
(2011) 12 P&H CK 0233

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 20385 of 2011 and C.W.P. No. 10521 of 2011

Orion Infrastructure Ltd.

APPELLANT

Vs

Commissioner, Gurgaon Division, Gurgaon and others

Rajender Kumar Vs State of Haryana and others

RESPONDENT

Date of Decision : 08-12-2011

Acts Referred:

Benami Transactions (Prohibition) Act, 1988 — Section 4, 4(1)
Constitution of India, 1950 — Article 226, 227
Haryana Ceiling on Land Holdings Act, 1972 — Section 18
Haryana Urban (Control of Rent and Eviction) Act, 1973 — Section 1(3)
Punjab Pre-emption Act, 1913 — Section 15
Punjab Village Common Lands (regulation) Act, 1953 — Section 3
Punjab Village Common Lands (Regulation) Act, 1961 — Section 10A, 13A, 13B, 13B(2), 16
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 17, 18, 31(1)

Citation : (2012) 3 RCR(Civil) 247

Hon'ble Judges : Satish Kumar Mittal, J;Paramjeet Singh, J

Bench : Division Bench

Advocate : Arun Jain, with Mr. Adarsh Jain, for the Petitioner in CWP No. 20385 of 2011 and Mr. Varun Baanth, for the Petitioner in CWP No. 10521 of 2011, for the Appellant; Ajay Kumar Gupta, Addl. A.G. Haryana for the Respondent No. 1 to 8 (in CWP No. 20385 of 2011) and for Respondent No. 1 to 6 (in CWP No. 10521 of 2011) and None for Gram Panchayat for the Respondent No. 9 (in CWP No. 20385 of 2011) and Respondent No. 7 (in CWP No. 10521 of 2011), for the Respondent

Judgement

Satish Kumar Mittal, J.—This order shall dispose of Civil Writ Petitions No. 20385 and 10521 of 2011, which are arising from a common order dated 4.2.2010 (Annexure P-26 in CWP No. 20385 of 2011 and Annexure P-20 in CWP No. 10521 of 2011), passed by the Commissioner, Gurgaon Division, Gurgaon, whereby the revision petition filed by the Social Education and Panchayat Officer, Gurgaon u/s 13B(2) of the Punjab Village Common Lands (Regulation) Act, 1961 (As Applicable to Haryana) (hereinafter referred to as "the Act of 1961") has been

allowed and the order dated 21.11.2000 (Annexure P-5 in CWP No. 20385 of 2011 and Annexure P-7 in CWP No. 10521 of 2011), passed by the Assistant Collector 1st Grade, Gurgaon, partly decreeing the title suit filed by the predecessors of the petitioners, has been set aside being illegal and passed without jurisdiction. Since the common questions of facts and law are involved in both these petitions, therefore, for the purpose of convenience, the facts are being taken from CWP No. 20385 of 2011.

2. The petitioner in this petition has also challenged the interim orders dated 6.2.2006 and 8.1.2008 (Annexures P-22 and P-25), passed by the Commissioner. Vide order dated 6.2.2006, the predecessors of the petitioners and their heirs were restrained from alienating the disputed land by way of mortgage, sale, gift or any other mode, to any other person. They were further restrained from changing the nature of the disputed land or excavating earth from it. Vide order dated 8.1.2008, the revision petition was held to be maintainable and the same was ordered to be heard on merits. It is pertinent to mention here that earlier, the petitioner had filed CWP No. 9024 of 2006 for quashing the order dated 6.2.2006. However, during the pendency of the said petition, the interim order dated 8.1.2008 and the final order dated 4.2.2010 were passed by the Commissioner. When the petitioner filed application to amend the said petition to challenge these two subsequent orders, the petitioner was permitted to withdraw the writ petition with liberty to file fresh one challenging those orders. Hence, the present writ petition was filed.

3. The brief facts of the case are that as per the revenue record, as existed on 9.1.1954, the date on which the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter referred to as "the Act of 1953") came into force, out of total land measuring 6265 bighas 9 biswas, situated in village Bandhwari, land measuring 4895 bighas 10 biswas was recorded as "Shamilat Deh Hasab Rasad Kabja Zamin". With the coming into force of the Act of 1953, vide mutation No. 144 dated 31.3.1955, the aforesaid land was mutated in the name of the Gram Panchayat, being Shamilat Deh vested in the Gram Panchayat u/s 3 of the Act of 1953, which reads as under :

3. Vesting of rights in Panchayats and in non-proprietors. - Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land :-

(a) which is included in Shamilat deh of any village, shall, on the appointed date, vest in a Panchayat having jurisdiction over the village:

(b) which is situated in the Abadi deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of the Act vest in the said non-proprietor.

Thereafter, in the subsequent jamabandi, i.e. for the year 1960-61, 4895 bighas

10 biswas of land was recorded in the name of the Panchayat Deh and continued as such in subsequent revenue record.

4. On 1.3.1985, proprietors of the village filed a title suit (Annexure P-1) u/s 13A of the Act of 1961 before the Assistant Collector 1st Grade (who was having jurisdiction at that time under the unamended Section 13A of the Act of 1961), seeking declaration that the land in dispute is not Shamilat Deh and under the provisions of the Act of 1961, it does not vest in the Gram Panchayat. It was the claim of the proprietors that as per proviso to clause (5) of Section 2(g) of the Act of 1961, out of the total area of the village (which in the present case was 6265 bighas 9 biswas), only 25% area, i.e. 1566 bighas 7 biswas, could be described and treated as Shamilat Deh vesting in the Gram Panchayat and the remaining land, i.e. 3329 bighas 5 biswas, shall vest in the proprietors. It was also alleged that the proprietors were in cultivating possession of the disputed land for more than 12 years prior to 9.1.1954, therefore, it did not vest in the Gram Panchayat.

5. The Assistant Collector 1st Grade, vide order dated 9.11.1989 (Annexure P-2), partly decreed the said suit while holding that in view of proviso to clause (5) of Section 2(g) of the Act of 1961, out of total land of the village, measuring 6265 bighas, only 25% area, i.e. 1566 bighas 5 biswas, shall vest in the Gram Panchayat, whereas the remaining land measuring 3329 bighas 5 biswas will not vest in the Gram Panchayat, and the mutation with regard to the said land was held to be illegal. However, on issue No. 2, a categorical finding was recorded against the proprietors, while holding that they have failed to prove their individual cultivating possession of more than 12 years prior to the date of coming into force of the Act of 1953, i.e. 9.1.1954, on any particular khasra number of the land in question.

6. Feeling aggrieved against the said order of the Assistant Collector 1st Grade, the Gram Panchayat filed appeal before the Collector claiming that the land, which was "Gair Mumkin Pahar. Nadi Nala etc" could not be included to determine the area of 25%. It was argued that when the land falls under the definition of Shamilat Deh under clause (1) of Section 2(g) of the Act of 1961, then the said land stands vested in the Gram Panchayat, independent of other clauses. It was further argued that when any land comes within the definition of Shamilat Deh on the basis of any of the sub-clauses mentioned in Section 2(g) of the Act of 1961, then there is no need of reading the other sub-clauses of the said Section. Thus, the Assistant Collector 1st Grade has committed grave illegality, while relying upon the proviso to clause (5) of Section 2(g) of the Act of 1961, while holding that 3329 Bighas 5 Biswas Shamilat land vests in the proprietors, particularly when such land falls under clause (1) of Section 2(g) of the Act of 1961.

7. The Collector, vide order dated 18.12.1991 (Annexure P-3), accepted the appeal of the Gram Panchayat and after setting aside the order of the Assistant Collector 1st Grade, remanded the matter to the Assistant Collector 1st Grade to

decide it afresh, keeping in view the land of Nadi-Nala, Gair Mumkin Pahar and actual cultivating possession of the proprietors on the relevant date, after giving opportunity to both the parties to lead evidence.

8. The proprietors challenged the abovesaid order of the Collector before the Commissioner, by filing revision petition. The Commissioner, vide order dated 21.1.1993 (Annexure P-4), dismissed the revision petition, while observing that "all the sub clauses of section 2(g) are independent of each other and on this basis also the Assistant Collector 1st Grade has taken a wrong decision. Besides this, now according to the amended Act, shamilat land vest in the Gram Panchayat.

9. It is pertinent to mention here that during the pendency of the revision petition, vide Haryana Amendment Act 9 of 1992, proviso to clause (5) of Section 2(g) of the Act of 1961 was deleted. The Commissioner, while dismissing the revision petition, had drawn the attention towards this deletion, which was to be looked into by the Assistant Collector 1st Grade. It is further pertinent to mention that after the remand, when the matter was pending before the Assistant Collector 1st Grade, vide Haryana Amendment Act 9 of 1992. Section 13A of the Act of 1961 was deleted. For seven years, this Section remained in abeyance and subsequently, vide Haryana Amendment Act 9 of 1999, new Sections 13A and 13AA were inserted in the Act of the Act of 1961. In Section 13A, now the title suits is to be field before the Collector, appeal against the order of the Collector before the Commissioner, and revision petition before the Financial Commissioner. After the said amendment, only the Collector was having the jurisdiction to determine the issue raised in the title suit, as to whether the land in dispute is Shamilat Deh and the same vests in the Gram Panchayat or not. Sections 13A and 13AA of the Act of 1961 are re-produced below for ready reference :-

13-A. Adjudication - (1) Any person or in the case of a panchayat either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property, vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is shamilat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated:

Provided that no suit shall lie under this section in respect of the land or other immovable property, which is or has been the subject matter of the proceedings u/s 7 of this Act under which the question of title has been raised and decided or under adjudication.

(2) The procedure for deciding the suits filed under sub-section (1), shall be the same as laid down in the CPC 1908 (5 of 1908).

13AA. Appeal and revision - (1) Any person, aggrieved by an order passed under sub-section (1) of section 13A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-section (1), call for the record of any proceeding pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality of propriety of the proceedings or order and pass such order in relation thereto as he may deem fit:

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

10. The Assistant Collector 1st Grade, in total disregard to the amendments made vide Haryana Amendments Act 9 of 1992 and 9 of 1999, vide order dated 21.11.2000 (Annexure P-5) finally decided the title suit partly in favour of the proprietors, after holding that according to proviso to clause (5) of Section 2(g) of the Act of 1961, which was prevailing at the time of filing of the suit, out of the total Shamilat Deh land of 4703 bighas 15 biswas, 2104 bighas 9 biswas of land was uncultivable and the remaining land, i.e. 2599 bighas 6 biswas, was cultivable, out of which only 25 % (649 bighas 16 biswas) vests in the Gram Panchayat and the remaining land of 1949 bighas 10 biswas does not vest in the Panchayat, but the same vests in the proprietors. Thus, suit of the proprietors qua 1949 bighas 10 biswas of cultivable Shamilat Deh land was decreed in their favour. It is pertinent to mention here that the Assistant Collector 1st Grade again decided the matter, while taking into consideration the proviso to clause (5) of Section 2(g) of the Act of 1961, which was already deleted vide Haryana Amendment Act 9 of 1992. However, on issue No. 2, no finding was recorded that 12 years prior to the coming into force of the Act of 1953, any of the proprietors was in individual cultivating possession of the land measuring 2599 bighas 6 biswas.

11. Against the aforesaid order of the Assistant Collector 1st Grade, the Gram Panchayat and the Block Development and Panchayat Officer preferred appeal before the Collector. However, during the pendency of the appeal, the Sarpanch of the Gram Panchayat filed an application (Annexure P-6) for withdrawal of the appeal. It is pertinent to mention that this application was filed only by the Sarpanch of the Gram Panchayat. The Collector, vide order dated 27.2.2001 (Annexure P-8), allowed the said application and permitted the Gram Panchayat to withdraw the appeal.

12. Subsequently, in pursuance of the order dated 21.11.2000, passed by the Assistant Collector 1st Grade, mutation No. 2055 dated 29.5.2001 (Annexure

P-10) with regard to 20709 kanals 17 marlas of land was sanctioned in the name of Shamilat Deh Hasab Rasad Kabza Zamin and on the same day vide subsequent mutation No. 2056 (Annexure P-11), mutation of the said land was sanctioned in the name of the individual proprietors. Thereafter, some of the proprietors started selling the land in question vide various sale deeds to different persons, after getting the land in question partitioned. The petitioner company had purchased 2292 kanals 8 marlas of land from different proprietors vide 18 different sale deeds. Mutations of those sale deeds were sanctioned in favour of the petitioner company on 13.12.2004. Similarly, the petitioner in the connected writ petition (CWP No. 10521 of 2011) purchased 2579 marlas (16.11 acres) of land in the year 2005, regarding which mutation No. 3368 dated 20.12.2005 was sanctioned in his favour. It is the further case of the petitioner company that after getting the areas purchased by it demarcated, the petitioner company got a license in form LC-1 from the Director, Town and Country Planning, Haryana, for development of a residential colony on the land in question, after paying the requisite fee and charges, and also obtained certain Environmental permits, required by law.

12A. When it came to the notice of the Panchayat Department that the Sarpanch, in connivance with the proprietors or their vendees, has got the appeal (which was filed by the Gram Panchayat and the Block Development and Panchayat Officer) withdrawn and got finalised the illegal order of the Assistant Collector 1st Grade, which was wholly without jurisdiction, under which a big chunk of land vesting in the Gram Panchayat was declared to be owned and possessed by the proprietors, the Social Education and Panchayat Officer, Gurgaon filed a revision petition u/s 13B(2) of the Act of 1961, on 6.2.2006, before the Commissioner for setting aside the order dated 21.11.2000 being illegal and without jurisdiction, in exercise of its suo motu power. Along with the revision petition, an application for stay was also filed. On the said application, vide order dated 6.2.2006, the Commissioner stayed the operation of the order dated 21.11.2000, passed by the Assistant Collector 1st Grade, and restrained the proprietors and their heirs from alienating the disputed land by way of mortgage, sale, gift or any other mode, to any other person. They were further restrained from changing the nature of the disputed land or excavating earth from it.

13. During the pendency of the revision petition, the petitioner filed various applications for vacation of stay and with regard to the maintainability of the revision petition, but those applications were dismissed and finally, the Commissioner, after hearing counsel for the parties, including the proprietors and the petitioner allowed the said revision petition vide order dated 4.2.2010, and set aside the order dated 21.11.2000, passed by the Assistant Collector 1st Grade, Gurgaon, being wholly illegal and passed without jurisdiction. Firstly, it has been held that the order of the Assistant Collector 1st Grade, declaring 1949 bighas 10 biswas of land as not vesting in the Gram Panchayat and vesting in the proprietors, is totally illegal and contrary to the revenue record and the provisions of the Act of 1961, and the same is based upon the proviso to clause

(5) of Section 2(g) of the Act of 1961, which on the date of passing of the order stood already deleted vide Haryana Amendment Act 9 of 1992. Thus, the Assistant Collector 1st Grade has not complied with the direction given by the Collector, while remanding the case and the observations made by the Commissioner while upholding the said order of the Collector. Secondly, it has been held that the order dated 21.11.2000, passed by the Assistant Collector 1st Grade, was wholly without jurisdiction, as on the date of passing of the order, vide Haryana Amendment Act 9 of 1999, new provision of Section 13A was inserted in the Act of 1961, where only the Collector has been empowered to adjudicate as to whether the land is Shamilat Deh or not and whether any land or any right, title or interest therein, vests or does not vest in the Gram Panchayat under this Act. Thus, the order of the Assistant Collector 1st Grade was without jurisdiction and nullity. It has also been observed that the Gram Panchayat was in collusion with the proprietors, including their predecessors, and without safeguarding the interest of the Gram Panchayat, which the Gram Panchayat was supposed to do, it withdrew the appeal, without getting the right, title and interest in the Shamilat Deh land determined properly. A liberty has also been given that if any of the parties wants to get its right, title declared under the Act of 1961, he may file a fresh suit before the competent authority i.e. the Collector. Gurgaon.

14. The aforesaid order of the Commissioner has been challenged in these writ petitions.

15. During the course of hearing, when the Court was not agreeing with the arguments raised by learned counsel for the petitioners, learned counsel appearing on behalf of the petitioners in Civil Write Petition No. 22709 of 2011, titled as Tej Pal Jain v. State of Haryana and others (connected petition), withdrew the petition, with liberty to approach the Collector. In that petition, the following order was passed :

After having instructions from the attorney of the petitioner, who is present in Court, learned counsel states that the petitioner may be permitted to withdraw this petition with liberty to file a title suit before the Collector, Gurgaon, in terms of the order passed by the Commissioner, Gurgaon Division, Gurgaon.

Dismissed as withdrawn with the aforesaid liberty. If the petitioner files such title suit within a period of two months from today, the Collector is directed to decide the same in accordance with law, expeditiously, as early as possible, after issuing notice to the necessary parties and hearing them in accordance with the procedure prescribed under the Punjab Village Common Lands (Regulation) Act, 1961 (As Applicable to Haryana) and the Rules framed thereunder. We hope that the suit will be decided by the Collector within a period of nine months from the date of its filing.

However, counsel for the petitioners appearing in these two writ petitions submitted that these petitions be decided on merits.

16. We have heard learned counsel for the parties in detail and perused the record of the case.

17. Learned counsel for the petitioners made the following submissions :

(i) That the order dated 21.11.2000 passed by the Assistant Collector 1st Grade was in accordance with law and under the un-amended Section 13A of the Act of 1961, the Assistant Collector 1st Grade was fully competent to decide the suit filed by the proprietors. According to the learned counsel, new Section 13A inserted vide Haryana Amendment Act 9 of 1999, was not applicable to the pending suits, because this Section was inserted prospectively and not retrospectively. Therefore, on the date of decision by the Assistant Collector 1st Grade, though new Section 13A was in force, but the same did not debar the Assistant Collector 1st Grade from adjudicating the title suit already pending with him. In support of his contention, learned counsel relied upon the decisions of the Hon'ble Supreme Court in R. Rajagopal Reddy (Dead) by LRs and others v. Padmini Chandrasekharan (Dead) by LRs, (1995) 2 SC Cases 630, Shri Kishan alias Krishan Kumar and others v. Manoj Kumar and others 1998(1) R.C.R. (Rent) 283 : (1998) 2 Supreme Court Cases 710 and Shyam Sunder and others v. Ram Kumar and another, 2001(3) R.C.R. (Civil) 754 : (2001)8 SC Cases 24.

(ii) That u/s 13B(2) of the Act of 1961, the Commissioner has no suo motu power to set aside the order of the Assistant Collector 1st Grade, passed under the unamended Section 13A of the Act of 1961. According to the learned counsel, under the aforesaid un-amended provision, a title suit could have been filed within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act 1980, which was subsequently extended upto five years, and in this case, the proprietors (predecessors of the petitioners) filed the said suit before the Assistant Collector 1st Grade, within the prescribed period. Learned counsel argued that under sub-section (2) of Section 13B of the Act of 1961, the Commissioner may, suo motu or on an application made to him by any aggrieved person, entertain the revision against the order passed by the Assistant Collector 1st Grade, if the said order was passed under the proviso to sub-section (1) of Section 7 and not against any other order. According to the learned counsel, against the order passed by the Assistant Collector 1st Grade under the un-amended Section 13A of the Act of 1961, the Commissioner had no suo motu power to revise such an order passed by the Assistant Collector 1st Grade. While referring to Section 13AA of the Act of 1961 (which was inserted vide Haryana Amendment Act 9 of 1999), learned counsel argued that against an order passed by the Collector u/s 13A, revisional power has been given to the Financial Commissioner on a petition filed by the person aggrieved against the order passed by the Commissioner. Therefore, according to the learned counsel, the Commissioner was having no jurisdiction to set aside the order dated 21.11.2000 passed by the Assistant Collector 1st Grade. Thus, the impugned order is wholly without jurisdiction.

(iii) That the Commissioner has acted illegally and wholly without jurisdiction

while entertaining the revision petition after a long delay of about five years of the passing of the order dated 27.2.2001 by the Collector.

(iv) That the Assistant Collector 1st Grade has committed no illegality while relying upon the proviso to clause (5) of Section 2(g) of the Act of 1961, as on the date of filing of the title suit, such proviso was very much in existence. According to the learned counsel, status of the right, title or interest of the proprietors is to be seen not on the date of passing of the decree, but on the date of filing the suit. In this regard, learned counsel has relied upon a Division Bench decision of this Court in *Gram Sabha Salina v. Nahar Singh and others* 1986(*) R.R.R. 440 v. : 1982 PLJ 261.

18. On the other hand, learned counsel for the respondents, while supporting the order of the Commissioner, argued that in the facts and circumstances of the case, none of the contentions raised by learned counsel for the petitioners is sustainable.

19. After considering the submissions made by learned counsel for the parties and perusing the various orders passed by the authorities below, including the impugned order passed by the Commissioner, we do not find any illegality or impropriety in the order passed by the Commissioner.

20. In the present case, undisputedly, on 9.1.1954, when the Act of 1953 came into force, out of total area of 6265 bighas 9 biswas of land situated in village Bandhwari, the land measuring 4895 bighas 10 biswas was described in the revenue record as "Shamilat Deh Hasab Rasad Kabja Zamin". According to Section 3 of the Act of 1953, all lands recorded in the revenue record as Shamilat Deh vest in the Gram Panchayat. In view of the above said provision, vide mutation No. 144 dated 31.3.1955, the aforesaid Shamilat Deh was mutated in favour of the Gram Panchayat. Thereafter, in the jamabandi for the year 1960-61, this land was recorded in the name of the Gram Panchayat.

21. On 4.5.1961, the Act of 1961 came into force. Section 16 of this Act, which is pertaining to "Repeal and Saving", reads as under :-

16. Repeal and Saving - The Punjab Village Common Lands (Regulation) Act, 1953 and the Pepsau Village Common Lands (Regulation) Act, 1954 are repealed :

Provided that anything done or any action taken under any law so repealed shall be deemed to have done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

Therefore, action of sanctioning mutation with regard to the land in question in view of the provisions of the Act of 1953 has been protected under the Act of 1961, unless and until superseded by anything done or any action taken under the Act of 1961. Further, Section 4 of the Act of 1961 provides for vesting of rights in Panchayat and non-proprietors. This provision reads as under :

4. Vesting of rights in Panchayat and non-proprietors -

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interests whatever in the land, -

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

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

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

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

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

(ii) rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

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

22. A bare perusal of clause (a) of sub-section (1) reveals that all rights, title and interests in the land in the shamilat deh of any village, which has not vested in a Panchayat under the shamilat law shall vest in the Panchayat constituted for such village. The word "shamilat law" has been defined in the Act of 1961. Section 2(h) defines "shamilat law" as under :

shamilat law" means -

(i) in relation to land situated in part of the territory which immediately before the 1st November. 1956, was comprised in the State of Punjab, the Punjab Village Common Lands (Regulation) At. 1953: or

(ii) in relation to land situated in part of the territory which immediately before

the 1st November, 1956, was comprised in the State of Patiala and East Punjab States Union, the Pepsu Village Common Lands (Regulation) Act, 1954.

Undisputedly, the area of village Bandhwari, immediately before 1st November, 1956, was part of the territory of the State of Punjab. Therefore, the "shamilat law" means the Act of 1953. Thus, in our opinion, in view of Section 4(2) of the Act of 1961, the land in question, which vested in the Panchayat, on coming into force of the Act of 1953 and mutation of which was sanctioned in favour of the Panchayat on 31.3.1955, shall be deemed to have been vested in the Panchayat under the Act of 1961.

23. Sub-section (3) of Section 4 of the Act of 1961 provides three exceptions to clause (a) of sub-section (1) and sub-section (2). Exception (i) deals with the existing rights, title or interests of Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, Muqarrirdars. This exception is not relevant in the present case. Exception (ii) protects the rights of persons who were in cultivating possession of shamilat deh on the date of the commencement of the Act of 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon, though the land under their possession may be shamilat deh. In our view, shamilat deh, which has vested in the Gram Panchayat, either under the Act of 1953, or deemed to have vested in the Panchayat under the Act of 1961, can be held to be not vesting in the Panchayat only if it is proved by a person that he was in cultivating possession of such land on the commencement of the Act of 1953 and was in such cultivating possession for more than twelve years on such commencement, without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon. Therefore, in our view, there are three ingredients of clause (ii) of Section 4(3) of the Act of 1961, which a person is required to fulfill before the shamilat land is held to have not vested in the Panchayat, i.e. (i) he must be in cultivating possession of the shamilat deh on the date of commencement of the Act of 1953; (ii) his cultivating possession on such land must be for more than 12 years on such commencement; and (iii) such possession must be without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon. Once the shamilat land is deemed to have been vested in the Panchayat, it can be ordered to be de-vested from the Panchayat, only on the title suit filed by a person, if he establishes the aforesaid three ingredients. In our opinion, the case in hand is not falling in sub-clause (a) of Section 4(1) of the Act of 1961. It falls under sub-section (2) of Section 4. Once the shamilat land is deemed to have vested in the Gram Panchayat, the only exception, where the land can be ordered to be de-vested from the Gram Panchayat, has been provided in clause (ii) of Section 4(3) of the Act. In such a situation, the competent authority, i.e. the Collector u/s 13A of the Act of 1961 and the Assistant Collector 1st Grade under the un-amended Section 13A of the Act of 1961 was not required to take aid of the definition of "shamilat deh" given in Section 2(g) of the Act of 1961. The said definition is to

be looked into in case where the land has not vested in the Panchayat under the shamilat law and not deemed to have vested under the Act of 1961. This definition is to be seen to determine whether the land in question falls under the definition of shamilat deh and vests in the Panchayat under the Act of 1961. A finding has been recorded by the Assistant Collector 1st Grade that the proprietors have failed to establish their possession on the disputed land, therefore, in view of the said finding, the proprietors have clearly failed to bring their case under clause (ii) of Section 4(3), where the land can be de-vested from the Panchayat.

24. Section 2(g) of the Act of 1961 provides some of the eventualities, under which the land can be treated as shamilat deh. These eventualities are contained in clauses (1) to (5). All these clauses are independent of each other. (See : Tel Ram and others v. Gram Sabha Manakpur and others 1976 PLJ 628). If the case falls under one of the clauses, that would be sufficient to bring it within the definition of shamilat deh. The Assistant Collector 1st Grade, while taking into consideration clause (5) of Section 2(g) of the Act of 1961, has determined the nature of the shamilat deh on the presumption that the land, which is recorded as banjar qadim is uncultivable, and in order to assess as to whether the land falls under the definition of shamilat deh, only clause (5) should be looked into. This approach is totally incorrect. In the case in hand, the land in question, which was described in the revenue record as "Shamilat Deh Hasab Rasad Kabja Zamin", clearly falls under clause (1) of Section 2(g) and in order to bring the same within the definition of shamilat deh, no further reference to any other clause is necessary; nor it is to be seen whether the said shamilat deh is being used for the common purpose of the village or not. The said requirement is only with regard to the land, which has been recorded as banjar qadim and if such land is being used for the common purpose of the village, then the same falls under the definition of shamilat deh under clause (5) of Section 2(g) of the Act of 1961. Once the land falls under clause (1) of Section 2(g) of the Act of 1961, then the Court is not required to look into other clauses. If the land falls under any of the clauses i.e. clauses (1) to (5) of Section 2(g), then such land can be held not falling under the definition of "shamilat deh", if it does not fall under any of the exceptions provided in clauses (i) to (ix) of Section 2(g)(5). Exceptions (iii) and (viii) are relevant, where the proprietors can claim that the land in question does not fall under the definition of shamilat deh. Both these exceptions read as under :

shamilat deh" does not include land which -

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

(viii) was shamilat 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 shamilat deh on or before the 26th January, 1950.

Even if these two exceptions are taken into consideration, as per the finding recorded by the Assistant Collector 1st Grade the proprietors have failed to prove their individual cultivating possession as co-sharers on the land in dispute on or before 26th January, 1950, or that the land has been partitioned before 26th January, 1950. The Assistant Collector 1st Grade, while decreeing the title suit vide order dated 21.11.2000, did not consider the issue in light of the above discussion and provisions.

25. The Commissioner, while setting aside the order of the Assistant Collector 1st Grade, has observed that in spite of the fact that the Assistant Collector 1st Grade was aware of the omission of proviso to clause (5) of Section 2(g) of the Act of 1961, he has relied upon the said proviso on the pretext that on the date of filing of the suit, this proviso was in existence. When the matter came before the Assistant Collector 1st Grade to decide the matter afresh, after the remand made by the Collector, which was further upheld by the Commissioner, the proviso to clause (5) of Section 2(g) of the Act of 1961 stood already deleted vide Haryana Amendment Act 9 of 1992. The learned Commissioner, while upholding the remand order passed by the Commissioner, had also observed that while deciding the matter afresh, the Assistant Collector 1st Grade will look into the amended provisions. In spite of that, the Assistant Collector 1st Grade relied upon the aforesaid omitted proviso and came to the conclusion that only 25% of the total cultivable land vests in the Gram Panchayat and the remaining land vests in the proprietors. A contention was raised that the said deletion of the proviso was to be ignored in pending cases. In support of his contention, learned counsel for the proprietors relied upon the Division Bench decision of this Court in Gram Sabha Salina's case (supra) on the ground that the said amendment was not retrospective. In that case, the order passed by the competent authority under the Act of 1961 attained finality. Thereafter, only during the pendency of the writ petition, the proviso to clause (5) of Section 2(g) of the Act of 1961 was deleted and it was observed that the said fact cannot be taken notice in the writ petition, because the order passed by the competent authority had attained finality. However, in the present case, when the Assistant Collector 1st Grade was determining the issue after the remand, he ignored the factum of deletion of the proviso and rather relied upon the same on the pretext that the proviso was in existence on the date of filing of the suit. In our opinion, the learned Commissioner is right while observing that the Assistant Collector 1st Grade has committed grave illegality while deciding the title suit on the basis of the deleted provision to clause (5) of Section 2(g) of the Act of 1961.

25A. The aforesaid discussion highlights that from every angle, decision of the Assistant Collector 1st Grade was totally illegal and contrary to the provisions of the Act of 1961 as well as against the admitted factual position recorded in the revenue record, and the shamilat deh in question was illegally declared to have vested in the proprietors.

26. Now, the question arises as to whether on 21.11.2000, the Assistant

Collector 1st Grade was having any jurisdiction to adjudicate the title on the land in dispute, claimed by the proprietors. On 1.3.1985, the proprietors (predecessors of the petitioners) filed title suit u/s 13A of the Act of 1961 (as it then was) in the court of the Assistant Collector 1st Grade, for adjudication and seeking declaration that the land in dispute is not shamilat deh and does not vest in the Gram Panchayat. When the said suit was filed, the provision of Section 13A of the Act of 1961 was as under :-

13-A. Adjudication - (1) Any person or in the case of a panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property, vested or deemed to have vested in the Panchayat under this Act, may within a period of [five]* years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act 1980, file a suit for adjudication, whether such land or other immovable property is shamilat-deh or not or whether any land or other immovable property or any right, title or interest therein vests or does not vest in Panchayat under this Act, in the court of the Assistant Collector of the first grade having jurisdiction in the area wherein such land or other immovable property is situate. (2) The procedure for deciding the suits filed under sub-section (1), shall be the same as laid down in the CPC 1908.

Substituted for "two" by Haryana Act 15 of 1983 When after the remand by the Collector, the matter was pending before the Assistant Collector 1st Grade for adjudication, the aforesaid Section 13A was omitted vide Haryana Amendment Act 9 of 1992 and later on, vide Haryana Amendment Act 9 of 1999, new Sections 13A and 13AA were inserted. u/s 13AA, title suit could be filed before the Collector, appeal before the Commissioner and revision before the Financial Commissioner. According to new Section 13A, the title suit could have been filed in the Court of the Collector, having jurisdiction in the area wherein such land is situated. The proviso added to this Section further provides that no suit shall lie under this Section in respect of the land or other immovable property which is or has been the subject matter of the proceedings u/s 7 of this Act under which the question of title has been raised and decided or under adjudication.

27. A perusal of the aforesaid amended provision indicates that after the amendment, which came into force on 10.3.1999, only the Collector, having jurisdiction in the area, was having the jurisdiction to adjudicate the issue whether a particular land is shamilat deh or not and whether such land vests in the Gram Panchayat or not. The jurisdiction of the Assistant Collector 1st Grade to decide such issue has been taken away. In that situation, the Assistant Collector 1st Grade, before whom the title suit filed by the proprietors was pending, should have transferred the suit to the court of the Collector, who after the amendment was having the jurisdiction to adjudicate the title suit. But instead of transferring the case to the proper court, which the Assistant Collector

1st Grade could have done by invoking the provision of Order 7 Rule 10-A of the Code of Civil Procedure, the Assistant Collector 1st Grade himself decided the issue on 21.11.2000, which in our opinion was wholly without jurisdiction.

28. An argument has been raised by learned counsel for the petitioner that the aforesaid amendment was not retrospective, therefore, the same should not have been made applicable to the pending title suits before the Assistant Collector 1st Grade. According to the learned counsel, while amending Section 13A of the Act of 1961, the legislature did not make any provision for transferring the pending cases to the proper court of jurisdiction, therefore, the Assistant Collector 1st Grade did not commit any jurisdictional error, while deciding the pending suit. In support of his contention, learned counsel relied upon the following observations made by the Hon''ble Apex Court in Shri Kishan alias Krishan Kumar's case (supra) :-

A suit instituted during the period of exemption could be continued and a decree passed therein could be executed even though the period of exemption came to an end during the pendency of the suit. On a reading of all the provisions of the Act, it is evident that it has not prevented a civil court from adjudicating the rights accrued and the liabilities incurred prior to the date on which the Act became applicable to the building in question. If the legislature had intended to take away the jurisdiction of the civil court to decide a suit which had been validly instituted, it would have been worded differently.

On a careful perusal of the aforesaid judgment, we are of the opinion that the said decision does not support the contention raised by learned counsel for the petitioner. In the said case, u/s 1(3) of the Haryana Urban (Control of Rent and Eviction) Act, 1973, an exemption from operation of the Rent Control Act was granted to new buildings. During the said exemption period, landlord of a new building got the rented premises evicted by filing a civil suit. It was observed that if any such suit is filed within the exemption period, then such suit shall continue, in spite of the fact that the exemption period has expired. The purpose for which the exemption is granted is to encourage construction of new buildings. It was further observed that the purpose of the Act would be defeated if the owner of the building is deprived of his right to get possession of the building unless he gets a decree within a period of ten years from the date of its completion. A proceeding in a civil court for recovery of immovable property could be dragged on by the defendant easily for a period of ten years or more and thereby the tenant can defeat the very purpose of the said exemption. In these facts, the Hon''ble Supreme Court made the above observations. In our opinion, in the present case, the situation is entirely different. After the insertion of Section 13A of the Act of 1961, by Haryana Amendment Act 9 of 1999, the Assistant Collector 1st Grade had ceased to exercise the jurisdiction for adjudicating the question of title raised by a person or the Gram Panchayat and the said jurisdiction has been conferred only on the Collector having jurisdiction in the area. After the amendment, the Assistant Collector 1st Grade was

incompetent to adjudicate the matter and even to continue the title suit filed by the proprietor under the earlier provision of Section 13A. On the basis of the aforesaid judgment, in our opinion, it cannot be laid down that after the amendment, the Assistant Collector 1st Grade was to continue with the pending title suits filed by the proprietors.

29. Learned counsel for the petitioner further relied upon the following observations made by the Hon''ble Supreme Court in Shyam Sunder''s case (supra):

From the aforesaid decisions the legal position that emerges is that when a repeal of an enactment is followed by a fresh legislation, such legislation does not affect the substantive rights of the parties on the date of the suit or adjudication of the suit unless such a legislation is retrospective and a court of appeal cannot take into consideration a new law brought into existence after the judgment appealed from has been rendered because the rights of the parties in an appeal are determined under the law in force on the date of the suit. However, the position in law would be different in the matters which relate to procedural law but so far as substantive rights of parties are concerned, they remain unaffected by the amendment in the enactment. We are, therefore, of the view that where a repeal of provisions of an enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment. We are further of the view that there is a presumption against the retrospective operation of a statute and further a statute is not to be construed to have a greater retrospective operation than its language renders necessary, but an amending Act which affects the procedure is presumed to be retrospective, unless the amending Act provides otherwise.

In the said judgment, provision of Section 15 of the Punjab Pre-emption Act, 1913 was under consideration. By making amendment in the said provision, right of a co-sharer to pre-empt the sale made by the other cosharers was taken away. A question was raised that when appeal of the vendee of the land against the decree in a preemption suit was pending before the appellate court, whether the amendment is to be taken into consideration or not. It was held that though the appeal is continuation of the suit, but the amendment which was prospective in nature could not have affected the vested right of a pre-emptor, particularly when his suit was decreed by the trial court, before coming into force of the amended provision. It was observed that in a suit for pre-emption, the pre-emptor is required to prove his right of pre-emption on three dates, i.e. on the date of sale, date of filing of the suit and the date of decree of the court at the first instance. If before these dates, the vendee improves his status, for example if he gets the land partitioned, then the pre-emptor loses his right to preempt the same, but if the pre-emptor establishes his right of pre-emption on the aforesaid three dates, then the subsequent change in the provisions will not

affect the decree already passed by the first court in favour of the preemptor, because then it will amount to taking away the vested right of a pre-emptor, which cannot be taken away by a prospective statute. In the present case, it is not the right of a party which has been taken away. Rather, it was the jurisdiction of the court, which has been taken away from the Assistant Collector 1st Grade and was conferred on the Court of the Collector. In the case in hand, it has to be seen that on the date of passing of the decree, whether the court was having the jurisdiction in the matter or not. If prior to that, the court loses its jurisdiction to adjudicate the matter, then any order passed in the proceedings shall be deemed to be without jurisdiction. If we take the analogy of the aforesaid case, the amendment made in the Punjab Pre-emption Act, 1913 has been made applicable to the pending pre-empt suits before the first court. All those suits, after the aforesaid amendment, though instituted prior to the amendment, were dismissed, because pre-emptor was to maintain his right to pre-empt on the date of decree also. Therefore, in the present case, on the date of passing of the order, the Assistant Collector 1st Grade was having no jurisdiction to adjudicate the title suit filed by the proprietors. Thus, any decree passed by the Assistant Collector 1st Grade, after the amendment, was a nullity, being without jurisdiction.

30. Learned counsel for the petitioner further relied upon another decision of the Hon'ble Supreme Court in R. Rajagopal Reddy's case (supra). In that case, Section 4(1) of the Benami Transactions (Prohibition) Act, 1988 was under consideration, which provides that no suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall be by or on behalf of a person claiming to be real owner of such property. It was held that Section 4 was prospective in nature and it does not affect the pending litigations. It was observed that when the legislature in its wisdom has not expressly made Section 4 retrospective, then to imply by necessary implication that Section 4 would have retrospective effect and would cover pending litigations filed prior to coming into force of the section would amount to taking a view which would run counter to the legislative scheme and intent projected by various provisions of the said Act. However, it was observed that the express language of Section 4(1) clearly reveals that any right inhering in the real owner in respect of any property held benami would get effaced once Section 4 (1) operated, even if such transaction had been entered into prior to the coming into operation of Section 4 (1), and hence after Section 4(1) applied no suit can lie in respect of such a past benami transaction. To that extent the section may be retrospective.

31. In our opinion, the aforesaid judgment again does not help the petitioner, because in the said case, only the right to institute a suit claiming property as "benami" has been barred. Here, the right of the person to claim title on the shamilat deh has not been barred, but only the jurisdiction of entertaining such suits has been shifted from the court of Assistant Collector 1st Grade to the Court of the Collector, having jurisdiction in the area. The title suit, which was

filed prior to the amendment of Section 13A of the Act of 1961 before the Assistant Collector 1st Grade has been held to be not maintainable after the amendment. The only amendment is that such suit lies in the court of the Collector, having jurisdiction in the area. When the Assistant Collector 1st Grade decided the title suit filed by the proprietors, he had ceased with the jurisdiction to determine such issue. In that eventuality, the Assistant Collector 1st Grade should have transferred the suit to the proper court, for its adjudication, instead of deciding the same himself.

32. In *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and others* 2001(1) R.C.R. (Civil) 168 : (2000)7 Supreme Court Cases 357, provisions of Sections 18 and 31(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, came for consideration. By introducing Section 18, jurisdiction of the civil courts (except the Supreme Court and a High Court exercising jurisdiction under Articles 226 and 227 of the Constitution) was barred to entertain the suit relating to the matters specified in Section 17 of the said Act. By Section 31(1), provisions were made to transfer the pending cases to the Tribunal established under the said Act. While interpreting these provisions, the Hon"ble Supreme Court observed that after coming into force of the said Act, no debt recovery suit filed by a bank can be decided by a civil court. But such suit can be decided only by the Tribunal established under the said Act. It was held that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. If, while a suit is pending, a law like the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 providing that the civil court shall not decide the suit, is passed, the civil court is bound to take judicial notice of the statute and hold that the suit, even after its remand, cannot be disposed of by it. While observing that the provision barring a decree to be passed applied to pending suits and applied at the time the decree was to be passed, made the following observations :

Now, it is well settled that it is the duty of a court, whether it is trying original proceedings or hearing an appeal, to take notice of the change in law affecting pending actions and to give effect to the same. (See G.P. Singh : Interpretation of Statutes, 7th Edn., p. 406) If, while a suit is pending, a law like the 1993 Act that the civil court shall not decide the suit, is passed, the civil court is bound to take judicial notice of the statute and hold that the suit - even after its remand - cannot be disposed of by it.

In some statutes the legislature no doubt says that no suit shall be "entertained" or "instituted" in regard to a particular subject-matter. It has been held by this Court that such a law will not affect pending actions and the law is only prospective. But, the position is different if the law states that after its commencement, no suit shall be "disposed of or "no decree shall be passed" or "no court shall exercise powers or jurisdiction". In this class of cases, the Act applies even to pending proceedings and has to be taken judicial notice of by the

civil courts.

In that case, the principle of purposive construction was applied. This principle applies to a situation when the legislation has an aim. It seeks to obviate some mischief, to supply an inadequacy, to effect a change of policy, to formulate a plan of government. This aim of that policy is to be drawn in the light of the purpose of the said Act. It was observed that the clear purpose of provision of Section 31(1) was that after the Act, no suit by the bank is to be decided by the civil court and all such suits are to be decided by the Tribunal, established under the Act, which can be -achieved by giving the aforesaid interpretation.

33. In the present case also, purpose of amendment in Section 13A of the Act of 1961 was that all title suits should be decided by the Collector, having jurisdiction in the area, and not by the Assistant Collector 1st Grade. By the said amendment, a right to file a title suit was given to any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property, vested or deemed to have vested in the Panchayat under this Act, for adjudication of the dispute whether such land or other immovable property is shamilat-deh or not or whether any land or other immovable property or any right, title or interest therein vests or does not vest in Panchayat under this Act, in the court of the Collector, having jurisdiction in the area. In our opinion, if, after insertion of new Section 13A, the Assistant Collector 1st Grade is permitted to continue with the pending title suit and decide the same, then the very purpose of the amendment would be defeated. Though in the new provision of Section 13A, no provision was made for transfer of the pending cases to the Court of the Collector, having jurisdiction in the area, but under sub-section (2) of Section 13A of the Act of 1961, a specific provision has been made that the procedure for deciding the suits under sub- section (1) shall be the same as laid down in the Code of Civil Procedure. Thus, by taking the help of Order 7 Rule 10-A of the Code of Civil Procedure, the Assistant Collector 1st Grade could have transferred the pending title suits to the court of competent jurisdiction, i.e. the Collector, having jurisdiction in the area, instead of deciding the same himself. But, in the instant case, the Assistant Collector 1st Grade has passed the decree himself on 21.11.2000, when he was having no jurisdiction to decide the title suits. Therefore, in our opinion, the decree dated 21.11.2000 passed by the Assistant Collector 1st Grade was wholly without jurisdiction and a nullity.

34. Even if for the sake of arguments, it is assumed that after the introduction of new Section 13A of the Act of 1961, the Assistant Collector 1st Grade, was competent to pass the order in the pending title suits, even then the Commissioner, in order to protect the shamilat deh, meant for the common purposes of the village, has the power in exercise of his suo motu power u/s 13B(2) of the Act of 1961, to set aside that order of the Assistant Collector 1st

Grade, finding that it was totally illegal and contrary to the provisions of law. In Jagpal Singh and Others Vs. State of Punjab and Others, Recent Apex Judgments (R.A.J.) 519 AIR 2011 SC 1123, the Hon'ble Supreme Court has directed to all the State Governments to prepare schemes for eviction of illegal and unauthorised occupants of shamilat land vesting in the Gram Panchayat which has been illegally occupied by certain persons by using muscle power/money power and in collusion with the officials.

35. Now, the question arising for consideration is as to whether the Commissioner, in exercise of suo motu power u/s 13B(2) of the Act of 1961, was competent to set aside the order dated 21.11.2000 passed by the Assistant Collector 1st Grade, on an application filed by the Social Education and Panchayat Officer. Section 13B reads as under:

13-B. Appeal and revision - (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 subsection (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.

(2) The Commissioner may, suo mom or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit :

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

A perusal of sub-section (2) indicates that the Commissioner may call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of any proceedings or order, and pass such order in relation thereto as he may deem fit, either (i) suo motu; or (ii) on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time. A proviso has also been added to this sub- section to the effect that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

36. An argument has been raised by learned counsel for the petitioner that under sub-section (2) of Section 13B of the Act of 1961, the Commissioner can only entertain the revision either suo motu or on an application made to him by a person aggrieved against the order passed under the proviso to sub- section (1)

of section 7, and not against an order passed by the Assistant Collector 1st Grade u/s 13A of the Act of 1961. Therefore, the order of the Commissioner setting aside the order of the Assistant Collector 1st Grade, in exercise of suo motu power u/s 13B(2) of the Act of 1961 is wholly without jurisdiction. This contention of learned counsel for the petitioner cannot be accepted. If this contention is accepted, then the words "call for the record of any proceedings pending before, or orders passed by, any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order" used in Section 13B(2) will become redundant. It is fundamental principle of interpretation that every word of the statute is to be given meaning. The Court cannot give interpretation to a provision by rendering certain portion or words of the provision as meaningless or redundant. In *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and Another*, it has been held that "It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute". Similar observation was made in *Rao Shiv Bahadur Singh and Another Vs. The State of Vindhya Pradesh*, that "It is incumbent on the court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application". In *The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others*, , it was observed that "the courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the statute should have effect". The Legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons. In the present case, we do not find any reason to give construction to the provision of Section 13B(2) of the Act of 1961, by rendering some portion or words of the provision as meaningless or redundant. Sub-section (2) of Section 13B of the Act of 1961 deals with two types of revisions, firstly on the application made by a person aggrieved against an order passed under the proviso to sub-section (1) of section 7, and secondly, the Commissioner has been given suo motu power to revise or modify any order passed by any authority subordinate to him. The Commissioner has been given wide suo motu power to pass any order in relation to any proceedings or order passed by any authority subordinate to him, as he may deem fit.

37. There are various provisions under the Act of 1961, which authorise the Assistant Collector 1st Grade to adjudicate certain issues. u/s 6 of the Act of 1961, any person aggrieved by an act or decision of a Panchayat u/s 5 (which empower the Gram Panchayat to dispose of the lands vested or deemed to have been vested in Panchayats) may, within thirty days from the date of such act or decision, appeal to the Assistant Collector 1st Grade, who may confirm, reverse or modify the act or decision or make such order as he thinks to be just and proper. Such order of the Assistant Collector 1st Grade shall be final. u/s 10A of the Act of 1961, the Assistant Collector 1st Grade has been again empowered to

cancel or vary sales or leases etc., of lands vested in Panchayats. However, under subsection (7), any order passed by the Assistant Collector 1st Grade under this section is appealable before the Collector, whose decision shall be final. In view of sub-section (2) of Section 13B of the Act of 1961, the Commissioner, in exercise of suo motu power, may also set aside the order passed by the Assistant Collector 1st Grade u/s 6 and the order passed by the Collector under subsection (7) of Section 10A of the Act of 1961.

38-39. It is pertinent to mention here that no limitation has been prescribed for exercising suo motu power by the Commissioner u/s 13B(2) of the Act of 1961. It has been specifically mentioned in this provision that "any time", the Commissioner in exercise of its suo motu power may call for the record of any proceedings pending before, or orders passed by, "any authority subordinate to him" for the purpose of satisfying himself as to the legality or propriety of those proceedings or orders and pass such order in relation thereto as he may deem fit. In *The State of Gujarat Vs. Patil Raghav Natha and Others*, the Hon'ble Supreme Court, while interpreting the power of Commissioner to revise the order made by the subordinate authority u/s 211 of the Bombay Land Revenue Code, 1879, has observed that although there is no period of limitation prescribed u/s 211, but the power of the Commissioner to revise the order passed u/s 65 must be exercised in a reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order, which is being revised. The Hon'ble Supreme Court, in *Loku Ram v. State of Haryana*, 2000(1) R.C.R. (Civil) 141 : 1999 (3) PLR 590, again reiterated the aforesaid principle, while interpreting Section 18 of the Haryana Ceiling on Land Holdings Act, 1972. However, in the facts and circumstances of that case, it was held that the Financial Commissioner, without disclosing any reason, had set aside the order, in exercise of the suo motu revisional power after seven years of the passing of the order. Thus, it is settled principle that the suo motu revisional power can be exercised by the Commissioner within a reasonable time and length of reasonable time must be determined by the facts of the case and the nature of the order, which is being revised. In the facts and circumstances of the present case, particularly keeping in view the nature of the order dated 21.11.2000, passed by the Assistant Collector 1st Grade, which has been set aside by the Commissioner in exercise of its suo motu power, it cannot be said that the Commissioner has exercised its jurisdiction unreasonably, while totally ignoring the length of reasonable time. Here in the present case, the Commissioner, on an application made by the Social Education and Panchayat Officer, Gurgaon, has exercised his suo motu power and called for the record of the title suit filed u/s 13A of the Act of 1961 by the proprietors in the court of the Assistant Collector 1st Grade, Gurgaon, in which order dated 21.11.2000 was passed by the Assistant Collector 1st Grade, and after affording proper opportunity of hearing to the proprietors, the Commissioner has set aside the said order, after coming to the conclusion that the said order was wholly illegal and without jurisdiction. The contention of learned counsel for the petitioner that the Commissioner in

exercise of suo motu power was having no jurisdiction to set aside the order passed by the Assistant Collector 1st Grade, cannot be accepted. Learned counsel for the petitioner argued that under sub-section (1) of Section 13AA of the Act of 1961, any person aggrieved by an order passed under sub-section (1) of Section 13A may, within a period of thirty days from the date of such order, prefer an appeal to the Commissioner and under sub-section (2) of Section 13AA, the suo motu power for setting aside the order passed by the Commissioner has been given to the Financial Commissioner. If the suo motu powers of the Commissioner under subsection (2) of Section 13B and the Financial Officer under subsection (2) of Section 13AA of the Act of 1961 are compared, there is difference between the powers of these two authorities. The Financial Commissioner may, suo motu, call for record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order. He has not been authorised to call for record of any proceedings pending before, or orders passed by, any authority subordinate to him, whereas the Commissioner under subsection (2) of Section 13B has been empowered to call for record of any proceedings pending before, or orders passed by, any authority subordinate to him, and has been further authorised to modify the same, as he may deem fit. Thus, the suo motu power of the Commissioner is much wider than the power of the Financial Commissioner. In the present case, the Commissioner after coming to the conclusion that the Gram Panchayat in connivance with the proprietors and their predecessors has withdrawn the appeal filed against the order of the Assistant Collector 1st Grade and the Assistant Collector 1st Grade, while totally ignoring the deletion of proviso to clause (5) of Section 2(g) of the Act of 1961 and while taking totally unreasonable and illegal view by ignoring the various provisions of the Act of 1961 and also further ignoring the amendment made in Section 13A, has passed a totally illegal order, without any jurisdiction, and declared a big chunk of shamilat deh not to be vesting in the Panchayat, has set aside the order of the Assistant Collector 1st Grade. In our opinion, the Commissioner was fully competent to pass the aforesaid order and in the facts and circumstances of the case, has rightly exercised his suo motu power to set aside the illegal order of the Assistant Collector 1st Grade. Thus, in the glaring facts and circumstances of the case, the Commissioner, within reasonable time, has exercised suo motu power and set aside an illegal and without jurisdiction order passed by the Assistant Collector 1st Grade.

40. It is an undisputed fact that before passing the order dated 4.2.2010, the Commissioner had afforded proper opportunity of hearing to the petitioners. In view of the aforesaid discussion, we do not find any illegality or impropriety in the order dated 4.2.2010 passed by the Commissioner. The Commissioner while holding that the Assistant Collector 1st Grade was having no jurisdiction to adjudicate the title suit filed by the proprietors, has set aside the order dated 21.11.2000 passed by the Assistant Collector 1st Grade, on the ground of jurisdiction, by noticing the illegality in the said order. The Commissioner has

also given liberty to the proprietors, including the petitioners, to file title suit u/s 13A of the Act of 1961 before the Collector, Gurgaon. The petitioner in CWP No. 22709 of 2011 (connected petition) has withdrawn the petition with liberty to file a title suit before the Collector, Gurgaon, in terms of the order passed by the Commissioner, Gurgaon Division, Gurgaon. The petitioners in both these writ petitions are also granted the same liberty. If they file such title suits before the Collector, if so advised, the same are directed to be decided without being influenced by any observation made in this order, in accordance with law, expeditiously, as early as possible, after issuing notice to the necessary parties and hearing them in accordance with the procedure prescribed under the Act of 1961 and the Rules framed thereunder. We hope that the suits will be decided by the Collector within a period of nine months from the date of its filing.

Dismissed with the aforesaid liberty.