

SUPREME COURT OF INDIA

Patram

Vs.

Gram Panchayat Katwar

C.A.No.6319 of 2009

(L.Nageswara Rao and Deepak Gupta,JJ.,)

04.03.2020

JUDGMENT

Deepak Gupta,J.,

1. The short question involved in this case is whether the land in occupation of the appellant(s) is ‘shamilat deh land within the meaning of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as ‘the Act’) and vests in the village common body. The land in question is situated in Haryana and, therefore, for the purpose of this judgment we shall be referring to the Act as amended and applicable to the State of Haryana.

2. The contention of the appellant(s) is that the land in dispute though ‘shamilat land, is actually a patti in possession of the appellant(s) and his ancestors for more than a century and is not being used for the common purposes of the village and, therefore, does not fall within the definition of ‘shamilat deh land.

3. In India, land is said to be the true basis for the unity in a village, supplying the ultimate bond between the residents of the village who collectively are known as the village community. When settlers went to new areas and cleared forests or turned barren lands into cultivable lands, certain portions of the land were left for common use such as charand land used for grazing, lands used for wells, watercourses, land used for common purposes and also for extension of the village residential area normally known as the abadi. These lands which were reserved for common purposes were jealously guarded and were in essence the common property of the original settlers and those who had helped them after clearing the waste and bringing the land under cultivation. The following observations from Chapter X, which has the heading ‘The Village Common Land Introduction’ of Sir W.H. Rattigan’s ‘A Digest on Civil Law for the Punjab’, which is the one of the finest treaties on customary law of Punjab, are relevant:

“...Lands so reserved are jealously guarded as the common property of the original body of settlers who founded the village or of their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation are recognized as having a share in these reserved plots. Even in villages which have adopted separate ownership as to the cultivated areas, some

such plots are usually reserved as village common, and in pattidari village. It is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each patti, and other portions for common village purposes, the former is designated shamilat-patti and the latter shamilat-deh.”

4. Over period of time, the cultivable areas were separated amongst the different owners and in view of the caste system which was then extensively prevalent, separate areas in the village or in different hamlets were provided for different communities based not only on caste or religion but sometimes on professions also. To give an example, the weavers would be put in one area, the potters in another area etc. Each such division was called a patti.

5. This brings us to the definition of ‘shamilat deht in Section 2(g) of the Act. The relevant portion reads as under:

“2. Definitions. - in this Act, unless the context otherwise requires,-
xxx xxx xxx

(g) “shamilat deh” includes-

(1) land described in the revenue records as Shamilat deh or Charand excluding abadi deh;

(2) shamilat tikkas;

(3) land described in the revenue records as shamilat, tarafs, patties, 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;

(4) xxxxx

(4a) xxxxx

(5)

but does not include land which- (i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;

(v) is described in the revenue records as shamilat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

6. The case of the appellant(s) is that for more than a century he and his ancestors held a patti which has never been used for the common purpose of the village and has been cultivated by them. This land has never been used for common village purpose and in terms of Section 2(g) of the Act cannot be included in the definition of ‘shamilat deh!. The land continues to be shown in the possession of the appellant(s) or his ancestors in the Jamabandis from the year 1915-1916 till date. The earlier entries in the column of

ownership which read as 'Shamlat Patti Dhera & KhubV were replaced by the entry 'Panchayat Deh!. Aggrieved, the appellant(s) approached the Collector, Bhiwani challenging the change of entry in the column of ownership. The appellant(s) lost before the Collector, Bhiwani as well as the Commissioner, Hisar Division. He then filed a writ petition in the High Court of Punjab and Haryana, which was rejected with the following reasoning:

“While examining the first contention raised by the counsel for the petitioner, as has been noticed in the forgoing paragraph, it is necessary to refer to clause (3) of Section 2(g) of the Act extracted hereinabove, which expressly treats “shamlat”, “tarafs”, “pattis”, “pannas” and “tholas” as separate and distinct, while describing the nature of the land. Whereas, the exception under clause (v) of the proviso under section 2(g) of the Act notices, “shamlat taraf”, “pattis”, “pannas” and “thola” as falling with the exception. As per the revenue record of the year 1907-08, the land under reference has been described as “shamlat patti”. It does not, therefore, fall within the term “shamlat taraf”, “pattis”, “pannas” and “thola” as has been incorporated in the exception because “shamlat patti” is not excluded under the clause relied upon by the learned counsel. It is, therefore, not possible for us to accept that the land under reference falls within Clause (v) of the proviso under section 2(g) of the Act.”

7. The aforesaid judgment was delivered on the basis that whereas in clause (3) of Section 2(g), there is a comma after the word 'shamlat, there is no such comma in sub-clause (v) of clause (5) of Section 2(g). We had requested the parties to provide us the original Gazette notification and the definition as quoted by us above is in accord with the Gazette notification.

8. The issue for consideration is whether the word 'shamlat has to be read with taraf, patti, pannas, and tholas or only with taraf in sub-clause (v) of clause (5) of Section 2(g). We must understand what is meant by the terms 'taraf, 'patti, 'pannd and 'thold. To understand this distinction, one must also understand what is 'shamlat deh land. The word 'shamlat basically means 'held in joint possession and undivided lands which are part and parcel of a village'. When these lands are held commonly by a village proprietary body, they are described as 'shamlat deh land.

9. 'Taraf, 'patti, 'pannd and 'thold are different terms but have a common strain or similarity running through them. These descriptions are of land of a group of villagers based on clan, caste, sect, area, etc. In British India, the village was divided into different pattis/sections based upon caste, religion, occupation, etc. of the persons residing in the village. Patti is described as division of land into separate portions or strips in a village. These locations are known as pattis. After independence since the caste system has been constitutionally abolished, these classifications refer to different hamlets/clusters where villagers reside in groups irrespective of their caste. This may be true in law but not in fact, because unfortunately even today, in most villages, ghettoization continues and the people of different communities, castes and religions live in their earmarked areas or pattis. Patti is basically, therefore, a small division of the village. The terms 'taraf, 'pannd and 'thola' may be different but are akin to patti and also deal with community of villagers residing separately. Therefore, they have virtually the same meaning.

10. If we accept that there is virtually no difference between 'taraf, 'patti, 'pannd and 'thola then the task of interpretation becomes much easier. It is also apparent that a patti can normally be created out of the shamilat land only when a group of people enjoy some portion of the land out of the bigger common shareholding that is a patti. The definition of 'shamilat deh in Section 2(g) of the Act includes all lands described as 'shamilat deh or charand excluding abadi land. In clause (3) of Section 2(g) there is a comma after the word 'shamilat whereas such comma is missing in sub-clause (v) of clause (5) of Section 2(g). We are of the view that there seems to be an error rather than a deliberate non-use of the comma. We are of this view because clause (3) provides that land described as 'shamilat, 'tarafs', 'patties' 'pannas' and 'tholasare to be treated as 'shamilat deh land only if they are used for the common purpose of the village. This clearly implies that if the land described as 'shamilat, 'taraf, 'patti, 'panna' and 'thold were not being used for the common purpose, it would not fall within the meaning of 'shamilat deh!.

11. Clause (v) is the negative portion of the definition which provides that certain lands will not be treated as 'shamilat deh and these are those land which have described as 'shamilat, 'taraf, 'patti, 'panna' and 'thala in the revenue record and not used according to the revenue record for the benefit of the village community or a part thereof or for the common purpose of the village. In our view, the absence of the comma after the word 'shamilat is not of any great significance. In fact, it appears that the comma has been left out by mistake. We may also note that we find that in various publications, there is a comma between the words 'shamilat and 'taraf. However, there is no comma in the official publication in the Gazette notification. Keeping in view, what we have held above, it appears to us that the absence of a comma is a mistake and in fact according to us, a comma should be read after 'shami^t and before 'taraf in the latter part of the section also. The word 'shiamttat has to be read with all four- 'taraf, 'patti, 'panna and 'thola\ A land can be 'shiamttat deh only if it is 'shami^t taraf, 'shamilat patti.', 'shami^t panna or 'shamilat thola'. In case the word shamilat is missing from any of these four terms, then the land cannot be said to be belonging to a group of people and could never become 'sha-milat dehC land.

12. The purpose of the section which defines 'shamilat deh is that the land described as 'shamild, 'taraf, 'patti, 'panna and 'thola not used for the benefit of the village community will not be treated as 'shamilat deH. Clause (3) of Section 2(g) is identical. The purpose is that the land which is described in revenue records as 'shamilat, 'taraf, 'patti', 'pannaC and 'thola! and used for the benefit of the entire village community or a part thereof only would vest in the village proprietary body. The words 'part thereof' have been used with a specific purpose in the background of the meaning of patti which we have dealt with in detail above. Even if the land is being utilised for the common purpose of the inhabitants of that 'taraf, 'patti', 'panna' and 'thola!, it would be 'shamilat deh even if it is not used for the benefit of the entire village. However, if the land is not used either for the benefit of the entire village or for the part of the village community which comprises the patti then the land, in our opinion, cannot be said to be 'shamilat deh land within the meaning of Section 2(g).

13. From the revenue records produced, we find that the land has been shown as 'Shamlat Patti Dhera & Khubi'. 'Dhera & Khubi are the ancestors of the appellants. The possession is shown as that of proprietors/self-cultivators and an entry was made in

favour of the Panchayat Deh in 1987-1988. The land was always shown to be 'Shamlat Patti Dhera & Khubi' and in the cultivation of the appellant(s) or his ancestors. Moreover, the land was never shown to be used for the benefit of the entire village community or even for a part of the community.

14. In view of the above, we have no hesitation in holding that the land cannot be described as 'Shamlat Deh and, therefore, would not vest in the village proprietary body. Accordingly, we allow the appeal and set aside the judgment of the High Court dated 03.07.2008 and the orders of all the authorities below. The name of the appellant(s) be entered in the column of ownership with the entry 'shamlat patti.

15. Pending application(s), if any, shall stand(s) disposed of. No order as to costs.