Suraj Bhan and Ors. Vs. Ashvarya Estate Pvt. Ltd. and Ors.

Civil Appeal No. 244 of 2011 · Supreme Court of India · 2026-08-03 · Sanjay Kumar · K. Vinod Chandran · F2J-C-1135

Full judgment text

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Sanjay Kumar, J

1. Land is considered the 'new gold'. More so, when such land is proximate to expanding urban agglomerations. Land in Gurugram in the State of Haryana, lying right next to the NCT of Delhi, qualifies in this regard with flying colours. Hitherto, a village, Gurgaon, as it was known then, was subject to the laws of erstwhile Punjab with respect to lands classified as shamilat deh (common lands). After the formation of the State of Haryana in 1966, those laws were adopted by it with some changes. We are presently concerned with a large extent of land in Gurugram, which formed part of Haiderpur, a be chiraag (literally, 'without light') mauza, i.e., an uninhabited village, which was contiguous to Wazirabad, an inhabited village, in Gurgaon Tehsil and District. The crucial issue for consideration is whether this land was shamilat deh, i.e., common land, or was it under the actual ownership and possession of private parties.

2. Before we address the issue on merits, it would be appropriate to first dwell upon the concept of shamilat deh and, in due course, we shall also examine the abundance of case law that has developed on the subject over the past several decades.

Sir W H Rattigan's 'Customary Law'

3. In his erudite exposition on customary law1 in the Punjab of yore, authored in the year 1880, Sir William Henry Rattigan devoted an entire chapter to the 'Village common land'. Therein, he observed that land was the true basis of unity in village groupings, supplying the ultimate real bond of union between members who constituted the aggregate proprietary body called the 'village community'. He noted that, within the territorial limits of every village, some portions of the uncultivated waste land were reserved for purposes of common pasture; for assembling of people; for tethering of village cattle; and for possible extension of village dwellings.

This village common land was colloquially known as shamilat deh and comprised uncultivated (banjar) and pasture (charand) lands, the abadi or inhabited village site and the gorah deh or vacant space reserved for extension of village dwellings and the area adjoining the village site. The lands so reserved, he observed, were jealously guarded as common property of the original body of settlers who founded the village or of their descendants and, occasionally, those who assisted the settlers in clearing the waste and bringing it under cultivation.

4. Traditionally, as per Sir Rattigan, there were three forms of village tenures in erstwhile Punjab, namely, zamindari, pattidari and bhaiachara. The zamindari tenure was one in which all the proprietors had proportionate interest in the village lands as common property, without possession of or title to distinct portions of it, and the measure of each proprietor's interest in his share was fixed by the customary law of inheritance. The rents paid by the cultivators, whether they were proprietors or not, were thrown into the common stock along with all other profits from the village lands and, after deduction of expenses, the balance was divided amongst the proprietors according to their shares.

The pattidari tenure was one in which the village lands were sub-divided into two or more portions called pattis, and each of the proprietors usually held it in severalty, according to known ancestral shares, represented by biswas (whence, the term biswadar) or ploughs, each managing his lands and paying his own share of the Government revenue, for which, however, all the members of the village were jointly responsible.

The notion of a pattidari village was that it was founded by a common ancestor of the existing proprietors, and the primary division into pattis represented the main branches of his family. Thus, in the case of an original founder leaving three sons, if the village was subsequently divided, the division would, where ancestral shares were fully recognized, be ordinarily made into three pattis, called after the sons of the original founder, and each patti would be held by the descendants of that son or head of the branch of the family whose name it bears.

However, it could be that a village was originally settled by two distinct families, in which case the main division would first be into tarafs, representing the two families, and inside the tarafs, the sub-division would be into pattis, representing the branches of each family. Bhaiachara tenure was one in which possession determined the measure of the proprietors rights inter se but the whole village continued to be liable in solido for the default of any one proprietor to pay the revenue chargeable upon his holding.

5. Sir Rattigan found that mixed forms of these tenures also existed, combining peculiarities of one tenure with those of another. Ergo, a village community could retain certain portion of the land within the village as common and effect partition of the rest. Or, while retaining a portion as the village common, the rest may be divided into pattis. In a village divided into pattis, the lands allotted to each patti may be held within the patti, either according to ancestral shares or actual possession. The distinction between a pure and an imperfect pattidari village did not depend upon maintenance of ancestral shares but upon existence of the shamilat deh belonging to the village proprietors as a body.

If there was no shamilat deh, the tenure was pure pattidari; if there was, the tenure was pattidari ghair mukammal. Further, there could be two classes of proprietors - one, possessing full rights of ownership and entitled to a share in all accessory rights, and the other, only entitled to land actually in their possession and, in some cases, to a share in the shamilat income and the user of wood and grazing grass to the extent of their own wants, but having no claim, except by special custom, to a share in the common lands on division. This latter class were proprietors of their own holdings and were liable for nothing more than the revenue and cesses due on their own plots.

6. Sir Rattigan noticed that, even in a village which adopted separate ownership as to cultivated areas, some plots were reserved as the village commons. In pattidari villages also, he noted that portions of waste land were reserved for common use of proprietors of each patti and other portions for common village purposes - the former was shamilat patti and the latter, shamilat deh. As a general rule, only proprietors of the village (malkan deh), as distinguished from proprietors of their own holdings (malkan makbuza khurd), were entitled to a share in the shamilat deh.

7. Ordinarily, shamilat deh was governed by the same rule of inheritance as khewat land. However, in exceptional circumstances, the phrase 'hasab rasad khewat' was used in the revenue records in reference to it. Partition of shamilat deh was as per the land revenue assessed on the holding and not according to the area of the khewat holding. However, lands classified as shamilat deh were not accessories to khewat holdings and, therefore, upon sale/gift of the khewat holdings, the vendor's share in the shamilat deh did not pass to the vendee, unless proved otherwise.

8. In this regard, we may note the Division Bench decision of the Lahore High Court in Rahman and others vs. Sai and another2, wherein it was held that the rights of a proprietor in the shamilat deh are not accessories to the land fully held by him as an owner and alienation of the latter would not ipso facto convey rights in the former to the alienee. The khewat land that was gifted in that case was appurtenant to shamilat banjar land, possession of which was never delivered to the donee.

Dr. Kaul's 'Two Centuries on the Commons - the Punjab'

9. In her scholarly disquisition3 on common lands and institutions of communal control in North India from the early nineteenth century, Dr. Minoti Chakravarty Kaul did extensive research on the age-old customs prevalent in the Punjab of olden days. Her work contains a wealth of information, which is of valuable guidance in understanding how the notion of shamilat deh developed. She noted that village administration papers showed the waste as 'common land of the village' (shamilat deh). According to

her, the issue of proprietary rights in the waste land was decided by the Government in 1863 when Major Lake, the Commissioner of the Division, recommended that, within the mauzas, several hamlets should be demarcated as the entire waste was considered common waste and as hamlets were set apart from each other, it caused a lot of hardship at the time of the sale of the land.

In his settlement of 1865-72, Lyall demarcated hamlets within the mauzas and where hamlets were large and compact, each formed a tikka, by itself, and in the opposite case, several were clubbed into one area. The settlement policy enabled a class of cultivators - the occupancy tenants - to share in the shamilat rights. Though limited, these rights were secured to occupancy tenants on a permanent footing by the Punjab Tenancy Act,1868. Despite their intention to establish a village community, the British could not ignore a second line of right holders set up by the Sikhs as 'revenue paying' cultivators.

The British either created or confirmed, depending on the prior situation, a second set of proprietors - malik makbuza, i.e., owners of land, without rights to the common. In effect, the malik makbuza could not acquire the superior rights of the proprietary body or a share in the village common lands. Theoretically, such common land was held in shares proportionate to the revenue paid - hasab rasad zar-i-khewat, which meant that he who had well-irrigated land paid a higher share of the revenue of the village and had a right to demand a higher share of the common long fallow or shamilat and a greater part of the income from common property of the village. If the shamilat was partitioned, he was entitled to a larger portion.

10. The initial findings of settlement officers were recorded in the village administration paper, which contained conditions concerning such matters as revenue distribution, cultivation and partition of the shamilat deh and clauses regulating tenancy. This document, according to the author, was the genesis of the Wajib-ul-arz which, according to the Bengal Regulation VII of 1822, was to record matters which were the subject of village agreement, adjustment or general usage. Such a record, though not conclusive evidence, was admissible as prima facie proof of all matters relating to village customs. It had the same legal force as settlement records.

In all the districts where the villages could be dated from the first settlement, customs of the inhabitants would invariably be those followed by the tribe from which they became a splinter group or resembled those of neighbouring groups of villages. Each of these village societies had a set of customs and rules which served to maintain their joint character, if for nothing other than the discharge of the joint revenue responsibility which they shouldered. Thus, it came to be that blood ties were replaced by the ties of land rights.

That is how, per the author, common lands became the basis of communal cohesion, for so long as the shamilat deh remained unpartitioned, there was a basis for coherence. It was incumbent upon the administration to consider customs and customary law of rural Punjab from two angles - the personal and the communal and there was a clear distinction between the two. There were customs which regulated transmission or devolution of private rights, such as inheritance, and those which related to the internal economy and administration of the general affairs of the village community.

11. The author found that agricultural customs were put on the level of recorded usages by the Punjab Land Revenue Act, 1871. Villages were to be administered by them and those records could be taken as evidence to settle a dispute. Common lands were thus specifically administered by the Wajib-ul-arz. This document was theoretically based on 'age-old' customs declared by the village leaders at the time of settlement. It was formed into a standardized village administration paper, the rules of which overlay the customary usages by which the village community governed itself and its relations with the outside world, prescribing the terms of settlement and the relationship of members of the village proprietary body with (a) the Government; (b) each other and (c) other persons.

12. In 1873, Charles Louis Tupper, Junior Secretary, Government of Punjab, recorded that the Wajib-ul-arz was descriptive of the organic constitution, the internal economy and the history of the members of the village community. The clauses of the Wajib-ul-arz received sanction under Section 16 of the Punjab Land Revenue Act, 1871, but it was withdrawn in 1887, allowing changes in the Wajib-ul-arz at the time of settlements. This village document underwent a subtle change as it became a legal document intended primarily to define interests in land.

13. Another important document in relation to the proprietors, per the author, was the Shajra nasb, the family tree. The history of the families which comprised the village proprietary body was contained

in the Shajra nasb. This genealogy tree was constructed for the proprietary body in the settlements, but in the early part of the 20th century, the Shajra was drawn up for occupancy tenants also, as in Delhi, for example. This development shows that tenants became as much a part of the landholdings as the proprietors themselves.

The Shajra nasb showed complete tenures in the course of the settlement, giving sub-divisions of the village into tarafs and pattis. The Shajra nasb was not only a repository of village customs but also recorded the customs of inheritance, actually observed by Hindus and Muslims in the village. When a family member died, the change in the landholding was reflected therein. The Shajra nasb was first drawn up in the settlement of 1872-80 for Delhi district. Subsequently, one document, viz., the Misl Haqiyat or record of rights, demarcated the community statement from the record of individual rights and responsibilities.

14. The Wajib-ul-arz had one section, briefly chronicling the history of the village and that of the families of the malkan deh, viz., the Shajra nasb, and the other containing the rules regulating the management and use of shamilat deh. The important operative elements of the Wajib-ul-arz were the agreements regulating management of the shamilat deh and the control of user rights in such lands. These usually pertained to: - (a) cultivation of the shamilat deh by members of the proprietary body and by tenants of the village; (b) rights of the members of the proprietary body and other villagers to graze their cattle; (c) use of wells and johad (ponds); (d) utilization of the abadi and the spaces surrounding the area; and (e) the right to plant and cut trees in the shamilat deh and abadi areas.

15. The author found that disputes arose around the 1860s as to whether 'a share in the shamilat deh' could be conveyed, when land held in severalty was alienated, and whether an individual transferee could take physical possession of a share in the shamilat deh when it was still in an undivided state and not partitioned. Several decisions came to be delivered on the two rights appended to common lands as joint property, holding thus: - shamilat deh was not an accessory to land held in severalty, so rights to shamilat deh could not be conveyed unless there was an agreement amongst the village proprietary body or it was specifically mentioned in the deed of sale, mortgage or gift. Secondly, no individual co-proprietor could acquire exclusive title against the joint title of the other co-sharers in the shamilat deh till it was partitioned, i.e., shamilat deh was non-exclusive property till partitioned.

Right of occupancy in shamilat deh was almost universally acknowledged to be a right from which, customarily, a proprietor was to be precluded. Thereby, no co-sharer could individually acquire more than his share in the shamilat deh. This was an institutional safeguard against privatization by an individual. Clause (2) of Section IX of the Punjab Tenancy Act, 1868, made it clear that rights of occupancy could not be acquired in the common land of the village unless there was a clause in the Wajib-ul-arz permitting the same. Thus, a proprietor could not straightaway acquire the right to occupy a portion of the shamilat deh as he was only a joint proprietor.

The Wajib-ul-arz or Sharat-Wajib-ul-arz

16. In effect, the Wajib-ul-arz or Sharat-wajib-ul-arz, as it is also called, was a valuable revenue record and was the exponent of village customs, having been prepared after careful inquiry. The entries therein enjoyed a legally recognized presumption of reflecting the truth with regard to the customs that prevailed at that time. This valuable record of village and tribal customs related to possession of land and succession thereto and the same were collected under the authority of settlement officers.

They were brought into the legal system by statute, viz., the Punjab Land Revenue Act, 1887, whereby the entries contained therein were conferred the legal presumption of truth. The revenue records drawn up at that time were known by the terms - 'Sharat-wajib-ul-arz' and 'Rivaj-i-am'. The Sharat-wajib-ul-arz was of greater authority than the Rivaj-i-am, which was of general application and was not drawn up in respect of individual villages, unlike the Sharat-wajib-ul-arz. A presumption of correctness attached to an entry recording a custom in the Sharat-wajib-ul-arz.

As per the Privy Council, the record of a custom in the Sharat-wajib-ul-arz was the most valuable evidence of that custom [See Balgobind, since deceased, and others vs. Badri Prasad and another4]. Where the statement of a custom in the Sharat-wajib-ul-arz was unambiguous, the burden shifted onto the opposite party to rebut it with evidence. As was held by the Privy Council in the above case, evidence afforded by entries in records of customs prepared by responsible officials, whose duty was to ascertain and record such customs, was valuable evidence of the very existence of those customs.

Statutory Laws

17. After our country attained independence, the Punjab Village Common Lands (Regulation) Act, 19535, was enacted to regulate the rights in shamilat deh and abadi deh. It extended to the whole State of Punjab, as it existed then. In its Statement of Objects and Reasons, it was noted that, originally, when villages were founded, it was believed that the shamilat deh would be used by all the inhabitants of the village. However, the reality was that shamilat deh became the property of the proprietary body of the village and the non-proprietary classes did not enjoy any rights in the shamilat lands and they were not even proprietors of the sites under their houses in the abadi deh. These conditions, to the detriment of harijans and other non-proprietary classes, had come into vogue in the course of time and it was felt that they should have proprietary rights. Therefore, the Government, with a view to giving these classes of residents an opportunity to live with security, promulgated the 1953 Act.

18. Section 2(e) thereof defined 'appointed date' to mean the date of commencement of the 1953 Act if a gram panchayat was already in existence for the village and if not, the date on which a panchayat was constituted for that village. Section 2(f) defined 'inhabitant' of a village to mean a person, whether a proprietor or a non-proprietor, who ordinarily resided in that village. Panchayat was defined under Section 2(g) to mean the panchayat constituted or continued under the Punjab Gram Panchayat Act, 1952.

Section 3 provided for vesting of rights in the panchayat and non-proprietors and stated that, notwithstanding anything to the contrary contained in any other law for the time being in force and notwithstanding 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, which was included in the shamilat deh of any village shall, on the appointed date, vest in the panchayat having jurisdiction over that village and all rights, title and interest in the land situated in the abadi deh of the village and which was under the house owned by a non-proprietor shall, at the commencement of the Act, vest in that non-proprietor.

Section 4 provided that all lands that vested in a panchayat by virtue of the 1953 Act shall be utilised or disposed of by the panchayat for the benefit of the inhabitants of the village concerned, in the manner prescribed. Section 7 stipulated that no person shall be entitled to compensation for any loss suffered or allegedly suffered as a result of the coming into force of the 1953 Act. Section 8 barred the jurisdiction of the Civil Court in relation to any matter arising out of the operation of the 1953 Act. The Pepsu Village Common Lands (Regulation) Act, 19546, enacted on the same lines, was applicable in the former State of Patiala and East Punjab States Union. The 1953 Act and the 1954 Act were repealed by the Punjab Common Lands (Regulation) Act, 1961. They were, however, retained indirectly by conferring on them the status of 'shamilat law', as we shall see.

19. With the advent of the Punjab Common Lands (Regulation) Act, 1961, the intention of the legislature was clear that village common lands should vest in the panchayats for proper utilization and management. The aim and object of the said Act was to provide security and the right to live with self-respect to those associated with the economy of the village. It consolidated and amended the law regulating the rights in shamilat deh. After the State of Haryana was formed in the year 1966, the Haryana Common Lands (Regulation) Act, 1961, replicated the Punjab Common Lands (Regulation) Act, 1961, with some modifications, and was applicable in Haryana.

Except for substitution of 'Punjab' with 'Haryana', the Acts for both States, jointly referred to hereinafter as the Act of 1961, were substantially the same. Section 2(d) thereof defines 'inhabitant of a village' to mean a person, whether a proprietor or a non-proprietor, who ordinarily resides in the village. Section 2(e) of the Act of 1961 initially defined 'panchayat' to mean a gram panchayat constituted under the Punjab Gram Panchayat Act, 1952. Presently, in its application in Haryana, the Haryana Panchayati Raj Act, 1994, stands substituted therefor. Section 3(1) stated that the Act of 1961 shall apply, and before its commencement, shamilat law is deemed always to have applied, to all lands which are shamilat deh, as defined by Section 2(g) thereof.

20. Notably, amendments were made in the Act of 1961 in its application to Haryana and more so in Section 2(g) thereof, by Haryana's Act 9 of 1992, with effect from 11.02.1992. Thereby, clause (4) was substituted therein and clause (6) along with an Explanation were also added. Clause (6) categorized lands reserved for common purposes of a village under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 19487, whose management and control vested in the gram panchayat, as shamilat deh. Section 2(g) is an inclusive definition of 'shamilat deh' and, in the context

of the State of Haryana, it reads thus:

"S. 2(g) "shamilat deh" includes-

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

(2) shamilat tikkas;

(3) lands 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;

(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (liv) of section 2 of the Haryana Panchayati Raj Act, 1994, excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23-A of the aforesaid Act;

(4a) vacant land situate in abadi deh or gorah deh not owned by any person;

(5) lands 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-

(i) ****

(ii) has been allotted on quasi-permanent basis to a displaced person;

(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July,1985;

(ii-b) was shamilat deh and had been leased out, prior to the commencement of the Punjab Village Common Lands (Regulation) Rules, 1964 by the Collector under the Haryana Utilization of Lands Act, 1949 (East Punjab Act 38 of 1949) for a period of twenty years and the said land has been in continuous cultivating possession of the original lessee, transferee or his legal heir as per the revenue record on the date of commencement of this amendment Act;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed;

(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 for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act;

(vii) * * * * *

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

(ix) is used as a place of worship or for purposes subservient thereto;

(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.

Explanation.- Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh within the meaning of this section. Section 2(h) of the Act of 1961 defines shamilat law as under:

(h) "shamilat law" means-

(i) in relation to land situated in part of the territory which immediately before the 1st November, 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) Act, 1953; or

(ii) in relation to land situated in part of the territory which immediately before the 1st November,1956, was comprised in the State of Patiala and East Punjab States Union, the Pepsu Village Common Lands (Regulation) Act, 1954;

(iii) "State Government" means the Government of the State of Haryana"

21. Section 4 of the Act of 1961 deals with vesting of rights in the panchayats and non-proprietors. Section 4(1)(a) states that, 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 which is included in the shamilat deh of any village which has not vested in the panchayat under shamilat law shall, at the commencement of the Act of 1961, vest in the panchayat constituted for such village, and where no such panchayat has been constituted for such village, vest in the panchayat on such date a panchayat having jurisdiction over that village is constituted. Section 4(2) provides that any land which is vested in a panchayat under the shamilat law shall be deemed to have vested in that panchayat under the Act of 1961.

22. Section 13, as substituted by Haryana Act 34 of 1974 and Act 2 of 1981, but with effect from 04.05.1961, barred the jurisdiction of the Civil Court to entertain or adjudicate upon a question as to whether any land or other immovable property is or is not shamilat deh or whether any land or other immovable property or any right, title or interest in such land or immovable property vests or does not vest in a panchayat under the Act of 1961. Further, it stated that no Civil Court has jurisdiction to entertain or adjudicate upon any question in respect of any matter which a Revenue Court, Officer or Authority is empowered, by or under the Act of 1961, to determine or to question the legality of any action taken or matter decided by them.

Originally, there were no Sections 13A and 13B in the Act of 1961 in its application to the State of Haryana. Section 13A was inserted in the statute book by Haryana Act 34 of 1974 and it provided for certain decrees to be set aside and for fresh trial of cases. Section 13B was also inserted by Act 34 of 1974 and dealt with transfer of pending suits and institution of fresh proceedings. However, Section 13A and Section 13B were substituted by Haryana Act 2 of 1981, with effect from 04.05.1961.

23. The substituted Section 13A provided that, any person or, in the case of a panchayat, either the panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorized by the State Government, claiming right, title or interest in any land or other immovable property vested or deemed to have vested in the panchayat under the Act of 1961 may, within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, file a suit for adjudication whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a panchayat under the Act of 1961, in the Court of the Assistant Collector of the first grade, having jurisdiction over the area wherein such land or other immovable property is situated. The new Section 13B provided for appeal and revision against an order passed under Section 13A. Thereafter, by Haryana Act 15 of 1983, the limitation period of two years prescribed in Section 13A was increased retrospectively to five years,.

24. While so, Section 13A was omitted by Haryana Act 9 of 1992 and Section 13B was substituted, whereby it provided for an appeal against an order passed under Section 7 of the Act of 1961. Section 13A was, however, restored by Haryana Act 9 of 1999, deleting the limitation of five years. Section 13AA was also inserted, providing for appeal and revision. Section 13AA(1) stated that any person aggrieved by an order under Section 13A could prefer an appeal to the Commissioner within 30 days and, after hearing the appeal, the Commissioner could confirm, vary or reverse the order as he deemed fit. Section 13AA(2) provided that the Financial Commissioner could, suo motu or on an application, call for the record of any proceedings pending before, or order passed by, the Commissioner under Section 13AA(1) to satisfy himself as to the legality/ propriety of the same and pass such other order as he deemed fit.

25. Case law relating to the Act of 1961 in its application to both States is of great relevance and, more particularly, on the issue of shamilat deh. However, before we refer to the same, it would be apposite to turn to the factual milieu of the case leading up to the judgment of the Punjab and Haryana High Court, presently under challenge.

Factual background and the orders passed at different stages

26. After the enactment of the 1953 Act, the land in question in Haiderpur was mutated in the name of the Gram Panchayat, Wazirabad, in view of the letter dated 10.03.1954 of the then Punjab Government. While so, a suit in Case No. 18/DRO was filed on 11.09.1985 before the District Revenue Officer-cum-Assistant Collector, First Grade, Gurgaon, by four persons, viz., Ganpat, son of Umrao; Maher Chand, son of Jug Ram; Ram Phal (shown as Ram Pat in later orders), adopted son of Gordhan; and Chattar, son of Sukhram, all residents of Wazirabad. This suit was instituted by them under Section 13A of the Act of 1961 read with Order I Rule 8 of the Code of Civil Procedure, 1908 (CPC), professing to be nominees/representatives of those claiming under the pattis of Village Haiderpur, Gurgaon Tehsil and District.

They assailed the mutation in favour of the gram panchayat, claiming ownership over the land in dispute, viz., 436 bighas 18 biswas, in the be chiraag mauza, Haiderpur. They maintained that this land did not vest in the panchayat as it was not shamilat deh and was in the ownership of pattis. The pattis named by them were Chitru, Ramratan and Medha; and Sadasukh. They claimed that the pattis were in cultivating possession of the land and that the land in dispute was more than 25% of the land in the village and could not vest in the panchayat. Their grievance was that, based on the sanction dated 15.06.1955, mutation had been effected in favour of Gram Panchayat, Wazirabad, on 13.09.1955, in relation to this land without notice to the owners. They asserted that, as Haiderpur was uninhabited, it had no panchayat and the land in dispute was never used for common purposes.

27. The Assistant Collector framed the following issues for consideration in the suit:

(i) Are the plaintiffs owners with possession of the land in question?;

(ii) Is this case maintainable in the present form?;

(iii) Is this case within limitation?;

(iv) Is this case maintainable under Order I Rule 8 CPC or not? and

(v) Whether it is ancestral?

28. In the first instance, the Assistant Collector partly decreed the suit, by order dated 28.07.1990. The order discloses that the plaintiffs claimed that there were 524 shareholders in the subject land and that the suit was filed on their behalf. The suit was decreed to the extent of declaring their ownership over 179 bighas 6 biswas on the sole ground that the shamilat deh was more than 25% of the total land in the village. He observed that the total area of the village was 1059 bighas 11 biswas and 25% thereof came to 264 bighas 18 biswas. However, even as per the panchayat, the shamilat deh was 444 bighas 4 biswas and it, therefore, exceeded the 25% limit by 179 bighas and 6 biswas. He, accordingly, held that such excess area would vest in the pattis and those claiming under them.

29. However, on appeal by the Gram Panchayat, Wazirabad, the Collector, Gurgaon, by order dated 18.12.1991, set aside the order dated 28.07.1990 and remanded the case for consideration afresh. Aggrieved thereby, the plaintiffs filed a revision before the Commissioner, Gurgaon Division. In the meanwhile, WP No. 9232 of 1992 also came to be filed by some persons before the High Court, assailing the order of the Collector, Gurgaon. By order dated 15.12.1995, the High Court directed the parties to go before the Collector to have their case decided. The plaintiffs then filed an application before the Collector, Gurgaon, who remitted the matter to the Assistant Collector, First Grade, Gurgaon.

30. Thereupon, in his order dated 13.05.1996, while considering Issue No.1, i.e., as to whether the plaintiffs proved ownership and possession over the land in question, the Assistant Collector noted that, as per the Jamabandis for 1939-40 and 1944-45, the land was shown in the ownership of the pattis, Chitru, Medha, Sadasukh, Ahmed Ali and Ram Rattan and it was also shown in their possession. As per the Jamabandi for 1954-55, the land in dispute was not shown as being used for common purposes. He then noted that the the land was divisible as per the Sharatwajib- ul-arz. Further, income arising from the land was shown as being used as hasab rasad vikhiat malkiat. He, however, opined

that, as 2 bighas 2 biswas was shown as ghair mumkin johad (pond) and 10 biswas was shown as ghair mumkin rasta (path), i.e., 2 bighas 12 biswas in all, the same had to be excluded, being for common purposes. He, therefore, declared title and possession of the owners over the remaining extent.

31. Apropos Issue Nos. 2 and 3, i.e., as to the maintainability of the suit, the Assistant Collector opined that, as the Act of 1961 was amended in 1981 by inserting Section 13A with an extended limitation of five years and as the suit was filed on 10.09.1985 (sic, 11.09.1985), it was within time. On Issue No. 4, he noted that an application under Order I Rule 8 CPC had been filed and a list of owners was also appended. He also noted that his predecessor-in-office passed an order on 01.09.1995 (sic, 11.09.1985) allowing the plaintiffs, for themselves and on behalf of the nominees of the owners, to file the suit in this manner and the gram panchayat had raised no objection. On this reasoning, the Assistant Collector held in favour of the plaintiffs, except to the extent of 2 bighas 12 biswas, and the remaining 434 bighas 6 biswas were declared as vested in the owners.

32. Aggrieved thereby, the Gram Panchayat, Wazirabad, filed Appeal No. 15 of 1995-96 on 17.06.1996 before the District Collector, Gurgaon. It contended that the land in dispute was shamilat deh as the nature of the land was ghair mumkin nala, pahar, banjar qadim, rasta and johad, used for common purposes. It pointed out that, in the Jamabandi for 1940-41, in the column of ownership, shamilat deh was indicated, and in the column of cultivation, makbuja malkan was shown. The nature of the land was explained thus - 2 bighas 2 biswas was a johad (pond); 165 bighas 17 biswas was a nala and 258 bighas 9 biswas was shown as pahar (hills). The Jamabandi for 1945-46 also reflected the same situation.

Reference was made to the Wajib-ul-arz, wherein the shamilat deh was shown as 444 bighas 4 biswas, which was in keeping with the Jamabandis for the years1939-40 and 1945-46. Income from the shamilat deh was to be used for the works of the village. It was pointed out that the Wajib-ul-arz indicated that the banjar qadim could not be cultivated without consent and also spoke of the cattle grazing on the shamilat deh and drinking from the pond without charges and that, if any person of the other village dug any stones, he was to pay for the same to the Malkan @ 14% (sic, 4%) and this income was to be spent on the common expenditure of the village. The gram panchayat contended that by mere recording of hasab rasad rakba khewat in the revenue record, the character of the shamilat deh would not change.

33. On the other hand, the respondents in the appeal pointed out that, in the Jamabandis for 1938-39 and 1945-46, hasab rasad rakba khewat was shown in the ownership column and in the column of cultivation, makbuja malkan was entered, and argued that the land did not vest in the panchayat but in the biswadars. It was contended that, in terms of Section 2(g)(3) of the Act of 1961, the gram panchayat had to prove that the land in dispute was shamilat deh by demonstrating that it was used for common purposes of the village as per the revenue records.

34. By his order dated 02.03.1998, the Collector dismissed the appeal. Therein, he noted that, in terms of para 4(1) of the Wajib-ul-arz, the mauza land under cultivation, out of the shamilat deh, could be partitioned amongst the Hissadars and others in accordance with their shares. He noted that the land would first be divided amongst the pattis and, thereafter, amongst the members of those pattis.

He also noted that as per the Jamabandi for 1939-40, in column No.4 relating to ownership, the land was shown as vested in three pattis: patti Chitru; patti Sadasukh; and patti Ahmed Ali Khan, in the ratio of 10:5:5 and 'hasab rasad kabza land' was entered. In column No.5, pertaining to cultivation, makbuja malkan was entered. According to him, these entries, read together, indicated that the land was owned by the three pattis and biswadars of the pattis were in possession thereof. He then considered whether the land could vest straightaway in the panchayat. He noted the scheme of the Act of 1961 and concluded that, in terms of Section 2(g)(4) thereof, lands utilized for common purposes of the village would vest in the panchayat though, in this case, the rasta and the johad were shown outside the abadi deh.

35. In consequence, the Collector also excluded the extent of 2 bighas 12 biswas, on the ground that the same was shown as ghair mumkin johad (pond) and ghair mumkin rasta (path). As regards the rest of the land, the Collector noted that, insofar as persons of the other village procuring stones was concerned, such persons had to pay Government taxes and also pay the owners and that income was to be spent on some common work of the village, i.e., cleaning the pond, etc. According to him, the Wajib-ul-arz made it clear that the rights in the land vested with the owners and no other person had rights of any kind, as Haiderpur was barren and uninhabited.

He opined that three categories of persons lived in Wazirabad - biswadars of Haiderpur, biswadars of Wazirabad and ghair biswadars of Wazirabad. He held that unless the land in Haiderpur was used for common purposes by persons of all three categories, the land would not vest in Gram Panchayat, Wazirabad. He concluded that owners of the village had title over the land in question as per the Wajib-ul-arz and the panchayat had no concern with it. He, accordingly, held that the land was not shamilat deh and affirmed the Assistant Collector 's order.

36. Assailing the above order dated 02.03.1998, the Gram Panchayat, Wazirabad, filed Executive Revision No. 136/1997-98 on 02.04.1998 before the Commissioner, Gurgaon Division. While so, Suraj Bhan, Jage Ram, Dharamvir Singh, Raghbir, Jugmal and Kirpa Ram, all residents of Wazirabad, separately filed Executive Revision No. 56/1998-99 on 27.11.1998 against the Collector's order dated 02.03.1998. The revisions were allowed by order dated 05.08.2005.

The Commissioner noted therein that his predecessor had, by order dated 02.04.1998, stayed the operation of the orders of both the authorities below. It was argued that mutation in favour of the gram panchayat was made by the Assistant Collector, Grade II (Tehsildar), in a general gathering, upon verification by the lambardar (also known as numberdar), who was a shareholder in the land of Haiderpur. It was contended that the plaintiffs who filed the suit long thereafter could not claim ignorance about such mutation. It was pointed out that, as per the Sharat-wajib-ul-arz, the land in question was shamilat deh and that both authorities had erred in holding to the contrary.

37. The plaintiffs in the suit contended otherwise. As regards the revision filed by Suraj Bhan and others, they argued that they had not chosen to raise a claim before either of the authorities below and there was no justification in their filing a revision at that late stage. However, Suraj Bhan and the others contended that Haiderpur was in the control of the Gram Panchayat, Wazirabad, and that they were using the shamilat deh of that village for grazing cattle, collection of wood, digging of earth, etc., from generation to generation. They alleged that biswadars of Haiderpur, who resided in Wazirabad, sold the land at low prices to purchasers, impleaded as respondent Nos. 5 to 11 in their revision.

38. The Commissioner found that, in the Jamabandis for 1938-39, 1941-42 and 1945-46, in column No.4, the entry was hasab rasad kabza malkan and in the column of cultivation, the entry was makbuja malkan. He noted that, as per the Misl Haqiyat for 1939-40, the area of land in the village was 1059 bighas 10 biswas, in which ownership of patti Chitru, Ramrattan and Medha was shown over 102 bighas 13 biswas; of patti Sadasukh over 141 bighas 11 biswas; and of patti Ahmed Ali Khan over 177 bighas 13 biswas, while 444 bighas 4 biswas, including the subject 436 bighas 18 biswas, was shown separately as shamilat deh.

As the land was shown as ghair mumkin pahar, nala, johad and rasta, etc., and was for common use and as the cultivation column showed makbuja malkan, the plea of the biswadars that the mutation was incorrect was rejected. As the mutation was effected in the presence of the lambardar, he opined that the plaintiffs could not claim ignorance of the same. He, therefore, set aside the orders passed by both the authorities below and restored Mutation No. 131 dated 13.05.1995 (sic, 13.09.1955) in favour of the Gram Panchayat, Wazirabad. The revisions were, accordingly, allowed.

39. Aggrieved by the Commissioner's order, several writ petitions were filed before the High Court of Punjab and Haryana at Chandigarh. CWP No. 20032 of 2005 was filed by Ashvarya Estate Private Limited; CWP No. 216 of 2006 was filed by Millet Private Limited and others; and CWP Nos. 1679 and 1696 of 2006 were filed by Chattar. These writ petitions were allowed by a Division Bench, vide common judgment dated 24.08.2007.

The impugned judgment dated 24.08.2007

40. In its judgment dated 24.08.2007, the Division Bench noted that the issue was with regard to an extent of 436 bighas 18 biswas in Haiderpur, an uninhabited village. It was contended by the petitioners that the land was not used for common purposes and that the Sharat-wajib-ul-arz and the revenue records for 1939-40, 1941-42 and 1945-46 showed that it was in the possession of patti Chitru, Ramrattan and Medha (10 shares); patti Sadasukh (5 shares) and patti Ahmad Ali Khan (5 shares). They pointed out that the cultivation column mentioned makbuja malkan, showing that the land was cultivated by these owners. It was argued that the land in dispute was more than 25% of the entire land and it could not vest in the panchayat. It was contended that, as the land in question had not been used for common purposes and the village was uninhabited and had no panchayat, the Gram Panchayat, Wazirabad, had no connection with it.

41. The writ petitions were contested by the panchayat and the other respondents, viz., Suraj Bhan and others. They argued that the writ petitions were filed for wrongful financial gain and to cause loss to the panchayat. It was pointed out that the writ petitioners were neither residents nor co-sharers/proprietors of the village, as they were builders/ colonizers based in Delhi, and their sole intention was to grab the shamilat land for their private benefit. It was contended that as Mutation No. 131 was sanctioned in favour of the panchayat on 15.06.1955 and the land remained vested in the panchayat for several decades, the suit filed in 1985 was inordinately delayed and was barred by limitation.

It was pointed out that no documents of title were produced by the petitioners, who had purchased the land, to indicate as to how much of the land they had each purchased and from whom. It was pointed out that the land was classified as ghair mumkin nala, pahar, etc., and the same could not be put to commercial or residential use. It was also pointed out that the revenue records showed the land as shamilat deh and it was, therefore, not necessary to prove that it was used for common purposes or for the benefit of the village community, as it automatically vested in the panchayat under Section 2(g)(1) of the Act of 1961.

They also argued that the petitioners had an effective remedy by way of a further revision before the Financial Commissioner and their writ petitions ought not to be entertained. It was contended by the private respondents, viz., Suraj Bhan and others, that the petitioners purchased parcels of land within a short span of 23 days, through 265 transactions, which clearly showed their collusive and fraudulent intention of knocking away the land for gain. They contended that the land was shamilat deh and vested exclusively in the panchayat and that the writ petitioners had no right over the same.

42. Considering these arguments, the Bench noted that the 1953 Act was repealed by the Act of 1961, which was thereafter amended by the Haryana Acts. In the Act of 1961, the right to challenge the vesting of land in a gram panchayat was created, by introducing Section 13A, initially with a limitation period of two years. The same was then extended to five years. The Bench noted that the five-year period expired on 15.12.1985 and, as the plaintiffs had filed their suit on 10.09.1985 (sic, 11.09.1985) itself, the suit was within time. Reference was made to the Sharat-wajib-ul-arz and the following points were noted: Part of the land was shown as banjar qadim while part of it was being cultivated by proprietors.

The banjar qadim could not be made cultivable without consent of the other owners; cattle of all the cultivators of the village could use the grazing grounds and the majrua land without any payment; trees in the land were owned by the owners and they could sell the produce thereof; there were hills situated in the village but if any person of the other village procured stones therefrom, he had to do so by paying taxes to the Government and the owners had a right to get payment at the rate of 4% and the said income would be spent on common works of the village, such as cleaning of the pond; no garbage and fertilizer were there in the village as it was uninhabited and no chowkidar was appointed separately for it.

It was noted that, in the Jamabandis, makbuja malkan was mentioned in the cultivation column and as as per the Sharat-wajib-ul-arz, the land was divisible amongst the biswadars and others in accordance with their shares. Observing that the Commissioner had not given any reasons for his ultimate conclusions, whereupon he had reversed the finding of both the authorities, the Bench held that his order was a non-speaking order.

43. Referring to Section 2(g)(3) of the Act of 1961, the Bench observed that the user is to be seen only from the revenue records. Adverting to the revenue records for 1939-40 and 1945-46, the Bench observed that there was nothing mentioned about the common user by the village community except for 2 bighas 2 biswas, described as 'ghair mumkin johad' and 10 biswas as rasta, while the rest of the land was shown in the possession of the owners, i.e., makbuja malkan. Reference was made to the Full Bench decision of that Court in Gram Panchayat Sadhraur vs. Baldev Singh8, which held that, before the land can be held to be shamilat deh under Section 2(g)(3) of the Act of 1961, it has to be proved that it was used for common purposes or for the benefit of the village community as a whole or for a part thereof.

44. As the entries in the revenue records showed that the three pattis were in possession, in proportion to their shares of 10:5:5, the Bench opined that there was no evidence to show that persons other than the owners were using the land for their benefit. Observing that a provision adversely affecting an individual's right in property should be construed strictly, the Bench observed

that it could not be denied that the land in question was described as shamilat deh hasab rasad biswat patti Chitru, Ram Rattan and Medha; patti Sadasukh; and patti Ahmed Ali Khan. The Bench opined that if the argument of the Gram Panchayat, Wazirabad, and the other respondents was to be accepted, then all lands have to be held to be shamilat deh, irrespective of whether they were used for common purposes or for the benefit of the village community and such an interpretation would do violence to the clear provisions of the Act of 1961.

45. The Bench further held that mere sanction of mutation in favour of the Gram Panchayat, Wazirabad, did not confer any right and as such mutation had been effected without notice to the proprietors, it was liable to be set aside on that ground. Referring to the Sharat-wajib-ul-arz, the Bench opined that, as the land in question was in an uninhabited village and there was no village community, it could not be argued that mere description of the land as ghair mumkin pahar, ghair mumkin nala, etc., would indicate that the land was not owned by individuals and was land used for common purposes. The Bench noted that there was no proof of a notification being issued under the Punjab Gram Panchayat Act, 1952, that Haiderpur fell within the 'sabha area' of Gram Panchayat, Wazirabad.

46. As regards the contention that the petitioners had no locus standi to file the writ petitions, the Bench observed that the suit had been filed by four persons under Order I Rule 8 CPC and a specific issue was framed in that regard and decided in their favour by the Assistant Collector, Gurgaon. The Bench also noted that Chattar, the petitioner in CWP Nos. 1679 and 1696 of 2006, was one of the original plaintiffs who had filed the suit in a representative capacity and held that he, in any event, had locus to challenge the order passed by the Commissioner.

47. As regards the plea that the writ petitioners had not availed the remedy of a further revision before the Financial Commissioner, the Bench opined that the revisions were filed before the Commissioner on 02.04.1998 before the introduction of Section 13AA in the statute on 21.01.1999/10.03.1999, and there was, thus, no occasion for the petitioners to approach the Financial Commissioner under Section 13AA(2). The Bench was of the opinion that the only remedy available to them was by way of writ petitions under Article 226 of the Constitution and, therefore, the filing of the writ petitions could not be said to be without basis.

The Bench concluded that ownership over the land in question vested in the three pattis, except for 2 bighas 2 biswas falling under the ghair mumkin johad (pond) and 10 biswas falling under the ghair mumkin rasta (path). The writ petitions were, accordingly, allowed, setting aside the order passed by the Commissioner on 05.08.2005 and restoring the order dated 13.05.1996 of the Assistant Collector, First Grade, Gurgaon, and the appellate order dated 02.03.1998 of the Collector, Gurgaon.

48. Thereupon, Civil Appeal No. 244 of 2011 was filed by Suraj Bhan and others, while Civil Appeal Nos. 536, 539, 540 and 541 of 2011 were filed by the Gram Panchayat, Wazirabad. All the appeals were directed against the common judgment dated 24.08.2007 of the Division Bench. Civil Appeal No. 244 of 2011, filed by Suraj Bhan and others, arose out of that judgment in relation to CWP No.20032 of 2005, filed by Ashvarya Estate Pvt. Ltd. Civil Appeal Nos. 536 and 540 of 2011 were filed by the panchayat in the context of CWP Nos. 1679 and 1696 of 2006 respectively, wherein Chattar was the petitioner.

In these three appeals, the cause titles were amended by orders dated 01.02.2010, substituting the Municipal Corporation, Gurgaon, in the place of the Gram Panchayat, Wazirabad. Civil Appeal No. 539 of 2011 pertained to CWP No. 216 of 2006 filed by Millet Pvt. Ltd. and others. The cause title therein was also amended on the same lines on 18.01.2010. Civil Appeal No. 541 of 2011 related to CWP No. 20032 of 2005 filed by Ashvarya Estate Pvt. Ltd. Similar amendment of the cause title was effected therein on 01.02.2009, even before the grant of leave by this Court.

Interim Order passed by this Court

49. By order dated 25.01.2008, this Court stayed the operation of the impugned common judgment dated 24.08.2007 passed by the High Court.

Relevant phrases and terms

50. Certain other terms, in vernacular, are unique to this litigation and warrant explanation. The phrase banjar jadid refers to land, uncultivated for four harvests, but still capable of being cultivated, while banjar qadim refers to land that remained uncultivated for eight harvests, but can also be cultivated. Ghair mumkin refers to land that can no longer be cultivated, having been used for another

purpose. Jumla mushtarka malkan refers to land carved out for common purposes from the proprietors' holdings, under control of the gram panchayat. Khewat number is a number assigned to a landowner in respect of his landholding. Makbuja malkan refers to the joint possession of all proprietors.

Case Law

51. We shall now look at the cornucopia of case law on the subject, mostly of Punjab & Haryana (P & H) High Court, which carries great value, as the laws under consideration are the local laws of those States and that High Court would, perhaps, be the one most well-versed with them.

52. In Shiv Charan Singh and others vs. Gram Panchayat Narike, Tehsil Malerkotla, District Sagnrur and others9, a learned Judge of the P & H High Court considered whether a disputed land was shamilat deh. Significantly, in that case also, the land was situated in an uninhabited village. In the revenue records, it was shown as shamilat deh, described as banjar qadim. The learned Judge held that, once the land was shown in the revenue records as shamilat deh, it was not necessary to prove that it was used for common purposes of the village or for the benefit of the village community, as it automatically vested in the gram panchayat under Section 2(g)(1) of the Act of 1961. The learned Judge held that, to determine whether a land is shamilat deh or not, reference has to be made only to revenue records and no evidence can be adduced for that purpose.

53. In Kashmir Singh and others vs. Joint Development Commissioner (IRD), Punjab, Chandigarh, and others10, a Division Bench of the P & H High Court considered a similar question. As in the case on hand, the complaint made against the gram panchayat was that it had gotten the mutation done in its favour without notice to the petitioners therein. Their appeal was, however, dismissed by the Joint Development Commissioner. The Bench noted that the petitioners' case was that the land was initially shown in the revenue records as shamilat deh jumla malkan hasab rasad khewat and was, therefore, in the ownership of the proprietors.

On facts, the Bench found that the land was shown as shamilat deh in the Jamabandi for 1954-55. However, the contention of the petitioners was that the land was never used for common purposes. The Bench observed that, once the land was shown as shamilat deh in the Jamabandi for 1954-55, the fact that it was also recorded as shamilat deh hasab hissa andraj shijra nasb, i.e., as per the share in the pedigree table, was of no significance as the land had not been partitioned and brought under cultivation by individual landholders before 26.01.1950, in terms of Section 2(g)(iii) of the Act of 1961.

The Bench noted that, thereunder, to be excluded from shamilat deh the land has to be shown as having been partitioned and brought under cultivation by individual landholders before 26.01.1950. As the land in question was not partitioned or brought under cultivation by individual landholders before the said date, it was held that such land would not stand excluded. The above decision was confirmed by this Court when the special leave petition filed against the same was dismissed on 25.01.2007.

54. Again, in Sita Ram etc. vs. Gram Panchayat Ismaila etc.11, another Division Bench of the P & H High Court considered whether a particular land was shamilat deh. The petitioners claimed that their names were recorded as being in separate individual cultivating possession of the land even before the Gram Panchayat, Ismaila, was formed and it could not have acquired proprietary rights in the said land. The entry in the revenue records under the column of ownership was 'hasab rasad arazi khewat', i.e., ownership of all the proprietors jointly. The cultivating possession of the land was shown as makbuja malkan. The complaint of the petitioners was that the land had been mutated in the name of the gram panchayat without notice to them.

The Bench noted that Section 2(g)(1) of the Act of 1961 stated that land which is described in the revenue records as shamilat deh or charand is to be treated as shamilat deh while Section 2(g)(iii) related to lands which are not to be included in shamilat deh and opined that it has to be shown that the land over which ownership was being claimed by individual landowners thereunder, was actually partitioned and brought under cultivation by them before 26.01.1950. However, as no such proof was forthcoming, the Bench opined that, as the land was recorded as shamilat deh, mention of the words 'hasab rasad arazi khewat' was inconsequential, as the land was not partitioned amongst the proprietors of the village before 26.01.1950, the date fixed to exclude land from shamilat deh.

The petitioners' claim that they were in individual cultivating possession of the land was not found tenable as most of the land was banjar qadim, which meant that it was not being cultivated. Reference was also made to the earlier decision in Ram Bahu and others vs. Gram Panchayat (Gram Sabha) of

Village Indri12, wherein it was observed that use of the expressions: 'individual', 'cultivating possession' and 'respective shares' suggests that a co-sharer or a body of co-sharers should be in separate cultivating possession of the lands on individual basis, before they can claim the benefit of the exceptions under Section 2(g) of the Act of 1961 and such separate possession of an individual, co-sharer or a body of co-sharers should not exceed his or their shares in the shamilat deh.

It was noted that there is no question of the entire proprietary body having its respective shares in the shamilat deh as such body owns it on joint basis and cannot be said to have a particular share therein. It was held that there can be no separate cultivating possession of the proprietary body on individual basis or as a body of co-sharers which could claim to be separate from the proprietary body. The Division Bench noted that Ram Bahu (supra) was affirmed by a Division Bench in Tel Ram vs. Gram Sabha, Manakpur13, wherein it was held that, if the land falls under any of the inclusive clauses in Section 2(g) of the Act of 1961, it would be sufficient to treat it as 'shamilat deh' and no further reference to any other clause is necessary.

55. In Surjit Kaur and another vs. State of Punjab and others14, a learned Judge of the P & H High Court was considering whether proprietary interest of Muslims who had migrated to Pakistan would become evacuee property, transferable by the State. Reference was made to Gram Panchayat of Village Jamalpur vs. Malwinder Singh and others15, wherein a Constitution Bench had held that Muslims who had migrated upon partition and who had only held an undivided share in shamilat deh did not have absolute rights therein.

It was observed that such lands were not liable to be partitioned or alienated as they were intended to be used and were, in fact, used as undivided property of the proprietors of other lands also. It was, therefore, held that the Muslims' interest in such shamilat lands became evacuee property but it was not disposable, whereby it could have been allotted by the State. The learned Judge, accordingly, held against the allottee. Challenge to this decision was dismissed by this Court on 20.02.2009, on delay as well as on merits.

56. In Balwinder Singh and another vs. Director, Rural Development and Panchayats, Punjab16, another Division Bench of the P & H High Court noted that the mutation in favour of the panchayat was made in the year 1956 while the entry in the ownership column in the Jamabandi for 1948-49 indicated the land as shamilat deh hasab rasad zar khewat. The Bench held that the entry in the cultivating possession column, being makbuja malkan, merely showed that the petitioners were in possession of the land, but it did not vest them with a legal right to hold separate possession or claim ownership. This decision was confirmed by this Court, as the appeal arising therefrom was dismissed on 14.01.2011.

57. In Ramesh Pal vs. State of Haryana and another17, a learned Judge of the P & H High Court observed that Section 2(g)(1) of the Act of 1961 defined shamilat deh to include the land described as charand (pasture) and once the land in dispute was reserved as charand during consolidation, the entries in the revenue records put paid to any argument that such land did not vest in the panchayat. The contention that the land was shown before 1950 as shamilat deh hasab rasad paimana haqiyat was held to be irrelevant as the land recorded as shamilat deh, whatever be its nature, vested in the panchayat, except to the extent excluded by Section 2(g) and Section 4 of the Act of 1961.

The learned Judge noted that those entries referred to ownership and possession before shamilat law and the Act of 1961 and the argument that the petitioner was in possession of the land before 1950 was unsubstantiated, for want of any such entry in the revenue records establishing that the petitioner or his predecessor were in cultivating possession of his or their share(s). The land was, accordingly, held to belong to the gram panchayat.

58. Again, in Bakshish Singh and others vs. State of Punjab and others18, the same learned Judge held on facts that the petitioners had failed to establish their status as co-sharers/proprietors and their plea that the land was shown as shamilat deh hasab rasad khewat, even if true, did not exclude it from shamilat deh. It was observed that the expression hasab rasad khewat merely reflected the shareholding of proprietors before enactment of the 1953 Act and the Act of 1961.

59. In Patram vs. Gram Panchayat Katwar and others19, this Court dealt with the question whether land in the appellant's occupation was shamilat deh within the meaning of the Act of 1961. The contention of the appellant was that the land, though shamilat land, was actually a patti in the possession of his ancestors for over a century and was not used for common purposes of the village.

He, therefore, contended that it did not fall within shamilat deh. His contention was that, in Section 2(g)(3), there is a comma after the word shamilat, but there is no such comma in Section 2(g)(v). This Court, therefore, considered as to whether the word 'shamilat' had to be read with taraf, pattis, pannas and tholas or only with taraf in Section 2(g)(v). It was observed that the word 'shamilat' basically means 'held in joint possession and undivided lands which are part and parcel of a village'.

This Court observed that, when the lands are held commonly by a village proprietary body, they would be described as 'shamilat deh'. It was noted that taraf, patti, panna and thola are different terms but they have a common strain or similarity running through them, as these are descriptions of lands of a group of villagers based on clan, caste, sect, area, etc. It was noted that, in British India, the village was divided into different pattis/sections based on caste, religion, occupation, etc., of the persons residing in the village - patti, being a division of the land into separate portions or strips. It was, therefore, concluded that patti was basically a small division of the village and the terms - taraf, patti, panna and tholas, though different, were akin to patti and dealt with a community of villagers residing separately.

In essence, they were all held to virtually mean the same and the Bench opined that there was an error rather than a deliberate non-use of a 'comma' in Section 2(g)(v). It was observed that Section 2(g)(3) provided that land described as 'shamilat', 'tarafs', 'pattis', 'pannas' and 'tholas' are to be treated as 'shamilat deh' only if they are used for common purposes of the village and this clearly implied that, if the land described as 'shamilat' 'taraf', 'patti', 'panna' or 'thola' was not being used for common purposes, it would not fall within the meaning of 'shamilat deh'. In effect, this Court held that, if a land is 'shamilat taraf', 'shamilat patti', 'shamilat panna' or 'shamilat thola' it can be 'shamilat deh' only if it is used for common purposes.

60. In Gram Panchayat Balbera vs. Director, Village Development and Panchayat, Punjab, and another20, it was held by a Division Bench of the P & H High Court that the expression 'makbuja malkan' denotes possession of the proprietary body in common with no co-sharer being in possession of any part of the land, much less in cultivating possession. It was noted that Sections 2(g)(iii) and 2(g)(viii) of the Act of 1961 exclude land from shamilat deh, if it is proved that it is in cultivating possession of a co-sharer, pursuant to such partition. Thus, the expression 'makbuja malkan' was held to merely denote joint possession and the same was held insufficient to exclude the land from shamilat deh.

61. In Dalbir Chand and others vs. Gram Panchayat Village Rampur Haler and others21, it was held that shamilat deh in a hilly area shall vest in a panchayat except to the extent that such panchayat cannot exercise any right that has already vested in the State Government or in contravention of any provision of the Indian Forest Act, 1927. 62. In Gram Panchayat, Village Parhi vs. Ajmer Singh and others22, a Division Bench of the P & H High Court disagreed with the finding that the land was not shamilat deh as it was shown as shamilat deh hasab rasad khewat in the possession of makbuja malkan and held that the nature of the land was determined by the words 'shamilat deh' and not by 'hasab rasad khewat', which related to ownership in the shamilat deh prior to the Act of 1961 but, thereafter, land shown as shamilat deh hasab rasad khewat would vest in the gram panchayat.

63. In Maghi Ram (deceased) through his Legal Representatives and another vs. Gram Panchayat, Chirwa and others23, a Division Bench of the P & H High Court was considering whether the land in dispute was shamilat deh. It was contended that the land was shown as 'shamilat deh hasab hissas mundarza shijra nasar' in the revenue records and in the possession of makbuja malkan, thereby proving their possession prior to 26.01.1950 and, in consequence, the land stood excluded from shamilat deh. The Bench noted that the former expression denoted ownership of the proprietors as per their shareholdings prior to the 1953 Act, while the other expression, makbuja malkan, denoted possession in common of the proprietary body, with no particular proprietor in possession of identified land, much less, in cultivating possession thereof.

The Bench noted that, upon enactment of the 1953 Act, land described as shamilat deh came to vest in panchayats, thereby putting an end to ownership of proprietors therein without exception. Thereafter, the 1953 Act was repealed and the Act of 1961 took its place and Section 3(1) and Section 3(2)(i) thereof provided that lands that were shamilat deh under the 1953 Act shall continue to vest in the panchayats to the extent and in the manner provided by Section 2(g) of the Act of 1961. The Bench noted that the petitioners claimed exclusion from shamilat deh under Section 2(g)(iii) of the Act of 1961 but, to do so, they had to prove their possession as proprietors; that the land was partitioned;

and it was put to cultivation by individual landowners before 26.01.1950. On facts, the Bench found that the petitioners had not produced any evidence to establish partition amongst the proprietors or that the land was brought under cultivation by individual landowners before 26.01.1950.

Reliance placed by them on the expression makbuja malkan in support of their plea of possession was rejected on the ground that the said expression referred to possession of the proprietary body in common, as opposed to cultivating possession of individual proprietors, much less after partition. The Bench accordingly concluded that the expression shamilat deh hasab hissas mundarza shijra nasar coupled with the expression makbuja malkan merely referred to ownership as it existed prior to the vesting of shamilat deh in the panchayat under the 1953 Act and the Act of 1961 and recorded possession of the proprietors in common, without a particular proprietor being in possession of specific land, much less in cultivating possession, so as to exclude it from shamilat deh under Section 2(g)(iii) of the Act of 1961.

64. In The Gram Panchayat of Village Bajghera vs. The Financial Commissioner (Revenue), Haryana, and others24, a Division Bench of the P & H High Court considered whether a land qualified as shamilat deh. In the Jamabandi for 1939-40, the entry in the column of ownership was 'shamilat deh hasab rasad malgujari mundraja missal haqiyat' and the cultivation column showed the entry 'makbuja malkan'. The appellate authority had erroneously held that panchayats were formally established in villages in erstwhile Punjab only after independence and before that, gram panchayats had no legal entity.

It was noted that shamilat deh vested in the panchayat as per Section 2(g)(1) of the Act of 1961 while shamilat patti would vest in the panchayat, as per Section 2(g)(3) of the said Act, only if the said land was used for common purposes as per the revenue records. It was noted that there was no such requirement with regard to land which was shown as shamilat deh under Section 2(g)(1) of the Act of 1961. This, per the Bench, implied that shamilat deh land, whether it is used for common purposes or not, would vest in the panchayat in all circumstances. It was held that, by merely mentioning the basis of a share in the shamilat deh in the column of ownership, it would not change the nature of shamilat deh. Such land would remain shamilat deh and vest in the panchayat under Section 2(g)(1) of the Act of 1961.

The Bench observed that the core issue before it was as to whether the land in question vested in the panchayat or not. Reference was made to the Full Bench decision in Baldev Singh (supra), wherein it was held that land shown as shamilat patti, panna, thola, taraf and banjar qadim, falling under Section 2(g)(3), would vest in the panchayat only if such land was used for common purposes but, if the land was described in the revenue records as shamilat deh followed by any expression, the same would vest in the panchayat under Section 2(g)(1) of the Act of 1961. Following this edict, the Division Bench held that the land in dispute was proved to have vested in the panchayat, in terms of Section 2(g)(1) of the Act of 1961, and that Section 2(g)(5) of the Act had no application.

65. In Baldev Singh (supra), a Full Bench of the Punjab and Haryana High Court considered whether banjar qadim land falling in shamilat taraf or shamilat patti would be governed by Section 2(g)(3) or Section 2(g)(5). The Full Bench held that any land described as banjar qadim and falling in shamilat taraf or shamilat patti, according to the revenue records, would be governed by sub-clause (5) of Section 2(g) of the Act of 1961 and not by sub-clause (3) thereof. The Full Bench further held that the correct interpretation of the expression 'for the benefit of the village community or a part thereof' would mean that the benefit must include, in its ambit, not only the owners of the land of the patti or taraf concerned, but also the village community as a whole or a part thereof, which would include all sections of the population of the village, including the land owners.

66. In Gram Panchayat of Village Mundhal Khurd vs. Amar Singh (Dead) by LRs. and others25, this Court affirmed the view of the Full Bench in Baldev Singh (supra) and held that lands described in the revenue records as shamilat, taraf, patti, panna and thola, which are not used for the benefit of the village community or a part thereof or for common purposes of the village, as per the revenue records, cannot be included in shamilat deh. On facts, it was found that the lands in question were in the cultivating possession and use of the proprietors of the tholas, leaving no scope for commonality of purpose in the revenue entries or any indication of the non-proprietors sharing the benefit of the land in a common way.

67. In Prem Singh and others vs. The Commissioner, Ambala Division, Ambala, and others26, a Division Bench of the P & H High Court was considering whether the land in dispute vested in the

panchayat as the Sharat-wajib-ul-arz of 1909-10 recorded that only the proprietors were entitled to freely use the land for grazing their cattle and non-proprietors were required to pay a fixed amount of money. According to the Jamabandi, the land in dispute was shown in the ownership column as shamilat panna hasab rasad khewat and was in the cultivation of the proprietors.

The Bench found that the Sharat-wajib-ul-arz for 1909-10 could not be relied on as two or three settlements were effected thereafter and a new Sharat-wajib-ul-arz was prepared in each settlement. It was further noted that the clause in the Sharat-wajib-ul-arz that confined the user of the shamilat deh to proprietors and required the others to pay for such user was rendered irrelevant after enactment of the 1953 Act, which declared that all lands described as shamilat deh shall, without exception, vest in the panchayats. The Bench held that, as the land in question was reserved as charand, that is, grazing land, it would attract Section 2(g)(1) of the Act of 1961, which posited that such land shall be shamilat deh.

68. In Attar Singh vs. The Commissioner, Rohtak Division27, a Full Bench of the P & H High Court was dealing with a claim by a biswadar purportedly acting on behalf of other proprietors, under Order I Rule 8 CPC. He assailed the mutation in favour of the gram panchayat. Reliance was placed on the Jamabandi for 1950-51 wherein, in the ownership column, the land was recorded as shamilat deh hasab paimana malkiat and in the column of cultivation, it was recorded as makbuja malkan. The biswadar claimed that the proprietors were in cultivating possession of the land as per their shares therein as owners and that their possession was intact from before 26.01.1950.

The land was stated to be banjar qadim and was more than 25% of the total estate of the village. On these grounds, it was contended that the land did not vest in the panchayat. The averment as to the land being more than 25% of the total estate of the village assumed importance in the light of the proviso to Section 2(g)(5) of the Act of 1961 which provided for inclusion of lands in shamilat deh if described as banjar qadim and used for common purposes, to the extent of 25% of the total area of the village. This proviso was, however, omitted with effect from 11.02.1992 in the State of Haryana. It was contended that the proprietors, being owners in possession of the land, were in physical cultivation for 12 years prior to 1953.

They claimed the benefit of Section 4(3)(ii) of the Act of 1961 which provided that nothing contained in Section 4(2)(1)(a) shall affect or shall be deemed to ever have affected the rights of persons in cultivating possession of shamilat deh for more than 12 years immediately preceding the commencement of the Act of 1961, without payment of rent or of charges not exceeding the land revenue and cesses payable thereon. The Bench noticed that there were two kinds of common lands in the villages - one, shamilat deh, which was carved out at the time of settlements and was in existence before consolidation operations and was independent of the lands earmarked for common purposes during such consolidation operations. These lands were shown as shamilat deh by various names.

In the case of shamilat deh, ownership vested with the gram panchayat of the village, in terms of Section 4 of the Act of 1961. The other common land was that which was carved out during consolidation proceedings in the village under the 1948 Act and was used for common purposes, as defined in Section 2(bb) thereof. The ownership of these lands vested with the village proprietary body and only the management and control vested with the gram panchayat. Such lands were recorded in the revenue records as jumla malkan wa digar haqdaran arazi hasab rasad, jumla malkan or mushtarka malkan.

The Bench noticed that the land shown as banjar qadim was quite a vast extent and, in terms of Section 2(g)(5) of the Act of 1961, shamilat deh included lands in any village described as banjar qadim and used for common purposes as per the revenue records. It was also noted that the proviso to Section 2(g)(5) of the Act of 1961 was omitted with effect from 11.02.1992 and there was no savings clause in Haryana Act 9 of 1992, which meant that the said proviso never existed in the statute. The Bench disposed of the case leaving it to the parties to prove that the banjar qadim was used or not used for common purposes, so as to decide whether it was shamilat deh.

69. In Varinder Pal Singh and others vs. State of Punjab and others28, a Division Bench of the P & H High Court observed that the shamilat deh of a village was jointly owned and possessed by all proprietors in keeping with their shareholdings, the land revenue paid or the number of ploughs in the village, etc., while shamilat patti was entirely distinct, as it was in the sole and exclusive ownership of members of that particular body, who owned and possessed it jointly. It was noted that the proprietary and possessory rights of members in the shamilat patti were recognised in various settlements of

landholdings carried out in the 19th century and in the early part of the 20th century, by recording an entry in the record of rights that the land was shamilat patti.

It was noted that column No. 3 of a Jamabandi bears the title 'name of a patti or taraf' along with the name of the lambardar and the revenue paid. Perusal of the instructions in that regard, per the Bench, revealed that the name of a patti should be recorded in column No. 3 after assigning a separate khewat number to the patti and it shall be followed by the name of the lambardar and the revenue paid. Column No. 4 of a Jamabandi, per the Bench, required the recording of the name of the owner and if the land belonged to a patti, it had to reflect the word patti along with the name of the patti and the manner of calculating shares in that patti. It was further noted that the word patti may be used with or without the word shamilat but the word patti must appear in column No. 3 or 4 of a Jamabandi so as to raise an inference that the land is the land of the patti.

The Bench also noted that though column No. 8 of a Jamabandi records the classification of the land, that is, whether it is cultivated or not, the document that records the use to which the land of a patti is put to is the Sharat-wajib-ul-arz, which is also part of the record of rights, and contains a column, setting out in detail the use to which the land in the shamilat patti of the village shall be put to and whether its user shall be confined to members of the patti or whether it may be used by all inhabitants of the village, irrespective of their status, i.e., as proprietors or non-proprietors.

Referring to the provisions of the Act of 1961, the Bench observed that a person claiming the benefit of Section 2(g)(3) or 2(g)(v) of the Act of 1961 is required to prove, by reference to entries in column Nos. 3 and 4 of a Jamabandi, that the land is shamilat patti; and by reference to column No. 8 of the Jamabandi, the quality of the land; and by reference to entries in the Sharat-wajib-ul-arz, that the land was not used, as per the revenue records, for the benefit of the village community or a part thereof or for the common purposes of the village. It was held that it would be necessary that entries in the revenue records show that some actual benefit was being derived from the use of the land by the village community or a part thereof, other than the members of the patti.

It was further held that column No. 3 or column No. 4 of a Jamabandi must record the word patti along with name of the patti and the name of the lambardar and the absence of the word patti in column No. 3 or 4 would raise a rebuttable inference that the land is not shamilat patti. On facts, the Bench found that the word patti was there in column Nos. 3 and 4 of only a few Jamabandis and the words used were shamilat zail, followed by the name of a lambardar. 'Zail', an Urdu term, meant 'under' and nothing more. The absence of the word patti in column Nos. 3 or 4 and the presence of the word 'zail' after the word shamilat indicated that the land was not shamilat patti and that the same did not vest in the proprietors of a patti. In some of the cases in the batch, however, the Bench found that the land was shown as shamilat patti and there was no indication of the land being used for common purposes or for the benefit of the village community or a part thereof. Such land was, therefore, held not to vest in the panchayat.

70. In Bundi Ram (deceased) through his LRs vs. Commissioner, Ambala Division, Ambala, and others29, a Division Bench of the P & H High Court was considering whether the land in dispute vested in the gram panchayat. The petitioners asserted their ownership and claimed exclusion of the land from shamilat deh on the ground that the land was shown as shamilat deh hasab hissas biswat and was in the cultivating possession of the proprietors, makbuja malkan, from before 26.01.1950. The Bench noted that the revenue estate in a village would consist of two types of land - proprietary land and common land. The latter type of land was put to common use by the residents of the village and its ownership vested in the proprietors of the entire village or the pattidars, depending upon the nature of the land.

For example, if the land was shamilat deh charand (pasture) the entire village could use it to graze their cattle but where the owners were members of a patti, a taraf, a panna, a thola and the land was recorded as shamilat patti, the shareholders of the patti were entitled to use the land to the exclusion of all else but the ownership/share in the shamilat deh was determined as per the extent of the proprietary landholding or land revenue paid and was generally recorded as shamilat deh hasab hissas paimash malkiat, shamilat deh hasab hissas biswat, etc.

The possession of shamilat land was generally recorded as makbuja malkan, that is, possession of the proprietors' body in common. The proprietors were entitled to sell, mortgage, lease and partition the land as complete owners and, if a particular shareholder was an individual cultivator in possession or in possession through his tenant or the land was mortgaged, a separate khatauni was carved out in the record of rights to reflect the cultivating possession of such co-sharer, tenant or mortgagee.

The Bench observed that the question for decision was whether the land was in the possession of the petitioners from prior to 1950, in terms of Section 2(g)(iii) and (viii) of the Act of 1961, so as to exclude it from shamilat deh. It was observed that Section 2(g)(iii) required the petitioners to prove that the land was partitioned and cultivated by individual owners before 26.01.1950. However, the Bench found that there was nothing in the Jamabandi to indicate such cultivating possession, much less after partition of the land, and held that, in any event, a ghair mumkin nadi (river) could not be in cultivating possession.

71. Long ago, in Dakas Khan and others vs. Ghulam Kasim Khan and others30, the Privy Council examined the claim of proprietors of Village Darakki that they had rights over the shamilat deh of Village Sher Ali. The Privy Council noticed the common origin of these villages but found that, as per the Wajib-ul-arz, the names of the proprietors of Village Darakki were not reflected in the column of proprietorship in the settlement and Jamabandis and it was shown as shamilat of the proprietors of Sher Ali. It was, accordingly, held that the proprietors of Village Darakki could not claim any rights in the shamilat deh of the other village, Sher Ali.

72. In Tansukh and others vs. Financial Commissioner & Principal Secretary, Revenue Department, Government of Haryana, Civil Secretariat, Chandigarh and others31, a Division Bench of the P & H High Court observed that, though a presumption of truth attaches to an entry in a Jamabandi, when an entry appears without any reason or contradicts earlier and subsequent entries, a Revenue Authority or a Court may validly ignore such entry as an error or a stray entry.

73. In State of Haryana vs. Jai Singh and others32, a 3-Judge Bench of this Court noted that earlier decisions had held that land contributed for common purposes, as per a consolidation scheme, which remained unutilized after a portion thereof was used, would vest with the proprietors and not with the gram panchayat. It was held that the unutilized land, i.e., the bachat land, left after the land earmarked for common purposes was used, has to be redistributed amongst the proprietors according to the share in which they had contributed their land for such common purposes. The appeals filed by the State of Haryana were, accordingly, dismissed. We are, however, not dealing with bachat land presently.

Relevant Documents - The Sharat-wajib-ul-arz

74. The Sharat-wajib-ul-arz for Haiderpur (1939-40) is placed on record. In Para No. 1 in Dafa No. 1 therein, it is stated that the area of the shamilat deh in the village is 444 bighas 5 biswas. Details were stated thereunder: possessed by owners (makbuja malkan) - 436 bighas 8 biswas (ghair mumkin pond, pahar, nala). Co-sharer cultivation - 5 bighas 11 biswas cultivable, sare-aam (open to public) 3 bighas 5 biswas (ghair mumkin rasta). Shamilat patti, Chitru, Ramrattan and Medha - 138 bighas 11 biswas.

The details were as under: Possessed by owners - 9 bighas 9 biswas, banjar qadim, under cultivation of co-sharer, - 53 bighas 1 biswa (Magda 52.14, Nala 0-7), under cultivation of occupancy tenants - 46 bighas 12 biswas (Cultivable 46-10, Nala 0-2) cultivation of tenants at will 29 bighas 9 biswas (28-7 Magda, 1-2 banjar jadid). Shamilat patti Sadasukh - 13 bighas 12 biswas. Details were as under: under occupancy tenants - 8 bighas 16 biswas. Under dholidaran (donees of land gifted for religious purposes)- 4 bighas 16 biswas. Supervision/management of land under cultivation was with occupancy tenants and dholidaran. Para 2 stated that the income received from sale of trees from the shamilat deh possessed by jumla malkan is utilized for the maintenance/cleanliness of the pond (johad) and that no other income is received from the shamilat deh.

The rent received from the shareholders, tenants, marusi and ghair marusi, and from shamilat patti is being utilized for payment of Government land revenue and no other income is received from shamilat pattis. As per Para No. 3, no shareholder could cultivate the land in the shamilat deh banjar qadim without the prior consent of other co-sharers. Para No. 4 stated that the area of the shamilat deh banjar qadim and cultivable area under the cultivation of proprietors, tenants, ghair marusian awal, meaning persons in possession, would be partitioned first among the three pattis as per their share and within the pattis.

75. In Para No. 1 of Dafa No. 2, it was clarified that, in the ghair majrua (non-cultivable) shamilat deh, all cultivators could use it for grazing their animals without payment. In the majrua (cultivable) shamilat deh, after the crop was harvested, the owners had the first right to graze their animals and others would, thereafter, have the right to graze their cattle.

76. In Para No. 3 of Dafa No. 3, it was noted that there was a mountain in the village and any person of the other village could take stones after paying royalty to the Government but he then had to pay 4 annas per munn (40 ser) to the landowners and this income was to be utilized for the cleanliness/maintenance of the pond or any other village expenditure. Kankar (stones) could be taken from the nala by any person with the permission of the owners and on paying royalty to the Government and 4 annas per munn to the owners and the same was to be utilized for common purposes.

77. Para No. 1 in Dafa No. 4 stated that the waste (malba) of the village is not taken separately and the malba is utilized from Village Wazirabad as required, as the proprietors were the same for both the villages, Haiderpur and Wazirabad.

78. Dafa No. 6 made it clear that animals of all the cultivators of the village could use the pond without payment. Para No. 2 in Dafa No. 8 recorded that, as the village was lampless, there is no manure/dust in the village; no planted trees in the fields of the tenants, occupancy tenants, tenants at will and dholidaran. However, they had the right to sell any trees standing in their fields. Para No. 1 in Dafa No. 9 recorded that there was no chowkidar/watchman as the village was lampless. Para No. 2 recorded that there were no kamin (agricultural associates, barber, carpenter, blacksmith, sweeper, washerman, etc.) in the village and work is taken from the kamin of Wazirabad and payments were made from that village.

79. Para No. 4 in Dafa No. 12 recorded that there is only one planted peepal tree standing on the banjar qadim shamilat deh in the village and it was owned by jumla malkan as per their share. It was also recorded that there was no other planted tree. Para No. 5 recorded that no owner was without possession in the village and in future, if any proprietor left the possession of the land without management, then his male successor or his wife were responsible for the management and payment of land revenue.

If there was no male relative or if the patti refused, the land would go to the owners of the village and they were responsible for the management and payment of land tax. The non-proprietor could take the land back, within limitation, after he made payment for the development of the land. Para No. 9 recorded that no non-proprietors inhabited the village as it was lampless and concluded with the statement that, on that day, viz., 29.01.1940, in the presence of owners, tenants and kamin, the Sharat-wajib-ul-arz was verified and no dispute was found.

The Jamabandis

80. Certain Jamabandis were produced before us which were not filed before the statutory authorities who had dealt with the matter earlier or even the High Court during the hearing of the writ petitions. However, as such documents are public records and nothing contrary has been shown to doubt their genuineness, we are inclined to accept and act upon them.

81. The Jamabandi for 1863 of Village Haiderpur, Gurgaon Tehsil and District, makes for an interesting reading. Therein, in column No. 3, titled 'name of owner with details', 'shamilat deh yani har sah patti' is mentioned but there are no names of pattis. The ghair majrua was shown as 524 bighas 16 biswas and the shamilat deh as 526 bighas 16 biswas.

82. The Jamabandi for 1877 in relation to khewat No.24, khatauni No. 62 reflects that column No. 3 therein, relating to the name of the lambardar is blank, as is column No.4, relating to the name of taraf and patti. Column No. 5, titled name of the owner with shares as per the Shajra nasb, bears the entry 'shamilat deh'. Column No.6, relating to name of the cultivator, shows the entry 'makbuja malkan'. A separate entry is made under the heading 'aijan' with khatauni No. 63, wherein in column 5 'aijan' is entered and in column 6, the entry is 'sare-aam' (open to public). The total extent is shown as 494 bighas 7 biswas, of which 201 bighas 6 biswas is shown as mumkin ain banjar qadim while 293 bighas 1 biswa is shown as ghair mumkin, whereunder further details were given - pahar 280 bighas 7 biswas, johad 4 bighas 2 biswas, nala 2 bighas 12 biswas, kheda (ruins) 2 bighas 19 biswas, and rasta 3 bighas 1 biswa.

83. The Jamabandi for 1885-86 shows that, in column No.3, titled 'name of taraf or patti and the name of the concerned lambardar, there is no entry, while in column No.4, titled 'name of the owner with details', the entry is shamilat deh. In column No.5, titled 'name of the cultivator', the entry is makbuja malkan. These entries were in relation to banjar qadim land (603 bighas 18 biswas) and ghair mumkin land (879 bighas 3 biswas). Thereunder, the entries were: pahar 441 bighas 1 biswa, johad 12 bighas 6

biswas, kheda (ruins) 8 bighas 17 biswas, nala 7 bighas 16 biswas and rasta 9 bighas 3 biswas.

84. The Jamabandi for 1906-07 states in the kaifiyat (remarks) column that a sehat indraaj (correction entry) was made. In column No.3, relating to the name of the owner, the rectified entry stated shamilat deh hasab rasad biswat, patti Chitru, Ramrattan and Medha (10 biswas), patti Sadasukh (5 biswas), patti Ahmed Ali Khan (5 biswas). In column No. 6, titled 'cultivator's name', makbuja malkan was entered. The registered inteqal (mutation) dated 19.09.1907 detailed the correction made and stated that, basing on the Patwari's report dated 08.03.1907, verification was done before the Naib Tehsildar, Consolidation Canal and Patram and Mahmood Ali Khan, Lambardar, and Sukhram and Ram Karan, etc., biswadar Mauza Haiderpur, who stated that the shamilat land is in the possession of biswadars.

Whereas, the consolidation was recorded in the Shajra nasb, Mutation No. 84 was recorded but the order had not been accepted. Therefore, after registering the mutation in the Register, a copy was pasted on the area chaupal. This was signed by the Patwari, Canal Lambardar, Patram Lambardar and Mehmood Ali Khan, Lambardar. Mutation No. 84 dated 19.05.1906 was presented for acceptance by allotting Khewat No. 21/26 to 43 to patti Chitru, Ramrattan and Medha; Khewat No. 27/51 to patti Sadasukh; and Khewat No. 36/94 to 106 was to be allotted to shamilat deh but the Inteqal Register reveals that the Revenue Officer scored off the entry pertaining to shamilat deh while maintaining the khewats allotted to the pattis. There was no mention of patti Ahmed Ali Khan.

The order dated 19.05.1906 was signed by the Assistant Collector, Second Grade, and it states that there was no dispute between the proprietors of the pattis Chitru and Sadasukh that the land would be partitioned in accordance with hasab rasad kabza or hasab hassis khewat (as per possession or shareholding) but it did not record any shareholding of any member of the patti or of any share in the shamilat deh of the village. It also reveals that the shamilat khewat was separated, that is, shamilat khewat No. 36/94 to 106 from the shamilat patti by scoring out the proposed entry.

Thus, Mutation No. 84 made no reference to the division of the shamilat deh amongst the pattis. However, it appears that a month later, a complaint was made that Mutation No. 84 had not been passed by the Revenue Officer with proper details and the Circle Revenue Officer wrongly ordered the implementation of Mutation No. 84 by restoring the scored off portion and made an entry of shamilat patti below shamilat deh. The first part of Mutation No. 84 was shown in the Jamabandi of 1906-07. Shareholdings were recorded of the three sets of pattis. However, shares in the shamilat deh were left to be demarcated in accordance with the biswadari of the malkan deh at the time of partition.

85. In the Jamabandi for 1939-40, in column No. 3, titled 'name of village owner (aala malik) with description', there was no entry. In column No. 4, titled 'names of taraf or patti' and the lambardar' there was no entry. In column No.5, titled 'name of owner (malik) and details (ahwal), the entry was: 'shamilat patti Chitru, Ramrattan and Medha hasab rasad kabza saal 1939-40'. The cultivator's column showed the entry 'makbuja malkan'.

86. The Jamabandi for 1941-42 of Village Haiderpur does not have any entry in column 3, which is titled 'name of taraf or patti, land revenue and name of lambardar', but column No. 4, titled 'name of owner with description' mentioned shamilat deh hasab rasad biswat, patti Chitru, Ramrattan and Medha (10 biswas), patti Sadasukh (5 biswas), patti Ahmed Ali Khan (5 biswas) within pattiyat, according to their shares. The entry in column 5, titled 'name of cultivator', is makbuja malkan. The total ghair mumkin was shown as 438 bighas 13 biswas, of which pahar was 268 bighas 9 biswas, johad was 2 bighas 2 biswas, nala was 165 bighas 17 biswas and rasta was 2 bighas 5 biswas. The area was 1059 bighas 10 biswas; of which ghair mumkin was 464 bighas 5 biswas, comprising 443 bighas 1 biswa - banjar qadim; 268 bighas 9 biswas - pahar, 2 bighas 2 biswas - johad, 2 bighas 5 biswas - rasta, 16 bighas 18 biswas - nala.

87. The Jamabandi for 1945-46 also showed the entry 'makbuja malkan' in the cultivator's column and the area was shown as 1059 bighas (662 acres), comprising majrua (cultivable) - 601 bighas 4 biswas (378 acres), ghair majrua (uncultivable) - 458 bighas 18 biswas (268 acres) with banjar qadim 17 bighas 10 biswas (11 acres) and ghair mumkin (441 bighas 8 biswa) comprising ghair mumkin nala -167 bighas 19 biswas (105 acres) ghair mumkin pahar 268 bighas 9 biswas (168 acres) chah pukhta (water body) 13 biswas (1 acre), johad (pond) 2 bighas 2 biswas (1 acre) and ghair mumkin rasta 2 bighas 5 biswas (1 acre).

Analysis

Whether Haiderpur was under a gram panchayat?

88. Though it was contended before us that there was no gram panchayat for Haiderpur, as it was an uninhabited village, we find that the documentary evidence clearly indicates to the contrary. Eons prior to enactment of the Punjab Gram Panchayat Act, 1952, gram panchayats were part and parcel of our rural tradition and culture. The law in that regard was codified even under British Rule. The Punjab Gram Panchayat Act, 1952, was preceded by the Punjab Village Panchayat Act, 1939. Section 4 therein stated that the Government may, by notification, declare any area situated within the limits of any one Tehsil to be a 'panchayat area' for the purposes of that Act and the Government may, by notification, alter the boundaries of any area so declared. Section 5(1) thereof stated that the Government may, by notification, establish a gram panchayat for any such panchayat area.

Though notifications issued under this Act have not been produced, the above provisions reflect that demarcation of a 'panchayat area' was not for a village or contiguous villages but for a 'Tehsil' and the entire area in such Tehsil could be notified as a 'panchayat area' for which a gram panchayat could be formed. As it is an admitted fact that Haiderpur and Wazirabad were adjacent to each other, there can be no doubt that they would have formed part of the same Tehsil. This is also clear from later notifications which show that they fell in Gurgaon Tehsil. That being so, once Wazirabad was notified as being within that 'panchayat area' and had a gram panchayat under the Punjab Village Panchayat Act, 1939, it inevitably follows that the said 'panchayat area' would have also included the contiguous be chiraag Haiderpur and that entire 'panchayat area' would have been under the control of the very same gram panchayat that was constituted for Wazirabad.

89. Thereafter, Section 4(1) of the Punjab Gram Panchayat Act, 1952, provided that the Government may, by notification, declare any village or group of contiguous villages, with a population of not less than 500, to constitute a 'sabha area'. This provision was amended, whereby the minimum required population for a 'sabha area' was decreased to 200. In exercise of power under Section 4(1) of the Punjab Gram Panchayat Act, 1952, the Governor of Haryana issued Notification No. DPH-EI-83/134 in supersession of earlier notifications, published in the Government Gazette dated 31.05.1983, and declared the villages or group of villages named therein to be 'sabha areas' and established a gram panchayat for each such 'sabha area' in column 5 of the schedule. Therein, Wazirabad and Haiderpur were clubbed together at Serial No. 71 and the named gram panchayat was the Gram Panchayat, Wazirabad.

90. On the same lines, Notification No.E-6-94/817 was issued under Rule 3 of the Haryana Panchayati Raj (Election) Rules, 1994, and published in the Gazette dated 25.08.1994, indicating the number of panchas for each 'sabha area' and gram panchayat. In Gurgaon block, Wazirabad and Haiderpur were clubbed together and the number of panchas was shown for Gram Panchayat, Wazirabad. These documents show that Haiderpur was always under the control of a notified gram panchayat.

The locus standi of the Municipal Corporation, Gurgaon

91. Further, we find the argument that the Municipal Corporation, Gurgaon, had no locus to step into the shoes of the Gram Panchayat, Wazirabad, to be without merit. Section 161 of the Haryana Municipal Corporation Act, 1994, deals with property vesting in a corporation. It states that all property of the nature specified in that provision and situated within the municipal area shall vest in and under the control of the municipal corporation concerned along with all other property which so vests, by virtue of the said Act or any other law for the time being in force. The properties detailed in Section 161 include, amongst others, shamilat deh under clause (g).

92. Further, Notification No. 18/1/95/20083-C1 dated 02.06.2008 was issued in exercise of power under Section 3(2) of the Haryana Municipal Corporation Act, 1994, whereby the Governor of Haryana declared the Municipal Council, Gurgaon, comprising the area specified in the schedule, to be a municipal corporation, by name, Municipal Corporation, Gurgaon. The schedule detailed the boundaries shown under Points 'A' to 'F' from North-East, South and South-East, West and North-West. It is not in dispute that Haiderpur falls within these boundaries. In consequence, the locus of the Municipal Corporation, Gurgaon, stands settled.

Consideration of facts and law

93. The system of having a 'village commons' or common property as a resource, collectively managed and used by the entire village community, was widely prevalent in our country since ages past. Such 'village commons' went by different names in different regions, but the core concept was

the same. In Jagpal Singh and others vs. State of Punjab and others33, this Court observed thus in the context of community lands:

'Since time immemorial, there have been common lands among the village communities of India, variously called Gram Sabha land, Gram Panchayat land (in many North Indian states), shamilat deh (in Punjab), mandaveli and poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of the user. These public utility lands in the villages were, for centuries, used for the common benefit of the residents of the village. These lands stood vested through local laws in the State, which handed over their management to Gram Sabhas/Gram Panchayats. They were generally treated as inalienable in order that their status as community land be preserved.'

94. As noted by this Court, shamilat deh was the name given to common lands in the Punjab of yesteryears. The original settlers in the village, the malkan deh, constituted the proprietary body, who owned the shamilat deh, as opposed to malkan makbuza khurd, i.e., those who purchased the land thereafter. Shamilat deh is, thus, the land collectively owned by village owners, also called 'Aala Maliks'. It was reserved for common use of the villagers and consisted of grazing grounds, roads, rivers, ponds, cremation grounds, hills, etc. 'Shamilat', as per the Law Lexicon of P. Ramanatha Aiyar, means comprehensive or coparcenary concern; lands which have never been divided, but are part and parcel of an estate held in common or in partnership by the whole proprietary body of a village; the lands of such village, which are not let out or severally appropriated, but which are cultivated in common, and of which, the produce is divided amongst the proprietors according to recorded portions.

In Sarjeet Singh vs. Hari Singh34, 'shamilat' was defined to connote commonality of possession. The proprietary body, viz., the original settlers of the village, were shareholders in the shamilat deh and could sell, partition, mortgage and lease out such land as per the customs recorded in the Wajib-ul-arz. On the other hand, shamilat patti was the land set apart for members of a patti, based on religion, community, sect, family, etc., and used by them to the exclusion of all others. But for the members of that patti, no one else was entitled to use that land. Shamilat patti was, thus, land left to a particular community, sect or group of people for their use, distinct and separate from shamilat deh, which was for the use of all in the village. Shamilat deh and shamilat patti were, therefore, mutually exclusive.

95. Details of both categories of land, i.e., shamilat deh and shamilat patti, were entered in the revenue records, including the Jamabandis prepared under Section 31 of the Punjab Land Revenue Act, 1887, and a presumption of truth attached to them. The words hasab rasad khewat or hasab rasad paimana malkiyat or hasab rasad biswat and other such expressions denoted shareholding of the malkan deh, so as to determine their shares in the event of partition of the shamilat deh. The expression makbuja malkan denoted possession in common of the proprietary body, with no particular proprietor being in possession of a portion of land, much less, in cultivating possession of an identified extent.

96. This was the situation prevailing prior to promulgation of the 1953 Act and the 1954 Act. Upon enactment of these two Acts, the lands classified as shamilat deh vested in gram panchayats without exception, thereby putting an end to ownership of the proprietors in such lands. Therefore, the old expressions lost their significance as all proprietary rights in the shamilat deh stood wiped out. In this context, we may note that, by the impugned judgment, the High Court set aside the mutation in favour of the Gram Panchayat, Wazirabad, effected on 13.09.1955, on the ground that it could not have been done without notice to the proprietors. This reasoning is clearly contrary to the inevitable fallout of the two Acts, which decimated all existing rights of proprietors and directed vesting of shamilat deh in gram panchayats.

Thus, there was no question of notice or hearing being given to any proprietor in that regard, as the mandate of those Acts was absolute and permitted no exemption. Based on that statutory fiat and acting on the then Punjab Government's letter dated 10.03.1954, the mutation was effected in favour of the gram panchayat. Further, the letter dated 10.03.1954 stated the obvious, i.e., the statutory vesting in the gram panchayat, and by itself was of little consequence. It was only after the repeal of the 1953 Act and the 1954 Act that rights of proprietors were restored to an extent. The Act of 1961 repealed the Acts but secured their status as shamilat law, under Section 2(h) thereof.

Case No. 18/DRO

97. Coming to the suit in Case No. 18/DRO filed before the Assistant Collector, First Grade, Gurgaon, by the four plaintiffs, viz., Ganpat, Maher Chand, Ram Pat (or Ram Phal) and Chattar, this suit was filed

under Section 13A of the Act of 1961 and Order I Rule 8 CPC. It was filed within the extended limitation period of five years. However, the Assistant Collector necessarily had to satisfy himself as to the title and rights claimed by the plaintiffs and others and, in that regard, perforce he had to undertake a deeper study as to how they claimed title under the named pattis. However, no such examination was undertaken at any point of time. The indubitable fact apparent from the record is that the right of these four persons to maintain this suit in a representative capacity either on behalf of the named pattis or those purportedly claiming under them was never verified or tested. Neither the statutory authorities under the Act of 1961 nor the Division Bench of the High Court undertook such an exercise.

98. The plaintiffs stated that they were representing as many as 524 claimants, who traced their rights to the named pattis, viz., Chitru, Ramratan and Medha; and patti Sadasukh. The name of patti Ahmed Ali Khan did not even find mention by them in the first instance, as is evident from the first order dated 28.07.1990 passed by the Assistant Collector, Gurgaon. However, neither the Shajra nasb nor any other document was produced in proof of the genealogy/lineage of those pattis, whereby these 524 persons came into the picture.

Though the Division Bench noted that sale deeds had been filed before it, they related to the petitioners before the High Court, other than Chattar, who claimed through sales made in their favour. However, no endeavour was ever made to examine the link between the named pattis and those who raised a claim under them, including Chattar. There is no explanation forthcoming even at this stage as to how Chattar, one of the original plaintiffs in the suit, laid a claim to the land and through which patti.

Parties before the Court now

99. It has also come on record that an interim order was passed by the Commissioner, Gurgaon, on 02.04.1998 in the revisions filed before him, whereby operation of the earlier orders passed by the statutory authorities was stayed. However, 272 sale deeds were admittedly executed and registered between 23.03.1998 and 06.04.1998 and mutation was carried out on the strength thereof between 06.04.1998 and 10.04.1998, during the subsistence of the stay order. Of these, 39 sale deeds were in favour of Ashvarya Estate Private Limited; 52 sale deeds were in favour of Lonicera Estate Private Limited; 35 sale deeds were in favour of Malm Estate Private Limited; 58 sale deeds were in favour of Millet Estate Private Limited; 46 sale deeds were in favour of Mohiniya Estate Private Limited; and 41 sale deeds were in favour of Ranbir Singh.

100. Details of the sale deeds executed in favour of various parties have also been furnished. Names of the sellers therein are many - Ranbir Singh, Kundan, Roshni, Jiwram, Dharmpal, Indraj, Rampal, Totaram, Gabru, Tika, Meharchand, Shanti, Bhagwana, Jagmal Singh, Girwar, etc. Again, there is no indication as to how these vendors claimed title under the named pattis. Ashvarya Estate Private Limited filed copies of sale deeds executed and registered in its favour between the dates 23.03.1998 and 01.04.1998, i.e., prior to passing of the stay order dated 02.04.1998. However, the company conceded that it also purchased some more lands under the sale deeds executed between 02.04.1998 and 07.04.1998. It claims to have done so in purported ignorance of the stay order dated 02.04.1998 passed by the Commissioner, Gurgaon. In any event, there is no clarity as to how any of its vendors traced their title to one or the other of the pattis.

The intervenors and the intervenors-in-waiting

101. Shilpi Modes Pvt. Ltd. and Dr. Arvind Agarwal sought to intervene in this matter and were allowed to do so, by order dated 03.02.2021. They claim to have purchased/agreed to purchase portions of the subject land between 11.12.1990 and 03.01.1991. They asserted that they purchased about 20 acres through one Naresh Kumar and another 6.53 acres through other registered sale deeds. Their further case was that they had entered into 60 agreements to purchase 182 bighas 6 biswas (about 114 acres). In all, they claim to have rights over 140 acres. While so, Vimla Devi and her daughters, Alpana and Shiksha, filed an application seeking to be impleaded.

They claim to be legal heirs of late Naresh Kumar, who was stated to be the biswadar of khewat No.138, measuring 20 acres, in Haiderpur, which he agreed to sell to Dr. Arvind Agarwal. They stated that Dr. Arvind Agarwal had no title as he had not yet purchased the land and sought to contest his claim. One Ramprakash and his sister, Maya, claiming to be legal heirs of late Sh. Kishan Lal, also seek intervention. Their case was that late Sh. Kishan Lal was the owner of khewat No.77, admeasuring 1482 square yards, in Haiderpur. They, however, did not produce any proof of such holding. Sh. Kishan

Lal expired only on 29.11.1995 but he did not take any interest in this litigation during his lifetime. Pending intervention applications do not warrant consideration in our opinion.

The 25% issue

102. The only point that weighed with the Assistant Collector, Gurgaon, in the first instance, as is clear from his order dated 28.07.1990, was that more than 25% of the entire land in the village was shown as shamilat deh, which was impermissible as per the proviso to Section 2(g)(5) of the Act of 1961. However, this proviso was omitted by Haryana Act 9 of 1992 and, as was held in Attar Singh (supra), such omission had the effect of deleting the said proviso from the statute book for all practical purposes, as there was no savings clause in Act 9 of 1992. In consequence, this aspect no longer figures for consideration.

Payment of land revenue

103. Further, the contention that the pattis directly paid land revenue to the Government for the subject land and the same indicated their proprietary title and possession, notwithstanding the description of the land, does not hold water. The Sharat-wajib-ul-arz recorded that the rent received from various sources was used to pay Government land revenue and that no other income was received from the pattis. The bald claim, now made, that the pattis independently paid land revenue to the Government for the subject land is, therefore, not borne out.

The core issue

104. As noted by Sir Rattigan, mixed forms of tenures also co-existed, i.e., both shamilat deh and shamilat patti existed in the same village. Part of the village land could be set apart for pattis while part of it could be reserved for use of the entire village community. Further, as noted by him, lands classified as shamilat deh were not accessories to khewat holdings and even if the Sharat-wajib-ul-arz recorded the proprietors' right to partition the shamilat deh in accordance with their shares, until such partition took place, they had no identifiable, determined share therein.

105. Presently, the Sharat-wajib-ul-arz of 1939-1940 of Haiderpur shows that three sets of pattis held lands in Haiderpur independently and they were also proprietors of the shamilat deh in that village. Unfortunately, the Misl Haqiyat of 1939-40, referred to by the Commissioner, Gurgaon Division, in his order dated 05.08.2005, has not been produced before us but the contents thereof, as set out in the said order, have not been controverted or denied. Therein, the pattidari holding of Chitru, Ramrattan and Medha was shown as 102 bighas 13 biswas; while patti Sadasukh held 141 bighas 11 biswas and patti Ahmed Ali Khan held 177 bighas 13 biswas. These holdings were distinct from 436 bighas 18 biswas, separately shown as part of the shamilat deh of 444 bighas 4 biswas.

106. The Division Bench as well as the authorities failed to attach due importance to the Sharat-wajib-ul-arz, which recorded in clear terms that, in Haiderpur, the total area of the shamilat deh was 444 bighas 4 biswas, of which 436 bighas 18 biswas was ghair mumkin pahar, johar, nala, etc., in the possession of makbuja malkan. Once this extent of 436 bighas 18 biswas was not shown to be in actual and separate cultivating possession of the proprietors individually, the land invariably constituted shamilat deh and could not be treated as allotted to anyone in particular.

As noted by Dr. Minoti Chakravarty Kaul, shamilat deh is non-exclusive property till partitioned and no proprietor can acquire a permanent right to occupy or claim any portion thereof till such partition. Reference has been made to Sir Rattigan's Digest of Customary Law, Fifth Edition (1896), with regard to partition of shamilat deh, wherein it was stated that, by private arrangement or by application to the revenue authorities or by a decree of a Civil Court, such partition can take place. However, no proof of any such steps being taken was ever produced.

Though the Sharat-Wajib-ul-arz also spoke of a possible partition of the shamilat deh amongst the proprietors, there is no evidence of any such partition having taken place before 26.01.1950, whereby the pattis, Chitru, Ramrattan and Medha (10 biswas share); Sadasukh (5 biswas share); and Ahmed Ali Khan (5 biswas share) separately apportioned and settled their shares in the shamilat deh. Further, if such partition did take place, it entailed a further partition amongst Chitru, Ramrattan and Medha. The plaintiffs in the suit did not even allege to the effect that any of these events had taken place.

107. Surprisingly, the claim put forth by the plaintiffs was that the land in dispute was not shamilat deh but was in the ownership of the pattis. Their specific case was that the land had never been part of the shamilat deh as it was under the hasab rasad ownership of the pattis and was in their cultivating

possession. In effect, as they said that the land was never part of the shamilat deh, their claim seems to have been that the land was shamilat patti and not shamilat deh.

It is on the strength of this claim that they argued that there was no evidence of the land having been used for common purposes as per the revenue records. However, that aspect would arise for consideration only if the land falls under Sections 2(g)(3) or 2(g)(v) of the Act of 1961. Thereunder, when a land is described in the revenue records as shamilat taraf, shamilat patti, shamilat panna or shamilat thola, the question of seeing whether it was used for the benefit of the village community or a part thereof or for common purposes of the village would arise [as per the decision of this Court in Patram (supra)]. Depending on the result of such inquiry, either Section 2(g)(3) or Section 2(g)(v) of the Act of 1961 would have application.

108. However, in the case on hand, the revenue records never showed the land in question, viz., the extent of 436 bighas 18 biswas, as shamilat patti. On the other hand, the Sharat-wajib-ul-arz demonstrates that the said land was shown as shamilat deh. The Jamabandis, referred to hereinabove, also did not record 'shamilat patti' but mentioned 'shamilat deh'. It has also been contended before us that description of the land as banjar qadim, etc., would not mean that the land is incapable of private ownership and assuming so would be contrary to Notification No. 6073-R dated 22.12.1929, issued under Rule 2(ii) of the Land Revenue Assessment Rules, 1929, framed under Section 60 of the Punjab Land Revenue Act, 1887, which expressly recognized banjar jadid, bajar qadim and ghair mumkin lands as classes of uncultivated agricultural land. It was pointed out that the High Court relied upon this Notification.

It was also pointed out that this Court recognized this principle in Gaon Sabha and another vs. Nathi and others35, wherein the finding of the High Court that ghair mumkin pahar or banjar qadim or banjar jadid constituted agricultural land, under the Notification dated 23.12.1929, was upheld. There can be no dispute with the aforestated proposition but the decisive factor is as to where such ghair mumkin pahar or banjar qadim or banjar jadid are situated. Once it is established that such lands were part of the shamilat deh in which the proprietors had a partitionable interest, their rights therein would crystallize only after a partition and not prior thereto.

109. Further, when 'shamilat deh' was mentioned in the revenue records, Section 2(g)(1) of the Act of 1961 had application and not the exceptions carved out thereafter. No explanation is offered as to why shamilat deh was entered in the ownership column, if the land was shamilat patti and as to why the column pertaining to patti, taraf, etc., was left blank. The earlier Jamabandis recorded the land as shamilat deh and made no mention of any pattis. A correction in that regard was made only in the year 1906-07 but the Jamabandi for that year also recorded the words shamilat deh hasab rasad biswat and, thereunder, the names of pattis and their shares were noted.

The value to be attached to this correction is, perhaps, beyond the scope of deeper examination at this late point of time, but even if we accept that the named pattis were the proprietors of the shamilat deh in the village, the entries all through in the column pertaining to cultivation effectively negate the possibility of their claiming individual cultivating possession. The entries therein always read as 'makbuja malkan'. As has been settled by the well-researched commentaries on the subject and the decisions of the Punjab and Haryana High Court, makbuja malkan reflects joint possession. The High Court's consistent view on this point puts it beyond doubt that, unless there is a partition effected amongst the proprietors, as per their shares, in relation to the shamilat deh, whereby they could assert actual individual cultivating possession of such shares, they cannot claim that such land stood excluded under Section 2(g) of the Act of 1961.

110. Had there been such a partition in 1906-07 in relation to the shamilat deh of Haiderpur, the Jamabandis thereafter would not have recorded the entry 'makbuja malkan' in the cultivator's column, evidencing continuing joint possession. No separate khewat numbers with the names of each patti and lambardar were shown in those Jamabandis. This is the essential requirement of law, as is clear from the texts and the case law. The very fact that reliance is still placed on a jamabandi, wherein the entry showed the land as shamilat deh hasab rasad biswat, followed by the names of the pattis, negates the claim that this land was shamilat patti and not shamilat deh.

Once the land is taken to be shamilat deh, in which the village proprietors had a right to seek partition, it is not Section 2(g)(3) or Section 2(g)(v) of the Act of 1961 that would have application, but Section 2(g)(iii) or Section 2(g)(viii) of the Act of 1961. In situations coming under these provisions, it is necessary for a claimant seeking exclusion of land from the classification of shamilat deh to prove that such land was partitioned before 26.01.1950 and was brought into the cultivating possession of individual co-sharers as per such partition.

111. We, therefore, find that the plaintiffs in Case No. 18/DRO failed to make out any tenable grounds to interfere with the mutation effected on 13.09.1955 in favour of the Gram Panchayat, Wazirabad. The facts demonstrate that the subject land was not shamilat patti but constituted part of the shamilat deh of Haiderpur and though the proprietors, viz., patti Chitru, Ramratan and Medha; patti Sadasukh; and patti Ahmed Ali Khan, had the right to seek partition thereof in accordance with their shares, no such partition took place prior to 26.01.1950 and, in consequence, the shamilat deh of 436 Bighas 18 Biswas continued as such, attracting Section 2(g)(1) of the Act of 1961, and vested in the Gram Panchayat, Wazirabad. It was not necessary in such a situation to even prove that the land in question was used, as per the revenue records, for the benefit of the village community or a part thereof or for common purposes of the village.

112. The impugned common judgment dated 24.08.2007 passed by the Punjab and Haryana High Court is, therefore, unsustainable on facts and in law. The appeals are, accordingly, allowed setting aside the same and confirming the mutation effected on 13.09.1955 in favour of the Gram Panchayat, Wazirabad, which shall enure to the benefit of its successorin- interest, the Municipal Corporation, Gurgaon (now, Gurugram).

113. The applications filed for placing on record additional documents are allowed. All other pending applications, including those filed for intervention/impleadment, shall stand dismissed. Parties shall bear their own costs.

..................J. [S Anjay Kumar]

..................J. [K. Vinod Chandran]

New Delhi;

August 03, 2026.

1 'Rattigan's Customary Law', Sixteenth Edition (2007)

2 AIR 1928 Lahore 922

3 'Two Centuries on the Commons - the Punjab'

4 AIR 1923 PC 70 = ILR (1923) 45 All 413 (PC)

5 For short, 'the 1953 Act'

6 For short, 'the 1954 Act'

7 For short, 'the 1948 Act'

8 1977 PLJ 276

9 AIR 1974 P&H 283

10 2006 (7) RCR (Civil) 42

11 2007 (57) RCR (Civil) 9

12 1971 PLJ 487

13 1976 PLJ 628

14 2006 (6) RCR (C) 968

15 AIR 1985 SC 1394 = (1985) 3 SCC 661

16 2004 (4) RCR (Civil) 210

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