

(1995) 01 P&H CK 0127

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 5877 of 1992

Jain Singh and others

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 18-01-1995

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 19, 20
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 — Section 18, 23A
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 — Rule 16
Punjab Gram Panchayat Act, 1952 — Section 3
Punjab Tenancy Act, 1887 — Section 7(3)
Punjab Village Common Lands (Regulation) (Amendment) Act, 1992 — Section 2, 5, 5(1), 7(1), 7A
Punjab Village Common Lands (Regulation) Act, 1961 — Section 13, 13A, 13B, 15, 18C
Punjab Village Common Lands (Regulation) Haryana (Amendment) Act, 1991 — Section 2, 3, 5(1)

Citation : AIR 1995 P&H 243 : (1995) 2 ILR (P&H) 63 : (1995) 109 PLR 614

Hon'ble Judges : M.S. Liberhan, J;H.S. Bedi, J;Amarjeet Chaudhary, J

Bench : Full Bench

Advocate : H.S. Hooda and Mahavir Sandhu, H.L. Sibal, A.G., Haryana and J.V. Vaydav, Dy. A.G., Haryana, for the Appellant; H.L. Sibal, Advocate General, Haryana and J.V. Vaydav, Dy. Advocate General, Haryana, for the Respondent

Judgement

M.S. Liberhan, J.—Petitioner challenged the provisions of Sections 2, 3 and 5(1) of the Punjab Village Common Lands (Regulations) Haryana Amendment Act, 1991 (Act No. 9 of 1992) hereinafter referred to as Act of 1992, as ultra vires of the Constitution of India.

2. Succinctly, the grounds of the challenge put forth by various counsel for the petitioners in the writ petitions run as under:--

(i) There is no assent of the President of India for the Act of 1992;

(ii) Under the East Punjab Consolidation of Holdings Act, 1948 (Hereinafter

referred to as the "Consolidation Act" lands were reserved for common purposes by imposing a proportional cut in the holdings of the proprietors from their lands within the ceiling limits and the management of such land vested in the Gram Panchayats or the State under the Consolidation Act. Now by virtue of the Act of 1992, title, interest, vests in the Gram Panchayat. It divests the petitioners of their proprietary rights i.e. title and interest, without any compensation either paid or provided for under the Act of 1992. Holding of land up to the ceiling limits has been rendered illusory. Thus, the Act of 1992 is ultra vires Art. 31 A of the Constitution of India.

(iii) Provisions of Act of 1992 are unjust unfair arbitrary, capricious and discriminatory as similar land i.e. lands not used for common purposes which had been partitioned were kept out of the purview of definition of Shamlat Deh. Resultantly, the Act of 1992 violates the mandate of Arts. 14, 16 and 19 of the Constitution of India.

(iv) Explanation appended to Section 2(g)(6) of the Punjab Village Common Lands Act 1961 by the Act of 1992 read with Section 4 of the Act of 1961 cannot override the substantive provisions of the Act.

(v) In view of the provisions of Section 13 of the Act of 1961; deletion of Section 13A of the Act of 1961 by the Act of 1992 has alluded the judicial review.

(vi) No alternative remedy to the common law remedy is provided to the affected persons. An embargo has been imposed on getting the title cleared till proceedings for ejectment are initiated u/s 7 of the Act of 1992.

(vii) Section 7 of the Act of 1992 does not authorise the authorities to decide the question of title.

(viii) The right of appeal has been rendered illusory, non est, ineffective and irrational by imposing a condition of depositing the amount of penalty for entertainment of appeal. Recovery of penalty as arrears of land revenue and deposit of penalty before the appeal is entertained are two different concepts.

(ix) Provisions for imposition of penalty retrospectively without providing guidelines as to the date from which it is to be reckoned and imposition of penalty without hearing the affected persons are arbitrary and violative of Arts. 14 and 20 of the Constitution of India.

(x) Imprisonment for unauthorised occupation of the land for the period when it was not an offence as well as recovery of damages as penalty for the unauthorised occupation would amount to double jeopardy, apart from being retrospective punishment. Thus provisions providing for imprisonment and recovery of damages as penalty are violative of Art. 20 of the Constitution of India.

3. Contentions of the petitioners were refuted. It was contended on behalf of the State that President's assent to the Act is there. It was further contended that

management of the lands reserved during consolidation vested either in the State or Gram Panchayats under Sections 18 and 23A of the Consolidation Act, though the title remained vested in the proprietors. No proprietors had a right to use the land under custom. It was in fact common lands as envisaged by the Act of 1961 even before the Act of 1992 came into force. Thus, the impugned provisions do not provide for acquisition of rights of the petitioners. The right of management and control already vesting in the Gram Panchayats or State is only modified by the Act of 1992. Proprietors had only an illusory title, which still continues with them. Proprietorship does not vest in Panchayats who are still not complete owners. There was no personal cultivation, therefore, neither there is any extinguishment of proprietors' right nor there is any acquisition under the impugned Act. Proprietors were the beneficiaries of the lands under the Consolidation Act, the Act of 1961 and they still continue to be so under the impugned Act. A Panchayat can use the land only for the benefit of the villagers. The object of the Act is to provide for more effective management and control over the village common lands. Vires of the Consolidation Act under which the management vested in the Panchayats have been upheld.

4. The question of acquisition would depend upon the facts and circumstances of each case which have not been pleaded. It was further contended that apart from the fact that the Act of 1992 is by way of agrarian reforms and cannot be challenged on the ground of being violative of Constitution of India, there is no violation of Art. 31A, 31B, 31C of the Constitution. It is a just Act.

5. Right of Judicial review and scrutiny still subsists and has not been rendered illusory by the impugned Act. Orders of the authorities under the Act are subject to judicial review under Art. 226/32 of the Constitution. Mere preclusion of review by the Civil Courts of the orders of the Authorities under the Act would not render the Act ultra vires. The Act itself provides an alternative remedy to implement rights under the Act as well as a right to defend title in a person other than a Panchayat.

6. It was submitted that Constitutional remedy like certiorari etc. are available to the petitioners. Mere barring of remedy before the common law municipal Courts by itself would not result in abolition of judicial scrutiny, nor necessitates provisions for alternative remedy though the Act of 1992 does provide for it.

7. Right of appeal is a statutory right and can be invoked only in accordance with the statute creating the right. It is for the legislature to provide the hierarchy of appeal etc, keeping in view the urgency and the object of the Act.

8. It was further contended that no law can apply de hors the facts. The petitioners have not pleaded whether the lands were reserved for common purposes under the Consolidation Act and whether these were in their possession within the ceiling limits. The question with respect to nature of the land i.e. whether it falls within the four corners of the definition of "Shamlat Deh" or not is question of (sic) decided by the Authorities under the Act.

9. Last but not the least, it was urged, the petitions suffer from laches as the scheme under the Consolidation Act became final in 1964 when the land vested in the Panchayat. Vesting of land in the Panchayat cannot be challenged in 1992 inasmuch as no writ petition is maintainable without challenging the Consolidation Scheme in which the land was reserved for common purposes.

10. The imposition of penalty is neither punitive in nature nor retrospective. There has to be offence, then prosecution and only thereafter a penalty. The prosecution is a concept before a Court of law. The changes brought about the necessary in nature and cannot be given the colour of further punishment or penalty. The penalty provided is compensatory in nature for the authorised and illegal possession. Thus there is no violation of Art. 20 of the Constitution of India.

11. Lastly, it was urged the explanation to Section 2(g)(6) does not override the substantive provisions of the Section;

12. From a reading of various writ petitions and consideration of the arguments addressed by the learned counsel for the parties the factual matrix necessary for determination of the questions raised/ emerges as under:--

That proprietors' lands were reserved for the common purposes under the Consolidation of Holdings by applying cut of the proprietary lands of the village proprietors, i.e. land holdings were reserved for common purposes under the Consolidation Act of 1948 during consolidation proceedings. "Common Purposes are defined by the Consolidation Act of 1948. The management of the land reserved under the Consolidation Act for common purposes either vested in the State or in the Gram Panchayat in terms of Sections 18 and 23A of the Consolidation Act of 1948. Lands so reserved were described as prescribed under the Rule 16 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules 1949 (hereinafter referred to as "the Consolidation Rules") i.e. it was described in the column of "ownership" of the records of the rights as Jumla Malkhan-wah-Digar Haqdarani-Araji-Hasab-Hissar Raqba. Under the Consolidation of Holdings Act, the management was to be provided or done by the Panchayat on behalf of the village Proprietary Body.

13. In Civil Writ Petition No. 5877 of 1992, entries relating to the land in dispute run as under:--

In column of "ownership" land in dispute was shown as Shamlat Deh Hasab Rasad Araji Khewat and in the column of "Possession" it was shown as Maqbuja Bashind-gan Deh.

14. The petitioners claim, it never vested in the Gram Panchayat. The proprietors are in possession from the very inception of the village. Land was neither reserved under Consolidation of Holdings Act for common purposes nor was under the management of the State or the panchayat. The petitioners as proprietors of the village were and are the owners of the land in dispute. Their

title cannot be taken away or extinguished under the veil and garb of the amended Act of 1992.

15-16. At this stage I may hasten to add that in all these connected large number of cases, the land is differently described in different petitions. Itemised general description runs as under:--

In the column of "Ownership" it was described either Shamlat Deh Hasab Rasad Araji Khewat or Shamlat Patti Bajaria Hasab Hissar Jadid or Shamlat Deh Hasab Rasad Zar Khwat or Jumla Malkhan-Wah-Digar-Haqdaran-Hasabrasad Raqba Khewat or Jumla Milkan-Wah Digar Haqdaran-Araji--Hasab--Hissar Raqba or Shamlat Deh Hasab Rasad Araji Khewat or Jumla Malkhan-Wah-Digar Haqdaran-Hasabrasad-Raqba, while the in the column of "possession" possession was described either put in "Possession of Maqbuja Bashindgan Deh or Maqbuja Malkan or in the name of particular shareholders or persons recorded as Gair Murusian or in the joint names of Shareholders of "Khudkasht" by the Shareholders of thoroughfare etc. Mostly arguments were addressed only relating to the vires of the Village Common Lands Act 1992 (Act No 1 of 1992). I would address myself with respect to the question of vires of Act No. 1 of 1992.

17. Brief reference to skeletal historical scenario is a prefatory necessity. Commonly, ordinarily and generally it is accepted that holding and possession of property is basically imbibed in the human nature. It provides for the desires of mortals and their social and economic security. A person's natural desires, his feelings for security and identity can be satisfied with ownership or title of the property vesting in him. There cannot be any serious objection to it ordinarily. These traits may be more predominant in a person belonging to egalitarian and agricultural society.

18. In this part of the country it may be noticed on settlement of a village, some portion of lands were reserved for common purposes. This might be due to the requirements of village life and agricultural economy. With the passage of time, three types of properties came to be known in the village. Firstly, the properties which were possessed and enjoyed by its owner known as private properties. Secondly, in conformity with human nature, compelling social and economic needs of the village proprietors, villagers reserved lands for their common use i.e. for use jointly by the proprietary community. The land so reserved was used solely for the common purposes of the proprietors. These lands are ordinarily and usually known as Pattis etc. Thirdly, some land was reserved for use by the persons subservient to agricultural economy and other human needs of the villagers. The lands so reserved was to be enjoyed jointly by the villagers irrespective of their proprietary interests in it or in the village holdings, for instance lands reserved for pastures, ponds, pools and reservoirs fall in this category. Such lands were termed and came to be known by the ordinary person as Shamlat Deh. It is this type of lands which we are concerned with and which will be dealt with in the later part of the judgment. The right of individuals, non-proprietors etc. in such lands was defined in customary laws, Riwarje Aam etc. of

the locality. Reference may be made to paragraphs 223 and 224 of Rattigan customary law. It was observed in 13 Lahore 92 that only proprietors and not merely Malikan Qabza were entitled to share i.e. persons who hold land on which revenue is assessed and who were co-sharers in Khewat were entitled to share in Shamlat in proportion to the land revenue paid. It was not an appendate or accessories to khewat Holding. A vendee may sell his share of Shamlat Deh. Non-proprietors had a limited right. Proprietors were joint owners with no right to do anything or deal with it without the consent of all the joint owners.

19. With the development of civilisation, awakening of society and growth in needs of the village economy customarily it was accepted rather got established that persons enjoyed share in Shamlat Deh or land irrespective of their holdings or Khewat etc. in the village. It was alienable. As a natural corollary, all the persons having share in Shamlat Deh came to be considered as joint owners. I may hasten to state that though customarily the non-proprietors and agricultural labourers helpful in the village economy enjoyed only limited rights like grazing of cattie, building houses on the plots allotted etc. They did not have any right in the sites though they were the owners of the super-structures. It may be noted at the same time that every land reserved for common pur-poses and recorded to be owned by Jumla Mustarka would not by itself be a Shamlat Deh vesting in the Panchayat, though the management may be with the Panchayat. Reference may be made to Gram Panchayat, Village Bashamberpura v. Sardara Singh 1988 PLJ 486 . in the judgment reported in State of Haryana and others Vs. The Karnal Co-op. Farmers" Society Limited, etc. etc. and others,) Hon"ble the Supreme Court while upholding the vesting of common land in Gram Panchayat observed that "Originally the lands intended for use of all inhabitants and for common purposes i.e. meant for entire community in the land. But with passage of time and on proprietors exerting their right on non-proprietors in the context of village economy particularly in the circumstances in an egalitarian society to provide security and right to live with self-respect to non-proprietors, labourers associated with village economy that such lands were vested in Gram Panchayat.

20. A brief survey of the provisions of the Punjab Village Common Lands (Regulation) Act. 1961 (hereinafter referred to as "1961 Act") and the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act 1948 is perhaps necessary and essential to comprehend and assess the grounds of challenge.

21. The Legislature imbibed with the needs of developing village economy and with the object of improving the agricultural output, and productivity, convenient and efficient cultivation, ensuring an era of mechanised farming, social and ethical order and need for preventing fragmentation o.f agricultural holdings enacted the "Consolidation Act 1948".

22. Before embarking upon the process of answering the questions raised, parenthetic reference to the provisions of the Consolidation of Holdings Act 1948, is called for as the same is manifestly the basis for the purposes of

petitioners' founding claim. Basic design of the Consolidation Act 1948 is that the land can be reserved for common purposes and its management and control will then vest either in the State or Panchayat of Village. Rights of owners stood modified and extinguished of course, subject to the condition that land so reserved or their income " could be appropriated for village community. Only exception carried out was that if the reservation was for the extension of Abadi Deh or manure pits. It vested in the proprietors or non-proprietors to whom it was allotted.

23. In order to give effect to the Act, procedure for reservation of land for common purposes, scale, modes of utilisation, mechanism of management, with whom the title of land to continue and how the same would be described in revenue records was provided by Rule 16 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as "Consolidation Rules, 1949") read with the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Haryana 1st Amendment Rules 1970 (hereinafter referred to as "Consolidation Rules 1970").

24. Putatively it defines common purposes which in principle means for common need, convenience or benefits of village -- It was further elaborated like as extension of Abadi Deh, providing for income of Panchayat for the benefit of Village community, roads, paths, drains, wells, ponds, tanks, water courses, or channels, bus stands, waiting places, manure pits, public latrines, cremation grounds, and burial grounds, Panchayat Ghars, Jhanj Ghars, grazing grounds, tanning places, neera grounds, public places for religious and charitable nature, schools, play grounds dispensaries, hospitals and institutions of like nature, water works tubewells etc. irrespective of their management by the State or not.

25. Similarly the land, ownerships etc. were defined. Procedurally, to give effect to the Consolidation Act 1948, under the Scheme of the Act all the lands of the village were put in notch potch and scheme for consolidation used to be drawn in consultation with the villagers. It used to be attempted, rather ensured that no body should suffer in the process economically. Reference may be made to Section 15 of the Act.

26. Precisely the relevant statutory provisions which were referred to by the learned counsel for the petitioners are Sections 18 and 23A of the Consolidation Act, 1948. Section 18 provides that notwithstanding anything contained in any law for the time being in force, it would be lawful for the Consolidation Officer to direct or assign some other land in substitute of the land already assigned for common purposes and further assign lands such as river area for common purpose. In the same sequence lastly it provided that in the eventuality of the land for common purposes being inadequate, it can assign other land for such purposes. The relevant provisions of Section 18 of the Act run as under :--

"18(c). That if any area under Consolidation no land is reserved for any common purposes including extension of the village abadi or if the land so reserved is

inadequate, to assign other land for such purpose."

The land with the exception of one reserved for common purpose was partable.

27. The Legislation while providing for reservation of land for the common purposes, provided for its management and control vide Section 23 of the Act. It runs as under :--

"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 as 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 Govt.; 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".

28. In pith and substance Sections 18C and 23A of the Act ordained that management and control of the common land vested in the Gram Panchayat of the village except the land with respect to which the management and control vested in the State. Rights of owners stood modified and extinguished subject to the condition that the land or their income could be appropriated for the village community though at the same time, the land reserved for the extension of Abadi Deh or manure pits vested in proprietors or non-proprietors to whom it was allotted.

29. The conspectus of conclusion followed the interpretation of various Sections of the Act and the decisions cited at the Bar under the Consolidation Act, viz. Bhagat Ram and Others Vs. State of Punjab and Others, , Gram Panchayat Village Sukhia Nangal v. Addl. Director, Consolidation of Holdings, Punjab 1992 P LJ 319, Kala Singh v. Commissioner, Hissar Division 1984 P LJ 169 Gram Panchayat, Gunia Majri v. Director Consolidation of Holdings 1991 P LJ 46, Des Raj v. Gram Sabha of Village Ladhot 1981 P LJ 300, Gurdial Singh v. State of Haryana 1979 P LJ 350, Gram Panchayat Sadhaur v. Baldev Singh 1977 P LJ 276, (FB), Gram Panchayat, Village Bashamberpura v. Sardara Singh 1988 P LJ 486 emerges :

- (i) The Consolidation Act, 1948 is an Act in the nature of Agricultural Reforms.
- (ii) No land can be reserved for the income of the Panchayat either directly or under the veil or garb of common purposes.
- (iii) Though the right of possession and management of the lands reserved for common purposes may be finalised yet it is not an acquisition by the State. It may be a modification or extinguishment of rights;
- (iv) After utilisation to its optimum of common lands reserved for the common purpose, as defined under the Act, the remaining land as colloquially called and accepted and known to persons concerned or effected as "Bachatland". It is usually leased out by the Panchayat in spite of which it does not change its nature. It is described in the revenue records in terms of Rule 16 i.e. Shamlat Deh, Hasab Rasad Khewat. It was observed that ownership of this type and nature of the land continued with the proprietors out of whose land it was carved out by applying pro rata cut. Customarily, ordinarily and even otherwise it used to be redistributed amongst the proprietors. Lands described as Jumla Mustarka Malkan i.e. jointly owned by the owners and other right holders in proportion to their respective area of land under cultivation.

30. The relevant composite picture as discernible under the Act of 1961, essential and a necessary prelude for considering the sweeping concentrated attack on the validity and vires of the Act is :

31. Shamlat Deh is the quintessence of the Act of 1961. It is the land reserved for common purpose of the Village community. It is the basic feature of the Act. It permeates the entire act so much that the Act has provided even a deeming definition of Shamlat Deh.

32. The Legislature was alive to the social-economic realities of village life and the right established by usage and custom which has been well entrenched in ground realities of village life. I may venture to state that the Act defined various types of lands or Immovable properties like Shamlat Deh, Charand, Banjar Qadim, Shamlat Tikka, Shamlat Taraf, Pattis, and Dholas as whole area in parts used for the benefit of the village community or part thereof, which are so recorded in the revenue record, to be Shamlat Deh. The land used or reserved for the benefit of the village community like play grounds, streets, schools, lanes drinking wells or ponds etc. within the Abadi Deh or Gora Deh falls within the deemed definition of Shamlat Deh. The only limit imposed on the Shamlat Deh and Charand is that it should not be more than 25% of the total area of the village beyond which its utilisation in particular manner is provided. Some of the lands were precluded from the purview of the Act of 1961 by providing exceptions to the definition of Shamlat Deh. i.e. excepting these lands from the definition of Shamlat Deh though these are Shamlat Deh. The lands becoming Shamlat Deh/Charand/pastures/playgrounds on account of river action allotted to the displaced persons, partitioned and brought under self-cultivation before 26-1-1950, one acquired by purchase or exchange for proprietary land from the

co-shares which is not in excess of their shares in Shamlat Deh, land assessed to land revenue under self-cultivation of the co-sharers not beyond their shares on the cut of date of 20-1-1950 are excluded from the definition of Shamlat Deh. The land used for Gitawar, Bara, manure pits, cottage industries situated outside the Abadi Deh on the cut of date including a place of worship was not deemed to be Shamlat Deh as usually understood or referred to in ordinary parlance. Reference may be made to Section 2(g) of the Punjab Village Common Lands (Regulation) Act 1961 (Punjab Act 18 of 1961) as amended by the Haryana Act 20 of 1981 (hereinafter referred to the Common Lands Act, 1981).

33. Vide Section 4 of the Common Lands Act, 1981, all rights, title or interests in the Shamlat Deh vested in the Gram Panchayat jurisdiction over the village with the exception of land which is with the non-proprietors and vested in them. Under the scheme of the Act the Legislature further provided for the use, management disposal, etc. by Pancha-yats. Summary procedure was provided for putting the Panchayats in possession by enacting Section 7 of the Act. The civil Court's jurisdiction to determine the dispute relating to Shamiat Deh was excluded vide Section 13, though earlier an alternative remedy was provided for determining the nature of land as being Shamfat Deh or vesting of its title in the Gram Panchayals or any other right or title of a person. Now these provisions have been deleted by the Act of 1992.

34. At this stage, I may deal with the point of president assent to the Act. During the course of arguments, counsel for the petitioners accepted that the point does not survive for determination as factually the assent of the president is there.

35. With the aforesaid scheme of the Act and composite picture given, I may proceed first to refer to Section 2 of the Act of 1992, the constitutionality and validity of which was the main thrust of challenge. The relevant Section under challenge runs as under :--

"Section 2(g)(4)

The land used or reserved for the benefit of the village community, including streets, lanes, playgrounds, schools, drinking wells or ponds situated within Sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding the land reserved for the common purposes of the village u/s 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act. The management and control whereof vests in the State u/s 23 of the aforesaid Act."

"Section 2(g)(6) :

The land reserved for the common purposes of the 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 23A of the aforesaid Act."

Explanation : The land entered in the column of records of right as Jumla Malkan

Wa Hakdaran, Razi Hasad Rasad, Jumla Malkan or Mushtarka Malkan shall be Shamiat Deh within the meaning of this Section."

36. Compendiously it was observed by Hon^{ble} the Surpeme Court in various Judicial pronouncements and further said in texts that the human motives are mixed up or precisely incapable of expression with clarity. In one's endeavour to understand legislation intendment, effects produced in ground realities, pith and substance of the Act has to be seen. While doing so, the concept of the Act, object which it intended to achieve and articulate, its benefit to society, its import on individual and society, irrespective of the form of the Act, are some of the factors taken note of. Courts on construction dealing with the language of the statute accord meaning to the statutory provisions as well as the purpose, the legislation intended to serve, which should ordinarily be unveiled from the language of the Act itself and the object and scope of the Act in its entirety without permitting the hypertechnical analysis pushed to the point of defeating justice or resulting in repugnancy with the accepted norms of justice and reasons. There is no gain saying that effect on individual rights without its social impact, simply cannot exist. It is the individual right and social impact which has to be balanced. Either of them cannot be permitted to be master of the other. Reference may be made to *Ranjit Singh and Others Vs. State of Punjab and Others*, .

37. Again it is a salutary principle that in the realm of the Government run by laws in civilised society ordinarily rule of policy which promotes stability, certainty and pre-dictability is to be adhered to. In common law it is said that system should furnish clear code of conduct to its people so as to enable them to plan their affairs with assurance against surprises. In the same context the impugned legislation has to be interpreted keeping in view the vulnerable conditions of village life particularly when it has found a new ambition to become owner of private land by indirect means without acquisition and further avoiding the constitutional protection granted to the citizens to hold land within the ceiling limits. One has to take care that in an endeavour to interpret statutory words the same cannot be denuded from the end result produced. While interpreting a statute its character in substance as to be found irrespective of its propriety and equity. No doubt one has to see whether the impugned legislation conforms to the article alleged to have been violated which can be done and should be done by tearing and piercing the veil created or cloak put around the Legislation. It has been observed in innumerable precedents that ordinarily courts are not concerned with ethics or philosophy but are concerned with statute. Coke putatively said that in order to correctly appreciate the scope of law it must be asked (i) what was the law before the act was passed; (iij what was the mischief or defect for which the law had not provided; (iii) what remedy the Legislation has provided; (iv) reasons of remedy. Reference may be made to *S. Sundaram Pillai and Others Vs. `R. Pattabiraman and Others*, .

38. In interpreting law another principle to be kept in mind is that the legislative

authority is presumed to know the law of the land.

39. In *Pathumma and Others Vs. State of Kerala and Others*, , Hon"ble the Supreme Court observed that one of the principles of interpreting a statute is that ordinarily what is directly forbidden cannot be permitted to be achieved indirectly. In the same strain it was observed that the principles of construction to the effect that where mode of doing a thing is expressly provided it necessarily prohibits going the same thing by another manner.

40. It would be expedient to notice here the provisions of the Constitution alleged to have been violated :--

Article 31 A

"Saving the Laws providing for acquisition of estates, etc. :--

(1) Notwithstanding anything contained in Article 13, no law providing for -

(a) the acquisition by the State of any rights therein or the extinguishment or modification of any such rights, or

(b) the taking over the management of any property by the State for a limited period either in the Public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more Corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of management agents, secretaries and treasurers, managing directors, directors or managers of corporation, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence.

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridge any of the rights conferred by (Article 14 or Article 19).

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent :

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

not be less than the market value thereof.

(2)(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include -

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janman right :

(ii) any land held under rhotwari settlement.

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans :

(b) the expression "rights" in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, (raiyat, under-raiyat) or other intermediary and any rights or privileges in respect of land revenue."

41. To test the vires of the impugned Act, it has to be seen whether the Statute challenged conforms with the Articles alleged to have been violated may be by tearing the veil or piercing the cloak which the law has been made to wear. From reading of the Articles it is quite discernible that the Constitution has put an embargo on the fiat of Legislation namely, to enact laws regarding acquisition keeping in view the undergoing sea change with respect to the concept of the right to property of a citizen qua the State's right to acquire it for the larger benefit of the society. The limitation provided on State's right to acquire and legislature's right to enact legislation for acquisition is in consonance with the basic concept of freedom, which is the hall mark of our constitution.

42. Acquisition in the context of Article 31A of the Constitution, as understood not only in legal world as established by numerous judgments of the apex Court but also even in ordinary parlance has certain established quintessence and essential features i.e. taking away a property by the State, for the State, it must transfer the ownership of property to the State. Ordinarily, it is the complete transfer of title, ownership, interest and possession i.e. all the rights patent or latent in the estate. There has to be complete extinguishment of rights. Mere suspension of rights of taking over management for a definite or indefinite period would not amount to acquisition. Law which deprives a person of property but does not transfer the ownership of the property or the right to possession is not a law providing for acquisition. There is no gainsaying that State can destroy private property but cannot appropriate to itself. Reference may be made to Gram Panchayat of Village Jamalpur Vs. Malwinder Singh and Others, , Dattatraya Govind Mahajan and Others Vs. State of Maharashtra and Another, , State of Bihar v. Pratap Singh AIR 1979 SC 164 , State of Gujarat Vs. Shantilal Mangaldas and Others, and Bhagat Ram and Others Vs. State of Punjab and

Others, .

43. "State" is well understood as defined by Article 12 of the Constitution of India. It is further well established that no person can be deprived of its property within the ceiling limits without payment of compensation. There is again no dispute that all lands reserved for common purposes under the Consolidation Act of 1948, described as Shamlat Deh under the Consolidation Rules were brought under the purview of the definition of Shamlat Deh under the Act of 1961 by the Amendment Act of 1992, by providing a deeming definition of Shamlat Deh. I am of the considered view that as a necessary consequence of the impugned amendment of the Act by the Act of 1992 lands reserved under the Consolidation Act, 1948 became property of Panchayats, rather its title vested in Gram Panchayats under the Act of 1961. It is the Gram Panchayat which became the title holder of the Estate. Panchayat is State within the meaning of Article 12 of the Constitution.

44. It has further been put beyond any pale of doubt by addition of Section 2(g) (6) of the Act of 1992 wherein the land reserved for common purposes u/s 18 of the Consolidation Act, which was under the management or control of the Gram Pan-chayat was declared to be Shamlat Deh. Explanation further elucidates that the land reserved under the Consolidation Act, 1948 and described under the rules as "Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad Jumla Malkan or Mushtarka Malkan" shall be Shamlat Deh within the meaning of the Section.

45. There is no restriction imposed by the Constitution on the powers of the Legislature to make laws relating to acquisition. One does not have even a right for just compensation. It has been clearly pointed out by Hon"ble the Supreme Court with reference to Article 31 A of the Constitution. If a law makes any provision for acquisition by the State of an estate i.e. any land comprised in the estate held by a person under his cultivation within the ceiling limit as applicable to him under any law for the time being in force including any building or structure thereon or appurtenant thereto, the State would not acquire it without providing for payment of compensation which shall not be less than the market value thereof.

46. Law made in violation of Article 31 A of the Constitution is not protected by the legislation except when it is protected under Article 31B of the Constitution by placing it in the 9th Schedule. Thus, constitutionally the State can acquire land of a person within ceiling limits only on payment of its full market value. This does not merely amounts to a prohibition but also confers on the citizens a right to hold land within the ceiling limits. Further a right to compensation for the land acquired is assured.

47. I have no doubt nor has any been expressed by any of the counsel for the parties that the Act is by way of agrarian reform. The correct interpretation, on my view, keeping in view the dominant object, elucidation provided by definition of Shamlat Deh read with explanation to Section 2(g)(6) of the Act, is that the

land reserved for common purposes during consolidation was the land of the owners who had been denuded of their title instead of the management provided by the Consolidation of Holdings Act, 1948 by vesting it in the Gram Panchayat, Now by indirect methodology adopted in order to put a veil on the legislation against the violation of the constitutional provisions, in effect vested the title of land in Panchayat. Though it being agrarian reforms, still it has to satisfy the quintessence of Article 31A of the Constitution in order to satisfy the constitutional validity. No doubt, the broad objectives of the agricultural reforms is to maximise the agricultural out put and productivity, a fair equitable distribution of agricultural income, to increase the employment opportunities and social and ethical order.

48. In my considered view, though the enactment is intended to distribute material resources of the country yet under the veil of laudable act, it is nothing else but amounting to depriving Peter of the property to give it to Paul. It is nothing but amounts to shedding of crocodile tears and anathema or taboo or would amount to unethical enrichment of the Gram Panchayat. The legislature has attempted to overcome the law laid down by this Court in Kala Singh's case 1984 P LJ 169) (supra), wherein it was observed that the lands reserved for common purpose during consolidation proceedings do not fall within the definition of Shamlat Deh under the Act of 1961. The net result of the judgment was that the land described in the earlier part to the judgments were owned by the proprietors.

49. I find force in the challenge which is pristinely legal. In the correct percepts of the provisions of subject matter of challenge before us, results in only one and one inference, that land reserved for common purpose during the consolidation proceedings, out of the proprietors' land by applying pro rata cut to their lands under consolidation rules, within the ceiling limits. The land so described or named under consolidation rules/Act, the management of which vested in Panchayat and the title continued with the proprietors now vested in Gram Panchayats. It is the Gram Panchayat who became an owner of all its titles whatever be the format. Proprietors of its users were denuded of all its interest. If I may say so, this act of the State is to acquire the property without providing any compensation and thereafter allot it to another authority i.e. Gram Panchayat, is complete violation of Article 31A of the Constitution. The provisions suffer from the vice of not being in consonance with Article 31A of the Constitution. It is a facade and concealed purpose to do what the constitution specifically prohibits.

50. It was categorically observed by Hon'ble the Supreme Court in Ajit Singh Vs. State of Punjab and Another, and in Bhagat Ram and Others Vs. State of Punjab and Others, that since only management of the lands reserved for common purposes to the Gram Panchayat which is for the common good and since owners have not been deprived of their title, the Panchayats do not acquire title or interest of their own. In view of these observations reservation of land for

common purposes in consolidation proceedings was held to be good.

51. On the same and similar parity of reasoning as given in earlier part of the judgment the legislation cannot under the garb of one act reserve the land of proprietors for common good and deprive them of their titles in order to vest the same in its Manager by the other enactment which is impugned. The rationale of the decisions cited above that management being (is) no acquisition does not violate Article 31A.

52. In the very nature of things the land cannot be provided to every one. The Constitution of India, by now has acquired a well established connotation with respect to ceiling holdings. It provides protection to individuals to hold lands within ceiling limits. In my considered view, the Legislature cannot be permitted to exercise colourable jurisdiction by enacting a law depriving a person of his title of the land within the ceiling limits particularly when the concept of freedom is taking a new turn i.e. providing an opportunity to an individual to attain and to develop according to his capacity tyrest with destiny. It is an era where we have embared that justice social, economic and political shall be provided to all and last but not least the dignity for all individuals. The liberalization is more needed in agricultural dominated society as we are if there is any hope to have a sense of justice, particularly when the experience belies the expectation of small holdings in the scientifically developed, advanced era of mechanised farming as small scale farming cannot even provide viable opporunity of self-employment particularly during the age of acute recession in employment. It cannot be denied that the philosophy postulated by the constitutional process is levelling up and not down increasing and not diminishing the middle class.

53. By upholding the amended definition, we will not be justified in upsetting the settled claims and titles and introducing chaos and confusion into the lawful affairs of lairly orderly society. I may add, as observed in earlier part of the judgment, that the land reserved for common purpose alter its optimum utilization for the purpose reserved, was to go back for distribution to the persons who owned it.

54. Again on the annals of the test provided to decide constitutionally that it would be necessary for the Courts to decide whether the law secures any of the directive principles of State policy, is it necessary to encroach upon the fundamental rights; that is the extent of such encroachment; does it violate or encroach upon the basic structure. In a truly democratic policy validity of State action must be adjudged in the light of its operation. The nature of rights involved, the interest of the aggrieved persons, the degree of harm from the State action in the form of impairment of the right of individuals and the object of the State for taking the impugned action have to be kept in view.

55. One has to keep in mind the inevitable conclusions and the principles laid down that validity of the State action must be adjudged in the light of its operation upon the rights of the individuals or groups of individuals in all

dimensions. Mere declaration of a right theoretically and making it impossible in practical sense would be an arbitrary legislation.

56. One of the basic tests required to be satisfied for the reasonableness of a law is to see that the restriction put is commensurate with the need for protection of the public interest against exercise of the right though pecuniary loss occasioned to the owner of the land by itself is no criterion to hold the law unreasonable. It is the nature of right infringed and the underlying purpose of the restriction, the extent of evil and the urgency of the evil sought to be remedied, the prevailing conditions at the time, which must be taken care of. Courts have to look behind the name and form and endeavour to disclose the true nature of the legislation.

57. I need not put emphasis on the rule relating to legislation in relation to the constitutional prohibitions binding on legislation, that Legislature cannot disobey the prohibition merely by articulating or applying indirect methods of achieving exactly the same results which the Constitution prohibits.

58. In my considered view the Legislature by enacting the amended definition/provisions has transgressed its powers and the action amounts to acquisition of land without compensation in violation of Article . Transgression may be open, direct or overt, disguised and indirect or covert, it would be colourable legislation. Violation of the Constitution is so manifest as to leave no room for any reasonable doubt.

59. In my view, while judging the constitutionality of the definition clause, the State action is to be judged in the light of its operation upon the individuals or groups of individuals in all dimensions and on so doing the conclusion is inevitable that the act provides for extinguishment of rights in land. In *Bhagat Ram and Others Vs. State of Punjab and Others*, it has been observed by Hon"ble the Supreme Court, "There is no question of looking to the end to which the income may be used and to differentiate between deprivation of one kind and deprivation of another kind. According to us the ceiling fixed by law is not to be reduced by a acquisition by the State unless compensation at market rate is paid. No other compensatory factors can be taken note of."

60. 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 purpose under Consolidation of Holdings Act, 1948 by application of 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 Panchayats the action is in violation of Article 31A. Since definitions by Sections 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 cannot 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 31A 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 31A 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.

61. In order to have correct perspective before examining the validity of the Act as being violative of the basic structure of the Constitution for want of judicial review, the impugned provisions of Section 7 of the Act of 1992 and in the context of arguments put forth provisions of Section 13 of the Act of 1961 may be noticed verbatim which run as under :--

"Section 7(1) :

An Assistant Collector of the First Grade having jurisdiction in the village may either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the Shamlat Deh of that village which vests or is deemed to have been vested in the Panchayat under this Act and put the Panchayat in possession thereof and for so doing the Assistant Collector of the First Grade may exercise the powers of a revenue Court in relation to the execution of a decree for possession of land under the the Punjab Tenancy Act, 1887 :

Provided that if in any such proceedings the question of title is raised and proved prima facie on the basis of documents that the question of title is really involved, the Assistant Collector of the First Grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter."

Section 7(3)

"The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the CPC 1908."

Section 13A of the 1961 Act, as it existed before the amendment Act of 1992 came into force, provided that any person claiming declaration of One's right in land and immovable property vested or deemed to have been vested in Panchayat within 5 years of the date of commencement of 1980 Act may file a suit for declaration for determination:--

- i) whether such land or immovable property is Shamlat Deh or not?
- ii) whether it is or any right, title or interest does or does not vest in Panchayat under the Act?

62. The procedure for determining the above referred question u/s 13A was as provided by the Code of Civil Procedure, 1908.

63. Section 13 of 1961 Act which bars the jurisdiction of the Civil Court, runs as under:--

"13. Bar of jurisdiction:--

No Civil Court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether:

(1) any land or other immovable property is or is not Shamilat Deh.

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act.

(b) in respect of any matter which any Revenue Court, Officer or authority is empowered by or under this Act to determine, or

(c) to question the legality or any action taken or matter decided by any Revenue Court, Officer or authority empowered to do so under this Act."

Precisely it emerges that:--

(i) Only the Assistant Collector could summarily eject a person in wrongful or unauthorised possession of Shamilat Deh land or other immovable property which vested or deemed to have been vested in Panchayat under the village Common Lands Act, 1961.

(ii) the ejectment could be ordered only after an enquiry;

(iii) upon a question of title being raised before the Assistant Collector who on documentary evidence produced before him is prima facie satisfied that in fact question of title was involved would record first a finding to the effect, that prima facie question of title was involved and thereafter he would proceed to decide the question of title as a Revenue Court;

(iv) During the process of deciding the question of title it was incumbent upon the Assistant Collector to adhere to the procedure prescribed by the Code of Civil Procedure;

(v) The Civil Courts were debarred from determining;

(a) the nature of property i.e. whether it was Shamilat Deh or not;

(b) whether it vested or did not vest in Gram Panchayat under the Act of 1961;

(c) Determine other questions which the authority under the Act was required to decide;

(d) determine the legality of the act taken or matter decided.

(vi) The Assistant Collector had been constituted as an alternative Tribunal to decide the nature of the land which vested in Panchayat as well as question of

title in respect of the land or other immovable property.

(vii) Assistant Collector was conferred with the power to eject the people in wrongful or unauthorised possession by summary proceedings. He could enforce his orders and could exercise his powers as Revenue Court for executing the decree.

The Legislature in order to meet with the human ingenuity, greed and exploitation of common lands by the village proprietors, land holders and other muscle men and also in view of the changing scenario in the village life, keeping in view the welfare of the village community and in order to protect common lands from the usurper's greed and to avoid proverbial delays in ordinary common law Courts resulting in inordinate delays in taking possession from unauthorised or wrongful possessors provided the mechanism for summary ejectment after enquiry. This was done to put the Panchayats in possession of the land for utilisation for common purpose. It was the need of the hour and was done in order to protect social order in the village life and to fulfil social needs. The object was to provide peace to the village community and an effective and expeditious remedy to the Panchayats for taking possession of the common lands for the benefits of the community as a whole.

64. It appears that the legislation conferred the powers to determine the facts whether the land vested in Gram Panchayat or not and the question relating to its title on the Assistant Collectors keeping in view their conversance with ground realities of village life. Though it may not be their sole fiefdom yet the fact that they are better equipped in this respect cannot be denied.

65. It is in public interest that the land should be put to public use at the earliest without any legal vulnerability in view of back-ground of wide ranging consideration as referred to in the earlier part of the judgment. The powers conferred for the public interest or residents of the village should not be lightly dismissed at the altar of the interest of individuals. It is obvious that the powers are conferred keeping in view the suitability of the task in mind and the qualities required for the same.

66. Ordinarily, the rule of law is the basic necessity of any civilised society and in order to maintain the rule of law all recognised mechanism provide for checks and balance for exercising authority. Before barring an ordinary Civil Court remedy for enforcement of legal right or diluting the law of judicial review by the ordinary civil Courts usually an alternative remedy is provided for determination of the rights of the parties who are likely to be affected. The remedy may be with a statutory restriction which may be required to deal with the situation and its urgencies. It may be *pari materia* with Civil Courts or it may take the form of Administrative Tribunal. There is no gainsaying that the Tribunal's procedural and substantive provisions for judicial review have to be in consonance with the Constitutional provisions.

67. Providing limitation or time period for enforcing a right or for assertion of

one's legal right in a particular format are well recognized features of a legislation. By the Act of 1980 the Legislature in its wisdom provided a period of five years for bringing a suit for declaration of one's rights and also barred the exercise of ordinary civil Court's jurisdiction granting such declarations.

68. There is no doubt that judicial review is one of basic pillars or features of Indian Constitution. States do attempt to strive for promoting the welfare of its people but it has to be done by securing and protecting the rights of the citizens and the same would be a paper dream without there being mechanism for judicial review of the State's actions. Judicial process is a basic necessity for instilling a sense of security among the people. In spite of human ingenuity rights of the people are, and can be, protected through Courts without whose intervention unbridled powers would vest in administrative authorities to usurp property of individuals. At the same time, providing institutional mechanism or arrangements for judicial review is permissible under our Constitution. Forum for adjudication of rights by judicial process may differ. Mere exclusion of judicial review by Civil Courts or ordinary Municipal Courts by itself cannot be described as black out of judicial review without which the rights provided by the Constitution would be mere human hallucinations. Providing alternative forums for judicial review would of course be subject to provisions like Art, 14 etc. of the Constitution. Drastic or arbitrary procedure provided beyond the requirement of the situation is subject to judicial scrutiny. Adjudicative facts can be gathered by judicial process. It is the common man's sense of justice which sustains democracy. Change of forum would be immaterial while adjudicating whether the statute obliterates judicial review. Change of forum for adjudication by itself would not obliterate the Constitutional right of judicial review envisaged by our Constitution. Bringing a suit by any person, unless barred by any specific statute, is by itself inherent to a person. Maintainability of suit requires no specific authority of law. It is enough that a statute does not bar it, However, case of appeal is on a different footings than suit. Appeal can be filed only if law authorises it.

69. In order to test vires of an Act alleged to be barring the jurisdiction of Civil Court for adjudication of rights one has to see firstly. Whether the aggrieved party has a right of representation and secondly, whether the restriction imposed is arbitrary. State's action has to be adjudged in the light of its operation. It is inevitable validity of State's action is adjudged in the light of its operation upon the rights of its subjects or groups of subjects in all its dimensions. Enquiry into the reasonableness of the procedural provisions is not excluded from judicial review. Reasonableness of executive fiat, sufficiency and adequacy of the remedies provided are the relevant considerations to conclude whether judicial review has been obliterated or not. Provisions being harsh would not render the provisions ultra vires. Coke enunciated that in order to test the vires and correctly appreciate the scope of law, one must keep in mind (I) what was the law before the Act was passed? (ii) What was the mischief or the defect which the law had not provided for? (iii) What remedy the Parliament has approved?

(iv) The reasons for the remedy. Reference may be made to K.K. Kochuni v. States of Madras and Kerala AIR 1960 SC 1080, wherein it was observed by Hon"ble the Supreme Court that it is not the effect of an Act nor its form that matters but it is the substance in its operation which matters.

70. Judicial review has been provided by Arts. 32 and 226 of the Constitution conferring powers of judicial review on the High Courts and the Supreme Court of India and not on any other body or authority whether executive or legislative functionary under the Constitution. It cannot be controlled by any advice or direction to the judiciary. Apart from this the word "judicial" has also attained a definite connotation. It is the decision because of its functional similarity as was made by the Courts of law, and made in accordance with procedure provided to the Civil Courts. These are the essential elements to clothe a Tribunal's order as a judicial order,

71. Section 7 unveils the summary procedure provided for putting the Panchayat in possession of its property i.e. the properly vested in it under the Act. The authority has been conferred with inquisitorial powers for determining the title and interest of the beneficiaries Gram Panchayats. The Assistant Collector is required to act as a Revenue Court while determining the question of title of any person in accordance with the procedure laid down by the Civil Procedure Code. The jurisdiction of the Assistant Collector is further circumscribed to the effect that it can only put the Panchayat in possession of the land or other property vested in it under 1961 Act. The embargo put on the right of Assistant Collector to determine prima facie the question of title where disputed after returning a finding that the title is disputed, on the basis of documentary evidence, cannot be termed as violative of Art. 14 of the Constitution of India, particularly in view of the fact that the Assistant Collector while deciding the question of title has to follow the procedure of Civil Procedure Code.

72. In view of the observations made above, I am of the considered view that the Assistant Collector may be termed as Tribunal to discharge the judicial functions. It further finds support from the fact that the decision of the Assistant Collector is not only binding between the parties, but is also conclusive, without there being any need for its confirmation or adoption by any other authority. The order of the Assistant Collector is appealable and executable as a decree of the Revenue Court. I may venture to say that the procedure provided for ejection of the unauthorised persons and putting the Panchayat in possession is judicial in nature. It is incumbent upon the authorities under the Act to act judicially.

73. To establish authorities/Tribunal, to act judicially and to determine the rights of the parties is the Legislature's sphere. As long as the Legislature exercises its powers circumscribed by the Constitution of India and provides for Tribunals to determine the rights of the parties; the provisions cannot be struck down solely on the ground that these are harsh and debar some of the declaratory rights or restricts the remedies available under the common law. The legislative power is to be exercised for making laws for the governance of the society or to provide

exercise of the powers to administer the laws enacted. The judicial power begins when the Tribunal or Authority is provided, which has got powers to give a binding decision, irrespective of the fact, whether the decision is appealable or not. The Legislature is well within its right to prescribe the legal prerequisites for the relief to be taken under the Act. There is no doubt that the Courts can award variety of sanctions and remedies for example prohibitory, mandatory, nullatory (sic), penal, declaratory, restitutory or compensatory etc. etc. The Legislature can restrict or obliterate any of the remedy, provided obliteration is reasonable and in conformity with the object to be attained by the enactment.

74. In view of the observations made \\ above, it cannot be denied that the Assistant Collector discharges judicial functions subject to the control of writs under Arts. 226 and 227 of the Constitution of India. I may hasten to add that the powers conferred on the Assistant Collector are neither in conflict with the general principles of law nor are so arbitrary or unreasonable that no fair minded person could overweigh these. The instances of hardship cannot be assumed to be the ground to invalidate the provisions of law enacted by the representatives of the people, who are better informed about the needs of their people.

75. I find no force in the contention raised by the learned counsel for the petitioners that since the impugned provisions provide only one mode of proof for establishing prima facie title namely documentary evidence and rule out oral evidence, these infringe a person's right to institute suit independently seeking declaration about his right. I am of the considered view that the documentary evidence needed to satisfy the Assistant Collector that question of title is really involved is the essential necessity keeping in view the object of the Act and the conclusion drawn from experience that by raising frivolous objections wrongful and unauthorised possessors of the village common lands were able to retain the possession for inordinate periods. Providing one mode of proving a fact by itself does not render the provisions arbitrary or violative of any fundamental right, although in my view oral evidence has not been ruled out by the provisions under challenge as the same is inherent as the question of title is to be decided in accordance with the CPC after the Authority has come to a conclusion that prima facie question of title is involved. The concept of prima facie proof and proof are two distinct concepts. I fail to comprehend how the two concepts are contradictory to each other as contended by the counsel for the petitioners.

76. In view of the observations made above, I find no force in the contention raised by the learned counsel for the petitioners that by the enactment of the Amendment Act, 1992, the judicial review has been obliterated or the right to get declaratory reliefs has been in any way affected.

77. The contention that no alternative remedy has been provided by the Act to the ordinary civil Court cannot be sustained in view of the observations made above to the effect that the Assistant Collector has been conferred with the powers which are almost pari materia with the powers of the ordinary Courts. There is no dispute with the principle of law laid down in the judgments cited by

the learned counsel for the petitioners which are enumerated below:

78. Satish Chandra Anand Vs. The Union of India (UOI), , Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, , Additional Commissioner of Income Tax, Gujarat Vs. Surat Art Silk Cloth Manufacturers Association, , Tara Chand v. Gram Panchayat 1979 P LJ 1, Gram Panchayat, Mehal Kalan v. Ram Singh 1986 P LJ 307 , Ram Singh and Others Vs. Gram Panchayat Mehal Kalan and Others,), Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, , H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, , Kamala Mills Ltd. Vs. State of Bombay, and Smt. Ganga Bai Vs. Vijay Kumar and Others, .

79. In view of the findings returned in the earlier part of the judgment that alternative remedy has been provided by the Act, there is no bar to judicial review. There is no inconsistency between the provisions of the impugned enactment and the Constitution on this score.

80. I am of the considered view that no unbridled power vests in the Authorities under the Act because of any overt or covert exclusions of judicial review by the ordinary common law Courts. The jurisdiction of the High Court to exercise powers under Art. 226 read with Art. 227 of the Constitution of India permitting judicial review which is the soul of the Constitution has not been excluded. The provisions of summary ejectment providing expeditious remedy for the beneficiaries cannot be said to be drastic or arbitrary beyond the requirement of the situation. Affording an opportunity of hearing to the party likely to be affected which is part and parcel of the principles of natural justice and which has got imbibed into a legal right has been provided u/s 7. Only the forum for decision making has been changed from the Civil Court to the Revenue Authority. The right to get a judicial decision from the Revenue Authority within the parameters and restrictions provided by the Act has not been tampered with.

81. In order to appreciate the contention of the counsel for that right of appeal is illusory, it would be expedient to notice the impugned provisions regarding appeal provided by the Act of 1992 which runs as under:

"(1) Any person aggrieved by an order of Assistant Collector of the First Grade may, within a period of thirty days from the date of order passed under sub-section (f) or subsection (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."

The Statute confers a right of appeal against the order of ejectment u/s 7(1) or imposition of penal damages u/s 7(2) to the Collector. After conferring a right of an appeal in categorical terras an embargo has been added by providing a proviso to the effect that no appeal shall lie unless the penalty imposed is

deposited.

82. In *Shyam Kishore and others Vs. Municipal Corporation of Delhi and another*, Hon''ble the Supreme Court while considering the validity of the condition for an appeal in a tax case providing that no appeal shall be heard or determined unless the amount, if any, in dispute has been deposited by the appellant, observed that there is no reason that the Legislature cannot impose a condition for exercise of such a right as long as the condition was not so onerous as rendering the right of appeal almost illusory. Hon''ble the Supreme Court taking note of *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, observed that proviso authorising the appellate authority to dispense with the deposit where it is going to cause hardship or imposing a condition enabling him to get rid off the rigour of the provision does not nullify the right of an appeal, especially when discretion is vested in the Judge/authority. It was observed that requirement of the right of appeal and the desirability for speedy recovery of tax had been balanced. Reasonableness of the condition imposed for exercise of a right of appeal can be gone into.

83. The object of imposing condition for deposit of penalty is to prevent the frivolous litigation. Broadly, the test for reasonableness was laid down by Hon''ble Apex Court in *State of Madras Vs. V.G. Row*, wherein it was observed that no abstract standard or whole pattern can be laid down to test the reasonableness. The reasonableness has to be seen by applying mind to individual cases, nature of right which has been infringed, underlying purpose of the restriction imposed, extent and urgency of the evil sought to be remedied, disproportion of the imposition, prevailing conditions at the time of imposition, valuation, social philosophy and scale of value etc. etc. In the *State of Maharashtra v. Himmat Bhai Narbheram Rao*, Hon''ble the Supreme Court further observed that to determine reasonableness the restriction should be commensurate with the need of the protection of the public interest against the exercise of the right. Reasonableness could be decided only on the conspectus of all the relevant facts and circumstances.

84. As observed in the preceding part of the judgment Section 7(2) of the 1992 Act provided a deterrent penal damages for wrongful and unauthorised possession ranging between Rs.5,000/- per annum to 10,000/- per annum per hectare. Prima facie the rate of damages appears to be penal, even the statute, recognizes it to be so when it is termed as "Penalty". The deposit is not correlated to land holding which can be termed as paltry by any statute.

85. The restriction imposed by the proviso renders the substantive clause of conferring a right of appeal a mere paper right. The right of appeal is rendered nugatory, in effect. The restriction imposed is stringent. Theoretically, right of appeal is conferred but the ground realities namely poverty of Indian villagers cannot be lost sight of. The right to prefer an appeal must include the right to defend the right with respect to possession of the land or immovable property proclaimed by the Gram Panchayat to be vested in it. At least one right of appeal

against executive fiat is reasonable procedural right particularly when scrutiny by the ordinary civil Court has been taken away. Taking conspectus of all the relevant facts and circumstances, I am of the considered view that the imposition of condition provided by the provision for deposit of damages before the appeal is entertained is unreasonableness. The provision is hit by Art. 14 of the Constitution of India being arbitrary and unreasonable. Further the authorities have a right to recover the damages imposed as arrears of land revenue. Keeping all the facts in view and the observations made above, I am of the considered view that the proviso to Section 5 of the 1992 Act providing for deposit of penal damages for entertaining appeal is ultra vires the Constitution and the same is declared to be so.

86. It would be pertinent to refer to Section 7(2) and Section 7(5) which is putatively said to be violative of Art. 20 of the Constitution of India.

Section 7(2)

"The Assistant Collector of the First Grade shall by an order, in writing, require any person to pay a penalty which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order the same shall be recoverable as arrears of land revenue."

Section 7(5)

"Any person who is found in wrongful or unauthorised possession of the land or other immovable property in Shamilat Deh and is ordered to be ejected under sub-section (1) shall be punishable with imprisonment for a term which may extend to two years."

Section 7A

"Cognizance of offence: Notwithstanding anything contained in the Code of Criminal Procedure 1973 (No. 2 of 1974), no Court other than that of the Judicial Magistrate of the First Class shall take Cognizance of or try, any offence punishable under this Act."

87. Section 7B further provides the procedure for prosecution and has put an embargo on initiation of penal proceedings, which can be initiated only after the ejectment order against the wrongful or unauthorised occupier has been confirmed.

88. Succinctly, it emerges from the reading of Sections 7(2) and 7(5) read with Section 7A and 7B that the Legislature has provided civil as well as criminal liability for an unauthorised or illegal possessor of village common land.

89. It is well known concept that damages can either be punitive or compensatory. While interpreting Section 7(2) providing penal damages in the

context in which it occurs in the Section, it would Be reasonable to infer that punitive damages by way of compensation for wrongful or unauthorised possession of the village common land have been provided. Mere fixing lower limit and upper limit for assessing the penal damages or use of the word "penalty" would not change the character of the section, which in my considered view is nothing else but a provision for providing punitive damage for the use and occupation of the village common land unauthorisedly. It is incumbent upon the Authority to assess the damages keeping in view the income per hectare per annum. Opportunity of hearing before determining damages is inherent in the Section itself. In order to uphold the validity of sub-section (2) reading down is essential. Reference may be made to *Sri Kalimata v. Union of India*, (1981) 2 SCR 950). The penal damages provided by subsection (2) are prospective i.e. these can be imposed for the period after coming into force of the Act of 1992. The word "Penal" used takes its colour from the language of the Section i.e. the damages are to be imposed keeping in view the benefit which could be derived from the land or the immovable property. The intention of the Legislature is obvious.

90. Section 7(2) does not provide for penalty for an offence which is definite and amounts to an act or omission made punishable by law for the time being in force. Reference may be made to *Maqbool Hussain Vs. The State of Bombay*, . The intention of the Section is obvious namely to obtain payment for the land used unautho-ri-sedly. The rate prescribed may be high; but as observed earlier the Supreme Court has observed that mere harsh consequences on an individual by itself is no violation of the Constitution. Reference may be made to *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, . In order to sustain the vires of the provisions, I may venture to read down the provisions to the effect that damages can be imposed at the rate prescribed prospectively. Reference may be made to *Raghubar Dayal Jai Prakash Vs. The Union of India (UOI) and Others*, .

91. Sub-section (5) provides for an imprisonment for unauthorised possession of the land or other immovable property in *Shamlat Deh*. Sub-section (5) is not incongruence to sub-section (2) in any manner. Both the sections do not provide for imprisonment for an offence committed. Subsection (5) obviously on its plain reading provides for wrongful or unauthorised possession as offence punishable with imprisonment. The offence is triable by a Magistrate in ordinary course, providing damages for use and occupation cannot be stretched to be a provision making an offence as understood in Article 20 of the Constitution of India and the Judicial Courts of the Country. There is no prosecution of punishment for the same offence twice over. Subsection (2) provides for civil liability for an unauthorised occupant whereas sub-section (5) provides punishment for unauthorised possession. Mere use of the word "penal" in sub-section (2) would not change the nature of the provisions of the Act to provide for prosecution and punishment. Article 20 bars only the prosecution and punishment for "the same offence". It does not bar the recovery of the damages for the offence committed. I fail to comprehend by reading sub-section (5) how it is retrospective in nature.

The person who continues in wrongful or unauthorised possession is committing a continuing wrong. For every day of wrongful or unauthorised possession it would be an offence punishable with imprisonment. Thus I am of the considered view that sub-section (5) is prospective in nature.

92. For the reasons recorded above, I am of the considered view that :

(i) Section 2 of the Punjab Village Common Lands (Regulation) 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 7 are intra vires the Constitution of India, and

(iv) Section 5 of the Haryana Act 9 of 1992 which has amended Section 13B of the Principal Act and the proviso to the substituted sub-section (1) is ultra vires the Constitution of India.

93. The writ petition is accordingly allowed in part as indicated above.

94. Petition allowed.