REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6990 OF 2014

THE STATE OF HARYANA THROUGH
SECRETARY TO GOVERNMENT OF HARYANA .....APPELLANT(S)

VERSUS

JAI SINGH & ORS. .....RESPONDENT(S)

WITH

CIVIL APPEAL NOS. 6610-6612 OF 2016

CIVIL APPEAL NO. 6992 OF 2014

CIVIL APPEAL NO. 6991 OF 2014

CIVIL APPEAL NO. 6997 OF 2014

CIVIL APPEAL NO. 7001 OF 2014

CIVIL APPEAL NO. 4435 OF 2015

CIVIL APPEAL NO. 1679 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 28528 OF 2017)

CIVIL APPEAL NO. 1678 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 1072 OF 2018)

CIVIL APPEAL NO. 1675 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 4062 OF 2019)

CIVIL APPEAL NO. 1677 OF 2022
(ARISING OUT OF SLP (CIVIL) 3562 OF 2022)
(DIARY NO. 7418 OF 2020)

AND

CIVIL APPEAL NO. 1680 OF 2022
(ARISING OUT OF SLP (CIVIL) NO. 3557 OF 2022)
(DIARY NO. 14965 OF 2018)

J U D G M E N T

HEMANT GUPTA, J.

CIVIL APPEAL NO. 6990 OF 2014; CIVIL APPEAL NOS. 6610-6612 OF 2016; CIVIL APPEAL NO. 6992 OF 2014; CIVIL APPEAL NO. 6991 OF 2014; CIVIL APPEAL NO. 6997 OF 2014; CIVIL APPEAL NO. 7001 OF 2014; CIVIL APPEAL NO. 4435 OF 2015; CIVIL APPEAL NO. 1675 OF 2022 AND CIVIL APPEAL NO. 1677 OF 2022

1. The subject matter of challenge in the present appeals is the amendments in the Punjab Village Common Lands (Regulation) Act, 1961[1], as inserted by Haryana Act No. 9/1992[2], published on 11.2.1992 after the assent of the President of India.

2. The amendments carried out by the Amending Act came up for consideration before the Full Bench of Punjab and Haryana High Court in a judgment reported as ***Jai Singh & Ors.*** v. ***State of Haryana***[3]. The High Court struck down the amendments introduced and held as under:

> "In view of the observations cited above, Sections 2(g)(4) and 2(g)(6) of the Act of 1961 describes the land reserved for common purposes under Consolidation of Holdings Act, 1948 by application or *pro rata* cut to the holdings of the land owners within their ceiling limits as Shamlat Deh under the Act of 1961 and since these lands have been vested in the Panchayat the action is

1 For short, the '1961 Act'
2 Amending Act
3 AIR 1995 P&H 243 (Jai Singh I)

> in violation of Article 31-A. Since definitions by Section 2(g)(4) and 2(g)(6) are so intermingled that no part can be segregated and held *ultravires* and these sections having categorically transgressed the powers of the State for acquisition of land without compensation, these provisions can not stand the test of constitutionality. It is immaterial that the transgression is open, direct or overt, disguised covert and indirect. It is a piece of colourable legislation. Violation of Article 31-A is so manifest that it leaves no manner of doubt. I am of the considered view that Sections 2(g)(4) and 2(g)(6) are void being violative of Article 31-A of the Constitution of India. Writ of *mandamus* is, therefore, issued restraining the State of Haryana from enforcing the provisions of Sections 2(g)(4) and 2(g)(6) of the Act of 1992."

3. Civil Appeal No. 5480 of 1995 titled as ***State of Haryana*** v. ***Jai Singh*** before this Court against the said judgment was accepted on 6.8.1998 and the following order was passed:

> "We have made a through search in the judgment under appeal in order to discover whether any finding was recorded by the High Court that the land sought to be affected by the legislative measure under challenge was within the celling limit of each of the respective proprietors and was in each's personal cultivation, be it factually or legally. That there is no such finding is conceded to by the learned counsel for the parties. Unless such finding was recorded, in clear terms, the legislative measure could not have been struck down on the anvil of Article 31A of the Constitution. In this view of the matter, we would rather have a complete decision from the High Court on the subject and, therefore, necessarily, have to effect a remand to it; other questions not being adverted to and leaving those questions to the High Court to be re-affirmed or otherwise".
>
> As a result, we allow this appeal, set aside the impugned judgment of the High Court and remit the matter back to it for re-decision of the question focussed as also others as indicated above".

4. It is thereafter, the Full Bench of Punjab and Haryana High Court in ***Jai Singh and Ors.*** v. ***State of Haryana***[4] examined the legality of sub-section 6 of Section 2(g) of the 1961 Act. The above-mentioned appeals are directed against such order and the order dated 08.11.2013 passed by the Full Bench dismissing the review application against the said order in the case of ***State of Haryana*** v. ***Vir Singh & Ors.***[5].

5. The impugned provisions of the Amending Act read thus:

> "2. In this Act, unless the context otherwise requires-
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> xxx xxx xxx
>
> (g) shamilat deh" includes
>
> xxx xxx xxx
>
> (6) 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 vest in the Gram Panchayat under Section 23-A of the aforesaid Act.
>
> Explanation- Lands entered in the column of ownership of record of rights as 'Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad, 'Jumla Malkan' or 'Mushtarka Malkan' shall be Shamilat Deh within the meaning of this Section."

6. The Statement of Objects and Reasons for the Bill introduced on 5.3.1991 containing the above impugned provisions is as follows:

4 2003 SCC Online P&H 409 (For short, 'Jai Singh II')
5 RA -CW No. 350 of 1999 decided on 8.11.2013

> "To make the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 more effective, practical, deterrent and beneficial to the interests of the Gram Panchayats it is necessary to amend the Punjab Village Common Lands (Regulation) Act, 1961."

7. Customary Law by Sir W.H. Rattigan (Sixteenth Edition revised by Dr. Hari Dev Kohli) was first published in the year 1880. It is a celebrated reference book, which explained the origin of Shamilat law in Punjab in Chapter X of the book that the land is the true basis of unity in villages, supplying the ultimate real bond of union between the members who constitute the aggregate proprietary body generally called the "village community". It was elaborated as under:-

> "That land is the true basis of unity in village groupings, supplying the ultimate real bond of union between the members who constitute the aggregate proprietary body generally called the "village community", is a fact which may be verified by the most superficial observer of the organization which underlies those communities in the Punjab. Thus, whatever may be the type to which a particular village may belong, and to whatever extent individualistic notions of property may have superseded the earlier ideas of jointness and common holdings, there will be found still surviving very distinct evidence of the fact that in its origin the village association was bound together by the acquisition of a definite space of land, which, as Sir Henry Maine has so abundantly demonstrated, began at once to become the basis of its capacity instead of kinship, ever more and more vaguely conceived. This evidence is to be found in the reservation within the territorial limits of every village of some portions of the uncultivated waste for purposes of common pasture, for assemblies of the people, for the tethering of the village cattle, and for the possible extension of the village dwellings. Lands so reserved are jealously guarded as the common property of the original body of settlers who founded the village or of their descendants, and occasionally also those who assisted the

> settlers in clearing the waste and bringing it under cultivation are recognised as having a share in these reserved plots. xxxx xxxx and Finally, a modified and consolidated Punjab Village Common Land Regulation Act, 1961 came in the statute book which vests the village common land in the Gram Panchayats without putting any constraints on the rights of the village folks to use the village common land. It is only the ownership which is vested in the Gram Panchayats along with its management and power of alienation and thus superseding the village proprietary body…."

8. The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948[6] was enacted to provide for compulsory consolidation of agricultural holdings and for preventing their fragmentation. The expression "common purpose" defined under Section 2(bb) to mean "any purpose in relation to any common need, convenience or benefit of village" was inserted by Punjab Act No. 22 of 1954 with retrospective effect. The scope of such expression came up for consideration before the Full Bench of Punjab and Haryana High Court in a judgment reported as ***Munsha Singh & Ors.*** v. ***The State of Punjab & Ors.***[7]. It was held that the individual proprietors of the land were not left with even a single right which may be included among the attributes of ownership and that it was a case of total expropriation of the right-holders. The Full Bench held that neither the language of the preamble, nor that of section 18(c) could be extended so as to include within its ambit wider programme, with a view to

6 For short, the '1948 Act'
7 AIR 1960 P&H 317 (FB)

bring about social equality by taking away from individual proprietors their lands and giving them to non-proprietors, or handing them over to the Panchayat for purposes of management for any 'common purpose'. The amendment carried out was thus set aside. It was thereafter, the expression “common purpose” was amended by Punjab Act No. 27 of 1960. Such amendment was upheld by the Full Bench of Punjab High Court in a judgment reported as ***Kishan Singh & Anr.*** v. ***The State of Punjab & Ors.***[8].

9. The correctness of the decision of Full Bench in ***Kishan Singh*** was doubted in view of the judgment reported as ***Kavalappara Kottarathil Kochuni v. States of Madras and Kerala***[9]. The matter was considered by a larger Full Bench of five judges in a judgment reported as ***Jagat Singh & Ors.*** v. ***The State of Punjab & Ors.***[10] The question examined therein was as to whether it was permissible to keep aside land owned by private individuals for providing income to the Gram Panchayat. It was held that the 1948 Act was a measure designed to promote agrarian reforms and therefore, not *ultra vires* the Constitution. The judgment in ***Jagat Singh*** came up for consideration in ***Ranjit Singh v. State of Punjab***[11]

8 AIR 1961 P&H 1
9 AIR 1960 SC 1080
10 AIR 1962 P&H 221 (FB)
11 AIR 1965 SC 632

wherein the judgment of the High Court was not interfered with.

10. In ***Ajit Singh*** v. ***State of Punjab***[12], an argument was raised before the Division Bench that the proprietor (land owner) was a small landholder within the meaning of the Punjab Security of Land Tenures Act, 1953, and that, therefore, no part of his holding could be acquired without payment of compensation at the market value. The High Court dismissed the petition. Such judgment came up for consideration before a Constitution Bench of this Court in a judgment reported as ***Ajit Singh*** v. ***State of Punjab & Anr.***[13]. The Court considered Rule 16(ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949[14] to hold that the title vests in the proprietary body, the management of the land is done on behalf of the proprietary body by the Panchayat for common needs and purposes and for the benefit of estate or estates concerned. Hence, the beneficiary of the modification of rights was not the State.

11. At this stage, it may be noted that a Full Bench of Punjab in a judgment reported as ***Jit Singh*** v. ***The State of Punjab & Ors.***[15], considered the Punjab Act No. 39 of 1963 amending the 1948 Act. It was held that reservation of land for income of the Gram Panchayat under the 1948 Act and for extension of the

12 ILR (1966) 1 Punjab 828
13 AIR 1967 SC 856
14 1949 Rules
15 AIR 1964 P&H 419 (FB)

abadi of the non-proprietors including Harijans, for Panchayat *Ghar* and for manure pits was valid, as covered by Article 31A(1)(a) of the Constitution. In ***Bhagat Ram & Ors.*** v. ***State of Punjab & Ors.***[16], the Constitution Bench of this Court held that reservation of land for the income of panchayat is not permissible, being hit by second proviso to Article 31A of the Constitution. The question considered in the context of said clause (ii) of Section 2 (bb) was as to whether the reservation of land for income of the Panchayat was an acquisition of land by the State within the second proviso to Article 31A of the Constitution. It was held by the majority judgment that the said provision was hit by the second proviso to Article 31A of the Constitution. The State was accordingly directed to modify the consolidation scheme and bring it into accord with the majority judgment. There is no dispute about the said proposition in the present appeals.

12. In ***Atma Ram*** v. ***State of Punjab***[17], the constitutionality of the Punjab Security of Land Tenure Act, 1953 as amended by Punjab Act No. 11 of 1955 was in question. The Constitution Bench examined Article 31A. It was held that in Punjab there are very few estates as defined in Section 3(1) of the Punjab Land Revenue Act, 1887 in the sense that one single landowner is seized and possessed of an entire estate which is

16AIR 1967 SC 927
17 AIR 1959 SC 519

equated with a whole village. In Punjab, an estate and a village are inter-changeable terms, and almost all villages are owned in parcels, as holdings by co-sharers, most likely, descendants of the holder of a whole village which came to be divided amongst the co-sharers, as a result of devolution of interest. This Court also noticed that holdings in Punjab are vertical divisions of an estate whereas in Eastern India, they represent a horizontal division. The writ petitions were dismissed holding that the provisions of Article 31A save the Act from any attack based on the provisions of Articles 14,19 and 31 of the Constitution.

13. The Five Judges Full Bench in ***Suraj Bhan & Ors.*** v. ***State of Haryana & Anr.***[18] has given the historical background of the *shamilat deh* lands in the State of Punjab, including the present-day State of Haryana. The history of *shamilat* law as delineated in the said judgment is quoted hereinunder for better understanding of the subject in the present appeals. The words commonly used in this judgment are not common in use, therefore, the Glossary of the words with their meaning is appended at the foot of this judgment.

14. The *shamilat deh* lands in Punjab and Haryana are the common lands in the villages reserved and utilized for common purposes by inhabitants of the villages. These were

18 MANU/PH/3354/2016; (2017) 2 Punjab Law Reporter 605

kept as such at the time when the villages were formed or consolidated and the land was colonized. In many cases, land was contributed by the landowners or the village proprietary body from their own landholdings for common purposes. Villages were formed by cultivating the barren, uncultivated, waste, or fallow land, which are known as '*banjar qadim*' or '*banjar jadid*' (barren land since long or recent). The agricultural tribes which cultivated such land and made it cultivable were the original landowners. Agricultural land owned by a proprietor in his own right was a 'holding' of the land and was recorded as such in the revenue records as '*khewat*' and the owners were known and recorded as '*khewatdars*'. A *khewatdar* or landowner may hold the entire *khewat* or have a share in it. The *khewatdars* were collectively treated as owners of the land in a village ('*malkan deh*'). The *shamilat* lands were enjoyed collectively by the *khewatdars* and also by the other inhabitants of the village. These rights find mention in the Village Land Administration Papers known as '*Sharat Wajib-ul Arz*'.

15. The proprietors of land in an estate had a right of ownership in the *shamilat deh* lands, mostly to the extent of the share of their holdings in the revenue estate. Various revenue terms were used for describing and indicating the extent of ownership rights and share of the proprietors. The non-proprietors including labourers, artisans, etc., as also those

responsible for collecting the land revenue ('*mal guzars*') were entitled to the use of the common lands of the village i.e., *shamilat deh* lands.

16. The *shamilat* lands are recorded in the revenue records by various nomenclatures such as *shamilat deh*, as also *shamilat tikkas*, besides shamilat *tarrafs*, *pattis*, *pannas* and *tholas*. The said lands are recorded as such in the revenue records for the common use of the inhabitants of the village or for the common use of a particular subdivided class of the village like '*tikkas*', '*tarrafs*', '*pattis*', '*pannas*' and '*tholas*' etc. These types of lands, however, were not without ownership or proprietary rights of the owner or '*khewatdar*'. Such ownership was and had been collective in nature and not exclusive. The lands recorded and described with different aforementioned nomenclatures would vest accordingly in the '*tarraf*', '*patti*', '*panna*' or '*thola*' etc. which is in the form of a unit or a class in the village. The proprietary body of the village managed the day-to-day affairs of the inhabitants of the village and also generated income for common use and kept lands for common use for its inhabitants.

17. The British Government in India had undertaken the task of land settlements. The most important aspect of land settlement was to formulate a 'record of rights' commonly known as '*fard*', which is a detailed register of land in the form in which they were believed to have been in existence at the

time of annexation of Punjab by the British in 1849. These settlements were carried out by Settlement Officers whose duty was to prepare the 'record of rights'. The records were prepared primarily for fiscal purposes; however, these assume a judicial character, specifically with reference to the proprietorship or ownership. The records prepared in the past during settlements play an important role in determining the rights of owners and cultivators even as on date.

18. The Punjab Settlement Manual by Sir James M. Douie, KCSI, ICS, 4th Edition, (3rd Reprint 2013)[19] delineated the Development of Settlement Policy in Punjab, which then included the State of Haryana as well. In these settlements, various areas and regions of the States were demarcated. The Punjab Land Revenue Act, 1887 was enacted and is now applicable in the States of Punjab and Haryana with modifications by the respective States. The Settlement Manual by Sir Douie makes a mention of the 'village community' as a body of proprietors who then or formerly owned part of the village lands in common, and who were jointly responsible for the payment of revenue.[20] As time passed by, it has been mentioned that the tendency was for the area held in severalty to increase, but it was rare indeed to find a village which was one of the communal types in which there was no common

19 For short, 'Settlement Manual' printed by the Controller of Printing & Stationery Department, Haryana, 2013.
20 Para 126 of the Settlement Manual

property remaining. Joint responsibility had been made a permanent feature of village tenure by the British Government. Under the native rule, it did not exist when the State realized its dues by division of crops or by appraisement. Even when a cash assessment was made, only a few leading members of the community became responsible and they generally occupied the position of revenue farmers in their dealings with the rest of the brotherhood. But joint responsibility occupied a far more prominent position in the codes than in practice. There was reluctance of the village proprietary body to admit strangers. The admission of strangers into the brotherhood was always in theory at least, a thing to be guarded against, and village customs in the matter of inheritance and preemption were founded on this feeling.[21] But under the native rule, the repugnance to admit strangers often yielded to the pressure of the Government demand, and outsiders were allowed to share in rights that had become burdens. The almost complete freedom of transfer for long enjoyed in practice under the British Rule had a still more disintegrating effect on village communities.

19. The Settlement Manual also makes a mention to the sub-divisions of villages into '*Pattis*' etc.[22] It has been stated that villages often consisted of several divisions known by various names such as '*tarraf*', '*patti*' (where the term '*tarraf*' is used

21 Para 127 of the Settlement Manual
22 Para 128 of the Settlement Manual

for main divisions, the sub-divisions are sometimes called '*pattis*') or '*panna*' and these again sometimes divided into smaller sections like '*thoks*', '*thulas*' etc. The lands of two '*pattis*' may be separated ('*chakbat*' i.e., applicable to a '*patti*' or sub-division of an estate which has all its land in one block) or intermixed ('*khetbat*' i.e., applicable to a '*patti*' or subdivision of an estate, the land of which do not lie in a single block) and the proprietors of a '*patti*' may have common lands of their own and also a share in the general village common land.

20. The Settlement Manual deals with the residents in the village community who were not proprietors.[23] The village community of the communal type was to a considerable extent self-sufficing. The landowners included "a nearly complete establishment of occupations and trades for enabling them to continue to their collective life without assistance from any person or body external to them."[24]

21. The constitutional validity of certain provisions of the Punjab Village Common Lands (Regulation) Act, 1953[25] came up for consideration before the Punjab and Haryana High Court in a judgment reported as ***Hukam Singh*** v. ***State of Punjab***[26]. The High Court examined Article 31(2) and Article 31A, keeping in view the fact that the Punjab Act was reserved for

23 Para 129 of the Settlement Manual
24 Maine's Village Communities in the East and West, 5th Edition, Page 125.
25 Punjab Act
26 AIR 1955 P&H 220

consideration of the President and had received his assent, it was held that the term “extinguishment” appearing in Article 31 of the Constitution does not mean total abolition of rights known to law. Further argument was that the Act does not provide for extinguishment or modification of any right in any estate, therefore, the *shamilat deh* in a village would not be an estate and the extinguishment or modification of any right in such part of an estate would not be covered by Article 31A of the Constitution. The Court held as under:

> “ …The argument is interesting but not in my opinion substantial. According to Mr. Tek Chand a law which provides for the total abolition of the rights of ownership of landed property, for instance, would be constitutional as it would, according to him, fall under Article 31-A, but if the right of ownership of a person or a group of persons is merely extinguished *qua* those persons and the same right is vested in some other person that would not fall within the Article. I find it impossible to agree that the expression “extinguishment” has been used in Article 31-A of the Constitution in the special sense suggested by the learned counsel. It is significant that Article 31-A speaks of acquisition by the State of any estate or of any rights in an estate and then speaks of the extinguishment or modification of any rights in an estate and I can find no ground for thinking that if a person's rights in an estate have been taken away from him and given to another person this would not be extinguishing those rights. In my opinion, therefore, the impugned Act does fall within the meaning of Article 31-A of the Constitution as it provides for the extinguishment of certain rights in certain property belonging to the village proprietors and also for the modification of those rights.
>
> …Once again, I am unable to agree. There are in an estate several kinds of rights owned by various persons and one of such rights is the right of proprietorship in the village *shamilat* and when, therefore, the impugned

> Act provides for the extinguishment of such ownership rights it clearly provides for the extinguishment or modification of certain rights in an estate. Mr. Tek Chand's argument that a part of an estate is not an estate appears to have been raised before a Full Bench of this Court in connection with the validity of another statute and it was on that occasion repelled by the Full Bench. Khosla, J. who delivered the main judgment in that case, *Bhagirath Ram Chand* v. *State of Punjab and others* [A.I.R. 1954 Punj. 167] , observed in connection with this argument—
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> > "It is clear that the whole includes the part and where an Act provides for rights in an estate it provides for rights in part of an estate."
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> We are, in my opinion, bound by the view of the Full Bench so clearly expressed in this respect."

22. In ***State of Haryana v. Karnal Co-op. Farmers' Society Limited***[27], it was held that the Punjab Act and the Pepsu Village Common Lands (Regulation) Act, 1954[28] are two legislative measures enacted by the respective States of Punjab and Pepsu to vest the common lands of villages in their Panchayats for the common benefit and advantage of the whole community of the village. It was held as under:

> "3. Villages in pre-independent rural India having village common or communal lands meant for use by the whole village community was their common redeeming feature, in that, the inhabitants of the villages whose occupation was predominantly agriculture dependent on their live-stock needed to give manure to their lands, to cart manure to their lands, to plough their lands to carry on several other incidental agricultural operations, required common lands for using as pasturages, pools, ponds, thrashing-floors, cowdung pits, hay stack areas, tethering areas and the like. Villages in the States of Punjab and Pepsu were of no exception. With the dawn of independence and rise in land value even in villages,

27 (1993) 2 SCC 363.
28 Pepsu Act (Patiala and East Punjab States Union).

> powerful and greedy inhabitants in villages became grabbers of Village common lands depriving their use to the village community. Some of the States which were enabled by the Constitution of India to organise village Panchayats as units of Self Government and encourage growth of agriculture and animal husbandry in villages by suitable legislative measures took prompt steps to legislate on common lands of the village, so as to restore such lands for communal use and common benefit of all the inhabitants of the villages by vesting them in their respective Panchayats. Punjab Village Common Lands (Regulation) Act, 1953 and Pepsu Village Common Lands (Regulation) Act, 1954 are two legislative measures enacted by the respective States of Punjab and Pepsu to vest the common lands of villages in their Panchayats for common benefit and advantage of the whole community of the village concerned. When under the States Reorganisation Act, 1956 Pepsu State merged in Punjab State, the said Pepsu Act continued to operate in the area of erstwhile Pepsu. When the operation of two legislative measures in the new Punjab State, which were in some respects not common, was found to be undesirable, the State of Punjab enacted the Village Common Lands (Regulation) Act, 1961 referred to by us already as 'principal Act' and made it operative in the whole territory of Punjab State, with effect from 4th day of May, 1961. By the principal Act the two earlier Acts which had covered the field till then were repealed, as well. The principal Act, as stated in its preamble, sought by its provisions to consolidate and amend the law regulating the rights in village common lands popularly and colloquially known as 'shamilat deh' and 'abadi-deh'. As 'shamilat deh' was not defined in the repealed Acts adverted to and there prevailed uncertainty as to its nature, the principal Act defined 'shamilat deh' in Section 2(g) thereof in an endeavour to achieve certainty, ...”

23. The nature of *shamilat deh* lands or village common lands was examined by a Constitution Bench in ***Gram Panchayat of Village Jamalpur v. Malwinder Singh***,[29]. It was observed that prior to the partition of India, *shamilat deh* lands in Punjab were owned by proprietors of other lands in the village, "*Hasab Rasad Khewat*", that is to say, in the same proportion in which

29 (1985) 3 SCC 661

they owned other lands. Therefore, a person who did not own any land in the village could have no proprietary rights or interest in the *shamilat deh* lands. But since the interest of the proprietors of other lands in *shamilat deh* lands was incidental to their proprietary interests in those other lands, such interest in the *shamilat* was not a mere appendage to their interest in the other lands. A reference was made to Chapter X (Village Common Land) of Rattigan's Digest, which is to the effect that within the territorial limits of every village, some portion of the uncultivated wastelands was reserved 'for purposes of common pasture, assemblies of people, the tethering of the village cattle, and the possible extension of the village dwellings'. The lands so reserved were zealously guarded as the common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation were recognized as having a share in these reserved plots. It was further noticed, ‘even in villages which have adopted separate ownership as to the cultivated area, some of such plots are usually reserved as village common, and in *pattidar* villages, it is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each *patti*, and other portions for common village purposes. The former is designated as *Shamlat-patti* and the latter *Shamlat deh*’. It was said, ‘as a general rule,

only proprietors of the village (*malikan-deh*) as distinguished from proprietors of their own holdings (*malikan makbuza khud*) are entitled to share in the "*shamilat deh*"'. This Court held that Punjab Act was a measure of agrarian reforms protected by Article 31A of the Constitution, holding as under:

> "12. The Punjab Act of 1953 was reserved for consideration of the President and received his assent on December 26, 1953. *Prima facie,* by reason of the assent of the President the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the *Shamlat-deh* lands according to the relevant Rules or Bye-laws governing the matter, including the evacuee interest therein. But, there is a complication of some nicety arising out of the fact that the Punjab Act was reserved for the assent of the President, though for the specific and limited purpose of Articles 31 and 31A of the Constitution. Article 31, which was deleted by the Constitution (forty-fourth Amendment) Act, 1978 provided for compulsory acquisition of property. Clause (3) of that Article provided that, no law referred to in clause (2), made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Article 31-A confers protection upon laws falling within clauses (a) to (e) of that Article, provided that such laws, if made by a State Legislature, have received the assent of the President. Clause (a) of Article 31-A comprehends laws of agrarian reform. Since the Punjab Act of 1953 extinguished all private interests in *Shamlat-deh* lands and vested those lands in the Village Panchayats and since, the Act was a measure of agrarian reform, it was reserved for the consideration of the President....."

24. The *shamilat land* in terms of Section 4 of the 1961 Act vested in the Gram Panchayat of the village. The vesting of *shamilat land* in a village panchayat brought about a paradigm shift in the ownership of rights in *'shamilat deh'*. The proprietary rights of the proprietary body of the village in *shamilat land* were extinguished by a statutory declaration. The proprietary and

possessory rights of proprietors and non-proprietors in *shamilat deh* were to henceforth vest in a Gram Panchayat and used for common purposes of the entire village community, under the aegis of the Gram Panchayat. The *shamilat deh* lands as defined under Section 2 (g) of the 1961 Act now vest completely, that is, with ownership and title, in the Panchayat of the village concerned. The vesting of the *shamilat deh* lands or the village common lands in the Panchayat has been for agrarian reforms and such vesting is protected by Article 31A of the Constitution.

25. The other form of common land in the village is the land described as `*jumla mustarka malkan wa digar haqdaran arzi hasab rasad raqba*', referring to joint holding of the proprietary body and other right holders as per the share in the land according to their holdings. These had come into effect with the enactment of the 1948 Act, which was an act to provide for compulsory consolidation of agricultural holdings, preventing fragmentation of agricultural holdings and for assignment or reservation of land for common purposes in the villages.

26. The 'common purpose' is defined in Section 2 (bb), Section 18 and Section 23A of the 1948 Act as follows:

> "(bb) "Common purpose" means any purpose in relation to any common need, convenience or benefit of the village]; and includes the following purposes: -
>
> (i) extension of the village Abadi; [30][-].

30 The word "and" omitted by Punjab Act 39 of 1963 and shall be deemed always to have been omitted.

[(ii) providing income for the Panchayat of the village concerned for the benefit of the village community].

[31][(iii) village roads and paths; village drains, village wells; ponds or tanks; village watercourses or water channels; village bus stands and waiting places; manure pits; *hada rori*; public latrines; cremation and burial grounds, *Panchayat Ghar*; *Janj Ghar*; grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and

(iv) schools and playgrounds, dispensaries, hospitals and institutions of like nature, water-works or tube-wells whether such schools, playgrounds, dispensaries, hospitals institutions, water-works or tube-wells may be managed and controlled by the State Government or not.]

18. Land reserved for common purposes. - Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct -

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

(b) that any land under the bed of a stream or torrent flowing through or from the Shiwalik mountain range within the [State] shall be assigned for any common purpose;

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose.

[32][23A Management and control of lands for common purposes to vest in Panchayats or State Government. –

As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the villages under Section 18, -

(a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised

31 Inserted by Punjab Act 39 of 1963.
32 Substituted by Punjab Act 39 of 1963.

by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the Panchayat of that village;

and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly:

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of Consolidation.]"

27. The consolidation operations are carried out in terms of the 1949 Rules. A consolidation scheme is prepared under Rule 4 and area for the common purpose is to be provided for under Rule 16(ii) of the 1949 Rules, which reads as under: -

"Rule 16(i) XX XX XX

16(ii) In an estate or estates where during Consolidation proceedings there is no Shamlat Deh land or such land is considered inadequate, "land shall be reserved for the village Panchayat and for other common purposes", under section 18(c) of the Act, out of the common pool of the village 3 [at the scale given in the schedule to these rules]. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi of the proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of records rights as (Jumla Malkan wa Digar Haqdarana Arazi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefit of the estate or estates concerned.]"

28. The two enactments – Punjab Act and the Pepsu Act referred to above were enacted with the assent of the President of India to meet the immediate requirement during the consolidation operations as the holding of proprietors to the extent of their share was being added to the share of the proprietors. Thereafter, the 1961 Act was enacted with the assent of the President of India to grant inclusive definition to *shamilat deh.* The Act as was originally enacted reads as under:

> "2. In this Act, unless the context otherwise requires-
>
> xxx xxx xxx
>
> (g) 'shamilat deh' includes-
>
> (1) lands described in the revenue records as shamilat deh excluding abadi deh;
>
> (2) shamilat tikkas;
>
> (3) lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used accordingly to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;
>
> (4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gorah deh; and
>
> (5) lands in any village described as banjar Qadim and used for common purposes of the village according to revenue records;
>
> Provided that shamilat 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) xxx xxx xxx
>
> 3**.** (1) This Act shall apply, and before the commencement of this Act, the shamilat law shall be

deemed always to have applied, to all lands which are shamilat deh as defined in clause (g) of section 2.

(2) Notwithstanding anything contained in sub-section (1) or section 4, where any land has vested in a panchayat under the shamilat law but such land has been excluded from shamilat deh as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law and the panchayat shall deliver possession of such land to such person or persons:

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the panchayat shall, notwithstanding anything contained in section 10, pay to the person or persons entitled to such land compensation to be determined in accordance with such principles and in such manner as may be prescribed.

4**.** (1) 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 interests whatever in the land,-

(a) which is included in the shamilat deh of any village and which has not vested in a panchayat under the shamilat law shall, at the commencement of this Act, vest in a panchayat constituted for such village, and, where no such panchayat has been constituted for such village, vest the panchayat on such date as a panchayat having jurisdiction over that village is constituted;

(b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall on the commencement of the shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a panchayat under the shamilat law shall be deemed to have been vested in the panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed ever to have affected the-

(i) existing rights, title or interest of persons who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqararidars;

(ii) rights of persons in cultivating possession of shamilat deh for more than twelve years without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.

5**.** (1) All lands vested or deemed to have been vested in a Panchayat under this Act shall be utilized or disposed of by the Panchayat for the benefit of the inhabitants of the village concerned in the manner prescribed;

Provided that where two or more villages have a common Panchayat in the shamilat deh or each village shall be utilised and disposed of by the Panchayat for the benefit of the inhabitants of that village:

Provided further that where there are two or more shamilat tikkas in a village the shamilat tikka shall be utilised and disposed of by the panchayat for the benefit of the inhabitants of that tikka:

Provided further that where the area of land in shamilat deh of any village so vested or deemed to have been vested in a Panchayat is in excess of twenty-five per cent of the total area of that village (excluding abadi deh), then twenty-five per cent of such total area shall be left to the Panchayat and out of the remaining area of shamilat deh an area up to the extent of twenty-five per cent of such total area shall be utilized for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the

> remaining area of shamilat deh, if any, shall be utilised for distribution to the small landowners of that village subject to the provisions relating to permissible area and permissible limit of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, as the case may be by the Collector in consultation with the Panchayat in such manner as may be prescribed.
>
> xxx xxx xxx
>
> 11**.** Notwithstanding anything contained in the Punjab Pre-emption Act, 1913, no sale of land in shamilat deh made by a Panchayat shall be pre-emptible and no decree of pre-emption in respect of any such sale shall be executed after the commencement of this Act."

29. The 1961 Act has undergone many changes in both States of Punjab and Haryana. In the present appeals, the 1961 Act as is applicable in the State of Haryana after reorganization of States w.e.f. 1.11.1966 is under consideration. The noticeable amendments carried out in the 1961 Act are by Haryana Act No. 18 of 1971, and Haryana Act No. 2 of 1981 enacted after the assent of the President of India on 31.1.1981. Sections 13C and 13D were inserted by such amendment which read thus:

> "5 xxx xxx
>
> [33][(5) Notwithstanding anything contained in this section, if in the opinion of the State Government, it is necessary to take over, to secure proper management for better utilization for the benefit of the inhabitants of the village concerned any shamilat deh the Government may by notification take over the management of such shamilat deh, for a period not exceeding twenty years.]
>
> [34][13C. Finality of orders. – Save as otherwise expressly provided in this Act, every order made by the Assistant

33 Added by Haryana Act 18 of 1971, Section 2
34 Added by Haryana Act No. 2 of 1981

> 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.
>
> 13D. Provisions of this Act to be over-riding. – The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority".]

30. Some other amendments have been carried out during the pendency of these proceedings. Certain arguments have been addressed on the basis of such amendments as well. The said amendments read as thus:

> "[35][5A(1)(1) A panchayat may, gift, sell, exchange or lease the land in shamilat deh vested in it under this Act to such persons including members of Scheduled Castes and Backward Classes on such terms and conditions, as may be prescribed.
>
> 5B(1) Any transfer of land, gifted sold, exchanged or leased before or after the commencement of this Act, made in contravention of the prescribed terms and conditions, shall be void and the gifted, sold, exchanged or leased land so transferred shall revert to, and revert in, the panchayat free from all encumbrances.
>
> (2) The Government or any officer authorized by it may, either *suo motu* or on application made to him by a panchayat or an inhabitant of the village or the Block Development and Panchayat Officer, examine the record for the purpose of satisfying himself as to the legality or propriety of any sale, lease, gift, exchange, contract or agreement executed before or after commencement of this Act, if such sale, lease, gift, exchange, contract or agreement is found detrimental to the interest of the villagers and is no longer required in the interest of the panchayat, the Government may, after making such enquiry as it may deem fit, cancel the same and no separate proceedings under any law shall be required to cancel the sale, lease, gift or exchange. The panchayat shall be competent to take

35 Substitution of Section 5A and 5B by Act 8 of 2007 and thereafter by Act 23 of 2013

over the possession of such premises including the construction thereon. If any, for which no compensation shall be payable.]"

31. It was thereafter, considering the respective arguments of the learned counsel for the parties, the Full Bench in **Jai Singh II** held as under:

"22. The petitioners, in view of the stand now taken by the State join issues only with regard to unutilised lands, as according to them, the said lands shall also not fall within the ambit of shamlat deh as defined under Section 2(g)(1) of the Act of 1961 nor the management and control whereof can vest with the Gram Panchayat under the provisions of Sections 18, 23-A and Rule 16(2) of the Act of 1948. They further clearly and candidly plead and so urge in the Court that the petitioners are not claiming the lands which have been reserved under Section 2(bb) read with Sections 18, 23-A and Rule 16(2) of the Act of 1948 and the rules framed thereunder. In view of the limited controversy between the parties, as now exists, it appears, there shall be no need whatsoever, to test the constitutionality of clause (6) of Section 2(g) of the Act of 1961 and the explanation appended thereto on the anvil of either Article 31-A or Article 300-A of the Constitution of India. We may, however, briefly state the pleadings of the parties on the issue limited to land, subject matter of legislative measure, being within or otherwise the ceiling limit of petitioner-proprietors.

xxx xxx xxx

46. The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time.

In none of the sections or rules, which have been referred to by us in the earlier part of the judgment, there is even slightest inkling that the scheme envisages only such lands which have been utilised. That apart, in all the relevant sections and the rules, words mentioned are reserved or 'assigned'. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilised or not.

xxx xxx xxx

49. The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contributed the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant difference is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common pupose as per the scheme.

xxx xxx xxx

62. In view of the discussion made above, we hold that:-

(i) sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;

(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and

> confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;
>
> (iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;
>
> (iv) all such lands, which have been, as per the consolidations scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc."

32. The Five Judge Bench in **Suraj Bhan** held that the observations in **Jai Singh II** and **Vir Singh** conferring right, title and ownership in respect of *Jumla Mustarka Malkan* lands on the Gram Panchayat would be improper and invalid. The Court held as under:

> "218. In view of the above discussion, the legal position that emerges is as follows:-
> xxx xxx
> (k) Any observation in Jai Singh's case (supra) and Veer Singh's case (supra) to the extent it is taken as conferring a right, title and ownership in respect of 'Jumla Mushtarka Malkan' lands on the Gram Panchayat would be improper and invalid notwithstanding Section 4 of the VCL Act 1961 in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16(ii) of the Consolidation Rules 1949 and the judgment of the Five

> Judge Bench of Hon'ble the Supreme Court in Ajit Singh's case (supra)."

33. The above findings are subject matter of challenge by the State as well as by the proprietors. The State is aggrieved against finding no. (iii) of **Jai Singh II** and conclusion in para 218 (k) of **Suraj Bhan,** whereas the proprietors are aggrieved against finding nos. (i) and (ii) of **Jai Singh II**.

34. Mr. Pradeep Kant, learned Senior Advocate appearing for the State contended that the land reserved for common purposes in a Scheme under Section 18(c) read with section 23-A and Rule 16 (ii) of the 1949 Rules is for the present and future needs. If a particular piece of land so reserved for common purposes is not put to use as conceived in the Scheme, it does not mean the land would revest with the proprietors. There is no time limit within which the land reserved for common purposes is to be used. Therefore, once the land has been reserved for common purposes, the Panchayat can put it to use for common purposes at any point of time. It was contended that if the land is not put to common use, the Panchayat can lease out such land, such leasing out would not be for the income of the Panchayat but for optimum utilization of land reserved for common purposes. It was also contended that if the land is reserved for a particular common purpose, it can be used for any other common purpose as well for the

benefit of village community, including proprietors and non-proprietors.

35. It was further contended that Section 2(g)(6) in 1961 Act is not a new provision but is only a clarificatory and declaratory amendment of the existing law. *Shamilat Deh* is the land owned by Gram Panchayat to be used for common purposes under Section 2(g)(1) of 1961 Act before consolidation. This Court in a judgment reported as ***Sukhdev Singh*** v. ***Gram Sabha Bari khad***[36] held that land recorded in the revenue record as *shamilat* deh in the year 1914-15 could not detract from the nature of the land as it was merely recorded to be in possession of the owners as per respective shares in khewat in a pre-consolidation *shamilat* land. The Court held as under:

> "2..... Firstly, the entry in 'jamabandi' of 1914-15 which recorded that the land was in possession of the owners was quite innocuous, because it was made for the reason that it was in nobody else's possession. The fact that even then it was recorded in the 'Jamabandhi' as "shamlat deh" shows that the particular character of the land was recognised even as far back as 1914-15, and it could not detract from that nature of the land merely because it was further stated in the 'jamabandi' that it was in the possession of the owners "as per respective shares in khewat." ....."

36. On the other hand, the *Jumla Mustarka Malkan* land is reserved for common purposes during consolidation. The reservation of land for common purposes after consolidation is not different from the *shamilat deh* land existing prior to the consolidation as both are reserved for common

36 (1977) 2 SCC 518

purposes. The two nomenclatures are on account of difference of time as *shamilat* lands were carved out prior to commencement of *shamilat* law whereas *Jumla Mustarka Malkan* lands were carved out after the commencement of *shamilat* law. Therefore, once land is reserved for common purposes, what was implicit in the definition of *shamilat deh* as defined in Section 2(g)(6) of 1961 Act has been made explicit by virtue of the Amending Act. It was further contended that explanation of Section 2(g)(6) again uses the expressions used in Rule 16(ii) of the 1949 Rules. Hence, the amendment is not vesting of land reserved for common purposes during consolidation for the benefit of village community for the first time but is merely a clarificatory amendment.

37. Alternatively, it was argued that even if it was a new provision leading to acquisition of land, it was not a case of acquisition without compensation but acquisition with “Nil” compensation as the proprietors have been conferred right to use larger tract of common land in lieu of small portions deducted by applying pro-rata cut from their shares of holding. Such ultimate use of land by the Panchayat confers benefit to the entire village community including proprietors and non-proprietors. Therefore, while introducing Section 2(g)(6), no compensation was required to be paid in cash as the benefit in lieu of

compensation was already conferred to the proprietors in the consolidation scheme.

38. Mr. Manoj Swarup, learned Senior Counsel appearing for the proprietors argued that the effect of the Amending Act is that the land stands vested with the Panchayat and, therefore, there is no embargo on the Panchayat to sell or alienate the land so vested. He draws support from Section 11 of the 1961 Act which curtails the right of pre-emption in respect of sale of land of the Panchayat. It was argued that the vesting of land with the Panchayat leads to conferment of all the rights and interests in the land so vested, therefore, the Panchayat is competent to sell the land which is not in tune with the judgment of this Court in ***Ajit Singh***.

39. Ms. Anubha Agarwal, counsel for the proprietors, submitted that the amendments carried out in the 1961 Act when Sections 13C and 13D were inserted not only grant finality to the order passed by the Authority under the Act but also give over-riding effect to any law, agreement, instrument, custom, usage, decree or order of any court or other authority. Therefore, the land, though at one point of time was earmarked for common purposes and the management and control vested with the Panchayat, but such provision will have preference over any other provisions of any other law including the 1948 Act. The provision read with Sections 5A and 5B of

the 1961 Act inserted in the year 2007 shows that the Panchayat is exercising right, title and interest over the land vesting with the Panchayat in terms of the 1948 Act, though only vesting of control and Management to the Panchayat was upheld by this court in ***Ajit Singh***. Such statutory intervention is illegal and in the teeth of the judgment of this Court in mentioned judgment.

40. It was also argued on behalf of the proprietors that the 1948 Act does not contemplate divesting their ownership rights, but the vesting of land by the Amending Act read with Section 4 of 1961 Act divests the owners of their title over the land without compensation. Such action violates the mandate of Article 300A of the Constitution as the landowners are being deprived of land without authority of law i.e., adequate compensation in lieu of the land so acquired.

41. Learned Counsel for some of the proprietors further argued that the land reserved for common purposes was in fact never used for such common purpose and that it has always been in possession of the proprietors of the village. Thus, the proprietors are the owners in possession of the land in question. The proprietors could thus not be deprived of their title, possession or propriety rights in any manner without following the due process of law i.e., after payment of market value of such land.

42. It was argued that the land reserved for common purposes during the consolidation which was more than the land specifically assigned for common purposes in the consolidation scheme was in fact a surplus land or a Bachat land. It was thus contended that the unutilized land i.e., Bachat land has to be revested with the proprietors as such land does not fall within the ambit of *shamilat deh,* nor the management and control of the same could vest with Gram Panchayat under the provisions of Sections 18, 23A and Rule 16(ii) of 1948 Act. It was hence argued that though the land has been reserved for common purposes in the consolidation scheme under the 1948 Act, but such land which is neither utilized nor reserved for any specific common purpose would revest with the proprietors.

43. A reading of the aforementioned judgments and the history of the *shamilat deh* (common land) in the State of Punjab, including State of Haryana, shows that the common land for the purposes of the present appeals falling in Section 2(g)(1) and (6) of the 1961 Act as amended by the Amending Act can be broadly classified into three categories:

(i) shamilet deh recorded in the ownership of the Gram Panchayat prior to consolidation which vests unequivocally with the commencement of the Punjab and PEPSU Act.

(ii) land for common purposes reserved during the process of consolidation by applying pro-rata cut from the holdings of the

proprietors, not necessarily falling within the permissible ceiling limits under the land ceiling laws.

(iii) common purposes land reserved by pro-rata cut within the permissible limits as per the land ceiling laws, the management and control of which vests with the panchayat.

44. There is no dispute about the land falling in the first category as held by the High Court in ***Hukam Singh*** and subsequently affirmed by this Court in ***Malwinder Singh*** as being part of the agrarian reforms.

45. The 1948 Act is a pre-constitution law which has received the assent of Governor General of India on 07.12.1948 and published in East Punjab Government Gazette (Extraordinary) dated 14.12.1948. The two subsequent amendments in the 1948 Act by Punjab Act No. 27 of 1960 and Punjab Act No. 39 of 1963 were enacted and published after the assent of the President of India. Both the amendments were upheld by the High Court in ***Kishan Singh*** and ***Jagat Singh*** relating to Punjab Act No. 27 of 1960 and ***Jit Singh*** relating to Punjab Act No. 39 of 1963.

46. The land falling in the second category was held to be a part of the agrarian reforms protected by Article 31A of the Constitution by the Full Bench of the Punjab and Haryana High Court in ***Kishan Singh*** and ***Jagat Singh***. A reading of the judgment of the High Court in ***Jagat Singh*** shows that the challenge therein was to 20 acres of land for the purpose of

income of Gram Panchayat. The High Court upheld the land carved out for income of the Gram Panchayat since the 1948 Act was found to be part of agrarian reforms as per its object. Though the members of the Bench gave different opinions, the conclusion was that the 1948 Act is an Act having object of agrarian reforms, protected by Article 31A(1) of the Constitution. The Civil Appeal No. 743 of 1963 in ***Ranjit Singh*** against such judgment was dismissed by the Constitution Bench of this Court. The appeals before this Court were heard and closed for judgment on April 27, 1964 but before the judgment could be delivered, the Constitution (Seventeenth Amendment) Act, 1964, received the assent of the President on June 20, 1964. That amendment *inter alia* substituted retrospectively from January 26, 1950, a new sub-clause (*a*) in clause (2) of Article 31A and added a proviso to clause (1). The High Court had decided the issues raised before it considering the Article 31A as it was then existing. The short point examined by this Court was, without referring to the Seventeenth Amendment, whether the transfer of *shamilat deh* owned by the proprietors to the village Panchayat for the purposes of management in the manner described above and the conferral of proprietary rights on non-proprietors in respect of lands in *abadi deh* is illegal and if the several provisions of law allowing this to be done are ultra vires Article 31 inasmuch as no compensation is payable or whether the law and the

action taken are protected by Article 31A? The appeals were dismissed with an observation that the question examined was the correctness of the decisions under appeal, particularly the Full Bench decision in ***Jagat Singh***, without expressing any opinion on the Seventeenth Amendment.

47. As per the facts noticed by this Court, 270 kanals, 13 marlas of land in village Virk Kalan was given to village panchayat for management and realization of income, apart from some land reserved for abadi, manure pits, although the ownership was shown in the revenue record as *Shamilet Deh* in the name of the proprietors. In village Sewana, 400 kanals and 4 marlas were set apart for the village panchayat for extension of the abadi and to grant 8 marlas of land to each family of non-proprietors and 6 kanals being reserved for a primary school and some more land for a phirni (Village Pathway around village). In village Mehnd, the land was reserved for a school, tanning ground, hospital, cremation ground and for non-proprietors. The proprietors were not paid compensation for the lands. This Court noticed that Punjab Act was upheld by the High Court in ***Hukam Singh*** but observed that Article 31(2) of the Constitution would have rendered the Act as void but for the enactment of Article 31A. This Court also made reference to Punjab Security of Land Tenures Act, 1953 providing for fixing the areas for self-cultivation and conferring rights on the tenants to purchase land under their cultivation

from the landholders. Before this Court, the challenge was to the correctness of a decision in ***Jagat Singh*** as also validity of Punjab Act No. 27 of 1960 which was said to be in breach of Article 19(1)(f) and Article 31 of the Constitution. Before the judgment could be delivered, 17th Amendment to the Constitution came into force and the judgment was delivered without considering the insertion of second proviso in Article 31A(1). This Court held that village panchayat is an authority for the purpose of Part III of the Constitution and it has the protection of Article 31A. Because of this character, even if the taking over of *shamilat deh* amounts to acquisition, the High Court was right in deciding as it did in this case. A reading of the judgment of ***Ranjit Singh*** would show that the land reserved for income of the panchayat in village Virk Kalan was not found to be unconstitutional, and further, the carving of *shamilat deh* and giving it to Gram Panchayat was found to be an act of agrarian reform, protected by Article 31A of the Constitution, even if it amounts to acquisition. This Court held as under:

> “12. From a review of these authorities it follows that when the Punjab High Court decided these cases on the authority of Jagat Singh's case, the view taken in this Court was in favour of giving a large and liberal meaning to the terms 'estate' 'rights in an estate' and 'extinguishment and modification' of such rights in Article 31-A. No doubt Kochuni's case, considered a bare transfer of the rights of the sthanee to the tarwad without alteration of the tenure and without any pretence of agrarian reform, as not one contemplated by Article 31-A however liberally construed. But that was a special case and we cannot apply it to cases where the

general scheme of legislation is definitely agrarian reform and under its provisions something ancillary thereto in the interests of rural economy, has to be undertaken to give full effect to the reforms. In our judgment the High Court was right in not applying the strict rule in Kochuni's case, to the facts here.

13. The High Court was also right in its view that the proposed changes in the shamlat deh and abadi deh were included in the general scheme of planning of rural areas and the productive utilisation of vacant and waste lands. The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a concentration of land in the hands of a few, on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enure for the benefit of rural population and must be considered to be essential part of the redistribution of holdings and open lands to which no objection is apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural welfare than individual owners of small portions of lands. Further, the village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Article 31-A because of this character even if the taking over of shamlat deh amounts to acquisition. In our opinion, the High Court was right in deciding as it did on this part of the case.

14. With respect to abadi deh the same reasoning must apply. The settling of a body of agricultural artisans (such as the village carpenter, the village blacksmith, the village tanner, farrier, wheelwright, barber, washerman etc. etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages selfsufficient cannot but be regarded as part of the larger reforms which consolidation of holdings, fixing of ceilings on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate. The four Acts, namely, the Consolidation Act, the Village Panchayat Act, the Common Lands Regulation Act and the Security of Tenure Act are a part of a general scheme of reforms and any modification of rights such as the present has

> the protection of Article 31-A. The High Court was thus right in its conclusion on this part of the case also."

48. Thus, the property was held to be acquired as a part of the agrarian reform under Article 31A and no compensation was payable as provided under Article 31. Therefore, the acquisition was complete in respect of the land reserved for common purposes by applying pro-rata cut on the land holdings of the proprietors. Further, it is pertinent to mention that the question of payment of compensation was specifically negated in ***Ranjit Singh***. Therefore, the land stood vested with the Panchayat under the scheme in view of the said judgment of this Court. In the present appeals, there is no dispute that the land by applying pro-rata cut has not been reserved for the income of the panchayat. Thus, we find that the land falling in second category i.e., land reserved for common purposes, not falling within the ceiling limit of the proprietor would vest with Panchayat. The Amending Act does not acquire land or deprive the proprietors of their ownership as such ownership stood already divested in view of consolidation scheme reserving land for common purposes. The Amending Act is only a clarificatory or a declaratory amendment as the land stood vested in the panchayat on the strength of ***Ranjit Singh***. Hence, Section 2(g)(6) read with Section 4 of the 1961 Act vests the land reserved for common purposes by applying pro-rata cut in the village Panchayat.

49. The Amending Act was enacted and published after obtaining assent of the President of India, thus such Act is part of the agrarian reform. In the year 1992, when the Amending Act was enacted, Article 31 stood omitted by virtue of 44th Constitutional Amendment Act, 1978 with effect from 30.04.1979. Therefore, the provision of payment of compensation contemplated under Article 31(2) was not available on the day when the Amending Act was published. Article 300A was inserted by the same amendment i.e., 44th Amendment with effect from 30.04.1979. Such Article contemplated that no person shall be deprived of his property save by the authority of law. Since the land was already vested with Gram Panchayat, therefore, there was no question of payment of compensation in the year 1992.

50. As observed above, the land stood acquired and vested with the Panchayat by virtue of ***Ranjit Singh***. This Court held that no compensation was payable in view of the four Acts, namely, the 1948 Act, the Punjab Act and the Pepsu Act, the 1961 Act and also the Punjab Security of Land Tenures Act, 1953 as such Acts were a part of a general scheme of reforms and any modification of rights such as the present had the protection of Article 31A. Such land would vest with the Panchayat.

51. The Full Bench of the Punjab and Haryana High Court in a

judgment reported as ***Parkash Singh & Ors.*** v. ***Joint Development Commissioner, Punjab & Ors.***[37] has found that "Jumla Mushtarka Malkan" land is not included in the *shamilat deh* in the State of Punjab, therefore, the 1961 Act will not confer jurisdiction on the Collector to decide the dispute regarding title. The Full Bench held that the only forum available to a person who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction. The Court held as under:

> "61. The question that now remains is to identify the forum, a person who raises a plea that the land is not "Jumla Mushtarka Malkan" or that it was created by applying an illegal pro rata cut or that the land was not reserved for common purposes during consolidation, would be required to approach. After due consideration of the entire matter, we find no provision in the 1961 Act, the 1976 Act or the Consolidation Act that provides a forum to a person who raises such a plea and, therefore, in the absence of any fora for deciding such a dispute a person may have to approach a Civil Court but Section 44 of the Consolidation Act prohibits a Civil Court from entertaining any matter which the State Government or any officers are empowered by the Consolidation Act to determine or dispose of Section 44, however, cannot be read to prohibit Civil Courts from deciding a question of title relating to "Jumla Mushtarka Malkan" as what is prohibited by Section 44 is matters that fall to the jurisdiction of State Government or to any officer duly empowered by the Consolidation Act to decide. The Consolidation Act does not confer power whether on the State Government or the officers empowered thereunder to decide a question of title. The jurisdiction of a Civil Court to entertain a dispute regarding "Jumla Mushtarka Malkan" is, therefore, not barred by Section 44 of the Consolidation Act. The only forum available to a person, who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in

37 2013 SCC OnLine P&H 26809

> the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court."

52. In ***Suraj Bhan*****,** the Full Bench of the High Court held that only the management and control as distinguished from the title and ownership in respect of lands carved out during consolidation operations by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc., vest in the Panchayat. It was held as under:

> "146. However, for the removal of doubts, it is clarified and held that any observations in Jai Singh's case (supra), and in Veer Singh's case (supra) (in which the application for review of the judgment in Jai Singh's case (supra) had been dismissed by making clarifications), if it is to be taken that the ownership or title in respect of lands kept for 'common purposes' of the village by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc. vest with the State or the Gram Panchayat, as the case may be, without payment of compensation is not the correct legal position notwithstanding the provisions of Section 4 of the VCL Act 1961 and that in fact, only the management and control of such lands vests in the State or the Gram Panchayat, as the case may be. Therefore, only the management and control as distinguished from the title and ownership in respect of lands carved out during consolidation operations by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as 'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba', 'Jumlan Malkan' or 'Mushtarka Malkan' etc., vest in the Panchayat. Besides, as already noticed, the provision relating to appropriation of income of the land kept for 'common purposes' in a consolidation scheme has been invalidated by a Five Judge Bench of the Supreme Court

in Bhagat Singh's case (supra).”

53. We find that such conclusion in ***Parkash Singh*** or ***Suraj Bhan*** that ‘Jumlan Malkan’ or 'Mushtarka Malkan' land so described in the revenue record would not vest with the Panchayat is not based on the correct reading of judgment of this Court in ***Ranjit Singh***. Once land had been reserved for common purposes, irrespective of description in the revenue record, such land would vest with Panchayat or the State. The only condition is that it should not be within permissible limits of the proprietors.

54. Still further, in ***Parkash Singh*****,** it has been held that the forum available to a person, who raises a dispute regarding title in “Jumla Mushtarka Malkan” is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court. Though the said judgment is in the context of the State of Punjab, but the said finding is not sustainable for the reason that “Jumla Mushtarka Malkan” is a land reserved for common purposes during consolidation. Though Rule 16(ii) of the 1949 Rules prescribes that the common purposes land after applying pro-rata cut would be described in the revenue record but the expression “Jumla Mushtarka Malkan” or “Mushtarka Malkan” is a land of the proprietors for the benefit of the village community for common purposes. Therefore, if the revenue records as “Jumla Mushtarka Malkan” or “Mushtarka Malkan” in

the ownership column, it is the authority under the 1961 Act and the machinery provided thereunder which would exercise jurisdiction to determine the dispute as to whether it is reserved for common purposes or not.

55. We do not find any merit in the arguments raised by learned counsel for the proprietors that the explanation enlarges the scope of the common purposes for which land was reserved under the scheme in terms of 1948 Act. Rule 16(ii) of 1949 Rules specifically mentions that the entry in the column of ownership of records would be *Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad.* The other expression used in the explanation is *Jumla Mustarka Malkan* or *Mustarka Malkan,* which means the ownership of all the proprietors. They are commonly used in the revenue record but they are not larger in scope than the entry contemplated in the revenue record as *Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad*. Therefore, neither sub-section 6 nor the explanation is contrary to Article 300-A as the land stood acquired without payment of compensation being part of the agrarian reforms, when pro-rata cut was applied on the land of the proprietors.

56. We do not find any merit in the arguments raised that on the basis of insertion of Sections 13C and 13D by virtue of amendment in the year 1981 and insertion of Sections 5A and

5B by virtue of amendments carried out in 2007 or on the strength of Section 11 of the 1961 Act as originally enacted, the legality and validity of the Amending Act is any way affected. The Panchayat was conferred ownership rights over the land when pro-rata cut was applied on the land of the proprietors to reserve land for the common purposes under the 1948 Act. The Panchayat is therefore the absolute owner of such property which came to be vested in the Panchayat with the commencement of *shamilat* law. The entire right, title or interest in the said land forming part of second category mentioned above vests with the Panchayat in view of the judgment of this Court in **Ranjit Singh**.

57. In a judgment reported as ***Mahant Sankarshan Ramanuja Das Goswami, etc.*** v. ***State of Orissa and another***[38], it has been held that the benefit of Article 31-A is available also to the Amending Act provided the assent of the President is obtained to such Amending Act. It was held as under:

> "12. The first argument is clearly untenable. It assumes that the benefit of Article 31-A is only available to those laws which by themselves provide for compulsory acquisition of property for public purposes and not to laws amending such laws, the assent of the President notwithstanding. This means that the whole of the law, original and amending, must be passed again, and be reserved for the consideration of the President, and must be freshly assented to by him. This is against the legislative practice in this country. It is to be presumed that the President gave his assent to the amending Act

38 AIR 1967 SC 59

> in its relation to the Act it sought to amend, and this is more so, when by the amending law the provisions of the earlier law relating to compulsory acquisition of property for public purposes were sought to be extended to new kinds of properties. In assenting to such law, the President assented to new categories of properties being brought within the operation of the existing law, and he, in effect, assented to a law for the compulsory acquisition for public purposes of these new categories of property. The assent of the President to the amending Act thus brought in the protection of Article 31-A as a necessary consequence. The amending Act must be considered in relation to the old law which it sought to extend and the President assented to such an extension or, in other words, to a law for the compulsory acquisition of property for public purposes."

58. Therefore, the Amending Act having been enacted after the assent of the President, is protected in terms of Article 31A of the Constitution.

59. In respect of the third category, the land within the ceiling limit of the proprietor was pooled for common purposes and was found to be part of the agrarian reforms by Division Bench of the Punjab High Court in ***Ajit Singh.*** The argument raised was that the proprietor (land owner) was a small landholder within the meaning of the Punjab Security of Land Tenures Act, 1953, therefore, no part of his holding could be acquired without payment of compensation at the market value. The writ petitioner had pleaded that in pursuance of the Cooperative Societies Act, 100 bighas of land was given to the local panchayat for common purposes, whereas in this scheme prepared under 1948 Act, another 100 bighas of land was being provided for the same purpose. The argument raised

was that most of the proprietors including the writ petitioner own land within the first ceiling, therefore, the land falling within the ceiling limit could not be acquired without payment of compensation on account of insertion of second proviso to Article 31A(1) by 17th Amendment. The 17th Amendment reads thus:

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

60. The Division Bench of the High Court *inter alia* examined the 17th Amendment and held that it was not retrospective in operation. The petition was dismissed after examining Article 31(2-A) of the Constitution as well as 17th Amendment which deals with acquisition by the State, leaving requisitioning untouched. The High Court found that where land is assigned to a village Panchayat or the State for a common purpose, it does not seem to provide, technically speaking, for the transfer of ownership and the State Government and Panchayat are merely empowered to manage and appropriate the income accruing from the property for the benefit of village community, including the original holder, and for no other

purpose. It was held that Article 31(2-A) of the Constitution lays down that where a law does not provide for the transfer of ownership, only the management and control would vest in the village Panchayat. The Court held (page 857-858) as under:

> "This brings me to the question whether the assignment of land for common purposes is acquisition. The controversy on this point seems to centre round Article 31(2-A) of the Constitution which lays down that where a law does not provide for the transfer of the ownership, or right to possession of any property, to the State or to a Corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. The learned Advocate-General has submitted that providing for right to possession of any property means requisitioning of such property, and compulsory acquisition, according to this sub-article, is confined only to the transfer of ownership. In the case in hand, ownership has not been transferred in law and it is only the management and control which vests in the village Panchayat concerned or the State, as the case may be. This may amount to compulsory requisitioning, but the further proviso introduced by the 17th Amendment, with which we are concerned, hits only acquisitions by the State leaving requisitioning untouched. The petitioner's learned counsel has, on the other hand, placed his reliance on the observations of Tek Chand, J. in *Munsha Singh's case* and on the Supreme Court decision in Ranjit *Singh's case*, the relevant passage from which has been reproduced above. In this connection, it may be remembered that the further proviso introduced in Article 31-A(1) speaks of payment of compensation only in case of acquisition by the State of land within the ceiling limit applicable to the persons mentioned therein. Where such land is assigned to a village Panchayat or the State for the common purpose, it does not seem to me to provide technically speaking for the transfer of ownership, and indeed it is not the petitioner's case that title has actually passed to the Panchayat or the State. What is argued is that all the ingredients of ownership are taken away and what is left with the owner is merely the husk or the shadow. As at present advised, I find some difficulty in readily agreeing with this submission because the property, though vesting in the Panchayat, or the State Government, as the case may

> be, has been reserved for common purposes in which the entire village community including the original holder is interested as equal sharer, and is entitled to secure the benefit thereof in common with all the co-beneficiaries. The State Government or the Panchayat are merely empowered to manage and appropriate the income accruing from the property for the benefit of the village community, including the original holder, and for no other purpose. It is only the right to transfer, or, to the exclusive use or appropriation, of which the original holder has been deprived.
>
> The benefits of the use of the land reserved for common purposes are assured to the original holder in common with all the other members of the community. Whether this can be considered to be acquisition as distinguished from requisitioning is a question which does not seem to be capable of an easy answer. However, keeping in view the general scheme and purpose of the Act, the scales do seem to me *prima facie* to be somewhat inclined in favour of the view that the statutory vesting of the property in the State Government or the Panchayat, as the case may be, under the Act, when it is reserved for common purposes, is perhaps not intended to amount to acquisition within the contemplation of the second proviso added to Article 31-A by the 17th Amendment. But I should not like to express any considered opinion on this somewhat difficult and vexed point on the present occasion, leaving it to be settled if necessary in a more appropriate case."

61. In appeal, a Constitution Bench of this Court in ***Ajit Singh*** noted that the scheme under the 1948 Act was not part of the record but 89 bighas, 18 biswas and 18 biswanis of pukhta land was owned by Gram Panchayat prior to consolidation which was used for common purposes. Some more area was reserved for common purposes such as for canals, pathways, community center, school etc. after applying cut upon right holders on pro-rata basis and not for income of Panchayat. This Court held that the proprietor is not entitled to

compensation as the title of the proprietor is not being divested and that management and control alone vests with the panchayat. It was thus held that it was not a case of acquisition of land.

62. This Court considered the questions as to "whether in the second proviso to Article 31A(1), the expression "acquisition" means substantial taking over the benefits of property and conferring it on the State?" and that "whether the acquisition means the entire process terminating with possession and extinction of the title of the individual?". This Court held that the title vests in the proprietary body, the management of the land is done on behalf of the proprietary body, the land is used for the common needs and the benefits of the estate or estates concerned. The Panchayat would manage such land on behalf of the proprietors and use for common purposes, therefore, the beneficiary of the modification of the rights is not the State. Therefore, there is no acquisition by the State within the meaning of second proviso. This Court examined the Constitution (Seventeenth Amendment) Act, 1964 and negated the argument raised by the proprietor. It was held as under:

> "9. Coming now to the second proviso to Article 31-A, it would be noticed that only one category is mentioned in the proviso, the category being "acquisition by the State of an estate". It means that the law must make a provision for the acquisition by the State of an estate. But what is the true meaning of the expression

"acquisition by the State of an estate". In the context of Article 31-A, the expression "acquisition by the State of an estate" in the second proviso to Article 31-A(1) must have the same meaning as it has in clause (1)(*a*) to Article 31-A. It is urged on behalf of the respondents before us that the expression "acquisition by the State of any estate" in Article 31-A(1)(*a*) has the same meaning as it has in Article 31(2-A). In other words, it is urged that the expression "acquisition by the State of any estate" means transfer of the ownership or right to possession of an estate to the State Mr Iyengar on the other hand urges that the expression "acquisition by the State" has a very wide meaning and it would bear the same meaning as was given by this Court in *State of West Bengal* v. *Subodh Gopal Bose* [(1964) SCR 587] , *Dwarkadas Shrinivas of Bombay* v. *Sholapur Spinning & Weaving Co. Ltd.* [(1954) SCR 674] *Saghir Ahmad* v. *State of U.P.* [(1955) 1 SCR 707] and *Bombay Dyeing and Manufacturing Co. Ltd.* v. *State of Bombay* [(1958) SCR 1122] . In these cases this Court had given a wide meaning to the word "acquisition". In *Dwarkadas Shrinivas of Bombay* v. *Sholapur Spinning & Weaving Co. Ltd.* [(1954) SCR 674] Mahajan, J., observed at p. 704 as follows:

"The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of."

10. Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to ceiling limits. It is well known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which

was less than the market value. It seems to us that in the light of all the considerations mentioned above the words “acquisition by the State” in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

xx xx xx

12. ... It will be noticed that the title still vests in the property body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate, mentioned above. The proprietors naturally would also share in the benefits along with others.

13. ...In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal etc. he would not have been able to have them on the fraction of his land reserved for common purposes.

14. Does such taking away of property then amount to acquisition by the State of any land? Who is the real beneficiary? Is it the Panchayat? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to “all the owners and other right holders in proportion to their areas”. The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore

> there is no acquisition by the State within the second proviso.
>
> 15. In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash."

63. Thus, in respect of the land taken from the proprietors from their permissible ceiling limits, it is the management and control alone which would vest with the panchayat. The management and control include leasing of land and use of the land by non-proprietors, Scheduled Castes and Schedules Tribes etc. which is for the benefit of the village community. Therefore, vesting under Section 4 would be limited to management and control. It is pertinent to note here that for the land taken from the proprietors by applying pro-rata cut from the permissible ceiling limits of the proprietors, management and control alone vests with the Panchayat but such vesting of management and control is irreversible and the land would not revert to the proprietors for redistribution as the common purposes for which land has been carved out not only include the present requirements but the future requirements as well. Such land would not be available for sale so as to confer title on the purchaser in view of the fact that the Panchayat is not the full owner of the land but while

exercising control and management, it is duty bound to safeguard the land for the benefit of the village community.

64. The Panchayat will not have title over the land but as part of management and control, the panchayat is at liberty to put the land for the use for the common purposes. Such common purposes as defined under Section 2(bb) of 1948 Act are interchangeable and also can be used for any other common purposes. It is to be noted that common purposes are ever evolving, they are not fixed in time. With the change in time and expectations of the village community, common purposes have to be given wider meaning in view of the object of such reservation of land. Therefore, though the panchayat has management and control in respect of the land which was carved out from the land falling within the ceiling limits, the panchayat would have complete control over the said part of the land. The word 'vesting' appearing in Section 4 has to be read down to mean that management and control of such land alone would vest in the panchayat.

65. In ***Shish Ram & Ors.*** v. ***State of Haryana & Ors.***[39], an argument was raised that the land reserved for a particular common purpose can be used only for the said purpose. This Court held that a land vesting in the Gram Panchayat can be used for any one or more of the purposes. It was held as under:

39 (2000) 6 SCC 84

> "6. We do not agree with the submission of the learned counsel of the appellants that in *Bishamber Dayal case* [1986 Punj LJ 208 : AIR 1986 P&H 203 (FB)] the Full Bench of the High Court had taken a different view than the one which was taken in *Khushi Puri case* [1978 Punj LJ 78 : 1978 Rev LR 443] . The High Court appears to have consistently held that the land vesting in the Gram Panchayat can be used for any one or more of the purposes specified in sub-rule (2) of Rule 3, leasing out for cultivation being one of the purposes. We find no reason to disagree with the High Court and in fact approve the position of law settled by it in *Khushi Puri case* [1978 Punj LJ 78 : 1978 Rev LR 443] which was upheld by the Full Bench in *Bishamber Dayal case* [1986 Punj LJ 208 : AIR 1986 P&H 203 (FB)]."

66. Having said so, though the land vests with the Panchayat, but such land should be utilized only for common purposes for the benefit of village community. Such benefits to the village community is not limited to traditional benefits of the village community i.e., land for grazing of cattle, dumping of dead animals, schools and hospitals but also the activities which would be required in future, keeping in view the modernization of the village economy which will ultimately for the benefit of the village community.

67. Therefore, we affirm the conclusions No (i) and (ii) arrived at by the Full Bench in ***Jai Singh II***, though for different reasons. The finding in para 218 (k) in ***Suraj Bhan*** is set aside for the reasons recorded above. There is no challenge to Conclusion No. (iv) in the order of ***Jai Singh II***, therefore, the same stands affirmed as well.

68. With respect to the conclusion no. (iii) by the Full Bench in ***Jai Singh-II***, it was observed that the land which has been cultivated by the proprietors on pro-rata cut and which have not been earmarked for any common purpose, commonly called as Bachat land, shall not vest with the Gram Panchayat. We are unable to agree with such conclusion. The land reserved for common purposes was reserved for the requirement of village community *in praesenti* and in future. If the land has not been put to use for any common purpose soon after the consolidation and/or thereafter, it cannot be said to be a Bachat land. The land mass is not going to increase but the requirement of the people and the expectations of the village community is ever expanding. Therefore, even if any land reserved for common purposes is not actually being put to any common purpose, it cannot be termed as a Bachat land and thus open for the purpose of repartition amongst the proprietors sought.

69. The expression Bachat land was first used by the High Court in ***Gurdial Singh*** v. ***State of Haryana***[40] wherein, the Panchayat was the owner of 850 standards kanals and 15 marlas. After considering the land owned by Panchayat prior to consolidation and the land, management and control of which came with Gram Panchayat, it was found that 48 standard kanals and 14 marlas were actually utilised for various

40 1979 PLJ 350

common purposes and the remaining 112 standard kanals and 7 marlas were ordered to be redistributed pro-rata amongst the right-holders under Section 42 of the 1948 Act by the Assistant Director, Consolidation of Holdings. The order of the Assistant Director Consolidation to redistribute the land was not interfered with.

70. In a judgment reported as ***Bagga Singh*** v. ***The Commissioner, Ferozepur Division, Ferozepur***[41]**,** Panchayat filed an application for eviction for the ejectment of the writ petitioner. It was asserted that he is in possession as proprietor. 2 kanals out of 50 kanals reserved for common purposes was utilized for passages and remaining 48 kanals was said to be left as Bachat land by the writ petitioner. It was held by the learned Single Bench that though the land in dispute is entered in the name of proprietary body of the village in the revenue record, but this would not be sufficient to draw an inference that it was reserved for common purposes of village. The High Court held that though initially the land was reserved for common purposes but since it was never utilized for any such purpose, therefore it is Bachat land which means the area left unutilized. The Court held as under:

> "4. For any land to be common purposes land under the 1976 Act, two conditions have to be satisfied that it was reserved for common purposes under Section 18 and its management and control vests in the Gram Panchayat under Section 23-A of the Consolidation Act. No doubt,

41 (1984) SCC OnLine P&H 384

> the land in dispute is entered in the name of proprietary body of the village in the revenue record but his fact alone would not be sufficient to draw an inference that it was reserved for common purposes of the village. As discussed above, the list of the land reserved for common purposes of the village as well as the entires in the Jamabandi clearly show that the land in dispute though initially reserved for common purposes of the village but was never utilised for any such purpose and was entered in the name of the proprietary body of the village being Bachat land which means the area left over unutilized. The Panchayat, therefore, was not entitled to manage and control the land in dispute and as such the authorities below had no jurisdiction to order ejectment of the petitioner under the Eviction Act."

71. In another judgment reported as ***Gram Panchayat, Gunia Majri*** v. ***Director, Consolidation of Holdings & Ors***[42]***.,*** the learned Single Bench held that if the land reserved for common purposes stands satisfied by the utilization of the land required for each such purpose, the remaining land should be redistributed back to the proprietors. The Court held as under:

> "Precisely, this very view has been taken by the Director/Additional Direction, Consolidation of Holdings, in the present writ petitions and the cases have been remitted by issuing the directions to the Consolidation Officers for re-distribution of land to the original proprietors from whom it was taken during consolidation pro rata by defining the shares of the right-holders. These orders are sought to be challenged on the ground that entries like Hasab Rasad Khewat, Jumla Mushtarka Malkan or Jumla Malkar Wa Digar Haqdaran Arazi Hasab Rasad Raqba, do not entitle the right-holders to claim this land once the same was earmarked and reserved for common purposes. The plea taken by the Gram Panchayats and lessees of the

42 (1990) SCC OnLine P&H 823

> Panchayat is wholly without any basis in view of the aforesaid judgments."

72. Similar view has been taken by the learned Singh Bench in ***Baj Singh*** v. ***State of Punjab***[43]. In a judgment reported as ***Gram Panchayat, Village Bhedpura*** v. ***Additional Director, Consolidation, Punjab***[44]**,** an argument was again raised before the Division Bench that the land still left which is known as Bachat land should be redistributed after utilizing the land reserved for common purposes.

73. Mr. Manoj Swarup, learned Senior Counsel for the proprietors, referred to a judgment of the High Court in ***Gurjant Singh*** v. ***Commissioner, Ferozepore Division***[45] wherein many appeals were taken up for hearing together, the lead judgment being LPA No. 868 of 1992. The said LPA arose out of Writ Petition No. 18016 of 1991 wherein a writ petition was filed against common order of eviction affirmed by Commissioner, Ferozepur Division on 06.08.1991. The Panchayat had sought eviction of the appellants before the High Court as an unauthorized occupant. The learned District Development and Panchayat Officer exercising the powers of the Collector passed an order for the eviction. Such order of eviction was affirmed by the Commissioner, Ferozepur Division. In a writ petition before the High Court, it was pleaded that the land in

43 (1992) 1 PLR 10
44 (1997) 1 PLR 391
45 (2000) SCC OnLine P&H 56

dispute along with other land was reserved for common purposes during consolidation and after utilizing the land for common purposes, the land in dispute remained as Bachat land and is not being used for any common purpose. The learned Single Bench in the order reported as ***Balwant Singh*** v. ***State of Punjab***[46] dismissed the writ petitions as the argument was raised that the Bachat land could not be held to vest in the panchayat. In ***Gurjant Singh*** case, the argument raised was as under:

> "4. Mr. Chopra, learned counsel representing the appellants vehemently contends that the land found Bachat (surplus) after utilizing it for common purposes, cannot possibly vest with the gram panchayat and this precise question is not res integra having been so held by a string of judicial precedents of Supreme Court and this Court.
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> xxx xxx xxx
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> 16. In view of the consistent view taken by the Hon'ble Supreme Court and this Court from time to time, it is not possible to hold in tune with the findings recorded by the learned Single Judge and, therefore, it has to be held that the Bachat land i.e. land which remains unutilised after utilising the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the gram panchayat. Inasmuch, as there is no material brought on records of the case showing how a mutation came to be entered in favour of gram panchayat with regard to land which was consistently shown in the records of rights as belonging to proprietors, the mutation entry in favour of gram panchayat has to be completely ignored. It may be mentioned that this view was also taken by the same Hon'ble Judge in a D.B. who decided the writ petitions giving rise to the present Letters Patent Appeals. It is quite apparent that the provisions of East Punjab Holdings (Consolidation and Prevention of

46 (1992) SCC OnLine P&H 570

Fragmentation) Act, 1948 and the judgments that have been cited before us were not brought to the notice of the learned single Judge. The judgment in appeal recorded by the learned single Judge in Civil Writ Petitions No. 18016, 18018 and 18049 of 1991 cannot, thus, sustain.

17. Before we may part with this order, we would like to mention that several cases of this nature are being filed almost every day as is also informed to us by the learned Counsel representing the parties. It appears to us that gram panchayat even though conscious of the fact that such lands cannot possibly belong to it rakes up the issue primarily for the reason that some individuals have occupied the Bachat land. The present case also provides such an example. It has been repeatedly held by this Court and reference whereof has already been made above that the unutilised land after utilising the land ear-marked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes. This exercise, it appears, has not been done throughout the States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that. We have already reproduced the relevant sections of the Act which in turn do contain the provision of re-partition. This non-exercise of statutory provision has led to widespread litigation both in States of Punjab and Haryana and villages forming part of Union Territory, Chandigarh. With a view to curb this unnecessary and avoidable litigation as also keeping in view the common good and benefit of proprietors who had contributed land belonging to them for common purposes, we not only direct in this case that the concerned authorities under the Act should redistribute the Bachat land amongst the proprietors according to their shares but this exercise must be done throughout the States of Punjab and Haryana and villages forming part of Union Territory Chandigarh. A copy of this order, thus, be sent to the Chief Secretaries of Punjab and Haryana, Civil Secretariat, Chandigarh and Adviser to the Administrator, Union Territory, Chandigarh with a direction that proper instructions be passed on to the concerned authorities under the Statute to redistribute/re-partition Bachat land amongst the proprietors according to their shares. This exercise be

> done as expeditiousiy as possible and preferably within six months for re-partition must commence. Liberty to apply in the event of non-compliance of directions, referred to above."

74. The argument was thus that such land carved out by pro-rata cut from the land holding of the proprietors therefore, the proprietors have a right over such land in proportions to the shares of the proprietors in the khewa, in case, the same is not put to use for common purposes. The Civil Appeal Nos. 5709-5714 of 2001 against the order of the High Court in ***Gurjant Singh*** were decided on 27.8.2001. It was thus argued that the reasoning recorded by the High Court is the reasoning not only approved by this Court but shall also be deemed to be reasoning recorded by this Court. The order passed by this Court in ***State of Punjab*** v. ***Gurjant Singh***, reads thus:

> "Leave granted.
>
> Mr. Harish N. Salve, learned Solicitor General submitted that the State of Punjab takes objection only in regard to the following observations made in the impugned judgment:
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> "This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh even though there is a specific provision for doing that.
>
> This exercise be done as expeditiously as possible and preferable within six months proceedings for re-partition must commence. Liberty to apply in the event of non-compliance of directions, referred to above."
>
> Learned counsel for the respondent submits that he has no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals

to the extent of deleting of the abovesaid passage from the impugned judgment.

These appeals are disposed of accordingly."

75. The argument advanced was that since the appeal was decided by this Court, the findings recorded by the High Court stands affirmed by this Court and that we are bound by the judgment of the High Court. He relied upon the judgment in ***Kunhayammed*** v. ***State of Kerala***[47] and also the judgment in ***V.M. Salgaocar & Bros. Pvt. Ltd***. v. ***Commissioner of Income Tax***[48]. On the other hand, Mr. Kant relied upon judgment of this Court in ***S. Shanmugavel Nadar*** v. ***State of T.N***.[49].

76. We find that the judgment of ***Kunhayammed*** referred to by Mr. Swaroop is not helpful to the argument raised. In fact, it was held as under:

"12**.** The logic underlying the doctrine of merger is that there cannot be more than one decree or operative orders governing the same subject-matter at a given point of time. When a decree or order passed by an inferior court, tribunal or authority was subjected to a remedy available under the law before a superior forum then, though the decree or order under challenge continues to be effective and binding, nevertheless its finality is put in jeopardy. Once the superior court has disposed of the lis before it either way — whether the decree or order under appeal is set aside or modified or simply confirmed, it is the decree or order of the superior court, tribunal or authority which is the final, binding and operative decree or order wherein merges the decree or order passed by the court, tribunal or the authority below. However, the doctrine is not of

47 (2000) 6 SCC 359
48 (2000) 5 SCC 373
49 (2002) 8 SCC 361

> universal or unlimited application. The nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or which could have been laid shall have to be kept in view."

77. In ***V.M. Salgaocar***, the question of law framed was answered in favour of the assessee and against the revenue by the High Court. The Civil Appeal at the instance of revenue was dismissed without any speaking order. It was held that the previous proceedings would operate as binding precedent that once this Court has dismissed the appeal, the High Court in a subsequent assessment year cannot take a different view. It may be noticed that the aforesaid judgment was delivered on 10.04.2000 whereas ***Kunhayammed*** was delivered in 19.07.2000 by a larger bench.

78. In ***S. Shanmugavel Nadar,*** this Court has referred to the judgment of this Court in ***V.M. Salgaocar*** while examining the legality of the Madras City Tenants Protection (Amendment) Act, 1994. The constitutional validity was upheld by the High Court in first round. The Special Leave Petition was dismissed on the ground that the State of Tamil Nadu was not made a party. This Court had not examined the constitutional validity of the Amending Act. In a subsequent round before the Full Bench considering the challenge to the Amending Act, the Division Bench of the High Court was cited as a binding precedent affirmed by this Court. This Court held that when an order of the superior forum results in confirmation, reversal or

modification the order, what emerges is the operative part alone is binding i.e., the mandate or decree issued by the court which have been expressed in a positive or negative form. This Court also examined that dismissal of Special Leave Petition can either result into res-judicata or a binding precedent under Article 141 of the Constitution. It was held as under:

> "10. Firstly, the doctrine of merger. Though loosely an expression merger of judgment, order or decision of a court or forum into the judgment, order or decision of a superior forum is often employed, as a general rule the judgment or order having been dealt with by a superior forum and having resulted in confirmation, reversal or modification, what merges is the operative part i.e. the mandate or decree issued by the court which may have been expressed in a positive or negative form. For example, take a case where the subordinate forum passes an order and the same, having been dealt with by a superior forum, is confirmed for reasons different from the one assigned by the subordinate forum, what would merge in the order of the superior forum is the operative part of the order and not the reasoning of the subordinate forum; otherwise there would be an apparent contradiction. However, in certain cases, the reasons for decision can also be said to have merged in the order of the superior court if the superior court has, while formulating its own judgment or order, either adopted or reiterated the reasoning, or recorded an express approval of the reasoning, incorporated in the judgment or order of the subordinate forum.
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> 12. Thirdly, as we have already indicated, in the present round of litigation, the decision in M. Varadaraja Pillai case [85 LW 760] was cited only as a precedent and not as res judicata. The issue ought to have been examined by the Full Bench in the light of Article 141 of the Constitution and not by applying the doctrine of merger. Article 141 speaks of declaration of law by the Supreme Court. For a declaration of law there should be a speech i.e. a speaking order. In Krishena Kumar v. Union of India [(1990) 4 SCC 207 : 1991 SCC (L&S) 112 : (1990)

> 14 ATC 846] this Court has held that the doctrine of precedents, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. In State of U.P. v. Synthetics and Chemicals Ltd. [(1991) 4 SCC 139] R.M. Sahai, J. (vide para 41) dealt with the issue in the light of the rule of sub silentio. The question posed was: can the decision of an appellate court be treated as a binding decision of the appellate court on a conclusion of law which was neither raised nor preceded by any consideration or in other words can such conclusions be considered as declaration of law? His Lordship held that the rule of sub silentio is an exception to the rule of precedents. "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." A court is not bound by an earlier decision if it was rendered "without any argument, without reference to the crucial words of the rule and without any citation of the authority". A decision which is not express and is not founded on reasons, nor which proceeds on consideration of the issues, cannot be deemed to be a law declared, to have a binding effect as is contemplated by Article 141. His Lordship quoted the observation from B. Shama Rao v. Union Territory of Pondicherry [AIR 1967 SC 1480 : (1967) 2 SCR 650] "it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles, laid down therein". His Lordship tendered an advice of wisdom — "Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law." (SCC p. 163, para 41)
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> xxx xxx xxx
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> 14. It follows from a review of several decisions of this Court that it is the speech, express or necessarily implied, which only is the declaration of law by this Court within the meaning of Article 141 of the Constitution."

79. In ***S. Shanmugavel Nadar***, the Bench had the advantage of considering ***Kunhayammed*** and ***V.M. Salgaocar.*** A perusal

of the aforesaid judgment would show that if leave is granted in a special leave petition, the appellate order becomes operative and executable order. But the nature of jurisdiction exercised by the superior forum and the content of subject matter of challenge laid or which could have been laid had to be kept in view.

80. In a recent judgment reported as ***Kaikhosrou (Chick) Kavasji Framji*** v. ***Union of India and another***[50], this Court held as under:

> "53. In our view, the principle of merger is fairly well settled. For merger to operate, the superior court must go into the merits of the issues decided by the subordinate court and record finding(s) one way or other on its merits. If this is not done by the superior court, a plea of merger has no application in such a case and the order of the subordinate court would continue to hold the field (see S. Shanmugavel Nadar v. State of T.N.)."

81. In another judgment reported as ***Commissioner of Income-Tax, Bombay*** v. ***M/s. Amritlal Bhogilal and Co.***[51], an appeal was filed before the Appellate Assistant Commissioner against an order passed by the Income-Tax Officer. However, the Income-Tax Officer passed an order refusing to grant registration to the firm to the two assessment years 1947-48 and 1948-49. An argument was raised that since the order of the Assessing Officer has been affirmed in appeal, the non-registration of the firm could also be challenged before the

50 (2019) 20 SCC 705
51 AIR 1958 SC 868

Appellant Assistant Commissioner. This Court noticed the fact, that the department has not been conferred in the right of appeal against the order either refusing to register the firm or cancelling the registration of the firm. This Court considered such an argument and held as under:

> "13. ..... It is thus clear that wide powers have been conferred on the Appellate Assistant Commissioner under Section 31. It is also clear that, before the Appellate Authority exercises his powers, he is bound to hear the Income Tax Officer or his representative. It has been urged before us by Mr Ayyangar on behalf of the respondent that these provisions indicate that, in exercise of his wide powers the Appellate Assistant Commissioner can, in a proper case, after hearing the Income Tax Officer or his representative, set aside the order of registration passed by the Income Tax Officer. We are not prepared to accept this argument. The powers of the Appellate Assistant Commissioner, however wide, have, we think, to be exercised in respect of the matters which are specifically made appealable under Section 30(1) of the Act. If any order has been deliberately left out from the jurisdiction of the Appellate Assistant Commissioner it would not be open to the Appellate Authority to entertain a plea about the correctness, propriety or validity of such an order. .....It is true that, in dealing with the assessee's appeal against the order of assessment, the Appellate Assistant Commissioner may modify the assessment, reverse it or send it back for further enquiry; but any order that the Appellate Assistant Commissioner may make in respect of any of the matters brought before him in appeal will not and cannot affect the order of registration made by the Income Tax Officer. If that be the true position, the order of registration passed by the Income Tax Officer stands outside the jurisdiction of the Appellate Assistant Commissioner and does not strictly form part of the proceedings before the appellate authority. Even after the appeal is decided and in consequence the appellate order is the only order which is valid and enforceable in law, what merges in the appellate order is the Income Tax Officer's order under appeal and not his order of registration which was not

> and could never become the subject-matter of an appeal before the appellate authority. The theory that the order of the tribunal merges in the order of the appellate authority cannot therefore apply to the order of registration passed by the Income Tax Officer in the present case."

82. Thus, the principle of merger would be that the order of the higher court becomes the operative order and not the order which was appealed from and not interfered with.

83. In the appeal against the judgment of ***Gurjant Singh,*** only grievance raised before this Court was in respect of a direction of fixing a time limit to re-partition the land. It was the said direction which was deleted from the order. By such exercise of jurisdiction in appeal, the reasoning of the High Court is not deemed to be the reasoning of this Court. Such argument would in fact give rise to strange results as the reasoning of the High Court would have to be accepted as reasoning of the Supreme Court. There cannot be a more absurd argument. As held by this Court in ***S. Shanmugavel Nadar***, there can be only one operative judgment/order. Once this Court has deleted the time limit to complete the re-partition, the operative order remains of the High Court that Bachat land can be partitioned i.e., operative part of the order. The reasoning recorded by the High Court is not however affirmed by this Court. It would be a judgment of the High Court alone which can be cited as a precedent in other cases but not as an order of this Court. Consequently, we do not find any merit in the

argument so raised. In fact, by applying the doctrine of merger, the order of this Court becomes operative order but since the order is of deletion of a direction only, the effect would be that the order of the High Court has not been interfered with.

84. Keeping in view of the above discussions, we find that the land reserved for common purposes cannot be re-partitioned amongst the proprietors only because at a particular given time, the land so reserved has not been put to common use. The learned counsel for the parties could not point out any particular time-line during which the common purposes have to be accomplished. Since 'common purpose' is a dynamic expression, as it keeps changing due to the change in requirement of the society and the passing times, therefore once the land has been reserved for common purposes, it cannot be reverted to the proprietors for redistribution. Therefore, the conclusion no. (iii) arrived at by the High Court is set-aside as unutilized land is not available for redistribution amongst the proprietors. The finding recorded by the different Benches of the High Court are clearly erroneous and not sustainable. Thus, the conclusion no (iii) arrived at by the High Court in ***Jai Singh II*** is set aside.

CIVIL APPEAL NO. 1679 OF 2022; CIVIL APPEAL NO. 1678 OF 2022 AND CIVIL APPEAL NO. 1680 OF 2022

85. In the abovementioned appeals, the challenge on behalf of the proprietors is to the provisions of the Haryana Municipal (Amendment) Act, 1999 (Act No. 17 of 1999) and to Section 2(52A) and Section 161(1)(g) of the Haryana Municipal Corporation Act, 1994 *inter alia* on the ground that the said Act infringes upon the fundamental rights of the proprietors as the same is not directed towards agrarian reforms. The land owners have sought a direction that the land reverts back to them. By virtue of the amendments, the *shamilat deh* was to vest with the Municipalities. The amendments were said to be violative of Articles 13, 14, 31-A and also Article 300A of the Constitution.

86. In Civil Appeal No. 1679 of 2022, the appellant has purchased land admeasuring 6.4625 acres (51 Kanals 14 Marlas) said to be from the erstwhile owners through registered sale deeds. The appellant cannot be said to be proprietor as it is a company whereas the vendors of the appellant may be proprietors but the facts are not clearly established on record. Mr. Kamat, learned Senior Advocate appearing for the appellant argued that the appellant has challenged the provisions of the Haryana Municipal Corporation (Amendment) Act, 1999 amending the Haryana Municipal Corporation Act,

1994[52] but the State has not filed any appeal against the judgment arising out of the writ petition filed by the appellant. It was argued that the provisions of the Amending Acts, amending the Haryana Municipal Act, 1973[53] or the 1994 Corporation Act introducing '*shamilat land*' as vesting in municipality are not part of agrarian reforms and do not have the protection under Article 31A of the Constitution. Therefore, it is an acquisition by urban local body and the property of the proprietors can be acquired only by way of compensation. Since no compensation is contemplated under the amending statutes, therefore, such amendments are absolutely unconstitutional. The said issue has already been decided by the Full Bench of Punjab and Haryana High Court in ***Rajender Parshad & Ors.*** v. ***State of Haryana & Ors.***[54].

87. The Full Bench of the High Court in ***Rajender Parshad*** had struck down the Haryana Municipal Common Lands (Regulation) Act, 1974[55] as suffering from the vice of unconstitutionality. It was found that the said Act was not a measure of agrarian reforms, therefore, could not enjoy the protection envisaged by Article 31A(1)(a) of the Constitution.

88. The High Court in ***Suraj Bhan*** struck down the provisions of the amending statutes amending the 1973 Municipal Act and

52 1994 Corporation Act
53 1973 Municipal Act
54 AIR 1980 P&H 37
55 For short, the '1974 Act'

the 1994 Corporation Act relying upon the Full Bench decision in ***Rajender Parshad.*** The appellant in Civil Appeal No. 1679 of 2022 is aggrieved against the direction to pay compensation treating the action of the State as an acquisition and holding that the owners are entitled to compensation under Article 300-A of the Constitution.

89. The High Court in ***Suraj Bhan*** held that the proprietors cannot be divested of their proprietary rights in *'Jumla Mushtarka Malkan*' or *'Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba*' lands without payment of compensation by a mere declaration of such inclusion or vesting by Section 2(g)(6) of the 1961 Act. The High Court further held that the provisions of the Amending Acts amending the 1973 Municipal Act and the 1994 Corporation Act would amount to compulsory acquisition without payment of compensation which is impermissible in law. The Court held that the judgments in ***Notified Area Committee & Anr.*** v. ***Des Raj & Ors.***[56] and ***Municipal Committee, Sirhind*** v. ***Parshotam Dass & Ors.***[57] are not applicable as the issue was confined to the effect of reversion of land to the land owners in the context of Rule 3 of the Punjab Gram Panchayat Rules, 1965. The High Court held as under:

> "207. In Municipal Committee, Sirhind v. Parshotam Dass (supra) and in the Notified Area Committee v. Des Raj (supra), the issue was confined to the effect of

56 (1995) 5 SCC 317
57 (1996) 8 SCC 324

> reversion of land to the land owners in the context of Rule 3 of the Punjab Gram Panchayat Rules, 1965 and the original owners were held not entitled to claim the property in question in the context of said Rule. Besides, in Notified Area Committee v. Des Raj (supra), the proviso to Rule 3 of the Punjab Gram Panchayat Rules, 1965 was held to be inapplicable as the land came to be vested in the concerned Panchayat by operation of the VCL Act 1953 under which the Gram Panchayat had acquired its right and the repeal of the said VCL Act 1953 by the VCL Act 1961, it was said, did not in any way affect the right which the Gram Panchayat had acquired over the land.
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> xx xx xx
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> 211. In the present case, when the land being taken over by a municipality and would, thus, have the characteristics of an urban area, it cannot be said that the same is for giving effect to the directive principles of the State policy or for agrarian reforms. Rather the common purposes for which the land was being utilized by the 'inhabitants of the village' would cease. Besides, there is no dispute to the proposition that the areas of the Gram Panchayat which are merged into the municipalities would not be entitled to a hearing in compliance with the principles of natural justice before their merger."

90. Mr. Pradeep Kant, learned senior counsel appearing for the State argued that the land vested in the Panchayat in terms of Section 4 of the 1961 Act, hence the land of Panchayat now merely stands transferred from one statutory body to the other by extending the municipal limits and thus that the proprietors would not be entitled to any compensation. Mr. Kant also argued that the Haryana Panchayati Raj Act, 1994[58] contemplates the satisfaction where the whole of the sabha area included in the municipality or cantonment, the Gram

58 For short, the '1994 Act'

Panchayat shall cease to exist and the assets and liabilities shall vest with the municipality.

91. Mr. Kamat has raised an argument that the stand of the State that the amendment was necessitated to remove the encroachments on the land reserved for common purpose is not tenable. It was pointed out that for such purpose, the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985[59] has been enacted to treat the land reserved for common purposes under 1948 Act as public premises. The said aspect has been considered by the Five Judges Bench in ***Suraj Bhan*** to hold that both proceedings under the 1961 Act and under the 1985 Act are parallel proceedings and that it is open to choose any. The Court held as under:

> "83. It may appropriately be noticed that the Haryana State has also framed the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985. The said Act is to provide for eviction of unauthorized occupants from land reserved for common purposes under the Consolidation Act 1948. In terms of Section 2 of the said Act 'Common Purposes Land' has been defined to mean land reserved for common purposes of a village under Section 18 of the Consolidation Act 1948, the management and control whereof vests in the State Government or the Panchayat under Section 23-A of the said 16-02-2022 (Page 31 of 89) www.manupatra.com Supreme Court Judges Library Consolidation Act 1948. Section 3 of the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985 provides for application of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 to common purposes. It is provided that notwithstanding anything contained in any law for the time being in force, the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, shall apply to

59 Hereinafter referred to as the '1985 Act'

> common purposes land which shall be deemed to be public premises for the purpose of the said Act. The provisions of the VCL Act 1961 are, however, more comprehensive and deal with disputes inter se parties as well as other disputes in terms of its various provisions, as have been noticed above. The provisions of the VCL Act 1961 would be in addition to the procedure provided for eviction of unauthorized occupants from land reserved for common purposes under the Consolidation Act 1948. The provisions of the VCL Act 1961 shall have, however, have overriding effect in view of Section 13-D thereof. Besides, the provisions of the VCL Act 1961 are invoked and administered by the officials of the Rural Development and Panchayats Department, Haryana. The officials of the said Department have been invested with the powers of the Collector, the Commissioner and the Financial Commissioner under the VCL Act 1961. The Sarpanches and Panches of the Gram Panchayats are more familiar in their day-to-day dealings with the officials of the Panchayat Department at the Block Level, District Level and the State Level. Therefore, having an additional forum for resolution of disputes of lands which are vested in the Panchayats or the management and control of the same is with the Panchayats. Besides, in case two procedures are provided for eviction of unauthorized occupants of lands which vest in the Panchayat or the Panchayat has management and control would not be illegal or improper."

92. Ms. Agarwal has referred to Section 5 of the 1961 Act to contend that the *shamilat* land is for the benefit of the inhabitants of a same village but in case, there is common benefit for more than one village, the land has to be used for the benefit of the inhabitants of that village and not of the other village. It was further contended that *shamilat deh* land is a concept of rural areas and its import into urban municipal laws is wholly erroneous construction by the State Legislature.

The transfer of such land to the municipal bodies would be to the detriment of villagers and, therefore, bad in law. The vesting of land in municipal bodies is not an agrarian reform and, thus, not protected by Article 31-A.

93. It was further argued that *shamilat* land is not an asset of Gram Panchayat and cannot be transferred. The Gram Panchayat only has the management and control of land carved out during consolidation under the 1948 Act for a limited purpose for benefits of villagers of that village. Such vesting is a trust created with the Panchayat and cannot be transferred or vested with any other person. Still further, the Gram Panchayat can transfer only that much right which it had, therefore, the transfer of the *shamilat* land to the municipality lead to divesting of the interest of the proprietors and, therefore, the proprietors in any case would have continue to use the land so reserved for the benefit of the community.

94. We do not find any merit in the argument that since the State has not challenged the orders in the writ petition filed by the appellant, therefore, the State cannot challenge the judgment of Full Bench in ***Suraj Bhan***. The State is in appeal against the entire judgment rendered by the Full Bench in ***Suraj Bhan***. The provisions amending the 1994 Corporation Act are pari materia with the provisions amending the 1973 Municipal Act.

Therefore, the argument that the State has not filed an appeal against the order passed in the writ petition does not merit any consideration since the entire judgment is in appeal.

95. The fact is that the Full Bench of the Punjab and Haryana High Court in ***Rajender Parshad*** has struck down the Haryana Municipal Common Lands (Regulation) Act, 1974 as unconstitutional *inter alia* on the ground that such Act is not a measure of agrarian reform. The infirmities pointed out by the High Court in ***Rajender Parshad*** are very well applicable to the amending Statutes amending the 1973 Municipal Act and the 1994 Corporation Act. Therefore, we have no hesitation to affirm the findings recorded by the High Court that the amending statutes amending the 1973 Municipal Act and the 1994 Corporation Act are also unconstitutional as they are not part of the agrarian reforms.

96. However, we find merit in the argument raised by Mr. Pradeep Kant that if whole or part of the Panchayat area comes within the municipal limits, and the Panchayat ceases to exist, land would vest with the municipality and will not revert back to the proprietors. The relevant extract from the Haryana Panchayati Raj Act, 1994 reads as under:

> "7. Demarcation of sabha area – (1) The Government may, by notification, declare any village or a part of a village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas:

> Provided that Government may in exceptional cases, by reasons to be recorded in writing, relax the limit of population of 500:
>
> Provided further that neither the whole nor any part of a-
>
> (a) municipality constituted under the Haryana Municipal Act, 1973;
>
> (b) cantonment;
>
> shall be included in a sabha area unless the majority of voters in any municipality desire the establishment of a Gram Panchayat in which case the assets and liabilities, if any, of the municipality shall vest in the Gram Panchayat and the municipality shall cease to exist.
>
> (2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.
>
> (3) Government may, by notification, include any area in or exclude any area from the sabha area.
>
> (4) If the whole of the sabha area is included in a municipality or a cantonment, the Gram Panchayat shall cease to exist and the assets and liabilities of it shall vest in the municipality or cantonment, as the case may be.
>
> (5) If the whole of the sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971, the Gram Panchayat shall cease to exist and its assets and liabilities shall vest in the Faridabad Complex."

97. Section 2-A of the 1973 Municipal Act deals with classification and constitution of municipalities such as Municipal Committee for a transitional area with population of not more than fifty thousand, Municipal Council for a smaller urban area with population of more than fifty thousand but less than three lacs and the Municipal Corporation for a larger urban area with

population of three lacs or more[60]. Section 3 empowers the State Government to propose any local area to be a municipality under the 1973 Municipal Act. Section 4 empowers the State Government to alter the limits of municipality whereas Section 5 empowers the State Government to exclude any area from the municipality. Relevant provisions from the 1973 Municipal Act read thus:

> "3. Procedure for declaring municipality.—(*1*) The State Government may, by notification, propose any local area to be a municipality under this Act.
>
> (*2*) Every such notification shall define the limits of the local area to which it relates.
>
> xx xx xx
>
> (*10*) A Committee shall come into existence at such time as the State Government may, by notification, appoint in this behalf.
>
> 4. Notification of intention to after limits of municipality. —(*1*) The State Government may, by notification, and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification.
>
> (*2*) xx xx xx
>
> (*4*) When any local area has been included in a municipality under sub-section (*3*), this Act, and, except as the State Government may, by notification, direct otherwise, all notifications, rules; bye-laws, order, directions and powers issued made, or conferred under this Act and in force throughout whole of the municipality at the time, shall apply to such area.
>
> 5. Notification of intention to exclude local area from municipally.—The State Government may, by notification, and in such other manner as it may deem

60 As amended by Haryana Act No. 11 of 2002

> fit, declare its intention to exclude from a municipality any local area comprised therein and defined in the notification."

98. In the ***Notified Area Committee***, an argument was raised that the land once vested with the Panchayat under the Punjab Act in terms of Section 3(a) of the said Act would be mutated in favor of the appellant after the enactment of the 1974 Act. As the said Act was declared void, it stands revested with the proprietors. Such argument was negated by this Court, though the High Court had accepted such argument. This Court held as under:

> "3. There being no dispute as to the vesting of the land pursuant to 1953 Act in the Gram Panchayat concerned, all that we are required to decide is whether the stand of the plaintiffs-respondents that the same got reverted to them pursuant to what has been mentioned in the aforesaid proviso is correct or not.
>
> 4. To decide the aforesaid question, let Rule 3 of the Punjab Gram Panchayat Rules, 1965 be noted, which reads as under:
>
> > 3. "If the whole of Sabha area is included in Municipality, cantonment or notified area all rights, obligations, property, assets and liabilities if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board or Notified Area Committee as the case may be:
> >
> > Provided that the land, which vests in the panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 or the land, management and control of which vests in the panchayat under the East Punjab Consolidation and Prevention of Fragmentation Act, 1948, shall revert to the co-sharers and owners thereof.

> 5. The respondents first contention is that for the appellant to claim vesting of the land in it, the first requirement is that the whole of the sabha area must have been included in it. It is then urged that even if this part of the requirement be held to be satisfied, because of what has been stated in the aforesaid proviso, the land did revert to them. The further leaf of this argument is that the omission of the proviso by notification dated 22nd December, 1976 cannot alter the position inasmuch as the area of village Gudha, in which the land is admittedly situate, had been declared to be part of notified area on 6-10-75; and so, the proviso operated by its own force on that date, because of which its omission later on could not alter the legal position.
>
> 6. Insofar as the first contention is concerned, Shri Ashri, learned counsel appearing for the appellants, brings to our notice what has been stated in sub-section (2) of Section 8 of the Panchayat Act, which is in the following language :-
>
> xxx xxx
>
> This shows that the only effect of non- inclusion of the whole of the area of a Gram panchayat is that the jurisdiction of the concerned Notified Area Committee shall get reduced and would be confined to the part included. As in the present case there is nothing to show that the part of the Gram Panchayat in which the suit land is situate had not been included in the territorial area of the appellant- committee, the first contention advanced on behalf of the respondent, which had found acceptance with the Courts below, cannot be regarded as legally sound."

99. In ***Municipal Committee, Sirhind***, the plaintiff filed a suit against the Municipal Committee for a declaration that the subject matter of the suit land is the property of the plaintiff as proprietors. The municipal limit of Sirhind Municipality was extended, covering a part of Gram Sabha area of Nagar Panchayat and the disputed area came under the Municipal

Limits. The argument which found favor with the High Court was that unless the whole land of the Sabha area is included in an urban estate under the provisions of the Punjab Municipal Act, there can be no vesting of the Sabha area with the municipality. Such argument was not accepted by this Court as the 'whole' was said to be including a 'part'. Still further, the argument of the proprietors that the *shamilat* property would stand reverted to the proprietors was not accepted. It was held as under:

> "7. But a contention has been advanced which found favour with the courts below that unless the whole land of the Sabha area is included in an urban estate under the provisions of the Punjab Municipal Act, then there can be no vesting of the Sabha area with the municipality. We are unable to accept this contention since the expression 'whole' in sub-section (3) of Section 4 of the Punjab Gram Panchayat Act must be held to be including a 'part' and therefore if a part of the Sabha area is included within the municipal limits then that part of the Sabha area becomes a part of the municipality and it ceases to be a part of the Gram Panchayat. Section 8 of the Gram Panchayat Act stood deleted from the Gram Panchayat Act in the year 1962. Section 4(3) extracted above was added to the Punjab Gram Panchayat Act with effect from 14-7-1978. The Punjab Gram Panchayat Rules, 1965 had been framed in exercise of power under Section 101 of the Punjab Gram Panchayat Act by the State Government. Rule 3 is the rule for disposal of assets and liabilities of Gram Sabha. The said rule provides that if the whole of the Sabha area is included in a municipality, cantonment city, urban estate or notified area, rights, obligations, property, assets and liabilities, if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board, (Municipal Corporation, Chief Administrator or Notified Area Committee, as the case may be).
>
> xx xx xx

10. A combined reading of the aforesaid provisions of the Gram Panchayat Act, the rules made thereunder and the Punjab Municipal Act unequivocally indicate that on and from the date of issuance of a notification extending the municipal limits over a part of the Sabha area that part of the Sabha area forms a part of the municipality and it is the municipality in whom right, title and interest over the area vests. It is difficult to accept the reasoning advanced by the courts below that only when the entire Sabha area comes within the municipal limits then the property vests and not otherwise. In our considered opinion the expression 'whole' in Section 4(3) of the Gram Panchayat Act brings within its sweep also a part of the Sabha area and therefore the disputed properties in the case in hand which originally formed a part of Sabha area of Village Brahman Majra having been included in municipal limits of Sirhind Municipality by notification dated 18-9-1968, it is the municipality on whom the right, title and interest of the property vested and it never revested at (*sic* in) the khewatdars as found by the courts below. The courts below including the High Court not only committed error in interpreting Section 4(3) of the Gram Panchayat Act but also committed error in relying upon the proviso to Rule 3 of the Gram Panchayat Rules since on the date when the notification was issued extending the municipal limits of Sirhind Municipality on 18-9-1968 Section 4(3) of the Gram Panchayat Act was not in force and therefore Rule 3 could not have operated upon. As has been stated earlier Section 56 of the Municipal Act and Section 4 of the Gram Panchayat Act make the legislative intention clear that when a part of the Sabha area gets included within the municipal limits of any municipality the property comprised therein vests with the Municipal Committee. In this view of the matter the plaintiffs who were the original khewatdars cannot claim the property in question and it is the municipality which continues to be the owner of the disputed property.

xx xx xx

12. Sub-section (2) of Section 3 would be attracted only when land vested in Municipal Committee, Sirhind has been excluded from "Shamlat deh" as defined in clause

> (*g*) of Section 2 of the said Act. Section 2(*g*) has 9 exclusion clauses but there is not an iota of material on record and in fact the case in hand has not been examined from that angle to establish that the disputed property stood excluded from "Shamlat deh" by operation of any of the sub-clauses which excludes from the definition of "Shamlat deh" in Section 2(*g*). In that view of the matter the contention of Mr Madhava Reddy cannot be sustained."

100. The sub-section (4) of Section 7 of the 1994 Act contemplates that if the whole of the Sabha area is included in a municipality, the Gram Panchayat shall cease to exist, whereas on the other hand, the 1973 Municipal Act contemplates inclusion of part of local area into a municipality. In fact, Section 7(4) is pari materia with Section 4(3) of the Punjab Gram Panchayat Act, 1952, since repleaded by 1973 Municipal Act.

101. The Panchayati Raj Act contemplates cessation of Gram Panchayat if whole of the Sabha area is included in the municipality, whereas the 1973 Municipal Act contemplates the local area which may be part of Gram Panchayat area can be included in the municipality. Even an area from the municipal limits can be excluded from the municipal limits as well. In ***Atma Ram*** this Court also examined the maxim that *Omne Majus continet in se minus* (the greater contains the less). This Court held as under:-

> "12. Another branch of the same argument was that if the makers of the Constitution intended to include within the purview of Article 31A, not only entire estates but also portions thereof, nothing would have been

> easier than to say so in terms, and that in the absence of any specific mention of "portions of an estate", we should not read that article as covering "portions of an estate" also. In our opinion, there is no substance in this contention, because they must be attributed full knowledge of the legal maxim that "the greater contains the less" – *Omne Majus continet in se minus*. .....Thus the Full Bench specifically held that Article 31A of the Constitution applied equally to portions of estates also. This decision of the Full Bench[61] was followed by a Division Bench of the same High Court, consisting of Bhandari C. J. and Dulat J., in the case of ***Hukam Singh v. State of Punjab, 57 PLR 359 : (AIR 1955 Punjab 220).*** That Bench was concerned with the provisions of another Act -Punjab Village Common Lands (Regulation) Act, 1954. In that case, the Division Bench, naturally, followed the decision of the Full Bench in so far as it had ruled that the 'whole' includes the part, and that where an Act provides for rights in an estate, it provides for rights in a part of an estate also. ..... In our opinion, the view taken by the earlier Full Bench is the correct one. The learned Chief Justice who was a party to both the conflicting views on the same question has not indicated his own reasons for changing his view. The Full Bench has accepted the force of the legal maxim that the greater contains the less, referred to above but has not, it must be said with all respect, given any good reasons for departing from that well-established maxim. ....."

102. The reference was made to later Full Bench judgment of Punjab High Court reported as ***State of Punjab*** v. ***S. Kehar Singh***[62] and earlier Full Bench reported as ***Bhagirath***. Even in a later Full Bench of the High Court in a judgment reported as ***M/s. Hari Ram Paras Ram*** v. ***State of Haryana***[63], the expression 'whole' will include part has been accepted. It was held as under:-

> "19. Mr. Mittal was pretty vehement in submitting that under Section 3(2)(c) of the Act the price of the entire

61 AIR 1954 Punjab 167
62 AIR 1959 P&H 8; 1958 SCC Online Punj 89
63 ILR (1982) 1 Punjab and Haryana 317

> essential commodity in contradistinction with a part thereof alone can be fixed. According to him, there is no such thing as a partial control of the price. I see no merit in this submission. If the non-availability of essential commodities, which grows with the passage of time, has to be checked, then the evil must be nipped in the bud. In other words, if the supply position can be improved by taking less drastic action, the State Government should be allowed to take that action instead of allowing the problem to go out of hands. If the interpretation suggested by Mr. Mittal is accepted, then the authorities under the Act, would have to wait till the essential commodities become so costly and scarce as to make absolute control of prices the only imperative. Besides, there is a legal maxim omne majus continet in se minus - the greater contains the less. This maxim has been referred to with approval in ***Atma Ram v. State of Punjab, AIR 1959 Supreme Court 519*** - If the State Government has the volition and the right to travel the whole distance, I see no reason why it should be commanded to go further if it exercises an option of stopping midway. ……”

103. The Section 7(4) of the Panchayati Raj Act, 1994 is to be read with the provisions of the 1973 Municipal Act. However, both the statutes had undergone extensive changes after the insertion of Part IX and IX A in the Constitution empowering the third tier of the democratic set up. The Panchayati Raj Act contemplates vesting of property of Gram Panchayat with the municipality., whereas the Municipal Act takes into its ambit the properties which were vesting with Panchayat. The 1973 Municipal Act contemplates that even if part of the property of Gram Panchayat is included in the Municipal Limits, it would vest with the municipality. Thus, the word ‘whole’ appearing in Section 7(4) of Panchayati Raj Act does include part of the

Gram Panchayat area coming within the municipal limits. It is the same view which was taken by this Court in a ***Notified Area Committee, Sirhind***.

104. Thus, if the whole or part of Gram Panchayat area is included in the municipal limits, the land reserved for common purposes as part of agrarian reforms would stand vested with the municipality. Such vesting is not a part of agrarian reforms but shall be on account of extension of municipal limits. When the municipal limits are extended, the residents of the Panchayat also became residents of the municipality. The common purposes of the village community prior to extension of the municipal limits would be deemed to be common purposes for which land can be utilized by the municipality. Therefore, such vesting of land reserved for common purposes is not an acquisition for the first time but transition of the land reserved for common purposes in the changed scenario when the land vest with the municipality.

105. The argument of the proprietors that if whole of the Sabha area merges with the municipality, only then there can be vesting of land reserved for common purposes with the municipality is untenable. Such an argument would lead to anomalous results. The title, right and interest of the property cannot be held in abeyance. There has to be continued control and management over the land reserved for common purposes

under the 1948 Act. Therefore, even if a part of Sabha area is merged into the municipality, the municipality will have control over the land so reserved for the erstwhile village community which will now form part of the urban area. In view thereof, we do not find any merit in the argument raised on behalf of the proprietors and dismiss the writ petitions filed by them while allowing the appeals of the State.

106. The argument of the proprietors that the land which is not capable of being used for common purposes of the inhabitants of a particular village shall be reverted to the proprietors is untenable and unsustainable. The land has been put to common pool by applying pro-rata cut. Once pro-rata cut has been applied, the management and control of such land vest with the Panchayat. There is no question of reverting the land to the proprietors. As discussed above, the land which is not part of the permissible limits under the land ceiling laws stand acquired and vested with the Panchayat in terms of judgment of this Court in ***Ranjit Singh***. However, in respect of the land forming part of permissible limits of the proprietor under the land ceiling laws, the management and control vest with the Panchayat. Neither the 1961 Act nor the 1948 Act contemplates redistribution of land to the proprietors. It is an irrevocable act which cannot be undone. Therefore, once land vest with the Panchayat, it can be used for common purposes of the community and will never revert back to the proprietors.

107. We find that the scope of the two provisions under the 1985 Act and 1961 Act are different and distinct. Under the 1985 Act, the Gram Panchayat could seek eviction from unauthorized occupants, the management and control as of the land reserved for common purposes whereof vested in the Gram Panchayat in a summary way where the possession of the occupant was unauthorized. But if there is dispute in respect of the nature of occupation by the occupant or by the panchayat, procedure under the 1961 Act alone can be resorted to as Section 13A of the 1961 Act confers power upon the Collector to decide the question of right, title or interest in any land or immoveable property vested or deemed to have been vested in the panchayat. Therefore, in case of a dispute about the right, title or interest in any land for or on behalf of any person, the remedy under the 1961 Act alone can be exercised. This will include right, title or interest in all the three categories of land i.e., *shamilat deh* owned by panchayat, *shamilat* land vested in terms of 1948 Act falling in second category and the land, the management and control whereof is vested with the panchayat, land being within the permissible limits of the proprietor, the management and control of which vest with the panchayat.

108. Consequently, we hold that Act No. 9 of 1992, the Amending Act is valid and does not suffer from any vice of constitutional

infirmity. The entire land reserved for common purposes by applying pro-rata cut had to be utilized by the Gram Panchayat for the present and future needs of the village community and that no part of the land can be re-partitioned amongst the proprietors.

109. With the aforesaid discussion and findings, the appeals filed by the State and panchayats are allowed and those filed by the proprietors are dismissed. Consequently, the writ petitions filed before the High Court shall also stand dismissed.

.....J.
(HEMANT GUPTA)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
APRIL 07, 2022.

GLOSSARY OF THE WORDS USED IN THE JUDGMENT

S.No.	Term Used		Meaning
1.	***Abadi***		Land which is the site of a house, homestead or building.
2.	***Abadi Deh***		Land reserved for houses of the village community. Lies within the Laldora (red line). Is normally assigned one Khewat and one Khasra no. No land revenue is charged.
3.	***Bachat land***		Land left out which was carved out by imposing a cut on proprietors which was reserved for common purposes during Consolidation.
4.	***Types of land***		
	(a)	***Banjar Jadid***	Old Fallow that has remained uncultivated for four Harvests but may still be brought to cultivation
	(b)	***Banjar Qadim***	Old Fallow that has remained uncultivated for eight Harvests but may still be brought to cultivation.
	(c)	***Gair Mumkin Land***	Land that is no longer capable of being used for cultivation as it is the site of a house, building, road, canal, river etc
	(d)	***Nehri land***	Land that is irrigated by a canal
	(e)	***Barani***	Rain fed
	(f)	***Chahi***	Irrigated by wells or Tubewells
	(g)	***Aabi***	Irrigated by means other than canal or well
5.	***Deh***		Land
6.	***Fard***		Document prepared by the revenue official
7.	***Documents that form part of the Records of Rights U/s 31 of the Punjab Land Records Act, 1887***		

	(a)	***Jamabandi***	Records names of land owners, tenants or assignees of land revenue in the estate or who are entitled to receive rents, profits or produce of the estate or to occupy land therein.
	(b)	**Wajib-ul-arz** ***Or Sharat Wajib-ul-arz***	The statement of custom respecting rights and liabilities in the estate and also contains the rights of proprietors and non-proprietors in the common land of the village. It is also called the village administration paper.
	(c)	**Shajra kishtwar**	A Map of the estate *(shajra kishtawar (map of the village) is prepared on a strong cloth called a Latha* *A copy of the Map is called the Aksh Shajra).*
9.	***Hasab Rasad Zare Khewat***		Share of a proprietor in common land. According to the revenue assessed on his proprietary holding.
10.	***Jumla Mushtarka Malkan***		Land carved out for common purpose from the holding of the proprietors, the control and management of which vests with Panchayat.
11.	***Jumla Mushtarka Malkan Wa digar Haqdaran Arazi Hasab Rasad Raqba***		Joint holding of the proprietary body and other right holders as per share in the land contributed during consolidation on a pro rata basis. The management and control of such land vests in the Panchayats.
12.	***Khewat Number***		Is the number assigned to an owner of his land holding. Only a landowner will be assigned a khewat number.
13.	***Khewatdar***		The holder of Land/share in a village.
14.	***Khatauni***		Records the name of person in possession
15.	***Mal Guzars***		The person who pays the revenue assessed on an estate
16.	***Malikan Deh***		Proprietary body of the village.
17.	***Malikan Makbuza Khurd***		Owner in self cultivation
18.	***Mushtarka Malkan***		Joint ownership of all the proprietors
19.	***Phirni***		Pathway around the village habitation

		i.e. the village path around the Abadi Deh	
20.	***Shamilat***	Common purposes	
21.	***Shamilat Deh***	Lands Reserved and used for common purposes.	
22.	***Tarrafs, Pattis, Pannas and Tholas***	The village was divided into different *Pattis*/sections based upon caste, religion, occupation, etc. of the persons residing in the village. Patti is described as division of land into separate portions or strips in a village. Patti is basically, therefore, a small division of the village. The terms '*Taraf*', '*panna*' and '*Thola*' may be different but are akin to P*atti* and also deal with community of villagers residing separately.	
23.	***Marla***	30.25 sq. yards	
24.	***kanal***	20 marlas = 605 sq. yards	
25.	***Acre***	160 marlas = 4840 sq. yards	
		Pukhta	**Kachcha**
26.	***Biswani***	7.5625 sq. yards	2.521 sq. yards
27.	***Biswa***	151.25 sq. yards	50.42 sq. yards
28.	***Bigha***	3025 sq. yards	1008.33 sq. yards
	Acre	5 Bighas 12 Biswa	4 Bigha 75 Biswa
30.	***Hadbast***	Boundary of a village or revenue estate. Each village or revenue estate is assigned a separate Hadbast number.	
31.	**Rectangle/Mushtatil**	The land is divided into different rectangles/Mushtatils. The rectangle is represented by (//) in the revenue record. Each Mushtatil contains 25 Khasra Numbers with Khasra No. 13 being in the center. The holding of the land owner is represented by the rectangle/ Mushtatil number, followed by the Khasra number and the area of each khasra number	
32.	**Khasra number**	Khasra number is given to a specific piece of land in the village. One or more Khasra form a khatauni, one or more Khatauni form a Khewat. The Khasra numbers in a khatauni may or may not be mentioned sequentially.	