

(1971) 12 MP CK 0022
In the Madhya Pradesh High Court
Case No : L.P.A. No. 5 of 1968

Ram Singh

APPELLANT

Vs

Shankarlal

RESPONDENT

Date of Decision : 02-12-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 47, 51, 61, 73(3)
Madhya Pradesh General Clauses Act, 1957 — Section 5
Madhya Pradesh Land Revenue Code, 1959 — Section 108, 147, 157, 165, 165(7)

Citation : (1972) MPLJ 405

Hon'ble Judges : S.R. Vyas, J; S.P. Bahrgava, J; S.B. Sen, J; G.L. Oza, J

Bench : Full Bench

Advocate : S.D. Sanghi, for the Appellant; G.M. Chaphekar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sen, J.

The facts out of which this Letters Patent appeal has arisen are not very much in dispute, Shankarlal held a decree for money against Ramsingh. In execution of the decree he attached certain agricultural holdings held by the said Ramsingh in bhumiswami rights in village Kalani Tahsil Indore. Three of the holdings were put to sale one by one. The decree holder was allowed to bid with the leave of the Court. The sale prices in respect of the lands are respectively given below :

Survey No.

Area.

Sale price.

128

19

00

137

63

00

138

89

00

The sale was finally knocked down in favour of the decree-holder. The bids were accepted on that date. He was given an exemption under Order 21, Rule 84, Civil Procedure Code, dispensing with the deposit of 25 percent on the amount of the purchase money.

The dispute has now arisen on account of the decree holder not depositing within 15 days the balance of the purchase money, that is to say before the end of the Court hours of the 26th October, 1965. He, however deposited the amount of Rs. 3437. 55 in Court on 7-4-1967. On the date of the order of confirmation on 18-4-1967 Ramsingh filed an application in the executing Court challenging the sales on the ground of non-compliance of the provisions of Order 21, Rule 85 CPC and also for contravention of section 165(7) of the M. P. Land Revenue Code. The executing Court disallowed the objections on the ground that they did not fall within the purview of either section 47 or 151 CPC and that Order 21, Rule 90 CPC also could be of no avail as the sale had already been confirmed. The appellant preferred an appeal to the High Court. The single Judge who heard the appeal dismissed the same. The judgment-debtor has now filed this Letters Patent appeal.

Two questions have been raised before us. They were also raised before the single Judge. They are : (1) whether a sale can be challenged after its confirmation on the ground that the amount payable by the auction purchaser had not been deposited within 15 days from the bid though the judgment-debtor have not made any prayer in that behalf for a long time and (2) whether an area of 10 acres should have been exempted from each of the plot numbers of agricultural land sold in the auction inspite of the fact that this point was not taken at any stage before the sale.

It was urged by the judgment-debtor that in view of the non-compliance of Order 21, Rule 85, Civil Procedure Code, the sale has become nullity and the judgment debtor can challenge the sale at any stage, in particular at the time when possession is to be delivered. While discussing that point it was argued that the three sales involved in these proceedings were distinct ones and, therefore, the right of the decree-holder who was allowed to bid with the permission of the Court to set off can be utilized in the purchase of two of the plots for the amount of the decree sufficient for the purpose. In this connection we may refer to the factual position which we have mentioned in a tabular form. It will be clear that

the two sales of survey Nos. 128 and 137 can be held to be good in view of the decretal amount of the decree. But even then this position which endures to the benefit of the decree-holder depends on a consideration whether the sales of the two plots also were justified in view of section 165(7) of the M. P. Land Revenue Code as even of these two plots one has an area of less than 10 acres and the other will leave a very small area after leaving 10 acres. This takes us to the most important question i. e. whether in applying section 165(7) of the M. P. Land Revenue Code, we will take the area of individual plots or of all the plots together. It depends on the interpretation of the holding mentioned in the section. The learned single Judge felt himself bound ("by a recent decision" which the learned Judge did not mention specifically but there is no doubt that he had in mind *Ikramuddin v. Gulabkhan* 1966 M.P.L.J.114 : 1966 BN. 1. As we feel that this decision requires reconsideration we like to take that question in details.

We may also mention that the learned counsel for the respondent stated that the bar of section 165(7) would not apply because the judgment debtor had agreed to charge the lands with the decretal amount and, therefore, as a result of this agreement about the charge the judgment-debtor is estopped from taking recourse to the bar of section 165(7).

Whether the judgment-debtor is barred or not is very short question and we may just dispose it off by referring to the two decisions of the Supreme Court in *Waman Shrinivas Kini v. Ratilal Bhagawandas and Co.* and *Smt. Kaushalya Devi and others v. K.L. Bansafi*. It has not been disputed that the judgment debtor had agreed to keep his lands as charge for the payment of the decretal amount. It was, there tore, argued that he is estopped from challenging the right of the decree-holder to recover his decretal amount out of the property by enforcing the charge.

There are two objections to this argument and we think both are valid. There is no restriction u/s 165(7) so far as the charge is concerned. The restriction is about the "attachment or sale " Therefore, keeping the property charged is not against the provisions of section 165(7) nor can that charge be taken advantage of because the judgment debtors did not agree that the property should be sold payment the provisions of law. It is one thing to keep a property as a charge, but it is another thing to get the property sold.

Even assuming that the keeping of the charge tantamount to an agreement to have the property sold and, therefore, the judgment debtor should be estopped from challenging the sale at this stage, the de visions of the Supreme Court are a complete answer to such a contention Reliance was placed on *Waman Shrinivas Kini v. Ratilal Bhagwandas and Co.* (Supra). According to us the case will not apply. Their Lordships were dealing with a case of ejectment in which there was a question of waiver and estoppel. That point was agitated for the first time in the Supreme Court. Their Lordships were reluctant to allow the plea to be take a. Even then their Lordships were of the view that a plea of waiver cannot be raised

because as a result of giving effect to that plea the Court would be enforcing an illegal agreement and thus contravene the statutory provisions of section 15 based on public policy and produce the very result which the statute prohibits and makes illegal. Section 15 of the Bombay Rents, Hotel and Lodging House Rates Control Act prohibits sub-letting and makes it unlawful for a tenant to assign or to transfer his interest in the premises let to him. An agreement was pleaded by the tenant of sub-letting but that was not successful. Their Lordships observed:

The landlord is only seeking to enforce his rights under the statute and the tenant could not be permitted to assert in a Court of Justice any right founded upon or growing out of an illegal transaction, namely the agreement to allow the tenant to sublet.

Their Lordships further held:

Section 15 is based on public policy and if public policy demands it even an equal participant in the illegality is allowed relief by way of restitution or rescission, though not on the contract.

Another case was also cited at the Bar that is Smt. Kaushalya Devi and others v. K.L. Bansal (Supra). That was a case u/s 13 of the Delhi and Ajmer Rent Control Act (38 of 1952). In that case after a suit for ejectment was filed there was a compromise which stated :

(a) Decree for ejectment be passed in favour of the plaintiff against the defendant, the decree will be executable after the 31st December, 1958 if the defendant does not give possession till then.

(b) The standard rent of the premises be fixed at Ra. 40/- per mensem, instead of Rs. 50/-paid at present payable from the 1st July, 1956, till the defendant vacates the premises.

(c) The amount in deposit with this Court be paid to the plaintiff which will be adjusted between the parties.

The compromise was not, however, adhered to. On the other hand an objection was presented on February 16 u/s 47 CPC challenging the valid by of the decree alleging that the same had been passed in contravention of the provisions of section 13 of the Delhi and Ajmer Rent Control Act and hence the decree was a nullity. The High Court, when the matter came up in revision held that the decree was a nullity as the order passed on the basis of the compromise did not indicate that any of the statutory grounds mentioned in section 13 of the Act existed. This was also confirmed by the Supreme Court. It is thus clear that when the agreement is against the statutory provisions it becomes a nullity and, therefore, if the charge is taken to be an agreement to sell away the property against the provisions of section 165 (7) it will be a nullity and the decree holder cannot take advantage of the same.

In view of what we have just said above, it is clear that the judgment-debtor is entitled to raise the objection about the invalidity of the decree at any stage. According to their Lordships of the Supreme Court the sale is void and an acquiescence or consent or compromise made by the judgment debtor to that effect will be of no avail. A decree-holder may have some concessions and as per their Lordships of the Supreme Court in *Manilal Mohanlal Shah and others v. Sardar Sayed Ahmed Sayed Mohamad* and another the provisions regarding the deposit of 25 per cent by the purchaser other than the decree-holder is mandatory as the language of the rule suggests. If the payment is not made within the period of 15 days the Court has the discretion to forfeit the deposit and there the discretion ends. But the obligation of the Court to re-sell the property is imperative. A further consequence of nonpayment is that the defaulting purchaser forfeits all claim to the property.

These observations might be taken advantage of by the decree-holder to the extent we have already indicated. But even then there still remains the third property for which the balance of the decretal amount left would not be sufficient.

A Division Bench of this Court in *Nathuram v. District Co-operative Bank Limited, Shivpuri and others* has held that rules 84 and 85 of Order 21, are mandatory and if they are not complied with there would be no sale at all and the Court is bound to order a re-sale. In view of this there cannot be any doubt that the objection that the sale was a nullity can be taken at any time. In the instant case the objection was taken at the stage of possession. The judgment-debtor was therefore entitled to do so.

We now take up the question of interpretation of section, 165(7) of the M. P. Land Revenue Code. The learned Single Judge followed the decision of this Court in *Ikramuddm v. Gulabkhan* (supra). He has not specifically mentioned the same, but it is clear from the observations he has made in the order under appeal, wherein he says:

Originally it was held by the Coats that the 10 acres exemption of BOH-irrigated land would be in entire holding and not in every individual plot. This was the ease law in force at the time of the attachment of these plots, later on, however, there has been refinement, namely, that where the plot numbers even though in the same holding are each separately assessed to revenue, each of them would be treated as a separate holding for the purposes of this exemption.

We are definite that he refers to the case cited above. With due respect, however to the learned Judges who decided the case, we cannot agree with the propositions laid down therein.

Section 165(7) and the definition of "holding" given in section (h) (i) of the M. P. Land Revenue Code will be the subject-matter of discussion and, therefore, we propose to quote them :

166(7): Notwithstanding anything contained in sub-section (i) or in any other law

for the time being in force -

(a) only that part of a holding of a Bhumiswami shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of unirrigated land;

by no land comprised in a holding of a Bhumiswami belong to a tribe which has been declared to be an aboriginal tribe under sub-section (6) shall be liable to be attached or sold in execution of any decree or order:

(o) DO receiver shall be appointed to manage the land of a Bhumiswami u/s 51 of the Code of Civil Procedure, 1908 (V of 1908) nor shall any such land vest in the Court or any receiver under the Provincial Insolvency Act, 1920 (V of 1920) contrary to the provisions of clause (a) or clause (b):

Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgage.

The decision *Ikramuddin v. Gulabkhan* (supra) requires reconsideration. It appears that certain provisions of the Land Revenue Code itself were not brought to the notice of the Bench at that time. If we carefully read the provisions it will be clear that "a holding" cannot be equated with a survey number separately assessed to land revenue. The definition of holding we may quote here:

Holding" means-

(i) it parcel of land separately assessed to land revenue and held under one tenure; and

(ii) in reference to land held by a tenant a parcel of land held from a Bhumiswami under one lease or set of conditions;

From the definition it is clear that a parcel of land separately assessed to land revenue and held under one tenure is a holding and when such a land is held by a tenant, "holding" is a parcel of land from a Bhumiswami under one lease or set of conditions. If a holding was equated with a plot or a survey number then there would be no difficulty in saying so in clear words instead of saying that it is a parcel of land and then qualify that parcel of land to become a holding under certain conditions. The position will be further clear from section 73 (3). This section gives power to renumber or subdivide survey numbers. Under sub-clause (3) the Code says that where holding consists of several khasra numbers the Settlement Officer shall assess the land revenue payable for each khasra number and record them as separate survey numbers. It is, therefore clear that holding may consist of several numbers. Therefore, each khasra number cannot be a separate holding. Not only that, this sub-section authorises the Settlement Officer to settle the land revenue payable for each khasra number and then record them as separate survey numbers. There is no mention that each of them becomes a separate holding.

Under rule 29 of section 74 the method of assessment of agricultural lands has

been described. The Settlement Officer under this rule has to collect the assessment on each holding in accordance with the assessment rate sanctioned by the State Government and apportion it over the Survey numbers comprised in that holding. That means that each survey number will be separately assessed. But each will still remain in one holding. The patwari under rule 6 of section 12t has to prepare at each agricultural year a khasra for each village that has been completely surveyed in his circle in Form I. The form is quoted below because it also serves as a guide :

Kh. No.

Area and

Number of

Name of Bhumi-

Name of occu-

and its

if the land

holding Kist-

swami /Govt.

pancy tenants/

name if

is not in-

Bandi B-1.

lessee /Bhudan-

sub-lessee of

any.

cluded in

holder /service land

Bhumiswami

holdings,

holder with

with father''s/

description).

father''s/husband''s name, residence, right and land revenue.

husband's name, residence with nature of possession and rent.

(1)

(2)

(3)

(4)

(5)

In column No. 1, "Khasra number and its name," if any is also given and if each survey number was equated with a holding then there would not be two separate columns. We may further refer to section 178 of the Code where the Code deals with partition. Before the amendment of this section there was a provision for limiting the partition. Section 20 of the Act No. 25 of 1964 has omitted sub-sections (3) 4) and (5) of section 178 as originally enacted. We are concerned with sub-section (3) which was as follows:

3) No partition shall be allowed if it results in creating a holding, the area of which will be below five acres of irrigated land or ten acres of an irrigated land.

This mentions a limit to which partition may be made and it says that no partition shall be allowed if it results in creating a holding the area of which is below five acres of irrigated land and ten acres of un-irrigated land. Section 178 speaks of the partition, when there are more than one bhumiswami and after the partition each bhumiswami will be having a holding. After omission of sub-section (3) j there is no limit and a bhumiswami can have a holding which is less than the area contemplated u/s 165(7) and the bhumiswamis may be having only a number of survey numbers and by partition each survey number will be divided and when it falls to a share of the bhumiswami, then that part of survey number would be a holding. That means that holding is independent of any survey number or khasra number or khata number. It may be that in the partition when a number of khasra numbers are there each will be having a part of khasra numbers or survey numbers, but they will be considered one holding. So what "holding" means is what is held by a bhumiswami from the State under one tenure and not that each plot of land is a holding. A holding may consist of a number of survey numbers or khasra each separately assessed to land revenue. The Bhumiswami will be liable for the total assessment. We find Krtshnan J. in *Shobharam v. Ladlibafi* held the same view.

We thus respectfully differ from the view taken by the Division Bench in *Ikramuddin v. Gulabkhan* which holds that where each plot held by a Bhumiswami is separately assessed to land revenue it is a separate holding held under one tenure. We are of the view that the plots or Khasra numbers simply because they are assessed separately to land revenue cannot be declared to be a holding. According to us separate assessment of each Khasra number is immaterial. It is the parcel of land held under one tenure that has to be

considered. There is only one tenure which is called the Bhumiswami tenure now existing. A parcel of land held under Bhumiswami tenure will be a holding when each parcel is separately assessed. Each parcel may consist of several plots and each plot may be separately assessed in order to find out the total assessment. Therefore, taking into consideration the import of all the words used in the definition that is "parcel of land" held under one tenure ""and" separately assessed to land revenue "we come to the only conclusion that mere separate assessment of a khasra is not enough to make it a holding. In this view of the definition of holding we are respectfully differing from the view held in *Ikramuddin v. GuIabutan* (supra).

We, therefore, refer the following question to the learned Chief Justice with a recommendation that it be placed before a Full Bench under Chapter I, rule 12 of the High Court Rules:

Whether *Ikramuddin v. Gulabkhan* (supra) was correctly decided when it held that a holding means a plot held by a Bhumiswami separately assessed to land revenue?

S.R. Vyas, J.

The following question has been referred to this Bench for opinion (by a Division Bench) :-

Whether *Ikramuddin v. Qulabhhan* 1966 MILJ 114 : 19G6 B.N. 1 was correctly decided when it held that a folding means a plot held by a Bhumiswami separately assessed to land revenue?

Briefly stated the facts giving rise to the present reference are these:- Respondent ShanIcarJal held a decree for money against the appellant Ramsingh. In execution of this decree, he attached certain agricultural lands held by Ramsingh in Bhumiswami rights under three different survey Nos. respectively measuring 17.19, 6.63 and 11.89 acres. These lands were sold one by one by public auction and, with the leave granted by the Executing Court, the decree-holder purchased all the lands.

The judgment-debtor, after the sales were confirmed, challenged the sales on grounds with which we are presently not concerned. After these objections were disallowed he, for the first time in an appeal (Misc. Appeal No 54 of 1967), raised an objection that the sales were in contravention of section 165(7) of the M. P. Land Revenue Code, 1959 and were liable to be set aside. In that appeal it was held by Krishnan J. that this objection, having been not raised at the appropriate stage, was not tenable. Against that judgment, the judgment-debtor in the present appeal under the Letters Patent, raised the same objection. Tare and Sen JJ. who heard this appeal were of the view that the decision taken by a Division Bench of this Court in *Ikramuddin v. Gulabhhan* required reconsideration by a larger Bench. They, accordingly, under Chapter I, Rule 12 of the High Court Rules requested our Lord the Chief Justice for referring the above question to a Full

Bench. This is how the matter has come before us.

Before I proceed further to express my opinion on the question referred to us it would be useful to reproduce the relevant provisions of the Code, on the interpretation of which would depend my opinion,

2 (1) (i) "holding" means-

(i) a parcel of land separately assessed to land revenue and held under one tanner; and

(ii) in reference to land held by a tenant a parcel of land held from a Bhumiswami under one lease or set of conditions

2 (1) (q) "plot number" means a portion of land in urban area formed into or recognized as K plot number u/s 93, in respect of which the area and the land revenue payable are separately entered in the prescribed records under an indicative number and includes any portion of land entered in the previous records under an indicative number known as Khaara or survey number.

2 (1) (i) "rent" means whatever is paid or is payable in money or in kind- (i) by an occupancy tenant to his Bhumiswami according to the provisions of sections 188 or by a lessee to his Bhumiswami on account of the use or occupation of land held by him from such Bhumiswami; or

(ii) by a Government lessee to the Government on account of the use or occupation of land leased out to him by the Government

2 (1) (x) "Survey number" means a portion of land in non-urban area formed into, or recognized as a survey number at the last preceding revenue survey, or subsequently recognised AS such by the Collector, in respect of which the area and land revenue payable area separately entered under an indicative number in the land record; and includes, any portion of land entered in the land records under an indicative number known as the Khasra number.

2 (1) (z) "tenure-holder" means a person who holds and from the State Government and who is or is deemed to be a Bhumiswami under the provisions of this Code.

Liability of land to payment of Land Revenue.-

(1) All land, to whatever purpose applied and wherever situate, is liable to the payment of revenue to the State Government except such land as has been wholly exempted from such liability by special grant of or contract with the State Government, or under the provisions of any law or rule (or the time being in force.

(2) Such revenue is called "land revenue, and that term includes all moneys payable to the State Government for land notwithstanding that such moneys may be described as premium, rent) lease-money, quit rent or in any other manner in any enactment, rule, contract or deed.

5R-A. Certain land to be exempt from payment of land revenue.-Notwithstanding anything contained in this Code, no land revenue shall be payable in respect of an uneconomic holding used exclusively for the purpose of agriculture.

Explanation I.-For the purposes of this section,-

(a) "uneconomic holding" shall mean a holding the extent of which is less than ten acres or any holding the land revenue payable In respect whereof does not exceed five rupees;

(b) "holding" shall mean the entire land held by a person in the State, notwithstanding the fact that any portion thereof is separately assessed to land revenue; and

(c) "land revenue" shall not include moneys payable to the State Government for land by way of premium, rent or lease money in respect of land leased out for a period of less than five years or quit rent.

Explanation II:-For the purpose of clause (b) of Explanation I, "entire land held by a person in the State shall mean-

(at the entire land held by a person in the State individually and shall include--

(i) where land is held by such person jointly with one or more persons, so much portion of the land as falls to his share; and

(ii) land held by suo person as Bhoodan holder under the Madhya Pradesh Bhoedan Yagna Act 1968 (28 of 1968;

(b) where land is held by a person jointly with one or more persons, the single holding BO jointly held

Rights of transfer-(1) Subject to the other provisions of this section and the provisions of section 168 a Bhumiawami may transfer any interest in his land.

(2) * * * *

(3) * * * *

(4) * * * *

(5) * * * *

(6) * * * *

(7) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force-

(a) only that part of a holding of a Bhumiawami shall be liable to attachment or sale in execution of any decree or order as is in excess of five acres of irrigated or ten acres of un-irrigated land;

(b) no land comprised in a holding of a Bhumiawami belonging to a tribe which

has been declared to be an aboriginal tribe under sub-section (6) shall be liable to be attached or sold in execution of any decree or order;

(c) no receiver shall be appointed to manage the land of a Bhumiswami u/s 61 of the Code of Civil Procedure, 1908 (V of 1908) nor shall any such land vest in the Court or any receiver under the Provincial Insolvency Act, 1920 (V of 1928) contrary to the provisions of clause (a) or clause (b);

Provided that nothing in this sub-section shall apply where a charge has been created on the land by a mortgagee.

(8) x x x x

(9) x x x x

(10) x x x x

(11) x x x x

In Ikramuddin's case the judgment-debtor-Bhumiswami was the holder of two plots of land under two distinct and separate Khasra numbers. The total area of both plots, so separately assessed and numbered, was more than ten acres but individually the area of each plot was less than five acres. They were attached and sought to be sold. An objection was raised that as each of the two plots was an individual holding within the meaning of sub-section (7) of section 165 read with section 2(1)(i) of the Code and was less than the limit prescribed by section 165(7) in area, it was not liable to be attached and sold. On a consideration of the relevant provisions of the Code, it was held that despite possible anomalous consequences the plain meaning of the provisions of the Code meant that even if, a Bhumiswami was the holder of more than ten acres of land-un-irrigated land-in different holdings, each of which was less than ten acres and separately assessed to land revenue, then the protection provided by section 165(7) was available against attachment and sale ability. I shall shortly refer to the reasons which were accepted in Ikramuddin's case for the aforesaid view.

In the instant case the learned Judges of the Division Bench were inclined to differ from the view in Ikramuddin's case and to take the view that there were ample provisions in the Code to indicate that a plot of land under a distinct Khasra No. (Survey No.) could not be equated with "holding" as defined in section 2(1)(i) and referred to in section 165(7) of the Code; that the Code contemplated and provided for a "holding" to consist of more than one individual Khasra number; that each Khasra number could not constitute an individual holding even though there is separate assessment under the Code for payment of land revenue on each of them and that "holding" and Khasra numbers or survey numbers or Khata numbers are independent of each other. It has been further observed that "holding" means what is held by a Bhumiswami from the State under one tenure and each individual plot cannot be a "holding". Since this view would have been opposed to the view in Ikramuddin's case a reference to a larger Bench was sought and has been made.

Before us the learned counsel for the appellant supported the view taken in *Sobharam v. Ladli Bai* 1965 E. N 132 by Krishnan J. and the view which the learned judges of the referring Bench felt inclined to take but for the view of the Division Bench in *Ikramuddin's* case. In my opinion the view taken in *Ikramuddin's* case was correct and does not require reconsideration.

Reference was made to decided cases by the learned counsel for both the parties in support of their respective contentions, One view advanced was that where the words used in the provision? of an enactment are found ambiguous and were likely to lead to anomalous results, the intention of the Legislature should be looked into in interpreting these words of the Legislative enactment. The counter view put forward was that if there was no ambiguity and the provisions were capable of plain meaning, a different meaning could not be put to avoid possible anomalies. I, therefore, propose to determine whether there is any scope for the contention that the provisions of the Code relevant for the purposes of this case, suffer from any such ambiguity and present any difficulty in interpreting their plain meaning apart from the intention with which they may have been brought on the statute book.

The word "holding" has been defined both in section 2(1)(i) and section 58-A of the Code. Section 2(1) of the Code says that unless there is anything repugnant to the subject or context the words referred to in clauses (a) to (z-5) shall have the meaning as is given in the various clauses of the subsection. This clearly shows that unless there is any repugnancy in the subject or the context all the words in this section, wherever they occur in the Code, shall mean as they are defined in it. Only in section 58A it has been added, by way of an explanation, that for the purposes of that section "holding" shall mean as stated in clause (b) of the said explanation. In view of these provisions it would be clear that the word "holding" Occurring in section 165(7) of the Code will have to be given that meaning only as is given in section 2(1)(i), subject however to the condition that no repugnancy in the subject or context arises. It has, therefore, to be seen as to what is the meaning of the word "holding" as given in section 2(1)(i) of the Code.

Section 2(1)(i) says that "holding" means a parcel of land separately assessed to land and held under one tenure; and in reference to land held by a tenant a parcel of land from a Bhumiswami under one lease or set of conditions. I has, according to this definition, the requirements of a holding, as defined above, are that--

- (1) It should be a parcel of land ;
- (2) It should be separately assessed to land revenue;
- (3) It should be held under one tenure ;
- (4) In case the land is held by a tenant from a Bhumiswami then it should be a parcel of land under one lease or set of conditions.

If, these requirements are present, then any land in a given case will have to be treated as holding for the purposes of section 165(7) of the Code.

"Land" has been defined in section 2(1)(k) as a portion of earth's surface. The word "parcel" has not been defined by the Code and, therefore, while construing this word the Court has to take its natural and grammatical meaning viz. a little part or a portion of a whole "Parcel of land", therefore, would mean a piece or portion of the earth's surface with separate ascertainable identity. Further, if any portion of earth's surface, so identifiable as parcel of land, is separately assessed to land revenue under the provisions of the Code then it will have to be treated as holding irrespective of the area of such a portion of land.

The second requirement is that it i e., the parcel of land, should be held under one tenure. The dictionary meaning of the word "Tenure" is the fact of holding tenement; the condition under which a tenement is held from a superior; the title by which the property is held; the relations, right and duties of a tenant to the landlord; the terms of holding (vide Oxford English Dictionary). The word "tenure" though has not been defined in the Code yet the words "tenure holder" have been defined in section 2(1)(z) as a person who holds lands from the State Government and who is or is deemed to be a Bhumi-swami under the provisions of the Code. Section 157 of the Code says that there shall be only one class of tenure holders from the State to be known as Bhumiswami Thus, if a parcel of land is held in Bhumiswami rights from the State Government the holder becomes the tenure holder of that parcel of land and will be entitled to all the rights and be subject to all the liabilities provided by the Code.

Sections 57 and 58 of the Code declare that all lands belonging to the State Government shall be liable to the payment of land revenue to the State Government. The mode and the principles of survey of land and its assessment for determination of land revenue are provided in Chapter VII (Sections 61 and 91) of the Code. For the purposes of maintenance of laid records, settlement with the tenure holders, and survey and assessment of land revenue the authorised officer is empowered, under the Code, to divide and form any portion of land into distinctive survey or Khasra numbers and then determine the land revenue payable by the holder in respect of each survey or Khasra number (see sections 71 and 73 of the Code),

It would thus be clear that while surveying, settling and assessing land for the purposes of land revenue, a given parcel of land may be divided into one or more than one survey/khasra numbers and separate assessment may be made for separate survey/khasra numbers, irrespective of the fact that the holder holds from the State in Bhumiswami rights one or more than one survey / khasra numbers. Once the assessment of land revenue is made separately in respect of a parcel of land held under Bhumiswami tenure, then irrespective of the area of the individual survey/khasra number and the total number of parcels of land held, each parcel of land would become a holding within the meaning of the Code. The authorised officer may take different portions of land and form one

survey number, settle it with the tenure holder and assess the land revenue for all the portions so found into one or more than one survey numbers.

A question may arise as to what is the holding of a tenure holder in such cases. When a Bhumiswami is the holder of only one survey number or Khasra number which is individually and separately assessed to land revenue no difficulty arises in determining as to what is his holding i. e. the parcel of land held by him. In the instant. case in the case of Ikramuddi (supra) and many other cases lands held by a Bhumiswami may be indicated, either in one or more than one village, by more than one survey or Khasra numbers. The total area of such survey numbers collectively may be more than the limits prescribed by section 165(7) i. e. five acres of irrigated or ten acres of un-irrigated land but individually the area of each may be less than the above mentioned five or ten acres. Questions have arisen as to whether each parcel of land, which is given a separate survey/khasra number, should be regarded as a separate holding or all the parcels of land collectively held by him, under the Bhumiswami tenure, should be regarded as one holding. In my opinion, the basis for determination is neither the number of parcels of land nor the individual area of the survey/khasra numbers. The real basis is the mode of assessment of land revenue for the parcels of land. If, all the parcels of land have been collectively assessed to land revenue as one separate and single unit then all of them would constitute one holding of the Bhumiswami. If, on the. other hand; the assessment of land revenue is separate for each parcel of land, though held under one tenure by the same Bhumiswami, then each parcel of land will have to be treated as a separate holding. In such cases neither the number of parcels of land nor the extent of the Khasra numbers nor the total area of the land held by a Bhumiswami could be the basis to determine the question as to what is the holding of the Bhumiswami.

To illustrate my view, the following cases would be useful:-

A. In village X, A, a Bhumiswami is the holder of only one parcel of un-irrigated land indicated by khasra No. 1, area 12 acres. This parcel of land is separately assessed to land revenue at Rs. 5-00.

B. In village Y, B, a Bhumiswami is the holder of three parcels of un-irrigated land indicated by Khasra numbers 2, 3 and 4. The individual area of the three numbers being four acres each and the total area being 12 acres, all the three parcels of land are assessed collectively and not separately to land Revenue at Rs. 6-00.

C. In village Z, C, a Bhumiswami, is the holder of 3 parcels of un-irrigated land indicated by khasra numbers, 5, 6 and 7; the individual area being 4 acres each and the collective area being 12 acres. Each of the parcel of land is separately assessed to land revenue at Rs. 2-00 each.

In illustration A, the plot of land is only one and is separately assessed to land revenue at Rs. 5. As the assessment is separate, the land, bearing Khasra No. 1, will be one holding for the purposes of section 165 of the Land Revenue Code. In

illustration B the Bhumiswami is the holder of three plots of land bearing Khasra Nos. 2, 3 and 4, the individual area being 4 acres and the total area being 12 acres. As the assessment of land revenue is collective as one unit, all the three khasra numbers will be treated as one holding for the purposes of section 165 of the M. P. Land Revenue Code. In illustration C, the Bhumiswami is the holder of three plots of land being khasra numbers 5, 6 and 7, whose individual area is 4 acres and collective area is 12 acres. As each plot of land is separately assessed to land revenue, each one of them will be a separate holding irrespective of the fact that the holder is one and the same person and the total area of the land is more than 10 acres.

It is no doubt true that in illustrations A and B the holders, though holding the same area of land as the holder in illustration C, would be liable for attachment and sale of their lands and the holder in illustration C would not be so liable. This would naturally lead to anomalous results but in view of the specific provision of the Code the resulting anomaly is unavoidable.

It was, on the basis of the provisions of section 58A of the Code, contended that "Holding" as used in the Code signified the entire land held by a holder under Bhumiswami rights and that if one holder held different plots of lands under different and distinctive khasra/survey numbers then each and every khasra number/survey number could not be treated as a separate holding. A bare reading of section 58A enacted by Act No. 6 of 1967 would show that the word "holding" has been given a special meaning for the purposes of section 58A only. Accordingly what is to be understood by the word "Holding" while interpreting section 58A, cannot be understood for the interpretation of this word occurring in other sections of the Code. Consequently the provisions of section 58-A cannot be called in aid for interpreting the provisions of section 165 of the Code.

It was then contended that the intention of the Legislature in enacting the protective measures in section 165 (7) for the benefit of agriculturists was to ensure for them some minimum requirements of land for their maintenance and exempt such lands from sale and attachment in execution of any decree or order; that a holder of many parcels of land, separately assessed to land revenue, will be entitled to protection given by section 165(7) for the simple reason that each parcel is less than the excepted minimum and a holder of one single parcel of land would be deprived of the land in excess of prescribed minimum and that such anomalous results were neither intended nor contemplated by the Legislature. Cases were cited at the Bar : Firstly in support of the view that where there was no scope for any ambiguity in interpreting the Legislative enactment, there was no need to ascertain the intention of the Legislature and secondly in support of the view that as in the instant case the interpretation accepted in *Ikramuddin's* case (supra) was giving rise to anomalous results, the intention of the Legislature in enacting section 165(7) should be looked into.

While interpreting the provisions of a statute the Courts will only look to the

plain and natural meaning of the words used in the statute. If the plain and natural meaning gives rise to anomalous results, which the Legislature may not have anticipated in advance, then the Courts will have to adopt the plain and natural meaning and leave it to the Legislature to amend the law and remove the anomaly.

A reference in this connection may be made to the decision of the Supreme Court in *Rananjaya Singh v. Baijnath Singh and others*⁵ In this case a question arose as to whether persons employed by the father of the candidate to a Legislative Assembly elections and paid for by him should or should not be treated as persons employed and paid for by the candidate himself. It was found that it was the father, who assisted the son in his election. It was contended that if these employees were not to be treated as employees of the candidate then the candidate who had rich friends and relations would have an unfair advantage over a poor rival. Repelling this contention, it was held that :-

The spirit of the law may well be an elusive and unsafe guide and the supposed spirit can certainly not be given effect to in opposition to the plain language of the sections of the Act and the rules made thereunder. If all that can be said of these statutory provisions is that construed according to the ordinary, grammatical and natural meaning of their language they work injustice by placing the poorer candidates at a disadvantage, the appeal must be to Parliament and not to this Court.

Similarly in *Pakala Narayana Swami v. Emperor* while considering the question of the intention of the Legislature in enacting certain provisions of section 162 of the Criminal Procedure Code, it was held that in truth when the meaning of the word is explained it is not the duty of the Courts to busy themselves with the supposed intentions.

In *State of Uttar Pradesh Vs. Dr. Vijay Anand Maharaj*, the following passage from Crawford on "Statutory Construction" at page 492 was quoted with approval:-

A liberal construction does not justify an extension of the statute's scope beyond the contemplation of the Legislature. The fundamental and elementary rule of construction of that the words and phrases used by the Legislature shall be given their ordinary meaning and shall be construed according to the rules of grammar. When a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself. It is a well recognized rule of construction that the meaning must be collected from the expressed intention of the Legislature.

In the light of the aforesaid decisions it has to be held that if the words in a statute are clear, then the Courts can only recognize that intention of the Legislature which is expressed in unambiguous and clear words of the provisions of the statute itself.

As stated above the meaning of the word "holding" as accepted in Ikramuddin's case does no doubt give rise to anomalous results. Decision in Ikramuddins case was give by this Court on 12-2-1964. Three years thereafter, section 58-A was brought on statute book by the Legislature. It is presumed that the interpretation given to the word "holding" for the purposes of section 165(7) of the Code was present before the Legislature when a special meaning: to the word "holding" was given in clause (b) to the Explanation in section 58-A of the Code If, inspite of this decision the Legislature thought it fit not to amend section 165(7) of the Code by making some suitable provisions, then it must be presumed that the interpretation in Ikramuddin's case was acceptable to the Legislature.

It is no doubt true that if a reference is made to the provisions of section 73(3), section 147 and rule 29 of the Rules regarding Revenue Survey of Agricultural Land (published vide Notification No. 179-6477-VII-N (Rules) dated 6-1-1960), an argument can be advanced in support of the interpretation which the earned Judges of the referring Bench were inclined to take. Sub-section (3) of section 73 of the Code provides that where a holding consists of several khasra numbers the Settlement Officer shall assess the land revenue payable for each khasra number and record them as separate survey numbers. Rule 29 also provides for the Settlement Officer to calculate the assessment on each holding in accordance with the assessment rates sanctioned by the State Government, and apportion it over the survey numbers comprised in that holding. Relying on these provisions it was contended that the aforesaid provisions did indicate that since a survey number/khasra number had to be assessed separately and if a holding consisted of more than one khasra number then assessment of land revenue had to be made holding-wise and not khasra number-wise and that in that event khasra number would not be regarded as a holding and the holding would consist of all the survey numbers, whether assessed individually or collectively. This contention cannot be accepted.

If, while assessing the land revenue of agricultural land, the Settlement Officer makes assessment of individual khasra numbers or of a holding as a whole men the question still would be as to whether a particular khasra number, if assessed separately, would or would not constitute a holding as deseed in section 2(1)(i) of the Code. According to section 2(1)(i) if a parcel of land t whether indicated by an individual khasra/survey number or not) is assessed separately to land revenue and held under one tenure then it will become a holding for the purposes of section 165(7) of the Code. Thus, the real test to determine as to whether a particular survey number is or is apt a holding for the purposes of section 2(1) (i) and section 165(7) of the Code is as to whether in respect of a particular parcel of land there has or has not been its separate assessment for land revenue by a Settlement Officer. If a reference is made to rule 6 of the rules regarding Formation of Survey Numbers and Villages (published, vide Notification No. 177-6477-VII-NvRules)dated the 6th January 1960), then the contention in support of the view proposed by the learned Judges of the referring Bench would be negatived. Rule 6 is as under ;

(i) Two or more occupied survey numbers may be amalgamated, provided the following conditions are Satisfied:

(i) the total area does not exceed 30 acres or where one of the numbers to be amalgamated is less than five acres in area, 40 acres;

(ii) the tenure-holder or tenants are holders of each survey number are the same and agree to amalgamation;

(iii) there are no sub-divisions; and

(iv) the common boundary is such that the amalgamation will materially facilitate cultivation;

Provided that the limits imposed by the above condition (i) may be exceeded to such extent as the Settlement Commissioner may by general or special order, sanction.

(2) The combined survey number shall be given the numbers of all the survey numbers which have been amalgamated to form it, the various numbers being connected by hyphens.

Condition No. (11) speaks of the tenure-holder or tenure-holders of each survey number. It would thus be clear that even while framing the rules, the appropriate authority did contemplate that even in respect of an individual survey number there could be a tenure-holder.

In the order of reference, reference is also made to the rules for the preparation of Khasra for each village by the Patwari. According to this form, there are five columns. The first column is for the khasra number, the second is for the area, the third is for the holding, the fourth is for the name of the Bhumiswami and the fifth is for the name of the occupancy tenant. Referring to this prescribed form, it has been suggested that khasra number and holding number were not treated as one and the same thing and that the land comprised in one khasra number could not be equated with holding. In my opinion, such a construction cannot be placed on the word "holding" as defined by section 2(1)(i) by making a reference to some form prescribed under the rules framed under the Code.

In *Ikramuddin's* case the possible anomalies resulting from the view taken in that case was duly considered. It was, however, held that if the words "interpreted according to their natural and grammatical meaning" lean to an anomaly then it has to be allowed and that it should be left to the Legislature to remove the anomaly if and when it considers it fit to do so. I fully agree with those observations and hold that so long as the definition of the word "holding" as given in section 2(1)(i) of the M. P. Land Revenue Code is on the statute book, the Courts cannot, by exploring and examining the intention of the legislature, assign a meaning different from what can be derived at in the manner indicated above. As Their Lordships of the Supreme Court have observed in *Rananjaya Singh's* case (*supra*) the appeal in such cases must be to the Legislature and not

to the Courts.

According to the reasons given above, my answer to the question referred to this Bench is that Ikramuddin v. Gulabkhan was correctly decided when it held that a "holding" means a plot of land by a Bhumiswami separately assessed to land revenue.

G.L. Oza, J.

I had the advantage of going through the opinion of my learned brother Vyas J. He has stated the facts of the case in details and also the question that is referred to us. But for the reasons stated herein I do not find myself in agreement with the opinion expressed by him I can, therefore, straightway come to the question. Although the reference is about the decision reported in Ikramuddin v. Gulabkhan, but in substance the question is as to what should be the interpretation of the term "holding" as used in the M. P. Land Revenue Code, 1959, (hereinafter called the Code.)

The word "holding" has been defined in section 2(1)(i) of the Code in the following words-

holding" means-

(i) a parcel of land separately assessed to land revenue and held under one tenure; and

(ii) in reference to land held by a tenant a parcel of land held from a Bhumiswami under one lease or Bet of conditions;

Clause (i) of this definition contemplates (a) a parcel of land, (b) separately assessed to land revenue, and (c) held under one tenure. On an analysis of this definition, it appears that lands held by a Bhumiswami are held under one tenure as in the present scheme of revenue law a Bhumiswami holds the land only under one tenure. Consequently if only this aspect of the definition is considered, then the term "holding" will mean lands held by a Bhumiswami which may be spread over in the whole State. The term "a parcel of land" will also include parcels of land as well, and in view of section 5 of the M.P. General Clauses Act, 1957, this will make no difference. Consequently, a "parcel of land" may also mean a parcel or parcels of land held by a Bhumiswami under one tenure, and this would clearly indicate that it will mean all the lands held by a Bhumiswami all over the State. It is only the phrase "separately assessed to land revenue" which has led to the controversy about the definition and, it appears, that has resulted in a conflict of decisions in this Court.

The Division Bench, which made this reference, appears to have taken the view that "holding" means what is held by a Bhumiswami from the State under one tenure, thereby meaning the whole land held by a Bhumiswami in the State and it appears that in this view they were in agreement with the view taken by my learned brother Krishnan J. in Shobharam v. Ladlibai. In Ikramuddin's case

(supra) the view taken was that "holding" shall mean every Khasra number.

In order to appreciate the correct interpretation of the term "separately assessed to land revenue" in the context of the definition of the term "holding", it would be worthwhile to go into earlier enactments where this term was used and defined. In the Madhya Bharat Land Revenue and Tenancy Act, 1950, the term "holding" has been defined in section 54 (v) thus-

Holding means a parcel or parcels of land, forming part of a village which is held under one lease or grant.

In this definition, instead of the phrase "separately assessed to land revenue" the phrase "forming part of a village" has been used, and by the use of this phrase the definition in the Madhya Bharat Act created no difficulty about interpretation. In the Indore Land Revenue and Tenancy Act, 1931, the word "holding" was defined as under-

"holding" means a parcel of land, forming part of a village which is held under one lease or one set of conditions.

From a perusal of this definition, it appears that the Madhya Bharat Act adopted the definition given in the Indore Act. If we compare the three definitions given in the aforesaid three enactments, including the Code, the definition appears to be substantially the same except that in the Indore and Madhya Bharat Acts the phrase "part of a village" was used which is substituted in the Code by the use of the phrase "separately assessed to land revenue". In the Madhya Bharat Act the term "parcel or parcels of land" was used whereas in the Code only the words "a parcel of land" have been used as was done in the Indore Act. But, as pointed out earlier, this would make no difference in view of section 5 of the M. P. General Clauses Act, 1957. In order therefore, to understand the import of the phrase "separately assessed to land revenue", we will have to examine the scheme of assessment in the present law.

Section 71 of the Code provides for division of the land in the State into survey numbers and villages. It is as under-

Subject to rules made under this Code, the Settlement Officer may- (A) take measurements of the land to which the revenue survey extends and construct such number of survey marks thereon as may be necessary;

(b) divide such lands into survey numbers and group the survey numbers into villages;

(c) recognize existing survey numbers, reconstitute survey numbers, or form new survey numbers:

Provided that, except as hereinafter provided, no survey numbers comprising land used for agricultural purposes shall henceforth be made of less extent than a minimum to be prescribed for the various classes of land:

Provided further that the limit prescribed under the aforesaid provision shall not apply in the case of survey numbers already existing immediately before the date of the notification under sub section (1) of section 70.

Section 76 provides for grouping of villages for purposes of assessment, and section 77 provides for fixation of assessment rates. Section 78 provides for assessment of each holding in accordance with the rates approved u/s 77. The scheme of assessment in Chapter-VII indicates that a village or a group together is to form one unit for purposes of assessment. Section 78, therefore, contemplates holding in each village and fixation of assessment in accordance with the rates approved u/s 77 or section 80. Section 78 is as under-

The Settlement Officer shall fix the assessment on each holding in accordance with the assessment rates approved u/s 77 and the provisions of section 80 and such assessment shall be the fair assessment of such holding

After the assessment of the holding is done in accordance with the provisions of section 78, further division of assessment for each survey number, if the holding consists of more than one survey number, has been provided for in rule 29 of the rules framed under the Act. Rule 29 reads thus -

The Settlement Officer shall then proceed to calculate the assessment on each holding in accordance with the assessment rates sanctioned by the State Government, and apportion it over the survey numbers comprised in that holding.

This also appears from sub-section (3) of section 73, which is as under -

Where a holding consists of several Khasra numbers, the Settlement Officer shall assess the land revenue payable for each Khasra number and record them as separate survey numbers.

It is thus clear from the provisions contained in section 73 (3) and rule 29 that in accordance with the scheme of assessment u/s 78, the assessment of holding has first to be done on the basis of the rates approved u/s 77 or section 80, and it is only then that that assessment has to be further divided into survey numbers in order to get the land revenue payable on each survey number in case the holding consists of more than one survey number. This clearly goes to show that a holding and a survey number are not terms which can be interchanged. Holding, therefore, does not mean merely a survey number. There may be cases where holding itself may consist of only one survey number. But, as the provisions of sub-section (3) of section 73 indicate, a holding may even consist of more than one survey number. Consequently, under the scheme of assessment of land revenue as provided for in Chapter-VII of the Code, in a village what is separately assessed is the holding, that is the lands held by one Bhumiswami in one village. This is also clear from the provisions contained in section 108 of the Code where against the name of each Bhumiswami all lands held by him in a village are to be indicated and the land revenue payable by such Bhumiswami has also to be shown, and in this manner a Record of Rights has to

be prepared for every village. In the light of this scheme of assessment of land revenue, it appears that in each village what is separately assessed to land revenue is all lands held by one Bhumiswami, and that merely because every survey number has also been allotted a portion of the land revenue, it cannot be said that every survey number is separately assessed, because the process of assessment is of fixing the land revenue on a particular portion of land on the basis of assessment rates approved u/s 77 or section 80 and with this process what is assessed is all lands put together held by a Bhumiswami in one village. It is only this which can, therefore, be said to be "separately assessed to land revenue". The assessment of a survey number is merely a process of distribution. It is also significant that the Records of Rights are prepared village-wise, and in each village against the name of the Bhumiswami is shown all lands held by him in that village, and the land revenue payable on that land. In this view of the matter, therefore, it cannot be doubted that "holding" shall mean a parcel or parcels of land held by a Bhumiswami in one village, and that is separately assessed to land revenue.

If from the definition of the term "holding" it is inferred that it means lands held by one Bhumiswami all over the State as appears to be the view taken in *Shobharam v. Ladlibai* (Supra) and also by the Division Bench referring this matter to us, then the phrase "separately assessed to land revenue" will have to be omitted from the definition. But as this phrase is there in the definition, it has to be given its meaning. Consequently it cannot be said that "holding means" all lands held by a Bhumiswami all over the state. It will only mean land held by a Bhumiswami in one village which is separately assessed to land revenue. The word "village" has been defined in the Code thus :-

2 (z 5). "village" in any tract of land which, before the coming into force of this Code, was recognized as or was declared as a village under the provisions of any law for the time being in force any other tract of land which is hereafter recognized as a village at any revenue survey or which the State Government may, by notification) declare to be a village.

Section 58-A was introduced in the Code by an amendment under Ordinance No. 19 of 1966, which was subsequently replaced by M. P. Act No. 6 of 1967. In this provision, "holding" has been defined to mean "the entire land held by a person in the State, notwithstanding the fact that any portion thereof is separately assessed to land revenue." This definition was added for the purpose of section 58-A alone, which is clear from the first Explanation to section 58-A clause (b) of which provides the definition of "holding" for the purposes of section 58-A. It is very clear from this that while "holding" is defined in this section to mean the entire land held by a Bhumiswami in the State, it was understood that in fact portions thereof may be separately assessed to land revenue because it is clear that lands held by a Bhumiswami in one village will only be separately assessed to land revenue in accordance with the scheme of assessment. It is also clear that if the term "holding" meant the entire land held by a Bhumiswami in the

State and if such was the intention of the Legislature, then there was no need to provide this special definition of "holding" for the purposes of this section 58-A. As it is well known, section 58-A was enacted for exempting Bhumiswamis from land revenue -if they held an uneconomic holding, and for the purpose of finding out the limit which could be exempted in the case of a particular Bhumiswami, the entire land held by him in the State had to be considered. For that purpose, it was provided that "holding" for the purposes of section 58-A shall mean the entire land held by a Bhumiswami in the State, inspite of the fact that portion or portions thereof may be separately assessed to land revenue. This amendment, therefore, only goes to indicate what the Legislature intended to mean by the use of the term "holding" in section 2(1)(i) of the Code. Consequently, when the Legislature while enacting the Code used the phrase "separately/ assessed to land revenue", by implication it only meant what was provided for in the Madhya Bharat Act where the phrase used was "part of a village". Consequently, a holding of a Bhumiswami can only mean lands held by a Bhumiswami under one tenure in one revenue village which is separately assessed to land revenue. It does not either mean every survey number forming part of the holding of the Bhumiswami or the entire land held by him all over the State.

In *Ikramuddin v. Gulahkhan* (Supra) which is the basis of reference in the present case, the anomalies arising; out of the interpretation of the word "holding" as meaning one survey number were pointed out. But it was felt that if the words of the enactment are clear, nothing can be done to avoid the apparent or real anomaly. But it appears that in view of what has been discussed above, when a holding is understood to be the land held by a Bhumiswami in one particular village, these anomalies may not arise. In any event, that is the only view that can be taken in the light of the scheme of the law.

My learned brother Vyas J. has observed in his opinion that:-

In my opinion, the basis for determination is neither the number of parcels of land nor the individual area of the survey /khasra numbers. The real basis is the mode of assessment of land revenue for the parcels of land. If, all the parcels of land have been collectively assessed to land revenue as one separate and single unit, then all of them would constitute one holding of the Bhumiswami.

I am perfectly in agreement with this view expressed by my learned brother with the only qualification that all parcels of land held by a Bhumiswami can only be assessed as one unit if they form part of one village, and in that view of the matter a "holding" can only mean what has been stated above

Consequently section 165(7) of the Code can only be read in the context of the meaning of the word "holding"s stated above. In this view of the matter, the decision in *Ikramuddin v. Gutabkhan* (Supra) is not correct and, therefore, the reference must be answered accordingly.

S.P. Bhargava, J.

I have had the advantage of reading the opinions of my learned brothers Oza J. and Vyas J. As I find myself in complete agreement with the views expressed by Vyas J., it is not necessary for me to record a detailed opinion. However, in the opinions recorded by Oza J. and Vyas J., The difference has arisen mainly due to their reading rule 29 with different emphasis. Rule 29 of the Rules regarding Revenue Survey of Agricultural land referred to by Vyas J. in paragraph 25 of his opinion provides:

The Settlement Officer shall then proceed to calculate the assessment of each holding in accordance with the assessment rates sanctioned by the State Government and apportion it over the survey numbers comprised in that holding.

In section 73(3) of the M. P. Land Revenue Code, the provision made is as follows:

Where a holding consists of several Khasra numbers, the Settlement Officer shall assess the land revenue payable for each Khasra number and record them as separate survey numbers.

The view which has appealed to my learned brother Oza J. is that if the land revenue is assessed for several Khasra numbers to begin with but U subsequently apportioned over the various Khasra numbers, each Khasra number cannot be said to constitute a holding within the meaning of section 2(1)(i) of the Code. Differing from Vyas J. he has recorded the conclusion "that all parcels of land held by a Bhumiswami can only be assessed as one unit if they form part of one village." On the other hand, the opinion expressed by Vyas J. in paragraph 15 is ""In my opinion, the basis for determination is neither the number of parcels of land nor the individual area of the survey/khasra numbers. The real basis is the mode of assessment of land revenue for the parcels of land. If all the parcels of land have been collectively assessed to land revenue as one separate and single unit, then all of them would constitute one holding of the Bhumiswami. If, on the other hand, the assessment of land revenue is separate for each parcel of land, though held under one tenure by the same Bhumiswami, then each parcel of land will have to be treated as a separate holding." In my view, once the record shows that there is a separate assessment for each Khasra/survey number, then whether that assessment was made in the first instance on each separate khasra/survey number or the figure of assessment was reached by originally fixing it over a group of khasra/survey numbers and "then apportioning it on individual khasra /survey numbers, the result would be the same and in each case a single khasra /survey number separately assessed to land revenue would be a holding within the meaning of section 2(1)(i) of the Code.

Further, in my opinion, if section 73 and rule 29 are not read in the manner aforesaid, there would be a clear conflict between the provisions made section 73 and rule 29, and it is well settled that if the two cannot be reconciled together, the section must be held to override the different provision made in the rule and thus rule 29 cannot be allowed to nullify or curtail the plain meaning of the clear

and unambiguous language used in section 73.

In the conclusion, I am of the view that the case of Ikramuddin v. Gulabkhan 1966 MPLJ 114 : 1966 R N 1 was correctly decided and the question referred to us should be answered accordingly.

By the Court-

In accordance with the opinion of the majority, the question referred to this Bench is answered in this way that Ikramuddin v. Gulabkhan was correctly decided when it held that the holding means "plot of land held by a Bhumiswami separately assessed for land revenue.

This opinion be placed before the Bench hearing the main case.

[The matter came up for hearing before Tare and S.B. Sen JJ. who passed the following order.]

P.K. Tare, J.

This is an appeal by the judgment-debtor against a Single Bench decision of this Court, dated 4-3-1963, passed in Misc. Appeal No. 54 of 1967, affirming the order of the Third Additional District Judge, Indore, in Execution Case No. 76 of 1959, dated 18-4-1967, dismissing the judgment-debtor's objection to the validity of the auction-sales on account of the operation of section 165(7) of the M. P. Land Revenue Code, 1959.

The facts leading to the present controversy are as follows : The respondent, Shankarlal held a money decree, against the appellant Ramsingh. In execution of the decree, he attached certain agricultural holdings held by Ramsingh in Bhumiswami rights. Three of the holdings were put to sale one by one. The decree-holder was allowed to bid with the leave of the Court. The sale-prices in respect of the lands were fetched as follows :-

Survey No.

Area

Sale price

128

19

00

137

63

00

138

In the execution proceedings an objection was raised on behalf of the judgment-debtor that a survey number separately assessed to land revenue below the minimum area of 10 acres, as per section 165(7) of the M P. Land Revenue Code, 1959, could not be sold in auction, but only area in excess of 10 acres could be sold. That objection was rejected by the Executing Court and upon an appeal, the learned single Judge also took the same view. The present Letters Patent Appeal was filed against the said order of the learned single Judge.

A Division Bench of this Court, by order, dated 11-9-1970, disposed of the other questions, but referred the following question to a Full Bench :-

Whether *Ikramuddin v. Gulabkhan* 1966 MPLJ 114 : 1968 R.N. 1. was correctly decided when it held that a holding means a plot held by a Bhumiswami separately assessed to land revenue.

The learned Judges of the Full Bench, by a majority decision, opined that the case of *Ikramuddin v. Gulabkhan* (supra) had been correctly decided when it held that a holding would mean a plot of land held by a Bhumiswami separately assessed to land revenue. Therefore, the case has come up before us for a final order consequent upon the opinion of the Full Bench.

In accordance with the opinion of the Full Bench, we hold that the auction sales held by the Executing Court were illegal. Only 7.19 acres out of Survey No 128, could have been sold. Survey No. 137, having an area below 10 acres, could not at all be sold. As regards survey No 138, only 1.89 acres of land could be sold. In this view of the matter, it would be necessary for the Executing Court to hold a fresh auction sale and the auction sales held by the Executing Court cannot thus be upheld.

Consequently, this appeal succeeds and is accordingly allowed. There shall be no order as to costs of this appeal. Similarly, there shall be no order as to costs before the single Bench, which shall be borne as incurred. The case is remitted to the Executing Court, which shall hold fresh auction sales in accordance with the directions given by us above.