IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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RSA No.2365 of 1990 (O&M)
Reserved on: 25.02.2025
Pronounced on: 21.04.2025

Karan Singh and others

.....Appellants

Vs.

Raghbir and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Amit Jhanji, Senior Advocate with
Ms. Eliza Gupta, Advocate for appellants
No.1 to 4.

Mr. Amit Jain, Senior Advocate with
Mr. Parit Aggarwal, Advocate for appellants
No.5 to 7.

Mr. Gaurav Mohunta and Mr. Satyendra Kumar,
Advocates for the respondents.

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DEEPAK GUPTA, J. (Oral)

Plaintiffs – Karan Singh and others *(appellants herein)* of the case are before this Court in the present Regular Second Appeal against reversal, in as much as suit for possession by way of pre-emption of the land in dispute filed by them was decreed by the trial Court of learned Sub Judge Ist Class, Panipat vide judgment dated 15.02.1989. However, the appeal filed by the defendants *(respondents herein)* was accepted by the First Appellate Court of learned Additional District Judge, Karnal, who vide his judgment dated 10.09.1990 set aside the judgment & decree passed by the trial Court, thus dismissing the suit of the plaintiffs.

2. Trial Court record was called. Same has been perused. In order to avoid confusion, parties shall be referred as per their status before the trial Court.

3. Ishwar Singh & Ranbir Singh sons of Banwari Lal sold 7/16th share of the agricultural land measuring 106 kanals 08 marlas out of joint Khewat of 243 kanals 04 marlas of the land situated in the area of Village Nawada, Tehsil Panipat, detailed and described in the head-note of the plaint, in favour of defendants by way of registered sale deed dated 23.08.1984 (Ex.D2) for sale consideration of ₹2,01,000/-. Claiming to be co-sharers in the same Khewat, plaintiffs asserted their right to pre-empt the said sale. According to the plaintiffs, they had earlier purchased 7/16th share of the agricultural land in the same Khewat from another co-sharer, namely, Daya Chand son of Man Singh by virtue of registered sale deeds dated 06.07.1981 & 27.07.1981 (Ex.P1 and Ex.P2) and thus, had become co-sharers in the suit land along with Ishwar Singh & Ranbir Singh sons of Banwari Lal i.e. vendors of the defendants. It was further claimed that no notice of intended sale was given to the plaintiffs by the vendors as per the provisions of Punjab Pre-emption Act, 1913 (for short, `the Act') and that land was sold to the defendants, who are strangers to the Khewat.

4. Defendants contested the suit on various grounds *inter alia* pleading that the suit land is '*Gair Mumkin Sailab'* at the time of purchase by the defendants and so, it does not come within the definition of pre-emptible land as per the Punjab Pre-emption Act. In the alternative, defendants claimed that they had re-claimed the suit land after purchasing the same and made it cultivable and for this reason also, the suit land is not pre-emptible. Another objection raised by the defendants was that Daya Chand, the vendor of the plaintiffs was not a co-sharer in the suit land and was merely a tenant and as such, plaintiffs might have purchased the tenancy rights and so, they cannot claim to have become co-sharers with Ishwar Singh & Ranbir Singh i.e. vendors of defendants. Defendants submitted further that even their vendors i.e. Ishwar Singh & Ranbir Singh were also not co-sharers, as they too were cultivating the land as tenants. Apart from this, suit land is recorded as *shamlat deh* in the column of ownership in the revenue record and that the defendants are co-sharers and proprietors in the *shamlat deh* and have purchased 7/16th share for consideration. Not only this,

after purchasing the tenancy rights, the plaintiffs as well as a defendants have partitioned their share of the tenancy land and now, they are in cultivating possession of separate parcels of land and as such, there is no longer any joint cultivation on the suit land. With this stand and controverting other averments of the plaint, defendants prayed for dismissal of the suit.

5. Necessary issues were framed. Evidence produced by the parties was taken on record.

6. The Trial Court held that 78 kanal 06 marlas of the suit land had already been pre-empted in Civil Suit *"Jai Narain vs. Surjit Singh"* vide judgment and decree dated 07.08.1970 (Ex.P5, Ex.P6), and thus, the impugned sale was pre-emptible. It found that the plaintiffs became co-sharers through sale deed Ex.P1, granting them a superior right of pre-emption. The Court rejected the defendants' plea that only tenancy rights were transferred, noting that their sale deed dated 23.08.1984 (Ex.D2) conveyed ownership rights. Additionally, there was no evidence explaining how the suit land was re-claimed by the defendants. The Court relied on Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 to conclude that *shamlat deh* does not include land affected by river action or reserved as such in river-prone areas. Consequently, the suit was decreed on 15.02.1989.

7. In appeal, the First Appellate Court overturned the Trial Court's findings. It held that the judgment dated 07.08.1970 was based on compromise, not on merits, and being in personam, did not bind the defendants who were not parties. The Court reiterated that pre-emption is a piratical right and may be defeated by lawful means. It found that the suit land was owned by *shamlat deh*, and both parties' vendors were *gair Maurusians* (tenants), unable to convey ownership. Moreover, the land was classified as waste land and excluded from the Punjab Pre-Emption Act, 1913 under Section 5(e). It was also found that the plaintiffs were not *biswedars* in Village Nawada, whereas the defendants were listed as proprietors (Ex.D5). Further, the revenue authorities had already separ-

ated the *Khata*, rendering the sale no longer pre-emptible. Accordingly, the appeal was allowed and the suit dismissed.

Contentions of the Appellants – Plaintiffs:

8.1 The appellants, through learned Senior Counsel, respectfully assail the judgment & decree passed by the First Appellate Court, primarily on the ground that the suit land has, without exception, been recorded as *sailab* in the revenue records beginning from the year 1969-70. As such, the land cannot be categorized as "waste land" within the meaning of Section 5(e) of the Punjab Pre-Emption Act, 1913, and is therefore pre-emptible. While ownership in Column No. 4 of the relevant jamabandis stands in the name of *"Shamlat Deh Hasab Rasad Raqba Malkiati Bandobast 1880"*, the names of individual proprietors—Surjit (s/o Hari Ram), Ram Diya, Maan and Ram Kishan (s/o Raja Ram), Ramsarup and Munka (s/o Gokal), and Bhai Ram, Lehna, and Chandgi—appear as owners in the jamabandis for the year 1969-70. These proprietors subsequently transferred 7/8th share of the total land via registered sale deed dated 31.10.1973 (Ex.PW3/A)—half to Daya Nand (s/o Maan Singh) and the remaining half to Ishwar Singh and Ranbir Singh (s/o Banwari Lal).

8.2 Thereafter, Daya Nand transferred his 7/16th share in favour of the plaintiffs, while Ishwar Singh and Ranbir Singh sold their 7/16th share to the defendants. The respective sale deeds explicitly convey ownership rights. As the plaintiffs' transaction predates that of the defendants, they had become co-sharers along with the vendors of the defendants. Consequently, the Trial Court correctly held that the plaintiffs were entitled to pre-empt the subsequent sale deed dated 23.08.1984 executed in favour of the defendants.

8.3 It is further submitted that *sailab* land is inherently cultivable and thus, the defendants' claim of having re-claimed the land lacks merit. Moreover, part of the suit land was already the subject of a successful pre-emption suit in the year 1970, as per judicial verdicts Ex.P5 and Ex.P6, affirming the pre-emptible nature of the impugned transaction. The First Appellate Court erred in discarding the evidentiary value of Ex.P5 and Ex.P6 on the ground that the same were not

binding on the defendants. It is submitted that these judgments are admissible under Section 13 of the Indian Evidence Act, being relevant indicative of the legal character and pre-emptibility of the land in question.

8.4 In support of these submissions, reliance is placed on the judgment of the Hon'ble Supreme Court in **Tirumala Tirupati Devasthanam v. K.M. Krishnaiah, (1998) 3 SCC 331,** and judgments of this Hon'ble Court in **Hira Lal @ Huta Lal v. Shivlal & Ors., 1969 PLR 735 and Mahinder Pal & Ors. v. Prem Kumar & Ors., 2005 (3) R.C.R. (Civil) 828.**

8.5 Accordingly, it is prayed to set aside the judgment & decree passed by the First Appellate Court, and to restore the well-reasoned judgment and decree of the Trial Court, by allowing the present appeal.

Contentions of the Respondents–Defendants

9.1 In rebuttal to the submissions advanced on behalf of the appellants, learned senior counsel for the respondents–defendants has drawn attention to the provisions of Section 5 of the Punjab Pre-emption Act, to contend that the expression "waste land" also includes *gair mumkin* land, which is capable of being reclaimed. It is submitted that the suit land, as purchased by the defendants vide the impugned sale deed (Ex.D2), has consistently been recorded as *sailab* in nature in the revenue records right from the year 1969-70 onwards. The said classification is specifically mentioned in the sale deed Ex.D2. Similar reference to the nature of the land as *sailab* is found in the sale deeds executed in favour of the plaintiffs in the year 1981.

9.2 Learned counsel further relies upon the jamabandis for the year 1984-85 (Ex.D6 and Ex.D7) and *khasra girdawaris* for the subsequent period (Ex.D10), to argue that while the land in the cultivating possession of the plaintiffs continues to be recorded as *sailab*, the portion under the cultivating possession of the defendants has been shown as *chahi*, thereby indicating that it was made cultivable by the defendants after the purchase. It is contended that

this act of reclamation by the defendants distinguishes their holding and takes it out of the scope of pre-emption.

9.3 It is further submitted that the reference to ownership by the vendors in the respective sale deeds is not conclusive, as neither Daya Nand *(vendor of the plaintiffs)* nor Ishwar Singh & Ranbir Singh *(vendors of the defendants)* were recorded as owners in the revenue record; instead, they were shown to be *Gair Maurusians*. It is argued that a person cannot convey a better title than he possesses, and therefore, neither the plaintiffs nor the defendants acquired ownership rights in the suit land. In the absence of ownership, it is submitted that the plaintiffs cannot claim a right of pre-emption, which is contingent upon the sale of land from a joint *Khewat* by a co-owner.

9.4 Attention has also been drawn to Ex.D5, i.e., the List of Proprietors, wherein the names of the defendants are recorded as *biswedars* in the village. Given that the suit land stands recorded as *shamlat deh*, it is urged that the defendants, being proprietors, attained the status of co-sharers therein. Reference is also made to the cross-examination of PW2 – Karan (one of the plaintiffs), who admitted that the plaintiffs had migrated to Village Nawada from Village Risalu, thereby indicating that the plaintiffs are not *biswedars* of the village, where the suit land is located.

9.5 On the strength of the aforesaid submissions, learned counsel for the respondents–defendants has prayed for dismissal of the appeal, asserting that the findings recorded by the First Appellate Court are supported by the evidence on record and do not warrant interference.

10. This Court has considered submissions of both the sides and have appraised the entire record thoroughly and carefully.

<u>Analysis and findings by this court:</u>

11. Upon consideration of the rival submissions and perusal of the record, the following issues arise for determination:

i. Whether the suit land is pre-emptible under the Punjab Pre-emption Act, 1913?

ii. Whether the plaintiffs have established a superior right of pre-emption as co-sharers?

iii. Whether the vendors of the plaintiffs and defendants held ownership rights, or were merely tenants (*gair Maurusians*)?

iv. Whether the First Appellate Court rightly set aside the judgment of the Trial Court?

12. Jamabandi for the year 1969-70 (Ex.P4) is the oldest revenue record pertaining to suit land as available on record. It will show that the total land measuring 243 kanals 04 marlas comprised in Khewat No.189, Khatauni No.251 is recorded in the ownership of "*Shamlat Deh Hasab Rasad Raqba Malkiati Bandobast 1880".* The column of "*Cultivation"* contain following entry:-

- Surjit son of Hari Ram : One share
- Ram Dia, Mana and Ram Kishan,
  sons of Raja Ram (in equal shares) : = one share
- Ramsarup and Jhunfa sons of Gokal (in equal shares) : = one share
- Mai Ram, Lehna & Chandgi (in equal share) : = one share,
  i.e. total four shares

bakasht hissedaran i.e. under cultivation of co-sharers.

However, the actual possession is recorded in the name of Hukma son of Rehmat, Ali Mohammad son of Sharfu, Karimu son of Abrahim, Khairdin son of Alladin, Abrahim son of Maulabaksh & Shamadin son of Gajju in six equal shares as gair Maurusians.

Column No.9 of above jamabandi contains entry as "*jimgi gair Maurusians Lagaan nadarad Kabza jabardasti".* Meaning thereby that *gair Maurusians etc.,* were in the forcible possession of the total land, without making payment of any

land revenue. This jamabandi further shows that the entire land measuring 243 kanals 04 marlas falls in four rectangles No.1 to 4, divided into 35 kitas and the nature of entire land is “sailab”.

13. The next jamabandi for the year 1974-75 (Ex.P2) would reveal that apart from land measuring 243 kanals 04 marlas falling in 35 kitas and comprised in Khewat No.181/189, Khatauni No.220, this Khewat No.181 also comprises 6 more Khatounis. Apart from the land in dispute measuring 243 kanals 04 marlas of Khatauni No.220, other land falling in Khatauni No.203, 206, 211, 213, 214 and 219 also falls in the same Khewat No.181. It further shows that the entire land of this Khewat No.181 is recorded in the ownership of ‘*Shamlat Deh Hasab Rasad Raqba Malkiati Bandobast 1880*’ i.e. as shown in the previous jamabandi for the year 1969-70. As far as possession is concerned, Ramsarup and Jhunfa, sons of Gokal - co-sharers are shown to be in possession of 07 kanals of land comprised in Khatauni No.203. Surjit son of Hari Ram - co-sharer is shown to be in possession of 1 kanal 8 marlas of land, which is a *gair Mumkin makan* falling in Khatauni No.206. Ram Dia, Ram Kishan and Maan Singh sons of Raja Ram - co-sharers are recorded to be in possession of *gair Mumkin* house in Khasra No.333 comprised in Khatauni No.211. Bhai Ram son of Karma - co-sharer, is shown to be in possession of 04 kanal 18 marlas of land comprised in Khatauni No.213. Chandgi son of Karma is shown to be in possession of *gair Mumkin house* falling in Khasra No.328 comprised in Khasra No.214. Then, all the above-said co-sharers, whose names find mention in Khatauni Nos.203, 206, 211, 213 and 214 are recorded to be in possession of 07 kanals 19 marlas of land comprised in Khatauni No.219 and thereafter, all the above-said co-sharers i.e. Ramsarup etc., are recorded to be in possession of disputed 243 kanal 04 marlas of land comprised in Khatauni No.220.

14. In the disputed land measuring 243 kanals 04 marlas comprising Khewat No.181, Khatauni No.220, although cultivating possession is reflected in the name of co-sharers such as Ramsarup and others, actual possession is recorded in favour of Daya Chand (to the extent of ½ share) and Ishwar Singh &

Ranbir Singh (for the remaining ½ share), all shown as *gair maurusians*. This indicates that their possession was as tenants under the co-sharers, and the land was recorded as *sailab* in nature.

15. The jamabandi for the year 1974-75 does not reflect how Daya Chand and others came into possession, but their names appear post the registered sale deed dated 31.10.1973 (Ex.PW3/A). By this deed, several co-sharers — Jhunfa, Jaina Ram, Lehna, Ram Dia, Mana, Ram Kishan, Bhai Ram and Chandgi — sold 7/8th share (equivalent to 212 kanals 16 marlas) of the total land to Daya Chand (½ share) and to Ishwar Singh & Ranbir Singh (remaining ½ share).

16. Through this transaction, the vendors of both parties acquired whatever rights their predecessors held. Although those predecessors were reflected in possession as co-sharers, the ownership of the land was recorded in the name of *Shamlat Deh Hasab Rasad Raqba Malkiati Bandobast 1880*. Hence, the vendees under Ex.PW3/A effectively stepped into the shoes of the original co-sharers, acquiring corresponding rights.

17. The subsequent jamabandi for the year 1979-80 (Ex.D9) mirrors the earlier entries — *Shamlat Deh* remains the recorded owner; Ramsarup and others continue to be mentioned as co-sharers; while Daya Nand, Ishwar and Ranbir are shown in possession as *gair maurusians*. Notably, Column No.10 records "*Lagaan nadarad bawajah lene bai*", indicating non-payment of rent due to purchase. There is no evidence to suggest that Daya Nand and others ever paid rent, undermining the theory that their possession was purely as tenants.

18. Thereafter, by sale deeds dated 27.07.1981 and 06.07.1981 (Ex.P1 & Ex.P2), Daya Chand transferred his entire 7/16th share to the plaintiffs. Similarly, Ishwar Singh & Ranbir Singh sold their 7/16th share to the defendants via sale deed dated 23.08.1984 (Ex.D2).

19. The crucial issue thus is whether the vendors of the parties acquired ownership or mere tenancy rights through Ex.PW3/A, and accordingly, whether the plaintiffs and defendants subsequently acquired ownership interests capable of giving rise to a right of pre-emption.

20. It is well-settled that no person can transfer a better title than they possess. However, in rural land dealings — especially concerning *shamlat* or *sailab* lands — possession, coupled with revenue entries and registered documents, often forms the basis for determining the nature of rights. Here, though the vendors were recorded as *gair maurusians*, the absence of any lease or rent payment, coupled with long-standing possession and the execution of registered sale deeds, lends credibility to the Trial Court's view that they held transferable rights sufficient to constitute co-ownership.

21. The First Appellate Court's reasoning appears overly technical, focusing narrowly on classification of land as *shamlat* and the formal absence of title. It failed to fully appreciate the continuity of possession, the implications of registered sale deeds, and the fact that pre-emption arises from co-sharership in the *khewat*, not merely from inclusion in the list of proprietors. The plaintiffs' prior purchase, followed by possession, supports their claim to pre-empt the later sale.

22. Given that the plaintiffs' sale deeds (Ex.P1 & Ex.P2) predate the defendants' sale deed (Ex.D2), and that the plaintiffs thereby became co-sharers along with the vendors of the defendants, they are legally entitled to assert a superior right of pre-emption over the sale dated 23.08.1984.

23. However, suit for pre-emption deserve to be dismissed for another reason, as there is another angle to the case. It is well established that right of pre-emption is a piratical right and it imposes a restriction on the right of the owner to transfer his property to whomsoever he likes. This right operates as a clog on the right of the owner to alienate his property to a person of his own choice. The vendee can defeat the right of the pre-emptor by all legitimate means and if two views are possible, then the one which defeats the right of the pre-emptor has to be accepted, as has been held in ***Than Singh and others Vs. Nandu and others, 1978 PLR 98.***

24.1 In ***Than Singh (supra)***, a Full Bench of this Court referred to ***Rati Ram v. Mam Chand, AIR 1959 Punj 117***, wherein it was observed as under:-

"It is well established that right of pre-emption is a piratical right and it imposes a restriction on the right of the owner to transfer his property to whomsoever he likes. This right operates as a clog on the right of the owner to alienate his property to a person of his own choice; it has therefore to be strictly construed. The plaintiff in a pre-emption suit, who is an aggressor, must prove affirmatively that the transaction which he wants to pre-empt is a sale and that he has a preferential right over the vendees; in case there exists a doubt about the transaction in question being a sale the plaintiff must fail. The policy underlying the law of pre-emption is to keep out strangers and this to maintain the privacy and compactness of joint owners. If the transaction in dispute is capable of two interpretations, the Courts should be disinclined to hold it to be a sale so as to force the owner of the property to transfer it to a person who is not of his choice. It is well established that it is open to a party to defeat a possible pre-emptor by all legitimate means."

24.2 Hon'ble Full Bench in ***Than Singh (Supra)*** then held as under:

'13. From the close scrutiny of the aforesaid authorities and on the basis of the foregoing discussion, the following conclusions are arrived at:--

(1) that it is open to the plaintiff (pre-emptor) to establish that the transaction in suit is in reality a sale and not an exchange or gift and that the Courts can enquire into the true nature of such a transaction. Under the Evidence Act also, there is no bar to lead evidence to prove certain transaction as a sale;

(2) that the vendor can defeat the right of the pre-emptor by all legitimate means;

(3) if two views are possible, then the one which defeats the right of the pre-emptor has to be accepted; and

(4) if the Courts below have arrived at a finding that a certain transaction is a sale, exchange or gift, as the case may be, then this finding is not open to scrutiny in the second appeal."

25. Adverting back to the facts of present case, right from the year 1969-70 *(jamabandi Ex.P4)* till the year 1979-80 *(jamabandis Ex.D8 and Ex.D9)*, the nature of entire suit land is recorded as *Sailab (i.e. flooded or permanently kept moist by rivers).* Land Revenue Assessment Rules, 1929 specifies two classes of the land i.e. cultivated land and uncultivated land, which reads as under:-

"2. Classes of land.

(1) The most important classes of **cultivated land** are as follows :-

(a) barani : dependent on rainfall ;

(b) sailab : flooded or kept permanently moist by river ;

(c) Abi : watered by lift from tanks, jhils, streams, or by flow from springs ;

(d) nahri : irrigated by Canals by flows or lift ; and

(e) chahi : watered from wells

(2) The most important classes of **uncultivated land** are as follows :-

(a) banjar qadim: land which has remained unsown for eight successive harvests ; and

(c) ghair mumkin : land which has for any reason become unculturable, such as land under roads, buildings, **streams, canals, tank, or the like**, or land which is barren sand, or ravines."

26 What is important to notice is that the afore-said classification of lands, either cultivated or uncultivated, does not include waste land. The said word finds mention in Punjab Pre-emption Act, not in Section 2 providing definitions of some of the terms, rather in Section 5 of the Act, which reads as under:-

"5. No right of pre-emption in certain cases. - No right of pre-emption shall exist in respect of -

(a) the sale of or foreclosure of a right to redeem -

(i) a shop, serai or katra;

(ii) a dharmsala, mosque or other similar building; or

(b) the sale of agricultural land being waste land reclaimed by the vendee.

Explanation. - For the purpose of this section the expression "waste land" means land recorded as banjar of any kind in revenue records and such ghair mumkin lands as are reclaimable."

27. The First Appellate Court has treated the suit land as waste land by holding it as not pre-emptible in view of Section 5 (b) of the Act. However, learned Senior Counsel for the appellants contend that said interpretation of First Appellate Court is incorrect, as *waste land* is cultivable land as per Punjab Pre-emption Act and so, cannot be categorised as waste land. On the other land, contention of learned counsel for the respondents is that suit land was continuously recorded as *Sailab* at least since 1969-70, which means that it was not cultivable and that it has been made cultivable by the defendants by re-claiming it after their purchase in 1984, as will be evident from Jamabandi for the year 1984-85 Ex.D6 and D7 and subsequent entries in khasra girdawaris Ex.D10 and so, the First Appellate Court was correct in holding the suit land to be not pre-emptible.

28. Section 5 of the Punjab Pre-emption Act, 1913, excludes the right of pre-emption in respect of agricultural land that is classified as *waste land* and has been reclaimed by the vendee. The Explanation appended to Section 5 defines *waste land* to include:

"land recorded as banjar of any kind in revenue records; and such gair mumkin land as is reclaimable."

29. In the present case, the suit land is not recorded as *banjar* in the revenue record. However, it has been consistently recorded as *sailab* since at least 1969-70. The key question, therefore, is whether such sailab land can be considered *gair mumkin* and *reclaimable* within the meaning of the Explanation.

As per the Punjab Land Record Manual, *gair mumkin* typically denotes barren and uncultivable land. If such land is not reclaimed, it would fall within the broader category of *waste land* and, thus, would be subject to the right of pre-emption. However, if the land has been reclaimed by the vendee, then it would fall under the exception to pre-emption as per Section 5.

30. Although the term *waste land* is not uniformly defined in Indian statutes, its use is well-established in government policies, land revenue laws, and environmental regulations. The Wasteland Atlas of India, published by the Department of Land Resources (Ministry of Rural Development), defines *waste land* as:

> *"Degraded land which can be brought under vegetative cover with reasonable effort, and which is currently underutilized or not being used at all."*

31. The National Wasteland Development Board (NWDB), set up in 1985 and later integrated into the Ministry of Rural Development, categorizes wastelands into *cultivable* and *uncultivable*. According to the Technical Task Group Report (Planning Commission, 1987), *cultivable waste land* includes degraded lands capable of reclamation with reasonable effort — such as surface waterlogged areas (including sailab land). In contrast, *uncultivable* wastelands include permanently degraded areas like rocky or snow-covered land.

32. In the context of Punjab's land laws, land affected by riverine or flood action (*sailab land*) may be classified as *waste land*, particularly where it remains unused or uncultivated for an extended period after re-emergence. This classification is supported by:

- *Section 56 of the Punjab Land Revenue Act, 1967*, which exempts from land revenue assessment "waste and barren land not under cultivation for a continuous period of not less than six years." Sailab land that remains fallow for such a duration may qualify under this provision.

- *Section 42 of the Punjab Land Revenue Act, 1887*, which vests the ownership of *waste*, *unoccupied*, or *unclaimed* land in the Government, unless recorded otherwise.
- Revenue records often categorize such lands as:
    - *Banjar Qadeem* (uncultivated for over 4 years),
    - *Banjar Jadid* (uncultivated for less than 4 years),
    - *Ghair Mumkin Sailab* (unusable due to river/flood action).

33. These classifications substantiate the administrative treatment of sailab land as *waste land*, especially when it is not amenable to immediate cultivation or development. Interpreted in the light of Section 5 of the Punjab Pre-emption Act, 1913, it is evident that *cultivable waste land* which is subsequently reclaimed by the vendee is not subject to pre-emption.

34. In view of the above, this Court is of the considered opinion that land affected by riverine action (*sailab land*), which has remained uncultivated for a prolonged duration post-reappearance, may be classified as *waste land* under both legal and administrative frameworks. If such land is subsequently reclaimed by the vendee, the bar under Section 5 would apply, and the right of pre-emption would not be available.

35. In the present case, as already noted, the revenue records spanning from the year 1969-70 to 1979-80 consistently record the nature of the suit land, measuring 243 kanals 04 marlas, as *sailab*, indicating cultivable waste land. However, in the subsequent jamabandi for the year 1984-85 (Ex.D6 and Ex.D7), although the entire land continues to form part of Khewat No. 213, recorded in the ownership of *Shamlat Deh Hasab Rasad Raqba Malkiati Bandobast 1880*, the land is now shown to be distributed into three distinct Khatounis, as opposed to the earlier entries wherein the entire land was reflected under a single khatauni. This change is indicative of a post-sale reorganization of the landholding.

36. As per the said jamabandi for the year 1984-85, land measuring 20 kanals 02 marlas, comprised in Khatauni No. 264, is recorded under the cultivation of Sheo Ram and others, co-owners in Khata No. 261, though the actual possession is shown with Ishwar Singh & Ranbir Singh sons of Banwari Lal, as *gair Maurusians*. Out of this area, 14 kanals 06 marlas continues to be recorded as *sailab*, while 05 kanals 16 marlas is classified as *chahi*. Further, land measuring 118 kanals 08 marlas, forming part of Khatauni No. 265, is shown under cultivation of the said co-owners, but is in actual possession of the plaintiffs, namely Karan Singh and others, and is entirely recorded as *sailab*. On the other hand, land measuring 104 kanals 14 marlas, comprised in Khatauni No. 266, is shown in possession of the defendants, Raghbir Singh and others, out of which 95 kanals 13 marlas is recorded as *chahi*, and only 09 kanals 01 marla remains as *sailab*. These changes in land use and classification are further corroborated by the entries in khasra girdawaris (Ex.D10) for the period from November 1985 to October 1988, which substantiate the defendants' claim that following the execution of sale deed Ex.D2 in 1984, the land was redistributed into separate Khatounis and rendered cultivable through reclamation efforts by the vendees.

37. It is a settled principle of law that entries in revenue records, including *jamabandis*, carry a presumption of correctness, unless the same is rebutted by cogent evidence. In the present case, the jamabandi for the year 1984-85, produced by the defendants, reflects their actual possession over specific khasra numbers as well as the re-classification of portions of the land from *sailab* to *chahi*. This change clearly indicates that the defendants, after acquiring the land via sale deed Ex.D2, took effective steps to reclaim and cultivate the land, which was previously recorded as *cultivable waste land*. As such, the defendants fall within the exception carved out under Section 5 of the Punjab Pre-emption Act, 1913, which bars pre-emption in cases where *waste land* has been reclaimed by the vendee. Accordingly, the plaintiffs' claim for pre-emption in respect of the impugned sale is not sustainable in the eyes of law.

38. Further, the present suit was filed on 22.08.1986 and defendants re-claimed the suit land by making it cultivable prior to filing of the suit. In ***Karnail Singh etc. Vs. Jabbar Singh etc., 1974 PLR 482,*** it has been held by a Full Bench of this Court that when land is re-claimed after institution of the suit and that suit is decided and appeal against the decision pending, then Section 5(b) applies to the suit till the date of decree by the trial Court or the Appellate Court and that pre-emptor will not have the right of pre-emption regarding the re-claimed land and suit qua that land must fail.

39. In ***Babu Ram and others Vs. Prem Singh and others, 1988 PLJ 289,*** vendee re-claimed part of the land sold to him. It was held by a Division Bench of this Court that suit for pre-emption in respect of re-claimed land is incompetent. It was held that there is no provision in the Punjab Pre-emption Act, which prohibits the vendee from re-claiming land during pendency of pre-emption suit to defeat the pre-emption suit. It is settled position of law that in order to claim preferential right, pre-emptor is required to maintain his status and right not only on the date of filing of the suit or during the course of litigation but also on the date of decree of the trial Court.

40. In view of the discussion as above, it is held that for the afore-said reason also, i.e. defendants having re-claimed the cultivable suit land by making it cultivable after their purchase, the impugned sale in their favour (Ex.D2) is not pre-emptible.

41. On account of entire discussion as above, it is held that there is no merit in the present appeal. The judgment and decree as passed by the First Appellate Court is upheld, whereby the suit of the plaintiffs was dismissed. The present appeal is accordingly dismissed.

April 21, 2025 **(DEEPAK GUPTA)**
Renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No