

(1959) 09 MP CK 0011
In the Madhya Pradesh High Court
Case No : First Appeal No. 142 of 1954

Rao Shankar Pratap Singh	Vs	APPELLANT
The State of Madhya Pradesh		RESPONDENT

Date of Decision : 21-09-1959

Acts Referred:

Central Provinces Land Revenue Act, 1881 — Section 2(5)
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act,
1950 — Section 2, 4(2)

Citation : AIR 1960 MP 86 : (1959) ILR (MP) 639 : (1960) JLJ 1 : (1959) 4 MPLJ 1100

Hon'ble Judges : G.P. Bhutt, C.J; T.P. Naik, J; K.L. Pandey, J

Bench : Full Bench

Advocate : R.L. Sharma, for the Appellant; M. Adhikari, General and H.L. Khaskalam, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Pandey, J.

I have had the advantage of reading the opinions of my Lord the Chief Justice and my learned brother, Naik J. I fully agree with the conclusions of my Lord the Chief Justice. I had not at first intended to record a separate opinion, but since the main question involved is important, I feel, upon reflection, that I ought to express my opinion.

The question is whether the lands covered by Clauses (i) to (iv) as enumerated in paragraph 7 of the opinion of my Lord the Chief Justice were Khudkasht lands within the meaning of the Central Provinces Land Revenue Act, 1917 (II of 1917).

Clause (5) of Section 2 of the Central Provinces Land Revenue Act, 1917, which defines khudkasht, is as under:

""Khudkasht" means that part of the home-farm of a mahal which is cultivated by the proprietor as such and which is not sir-land:

Explanation (1) -- Land allowed to lie fallow according to agricultural practice shall be deemed to be cultivated.

Explanation (2) -- In this definition "proprietor" includes a transferee of proprietary rights in possession, a thekadar or headman with protected status, a mortgagee with possession and a lessee holding under a lease from year to year or for a period exceeding one year, but not a malik-makbuza."

It has been contended that since "agriculture" or "agricultural practice" has not been defined in the Central Provinces Land Revenue Act, 1917, the expression "agricultural practice" occurring in the first explanation reproduced above should be construed with reference to the meaning given to "agriculture" in a later enactment namely, the Central Provinces Tenancy Act, 1920 (I of 1920). Arguments based upon analogy may be misleading and, in my view, it is not safe to pronounce upon the meaning of the provisions in one Act with reference to the provisions in another which may not be in pari materia.

In this connexion, it may be mentioned that while the Central Provinces Land Revenue Act, 1917, was enacted to consolidate and amend the law relating to land revenue and other matters relating to land and liabilities incidental thereto, the Central Provinces Tenancy Act, 1920, was placed on the statute book mainly to consolidate and amend the law relating to agricultural tenancies. It may be noted in particular, that, although under the Tenancy Act of 1920 diversion of land to non-agricultural purposes continued to be a ground for ejectment of occupancy tenants, "agriculture" was defined for the first time in wide terms to include purposes subservient to agriculture.

This became necessary in order to extend a large measure of protection, to occupancy tenants because previously the cultivation of singhara (water nuts), the planting of a mango grove and grazing of cattle were not held to be agricultural purposes: *Battoo v. Narainprasad* 11 Nag LR 49: (AIR 1915 Nag 49) and *Hari v. Wanu* 11 Nag LR 122: AIR 1915 Nag 57. The basis on which statutes in pari materia are resorted to for construing, where necessary, any enactment is the assumption that all statutes which relate to the same subject-matter were enacted in accord with the same legislative policy and that together they constitute a harmonious system of law.

It is an extension of the principle that one part of a statute is properly called in to help the construction of another. Where however, a definition is enacted in a later Act to effectuate a purpose not germane to the earlier Act, this principle does not apply. I am therefore, of the view that for expounding the meaning of the expression "agricultural practice" occurring in the Central Provinces Land Revenue Act, 1917, resort cannot be had to the definition of "agriculture" in the Central Provinces Tenancy Act, 1920, "especially" when it was enacted subsequently.

Since the cases, out of which the appeals under consideration arise, deal with the rights of ex-proprietors under the Madhya Pradesh Abolition of Proprietary Rights

(Estates, Mahals, Alienated Lands) Act, 1950 (I of 1951), and Clause (b) of Section 2 of the Act provides for adopting the meaning of any expression, used or explained but not defined therein, as assigned to it in certain other Acts including the Central Provinces Tenancy Act, 1920, it is argued that the definition of "agriculture" in the Tenancy Act of 1920 ought to be taken into account. The relevant Clause (b) reads as under:

"in relation to the Central Provinces, any expression not herein defined but used or explained in the Central Provinces Land Revenue Act, 1917, or the Central Provinces Tenancy Act, 1920, and the Central Provinces Settlement Act, 1929, shall have the meaning therein assigned to it."

It is significant that, under this provision, meaning of undefined expressions has to be adopted either from the Land Revenue Act, 1917, or the Tenancy Act of 1920. The word "khudkasht" is defined in the Land Revenue Act of 1917 and is not defined in the Tenancy Act of 1920, or the Settlement Act of 1929. That being so, only one view can be taken of this adoption by express reference. For the purposes of the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, the word "khudkasht" shall have the meaning assigned to it under the Central Provinces Land Revenue Act, 1917.

To modify the meaning of the word "khudkasht" with reference to the definition of agriculture as given in the Central Provinces Tenancy Act, 1920, and then to adopt it, as contended at the Bar, would in effect amount to a violation of the direction in the relevant enactment that the word shall have the meaning assigned to it in the Central Provinces Land Revenue Act, 1917.

It would also disregard the presumption that the Legislature in adopting a statute also adopts the construction which has been placed upon it in the absence of some indication of a contrary intent. It would thus be seen that, in this view, there is no scope for contending that the word "khudkasht" should be given a wide meaning in the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, because that Act is expropriatory in character.

The position which emerges is this. The word "khudkasht" in the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, has to be given the "meaning assigned to it in the Central Provinces Land Revenue Act, 1917. The provision which has given rise to the main controversy is the first Explanation under Clause (5) of Section 2 of the Act of 1917 which defines khudkasht. It provides that land allowed to lie fallow according to "agricultural practice" shall be deemed to be cultivated. "Agricultural practice" is practice pertaining to agriculture.

The word "agriculture" has not been defined in the Central Provinces Land Revenue Act, 1917, and should be presumed to have been used in its ordinary sense. The primary meaning of agriculture is agera field, -- cultura-cultivation, that is, cultivation of a field. Another and a wider meaning is also given by dictionaries. The one given in the Webster's New International Dictionary and

noticed by Naik J., which may be regarded as representative of the wider meaning, is reproduced below:

"the art or science of cultivating the ground, including rearing and management of livestock, husbandry, farming, etc. and also including in its broad sense farming, horticulture, forestry, butter and cheese-making etc,"

The point is which of the two meanings should be ascribed to agriculture in order to construe the expression "agricultural practice" in the context in which it appears.

Since the provisions of the Land Revenue Act, 1917, do not throw any light on the question whether the etymological or the wider meaning of agriculture should be adopted, it is permissible to look to the repealed Act for light upon the intention of the Legislature. In *Bradlaugh v. Clarke* (1883) 8 AC 354, Lord Blackburn observed at page 373:

"It has always been held, that where a statute was passed for the purpose of repealing and, in part, re-enacting former statutes, all the statutes in *pan materia* are to be considered, in order to see what it was that the Legislature intended to enact in lieu of the repealed enactments. It may appear from the language used that the Legislature intended to enact something quite different from the previous law, and where that is the case effect must be given to the intention. But when the words used are such as may either mean that former enactments shall be re-enacted, or that they shall be altered, it is a question for the Court which was the intention."

Even Lord Watson, who expressed a contrary view, accepted that there might be occasions on which such a reference would be legitimate. In *Tumahole Bereng v. The King* AIR 1949 PC 172 Lord MacDermott observed at page 176-

"The wisdom of that warning cannot be doubted, but the circumstances of the present case put it beyond the mischief Lord Watson was minded to discourage, and that for two reasons. In the first place, the terms of the section as it now stands are sufficiently difficult and ambiguous to justify the consideration of its evolution in the statute-book as a proper and logical course; and secondly, the object of the instant enquiry is to ascertain the true meaning of that part of the section which remains as it was and which there is no ground for thinking the substitution of a new proviso was intended to alter."

In *D.N. Banerji Vs. P.R. Mukherjee and Others*, , *Chandrasekhara Aiyar, J.* observed at page 309 (of S.C.R.) : (at pp. 60-61 of AIR):

"It is no doubt true that the meaning should be ascertained only from the words employed in the definitions, but the set-up and context are also relevant for ascertaining what exactly was meant to be conveyed by the terminology employed. As observed by Lord Atkinson in *Keates v. Lewis Merthyr Consolidated Collieries* (1911) A. C. 641 . "In the construction of a statute it is, of course, at all times and under all circumstances permissible to have regard to the state of

things existing at the time the statute was passed, and to the evils which, as appears from its provisions, it was designed to remedy".

If the words are capable of one meaning alone, then it must be adopted, but if they are susceptible of wider import, we have to pay regard to what the statute or the particular piece of legislation had in view. Though the definition may be more or less the same in two different statutes, still the objects to be achieved not only as set out in the preamble but also as gatherable from the antecedent history of the legislation may be widely different."

When the proprietary rights were first conferred in the sixties of the last century the lands in the cultivation of newly created proprietors were recorded as their sir lands in the record-of-rights. They had absolute control over their sir lands. A lessee cultivating sir land could not acquire any right over the land and could be ejected from it without difficulty. The consequence was that numerous proprietors, who had either large areas of sir land or who had extended their cultivation over lands formerly held by tenants or broken up from waste, habitually leased out their sir lands and rack-rented their lessees.

In this situation, it became necessary to afford some measure of protection to the lessees. Therefore, the Central Provinces Land Revenue Act of 1881 and the Central Provinces Tenancy Act of 1883, which were subsequently enacted, provided for extinction of sir rights in lands which the proprietors had shown they did not want to cultivate personally. A provision was also made for creation of sir rights in favour of the proprietors who desired to extend their home-farm. It was accordingly enacted that sir rights would be extinguished if the land was leased out for six or more consecutive years without express reservation of the sir right, and would be acquired by continuous cultivation by the proprietor for twelve Or more years land relinquished by a tenant, and six or more years land which he had broken up from waste.

For various reasons, these objects could not be achieved by the new law which had to be amended within six years. Under the amending Act of 1889, sir rights could no longer be extinguished and new sir rights could only be acquired automatically by cultivation of waste land for six years or by the declaration at a settlement that land formerly held by a tenant had been continuously cultivated by a proprietor for upwards of twelve years. It was, however, provided that only so much land formerly held by the tenants could be declared sir, which together with other sir lands already held by a proprietor did not exceed 25 per cent of the total cultivated area of his Mahal. The new law was simple enough but the various saving clauses of the definition of sir land made it cumbrous. Therefore, fresh legislation was undertaken in 1898. By the Central Provinces Land Revenue Act, 1898 (XII of 1898), new Sections 4-A and 69 were inserted in the Act of 1881. This brief history takes us to the law which was in force at the time when the consolidating and amending Act of 1917 was enacted.

The relevant provisions of the law in force prior to the Act of 1917 and the

corresponding provisions made in Act II of 1917 are reproduced side by side.

Act of 1881 Act of 1917

Section 4-A (1).? Subject to the provisions of sub-section (2), "sir-land" (that is to say demesne or permanent home-farm land of a proprietor) includes the following, and no other, land namely:?

Section 2 (17).? "Sir-land" means.

(a)

land finally recorded u/s 68 as "sir-land" in the record-of-rights of the current settlement;

(a)

land finally recorded u/s 69 as "sir-land" in the papers of the current settlement;

(b)

land declared u/s 106, clause (c), to be "sir-land"; and

(b)

land declared, u/s 132, clause (j), to be ""sir-land", and

(c)

land in the Sambalpur District recorded as "bhogra" in the papers of the current settlement.

(c)

land in Sambalpur Territory recorded as "bhogra" in the record of-rights of the current settlement.

Section 4-A (2).? In any local area of which no settlement has been made since the commencement of the Central Provinces Land Revenue Act, 1889, and until the settlement of such local area next following the commencement of the Central Provinces Land Revenue Act, 1889, "sir-land" includes:?

Section 2 (5). ? Khudkasht means-part of the home-farm land of a Mahal which is cultivated by the proprietor as such and which is not sir-land:

(a)

land defined as sir-land in the foregoing sub-section:

Explanation (1)? Land allowed to lie fallow according to agricultural practice shall be deemed to be cultivated.

???? ???

(b)

land which at the commencement of the Central Land Revenue Act, 1889, was occupied by and had been cultivated by the proprietors or one of the proprietors thereof for a period of not less than twelve consecutive years;

(c)

land which at the commencement of the Central Provinces Land Revenue Act, 1889, been broken up from waste by the proprietor or one of the proprietors thereof, and cultivated by him for a period of not less than six consecutive years;

??? ??? ??? ??? ???

Explanation I.:? For the purpose of sub-section (2), land shall be deemed to be occupied by the proprietor when it is leased out by him with an express reservation of his sir rights and land shall be deemed to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation.

Section 69 (2).? The Settlement Officer shall also record as sir land;

Section 68(3). ? The Settlement Officer shall record as sir land such khudkasht land as has been continuously cultivated by a proprietor for a period of not less than six consecutive years:

(a)

land which is at the time of his enquiry cultivated by the proprietor, or one of the proprietors thereof, and has been continuously so cultivated for a period of not less than twelve consecutive years; and

(b)

Land which is at the time of his enquiry cultivated by the proprietor, or one of the proprietors thereof, and having been broken up from waste land by such proprietor or one of such proprietors, has since been continuously cultivated by him for a period of not less than six years.

Provided that no land shall be recorded as sir land under this sub-section if the total area of sir land within the mahal already exceeds, or will by such record made to exceed, one quarter of the total occupied area of a mahal; provided further that the Settlement Officer may, with the previous sanction of the Commissioner, exempt any mahal or part thereof from this limitation in respect of land falling under clause (b) of this sub-section.

Provided that?

(1)

no land shall be recorded as sir land under sub-sections (2) and (3) if the total area of sir land within the mahal already exceeds or would thus exceed, one quarter of the total occupied area of the mahal;

(2)

the Settlement Officer may, with the previous sanction of the Commissioner, exempt any mahal or part thereof, from this limitation.

It would appear that, in the provisions of Act II of 1917, the distinction between occupied land and land broken up from waste was done away with and continuous cultivation for six years by a proprietor as such was prescribed for making his ordinary home-farm land eligible for being declared as sir land. In other respects, the old Taw was re-stated in substantially the same language.

It is true that in place of Sub-section (2) of Section 4-A of the old Act, a definition of khudkasht was enacted. It is, however manifest that the definition merely described that part of the home-farm land under the cultivation of a proprietor as such which was not his sir land.

It was merely an expression, a name or label, given to such land without creating any right, in order to avoid, as usually desired by draftsmen, use of repetitive language. It would be seen that the explanation under the definition of khudkasht occurring in the new Act was located under Sub-section (2) of Section 4-A of old Act which prescribed that ordinary home farm land, to be eligible for being regarded as sir land, had to be continuously cultivated by its proprietor for a minimum number of years.

That explanation created a fiction which considered a practice that was not in fact cultivation as cultivation for computing the period of continuous cultivation of home-farm land because, as already stated, cultivation of such land for the prescribed number of consecutive years was required for earning sir rights in respect of the land. In the new Act, the relevant part of the explanation, re-enacted in substantially the same language was tagged on to the definition of khudkasht. Relocation is not unusual in a consolidating enactment.

In my opinion, the proper place for the explanation was under Sub-section (3) of Section 68 of the new Act. Even under the definition of khudkasht, it was not entirely out of place since that word was used merely for describing home-farm other than sir land, which was being cultivated by its proprietor in a situation in which continuous cultivation of khudkasht land for not less than six consecutive years was necessary for earning sir rights. In this view, notwithstanding the relocation, the explanation should be construed as bearing the meaning which was assigned to it under the old Act.

It is, however, pointed out that there was an alteration in the language in that the words "allowed to lie fallow according to agricultural practice" were substituted for the words "allowed to lie fallow in accordance with the usual practice of cultivation". In my opinion, having regard to the etymological meaning of agriculture, there was only a verbal change which did not affect the substance. The two provisions mean the same tiling. In this view, the narrow meaning of agricultural practice, the one restricted to leaving land fallow according to the usual practice of cultivation, is indicated.

The narrow meaning also finds support from the use of the word fallow, which, as my Lord the Chief Justice has indicated in paragraph 12 (Para 85 of this report) of his opinion, means left untilled or unsown for a time with a view to resuming cultivation. That word is not usually employed to denote land which is simply left uncultivated without any intention of resuming cultivation. Since the ordinary meaning should be ascribed to that word, I am of the view that the word means, especially in the context in which it occurs, land left untilled or unsown for a time with a view to resuming cultivation.

It is well settled that when a statutory fiction is created, the Court is entitled and bound to ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion: *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, . Since khudkasht was not a right, no purpose could be served by resorting to a statutory fiction for enlarging its meaning. As shown, khudkasht denoted certain lands subjected to a certain process. The fiction created by statute was attached, to the process and not to the land.

This had a purpose. If certain lands were subjected to that process (cultivation) continuously for the prescribed number of years, the proprietor of those lands became entitled to claim in respect thereof certain rights called sir rights. If there was a break in the process during that period, those rights could not be claimed. But there were certain lands which could not be continuously subjected to that process without deterioration. The wise farmer had realized that long ago and, therefore, it was usual for him to give rest to such lands in order that they might regain their fertility and be again fit for cultivation.

The statutory fiction enacted that whenever such rest was given for a short interval and there was a consequent break in the continuity of cultivation, the land would nevertheless be deemed to have been subjected to the process of cultivation. It would thus appear that the statutory fiction was created for the purpose of enabling the proprietor to claim sir rights on the basis of continuous cultivation for the prescribed period even though he had allowed his lands the usual rest for a short interval.

Looking to this purpose for which the fiction was created, the large meaning sought to be ascribed to the expression "agricultural practice" is contradicted. Indeed, having regard to the insistence on continuous cultivation for earning sir rights and the fiction which had to be created to make allowance for the vice inherent in some of the lands required to be so cultivated for securing those rights, it would be strange if the fiction were to be so widely interpreted as to do away with cultivation altogether.

For the foregoing reasons, I am of the opinion that the lands covered by Clauses (i) to (iv) were not khudkasht on the date of vesting under the Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, and would,

therefore, agree with the order proposed by my Lord the Chief Justice in the last paragraph of his opinion.

Naik, J.

The question for consideration in these appeals is whether the land which may be classified as below:

(i) lands which were recorded as khudkasht in the last settlement but were subsequently recorded as "chhota ghas" in the annual papers,

(ii) lands which were recorded as bir in the last settlement but were recorded subsequently as bir or "chota ghas" in the annual papers,

(iii) lands which formed tenancy holdings at the last settlement and were acquired by the plaintiffs, but recorded subsequently as "chhota ghas" in the annual papers,

(iv) lands which were recorded as "chhota ghas" in the last settlement and were also recorded as such in the annual papers,

and

(v) lands which were brought under cultivation after 1948-49 but before the date of vesting, may be permitted to be retained by the ex-proprietors u/s 4(2) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act No. I of 1951), hereinafter referred to as "the Act", by reason of the fact that it was his "home-farm land" or land brought under cultivation after 1948-49 but before the date of vesting, as the case may be.

Section 4(2) of the Act says:

"Notwithstanding anything contained in Sub-section (1), the proprietor shall continue to retain the possession of his home-stead, home-farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49 but before the date of vesting."

The word "home-farm" is defined in Section 2(g) of the Act as follows:

" "Home-farm" means,--

(1) in relation to the Central Provinces,--

(i) land recorded as sir and khudkasht in the name of a proprietor in the annual papers for the year 1948-49, and

(ii) land acquired by a proprietor by surrender from tenants after the year 1948-49 till the date of vesting."

* * * * *

The word "khudkasht" is not defined in the Act, but by virtue of Section 2(b), which says:

"In this Act unless there is anything repugnant in the subject or context-

* * * * *

in relation to the Central Provinces, any expression not herein defined but used or explained in the Central Provinces Land Revenue Act, 1917, or the Central Provinces Tenancy Act, 1920, and the Central Provinces Settlement Act, 1929, shall have the meaning therein assigned to it".

we can take the help of the Central Provinces Land Revenue Act, 1917, or the Central Provinces Tenancy Act, 1920, or the Central Provinces Settlement Act, 1929, for ascertaining its meaning if that expression has been used or explained in those Acts or in any one of them.

The word "khudkasht" is defined in Section 2(5) of the Central Provinces Land Revenue Act, 1917 as follows:

"'Khudkasht' means that part of the home-farm of a mahal which is cultivated by the proprietor as such and which is not sir-land:

Explanation (1). -- Land allowed to lie fallow according to agricultural practice shall be deemed to be cultivated.

Explanation (2).-- In this definition "proprietor" includes a transferee of proprietary rights in possession, a thekadar or headman with protected status, a mortgagee with possession and a lessee holding under a lease from year to year or for a period exceeding one year, but not a malik-makbuza."

The first question, therefore, is whether the lands of classes (i) to (iv) enumerated above in paragraph 1 are khudkasht within the meaning of this definition.

It is undisputed that if the definition had stood alone without the Explanation (1), the lands of classes (i) to (iv) could not have been covered by the definition. We have, therefore, to consider what the implications of the Explanation (1) are. It is true that the purpose of an explanation is to explain, and not to change the scope of, the original section; but in modern legislation, the draftsman has not always taken care to use the words with meticulous care and consequently the description of a provision as an "Explanation" is not always a safe guide for its interpretation. In *Krishna Ayyangar v. Nallaperumal Pillai* ILR 43 Mad 550 : AIR 1920 PC 56 Viscount Finlay said:

"The construction of the Explanation must depend upon its terms, and no theory of its purpose can be entertained unless it is to be inferred from the language used."

The Supreme Court in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, at p. 258 stated the aforesaid proposition with a qualification:

"It may be that the description of a provision (here the provision was an

Explanation) cannot be decisive of its true meaning or interpretation which must depend on the words used therein but, when two interpretations are sought to be put upon a provision, that which fits the description which the legislature has chosen to apply to it is according to sound canons of construction, to be adopted, provided, of course, it is consistent with the language employed, in preference to the one which attributes to the provision a different effect from what it should have according to its description by the legislature". (The words in brackets are mine).

The purpose of the Explanation (1) in the Act is to explain what "cultivation" connotes in the definition of the word "khudkasht" by extending its true meaning by a legal fiction. The legal fiction is created by the expression: "deemed to be." In AIR 1930 54 (Privy Council) , the Judicial Committee of the Privy Council at p. 223 (of ILR Bom): (at p. 55 of AIR) said:

"Now, when a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were. It follows that although the High Court was perfectly right in holding that if Section 42 stood alone, "agent" in that section would mean an agent in actual receipt of the profits or gains which were to be assessed, they failed to appreciate that Section 43 puts the person who comes within its terms artificially into the position of the agent and of the assessee u/s 42."

The consequence of the legal fiction, therefore is that not only is that part of the home-farm of a mahal, which is cultivated by the proprietor and which is not sir, "khudkasht" but also that part of the home-farm which is not actually cultivated but which is brought artificially within that category, e.g.. land which is allowed to lie fallow according to agricultural practice.

The question, therefore, narrows down to this, e.g. whether in law the lands of classes (i) to (iv) could be classed as "land" which is "allowed to lie fallow" according to "agricultural practice".

The dictionary meaning of the words "fal-law", agricultural" and "agriculture" is as follows:

"Fallow": "Of land: frequent in phrases, To lie, to lay fallow.

- (a) That is uncropped for the current year.
- (b) Uncultivated.
- (c) Fit for tillage; ploughed ready for sowing.
- (d) tranf. and fit".

"Agricultural" "Of or pertaining to agriculture connected with husbandry or tillage of the ground."

"Agriculture": "The science and art of cultivating the soil; including the allied

pursuits of gathering in the crops and rearing live stock; tillage, husbandry, farming (in the widest sense).""

(See The Oxford English Dictionary, Vol. IV, p. 47 and Vol. I, p. 191, respectively.)

The contention of the learned counsel for the proprietor is that the phrase "land allowed to lie fallow according to agricultural practice" simply means: "land allowed to lie uncultivated according to the practice of good farming in the widest sense", while the learned Advocate-General contends that it means:

"land allowed to lie uncropped according to agricultural practice of rotation of crops or of giving the land rest between a succession of crops for the purpose of allowing it time to regain its fertility before cultivation was resumed".

I have no doubt that the practice of allowing lands rest for a season or two so that they may regain their fertility is an agricultural practice.

Similarly, in appropriate context, "fallow" does mean land left uncropped for the current year; but the phrase cannot be equated with this agricultural practice alone. This would unnecessarily restrict the meaning of the phrase, which restriction neither the context nor the language warrants.

Use of the word "fallow" for "uncultivated" is as old as the Bible where, as pointed out in the Oxford English Dictionary, in Jer iv 3, it is said "Break up your fallow ground and sow not among the thorns: Similarly, in the Settlement Reports and District Gazetteers, the word is used in the same sense, though, in order to distinguish between "the land within the occupied area which has been fallow for 3 years or more" and the land which has been fallow for the lesser period, the former has been described as "old fallow" and the latter "new fallow" : (see Hoshangabad District Gazetteer, p. 116 and Narsinghpur District Gazetteer, p. 98). So also, the expression "agriculture", though etymologically may have meant cultivation of a field or land (Ager, Agri-field, Cultura culture, cultivation), it has now come to acquire a wider meaning which includes allied pursuits of gathering in the crops and rearing of live stock. Consequently, unless there is anything in the subject or context to give these expressions a restricted meaning, I do not see why they should not be interpreted in their ordinary sense.

In Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, at p. 772, Bhagwati, J., in construing the words "agriculture" and "agricultural purpose" for the purpose of the Indian Income Tax Act, where the words were not defined nor any aid to their construction specifically suggested, said:

"The terms "agriculture" and "agricultural purpose" not having been defined in the Indian Income Tax Act, we must necessarily fall back upon the general sense in which they have been understood in common parlance. "Agriculture" in its root sense means ager, a field, and culture, cultivation, cultivation of field which of course implies expenditure of human skill and labour upon land. The term has, however, acquired a wider significance and that is to be found in the various

dictionary meanings ascribed to it.

It may be permissible to look to the dictionary meaning of the term in the absence of any definition thereof in the relevant statutes. As was observed by Lord Coleridge in *R. v. Peters* (1886) 16 QBD 636 :

"I am quite aware that dictionaries are not to be taken as authoritative exponents of the meaning of words used in Acts of Parliament, but it is a well known rule of Courts of Law that words should be taken to be used in their ordinary sense, and we are therefore sent for instruction to these books." Cozens-Hardy, M. R., also said in *Camden (Marquis) v Inland Revenue Commrs.* (1914) 1 KB 641:

"It is for the Court to interpret the statute as best it may. In so doing the Courts may no doubt assist themselves in the discharge of their duty by any literary help they can find, including of course the consultation of standard authors and reference to well-known and authoritative dictionaries."

Turning therefore to the dictionary meaning of "agriculture" we find Webster's New "International Dictionary" describing it as "the art or science of cultivating the ground, including rearing & management of live stock, husbandry, farming, etc. and also including in its broad sense farming, horticulture, forestry, butter and cheese-making etc." Murray's Oxford Dictionary describes it as the science and art of cultivating the soil, including the allied pursuits of gathering in the crops and rearing live stock; tillage, husbandry, farming (in the widest sense)".

In Bouvier's Law Dictionary quoting the Standard Dictionary "agriculture" is defined as "the cultivation of soil for good products or any other useful or valuable growths of the field or garden, tillage husbandry; also, by extension, farming, including any industry practised by cultivation, as breeding and rearing of stock, dairying, etc.....The science that treats of the cultivation of the soil."

In Corpus Juris the term "agriculture" has been understood to mean: "art or science of cultivating the ground especially in fields or large quantities, including the preparation of the soil, the planting of seeds, the raising and harvesting of crops, and the rearing, feeding and management of live stock; tillage, husbandry and farming. In its general sense the word also includes gardening or horticulture".

Bhashyam Ayyangar, J., in *Murugesu Chetti v. Chinnathambi Goundan* ILR 24 Mad 421 gave the following dictionary meaning of "agriculture" as culled out from the Century Dictionary and Anderson's Dictionary of Law:

"The primary meaning of agriculture is the cultivation of the ground (The Century Dictionary) and in its general sense, it is cultivation of the ground for the purpose of procuring vegetables and fruits for the use of man and beast including gardening or horticulture and the raising or feeding of cattle and other stock (Anderson's Dictionary of Law). Its less general and more ordinary signification is the cultivation with the plough and in large areas in order to raise food for man

and beast (The Century Dictionary) or, in other words, "that species of cultivation which is intended to raise grain and other field crops for man and beast". (Anderson's Dictionary of Law). Horticulture, which denotes the cultivation of garden or orchards, is a species of agriculture in its primary and more general sense." Ramesam, J., In Pavadai Pathan and Another Vs. Ramaswami Chetty and Others, , referred to the following connotation of agriculture":

"Whartons" Law Lexicon adopts the definition of "agriculture" in Edw. VII c. 36, as including horticulture, forestry and use of land for any purpose of husbandry etc. "In 10 Edw. VII, c. 8, Section 41, it was defined so as to include the use of land as "meadow" or pasture land or orchard or osier or woodland, or for market gardens nursery grounds or allotments, etc. In 57 and 58, Vict. c. 30, Section 22, the term "agricultural property" was defined so as to include agricultural land, pasture and woodland etc."

These are the various meanings ascribed to the term "agriculture" in various dictionaries and it is significant to note that the term has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of live stock, dairying, butter and cheese-making, husbandry etc."

I may here also refer to the observations of Ashutosh Mookerjee and Beachcroft, JJ. in Hedayet Ali v. Kalanand Singh, 20 Ind Cas 332 at p. 334 (Cal), where contrasting the expression "agriculture" with the expression "cultivation", the learned Judges said:

"We are of opinion, however, that the term agriculture is of wider import than the term "cultivation". As is pointed out in the Oxford Dictionary, "agriculture" means the science or art of cultivating the soil including the allied pursuits of gathering in the crops and rearing live stock; tillage, husbandry, farming (in the widest sense). "Cultivation", on the other hand, is defined in the Oxford Dictionary as meaning the tilling of land, tillage, husbandry. It is obvious, therefore, that "agriculture" has a much wider import than "cultivation". Consequently, a purpose may be connected with agriculture but not necessarily ancillary to cultivation."

Bill, apart from the dictionary meaning of these words, the Act (Section 2(b)) in terms enjoins on us to look to the Central Provinces Tenancy Act, 1920 for discovering their meaning, because it says that these words shall have the meaning therein assigned to them unless there is anything repugnant in the subject or context, provided those words have been used or explained in those Acts. In Section 2 (2) of the Central Provinces Tenancy Act, 1920, "agriculture" includes-

- "(a) the raising of annual or periodical crops and garden produce;
- (b) horticulture;
- (c) the planting and upkeep of orchards; and

(d) the preserving of land for fodder, grazing, thatching grass;"

and, in my opinion, the word "agriculture" having been used in this specific sense in the Central Provinces Tenancy Act, 1920, it would be necessary to understand the word "agricultural practice" in the Central Provinces Land Revenue Act, 1917 in the same sense for the ultimate purpose of understanding the connotation of the term "home-farm in the Act (Act I of 1951), in preference to any other sense in which the word "agriculture" or "agricultural practice" may have been used in other Acts.

We may, in passing, also refer to Settlement Instructions No. X issued by the Chief Commissioner u/s 62 of the Central Provinces Land Revenue Act, 1917, wherein it has been provided as follows:

"In certain districts it is the practice of both proprietors" and tenants to reserve part of their holdings as grazing ground for their agricultural cattle; when the practice is proved, and the Financial Commissioner directs its recognition, land that is expressly reserved by one or more of the proprietors for the exclusive use of the agricultural cattle needed for the home-farm cultivation in the village will be classed as "khudkasht." "

Incidentally, if we read the further provisions:

"Since this reservation of grazing land does not constitute "cultivation" it does not qualify for declaration of sir right u/s 68(3)."

the purpose of the legal fiction created in the Central Provinces Land Revenue Act, Explanation (1) to the definition of the word "khudkasht" becomes still clearer. The legal fiction was resorted to because, as the aforesaid observations in the Settlement Instructions show, reservation of grazing land did not constitute cultivation and consequently the land so reserved could not come within the definition of khudkasht in Section 2(5) if the aid of the Explanation (1) was not taken. But, if such land had yet to be classed as khudkasht in cases where the necessary "agricultural practice" was proved, the legislature enjoined on us to treat such "uncultivated" land as "cultivated" and thereby included in the definition of the word "khudkasht". We may also, at the same time, remember that where the legislature provides that something is to be deemed other than what it is, we must be careful to see within what bounds and for what purpose it is to be so deemed: Gover's case (1875) 1 ChD 182 and Ex parte Walton: In re, Levy(1881) 17 Ch D 746 .

In the instant case, the legal fiction is created for the purpose of giving an extended meaning to the word "khudkasht" so that land which was actually not cultivated was yet to be put artificially into the class of cultivated land. And, once land reserved for grazing which, in fact, has never been cultivated, is fictionally to be treated as cultivated, we cannot, unless prohibited from doing so, but imagine as real the consequences and incidents which, if "cultivation" had in fact existed, must inevitably have flowed from or accompanied it, i.e., if the

cultivated land would have been classed as khudkasht, the "fictionally cultivated" land would equally well have to be classed as khudkasht : (see in this connection the observations of Lord Asquith in *East End Dwellings Co. Ltd. v. Finsbury Borough Council* 1952 AC 109).

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied itThe statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

which have been cited with approval in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, at p. 246.

I am, therefore, of opinion, that the words "agricultural practice" must be give an extended meaning, and I find no reason, either in the context or subject of the Act, to restrict their meaning to that "agricultural practice" alone wherein the land which was once under cultivation was given rest to permit it to recoup its fertility with a view to resuming cultivation.

If this were all that the legislature intended, the purpose could have more easily been accomplished by inserting the words "according to agricultural practice" after the words "as such in the original definition. The Section would then have read:

""Khudkasht" means that part of the home-farm of a mahal which is cultivated by the proprietor as such according to agricultural practice and which is not sir land."

Because, if the meaning contended for by the learned Advocate-General is to be assigned to the Explanation (1), ;the expression "according to agricultural practice" would qualify "cultivation" only and not the practice of allowing the land to lie fallow.

Besides, it may be--though I do not express any final opinion in the matter--that allowing rest to the soil in order to enable it to recoup its fertility may well be included in the concept of cultivation. "To cultivate", in Oxford English Dictionary, means:

"To bestow labour and attention upon (land) in order to the raising of crops; to till; to improve and render fertile by husbandry."

In Webster's New International Dictionary, it means:

To prepare or to prepare and use, for the raising of crops; to till; as, to cultivate the soil, to loosen or break up the soil about (growing crop or plants) for the purpose of killing weeds, etc., especially with a cultivator, as to cultivate the corn." Cultivation, therefore, connotes preparation of the soil for raising of crops,

and preparation of the soil may embrace the operation of leaving it unsown for a season or two either to green manure it or in order to allow it to regain its fertility from rest.

Again, the construction that the learned Advocate-General seeks to place on the Explanation (1) would necessitate the reading of the words "any such" before the word "land" therein, because, his contention is that the Explanation applies to the khudkasht lands as defined in the section, i.e., to such land only which is cultivated by the proprietor as part of the home-farm of a mahal and which is not sir as defined in the section without the Explanation. The absence of any qualifying words before "land" in the Explanation (1) shows that the legislature had not the land spoken of in the section only, in its mind when enacting the Explanation, but that the Explanation was general and was advisedly adding to the class of lands which could be classified as khudkasht, by adding in its category all that part of the home-farm of a mahal which is allowed to lie fallow according to "agricultural practice" and which, for that reason, is deemed to be cultivated. It is a settled rule of construction that the Courts have no power to add to the words of a statute if its meaning is clear. "If the meaning of the language be plain and clear", says Pollock, C.B. in *Miller v. Salomons* (1852) 7 Ex 475 .

"We have nothing to do but to obey it--to administer it as we find it; and I think, to take a different course is to abandon the office of Judge, and to assume the province of legislation".

The learned Advocate-General next contended that the key to the interpretation of the Explanation is furnished by the word "fallow" which has a technical meaning and its meaning could advantageously be gathered from the definition of the word "fallow land" in the Central Provinces and Berar Cultivation of Fallow Land Act, 1948, Section 2(c). The Fallow Land Act, being a later Act, the definition of "fallow land" contained therein could not be used for construing the word "fallow" in an earlier Act. Besides, the object of the later Act is to provide regarding "fallow lands" as therein defined, and it could not, under the circumstances be a safe guide for the interpretation of the word "fallow" in the Central Provinces Land Revenue Act, 1917 and as stated by the Supreme Court in *Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, when expressions are not defined in an Act,

"we must necessarily fall back upon the general sense in which they have been understood in common parlance".

The contention that the Explanation (I) to Section 4A(2) of the Central Provinces Land Revenue Act, 1898, which defined sir land and provided that "land shall be deemed to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation" furnished a key to the interpretation of the Explanation (1) to Section 2(5) of the Central Provinces Land Revenue Act, 1917, is equally untenable. It is true that at both places (e.g. in Explanation (I) to

Section 4A (2) of the earlier Act and in Explanation (1) to Section 2(5) of the later Act), a legal fiction is created to extend the meaning of the word "cultivated", but, apart from this, the purpose and the language of the two phrases is widely different. In addition, in the later Act, the expression "agricultural practice" is not the phrase employed but the expression "usual practice" of "cultivation". The latter is plainly a word of wider import: (see 20 Ind Cas 332 (Cal) (supra)); and, in my opinion, it would be doing violence to the plain language of the Explanation (1) to Section 2(5) of the Central Provinces Land Revenue Act, 1917, to construe the expression "agricultural practice" as "usual practice of cultivation".

The construction I seek to place on the words "agricultural practice" in no way militates against the Supreme Court decision in Benoy Kumar's case, (S) AIR 1957 S C 768 (supra). There, the Supreme Court, in para 26, lays down:

"Whether the narrower or the wider sense of the term "agriculture" should be adopted in a particular case depends not only upon the provisions of the various statutes in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute does not afford a guide to the construction, of the same term in another statute and the sense in which the term has been understood in the several statutes does not necessarily throw any light on the manner in which the term," should be understood generally."

Construing the words "agricultural purposes" and "agricultural operations," it says:

"Agriculture is the basic idea underlying the expressions "agricultural purposes" and "agricultural operations" and it is pertinent, therefore, to enquire what is the connotation of the term "agriculture"."

* * * * *

"The cultivation of the land does not comprise merely of raising the products of the land in the narrower sense of the term like tilling of the land, sowing of the seeds, planting, and similar work done on the land, but also includes the subsequent operations set out above all of which operations, basic as well as subsequent, form one integrated activity of the agriculturist and the term "agriculture" has got to be understood as connoting this integrated activity of the agriculturist."

* * * * *

"The term "agriculture" cannot be confined merely to the production of grain and food products for human beings and beasts as was sought to be done by Bhashyam Ayyangar, J. in ILR 24 Mad 421 or Sadashiv Ayyar, J. in Raja of Venkatagiri v. Ayappa Reddy ILR Mad 738 : AIR 1915 Mad 781 , but must be understood as comprising all the products of the land which have some utility either for consumption or for trade and commerce and would also include forest products such as timber, sal and piyasal trees, casuarina plantations, tendu

leaves, horranuts etc."

* * * * *

"The term "agriculture" cannot be dissociated from the primary significance thereof which is that of cultivation of the land and even though it can be extended in the manner we have stated before both in regard to the process of agriculture and the products which are raised upon the land, there is no warrant at all for extending it to all activities which have relation to the land or are in any way connected with the land. The use of the word "agriculture" in regard to such activities would certainly be a distortion of the term."

The case did not specifically deal with the expression "agricultural practice" and there is nothing in the decision to warrant the suggestion that the "cultivation of land" was the only activity which could be comprised in the term "agriculture". On the other hand, the Supreme Court clearly pointed out that "agriculture" comprised an integrated activity of which "the cultivation of land" formed the core, and though subsequent activities divorced from the core may not constitute agriculture, such activities, when performed in conjunction with the cultivation of land, shall be comprised in the term "agriculture".

Consequently, reserving some land for grazing or for raising fodder for agricultural cattle, when taken in conjunction with the cultivation of his other land by an agriculturist, would be included in "agriculture", even with the definition of the word "agriculture" in the Supreme Court case. In the instant case, I stand on a stranger ground, because the Supreme Court case proceeded on the dictionary meaning of the word "agriculture", while in the instant case, by virtue of Section 2(2) of the C. P. Tenancy Act, 1920 "agriculture" includes "the reserving of land for fodder, grazing or thatching grass", and the use of the word "include" in defining the expression "agriculture" suggests that even if extended meaning were not to be given to the word, in the context of the C. P. Tenancy Act, 1920, it shall be so understood and, by virtue of Section 2(b) of the Act, the same connotation shall have to be extended to the word "agricultural practice" in the definition of Section 2(5), Explanation (1), of the C. P. Land Revenue Act, 1917.

If this were not done, the purpose of the legal fiction would be defeated. However, bearing in mind the principle laid down by the Supreme Court in Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , I shall say that "allowing the land to lie fallow according to agricultural practice" can only be taken advantage of by a person who is an agriculturist when this activity is resorted to by him in conjunction with his primary activity of cultivating his land.

The idea is that if a person is an agriculturist, who is cultivating his lands in the village and in consequence owns agricultural cattle and an agricultural dwelling, he shall also be permitted as part of his "agricultural practice" to allow some of his land to lie fallow in the sense of being cultivated for the purpose of providing

fodder or grass for his cattle and thatching grass for his roof, and in so doing he shall not lose the benefit of classifying the land so left fallow (uncultivated) as khudkasht even though it is not being actually cultivated.

It was not denied at the bar that intensive cultivation soon impoverishes the soil and the only way of permitting it to recoup its fertility is to allow it to rest or to green manure it by occasionally ploughing the grass and weeds growing on it without actually sowing it for a season or two. The period of rest will usually depend on the various factors, such as nature of the soil, the climate, the rainfall, and consequently for every region an agricultural practice of giving rest for a particular period would grow. Similarly, for providing fodder or grazing for agricultural cattle, practice would dictate the amount of land to be left fallow.

Similarly, according to the fertility of soils in different regions, practice may grow of leaving some land of inferior quality or near a river or a nullah, which gets flooded easily, uncultivated to provide fodder for the cattle. The practice may be dictated by agricultural economy as it would not be good husbandry to waste money over such lands. But, all this will be a matter for evidence for establishing the necessary "agricultural practice".

I find considerable support for my conclusions regarding the interpretation of the term khudkasht in Section 2(5) of the Central Provinces Land Revenue Act, 1917, for the purpose of Section 4(2) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 from the following considerations:

Though the preamble or the purpose of an enactment is usually not germane for the interpretation of a statute, it may usefully be referred to when the interpretation is doubtful. Both the headings of the Act as well as its preamble make it clear that the Act is for the acquisition of the rights of the proprietors in estates, mahals, etc., and to make provision for other matters connected therewith. Section 4(1) of the Act enumerates the consequences which follow from the notification u/s 3 with regard to the vesting of the proprietary rights in an estate, mahal etc. in the State.

Section 4(2), which has already been quoted above in paragraph 2, (para 15 of this report) then, says that the proprietor shall continue to retain possession of his home-farm, notwithstanding anything, contained in Sub-section (1). The definition of "home-farm" in Section 2(g) (1) (i) of the Act is, "land recorded as sir or khudkasht in the name of the proprietor in the annual papers for the year 1948-49". It has not been controverted that the mere record as khudkasht, however erroneous, does not make it home-farm; it must be validly so recorded, or, if erroneously not so recorded, which could properly have been so recorded.

This must obviously have been so because entries in annual papers, which are made u/s 47(1) of the Central Provinces Land Revenue Act, 1917 under instructions of the Collector, are for statistical purposes of the revenue and do not purport to decide rights of parties, unlike entries in the Settlement papers. It

has, therefore, been held that the entries made by the patwaris in the khasra and jamabandis do not furnish the aggrieved party with any cause of action to bring a suit even for a declaration of his rights as the entries made by the Settlement Officer in the record-of-rights do: see AIR 1930 92 (Nagpur) . We shall therefore, have to find out, in every case where a dispute arises, whether the land in question was validly or correctly recorded as khudkasht in the annual papers for the year 1948-49, and, if not so recorded, whether it should have been so recorded.

It is because of the aforesaid consideration that we have to consider whether the mere record of land as grass, bir, chhota ghas or by any other name, in the annual papers for the year 1948-49 changes the character of the land which was originally khudkasht and which ought to be legally recorded as khudkasht in consequence.

Khudkasht is not a right as sir is. As its name implies, its primary meaning is "One's own cultivation" and vide the definition in the Central Provinces Land Revenue Act, 1917 minus the Explanation (1), land which is cultivated by the proprietor as such and which is not his sir. It is because of this emphasis on personal cultivation that a legal fiction had to be resorted to by the legislature when it bid us to treat as cultivated land which was not actually cultivated. Giving the legal fiction its full import for the purpose for which it was created, we arrive at the position that land allowed to lie fallow according to agricultural practice shall be treated as khudkasht even though it is not in personal cultivation of the proprietor as such.

The learned Advocate-General suggested the following definition for the term "khudkasht":

"Khudkasht denotes a certain state of things which is an incident of proprietorship coupled with an act of cultivation."

This definition in no way militates against the interpretation I have sought to put on Explanation (1). I, however, do not agree with his further contention that the legal fiction in Explanation (1) was created for the purpose of saving the land which was allowed to lie "fallow" in accordance with the usual practice of cultivation, because the Explanation in clearest terms says "agricultural practice" and not "usual practice of cultivation". But, even so, this does not solve the problem. The problem is whether land recorded as khudkasht at the time of the last Settlement (from which record certain legal consequences flowed) could lose that character (so that those legal consequences ceased to flow) by being designated as something else in the administrative papers, such as annual papers, when they did not decide, nor did they purport to decide, the right, title or interest of the proprietors with respect to that land.

The learned Advocate-General relied on certain executive instructions contained in Revenue Book Circular III-1, but nothing in the said instructions warrants the suggestion that by that recording, the character of the land changed from

khudkasht to something else. The instructions do not in term say that by such record the land shall cease to be khudkasht, and, we cannot so construe the instructions as to destroy legal rights when they do not specifically purport to do so. It has to be remembered that leaving the land uncultivated (fallow) for growing grass according to agricultural practice was permitted user of the khudkasht land and consequently such user alone could not change its character.

Secondly, it is significant that the proprietor is required to pay assessed rent on the land recorded as khudkasht at the last Settlement and no provision is made in the Central Provinces Land Revenue Code for revising the assessment during the currency of the Settlement, if khudkasht land is left uncultivated for grazing grass according to agricultural practice: (see Section 106 of the Central Provinces Land Revenue Act, 1917). This absence of provision must presumably have been on the basis that the character of the land has not changed.

Then again, in AIR 1929 108 (Nagpur) , on this principle, it was held that a proprietor had the power to give his khudkasht lands for cultivation, to cultivate them himself, or to leave them under grass, and if he liked to do the last thing, the villagers were not entitled to graze their cattle free of charge thereon. This case thus emphasized the fact that the rights of the proprietor over land which was his khudkasht do not get destroyed by its being recorded as "khalipad". The Court further, held that this description of khudkasht land was distinguishable from land specified as "khalipad" in the wajib-ul-arz.

Thirdly, when the lands were recorded as khudkasht during the last Settlement even though they were actually not under the personal cultivation of the proprietor, it must have been on the basis that they were fictionally under his cultivation.

Fourthly, in my opinion, the Settlement entry could not be made nugatory without any specific adjudication of the rights of a person in whose favour the entry was made.

[Fifthly, there is considerable force in the contention of the learned counsel for the proprietor that any other interpretation would create a number of anomalies, such as if the land were in possession of a stranger and thus cut of the persona] cultivation of the landlord, it ought to lose its character as khudkasht but, in fact, it continues to be the khudkasht of the landlord, though in illegal occupation of a stranger, because on the landlord obtaining its possession it is again recorded as his khudkasht.

Lastly, we have to bear in mind that we are dealing with an expropriatory legislation and consequently the proprietor shall be divested of those rights only which can clearly be gathered from the provisions of the Act. If, however, the provision is capable of two interpretations, that should be adopted which, without doing violence to the language, saves the private rights. Here, in the instant case, this principle does not conflict with the other principle of interpretation that, that interpretation should be adopted which advances the purpose of the

Act as the avowed purpose of the Act is the deprivation of the proprietary rights and not the deprivation of the proprietor of the home-farm in his possession.

I am therefore, of opinion that the expression "land allowed to lie fallow according to agricultural practice" is wide enough to include the lands of classes (i) to (iv) provided of course the necessary agricultural practice under which they were allowed to lie fallow had been satisfactorily established, and further provided that they were part of the home-farm of a mahal.

In this view of law in my opinion, the observations on the point to the contrary in *Raghubirprasad v. State of M. P.*, 1958 MPLJ 43 and in *Smt. Khimmibai v. State of M.P.*, F. A. No. 49 of 1954 D/- 29-7-1958 (MP) are erroneous. The decisions in *Ganpat Rao v. Yeshwant*, Misc. Petn. No. 239 of 1953, D/- 4-11-1953 (Nag) and in *Mahadeo Sitaram v. State of MP* 1955 Nag LJ 616 were, however, correct, in so far as they laid down that land reserved for growing grass and fodder for agricultural cattle was land under "personal cultivation".

As regards land in Clause (v), I respectfully agree with the conclusion of My Lord the Chief Justice on the point.

I will now examine the fact of each case separately, in the light of my observations aforesaid in respect of lands of classes (i) to (iv).

First Appeal No. 142 of 1954: This was an appeal by the plaintiff-ex-proprietor. He claimed khasra Nos. 360/1, area 11.66 acres, 360/2, area 1.42 acres, 364/2 kh area. 90 acres, 634/1 k, area 6.79 acres and half of khasra Nos. 539/1, area 68.58 acres and 539/2, area 4.20 acres, of village Sadhumar, Settlement No. 424, tahsil Gadarwara, district Hoshangabad. At the last Settlement the lands were recorded as khudkasht lands of the plaintiff and his brother Rao Rudrapratapsingh and were assessed to rent which was taken into consideration in fixing the land revenue of the village.

After partition with his brother, the plaintiff, according to agricultural practice, allowed them to lie fallow for keeping them under grass for his agricultural cattle as the lands were of inferior quality. He also planted trees on them in order to maintain their fertility and prevent erosion. He claimed to have been in their exclusive possession all through. The respondent State in its written statement admitted that the suit lands were recorded as the khudkasht of the plaintiff and his brother at the last Settlement, i.e., Settlement of 1924-25.

It was, however, averred that even at that time the fields were not being cultivated and were lying fallow. The agricultural practice of leaving lands fallow for growing grass thereon was denied, though it was admitted that grass had been growing on those lands. It was also admitted that the plaintiff used the grass growing on the said fields for his cattle and that he also paid the land revenue assessed on them. It was, however, denied that the lands were the exclusively reserved grass lands of the plaintiff. The trial Court dismissed the suit, holding that the agricultural practice of leaving lands fallow, under grass,

had not been established.

It, however, held that the lands were in "the exclusive possession of the plaintiff. The judgment was based on an erroneous interpretation of the expression "agricultural practice" as used in Explanation (1) to the definition of khudkasht in the central Provinces Land Revenue Act, 1917.

Besides the evidence of the plaintiff Rao Shankar Pratapsingh as P. W. 1, who sought to prove the agricultural practice pleaded, we may usefully look to the Settlement Reports and the Gazetteers which fully support him on the point.

In the Settlement Report of 1866 by C. Grant, it is recorded as follows:

"85. It has been already remarked that the unbroken succession of wheat crops returned by the same land is often surprising, but sometimes the soil shows signs of complete exhaustion. In these cases gram or some of its tribe is usually substituted for wheat for two or three years. Cultivators are afraid to leave their lands fallow, even for a single year, for the vacant land is immediately occupied by rank "kans" grass, which no exertions can eradicate till it has run its appointed time.

This is, in the best soils, 10 or 12 years, --in poorer land proportionately less. At the expiry of this time of forced rest the land is restored to the cultivator, refreshed and reinvigorated, but so much is the long fallow feared, that landlords will take up, even at a loss, lands unexpectedly thrown out of cultivation by their tenants."

** ** *

"104. The chief value of the forest tracts is for grazing purposes. Stall-feeding is little practiced in this valley, and the black soil village grazing grounds become perfect quagmires in the rainy season. Hence during those months it is the custom to send all cattle up to the hills, at a fixed and ordinarily a very low rate, per 100 head.

Most villages have, however, a certain area under grass, which when ripe is cut and stacked. These reserves, called "bears", are often situated in hollows or on the banks of nullahs, where there is sufficient moisture in the soil to ensure a good growth of grass. The best kinds of grass are the "keil" and the "mucheil", which have fine stalks. It is said that the appearance of these grasses in a field infested with "khans" is one of the first signs that the "khans" has run its time, and the soil has recovered its vigour. Next is the "goonheir", a coarse luxuriant grass, which is eaten readily by horned cattle. The spear grass of lumpeil", is almost useless, as even horned cattle object to it when they can get any thing else. The "khans" has already been mentioned. It is principally used for thatching purposes."

Then, in the Settlement Report of 1923-26, the following observations appear:

"126. Recent trend of agriculture. -- Concentration upon superior soils. -- The

recent history of cultivation in the district may be described as the concentration of cultivation upon remunerative soils, and the relegation of inferior tracts to the supplying of forest produce, grazing, and nistar.

In closely cultivated areas the shortage of communal nistar land has resulted in a further increase in the area occupied for private grazing and nistar."

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"127. Occupied area extended for private nistar owing to the shortage of communal nistar land. -- Only in the Riverain group of the Narsinghpur tahsil, where culturable areas still remained unoccupied, and where communal nistar land is still sufficient, has this extension in occupation been, accompanied by an extension of cultivation and cropping. In all other groups in which the occupied area has increased, agriculturists have extended their holdings for purposes of private nistar and grazing land, concentrating cultivation upon the best soils.

As a result the area under cultivation requiring a rest has fallen, and the new fallow area is down from 49,846 acres to 33,645 or to 5 per cent. which is almost the lowest percentage of new fallow in the province. In the Haveli groups the percentage of new fallow is now 2 per cent. only.

At the same time the area of land reserved for grazing as old fallow has increased considerably." (61) In the Narsinghpur District Gazetteer, it is stated:

"In 1903-04, 130,000 acres or 18 per cent of the occupied area were under old and new fallow. There has been some increase in the land left fallow since 1891-93. The area under resting fallows is naturally larger in the hill and forest tracts where the soil is poor than in the fertile open plain. Here fallows are avoided as much as possible. A part of the holding is often kept waste to grow grass for the cultivator's cattle, but the rest is cropped year after year if it is good land; for if left fallow there is every probability that kans grass (*Saccharum spontaneum*) will spring up and render the field unfit for cultivation for many years -- the period varying with the richness of the soil, as the better the land the longer will the kans flourish."

These extracts, taken in conjunction with the evidence of Rao Shankar Pratapsingh (P.W. 1), in my opinion, fully establishes the agricultural practice pleaded.

The appeal will, therefore, have to be allowed and the suit of the plaintiff decreed with costs throughout.

First Appeal No. 145 of 1955: This is an appeal by the State, as the suit of the plaintiff has been decreed on a finding that the agricultural practice pleaded had been proved.

The plaintiffs claimed lands in Schedules CDE and G. The evidence of the plaintiffs' witnesses, Sadasheo (P.W. 1) and Madanlal (P.W. 2) has been accepted by the trial Court for proving the agricultural practice of leaving the lands fallow

for the purpose of giving them rest and for growing grass thereon for use of their agricultural cattle, which are also detailed in the schedules, and nothing has been shown here why their evidence should not be accepted. There is nothing to show that the lands in Schedule G were not under cultivation nor anything to show that the other lands were never Intended to be cultivated.

The judgment and decree of the lower Court were thus correct and the appeal will therefore have to be dismissed with costs.

First Appeal Nos. 159 of 1955, 16 of 1956 and 33 of 1956: These are appeals by the State Government. The evidence of the plaintiffs' witnesses has been accepted to establish the agricultural practice pleaded, and in the view of law I have taken, the suits were rightly decreed. These appeals will therefore have to be dismissed.

Letters Patent Appeal No. 106 of 1958: This is an appeal against the judgment of Chaturvedi, J. Apart from the fact that on the view of law that I have taken, the plaintiffs claim would have to be decreed, the appeal would also fail on the short ground that it was incompetent under Clause 10 of the Letters Patent, as the application for leave was not made immediately after the judgment was pronounced. The judgment was delivered on 25th March 1958 and the application for leave was filed on 28th March 1958. The application did not disclose why an application for leave could not be made orally or in writing immediately after the judgment was delivered.

The learned single Judge, in his order granting leave, stated:

"Mr. Khaskalam heard. The interpretation put on Rule 10, Chapter IV, by the Office is correct. Without in any way creating any precedent for future, and considering the importance of the judgment and the point involved, I think the matter be allowed to go before L.P. Bench only as a special case. I grant leave for L.P.A."

There is no provision for the grant of leave under the circumstances of the case nor for the reasons stated by the learned single Judge.

It has been repeatedly held by this Court that "immediately" implies prompt vigorous action "without any delay and a very heavy onus lies on a party applying for leave on a day subsequent to the delivery of the judgment to establish compliance with the rule. Reviewing the case-law on the subject, Rao, J. in *Sakharam v. Laxman*, Misc. Civil Case No. 60 of 1955, D/- 7-4-1955, stated:

"The learned counsel for the applicants contend that there has been no such delay as would result in the rejection of the application. The word "immediately" implies that there is a more stringent requisition than what is ordinarily implied in the word "reasonable" True, it must receive a reasonable interpretation, so far that it cannot be considered as imposing an obligation to do what is impossible: Per Cockburn, C. J. in *Alexiadi v. Robinson*, (1861) 2 F and F. 679 at pp. 683, 684. "Immediately" has the same meaning as "forthwith". Both are stronger

than the expression "within a reasonable time", and imply prompt vigorous action, without any delay: R. v. Berkshire JJ. (1878) 4 QBD 469 . In the latter case, a recognizance entered into four days after notice of appeal was held to be not in compliance with the regulation requiring the recognizance to be entered into immediately after notice of appeal.

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The judgment was posted for delivery on 21-2-1955. The learned counsel who argued the appeal was aware of the fact. The applicant also came to know of the judgment late on that very day. There is no explanation why leave could not have been asked for on the 22nd or the 23rd. The present application does not disclose the grounds on which leave is sought. So in that form leave might as well have been asked before the 24th. As the rule is made unmistakably stringent, there can be no difficulty in a party instructing his counsel in advance for leave against an adverse decision.

Neither the request for leave nor the grant of it involves the party in any expense or commits him to the filing of the appeal. If an appeal under the Letters Patent is not meant to be a third appeal at the will of the party aggrieved but is really meant to be an opportunity for a further consideration of the points urged at the hearing when the Judge himself feels that they require reconsideration as is manifest from the history and the wording of the clause, the learned counsel who argued the appeal cannot be said to have been in a less advantageous position in asking for leave than another who comes on the scene subsequent to the decision. True, the party is free to brief anyone of his choice but the process involved cannot enlarge the time under the rule."

The precedents of this Court to be found in --Mst. Katia v. Mst. Doja, S. A No. 281 of 1951, P/-29-8-1951. Misc. Civil Case No. 19 of 1948, D/23-8-1948. Misc. Civil Case No. 172 of 1950, D/-28-12-1950. Misc. Civil Case No. 238 of 1953, D/-6-12-1953, Misc. Civil Case No. 277 of 1954, D/-20-9-1954. Misc. Civil Case No. 280 of 1954, D/-17-9-1954. also point to the same conclusion.

The Letters Patent Appeal (No. 106 of 1958) will, therefore, have to be dismissed. Bhutt, C.J.

This appeal (No. 142 of 1954) was referred to a Full Bench as the learned Judges who heard it doubted the correctness of an earlier decision of this Court in 1958 MPLJ 43. Other appeals which were heard with it are the following:

- (1) F.A. No. 145 of 1955 (State of Madhya Pradesh v. Sadashivrao and others).
- (2) F. A. No. 159 of 1955 (State of Madhya Pradesh v. Madhaorao and others).
- (3) F. A. No. 16 of 1956 (State of Madhya Pradesh v. Subedar Mrityunjayaprasad and another).
- (4) F. A. No. 33 of 1956 (State of Madhya Pradesh v. Savitribai).

(5) L. P. A. No. 106 of 1958 (State of Madhya Pradesh v. Patel Gayaprasad).

This appeal and the other first appeals are directed against the decrees of the original Courts and the Letters Patent appeal against the decree of late Chaturvedi J. This opinion shall govern all the appeals.

The facts briefly are these:

(1) F. A. No. 142 of 1954: The plaintiff-appellant Rao Shankar Pratapsingh was a co-sharer of mahal no. 1 of mouza Sadhumar, tahsil Gadarwara, district Hoshangabad. He held lands mentioned in paragraph 2 of the plaint. These lands were recorded as khudkasht in the last settlement (1915-16). They were not under cultivation since then and were recorded as "chhota Ghas" in the annual papers. The case of the plaintiff was that they were allowed to lie fallow according to agricultural practice and consequently they were his home-farm within the meaning of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. I of 1951), hereinafter called Act I of 1951. In this view he contended that the lands did not vest in the State and their record as "Riya Nistar" did not affect his rights.

(2) F. A. No. 145 of 1955: The plaintiffs-respondents Sadashivrao and others, who form members of a family, were proprietors of four villages viz. (1) Gurarkheda, (2) Raibore, (3) Bahaddarpura, patti No. 1, and (4) Baharakheddi, patti No. 1, tahsil Harda, district Hoshangabad. They claimed that the lands mentioned in Schedules C, D and E of the plaint formed their home-farm within the meaning of Act I of 1951, and the lands mentioned in Schedule G were brought under cultivation after the year 1948-49 but before the date of vesting. Schedule C contains the lands which were recorded as khudkasht in the last settlement (1915-16) but as "Chhota Ghas" in the subsequent annual papers.

Schedule D contains the lands which, according to the plaintiffs, were tenancy holdings at the time of the last settlement and were acquired by them subsequently either by purchase, pre-emption, ejectment or abandonment before the year 1946. These lands were also recorded as "Chhota Ghas" since their acquisition. The lands mentioned in in Schedule E were never under cultivation and were recorded as "bir" or Chhota Ghas" in the Settlement and annual papers.

The plaintiffs' case was that the lands mentioned in Schedules C, D and E were allowed to lie fallow according to agricultural practice and formed their home-farm as defined in Act I of 1951.

As regards the lands mentioned in Schedule G, they contended that they were liable to be settled with them under the provisions of Act I of 1951, inasmuch as they were brought under cultivation after the year 1948-49 but before the date of vesting. Accordingly, they claimed that all these lands did not vest in the State and their record as "Riya Nistar" did not affect their rights.

(3) F. A. No. 159 of 1955: The plaintiffs-respondents Madhorao and

Gangadharrao, who are brothers, were proprietors of five villages, viz (1) Sodalpur, (2) Barja, (3) Alanpur, patti No. 1, (4) Nimachkala, patti No. 1 and (5) Shhaddarpura, patti No. 2, tahsil Harda, district Hoshangabad. The other respondents are members of their family and were co-plaintiffs in the suit. The plaintiffs claimed that the lands mentioned in Schedules C, D and E of the plaint formed their home-farm within the meaning of Act I of 1951, and the lands mentioned in Schedule G were brought under cultivation after the year 1948-49 but before the date of vesting. These lands were claimed by the plaintiffs on the same grounds on which the plaintiffs-respondents in F. A. No. 145 of 1955 claimed their respective lands in Schedules C, D, E, and G of their plaint.

(4) F. A. No. 16 of 1956: The plaintiffs-respondents, Subedar Mritynjayaprasad and Subedar Trimbakprasad, who are brothers, were proprietors of three villages, viz. (1) Dadiwada (2) Sontalai and (3) Katmi, tahsil and district Hoshangabad. Schedule B of the plaint contains the lands which were recorded as khudkasht in the last settlement (1915-16) but as "Chhota Ghas" in the subsequent annual papers. Schedule C contains the lands which were tenancy holdings at the last settlement and were acquired by them subsequently by sale or surrender. Since their acquisition, however, they were recorded as "Chhota Ghas" in the annual papers. Schedule D contains lands which were never under cultivation and were always recorded as "Chhota Ghas" in the annual papers. The case of the plaintiffs was that all these lands were allowed to lie fallow in accordance with agricultural practice and consequently formed their home-farm within the meaning of Act I of 1951. Accordingly, they contended that they did not vest in the State and could not be recorded as Riya Nistar.

(5) F. A. No. 33 of 1956: The plaintiff-respondent Savitribai was proprietor of four villages, viz. (1) Gondagaon, (2) Temagaon, (3) Mathui, and (4) Amaner, tahsil Harda, district Hoshangabad. According to her, the lands of Schedule A of the plaint were recorded as "Chhota Ghas" in the last settlement (1915-16) and were all along in her possession. As regards the lands of Schedule B, khasra Nos. 10 and 33 of mouza Gondagaon and khasra No. 4 of mouza Mathui were surrendered to her by the tenants after the last settlement and khasra Nos. 224/1, 224/3 and 224/5 of mauza Temagaon formed her khudkasht at that time. Her case was that all these lands were allowed by her to remain fallow according to agricultural practice and did not therefore vest in the State under Act I of 1951.

(6) L. P. A. 106 of 1958: The fields in dispute in this appeal are khasra Nos. 307, 308, and 316 of mouza Pathrota and khasra Nos. 58/1 and 52 of mouza Jilwani, tahsil and district Hoshangabad. The plaintiff-respondent Patel Gayaprasad was proprietor of these fields before the enactment of Act I of 1951. The Courts below held that the lands in dispute were his khudkasht in the last settlement (1915-16) and were allowed to lie fallow subsequently in accordance with agricultural practice. In that view they granted him a declaration that the lands formed his home-farm and did not vest in the State under Act I of 1951.

The State contested the suits and contended that since the lands were not recorded as sir or khudkasht in the names of the plaintiffs in the annual papers for the year 1948-49 and were not acquired by them by surrender from tenants after the year 1948 till the date of vesting they did not form their home-farm within the meaning of Act I of 1951. The State further denied that the lands were allowed to lie fallow in accordance with agricultural practice. Respecting the lands contained in Schedule G of F. A. Nos. 145 and 159 of 1955, it was denied that they were brought under cultivation after the year 1948-49 but before the date of vesting. The right of the plaintiffs to all the lands was thus denied by the State, and it was contended that the record of the lands as having vested in the State or as Riya Nistar was final and could not be contested in civil Courts.

The pleas of the plaintiffs were upheld by the Courts of trial except in the suit from which the present appeal arises. Accordingly, that suit was dismissed and in other suits the declaration that was sought was granted, except that in F. A. No. 159 of 1955 the claim of the plaintiffs to khasra Nos. 71/1 and 73/1 of mouza Barja was negatived on the ground that they were not included in the notice u/s 80 of the Code of Civil Procedure.

In all the suits under consideration one of the pleas of the plaintiffs was that the fields in dispute could not lawfully vest in the State without payment of compensation. Act I of 1951, however, provides for payment of compensation for the proprietary rights that have vested in the State. In F. A. No. 49 of 1954, D/- 29-7-1958 (Nag) it was held that Act I of 1951 could not be challenged on any ground bearing on the question of compensation, its fairness, its adequacy, or equality of treatment between class and class and person and person, and that it did not contravene article 31(1) of the Constitution of India on the ground that it did not make any provision for compensation in respect of abadi and grass lands. The challenge to the vesting of the lands in dispute in the State on this ground, therefore, has no basis and was not also pressed before us. That point need not, therefore, be elaborated.

The learned Judges who heard the present appeal have remarked in their order of reference that there is a conflict of views in this Court on the interpretation of Section 2(g) of Act I of 1951. The view in 1958 MPLJ 43 (supra) was followed in F. A. 49 of 1954, D/- 29-7-1958 (Nag), to both of which I was a party. The learned Judges who heard the present appeal have remarked that another Division Bench consisting of Sinha C. J. (as he then was) and myself took a different view in the case of MP No. 239 of 1953, D/- 4-11-1953. That case was quoted with approval by Mudholkar J. in 1955 Nag LJ 616. The observations in that case, which were relied upon by him, are as below:

"The main question u/s 2(g) (3) (i) in respect of the land held by a proprietor is whether it was under his personal cultivation or was allowed to lie fallow in accordance with the usual agricultural practice. If the land was cultivated for the purpose of growing grass, that would be personal cultivation" within the meaning of Section 2 (g) (3) (i) of the Act."

These observations apply to a case where grass was grown through a process of cultivation and not to grass which grows spontaneously. So far as the case decided by late Chaturvedi J., out of which Letters Patent Appeal No. 106 of 1958 arises, is concerned, the finding of the learned Judge was based on facts which as found by the Courts below, came within the dictum of 1958 MP LJ 43 (supra). There has thus really been no divergence of opinion so far as regards the meaning to be attached to the "home-farm" as defined in Section 2(g) of Act I of 1951.

The lands which are the subject of the appeals before us may be classified as under:

(i) lands which were recorded as khudkasht in the last settlement, but were subsequently recorded as "Chhota Ghas" in the annual papers;

(ii) lands which were recorded as bir in the last settlement but were recorded subsequently as bir or "Chhota Ghas" in the annual papers;

(iii) lands which formed tenancy holdings at the last settlement; and were acquired by the plaintiffs but recorded subsequently as "Chhota Ghas" in the annual papers;

(iv) lands which were recorded as "Chhota Ghas" in the last settlement and were also recorded as such in the annual papers; and

(v) lands which were brought under cultivation after 1948-49 but before the date of vesting. The question as regards the lands covered by Clauses (i) to (iv) is whether they formed the home-farm of the plaintiffs under Act I of 1951. The case of lands covered by Clause (v) falls to be dealt with u/s 4(2) of Act I of 1951 and the plaintiffs would be entitled to retain their possession u/s 40 ibid on such terms and conditions as the State prescribed, if it is found that these lands were brought under cultivation after the year 1948-49 but before the date of vesting.

The question as to whether the lands covered by Clauses (i) to (iv) formed the home-farm of the plaintiffs under Act I of 1951 depends upon whether they can be deemed to be the plaintiffs' khudkasht as defined in the C. P. Land Revenue Act, 1917. The term "khudkasht" has been defined there as below:

" "khudkasht" means that part of the home-farm of a mahal which is cultivated by the proprietor as such and which is not sir land:

Explanation (1). -- Land allowed to lie fallow according to agricultural practice shall be deemed to be cultivated.

Explanation (2).-- In this definition "proprietor" includes a transferee of proprietary rights in possession, a thekadar or a headman with protected status, a mortgagee with possession and a lessee holding under a lease from year to year or for a period exceeding one year, but not a malik makbuza."

It was not disputed before us that these lands were never brought under cultivation since the last settlement and that grass was not grown thereupon through any human or mechanical agency. Accordingly, they do not fall in the main definition of the term "khudkasht". This position was accepted before us, but it was contended that since the reservation of land for raising grass is "agriculture" within the meaning of Section 2(2) of the C. P. Tenancy Act, 1920, the lands should be deemed to have been allowed to lie fallow according to agricultural practice within the meaning of Explanation (1).

In the view that was taken in 1958 MPLJ 43 (*supra*), they would not fall within that explanation unless they were once under cultivation and rest was given to them with a view to resuming cultivation. The question is whether any wider meaning should be given to the expression "land allowed to lie fallow according to agricultural practice" occurring in that explanation.

The term "agriculture" has not been defined in the C. P. Land Revenue Act, nor was it defined in the older Land Revenue Acts or in the C. P. Tenancy Acts of 1883 or 1898. The term was, for the first time, defined in the C. P. Tenancy Act of 1920, but that was for a specific purpose. That Act provides certain penalties if the land is diverted to non-agricultural purposes. Thus u/s 25 a tenant can be ejected from his holding by his landlord in execution of a decree of a civil Court passed on the ground of his having diverted the land to non-agricultural purposes.

It is not a sound principle of construction to interpret expressions used in one Act with reference to their use in another Act; the meanings of words and expressions used in an Act must take their colour from the context in which they appear: See *Pandit Ram Narain Vs. The State of Uttar Pradesh and Others*, . Much more should this be interdicted where the sense in which a word used in a later Act is sought to be introduced in an earlier enactment. Therefore, the term "agriculture" in the expression "agricultural practice" has to be given an ordinary meaning with reference to the context in which that expression has been used in the definition of the term "khudkasht" in the C. P. Land Revenue Act.

The import of the term "agriculture" has been recently stated by their Lordships of the Supreme Court in *(S) Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy*, in which it is held that "agriculture" in its primary sense means *ager* -- a field -- and *cultura* -- cultivation, i.e., cultivation of a field, which, as their Lordships have put it, of course implies expenditure of human skill and labour upon it. This is the basic condition of agriculture, and, if it is absent, subsequent operations e.g., cutting and threshing, will not by themselves amount to agriculture. The expression "agricultural practice" should, therefore, have relationship to this basic condition of agriculture.

The same conclusion is reached if the words allowed to lie "fallow" are also understood in the context of the main provision. The term "fallow land" has been defined in Wharton's Law Lexicon as "land ploughed, but not sown, and left

uncultivated for a time after successive crops". To the same effect is the meaning given to that term in Law Dictionary with Pronunciations, 2nd Edition, by Ballentine, in which it is defined as "land which has been ploughed up but which has been left uncultivated in order to allow it to recuperate its fertility". The C. P. and Berar Cultivation of Fallow Land Act, 1948, which deals with an allied subject, has defined the term "fallow land" in the same way. In its ordinary connotation also, the term "fallow" means adj. left unfilled or unsown for a time, n. land that has lain a year or more unfilled or unsown after having been ploughed. -- v.t. to plough without seeding: Chambers Twentieth Century Dictionary. The same meaning is given to that term in Oxford English Dictionary and Webster's New International Dictionary.

It, therefore, follows that the expression "allowed to lie fallow according to agricultural practice" should mean that the land was once under cultivation and was given rest for some time for the purpose of resuming cultivation after the land regained its fertility. If it is interpreted widely to include any land which was never brought under cultivation or was allowed to lie uncultivated without any idea of resuming cultivation, it would make the main provision nugatory. In *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, at p. 258 it has been held that the object of an explanation is not to exclude anything from the meaning of the main provision but to serve as a description. In effect, therefore, an explanation cannot be read as an exception, and even if it may extend the meaning of the main provision, it cannot go so far as to dispense with its basic condition and thereby make it nugatory.

The term "khudkasht" was not defined in the old C. P. Land Revenue Act of 1881 or the Amendment Act of 1889. The Amendment Act of 1889 defined the term "sir land", which included the land that was occupied by a proprietor at the commencement of that Act, and had been cultivated by him for a period of not less than 12 consecutive years. Explanation 1 to the definition was in these terms:

"For the purpose of Sub-section (2), land shall be deemed to be occupied by the proprietor when it is leased out by him with an express reservation of his sir rights, and "land shall be deemed to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation."" (underlining is mine; here into " ")

The expression "allowed to lie fallow in accordance with the usual practice of cultivation", appears to have the same connotation as the expression "allowed to lie fallow according to agricultural practice", if the term "agriculture" is, as it ought to be, given its ordinary basic meaning.

Reliance was, however, placed upon Settlement Instructions No. X which were issued by the Chief Commissioner u/s 62 of the C. P. Land Revenue Act, 1917, in which it has been provided:

"In certain districts it is the practice of both proprietors and tenants to reserve

part of their holdings as grazing ground for their agricultural cattle; when the practice is proved, and the local Government directs its recognition, land that is expressly reserved by one or more of the proprietors for the exclusive use of the agricultural cattle needed for the home-farm cultivation in the village will be classed as khudkasht."

But it is also provided: "since this reservation of grazing land does not constitute "cultivation" it does not qualify for declaration of sir right u/s 68(3)." It would thus appear that the first provision was to come into effect only if the practice mentioned in it was directed to be recognized by the local Government. Further, the instructions make it clear that reservation of grazing land does not constitute "cultivation" and therefore it did not qualify for declaration of sir right under Sub-section (3) of Section 68 of the C.P. Land Revenue Act. These provisions, therefore, do not help the plaintiffs.

The term "khudkasht", unlike "sir" does not denote any special right. It is only a description of the land that is under the personal cultivation of the proprietor. In this connection the decision in 25 Nag LR 16:(AIR 1929 108 (Nagpur)) does not lead to a different conclusion. That case only dealt with the question whether the land recorded as khudkasht but left uncultivated and kept under grass by a proprietor was "Khali Pad", within the meaning of the wazib-ul-arz over which the villagers had a right of grazing their cattle, but that obviously is a different question. Therefore, unless any particular land can properly be deemed to be "khudkasht" within the meaning of the C. P. Land Revenue Act, it would vest in the State u/s 4(1) of Act I of 1951, whether it was grass land, forest or trees. The basic condition of "khudkasht" being personal cultivation by the proprietor, it cannot be dispensed with wholly by the explanation. The Explanation can only cover cases where land was initially "khudkasht" within the main definition but was later allowed to lie fallow for resuming cultivation at a subsequent date. The period of rest would, of course, depend upon the nature of the soil and, therefore, would vary from region to region. The period of rest may thus be determined with reference to the agricultural practice obtaining in any particular part of the country. But it does not mean that the basic condition of agriculture, meaning cultivation, as enunciated by their Lordships of the Supreme Court in (S) Commissioner of Income Tax, West Bengal, Calcutta Vs. Raja Benoy Kumar Sahas Roy, , can be dispensed with.

In this connection reference was made by the learned Judges who heard the present appeal to paragraphs 104 and 105 of the Settlement Report of Narsingpur district of the year 1866 and to paragraph 127 of the Settlement Report for the years 1923-26. In the Settlement Report of 1868, paragraph 105, it is stated that the best kinds of grass are "keil" and "mucheil" which have fine stalks, and it is stated that the appearance of these grasses in a field infested with "khans" is one of the first signs that the "khans" has run its time, and the soil has recovered its vigour. This is the only pertinent extract in the context of the question that is under consideration, but it is nobody's case before us that

any lands had "khans" and that they were allowed to lie fallow for the appearance of the grass of the variety of "kief or "muchiel". These extracts, therefore, do not help the interpretation of the expression "allowed to lie fallow according to agricultural practice".

To construe reservation of land for raising grass as agriculture and to hold therefrom that if the land is reserved for this purpose, it would be tantamount to allowing the land to lie fallow in accordance with agricultural practice would be to ignore the context in which the term "khudkasht" has been defined in the C. P. Land Revenue Act. That would be tantamount to interpreting the term "agriculture" as agricultural practice which obviously would not be proper. I am, therefore, of opinion, that the view taken in 1958 MPLJ 43 (supra) was correct. Unless, therefore, it can be held on evidence that the lands covered by Clauses (i) to (iv) were allowed to lie fallow to regain fertility for a limited period in accordance with the usual practice of cultivation in the tracts where the lands are situate, they would not be khudkasht within the meaning of the C.P. Land Revenue Act.

The evidence on record is very meagre and vague to establish an agricultural practice in the sense above stated. The evidence in each case may be detailed as below:

(1) F. A. No. 142 of 1954: The plaintiff-appellant Rao Shankar Pratapsingh (P.W. 1) merely stated that he used to keep grass on the lands and utilized it for grazing his cattle. The practice that he spoke, of was only in respect of this purpose. His evidence does not establish that he kept the lands fallow to resume cultivation at any time.

(2) F. A. No. 145 of 1955: The only witness in this case is plaintiff-respondent No. 1 Sadashivrao (P.W. 1). He spoke generally of the custom in his tahsil of the cultivators keeping their lands fallow to renew their fertility. He doubtless stated that he kept his lands fallow for this purpose, but it does not appear from his evidence that he intended to resume cultivation.

(3) F. A. No. 159 of 1955: The plaintiff-respondent no. 1 Madhorao (P.W. 1) spoke of two customs (1) of the cultivators leaving their lands fallow for some years to replenish their fertility and (2) of keeping them fallow to serve as pasture for their cattle. He, however, stated that the lands mentioned in his Schedules C, D and E, were kept as grazing ground for his cattle. This "means that he did not intend to resume cultivation. This is confirmed by the fact that Ganesh (P.W. 3) stated that generally a period of 10 years is sufficient to bring the productivity of lands "to the mark". The lands in dispute had been lying fallow for a much greater length of time, which indicates that they were never intended to be brought under cultivation.

(4) F. A. No. 16 of 1956: The only witness in this case is Narmada Prasad (P.W. 1), mukhtyar of the plaintiffs-respondents. He has also spoken of the two practices, viz., (1) of keeping the lands fallow for a certain number of years to

restore their productivity and (2) of keeping them fallow for cattle to graze the growing grass. He, however, did not state the period that is generally required in his locality for replenishing the productivity of the lands. His statement, therefore, that the plaintiffs kept their lands fallow to restore their productivity, cannot be acted upon. The lands in dispute have been lying fallow from a very long time, which militates against the alleged intention of the plaintiffs, to resume their cultivation.

(5) F. A. No. 33 of 1956: Ghasiram (P.W. 1), brother of the plaintiff-respondent, is the only witness in the case. He spoke of the plaintiff having kept the lands fallow for grazing purposes or increasing their fertility. His evidence is vague, as it does not indicate which lands were intended for resuming cultivation.

(6) L. P. A. No, 106 of 1958: In this case the application for grant of leave to appeal under Clause 10 of the Letters Patent was made three days after the judgment was delivered. Rule 10 of the rules made by the High Court in exercise of the powers conferred by Clause 27 of the Letters Patent requires that the application for leave to appeal must be made immediately after the judgment is delivered and no other application for such leave to appeal shall be entertained. The application in question could not, therefore, be entertained and grant of leave to appeal was accordingly incompetent. This has been the consistent view of this Court: see Misc. Civil Case No. 60 of 1955 (Nag), decided by late Rao J. on 7-4-1955, in which all the precedents are referred to. The same view follows from AIR 1940 47 (Nagpur) . It is not, therefore, necessary to consider this appeal on merits, and it must be dismissed as incompetent.

In view of the above discussion, the lands covered by Clauses (i) to (iv) cannot be held to be khudkasht within the meaning of the C.P. Land Revenue Act. It was, however, contended that if lands reserved by proprietors for grazing their cattle are treated as grass lands, it would lead to an anomaly in that under Act I of 1951 they would be getting more compensation than if they were treated as khudkasht. It is not necessary to examine the respective extent of compensation that would be payable to the plaintiffs, for that would not determine the nature of khudkasht within the meaning of the C. P. Land Revenue Act. The claim of the plaintiffs for the lands covered by Clauses (i) to (iv) must accordingly fail.

Coming to the lands covered by Clause (v), the claim relates only to P. A. Nos. 145 and 159 of 1955. The plaintiff-respondent No. 1 Sadashivrao (P.W. 1) in the first case and Madhorao (P.W. 1) in the other are the only witnesses who testified to their having brought the lands in schedule G under cultivation after the year 1948-49 but before the date of vesting. Their evidence is interested and cannot, therefore, be accepted without corroboration. This corroboration is furnished by the annual papers only in respect of the following lands:

P. A. No. 145 of 1955 :

Khasra No.

Area

Village.

52/1 Ka.

11.09 acres

}

Gurarkheda

52/2 Ka.

15.91 acres

(See Exh. D-15).

54/1 Ka.

30.00 acres

}

Baharakheddi

55/1

1.30 acres

(See Exh. D-9).

56

1.63 acres

P. A. 159 of 1955 :

Khasra No.

Area

Village.

107/4.

1.30 acres

Nimachkala.

(See Exh. D.11).

Note: Khasra No. 107 had an area of 4.00 acres, out of which only 1.30 acres, numbered as 107/4, was brought under cultivation. As these lands were not recorded as Riya Nistar and the challenge is not to their vesting in the State, the claim thereto is not barred under the provision of Act I of 1951. The plaintiffs-respondents of F. A. Nos. 145 and 159 of 1955 are accordingly entitled to remain

in their possession u/s 4(2), and on such terms and conditions as may be prescribed u/s 40 thereof.

In view of the above, I would dismiss the present appeal (F. A. No. 142 of 1954) and Letters Patent Appeal No. 106 of 1958 with costs as incurred. In regard to other appeals. I would wholly allow F. A. Nos. 16 and 33 of 1956 and dismiss the suits out of which these appeals arise and partly allow F. A. Nos. 145 and 159 of 1955 and dismiss the suits out of which these appeals arise except] to the extent that the plaintiffs-respondents shall be granted a declaration that they are entitled to remain in possession of the khasra numbers mentioned in paragraph 21 above u/s 4(2) and on such terms and conditions as may be prescribed u/s 40 of Act I of 1951. Costs throughout in F. A. Nos. 16 and 33 of 1956 and F. A. Nos. 145 and 159 of 1955 shall be borne as incurred.

BY THE COURT: The appeal fails and is dismissed with costs as incurred.