

Most
Important
Personal
Attention

Government of Punjab
Department of Rural Development and Panchayats

To

1. All the Divisional Deputy Directors,
2. All the Additional Deputy Commissioners (Development);
3. All the District Development & Panchayat Officers,
4. All the Deputy C.E.Os. of Zila Parishads
5. All the Block Development & Panchayat Officers of the Punjab State.

Memo No. 38806-40906
Dated: 14/11/2007

Sub: Management and Control of lands owned by Panchayat Raj Institutions (PRIs)

1. The management and control of lands owned by Gram Panchayats is of paramount importance. The lands are however not managed in a professional manner. There is no inventory of the lands owned by the PRIs. There is a need to ensure that the lands are leased out annually through an open auction. At some places the lands have been alienated by the officers of the Revenue and Rural Development Department. Court cases involving the lands are not defended properly and appeals are not filed in time against adverse orders. At times the officers of the Department are not well conversant with the provisions of the Village Common Land Act and the Rules.

A conference of officers of the Department was held in Ludhiana on 1/9/2007. It was addressed by the senior officers of the Department and experts from the Revenue Department. A list of important points regarding management of Panchayat lands and court cases has been compiled for the convenience of the officers.

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2. **Inventory of Gram Panchayat Land** – First and foremost task is to keep an inventory of Gram Panchayat Lands and see to it that these lands are put to regular auction and are not under illegal occupation. Similarly the BDPOs and CEO Zila Parishads would keep an inventory of lands owned by the Punjab Samities and the Zila Parishads.

It would be the responsibility of the BDPO, Panchayat Secretary and Sarpanch to ensure that –

- (1) Lands being used for agricultural purposes are annually lease auctioned.
- (2) For lands under illegal occupation, the cases under Section 7 are filed.
- (3) Possession of the land for which the cases have been decided in favour of PRIs are taken without any delay.
- (4) For any adverse orders, prompt appeal is filed in the court of competent jurisdiction.

The lands and other properties owned by Panchayati Raj Institutions (PRIs) should be recorded in the property register. It should depicts the details of the land owned by the PRIs, land put to auction, income there from, the land under illegal occupation, the details of court cases involving etc. While it is responsibility primarily of BDPO, Panchayat Secretary and the Sarpanch to ensure proper management of lands, yet DDPOs are also expected to review the management of Panchayat lands from time to time and ensure compliance with the instructions.

3. **Difference between Panchayat and Jumla Mustarka Malkan Lands-**

There are broadly two kinds of lands – Panchayat and Jumla Malkan Lands in the villages. The dissimilarities between them are summarized in the following table –

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Item	Gram Panchayat Land	Jumla Mushtarka Malkan Land
Law/Act	The Punjab Village Common Lands (Regulation) Act, 1961	The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948
Rules	The Punjab Village Common Lands (Regulation) Rules, 1964.	The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rule, 1949
Ownership	Gram Panchayat	Jumla Mushtarka Malkan Rule 16 (ii)
Management	Gram Panchayat	Gram Panchayat Section 23-A
Mutation	Lands should be recorded in the ownership of Gram Panchayat and not in the ownership of Shamilat deh etc.	Land is to be recorded in the ownership of Jumla Mushtarka Malkan and not in the ownership of individual Khewat dars. Rule 16 (ii)
Removal of encroachment	Section 7 of the 1961 Act	Section 3-4 of The Punjab Public Premises and Land (Eviction and Land Recovery) Act, 1973 read with The Punjab Gram Panchayat (Common Purpose Land) Eviction and Rent Recovery Act, 1976
Question of Title	Section 11 of the Village Common Land Act	Section 23-A, Rule 16 (ii) of the Consolidation Act
Partition of the land	Shamilat deh or Gram Panchayat Lands can not be partitioned as held by the Supreme Court in its order dated 1985 (Jamalpur Case)	No provision of partition in the Consolidation Ac. As per amended Section 42-A, partition clearly prohibited

4. **Cases to be decided under PP Act, 1973** – The cases pertaining to the lands of Rural Development Department, Zila Parishads and Panchayat Samities are to be filed under PP Act. Cases regarding Jumla Mushtarka Malkan lands which are managed by Gram Panchayat are also filed under PP

Act read with "The Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976". The concerned officers should file the cases under PP Act in the court of competent jurisdiction and have the illegal occupation vacated. They should be held responsible if the cases of illegal occupation are not filed.

5. **Cases filed under Village Common Land Act** – The cases pertaining to the Gram Panchayat Lands are filed under the Punjab Village Common Land (Regulation) Act, 1961. The illegal possession of these lands can be vacated by filing cases under section 7 of the Act. It is the prime responsibility of BDPO, Panchayat Secretary and Sarpanch to see it that the lands owned by Gram Panchayat are properly managed and cases of illegal occupation are filed in the courts of the concerned DDPOs. DDPOs should review it from time to time and ensure that all the cases of illegal occupation are filed in the courts.

6. **Ownership of Lands** – It has been observed that the ownership of the lands in some cases is not correctly recorded. The lands owned by Panchayat Samities and Zila Parishads should be reflected in their names in the revenue records. This may be checked and if the ownership column still carries the entries in the name of the District Boards etc. then the Revenue Officers should be moved for correction of the Jamabandi.

In some of the villages lands reserved for common purposes during Consolidation are recorded in the ownership of all the individual Khewatdars of the village and not in the ownership of Jumla Mustarka Malkan. This position is not correct as per the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. These lands should be recorded in the ownership of Jumla Malkan. The Gram Panchayats should have the mutation sanctioned in favour of Jumla Malkan as per the 1948 Act.

7. **Jumla Mustarka Malkan Lands** - These lands are regulated under Section 18 and Rule 16 (ii) of the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948 and the Rules there under. They are recorded in the ownership of Jumla Mustarka Malkan and the management vests with the Gram Panchayat. The following points should be kept in view while dealing with these lands –

(1) If these lands are recorded in the name of all the Khewatdars of the village, then the Gram Panchayat and BDPO should make an application to the Circle Revenue Officer (CRO) for mutating these lands in favour of Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasab as provided under Rule 16(ii) of the Consolidation Rules, 1949.

(2) As explained in para 4 above, illegal encroachments on these lands are dealt under Punjab Public Premises Act, 1973 read with The Punjab Gram Panchayat (Common Purposes Land) Eviction and Rent Recovery Act, 1976. The cases should be filed in the court of Collector concerned.

(3) There is no question of re-partition of these lands. There was no provision in the original Consolidation Act for partition of these lands among the khewatdars. Now Section 42-A has been added to the act explicitly prohibiting partition of the land. The Hon'ble Supreme Court in the case of Gram Panchayat Kakran v/s Additional Director Consolidation (1997 vol. 8 SCC 484) has also held that such lands cannot be partitioned. Hon'ble High Court took notice of this amendment in their order dated 16/7/2007 in the case of Gram Panchayat Bhajo Majri (CWP 10425/2007) and stayed the partition proceedings before the revenue officers. The Revenue Department Government of Punjab vide its Memo No. 17/19/2002-MB5/6161 dated 9/8/2007 has circulated the newly added Section 42-A of the Consolidation Act amongst the Revenue Officers and has asked them –

- Not to enter Jumla Malkan lands in the ownership of Individual Khewatdars even if there are orders from any Court.
- To ensure that this land is recorded in favour of Jumla Malkan and ignore orders of the Courts to the contrary.

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These instructions have also been circulated to the officers of the Rural Development Department vide this office letter No. 22486-22651 dated 31/8/2007 under the signatures of Deputy Director (Land Development).

(4) The Jumla Malkan Lands cannot be sold. The revenue and our department officers at times have held the sale deeds legal. There are number of civil courts orders that sale deeds of such lands are not legal .

(5) Since these lands are owned by Jumla Mustarka Malkan and only the management vests with the Gram Panchayats, no case can be filed in respect of these lands under section 11 or any other section of the Village Common Land Act which applies only to the lands owned by Gram Panchayat.

8. **Khasra Girdawari** – The lands are given on lease either every year or after fixed tenure through public auction to the leaseholders. However the Khasra Girdawari continue in the names of previous lessees. It is therefore incumbent upon the BDPO/Panchayat Secretary that when ever these lands are given on lease to a new lessee, the names of new lessee should be reflected in the Khasra Girdawari.

9. **Section 7 of the Punjab Village Common Land Act (Regulation), 1961** - The DDPOs have been conferred the powers of Collector under Section 7 of the 1961 Act. They are requested to keep among other things the following points while deciding the cases under Section 7 -

(1) The Presiding Officer should frame specific issues and thereafter decide them one by one;

(2) The Presiding Officer should award damages to the Gram Panchayats for illegal occupation as provided under Rule 20A of the 1964 Rules;

(3) The Presiding Officer should examine as to how the persons claiming possession entered into the possession of these lands. Are they lessees who have not relinquished the possession after the expiry of the lessee or they are trespassers ?;

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(4) The Presiding Officer would not go into the question of title and if the land is recorded in the ownership of Gram Panchayat and if the possession of a person is not lawful, he is liable to be evicted.

(5) The cases filed under section 7 should not be adjourned sine die merely on the ground that a case under section 11 has been filed. The Presiding Officer should see whether a case for title is prima facie made or the case has been filed merely to delay the eviction proceedings. If there is no prima facie case for title then the eviction proceedings should be continued ignoring the case filed under Section 11.

(6) There is no provision under the act to legalize the illegal occupation by fixing a price. Rule 4 of the 1964 rules allows transfer of lands at collector rates for the houses built on the Gram Panchayat lands before coming into force of the Act.

(7) There is no provision for review of orders by the Collectors/Commissioners under section 7 of the Act.

10. Section 11 of the Punjab Village Common Land Act (Regulation), 1961 – The ADCs (D) and Divisional Deputy Directors Panchayats have been conferred the powers of collector under section 11 of the 1961 Act. The following issues should be kept in view while deciding the cases under section 11 -

(1) Limitation - Under Section 11 read with Rule 21 A - cases under section 11 can be filed within 30 days from the date of accrual of a cause. The lands recorded as 'Shamilat deh' were muted in the revenue records in favour of Gram Panchayats after the enactment of Punjab Act 1955 and Pepsu Act 1953 and may be Village Common Land Act 1961. The date of cause of action would naturally be 30 days from the date of mutation in favour of the Gram Panchayats. The date of cause is mistakenly taken as 'date of knowledge' by the Presiding Officer. The petitions filed after 40 years or more are therefore hopelessly time barred and deserves to be rejected unless there is a valid reason. The Supreme Court in the case of Gram Panchayat Kakran vs.

Additional Director Consolidation has held that even if no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. There is no reason why the mutations sanctioned in favour of Gram Panchayat under the Village Common land Act in 1961 or before should be challenged by the parties after 30-40 years. Even otherwise the period of limitation prescribed is only one month.

(2) In any case a petition filed after the stipulated time, it has to be accompanied by an application for condonation of delay. The Presiding Officer should decide the application for condonation of delay through speaking order before taking up the main case under Section 11.

(3) Specific issues should be framed and thereafter decided one by one. The officers should rely on the documentary evidence including the revenue record and the record of Gram Panchayat while deciding a case. They should not merely rely on the oral evidence.

(4) Some of the Presiding Officers have observed in their orders that mutations entered in favour of Gram Panchayat on the basis of the Government letter cannot be treated as legal. The interpretation is malafide and patently incorrect. As already explained above the lands were mutated in favour of Gram Panchayat under the provisions of 1953, 1955 and the 1961 Acts and not on the basis of a Government letter. The so called government letter had only asked the field officers to have the Shamlat Deh lands mutated in favour of Gram Panchayat as per the provisions of the three Acts.

(5) Some of the Presiding Officers have tried to distinguish between the lands recorded as 'Shamlat deh' and 'Shamlat deh Hasab Rasad Rakba Khewat', 'Shamlat deh Hasab Rasad Shajra Nasab', 'Shamlat deh Hasab Rasad Zar Khewat' and 'Shamlat deh Hasab Rasad Hal Hisha'. It is clarified that all these lands are one and the same and were required to be mutated in favour of the Gram Panchayats. These terms merely denote the notional share of the Khewat dars in the Shamlat Deh Lands.

(6) The Hon'ble Supreme Court in the case of Gram Panchayat Jamalpur Versus State of Punjab (AIR 1985 SC 1394) categorically held that the share of

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the khewatdars in 'Shamlat deh' lands was purely notional and could never be separated. There is therefore no question of partition of Shamlat Deh Lands under whatever name by the revenue officers.

(7) In some cases the share of evacuee in Shamlat Deh Lands has been separated in contravention of the Supreme Court Judgment and such lands have been declared as evacuee lands and subsequently allotted to the illegal occupants on the basis of possession under the Package Deal Property Act. It is therefore to be ensured that the share of the evacuee land is not separated. Such instances should be investigated and brought to the notice of the department and the revenue officers.

(8) Some of the collectors have tried to convert a case under section 11 into a case under section 4 of the Village Common Land Act. Section 4 (3) protects only the limited rights of cultivators who were cultivating the land before 1950 etc. It does not confer any right regarding title on the cultivators. There is no provision for filing a case under Section 4 questioning the ownership of Gram Panchayat. That question can be settled only under Section 11.

(9) At times the cases are decided against the Gram Panchayats on the ground that the Gram Panchayat could not prove that the lands were being lease auctioned. This is a wrong approach. The onus to prove that the lands are not being lease auctioned is on the party who has filed a case under section 11 claiming ownership. Secondly, the Presiding Officers can summon the record of Gram Panchayat and verify whether the lands are being leased or not. They should not go only by the oral evidence. They can scrutinize the record of Gram Panchayat and the revenue record and come to a conclusion whether the lands were leased out by Gram Panchayat or not. This would also preclude the possibility of connivance between Sarpanch of the Gram Panchayat and the Khewatdars.

(10) Another ground often cited for deciding the case against the Gram Panchayat is that the petitioners were in possession of the Gram Panchayat lands since 26/1/1950 or before. This observation is made mainly on the basis of entry in the cultivation column of the Jamabandi. The entry in favour of

'Maqbuza Malkan' in the cultivation column is taken as a proof that the petitioners were in possession of the Shamlat lands. As per Section 2 (g) exception (iii) three things have to be satisfied – (a) that the land has been partitioned, (b) that it was brought under cultivation by individual land holders and (c) and that it was done before 26/1/1950. Similarly as per Section 2 (g) exception (viii) four things have to be satisfied – (a) possession has to be of an individual co-sharer not being in excess of his share. The entry Maqbuza Malkan in the cultivations column of the Jamabandi would not suffice (b) it has to be cultivating possession (c) the possession has to be before 26/1/1950 (d) the land was assessed to land revenue. If any of the ingredient is missing, the case will not be covered under the exception and the land would be Shamlat Deh lands.

(11) The scope of Section 11 is to determine whether the land in dispute vests with the Gram Panchayat or not. The collector is not competent to determine the share of proprietors in the land. However some of the officers have overstepped their jurisdiction. They have not only struck off the ownership of Gram Panchayat but also held that the land would vest with the petitioner(s) Khewatdars. Even if they come to the conclusion that the land is wrongly recorded in the ownership of Gram Panchayat, at most the land can revert to its previous original status i.e. Shamlat Deh.

(12) Some of the Presiding Officers have set aside the ownership of the Gram Panchayat on the ground that the land was recorded as 'banjar qadim'. Such officers need to study Section 2 (g) of the Village Common Land Act carefully. 'Shamlat deh' lands include lands recorded as Shamlat deh in the revenue records irrespective of the kind or type of the land or the purpose for which it is being used. Such lands would vest with Gram Panchayat as per the Act. Shamlat deh lands, in addition as per Section 2 (g)(5) also include lands (irrespective of ownership) described as banjar qadim and used for common purposes of the village. It does not mean that Shamlat deh land described as banjar quadim in the revenue records would ceased to be Shamlat deh and not vest with the Gram Panchayat. In fact private lands recorded as 'Banjar Qadim'

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and used for common purpose of the village according to revenue records, would vest with the Gram Panchayat.

(13) Lands which are not 'Shamlat deh' are covered under exceptions to Section 2(g) of the 1961 Act. The Presiding Officer do not mention the specific provision of section 2(g) under which this land has been exempted from being 'Shamlat deh'. In some of the cases the Presiding Officers have given contradictory findings describing the land as banjar qadim and at the same time being in the cultivating possession of the petitioners since January, 1950.

(14) In some of the cases even the lands which are lease auctioned have been transferred by way of ownership to the lessee/illegal occupants on the ground that the lands were not being used for common purposes. The annual lease auction is also one of the common purposes.

(15) One of the glaring mistakes often committed is in regard to describing the 'Shamlat deh' lands as Bachat Lands. The Shamlat deh lands are first erroneously held to be Bachat Lands and then divided among the khewatdars. The concept of the Bachat land is in regard to Jumla Mustarka Malkan Lands which were reserved for the common purpose during consolidation after imposing a pro rata cut in the land holdings of the khewatdars. These lands are regulated by the Consolidation Act as mentioned in para 5 above. Even these lands are also prohibited from being partitioned.

(16) Some time the cases are decided on the basis of the cases already decided by other collectors. Each case has its own unique facts and it has to be decided on its merit and not because some other case of similar nature has already been decided in a particular manner.

(17) It is a well settled proposition of law that only the Collectors under Section 11 of the Act are competent to adjudicate the questions regarding title of Gram Panchayat Lands. If the officers come across any case in which the question of title has been decided by other authorities like consolidation officers, revenue officers etc. then it is their duty to take remedial action in the shape of filing a case under Section 11 of the Act and have the land restored to the Gram Panchayat.

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(18) There is no provision of review of orders by the Collectors/Commissioners under section 11 of the Act.

11. **Court Cases/Appeals** – It is often been seen that no appeal is filed by the Gram Panchayats against the orders of ADCs (Dev), Divisional Deputy Directors Panchayats and DDPOs. Some time the Sarpanch himself is hand in glove with the illegal occupants. It is the paramount duty of the BDPO and Panchayat Secretary to monitor the court cases filed in respect of Gram Panchayat Lands in the various courts and to personally ensure that the appeals are filed at the earliest and in any case within the stipulated time. If the Sarpanch does not cooperate, he should be got suspended and the appeal should be filed through an administrator.

It is the personal responsibility of the BDPOs to see to it that the cases of Gram Panchayats are properly defended by the competent Advocates. The cases of collusion between the Sarpanch and the parties should be immediately detected and checked. They should vet the replies filed by Gram Panchayats before the various courts.

If the Gram Panchayats have no funds to file the appeal, then the BDPOs are authorized to book the expenditure under Panchayat Samities Funds.

12. It is the responsibility of the Presiding officer that Gram Panchayat Lands are properly managed and protected. They should not go only by the oral evidence and what is produced before them. There are plenty of records with the Gram Panchayat and Revenue Department whose scrutiny can yield a lot of information having a bearing on the issues involved in the case. They are the senior most officers in the districts and can command production of all kinds of record in their courts. They should also check instances of any connivance between the Sarpanch and the illegal occupants. Cases of complicity on the part of the officials of the Revenue Department and the Rural Development

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Department should be brought to the notice of the Head Office for action against the guilty.

The department is conscious of the fact that proceedings under Section 7 & 11 are of quasi judicial nature and should not be questioned without any cogent reasons. At the same time it is made clear that Section 14 of the Village Common Land Act 1961 does not indemnify the officers against patently illegal orders. If the provisions of the Act and Rules are blatantly violated then the officers would invite action from the government.

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