

Subject: **SHAMLAT LANDS**

Dear Sir,

Our opinion has been required as to whether lands described as Shamlat in revenue papers can be accepted to secure financial facilities that may be extended by the Bank.

Shamlat lands are a peculiar feature of development of village communities in this part of the world and have historical as well as socio-cultural background that must be taken into consideration before the relevant concepts can be understood. This opinion is, therefore, divided into three main parts. The first part deals with the historical background, the second with practices relating to Shamlats, and the third part addresses matters that might have a bearing on accepting Shamlat property as security by a financial institution.

Historical Background

1. a) The Province of Punjab was constituted in 1849. The East India Company had established its complete supremacy in the area after defeating its predecessors: the Sikhs. During pre-British times huge tracts of lands would be lying in the sovereignty of some local feudal lords. With their express or implied permission, a person could bring a portion of the waste land under his cultivation by digging up a well. The original cultivator of the waste land and his associates would constitute the original land owners and the land actually being cultivated by them would become their property. Near this cultivated land they would set up their dwelling in a village that was collectively owned by them.
- b) After the British takeover, formal settlement regarding payment of land revenue was made by the British powers with the land owners. Initially summary settlements were made and then periodical permanent settlements commenced around middle of the nineteenth century.
- c) Around the cultivated land owned by the original founding families of a village, there could be huge tracts of waste land called “**Shamlat**” land, collectively owned by the village owners over which they would have a right either to reclaim the land themselves or allow others also to do so. The original owners were called

- “**Aala Maliks**” and others who had reclaimed the land with their consent were called “**Adna Maliks**”. The Aala Maliks had the right to bring further Shamlat waste land under cultivation by digging wells or adopting some other means. In certain cases even Adna Maliks would have the right to expand the area of their ownership by reclaiming Shamlat land. However, an Adna Malik could not allow strangers to bring the Shamlat land under cultivation. Persons who had reclaimed land as Adna Maliks, as well as those who had been transferred rights only to a piece of land (without the right to Shamlat lands) were called “**Malik Qabza**”. There could also be another class, mainly herdsmen, enjoying grazing rights over the Shamlat waste lands and paying a fee for it (“**Tirni**”).
- d) The British also commenced the process of formally demarcating village boundaries in Punjab, around the middle of the 19th century (which till 1901 included NWFP areas also). At the time of the first settlement formal records were prepared as to what land constituted private property of the original land owners and what constituted the Shamlat. The exact area of Shamlat land was also specified. There could be some scope of variation regarding the rights to Shamlat land but the main structure was that such land belonged to the Aala Malkan.
2. A unit of agricultural land independently owned is called a “**Holding**” (“**Khewat**”) and the owner of the land would be called the Khewatdar. The Khewatdars were collectively treated as owners of the village (**Malkan Deh**). To the extent of their individual or collectively private properties as Khewatdars such property belonged exclusively to them. It is possible that a single owner holds an entire Khewat or that the Khewat is co-owned by a number of persons. As regards the Shamlat properties the Khewatdars would enjoy collective rights of various natures. These rights find mention in important land revenue record documents called “**Wajab-ul-Arz**”. This document records various customs and usages of the village. Whether on partition of the Shamlat the land would be divided on the basis of individual ownership or revenue payments for the Khewat land, or some other basis, would again be a matter mentioned in the “**Wajab-ul-Arz**”. Grazing rights of herdsmen and the rights of Adna Malikan were also taken note of in the Wajab-ul-Arz. The fundamental idea that must be kept in mind is

that Shamlat land is not some class of “ownerless” land. It is a land that is fully owned by the Khewatdars, but the “ownership” is “collective” in nature and not “exclusive”.

3. Shamlat land would include the waste land held in common by the Khewatdars (whether or not brought under cultivation by them) as well as the land allocated for residential purposes of the Khewatdars (**Abadi Deh**). The Abadi Deh would comprise areas where houses had been actually constructed as well as areas reserved to meet certain other needs of the Abadi such as places of worship, graveyards, areas reserved for village expansion, or communal activities, etc. (**Gora Deh**).
4. Unlike Malkan Deh who enjoyed a number of rights regarding village property, Malkan Qabza were those who owned only the land actually acquired by them and which was in their possession. They had no share in the Shamlat of the village community or in the various rights, profits and privileges vesting in the proprietary body of the village, Malkan Deh.
5. In addition to rights of ownership in the nature of Malik Qabza arising in land that was Shamlat Deh, another kind of right also arose in such lands. Where a person without the consent of the village owners brought a land under cultivation such person became a tenant under the village owners with the right to use the property as long as he paid the rent and fulfilled other obligations of the tenancy. Such tenants were called Occupancy Tenants, Dakheelkars, Muqarraridars etc. An occupancy tenant was entitled to mortgage or transfer his rights, but subject to certain procedures laid down in certain statutes. Since early 1950s onwards, such occupancy tenants have been permitted to obtain full ownership rights in the land in their occupation, by paying a prescribed fee. There could also be a class of cultivators who would not be occupancy tenants or Dakheelkars, but only tenants at will.
6. It may be noted that when Shamlat land is brought into cultivation with exclusive right of ownership vesting in the Malik Qabza, although such Shamlat land would cease to be part of the divisible pool of Shamlat, but the description of the land in

the revenue records would continue to be Shamlat. Ordinarily, the person reclaiming the land with the permission of the land owning village community, or in accordance with the terms of Wajabul Arz would, to the extent of the reclaimed land, be its owner as Adna Malik (and also Malik Qabza). The Aala Malkan also had certain other rights regarding tributes payments, in cash or in kind, generally called **Malkiana Rights**. Such Malkiana rights were abolished when land reforms took place under the Government of Pakistan.

7. It should also be kept in mind that where colonization of land had been made by the government through making canal waters available, or where state waste land has been made available for reclaiming land and villages had also been set up for the purposes, the Shamlat system, as discussed above was, in many cases, not fully operative. These kinds of colonies are called “**Chaks**”. Quite often, huge tracts of waste land are attached to a Chak but unlike the village Shamlat system, this land sometimes belongs to the state. The land owners are allowed only the right of user, but not the right of ownership. In the Shamlat system, the waste land belongs to the Khewatdars but in Chak system such land belongs to the state. However, in many cases the state also transferred huge tracts of lands as Shamlat to the Khewatdars of the Chak.

Practices regarding Shamlats

8. If the majority of the Khewatdars so decide, the Shamlat land can be partitioned on a pari pasu basis, prorated against the land owned by the Khewatdars or on the basis of the revenue being paid by a Khewatdar (Hasab-e-rasad Khewat)
9. Unless partitioned, no Khewatdar can be called an exclusive owner of any Shamlat land, whether comprising the Abadi Deh or Shamlat Deh. Whenever a Khewatdar transfers any “Khewat” land, the buyer would become entitled to a prorata co ownership right in the Shamlat land only if it is so agreed between the seller and the buyer specifically. {This legal position has also been given statutory recognition in “West Pakistan Land Dispositions (Savings of Shamlat) Ordinance, 1959”} In absence of an express provision, the sale would cover only the Khewat land, and corresponding rights to the Shamlat would remain with the Seller.

10. The Khewatdar would also be competent to transfer only his share in the Shamlat land to a vendee, and if he is in exclusive possession of such share the vendee would be put into exclusive possession of the relevant land. However, the vendee in possession becomes entitled only to the share purchased by him. When partition of Shamlat takes place, he would not become entitled to a pari passu partition right in the general Shamlat land itself, (the way a Khewatdar would be).
11. Despite creation of exclusive proprietary interest as Malik Qabza in property that was Shamlat, the word “Shamlat” would be mentioned in the ownership column of the fard jamabandi meant for stating names of the owners. The name of the Malik Qabza would be given in the general column for “Remarks” (kefiat). This practice would continue till partition of Shamlat takes place.
12. As regards “Abadi Deh” a Khewatdar in possession of his dwelling unit would be entitled to transfer to a vendee his interest in the land. However, the interest of such Vendee would be an exclusive right of use and occupation of the dwelling unit and the land as a co-sharer in Abadi Deb, but the title to the land would, otherwise, continue to be held in common by the Khewatdars, as Shamlat. Such purchaser from the proprietor would also be entitled to transfer his interest to another purchaser. However, where the village proprietors have allowed another person to build a house who had no share in Abadi Deh Shamlat, such house would be held by such person as a “non-proprietor”. A Non-Proprietor was not competent to sell his possessory rights to another person nor was he entitled to allow any other person to reside in the house held by him as a non-proprietor. He enjoys only a personal right of use and occupation (**Bartan**)
13. It is also possible that workers required for any village/community might be allowed to raise houses in parts of village Deh. However, ordinarily the worker owns only the construction materials but not any right in the land itself. If the worker leaves, he will have to surrender the land to the new worker.
14. Whenever partition of Shamlat Deh takes place, it would be the endeavour of the Revenue Authorities not to disturb the actual possession of the Khewatdar or Malik Qabza. However, it is possible that at the time of partition there might be

relocation. Partition is hardly ever permitted for Abadi Deh land covered by houses. The Abadi Deh is shown in revenue papers encircled with a red line (**lal lakeer**).

15. Across a period of time it happens that villages covered by the Land Revenue Act, 1877 have become parts of towns, although there has not been a formal de-notification to take the land out of the scope of the land revenue administration system. In this kind of situations one comes across “fards” mentioning some land as “Shamlat Deh”, although the entire land has become urbanized. It is hardly possible for any partition of such land to take place formally. In fact it should be assumed that there has been a private partition of the land and the Khewatdars/Malik Qabza would continue to retain the benefit of exclusive possession of the land. The rights of such holders of land cannot be easily disturbed, since no right over the land can be claimed by any stranger (including the government) and general partition could take place only when the majority of the Khewatdars demand it.
16. Shamlat land is subject to partition if the majority of the owners of Shamlat Deh agree. But this would depend on what exactly are rights of the village community or Khewatdars as stated in the Wajib-ul-Arz. In certain cases, special interest such as those of the Tirni payers would be protected regarding their grazing rights.
17. From the foregoing it can be seen that Shamlats land could pass into private property with its purchaser becoming Malik Qabza. There could also be possibility of a Non-Khewatdar being in possession of Shamlat land. If any person is shown only to be in possession of Shamlat land (but not as a Malik Qabza), he would not be holding exclusive rights of possessory ownership in the land, but could have been holding possession as an occupancy tenant, or in some other capacity.

Shamlat and the Banker

- 18.** From the point of view of accepting as security land mentioned as Shamlat in the ownership column of the Register Haqdar-e-Zamin, the following position emerges:
- (a) Shamlat land, whether in the Abadi Deh or around it, can be transferred and the transferee becomes entitled to the share transferred to him, subject to possible relocation at the time of partition. It is not the case that merely because a property is Shamlat, it ceases to be a property that can be sold or mortgaged.
 - (b) Shamlat land in exclusive possession of a Khewatdar or purchased from him can be acceptable as security. Property in the Abadi Deh shown to be occupied by a Khewatdar, or purchased from him, can be also accepted as security.
 - (c) Shamlat in possession of the Khewatdar, (or a transferee from him) including land in Village Deh should be accepted only to the extent of his share in Shamlat and not as regards land that is occupied in excess of the Shamlat Share.
 - (d) Where a person is entered as Malik Qabza, the property of such person can also be accepted as security, as would be the case when he is mentioned as a Khewatdar.
 - (e) No property held as Dakheelkar or Muqarraridar should be accepted as security. They should obtain proprietary rights, as discussed earlier.
- 19.** While accepting Khewat land for mortgage from a Khewatdar, in cases where there are also Shamlat rights available in the village, a bank has to keep in mind that unless it is clearly mentioned in the mortgage deed that pro-rata Shamlat rights were also being mortgaged, the mortgage interest would be limited only to the Khewat land and would not include a share in the Shamlat. This would not affect enforceability of the mortgage but would only have a bearing on value of the mortgaged property.
- 20.** Before a property classified as Shamlat Deh is accepted as security, its “owner” in possession must produce a fard that clearly states that it is being issued for the purpose of creating a mortgage. Additionally, a fard issued for purpose of sale

should also be demanded, since such fard would establish that there was no bar on alienation of the land. It may be noted that the Land Revenue Act does not apply to Abadi Deh (excepting the rare cases where the Abadi is subject to payment of land revenue), but formal records are maintained relating to it. The ownership in Abadi Deh must be certified by the revenue officer.

- 21.** As mentioned earlier at No.15 above, that land continues to be classified as Shamlat Abadi Deh although the Abadi Deh might have got converted into a town. Although a non-proprietor ordinarily could not sell his interest to another person but if it could be established that there was a custom that he could do so, then the non-proprietor would be competent to sell the house to another person. In cases where Abadi Deh has become urban land, subject to property tax assessment, if a person holds a house where only he is shown as an owner in the PT-I form (and the record being maintained by the Property Tax Department) there could be a presumption that he holds an absolute transferable interest. However, in such cases, the title of the occupant must be traced back, and if it is sourced in a series of previous sellers, or based on a long period of occupation, such person could be treated as an owner. Nevertheless, it again needs to be emphasized that the facts and circumstances of each case have to be carefully considered. The fundamental point being asserted here is that it could be possible that an original non-proprietary interest in Abadi Deh might have matured into a proprietary interest, although such interest is not sourced in a proprietary grant from the original Khewatdars.
- 22.** For properties of the above nature mortgage should be created only through a registered instrument for full value of the security and funds should be released to a customer only after a mortgage mutation has been entered in the records.
- 23.** No property classified as Shamlat should be accepted as security without it having been cleared by a competent lawyer. A copy of Wajib-ul-Arz regarding the Shamlat land should also be made available to the lawyer.

24. For loan to value purposes a greater margin should be required for properties that are held in Shamlat Deh or in Abadi Deh as compared to properties that are held as owners of Khewat lands.
25. In case of long term loans, the banks, as a matter of prudent practice, should obtain a fresh copy of fard, every year disclosing the mortgage of the bank.
26. If a banker decides to provide a loan on the security of a land which is Shamlat, the bank has to ensure that the land is in independent physical possession of the “owner” It should be noted here that such Shamlat land which is evidently meant to always remain in common ownership cannot be given in exclusive possession of any person e.g. places of worship, graveyards, common public paths etc.
27. Where the Shamlat property has become urbanized, the matter should be addressed, as discussed at 21 above.