

(1973) 06 SHI CK 0009
In the High Court Of Himachal Pradesh
Case No : Civil Suit No. 15 of 1970

Rajkumar Rajinder Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 26-06-1973

Acts Referred:

Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 11, 27, 27(1), 27(2)
Punjab Security of Land Tenures Act, 1953 — Section 2(8)
Specific Relief Act, 1963 — Section 34
Suits Valuation Act, 1887 — Section 8
Civil Procedure Code, 1908 (CPC) — Section 10, 11, 80

Citation : (1973) 2 ILR HP 460

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; B. Sita Ram, General and K.D. Sud, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is a suit filed by Rajkumar Rajinder Singh of Rampur Bushehr and the relief asked for, is, for a declaration that the plaintiff is owner-in-possession of all banjar, abadi, gharat, kohlu and gair mumkin areas comprised in khasra numbers given in the plaint situate in Tehsil Rampur and Tehsil Rohru, that such areas have neither vested nor could vest in the State Government u/s 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act (hereinafter to be referred as the Abolition Act), and that the plaintiff has every right to transfer, alienate or enjoy the disputed land in any manner he likes.

2. It is alleged by the plaintiff that in the revenue records, his ownership is written against these khasra numbers which are unmeasured and hence the area is not given. A writ petition C.W.P. 15 of 1962 was filed by the plaintiff before the Judicial Commissioner wherein he prayed that the disputed land could not vest in the Government u/s 27 of the Abolition Act until and unless compensation was

determined and paid to the plaintiff. The writ petition was allowed by the judicial Commissioner. The defendants who are the State of Himachal Pradesh, the Land Reforms Commissioner and the Collector, went in appeal before the Hon'ble Supreme Court and the decision of the learned Judicial Commissioner was reversed inasmuch as, it was held, that the vesting of the land took place from the date of the enforcement of the Act which is admittedly 26th January, 1955. The Hon'ble Supreme Court, however, remanded the petition to the Delhi High Court (Himachal Bench) at Simla for decision upon the remaining grounds of contentions which were already incorporated in the writ petition. Subsequently the writ petition after remand was put up before T.V.R. Tatachari, J. a learned Judge of that Court. It was considered by the learned Judge on 9-7-1970 that the writ petition involved several questions of fact which could not be effectively decided while the High Court exercised writ jurisdiction. The contending parties, therefore, agreed before the learned Judge that the petitioner would file a regular suit for which four months period was granted by the Court. The respondents waived their right of notice u/s 80 of the Code of Civil Procedure.

3. According to plaintiff, he had transferred parcels of disputed land to several persons. When the transferees asked for mutations in their favour, the defendants intervened and did not permit such mutations. The Land Reforms Commissioner issued instructions to the revenue staff that mutations should not be effected. The plaintiff then filed another writ petition C.W.P. 70 of 1968 wherein he challenged the validity of those instructions issued by the Land Reforms Commissioner. The land under dispute in that writ petition was of the same khasra numbers which are at present under dispute in this suit. On 2-4-1968 and 7-4-1968 a Division Bench of Delhi High Court consisting of I.D. Dua the then Chief Justice and Jagjit Singh, J., made orders based on a certain assurance given by the learned Advocate-General that the instructions issued by the revenue authorities would not be enforced, that the writ petition be withdrawn and that a regular suit be filed by the petitioner-plaintiff. For such a suit, a period was prescribed which extended upto 6-1-1969. The plaintiff had already given a notice u/s 80 CPC and therefore, no observation was made as to the said notice while the learned Judges of the Division Bench made the said orders.

4. The contention of the plaintiff is that in pursuance of Section 27 of the Abolition Act, the Compensation Officer, Mahasu district at Kasumpti, had issued notices to the plaintiff. The objections were filed by the plaintiff and after hearing the parties, the Compensation Officer gave his decision on 12th April, 1966. As a result to that decision, whatever land had vested in the Government was specified and compensation was awarded to the plaintiff. The learned Compensation Officer however, held that a sum of Rs. 1,703.25 was realised by the plaintiff from tenants who had acquired proprietary rights u/s 11 of the Abolition Act and this amount was to be deducted from the total amount of compensation payable to the plaintiff. Against this part of the decision of the learned Compensation Officer the plaintiff went in appeal before the District

Judge, Mahasu. He succeeded in appeal and it was held by the learned District Judge that the excess compensation received by the plaintiff could not be realised from him and as such the deduction made by the learned Compensation Officer was set aside. The State Government came in second appeal before the High Court, and Hardyal Hardy, J., allowing the second appeal held, that the disputed land had vested on the date of the enforcement of the Abolition Act and therefore whatever compensation was realised by the plaintiff from tenants who acquired proprietary rights, was illegal realisation and hence he had to account for the same. Accordingly the decision of the learned Compensation Officer was restored, while the decision of the learned District Judge was set aside. The plaintiff submits that the decision of the learned Compensation Officer in so far as it related to the vesting of land had become final and is res-judicata between the parties. According to plaintiff, the implication of that decision is that the land not covered by the order of the Compensation Officer had not vested in the State Government. The defendants are thus estopped to deny the right and title of the plaintiff for the disputed land which was not the subject-matter of the order made by the Compensation Officer.

5. The plaintiff had also received a letter on 25th August, 1964, from defendant No. 3 who is the Land Reforms Commissioner, which stated, inter alia, that the Government was yet deciding about the waste, ghasni and banjar lands, and proceedings of vestment of such lands u/s 27 were stayed and the process of implementation of the said provisions of the Act to that extent was to be stopped. According to plaintiff, such a category of land which is banjar, gharat, kohlu, abadi and gair mumkin is not covered by the definition of "land" as given in the Abolition Act. As such the disputed land which falls in this category has not vested in the State Government. The contention of the plaintiff is that vestment u/s 27 relates only to such land which is with the tenants. The decision of the Compensation Officer related to tenancy land and that was end of the matter. The defendants have no right to re-open the matter and the disputed land cannot be deemed vested in the State Government. Although the notice u/s 80 CPC was waived, yet such a notice was given by the plaintiff and relief could be granted to him.

6. According to plaintiff, a part of the disputed land has been acquired by the State Government under the provisions of the Land Acquisition Act. Compensation under that Act has been received by the plaintiff. A part of disputed land has also been acquired for the construction of Sarahan-Dharanghati road and compensation was payable to the plaintiff.

7. It is, therefore, prayed that a declaration be given that the plaintiff is owner-in-possession of the disputed land. The land has not vested in the State Government u/s 27 of the Abolition Act. The plaintiff being absolute owner is at liberty to enjoy, transfer or alienate such land, and any instructions issued by the State Government to the contrary are wrong, illegal, void and ineffective.

8. All the defendants have contested and their defence is that the disputed land

is no doubt "land" as defined in the Abolition Act and the entire of it has vested in the State Government u/s 27. It is denied that the plaintiff is in possession over such lands. In fact, the disputed land was required to be in the "personal cultivation" of the plaintiff so that it could be exempted from vestment. Since the disputed land could not be in the personal cultivation of the plaintiff, the exemption laid down in the Abolition Act did not apply. It is contended that the plaintiff being out of possession could not file a suit for mere declaration. As such the suit is not properly valued for purposes of court-fee and also of jurisdiction. It is submitted that the present suit has been filed against the directions of the High Court. It is time-barred as it has not been filed within the dates prescribed by the two orders of the High Court, one under the C.W.P. 15 of 1962 and the other under C.W.P. 70 of 1968. A notice u/s 80 CPC was also required and the suit is defective on this account. The previous writ petition C.W.P. 15 of 1962 related to land situated in village Sainji of Tehsil Rohru. The present suit deals with other lands, besides the land situated in Sainji. Therefore, the order of the High Court made on 9-7-1970 whereby the requirement of notice u/s 80 was waived, could not relate to such other land to which the present suit relates.

9. According to defendants, the order of the Compensation Officer related to tenancy lands and out of the total area of the land for which compensation has been awarded, 398-5 bighas of land has again been included in the suit which the plaintiff cannot do, as he has already received compensation for it. As such, according to defendants, the plaintiff is estopped to file his suit to that extent. The defendants have shown this area in Annexure-I appended to the written statement. It is contended that full particulars have not been given. Neither areas are specified, nor land revenue is mentioned. It is not stated in which particular khasra number gharats, kohlu, abadi and gair mumkin passages etc. exist. The plaint being vague deserves rejection. Since the plaintiff has transferred a part of the disputed land to third parties and they have not been impleaded, the suit according to defendants is bad for non-joinder of necessary parties. Similarly land specified in Annexure-II of the written statement was also included in the claim made before the Compensation Officer and compensation was paid to the plaintiff. As such the suit is barred on ground of estoppel for this part of land as well. As regards the land acquired by the defendants under the Land Acquisition Act, which is specified in Annexure-V of the written statement, it is contended that proceedings of acquisition were initiated under a bona fide mistake. Whatever compensation has been paid to the plaintiff shall now be realised from him. For compensation which according to plaintiff is payable to him for the land acquired for the construction of Sarahan-Dharanghati road, it is contended that the payment has been detained as the plaintiff is not entitled to receive such payment. The suit deserves to be stayed u/s 10, CPC on this ground.

10. The Compensation Officer, contend the defendants, never decided about the disputed land which was not under tenancy. As such the said decision cannot be res judicata between the parties. Only such land which was in "personal cultivation" of the plaintiff was exempt from vestment. The disputed land could

not be in "personal cultivation" of the plaintiff. As such the same has vested in the State Government with effect from 26th January, 1955, which is the date of the enforcement of the Act. According to defendants, the disputed land is very much "land" as defined in the Abolition Act. The said definition is sufficiently wide to cover up pastures and ghasnis. Banjar or gair mumkin land cannot but be pasture land or ghasni and hence it was covered under the Act for vestment. According to Section 27 of the Abolition Act, the entire land of a landowner paying annual rent revenue which exceeds Rs. 125 per year is vested and no part of it is left out. It is wrong to state that the said Section relates to only tenancy lands and does not relate to lands not occupied by tenants. It is also wrong to contend that of such a landowner, only that portion of the land which is in excess of the quantity paying land revenue of Rs. 125 is vested and the remaining is left out.

11. It is, therefore, contended that the suit deserves dismissal, with costs to the defendants.

12. Upon the pleadings of the parties, the following issues arose for decision:

(1) Whether the plaintiff is the owner-in-possession of the land in dispute? Has not the disputed land, in whole or in part, vested in the State Government?

(2) Whether a part of the property in dispute, as alleged by the plaintiff, is not "land" as defined in the Himachal Pradesh Abolition of Big Landed Estates and Laud Reforms Act? If so, its effect?

(3) Has a valid notice u/s 80 CPC been served on the defendants? If not, its effect?

(4) Have the defendants waived the requirement of a notice u/s 80 Code of Civil Procedure?

(5) Have the defendants no right to reopen the matter on principle of res judicata? Are the defendants estopped from questioning the ownership of the disputed land?

(6) Is the suit for declaration not competent, as alleged by the defendants?

(7) Is the court-fee paid insufficient? Has the property been valued incorrectly?

(8) Is the suit bad for non-joinder of necessary parties?

(9) Is the suit not within time, as alleged?

(10) Is the suit liable to be stayed u/s 10 of the Code of Civil Procedure?

(11) Has the decision dated 12-1-1960 of the Compensation Officer in case No. 205/05 become final? If so, is the plaintiff barred on principle of res judicata to file the present suit?

(12) Has the plaintiff received compensation in respect of part of the area in

dispute, as alleged? Is the plaintiff estopped from filing the suit in respect of such area?

(13) Has the plaintiff no locus standi to file the suit in respect of khasra numbers stated in Annexure (IV) of the written statement, as alleged, and also because he has included in the suit, property other than that involved in the C.W.P. 15 of 1962?

(14) Has some area in dispute been already acquired under the provisions of the Land Acquisition Act and compensation has been paid in lieu thereof? If so, its effect?

(15) Is the plaintiff estopped from filing the suit because of the time lag provided by the decision dated 7-10-1968 in C.W.P. 70 of 1968? Has the plaintiff waived his right to file the suit on that account?

(16) Is the plaintiff entitled to the relief?s claimed?

FINDINGS

Issues No. 1 and 2:

13. The contention of the plaintiff has been that the disputed land which is of the description of banjar, abadi, gharat, kohlu and gair mumkin could not be "land" as defined in the Abolition Act. As such, submits the plaintiff, the disputed land has not vested in the State Government. The definition of land as given in the Abolition Act is in the following terms:

land means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes--

- (a) the sites of buildings and other structures on such land,
- (b) orchards,
- (c) ghasnis.

14. It is evident from the above noted definition that the land which is occupied or has been let for agricultural purpose or purposes subservient to agriculture and is not situate in a town or village would ordinarily be "land". Besides this the definition enlarges its scope by including in it pastures, sites of buildings and other structures on such land, orchards and ghasnis. It is then to be seen if the land of the description pointed out by the plaintiff, is covered by the definition. The entries to be found in the Jamabandis and other revenue papers produced by the plaintiff are "banjar qudim, khandhar gair mumkin, bauri gair mumkin, abadi gair mumkin, sarak gair mumkin, pathar gair mumkin, makan gair mumkin, mandir gair mumkin, khad gair mumkin and dhank gair mumkin". Most of the lands are of course banjar qudim and a decision is naturally required for the interpretation of these words. According to the plaintiff the land which lies fallow for four years or more is denoted in the revenue record as banjar qudim. From

this it cannot be inferred that the land is entirely incapable of cultivation. It can be broken and converted into arable land. The State Government has been giving Nautor grants out of it for which they have executive rules. In the definition of "land" pastures and ghasnis have been included. Most of the areas of banjar qudim contain grass which is fodder for cattle. The site itself is either pasture or ghasni. As such prima facie banjar qudim, if it is in the shape of pasture or ghasni, is included in the land.

15. The plaintiff's witness Salig Ram (P.W. 3) who is Sadar Kanungo of Tehsil jubbal and knows about these lands since 1942, stated, that banjar is the word used for "charand, jungle or ghasni". Similarly Surat Ram Jhingta (P.W. 4) the general attorney of the plaintiff, stated, that a tenant was never settled on any part of the disputed land and that jungle existed over it. The plaintiff used to cut the grass and dispose it off by sale etc. In cross-examination he further stated that in banjar land, jungle, ghasni and pasture are included. Similarly in banjar area grass grows and even forest exists in Bushehr State to which the suit relates. With these statements it is not difficult to hold that banjar qudim included pastures and ghasnis. The grass and other shrubs used to grow. These were natural produce and the plaintiff sold such produce. Thus banjar qudim was land and as such did vest in the State Government.

16. It is contended on behalf of the defendants, that tilling of grass is a purpose subservient to agriculture. Apart from this, growing of grass is in itself an agricultural purpose. As stated before, this controversy may not be very material, because pasture and ghasni are included in the definition. All the same, it may be held that growing of grass is an agricultural purpose or at any rate a purpose subservient to agriculture. It is clear that cattle are mostly utilised in ploughing. They are fed upon the grass which grows on banjar. The cattle of the village do utilise the pastures or ghasnis for grazing. In Stroud's Judicial Dictionary (3rd Edition) at page 104 where agriculture was defined with reference to Corn Production Acts (Repeal) Act, 1921, the following observation is made:

agriculture includes dairy farming and the use of land as grazing, meadow, or pasture land, or orchard, or other land, or for market gardens or nursery grounds, but not woodland or woodland nurseries, and the expression "agricultural" is to be construed accordingly.

The plaintiff has not alleged that forest or woodland as understood in the Indian Forest Act is included in the disputed land. The land is rather used for grazing, meadow or pasture and is thus included in the agricultural purpose. Crop is divided into two categories, fructus naturales and fructus industriales. The former is crop produced by the power of nature alone. It is a part of the soil, including any plant which is of perennial roots, such as trees, shrubs and grass (Corpus Juris Secundum, Volume 25). The grass which is produced by the power of nature would thus be a crop and the land which contains grass would be pasture or ghasni.

17. Therefore, the land comprising banjar qudim was included in the definition of land for vestment u/s 27 Regarding the other categories of land, namely, abadi, gharat, kohlu, mandir, makan or bauri if these structures have existed on the sites which are occupied or let for agricultural purpose or for purposes subservient to agriculture, they would not be land by themselves but the sites on which these structures exist would be land as defined in the Abolition Act. It is evident that mandir and bauri if dedicated would not belong to any person. Regarding other buildings and structures they would belong to the persons who have constructed them. There is absolutely no evidence on behalf of the plaintiff that he constructed any of these buildings or structures. As such he cannot be held the owner thereof. As to the "Rasta", it must be utilised by persons residing in the village. The plaintiff has not given any evidence to claim exclusive ownership of any such "Rasta". The mere entry in the revenue papers would be of no avail. Some evidence was required to be given, to indicate as to where the "Rasta" existed and as to whether it was in the exclusive possession of the plaintiff. Failing such evidence the plaintiff cannot be granted relief in respect of "Rasta" land. Besides this, the order of the Compensation Officer referred to such buildings and structures and the plaintiff has been granted the relief by that order. A declaration is not required to be given in this suit.

18. As to the "pathar" and "khad" entries, the same would not be land, but again the difficulty is that the plaintiff has not specified as to how much land is "pathar" and "khad" and where does it exist. He has not essentially based his claim on such a category of land. In the plaint a proper detail has not been given and hence no relief of declaration can be granted for any "pathar" or "khad" area.

19. It has been held by a learned Judge of Delhi High Court (Himachal Bench) in Maharani Kam Sundary v. The State of Himachal Pradesh 1971 H.L.R. 35 that the site of a building howsoever large in size it may be, would be land if such a site is part of the adjoining land which is occupied or let out for agricultural purposes. In the present case the plaintiff has not given details as to where these buildings and structures existed and, therefore, it is difficult to hold as to whether the site underneath can be considered to be land or not.

20. The phrase "gair mumkin" will certainly indicate that the land is not utilised for cultivation and the other entries besides "banjar qudim" which relate to buildings, structures, rasta, khad etc., have been denoted as "gair mumkin" area. As I have stated above the plaintiff has essentially referred to "banjar qudim" area. It is held that this area is covered by "ghasni" and pasture. As such it would be land as defined in the Abolition Act.

21. The other contention of the plaintiff is that he has been shown in possession of "banjar kudim" and other disputed lands. As such, the land should be considered exempted from investment under Sub-section 2 of Section 27. Section 27 so far as it is relevant need now be quoted:

27. (1) Notwithstanding anything contained in the foregoing provisions of this

Chapter, a landowner who holds land, the annual land revenue of which exceeds Rs. 125 per year, the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free from all encumbrances.

(2) Nothing contained in Sub-section (1) shall apply in respect of such land which is under the personal cultivation of the landowner.

(3)....

(4) The right, title and interest of landowner acquired under Sub-section (1) or (2) shall be transferred by the State Government on the payment of compensation in accordance with Schedule I to such tenant who cultivates such land.

(5) The State Government shall give rehabilitation grant according to the rules framed under this Act, to such small landowner whose right, title and interest have been extinguished and who does not have any other means of livelihood.

22. In order to succeed in his plea the plaintiff has to prove that he was in "personal cultivation" of such land. The word "cultivation" has not been defined in the Act. It should, therefore, be understood in its natural meaning. As I have stated before, the plants which have perennial roots, trees, shrubs and grass are included in crop. If one raises such crop, he naturally cultivates the land for the specified purpose. In *Corpus Juris Secundum*, Volume 25, the purposes of cultivation have been explained. In the present tense "cultivate" has been defined as to improve the product of the earth by manual industry; management and improvement in husbandry; to till, or husband the ground to forward the product of the earth, by general industry; to till, prepare for crops, manure, plough, dress, sow and reap. It is, therefore, essential that in order to cultivate some act or purpose which involves primarily the improvement of the crop is required to be indicated. It has been stated cultivation will include good management and care, and usually, but not always, implies the planting of annual crops. The harvesting of such crops as perennial grass has also been held to be cultivation of land. With these ideas which we get from the learned author (*ibid*) it is not difficult to hold that the grass would be a crop but in order to cultivate such grass some manual or physical labour is required. In the instant case the grass of pasture and ghasni was of natural growth. If the plaintiff adopted any physical process even to safeguard such crop he would be held to be cultivating it. If he proves that he has fenced the ground, has watered the grass or has protected it from the animals, he could be stated to be personally cultivating it. If he leaves the land as such and goes at the end of the season to cut the grass or sells it to others, he cannot be said to be cultivating the land. Therefore, in order to have the personal cultivation of such grass, shrubs or trees growing on ghasnis and pastures, some manual labour was required to be done at the instance of the plaintiff. There is no iota of evidence for such manual labour which the plaintiff or his servants might have been doing. As such it is

difficult to hold that these pasture land or ghasni were in the personal cultivation of the plaintiff, in *Kisanlal Ratanlal Daphtary Vs. Janmejaya Chhabildas and Others*, it is held that the flowers and grass are as much the produce of the soil as rice, and the upkeep of a garden or a grass lawn is cultivation. It is more than clear that the upkeep of grass lawn necessarily means employment of labour in some form or the other. There is no evidence that the plaintiff ever employed such labour. In *Sri Athmanathaswami Devasthanam Vs. K. Gopalaswami Aiyangar*, their Lordships considered the case of lands covered with shrubs and jungle. Waste lands covered with shrubs, jungle and the like cannot be held to be uncultivable merely on that account. Such a land can be brought under cultivation unless undue expenditure of money and labour is required to cultivate "banjar qudim". Apart from this, as stilted by the plaintiff's own witnesses, "banjar qudim" includes pasture land and ghasni. Such a category of land is covered in the definition and such a land can only escape vestment if it is under the personal cultivation of the landowner. The plaintiff has not even pleaded, much less proved, such personal cultivation.

23. The learned Counsel for the plaintiff relied upon three decisions of the Punjab High Court: *Rajinder Prashad and Anr. v. The Punjab State and Ors.* ILR 1966 (2) Pun 38; *Raj Mal and Ors v. The Financial Commissioner Haryana and Ors.* 1970 PLJ 367 and *Jindu Ram v. State of Punjab (now Haryana State)* 1971 CriLJ 817. In all these decisions it has been held that land as defined in Section 2(8) of the Punjab Security of Land Tenures Act, 1953, does not include "banjar qudim" or "gair mumkin" land.

The definition so provided in that Act is different from the definition provided in the Abolition Act. In our Act, the definition of land is more enlarged and decidedly embraces "ghasni" which is another name for "banjar" and grass usually grows on "ghasni". Therefore, these decisions will be of no help to the plaintiff. For the purpose of the Punjab Act "banjar qudim" might not be included in the area under self-cultivation of the landowner. But the Abolition Act is a statute to extinguish zamindari rights and big landed estates. "Banjar qudim" is a part of such big landed estates. For the purpose of vestment under the Abolition Act, such vast tracts of land have been included. That is why the definition has been enlarged and besides pasture land ghasnis have also been included. "Therefore, the purpose and scope of the Punjab Security of Land Tenures Act is different than that of the Abolition Act.

24. In order to lend support to his argument the learned Advocate-General also cited *Chengarath Velu v. Executive Officer Erumayur Panchayat Alathur and Anr* AIR 1968 Kerala 41. It is observed by the learned Judges that agriculture connotes the raising of useful or valuable products deriving nutriment from the soil. Webster calls it the "science or art of cultivating the ground". "The employment of human skill and labour is its distinguishing feature and an agriculturist is he who by himself or by his servants earns his livelihood, wholly or principally, by the pursuit of agriculture. Applying this test to the plaintiff it is

difficult to hold that he is employing human skill or labour in raising or producing grass on pasture land or ghasni. Therefore, the disputed area would no doubt be the land but it cannot be held to be in his personal cultivation. It is also contended on behalf of the plaintiff that only tenancy lands have vested under the Abolition Act. Such an argument was repelled in *Union of India v. Dinesh Kumar* 1968 DLT 419, Full Bench decision which dealt with Section 27 of the Abolition Act. It has been held that where the annual land revenue of the landed holding of a landowner exceeds Rs. 125 per year his entire landed holding is to be deemed automatically to have been transferred and vested in the State Government free from all encumbrances. Upon the language of the statute and for the reasons employed to support the enactment of the statute, it was held by the learned Judges that the conditions being satisfied of the landed holding of a landowner the land revenue of which is Rs. 125 or more his entire land is vested and not the excess part over and above the quantity of land to which the said land revenue is ascribed. This decision of the Full Bench is a complete answer to the contention of the plaintiff.

25. In this view of the matter I hold, that the land in dispute is decidedly land as defined in the Abolition Act and the plaintiff not being in personal cultivation of such land, the entire of it has vested in the State Government u/s 27 of the Act. The two issues are thus decided against the plaintiff.

Issues No. 5, 11 and 12:

26. Both the parties seem to have relied upon the order of the Compensation Officer, dated 12-4-1966 (Ex.P. 3). As a result to vestment u/s 27, proceedings were initiated before the Compensation Officer. It is, however, admitted on all hands, that the order of the Compensation Officer dealt with tenancy lands. In that order no decision was given for the disputed land which is of the category of "banjar qudim", "abadi", "gharat", "kohlu" and "gair mumkin". The plaintiff's contention is that the order of the Compensation Officer is res-judicata between the parties. According to him, in that order whatever land had vested in the State Government has been described. As nothing beyond that order exists which has vested, therefore, the disputed land should necessarily be excluded from vestment. This is a totally faulty reasoning. It is plaintiff's own case that he had transferred some of the lands out of the disputed area and the defendants have set down such khasra numbers in Annexure-IV. According to plaintiff, on 25th August, 1964, instructions were issued by the Land Reforms Commissioner that vestment proceedings regarding waste "ghasni" or "banjar" lands should be suspended. The letters Exs. P. 1 and P. 2 are filed in that connection. There was some confusion with the Government as to the vestment of "banjar", "ghasni" etc. and that is why these instructions were issued. Therefore, it is evident, "banjar", "ghasni" lands were not included in the order of the Compensation Officer. With respect to that category of land, the Government was to arrive at a final decision. The plaintiff has further averred that he addressed numerous representations to the Deputy Commissioner, Land Reforms Commissioner and

even to the Chief Minister, but he was not conveyed any final decision as to the vestment of "banjar", "ghasni" lands. From all this, it is clear that the disputed land was not the subject-matter of the order of the Compensation Officer. It is elementary principle of res judicata u/s 11 of the CPC that a matter which was not directly and substantially in issue in the former proceedings can never be res judicata in a subsequent proceeding relating to that subject-matter. Therefore, the order of the Compensation Officer, which admittedly decided about tenancy lands, could not be res judicata for the present suit.

27. The defendants have availed of that order by submitting, that the plaintiff has comprised in the disputed land certain area which was with tenants and for which compensation was already awarded in the said order and to that extent he is estopped from filing the suit. In this connection, the defendants averred that 398-5 bighas of land set down in Annexure-I of the written statement was the subject-matter of that order of the Compensation Officer. Similarly the khasra numbers specified in Annexure-II were also subject-matter of decision of the Compensation Officer. As such the land comprising Annexures I and II was already decided upon and compensation was paid for such land. The present suit is barred to that extent and could not be re-opened. The plea is decidedly sustainable because it has been stated by Shri H.S Thakur Advocate for the plaintiff on 4-1-1973 that the plaintiff would admit the contents of Annexure I to V submitted by the defendants along with their written statements. The very title of Annexures I and II indicates that the land denoted in these annexures is of the category for which compensation was already determined. Admittedly this determination of compensation took place in the order" of the Compensation Officer dated 12-4-1966 and under no other order. The plaintiff had, of course, denied in his replication in respect of areas of village Gaura, Rohru and Chirgaon that any compensation was paid for such area because, according to him, the same was unmeasured and was covered within the province of the land in dispute. However, as stated above, his learned Counsel on a subsequent date admitted the correctness of Annexure-II which contains such areas. In this manner, he traversed his previous pleading and by his admission of Annexures I and II it is proved that the suit was wrongly filed for the khasra numbers specified in these two annexures. To this extent the present suit was decidedly barred and estoppel by res judicata arose between the parties.

These issues are, therefore, decided against the plaintiff.

Issues No. 3 and 4:

28. Regarding the notice u/s 80 Code of Civil Procedure, it is manifest, such a notice was waived as a result to the order of Tatachari, j. dated 9-7-1970. When the subsequent writ petition was filed and the Division Bench made its order on 7-10-1968 and granted time up to 6-1-1969 to file a suit, nothing was mentioned about the notice u/s 80. The reason was that such a notice was already given and a copy of such notice has been filed Ex. P. 47. The postal receipts and acknowledgements are Exs. P. 48 to P. 53. Therefore, a proper notice u/s 80 CPC

has been given and the suit is not defective on that account.

Both the issues are decided in favour of the plaintiff.

Issue No. 6:

29. The present suit has been filed for a declaration that the plaintiff is owner-in-possession of the disputed land. It is no doubt true that revenue entries exist in favour of the plaintiff, but he is not in actual physical possession. I have already held above that the disputed land is not in "personal cultivation" of the plaintiff. It cannot be disputed that the land in suit had vested on the date of enforcement of the Act. The vesting was automatic on that date. The plaintiff was thus out of possession and a suit for a mere declaration was not maintainable and was barred u/s 34 of the Specific Relief Act, 1963.

The issue is decided against the plaintiff. Issue No. 7:

30. It has been stated by the learned Advocate-General that the plaintiff has asked for three declarations: that he is owner-in-possession, that the land has not vested in the State Government, and that the instructions issued by the State Government are wrong, illegal, void and ineffective. Therefore, the learned Counsel submits, that the plaintiff should pay court-fee for three declarations. Besides this, he further submits that the valuation for jurisdiction has been put at Rs. 60,000 which was an arbitrary fixation of valuation. Perhaps the plaintiff wanted to invoke the jurisdiction of High Court and therefore he has put this valuation.

31. The so-called three declarations really emerge from one and the same declaration, namely, that the plaintiff is owner-in-possession and the property has not vested in the State Government. When several reliefs of declaration are so inter-dependent that one declaration necessarily emerges from the other, all reliefs can be considered conjointly for purpose of court-fee. In my opinion, therefore, a single court-fee was payable and (the suit is not defective on that account. u/s 8 of the Suits Valuation Act, 1887, the suit should be valued as fixed by the plaintiff in the plaint. The market value has been considered by the plaintiff to be Rs. 60,000 which appears to be reasonable, and as such the suit cannot be considered to have been inflated as to value for jurisdiction.

The issue is, therefore, decided in favour of the plaintiff.

Issues No. 8 and 13:

32. It has been contended by the defendants that the land mentioned in Annexure-IV of the written statement, has been transferred to third parties. As such these third parties were necessary to be impleaded. I do not think the plea is sustainable. In the present suit the title of the plaintiff is in dispute. His successors-in-interest succeed or fail according to his title. Therefore, these successors-in-interest were not necessary parties. The point under dispute between the plaintiff and the defendants could easily be decided without

impleading them. As such the suit is not bad for non-joinder of necessary parties.

33. With reference to Annexure-IV, it is further submitted by the defendants that the plaintiff has no locus standi to file the suit for these khasra numbers. He has transferred the land to third parties and as such he has ceased any title in respect thereof. It is also contended that in C.W.P. 15 of 1962, the land situate in village Sainji was under dispute. The present suit has been filed in respect of other land as well. The High Court had permitted the plaintiff to file suit for Sainji land and so the present suit is barred.

34. All such picas are not sustainable, because the order of the High Court did not enjoin the plaintiff not to file the suit in respect of such other land for which he may have a grievance. It is true that the land covered under the writ petition was to be the subject-matter of a regular suit. If the plaintiff chose to include some other land for which a cloud for title existed, he was justified to do so and there was no legal prohibition to bring such a suit. As to the lands transferred by the plaintiff, it is true that he should have lost his title, but in view of my finding above the plaintiff himself did not possess any title and so he could not pass on any title to others. Therefore, the suit was rightly brought against the entire land so that once for all the title of the plaintiff was cleared.

Both the issues are, therefore, decided in favour of the plaintiff.

Issues No. 9 and 15:

35. It is contended by the defendants that the suit is time barred because of the time lag given by the High Court under the two orders made in the writ petitions. On 9-7-1970 Tatachari J. enjoined that the suit should be filed within four months. Similarly on 7-10-1968 the Division Bench enjoined that the suit should be filed by 6-1-1969. In my opinion, it cannot be spelt out from the two orders made by the High Court that the plaintiff was debarred from filing a suit if he chose to do so on a date beyond the prescribed period. The writ petitions were filed because the plaintiff had his grievance against the executive instructions issued by the Government and against the cloud cast upon his title by certain overt acts committed by the Government. If the plaintiff did not choose to file his suit earlier he suffered the risk of the executive intruding upon his title. In fact, the order dated 7-10-1968 of the Division Bench (Ex. P. 46) indicated that if the suit was not instituted by 6-1-1969 the State Government was free to proceed in accordance with law against the plaintiff notwithstanding the directions of the Court contained in its order dated 2-4-1968. These directions decidedly pertained to the executive instructions issued by the Government whereby the mutations were not effected in favour of the transferees of the plaintiff. Therefore, the effect of non-compliance of time lag in the institution of the suit was that the executive instructions of the Government were to remain valid and mutations were not to be effected. Only to this extent the plaintiff was prejudiced and he was not further debarred from filing the suit after the expiry of time lag. I am not, therefore, persuaded to exalt the order of the High Court into a rule of

limitation.

36. As to the land in dispute which is banjar ghasni etc., the State Government had itself stayed the implementation of vestment by prohibiting necessary revenue entries. This is clear from the correspondence exchanged between the plaintiff and the Government" (Kxs. P. 54 to P. 60) and the Government made in the plaint that in 1964 instructions to that effect were issued by the Government. Therefore, the process was already continuing and the representations of the plaintiff were not finally replied. He had filed two writ petitions, one in 1962 and the other in 1968, which too remained infructuous to this extent that regular suits were directed to be instituted. Therefore, the relief now claimed by the plaintiff cannot be considered to be time barred. It could not be stated with reference to any pointed date that the Government had refused to acknowledge the title of the plaintiff.

37. For the reasons stated above, the plaintiff cannot be considered to be estopped from filing the suit because of any time lag provided by the orders of the High Court. Nor can it be stated that the plaintiff has waived his right to file the suit on any such ground.

Both the issues are, therefore, decided in favour of the plaintiff.

Issue No. 11:

38. The plea of the defendants is that the plaintiff has already been paid compensation for the land contained in Annexure-V, while an award for compensation has been made for the land contained in Annexure-III. The latter acquisition was for construction of Sarahan-Dharanghati road. As to the former acquisition by the P.W.D., although compensation has been paid, yet according to defendants it was done under a bonafide mistake. The defendants are taking proceedings to recover back such compensation. The plaintiff has naturally filed the present suit to defend his title. His suit cannot be defeated merely on the ground that he had received the compensation.

39. As to the land specified in Annexure-III a statement has been given by the plaintiff in O.M.P. 3 of 1973 that, he would withdraw his claim in respect of these khasra numbers. A civil writ petition 4 of 1970 was filed by the plaintiff wherein he challenged the order of the State Government withholding payment of such compensation. With reference to the order of the Court made in that writ petition, the plaintiff made a request in O.M.P. 3 of 1973 withdrawing his suit so far as these khasra numbers are concerned. "Therefore, the plaintiff's suit cannot fail for any such reason.

The issue is, therefore, decided in favour of the plaintiff.

Issue No. 10:

40. The learned Advocate-General stated at the time of arguments that he would not press this issue against the plaintiff. Even, otherwise, no ground exists for

staying the suit u/s 10 of the Code of Civil Procedure.

The issue is decided in favour of the plaintiff.

Issue No. 16:

41. In view of my decision given above for respective issues, the relief of declaration cannot be granted. The disputed land has automatically vested in the State Government u/s 27 on 26th January, 1955, when the Abolition Act came into force. As such the plaintiff is not the owner of such land. Since the plaintiff has not proved his "personal cultivation" for such land, the same is not exempt from vestment under Sub-section (2) of Section 27. "The executive instructions issued by the defendants, for this reason, cannot be considered to be wrong or illegal. The plaintiff is not entitled to any relief.

ORDER

42. The suit is dismissed, with costs.