

Before Jasbir Singh and Augustine George Masih, JJ.

M/S BHANOT LEASING LTD. AND OTHERS,—Petitioners

versus

**THE COMMISSIONER, GURGAON DIVISION
GURGAON AND OTHERS,—Respondents**

C.W.P. No. 11821 of 1992

6th October, 2010

Constitution of India, 1950—Art. 226—Punjab Village Common Lands (Regulation) Act, 1961—Ss. 2(g) and 13-A—Land recorded as shamlat deh in revenue record showing cultivating possession of owners—Land owners filing suit u/s 13-A—Assistant Collector decreeing suit in favour of land owners—Collector dismissing appeal of Gram Panchayat—Petitioners purchasing land—Sanction of mutation in favour of petitioners—Gram Panchayat filing revision petition—Commissioner after hearing parties including petitioners setting aside orders passed by Assistant Collector—Challenge thereto—Proviso placed after sub Cl. (5) of S. 2(g) provides that land not more than 25% of total area of village can vest in Gram Panchayat as Shamlat Deh—Whether proviso placed after Sub Cl. (5) applicable to all Sub Cls. (1) to (5)—Held, no—Sub Cls. (1) to (5) of S. 2(g) are independent of each other—Amendment in 1961 Act deleting proviso to sub Cl. (5) during pendency of revisional proceedings—Whether such amendment can be taken into consideration—Held, yes—Revision petition is a continuation of original suit—Proprietors or subsequent purchasers held not entitled to any relief as their claim based only on proviso to Sub Cl. (5).

Held, that a perusal of Section 2(g) of the 1961 Act at the relevant time i.e. when the original land owners filed suit under Section 13-A, would show that the definition of Shamlat Deh starts with the inclusion of the lands described in the revenue records as provided in sub-clauses (1) to (5). After sub-clause (5), proviso finds placed. After the proviso, starts the exclusion of lands which are not included in the Shamlat Deh. Section 2(g) defines

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Shamlat Deh to be inclusive of different categories as classified in sub-clauses (1) to (5) Thereafter, proviso is added to sub-clause (5) to the effect that at least 25% of the total area of the village does not exist in the village. If this proviso would have been applicable to all the sub-clauses, it would have been included in the exclusion clauses which follow the proviso in the Section. A perusal of Section 2(b) of the 1991 Amendment Act leaves no manner of doubt that the proviso incorporated in the 1961 Act was to sub-clause (5) of Section 2(g) only.

(Paras 19 and 21)

Further held, that the land falls within the definition of Shamlat Deh and entry in the jamabandi that the land is Shamlat Deh but in possession of owners as per the respective share in Khewat does not distract from the nature of land and the character of the land remains Shamlat Deh. Two Division Bench Judgments of this Court in **Shiv Charan Singh and others versus Gram Panchayat, Narike and another**, 1977 PLJ 453 and **Tel Ram and others versus Gram Sabha Manakpur and others**, 1976 PLJ 628 have held that all sub-clauses of Section 2(g) are independent of each other and do not govern or circumscribe the scope of each other in any manner. This further fortifies the conclusion as reached by us with regard to the proviso being applicable to only sub-clause (5) of Section 2(g) of the Act. Thus, it is held that proviso applies to sub-clause (5) of Section 2(g) of 1961 Act only and not to sub-Clauses (1) to (4) of Section 2(g) of the 1961 Act.

Further held, that the power of revision has been conferred upon the Commissioner under Section 13-B of the 1961 Act. A perusal of the same would show that there is no period of limitation provided for exercise of powers of revision by the Commissioner. If the Statute does not provide for any limitation, the Court cannot import such period on its own. The Commissioner may *suo motu* exercise its revisional powers. In the present case, after the passing of the order dated 13th December, 1988 by the Collector, revision was preferred by the Gram Panchayat on 21st July, 1989, the entertainment of the same by the Commissioner cannot be said to be beyond limitation or exercise of the powers without any jurisdiction.

(Para 26)

Further held. that the original proceedings continue till it attains finality as provided under Section 13-C. The revision proceedings under the 1961 Act, thus, would be continuation of the original proceedings. The amendment in the 1961 Act was brought about by the State of Haryana by 1991 Amendment Act on 11th February, 1992. *Vide* Section 2(b) of the 1991 Amendment Act, the proviso to sub-clause (5) has been omitted.

(Para 30)

Further held. that the revision was pending before the Commissioner when the 1961 Act was amended. The Commissioner has rightly taken note of the amendment to the 1961 Act while deciding the revision. Thus, revision proceedings under the 1961 Act are continuation of the original suit. The amendment in Section 2(g) would be applicable to the revisional proceedings and since it is continuation of the original proceedings, the vested rights, if any of the subsequent purchasers shall be hit by the principle of *lis-pendens* as they cannot claim a better title than the original land owners i.e. proprietors of the village.

(Para 32)

M.L. Sarin, Sr. Advocate with Hemant Sarin, Advocate, Suvir Sehgal, Advocate and S.L. Bhalla, Advocate for the petitioners in C.W.P. Nos. 11821 of 1992 and 2069 of 1996.

C.B. Goel, Advocate for the petitioner in C.W.P. No. 10381 of 1989.

Kamal Sehgal, Addl. A.G., Haryana, Ashish Aggarwal, Advocate and J.S. Yadav, Advocate, for the respondents.

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(1) By this order, we propose to decide three writ petitions i.e. C.W.P. No. 11821 of 1992 **M/s Bhanot Leasing Limited and others versus The Commissioner, Gurgaon Division, Gurgaon and others**, C.W.P. No. 2069 of 1996. **M/s Decent Towers (P) Limited and others versus State of Haryana and others** wherein order dated 23rd July, 1992 (Annexure P-7) passed by the Commissioner, Gurgaon Division, Gurgaon has been challenged and C.W.P. No. 10381 of 1989 **Gram Panchayat,**

Rithoj versus Commissioner (Appeals) Ambala Division and others, wherein, order dated 24th February, 1989 (Annexure P-3) passed by the Commissioner has been challenged.

(2) Counsel for the parties have submitted that these writ petitions can be disposed of by a common order as similar facts and identical questions of law are involved. The facts in C.W.P. Nos. 11821 of 1992 and 2069 of 1996 are as follows :—

(3) Petitioners in these writ petitions purchased land from the proprietors of the village Behrampur, Tehsil and District Gurgaon. The land in question stands entered in the revenue records i.e. jamabandis for the year 1939-40 as *Shamlat Deh Hasab Rasad Rakba Zameen* and in the column of cultivation, the owners are shown to be in cultivating possession. The land owners asserted their right of ownership to the land by filing a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961, as applicable to Haryana (hereinafter referred to as the 1961 Act) against the respondent-Gram Panchayat, Village Behrampur before the Assistant Collector, 1st Grade, Gurgaon. In the said suit, it was prayed that a declaration be issued to the effect that they were owners in possession of the land and that the Gram Panchayat had no vested right in the same. The suit was decreed in favour of the land owners,—*vide* order dated 20th June, 1988 (Annexure P-1).

(4) Respondent-Gram Panchayat filed an appeal against the order of Assistant Collector before the Collector, Gurgaon, who,—*vide* order dated 13th December, 1988 (Annexure P-2) dismissed the same. No revision was immediately preferred by the respondent-Gram Panchayat. The petitioners, after the declaration and the dismissal of the appeal, purchased the land,—*vide* different sale deeds during the period 24th January, 1989 to 7th April, 1989. Mutation was sanctioned in favour of the petitioners on 17th July, 1989.

(5) Respondent-Gram Panchayat preferred revision petition before the Commissioner, Ambala Division, Ambala on 21st July, 1989 who,—*vide* order dated 21st July, 1989 (Annexure P-4) stayed the operation of the order dated 20th June, 1988 passed by the Assistant Collector, 1st Grade, Gurgaon and that of the Collector, Gurgaon dated 31st December, 1988 and the respondents in the said revision petition were further restrained

from changing the character of the land or alienate the same or to change its nature in any way till further orders. Since, the petitioners had not been impleaded as party, an application (Annexure P-5) was preferred by the Gram Panchayat to implead the petitioners as party thereto as they were subsequent purchasers after the decision of the Collector dated 31st December, 1988. The said application was allowed by the Commissioner and notices were issued to the petitioners who appeared before the Commissioner and filed their reply to the revision petition and submitted their written arguments as well,— *vide* Annexure P-6. The Commissioner after hearing the parties, allowed the revision petition,— *vide* order dated 23rd July, 1992 (Annexure P-7), preferred by the Gram Panchayat, setting aside the orders passed in favour of the land owners holding therein that the proviso appearing after sub-clause (5) of Section 2 (g) of the 1961 Act which defines *shamlat deh*, applies to sub-clause (5) only and not to the total *shamlat deh* land as mentioned in sub-clauses (1) to (5). It was further held that the amendment brought about in the Act with effect from 11th February, 1992 deleting proviso to sub-section (5) can be taken into consideration in the revision petition as the case cannot be said to have been finally concluded and the revision petition is a continuation of original suit. The said order is under challenge in these two writ petitions before this Court.

(6) In C.W.P. No. 10381 of 1989, respondents No. 4 to 7 filed a suit under Section 13-A of the Punjab Village Common Lands (Regulation) Act, 1961 before the Special Collector, 1st Grade, Gurgaon for declaration that the land in dispute does not fall within the definition of '*Shamlat Deh*' as defined under Section 2 (g) of the 1961 Act and, therefore, does not vest in the Gram Panchayat and, thus, the entries to this effect in the *jamabandi* recorded in favour of the petitioner-Gram Panchayat and against respondents No. 4 to 7 (proprietors of the village) are wrong. The said suit was dismissed by the Special Collector, 1st Grade, Gurgaon,— *vide* order dated 28th November, 1985 (Annexure P-1).

(7) Respondents No. 4 to 7 preferred an appeal before the District Collector, Gurgaon, who too dismissed the said appeal,— *vide* order dated 26th August, 1986 (Annexure P-2) holding the Gram Panchayat to be the owner of the land. Thereafter, respondents No. 4 to 7 filed a revision petition before the Commissioner (Appeals), Ambala Division,

Ambala, who accepted the same,—*vide* order dated 24th February, 1989 (Annexure P-3) after observing that the proviso at the end of sub-clause (5) of Section 2 (g) of the 1961 Act applies to not only sub-clause (5) but also to sub-clause (1) to (4) of this Section and accordingly, held that the land not more than twenty five per cent of the total area of village can vest in the Gram Panchayat as shamlat deh. The said order is under challenge before this Court by the Gram Panchayat in this writ petition.

(8) Thus, there are two interpretations put-forth in these two sets of writ petitions with regard to the applicability of proviso as provided after sub-clause (5) to Section 2(g) of the 1961 Act. It would not be out of way to mention here that C.W.P. No. 11821 of 1992 came up for hearing before learned Single Judge, who, referred the matter to a Division Bench for decision. The order of reference dated 26th March, 2009 reads as follows :—

“Some very important questions regarding the right of the petitioners, who are subsequent purchasers and applicability of proviso under Section 2(g) to clause (5) only as held by Commissioner do arise in this case. It is also to be decided if revision is continuation of the original suit. It would be appropriate that this case is placed before a Division Bench to decide all these question.

Let the papers be placed before Hon’ble the Chief Justice for passing appropriate order for placing the case before Division Bench and for constituting the Bench.”

(9) This is how these writ petitions have come up for adjudication before us.

(10) Mr. Sarin, learned Senior Counsel, submits that the provisions of Section 2(g) of the 1961 Act, show that each sub-clause (1) to (4) end up with semi-colon while sub-clause (5) ends up with a colon. This indicates that the text of the clauses (1) to (5) come to an end with sub-clause (5). The proviso is embodied in a separate paragraph and starts with a capital word ‘P’ for word ‘Proviso’. The proviso figures between sub-clause (5) and exceptions starting with a word “and does not include land that...”. He, on this basis, contends that proviso applied to all sub-clauses, i.e. (1) to

(5). He contends that unless there is a special indication to show that a proviso to a Section is limited to one part of it only, normally the proviso governs the entire section. It is not necessary for the purpose of making a proviso applicable to the entire Section to repeat it after each clause as an exception. In support of this contention, he relies upon a judgment of the Madras High Court in the case of **Saradambal versus Seethalakshmi, (1)**. His further submission is that Sections 4 and 5 of the Act further clarify the position which deals with vesting of rights in Panchayats and non-proprietors and use and occupation etc. of the lands vested or deemed to have been vested in Panchayats. His further contention is that amendment to the 1961 Act brought about,—*vide* the Punjab Village Common Lands Act, Haryana Amendment Act, 1991 (hereinafter referred to as the Amendment Act, 1991) by the State of Haryana,—*vide* Act No. 9 of 1992 is prospective and, therefore, cannot take away the vested rights of the land owners or the subsequent purchasers. In support of this contention, he relies upon a judgment of the Hon'ble Supreme Court in the case of **K. Eapen Chako versus The Provident Investment Company (P.) Ltd., (2)**. As regards the amending provision i.e. section 2(b),—*vide* which proviso has been omitted by the Amendment Act, 1991, he contends that the said provision only shows the placement of the proviso and does not indicate that the proviso was to sub-clause (5) of Section 2(g) of the 1961 Act only.

(11) Learned Senior Counsel submits that revision is not a continuation of the original suit and therefore, the amendment brought about in the 1961 Act by the State of Haryana,—*vide* Amendment Act, 1991, could not be made applicable to the said proceedings. In support of this contention, he relies upon a judgment of this Court in the case of **M/s Ram Saran Dass Tara Chand versus Ram Richhpal and another, (3)**.

(12) Per contra, Mr. Aggarwal, counsel for the respondent-Gram Panchayat, submits that the land which is recorded as Shamlat Deh in the jamabandi even if shown in cultivating possession of the owners as per their respective shares in the khewat, does not detract from nature of land as the same remains to be Shamlat Deh. Reliance has been placed by him upon

(1) AIR 1962 Madras 108

(2) AIR 1976 S.C. 2610

(3) 1961 (2) I.L.R. (Pb.) 507

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a Supreme Court judgment in the case of **Sukhdev Singh and others versus Gram Sabha, Bari Khad and others**, (4) and upon a Division Bench judgment of this Court in the case of **Shiv Charan Singh and others versus Gram Panchayat, Narike and another**, (5). He submits that all sub-clauses of Section 2(g) of the Act are independent of each other and do not govern or circumscribe the scope of each other in any manner. The proviso has been placed after sub-clause (5) and, therefore, is applicable to that sub-clause alone. He further contends that the amendment as has been brought about by the State of Haryana,—*vide* the Amendment Act, 1991, leaves no manner of doubt that the proviso was to sub-clause (5) only. He refers to Section 2(b) of this Act.

(13) Controverting the contention of Mr. Sarin that revision is not a continuation of the suit, Mr. Aggarwal, learned counsel, submits that the 1961 Act itself provides for a revision under Section 13-B (2) of the Act. He refers to Section 13-C of the 1961 Act to submit that the proceedings shall attain finality after the order is passed by the Commissioner as no further remedy is provided under this Act against such order. It is a statutory right and, therefore, would be continuation of a suit. In support of this contention, he relies upon a Division Bench judgment of this Court in the case of **Gram Saba, Salina versus Nahar Singh and others**, (6) wherein it has been held that the Court could take notice of the change in law only if the proceedings were in continuity of the proceedings before the Revenue Officer. He has also placed reliance upon the judgment of this Court in **Bachna @ Bachan Singh versus State of Haryana and others**, (7). He prays that the petition deserves to be dismissed.

(14) We have heard counsel for the parties and have gone through the records of the case with their able assistance.

(15) The questions which arise for decision in the present case are :—

- (1) Whether proviso placed after sub-clause (5) of Section 2 (g) of the 1961 Act applies to sub-clauses (1) to (5) or to sub-clause (5) alone ?

(4) 1977 P.L.J. 150

(5) 1977 P.L.J. 453

(6) 1982 P.L.J. 261

(7) 1986 P.L.J. 83

- (2) Whether revision is a continuation of the suit or not ?
- (3) If yes, whether the amendment brought about in the 1961 Act,—*Vide* Amendment Act, 1991 applies to revisional proceedings under the Act and the effect thereof on the vested rights of the parties ?

Answer to question 1 :

(16) Section 2 (g) of the 1961 Act at the relevant time i. e. when the original land owners filed suit under Section 13-A, *reads as* follows :—

“2. **Definitions.**—In this Act unless the context otherwise requires,—

(a) to (f) xxxx xxxx xxxx xxxx

(g) “shamlat deh” includes—

- (1) lands described in the revenue records as Shamlat Deh or Charand excluding abadi deh ;
- (2) shamlat tikkas ;
- (3) lands described in the revenue records as shamlat 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 purpose of the village;
- (4) lands used or reserved for the benefit of village community including street, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, 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; and

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(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:

Provided that shamlat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village ;

but does not include land which—

(i) to (ix) xxx xxx xxx xxx”

(17) A perusal of the above would show that the definition of Shamlat Deh starts with the inclusion of the lands described in the revenue records as provided in sub-clauses (1) to (5). After sub-clause (5), proviso finds placed. After the proviso, starts the exclusion of lands which are not included in the Shamlat Deh.

(18) There is distinction between a Proviso and an Exception. A Proviso follows an enacting clause and qualifies it in certain specified cases/circumstances whereas an Exception is a part of the enacting clause and is of general application and thus, exempts something which would otherwise fall within the purview of the general words of the Statute. The normal function of a proviso is to except something out of the enactment or to qualify something enacted therein which, but for the proviso, would be within the purview of the enactment. The language of the proviso even if it appears to be general is ordinarily to be construed in relation to the subject matter to which the proviso is appended. It carves out an exception to the provision to which it has been enacted as a proviso and to no other. In other words, normally a proviso does not travel beyond the provision or the clause to which it is a proviso.

(19) Section 2 (g) defines Shamlat Deh to be inclusive of different categories as classified in sub-clauses (1) to (5). Thereafter, proviso is added to sub-clause (5) to the effect that at least 25% of the total area of the village does not exist in the village. If this proviso would have been applicable to all the sub-clauses, it would have been included in the exclusion clauses which follows the proviso in the Section.

(20) Section 2 (b) of the 1991 Amendment Act, brings out and seals the intention of the Legislature which reads as follows:—

“2. **Amendment of section 2 of Punjab Act 18 of 1961.**—In clause (g) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called the principal Act),—

(a) xxx xxxx xxxx xxxx

(b) The proviso to sub-clause (5) shall be omitted ;”

(21) This leaves no manner of doubt that the proviso incorporated in the 1961 Act was to sub-clause (5) of Section 2 (g) only.

(22) It is not in dispute that the land falls within the definition of Shamlat Deh and in the light of the judgment of the Hon'ble Supreme Court in the case of **Sukhdev Singh and others** (*supra*), entry in the jamabandi that the land is Shamlat Deh but in possession of owners as per the respective share in Khewat does not distract from the nature of land and the character of the land remains Shamlat Deh. Two Division Bench judgments of this Court in **Shiv Charan Singh's case** (*supra*) and **Tel Ram and others versus Gram Sabha Manakpur and others**, (8) have held that all sub-clauses of Section 2 (g) are independent of each other and do not govern or circumscribe the scope of each other in any manner. This further fortifies the conclusion as reached by us with regard to the proviso being applicable to only sub-clause (5) of Section 2 (g) of the Act.

(23) Thus, it is held that proviso only applies to sub-clause (5) of Section 2(g) of 1961 Act only and not to sub-clauses (1) to (4) of Section 2(g) of the 1961 Act. The question is answered accordingly.

Answer to questions 2 and 3 :

(24) A Division Bench of this Court in **Gram Sabha Salina's Case** (*supra*) while dealing with these questions in a Punjab case has held in para 9 thereof as follows :—

“9. It was then urged on behalf of the appellant that by the Act No. 19 of 1976, the proviso to section 2(g)(5) of the Act has been deleted. It was also urged that this Court should take notice of this change in law to quash the order of the Commissioner. The Amending Act No. 19 of 1976 received the assent of the President of India on 15th of April, 1976, and was published in

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the Government Gazette on 27th of April, 1976. It was to come into force with immediate effect from the date of publication. The Amending Act No. 19 of 1976 came into operation after the decision of the case by the Commissioner. The proceedings were initiated on the basis of application under section 7 of the Act and were finally decided up to the highest level of the forum empowered to decide those, that is, the Commissioner, before the Amending Act came into force. The writ petition, however, was pending on the day when the Amending Act came into force. The counsel for the parties are agreed that Act No. 19 of 1976 was not retrospective in operation. The High Court could take notice of the change in law only of the proceedings were in continuity of the proceedings decided by the Revenue Officers. Section 7 of the Act provides only two appeals; one to the Collector and the second to the Commissioner. It does not provide any further appeal or revision. The order of the Commissioner under section 7 of the Act is final. The proceedings, therefore, under the Act came to an end and attained finality on 23rd of April, 1976, when the Commissioner accepted the appeal of respondent No. 1. In the hierarchy of the Appellate Authorities under the Act, the High Court does not figure. The proceedings before it under Articles 226 and 227 of the Constitution of India are not in continuity of the proceedings under the Act. It is only under Article 226 of the Constitution of India that the High Court, under its extraordinary civil jurisdiction, is moved to examine whether the decision or a proceeding before a Court or Tribunal or any Authority should be allowed to stand or for want of jurisdiction or on account of error apparent on the face of the record, should be set aside. Under this jurisdiction, the High Court does not hear any appeal or revision against the order of the authorities whose orders or proceedings it examines. It is thus no continuance of the original proceedings. For this reason, the High Court cannot take the impact of the repeal of the proviso to section 2(g) (5) of the Act into consideration to quash the decision of the Commissioner.” (Emphasis supplied by us)

(25) The ratio of the above judgment is that the proceedings before the Commissioner under the Act would be continuance of the original proceedings and the Amendment in the Act during the proceedings pending before the revenue authorities could be taken note of and given effect thereto by such authority.

(26) It is not in dispute that the power of revision has been conferred upon the Commissioner under Section 13-B of the 1961 Act. A perusal of the same would show that there is no period of limitation provided for exercise of powers of revision by the Commissioner. If the Statute does not provide for any limitation, the Court cannot import such period on its own. The Commissioner may *suo motu* exercise its revisional powers. In the present case, after the passing of the order dated 13th December, 1988 by the Collector, revision was preferred by the Gram Panchayat on 21st July, 1989, the entertainment of the same by the Commissioner cannot be said to be beyond limitation or exercise of the powers without any jurisdiction..

(27) Section 13 of the 1961 Act bars jurisdiction of the Civil Court. Section 13-A of the Act gives a right to any person or panchayat claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the panchayat under this Act, to file a suit for adjudication as to whether such land or other immovable property is *shamlat Deh* or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in panchayat under this Act. The suit can be filed in the Court of Assistant Collector, 1st Grade, having jurisdiction in the area wherein such land or other immovable properties is situated. Section 13-B provides for an appeal and revision. This section would be relevant for the decision of the case which reads as follows :—

“13-B. Appeal and revision.—

- (1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit :

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Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7, is deposited with the Collector.

(2) The Commissioner may, *suo motu* call for the record of proceedings pending before, or order passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit :

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.”

Section 13-B (1) of the Act gives a right of appeal to any person aggrieved by the order passed under Section 13-A of the 1961 Act within a period of 30 days from the date of the order, before the Collector. Section 13-B (2) of the Act vests powers in the Commissioner which are revisional in nature.

(28) Thus, it is manifest from the reading of the above that the powers had been conferred upon the Commissioner to call for the records of the proceedings pending before or order passed by any Authority subordinate to him to satisfy with regard to legality or propriety of the proceedings or order and had further been conferred powers to pass such an order in relation thereto as he may deem fit. The only rider attached thereto is that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard. The proceedings, thus, before the Commissioner would be in continuation of the suit preferred under Section 13-A of the 1961 Act.

(29) Section 13-C of the Act reads as follows :—

“**13-C Finality of orders.**—Save as otherwise expressly provided in this Act, every order made by the Assistant Collector of the first grade, the Collector or the Commissioner shall be final and shall not be called in question in any manner in any court.”

(30) This provision leaves no manner of doubt that the original proceedings continue till it attains finality as provided under Section 13-C. The revision proceedings under the 1961 Act, thus, would be continuation of the original proceedings. The Amendment in the 1961 Act was brought

about by the State of Haryana by 1991 Amendment Act on 11th February, 1992. *Vide* Section 2(b) of the 1991 Amendment Act, the proviso to sub-clause (5) has been omitted. In view of the ratio of the judgment of this Court in **Gram Sabha Salina's case** reproduced above, the same could be taken note of by the Revenue authority before which the proceedings under the Statute were pending adjudication when the amendment was made. In the present case, the revision was pending before the Commissioner when the 1961 Act was amended. The Commissioner,—*vide* order dated 23rd July, 1992 in C.W.P. No. 11821 of 1992 and C.W.P. No. 2069 of 1996 has rightly taken note of the Amendment to the 1961 Act while deciding the revision. Reference to the judgment of this Court in **Bachna alias Bachan Singh's case** (*supra*) would be beneficial wherein relying upon the judgment of the Hon'ble Supreme Court, it has been held that the change in law during the pendency of the proceedings can be taken into account by the Court.

(31) The contention of Mr. Sarin, learned Senior Counsel, that the vested rights of the subsequent purchasers cannot be affected by the amendment of the Act when the said Act is prospective in operation, cannot be disputed with. However, in the light of the fact that the subsequent purchasers from the proprietors of the village have stepped into their shoes during the pendency of the proceedings before the revenue Authorities, they cannot claim a better right or title than that of the vendors and therefore, will have to swim or sink with them. The Commissioner can take into consideration the change in law during the pendency of the proceedings before him even while exercising its revisional jurisdiction and, therefore, the amendment brought about in the Act has rightly been given effect to by the Commissioner,—*vide* its order dated 23rd July, 1992 and no fault can be found in such exercise of power by the Commissioner.

(32) Thus, answer to question Nos.2 and 3 is that revision proceedings under the 1961 Act are continuation of the original suit. The amendment in Section 2 (g) would be applicable to the revisional proceedings and since it is continuation of the original proceedings, the vested rights, if any, of the subsequent purchaser shall be hit by the principle of *lis-pendens* as they cannot claim a better title than the original land owners i.e. proprietors of the village.

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(33) Mr. Sarin had, very fairly and at the very outset while opening the arguments of the case, stated that the claim of the proprietors and the subsequent purchasers was dependent upon the proviso which finds mention after sub-clause (5) of Section 2 (g) of the 1961 Act. He had submitted that in case it is held that proviso is applicable to Section 2 (g) sub-clauses (1) to (5), then the proprietors and the subsequent purchasers would be entitled to the claim made by them in the suit filed by them under Section 13-A of 1961 Act and in case it is held that the proviso is only applicable to sub-clause (5) of Section 2 (g), the proprietors and subsequent purchasers would not be entitled to the benefit as claimed by them. Since we have held that the proviso was to sub-clause (5) of Section 2 (g) alone, the proprietors and the subsequent purchasers are not entitled to any benefit. That apart, they would also not be entitled to any relief for the reason that the amendment in Section 2 (g) which came into effect during the pendency of the revisional proceedings under the Statute, would be applicable to these proceedings as it is continuation of the original proceedings. That being so, the proviso to sub-clause (5) of Section 2 (g), which existed before the amendment of the 1961 Act was deleted by the 1991 Amendment Act. Thus, no claim of the subsequent purchasers or original land owners survives as they had not only based their claim on this proviso but the same was dependent upon it alone.

(34) In view of the above, order dated 23rd July, 1992 (Annexure P-7) passed by the Commissioner, Gurgaon Division in C.W.P. No. 10381 of 1989 is upheld and the order dated 24th February, 1989 (Annexure P-3) passed by the Commissioner (Appeals), Ambala Division in C.W.P. Nos. 11821 of 1992 and 2069 of 1996 is hereby set aside.

(35) Consequently, C.W.P. No. 10381 of 1989 stands allowed whereas C.W.P. Nos. 11821 of 1992 and 2069 of 1996 are hereby dismissed.

(36) A photocopy of this order be placed on file of each connected case.