

(2001) 05 MP CK 0024

In the Madhya Pradesh High Court

Case No : Second Appeal No's. 454 and 188 of 1996 with S.A. No's. 72 and 22 of 1997 and S.A. No. 165 of 1998

State of M.P. and others

APPELLANT

Vs

Balveer Singh and others

RESPONDENT

Date of Decision : 16-05-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 3B, 9
Constitution of India, 1950 — Article 141
Limitation Act, 1963 — Article 64, 65, 27, 29
Madhya Bharat Zamindari Abolition Act, 1951 — Section 3, 4, 8
Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 — Section 3, 4
Madhya Pradesh Land Revenue and Tenancy Act, 1954 — Section 50
Madhya Pradesh Land Revenue Code, 1959 — Section 111, 158(3), 165(6), 166, 168
Specific Relief Act, 1963 — Section 9
States Reorganisation Act, 1956 — Section 9
Transfer of Property Act, 1882 — Section 73

Citation : AIR 2001 MP 268 : (2001) 3 MPHT 255 : (2001) 1 MPJR 546 : (2001) 2 MPLJ 644

Hon'ble Judges : Mr. S.P. Srivastava, J;Mr. R.B. Dixit, J;Mr. N.G. Karambelkar, J

Bench : Full Bench

Advocate : Shri K.K. Lahoti, A.A.G, Mr. H.D. Gupta, Mr. A.K. Shrivastava, Mr. M.M. Kaushik, Mr. B.K. Agarwal and Mr. V.N. Pathak, Mr. R.D. Jain and Mr. S.B. Mishra, for the Appellant;

Judgement

S.P. Srivastava, J.

Finding a mist of confusion in the scheme underlying the provisions of the Madhya Pradesh Land Revenue Code, 1959, in regard to the exclusion of the jurisdiction of the Civil Court in the matters relating to various rights which may require adjudication of the disputes relating thereto which mist instead of being removed was felt to have been densified in view of the various decisions of this Court, two learned Single Judges of this Court thought it appropriate to refer the questions of law framed by them for being considered and answered by a Full

Bench so that the position in law may be clarified and this is how this matter has come up for consideration before the present Full Bench constituted by Hon"ble the Chief Justice.

One of the learned Single Judges while hearing the aforementioned four second appeals involving the substantial question of law as to whether in view of the provisions of Section 57 of the Madhya Pradesh Land Revenue Code, the Civil Court has jurisdiction to try the suit filed by the plaintiff for declaration of bhumiswami rights framed the following questions of law which required to be decided by the Full Bench-

(1) Whether the right of ownership u/s 57 of the M.P. Land Revenue Code, 1959, covers in its ambit rights of bhumiswami, occupancy tenancy right and Government lessee or it deals with only complete ownership right of State ?

(2) Whether there can be any distinction as to the forum with respect to the rights of bhumiswami acquired after coming into force the M.P. Land Revenue Code, 1959, and the rights acquired by the bhumiswami on the basis of pre-existing Fights ?

(3) Whether determination of question of bhumiswami is a province of Civil Court? And

(4) What is the limitation for establishing such rights of bhumiswami, occupancy tenant, Government lessee and whether the Limitation Act, 1963, has no application if such rights are sought to be established against the Government and limitation u/s 57 of one year would apply ?

The other learned Single Judge while hearing another second appeal involving the substantial question of law to the effect - Whether the Courts below were justified in dismissing the plaintiffs suit u/s 57 (2) of the Madhya Pradesh Land Revenue Code, framed the following question which was referred for decision before the Full Bench-

"Whether a civil suit is directly maintainable in respect of the dispute with the State, avoiding the mandatory provision u/s 57 (2) of the Code ?"

We have heard the learned the counsel for the parties including the Amicus Curiae, Shri R.D. Jain, Senior Advocate as well as Shri S.B. Mishra, Senior Advocate and have carefully perused the various provisions of the Madhya Pradesh Land Revenue Code, 1959.

The Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) was brought into force with effect from 21st September, 1959, after receiving the assent of the President on 15th September, 1959, This Act was brought into effect to consolidate and amend the law relating to the land revenue, the powers of the Revenue Officers, rights and liabilities of holders of land from the State Government agricultural tenures and the other matters relating to the land and liabilities incidental thereto in Madhya Pradesh.

It may be noticed that initially the State of Madhya Bharat and Madhya Pradesh as originally constituted covered various areas falling within the States of Gwalior, Indore, Malwa, Bhopal, etc. The New State of Madhya Pradesh was formed with the territories as indicated in Section 9 of the States Reorganisation Act, 1956, which are-

(a) the territories of the existing State of Madhya Pradesh, except the Districts Buldana, Akola, Amravati, Yeotmal, Wardha, Nagpur, Bhandara and Chanda thereof;

(b) the territories of the existing State of Madhya Bharat, except Suneltappa of Bhanpura tehsil of Mandsaur District;

(c) Sironj sub-division of Kotah District in the existing State of Rajasthan;

(d) the territories of the existing State of Bhopal; and

(e) the territories of the existing State of Vindhya Pradesh;

(2) The said Sironj sub-djvisipn shall be included in, and become part of, Bhilsa District in the new State of Madhya Pradesh.

The law relating to the land revenue, the powers of the Revenue Officers, rights and liabilities of holders of the land from the erstwhile States, State Government, agricultural tenures and other matters relating to lands and incidental thereto were regulated by various State Laws, such, as Quanoon Mal in the State of Gwalior, Madhya Bharat Abolition of Proprietary Rights, Madhya Bharat Jagirdari Abolition Apt, 1951, Madhya Bharat Jagir, Revenue and Police Powers Abolition Act, 2005, Madhya Bharat Jagir Land Records, Samvat 2006, Madhya Bharat Zila Records Management Act, 1961, Madhya Bharat Jagir Tenants Restoration of Land Act Samvat, 2008, Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, Indore Land Revenue and Tenancy Act, Bhopal Abolition of Jagirs and Abolition Act, 1953, Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (No. 1 of 1951) and Madhya Bharat Land Revenue and Tenancy Act, Samvat 2007, etc.

It was in the aforesaid view of the matter that Act No. 20 of 1959, i.e. the Madhya Pradesh Land Revenue Code, 1959 was enacted and was brought into force to consolidate and amend the law relating to the land revenue, the powers of the revenue officers, rights and liabilities of holders of the land from the State Government agricultural tenures and other matters relating to land and liabilities incidental thereto in the newly constituted and reorganised State of Madhya Pradesh as it now exists. The Legislative intent obviously was to have a uniform law regulating the above matters.

With the enforcement of the Madhya Pradesh Land Revenue Code, 1959, various enactments as specified in the Schedule II of the said Code were repealed but it was not to affect the previous operation of any law so repealed or anything duly done or suffered thereunder; or any right, privilege, obligation or liability

acquired, accrued or incurred under any law so repealed and any action taken including any rules, assessment, appointments and transfers made, notifications and powers conferred, forms and leases granted, record-of-rights, and other records framed or confirmed. The rights acquired and liabilities incurred under any such enactment were deemed to have been done or taken under the corresponding provision of the new Code and were to continue to be in force accordingly unless and until superseded by anything done or action taken under the Code.

The question of law referred for consideration to this Full Bench necessarily involves the scope, interpretation, effect and implications arising under the provisions contained in Section 57, Section 111 and Section 257 of the Madhya Pradesh Land Revenue Code, 1959. The relevant parts of the aforesaid sections are being reproduced hereinbelow-

Chapter VI Land and Land Revenue

State ownership in all lands.-- (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government:

Provided that nothing in this section shall, save as otherwise provided in this Code, be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the (Sub-divisional Officer).

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(3-a) (a) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908) no Civil Court shall, in a civil suit instituted under sub-section (3) on or after 24th October, 1983, by order of temporary injunction disturb the person to whom possession is restored u/s 250 if such person furnishes a reliable surety to recompensate the aggrieved party against any loss in case the Civil Court grants a decree in favour of the aggrieved party:

Provided that no surety shall be required to be furnished by a member of a tribe declared to be an aboriginal tribe under sub-section (6) of Section 165;

(b) Where a Civil Court by an order of temporary injunction disturbed the person referred to in clause (a) on or after 24th October, 1983 but before the publication of Revenue Department's Notification No. 1-70-VII-N-2-83, dated 4th January, 1984 such order shall abate on such publication and the Tahsildar shall restore possession to a person who is disturbed by such order.

(4) Where a civil suit has been instituted under sub-section (3) against any order such order shall not be subject to appeal or revision.

Chapter IX Land Records

111. Jurisdiction of Civil Courts.-- The Civil Courts shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the record-of-rights.

Chapter XIX Miscellaneous

257. Exclusive jurisdiction of revenue authorities.-- Except as otherwise provided in this Code, or in any other enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the following matters-

(a)

(b)

(c)

(d) any claim against the State Government to hold land free of land revenue, or at less than the fair assessment, or to be assigned in whole or in part the land revenue assessed on any land;

(e)

(f) any claim against the State Government to have any entry made in any land records or to have any such entry omitted or amended;

(g) any question regarding the demarcation of boundaries or fixing of boundary marks under Chapter X;

(h) any claim against the State Government connected with or arising out of, the collection of land revenue or the recovery of any sum which is recoverable as land revenue under this Code or any other enactment;

(i)

(j) any decision regarding forfeiture in cases of certain transfers u/s 166;

(k) ejectment of a lessor of a bhumiswami under sub-section (4) of Section 168;

(l) any claim to set aside transfer by a bhumiswami under sub-section (1) of Section 170 and clauses (a) and (b) of sub-section (2) of Section 170-A;

(l-1) any matter covered u/s 170-B;

(m) ejectment of a Government lessee u/s 182;

(n) resumption by a bhumiswami of land held by an occupancy tenant u/s 189 and the fixation of rent of land left, if any, with the occupancy tenant;

(o) claims by occupancy tenants for conferral of the rights of bhumiswami u/s 190;

(p) restoration of possession to an occupancy tenant u/s 191;

(q)

(r) any claim to set aside transfer by an occupancy tenant u/s 197;

(s)

(t)

(u) any decision regarding reinstatement of a wrongfully ejected occupancy tenant u/s 202;

(v)

(w)

(x) any decision regarding reinstatement of a bhumiswami improperly dispossessed u/s 250;

[(x-i) any decision regarding confinement in civil prison u/s 250-A;

(x-ii) any decision regarding delivery of actual possession of land to the bhumiswami or the Government Lessee u/s 250-B.]

The expression "land" has been defined under the Madhya Pradesh Land Revenue Code in Section 2 (1) (k) which is to the following effect:--

(k) "land" means a portion of the earth's surface whether or not under water; and, where land is referred to in this Code, it shall be deemed to include all things attached to or permanently fastened to any thing attached to such land;

The expression "tenant" has also been defined in Section 2 (1) (y) which is to the following effect-

(y) "tenant" means a person holding land from a bhumiswami as an occupancy tenant under Chapter XIV;

The expression "tenure-holder" has been defined in Section 2 (1) (z) which is to the following effect:--

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

The expression "Government lessee" has been defined in Section 2 (1) (h) which is to the following effect:--

(h) "Government lessee" means a person holding land from the State

Government u/s 181.

It will be appropriate at this stage to refer to the relevant provisions of Sections 3 and 4 of the Madhya Bharat Jamindari Abolition Act, Samvat 2008 which are as under:--

.....

.....

Vesting of proprietary rights in the State.--(1) Save as otherwise provided in this Act and subject to the provisions of Section 8, on and from a date to be specified by a notification by the Government in this behalf (hereinafter referred to as the date of vesting) all proprietary rights in a village, muhal, land, chak or block in Madhya Bharat vesting in a proprietor of such village, muhal, land, chak or block, as the case may be, or in a person having interest in such proprietary rights through the proprietor shall pass from such proprietor or such other person, to and vest in the State free of all encumbrances.

(2) After issue of a notification under sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a decree or order of a Court or under a grant or contract in writing made or entered into by or on behalf of the Government; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the Government in this behalf.

(3) The Government may by notification published in the Government Gazette vary the date specified under sub-section (1) at any time before such date.

Consequences of the vesting of an estate in the State.-- (1) Save as otherwise provided in this Act when the notification u/s 3 in respect of any area has been published in the Gazette, then notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely:--

(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways, village sites, hats and bazars and mela grounds and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances;

(b) all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine;

(c) all rents and cesses in respect of any holding in the property so vesting for any period after the date of vesting which, but for such vesting would have been

payable to the proprietor, shall vest in the State and be payable to the Government and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same;

Explanation :-- The word "holding" shall for the purpose of this clause be deemed to include also land given, on behalf of the proprietor, to any person on rent for any purpose other than cultivation;

(d) all arrears of revenue, cesses or other dues in respect of any property so vesting and due by the proprietor for any period prior to the date of vesting shall continue to be recoverable from such proprietor and may, without prejudice to any other mode of recovery, be realised by deducting the amount from the compensation money payable to such proprietor under Chapter V;

(e) the interest of the proprietor so acquired shall not be liable to attachment or sale in execution of any decree or other process of any Court, Civil or Revenue, and any attachment existing at the date of vesting or any order of attachment passed before such date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882, cease to be in force;

(f) every mortgage with possession existing on the property so vesting or part thereof on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such property or part thereof be deemed without prejudice to the rights to the State u/s 3, to have been substituted by a simple mortgage.

(2) Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his Khud-kasht land, so recorded in the annual village papers before the date of vesting.

(3) Nothing contained in sub-section (1) shall operate as bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting in virtue of his proprietary rights.

Similarly, the relevant provisions contained in Sections 3 and 4 of the Madhya Pradesh Abolition of Proprietary Rights (Estate, Mahals, Alienated Land) Act, 1950 are to the following effect:--

.....

.....

Vesting of proprietary rights in the State.-- (1) Save as otherwise provided in this Act, on and from a date to be specified by a notification by the State Government in this behalf, all proprietary rights in an estate, mahal, alienated village or alienated land, as the case may be, in the areas specified in the notification, vesting in a proprietor of such estate, mahal, alienated village, alienated land, or in a person having interest in such proprietary right through the proprietor, shall pass from such proprietor or such other person to and vest in the State for the purposes of the State free of all encumbrances.

(2) After the issue of a notification under sub-section (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as made by the State Government in this behalf.

(3) Different dates may be specified under sub-section (1) for different areas.

(4) The State Government may vary the date specified under subsection (1) at any time before such date.

Consequences of the vesting.-- (1) When the notification u/s 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely:--

(a) all rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren), grass land; scrub jungle, forest, trees, fisheries, wells, tanks, ponds, water channels, ferries, pathways, village sites, haats, bazars and melas; and in all sub-soil, including rights, if any, in mines and minerals, whether being worked or not, shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge on any proprietary rights shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act;

(b) all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine;

(c) all rents and cesses in respect of any holding in the property so vesting for any period after the date of vesting, and which, but for such vesting, would be payable to the proprietor, shall vest in and be payable to the State Government, and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same;

(d) all arrears of revenue, cesses or other dues, in respect of any property so vesting, and due by the proprietor for any period to the date of vesting, shall continue to be recoverable from such proprietor and may, without prejudice to any other mode of recovery, be realised by deducting the amount from the compensation money payable to such proprietor under Chapter V;

(e) the interest of the proprietor so acquired shall not be liable to attachment or sale in execution of any decree or other process of any Court, civil or revenue, and any attachment existing at the date of vesting or any order of attachment

before such date shall, subject to the provisions of Section 73 of the Transfer of Property Act, 1882 (V of 1882), cease to be in force;

(f) every mortgage with possession existing on the property so vesting or part thereof on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such property or part be deemed, without prejudice to the rights of the State Government u/s 3, to have been substituted by a simple mortgage.

(2) 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.

(3) Nothing contained in sub-section (1) shall operate as a bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting by virtue of his proprietary rights and any such sum shall be recoverable by him by any process of law which but for this Act would be available to him.

The Acts to which a reference has been made hereinabove, which regulated the law relating to land revenue and the rights and liabilities of holders of land from the State Government, agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh, mostly contain the provisions which are declaratory of the rights acquired by different categories of the holders of the land on the date of vesting. Such holders of land included the proprietor, tenants of the proprietors or sub-tenants, Jagirdars etc., whose proprietary rights, title and interest in the land in respect of which a notification under the Madhya Bharat Jamindari Abolition Act or Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 had been issued stood vested in the State free from all encumbrances subject to certain special tenurial rights which the proprietor or Jagirdar could continue to enjoy subject to certain conditions being satisfied. Not only Madhya Bharat Jamindari Abolition Act and the Madhya Bharat Jagirdari Abolition Act but even in other Acts which were in force earlier regulating the proprietary rights and of liabilities of the proprietor, Jagirdar or an intermediary and the rights of the tiller of the soil were kept distinct and separate. In other words, a consistent distinction was maintained throughout between the proprietary right and the cultivatory right.

It may, however, be observed that though certain conditions had been laid down under the various provisions of the aforesaid enactments which were required to be fulfilled before the rights mentioned thereunder were to be deemed to have been acquired but there is nothing to indicate or to suggest that acquisition of such rights was to depend upon the determination of any dispute between persons claiming to belong to a particular category and those who might be interested in challenging their status by any named authority.

This, however, could not mean or suggest that there could not be any dispute which could arise because of the deeming provisions. It is, therefore, obvious

that in the absence of specified special Courts or Tribunals created for such determination, ordinary Civil Courts had to be taken to be quite competent to deal with all kinds of civil disputes including the question as to what purpose and between what persons statutory fiction ought to be resorted to.

Where the rights are conferred upon a person by a statute on satisfying certain conditions they merely because somebody may choose to raise any contest about it the vesting of such right cannot be taken to have been suspended until determination of such right is made specially where such disputes are to be determined by Tribunals or Courts other than the Civil Court vested with the powers of deciding all disputes of civil nature. The Legislature has to say so specifically. Where it is not so done then obviously such determination has to be made by the ordinary Civil Courts.

While interpreting the provisions of a statute a mechanical approach to the construction is altogether out of step with the modern positive approach which is to have a purposeful construction i.e., to effectuate the object and purpose of the Act. Even if there is a choice between two interpretations an effort has to be made to construe the provision in such a manner so as not to defeat its object ensuring that its real object is carried into effect avoiding a construction which would reduce the legislative intent to futility. The legislature, it should not be lost sight of legislates only for the purpose of bringing about an effective result. Further, provision of a statute should be construed with reference to the context and to the other clauses of the Act so as to ensure so far as possible to make a consistent enactment of the whole statute or series of statutes relating to the subject matter.

In the present case taking into consideration the implications arising under Sections 3 and 4 of the Madhya Bharat Jamindari Abolition Act, and the other Acts which were in force prior to the bringing into effect of the Madhya Pradesh Land Revenue Code, 1959 there could be no doubt that proprietary rights in the land of any kind vesting in any person stood extinguished and by operation of law vested in the State. It is in this view of the matter, that in Section 57 of the Code, it was clarified and declared that all lands belong to the State Government and all such lands including standing and flowing water, mines, quarries, minerals and forests reserved or not, and all rights in the sub-soil of any land are the property of the State Government.

However, since the tenurial rights for the tillers of the soil had been protected, it was provided that nothing in Section 57(1) shall, save as otherwise provided in the Code be deemed to affect any rights of any person subsisting at the coming into force of this "Code" in any such property. It may be noticed that the expression "subsisting" at the coming into force of the "Code" is of quite significance. The expression "the rights of any person subsisting at the coming into force of this Code" can only have within its ambit the tenurial rights or the rights secured in favour of the tiller of the soil given specific nomenclatures in the enactments which were in force prior to the commencement of the Code. The

expression "tenure" in its general sense is a mode of holding or occupying. It is with reference to such a right that while defining the term "tenant" in the Code it had been specified that a tenant means a person holding land from a bhumiswami as an occupancy tenant under Chapter XIV of the Code and the term "tenure-holder" was defined specifying him to be a person who holds land from the State Government and who is or is deemed to be bhumiswami under the provisions of the Code which obviously means subject to the rights and the obligations cast upon such a bhumiswami under various provisions of the Code.

It may be noticed at this stage that tenurial rights with which the tiller of the soil whether the land was got actually tilled by the person himself or was being tilled through his recognised agent/servant as permitted by law had been put in several categories. One of the category of such tenure holders was given the nomenclature of a "bhumiswami". In its decision in the case of Ramgopal Vs. Chetu, reported in 1976 mpLJ 278, rendered by a Full Bench of this Court in Paragraph 14 thereof it was observed as under:--

"It must be remembered that a bhumiswami has a title though he is not the "swami" of the "bhumi" which he holds, in the sense of absolute ownership, because as declared in Section 57 of the Revenue Code, ownership of land vests in the State Government, yet, he is a bhumiswami. He is not a mere lessee. His rights are higher and superior. They are akin to those of a proprietor in the sense that they are transferable and heritable, and, he cannot be deprive of his possession, except by due process of law and under statutory provisions, and his rights cannot be curtailed except by legislation."

The aforesaid observations made by the Full Bench in its decision with reference to the "bhumiswami" had brought him akin to the proprietor or owner.

The question as to the nature of the rights secured in favour of a tenure holder had come up for consideration before the Apex Court in its decision in the case of Mohd. Noor and others Vs. Mohd. Ibrahim and others, rendered by a Two Judge Bench reported in Mohd. Noor and others Vs. Mohd. Ibrahim and others, . The Apex Court after referring to the Butterworth's Words and Phrases Legally Defined, 2nd Edition Vol. 4, and Austin's book Jurisprudence, 3rd Edition and various other aspects had clarified the legal position to be as follows:--

"The theoretical concept of "ownership", therefore, appears to be that a person can be considered to be owner if he has absolute dominion over it in all respects and is capable of transferring such ownership. Heritability and transferability are no doubt some of the many and may be most important ingredients of ownership. But they by themselves cannot be considered as sufficient for clothing a person with absolute ownership. Their absence may establish lack of ownership but their presence by itself is not sufficient to establish it. The ownership concept does not accord with the status of a person who is paying the rent. A tenant under various legislations either urban or rural property, agricultural or otherwise, enjoys right of heritability and transferability. At the

same time, he does not become owner of the property. Transfer of ownership is distinct and different from transfer of interest in the property. All licensee or even a tenant may be entitled by law to transfer his interest in the property but that is not a transfer of ownership. For instance, a lessee from a corporation or a local body or even State Government to raise building may have heritable and transferable right but such a person is not an owner and the transfer in such a case is of his interest in the property and not the ownership. In *Inder Sen Vs. Naubat Singh* [ILR 7 All. 553 (FB)] it was held that absolute ownership is an aggregate of compendium of rights such as right of possession, the right of enjoying usufruct of the land and so on and so forth. The ownership, therefore, is a sum total of various subordinate rights.

It was further observed as under:--

"..... It is true that after abolition of zamindari in various States the tiller of the soil has become owner of the land. But it cannot be disputed that the proprietorship of the land vests in the State to whom the rent is payable. It is not uncommon that a person in possession of an agricultural holding even as an owner cannot put his land to any use as he desires. For instance, if the land has to be converted from agricultural use to non-agricultural use then the tenure-holder is required to obtain permission of the State Government or the appropriate authority appointed by it. All these indicate that even though a Khatedar tenant is an owner for all practical purposes but his ownership is limited and, therefore, the transfer by a Khatedar tenant of an agricultural holding does not give right to a co-sharer to claim right of pre-emption. The submission that the ownership of the State was a mere fiction cannot be accepted....."

The aforesaid observations leave no room for doubt that the tenure-holder as envisaged under the Madhya Bharat Zamindari Abolition Act or the Madhya Pradesh Land Revenue Code, whether given a nomenclature of bhumiswami or any other nomenclature with lesser rights cannot be taken to be the owner of the land comprised in his holding as contemplated u/s 57 of the Code. He cannot further be equated with a proprietor or zamindar or an intermediary or jagirdar or magulzar whose proprietary rights were extinguished and vested by operation of law in the State. We are bound to follow the position in law as indicated by the Apex Court in its aforesaid decision while determining the status of "bhumiswami" or any other tenure-holder with any other nomenclature given to him under the provisions of the Madhya Bharat Zamindari Abolition Act or the Madhya Pradesh Land Revenue Code (Act No. 20 of 1959). The observations to the contrary made in the decision in the case of *Ramgopal Vs. Chetu* (supra) have to be taken to have lost their efficacy.

It has been urged that the decision in the case of *Ramgopal Vs. Chetu* (supra) was not disturbed by the Apex Court in its decision in the case of *Rohini Prasad and Others Vs. Kasturchand and Another*, , and therefore, the status of "bhumiswami" qua the proprietor or owner as clarified by this Court in the case of *Ramgopal Vs. Chetu* (supra) continues to hold the field.

We have carefully examined the decision in the case of Rohini Prasad and others (supra). That was a case where one of the questions which had arisen for consideration was as to whether the Civil Court had no jurisdiction to try the suit without taking recourse to the remedy provided u/s 250 of the Land Revenue Code. The bhumiswami in that case was the plaintiff and had without initiating the proceedings u/s 250 of the Code had straight away filed the suit in the Civil Court for eviction of Rohini Prasad claiming that he was in unauthorised possession of the land after the expiry of his lease. Section 250 of the Code provides for a speedy remedy for recovery of possession to a bhumiswami. The Apex Court had refused to interfere on the ground that the law laid down by the High Court of Madhya Pradesh while interpreting the Code which applies to the State of Madhya Pradesh having held the field for all these years it was not desirable for the Supreme Court to give its interpretation and to upset the settled law observing that merely because a different view is possible and on that ground the decision of the High Court was erroneous it should not be a ground to interfere. It was observed that the law should be certain and parties should know where they stand.

The Apex Court in its decision in the case of Rohini Prasad (supra) was considering the implications arising u/s 250 of the Code which itself provides that if a bhumiswami is dispossessed of the land otherwise than in due course of law or if any person unauthorisedly continues in possession of any land of the bhumiswami to the use of which such person has ceased to be entitled under any provision of this Code the bhumiswami or his successor-in-interest may apply to the Tahsildar for restoration of the possession. The use of the expression "may" in Section 250 (1) (1-a) itself leaves it to the option of the aggrieved bhumiswami to either take recourse to a summary remedy or to take recourse to the regular suit.

It must be emphasised that the provisions contained in a statute have to be construed so as to be in harmony with each other. The special provisions will have to be taken as excluding the applicability of the general provisions. The word "may" has been sometimes understood in the imperative sense as "shall" but ordinarily it indicates the choice of action and not the command.

In the present context there does not appear any reason to assume that the word "may" has not been used in its ordinary sense. The use of the expression "may" is an enabling provision leaving a choice of action which is not to be understood as a command.

The aforesaid position was amply clarified by this Court in its decision in the case of Nathu Vs. Dilbande Hussain, reported in 1964 RN 513 indicating that what is excluded from the cognizance of a Civil Court under clause (x) of Section 257 is a suit of the type contemplated u/s 9 of the Specific Relief Act for restoring possession of land to a dispossessed bhumiswami. It was emphasised that remedy of a suit u/s 9 of the Specific Relief Act is clearly not available to such a bhumiswami in view of Section 257 (x) of the Madhya Pradesh Land Revenue

Code but such a bhumiswami if he wished to have the land restored to him in a speedy manner and after a summary enquiry must resort to remedy given by Section 250 of the Code.

It was the aforesaid view which had been affirmed by the Full Bench in the case of Ramgopal (supra) observing that the bhumiswami was not bound to avail himself of the speedy remedy provided u/s 250 of the Code and it was open to him to take recourse to summary remedy u/s 250 or even without it straight away bring a suit in the Civil Court for declaration of his title and possession. Even if there had been a decision u/s 250 of a Revenue Court the party aggrieved could institute a civil suit to establish his title to the disputed land and upholding the decision in the case of Nathu Vs. Dilbande Hussain (supra), it was held that Civil Court had jurisdiction to decide such suit based on title against the trespasser.

In The State of Orissa Vs. Sudhansu Sekhar Misra and Others, , the Hon''ble Supreme Court had observed as under:--

"A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It is not a profitable task to extract a sentence here and there from a judgment and to build upon it."

The provisions contained in Section 157 of the Madhya Pradesh Land Revenue Code, 1959, provide that there shall be only one class of tenure holder of the land held from the State to be known as the bhumiswami. Section 158 of the said Code provides that every person who at the time of the coming into force of this Code who belongs to any of the classes enumerated therein was to be called a bhumiswami and was to have all the rights and be subject to all the liabilities conferred or imposed upon a bhumiswami by or under the Code. Section 168, however, provides that except in cases provided for in sub-section (2) thereof, no bhumiswami shall lease any land comprised in his holding for more than one year during any consecutive period of the three years.

The Madhya Pradesh Land Revenue Code, 1959, is a special local law. Section 29 of the Limitation Act, 1963, provides that where any special or local law prescribes for a suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law. In the absence of any provision in the Madhya Pradesh Land Revenue Code, 1959, which may suggest exclusion of Section 27 of the Indian Limitation Act in respect of the rights envisaged under the Code, it is obvious that as provided u/s 27 of the Limitation Act, 1963, at the

determination of the period prescribed for instituting a suit for possession of any land the right of the person concerned to such land has to be taken to have been extinguished. With the extinguishment of the right, the accrual of fresh right is contemplated under the provisions of the Madhya Pradesh Land Revenue Code, only in certain specified situations which is apparent from the various provisions of the Code.

On a careful perusal of the various provisions contained in the Madhya Pradesh Land Revenue Code, the underlying policy which is apparent is that apart from the cases of a limited category and persons in cultivatory possession of the land belonging to a bhumiswami and further only on specified grounds expressly provided for there is no provision which could lead to an inference that the bhumiswami rights could be acquired by adverse possession. In fact what is apparent is that the accrual of bhumiswami rights by adverse possession is not contemplated under the Code.

The expression bhumiswami as contemplated under the Madhya Pradesh Land Revenue Code, 1959, encompass not only the so called proprietors, jagirdars, etc., envisaged under the Acts in force immediately preceding the commencement of the Code of 1959 but also the persons who were considered to be tenants previously. The bhumiswami contemplated u/s 158 of the aforesaid Code obviously comprises of all categories of persons whether plot holder, proprietor, jagirdar, pakka-tenant or tenants indicated therein who were put into a single category of a tenure-holder giving them the nomenclature of bhumiswami.

As has already been noticed hereinabove the legislative scheme underlying the provisions of the Madhya Pradesh Land Revenue Code, 1959, clearly contemplates specified modes whereunder a person could become a "bhumiswami" as contemplated u/s 158 of the said Code. The first category of bhumiswamis contemplated under the Code is of those persons who satisfied the minimum requisite conditions as enumerated in Section 158 of the Code on the date of the coming into force of the Code. The second category of bhumiswamis consists of those persons specified in Section 158 (3) of the Code which fall in the category of Government lessees before the enforcement of the Madhya Pradesh Land Revenue Code Amendment Act, 1992. The third category of bhumiswamis consists of those persons which are contemplated u/s 158 (3) (ii) of the Code. The bhumiswami right contemplated in favour of such persons is subject to various restrictions. The other category of persons who could acquire bhumiswami rights is contemplated u/s 155 read with Sections 190 and 191 of the Code, where an occupancy tenant can become a bhumiswami on his satisfying the minimum requisite eligibility criteria and satisfying further the requisite conditions contemplated under those provisions.

It may be noticed that there is no other provision except those mentioned hereinabove which may contemplate either conferment or accrual of bhumiswami rights whether with or without conditions/restrictions.

Further as indicated by the Apex Court in its decision in the case of Mathuralal Vs. Keshar Bai and Another, at page 315 lessee's possession cannot be adverse to the owner and the latter's title cannot be extinguished by the lessee being in possession for any length of time. However, there may be a situation where a suit for possession is filed by the rightful owner after 12 years, his title having been extinguished, the possessory owner may be held to have acquired absolute title. But in the cases governing the special Acts dealing with specified rights created or recognised subject to limitations and restrictions in the absence of any provision, no such contingency could arise as special always excludes the general. There could be no mixing up of the two.

It may however be noticed that in its decision in the case of Kalika Prasad and another Vs. Chhatrapal Singh, reported in 1997 RN 81 rendered by a Bench of Two Hon'ble Judges of the Apex Court, it was observed that a person remaining in possession for 12 years acquires rights of bhumiswami over the agricultural land by way of prescription. On the other hand in its decision in the case of Dindayal Vs. Rajaram, reported in 1970 RN 327, a larger Bench of the Apex Court (Three Judges Bench) in its unanimous judgment had observed as follows:--

"..... It is one thing to say that a tenant who was in possession of the tenancy holding at the time of dispossession had lost his rights in the holding but it is another thing to say that a trespasser had become the tenant of that holding at the end of the prescribed period....."

The aforesaid case was a case under the C.P. Tenancy Act, which was a special Act just like the present Madhya Pradesh Land Revenue Code. In that context it was further observed as follows:--

"..... It only governs those matters for which provision is made therein. In other respects the general law continues to apply We do not think that the provisions of the Act enabled (the Act has been repealed) a trespasser to impose himself as a tenant on the landlord by means of adverse possession of the holding as against the tenant for a period of three years. Similarly, it is not possible to hold that a tenancy right could have been acquired in a holding so as to affect the rights of third parties by being in wrongful possession of that holding for a period of three years. If it is otherwise, valuable rights of third parties could have been jeopardised for no fault of theirs....."

A learned Single Judge of this Court in his decision in Second Appeal No. 510/65, Bagadi Ram Vs. Onkar, decided on 28-10-1975, had held that a right of a bhumiswami cannot be acquired by adverse possession. Another learned Single Judge of this Court finding himself unable to agree with the aforesaid proposition had referred the question for consideration before the Larger Bench. It was contended before the Full Bench that if a person allows another person to be in adverse possession of his property for more than 12 years, his right to such property may be extinguished but no corresponding right or title is conferred on

the person in adverse possession. The Full Bench in its decision in the case of Kashiram Vs. Nathu and Another, , referring to the decision of the Privy Council in the case of Mohd. Abdul Jalil Khan Vs. Muhammad Obaidullah Khan, reported in AIR 1929 PC 228 and to the decision of the Privy Council in the case of Lala Hemchand Vs. Lala Pearey Lal and others, reported in AIR 1942 PC 64 held that if an owner of a property suffers another person to be in adverse possession thereof for more than 12 years his right or title to the said property is extinguished in favour of the person in adverse possession and the latter person acquires title to the same, and did not approve of the view of the Division Bench in the case of Mst. Sultan Jehan Begum and Others Vs. Gul Mohd. and Others, to the effect that Section 28 of the Limitation Act (old Act) merely declares when the right of the person out of possession is extinguished and it is not correct to say that section confers title on the person who has been in adverse possession for a certain period. The observations to the effect that there is no law which provides for conferral of title on a person for whatever length of time was also not approved. It was submitted before the Full Bench that whatever may be the position in regard to the general property, the tenancy rights in agricultural holdings could not be acquired by adverse possession and the rights of a bhumiswami can be acquired only under the provisions of the Madhya Pradesh Land Revenue Code and cannot be acquired by adverse possession. Reliance in support of the submission was placed on two Full Bench decisions of the Nagpur High Court in AIR 1940 49 (Nagpur) and AIR 1944 250 (Nagpur) The Full Bench in the case of Kashiram (supra) while noticing the above submissions observed that the lease hold rights can be extinguished and acquired by adverse possession. It was observed that a lease is an interest, though limited, in immovable property and if a person having lease hold rights in property is dispossessed by another person and the lessee suffers such dispossession for the statutory period his lease hold rights are extinguished and acquired by the person in adverse possession. It is true that the person in adverse possession does not acquire any title qua the landlord but from this it cannot be reasonably deduced that the lease hold rights cannot be acquired by adverse possession. It was further indicated that it is one thing to say that a person in adverse possession of lease hold rights does not acquire any title against the landlord but quite another that such a person does not acquire the right of the tenant against whom he was in adverse possession for the statutory period. If lease hold rights pertaining to general property can be acquired by adverse possession, we have to see whether any distinction can be made in regard to the tenancy rights in agricultural holdings. For that, we have to see whether there is any provision in the law relating to agricultural land which prohibits acquisition of title by adverse possession.

After examining the various provisions of the entire Land Revenue and Tenancy Acts and the Madhya Bharat Land Revenue and Tenancy Act, it was observed that a holder of a land could lose his right in any land by dispossession. However, it was observed that no such provisions is made in the Madhya Pradesh Land

Revenue Code, 1959. The contention that loss of right of a bhumiswami by dispossession was not recognised by the Court was rejected observing that it is true that the initial act of dispossession of the true owner by a person in adverse possession may or may not be lawful but it cannot be disputed that acquisition of title by adverse possession for the statutory period is lawful in the absence of the contrary provision in the statute. No provision of the Madhya Pradesh Land Revenue Code or of the earlier tenancy laws was brought to their notice prohibiting acquisition of title to agricultural land by adverse possession. The Full Bench further observed that no provision is made in the Madhya Pradesh Land Revenue Code restricting the transfer by sale of the bhumiswami rights who could transfer his rights in land without any restriction although provision is made placing impediment in the transfer of the land belonging to members of Scheduled Tribes. Acquisition of title by adverse possession of bhumiswami rights of a tenure holder, who can transfer his right without any impediment presents no difficulty because it may be stated as a general proposition of law that transferable rights can be acquired by adverse possession and such acquisition of rights is lawful. It was further observed that if there is any legal impediment in the transfer of a right and a person is put in possession in contravention or circumvention of such impediment and remains in adverse possession for more than the statutory period, the questions whether in such a case the person in adverse possession can acquire title by adverse possession and whether such acquisition of title is lawful or not may present some problems. It was clarified that if a person claiming title by adverse possession was put in or had obtained possession of the land prohibiting to invalidating the transaction which was occasioned by such adverse possession or if any such provision of any statute was thereby circumvented the concerned authority has the power to refuse mutation of the person claiming to have acquired title by adverse possession on the ground that the acquisition of title claimed by him is not lawful but if the acquisition of title by adverse possession is lawful, the revenue authorities are bound to recognise the person in adverse possession as the bhumiswami and to record his name in the revenue papers. Holding so, the Full Bench clarified, that a person may acquire rights of a bhumiswami by adverse possession qua that bhumiswami but whether he acquires any right in that land qua the State Government would depend upon the question whether the acquisition of the right by adverse possession is lawful or not. The contention of the learned counsel for the appellant that as bhumiswami rights can be conferred only by the provisions of the Madhya Pradesh Land Revenue Code, those rights cannot be acquired by adverse possession was found to have no merit and was negatived.

It may be noticed that the attention of the Full Bench was drawn to the decision of the Apex Court in the case of *Dindayal and Another Vs. Rajaram*, in support of the contention that the tenancy rights in agricultural land cannot be acquired by adverse possession, and also to the Full Bench decision of the Nagpur High Court in the case of *Punjaram Jagoba Teli Vs. Ramu Chintoo Gond* (supra) and *Tulsiram Jiyanalal Lodhi Vs. Hyder Lalla Pinjara* (supra). The Full Bench held that the

aforesaid decisions were not authorities for the proposition that the tenancy rights in agricultural land cannot be lost or acquired by adverse possession.

In its decision in the case of *Lata Hem Chand Vs. Lala Pearey Lal and others*, reported in AIR 1942 PC 64 referring to an earlier decision in the case of *Gunga Gobindas Mundal Vs. The Collector of the Twenty Four Pergunnahas* (11 M.I.A. 345), the Privy Council had observed that if the owner whose property is encroached upon suffers his right to be barred by the law of Limitation the practical effect is the extinction of his title in favour of the party in possession. However, considering the implications arising u/s 10 of the Limitation Act, the plaintiff in that case was held to be entitled to recovery of possession as the plaintiff had established his title to the suit property by adverse possession for upwards of 12 years before the tenant obtained the possession of the same and since the suit had been brought within a short time of two years of dispossession.

It may be noticed that the doctrine of judicial precedent is to declare the law and not the facts and the declaration itself has to be taken to be binding upon all persons whether parties to the proceedings or not. The decision of the Supreme Court is binding not only under Article 141 of the Constitution of India but also under the doctrine of the binding precedent.

Where however various judgments of the Supreme Court cannot be reconciled in view of the fact that even if some inconsistency may be there this Court is, on the facts of the instant case, bound to follow the decision of the Supreme Court having been rendered by a Bench of larger number of Hon''ble Judges in preference to the decision in a case having been rendered by a Bench of lesser number of Hon''ble Judges. This is so in view of the decision of the Hon''ble Supreme Court in the case of *The State of U.P. Vs. Ram Chandra Trivedi*, wherein it was observed as follows :--

"It is also to be borne in mind that even in cases where a High Court finds any conflict between the view expressed by Larger and Small Benches of this Court, it cannot disregard or skirt the views expressed by the Larger Benches. The proper course for a High Court in such a case, as observed by this Court in *Union of India (UOI) and Another Vs. K.S. Subramanian*, , to which one of us was a party, is to try to find out and follow the opinion expressed by Larger Benches of this Court in preference to those expressed by Smaller Benches of the Court which practice, hardened as it has into a rule of law is followed by this Court itself."

In *Mattulal Vs. Radhe Lal*, , it was held by the Supreme Court that where there are contradictory decisions of the Supreme Court the decision of the Larger Bench has to be followed even if that decision was rendered earlier in point of time than the decision of the smaller Bench.

Further, where there is a direct conflict between the decision of the Hon''ble Supreme Court in its co-equal Benches, the High Court has to follow the judgment, which appears to it to state the law more elaborately and more

accurately and in conformity with the scheme of the Act. The date of delivery of the judgment cannot be a guiding factor. This was so indicated by a Division Bench of this Court in its decision in the case of Municipal Corporation, Indore and others Vs. Smt. Ratnaprabha Dhanda, Indore and others, reported in 1989 MPLJ 20 at page 27.

The observations to the aforesaid effect were also made by the Patna High Court in its decision in the case of Amar Singh Yadav and Another Vs. Shanti Devi and Others, rendered by a Full Bench.

It may also be noticed that in its decision in the case of Mattulal Vs. Radhe Lal, , as well as in its decision in the case of The State of U.P. Vs. Ram Chandra Trivedi, , the Apex Court had clearly observed that its former decision of the Larger Bench should be followed.

It is settled law that the exclusion of the jurisdiction of the Civil Court is not to be readily inferred but such exclusion must either be explicitly expressed or clearly implied. It is also well settled that where a statute creates a liability not existing at common law, and gives also a particular remedy for enforcing it with respect to that class it has always been held, that the party must adopt the form of remedy given by the statute.

The Nagpur High Court in its decision in the case of AIR 1940 49 (Nagpur) had expressed the view that in all cases to which Section 28 of the Indian Limitation Act, (then in force) applied as soon as a right to sue for possession becomes barred by limitation, the right to the property itself gets extinguished, and not merely the right to sue for it. In the cases of tenancies in the Central Provinces the extinguishment spoken of in Section 28 of the Limitation Act (in force at that time) occurred at the end of the period specified in Schedule 2 to the Tenancy Act, and not at the end of the period prescribed by the Limitation Act. It was, therefore, apparent that as soon as that period elapsed the right to the tenancy is extinguished and not merely barred. The notions derived from English Law of landlord and tenant and the implications arising under the ordinary Indian Law must be placed completely on different sides and to do otherwise is bound to lead to an error. It was emphasised that the Tenancy Act creates special tenures which are unknown to the ordinary law. It prescribes in detail the rights, remedies and liabilities of the various persons and subjects with which it deals. It creates a status of a very special and peculiar kind. Therefore, unless one follows closely the spirit and the provisions of the Act and excludes from consideration preconceived notions gathered from other laws, one will be landed in fallacies and contradictions and will be trapped into giving a false interpretation to the meaning and intent of the Legislature.

We are of the considered opinion that the provisions of the Madhya Pradesh Land Revenue Code, 1959, have to be interpreted keeping in view the aforesaid position in law which stands squarely attracted in the facts and circumstances of the present case taking into account the historical background of the nature of

the rights enjoyed by the proprietors, jagirdars, zamindars etc., and the tenants in the lands envisaged under the previous enactments in force prior to the abolition of the zamindari, jagirdari or proprietary rights and the recognition granted to the various types of the inferior rights like tenancies with different nomenclature with or without restrictions/limitations.

It should not be lost sight of that unless the aforesaid facts are taken into account, it will be impossible to grasp the true significance of the expressions such as proprietors, jagirdars, malguzars, zamindars and the tenants with various nomenclatures used in the various Acts in force prior to the coming into effect of the "Code". The so-called bhumiswamis were never contemplated to be the title holders at all in the ordinary sense of the term, nor were the tenants in the ordinary sense of the term. The sovereign did not part with its ownership rights or title when it formally "conferred" the proprietary rights with limitations upon the malguzars, jagirdars, zamindars and proprietors etc. In essence, the intent was the continuance of old estates *jure coronae*.

It may be observed that the terms "proprietary right" as used in the various Acts enforced prior to the coming into effect of the Madhya Pradesh Land Revenue Code, 1959, did not include within its ambit the entire bundle of interests which in aggregate make up a complete or absolute estate but only some of them, the remainder being enjoyed by other persons i.e., tenants, tenure-holders and the like along with the obligations to pay land revenue to the Government and the reservation by Government of its rights in mines and quarries and in large tracts of uncultivated land and forest. The jagirdar, khatedar, intermediary, zamindari or proprietary system was an almost wholly artificial tenure created by our revenue system and the policy of the Government of the day.

It may further be noticed that the Code deals with special rights. It had created special tenures unknown to the ordinary law. therefore, when the Code prescribes a special remedy in case of the contravention of what it prohibits, it must be taken that the intention is to limit the party seeking relief to take recourse to the special remedy prescribed. This must be considered as one of the incidents of the special tenures. We are further of the view that it is not profitable to look to the ordinary law of landlord and tenants because these tenures are not of that nature. The bhumiswami is not a landlord in any real sense of the term, He is not and never had been so. The quondam precariousness of his tenure has gone and stability and protection are now guaranteed to him as well as cheap and effective remedies, but at a price. He has to respect the rights and title of the State and of another class of tenure-holders though they may have very limited rights secured in their favour under the Code.

In its decision in the case of AIR 1944 250 (Nagpur) rendered by a Full Bench, it had been observed that while considering provisions of the C.P. Tenancy Act while applying Section 28 of the Limitation Act to suits between tenant and trespasser which provision extinguishes the tenant's right after exclusion for the prescribed period under the special law cannot have the effect of conferring by

implication tenancy right on the trespasser against the landlord. It was clearly observed that effect of Section 28 of the Limitation Act (now, Section 27 of the Limitation Act, 1963) is not to vest the tenancy in the trespasser. Even if a tenant's right is extinguished the tenancy was never intended to have been vested in the trespasser. The question referred to the Full Bench for decision which was as to whether an absolute occupancy tenancy or, failing that, an occupancy tenancy, can be acquired by adverse possession was answered in the negative.

It may be noticed that even the doctrine of transfer by prescription could not be taken to have been attracted in the case of a trespasser or a person continuing to be in possession otherwise than in accordance with law over a holding as defined under the Code as against the State -- the owner/title holder -- as envisaged u/s 57(1) of the Code as the provision envisaged u/s 27 of the Limitation Act, 1963, could if at all hit adversely the tenants only and not the real title holder, i.e., the State. In such a case, the person who could be affected if at all could be the tenant of the holding with the obvious result that the State, the real owner/title holder will be taken to have been relieved of such a tenant with the consequential result that it could claim to evict the trespasser in case he was not wanted.

The Madhya Pradesh Land Revenue Code, 1959, is exhaustive and the principles available in general law that the extinguishment of the title of the rightful owner will operate as good title of the wrong doer or extinguished in favour of a true owner is wholly alien to the scheme of the aforesaid Code.

It must be emphasised that the provisions contained in the statute have to be construed so as to be in harmony with each other and special provisions will have to be taken as excluding the applicability of a general provision.

In view of the facts and circumstances noticed hereinabove, there can be no escape from the conclusion that no mode other than the modes prescribed for conferment, acquisition or accrual of bhumiswami rights can be created or presumed to exist or assumed so as to entitle a cultivator or tiller of the soil or even a trespasser having inferior rights to become a bhumiswami envisaged u/s 157 of the Code or a tenant as envisaged under the Code by prescription or by adverse possession. The ratio of the decision of the Apex Court in the case of Dindayal Vs. Rajaram (supra) can be safely applied to the legislative scheme underlying the provisions of the Code and nature of the rights with reference of the soil or land as envisaged under the Madhya Pradesh Land Revenue Code, 1959.

As has already been indicated hereinabove Section 111 of the Madhya Pradesh Land Revenue Code, clearly provides that the Civil Courts shall have jurisdiction to decide any dispute to which the State Government is not a party relating to any right which is recorded in the record-of-rights. Section 257 of the Code, however, stipulates that except as otherwise provided in the Code or any other

enactment for the time being in force, no Civil Court shall entertain any suit instituted or application made to obtain a decision or order or on any matter which the State Government, the Board, or any Revenue Officer is by this Code, empowered to determine, decide or dispose of, and in particular and without prejudice to the generality of this provision, no Civil Court shall exercise jurisdiction over any of the matters enumerated therein.

The provisions contained in Section 57 of the Madhya Pradesh Land Revenue Code have to be interpreted taking into account the legislative policy and intent underlying all the three provisions, i.e., Sections 57, 111 and 257 of the Code.

It may be noticed in the aforesaid connection that in its decision in the case of M/s. Assam Company Limited and another Vs. The State of Assam others, in Civil Appeal No. 5047 of 1996, decided on 21-3-2001 by a Bench of Three Hon'ble Judges of the Apex Court it had been observed-

"It is a well established rule of interpretation that while interpreting a particular provision of a Statute, Courts should bear in mind the object and scheme of the entire Act. A particular provision of the Act cannot be considered or interpreted in isolation so as to give room for conflict inter se between the provisions of the same Act. Courts should also bear in mind that while interpreting a provision of the Act an interpretation leading to the provision becoming ultra vires should be avoided."

The legislative intent which is apparent is that the provisions contained in Section 57 (2) of the Code requires a narrow interpretation confined to the limited disputes in respect of the matters contemplated in Section 57 (1) of the Code excluding the rights of any person in such property subsisting at the coming into force of the Code i.e., on 21st September, 1959. This necessarily excludes the cultivatory rights in respect of the land as contemplated u/s 2 (1) (k) secured in favour of a "tenant" as defined u/s 2 (1) (y) and a "tenure holder" contemplated u/s 2 (1)(z) of the Code. For determination of any dispute in respect of a cultivatory right or any other right in respect of the aforesaid land which stand excluded from the purview of Section 57 (1) of the Code, the jurisdiction of the Civil Court to adjudicate upon the dispute is expressly protected u/s 111 of the Code, subject to the exceptions carved out in Section 257 of the Code. It may be noticed at this stage that although in Section 111 of the Code, it is provided that the Civil Courts shall have jurisdiction to decide any dispute to which State Government is not a party relating to any right which is recorded in the record -of-rights yet by virtue of the provisions contained in Order 1 Rule 3-B of the Code of Civil Procedure, 1908 as applicable for the State of Madhya Pradesh (vide M.P. Act No. 29/84), the impleadment of the State in any proceedings effecting the interest of the State in any manner has been made mandatory.

in view of what has been discussed and noticed hereinabove, the question referred to for consideration are answered as follows-

Question No. (1)-- The "right" contemplated u/s 57 (2) of the Madhya Pradesh Land Revenue Code, 1959 is a right other than the cultivatory right in respect of the land as defined u/s 2 (1) (k) which stands secured in favour of a bhumiswami, occupancy tenants or a Government lessee as defined under the said Code and this right has to be taken to be confined to the proprietary rights including those rights which vested in the State by operation of law under the enactments in force prior to the coming into effect of the aforesaid Code.

Question No. (2)-- There can be no distinction as to the forum with respect to the rights of bhumiswami acquired after coming into force of the Madhya Pradesh Land Revenue Code, 1959 and the Bhumiswami rights acquired on the basis of pre-existing rights. Question No. (3)-- The determination of question of bhumiswami rights lies within the province of the Civil Court excepting the cases falling within the ambit of those specified u/s 257 of the Code.

Question No. (4)-- The provisions of the Indian Limitation Act will have application only to the extent permissible u/s 29 of the said Act and where special period of limitation is prescribed under the provisions of the Land Revenue Code, the same shall prevail over the limitation prescribed under the Indian Limitation Act, 1963 and further the extinguishment of the right u/s 27 of the Limitation Act will not automatically result in the accrual of bhumiswami rights or any superior right on the ground of adverse possession.

The question referred to in Second Appeal No. 165 of 1998 is answered as follows :--

"A civil suit is directly maintainable in respect of the disputes with the State other than the disputes contemplated u/s 57 (1) of the Code as indicated in our answer to question No. 1 referred to hereinabove."

The views expressed in the earlier decisions of this Court to the extent of inconsistency shall stand disapproved and over-ruled with prospective effect and consequently excepting the pending cases the adjudication of any dispute which has attained finality shall remain undisturbed and shall not be liable to be reopened.

Let the papers of this case along with a copy of this opinion with the answers be placed before the learned Single Judge for disposal of the appeals in accordance with law.

R.B. Dixit, J.

I have gone through the draft of opinion prepared by Hon'ble Justice Shri S.P. Srivastava, and I respectfully agree with the erudite views expressed by my esteemed Brother, I, however, wish to add few words of my own.

In dealing with the reference under consideration, we are mainly concerned with the nature and scope of the provisions envisaged u/s 57 of the M.P. Land Revenue Code, 1959 (in short "Code"). After its enactment, it was amended for

the first time by the M.P. Amending Act 24 of 1961 thereby substituting words "S.D.O." for "Collector" in sub-section (2) and, second time by another amendment dated 5th January, 1984 adding words "save as otherwise provided in this Code" as sub-clause (3A) (d) to sub-section (3). It is further to be noticed that the unamended portion of the main provision of Section 57 of the Code stands pari materia to the provisions of Section 50 of M.P. Land Revenue and Tenancy Act, 1954, which had declared title of State in all lands "except the land which are not the property of the persons".

It is also necessary to mention in brief the nature of controversy and confusion created in the minds of the Courts and the litigating parties as to the jurisdiction of the Civil Courts in entertaining a civil suit directly concerning a "dispute" between "any person" affecting "any rights" occurring under subsection (2) of Section 57 of the Code.

The Full Bench decision of this Court in case of Ram Gopal Vs. Chetu (1976 mpLJ 278) was not at all concerned with the provisions of Section 57 of the Code and the question referred for its opinion, was whether the Civil Court can take cognizance of a civil suit instituted by a bhumiswami on the basis of his title against a trespasser u/s 250 of the Code. However, the Full Bench had also dwelt upon the nature of the rights of a bhumiswami with reference to the provisions u/s 57 of the Code and held that the civil suit in respect of declaration of rights of bhumiswami is directly maintainable in a Civil Court.

In a Division Bench decision of this Court in the case of State of Madhya Pradesh and Another Vs. Gyasiram and Others, , where in a petition under Article 227 of the Constitution of India, the State of M.P. had raised a question for decision whether a suit where a dispute arises between the State Govt. and any person in respect of any right u/s 57 (1) of the Code, is cognizable by a Civil Court in view of Section 57 (2) of the Code, which vests jurisdiction in S.D.O., for deciding such disputes, it was observed that from the scheme of provisions and its intendments, it is clear that the dispute in respect of any right as against the State is barred u/s 57 (2) of the Code and civil suit can only be instituted u/s 57 (3) of the Code to challenge the validity of the order. The provision thus excludes the jurisdiction of Civil Courts and even a case of declaration of rights or ownership relating to the ownership of the land as against the State cannot be instituted, therefore, it cannot be contended that the provision is enabling and concurrent or alternate.

It is to be noticed that in spite of unanimous aforesaid conclusion in D.B. decision of this Court in case of Gyasiram (supra) one of the members, Hon"ble S.K. Chawla, J., in his separately recorded opinion observed that the discretion is not articulate enough on the question whether a civil suit against the State Govt. with respect to any right short of ownership, said to have been acquired by a person after coming into force the Code over any land is barred. A dispute about rights, short of ownership, stated to have been acquired by any person in any land after the commencement of the Code arising between the State Govt. and

any such person falls outside the ambit of Section 57 (1) and cannot, therefore, be decided by the S.D.O. u/s 57 (2) of the Code.

In case at Ramcharan and others Vs. State of M.P. (1997 R.N. 141), the learned Single Judge of this Court also made a passing reference in respect of provisions envisaged under sub-section (2) of Section 57 of the Code and pointed out that the order of S.D.O. of cancellation of patta can be challenged in the civil suit, without approaching the S.D.O. u/s 57 (2) of the Code. In the case of Ramvir Singh Vs. State of M.P. (1997 R.N. 375) the learned Single Judge though relied upon the D.B. decision in case of Gyasiram (supra), but followed the view expressed by Hon"ble Chawla, J., therein. This controversy was again raised before the Single Judge of this Court in case of State of M.P. Vs. Janved (1991 R.N. 423), however, since the objection of jurisdiction of Civil Court was raised for the first time in the second appeal, it was not considered proper to remand the case to the S.D.O. for retrial on this issue at such a latter stage.

In a recent decision of this Court in the case of Hukum Singh Vs. State of M.P., reported in 2001 MPLJ 93, the learned Single Judge after making reference to some of the above decisions observed that on harmonious construction of Section 57 (2) of the Code, the word, "any right" would include bhumiswami rights. However, it was further made clear that where the plaintiff claimed bhumiswami right against the State, such suit is not maintainable, where the dispute is not adjudicated u/s 57 (2) of the Code.

In order to clear the mist created due to deciding the nature of "rights" envisaged u/s 57 (1) of the Code, it would be beneficial to appreciate the purpose and intent behind the legislation of the enactment of the provision u/s 57 of the Code. Soon after attaining freedom the country was faced with a struggle against the feudal lords claiming various rights under the instrument of accession, who may be termed as intermediaries and protecting the interest of tillers of the land. It was a period when the State reorganisation was taking shape and the country was selling to democracy. In order to safeguard the interest of the actual cultivators of the land and the sovereign powers of the State, it had been the policy of the various legislatures to declare State ownership in all the lands, including standing and flowing water, mines, quarries, minerals and forests etc. It is in consequence of the vesting of the State ownership in all the lands that the question of deciding disputes arose affecting any rights of any person subsisting at the time of coming into force of this Code. It is for this purpose that the provision in the nature of Section 50 of M.P. Land Revenue Code, 1954 was enacted. Somewhat similar provisions are found under different tenancy laws prevalent in erstwhile merging States of the present State of Madhya Pradesh.

It would be interesting to note that under most of the relevant provisions dealing with consequences of the vesting in State ownership in all the lands, the private rights of the cultivators including khudkast that is the lands of personal cultivation of even the ex-proprietors were saved. Thus a clear line of

demarcation can be sketched between the rights of any person affected in consequence of vesting ownership in the lands in the State which could be decided by the S.D.O. u/s 57 (2) of the Code and the rights of an individual in nature of private rights in any agricultural holding, which could be challenged and decided even against the State Govt. directly in a Civil Court and which, therefore, lay outside the purview of the rights envisaged under the provisions of Section 57 (2) and (3) of Code.

It would not be out of place to mention here that now by insertion of Rule 3-B in Order 9 of the C.P.C. by M.P. Amending Act 29 of 1984 in every civil suit or proceedings in respect of any agricultural land, it has been provided to add State Govt. as a party and, therefore, the interest of State can very well be safeguarded in a civil suit for declaration of title in and over any land. Since the provisions of Section 57 of the Code were enacted to settle the disputes relating to the rights of the proprietorship arising out of the consequences of the vesting of State ownership in all lands, it can very well be imagined that now after lapse of about 50 years of period, such provisions have outlived its utility. However, even otherwise the jurisdiction of the Civil Court has been left open for challenging the order of Revenue Authority under sub-section (3) of Section 57 of the Code. In such a situation, the procedure for taking the dispute first to the Revenue Authority and then continue to litigate in a Civil Court seems vexatious and a time consuming exercise. This provision, therefore, in my view, deserves to be suitably amended for taking such disputes left out, if any, for being agitated directly before a Civil Court.