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PATRAM

v.

GRAM PANCHAYAT KATWAR & ORS.

(Civil Appeal No. 6319 of 2009)

B

MARCH 04, 2020

[L. NAGESWARA RAO AND DEEPAK GUPTA, JJ.]

C *Punjab Village Common Lands (Regulation) Act, 1961 – ss.2(g)(3) and 2(g)(5)(v) – Whether the word ‘shamilat’ has to be read with taraf, patti, pannas, and tholas or only with taraf in sub-clause (v) of clause (5) of s.2(g) – Held: The definition of ‘shamilat deh’ in s.2(g) of the Act includes all lands described as ‘shamilat deh’ or charand excluding abadi land – In clause (3) of s.2(g), there is a comma after the word ‘shamilat’ whereas such comma is missing in sub-clause (v) of clause (5) of s.2(g) – There seems to be*

D *an error rather than a deliberate non-use of the comma – This is because clause (3) provides that land described as ‘shamilat’, ‘tarafs’, ‘patties’ ‘pannas’ and ‘tholas’, are to be treated as ‘shamilat deh’ land only if they are used for the common purpose of the village – This clearly implies that if the land described as ‘shamilat’, ‘taraf’,*

E *‘patti’, ‘panna’ and ‘thola’ were not being used for the common purpose, it would not fall within the meaning of ‘shamilat deh’ – Clause (v) is the negative portion of the definition which provides that certain lands will not be treated as ‘shamilat deh’ and these are those land which have been described as ‘shamilat’, ‘taraf’, ‘patti’, ‘panna’ and ‘thola’ in the revenue record and not used according*

F *to the revenue record for the benefit of the village community or a part thereof or for the common purpose of the village – The absence of the comma after the word ‘shamilat’ is not of any great significance – In fact, it appears that the comma has been left out by mistake and in fact a comma should be read after ‘shamilat’ and before*

G *‘taraf’ in the latter part of the section also – The word ‘shamilat’ has to be read with all four- ‘taraf’, ‘patti’, ‘panna’ and ‘thola’ – A land can be ‘shamilat deh’ only if it is ‘shamilat taraf’, ‘shamilat patti’, ‘shamilat panna’, or ‘shamilat thola’ – In case the word shamilat is missing from any of these four terms, then the land cannot be said to be belonging to a group of people and could never become*

H *‘shamilat deh’ land.*

Punjab Village Common Lands (Regulation) Act, 1961 – s.2(g) – Whether land in occupation of appellant is ‘shamilat deh’ land and vests in the village common body – Held: In the revenue records, the land was shown as ‘Shamlat Patti Dhera & Khubi’ – ‘Dhera & Khubi’ were the ancestors of the appellant – The possession is shown as that of proprietors/self-cultivators and an entry was made in favour of the Panchayat Deh in 1987-1988 – The land was always shown to be ‘Shamlat Patti Dhera & Khubi’ and in the cultivation of the appellant or his ancestors – Moreover, the land was never shown to be used for the benefit of the entire village community or even for a part of the community – The land cannot be described as ‘Shamilat Deh’ and, therefore, would not vest in the village proprietary body – The name of the appellant be entered in the column of ownership with the entry ‘shamlat patti’.

Punjab Village Common Lands (Regulation) Act, 1961 – ‘shamilat deh’ land – Meaning of – Held: The word ‘shamilat’ basically means ‘held in joint possession and undivided lands which are part and parcel of a village’ – When these lands are held commonly by a village proprietary body, they are described as ‘shamilat deh’ land.

Punjab Village Common Lands (Regulation) Act, 1961 – ‘taraf’, ‘patti’, ‘panna’ and ‘thola’ – Meaning of – Held: ‘Taraf’, ‘patti’, ‘panna’ and ‘thola’ are different terms but have a common strain or similarity running through them – These descriptions are of land of a group of villagers based on clan, caste, sect, area, etc. – In British India, the village was divided into different pattis/sections based upon caste, religion, occupation, etc. of the persons residing in the village – Patti is described as division of land into separate portions or strips in a village – These locations are known as pattis – Patti is basically, therefore, a small division of the village – The terms ‘taraf’, ‘panna’ and ‘thola’ may be different but are akin to patti and also deal with community of villagers residing separately – Therefore, they have virtually the same meaning – It is also apparent that a patti can normally be created out of the shamilat land only when a group of people enjoy some portion of the land out of the bigger common shareholding that is a patti.

A **Allowing the appeal, the Court**

HELD: 1. The word ‘shamilat’ basically means ‘held in joint possession and undivided lands which are part and parcel of a village’. When these lands are held commonly by a village proprietary body, they are described as ‘shamilat deh’ land. B ‘Taraf’, ‘patti’, ‘panna’ and ‘thola’ are different terms but have a common strain or similarity running through them. These descriptions are of land of a group of villagers based on clan, caste, sect, area, etc. In British India, the village was divided into different pattis/sections based upon caste, religion, C occupation, etc. of the persons residing in the village. Patti is described as division of land into separate portions or strips in a village. These locations are known as pattis. Patti is basically, therefore, a small division of the village. The terms ‘taraf’, ‘panna’ and ‘thola’ may be different but are akin to patti and also deal D with community of villagers residing separately. Therefore, they have virtually the same meaning. [Paras 8, 9][1203-G-H; 1204-A-C]

2. If it is accepted that there is virtually no difference between ‘taraf’, ‘patti’, ‘panna’ and ‘thola’ then the task of interpretation becomes much easier. It is also apparent that a E patti can normally be created out of the shamilat land only when a group of people enjoy some portion of the land out of the bigger common shareholding that is a patti. The definition of ‘shamilat deh’ in Section 2(g) of the Act includes all lands described as ‘shamilat deh’ or charand excluding abadi land. In clause (3) of Section 2(g) there is a comma after the word ‘shamilat’ whereas F such comma is missing in sub-clause (v) of clause (5) of Section 2(g). There seems to be an error rather than a deliberate non-use of the comma. This is because because clause (3) provides that land described as ‘shamilat’, ‘tarafs’, ‘patties’ ‘pannas’ and ‘tholas’, are to be treated as ‘shamilat deh’ land only if they are G used for the common purpose of the village. This clearly implies that if the land described as ‘shamilat’, ‘taraf’, ‘patti’, ‘panna’ and ‘thola’ were not being used for the common purpose, it would not fall within the meaning of ‘shamilat deh’. [Para 10][1204-C-F]

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3. Clause (v) is the negative portion of the definition which provides that certain lands will not be treated as 'shamilat deh' and these are those land which have described as 'shamilat', 'taraf', 'patti', 'panna' and 'thola' in the revenue record and not used according to the revenue record for the benefit of the village community or a part thereof or for the common purpose of the village. The absence of the comma after the word 'shamilat' is not of any great significance. In fact, it appears that the comma has been left out by mistake. In various publications, there is a comma between the words 'shamilat' and 'taraf'. However, there is no comma in the official publication in the Gazette notification. It appears that the absence of a comma is a mistake and in fact a comma should be read after 'shamilat' and before 'taraf' in the latter part of the section also. The word 'shamilat' has to be read with all four- 'taraf', 'patti', 'panna' and 'thola'. A land can be 'shamilat deh' only if it is 'shamilat taraf', 'shamilat patti', 'shamilat panna', or 'shamilat thola'. In case the word shamilat is missing from any of these four terms, then the land cannot be said to be belonging to a group of people and could never become 'shamilat deh' land. [Para 11][1204-G-H; 1205-A-B]

4. The purpose of the section which defines 'shamilat deh' is that the land described as 'shamilat', 'taraf', 'patti', 'panna' and 'thola' not used for the benefit of the village community will not be treated as 'shamilat deh'. Clause (3) of Section 2(g) is identical. The purpose is that the land which is described in revenue records as 'shamilat', 'taraf', 'patti', 'panna' and 'thola' and used for the benefit of the entire village community or a part thereof only would vest in the village proprietary body. The words 'part thereof' have been used with a specific purpose in the background of the meaning of patti. Even if the land is being utilised for the common purpose of the inhabitants of that 'taraf', 'patti', 'panna' and 'thola', it would be 'shamilat deh' even if it is not used for the benefit of the entire village. However, if the land is not used either for the benefit of the entire village or for the part of the village community which comprises the patti then the land, cannot be said to be 'shamilat deh' land within the meaning of Section 2(g). From the revenue records produced, the land has been shown as 'Shamlat Patti Dhera & Khubi'. 'Dhera & Khubi' are the ancestors of the appellant(s). The possession is

A shown as that of proprietors/self-cultivators and an entry was made in favour of the Panchayat Deh in 1987-1988. The land was always shown to be 'Shamlat Patti Dhera & Khubi' and in the cultivation of the appellant(s) or his ancestors. Moreover, the land was never shown to be used for the benefit of the entire village community or even for a part of the community. The land cannot be described as 'Shamlat Deh' and, therefore, would not vest in the village proprietary body. The name of the appellant(s) should be entered in the column of ownership with the entry 'shamlat patti'. [Paras 12-14] [1205-C-H; 1206-A]

C CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6319 of 2009.

From the Judgment and Order dated 03.07.2008 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 16757 of 2007.

D Manoj Swarup, Sr. Adv., Rishi Malhotra, Neel Mani Pant, Utkarsh, Ms. Vidisha Swarup, Prem Malhotra, Advs. for the Appellant.

Anurag Tandon, Ms. Kshitiz Rao, Sanjay Jain, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **DEEPAK GUPTA, J.**

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

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

H 3. In India, land is said to be the true basis for the unity in a village, supplying the ultimate bond between the residents of the village who collectively are known as the village community. When settlers went to

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

“....Lands so reserved are jealously guarded as the common property of the original body of settlers who founded the village or of their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation are recognized as having a share in these reserved plots. Even in villages which have adopted separate ownership as to the cultivated areas, some such plots are usually reserved as village common, and in pattidari village. It is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each *patti*, and other portions for common village purposes, the former is designated *shamilat-patti* and the latter *shamilat-deh*.”

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

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

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

xxx

xxx

xxx

(g) “*shamilatdeh*” includes-

- A (1) land described in the revenue records as Shamilat deh or Charand excluding abadi deh;
- (2) shamilat tikkas;
- (3) land described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;
- B (4) xxxx
- (4a) xxxx
- C (5) xxxx

but does not include land which-

- (i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;
- xxx xxx xxx
- (v) is described in the revenue records as shamilat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;
- xxx xxx xxx
- E

- F 6. The case of the appellant(s) is that for more than a century he and his ancestors held a patti which has never been used for the common purpose of the village and has been cultivated by them. This land has never been used for common village purpose and in terms of Section 2(g) of the Act cannot be included in the definition of '*shamilat deh*'.
G The land continues to be shown in the possession of the appellant(s) or his ancestors in the *Jamabandis* from the year 1915-1916 till date. The earlier entries in the column of ownership which read as '*Shamlat Patti Dhera & Khubi*' were replaced by the entry '*Panchayat Deh*'. Aggrieved, the appellant(s) approached the Collector, Bhiwani challenging the change of entry in the column of ownership. The appellant(s) lost
H before the Collector, Bhiwani as well as the Commissioner, Hisar Division.

He then filed a writ petition in the High Court of Punjab and Haryana, which was rejected with the following reasoning: A

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

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

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

9. ‘*Taraf*’, ‘*patti*’, ‘*panna*’ and ‘*thola*’ are different terms but have a common strain or similarity running through them. These descriptions are of land of a group of villagers based on clan, caste, sect, area, etc. In British India, the village was divided into different *pattis*/sections based upon caste, religion, occupation, etc. of the persons residing H

A in the village. Patti is described as division of land into separate portions or strips in a village. These locations are known as *pattis*. After independence since the caste system has been constitutionally abolished, these classifications refer to different hamlets/clusters where villagers reside in groups irrespective of their caste. This may be true in law but not in fact, because unfortunately even today, in most villages, ghettoization continues and the people of different communities, castes and religions live in their earmarked areas or *pattis*. Patti is basically, therefore, a small division of the village. The terms '*taraf*', '*panna*' and '*thola*' may be different but are akin to *patti* and also deal with community of villagers residing separately. Therefore, they have virtually the same meaning.

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

G 11. Clause (v) is the negative portion of the definition which provides that certain lands will not be treated as '*shamilatdeh*' and these are those land which have described as '*shamilat*', '*taraf*', '*patti*', '*panna*' and '*thola*' in the revenue record and not used according to the revenue record for the benefit of the village community or a part thereof or for the common purpose of the village. In our view, the absence of the comma after the word '*shamilat*' is not of any great significance. In fact, it appears that the comma has been left out by mistake. We may also note that we find that in various publications, there is a comma between the words '*shamilat*' and '*taraf*'. However, there is no comma

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in the official publication in the Gazette notification. Keeping in view, what we have held above, it appears to us that the absence of a comma is a mistake and in fact according to us, a comma should be read after '*shamilat*' and before '*taraf*' in the latter part of the section also. The word '*shamilat*' has to be read with all four- '*taraf*', '*patti*', '*panna*' and '*thola*'. A land can be '*shamilat deh*' only if it is '*shamilat taraf*', '*shamilat patti*', '*shamilat panna*', or '*shamilat thola*'. In case the word *shamilat* is missing from any of these four terms, then the land cannot be said to be belonging to a group of people and could never become '*shamilat deh*' land.

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

13. From the revenue records produced, we find that the land has been shown as '*Shamlat Patti Dhera & Khubi*'. '*Dhera & Khubi*' are the ancestors of the appellant(s). The possession is shown as that of proprietors/self-cultivators and an entry was made in favour of the *Panchayat Deh* in 1987-1988. The land was always shown to be '*Shamlat Patti Dhera & Khubi*' and in the cultivation of the appellant(s) or his ancestors. Moreover, the land was never shown to be used for the benefit of the entire village community or even for a part of the community.

14. In view of the above, we have no hesitation in holding that the land cannot be described as '*Shamilat Deh*' and, therefore, would not vest in the village proprietary body. Accordingly, we allow the appeal

A and set aside the judgment of the High Court dated 03.07.2008 and the orders of all the authorities below. The name of the appellant(s) be entered in the column of ownership with the entry '*shamlat patti*'.

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

Devika Gujral

Appeal allowed