil Sohna, District Gurgaon, whereby mutation No.3249 in respect of land measuring 3717 Kanals 01 Marla was sanctioned in favour of the

Municipal Corporation, Gurgaon. The Division Bench held that after notification dated 20.03.2012, the land had vested in the Municipal Corporation,

Gurugram. Gram Panchayat, Gawal Pahari ceased to exist. Therefore, it would be the Civil Court, which could determine the question as to whether

the shamlat deh land vested in the Municipal Corporation or the owners. Similarly, in Anar Singh vs. The Commissioner, Rohtak Division, Rohtak and

others, CWP No.16554 of 2010 (decided on 08.11.2013), a Division Bench of this Court was considering a case, where the petitioner had filed a

petition under Section 13 of the 1961 Act, which was dismissed. During the pendency of appeal, a notification was issued to include the sabha area of

the Gram Panchayat within the municipal limits of Municipal Council, Sampla. It was held that after issuance of this notification, the Gram Panchayat

and the sabha area had ceased to exist and the land in dispute, was no longer amenable to provision of the Panchayat Act or the Punjab Village

Common Lands (Regulation) Act, 1961. The Collector and the Appellate Authority had no jurisdiction to decide, whether the land vested or did not

vest in the Gram Panchayat. It was further held that the petitioner would have to approach the Civil Court for adjudication of his rights in the shamlat

deh of erstwhile Gram Panchayat.

Applying the ratio of the above said judgments on the facts of the present case, the trial Court had the jurisdiction to decide the issue.

In Suraj Bhan's case (supra), the matter was referred to a Larger Bench of Five Judges to consider the following questions:-

(1)Whether the Full Bench judgment in â€œRajender Prashad and others vs. State of Haryanaâ€, 1979 PLJ 262 holding the 1974 Act, ultra vires, is no

longer good law in view of the 44th Amendment to the Constitution?

(2)Whether proprietary rights of proprietors in Jumla Mushtarka Malkan shall vest in a Municipal Council/Corporation or Faridabad Complex under the

1994 and /or the 1973 Act?

(3)Whether proprietors can be divested of proprietary rights in Jumla Mushtarka Malkan without payment of compensation by mere declaration of

such inclusion or vesting by Section 2(g) (6) of the 1961 Act, the 1994 and the 1973 Act, despite affirmation of their ownership in â€œAjit Singh v.

State of Punjab and anotherâ€, AIR 1967 SC 856?

(4)Whether the provisions of 1994 Act and the 1973 Act, which provide that rights in common land, shall vest in a Municipal Council/Corporation of

the Faridabad Complex, amount to compulsory acquisition, without payment of compensation?

(5)Whether the statutory divesting of proprietary rights, under the 1994 and the 1973 Act, without payment of compensation, is legal and valid?

(6)Whether Section 300A of the Constitution of India applies to the present controversy? And

(7)Whether Section 7 (4) of the 1994 Act, Sections 2 (22B) and 61 (h) of the 1973 Act and Section 2(g) (6) of the 1961 Act are ultra or intra vires?

It was held that with the enlargement of the municipal limits by including the shamlat deh lands in the Municipal Corporation or Municipal Committee,

the characteristics of the shamlat deh lands cease to exist. The lands, which are recorded in the revenue record as shamlat deh simpliciter, would not

entail as a document for grant of any compensation and the same would escheat to the State and may be taken to be escheated to the State in terms

of Article 296 of the Constitution of India. It has been further held in paragraph 218, as under:-

â€œ(f). However, where the lands are identifiable by title, semblance of ownership or vesting of title of a proprietor to the extent of his share by way

of a document or by way of revenue records/jamabandis, the owner, so identified, shall be entitled for compensation as per his entitlement. Besides, if

the lands come within the exclusionary clauses of Section 2(g) of the VCL Act 1961, the owner of such lands would be entitled for compensation. It

is, however, made clear that the onus to prove the right of ownership, semblance of ownership, vesting of title or that it comes within the exclusionary

clauses of Section 2 (g) of the VCL Act 1961 shall be on the person so claiming, which he can establish on the basis of revenue records/jamabandis or

other materials. The revenue records to which a presumption of truth is attached would, however, be subject to rebuttal;

(g) The entries in the revenue records carry a presumption of truth, which, however, are rebuttable and can be shown to be wrong by other

material(s) on record. The entries, however, in case based on fraud or manipulation of revenue records, the same would not confer any right or title on

the person so entered as owner in the records;â€

The above said observations are applicable in the facts of the present case, as the plaintiffs (respondents herein) have led sufficient evidence to show

that the proprietors namely Wazir, father of Ram Chand (plaintiff No.1) and Har Chand were in cultivating possession of the suit land since 1939-40

and as per Full Bench judgment in Suraj Bhan's case (supra), even if the land has been vested in the Municipal Corporation, Faridabad, the proprietors

are entitled to claim the compensation. A similar provision has been made that the lands, which fall in the category of Jumla Mushtarka Malkan or

Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba, vests in the proprietary body of the village and not in Panchayat. However, the

management and control of these lands vest in the Panchayat in view of Section 2 (bb) and Section 23A of the Consolidation Act, 1948. The

proprietors of the villages, who are recorded as per the above said entries, would be entitled to compensation to the extent of their shares as they are

owners of the same.

In the present case, since the plaintiffs (respondents herein) have led sufficient evidence that they were owners in possession of the suit land, without

payment of rent, they are covered under clauses (f) and (g) of paragraph 218 of the judgment passed in Suraj Bhan's case (supra). It has been proved

on record that from long time, plaintiffs and their predecessors have been in individual cultivating possession over the suit land.

Accordingly, after going through the impugned judgments, this Court is of the view that suit filed by plaintiffs-respondents has been rightly decreed by

both the Courts below, as they have led sufficient evidence to prove that the suit land is owned and possession by them as co-sharers in the shamlat

deh of village. No illegality, much less perversity, has been found in the impugned judgments warranting interference by this Court. The evidence has

been appreciated in the right perspective.

Resultantly, finding no merits, the present appeal is dismissed.