

(2003) 03 P&H CK 0042
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5877 of 1992

Jai Singh and Others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 13-03-2003

Acts Referred:

East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 22
Punjab Village Common Lands (Regulation) Act, 1961 — Section 2, 4
Punjab Village Common Lands (Regulation) Haryana (Amendment) Act, 1992 — Section 2, 2(6), 7

Citation : (2003) 2 ILR (P&H) 382 : (2003) 134 PLR 658 : (2003) 2 RCR(Civil) 578

Hon'ble Judges : Binod Kumar Roy, C.J;V.K. Bali, J;G.S. Singhvi, J

Bench : Full Bench

Advocate : H.S. Hooda and Mahavir Sandhu, for the Appellant; Surya Kant, A.G., for the Respondent

Judgement

M.S. Liberhan, J.—(1st June, 1993) Since the vires of Punjab Village Common Lands (Regulation) Haryana Amendment Act 1991 are under challenge in this writ petition it involves important questions of law. As the decision of this writ petition would affect a large number of cases, may be in thousands and similarly a large chunk of land is going to be effected. It would be in the interest of justice that the matter is placed before the Hon"ble Chief Justice to constitute a Full Bench in order to decide the questions in the writ petition including the vires of the said Act.

Sd/- S.S. Grewal, J.

JUDGMENT OF THE FULL BENCH

V.K. Bali, J.

In this bunch of petitions, proprietors, holding land in the village, who contributed a share of their holdings to form a common pool of land, meant

exclusively for common purposes of the village inhabitants, take strong exception to Sub-clause (6) of Section 2(g) and an explanation appended to the said sub-clause, inserted in the Punjab Village Common Lands (Regulations) Act, 1961 (here-in-after referred to as the "Act of 1961"). The said Sub-clause (6) and the explanation, appended thereto, came to be inserted in the Act of 1961 by virtue of Haryana Government Gazette Notification dated February 11, 1992 by Act No. 9 of 1992 which received the assent of the President on January 14, 1992.

2. Considering the matter to be involving important questions of law, likely to arise in large number of cases and involving large chunk of land, the Hon''ble Division, Bench, then seized of the matter, vide orders dated June 1, 1993, ordered the papers of the case to be placed before Hon''ble the Chief Justice for constituting a Full Bench for determination of vires of the Act and explanation, referred to above. Vide a detailed judgment dated January 18, 1995, Hon''ble Full Bench of this court, allowed the bunch of writ petitions, main judgment having been recorded in CWP No. 5877 of 1992 [Reported as Jain Singh and others Vs. State of Haryana, " Editor]. Operative part of the judgment, dealing with vires of Sub-clause (6) of Section 2(f) and the explanation, appended thereto as also some other sections, which were under challenge, reads thus:-

"(i) Section 2 of the Punjab Village Common Lands (Regulations) Haryana Amendment Act, 1992, Haryana Act No. 9 of 1992 vide which addition has been made to the definition contained in Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called the principal Act) is ultra vires the Constitution of India;

(ii) Section 3 of the Haryana Act No. 9 of 1992 vide which Section 7 of the Principal Act has been substituted and the substituted provisions, viz., Sub-section (1) of Section 7 are intra-vires the Constitution of India;

(iii) Section 3 of the Haryana Act No. 9 of 1992 vide which Section 7 of the Principal Act has been substituted and the substituted provisions, viz., Sub-section (2) of Section are intra-vires the Constitution of India, and

(iv) Section 5 of the Haryana Act No. 9 of 1992 which has amended Section 13-B of the Principal Act and the proviso to the substituted Sub-section (1) is ultra vires the Constitution of India".

3. The State of Haryana challenged the decision of Hon''ble Full Bench vide Civil Appeal No. 5480 of 1995 [Reported as State of Haryana Vs. Jai Singh and Others, - Editor]. The Hon''ble Supreme Court, dealing with the appeal in the matter aforesaid, reproduced para 60 of the judgment of the Hon''ble Full Bench in its order dated August 6, 1998, which, for facility of reference is reproduced below:-

"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 prorata 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 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 ultra vires 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".

4. The Hon"ble Supreme Court, in the context of paragraph 60 of the judgment, as reproduced above, held that certain essentials of Article 31-A of the Constitution of India were over-looked. Relevant part of Article 31-A was then reproduced and it was held:-

"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 ceiling 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 31-A 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".

5- It is in the manner indicated above, as to how this matter is before us, a newly constituted Full Bench for variety of reasons.

6. Before we may take in hand the exercise to determine the questions, or, in view of the significant change in the stand of the State, to determine the questions in light of the said stand, it would be relevant to give back-drop of the facts and events, even though in brevity, that led to challenge to vires of some provisions of Act No. 9 of 1992, and, in particular, Sub-clause (6) of Section 2(g) and explanation appended thereto as also addition to the pleadings that came about after remand of the case by the Hon"ble Supreme Court.

7. Inasmuch as the parties have filed complete pleadings in the lead case, i.e.

Civil Writ Petition No. 5877 of 1992, either before or after the decision of the Hon'ble Supreme Court, we would extract the pleadings from the records of the said writ petition only.

8. Jai Singh and 32 others, claim themselves to be owners in possession of two parcels of land, details whereof have been given in para 2 of the writ petition, measuring, in all, 2012 kanals 18 marlas situated within the revenue estate of village Sadipur, Tehsil Naraingarh, District Ambala, which, as per the revenue records, and, in particular, Jamabandi, attached with the writ petition, for the year 1986-87, has been described in column No. 1 with the caption "Name of owner with details" as shamlat deh Hasab Rasad Arizi Khewat" and in column No. 6, captioned "Name of cultivator with details", "Makbuja Wasindgan Deh". The first column, i.e., column No. 5; when translated into English would read as "Shamlat Deh as per share of land in Khewat" and the second column, i.e., column No. 6 as "the possession of the residents of village". It is the case of the petitioners that the entries reflected in the revenue record would manifest that land has never been used for any common purpose at any stage. Instead, it had always been in possession of the proprietors of the village inclusive of the petitioners. Proprietors of the village are, thus, owners in possession of the land in question and as such it does not vest in the Gram Panchayat or the State Government under the Act of 1961. Section 2(g) which defines shamlat deh in Clauses (1) to (5) read with provisos, which are reproduced as under, would further demonstrate that the land is not shamlat deh, is further the strain of the pleadings:-

"2(g) "Shamlat Deh includes":- (1) land described in the revenue record as Shamlat deh excluding abadi deh;

(2) Shamlat Tikkas.

(3) Land described in the revenue records as shamlat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of village,

(4) lands used or reserved for the benefit of the village community including streets, lanes, play-grounds, school, drinking wells, or ponds within abadi deh or gora deh and.

(4a) vacant land situated in abdi deh or gora deh not owned by any person - In Haryana only;

(5) lands in any village described as banjar qadim and used for common purpose of the village according to revenue records.

(Provided that shamlat deh at least to the extent of twenty five per centum of the total area of the village does not exist in the village; - in Haryana only)

but does not include land which -

i) becomes or has become shamlat deh due to river action or has been reserved

as shamlat deh in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records; - Haryana only).

ii) has been allotted quasi-permanent basis to a displaced person;

iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.

iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh and is so recorded in the jamabandi or is supported by a valid deed (and is not in excess of the share of the co-sharer in the shamlat deh - in Punjab only);

v) is described in the revenue records as shamlat taraf, patti, panna or thofa and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry immediately before the commencement of this Act;

vii) is shamlat deh of village included in the fourteen revenue estates called "Bhojas" of Naraingarh Tehsil of Ambala District - in Haryana).

viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamlat deh on or before the 26th January, 1950; or

ix) is in Haryana) (was being - in Punjab) used as a place of worship or for purposes subservient thereto (immediately before the commencement of this Act; - in Punjab only)".

9. Since from the very inception, the land had been in cultivating possession of the proprietors of the village and as such the petitioners are the absolute owners of the land in question and could not be deprived of the same either regarding their title, possession or proprietary rights in any manner by the Government or the State Legislature without following the due process of law, i.e., by way of paying compensation at the market price, yet the Legislature of the State of Haryana enacted Act No. 9 of 1992 and amended the Act of 1961 by Haryana Amendment Act, 1991 which received the assent of the President of India on January 14, 1992 and was published in the Haryana Government Gazette (Extraordinary) on February 11, 1992, annexure P-1. By virtue of the provisions of the Act aforesaid, proviso to Sub-section (5) of Clause (g) of Section 2 of the Act of 1961, was omitted and after Sub-clause (5), following Sub-clause (6) has been inserted: -

"2(g)(6) Lands reserved for the common purposes of a village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act, 50 of 1948), the management and control whereof vests in the Gram Panchayat u/s 23-A of the aforesaid Act.

Explanation:- Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", shall be shamlat deh within the meaning of this section".

10. It is the case of the petitioners that in view of insertion of Clause 2(g)(6) with explanation, as reproduced above, the lands entered in the column of ownership as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamlat deh within the meaning of this section. The explanation has, thus, widened the definition of "shamlat deh". It is further the case of petitioners that there is basic difference between the concept of "shamlat deh" as defined u/s 2(g) of the Act of 1961 and the lands mentioned in the above said explanation and as such lands, which have been mentioned in the said explanation, could not be defined as "shamlat deh" and, therefore, the explanation is arbitrary and violative of Articles 13 and 14 of the Constitution of India. It is further the case of the petitioners that the land in question had never been reserved as envisaged u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (here-in-after referred to as the "Act of 1948") and as such the management and control have also not been of the Panchayat or the Government. This land had also not been used for any common purposes of the village community nor it had been in the cultivating possession of the panchayat. Rather, it had been in cultivating possession either of the individual proprietors or jointly and as such the proprietors of the village including the petitioners were the absolute owners of the land in question and, thus, the amendment in question amounts to compulsory acquisition of land without paying any compensation and as such it is violative of Article 31-A of the Constitution of India.

11. With a view to substantiate that the petitioners are owners in possession of the land in question, described in the manner, as referred to above, it is further pleaded that according to Section 31 of the Punjab Land Revenue Act, 1887, records of rights and documents including therein have been defined. According to Section 31(1) of the said Act, there shall be a record of rights for each estate and u/s 31(2) the record of rights for an estate shall include following documents:- "a) statement showing, so far as may be practicable.

i) the persons who are land owners, tenants and assignees of land revenue in the estate or who are entitled to receive any of the rent for the produce of the estate or to keep the land therein;

ii) the nature and extent of the interest of those persons, and the conditions and liabilities attaching thereto;

iii) the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government.

b) a statement of customs respecting rights and liabilities in the estate;

c) a map of estate; and

d) such other documents as the Financial Commissioner may with the previous sanction of the State Government prescribe".

12. u/s 33 of the said Act, the Collector shall cause to be prepared by the Patwari of each estate yearly or at such other intervals as the Financial Commissioner may prescribe, an addition of the records of rights amended in accordance with the provisions of this chapter. The said addition of record of rights shall be called the annual record for the estate and shall comprise of the statements mentioned in Sub-section (2), Clause (a) of Section 31 and such other documents, if any, as the Financial Commissioner may with the previous sanction of the State Government, prescribe. For the purpose of the preparation of annual records, the Collector shall cause to be kept by the Patwari of each estate, a register of mutations and such other registers as the Financial Commissioner may prescribe. Keeping in view the aforesaid mandatory provisions of the Land Revenue Act, it is further the case of petitioners that record of rights for every estate shall be prepared by the Collector and Patwari concerned for determining the ownership, rights and liabilities of the persons and for collecting the revenue for the Government. In the present case, according to the record of rights, i.e., Jamabandi for the year 1986-87, petitioners are owners in possession of the land in question and as such it does not fall within the ambit of shamlat deh as defined u/s 2(g) of the Act of 1961 and as such it could not be brought under the definition of Section 2(g) of the Act of 1961 by way of adding the impugned explanation which is violative of Articles 13, 14, 31-A and 300-A of the Constitution of India. By adding the aforesaid explanation, the Government has divested the petitioners of the land in question not only of its title but all other rights regarding the land in question without paying compensation and, thus, the impugned explanation is liable to be declared ultra-vires. After Act No. 9 of 1992 having come into being, mutation regarding land in question was sanctioned in favour of the Gram Panchayat. The pleadings further go on to challenge some other provisions of Act No. 9 of 1992 but there is no need to refer to such pleadings at this stage, as, in later part of the judgment, if necessity might arise, while dealing with challenge to provisions of Act No. 9 of 1992, reference thereof shall be made.

13. The cause of the petitioners has since been opposed by the respondents and in the written statement filed on behalf of respondent No. I through R.K. Taneja. IAS, Director-cum-Joint Secretary to Government of Haryana, Development and Panchayats Department, Chandigarh,, it has, inter-alia, been pleaded that the writ is not maintainable since nothing adverse to the interest and rights of the petitioners has been done and further that petitioners have no locus stand! to file the present petition as their rights and interest stood extinguished in view of Sections 23-A, 18 of the Act of 1948 read with Rule 16(2) of the rules framed thereunder and the management and control of such lands vested in the Grain Panchayats as per provisions of the said Act. It is further the case of respondent-State that as per Act No. 9 of 1992, in terms of explanation to Sub-clause (6) of Clause (g) of Section 2 of the Act of 1961, Mustarka Malkan lands/Jumla Malkan

Lands and Hasab Rasad Lands vest in the Gram Panchayats. These lands vested in the Grain Panchayat not on account of Act No. 9 of 1992 but by virtue of Sections 23-A and 18 the Act of 1948 and Rule 16(2) of the rules framed thereunder. If any person is or has been in possession of such lands, his possession, if any, is illegal, in the eyes of law and can not confer any right, title or interest at all upon such lands since their rights stood extinguished as per provisions of the Act of 1948. It is only to make management and control of the Grain Panchayat more effective that the amendment has been brought about which is nothing but a measure of agrarian reforms to make such management and control more effective. It is then pleaded that the question as to whether the land is covered u/s 18 of the Act of 1948 is a matter to be decided at lower level and the petitioners have no locus standi to invoke extra ordinary jurisdiction of this Court.

14. Petitioners filed replication to the written statement filed on behalf of the respondent-Slate and pleaded therein that the management and control of the land had never vested in Gram Panchayat u/s 23-A, 18 of the Act of 1948 and Rule 16(2) of the Rules frames thereunder and further that Act No. 9 of 1992 is not a measure of any agrarian reform in any manner. The land in question which belongs to the proprietors has been compulsorily acquired without paying any compensation and as such the Act is violative of Articles 31-A and 300-A of the Constitution of India. It has been reiterated that the land in question had never been reserved under Sections 23-A, 18 read with Rule 16(2) of the Act of 1948 and rather had been in possession of the proprietors of the village. Even as per Jamabandi for the year 1945-46 the land in question was in possession of the proprietors of the village. The entries in the Jamabandi aforesaid go to show that the land in question was in possession of the proprietors of the village and the same had not been used for any common purpose of the village community or for the benefit of the village community as a whole or part thereof and as such it did not fall within the ambit of shamlat deh as defined u/s 2(g) of the Act of 1961. A copy of Jamabandi for the year 1945-46 has been annexed with the replication as Annexure P-3. During the process of consolidation in the village, notification for which was issued on November 13, 1957, scheme was approved by the Consolidation Officer, Sadhaura on April 19, 1959 and according to the said scheme, the land which had been reserved for common purposes and for common use was marked as required u/s 23-A and 18 read with Rule 16(2) of the Act of 1948. Acting upon the scheme aforesaid, land which had been reserved for common purposes under Sections 23-A and 18 read with Rule 16(2) of the Act of 1948 in the scheme of consolidation and which had actually used for such purposes. It is the positive case of petitioners that they are not claiming the management and control of such property. Instead, the land, subject matter of dispute in the present case, it is their case, was never reserved under the aforesaid scheme and as such management and control had never been given either to the State or the Gram Panchayat. The management and control remained with the proprietors and owners of the land in question. The petitioners

further state that even though they are not claiming right, title and possession over such land which might have been earmarked for a common purpose during the consolidation scheme, they are claiming title over the land which had been reserved even in the consolidation scheme for income of the Gram Panchayat at the time of consolidation. Besides, the petitioners are also claiming, right, title and possession of the land which had been reserved under Sections 23-A, 18 read with Rule 16(2) of the Act of 1948 but the same had not been utilised for common purposes and had remained unutilised being much more than the requirement for common purposes. The consolidation scheme of village Sadiqpur has been annexed with the replication as Annexure P-4. To make it more explicit, the petitioners have further pleaded that they are only claiming such lands as have now been mutated in favour of the Gram Panchayat by virtue of provisions of the Act No. 9 of 1992. The stand of the respondent-State that such lands vested in the State or Gram Panchayat by virtue of Section 23-A, 18 read with Rule 16(2) of the Act of 1948 has been refuted on the ground that if that was so, there was no necessity to mutate the lands as vesting in the Gram Panchayat by virtue of Act No. 9 of 1992.

15. This matter came up before us after remand on October, 24, 2002 when, after hearing arguments, matter was adjourned to October 25, 2002. On the adjourned date, i.e., October 25, 2002, learned Advocate General, Haryana sought adjournment to have further instructions from the Government and the matter was, thus, adjourned to October 28, 2002: On October 28, 2002, matter was ordered to be put up for hearing on October 30, 2002 as the stand of learned Advocate General, Haryana, as taken on the previous date of hearing, was sought to be incorporated in an affidavit. Order dated October 28, 2002 reads thus:-

"Put up on 30.10.2002 for further hearing awaiting filing of an affidavit incorporating the stand of the Government of Haryana, which has been given by it to the learned Advocate General, Haryana.

Let a copy of the proposed affidavit of the State of Haryana be furnished to the learned counsel for the petitioners by 4.00 PM tomorrow, i.e. 29.10.2002".

16. In tune with the stand, an affidavit dated October 28, 2002 of Ankur Gupta, IAS, Joint Secretary to Government, Haryana, Development and Panchayats Department, was placed on records. It has, inter-lia, been stated in the affidavit aforesaid that by Haryana Act No. 9 of 1992 Section 2(g)(6) along with explanation of the Act of 1961 was added, whereby only the lands reserved/ assigned for common purposes of a village u/s 18 of the Act of 1948, the management and control whereof vests in the Gram Panchayat u/s 23-A of the, said Act, were included within the definition of "shamlat deli", whether utilised or unutilised. It has further been pleaded in the affidavit aforesaid that notwithstanding of any entry, in respect of such lands in the revenue records, the management and control of these lands have continued with the State Government or Gram Panchayat or the proprietors/ non-proprietors, as the case

may be, in view of Section 23-A of the Act of 1948. It has further been pleaded that in addition to Section 23-A of the said Act, the provisions of the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985 are also relevant to establish lawful possession of the State Government or Panchayats or the proprietors/non-proprietors over the lands reserved/assigned for common purposes u/s 18 of the Act of 1948.

17. On the request made by the petitioners to file a counter to affidavit dated October 28, 2002, the matter was adjourned and petitioners have indeed filed reply to the affidavit aforesaid, wherein it has been pleaded that the petitioners are not claiming the lands which have been reserved u/s 2(bb) of the Act of 1948 and the rules framed thereunder. The petitioners are claiming the lands which have not been utilised for any common purposes and which have been defined u/s 2(bb) of the Act of 1948. The petitioners further specifically state that the land which has not been "utilised does not fall within the ambit of shamlat deh as defined u/s 2(g) of the Act of 1961. The State Legislature enacted Act No. 9 of 1992 and by the operation of the said amendment, the lands entered in the revenue records of rights as "Jumla Malkan Wa Digar Haqdaran Araji Hasab Rasad", "Jumla Malkan or Mustarka Malkan" had been included in the definition of shamlat deh as envisaged u/s 2(g) of the Act of 1961 by way of adding explanation in Section 2(g)(6). In view of the aforesaid amendment, mutation No. 1711 dated May 18, 1992 was sanctioned in favour of the Gram Panchayat Sadiqpur by the Assistant Collector IInd Grade. The petitioners, who are owners in possession of the land in question have been divested of their ownership rights without paying compensation. It is then pleaded that the land in question was never reserved u/s 18 of the Act of 1948 for any common purpose of the village to fulfil the basic common needs as defined u/s 2(bb) (i) to (iv) of the Act of 1948, management and control whereof is given to the respondent-State for any common purposes specified in Sub-clause (iv), of Clause (bb) of Section 2 of the Act of 1948 and in case of any other common purpose specified in the aforesaid provision to the Gram Panchayat of the village.

18. The stand of the petitioners, as reflected in the counter, primarily is that even though the shamlat land used for common purposes may vest with the State or Gram Panchayat, as the case may be, by virtue of provisions contained in Sections 23-A, 18 read with Rule 16(2) of the Act of 1948, the land having not been utilised for common purposes, would not fall within the ambit of shamlat deh and the same would be Bachat land belonging/owned by the proprietors/share holders of the village. 19. On November 13, 2002, after arguments had been concluded by some of the lawyers, representing the petitioners and the learned Advocate General, Haryana, had also proceeded with his arguments, a prayer was made to adjourn the case in the larger interest of justice to produce the various orders/directions of the Consolidation Officers concerned including the record of rights prepared u/s 22 of the Act of 1948. In tune with the prayer made by the learned Advocate General, Haryana, an additional affidavit dated November 16, 2002, came to be filed by Amit Jha, IAS, Director-cum-Joint

Secretary to Government, Haryana, Development and Panchayats Department, Chandigarh, wherein it has inter-alia, been pleaded that land mentioned in para No. 2 of the affidavit is recorded as "shamlat deh Hasad Rasad Arazi Khewat" in the column of ownership and in the column of possession the entry is "Makbuja Wasindgan Deh" which means "in possession of inhabitants of the village". Thus, the aforesaid land is shamlat deh in terms of Sub-clause (1) of Clause (g) of Section 2 of the Act of 1961 and, thus, vests in the Gram Panchayat. With regard to some other land involved in the present litigation, in the affidavit aforesaid, entries have been sought to be explained and then a general averment made that such lands would be covered under the definition of shamlat deh as per even unamended provisions of the Act of 1961. It is then pleaded that major portion of land recorded as shamlat deh had already vested in Gram Panchayat not on account of Act No. 9 of 1992, rather by virtue of Act of 1961 and approximately 25% of total land recorded as Jumla Malkan Wa Digar Haqdarana Hasab Rasad Raqba, would vest with the Gram Panchayat by virtue of provisions contained in Sections 18, 23-A read with Rule 16(ii) of the said Act. It is then pleaded that Act No. 9 of 1992 has vested into "shamlat deh" only those lands which were reserved u/s 18(c) by the Consolidation Officer in consolidation scheme and no other lands.

20. On December 4, 2002, petitioners filed reply in the form of affidavit to the additional affidavit dated November 16, 2002 controverting the stand of the State that various particulars of land, as mentioned in the affidavit of Amit Jha, would be covered under the definition of shamlat deh, in view of the provisions contained in Section 2(g)(1) of the Act of 1961 and Sections 18, 23-A read with Rule 16(ii) of the Act of 1948.

21. Having taken into consideration the pleadings of the parties, as reflected in the petition, written statement, replication, additional affidavits filed on behalf of the respective parties and replies thereto, time is now ripe to adjudicate upon the issues that now survive in the context of the stand taken by the State of Haryana, reflected in the additional pleadings as also during the course of arguments. The clear stand of the State, after remand of the case by the Hon'ble Supreme Court, is that Section 2(g)(6) alongwith explanation inserted in the Act No. 9 of 1992, subject matter of challenge by the petitioners, came into being so as to only mean that the lands reserved/assigned for common purposes of the village under Sections 18, of the Act of 1948, management and control whereof vests in the Gram Panchayat u/s 23-A of the said Act, have been included within the definition of shamlat deh, whether utilised or unutilised. The learned Advocate General, Haryana, in tune with the stand taken in the affidavit dated October 28, 2002 and further pleadings that have come on the records of the case, states during the course of arguments that Clause (6) of Section 2(g) and the explanation appended thereto came on the statute book by virtue of Act No. 9 of 1992 simply with a view to explain the existing position, i.e., that the lands reserved/assigned for common purposes of the village u/s 18 of the Act of 1948, management and control whereof vests in the Gram Panchayat u/s 23-A of

the Act, would be shamilat deh, whether utilised or not.

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 shamilat deh as defined u/s 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 u/s 2(bb) read with Section 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.

23. There are no averments pertaining to ceiling limit in the original pleadings, i.e., before remand by the Hon'ble Supreme Court. There is no mention with regard to lands, subject matter of legislative measure under challenge to be within or beyond the ceiling limits of each of the respective proprietors but in reply that came to be filed in opposition to the additional affidavit dated November 16, 2002 filed by Amit Jha, IAS, Joint Secretary, it has been averred that the land in question is within the ceiling limits, of the petitioners and other proprietors of the village, the same being neither surplus nor beyond their permissible limit under any law. The personal land holdings of the proprietors of the villages in the State of Haryana had already been determined for the purposes of surplus, firstly, at the time when the Act (referred to as the "Act of 1953") came into operation and thereafter in the year 1971 when the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called as the "Act of 1972") came into force. If by operation of the aforesaid Acts the land of any big land owner was found surplus the same has been taken away from him and has already vested in the State in view of Section 12(3) of the Act of 1972. The Consolidation Officer while preparing the scheme has taken into consideration the total area of the village revenue estate and he applied the cut for reserving the land for common purposes keeping in view the land holdings of individual land owner which was in his ownership and possession at that time. In most of the villages in the State of Haryana, the consolidation had taken place since 1950 till 1965 and in between this period the proprietors, who were in ownership and possession of such type of lands, their land holdings had again been determined while the surplus Act came into force in the year 1972. The State, neither in the pleadings nor during the course of arguments has even endeavoured to establish that the land, subject matter of dispute, which is in possession of the petitioner, is beyond the ceiling limit prescribed either under the Act of 1953 or the Act of 1972.

24. The Act of 1953 received the assent of the President on April 15, 1953 and was published in the Punjab Government Gazette (Extraordinary) on the same day. Sub-section (3) of Section 2 prescribes "permissible area" in relation to a landowner or a tenant to mean thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres. "Reserved area" has been defined under Sub-section (4) of Section 2 to mean the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 (Act XXII of 1950) as amended by President's Act of 1951. "Surplus area" has been defined under Sub-section (5-a) of Section 2 to mean the area other than the reserved area and where no area has been reserved, the area in excess of the permissible area selected u/s 5-B or the area which is deemed to be surplus area under Sub-section (1) of Section 5-C and includes the area in excess of the permissible area selected u/s 19-B but does not include a tenant's permissible area. The land owner, by virtue of provisions contained in Section 3 of the act aforesaid, is entitled to reserve permissible area and may therefore, select out of the entire area held by him as a landowner in the state of Punjab. Section 5-A enjoins upon every landowner and tenant, who owns or holds land in excess of the permissible area and where land is situated in more than one Patwari circle, to furnish within a period of six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957, a declaration supported by an affidavit in respect of the land owned or held by him in such form and manner and to such authority as may be prescribed. A landowner, who might have not exercised his right to reservation under the Act, could select his permissible area and intimate the selection to the prescribed authority within the period specified in Section 5-A and in such form and, manner as may be prescribed and intimate his selection alongwith declaration. If, however, he was to fail in making the selection of his permissible area, the prescribed authority was necessarily to select the parcel or parcels of land which such person might have been entitled under the provisions of the Act, after giving due opportunity to the landowner to be heard in the matter, as would be clear from the provisions of Section 5-B of the Act of 1953. A penalty for failure to furnish declaration is also provided u/s 5-C of the said Act.

25. Act of 1972 received the assent of President on December 22, 1972 and was published in the Haryana Government Gazette (Extraordinary) on December 23, 1972. The provisions of the Act of 1953 which were inconsistent with the provisions of the Act of 1972 were repealed by virtue of provisions contained in Section 33 of the Act of 1972. It is, however, significant to mention here that on the dint of provisions contained in Sub-section (3) of Section 12, the area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu Law, which had not so far vested in the State Government, was deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab Law or Pepsu Law after the appointed day was to be deemed to have vested in the State Government with effect from the date of such declaration. "Permissible

area" as per Clause (1) of Section 2 of the Act of 1972 means the extent of land specified in Section 4 as the permissible area and "surplus area" vide Clause (r) means the area in excess of the permissible area. The permissible area in relation to a landowner or tenant or mortgagee with possession or partly in one capacity or partly in another, of person or family consisting of husband, wife and upto three minor children has been fully described in Section 4. Every person, who, on the appointed day, may hold the land exceeding the permissible area, shall within a period of three months from such date as the State Government may, by notification, specify in this behalf or subsequent acquisition of land, furnish to the Prescribed Authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain, as would be clear from Section 9 of the Act of 1972. A statement of the permissible and surplus area has then to be prepared by the Prescribed Authority showing the total area of land owned or held by a person and the separate unit, their permissible area and the surplus area.

26. The provisions contained in the Acts of 1953 and 1972, brief reference whereof has been given in the preceding paragraphs, would manifest that the holding of each individual proprietor in the State of Haryana has been subject matter of determination of the permissible area with regard to land both, owned and held by him. Concededly, the land, subject matter of dispute, has been in possession of the proprietors and is, thus, owned and/or held by them. If the concerned proprietor had not made the declaration himself, the said exercise has been done by the Prescribed Authority constituted under the Acts aforesaid. In light of the pleadings as made by the petitioners, to which there is no rebuttal whatsoever, as also in view of the various provisions of the two Acts aforesaid, learned Advocate General, Haryana, was unable to urge and indeed did not even touch this issue. In fact, no endeavour at all was made by him to show that the land, subject matter of legislative measure, under challenge, would be beyond the permissible limits of any of the petitioners/proprietors. However, as mentioned above, since the controversy, as culled out above, is in a very narrow compass and has nothing at all to do with the land in dispute being within or beyond the prescribed limit of ceiling, there is no need to deal with the matter any further.

27. For adjudicating upon the issue in hand, fully mentioned above, it will be appropriate first to have a close look on the pleadings and the accompanying documents. The case of the petitioners is that the land, subject matter of dispute as would be reflected from the revenue records has been entered in the column of ownership as Shamilat Deh Hasab Rasad Arazi Khewat and in the column of possession, it has been mentioned that the same is in possession of the proprietors. It is further the case of the petitioners that this land was never used for common purposes. Instead, it had always been in possession of the proprietors of the village, which according to the petitioners, would show that the

proprietors are the owners and in possession of the land in dispute. With a view to substantiate the plea of their ownership, the petitioners have relied upon Sections 31 and 33 of the Punjab Land Revenue Act, 1887. In the written statement filed on behalf of the respondent-State, there is no dispute to the manner in which the land has been described in the revenue record, even though it is stated that the right and interest of the petitioners stood extinguished in view of Sections 18 and 23-A read with Rule 16(2) of the Act of 1948. In fact, paragraph 2 of the written statement corresponding to para 2 of the writ petition, where it has been averred that the petitioners are owners in possession as per revenue record and as per entries therein, it is pleaded that contents of para 2 of the petition, being matter pertaining to facts existing on the spot, do not relate to the answering respondent. In the pleadings, that came about after remand by the Hon''ble Supreme Court, it has been pleaded in the reply to the affidavit dated October 28, 2002, filed by the Joint Secretary to Government of Haryana, that the land in question had not been reserved u/s 18 of the Act of 1948 for any common purpose and the same as such is a Bachat land. It is further the case of the petitioners that the land was carved out after imposing prorata cut on the landowners and for that precise purpose has been recorded in the records of rights as belonging to the proprietors by virtue of entries as Jumla Malkan, Mustarka Malkan, Shamilat Deh Hasad Rasad Raqba Arazi Khewat etc. It is such land which remained unutilised and was contributed by the proprietors on the basis of pro-rata cut imposed on their holdings during consolidation proceedings. As against this, the stand of the State, as reflected in the additional affidavit of Amt Jha, Joint Secretary to Government of Haryana, Development and Panchayats Departments that without disputing the entries as recorded in the record of rights and as pleaded by the petitioners, even such lands shall be shamilar deh in terms of Clause (1) of Section 2(g) and would, thus, vest in the Gram Panchayat. As mentioned above, some effort has been made to take up different parcels of land and then to show that the same would vest with the Gram Panchayat. It is, however, significant to mention- here that the assertion made by the petitioners that there was pro-rata cut of their holdings and it is out of the land contributed by the petitioners themselves that a common pool of land for common purpose was formed, has not been denied. The scheme prepared during the consolidation proceedings has also not been denied. There is further no rebuttal to the averments made in the petition that the land in question is the one which became surplus after utilising the land meant for common purposes, as fully detailed in the consolidation scheme. We may, however, add here that the learned Advocate General, Haryana during the course of arguments did urge that the lands, earmarked for common purposes, whether utilised or not for the said purpose, as per the provisions contained in Sections 18, 23-A of the Act of 1948 and Rule 16(2) of the rules framed thereunder would still vest with the Gram Panchayat.

28. What has been pleaded by the petitioners is also fortified from the consolidation scheme annexed by none other than the respondent-State along

with affidavit dated November 16, 2002 of Amit Jha as Annexure R1/T(E). The head note of Annexure R1/T(E) reads "Scheme Consolidation of village Sadikpur No. 157, Tehsil Naraingarh, District Ambala. It starts by reciting that a notification dated November 13, 1957 u/s 14(1) of the Consolidation Act had been issued by the provincial Government to bring under consolidation village Sadikpur No. 157, Tehsil Naraingarh, District Ambala, proclamation of which has taken place and entry to that effect in the proceeding book of consolidation has also been made as Sr. No. 3 dated May 23, 1958, copy whereof was enclosed with the records. It has further been recited that Sh. Baldev Sahay was appointed as Consolidation Officer, The consolidation scheme goes on to give details of the lands of village, type of land and valuation thereof. The important item, that the Court is concerned with in the present case, is then dealt with under Item No. 4 with the caption "Details regarding area reserved for common purposes". It would be appropriate to reproduce the same:-

Sr. No.

Name of common Purpose

Khasra No.

Simple Kanal

Standard kanal

1.

Phirni Surrounding the Village Karam

4

19 to 21-2

16-5

2.

Rasta Sadhaura measuring Karam

4

9527-18

15-18

3.

Rasta village Hassangarh 4 karam

100

18-7

4-9

4.

Road 10 Karam

94,94/130-16

16-2

5.

Rasta Sltanpur measuring karam

4-96

6-7

2-2

6.

Rasta towards charand 6 karam

98, 98/1

8-11

1-12

7.

Rasta 4 karam

99

5-4

2-0

8.

Rasta Yawin Majra

97

9-19

5-12

9.

Johar

87 to 97

48-1

14-12

10.

Wells

43/27

4-7

1-3

45/26

49/28

11.

liadda rori and places for coloring leather.

43/26

2-6

0-6

12.

Public Latrine

42/27

6-2

1-4

33/23

32/19

13.

Primary School and Play Ground

41/13/2

26-11

21-8

14-17

18-19/1

14.

Grave Yard general

85

8-16

0-11

15.

Grave Yard lor Harijan

86

8-0

0-10

16.

Kanrisatan

84

JO-10

2-14

17.

Panchayat Cihar

41/26

1-19

1-7

IS.

Charand

As shown in the list

19.

Dharmshala and Maudir Chamaran

32/22 within Phirini

1-0

1-0

20.

Balmikiyan Dharamshala

32/14 within phirini

1-0

1-0

21.

Area Gram Panchayat

As per list

22.

Baithak Mavisiyan

32/26

8-14

1-1

42/26

23.

Matarani

33/27

1-10

0-12

24.

Basanti Mata

33/28

2-15

0-14

25.

Mandir Gugamari

26.

furbat Shahnoor

49/29

0-5

0-2

27.

Area for Barajats proprietors

within and out of Phirini

18-10

18-10

28.

Maxinre Pits Proprietors and non proprietors

out of

14-0

14-0

29.

Area lor path at the time of repartition.

-

100-0

TOTAL

333-11

29. While dealing with the repartition of shamilat, it is clearly recorded that there is 380.14 standard kanals shamilat deh area in the village, out of which 1-19 standard kanal is under possession of Gair Mumkin and 5-4 standard kanals is under possession of a transferee in the column of cultivation and 214-16 u/s 38 is under Forest Department. It is further recited that these areas would be kept as it is and the remaining area would be utilised for common purposes but there is need of 333-11 standard kanals area and, therefore, to fulfill the requirements of these common purposes, a prorata cut of Hasab Rasad standard area will be made to make good the deficiency which would be created as a separate khewat and entry to this effect would be made in the column of ownership as Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba and in the column of cultivation entry of these common purposes would be made as per spot Share-aam-Rafae,-aam etc. The consolidation scheme annexed by the respondent-State itself would demonstrate and, thus, prove beyond shadow of even a reasonable doubt that in village Sadiqpur, at the time when consolidation took place, the land for common purposes was not adequate. There was requirement of 333-11 standard kanal area for various purposes, as mentioned above. Not only that the area meant for a particular purpose has been specifically mentioned, khasra numbers of the said area have also been given with all details. The total land meant for common purposes works out to 333-11 standard kanals as found deficient at the time of consolidation proceedings. It is further clear that the said area came to be contributed by the proprietors on the basis of pro-rata cut imposed upon their holdings.

30. Having gone through the pleadings of the parties as also accompanying revenue documents, filed from time to time, it is time now to take into consideration the relevant provisions of the Act of 1948 and the rules framed thereunder insofar as the same deal with the second object of the Act, namely, assignment or reservation of the land for common purposes of the village.

31. The Act of 1948 received the assent of the Governor General of India on

December 7, 1948 and was published in the East Punjab Government Gazette (Extraordinary) on December 14, 1948. The Act of 1948 was introduced to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holdings in the State of Punjab, as Section 1 dealing with title, extent and commencement of the Act would reveal. Even though, the object was to provide for compulsory consolidation, yet when the provision with regard to carving out common pool from the proprietary land of the landowners was made, the Act and in particular, Rule 16(ii) of the Rules of 1949, came to be challenged primarily on two grounds, namely. Rule 16(ii) was beyond the scope of Act under which it was framed and, therefore, was completely unauthorised. On the second place, it was urged that the Act itself was ultra-vires the Constitution as it authorised the deprivation of property without payment of any compensation. The vires of the Act and Rule 16(ii) of the Rules of 1949 came for adjudication before a Full Bench of this Court in *Kishan Singh v. State of Punjab* 1960 62 P.L.R 840 . The Hon'ble Judges of the Full Bench allowed the petition on the first ground and held that the rule was beyond the scope of the Act inasmuch as Act 50 of 1948 was intended merely "to provide for the compulsory consolidation of agricultural holdings and for preventing the fragmentation of agricultural holding"; it was not intended to provide authority for adding to the shamalat land or depriving the proprietors of any land owned by them. Insofar as second ground challenging the vires of the Act, as mentioned above, is concerned, no decision thereon was given.

32. The Punjab legislature thereafter, it appears, with a view to plug the loopholes, because of which the Full Bench allowed the petition, promulgated Act No. 27 of 1960. Section 2 of the amending Act is in the following terms :-

"2. In the long title of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1946 (hereinafter referred to as the Principal Act), the words "and for the assignment or reservation of land for common purposes of the village" shall be, and shall be deemed always to have been added at the end".

33. The objects of the Act of 1948, as now stand, are two fold, namely, to provide for compulsory consolidation and preventing fragmentation of agricultural holdings and assignment of land for common purposes of the villages. While dealing with the provisions of Act of 1948 and the rules framed thereunder, we would, thus, endeavor to deal with such provisions which deal with the second object of the Act, as mentioned above.

34. The Act of 1948 consists of five different chapters. Chapter I with the caption "Preliminary" only deals with short title, extent, commencement and definitions. Chapter II deals with determination of standard areas and treatment of fragment whereas Chapter III, relevant for determining the controversy in issue, deals with consolidation of holdings. Chapter IV deals with other powers of the consolidation officers whereas Chapter V deals with general provisions. Rules of 1949 consist of 19 rules. Whereas, Rules 1 to 4, 5 to 7, 8 to 14 have been grouped together, Rules 15 to 19 find an independent mention.

35. "Common purpose" has been defined in Section 2(bb) to mean 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;

(ii) providing income for the panchayat of the village concerned for the benefit of the village community;

(iii) village roads and paths; village drains, village well, ponds or tanks, village water courses 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 play grounds, dispensaries, hospitals and institutions of like nature, water works or tubewells whether such schools play grounds, dispensaries, hospitals, institutions, water works or tubewells may be managed and controlled by the State Government or not".

36. Chapter III, dealing with consolidation of holdings, which, as mentioned above, is relevant for discussion on the issue in hand, starts with Section 14, which in turn, deals with declaration of intention of the Government of its own or on application to make scheme for consolidation of holdings. The same reads thus:

"14. Government may of its own accord or on application declare its intention to make scheme for consolidation of holdings.- (1) With the object of consolidating holdings in any estates or group of estates or any part thereof for the group of estates or any part thereof for the purpose of better cultivation of lands therein the (State) Government may of its own motion or on application made in this behalf declare by notification and by publication in the prescribed manner in the estate or estates concerned its intention to make a scheme for the consolidation of holdings in such estate or estates or part thereof as may be specified.

(2) On such publication in the estate concerned the (State) Government may appoint a Consolidation Officer who shall after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned (and of the non-proprietors and the Gram Panchayat, if any, constituted in such estate or estates under the Gram Panchayat Act, (No. IV of 1953) prepare a scheme for the consolidation of holdings in such estate or estates or part thereof as the case may be.

(3) Where a notification under Sub-section (1) has been made in respect of a group of estates and the holding is situated in more than one estate in the group then notwithstanding, any thing contained in the Punjab Land Revenue Act, 1887, the scheme prepared by the Consolidation Officer may provide for the alteration of boundaries of such estates)."

37. Sections 15, 16, 16-A and 17 deal with various aspects provided in the scheme that pertain to consolidation of holdings and are, thus, not much relevant to decide the controversy in issue. Sections 18 and 23-A, which have direct bearing on the issue, subject matter of discussion, dealing with land reserved for common purpose, read as follows:-

"18. Lands 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 purposes.

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 village u/s 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 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).

38. A combined reading of Sections 14, 18 and 23-A of the Act of 1948 would reveal no definite parameters for providing the land meant for common purposes in the scheme that is framed u/s 14 of the Act. All that can be spelt out from Sub-section (2) of Section 14 is that on publication of the scheme, a Consolidation Officer shall be appointed, who shall, after obtaining in the prescribed manner the advice of the landowners of the estate or estates concerned and of the non-proprietors and the Gram Panchayat, shall prepare a scheme for the

consolidation of holdings. Rule 4, 5 and 7, however, give sufficient hint pertaining to reservation of land for common purposes. Rules 4, 5 and 7 are reproduced below for facility of ready reference:-

"4. Preparation of scheme of consolidation.-

After the notification and publication by the State Government of its intention to make a scheme for the Consolidation of Holdings under Sub-section (1) of Section 14, the Consolidation Officer shall visit each of the estates concerned after giving reasonable notice of his visit to the landowners and non-proprietors thereof and shall, in consultation with the village committee constituted by him for this purpose, put up a scheme for the consolidation of holdings. The total number of members of the said committee shall not be less than three and it shall include:-

(i) members of the Gram Panchayat, if any, constituted under Punjab Gram Panchayat Act, 1952 (No. IV of 1953) and representatives of landowners.

(ii) a representative each of Harijans and other non-proprietors if not already included in the panchayat;

(iii) a representative each of the Cooperative Farming Societies, if any,

5. Every such scheme of consolidation shall contain the following particulars.-

(i) a statement of classification of land for the purpose of consolidation and the exchange ratio for conversion of one class into another;

(ii) a statement of valuation of lands, wells, trees, etc. to be exchanged showing the compensation to be given or received by the holders concerned;

(iii) a brief statement as to the action, if any, taken in pursuance of Section 17 and 18 of the Act; and

(iv) Such other particulars as may be considered expedient by the Settlement Officer in his behalf.

7. Repartition: The Consolidation Officer, after obtaining the advice of the land owners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 20 and shall prepare the following repartition papers:-

(i) a map of village showing all the existing field numbers, recognized roads, and irrigation channels and areas assigned for public purposes, such as burial grounds, disposal of animal carcasses, ponds or grazing areas, etc., with new field numbers superimposed upon it in red lines or other marking;

(ii) another similar village map exhibiting the position emerging as a result of repartition;

(iii) a statement showing the names of the owners of holdings, with particulars of

field numbers, shares, class of land, tenure, area assessment and encumbrances, if any, after getting the record of rights up-to-date;

(iv) a statement showing the names of owners with particulars of all different rights possessed by each individual;

(v) a statement showing the compensation payable by or to an owner in order to adjust differences in the value of land exchanged u/s 15 of the Act or due to the existence of wells, trees etc., under Sub-section (4) of Section 17;

(vi) a. statement showing the names of occupants or holders to whom the new consolidated holdings, are allotted with particulars of field number, shares, class of land, tenure area, assessment and encumbrances if any, and

(vii) such other papers as may be considered expedient by the Settlement Officer (Consolidation) in this behalf."

39. "The scheme prepared u/s 14 is published by way of draft scheme by virtue of provisions contained in Section 19 and is confirmed under the provisions of Section 20 of the Act of 1948. The scheme, as framed and confirmed is then carried out by virtue of provisions contained in Section 21, followed by preparation of record of rights as per Section 22. The schemes comes into force when persons entitled to possession of holdings have entered into possession thereof respectively allotted to them which remains undisturbed until a fresh scheme is brought into force. Sections 19, 20, 21, 22 and 24 are also reproduced below for facility of reference:-

"19. Publication of draft scheme.- (1) When the draft scheme of consolidation is ready for publication the Consolidation Officer shall publish it in the prescribed manner in the estate or estates concerned. Any person likely to be affected by such scheme, shall, within thirty days of the date of such publication, communicate in writing to the Consolidation Officer any objections relating to the scheme. The Consolidation Officer shall, after considering the objections, if any, received, submit the scheme with such amendments as he considers to be necessary, together with his remarks on the objections, to the Settlement Officer (Consolidation).

20. Confirmation of scheme.- (1) The State Government may by notification appoint one or more persons to be Settlement Officer (Consolidation) and, by like notification, specify the area in which each such Officer shall have jurisdiction. The Consolidation Officers in the area under the jurisdiction of the Settlement Officer (Consolidation) shall be subordinate to him subject to any conditions which may be prescribed.

(2) If no objections are received to the draft scheme published under Sub-section (1) of Section 19 and also if no written or oral objections to the draft scheme are received under Sub-section (3) by the Settlement Officer (Consolidation), he shall confirm the scheme.

(3) If any objections are received to the draft scheme published under Sub-section (1) of Section 19, or if any written or oral objections are received by the settlement Officer, Consolidation before the confirmation of the draft scheme by him, the Settlement Officer (Consolidation) may after taking the objection into consideration together with the remarks thereon of the Consolidation Officer and also after considering the written or oral objections, either confirm the scheme with or without modifications, or refuse to confirm it. In case of such refusal, the Settlement Officer (Consolidation) shall return the draft scheme, with such direction as may be necessary, to the Consolidation Officer, for reconsideration and re-submission.

(4) Upon the confirmation of the scheme under Sub-section (2) or (3). the scheme as confirmed shall be published in the prescribed manner in the estate or estates concerned.

21. Repartition.- (1) The Consolidation Officer shall, after obtaining the advice of the landowners of the estate or estates concerned, carry out repartition in accordance with the scheme of consolidation of holdings confirmed u/s 20, and the boundaries of the holdings as demarcated shall be shown on the shajra which shall be published in the prescribed manner in the estate or estates concerned.

(2) Any person aggrieved by the repartition may file a written objection within fifteen days of the publication before the Consolidation Officer who shall after hearing the objector pass such orders as he considers proper confirming or modifying the repartition.

(3) Any person aggrieved by the order of the Consolidation Officer under Sub-section (2) may within one month of that order file an appeal before the Settlement Officer (Consolidation) who shall after hearing the appellant pass such order as he considers proper.

(4) Any person aggrieved by the order of Settlement Officer (Consolidation) under Sub-section (3). whether made before or after commencement of the East Punjab Holding (Consolidation and Prevention of Fragmentation) Second Amendment and Validation Act, 1962, may within sixty days of that order, appeal to the Assistant Director of Consolidation.

(5) Any appeal against an order of the Settlement Officer (Consolidation) pending under Sub-section (4) immediately before the commencement of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Second amendment And Validation act, 1962, either before the State Government or any officer to whom the powers of the State Government in this behalf have been delegated, shall be decided by the Assistant Director of Consolidation.

(6) The appellate Authority may entertain an appeal under Sub-section (3) or Sub-section (4) after the expiry of the period of limitation prescribed therein if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(7) The State Government may by notification appoint any person to be an Assistant Director of Consolidation to exercise the powers under this section in respect of such area as may be specified in such notification"¹.

22. Preparation of record of rights.- (1) The Consolidation Officer shall cause to be prepared a new record of rights in accordance with the provisions contained in Chapter IV of the Punjab Land Revenue Act, 1887 (XVII of 1887), insofar as these provisions may be applicable, for the area under consolidation giving effect to the repartition and order in respect thereof made under the preceding section.

(2) Such record of right shall be deemed to have been prepared u/s 22 of the Punjab Land Revenue Act. 1887.

24. Coming into force of scheme.- (1) As soon as the person entitled to possession of holdings under this Act have entered into possession of the holdings, respectively allotted to them the scheme shall be deemed to have come into force and the possession of the allottee affected by the scheme of consolidation, or as the case may be. by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of Sub-sections (2), (3) and (4) of Section 21 or an order passed u/s 36 or 42 of this Act.

(2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act. 1887 (Act XVII of 1887). for purposes of compliance with the provisions of Sub-section (1)".

40. Section 23-A that stood substituted by Section 3 of the Punjab Act No. 39 of 1963. dealing with management and control of land for common purposes, reads thus:-

"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 village u/s 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 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)."

41. Rule 16(ii) dealing with the land reserved for common purposes u/s 18(c) reads thus:-

"(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, u/s 18(c) of the Act, out of the common pool of the village at the scale prescribed by the Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned and it shall be entered into the column of ownership of record of rights as (Jumla Malkan Wa Digar Haqdarani Arazi Hassab 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 utilise the income derived from the land so reserved for the common needs and the benefits of the estates concerned."

42. Close look of various provisions of the Act and Rules, as reproduced above, would manifest that preparation of a consolidation scheme is sine-qua-non of the rights of the proprietors. Gram Panchayat and the Government, as the case may be. The State Government, of its own motion or on an application made in this behalf, may declare by notification and by publication, in the prescribed manner, in the estate or estates, its intention to make a scheme of consolidation of holdings. After the scheme is published, the State Government is to appoint Consolidation Officer in the estate, who has to after obtaining in the prescribed manner the advice of the landowners, non-proprietors and Gram Panchayat of the estates concerned, prepare scheme for consolidation of holdings. It may be true that Sub-section (1) of Section 14 deals with the scheme pertaining to consolidation of holdings and that the second object of the act, i.e., assignment of land for common purposes, has not been specifically mentioned therein. Rule 5, however, specifically mentions that such scheme of consolidation shall contain a brief statement as to the action taken in pursuance of Section 17 and 18 of the Act. Sub-section (c) of Section 18 deals with lands reserved for common purposes, be it lands that were used for common purposes before introduction of Act of 1948 or so reserved or assigned after that. The scheme framed u/s 14 providing for the land meant for common purposes as reserved u/s 18 is then published and confirmed by virtue of provision contained in Sections 19 and 20 of the Act of 1948. Repartition is then carried out in accordance with the scheme of consolidation of holdings confirmed u/s 20, by virtue of provisions contained in Section 21 and the Consolidation Officer then has to prepare a new record of rights in accordance with the provisions contained in Chapter IV of the Punjab Land Revenue Act, 1887, and give effect to the repartition. The scheme then comes into existence as soon as the persons entitled to possession of holdings have entered into possession by virtue of provisions contained in Section 24 of

the Act of 1948.

43. The scheme of the Act clearly suggests that the land reserved or earmarked for common purposes u/s 18(c) would be a part of scheme prepared u/s 14. Once again, it is clear from reading of Section 23-A of the Act of 1948 that as soon as the scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village u/s 18, vests either in the State or Gram Panchayat, as the case may be. It is further clear from reading of Rule 16(ii) that the land covered thereunder is the same which has been reserved or earmarked u/s 18(c) which, it may be reiterated, is a part of the scheme framed u/s 14 of the Act of 1948. It is in this context that we have observed earlier that the scheme prepared u/s 14 read with Rule 5 is a magna carta of the rights of proprietors, non-proprietors and the Gram Panchayat or the State Government, as the case may be. The word "scheme", which comes into being by virtue of provisions contained in Section 14 and Rules 4 and 5, runs through all the provisions dealing with common lands, directly or by necessary implication. Chapter-III, dealing with consolidation of holdings, after a scheme is made, deals with providing of various aspects of consolidation, to be done by virtue of scheme only. Insofar as Section 18, pertaining to land reserved for common purposes, specifically dealing with reserving or assigning land for such purposes, is concerned, the same does not directly refer to word "scheme", but inasmuch as same finds mention in Chapter-III dealing with aspects to be provided in the scheme, the same, by necessary implication, would mean pertaining to scheme. What we have said is fortified from Sub-rule (3) of Rule 5, by virtue of which alone a scheme of consolidation has to contain a brief statement as to action, if any, taken in pursuance of the scheme under Sections 17 and 18 of the Act. Section 23-A, other section pertaining to management and control of lands for common purposes, specifically refers to word "scheme". It is on coming into force of a scheme that management and control of all lands, assigned or reserved for common purposes, vests in the manner prescribed, under the aforesaid section. Repartition, which takes place after the scheme is prepared, also refers to the word "scheme".

44. The provisions of Rule 7 pertaining to repartition, which scheme comes into existence only when possession is taken on the dint of provisions of Section 24 of the Act, would further show that the Consolidation Officer shall prepare a map of the village showing all the existing field numbers, recognised roads and irrigation channels and areas assigned for public purposes, such as burial grounds, disposal of animal carcasses, ponds or grazing areas etc. with new field numbers superimposed upon it in red lines or other marking. A combined reading of the provisions of the Act and Rules, as reproduced above, would leave no one in any doubt that the scheme deals only with land reserved or earmarked for common purposes and no other.

45. Rule 16(ii) commanding names of the proprietors to be shown in the proprietary column, even with regard to lands which were reserved or earmarked

for common purposes u/s 18(c) and yet, management and control whereof was compulsorily transferred to Government or the Panchayat, was subject matter of challenge, on the basis of Article 31-A of the Constitution of India and a Full Bench of this Court in Kishan Singh's case (supra) held:-

"The transfer of rights to the Panchayat can also be considered as modification or proprietary rights, and such modification is also permitted by Article 31-A. In *Atma Ram Vs. The State of Punjab and Others*, the Supreme Court considered the constitutionality of the Punjab Security of Land Tenures Act. The Act was held to be valid. After this decision, the Supreme Court held the Punjab Village Common Lands (Regulation) Act also to be intra-vires, and once the Punjab Village Common Lands (Regulation) Act, is held valid, all objections against the impugned Act disappear because the impugned Act does no more than the Punjab Village Common Lands (Regulation) Act. By Section 3 of that Act, the shamlat deh vests in the village Panchayat. Shamlat deh is the property of village proprietors and its vesting in the Panchayat deprives the proprietors of their proprietary rights. The Punjab Village Common Lands (Regulation) Act makes no provision for the payment of compensation to the proprietors. All that the impugned Act does is that it provides authority for adding to or taking away from the already existing shamlat deh, and this can clearly be done".

46. The land reserved for common purposes u/s 18(c), which might become part and parcel of a scheme framed u/s 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 envisage 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, this, further fortify that reference is to land reserved or assigned for common use, whether utilised or not.

47. What we have observed above is perhaps best illustrated by the facts of the case in hand itself. The scheme, as pertains to the present case, as mentioned earlier, came into being by virtue of notification dated November 13, 1957 issued u/s 14(1) of the Act of 1948. Under item No. 4, details regarding the area, reserved for common purposes with Khasra numbers, measurement thereof in simple and standard kanals, have been given. It is further clear from reading of scheme Annexure R1/T(E) itself that the proprietors had contributed land on pro-rata basis and such lands, as mentioned in the scheme, even though were to be used for common purposes but were to be shown as Jumla Malkan Wa Digar

Haqdaran Arazi Hasab Rasad Raqba in the column of cultivation. The entry of this common purpose was to be as per common use earmarked for it.

48. The contention of learned Advocate General, Haryana that Rule 16(ii) dealing with lands reserved or earmarked for common purposes u/s 18(c) would cover all such lands which form part of a scheme to be used for common purposes, shall vest with the State or the Panchayat, as the case may be, has to be accepted.

49. The lands which, however, might have been contributed by the proprietors on prorata 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 purposes as per the scheme.

50. We might have gone into this issue in all its details but inasmuch as the point in issue is not res-integra and in fact stands clinched by string of judicial pronouncements of this Court as well as Hon"ble Supreme Court, there is no necessity at all to interpret the provisions of the Act and the rules any further on this issue.

51. The Hon"ble Supreme Court in Bhagat Ram and Others Vs. State of Punjab and Others, dealt with reservation of certain areas in the consolidation scheme for income of the panchayat. Brief facts of the case aforesaid would reveal that a scheme made in respect of consolidation of village Dolike Sunderpur was questioned on the ground that inasmuch as it makes reservation of land for income of the Gram Panchayat, it is hit by second proviso to Article 31-A of the Constitution of India. The scheme in question reserved lands for phirni, paths, agricultural paths, manure pits, cremation grounds etc. and also reserved an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. It was held as under:-

"The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 defines "common purpose" to include the following purposes.

".....providing income for the panchayat of the village concerned for the benefit of the village community".

Therefore, the income can only be used for the benefit of the village community.

But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, reservation of 100 kanals 2 marlas for the income of the panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

52. The ratio of the judgment aforesaid would clearly suggest that it is the land reserved for common purposes under the scheme which would be saved, which, otherwise, would be hit by second proviso to Article 31-A of the Constitution of India. Surely, if the land, which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the one which is still left out after providing the land in scheme for common purposes, if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition within the ceiling limit of an individual without payment of compensation and would offend second proviso to Article 31-A of the Constitution of India.

53. Division Bench of this Court, in which one of us (V.K. Bali, J.) was a member, after referring to case law on the subject from 1967 to 1977 in *Bhagat Ram and Others Vs. State of Punjab and Others*, *Des Raj v. Gram Sabha of village Ladhot* 1981 P.L.J 300, *Chhajju Ram v. The Joint Director, Panchayats* 1986 89 P.L.R. 586, *Gram Panchayat Vs. Director, Consolidation of Holdings and Others*, *Gram Panchayat, Sahara (formerly Dhuma) v. Baldev Singh* 1977 P L J 276, *Baj Singh Vs. State of Punjab and Others*, *Kala Singh v. Commissioner, Hisar Division* 1984 P.L.J. 169, *Joginder Singh and Others Vs. Director, Consolidation of Holdings and Others*, , *Bhagwan Singh v. The Director Consolidation of Holdings, Punjab* 1997 116 P L R 472, and *Gram Panchayat Vs. The Additional Director, Consolidation and Others*, held that "they 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". It was further held that "the unutilised land after utilising the land earmarked 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". There is no need to give facts of the judicial precedents relied upon in *Gurjant Singh's* case (supra) as the same stand mentioned already therein and reiteration thereof would unnecessarily burden this judgment.

54. The decision of Division Bench of this Court in *Gurjant Singh's* case (supra) was tested, at the instance of the State of Punjab, in Civil Appeal Nos. 5709-5714 of 2001. Only, the general directions given in the judgment recorded in *Gurjant Singh's* case (supra) for distribution of land to the proprietors were set aside and that too on the concession of learned counsel, who represented the

respondents in the case aforesaid. Order passed by the Hon"ble Supreme Court on August 27, 2001, reads thus:-

"Leave granted.

Mr. Harsh 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:-

"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.

xxxx

This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-compliance of directions referred to above."

Learned counsel for the respondent submits that he had no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals to the extent of deleting of the above said passage from the impugned judgment. These appeals are disposed of accordingly."

55. The interpretation of the relevant sections, leading to conclusion that the land, which in the scheme is not reserved or assigned for common purposes, shall vest with the proprietors apart, the doctrine of stare decisis is also at once attracted in the present case. Ever since the Act of 1948 or the Act of 1961 came into being, the land not reserved or earmarked for common purposes, whether belongs to proprietors or Gram Panchayat or the State Government, has been subject matter to debate. If numbers might have some relevance, there may be more than 100 judgments, both reported and unreported taking the same view, as has been reflected by Division Bench of this Court in Gurjant Singh's case (supra). A long line of precedents should not be deviated even for the reasons of judicial propriety well enshrined in the doctrine of state decisis when it can not be said that the view so far taken is manifestly erroneous, unjust or mischievous. The Division Bench of Patna High Court in Mukhdeo Singh and Another Vs. Harakh Narayan Singh and Others, observed that:-

".....my other ground for adhering to the *crusus curiae* of this Court is substantially what has been pointed out recently by a Full Bench of this Court in Tribeni Prasad Singh and Others Vs. Ramasray Prasad Chaudhari and Others, and what has been expressed by Mukherjeet, J., in the case of Kedar Nath Hazra v. Manindra Chandra Nandy 1910 51 I C 309 in these words:-

"the Courts must always hesitate to overrule decisions which are not manifestly erroneous and mischievous, which have stood for many years unchallenged and which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of

property (Coung v. Roberson) 30(4) Macqueen 314."

56. In *C. Varadarajulu Naidu Vs. Baby Ammal and Another*, it was rightly highlighted that the evil of unsettling consistent judicial opinion would be much greater than the evil of laying down what is alleged to be bad law and that the Full Bench decisions should, so far as possible, be held to be binding unless they are glaringly bad or patently contrary to the statute itself. The Hon"ble Supreme Court in *Maganlal Chhaganlal (P) Ltd. Vs. Municipal Corporation of Greater Bombay and Others*, has held that;

"so far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience".

In *Waman Rao and Others Vs. Union of India (UOI) and Others*, it was observed by the Hon"ble Supreme Court that :

"It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests, or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis".

57. We have referred to the doctrine of stare decisis simply with a view to highlight the consistent view of this Court taken from time to time on the issue under debate and not because any endeavour that was made on behalf of the learned Advocate General or the counsel representing the Gram Panchayats to show that the ratio of judgments of the cases, referred to above, needs to be deviated.

58. Besides challenge to Sub-section (6) of Section 2(g) and the explanation, appended thereto, as mentioned above, there is challenge to some other provisions of Act No. 9 of 1992. Mr. Verma, learned counsel, who appears in some of the writ petitions on behalf of the petitioners, in the context of deletion of Section 13-A of the principal Act, dealing with adjudication of title by a proprietor or the Panchayat, contends that if an order of eviction may be passed u/s 7 in summary proceedings, a citizen is left with no right for adjudication of the title which may involve intricate questions of law and fact, not permissible to

be raised in summary proceedings and, therefore, Section 7 should be declared ultra-vires. When, however, confronted with the position that even though Section 13-A of the principle Act, which was deleted by Act No. 9 of 1992, has been re-introduced by notification issued on that behalf on 10.3.1999, he had to withdraw the contention pertaining to Section 7 being ultra-vires; as mentioned above.

59. Mr. Verma then challenges the vires of proviso to Sub-section (1) of Section 13-B, as substituted by Act No. 9 of 1992. With a view to appreciate the contention of learned counsel, it would be appropriate to reproduce Sub-section (1) of Section 13-B and the proviso, as has been substituted. The same reads thus:-

"(1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under Sub-section (1) or Sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may, after hearing the appeal, confirm, vary or reverse the order as he deems fit;

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under Sub-section (2) of Section 7, is deposited with the Collector"

60. While challenging the proviso, reproduced above, learned counsel contends that the remedy of appeal against an order of eviction, that may be passed u/s 7 of the Act of 1961, has been made absolutely illusory inasmuch as same is incompetent till such time the penalty imposed u/s 7(2) is deposited. This argument has to be stated to be rejected inasmuch as the very filing of an appeal is creation of a statute and if no meaningful argument can be raised if the statute may not provide any appeal as such, the conditions attached in filing the appeal can not be successfully challenged. The Hon''ble Supreme Court in Shyam Kishore and others Vs. Municipal Corporation of Delhi and another, upheld the vires of Section 170(b) of the Delhi Municipal Corporation Act, 1957, dealing with the condition of deposit of tax amount as a condition precedent for hearing or determination of the appeal. A Full Bench of this Court in Emerald International Ltd. Vs. State of Punjab and Others, held that "the legislature could impose condition for exercise of right of appeal and that there is neither a constitutional nor legal impediment for imposition of such a condition". It was further held that "in case a person wanted to avail of the right of appeal, he has to accept the conditions imposed by the statute". By virtue of provisions contained in Section 20 of the Haryana General Sales Tax Act, 1973, there is a complete bar to the entertainment of an appeal by the Appellate Authority without payment of tax amount. Unless the authority is satisfied that the dealer was unable to pay the amount so assessed and only in that situation the appellate authority, for the reasons to be recorded in writing, could entertain the appeal without deposit of the payment of such amount.

61. The position of law being so settled that whereas insofar as Mr. Verma is

concerned, he raised the contention only half heartedly, galaxy of lawyers, appearing in various matters, do not raise any argument with regard to invalidity of Section 7 and proviso to Section 13(b) of amending Act.

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 u/s 14 read with Rules 5 and 7 and confirmed u/s 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 u/s 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla. Mustarka Malkan Wa Digar Haqdarani 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 consolidation 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 Haqdarani Hasab Rasad Arazi Khewat etc.

63. Before we may part with this judgment, we would like to mention that the revenue authorities; totally unmindful of even the exiting law sans amendment under challenge, have changed, by way of mutation, ownership of lands in favour of the State or Gram Panchayat, as the case may be, irrespective of as to whether the said lands were used for common purposes as per consolidation scheme and so shown in the revenue records or the same were shown in the column of possession with proprietors, land having not been reserved in a scheme for common purposes, wherever the entries were Jumla Mustarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi etc. To illustrate, we may mention the decision recorded by Division Bench of this Court, in Which, one of us (VX. Bali, J.) was a member, in CWP No. 9118 of 2002 dated September 17, 2002. The land, subject matter of dispute in the said case was stated to have been purchased by the petitioners from the proprietors by virtue of various sale

deeds. The land, subject matter of dispute, which was earlier in a village, on extension of limits of municipality of a town, came under Municipal Council. The land was shown in the column of ownership as belonging to proprietors whereas in the column of possession, the same was shown to be used for common purpose as Gair Mumkin Johar (Pond), Gair Mumkin Ground for Vijay Dashmi (ground for holding Dushera festival) or Rafai-am (place for use by all). Such lands, as were subject matter of dispute in the writ petition aforesaid, came to be vested with the Municipal Council by virtue of provisions contained in the Haryana Municipal (Amendment) Act, 1999, vires whereof were challenged and the matter is still pending for adjudication. The vires of the Act aforesaid were challenged in the writ petition as well. However, in the written statement that came to be filed on behalf of the respondents, it was pleaded that the disputed land was a place for use by all (Rafai-am) and did not vest with the proprietors. It was further stated that the land in dispute, having been earmarked for common purposes and after the area having come within the municipal limits, vests with the Municipal Committee. Jamabandi for the year 1997-98 was annexed to substantiate the plea aforesaid. While dealing with the controversy in the case aforesaid, it was held:-

".....It is too well known and remained admitted by learned counsel for the parties during the course of arguments that land, known as shamlat deh, was contributed by proprietors by having a proportionate cut on their holdings. The scheme of consolidation provided for various uses of the land which was contributed by the proprietors. The land which was actually used for common purposes, as per the scheme, vested with the Gram Panchayat and the land which could not be utilised or Bachat land, continued to be recorded in the name of proprietors as per the share contributed by them in forming a common pool for common purposes. The land in dispute, as mentioned above, has since always been used for common purposes.

The records of the case would clearly reveal that the land is not owned by the proprietors, having always been used for common purposes, as mentioned above".

64. Even though, therefore, land in the aforesaid case may have been shown in the column of ownership as if vesting with the proprietors, inasmuch as it was being used for common purposes, pursuant to a scheme prepared under the Act of 1948, it was held to be belonging to Gram Panchayat. For the kind of land, as mentioned above, it is too apparent that there was no, necessity at all to sanction mutation in favour of the Gram Panchayat and change the entries recorded in the column of ownership from proprietors to that of Gram Panchayat, Further, as mentioned above, irrespective of provisions contained in Rule 16(ii) that such lands shall be shown to be vesting in the proprietors, the fact remains that the proprietors are divested of their ownership on the basis of Section 23-A as also Section 3 of the Act of 1961 as also in view of the Full Bench decision of this Court in Kishan Singh's case (supra).

65. Coming now as to what relief can be given in the present bunch of cases, we may first mention that we had asked the learned counsel for the parties to give a list of writ petitions wherein, before filing the petition, orders of eviction had since been passed by the authorities constituted under the Act of 1961 as also a list of cases where vires of Act, were straightaway challenged by way of writ petitions. We have received two lists from the Advocate General, Haryana, of the writ petitions where petitioners came straightaway challenging the vires of the amending Act, whereas counsel for the petitioners have supplied no list to use nor have they informed the Court that the lists given by the office of the Advocate General, Haryana contain incorrect particulars. The two lists given by the Advocate General, Haryana, are taken on record. It would transpire from reading of the said lists that only cases mentioned at Sr. Nos. 76, 86, 87, 101, 106, 112, 119, 126, 127, 138, 148, 176, 185, 188, 192, 199, 201, 205, 206, 207, 226, 255, 277, 280, 286, 287, 289, 290, 312, 317 to 321, 323, 324, 329 to 337, 344, 361, 368, 381, 402 in the one list and cases mentioned at Sr. Nos. 1 to 49 of the others, are such in which orders have been passed by the authorities constituted under the Act of 1961 and, therefore, naturally, while challenging the vires of the Act, prayer is also to set aside the said orders. These cases have naturally to be examined on merits in light of law laid down in this case. They shall, thus, be separated from the present bunch and listed for hearing separately.

66. Insofar as all other cases are concerned, same shall stand disposed of in light of law laid down by us. Resultantly, if the mutations might have come into being on the dint of Act No. 9 of 1992 challenged herein in favour of the State or Gram Panchayat, the said mutations shall stand cancelled or set aside, leaving open for the Gram Panchayat to file an application for eviction u/s 7 or title suit u/s 13-A, as the case may be, if the lands are such which have since been earmarked for common purposes under the scheme and the proprietors are in unauthorised occupation and, the proprietors to file a title suit in case the lands are such which form part of Bachal land, having not been earmarked for any common purpose in the scheme of consolidation and yet the Gram Panchayat is asserting its title or is in possession thereof.

Binod Kumar Roy, C.J.

I agree.

G.S. Singhvi, J.—I agree.