
(2014) 05 SHI CK 0154
In the High Court Of Himachal Pradesh
Case No : RSA No. 384 of 2001

Rudra Dutt

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 31-05-2014

Acts Referred:

Punjab Village Common Lands (Regulation) Act, 1961 — Section 4, 4(3)
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10, 11, 9

Citation : (2014) 05 SHI CK 0154

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Rajnish K. Lal, Advocates for the Appellant; Parmod Thakur, Addl. Advocate General, Advocates for the Respondent

Judgement

Rajiv Sharma, J.—This Regular Second Appeal is directed against the judgment and decree dated 19.5.2001, rendered by learned District Judge, Solan, in Civil Appeal No. 66 of 2000.

2. Pertinent facts necessary for the adjudication of this regular second appeal are that the appellant/plaintiff (hereinafter referred to as the "plaintiff" for the sake of convenience) filed a suit for declaration to the effect that he was co-owner in possession along with proforma respondents/proforma defendants (hereinafter referred to as the "proforma defendants" for the sake of convenience) to the extent of 2/3rd share in the total land measuring 8-9 bighas. The proforma defendants were also co-owners to the extent of 1/3rd share out of total land measuring 8-9 bighas comprised in Khata/Khatauni No. 25 min/43, Khasra Nos. 39 min, 121, 369/302 min, Kita 3, situated in Mauja Shaloomana, Tehsil and District Solan, H.P.. According to the plaintiff, mutation No. 289, dated 25.8.1975, whereby respondent/defendant-State (hereinafter referred to as the "defendant-State" for the sake of convenience) was shown as owner of the suit land, was illegal and inoperative. The plaintiff also prayed for consequential relief of permanent prohibitory injunction to restrain the defendant-State from

dispossessing the plaintiff and proforma defendants from the suit land. According to the plaintiff, he and proforma defendants along with their predecessors-in-interest had been coming in possession of the suit land since the time immemorial. The status and nature of the suit land as per jamabandi for the year 1957-58 was "shamlat deh rasad zere khewat". The defendant-State without issuing any notice to the plaintiff and proforma defendants changed the ownership of the suit land in its name vide mutation No. 289 dated, 25.8.1975. The officials of the defendant-State on account of wrong entries were threatening to dispossess the plaintiff and proforma defendants from the suit land.

3. The suit was contested by the defendant-State. According to the defendant-State, the plaintiff and proforma defendants could not claim ownership rights qua the suit land. The plaintiff and proforma defendants in connivance with the revenue staff procured entries in their names in the column of cultivation, which on the face of it, were wrong. The suit land, which was previously "shamlat deh", due to the enforcement of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974 was vested in the defendant-State. There was no necessity to issue the notice to the plaintiff and proforma defendants or their predecessors-in-interest.

4. No replication was filed by the plaintiff.

5. Learned trial court framed the issues on 24.4.1997 and decreed the suit vide judgment and decree dated 28.7.2000 by granting a decree of declaration and injunction in favour of the plaintiff to the effect that the plaintiff was co-sharer in possession along with proforma defendants to the extent of 2/3rd share in the total land measuring 8-9 bighas and the proforma defendants were also co-owners to the extent of 1/3rd share out of the total land measuring 8-9 bighas and mutation No. 289 dated 25.8.1975 was held illegal and inoperative qua right, title and interest of the plaintiff and proforma defendants.

6. The defendant-State, feeling aggrieved by judgment and decree dated 28.7.2000, filed an appeal before learned first appellate court, who vide judgment and decree dated 19.5.2001 allowed the appeal and dismissed the suit filed by the plaintiff. Hence, this Regular Second Appeal. It was admitted on following substantial questions of law on 21.8.2001:-

1) Whether in view of the fact that the appellant was in possession of the land along with respondents No. 2 to 4, mutation No. 289 attested on 25.8.1975 was illegal and void and the plaintiff was entitled to decree for injunction on the basis of his settled possession?

2) Whether on the proper construction of the provisions of H.P. Village Common Lands (Vesting and Utilization) Act 1974 and the provisions of the Punjab Village Common Land (Regulation) Act, 1961, the plaintiffs who were in possession of the property for more than 12 years prior to the enforcement of the Punjab Act, could be divested of its ownership treating the land as Shamlat when the same was exempted from the provisions of the Act?

3) Whether the findings of the court below are based on no evidence and in any case are perverse and based on misreading and misconstruction of oral evidence?

4) Whether the plaintiff was entitled for a decree for injunction and protection of his possession once it was found that the plaintiff was in settled possession of the property?

7. Mr. Rajnish K. Lal, learned Advocate, on the basis of substantial questions of law framed, has vehemently argued that mutation No. 289, attested on 25.8.1975, was illegal. He then argued that his clients, who were in possession of the suit land for more than 12 years prior to enforcement of the Punjab Village Common Land (Regulation) Act, 1961, could not be divested of its ownership treating the land as "shamlat deh". He lastly contended that the lower appellate court has not correctly appreciated the oral as well as documentary evidence.

8. Mr. Parmod Thakur, learned Additional Advocate General, has supported the impugned judgment dated 19.5.2001.

9. I have heard learned counsel for the parties and have gone through the impugned judgment and pleadings carefully.

10. Since all the substantial questions of law are interconnected and interlinked, the same are taken up together for determination to avoid repetition of discussion of evidence.

11. PW1, Rudra Dutt, deposed that he along with proforma defendants was coming in continuous possession qua the suit land. They were owners in possession of the suit land. According to him, mutation attested in favour of the defendant-State was wrong. It was done without any notice. The defendant-State had no concern with the suit land.

12. DW1, Suraj Prakash, Patwari, testified that the disputed land comprised in Khasra Nos. 39 min, 121, 302 min. It was owned by the defendant-State. There existed an orchard over 3 bighas of suit land and "ghasni" on the remaining suit land. The suit land was "shamlat deh". In cross-examination, he denied the suggestion that the land was owned by the plaintiff, though he admitted that the plaintiff was in possession of the suit land since the time of his ancestors.

13. The plaintiff has not pleaded or proved that the suit land was partitioned or brought under cultivation by him being landholder before 26.1.1950. Nature of the suit land always remained "shamlat deh". The suit land could not have been included in the definition of "shamlat deh" had it been proved that before 26.1.1950 the suit land was partitioned and made cultivable. The plaintiff has failed to prove that he and his predecessor-in-interest ever remained in possession of the suit land for more than 12 years before the enforcement of the Punjab Village Common Land (Regulations) Act, 1961. As per jam bandies for the years 1957-58 to 1986-87, land comprised in Khasra Nos. 121 and 369/302 min measuring 3-0-0 bighas and 5-0-0 bighas was "ghasni". It was barren land. It was never cultivated by the plaintiff or his predecessor-in-interest. The suit land

was never assessed to payment of rent. The plaintiff has also failed to prove that the suit land, before commencement of the H.P. Village Common Lands (Vesting and Utilization) Act 1974, which came into force on 29th August 1974, was excluded from being termed as "shamlat deh". The plaintiff has also not proved by leading tangible evidence that the land was ever partitioned amongst the co-sharer either by way of private partition or as per the order passed by the revenue authority.

14. Mr. Rajnish K. Lal, learned, Advocate, has relied upon State of Himachal Pradesh Vs. Tarsem Singh and Others, . However, this judgment has been reversed by their Lordships of Hon'ble Supreme Court in State of Himachal Pradesh Vs. Tarsem Singh and Others, . Their Lordships have held that Section 3 of the Act provides that, notwithstanding any custom, usage, instrument, agreement or decree of the court all titles, interests and rights in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. The word "encumbrance" means a burden or charge upon property or a claim or lien upon an estate or on the land. When the legislature has used the expression "free from encumbrances", it means the vesting of land in the State, is without any burden or charge of the land, including that of easementary right. Their Lordships have held as under:-

"7. In the aforesaid two cases, Entry 21 of List II of Seventh Schedule of Government of India Act and Entry 18 of List II of the Seventh Schedule of Constitution of India were relied upon for the purpose of holding that there was a legislative competence while enacting the land acts. The question whether vesting of all interests and rights in the land free from all encumbrances would also include easementary right was not the subject matter of decisions and, therefore, said decisions have no application in the present case. Section 3 of the Act provides that, notwithstanding any custom, usage, instrument agreement or decree of the Court all titles, interests and rights in the land shall stand extinguished and all such rights, title and interests shall vest in the State free from all encumbrances. Learned counsel when argued that easementary right being over the land has not vested in the State omitted to consider the significance of the expression "free from encumbrances." The word "encumbrance" means a burden or charge upon property or claim or lien upon an estate or on the land. "Encumber" means burden of legal liability on property, and, therefore, when there is encumbrance on a land, it constitutes a burden on the title which diminishes the value of the land. In Abdul Karim Khan and Others Vs. Managing Committee, George High School, , it was held that encumbrance would include easementary right of drainage over the land. In Rashid Allidina Vs. Jiwandas Khemji and Another, , it was laid down that the word "encumbrance" has always been understood to include easementary right. In Ganga Vishnu Swaika Vs. Machine Manufacturing Co. Ltd. and Another, , it was ruled that an easementary right to discharge water on other's land comes within the meaning of encumbrance on the right in the land.

9. In the present case, S. 3 of the Act starts with an non obstinate clause. Notwithstanding contained in any law, agreement, instrument, custom or usage or any decree of the Court, all rights, title and interests in the land shall stand extinguished and all such rights, title and interest shall vest in the State free from all encumbrances. If we accept the argument of learned counsel for the respondents that easementary right being over the land and the same has not vested in the State under S. 3 of the Act, the result would be that the land would carry burden or charge affecting possession, interests and rights in the land. Such a meaning cannot be given to the expression "free from encumbrances." When the legislature has used the expression "free from encumbrances," it means the vesting of land in the State is without any burden or charge on the land, including that of easementary right. We are, therefore, of the view that the consequence of vesting of right in the land free from all encumbrances is that the interest, right and title to the land including the easementary right stood extinguished and such rights vested in the State free from all encumbrances."

15. The suit land stood vested in the defendant-State as per Section 3 of the H.P. Village Common Lands (Vesting and Utilization) Act 1974 and no separate notice was required to be issued to the plaintiff as well as proforma defendants, as argued by Mr. Rajnish K. Lal, learned Advocate.

16. According to Section 3(2) of the H.P. Village Common Lands (Vesting and Utilization) Act 1974, provisions of sub-section (1) of this section shall not apply to lands described in clauses (b) and (c) of that sub-section, if before the date of commencement of this Act-

(a) Partition of such lands is made by the individual co-sharers through a process of law by a competent court or authority.

(b) Transfer of such lands is made by the landowner by way of sale gift or exchange.

(c) Such land built upon by an inhabitant by raising a residential house or cow-shed.

(d) Land recorded as "shamlat tika hasab rasad malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers so recorded before 26th January, 1950 to the extent or their shares therein:-

Provided that the provisions of this clause shall not be applicable to such lands which have already been put to use by the Government.

17. In the instant case, the plaintiff has not led any evidence that the suit land was ever partitioned through a process of law by a competent court or authority. It is not his case that the transfer of the suit land was made by the landowner by way of sale gift or exchange. It was not pleaded that the suit land was built upon by him by raising a residential house or cow-shed. Perusal of all jam bandies conclusively proves that the land was "ghasni" except portion measuring 3

biswas.

18. Their Lordships of Hon^{ble} Supreme court in Smt. Sulochana Chandrakant Galande Vs. Pune Municipal Transport and Others, while interpreting Sections 9, 10, and 11 of the Urban Land (Ceiling and Regulation) Act, 1976, held that the vesting means vesting of land in State without any charge or burden in it, i.e. State has absolute title/ownership over it. The landlord becomes persona non grata after vesting and has right to compensation only.

"13. The meaning of the word `vesting" has been considered by this Court time and again. In Fruit and Vegetable Merchants Union Vs. Delhi Improvement Trust, , this Court held that the meaning of word `vesting" varies as per the context of the Statute in which the property vests. While considering the case under Sections 16 and 17 of the Act 1894, the Court held as under:-

"...the property acquired becomes the property of Government without any condition or limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration."

(Emphasis added).

14. "Encumbrance" actually means the burden caused by an act or omission of man and not that created by nature. It means a burden or charge upon property or a claim or lien on the land. It means a legal liability on property. Thus, it constitutes a burden on the title which diminishes the value of the land. It may be a mortgage or a deed of trust or a lien of an easement. An encumbrance, thus, must be a charge on the property. It must run with the property. (Vide The Collector of Bombay Vs. Nusserwanji Rattanji Mistri and Others, ; H.P. State Electricity Board and Others Vs. Shiv K. Sharma and Others, ; and AI Champdany Industries Limited Vs. The Official Liquidator and Another, .

16. Thus, "free from encumbrances" means vesting of land in the State without any charge or burden in it. Thus, State has absolute title/ownership over it.

17. In Satendra Prasad Jain and Others Vs. State of U.P. and Others, , this Court held that once land vests in the State free from all encumbrances, it cannot be divested. The same view has been reiterated in Awadh Bihari Yadav and Others Vs. State of Bihar and Others, ; U.P. Jal Nigam, Lucknow through its Chairman and another Vs. M/s. Kalra Properties (P) Ltd. Lucknow and others, ; Chandragauda Ramgonda Patil and Another Vs. State of Maharashtra and Others, ; Allahabad Development Authority Vs. Nasiruzzaman and Others, ; State of Kerala and others Vs. M. Bhaskaran Pillai and another, ; M. Ramalinga Thevar Vs. State of Tamil Nadu and Others, ; The Printers (Mysore) Ltd. Vs. M.A. Rasheed and Others, ; Bangalore Development Authority and Others Vs. R. Hanumaiah and Others, ; and Govt. of A.P. and Another Vs. Syed Akbar, .

18. So far as the change of user is concerned, it is a settled legal proposition that once land vests in the State free from all encumbrances, there cannot be any

rider on the power of the State Government to change user of the land in the manner it chooses.

19. In a similar situation, in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, , this Court held as under:-

"Once the original acquisition is valid and title has vested in the Municipality, how it uses the excess land is no concern of the original owner and cannot be the basis for invalidating the acquisition. There is no principle of law by which a valid compulsory acquisition stands voided because long later the requiring Authority diverts it to a public purpose other than the one stated in the declaration."

20. Re-iterating a similar view in *C. Padma and Others Vs. Dy. Secretary to the Govt. of T.N. and Others*, , this Court held that if by virtue of a valid acquisition of land, land stands vested in the State, thereafter, claimants are not entitled to restoration of possession on the grounds that either the original public purpose is ceased to be in operation or the land could not be used for any other purposes.

21. In *Bhagat Singh Vs. State of U.P. and Others*, ; *Niladri Narayan Chandradhurja (d) by L.Rs. Vs. State of West Bengal*, ; and *Northern Indian Glass Industries Vs. Jaswant Singh and Others*, , this Court held that, the land user can be changed by the Statutory Authority after the land vests in the State free from all encumbrances.

22. In view of the above, the law can be summarised that once the land is acquired, it vests in the State free from all encumbrances. It is not the concern of the land owner how his land is used and whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes *persona non grata* once the land vests in the State. He has a right to get compensation only for the same. The person interested cannot claim the right of restoration of land on any ground, whatsoever.

39. The aforesaid factual position makes it clear that the appellant is not entitled for any relief whatsoever as per the law, as it exists today. The land once vested in the State cannot be divested. Once the land is vested in the State it has a right to change the user. The appellant cannot be heard raising grievance on either of these issues.

19. Their Lordships of Hon"ble Supreme Court in *Puran and Others Vs. Gram Panchayat, Faridabad*, have interpreted the *Punjab Village Common Lands (Regulation) Act, 1961* as under:-

8. The *Punjab Village Common Lands (Regulations) Act, 1961*, enacted by the Punjab Legislature to consolidate and amend the law relating *Shamilat deh*, which came with operation on 4.5.1961, applied to all lands which are *Shamilat deh*. Section 4 of the 1961 Act relates to vesting of rights in panchayats and non-proprietors. It is extracted below:

"4. Vesting of rights in Panchayats and non-proprietors. (1) Notwithstanding

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

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

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

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

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

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

(ii) Rights of persons in cultivating possession of Shamilat deh for more than twelve years [immediately proceeding the commencement of the Act] without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon;

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

9. Sub-section (3) of section 4 makes it clear that neither subsection (1), (a) nor (2) of section 4 will affect the rights of the three categories of persons mentioned therein. It is not the case of Appellants that they were accorded a status similar to occupancy tenants by custom or otherwise (though not entered as occupancy tenants in the revenue record), such as Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars, and Muqararidars. Nor are appellants mortgagees in favour of whom, the land had been mortgaged with possession prior to 26.1.1950. Therefore, neither clause (i) nor (iii) of sub-section (3) will apply. That leaves only clause (ii) of section 4(3). Clause (ii) of section 4(3) will be attracted only if the following 3 conditions are satisfied: (i) the person must be cultivating land which is part of the Shamilat deh of a village, (ii) he should be cultivating such land for a period of 12 years immediately preceding the commencement of the Act; and (c) he should be cultivating such land without payment of rent or payment of charges in excess of the land Revenue and cess. Let us consider whether appellants fulfilled the said three conditions.

20. Section 3(3) of the H.P. Village Common Lands (Vesting and Utilization) Act 1974 reads as under:-

"(3) The State Government shall be liable to pay, and the landowners whose rights have been extinguished under sub-section (1) of this Section shall be entitled to receive, the amount in lieu thereof, at the following rates:-

(i) for the land reserved for grazing and other common purposes under clause (a) of sub-section (1) of section 8, five times the annual land revenue including rates and cesses chargeable thereon; and (ii) for the remaining land, fifteen times the annual land revenue including rates and cesses chargeable thereon:

Provided that where the land vested in the State Government under this Act is not assessed to land revenue, the same shall be construed to be assessed as on similar land in the estate and if not available in the estate then in the adjoining estate or estates, as the case may be."

21. In the present case, neither plaintiff along with proforma defendants nor their predecessors-in-interest were ever paid any compensation in lieu of vesting of their land reserved for grazing. However, there would not be any procedural violation, if a person is dispossessed without payment of compensation. It is clear from the language of sub-section (5) of Section 3 of the Act that the Collector may, by order in writing, at any time after the land vested in the State Government, direct the landowners to deliver possession thereof within ten days from the service of the order to such person as may be specified in the order. Thus, the vesting of land is automatic and it is only after the land vests in the defendant-State free from all encumbrances, the Collector can direct the landowners to deliver the possession within ten days.

22. Their Lordships of Hon"ble Supreme Court in State of Himachal Pradesh and Another Vs. Shri Siri Dutt (Dead) by L.Rs. and Others, have held that payment of compensation is not a necessary condition for dispossession. Their Lordships have held as under:-

"14. Section 3 provides for vesting of rights in certain lands in the State Government. By virtue of non obstante clause contained in Section 3(1), overriding effect has been given to the provisions of that section not only qua any other law for the time being in force, but also any agreement, instrument, custom or usage or any decree or order of any court or other authority and has the effect of extinguishing all rights, title and interests including the contingent interest of the land owners in any estate.

15. Clause (a) of Section 3(1) relates to the lands vested in a Panchayat under Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 except those used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or garah deh. Clause (b) relates to the lands described in the revenue records as shamilat taraf, patties, pannas and thola which is not used for the benefit of the village

community or a part thereof or for common purposes of the village. Clause (c) relates to the areas which formed part of Himachal Pradesh before 1.11.1966 and the lands described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and patti.

16. In these appeals, we are not concerned with the lands covered by clauses (a) and (b) of Section 3(1) because the suit lands formed part of the erstwhile State of Bhagat, which was within the territory of the State of Himachal Pradesh immediately before 1.11.1966. In terms of Section 3(1)(c), the rights of the land owners in these lands vested in the State Government free from all encumbrances.

17. The argument of the learned counsel for the respondents that the suit land had not vested in the State Government was negated not only by the trial Court and the lower appellate Court but also by the learned Single Judge, all of whom concurrently held that with effect from the date of enforcement of the Act i.e., 29.8.1974 (this is the date of publication of the Act in Himachal Pradesh Gazette after the President of India gave assent), the land vested in the State Government and there is no reason for this Court to interfere with that finding.

18. It was neither the pleaded case of the respondents nor it was argued before this Court that their case is covered by the exceptions enumerated in clauses (b) and (c) of Section 3(2). Of course, a feeble attempt was made by the respondents to show that since time immemorial, the suit land was in possession of their forefathers and after partition, they were in individual exclusive possession but no tangible evidence was produced by them either to prove possession of their forefathers or the factum of partition and their individual exclusive possession. Therefore, their case cannot be treated as covered by clause (a) of Section 3(2).

19. The respondents' claim that they had become owners of the suit land by adverse possession is liable to be rejected because they did not adduce any evidence to prove that they were in continuous and uninterrupted possession for more than 30 years. This plea is also demolished by the entries contained in the revenue records and the statement of none else than PW-1 Dina Nath. In the Wazib-Ul-Arz (Ex. P3) prepared at the time of settlement of 1910, it was depicted that the proprietors of the village in the erstwhile State of Bhagat had only limited rights of grazing cattle, collecting grass and leaves, etc. over shamilat deh land and no proprietor had right to break the land or to bring it under cultivation. Not only this, in his statement, PW-1 Dina Nath admitted that all owners of the village were possessing the land and every person could cut grass from any portion of the land.

20. The entries contained in the jacarandas also do not prove open and uninterrupted possession of the respondents over the suit land. In Khewat No. 23 Khatauni No. 53 of the year 1971-73, 337.6 bighas of land was recorded in possession of Makbuja Malikan under Shamlat Deh Hasab Rasad Zare Khewat but

there were 9 mutations in the name of different persons. Only 37.5 bighas was recorded in individual possession of different persons as co-sharers. 8 bighas 15 biswas of Khewat No. 23 Khatauni No. 53 was recorded as Share Aam. On the basis of these entries, the respondents cannot claim that they have acquired title over the suit land by adverse possession.

21. It appears that predecessors of the respondents had taken possession of some portion of the suit land and got their names entered in the revenue records but that is not sufficient for declaring them to be in exclusive possession of separate shares in the land ignoring the entries in the "Wajib-ul-Arz" and the statement of PW-1 Dina Nath. Even the learned Single Judge of the High Court did not find them to be in exclusive possession of the suit land.

22. The next question which needs to be addressed is whether the learned Single Judge was right in injecting the State from dispossessing the respondents except after complying with the relevant statutory provisions and the rules of natural justice. At the cost of repetition, we deem it necessary to mention that the trial Court had found that the respondents were in possession of 37.5 bighas only and accordingly declared that their possession cannot be disturbed unless they are paid compensation under Section 3(3). The lower appellate Court reversed this part of the judgment of the trial Court and held that payment of compensation was not a condition precedent for dispossessing the respondents. Though, the learned Single Judge did not find any patent error in the approach adopted by the two courts in evaluating the pleadings and analyzing the evidence of the parties, yet he virtually reversed the finding recorded on the issue of possession simply by observing that the land had been recorded as 'Shamlat Deh Hasab Rasad Zare Khewat' and in the column of possession the expression 'Makbuza Malikan' and this, in the opinion of the learned Single Judge, indicated possession of the proprietors.

23. The learned Single Judge then proceeded to hold that the respondents cannot be dispossessed except after the procedure prescribed by law. While doing so, the learned Single Judge ignored that as early as in 1910 the land was shown to be in possession of village proprietors and not of any individual. Therefore, the finding recorded by the learned Single Judge suggesting that the respondents were in possession of the suit land cannot but be treated as perverse.

24. The legality and correctness of the direction given by the learned Single Judge that the respondents cannot be dispossessed except by following the procedure prescribed by law needs to be examined in the light of Section 3(5) and (6) of the Act read with Rules 3 to 5 of the Rules. In terms of these provisions, the Collector is required to give notice to the land owners to deliver possession of the land. If the notices fails to deliver possession, the Collector can take coercive measures for taking possession. Therefore, the only thing which the Collector will be required to do is to give notice to the respondents to hand over possession of the suit land to the designated officer.

25. The question which remains to be considered is whether payment of compensation is a condition precedent to the taking over of possession of the land vested in the State Government under Section 3(1). A reading of the plain language of Section 3(3) makes it clear that the State Government is obliged to pay compensation to the land owners whose rights are extinguished under Section 3(1), but such payment is not a condition precedent to the taking over of possession. If the State Legislature had intended that payment of compensation to the land owners must precede taking over of possession, then an explicit provision to that effect would have been incorporated in the Act, which has admittedly not been done.

26. In the result, the appeals are allowed, the impugned judgments are set aside and those passed by the lower appellate Court are restored. The competent authority shall now be free to take possession of the suit land, which was subject matter of Suit Nos. 85/1 of 1985 and 44/1 of 1987 after complying with the provisions of Section 3(5) and (6) of the Act read with Rules 3 and 5 of the Rules.

27. With a view to obviate further litigation in the matter, we direct the State Government to pay compensation to the respondents in accordance with Section 3(3) of the Act. This shall be done within a period of six months from today. The parties are left to bear their own costs."

23. The suit land automatically vested in the defendant-State after enforcement of the H.P. Village Common Lands (Vesting and Utilization) Act 1974, which came into force on 29th August 1974. Learned lower appellate court has correctly appreciated the jamabandies, for the years 1957-58, 1971-72, 1981-82, 1948-49, 1996-1997 and 1986-87, Ext. P1 to Ext. P6 respectively. Once the suit land stood vested in the defendant-State free from all encumbrances, the plaintiff and proforma defendants could not be shown in the possession of the suit land as per jamabandi for the year 1996-97. The mutation No. 289 dated, 25.8.1975, whereby the defendant-State was shown owner of the suit land is legal and valid. The learned lower appellate court has correctly appreciated oral as well as documentary evidence.

24. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in the regular second appeal and the same is dismissed. However, before parting with the judgment, the defendant-State is directed to pay compensation of the grazing land to the plaintiff and proforma defendants, as per Section 3(3)(i) of the Himachal Pradesh Village Common Lands (Vesting and Utilization) Act, 1974 within a period of 12 weeks from today. Pending application(s), if any, also stands dismissed. There shall, however, be no order as to costs.