

land which is recorded as 'Shamlat Deh' in the revenue record, is 'Shamlat Deh' within the meaning of Section 2(g) of the 1961 Act and is to vest in the Gram Panchayat in terms of section 4(i)(a)

Held,

"A reading of section 2(g)(1) of the 1961 Act shows that the land which is described in the revenue record as 'Shamlat Deh' excluding Abadi Deh is 'Shamlat Deh'. In terms of Section 4(1)(a) of the 1961 Act, it is provided 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 whatsoever in the land which is included in 'Shamlat Deh' of any village and which is not vested in a Panchayat under the 'Shamlat Law' shall at the commencement of the 1961 Act vest in a Panchayat constituted for the said village and where no such panchayat has been constituted for such village vest in the panchayat on such date as panchayat having jurisdiction over that village is constituted. Section 2(g) of the 1961 Act is in two parts. The first part relates to the land which is included in the 'Shamlat Deh' and the second part relates to the lands which are excluded. In terms of clause (iii) which is in the second part of section 2(g) and relates to the lands which are not included as 'Shamlat Deh' it has to be shown for the land to be the ownership of the individual land owners that it has been partitioned and brought under cultivation by the individual land holders before 26.1.1950. It is only then that such land would be excluded from 'Shamlat Deh'. In terms of the exclusion clause (iii) of the second part of Section 2(g) it was open to the proprietors and share holders before the appointed date i.e. 26.1.1950 to partition or bring into cultivation the land of the 'Shamlat Deh'. The land in question admittedly has not been partitioned or brought under cultivation by an individual land holder before 26.1.1950. Therefore, it does not come in the second part of Section 2(g) of the 1961 Act so as to be excluded from 'Shamlat Deh'. In the circumstances, the fact that the land is recorded as 'Shamlat Deh' and it is further mentioned as 'Hasab Rasad Arazi Khewat' is inconsequential as the land has not been shown to be partitioned amongst the proprietors of the village before 26.1.1950 which is the date fixed so as to exclude the land from 'Shamlat Deh'. Therefore, the land which is recorded as 'Shamlat Deh' in the revenue record, is 'Shamlat Deh' within the meaning of Section 2(g) of the 1961 Act and is to vest in the Gram Panchayat in terms of section 4(i)(a) as referred to above."

CWP No. 9368 of 2007, titled *Sita Ram etc., v. Gram Panchayat Ismaila* decided on 12.06.2007