
(2016) 07 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 314 of 2001 (O&M)

Suraj Bhan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 22-07-2016

Acts Referred:

Constitution of India, 1950 — Article 300A
East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 —
Section 23-A
Haryana Common Purposes Land (Eviction and Rent Recovery) Act, 1985 — Section 3
Haryana Mu

Citation : (2017) 2 PLR 605 : (2017) 2 RCRCivil 934

Hon'ble Judges : S.S. Saron, Augustine George Masih, Paramjeet Singh
Dhaliwal, Ms. Rekha Mittal and Ms. Lisa Gill, JJ.

Bench : Full Bench

Advocate : Soli Sorabjee, Senior Advocate and Puneet Bali, Senior Advocate
with Devadutt Kamat, Vibhav Jain, Arun Gupta, K.P.S. Kohli, G.S. Hooda, Hitesh
Verma and Mahavir Sandhu, Advocates, R.S. Sihota, Senior Advocate with B.R.
Rana, Amandeep Sharma, for P.S. Khur

Final Decision : Disposed Off

Judgement

S.S. Saron, J.—The petitioners-Suraj Bhan and others seek issuance of an appropriate writ, order or direction, especially in the nature of certiorari for declaring the provisions of the Haryana Municipal (Amendment) Act, 1999 (Act No.17 of 1999) ("Amendment Act 1999" - for short) to be ultra vires and violative of Article 31A of the Constitution of India. The aforesaid Amendment Act 1999, according to the petitioners, infringes their fundamental rights as enshrined in Article 31 (sic.) of the Constitution inasmuch as the same is neither directed towards agrarian reforms simpliciter nor is for the development of rural economy. The Amendment Act 1999 in question is, therefore, liable to be declared ultra vires and it does not affect the proprietary rights of the petitioners in respect of the land to which they lay their claim. Besides, it is claimed that a direction is liable to be issued to the respondents to revert back the ownership of

the land which they claim in their favour in terms of the revenue records. The respondents are also liable to be restrained from interfering in the peaceful possession of the petitioners in the land they claim, in any manner.

2. In terms of the Amendment Act 1999, clause (22B) to Section 2 of the Haryana Municipal Act, 1973 ("Municipal Act 1973" - for short) defining "shamlat deh" has been added; besides, in subsection (1) of Section 61 of the Municipal Act 1973 amendments have been made in clauses (g) and (h), which are to the effect that for the sign ".", the sign ";" has been substituted and after clause (g), clause (h) has been added which mentions "shamlat deh". The effect of the same is that "shamlat deh" lands, which were confined to common lands of villages and were for the common use of the inhabitants of the village, came to be included as lands of Municipal Committees as well in a town or an urban area.

3. The petitioners - Suraj Bhan and others claim that they are proprietors of the "Shamlat Panna Nasian Urf 5 Biswa Hasab Rasad Arazi Khewat" situated in Bahadurgarh, Tehsil Jhajjar. They are shown as co-sharers in possession of "Shamlat Panna Nasian Urf 5 Biswa Hasab Rasad Arazi Khewat", Bahadurgarh in columns No.4 (ownership) and 5 (cultivation) of the Jamabandi (record of rights) for the years 1994-95. A copy of the Jamabandi for the years 1959-60 (Annexure P1) has been placed on record showing Rijak Ram, the predecessor-in-interest of the petitioners No.1 to 6, to be a co-sharer in the "Shamlat Panna Nasian Urf 5 Biswa, Hasab Rasad Arazi Khewat". After the demise of Rijak Ram; Suraj Bhan and others (petitioners No.1 to 6) succeeded to the land of his share. The Jamabandis for the years 1994-95 (Annexures P2 and P3) are with reference to the specific "khasra" (field) numbers. Father of Mange Ram (petitioner No.7) namely Dariao Singh is also shown as a co-sharer in the aforesaid "Shamlat Panna Nasian" according to the Jamabandi for the year 1959- 60 (Annexure P4). Mange Ram (petitioner No.7) inherited the share left by his father Dariao Singh. It is submitted that besides, having share in the "shamlat deh", some of the petitioners, namely, Ishwar and Mange (petitioners No.2 and 7) had also purchased proprietary rights of the other co-sharers of the said "Panna". The possession of the petitioners is not beyond their entitlement in the total land of "Panna Nasian".

4. The Haryana legislature enacted the Municipal Common Lands (Regulation) Act, 1974 (Act No.15 of 1974) ("Municipal Common Lands Act 1974" - for short). In pursuance of the said Municipal Common Lands Act 1974, the land of "Shamlat Panna Nasian" to which the petitioners lay a claim was mutated in the name of Municipal Committee, Bahadurgarh. The said Municipal Common Lands Act 1974 was assailed in this Court in case of Rajender Parshad and others v. State of Haryana (CWP No.2010 of 1974) which was decided by a Full Bench of this Court on 28.3.1979 i.e. Rajender Parshad and others v. State of Haryana, 1979 PLJ 262 : AIR 1980 P&H 37. It was held by the Full Bench of this Court that the whole statute i.e. the Municipal Common Lands Act 1974 suffered from the vice of unconstitutionality. The Municipal Common Lands Act 1974, it was said,

was not a measure of agrarian reforms and, therefore, could not enjoy the protection envisaged by Article 31A (1) (a) of the Constitution. Once that was so, it was said that it in terms provided for acquisition of land without payment of compensation, which directly infringed the fundamental rights enshrined in Article 31 of the Constitution. It was also said that the provisions of the Municipal Common Lands Act 1974 which merely labelled the said Act as one of "agrarian reform" in the Statement of Objects and Reasons appended to the Bill would not make it so. The vesting of "shamlat deh" in a Municipal Committee or a Corporation could not be said to be a measure of development of rural economy. For the applicability of Article 31A (1) (a) of the Constitution two tests were required to be fulfilled i.e. (1) the lands must be definitely directed to agrarian reforms simpliciter or (2) at best made for ancillary purposes for development of rural economy. Therefore, the Municipal Common Lands Act 1974 being a legislation intending to acquire lands of the proprietors without payment of compensation was invalidated.

5. After the Full Bench decision in Rajender Parshad's case (supra), the mutations in respect of "Shamlat Panna" lands which are claimed by the petitioners and had been entered in the name of Municipal Committee, Bahadurgarh were corrected in the name of "Shamlat Panna". A reference has been made to Mutation No. 8417 (Annexure P5) by which the land recorded in favour of the Municipal Committee, Bahadurgarh was reverted by mutation in favour of "Shamlat Panna Nasian Urf 5 Biswa Hasab Rasad Arazi Khewat".

6. The respondent-State, as already noticed, in pursuance of Amendment Act 1999 after Clause (22-A) of Section 2 of the Municipal Act 1973 inserted Clause (22-B) so as to define "shamlat deh" for the purposes of the Municipal Act 1973 as well. Section 61 of the Municipal Act 1973 provides for; "Property vested in the committee". It is provided that subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature as mentioned in the said Section 61 specified and situated within limits of the municipality, shall vest in and be under the control of the Committee, and with all other property which had already vested or may thereafter vest in the Committee, shall be held and applied by it for the purposes of the said Act i.e. the Municipal Act 1973. Clauses (a) to (h) of Section 61 of the Municipal Act 1973 mention the various kinds of properties that vest in a "Committee" and clause (h), as referred to above, mentions "shamlat deh". In other words the "shamlat deh" lands as defined in Section 2 (22B) of the Municipal Act 1973 also vest in Municipal Committees.

7. The effect of the same is that "shamlat deh" as defined in Section 2 (22-B) by virtue of Section 61 (h) of the Municipal Act 1973 again vested with the respective Municipal Committees without payment of any compensation. Copy of notification dated 21.10.1999 (Annexure P6) carrying out the amendments is placed on record. Therefore, again mutation of land of "Shamlat Panna Nasian Urf 5 Biswa Hasab Rasad Arazi Khewat", Bahadurgarh was made in favour of and

in the name of Municipal Committee, Bahadurgarh. Mutation No.12760 (Annexure P-7), it is submitted, had been sanctioned by the learned Assistant Collector 2nd Grade on 29.9.2000. A perusal of the said mutation shows that the name of owner recorded as "Shamlat Panna Nasian Urf 5 Biswa Hasab Rasad Arazi Khewat" has been transferred in favour of Municipal Committee and the reason for transfer is mentioned that the mutation has been changed viz. Haryana Govt. Gazette Notification dated 9.2.1999 (Annexure P-6) i.e. the Notification adding clause (h) to Section 61 of the Municipal Act 1973 so as to vest the "shamlat" lands in the Municipal Committees.

8. The petitioners contend that Article 31A (1) (a) of the Constitution provides for acquisition by the State of any estate or of rights therein or the extinguishment or modification of any such right shall not be void on the ground that it is inconsistent with or takes away any rights conferred by Articles 14 and 19 of the Constitution of India. The Amendment Act 1999, according to the petitioners, has been made to acquire lands of the proprietors without payment of compensation. Therefore, it is submitted that the amendment in question is arbitrary and unsustainable in view of the earlier Full Bench decision in the Rajender Parshad's case (supra).

9. Notice was issued in the case and written statement has been filed by the Municipal Committee, Bahadurgarh through its Secretary (respondent No.2).

10. Along with the present petition, several other writ petitions came to be tagged. A Division Bench of this Court (Rajive Bhalla, J. and Rekha Mittal, J.) on 2.9.2013 made a reference of the questions involved of general public importance and for placing the matter before an appropriate Larger Bench. The reference order dated 2.9.2013 is to the following effect:-

"The dispute, in this bunch of petitions, is whether the common land of a Gram Panchayat i.e. Shamlat Deh and Jumla Mushtarka Malkan vests in a Municipal Council/Corporation or the Faridabad Complex, on account of merger of the sabha area into a Municipal Council/Corporation or the Faridabad Complex.

A Gram Panchayat generally owns two types of common land i.e. Shamlat Deh and Jumla Mushtarka Malkan (sic.[1]. Shamlat Deh came to vest in a Gram Panchayat, under Section 2 (g), read with Sections 3 and 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to the State of Haryana) (hereinafter referred to as the "1961 Act") whereas Jumla Mushtarka Malkan, is land created during consolidation after applying a pro-rata cut on the holdings of proprietors under Sections 18 and 23-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as the "Consolidation Act") read with Rule 16 (ii) of the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as the "Consolidation Rules 1949"). While ownership of Jumla Mushtarka Malkan remained with proprietors, its management and control vested in a Gram Panchayat.

[1] (1) In fact, Panchayat does not own Jumla Mushtarka Malkan land as it is the ownership of the proprietary body of the village which is also evident from the portion emphasized.

(Emphasis added.)

The Sabha areas of Gram Panchayats have, from time to time merged with municipal areas. The State of Haryana enacted the Haryana Municipal Common Lands (Regulation) Act, 1974 (hereinafter referred to as the "1974 Act"), to provide for vesting of common lands belonging to Gram Panchayats in Municipal Council etc. "The 1974" Act was, however, held to be ultra vires, by a Full Bench in "Rajender Prashad and others v. State of Haryana" 1979, PLJ 263. In the year 1994, the State of Haryana enacted the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as the "1994 Act") which provides by Section 7 (4) and (5) that if the Sabha area of a Gram Panchayat is included in a municipality or in the Faridabad Complex, the Gram Panchayat shall cease to exist and its assets and liabilities shall vest in the Municipality or in the Faridabad Complex, as the case may be.

After enactment of the 1994 Act, the State of Haryana, amended the Haryana Municipal Act, 1973 (hereinafter referred to as the "1973 Act") by incorporating Sections 2 (22-B) to define Shamlat Deh, in terms similar to Section 2 (g) of the 1961 Act and Section 61 (h) to declare that Shamlat Deh shall vest in a Municipal Council. Sections 2 (22-B) and 61 (h) of the 1973 Act are pari-materia to provisions of the 1974 Act which were declared ultra vires in "Rajender Prashad and others v. State of Haryana" case (supra).

Counsel for the petitioners, contend that though property is no longer a fundamental right but as it is a Constitutional right it does not empower the State to vest Shamlat Deh or Jumla Mushtarka Malkan in a Municipal Council/ Corporation or the Faridabad Complex, without payment of compensation. The right to property can only be extinguished by acquiring proprietary rights after paying compensation. It is further submitted that Jumla Mushtarka Malkan, even if declared Shamlat Deh, by Section 2 (g) (6) of the 1961 Act, does not divest proprietors of their proprietary rights. The vesting of Shamlat Deh and Jumla Mushtarka Malkan in a Municipal Council/Corporation or the Faridabad Complex without payment of compensation, is violative of Article 300A of the Constitution of India, and as these provisions are pari-materia to provisions of the 1974 Act, provisions of the 1994 and the 1973 Act must also be held to be ultra vires in view of the Full Bench judgment in "Rajender Prashad and others v. State of Haryana" case (supra).

Counsel for the respondents contend that in view of the 44th Amendment, to the Constitution of India, property is no longer a fundamental right. The judgment in "Rajender Prashad and others v. State of Haryana" case (supra) is, therefore, no longer applicable and as the common land of a Gram Panchayat statutorily vests in a Municipal Council, the writ petitions are devoid of any merit.

We have heard counsel for the parties, perused the Full Bench judgment, the 44th Amendment to the Constitution and statutory provisions referred to in the preceding paragraphs.

Before we record the questions that arise for adjudication, it would be appropriate, to point out that Jumla Mushtarka Malkan is a variety of common land created during consolidation after applying a pro-rata cut on the holdings of proprietors under Sections 18 and 23-A of the Consolidation Act read with Rule 16 (ii) of the Consolidation Rules. The management and control of such land vests in a Gram Panchayat whereas ownership continues to vest in proprietors. The vires of these provisions were upheld by the Hon"ble Supreme Court in "Ajit Singh v. State of Punjab and another", AIR 1967, SC 856, by holding that as proprietors have not been divested of ownership and mere right of management and control has been conferred upon the Gram Panchayat, it does not amount to acquisition of proprietary rights of an agricultural estate as envisaged by Article 31A of the Constitution. Section 2 (g) (6) of the 1961 Act, has declared that Jumla Mushtarka Malkan shall be included in Shamlat Deh. The vires of Section 2 (g) (6) of the 1961 Act were upheld in "Jai Singh v. State of Haryana" 2003 (2) PLR 658.

The questions that arise for adjudication are: -

- (1) Whether the Full Bench Judgment in "Rajender Prashad and others v. State of Haryana" case (supra) holding the 1974 Act, ultra vires, is no longer good law in view of the 44th Amendment to the Constitution?
- (2) Whether proprietary rights of proprietors in Jumla Mushtarka Malkan shall vest in a Municipal Council/Corporation or Faridabad Complex under the 1994 and/or the 1973 Act?
- (3) Whether proprietors can be divested of proprietary rights in Jumla Mushtarka Malkan without payment of compensation by mere declaration of such inclusion or vesting by Section 2 (g) (6) of the 1961 Act, the 1994 and the 1973 Act, despite affirmation of their ownership in "Ajit Singh v. State of Punjab and another"s case (supra)?
- (4) Whether the provisions of 1994 Act and the 1973 Act, which provide that rights in common land, shall vest in a Municipal Council/Corporation of the Faridabad Complex, amount to compulsory acquisition, without payment of compensation?
- (5) Whether the statutory divesting of proprietary rights, under the 1994 and the 1973 Act, without payment of compensation, is legal and valid?
- (6) Whether Section (sic. - Article) 300A of the Constitution of India applies to the present controversy? and
- (7) Whether Section 7(4) of the 1994 Act, Sections 2 (22B) and 61 (h) of the 1973 Act and Section 2 (g) (6) of the 1961 Act are ultra or intra vires?

The questions, so raised, are of general public importance. It would, therefore, be appropriate if the writ petitions are placed before an appropriate larger Bench after obtaining orders in this regard from Hon"ble the Chief Justice."

11. Thereafter, the matter came up before a three Judge Bench of this Court (Rajive Bhalla, J., Amol Rattan Singh, J. and Arun Palli, J.) and it on 19.03.2015 referred the case to a Larger Five Judge Bench. The reference order is as follows:-

"We have heard counsel for the parties, perused the reference, the statutory provisions, judgments cited before us and also considered the request made by counsel for the parties that the reference be placed before a Larger Bench.

An answer to the reference would entail appraising the correctness of a Full bench judgment in *Rajender Prashad and others v. State of Haryana*, 1979 PLJ 263 on the basis of two other Full Bench judgments of this Court in "*Jai Singh v. State of Haryana*, 2003 (2) RCR (Civil) 578 and *Veer Singh and others v. State of Haryana and others*, RA-CW- 350-1999 in CWP No.7077 of 1992. It would, therefore, be appropriate if the matter is placed before Hon"ble the Acting Chief Justice for constituting a Larger Bench.

A photocopy of this order be placed on the files of other connected cases."

12. This is how the case and the connected cases are now before this Full Bench.

13. In the case of *M/s ASF Buildwell Pvt. Ltd.*, CWP No. 15835 of 2015, the petitioner seeks quashing of Sections 2 (52A) and 161 (1) (g) of the Haryana Municipal Corporation Act, 1994 ("Municipal Corpn. Act 1994" - for short), the same being in violation of Articles 13, 14, 31A and also Article 300A of the Constitution of India and in violation of the law laid down by a Full Bench of this Court in *Rajender Parshad's* case (supra).

14. The petitioner - *M/s ASF Buildwell Pvt. Ltd.* is a Company incorporated under the Companies Act. According to the petitioner, the impugned provisions, i.e. Section 2 (52A) and Section 161 (1) (g) of the Municipal Corpn. Act 1994, affect its proprietary rights in the land purchased by it falling in the revenue estate of village Gwal Pahari, Tehsil Sohna, District Gurgaon inasmuch as the Municipal Corpn. Act 1994 is not a statute of agrarian reforms. The petitioner, it is alleged, has lost its right to use the land duly purchased by it as the offending provisions now vests its land in the Municipal Corporation, Gurgaon. The land of the petitioner measuring 51 kanals 14 marlas (6.4625 acres) is a part of the lands that were purchased by it from its erstwhile owners through registered sale-deeds. Besides, mutations had been sanctioned in favour of the petitioner in respect of the land that was purchased by it. The petitioner purchased the land after verification and investigation of title of the property. The name of the vendor and their predecessors-in-interest, were duly recorded in the revenue records. The petitioner, therefore, it is claimed is a bona fide purchaser and bought the land for valuable consideration without notice and knowledge of any

alleged dispute of title of its vendor(s). Since the date of purchase, the petitioner is the owner and in exclusive, peaceful and actual physical possession of the land. The petitioner subsequently transferred the land to ASF Insignia SEZ (Special Economic Zone) Pvt. Ltd. as the petitioner was aggregating the land under a land aggregation agreement dated 05.11.2008 entered into between ASF Insignia SEZ Pvt. Ltd. and the petitioner. In pursuance of sale-deeds dated 03.05.2012, mutations have also been sanctioned in favour of ASF Insignia SEZ Pvt. Ltd. on 08.05.2012.

15. The land purchased by the petitioner falls under the notified area under the SEZ Regulations for the purposes of developing an Information Technology SEZ vide notification dated 17.12.2007 and notification dated 27.08.2010 (Annexure P1 - colly. of the said writ petition). The land of the petitioner measuring 6.4625 acres is only a miniscule part of the entire notified SEZ, which is approximately 48 acres.

16. We have heard learned Senior Counsel and learned counsel appearing for the parties and with their assistance gone through the records of the case. The contentions as raised by learned counsel appearing in the connected cases have been heard at length on the legal issues that are involved.

17. The basic issue involved in the facts and circumstances of the cases is primarily that when the lands recorded in the column of ownership in the Jamabandi (records of rights) as "shamlat deh" or as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" (commonly also recorded and known as "Jumla Mushtarka Malkan") and are used for common purposes for the inhabitants of the village vest in the Municipal Committee or Municipal Corporation by enlargement of the area of the Municipality, is compensation liable to be paid for the same and if so, to whom.

18. The Division Bench in its order dated 2.9.2013 has formulated the questions which require consideration and which are required to be answered in the context of the further reference made by a three Judge Full Bench to a Larger Bench in terms of order dated 19.3.2015. The further question that requires consideration is regarding appraisal of the correctness of the Full Bench judgment in Rajender Parshad's case (supra) on the basis of two Full Bench judgments of this Court in Jai Singh v. State of Haryana, 2003 (2) PLR 658 and Veer Singh and another v. State of Haryana and others, RA-CW 350 of 1999 in CWP No.7077 of 1992.

19. Mr. Soli Sorabjee, learned Senior Counsel appearing for the petitioners has contended that after deletion of Article 31 of the Constitution of India by the Forty-fourth Constitutional Amendment Act w.e.f. 20.6.1979, Article 300A of the Constitution had been inserted on the same day. It is submitted that earlier deprivation of property save by authority of law was a fundamental right which is now not only a Constitutional or a statutory right but also a human right. Citizens are not liable to be deprived of their property, though no longer a fundamental

right is still nevertheless a Constitutional right. A reference has been made to Article 31A of the Constitution relating to savings of laws providing for acquisition of estates etc. to contend that laws providing for acquisition of estates are saved as these have been for agrarian reforms; however, it is provided by Article 31A that notwithstanding anything contained in Article 13, no law providing for acquisition as enumerated in Clauses (a) to (e) in Article 31A is to be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any rights conferred by Articles 14 or 19. Therefore, it is contended that a law providing for acquisition of estates cannot be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14 or Article 19, but it does not include Article 300A. It is submitted that Article 300A inheres the payment of compensation for the acquisitions that are made and where the land of a proprietor is to vest in a Municipality and is no longer for any agrarian reforms or for any ancillary purposes for the development of rural economy. Article 31A of the Constitution does not make the provisions of an Act to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 300A of the Constitution even though it may be void if it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14 or Article 19 of the Constitution. It is also submitted that the present acquisition by enlarging the area of the Municipal Corporation or Committee cannot be said to be an acquisition towards agrarian reforms or for any ancillary purpose thereto so as to be protected by Article 31A of the Constitution. According to Mr. Sorabjee, learned Senior Counsel, compensation for the land that vests with the Municipal Corporation or Committee, as the case may be, is liable to be paid to the landowners and the provisions of the Municipal Act 1973 and the Municipal Corpn. Act 1994 which take the common lands of the villages to vest it in the Municipality and deprive the landowners the payment of compensation would be void. Strong reliance has been placed by the learned Senior Counsel on the Supreme Court judgment in *K.T. Plantation v. State of Karnataka*, (2011) 9 SCC 1. It is submitted that Article 300A of the Constitution in fact creates a human right for the protection of property of a person even though it is now not a fundamental right.

20. Mr. Puneet Bali, Senior Advocate has reiterated the stand of Mr. Sorabjee and has further contended that compensation for the land which is acquired by the State is liable to be paid especially when the land is not acquired for agrarian reforms or for any ancillary purposes for the development of rural economy. It is submitted that even in respect of land which is for agrarian reforms, compensation is liable to be paid in view of the second proviso to Article 31A of the Constitution that is to say that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for a State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless law relating to the acquisition of such

land, building or structure, provide for payment of compensation at a rate which shall not be less than the market value thereof. Therefore, the acquisition of land within the ceiling limit of a proprietor even though for agrarian reforms would entail the payment of compensation. In any case, it is submitted that Article 300A of the Constitution is not protected even by the proviso to Article 31A and the rights conferred by Article 300A of the Constitution are akin to the rights that were conferred by Article 31 of the Constitution even though the latter provision, which conferred a fundamental right stands repealed.

21. Mr. Ashok Singla, Advocate appearing for the State of Haryana and Mr. Ashish Aggarwal, Senior Advocate appearing for the Municipal Corporation, Faridabad have submitted that the provisions of Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (as applicable in the State of Haryana) ("VCL Act 1961" - for short) provides for complete vesting of "shamlat deh" lands in a village to the Panchayat and when the land of the Panchayat is taken or merged by extending the municipal limits of a municipality then it merely stands transferred from one statutory body to the other in which case the proprietors or any inhabitant of the village would not be entitled for any compensation. Shri Aggarwal, learned Senior Advocate in fact emphasized that in case the land reserved for common purposes are not to vest completely in the Panchayat of the village, the definition of "shamlat deh" as contained in Section 2 (g) of the VCL Act 1961 by incorporating clause (6) after clause (5) by Haryana Act No. 9 of 1992 would require the setting aside and quashing the said Act to that extent and also holding Jai Singh's case upholding the validity of clause (6) to Section 2 (g) of the VCL Act 1961 to be not good law. Besides, with the abolition of Article 31 of the Constitution of India by the Constitution (Seventeenth Amendment) Act 1964, it is submitted that the Full Bench judgment in Rajender Parshad's case (supra) would no longer stand. The Municipal Common Lands Act, 1974 was invalidated in the said judgment on the ground that acquisition of land without payment of compensation was an infringement of fundamental rights enshrined in Article 31. This would, therefore, be inapplicable in view of the omission of Article 31 from the Constitution. Even otherwise, it is submitted that Section 7 (4) of the Haryana Panchayati Raj Act, 1994 states that if the whole of the Sabha area is included in a municipality or a cantonment, the Gram Panchayat shall cease to exist and the assets and liabilities of it shall vest in the municipality or cantonment, as the case may be. It is also submitted that in terms of Section 15 of the Faridabad Complex (Regulation and Development) Act, 1971 which provides for vesting of immovable property envisages that all property, movable and immovable, and assets belonging to the Municipal Committees and Gram Panchayats specified in Schedule I of the said Act shall vest in the Administration.

22. Therefore, according to learned counsel appearing for the respondents, no compensation is liable to be paid in respect of the "shamlat deh" lands when these vest in a municipality by enlargement of the municipal area. In support of the said stand, a reference has also been made to Section 7 of the Punjab Village

Common Lands (Regulation) Act, 1953 ("VCL Act 1953" - for short) to contend that no person shall be entitled to any compensation for any alleged loss due to the said VCL Act 1953. It is submitted that like Section 7 of the aforesaid VCL Act 1953, Section 10 of the VCL Act 1961 also creates a bar for payment of compensation and no person is entitled to compensation for any loss suffered or alleged to have been suffered as a result of coming into force of VCL Act 1961 or the "shamlat" law, i.e. the VCL Act 1953. The title of the "shamlat deh" land having once vested in a Panchayat under the "shamlat" law, i.e. the VCL Act 1953, read with Sections 3 and 4 of the VCL Act 1961, no title could remain with any person to now claim compensation or reversion of land and the title and interest of the Panchayat qua "shamlat deh" land, which is absolute and once the land had vested in the Panchayat with title, it cannot be divested except by proving or claiming the case to fall under any of the exceptions under Section 2 (g) of the VCL Act 1961. It is also submitted that Section 4 of the VCL Act 1961 makes vesting of the "shamlat deh" lands in the Panchayat to be absolute and Section 5 thereof does not make the absolute vesting of "shamlat deh" lands in the Panchayat to be conditional. Rather Section 5 simply says that such lands shall be used for the benefits of inhabitants of the village concerned.

23. A reference has been made to Entry 18 of List II of the Seventh Schedule of the Constitution which relates to land, that is to say, right in or over land, land improvement, etc. Besides, Entry 5 of the said List II of the Seventh Schedule deals with local government, that is to say, the constitution and powers of Municipal Corporations, Improvement Trusts, District Boards, Mining Settlement Authorities and other Local Authorities for the purpose of local self government or village administration. On the strength of the same, it is contended that the State Legislature by virtue of Article 246 (3) of the Constitution is competent to make laws with regard to subjects mentioned in List II, i.e. the State List. It is submitted that the questioned Acts/provisions either under the Municipal Act or the VCL Act 1961 in no way violates any provision of Part III of the Constitution under the heading "Fundamental Rights".

24. It is submitted that there is a presumption of legislative competence and validity of law. After the Constitution (Forty-fourth Amendment) Act, 1978, the right to property is no longer a fundamental right and compensation can only be claimed in terms of second proviso to Article 31A. Besides, Article 300A, it is submitted, provides that no person can be deprived of his land except by authority of law and the said authority of law lies in legislation/Acts made by the legislature by exercise of its powers under Article 246 (3) with regard to the State List including Entries No.18 and 5. The only impact of Article 300A, according to learned counsel for the respondents, is that no one could be deprived of his property by an executive order or instructions, etc., except in accordance with law. Therefore, the impugned legislation is valid and "shamlat deh" lands now vest in the municipalities like a successor and not that only the assets of the Panchayat vest in the municipality upon inclusion of Sabha area in Panchayats. Rather Panchayat liabilities also stand transferred in view of Section

7 (4) of the Haryana Panchayati Raj Act, 1994. The challenge to the vires of the Haryana Municipal Common Lands (Regulation) Act, 1974, was based on the infraction of Articles 19 (1) (f) and 31 of the Constitution which now stand repealed by the Constitution (Forty-fourth Amendment) Act, 1978, which came into effect from 20.06.1979. In the circumstances, according to learned counsel for the respondents, the Full Bench judgment in Rajender Parshad's case (supra), is no longer a good law.

25. As regards the "Jumla Mushtarka Malkan" land also it is submitted that the same in view of Clause (6) to Section 2 (g) of the VCL Act 1961 is included in the definition of "shamlat deh" and the same also vests completely in the Panchayat without any right of the other owners. Therefore, the same would also vest in a municipality. This would in fact be a transfer from one statutory body to another and with the abolition of the statutory body with the merger of its land in a Municipal Corporation or a Committee, as the case may be, no compensation is to be paid and even if it was to be paid, there would be no identifiable claimant having a vested right of ownership or title for the same.

26. The learned Senior Counsel for the petitioners have assailed the provisions of the Municipal Act 1973 and the Municipal Corpn. Act 1994 to the extent that "common lands" of the villages; may be "shamlat deh", in which case the title and ownership vests in the Panchayat, and the "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" or the "Jumla Mushtarka Malkan" lands, in which case the management and control only as distinguished from ownership and title, vests in the Panchayat and which were for the "benefit of inhabitants of the village", deny the payment of compensation.

27. The learned counsel for the State of Haryana and the learned Senior Counsel for the Faridabad Municipal Corporation, however, support the enlargement of the area of the municipalities by including the common lands of the villages without payment of any compensation being only a transfer or a merger from one statutory body to the other.

28. In order to understand the nature of "common lands" in the States of Punjab and Haryana and the rights of the proprietors, it may first be noticed as to what is the nature of "shamlat deh" lands and how these came into existence; besides, what is the nature of the lands termed as "Jumla Mushtarka Malkan" lands or land recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" in the revenue records and as to how they came to be so recorded.

29. The "shamlat" lands have been in existence ever since the settlements of villages were carried out. The "Jumla Mushtarka Malkan" lands were carved out for common purposes during consolidation proceedings that were conducted under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 ("Consolidation Act 1948" - for short). Consolidation operations were carried out after the partition of the country. Lands for common purposes were kept in the consolidation proceedings by imposing a pro rata cut on the land

holdings of a proprietor to contribute land for common purposes for the use and benefit of the inhabitants of the village. The ownership of the said lands vests with the village proprietary body mostly to the extent of their share in the holdings but notwithstanding the ownership, the land was for the benefit, use and enjoyment of the inhabitants of the village or for use and enjoyment of a particular class of the village inhabitants. Such agricultural lands were recorded in the revenue records for which the land had been reserved and mentioned in the Consolidation Scheme prepared at the time of consolidation. The lands carved out during consolidation operations by imposing a pro rata cut on the holdings of the proprietor and earmarking or reserving the same for "common purposes" of the village are recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" etc. in the revenue records, Jamabandis (record of rights). In respect of the "Jumla Mushtarka Malkan" lands or the lands recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", the proprietary body of the village is the owner and is also recorded as the owner of the land. The management and control only of the same, however, vests in the Panchayat.

30. The "shamlat deh" lands or the common lands were there before consolidation operations and are independent of the "Jumla Mushtarka Malkan" lands that were carved out during consolidation proceedings. The "shamlat" lands are recorded in the revenue records by various nomenclatures such as "shamlat deh", as also "shamlat tikkas", besides, "shamlat tarrafs", "pattis", "pannas" and "tholas". The said lands are recorded as such in the revenue records/Jamabandis (record of rights) and for common use of the inhabitants of the village or for common use of a particular class of the village like "tikkas", "tarrafs", "pattis", "pannas" and "tholas" etc. These types of lands, however, were not without ownership or proprietary rights of the owner or "khewatdar". Such ownership was and had been collective in nature and not exclusive. In respect of the lands recorded and described with different aforementioned nomenclatures would vest accordingly in the "taraf", "patti", "panna" or "thola" etc. which is in the form of a unit or a class in the village. The proprietary body of the village has been a living and not a dead institution. It was created for the living and management of the day to day affairs of the inhabitants of the village and also generating income for common use and also keeping lands for common use for its inhabitants. However, for all intents it mostly had ownership in the "shamlat" lands.

31. The British India Government commenced and undertook the task of land settlements. The most important aspect of the land settlement was to construct a "record of rights" also commonly known as "fard", which is a detailed register of land in the form in which they were believed to have been in existence on the annexation of Punjab in 1849. These settlements were carried out by Settlement Officer whose duty was to prepare "record of rights". The records were prepared primarily for fiscal purposes; however, these assume a judicial character specifically with reference to the proprietorship or ownership. The records prepared in the past during settlements play an important role in determining

the rights of owners and cultivators even as on date.

32. The "shamlat deh" lands as defined in Section 2 (g) of the VCL Act 1961 now vest completely, that is, with ownership and title in the Panchayat of the village concerned. The vesting of the "shamlat deh" lands or the village common lands in a Panchayat have been for agrarian reforms and such vesting is protected by Article 31A of the Constitution. In order to understand the rights in respect of "shamlat deh" lands, the background as to how they came about may be noticed.

33. The Punjab Settlement Manual by Sir James M. Douie, KCSI, ICS, 4th Edition, (3rd Reprint 2013) (hereinafter referred to as - the "Settlement Manual") has delineated the Development of Settlement Policy in Punjab which then included the State of Haryana as well, before its re-organization by the Punjab Reorganization Act, 1966. The history of Punjab Settlement during the past 50 years i.e. past 50 years from the 1st edition of the Settlement Manual in 1899, it is mentioned may roughly be divided into five periods. The first extended from 1846 to 1853 which begins with the settlement of the districts in the Cis-Sutlej and Trans-Sutlej territories after the first Sikh war and ends with the appointment of Mr. Edward Prinsep as Settlement Commissioner. The second covers the years 1863-1871 during which Mr. Prinsep held that office and terminates with the passing of the first Land Revenue Act, XXXIII of 1871. The third occupies the years 1871-1879 during which Sir James Lyall was Settlement Commissioner. The fourth lasting from 1879 to 1889 is marked by the changes in settlement and revenue procedure introduced by the late Colonel Wace as Settlement and Financial Commissioner and finally embodies in the second Land Revenue Act and Rules under it. The fifth extends from 1889 to the present day. As Financial Commissioner from 1879 to 1883 and as Lt. Governor from 1887 to 1892, Sir James Lyall directly controlled the settlement policy of the Province, and influenced of his use was strongly felt to the fourth and fifth periods.

34. These settlements in common parlance in the villages are termed as "bandobasts". In these settlements various areas and regions of the States were demarcated. The Punjab Land Revenue Act 1887 was enacted after the initial Land Revenue Act of 1871. The Punjab Land Revenue Act 1887 is now applicable in the States of Punjab and Haryana with modifications by the respective States. The policy of assimilating the settlements and ordinary revenue work was carried to its logical conclusion and the term settlement disappeared with the Settlement Officer being invested with the powers of a Revenue Officer with most of the powers of a Collector and charges with the duty of making general reassessments. The records drawn up at the settlements and annual records prepared by Patwaris were put on precisely the same legal footing and a special revision of the record of rights, though provided for was regarded as exceptional proceedings having no necessary connection with the reassessment of Land Revenue.

35. The Settlement Manual by Sir Douie in para 126 makes a mention of the "village community" as a body of proprietors who then or formerly owned part of

the village lands in common, and who were jointly responsible for the payment of revenue. As time went on, it is mentioned that the tendency was for the area held in severalty to increase, but it was rare indeed to find a village, which was one of the communal type, in which there was no common property remaining. Joint responsibility had been made a permanent feature of village tenure by the British Government. Under native rule it did not exist when the State realized its dues by division of crops or by appraisement. Even when a cash assessment was made only a few leading members of the community became responsible and they generally occupied the position of revenue farmers in their dealings with rest of the brotherhood. But joint responsibility occupied a far more prominent position in the codes than in practise.

36. Para 127 of the Settlement Manual makes a mention of reluctance to admit strangers. The members of the proprietary body in a true village community, it was observed, were often united by real or assumed ties of kinship. The admission of strangers into the brotherhood was always in theory at least, a thing to be guarded against, and village customs in the matter of inheritance and preemption were founded on this feeling. But under the native rule the repugnance to admit strangers often yielded to the pressure of the Government demand, and outsiders were allowed to share in rights which had become burdens. The almost complete freedom of transfer for long enjoyed in practise under the British Rule had a still more disintegrating affect on village communities.

37. It is to be noted that the main village or villages have all along in fact been further sub-divided by "pattis", "tarafs", "pannas", "thoks", "thulas" etc. The terms "pattis", "pannas", "thoks", "thulas" etc. mean sub-divisions of an estate or a sub-divisions within a village. "Pattis", "pannas", "thoks", "thulas" etc. or sub-divisions within the village were/are based mainly on castes, sub-castes or vocations that the members within the "pattis", "pannas", "thoks", "thulas" etc. or the subdivisions carried out. These "Pattis", "pannas", "thoks", "thulas" etc. or sub-divisions also possessed common lands which were known as "shamlat pattis", "shamlat pannas", "shamlat thulas" etc. or subdivisions and were for the common use of the members of the respective sub-divisions.

38. Para 128 of the Settlement Manual also makes a mention to the aforesaid sub-divisions of villages into "Pattis" etc. It is stated that villages often consisted of several divisions known by various names such as "taraf", "patti" (where the term "taraf" is used for main divisions, the sub-divisions are sometimes called "pattis") or "panna" and these again sometimes divided into smaller sections like "thoks", "thulas" etc. The lands of two "pattis" may be separated ("chakbat" i.e. applicable to a "patti" or sub-division of an estate which has all its land in one block) or intermixed ("khetbat" i.e. applicable to a "patti" or subdivision of an estate, the land of which do not lie in a single block) and the proprietors of a "patti" may have common lands of their own and also a share in the general village common.

39. Para 129 of the Settlement Manuals relates to the village Panchayat and the headmen. The affairs of the brotherhood were formally managed by an informal village council or Panchayat. But this body was too numerous and loosely constructed to fittingly represent the community in its dealing with Government officials. A few of its leading members were, therefore, selected as Headmen or "Lambardars", and the appointment of Headmen naturally came to be confined to particular families. From the revenue point of view the most important function of the Headman was to collect revenue from the coparceners and pay it into the treasury. The special position assigned to the "Lambardars" and the actions of the Courts stripped the Panchayat of its influence, and practically it had ceased to exist. The administration of the "malba" or fund out of which the common expenses of the brotherhood were met usually left in the hands of the Headmen, but it was generally recognised that each member of the proprietary body had a right to demand an account of its expenditure.

40. Para 130 of the Settlement Manual dealt with the residents in village community who were not proprietors. It is noticed that the village community of the communal type was and to a considerable extent self-sufficing. Besides the landowners it included "a nearly complete establishment of occupations and trades for enabling them to continue to their collective life without assistance from any person or body external to them" (Maine's Village Communities in the East and West, 5th Edition, Page 125). There were hereditary artisans and hereditary menials who performed offices considered unsuitable or degrading in the case of landowners. For these there was generally a customary rate of payment, which usually took the shape of allowances of grain according to a fixed scale at the time of harvest. Where the land was abundant and the proprietary body small, outsiders might be voluntarily admitted as cultivators or forced upon the community by the action of State officials. In the latter case, the landowners were fortunate if they could secure some small grain fee at harvest as an acknowledgement of their superior title. Residents who were not landowners sometimes paid to the latter as a body or to their headmen petty fees periodically, or on special occasions such as marriages. The tendency of the administration and especially of the legal system had been to loosen the communal tie and to weaken the authority exercised by the proprietary body over its individual members and over other inhabitants of the village.

41. Para 131 relates to the "abadi" (i.e. the inhabited dwelling area of the village) where the houses of the members of the brotherhood and of their dependents were usually built close together in some convenient part of the village. This inhabited site or "abadi" (dwelling) was excluded from the operation of the Land Revenue Act "except so far as may be necessary for the record, recovery and administration of village cesses" (Section 4 (1) of the Punjab Land Revenue Act, 1887). The houses of the village menials were usually placed on the outskirts of the "abadi".

42. The nature of "shamlat deh" lands or village common lands was considered

by a Five Judge Bench of the Hon'ble Supreme Court in *Gram Panchayat of Village Jamalpur v. Malwinder Singh*, AIR 1985 SC 1394. In the said case, the dispute was as to whether the share in the "shamlat deh" lands of the Muslim proprietors, who had migrated to Pakistan after partition of the country, would vest with the Custodian under the Administration of Evacuee Property Act, 1950 and consequently, liable to be allotted under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 to displaced persons who had migrated from Pakistan to India or whether the lands would vest with the Gram Panchayat in view of Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 (now Section 4 of the VCL Act 1961).

43. Prior to partition of India on 15.08.1947, the "shamlat deh" lands in Punjab, it was noticed, were owned by proprietors of other lands in the village, "Hasab Rasad Khewat", that is to say, in the same proportion in which they owned other lands. Therefore, a person who did not own any land in the village could have no proprietary rights or interest in the "shamlat deh" lands. But though, the interest of the proprietors of other lands, in "shamlat deh" lands, was incidental to their proprietary interests in those other lands, such interest in the "shamlat" was not a mere appendage to their interest in the other lands. A reference was made to Rattigan's Digest of Customary Law in the Punjab. Chapter X (Village Common Land) of Rattigan's Digest noted that within the territorial limits of every village some portion of the uncultivated waste lands were reserved "for purposes of common pasture, for assemblies of people, for the tethering of the village cattle, and the possible extension of the village dwellings" and that lands so reserved were jealously guarded as the common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation were recognised as having a share in these reserved plots. It was further noticed, "Even in villages which have adopted separate ownership as to the cultivated area, some such plots are usually reserved as village common, and in pattidar villages, it is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each patti, and other portions for common village purposes. The former is designated as Shamlat-patti and the latter Shamlat deh". It was said, "as a general rule, only proprietors of the village (malikan-deh) as distinguished from proprietors of their own holdings (malikan makbuza khud) are entitled to share in the shamlat deh".

44. It was also noticed that while it appeared to have been laid down that the right to share in the Village Common Land was an incident attaching to the ownership of agricultural land in the village and that ordinarily those persons who held land on which revenue was assessed and who were co-sharers in the "khewat" were entitled to a share in proportion to the revenue paid by them (see: *Malik Mohammad Sher Khan v. Ghulam Mohammad*, ILR 13 Lah. 92 : AIR 1932 Lahore 334). It also appeared to be settled law in Punjab that the rights of a proprietor in the "shamlat" were not a mere accessory to the land held by him and, therefore, an alienation by the latter did not ipso facto confer any right in

the former to the alienee (vide: Rahman v. Sai, ILR 9 Lah. 501 : AIR 1928 Lahore 922).

45. A reference was also made by the Supreme Court to Rattigan's Digest and the following was noticed; "In the absence of custom none of the proprietors can do anything which alters the condition of the joint property without the consent of all the co-sharers" (Art.225). "Nor can any individual proprietor plant or cut trees on the common land, nor sink a well, nor appropriate houses built for common purposes except with such consent" (Art.226). "Nor in the absence of custom can the will of the majority of a village community prevail against that of the minority when the question is one as to the disposal of the common property in such a way as to preclude all use of it by the owners." (Art.227). Thus, it was seen that "shamlat deh" or Village Common Land had certain distinctive and characteristic features of its own and even a majority of the co-sharers could not destroy its character.

46. The Supreme Court said that the power of the State legislature to pass laws on matters enumerated in the State List was exclusive by reason of the provision contained in Article 246 (3) of the Constitution. In a nutshell, it was held that the position was that the Parliament had passed a law on a matter which fell under Entry No. 41 of the Concurrent List, while the State legislature had passed a law which fell under Entry No. 18 of the State List. The law passed by the State legislature, being a measure of agrarian reform, it was said was conducive to the welfare of the community and there was no reason why that law should not have effect in its full amplitude. By this process, the village Panchayat would be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Village Common Lands (Regulation) Act, 1953, it was said, shall prevail over the Administration of Evacuee Property Act, 1950.

47. What is of significance is the fact wherein it was noticed that prior to partition of India on 15.08.1947, the "shamlat deh" lands in Punjab were owned by proprietors of other lands in the village, "Hasab Rasad Khewat", that is to say, in the same proportion in which they owned other lands. These were held to vest in the Panchayat primarily for the reason that the Punjab Act of 1953 i.e. the Punjab Village Common Lands (Regulation) Act, 1953 (now Section 4 of the VCL Act 1961) was a measure of agrarian reforms, it would receive the protection of Article 31A of the Constitution.

48. The said judgment in Gram Panchayat, Jamalpur v. Malwinder Singh (supra) was pronounced on 09.07.1985 and the said date was incorporated in clause (iia) of Section 2 (g) of the VCL Act 1961 amongst the exclusionary clauses to exclude lands from the definition of "shamlat deh". The said clause (iia) was inserted by Haryana Act No. 13 of 1996 so as to protect the rights of those allottees who had migrated from Pakistan to India and had been allotted land under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 so that the lands allotted to them before the pronouncement of the judgment on 09.07.1985 is protected and they are not deprived of the lands by the Gram Panchayats who were held to be

entitled to the said "shamlat deh" lands. The judgment was, thus, made prospective in pursuance of a legislative enactment so as to save the allottees.

49. A Full Bench of this Court in *Parkash Singh v. Joint Financial Commissioner, Punjab and others*, (2014-3) PLR 543 noticed that rights in land both possessory and proprietary were crystallized through a process called settlement of land holdings that commenced in the 1840s and eventually led to the enactment of the Punjab Land Revenue Act, 1887. The said enactment provided for demarcation of each village or a contiguous group of villages into a separate revenue estate. A revenue estate comprises of private agricultural lands, besides, common lands, called "shamlat deh" and land called "abadi deh". The private agricultural land vests in individual proprietors. The common land was kept apart for common use and was called "shamlat deh". It was observed that the proprietary and possessory rights in "shamlat deh" vested in absolute terms, in proprietors. The purpose for which a particular parcel of "shamlat deh" could be used, the rights of proprietors and nonproprietors therein were set out, in the "Sharat Wazib-ul Arz" (a document that records the bye-laws of revenue estate) also called a village administration paper. A proprietor was absolute owner of his share in "shamlat deh", held in common with other proprietors and could, depending upon rights recorded in the "Sharat Wazib-ul Arz", cultivate, sell, mortgage, lease and even partition the common land. The proprietors had a right to exclude non-proprietors from user of this land. It was further observed that cultivated land in "shamlat deh" was cultivated by proprietors in accordance with their share holdings. Large tracts of land were left for pastures called "charagh" or "charand". The "shamlat deh" of a revenue estate was used for common purposes like pasture ("charand"), "johar" (pond) or a "chhappar", streets, paths, cremation grounds, school, "chaupals" etc., but more often than not its users was confined to proprietors. The non-proprietors, though an integral part of the agrarian society were excluded from ownership and in many villages from the user of the common land. Another variety of common land called "shamlat taraf", "shamlat patti", "panna" or "thola" vested in the members of the "taraf", "patti", "panna" or "thola" and not in the entire proprietary body of the village.

50. The years 1953 and 1954, it was observed, saw the enactment of two significant statutes, namely, the Punjab Village Common Lands (Regulation) Act, 1953 and the Pepsu Village Common Lands (Regulation) Act, 1954. The said Acts jointly referred to as the "Shamlat Law" in terms of Section 2 (h) of the VCL Act 1961 declared by Section 3 of these statutes that land described as "shamlat deh" shall vest in a Gram Panchayat, bringing about a paradigm shift in the ownership of rights in "shamlat deh". The said Acts, it was observed, extinguished, by a statutory declaration, proprietary and possessory rights of proprietors and non-proprietors in "shamlat deh" and provided that "shamlat deh" of a village shall henceforth vest in a Gram Panchayat and would be used for common purposes of the entire village community, under the aegis of the Gram Panchayat. This statutory vesting of proprietary rights in "shamlat deh" in a Gram Panchayat was apparently too expansive and led to repeal of said

enactments by the VCL Act 1961. It was also pointed out that though the generic term used for common land is "shamlat deh", but the revenue authorities tend to use the expression the "Panchayat deh" and "Gram Panchayat deh" etc., while describing "shamlat deh". The following observation in Parkash Singh's case (supra) [(2014-3) PLR 543 at page 556] are apposite:-

"34. The common land of village can be divided into three separate and distinct categories, namely, "Shamilat Deh" i.e. land that existed prior to the Consolidation, prior to enactment of the 1953, 1954 and 1961 Acts and came to vest in a Gram Panchayat, under the 1953, 1954 and 1961 Acts, "Shamilat Patti, Pana, Thola & Taraf, etc., which vest in a Gram Panchayat only if this land is used for common purposes of the village, as per the revenue record and land described as "Jumla Mushtarka Malkan", which was created, under the Consolidation Act and came to vest in a Gram Panchayat or the State Government, for management and control, alone.

35. "Shamilat Deh" is the exclusive ownership of a Gram Panchayat, "Shamilat Taraf, Patti, Panna" etc. vest in a Gram Panchayat only if used for common purposes as per the revenue record, whereas "Jumla Mushtarka Malkan", confers the right of management and control upon a Gram Panchayat and the Gram Panchayat is in possession of the land for common use in terms of Section 2 (bb) of the Consolidation Act, a provision for which is to be made in the Consolidation Scheme prepared in terms of Rule 4 of the Consolidation Rules. We have tried to distinguish the different varieties of common land as revenue authorities have over a period of time begun treating these separate varieties of land as one."

51. In *Gurdial Singh v. Additional Director, Panchayats, Punjab*, AIR 2014 P&H 114 (P&H) (Full Bench), in which one of us (Paramjeet Singh, J.) was a member, elucidated the concept of traditional village in Punjab. It is mentioned that a traditional village in Punjab which would include Haryana is a fine example of multi-dimensional functional planning. The entire area of a revenue estate (village), it is mentioned, consists of "abadi deh", "gorah deh", "shamlat deh" and proprietary land. The villages were established by proprietors thereof, who invited labourers, artisans etc. to settle and cultivate their lands. The area where both proprietors and settlers lived together started to be known as "abadi deh". The planners of the village set apart certain land all around the "abadi deh" for its future extension, which was named as "gorah deh". Besides this, a large chunk of land was set apart for common use of its inhabitants which was known as "shamlat deh". In these three types of lands, proprietors and settlers (non-proprietors) had equal rights initially but with the passage of time, proprietors started asserting their rights over the land and consequently non-proprietors were deprived of their rights in the land. They were compelled to lead a life of dependency and poverty. Proprietors became owners of the property. Non-proprietors had restricted and limited rights of grazing, collecting firewood etc. in the "shamlat deh". Non-proprietors had only limited right of possession upon the site of their dwelling houses in "abadi deh". They were not in a position to sell/

dispose of the sites of their houses without consent of the proprietors of the village. In fact, the VCL Act 1961 met a long felt necessity of the non-proprietors and also management and control over the "shamlat deh" and "abadi deh". It was emphasized by the Full Bench that the importance of the said VCL Act 1961 lay in promoting welfare of the residents of the village which included proprietors and non-proprietors, by enabling them to use the lands in question for welfare of the society at large, including the persons who were not having property of their own. It was deemed fit to examine the purpose of the VCL Act 1961; object it sought to achieve; the object to regulating the rights in "shamlat deh" and "abadi deh" and use of "shamlat deh" and "abadi deh", and the duty cast upon the Panchayat to utilize or dispose of the same for the benefit of residents of the village as it would facilitate in comprehending the issue involved and assist in construing various provisions of the VCL Act 1961 as well as the words used in the said VCL Act 1961. To begin with, the preamble of the VCL Act 1961 afforded a useful assistance to ascertain the legislative intention. It records that the VCL Act 1961 was enacted to consolidate and amend the law regulating the rights in "shamlat deh" and "abadi deh". The use of word "regulating" furnished a key to the minds of legislators of the VCL Act 1961. Various definitions, provisions and the words used therein elaborately attempted to achieve the object of the VCL Act 1961 and were to be construed in this light without departing from the settled view that the preamble cannot control otherwise the plain meaning of provision.

52. The "shamlat deh" lands in Punjab and Haryana, therefore, owe their origin to the regular land settlements which have been mentioned above. In fact, the original cultivators of land or occupants of uncultivable, waste or fallow land known as "banjar qadim" or "banjar jadid" constituted the initial original land owners and the lands vested in them completely as owners. Agricultural land owned by a proprietor in his own right is called a "holding" known as "khewat" and the owners may hold the entire khewat or have a share in it. They are known as "khewatdars". The "khewatdars" were collectively treated as owners of the village ("malkan deh"). The "shamlat" lands were enjoyed collectively by the "khewatdars". These rights find mention in the Village Land Administration Papers known as "Sharat Wajib-ul Arz". Parcels of lands were carved out by the owners in the villages or revenue estates for common purposes. These lands in some cases were contributed and were provided for from out of the shares of the proprietors; besides, the proprietary body of the village also left out certain lands for common purposes which were to be used by the proprietors of the lands. The proprietors of land in an estate had a right of ownership in the "shamlat deh" lands mostly to the extent of their share of their holdings in the revenue estate. The share of ownership was/is recorded in the revenue records as "shamlat deh" followed by terms like "Hasab Rasad Zare Khewat" (to the extent of share in the "khewat") and similar entries such as, "Hasab Rasad Mal Guzari", "Hasab Rasad Paimana Malkiat", "Hasab Rasad Raqba Khewat", "Hasab Hissa Andraj Shijra Nasab" i.e. as per share in the pedigree table, "Shamlat Deh Hasab Paimana

Malkiat Muderqa Sajar Nasab Bandobasti", "Hissa Solah" (16) etc. The said terms were only indicative of the extent of the ownership share of the proprietors. The purpose for which a particular parcel of "shamlat deh" land could be used, besides, the rights of non-proprietors were recorded in the "Sharat Wazib-ul Arz". The non-proprietors including labourers, artisans etc. as also those responsible for collecting the land revenue ("mal guzars") were entitled for user of the common lands of the village known as "shamlat deh."

53. In order to provide regulatory measures for the "shamlat" lands and vest the said lands in the Panchayats, initially the Punjab Village Common Lands (Regulation) Act, 1953, for the State of Punjab as it stood immediately before 1.11.1956 i.e. before the Punjab Reorganization Act, 1966 came into effect, and the Pepsu Village Common Lands (Regulation) Act, 1954 which immediately before 1.11.1956 comprised the State of Patiala and East Punjab States Union (PEPSU), was enacted. The "shamlat deh" lands in Punjab as also PEPSU which then included the State of Haryana as well were owned by the proprietors of the village to an extent of share or in proportion of their holdings of land in the village, i.e. "Hasab Rasad Khewat". Therefore, a person who did not own any other land in the village could have no proprietary right or interest in the "shamlat deh" lands. The interest of the proprietors of the other lands, in "shamlat deh" lands, though was incidental to their proprietary interest in those other lands, such interest in the "shamlat" was not a mere appendage to their interest in the other lands. Therefore, "shamlat" lands were for the common use and benefits for the inhabitants of the village and the proprietors had a share as an owner in the said lands mostly to the extent of their holdings which were reflected in the revenue records or Jamabandis as "Hasab Rasad Zare Khewat".

54. There has also been a view that the said enactments i.e. the Punjab Village Common Lands (Regulation Act), 1953 and the Pepsu Village Common Lands (Regulation) Act, 1954 were enacted in a hurried manner during the consolidation operations as when consolidation proceedings commenced under the Consolidation Act 1948 then at that time the Consolidation Officers and officials started including the "shamlat deh" lands in the holdings of proprietors to the extent of their share and then redistributed it amongst the proprietors. Therefore, in order to protect the lands and vest them in the Gram Panchayats, the said enactments were brought into force.

55. In terms of the VCL Act 1961, "shamlat deh" has been defined in Section 2 (g) as follows:-

"Shamlat deh" includes-

- (1) lands described in the revenue records as Shamlat deh or charand excluding abadi deh;
- (2) shamlat tikkas;
- (3) lands described in the revenue records as shamlat, tarafs, pattis, pannas and

tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[2][(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act 1952, excluding lands reserved for common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;]

[2] Substituted by Haryana Act No.9 of 1992:

(4a) vacant land situate in abadi deh or gorah deh not owned by any person;

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

[3][(6) lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under Section 23-A of the aforesaid Act.

[3] Substituted by Haryana Act No.9 of 1992:

Explanation - Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarar Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamlat deh with the meaning of this section.]

but does not include land which ---

(i) becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

(ii-a) was shamlat deh, but has been allotted to any person by Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July 1985;

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh is so recorded in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamlat taraf, pattis, pannas, and thola and not used according to revenue records for the benefit of the village

community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, a house or for cottage industry immediately before the commencement of this Act;

(vii) ---- (Omitted by Haryana Act 18 of 1995).

(viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamlat deh on or before the 26th January 1950; or,

(ix) is used as a place of worship or for purposes subservient thereto.

56. The provisions of Section 2 (g) of the VCL Act 1961 are in two parts; the first part from clauses (1) to (6) relates to such lands which are included in "shamlat deh" and the second part from clauses (i) to (ix) are lands which are not included or are excluded from "shamlat deh". In terms of the Haryana Act No.9 of 1992 w.e.f. 11.2.1992, Clause (4) was substituted and Clause (6) with its Explanation was inserted in Section 2 (g) of the VCL Act 1961. The purpose of the said amendment was to include lands, which are recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", in the definition of "shamlat deh" and consequently vest them in the Panchayat. That is to say vest them with ownership and title also whereas the management and control only of such lands recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" or "Jumla Mushtarka Malkan" vested in the Panchayats. Such lands recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" were in fact taken from the holdings of the proprietors in an estate for common purposes of the village by imposing a pro rata cut during consolidation proceedings. The proprietary rights of the same vested in the village proprietary body and their share in the same was proportionate to their land holdings in the village. However, with the aforesaid amendment the lands recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" were to be recorded as "shamlat deh." In terms of Section 4 of the VCL Act 1961, the "shamlat deh" lands vest with the State Government or the Panchayat, as the case may be. Section 4 of the VCL Act 1961 providing for vesting of "shamlat deh" lands in the State Government or the Gram Panchayat reads as under:

"4. Vesting of rights in Panchayat and nonproprietors.

(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 shamlat deh of any village and which has not vested in a Panchayat under the shamlat law shall, at the commencement of this Act, vest in 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 who were in cultivating possession of shamilat deh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953, or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement 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."

57. Section 5 of the VCL Act 1961 relates to regulation of use and occupation etc. of lands vested or deemed to have been vested in Panchayats. The same shows that the "shamlat deh" lands are for the benefit of the "inhabitants of the village". Section 5 of the VCL Act 1961 reads as under:-

"5. Regulation of use and occupation, etc., of lands vested or deemed to have been vested in Panchayats.-

(1) All lands vested or deemed to have been vested in a panchayat under this Act, shall be utilized or disposed of by the panchayat, *for the benefit of the inhabitants of the village concerned in the manner prescribed:

Provided that where two or more villages have a common panchayat, Shamlat deh of each village shall be utilized and disposed of, by the Panchayat *for the benefit of the inhabitants of that village: Provided further that where there are two or more shamlat tikkas in a village, the shamlat tikka shall be utilized and disposed of, by the Panchayat *for the benefit of the inhabitants of that tikka:

Provided further that where the area of land in Shamilat deh of any village so vested or deemed to have been vested in Panchayat is in excess of twenty-five percent of the total area of that village (excluding abadi deh) then twenty-five percent of such total area shall be left to the Panchayat and out of the remaining area of Shamilat deh an area up to the extent of twenty-five percent of such

total area shall be utilized for the settlement of landless tenants and other tenants ejected or to be ejected of that village and the remaining area of Shamilat deh, if any, shall be utilized for distribution to the small landowners of that village subject to the provisions relating to permissible area under the Haryana Ceiling on Land Holdings Act, 1972, by the Assistant Collector of the first grade in consultation with the Panchayat in such manner and on payment of such amount as may be prescribed.

(2) The area of Shamlat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultation with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officers authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the second proviso to sub-section (1) or sub-section (2), issue to any Panchayat such directions as may be deemed necessary.

(4) Nothing contained in the third proviso to subsection (1), and in sub-section (2) and sub-section (3) shall apply to the "hilly area".

(5) Notwithstanding anything contained in this section, if in the opinion of the State Government, it is necessary to take over, to secure proper management for better utilization *for the benefit of the inhabitants of the village concerned any Shamlat deh the Government may by notification take over the management of such Shamlat deh for a period not exceeding twenty years.

(6) The income from the Shamlat deh, the management of which is taken over under subsection (5), after meeting all charges relating or incidental to the management and utilization, shall be credited to the Gram Fund *and utilized for the benefit of the inhabitants of the village concerned."

(*Emphasis by underlining is added)

58. Section 9 of the VCL Act 1961 is also apposite to show that "shamlat deh" land is for the benefit of the inhabitants of the village. The same reads as under:-

"9. Utilization of Income - Any income accruing from the use and occupation of the lands vested or deemed to have been vested in a Panchayat shall be credited to the Panchayat fund and shall be utilized in the manner prescribed."

59. The word "prescribed" has been defined in Section 2 (f) of the VCL Act 1961 to mean prescribed by the rules made under the VCL Act 1961. The Punjab Village Common Lands (Regulation) Rules, 1964 (as applicable in Haryana) ("VCL Rules 1964" - for short) have been framed. Rule 3, Rule 8 and Rule 14 are relevant. The same read as under:-

"3. The manner in which and the purposes for which shamlat deh may be used:- [Sections 5 and 15 (2) (a) of the Act] - (1) The Panchayat shall prepare a land utilization plan of the land in shamlat deh vested in it under the Act. It shall be the duty of Block Development and Panchayat Officer to assist the Gram

Panchayat concerned in the preparation of the said plan. Such plan shall be subject to approval of-

(a) the Panchayat Samiti -

Where the area exceeds 100 acres but does not exceed 500 acres.

(b) the Zila Parishad -

Where the area exceeds 500 acres but does not exceed 1000 acres.

(c) the Government -

Where the area exceeds 1,000 acres.

(2) Subject to the approval of competent authority prescribed under the Act or these rules, the Panchayat may make use of the land in shamlat deh vested in it under the Act, either itself or through another for any one or more of the following purposes:-

(i) Grazing of animals;

(ii) Tree plantation or any other purpose related to forestry;

(iii) Dyeing and tanning of skins and hides;

(iv) Storage of fuel, fodder and/or grain;

(v) Cremation or burial ground;

(vi) Manure pits;

(vii) Public latrines, and/or urinals;

(viii) Drains or water channels;

(ix) Playgrounds;

(x) Government School building and its Library;

(xi) Government Hospital or dispensary, Maternity or First-aid Centres, Veterinary Hospital or Dispensary;

(xii) Vehicle Parking related to agriculture and incidental purposes;

(xiii) Panchayat-ghar or Jhanjghar or Village Chaupal;

(xiv) Ponds and Fisheries;

(xv) Wells, hand-pumps, Water Works, or any other Water Lifting device.

(xvi) Crop thrashing ground;

(xvii) Kohloo;

(xviii) Cultivation;

(xix) Model Farm, Seed Farm, Dairy Farm, Nursery, Garden or any other Horticultural purposes;

(xx) Production of food, fiber or fodder crops;

(xxi) Stone crusher, Brick-kilns, Pottery, extraction of shora, sand, stone, kankar, bajri or other minerals defined in the Punjab Minor Mineral (Concession) Rules, 1964;

(xxii) Special Economic Zone Projects and Industrial development.

(xxiii) Roads, Pathways, Streets, Lanes and Byelanes;

(xxiv) Recreation Parks, Children's Park and Sports Stadium;

(xxv) Residential;

(xxvi) Educational and knowledge centres including libraries to be set up by non-governmental institutions or individual;

(xxvii) Hospital or dispensary, Maternity or First-aid Centres, Veterinary Hospital or Dispensary to be set up by non-governmental institution or individual;

(xxviii) Any other kindred common purpose: Provided that the use of land for the purposes mentioned under clauses (xix) to (xxviii) shall be with the prior approval of State Government.

(3) Subject to the approval of Panchayat Samiti, a Panchayat may unite with any other body or bodies being a Gram Panchayat, local authority or an institution or branch of an institution, established for the development of Panchayats and recognised by Government in taking up any of the purpose specified in sub-rule (2).

8. Use of shamlat deh by residents [Sections 5 and 15 (2) (g) of the Act]:-- (1) The land in Shamlat deh declared by the Panchayat by a resolution in writing, as pasturable may be utilized by the residents of the village for-

(a) grazing purposes; or

(b) collecting dry fuel-wood from the jungle on terms laid down by the Panchayat.

(2) Open spaces near the Abadi deh may, with the previous permission of the Panchayat and in the manner laid down by it, be utilized by the inhabitants of the village for threshing the harvests.

(3) Omitted.

(4) The Panchayat may if necessary, earmark suitable land for use as manure pits by the inhabitants of the village on such nominal charges as may be fixed by it;

Provided that the Panchayat may exempt a member of Scheduled Castes or Backward Classes or any landless labourer or tenant on the ground of poverty

from the payment of such charges."

14. Utilization of the income from the Shamlat Deh. [Sections 9 and 15 of the Act]- The income derived by a Panchayat from the use and occupation of the land in shamlat deh vested in it shall be utilized for the benefit of the inhabitants of village, as laid down in the Haryana Panchayati Raj Act, 1994 (16 of 1994) and for the improvement, maintenance and management of the shamlat deh."

60. In terms of Sections 5, 9 and 15 of the VCL Act 1961 and Rules 3, 8 and 14 of the VCL Rules 1964, the "shamlat deh" lands have primarily been and are for the benefit of the "inhabitants of the village". The common purposes for which the lands are to be used have been clearly delineated, defined and earmarked.

61. The revenue entries depicting the nature of the land and other particulars are incorporated in the record of rights/Jamabandis in terms of Section 31 of the Punjab Land Revenue Act, 1887, which reads as under:-

"31. Record-of-rights and documents included therein -

(1) Save as otherwise provided by this Chapter, there shall be record-of-rights for each estate.

(2) The record-of-rights for an estate shall include the following documents, namely: -

(a) statements showing, so far as may be practicable: -

(i) the persons who are land-owners, tenants or assignees of land-revenue in the estate or who are entitled to receive any of the rents, profits or produce of the estate or to occupy land therein;

(ii) the nature and extent of the interests of those persons, and the conditions and liabilities attaching thereto;

(iii) the rent, land-revenue, rates, cesses or other payments due from and to each of those persons and to the Government;

(b) a statement of customs respecting rights and liabilities in the estate;

(c) a map of the estate; and

(d) such other documents as the Financial Commissioner may, with the previous sanction of the [State Government] prescribe."

62. Section 44 of the Punjab Land Revenue Act, 1887 relates to presumption in favour of entries in records-of-rights and annual records. The said section 44 reads as under:

"44. Presumption in favour of entries in Records-of-rights and annual records:- An entry made in a record-of-rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is

proved or a new entry is lawfully substituted therefor."

63. In terms of the above provisions of Section 44 of the Punjab Land Revenue Act, it is provided that any entry made in a record of rights in accordance with the law for the time being in force, or in an annual record in accordance with the provisions of this chapter i.e. chapter IV and the Rules made thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor. As such, there is a presumption of truth in respect of the entries in the revenue records, which like other presumptions in law is rebuttable.

64. The Privy Council in *Maharaja Sir Kesho Prasad Singh Bahadur v. Bahuria Mt. Bhagjogna Kuer and others*, AIR 1937 Privy Council 69, considered the evidentiary value of entries in the record of rights. It was said that entries made in such Government record as record of rights are evidence of title mainly because they are good evidence of possession, but if contrary to the facts as to the possession at the time they were made they carry little, if any, weight. This would be especially applicable to entries made by the Tehsildar as of routine and without notice to any parties interested to oppose their being made. It was further said that entries made under Section 33 (3) of the United Provinces Land Revenue Act (3 of 1901) i.e. the statutory provisions applicable in the said case attract statutory presumption of correctness under Section 44 of the said Act (3 of 1901). Section 44 therein provided that all entries in the annual registers made under Sub Section (3) of Section 33 shall be presumed to be true until the contrary is proved. The provisions of Section 44 of the Punjab Land Revenue Act, 1887 as applicable in the present case contain a similar presumption as in the case of *Maharaja Sir Kesho Prasad Singh Bahadur v. Bahuria Mt. Bhagjogna Kuer and others* (supra).

65. The Supreme Court in *Chhote Khan v. Mal Khan*, AIR 1954 SC 575, said that by Section 44 of the Punjab Land Revenue Act, 1887, an entry made in the record of rights or in an annual record shall be presumed to be true until contrary is proved. The entries in *Jamabandis*, it was said, fall within the purview of record of rights under Section 31 of the said Act admits of no doubt. Section 16 of the old Act (XXIII of 1871) lays down that entries in the record of rights made or authenticated at a regular settlement shall be presumed to be true.

66. In *Vishwa Vijay Bharati v. Fakhrul Hassan*, (1976) 3 SCC 642, it was held by the Supreme Court that entries in the revenue records ought, generally, to be accepted at their face value and Courts should not embark upon an appellate inquiry into their correctness. The presumption of correctness can apply to genuine, not forged or fraudulent, entries.

67. In *Harish Chander v. Ghisa Ram*, AIR 1981 SC 695, it was held that a presumption of truth attaches to entries in *Jamabandi* in view of the provisions of Section 44 of the Punjab Land Revenue Act. That presumption is no doubt rebuttable. Further, once that presumption is raised, still another comes to the aid by reason of the rule contained in Section 109 of the Evidence Act, namely,

that when two persons have been shown to stand to each other in the relationship of landlord and tenant, the burden of proving that such relationship had ceased, is on the party who so asserts.

68. In *Durga v. Milkhi Ram*, 1969 PLJ 105 (SC), it was said by the Supreme Court that where the earlier revenue entries were changed in the later revenue entries and the change was effected without any mutation and there was no order of the revenue authorities showing how the change was made, it was said, that although presumption would be in favour of the later entries but that presumption was a rebuttable one and it would stand rebutted by the fact that the alteration in the later entries was made unauthorisedly or mistakenly, there being no material to justify the change of entries.

69. In *Guru Amarjit Singh v. Rattan Chand*, AIR 1994 SC 227 and in *Jattu Ram v. Hakam Singh*, AIR 1994 SC 1653, it was, however, held that entries in jamabandis are not proof of title and the parties had to establish a relationship or title to property. The statutory provisions of Section 44 of the Punjab Land Revenue Act, which create a presumption in favour of entries in the revenue records, were not brought to the notice of the Supreme Court. The dispute in *Guru Amarjit Singh's* case (*supra*) was regarding relationship of landlord and tenant. The trial Court found that the original lease deed was not produced. A copy of more than thirty years old was produced and was admissible in evidence which showed that Shardha Ram and Narsingh Dass had executed a lease deed on October 20, 1905 in favour of Guru Naunihal Singh. But there was no proof of payment of any rent of Rs.2/- per year. Jamabandi entries did not show any payment of rent but only existence of terms of lease to pay rent at Rs.2/- per annum. Non-production of receipts of payment of rent it was held by the trial Court clearly indicated that there was no relationship of landlord and tenant.

70. In respect of disputes between a landlord and a tenant, it is to be kept in view that the particular relationship as to whether it subsists or had ceased, is on the person who so asserts it. Therefore, the decision in *Guru Amarjit Singh's* case is confined to the facts in the said case.

71. *Jattu Ram's* case (*supra*) related to a case of an oral exchange between the parties. The appellant therein possessed land measuring 90 kanals 7 marlas. The first respondent agreed to exchange those lands with his lands to the extent of 90 kanals 12 marlas. For the excess 5 marlas, the appellant paid money. Later it transpired that the first respondent therein had a defective title of his land which he had purchased from Kartar Kaur and her two minor sons. The minor sons filed a civil suit against Hakam Singh (first respondent) claiming two-third share. The Civil Court decreed the suit holding that the sale made by the mother of their two-third share was void. Consequently on demand of the minors, the appellant had to surrender 52 kanals 10 marlas of land to them. As compensation thereof, the first respondent delivered 47 kanals 1 marla of land and promised to pay compensation for the balance loss of land and also promised to get mutation effected in the revenue records. Later, when the first respondent started

alienating the land in favour of respondents No.2 to 9, the appellant filed a suit. The first respondent admitted the factum of exchange as well as his purchasing the property and decree of the Civil Court that the sale to the extent of two-third of the share of minor was void and that the appellant had parted with 52 kanals 10 marlas of land in favour of the minors. However, he pleaded that the appellant had without his consent, voluntarily parted with possession of the lands. He further alleged that the lands in the possession of the appellant were only as tenant at will. Yet the first respondent had admitted that no rent was paid after delivery of the possession of 47 kanals 1 marla. The appellate Court relied on the Jamabandi where in column 9 it was recorded as "Tassawar Tabadla" (as a result of exchange). However, the appellate Court proceeded on the premise posing a question in the beginning for consideration whether the appellant came in possession only as a tenant and based on the entry of the Patwari in that behalf and without any further evidence concluded that the appellant was only a tenant. The question that arose for consideration on the admitted facts was whether the appellant in the said case was in possession of the plaint scheduled land on exchange as a consequence of compensating him for the loss of 52 kanals 10 marlas. Reference was made to Section 119 of the Transfer of Property Act, 1882. On the admitted facts, it was held that the appellant in furtherance of the oral understanding came in possession of 47 kanals 1 marla in exchange. The entry in column No.9 fortified the stand of the appellant. The sole entry on which the appellate Court had placed reliance was by the Patwari in the Jamabandi. It was in the said context that it was held that Jamabandi entries create no title. It was held to be a classic instance of fabrication of false entries made by the Patwari, contrary to the contract made by the parties, though oral.

72. Therefore, it follows that an entry in the revenue record is an evidence of title as held by the Privy Council in Maharaja Sir Kesho Prasad Singh Bahadur's case (*supra*); besides, it carries a presumption of truth in terms of Section 44 of the Punjab Land Revenue Act, 1887 and Section 35 of the Evidence Act, 1872 although the presumption like other presumptions is rebuttable. In the absence of any other material or document contradicting, disproving or disaffirming the entries in the revenue record, there is a presumption of truth attached to them which like other presumptions is rebuttable. However, in case of dispute of title, the same is to be decided only by a Civil Court on the basis of evidence and material. The entries in the revenue records in such a case carry only a presumption of truth which can be rebutted by other material and evidence.

73. In the rural areas of Haryana and even in Punjab, the land holders seldom keep their title deeds or "sanads" (grants) and mostly land passes from generation to generation. In almost all villages in the region, lands are owned in parcels as holdings by co-sharers which are mostly descendants of the holder of the entire village which came to be divided amongst the co-sharers as a result of devolution of interest. The records of rights/Jamabandis are, therefore, heavily relied upon for determination of the rights of the holders of the land. These records of rights/Jamabandis carry a presumption of truth in terms of Section 44

of the Punjab Land Revenue Act, 1887 as also Sections 35 and 109 of the Evidence Act, 1872.

74. In the circumstances, in case ownership rights in "shamlat deh" lands or the village common lands are recorded in the revenue records/Jamabandis in favour of proprietors or there is some semblance or vestige of title in the "shamlat deh" lands or the common lands of the village which may be proportionate in share to the extent of land holdings of the proprietors recorded in the revenue records, the same would carry a presumption of truth which though would be rebuttable. The "shamlat deh" land came to vest in the Panchayat by virtue of Section 4 of the VCL Act 1961 and it is for the benefit of the inhabitants of the village in terms of Section 5 thereof. This acquisition of the lands of the proprietors or of their share in the common lands was/is measure of agrarian reforms and is saved by Article 31A of the Constitution. The title and ownership of "shamlat deh" lands by virtue of Section 4 of the VCL Act 1961, vest in the Panchayats. The land, however, is for the benefit of the "inhabitants of the village".

75. The inclusion of "Jumla Mushtarka Malkan" or lands recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" within the definition of "shamlat deh" lands in terms of the definition of "shamlat deh" as contained in Section 2 (g) of the VCL Act 1961 in view of Act No.9 of 1992 was assailed in this Court in Jai Singh's case (supra). A Full Bench of this Court in Jai Singh's case held as follows:-

"In view of the discussion made above, we hold that:-

(i) Sub-section (6) of Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;

(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2 (g) (1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16 (ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;

(iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as "Jumla Mustarka Malkan Wa Digar Haqdarani Hasab Rasad Arazi Khewat" and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of Section 2 (g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;

(iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be "Jumla Mustarka Malkans Wa Digar Haqdarar Hasab Rasad Arazi Khewat" etc.

Before we may part with this judgment, we would like to mention that the revenue authorities; totally unmindful of even the existing law sans amendment under challenge, have changed, by way of mutation, ownership of lands in favour of the State or Gram Panchayat, as the case may be, irrespective of as to whether the said lands were used for common purposes as per consolidation scheme and so shown in the revenue records or the same were shown in the column of possession with proprietors, land having not been reserved in a scheme for common purposes, wherever the entries were "Jumla Mustarka Malkans Wa Digar Haqdarar Hasab Rasad Arazi" etc."

(Emphasis added)

76. In the case of Veer Singh, RA-CW No. 350 of 1999 in CWP No. 7077 of 1992, decided on 08.11.2013, a review of the Full Bench decision was dismissed with clarifications that the management and control only of the land that is carved out during consolidation operations by imposing a pro rata cut on the proprietors of the village and is recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba", vests with the Gram Panchayat and not its ownership or title; besides, it was held that by including such "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba" lands as "shamlat deh" was to provide a mechanism for resolution of the disputes. The provisions of the VCL Act 1961 were found to be comprehensive to deal with the disputes inter se parties as well as other disputes.

77. The provision relating to settlement of disputes was noticed i.e. Section 7 (1) of the VCL Act 1961. The said provision confers powers on an Assistant Collector 1st Grade to put Panchayat in possession of certain lands. It is provided that an Assistant Collector of the 1st Grade having jurisdiction in the village to act either suo motu or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer or Social Education and Panchayat Officer or any other Officer authorised by the Block Development and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed eject any person who is in wrongful or unauthorized possession of the land or other immovable property in the "shamlat deh" of that village which vests or is deemed to have vested in the Panchayat under the said VCL Act 1961 and put the Panchayat in possession thereof and for so doing the Assistant Collector of the 1st Grade may exercise the powers of the revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887. In terms of the proviso to said Section 7 (1) of the VCL Act 1961, the Assistant Collector can also decide the question of title in the manner as laid down thereafter. In terms of sub-

section (2) of Section 7, the Assistant Collector of the 1st Grade can also impose penalty in respect of land or other immovable property which was or had been in wrongful or unauthorized possession of any person, at a rate not less than Rs.5,000/- and not more than Rs.10,000/- per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of order, the same is recoverable as arrears of land revenue. Sub-section (3) of Section 7 of the VCL Act 1961 envisages that the procedure for deciding question of title under the proviso to sub-section (1) of Section 7 shall be the same as laid down in the Code of Civil Procedure, 1908. Sub-section (4) of Section 7 provides for enforcement of orders of eviction passed under sub-section (1) of Section 7. It is provided that if any person refuses or fails to comply with the orders of eviction passed under sub-section (1), within ten days of the date of such order, the Assistant Collector of the 1st Grade may use such force, including police force, as may be necessary for putting the Panchayat in possession. Sub-section (5) of Section 7 provides for punishment with imprisonment. It is provided that any person who is found in wrongful or unauthorized possession of the land or other immovable property in "shamlat deh" and is ordered to be ejected under sub-section (1), shall be punished with imprisonment for a term which may extend to two years.

78. Section 7-A of the VCL Act 1961 relates to cognizance of offence. It is provided that notwithstanding anything contained in the Code of Criminal Procedure, 1973, no Court other than that of the Judicial Magistrate of the 1st Class shall take cognizance of, or try, any offence punishable under this Act. Section 7-B provides the procedure for prosecution. Section 13 of the VCL Act 1961 relates to bar of jurisdiction. It is inter alia provided that no Civil Court shall have jurisdiction (a) to entertain or adjudicate upon any question whether ----(i) any land or other immovable property is or is not "shamlat deh"; (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act; (b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or (c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act. Therefore, the jurisdiction of the Civil Court is barred with respect to lands which are "shamlat deh" and with respect to matters enunciated in clauses (a) to (c) of Section 13.

79. Section 13-A of the VCL Act 1961 provides for "adjudication". It is envisaged that any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer, Social Education and Panchayat Officer or any other officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may file a suit for adjudication, whether such land or other immovable property is "shamlat deh" or not and whether any land or other

immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the Court of the Collector, having jurisdiction in the area wherein such land or other immovable property is situated. In terms of the proviso to Section 13-A, no suit shall lie under this Section 13-A in respect of the land or other immovable property, which is or has been the subject matter of proceedings under Section 7 of this Act under which the question of title has been raised and decided or under adjudication. Sub-section (2) of Section 13-A states that the procedure for deciding the suits under sub-section (1) of Section 13-A shall be the same as laid down in the Code of Civil Procedure, 1908.

80. Section 13-AA of the VCL Act 1961 relates to appeal and revision. In terms of sub-section (1) of Section 13-AA, any person, aggrieved by an order under sub-section (1) of Section 13-A, may within a period of thirty days from the date of such order, prefer an appeal to the Commissioner in such form and manner, as may be prescribed, and the Commissioner may after hearing the appeal, confirm, vary or reverse the order as he deems fit. In terms of subsection (2) of Section 13-AA, the Financial Commissioner may, suo motu or on an application made to him by any person aggrieved by an order passed under sub-section (1) of Section 13-AA, call for the record of any proceedings pending before, or order passed by the Commissioner for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto as he may deem fit: Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard. Section 13-B (1) of the VCL Act 1961 relates to appeal and revision against orders passed by the Assistant Collector of the 1st Grade under Section 7 to the Collector and sub-section (2) of Section 13-B provides for revision before the Commissioner. Section 13-C of the VCL Act 1961 provides for finality of orders and it is envisaged that every order made by Assistant Collector of the 1st Grade, the Collector or the Commissioner shall be final and shall not be called in question in any manner in any Court.

81. Section 13-D of the VCL Act 1961 relates to provisions of this Act to be overriding. It is envisaged that the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any Court or other authority. Section 13-E of the VCL Act 1961 provides that every officer or employee acting under the provisions of this VCL Act 1961 or the rules made thereunder shall be deemed to be a public servant within the meaning of Section 21 Indian Penal Code.

82. The said provisions of the VCL Act 1961 provide the mechanism, machinery and a complete code for adjudication and settlement of dispute with respect to "shamlat deh" lands. In terms of Explanation to Section 2 (g) (6) of the VCL Act 1961, lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" have been made "shamlat deh" within the meaning of Section 2 (g).

Therefore, the said lands i.e. lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" are also subject to the mechanism and regulatory procedure provided for by the VCL Act 1961. The settlement of disputes relating to the lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" can be done by the procedure laid down in the VCL Act 1961.

83. It may appropriately be noticed that the Haryana State has also framed the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985. The said Act is to provide for eviction of unauthorized occupants from land reserved for common purposes under the Consolidation Act 1948. In terms of Section 2 of the said Act "Common Purposes Land" has been defined to mean land reserved for common purposes of a village under Section 18 of the Consolidation Act 1948, the management and control whereof vests in the State Government or the Panchayat under Section 23-A of the said Consolidation Act 1948. Section 3 of the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985 provides for application of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 to common purposes. It is provided that notwithstanding anything contained in any law for the time being in force, the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972, shall apply to common purposes land which shall be deemed to be public premises for the purpose of the said Act. The provisions of the VCL Act 1961 are, however, more comprehensive and deal with disputes inter se parties as well as other disputes in terms of its various provisions, as have been noticed above. The provisions of the VCL Act 1961 would be in addition to the procedure provided for eviction of unauthorized occupants from land reserved for common purposes under the Consolidation Act 1948. The provisions of the VCL Act 1961 shall have, however, have overriding effect in view of Section 13-D thereof. Besides, the provisions of the VCL Act 1961 are invoked and administered by the officials of the Rural Development and Panchayats Department, Haryana. The officials of the said Department have been invested with the powers of the Collector, the Commissioner and the Financial Commissioner under the VCL Act 1961. The Sarpanches and Panches of the Gram Panchayats are more familiar in their day to day dealings with the officials of the Panchayat Department at the Block Level, District Level and the State Level. Therefore, having an additional forum for resolution of disputes of lands which are vested in the Panchayats or the management and control of the same is with the Panchayats. Besides, in case two procedures are provided for eviction of unauthorized occupants of lands which vest in the Panchayat or the Panchayat has management and control would not be illegal or improper.

84. In *Maganlal Chhagganlal (P) Ltd. v. Municipal Corporation of Greater Bombay and others*, AIR 1974 SC 2009 (Seven Judge Bench), the Supreme Court considered the provisions of Bombay Government Premises (Eviction) Act in case

relating to eviction of unauthorized occupants of the government premises. Two different procedures were provided for eviction of unauthorized occupants. One was under Chapter V-A of the Bombay Municipal Corporation Act, 1888 and the other under the Bombay Government Premises (Eviction) Act, 1955. It was held that the fact in such cases the Executive would choose which cases were to be tried under the special procedure would not affect the validity of the statute. The mere availability of two procedures it was held would not vitiate one of them that is the special procedure.

85. In the circumstances, if there are two procedures for eviction of unauthorized occupants of Panchayat lands under the VCL Act 1961 and the Haryana Common Purposes Land Eviction and Rent Recovery Act, 1985 which makes the provisions of the Haryana Public Premises and Land (Eviction and Rent Recovery) Act, 1972 applicable, the same would not be illegal or improper.

86. The contention of Mr. Ashok Singla, learned Counsel for the State and Mr. Ashish Aggarwal, learned Senior Advocate for the Municipal Corporation, Faridabad, is that in view of clause (6) and its "Explanation" to Section 2 (g) of the VCL Act 1961 means that the lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" would fall within the definition of "shamlat deh" and "shamlat deh" lands would in view of Section 4 of the VCL Act 1961 vest in the Gram Panchayat. Therefore, according to them in view of the "shamlat deh" land vesting in the Panchayat which was for agrarian reforms, the proprietors would have no interest whatsoever as the vesting of the "shamlat deh" lands in the Panchayats was complete and without fetters. Consequently, their inclusion in municipalities would not confer any rights whatsoever on the alleged proprietors.

87. It is to be noticed that during consolidation operations and proceedings, lands of proprietors in villages and revenue estates were taken for common purposes by imposing a pro rata cut of their holdings. This task was undertaken by preparing a Consolidation Scheme in terms of the Consolidation Act 1948 and the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (as applicable to Haryana) ("Consolidation Rules 1949" - for short). This land for common purposes in terms of Rule 16 (ii) was recorded in the revenue records as; "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" (all the owners and other right holders in proportion to their areas) came to vest in the Gram Panchayat as "shamlat deh". The object and purpose of carrying out consolidation operations was that in the erstwhile Punjab State which then included the State of Haryana a need was felt for consolidating the agriculture land holdings of the proprietors of land so as to prevent its fragmentation and manage the same in a better manner; besides, utilize it in an effective manner to increase productivity and yield of crops for the development of the villages and their inhabitants.

88. The Punjab Consolidation of Holdings Act, 1936 was initially passed. This

after the partition of the country was found to be a defective legislation as it did not give sufficient powers to the Government to undertake compulsory consolidation of holdings. Besides, there was no provision in it to avoid fragmentation of holdings due to partition between co-sharers and other causes. The need to consolidate land holdings and prevent fragmentation of land was felt more after partition of the country in 1947. The Consolidation Act 1948 was enacted with this avowed object. It was designed to consolidate land holdings in villages compulsorily and to avoid their fragmentation. The preamble of the Act provided for consolidation of agricultural holdings and preventing the fragmentation of agricultural holdings. The legislative intent was to develop agricultural land and optimize agriculture produce from such lands by consolidating the holdings of a proprietor of land in the village and prevent its fragmentation. In other words in case a proprietor had various chunks of land, then for its better management, cultivation and irrigation; compulsory consolidation of his land holdings was to be conducted, which would augment his agriculture produce. Therefore, the object was to provide a compact area of land to a landowner instead of having scattered chunks of land; besides, avoid fragmentation.

89. In the consolidation process, it was also felt that certain lands needed to be kept for "common purposes" in every village which land was to be given to the village Panchayats or the Gram Panchayats for its management and control. This land for "common purposes" reserved in consolidation proceedings was/is independent of the "shamlat deh" lands, which the proprietors had carved out or the settlements had provided for, as noticed above. In the Consolidation Act 1948; "common purpose" (before its amendment) was defined in terms of Section 2 (bb) to mean "any purpose in relation to any common need, convenience or benefit of the village".

90. The said definition of "common purposes", i.e. "any purpose in relation to any common need, convenience or benefit of the village", as it was before its amendment by Punjab Act 22 of 1954, Punjab Act 27 of 1960 and Punjab Act 39 of 1963 was invalidated by a Five Judge Bench of this Court in the case of *Munsha Singh v. State of Punjab*, AIR 1960 Punjab 317. The controversy in the said case centered around the question whether in exercise of powers under Section 18 (c) of the Consolidation Act 1948, the lands of the proprietors could be reserved for purposes indicated in the written statement and whether the giving of control to the Gram Panchayat over the areas in question infringed any fundamental right of the right holders. In the written statement it was submitted by the respondent-State that the village was taken up for fresh consolidation operations in the interest of development work in the light of new socio-economic conditions released by Independence and Constitution of India. The details of the reservations made during the course of publication of the draft scheme under Section 18 (c) provided for village roads including circular road, road under development scheme with 12 "karams" width (one "karam" is equivalent to roughly 57 feet in most parts of the State), water tanks, "hadda rori" (a place

where skeletons of dead animals are collected for further disposal), latrines, primary schools and play ground for children, fuel plantation, cattle ground, cremation ground for members of the Scheduled Castes and others, graveyard, grazing ground for cattle, area given to civil panchayat and area for extension of "abadi" (habitation) given to the non-proprietors. The subject of attack in the said case was the area given to the civil panchayat and the area for extension of "abadi" given to the non-proprietors.

91. The Full Bench in Munsha Singh's case (supra) held that the individual proprietors of the land were not left even with a single right which may be included among the attributes of ownership. The person who had been hitherto a proprietor was stripped of almost every vestige of ownership which makes the property owned valuable to him in several ways. The right merely to figure in the column of ownership in the revenue records was not even an empty husk of ownership or a nuda proprietas. They did not have the powers to enjoy the property. In substance, it was said that this was a case of total expropriation of the right-holders. Rule 16 (ii) of the Consolidation Rules 1949, it was said, would still be liable to be struck down, on the ground that these were ultra vires, being in excess of the rule-making powers conferred by Section 46 of the Consolidation Act 1948.

92. After Munsha Singh's case (supra), "common purpose" which was defined in terms of Section 2 (bb) of the Consolidation Act 1948 to mean, "any purpose in relation to any common need convenience or benefit of the village" was amended by the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment and Validation) Act, 1960 (Act No.27 of 1960) to include various purposes as mentioned therein. The said Clause (bb) of Section 2 of the Consolidation Act 1948 after amendment by said Act No.27 of 1960 as also Act No.39 of 1963 defines "common purpose" in the following manner:-

"[4][2 (bb) "common purpose" means any purpose in relation to any common need, convenience or benefit of the Village][5][[6]includes the following purposes:-

[4] Inserted by Punjab Act 22 of 1954. The clause shall be deemed always to have been inserted.

[5] Added and deemed always to have been so added by Punjab Act 27 of 1960.

[6] The word "and" omitted by Punjab Act 39 of 1963.

(i) extension of the village abadi;

(ii) providing income for the Panchayat of the village concerned for the benefit of the village community];

[7][(iii) village roads and paths; village drains, village wells, ponds or tanks; village watercourses or water channels; village bus stands and waiting places; manure pits; hadda rori; public latrines; cremation and burial grounds;

Panchayat Ghar; Janj Ghar, grazing grounds; tanning places; mela grounds; public places of religious or charitable nature; and (iv) schools and play-grounds, dispensaries, hospitals and institutions of like nature; water works or tube-wells whether such schools, playgrounds, dispensaries, hospitals, institutions, water-works or tube-wells may be managed and controlled by the State Government or not.]"

[7] Added and shall be deemed always to have been so added by Punjab Act 39 of 1963.

93. With the amended definition of "common purposes" the defects pointed out in Munsha Singh's case (supra) were corrected. The amendments that were carried out were upheld by a Full Bench of this Court in Kishan Singh and another v. State of Punjab, AIR 1961 Punjab 1. In the said case, a scheme for consolidation of holdings in village Bhoot in District Jalandhar was prepared. Out of the consolidated pool of proprietary land, 20 acres of land was allotted to the Gram Panchayat for common purposes of the village. No compensation was, however, paid to the proprietors for this land. A contention was raised on behalf of the land owners who were proprietors of land in the village that the deprivation of the use and management of these 20 acres was an infringement of their fundamental rights. The substance of the contention made on behalf of the petitioner was that they had been deprived of their property in a manner not permitted by the Constitution. On behalf of the State, it was contended that Article 31A of the Constitution saves the amendments to the Consolidation Act 1948 and, therefore, the handing over of 20 acres of land to the Gram Panchayat under the impugned Act was perfectly legal.

94. In Kishan Singh's case (supra) the vires of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (Second Amendment Validation) Act, 1960 (Act No. 27 of 1960) was in issue. The said Act was enacted in consequence of the Full Bench decision in Munsha Singh's case (supra). It was observed by the Full Bench in Kishan Singh's case (supra) that under Section 18 of the Consolidation Act 1948 some land of the common pool could be reserved for common purposes. In the Consolidation Act 1948, as originally framed, "common purposes" was not defined but clause (bb) to Section 2 was added by Act 22 of 1954. It was noticed that "common purpose" was defined as "any purpose in relation to any common need, convenience or benefit of the village". Earlier, by means of Punjab Act 1 of 1954, provision was made for vesting certain rights in Panchayats and in non-proprietors. A reference was made to the provisions of Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 which provided that all rights, title and interests included in "shamlat deh" of any village would vest in the Panchayat having jurisdiction over the village, and that portion of the area in the "abadi deh" which was under the house owned by a non-proprietor would vest in that non-proprietor. Rule 16 (ii) of the Consolidation Rules 1949 was also referred to. It was observed that the result of all this legislation was that whenever consolidation of holdings took place in a

village and a scheme was under preparation, the question of reserving certain area for common use of the village was considered. It was frequently considered necessary to add to the already existing "shamlat" land and hand it over for management to the village Panchayat. The Full Bench held that the act of handing over the management and possession of the land of the proprietors to the village Panchayat amounts to acquisition by the State. The transfer of rights to Panchayat, it was held, could also be considered as modification of the proprietary rights, and such modification is also permitted by Article 31A of the Constitution.

95. A reference was also made to the decision of the Supreme Court in *Atma Ram v. State of Punjab*, AIR 1959 SC 519, wherein the constitutionality of the Punjab Security of Land Tenures Act, 1953 was considered, which was said to be valid. It was observed that after the said decision the Supreme Court held the Punjab Village Common Lands (Regulation) Act, 1953 also to be intra vires, and once the same was held to be valid, all objections against the impugned Act, i.e. Act No.27 of 1960, amending the Consolidation Act 1948 would disappear because the impugned Act did no more than the Punjab Village Common Lands (Regulation) Act, 1953. By Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953, "shamlat deh" lands vest in the village Panchayat. "Shamlat deh" is the property of the village proprietors and its vesting in the Panchayat deprived the proprietors of their proprietary rights. The Punjab Village Common Lands (Regulation) Act, 1953 made no provision for the payment of compensation to the proprietors. All that the impugned Punjab Village Common Lands (Regulation) Act, 1953 did was that it provided authority for adding to or taking away from the already existing "shamlat deh" lands, and this could clearly be done. Therefore, it was held that Act 27 of 1960 was saved by the provisions of Article 31A of the Constitution.

96. Thereafter, the matter was again referred to a Five Judge Bench of this Court in the case of *Jagat Singh and others v. State of Punjab*, 1962 PLR 241 : AIR 1962 Punjab 221. In the said case, 20 acres of land owned by private individuals was kept aside to provide income for the Gram Panchayat. This act of the Consolidation Authorities of keeping aside land owned by private individuals to provide income for the Gram Panchayat was challenged on the ground that the law which authorised the transfer of proprietary rights to the Gram Panchayat for the purpose of providing income to them was ultra vires Article 31 of the Constitution. The question that arose for consideration was whether it was permissible to keep aside land owned by private individuals for providing income to the Gram Panchayat. The contention raised by the State was that the law was saved by the provisions of Article 31A (1) (a) of the Constitution inasmuch as the act of keeping aside land providing for income of the Gram Panchayat was nothing more than acquisition by the State of an estate and such acquisition was not hit by the provisions of Article 31 and the law under which this could be done need not make a provision for the calculation or the award of compensation in respect of the land acquired.

97. The petitioners in the said case contended that acquisition by the State of an estate was only justified if the aim and object of the acquisition was agrarian reforms. It was argued that keeping aside of these 20 acres did not amount to acquisition, but amounted to modification of the rights in this property because the land had been transferred from the owners to the Gram Panchayat and any modification of proprietary rights must have for its aim agrarian reform or the removal of intermediaries. It was further contended on behalf of the petitioners that in Kishan Singh's case (supra), the decision of the Supreme Court in Kavalappara Kottarathil Kochuni alias Moopil Nayar v. The State of Madras and Kerala, AIR 1960 SC 1080, which was contrary to the Full Bench decision in Kishan Singh's case (supra) had not been cited before the Full Bench. The Supreme Court by a majority decision in Kochuni's case (supra) held that the Madras Marumakkathayam (Removal of Doubts) Act, 1955 which deprived a sthanee of his properties and vested them in the tarwad contravened Article 19 (1) (f) and was not saved by Article 31A and that Article 31A saved laws for agrarian reforms only and did not enable the State to divest a proprietor of his estate and vested in another without reference to any agrarian reforms.

98. A Five Judge Bench of this Court in Jagat Singh's case (supra) held that the Consolidation Act 1948 was a measure designed to promote agrarian reforms and was, therefore, not ultra vires the Constitution. Hon'ble Mr. Justice Grover agreed that the impugned Act was valid as its object generally was to bring about a change in the village and agricultural economy, rendering it immune from attack by virtue of Article 31A (1) (a) of the Constitution. But, on a true and correct appraisal of the observations made and the decision given in the majority judgment by the Supreme Court in Kochuni's case (supra), it was found difficult to subscribe to the view that the legislation enacted to acquire an "estate," would be protected by that Article even if its object and purpose was completely divorced from what may be called agrarian or land reform. To do so would mean following the view laid down in the minority judgment in preference to the decision of the majority, which could not be done.

99. In Jit Singh v. State of Punjab, AIR 1964 Punjab 419, a Full Bench of this Court considered the effect of adding the sub clauses (iii) and (iv) to Section 2 (bb) Consolidation Act 1948 relating to the definition of "common purpose". These were added by Act No.39 of 1963. Sub-clauses (iii) and (iv) of Section 2 (bb) of the Consolidation Act 1948 enlarged the definition of "common purposes" so as to include other common purposes as well. In terms of sub-clause (iii) a reference was made to village roads and paths; village drains, village wells, ponds and tanks; village water courses or water channel; village bus stand and waiting places; manure pits; "hadda rori" (a place where skeletons of dead animals are collected for further disposal); public latrines; cremation and burial grounds; Panchayat ghar; Janj ghar, grazing grounds; tanning places; mela grounds; public places of religious or charitable nature. Sub-clause (iv) refers to schools and playgrounds, dispensaries, hospitals and institutions of like nature, water-works or tube-wells; whether such schools, playgrounds, dispensaries,

hospitals, institutions, water works or tube-wells may be managed and controlled by the State Government or not. It was held that reservation for common purposes enumerated in clauses (iii) and (iv) of Section 2 (bb) was valid. Amending Act 39 of 1963, it was held, was covered by Article 31A (1) (a) of the Constitution. A reservation for income of Gram Panchayat and for other purposes was also held to be valid.

100. It was inter alia contended on behalf of the landowners in Jit Singh's case (supra) that Section 18 (c) of the Consolidation Act 1948 conferred uncontrolled and arbitrary powers on the consolidation authorities to reserve any area for common purpose and to invent new heads for all common purpose. It was, however, held that there could be no doubt that if land is reserved in any consolidation scheme was not in conformity with the provisions of the Consolidation Act 1948 and the rules but in violation of them, that scheme will certainly be open to challenge; but so long as the land had been reserved in accordance with the aforesaid provisions, the landowners had no right to claim any compensation even if they were deprived of some portion of their holding.

101. The decision of the Five Judge Bench of this Court in Jagat Singh's case (supra) was considered by a Five Judge Bench of the Supreme Court in Ranjit Singh v. State of Punjab, AIR 1965 SC 632. In the said case, during consolidation proceedings, portions of lands from those commonly owned by the appellants in the said case as proprietors had been reserved for the village Panchayat and given over to it for diverse purposes, and other portions had been reserved either for non-proprietors or for common purposes of the villages. Land measuring 270 kanals 13 marlas in village Virk Kalan was given to the village Panchayat for management and realization of income, although the ownership was still shown in the village papers as "shamlat deh" in the names of the proprietors and 10 kanals 3 marlas had been reserved for "abadi" (habitation area in the village) to be distributed amongst persons entitled thereto and 3 kanals and 7 marlas had been reserved for manure pits. Similarly, in village Sewana 400 kanals and 4 marlas had been set apart for the village Panchayat for extension of the "abadi", to enable grants of 8 marlas of land to be made to each family of non-proprietors, 16 kanals had been reserved for primary school and some more for a "phirni" (a village circular road). Similar lands in other villages had also been kept for various common purposes.

102. The proprietors were not paid compensation for the land that was reserved for the aforementioned purposes in Ranjit Singh's case (supra). It was the taking away and allotment of these lands which was subject of challenge in the appeals. The challenge in the said case was to the East Punjab Holdings (Consolidation and Prevention of Fragmentation) (2nd Amendment and Validation) Act, 1960 (Act No.27 of 1960). In terms of the said amendment, as already noticed, the definition of "common purpose" in Section 2 (bb) of the Consolidation Act 1948 was amended so as to include the following purposes: (i) extension of the village abadi; (ii) providing income for the Panchayat of the village concerned for the

benefit of the village community. It was noticed that the amendment had been made to give little cover to Rule 16 (ii) of the Consolidation Rules 1949 after it had been declared ultra vires in Munsha Singh's case (supra).

103. The appellants before the Supreme Court in Ranjit Singh's case (supra) had filed a writ petition in this Court contending that the distribution of "shamlat" lands was illegal and such lands, if they had to be redistributed, could only be distributed amongst the proprietors but could not be given to non-proprietors. The writ petition was dismissed by this Court on the authority of Jagat Singh v. State of Punjab (supra). The correctness of decision in Jagat Singh's case and the validity of the Amending Act No.27 of 1960 i.e. 2nd Amendment and Validation Act, was in issue as it was contended that these were in breach of Articles 19 (1) (f) and 31 of the Constitution. Besides, Rules 16 (i) and (ii) of the Consolidation Rules 1949 were also challenged. Further challenge was to the VCL Act 1961, which was part of the entire scheme. This Court in Jagat Singh's case (supra) held that Act No.27 of 1960, i.e. 2nd Amendment and Validation Act, gave retrospective validity to Rules 16 (i) and (ii) of the Consolidation Rules 1949 and the position which existed when Munsha Singh's case (supra) was decided did not obtain then. It was also noticed that this Court had also decided that the said Act No.27 of 1960, i.e. 2nd Amendment and Validation Act, was saved by Article 31A and the case of the Supreme Court in K.K. Kochuni v. State of Madras (AIR 1960 SC 1080), which interpreted Article 31A as amended by the Constitution (Fourth Amendment) Act, 1955 was not applicable.

104. The Supreme Court held that this Court was right in following Jagat Singh v. State of Punjab (supra) and in rejecting the contentions of the proprietors. It was held that the transfer of "shamlat deh" owned by the proprietors to the village Panchayat for the purposes of management and conferral of proprietary rights on the non-proprietors in respect of land in "abadi deh" was legal and the several provisions of law allowing this to be done were intra vires Article 31 of the Constitution of India and the law and the action taken were protected by Article 31A as it stood before the Amendment by the Constitution (Seventeenth Amendment) Act, 1964. The consolidation of holdings, it was observed, was really nothing more than a proper planning of rural areas and this planning must of necessity take note of the vacant and waste land. The provisions for the assignment of lands to the village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enuring for the benefit of rural population, it was held, must be considered to be essential part of the redistribution of holdings and open lands. The same reasoning was applied to "abadi deh" lands.

105. As regards Jagat Singh's case (supra), the Supreme Court observed that a Five Judge Bench of this Court had agreed that the impugned provisions did come within the concept of agrarian reforms but conflicting views were expressed regarding the ambit of Article 31A as expounded in Kochuni's case (AIR 1960 SC 1080) (supra).

106. The appeals were heard and closed for judgment before the Supreme Court in Ranjit Singh's case on 27.04.1964. The Court went into vacation at the end of first week of May. The judgment had to be postponed till after the vacations. The Court re-assembled on 20.07.1964 but in the meanwhile on 20.06.1964 the Constitution (Seventeenth Amendment) Act, 1964, received the assent of the President. However, the effect of the same was not gone into as counsel appearing for the parties wished to argue the appeals on the premise that the amended provisions had no bearing and they wanted the Court to decide the appeals without reference to the said Constitutional amendment i.e. the Constitution (Seventeenth Amendment) Act, 1964. Their Lordships of the Supreme Court observed that they could not refer to sub clause (a) of clause (2) of Article 31A as it was formerly, because that sub clause must be deemed to have never existed. Their Lordships expressed their unhappy position of not being able to express any opinion on Article 31A as it must be deemed to have been all the time. It seemed that the implications of the amendments of the Constitution would have to be worked out in some other case. Therefore, the effect of the amendment brought about by the Constitution (Seventeenth Amendment) Act, 1964 was not gone into and the decision in Jagat Singh's case (supra) of this Court was considered and upheld on the basis of Article 31A as it stood before the Constitution (Seventeenth Amendment) Act, 1964.

107. The Constitution (Seventeenth Amendment) Act, 1964, which received the President's assent on 20.6.1964 inter alia added a proviso after the existing proviso to Article 31A (1) of the Constitution which is to the following effect:-

"Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

108. The above amendment of the Constitution provides for acquisition of land within the ceiling limit of a person only by law which provides for payment of compensation, which shall not be less than the market value thereof. Therefore, it was provided that it would not be lawful for the State to acquire any portion of land of a proprietor for the purposes of agrarian reforms as is within his ceiling limit applicable to him under any law for the time being in force unless the law relating to the acquisition of such land, building or structure; provides for payment of compensation at a rate which shall not be less than the market value thereof. Therefore, if land in the personal cultivation of a landowner within the ceiling limit applicable to him is to be acquired for agrarian reforms, then the same can be acquired only by law that provides for payment of compensation at a rate which shall not be less than the market value thereof.

109. The effect of the Constitution (Seventeenth Amendment) Act, 1964 was considered by a Division Bench of this Court in *Ajit Singh v. State of Punjab*, ILR 1966 (1) ILR (P&H) 828. One of the issues in the said case was based on the Constitution (Seventeenth Amendment) Act, 1964. It was argued on behalf of the petitioner in the said case that as he was a small land holder within the meaning of the Punjab Security of Land Tenures Act, 1953; therefore, no part of his holding could be acquired without payment of compensation at the market value. It was common ground that the land which had been acquired by the State and the acquisition was stated to be hit by the aforesaid Constitutional amendment, was the land which had been given to the local Panchayat for common purposes.

110. This Court held that the property, though vesting in the Panchayat, or the State Government, as the case may be, had been reserved for common purposes in which the entire village community including the original holder was/is interested as equal sharer and is entitled to secure the benefit thereof in common with all the cobeneficiaries. The State Government or the Panchayat, it was held, were merely empowered to manage and appropriate the income accruing from the property for the benefit of the village community, including the original holder, and for no other purpose. It was only the right to transfer or to the exclusive use or appropriation of which the original holder had been deprived. The benefits of the use of the land reserved for common purposes were assured to the original holder in common with all other members of the community. Whether this could be considered to be acquisition as distinguished from requisitioning was a question which did not seem to be capable of an easy answer. However, keeping in view the general scheme and purpose of the Consolidation Act 1948, the scales did seem to prima facie to be somewhat inclined in favour of the view that the statutory vesting of the property in the State Government or the Panchayat, as the case may be, under the Consolidation Act 1948 when it was reserved for common purposes was perhaps not intended to amount to acquisition within the contemplation of the second proviso added to Article 31A by the Constitution (Seventeenth Amendment) Act, 1964. However, no considered opinion on this somewhat difficult and vexed point was expressed leaving it to be settled in a more appropriate case.

111. The judgment of the Division Bench of this Court in *Ajit Singh's* case (supra) was considered by a Five Judge Bench of the Hon'ble Supreme Court in *Ajit Singh v. State of Punjab*, AIR 1967 SC 856. In terms of the consolidation scheme under the Consolidation Act 1948 of the village, some further area was reserved for common purposes after applying a cut upon the right holders on pro rata basis. There was 89 bighas 18 biswas and 18 biswanis of "pukhta" land with the Gram Panchayat prior to consolidation proceedings but under the consolidation an additional 123 kanals and 14 marlas were taken from the common pool and were given to the Panchayat and a pro rata cut was applied to the land of all the landholders. The appellant contended that he was a small land holder and his land had also been taken without payment of compensation as

required under Article 31A (1) second proviso, therefore, the acquisition was illegal and confiscatory.

112. It was held by the majority judgment in Ajit Singh's case (supra) that Article 31A (1) (a) of the Constitution mentioned four categories, that is; first, acquisition by the State of an estate; second, acquisition by the State of rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories were mentioned separately and were different. In the first two categories, it was observed that the State "acquires" either an estate or rights in an estate. In other words, there was transference of an estate or the rights in an estate to the State. When there was transference of an estate to the State, it could be said that all the rights of the holder of the estate had been extinguished. But if the result in the case of the extinguishment was the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner had been modified since one of the rights of the owner had been acquired. There was this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights", on the other. In the first case, the beneficiary was the State while in the latter case the beneficiary of the modification or the extinguishment was not the State. As an example, it was stated that suppose the State was the landlord of an estate and there was a lease of that property, and law provided for the extinguishment of leases held in estate. In one sense, it would be an extinguishment of rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment could be the State.

113. In the context of the second proviso to Article 31A, it was noticed that only one category was mentioned in the proviso, the category being "acquisition by the State of an estate". It meant that the law must make a provision for the acquisition by the State of an estate. But as to what was the true meaning of the expression "acquisition by the State of an estate" it was held that in the context of Article 31A the said expression in the second proviso to Article 31A (1) must have the same meaning as it had in Clause (1) (a) to Article 31A. It was contended before the Hon'ble Supreme Court on behalf of the respondent therein that the expression "acquisition by the State of an estate" in Article 31A (1) (a) had the same meaning as it had in Article 31 (2-A). In other words, the expression "acquisition by the State of an estate" meant the transfer of ownership or right to possession of an estate to the State.

114. A reference was made to earlier judgments of the Supreme Court. It was observed that the Supreme Court had given a wide meaning to the word "acquisition". In Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd., AIR 1954 SC 119, it was observed that:-

"The word "acquisition" has quite a wide concept, meaning the procuring of

property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of."

115. It was further observed:-

"I prefer to follow the view of the majority of the Court, because it seems to mean that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect."

116. It was further noticed that:-

"In my opinion, the possession and acquisition referred to in clause (2) mean the sort of "possession" and "acquisition" that amounts to "deprivation" within the meaning of clause (1). No hard and fast rule could be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that we must seek."

117. The other part of the second proviso was considered as to whether it threw any light on this question. It was noticed that it referred to ceiling limits. It was observed that it was well known that under various laws dealing with land reforms, no person apart from certain exceptions could hold land beyond a ceiling fixed under the law. Secondly, the proviso said that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seemed to be that a person who was cultivating land personally, which was his source of livelihood, should not be deprived of that land under any law protected by Article 31A unless at least compensation at the market rate was given. In various States, it was observed that most of the persons had already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seemed that in the light of all the considerations mentioned the words, "acquisition by the State" in the second proviso did not have a technical meaning. If the State had in substance acquired all rights in the land for its own purposes, even if the title remained with the owner, it could not be said that it was not acquisition within the second proviso to Article 31A.

118. Rule 16 (ii) of the Consolidation Rules 1949 was noticed, which provides that in an estate or estates where during consolidation proceedings there is no "shamlat deh" land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under Section 18 (c) of the Consolidation Act 1948, out of the common pool of the village at a scale prescribed by the Government from time to time. Proprietary rights in respect of

the land so reserved (except the area reserved for the extension of "abadi" of proprietors and non-proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba". The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned.

119. The said Rule 16 (ii) of the Consolidation Rules 1949, it was noticed, was that the title still vests in the proprietary body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words, it was observed that a fraction of each proprietor's land had been taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate. The proprietors naturally would also share in the benefits along with others.

120. A reference was made to the case of Attar Singh v. State of U.P., AIR 1959 SC 564. It was noticed that the Supreme Court in respect of a similar proviso in a similar Act, namely, the U.P. Consolidation of Holdings Act (U.P. Act V of 1954) as amended by U.P. Act XVI of 1957 observed as under:-

"Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of lands are collected from various tenure-holders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of Section 14 (1) (ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under Rule 41 (a) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4) threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) Panchayat ghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land."

121. In other words, it was observed that a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, "khal" (water course) etc., he would not have been able to have them on the fraction of his land reserved for common purposes. It was further considered as to whether such taking away of property then amount to acquisition by the State of any land and who was the real beneficiary and was it the Panchayat? It was held to be clear that the title remained in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to

their areas" (emphasis added). The Panchayat would manage it on behalf of the proprietors and use it for common purposes; it could not use it for any other purpose. The proprietors enjoyed the benefits derived from the use of land for common purposes. It was true that the non-proprietors also derived benefit but their satisfaction and advancement enured in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such did not enjoy any benefit. On the facts of the said case it seemed to their Lordships that the beneficiary of the modification of rights was not the State, and therefore there was no acquisition by the State within the second proviso to Article 31A (1) of the Constitution.

122. In the context of the second proviso to Article 31A (1) of the Constitution which was trying to preserve the rights of a person holding land under his cultivation, it was observed that it was impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of the village economy was regarded something to be compensated for in cash.

123. The fourth point, i.e. the acquisition meant the entire process terminating with possession and extinction of the title of the individual was not dealt with, because it did not matter whether the acquisition was complete or not, as even if it was held that the acquisition was not complete and it had to be completed, the second proviso to Article 31A (1) would not prevent the State from proceeding with the acquisition.

124. The question whether the appellant in the said case i.e. in Ajit Singh's case (supra) before the Supreme Court, who was a small land holder holding land within ceiling and had lost some of it, was entitled to compensation at the market rate as required by the second proviso to the Article 31A as incorporated in the Constitution, was also considered in the minority view in Ajit Singh's case (supra). It was observed as follows:-

"Therefore, when the State acquires almost the entire bundle of rights, it is acquisition within the second proviso and compensation at market rates must be given. It is not at all difficult to determine this compensation. The total land of the holder must be assessed at market value and the value of the diminution of the area determined proportionately. The appellant is thus entitled to compensation and he cannot be deprived of land within his ceiling without payment of compensation calculated in the manner indicated. It is admitted that his land has been reduced to something less than the ceiling applicable to him.

It is contended that what is acquired is a small bit from each landholder and that is not of much significance. We do not know what rule is in contemplation. If it is the de minimis rule, we can only say that it would be a most unsatisfactory mode of avoidance of the constitutional provision. What is a small bit is a very vague and uncertain expression. The safe rule is that the Constitution means what it says, that is, land within the ceiling is not to be touched unless compensation at

market rate is given. We would, therefore, reject the plea that we should ignore these small bits of land especially as they will be used for the general good and will confer some benefit also upon those who will lose them."

125. Therefore, it is to be noticed that the majority view of the Hon''ble Supreme Court in Ajit Singh's case (supra) held that even though the proprietors were deprived of land which is used for common purposes of the village, the beneficiaries ultimately were the proprietors and for this no compensation was payable to them. Besides, in terms of Rule 16 (ii) of the Consolidation Rules 1949, the land reserved for the village panchayat and for other common purposes under Section 18 (c) of the Consolidation Act 1948 out of common pool of the village was to vest in the proprietary body of the estate and recorded in the column of ownership of record of rights/ Jamabandi as "Jumla Malkan Wa Digar Haqdarar Hasab Rasad Raqba" i.e. belonging to all the owners and other right holders in proportion to their areas or holdings in the village.

126. The "Jumla Mushtarka Malkan" lands, therefore, can be used for "common purposes" as defined in Section 2 (bb) of the Consolidation Act 1948. The beneficiary of such land is not only the original owner but also other non proprietors but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of the more efficient agricultural community. The beneficiary of the modification of the rights is not the State and, therefore, there is no acquisition by the State within the second proviso to Article 31A of the Constitution. Besides, it was made clear that the title of the land taken in a consolidation scheme for common purposes remained in the proprietary body and in the revenue records the land is to be shown as belonging to "all the owners and other right holders in proportion to their areas". The Panchayat is only to manage it on behalf of the proprietors and use it for "common purposes", which would mean "common purposes" as defined in Section 2 (bb) of the Consolidation Act 1948. The proprietors enjoyed the benefits derived from the use of land for "common purposes".

127. In the circumstances, in respect of lands carved out of consolidation proceedings by imposing a pro rata cut for common purposes, the management and control vests in the Panchayat and the village proprietary body continues to retain its title to the same. This is the mandate of the Five Judge Bench of the Hon''ble Supreme Court in Ajit Singh's case (supra).

128. On the day that the judgment in Ajit Singh's case (supra) was pronounced by the Supreme Court i.e. on 02.12.1996, another judgment of the same Five Judge Bench was pronounced on the same day in the case of Bhagat Ram and others v. State of Punjab and others, AIR 1967 SC 927. In the said case the question that was considered was whether a consolidation scheme insofar as it makes reservations of land for income of the Panchayat was hit by second proviso to Article 31A. The consolidation scheme reserved lands for a "phirni" (a circular road going around the village "abadi", i.e. dwellings), paths, agriculture paths, manure pits, cremation grounds etc. Besides, the scheme also reserved

an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. The majority view in Ajit Singh's case (supra) held that the acquisition of land for common purposes such as "phirnis", paths etc. was not acquisition by the State within the second proviso to Article 31A. But this did not dispose of the question whether the reservation of the land for income of the Panchayat was acquisition of land by the State within the second provision to Article 31A. In respect of income of the Panchayat, it was said that the beneficiary was the Panchayat which fell within the definition of the word "State" under Article 12 of the Constitution. The income derived by the Panchayat was in no way different from its any other income. Section 2 (bb) of the Consolidation Act 1948, it was noticed, defined "common purpose" to include the following purpose:-

".....providing income for the Panchayat of the village concerned for the benefit of the village community".

129. It was said that the income could only be used for the benefit of the village community. But so was any other income of the Panchayat of a village to be used. It was held that:-

"The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

130. The majority view, therefore, in Bhagat Ram's case (supra) held that providing of income for the Panchayat was not "common purpose". In the circumstances, the Five Judge Full Bench decision of this Court in Jagat Singh's case (supra) cannot be said to be laying down the correct law.

131. It may, however, be clarified that the use of income of the Panchayat for common purposes being invalidated and holding it to defeat the whole object of the second proviso relates to the lands carved out in consolidation proceedings by imposing a pro rata cut of the holdings of the proprietor and the said land recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad", "Jumla Malkan" or "Mushtarka Malkan". The income for common purposes in respect of "shamlat deh" lands, however, is not invalidated. This is for the reasons that the "shamlat deh" lands vest completely in the Panchayat for all purposes, whereas the management and control only of the land carved out for common purposes in consolidation proceedings, which is recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad" etc. This is also evident from the fact that the Supreme Court said that the Consolidation Officer could easily defeat the object of the second proviso to Article 31A by reserving for the income of the Panchayat a major portion of the

land belonging to a person holding land within the ceiling limit.

132. Therefore, the use of income for common purposes being invalidated is confined only to land kept for "common purposes" in consolidation proceedings under the Consolidation Act 1948 and not for income of the Panchayat from the "shamlat deh" lands for which provisions have also been made in Rule 14 of the VCL Rules 1964.

133. In *Johri Mal v. Director of Consolidation of Holdings, Punjab* and another, AIR 1967 SC 1568, the matter regarding reservation of land for common purposes by a consolidation scheme under the Consolidation Act 1948 was considered. In the said case one of the contentions that was raised was that Section 18 (c) of the Consolidation Act 1948 requires that before a Consolidation Officer directs reservations of any land for the village abadi, no land should have been reserved for common purposes in the area under consolidation or the lands so reserved should have been inadequate. Section 18 (c) is to the effect that if in any area under consolidation, no land is reserved for any common purpose including extension of the village abadi or if the land so reserved is inadequate, to assign other land for such purpose. It was held that Section 18 (c) confers a power on the Consolidation Officer to reserve the land of proprietors for any common purpose including the extension of village abadi and there is no express limitation in the language of the Section to the effect that the land to be taken from the proprietors and other right holders should be according to the rateable share. But the language of Section 18 (c) should, however, be interpreted in a reasonable manner. The legislature could not have intended that the land should be taken from one proprietor only for common purpose. The intention must be that all proprietors should contribute rateably for such purposes. This intention, it was said, is brought out by Rule 16 (ii) and this is what Section 18 (c) must be held to mean. A reference was made to the Five Judge Bench judgment of the Supreme Court in *Ajit Singh's case* (supra) wherein the question at issue, it was observed, was whether reservation of land for common purposes in terms of Section 18 (c) of the Consolidation Act 1948 amounted to "acquisition by the State of any estate or rights therein" within the contemplation of the second proviso to Article 31A (1) of the Constitution, and if so, whether compensation should be paid to the proprietors for the land reserved in the scheme for various purposes in accordance with the second proviso to Article 31A (1) inserted by the Seventeenth Amendment of the Constitution. It was observed that it was held by the majority judgment that Section 18 (c) must be construed reasonably and that only a fraction of each proprietor's land was taken and formed into a common pool, so that the whole may be used for the common needs and benefits of the village. It was pointed out that title will vest in the proprietary body and the management of the land was done by the Panchayat of the estate on behalf of the proprietary body and the land was used for common needs and the benefits of the estate concerned. It was, therefore, held that Rule 16 (ii) only provides for adjustment of the rights of persons holding land so reserved in the interest of village economy and there was no "acquisition of land" within the

meaning of the second proviso to Article 31A (1) of the Constitution of India and there was no question of paying compensation in cash to the proprietors for such adjustment of right. It was further held that it is manifest that Section 18 (c) must be read in a restricted sense and the authority of the Consolidation Officer to reserve land for common purpose under Section 18 (c) must be restricted in the manner as had been indicated and it must be held that the Consolidation Officer has power under the Section to take the land out of the common pool of the village only according the rateable share from the proprietors and other right holders for any common purpose including the extension of the village abadi.

134. It is, therefore, quite apparent that lands of the proprietors of the village were deducted by applying a pro rata cut for common purposes in accordance with the consolidation scheme that is prepared. The land kept for common purposes is recorded in the revenue record as; "Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba" (all the owners and other right holders in proportion to their areas) in accordance with Rule 16 (ii) of the Consolidation Rules 1949. The land which is kept for common purposes in a consolidation scheme is for use by the villagers for common needs as envisaged by Section 2 (bb) of the Consolidation Act 1948. The common purposes for which such land can be used is to be confined to those as defined in Section 2 (bb) of the Consolidation Act 1948 and not any other, unless these are incorporated therein. This is the intent of the judgment of the Five Judge Bench Judgment of the Supreme Court in Bhagat Ram's case (supra) wherein land reserved for "providing income from the Panchayat of the village concerned for the benefit of the village community" was held would defeat the object of second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Besides, it is to be noted that the management and control only vests in the Panchayat in respect of lands earmarked for common purposes in a consolidation scheme. The proprietary rights and ownership vest in the proprietary body of the village.

135. The Consolidation proceedings are initiated in terms of Section 14 (1) of the Consolidation Act 1948, which provides that the Government may of its own accord, or an application, declare its intention to make a Scheme of Consolidation of Holdings "for the purpose of better cultivation of lands therein." Section 18 of the Consolidation Act 1948 provides for reservation of land for common purposes. The same reads as under:-

"18. Lands reserved for common purposes:-

Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation officer to direct-

(a) that any land specifically assigned for any common purpose shall cease to be so assigned and to assign any other land in its place;

(b) that any land under the bed of a stream or torrent flowing through or from the Shiwalik mountain range within the [State]*[1] shall be assigned for any

common purpose;

(c) that if in any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose."

[1] *[Substituted for the word `Province" by Adaption of Laws Order, 1950.]

136. The said Section 18 of the Consolidation Act 1948, inter alia, provides that notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct that any land specifically assigned for the any common purpose shall cease to be so assigned and to assign any other land in its place; besides, if in any area under consolidation no land is reserved for any common purpose including extension of the village "abadi" (dwelling) or if the land so reserved is inadequate, to assign other land for such purpose.

137. Consolidation Rules 1949 were framed. Rule 16 (ii) thereof was added by Punjab Government Notification No.459-D57/713, dated 9.4.1957 and reads as under:-

"In an estate or estates where during consolidation proceedings there is no shamlat deh land or such land is considered inadequate, land shall be reserved for the village Panchayat and for other common purposes, under Section 18 (c) of the Act, out of the common pool of the village at a scale prescribed by the Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi of proprietors and non-proprietors) shall vest in the proprietary body of the estate or estates concerned and it shall be entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba". The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the Panchayat shall have the right to utilize the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned".

(Emphasis added).

138. Therefore, in terms of the Consolidation Act 1948 and the Consolidation Rules 1949, the title and ownership in the land reserved for "common purposes" is to vest in the proprietary body of the estate or estates concerned and in the column of ownership of record of rights/Jamabandi, it is to be entered as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba"; however, the management and control of such land is to vest in the Panchayat on behalf of the village proprietary body. This aspect is also evident and clear from the provisions of Section 23-A of the Consolidation Act 1948 (as substituted by Punjab Act 39 of 1963), which reads as under:-

"23 A. Management and control of lands for common purposes to vest in Panchayats or State Government. -- As soon as a scheme comes into force, the

management and control of all lands assigned or reserved for common purposes of the village under Section 18, -

(a) in the case of common purposes specified in sub clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and

(b) in the case of any other common purpose, shall vest in the Panchayat of that village; and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly;

Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation."

(Emphasis added).

139. The said provision, therefore, also only provided for management and control of lands for common purposes to vest in Panchayats or State Government. It did not provide for vesting of ownership or title. The Five Judge Bench of the Supreme Court in Ajit Singh's case (supra) has also emphasized on this aspect with specific reference to Rule 16 (ii) of the Consolidation Rules 1949.

140. In Jai Singh's case (supra) as referred to above, the Full Bench held that; (1) land recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the dint of Sub-section (6) of Section 2 (g) the VCL Act 1961 and the Explanation appended thereto or any other provisions of the said VCL Act 1961 or the Consolidation Act 1948; (2) all such lands, which have been, as per the Consolidation Scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be "Jumla Mushtarka Malkans Wa Digar Haqdarani Hasab Rasad Arazi Khewat" etc. and (3) the change by way of mutation, ownership of lands in favour of the State or Gram Panchayat, as the case may be, was held to be a totally unmindful act on the part of the revenue authorities of even the existing law sans amendment under challenge. It was directed that if the mutations that might have come into being in favour of the State or Gram Panchayat on the dint of Act No. 9 of 1992 i.e. by addition of clause (6) and its "Explanation" to Section 2 (g) of the VCL Act 1961, the said mutations shall stand cancelled or set aside.

141. In terms of the proposition (iv) of Jai Singh's case (supra) to the effect that all such lands, which had, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the

Gram Panchayat, as the case may be, even though in the column of ownership the entries may be "Jumla Mushtarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat" etc. In this regard, it needs to be clarified that the vesting of the land in the State Government or the Gram Panchayat, as the case may be, is vesting only for the purpose of management and control and is not to in any manner be understood as vesting the title or ownership in favour of the State or the Gram Panchayat, as the case may be.

142. Shri Puneet Bali, learned Senior Advocate, has referred to the statement of the learned Advocate General as recorded by the Full Bench in Jai Singh's case (supra). It is recorded in para 21 of the judgment as follows:-

"The clear stand of the State, after remand of the case by the Hon"ble Supreme Court, is that Section 2 (g) (6) along with explanation inserted by Act No. 9 of 1992, subject matter of challenge by the petitioners, came into being so as to only mean that the lands reserved/assigned for common purposes of the village under Section 18 of the Act of 1948, management and control whereof vests in the Gram Panchayat under Section 23-A of the said Act, have been included within the definition of "shamlat deh", whether utilized or unutilized. The learned Advocate General, Haryana, in tune with the stand taken in the affidavit dated October 28, 2002 and further pleadings that have come on the records of the case, states during the course of arguments that clause (6) of Section 2 (g) and the explanation appended thereto came on the statute book by virtue of Act No. 9 of 1992 simply with a view to explain the existing position, i.e., that the lands reserved/assigned for common purposes of the village under Section 18 of the Act of 1948, management and control whereof vests in the Gram Panchayat under Section 23-A of the said Act, would be "shamlat deh", whether utilized or not."

(Emphasis added).

143. It is further recorded in para 47 that the contention of learned Advocate General, Haryana that Rule 16 (ii) of the Consolidation Rules 1949 dealing with lands reserved or earmarked for common purposes under Section 18 (c) of the Consolidation Act 1948 would cover all such lands which form part of a scheme to be used for common purposes, shall vest with the State or the Panchayat, as the case may be, has to be accepted.

144. The said observations of the Full Bench in Jai Singh's case (supra) based on the stand of the State in its written statement after remand of the case from the Supreme Court when read in the context of Section 23-A of the Consolidation Act 1948 and Rule 16 (ii) of the Consolidation Rules 1949, besides, Five Judge Bench decision of the Supreme Court in Ajit Singh's case (supra), it is to be taken as an authoritative enunciation of law that the lands kept for common purpose during consolidation operations by imposing a pro rata cut and recorded in the revenue records as "Jumla Malkan Wa Digar Haqdaran Arazi Hasab Rasad Raqba" etc. vest in the Panchayats for the purposes of management and control only as the

said provisions relate to management and control of the said lands. This aspect is quite evident from;

(1) the definition of "common purpose" as contained in Section 2 (bb) of the Consolidation Act 1948 wherein the common need, convenience or benefit of the village are mentioned so as to include the purposes enumerated in clauses (i) to (iv) for the common purposes have been defined; it is inter alia mentioned, "may be managed and controlled by the State Government or not";

(2) Section 23A of the Consolidation Act 1948 which relates to, management and control of lands for common purposes to vest in Panchayats or State Government. It is provided therein that as soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under Section 18, - (a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of Section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and (b) in the case of other common purpose, shall vest in the Panchayat of that village; and the State Government or the Panchayat, as the case may be, shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly. This would mean modified and extinguished for the purpose of management and control only. In terms of the proviso to Section 23A, it is provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation;

(3) Rule 16 (ii) of the Consolidation Rules 1949 in terms of which the land for common purpose is to vest in the proprietary body of the estate or estates concerned and is to be entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba" i.e. all the owners and other right holders have a share of ownership in the joint common land in proportion to their land holdings; however, the management of such land is to be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body; and

(4) Ajit Singh's case (supra), wherein a Five Judge Bench of the Supreme Court held that it is clear that the title of lands kept for common purposes by imposing a pro rata cut, the title remains with the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". The Panchayat, it was observed, would manage it on behalf of the proprietors and uses for common purposes; it cannot use it for any other purpose.

145. In the circumstances, the contention of Shri Ashish Aggarwal, learned Senior Advocate that in view of Section 4 of the VCL Act 1961, the lands kept for

"common purposes" of a village in a consolidation scheme by imposing a pro rata cut on lands of the proprietors and recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" etc., vest completely in the Gram Panchayat, which would include title and ownership, would be incorrect and unacceptable. Even his contention that in case the lands reserved for "common purposes" are not to vest completely in the Panchayat of the village, the definition of "shamlat deh" as contained in Section 2 (g) of the VCL Act 1961 by incorporating clause (6) after clause (5) by Haryana Act No. 9 of 1992 would require the setting aside and quashing of the said Act to that extent and also holding Jai Singh's case (supra) upholding the validity of clause (6) to Section 2 (g) of the VCL Act 1961 to be not good law, in view of the clear position stated above would not require to be invalidated as has been contended. In fact, Jai Singh's case (supra), as already noticed, had in a way clearly indicated that the land kept for "common purposes" in a consolidation scheme is not to vest completely in the Panchayat.

146. However, for the removal of doubts, it is clarified and held that any observations in Jai Singh's case (supra), and in Veer Singh's case (supra) (in which the application for review of the judgment in Jai Singh's case (supra) had been dismissed by making clarifications), if it is to be taken that the ownership or title in respect of lands kept for "common purposes" of the village by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", "Jumlan Malkan" or "Mushtarka Malkan" etc. vest with the State or the Gram Panchayat, as the case may be, without payment of compensation is not the correct legal position notwithstanding the provisions of Section 4 of the VCL Act 1961 and that in fact, only the management and control of such lands vests in the State or the Gram Panchayat, as the case may be. Therefore, only the management and control as distinguished from the title and ownership in respect of lands carved out during consolidation operations by imposing a pro rata cut on the land of the proprietors and recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", "Jumlan Malkan" or "Mushtarka Malkan" etc., vest in the Panchayat. Besides, as already noticed, the provision relating to appropriation of income of the land kept for "common purposes" in a consolidation scheme has been invalidated by a Five Judge Bench of the Supreme Court in Bhagat Singh's case (supra).

147. This, in fact, is the correct position and is in complete consonance and tune with the Five Judge Bench decision of the Supreme Court in Ajit Singh's case (supra). Unfortunately, Ajit Singh's case was not noticed by the Full Bench in Jai Singh's case (supra) although the principles laid down therein were kept in view.

148. From the above it is evident that there are different kinds of common lands in the villages. These are (1) "shamlat" lands simpliciter, (2) shamlat lands, recorded in the revenue records as; "Hasab Rasad Zare Khewat", "Hasab Rasad Mal Guzari", "Hasab Rasad Paimana Malkiat", "Hasab Rasad Raqba Khewat",

"Hasab Hissa Andraj Shijra Nasab" i.e. as per share in the pedigree table, "Shamlat Deh Hasab Paimana Malkiat Muderqa Sajar Nasab Bandobasti" etc. The said terms indicate the extent of the share of the proprietors or other non-proprietors including labourers, artisans etc., besides, those responsible for collecting the land revenue (mal guzars) in the common lands of the village known as "shamlat deh". (3) "shamlat tikkas", (4) lands described in the revenue records as shamlat "tarafs", "pattis", "pannas" and "tholas" and used according to the revenue records for the benefit of the village community or a part thereof for the common purposes of the village. The ownership and title of the "shamlat" lands notwithstanding the share of the proprietors but subject to the clauses providing for exclusion from "shamlat deh" lands as contained in Section 2 (g) of the VCL Act 1961, vest with the Panchayats in view of Section 4 of the VCL Act 1961. These lands in view of Section 5 of the VCL Act 1961 are for the benefit of the inhabitants of the village. Apart from the "shamlat" land, there are, (5) lands recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", "Jumlan Malkan" or "Mushtarka Malkan" etc., which are also for common purposes and have been carved out in consolidation operations by imposing a pro rata cut on the lands of the proprietors. The ownership and title of which vests in the village proprietary bodies although the management and control of the same vests with the State or the Gram Panchayat, as the case may be.

149. There is no dispute to the position that in respect of lands which are simply recorded as "shamlat deh", no one would have any claim of ownership in the same. Such lands recorded as "shamlat deh" simpliciter in fact were kept for common use of the inhabitants of the village at the time of settlement. As such, no one can claim any ownership rights in these lands as these do not denote or depict any right of ownership or even semblance of ownership. In the event lands recorded in the revenue records simpliciter as "shamlat deh" form part of the municipal area by the enlargement of the municipal limits, would not entail as a document for claiming right of ownership. Such lands recorded simpliciter as "shamlat deh" would escheat to the State in terms of Article 296 of the Constitution of India when these are included in a Municipal area.

150. The questions, however, that requires consideration is whether there would be entitlement to compensation in favour of a person or persons who have identifiable title of ownership, semblance or vestige of title in the "shamlat" lands and which cease to be measures for agrarian reforms or for the benefit of the inhabitants of the village by vesting them in a Municipal area by enlargements of its limits. Besides, entitlement for compensation for the members of the proprietary body of the village in respect of lands for common purposes as contemplated by Section 2 (bb) of the Consolidation Act 1948 earmarked as such during consolidation operations and recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba", "Jumlan Malkan" or "Mushtarka Malkan" etc. being taken or ceasing to be so by enlargement of the area of municipality.

151. The lands that are acquired by the State in exercise of power of eminent domain are predicated on the existence of public purpose. For the purpose of agrarian reforms, the same are saved by Article 31A (1) (a) of the Constitution of India, which reads as follows:-

[8][31A. Saving of laws providing for acquisition of estates, etc.

[8] Inserted by the Constitution (First Amendment) Act, 1951:

[9][(1) Notwithstanding anything contained in Article 13, no law providing for ---

(a) The acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

[9] Substituted by the Constitution (Fourth Amendment) Act, 1955:

(b) to (e) xxxxxx

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by[10][Article 14 or Article 19].

[10] Substituted by the Constitution (Forty-fourth Amendment) Act, 1978:

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent:

[11][Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.]"

[11] Inserted by Constitution (Seventeenth Amendment) Act, 1964:

152. The second proviso to Article 31A, as has already been noticed, has been added by the Constitution (Seventeenth Amendment) Act, 1964. The Article provides a protective shield for avoiding payment of compensation which, however, is subject to the condition that the acquisition is for the purpose of agrarian reforms. The area of the municipality in the present cases has been enlarged by including the common lands of the village in a Municipal Committee, Council or Corporation, as the case may be. Section 61 of the Municipal Act 1973, provides for vesting of property in a Municipal Committee and Clause (h) relates to "shamlat deh". The same reads as under:-

"61. Property vested in committee.

(1) Subject to any special reservation made or to any special conditions imposed

by the State Government, all property of the nature hereinafter in this section specified and situated within the municipality, shall vest in and be under the control of the committee, and with all other property which has already vested or may here after vest in the committee, shall be held and applied by it for the purposes of this Act, that is to say, -

(a) to (g) xxxxx

(h) Shamlat Deh."

153. Clause (h) to Section 61 of the Municipal Act 1973 has been inserted by the Haryana Amendment Act 17 of 1999. Besides, "shamlat deh" has been defined in Section 2 (22B) of the Municipal Act 1973 as under:-

"Section 2. Definitions. - in this Act, unless there is anything repugnant in the subject or context. - (22B) "Shamlat Deh" includes -

(1) lands described in the revenue records as Shamlat Deh or Shamlat Tikkas;

(2) lands described in the revenue records as Shamlat Tarafs, Pattis, Pannas or Tholas and used according to revenue records for common purposes or for the benefit of the community or a part thereof;

(3) lands described as Banjar Qadim and used for common purposes according to revenue records;

(4) lands used or reserved for the benefit of the community including streets, lanes, playgrounds, schools, drinking wells or ponds; and

(5) lands belonging to the Gram Panchayat of village the Abadi Deh of which has been included in a municipality and where the Panchayat consist of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has been included in a municipality,

but does not include land which-

(i) has been allotted on quasi-permanent basis to a displaced person;

(ii) has been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954) or has been treated as evacuee property under the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) or is of composite nature in which evacuee and non-evacuee shares have not yet been separated;

(iii) has been partitioned and brought under cultivation by individual land holders before the 26th January 1970;

(iv) having been acquired before the 26th January, 1970, by a person by purchase or in exchange for proprietary land from a cosharer in the Shamlat Deh, is so recorded in the Jamabandi or is supported by a valid deed;

(v) is described in the revenue records as Shamlat Tarafs, Pattis, Pannas or

Tholas and is not used according to revenue records for common purposes or for the benefit of the community or part thereof;

(vi) lies outside the Abadi Deh and is used as Gitwar, Bara, Manure-pit or house or for cottage industry;

(vii) was Shamlat Deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in it on or before the 26th January, 1970;

(viii) is used as a place of worship or for purposes subservient thereto; and

(ix) belongs to the Gram Panchayat of a village the Abadi Deh of which has not been included in a municipality and where the Panchayat consists of more than one village the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has not been included in a municipality."

154. In sub-section (1) of Section 61 of the Municipal Act 1973 amendments have been made in clauses (g) and (h) by the Haryana Amendment Act 17 of 1999 which are to the effect that for the sign ".", the sign ";" has been substituted. Besides, after clause (g), the clause (h) has been added which is mentioned as "shamlat deh".

155. Section 2 (52A) and Section 161 (1) (g) of the Municipal Corpn. Act 1994, which are under challenge in ASF Buildwell Pvt. Ltd., CWP No. 15835 of 2015, read as under:-

"Section 2. Definitions. - In this Act, unless the context otherwise requires, -

(52A) "Shamlat Deh" includes -

(1) lands described in the revenue records as Shamlat Deh or Shamlat Tikkas;

(2) lands described in the revenue records as Shamlat Tarafs, Pattis, Pannas or Tholas and used according to revenue records for common purposes or for the benefit of the community or a part thereof;

(3) lands described as Banjar Qadim and used for common purposes according to revenue records;

(4) lands used or reserved for the benefit of the community including streets, lands, playgrounds, schools, drinking wells or ponds; and

(5) lands belonging to the Gram Panchayat of a village the Abadi Deh of which has been included in a municipality and where the Panchayat consists of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has been included in a municipality.

but does not include land which -

(i) has been allotted on quasi permanent basis to a displaced person;

(ii) has been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954) or has been treated as evacuee property under the Administration of the Evacuee Property Act, 1950 (Central Act 31 of 1950) or is of composite nature in which evacuee and non-evacuee shares have not yet been separated;

(iii) has been partitioned and brought under cultivation by individual land-holders before the 26th January, 1970;

(iv) having been acquired before the 26th January, 1970, by a person by purchase or in exchange for proprietary land from a co-sharer in the Shamlat Deh, is so recorded in the Jamabandi or is supported by a valid deed;

(v) is described in the revenue records as Shamlat Tarafs, Pattis, Pannas or Tholas and is not used according to revenue records for common purposes or for the benefits of the community or a part thereof;

(vi) lies outside the Abadi Deh and is used as Gitwar, Bara, Manure-pit or house or for cottage industry;

(vii) was Shamlat Deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in it on or before the 26th January, 1970;

(viii) is used as a place of worship or for purposes subservient thereto; and

(ix) belongs to the Gram Panchayat of a village the Abadi Deh of which has not been included in a municipality and where the Panchayat consists of more than one village, the lands, belonging to the Panchayat in respect of that village or villages, the Abadi Deh of which has not been included in a municipality."

"161. Property vested in Corporation and management of public institutions.

(1) Subject to any special reservation made or to any special conditions imposed by the Government, all property of the nature hereinafter in this section specified and situated within the Municipal area, shall vest in and be under the control of the Corporation, and with all other property, which vests in the Corporation by virtue of the provisions of this Act or any other law for the time being in force, shall be held and applied by it for the purposes of this Act, that is to say,-

(a) to (f) xxxxxx

(g) Shamlat Deh."

156. The definition of "shamlat deh" as contained in Section 2 (22B) of the Municipal Act 1973 and that in Section 2 (52A) of the Municipal Corpn. Act 1994 is almost similar to the definition of "shamlat deh" as contained in Section 2 (g) of the VCL Act 1961 though with noticeable differences. The differences that are there between the definition of "shamlat deh" in the VCL Act 1961, and Section 2 (22B) of the Municipal Act 1973 and Section 2 (52A) of the Municipal Corpn. Act 1994 are as follows:-

Sr. No.

Section 2 (g) of the Punjab Village Common Lands (Regulation) Act, 1961.

Section 2 (22B) of the Haryana Municipal Act, 1973 and Section 2 (52A) of the Haryana Municipal Corporation Act, 1994.

1.

Sub-clause (1) excludes abadi deh.

Includes abadi deh.

2.

Sub-clause (3) includes such land which is "used according to revenue records for the benefit of the village community or part thereof or for common purposes of the village".

In sub-clause (2) the words "for the benefit of the village community" or "for common purposes of the village" are missing. Instead the words "for the common purposes or for the benefit of the community or a part thereof" are there.

3.

Under sub-clause (5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records are included in shamlat deh.

In sub-clause (3) lands described as banjar qadim and used for common purposes according to revenue records, are included in shamlat deh. The words "common purposes of the village" have been omitted.

4.

Under sub-clause (4) only such lands are included are "used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the Sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;".

In sub-clause (4) the word "village" is missing and the definition is very wide as it includes all lands "used or reserved for the benefit of the community including streets, lanes, playgrounds, schools, drinking wells or ponds".

5.

Under sub-clause (4a) only; "vacant land situated in abadi deh or gorah deh not

owned by any person" is included.

Under sub-clause (5) lands belonging to the Gram Panchayat of village the abadi deh of which has been included in a municipality and where the Panchayat consists of more than one village, the lands belonging to the Panchayat in respect of that village or villages, the abadi deh of which has been included in a municipality is included.

6.

Sub-clause (6) includes all Jumla Mushtarka Malkan lands

Does not include Jumla Mushtarka Malkan lands

Exclusions

7.

Under Exception (i) The land which becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records is excluded.

There is no exclusion of land which becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action and neither is there any exclusion of shamlat deh land entered as pasture, pond or playground in the revenue records.

8.

Under Exception (ii) land allotted on quasi permanent basis to a displaced person is excluded; besides, under clause (iia) land which was shamlat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of the VCL Act 1961, but on or before the 9th day of July, 1985 are excluded.

Under Exception (ii) land which has been acquired under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (Central Act 44 of 1954) or has been treated as evacuee property under the Administration of Evacuee Property Act, 1950 (Central Act 31 of 1950) or is of composite nature in which evacuee and non-evacuee shares have not yet been separated, has been excluded.

9.

Under Exception (iii) land which has been partitioned and brought under cultivation by individual land-holders before the 26th January, 1950 is excluded.

Under Exception (iii) land which has been partitioned and brought under cultivation by individual land holders before the 26th January, 1970, is excluded. The time for partition is increased by 20 years.

10.

Exception (iv) excludes land having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh is so recorded in the Jamabandi or is supported by a valid deed.

Under Exception (iv) land having been acquired before 26.1.1970, by a person by purchase or in exchange for proprietary land from a cosharer in the shamlat deh, is so recoded in the Jamabandi or is supported by a valid deed, has been excluded. The time period of purchase is increased by 20 years.

11.

Exception (v) excludes land "described in the revenue records as shamlat tarafs, pattis, pannas and tholas and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village".

Exception (v) excludes land "described in the revenue records as shamlat tarafs, pattis, pannas or tholas and is not used according to revenue records for common purposes or for the benefit of the community or a part thereof". The word "village community" has been omitted.

12.

Exception (vi) excludes land which lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of the VCL Act 1961.

Exception (vi) excludes land which lies outside the abadi deh and is used as gitwar, bara, manure-pit or house or for cottage industry.

13.

Exception (viii) excludes land which was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of cosharers not being in excess of their respective shares in such shamlat deh on or before the 26th January, 1950.

Exception (vii) excludes land which was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of cosharers not being in excess of their respective shares in it on or before the 26th January, 1970. The period of individual cultivating possession has been increased by 20 years.

157. The above tabulation shows that the definition of "shamlat deh" in Section 2 (22B) of the Municipal Act 1973 and that of Section 2 (52A) of the Municipal Corpn. Act 1994, are *pari materia*. However, in the said two enactments, there is a marked shift from the definition of "shamlat deh" as contained in the VCL Act 1961.

158. The definition of "shamlat deh" of the village, the lands of which have

merged with the Municipality or the Municipal Corporation, as the case may be, has been made so as to exclude more lands of the "shamlat deh" by changing the exclusionary clauses. The salient changes made in the definition of "shamlat deh" in the Municipal Act 1973 and the Municipal Corpn. Act 1994 from that in the VCL Act 1961 inter alia include;

(1) In terms of the VCL Act 1961, there is exclusion of lands which become or have become "shamlat deh" due to river action or have been reserved as "shamlat" in villages subject to river action except "shamlat deh" entered as pasture, pond or play ground in the revenue records; however, there is no such exclusion in the Municipal Act 1973 and the Municipal Corpn. Act 1994;

(2) In terms of the VCL Act 1961, only lands which were "shamlat deh" and had been allotted on quasi-permanent basis to a displaced person or had been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of the VCL Act 1961 but on or before 09.07.1985^[12] were excluded. The Municipal Act 1973 and the Municipal Corpn. Act 1994, however, provide that the lands which have been acquired (sic.-allotted) under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 or have been treated as evacuee properties under the Administration of Evacuee Property Act, 1950 or are of composite nature in which evacuee and non-evacuee shares have not yet been separated, have been excluded;

[12] The date 09.07.1985 is the date of pronouncement of the judgment of the Supreme Court in Gram Panchayat of village Jamalpur v. Malwinder Singh AIR 1985 SC 1394—a reference to which has been made.

(3) The VCL Act 1961 provides that the lands that have been partitioned and brought under cultivation by individual land holders before 26.01.1950 are excluded. The date for the partition of land and being brought under cultivation by individual land owners has been increased by 20 years from 26.01.1950 to 26.01.1970 in terms of the Municipal Act, 1973 and the Municipal Corpn. Act, 1994;

(4) In terms of the VCL Act 1961 the lands having been acquired before 26.01.1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the "shamlat deh", are so recoded in the Jamabandi or are supported by a valid deed, have been excluded. However, the time period of purchase by a person or getting in exchange for proprietary land from a co-sharer in the "shamlat deh" lands has been increased by 20 years from 26.01.1950 to 26.01.1970;

(5) According to the VCL Act 1961, the lands described in the revenue records as shamlat tarafs, pattis, pannas, and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village, have been excluded. However, in the Municipal Act 1973 and the Corpn. Act 1994 the lands described in the revenue records as shamlat tarafs, pattis, pannas or tholas and are not used according to the revenue

records for common purposes or for the benefit of the community or part thereof, have been excluded. The word, "village" has been omitted in the latter enactments;

(6) In terms of the VCL Act 1961, the lands which lie outside the abadi deh and was being used as gitwar, bara, manure-pit or house or for cottage industry, are excluded from immediately before the commencement of the VCL Act 1961, which commenced w.e.f. 04.05.1961. However, in the Municipal Act 1973 and the Municipal Corpn. Act 1994 the lands that lie outside the abadi deh and are used as gitwar, bara, manure-pit or house or for cottage industry, have been excluded.

(7) In terms of the VCL Act 1961, the lands which were "shamlat deh", were assessed to land revenue and had been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such "shamlat deh" on or before the 26.01.1950, have been excluded. The date of excluding such lands that were "shamlat deh", were assessed to land revenue and had been in the individual cultivating possession of co-sharer not being in excess of their respective shares in it under the Municipal Act 1973 and the Municipal Corpn. Act 1994, has been increased by 20 years till 26.01.1970.

159. The above-said changes whereby lands have been excluded from the definition of "shamlat deh" in respect of Municipalities and Municipal Corporations are not in accord with or correspond to the concept of "shamlat deh" as has always been understood in the common parlance in rural areas and villages and defined in Section 2 (g) of the VCL Act 1961. In fact, the villagers zealously protected their common rights in the "shamlat deh" lands. This has been recognised even by the Supreme Court in Jagpal Singh v. State of Punjab, (2011) 11 SCC 396, wherein it was observed that protection of common rights of the villagers were so zealously protected that some legislation expressly mentioned that even the vesting of the property with the State did not mean that the common rights of the villagers were lost by such vesting. A reference was made to Chigurupati Venkata Subbayya v. Paladuga Anjayya, (1972) SCC 521, and the observations made in para 23 thereof by the Supreme Court were noticed, which are as follows:-

"23. It is true that the suit lands in view of Section 3 of the Estates Abolition Act did vest in the Government. That by itself does not mean that the rights of the community over it were taken away. Our attention has not been invited to any provision of law under which the rights of the community over those lands can be said to have been taken away. What has been abrogated is the rights and interests created in or over the estate before the notified date by the principal or other landholder. The rights of the community over the suit lands were not created by the principal or any other landholder. Hence those rights cannot be said to have been abrogated by clause (c) of Section 3 of the Estates Abolition Act."

160. Learned counsel appearing for the petitioners have in fact gone to the

extent of saying that by increasing the period of time by twenty years from 26.01.1950 to 26.01.1970 for excluding the lands that had been partitioned and brought under individual cultivation by individual land holders; besides, acquisition of lands by persons by purchase or in exchange for proprietary lands from co-sharers in the "shamlat deh" lands and so recorded in the Jamabandi or supported by a valid deed, from the definition of "shamlat deh" under the Municipal Act 1973 and the Municipal Corpn. Act 1994, has been to give a benefit to realtors and property-dealers for speculation purposes otherwise there is no reason for increasing the time gap and thereby excluding more lands from the definition of "shamlat deh" as contained in Section 2 (g) of the VCL Act 1961.

161. This aspect though is of considerable concern, however, in the absence of challenge to the same and in the absence of any material in this regard or any specific pleadings to this effect, it would be improper to go into the same. Even otherwise, the increase in time gap by twenty years so as to exclude more lands from the definition of "shamlat deh" is by way of legislation and mala fides are not to be attributed to legislation. However, it may not be understandable as to on what rational relation and as to what object is sought to be achieved by increasing the time limit by twenty years so as to exclude more lands from the "shamlat deh" lands under the Municipal Act 1973 and the Municipal Corpn. Act 1994. The cut-off date for exclusion of land from the "shamlat deh" lands or the common lands under the VCL Act 1961 is 26.01.1950; however, under the aforesaid Municipal Acts, it is 26.02.1970 thereby giving a further extension of twenty years for enabling the lands which now vest with the municipalities from being excluded from "shamlat deh", in respect of three categories, i.e. (1) where the land which had been partitioned and brought under cultivation is to be excluded, (2) land which had been acquired by a person by purchase or in exchange for proprietary land from a co-sharer in the "shamlat deh" is so recorded in the Jamabandi or is supported by a valid deed and (3) land which was "shamlat deh", was assessed to land revenue and had been in individual cultivating possession of co-sharers not being in excess of their respective shares in such "shamlat deh" on or before 26.01.1950 in respect of the municipal areas is to be 26.01.1970.

162. In any case, the acquisition of "shamlat deh" lands in which the proprietors have a title or share or interest is without payment of compensation and may be termed as usurpation of the "shamlat deh" lands without payment of compensation to those who have a title, or a vestige or semblance of title in the same. The acquisition of "shamlat deh" lands of the village by enlarging the area of a Municipal Council or a Corporation is clearly unreasonable and deprives the "inhabitants of the village" of their rights to enjoy the common property of the village. In fact, the "shamlat deh" lands were the common lands of the village for use and enjoyment of the inhabitants and residents of the village and this has been the intent of the VCL Act 1961 as also of the Consolidation Act 1948 as amended from time. These were not for the domain of the public in the urban areas of a Municipality or a Municipal Corporation, as the case may be. The

purpose of reserving lands as "shamlat deh" or "Jumla Mushtarka Malkan" was to protect the rights of the holders and owners in the land against the competing claims of others, that is to say to avoid the claims of those who had not contributed towards the common purpose although they were/are entitled to full user and enjoyment of the same. With such lands vesting in a Municipality or a Municipal Corporation they assume the characteristics of a town or urban area with no connection for use and enjoyment for the inhabitants of the village. Their acquisition by the State for the rural economy and agrarian reforms in view of Article 31A (1) of the Constitution, protected the State from the payment of compensation. With the "shamlat deh" lands now vesting in the Municipality or Municipal Corporation, as the case may be, and thus being a part of a town or an urban area, the protective shield against payment of compensation is no more there. In fact, the concept of "shamlat deh" is absolutely foreign and alien in the context of an urban or a town area. The very use of the words "shamlat deh" which is common land of the village for an urban area or a town falling within the limits of a Municipality or a Municipal Corporation is out of context. The town or an urban area may have its own common lands, but the same are not liable to be termed or called as "shamlat deh" lands.

163. The concept of village and the manner in which "shamlat deh" lands were carved out in the villages has been considered and delved upon at considerable length. The inclusion of "shamlat deh" lands of a village in a Municipality or a Municipal Corporation is quite out of context of the character of such land in a village, which has always been for common use of the inhabitants of the village. To confer such lands with the characteristics of "shamlat deh" lands when it falls under a Municipality or Municipal Corporation is not in consonance with the concept of common lands of the village, which is used and even otherwise is in accord with the statutory provisions of Sections 5, 9 and 15 of the VCL Act 1961; besides, Rules 3, 8 and 14 of the VCL Rules 1964 referred to above in extenso, which show that "shamlat deh" lands in villages are for the benefit of the "inhabitants of the village". Therefore, once the concept of "shamlat deh" lands of the village goes with the merger of such lands in a Municipality or a Municipal Corporation, the same would lose its character for the benefit of the inhabitants of the village. The "shamlat deh" lands reserved for use of the inhabitants of the village with a rider that the same shall vest in the "Panchayat" which shall manage and control the same, had the protective umbrella of Article 31A being for agrarian reforms. The same would cease once these lands are no more for agrarian reforms. For invoking the shield and protective umbrella of Article 31A of the Constitution for avoiding the payment of compensation, the measure of agrarian reform is a pre-requisite which is indispensable for its invocation. The existence of agrarian reforms at the time of enactment of the legislation must continue to subsist so as to be for the benefit of the inhabitants of the village. Once the "shamlat deh" land vests in a Municipal Committee under Section 61 (h) of the Municipal Act 1973 or vest in a Municipal Corporation under Section 161 (g) of the Municipal Corpn. Act 1994, then the agrarian reforms ceases to

exist and urbanization sets in which is completely not synonymous or connected with agrarian reforms.

164. The contention of the learned counsel for the respondents that with the abolition of Article 31 of the Constitution of India by the Constitution (Seventeenth Amendment) Act 1964, the ratio of the Full Bench judgment in Rajender Parshad's case (*supra*) no longer stands, may be noticed. According to the respondents, the Municipal Common Lands Act, 1974 was invalidated on the ground that acquisition of land without payment of compensation was held to infringe fundamental rights enshrined in Article 31. This according to learned counsel for the respondents would, therefore, be inapplicable in view of the omission of Article 31 from the Constitution.

165. It is to be noticed that Article 31 of the Constitution was repealed by the Constitution (Forty-fourth Amendment) Act, 1978 with effect from 20.06.1979. On the same day, Article 300A of the Constitution was inserted. The effect of the same was that the right to property, which was a "fundamental right", became a "constitutional right" simpliciter. Mr. Sorabjee, learned Senior Advocate, has with emphasis submitted that a law providing for acquisition of estate etc. within the meaning of Article 31A is not to be deemed to be void on the ground that it takes away or abridges any rights conferred by Article 14 or Article 19, but it does not mention Article 300A even though Article 31 was omitted on the same day, i.e. 20.06.1979, by the Constitution (Forty-fourth Amendment) Act, 1978.

166. In *Deputy Commissioner and Collector, Kamrup v. Durganath Sarma*, AIR 1968 SC 394, a Five Judge Bench of the Supreme Court held that the acquisition of lands for construction of an embankment for prevention of flood control and for prevention of erosion was a measure of agrarian reform. It was contended on behalf of the State that the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 (Assam Act No. 6 of 1955) was a law providing for acquisition of estates and was protected by Article 31A (1) (a) of the Constitution. The Supreme Court, however, held that it was unable to accept the said contention and that it was well settled that Article 31A (1) (a) envisages only laws concerning agrarian reforms. A reference was made to *Kochuni's case* (*supra*) wherein the Supreme Court by a majority decision held that Article 31A saved laws for agrarian reforms only and did not enable the State to divest a proprietor of his estate and vested in another without reference to any agrarian reform. A reference was also made to *Ranjit Singh's case* (*supra*) in which it was said that the Consolidation Act 1948 was protected by Article 31A as the general scheme of the Act was definitely agrarian reform and under its provision something ancillary thereto in the interest of the rural economy had to be undertaken to give full effect to the reforms. Besides, a reference was made to *P.V. Mudaliar v. Special Deputy Collector, Madras*, AIR 1965 SC 1017, wherein the Supreme Court said that the Land Acquisition (Madras Amendment) Act, 1961 providing for the acquisition of lands for housing scheme was not a law with reference to any agrarian reform and was not protected by Article 31A. In the

light of the said decisions, it was held that the Assam Acquisition of Land for Flood Control and Prevention of Erosion Act, 1955 (Assam Act No. 6 of 1955) was not a law concerning agrarian reforms and was not protected by Article 31A. The said Act was a purely expropriatory measure. It provided for acquisition of lands both urban and agricultural for executing works in connection with flood control and prevention of erosion. A piece of land acquired under the said Act, it was observed, need not be an estate or part of an estate. It had no relation to agrarian reform, land tenures or the elimination of intermediaries.

167. In *Sriram Narayan Medhi v. State of Maharashtra*, (1971) 2 SCC 106, a Five Judge Bench of the Supreme Court considered the extent of protection to legislation under Article 31A of the Constitution and as to whether it covered the amending legislation in the said case. The petitioner in the said case had challenged the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1964. The State of Bombay had undertaken the legislation in furtherance of its policy of social welfare and to give effect to agrarian reform. The parent Act was passed by the Bombay State Legislature in order to amend the law which governed the relationship between the landlord and tenants of agricultural lands. By the said Amendment Act on the 1st of April, 1957, every tenant was, subject to other provisions, deemed to have purchased from his landlord free of all encumbrances subsisting thereon, on the said day, the land held by him as a tenant subject to certain conditions. The tenant was deemed to have purchased the land up to the ceiling area. It was further provided that if a tenant held the land partly as owner and partly as tenant, but the area of the land held by him as owner was equal to or exceeded the ceiling area he was not to be deemed to have purchased the land held by him as a tenant. Besides, as a result of the said amendment, the relationship of landlord and tenant came to an end, the land holder ceased to be a tenure holder and the title thereto was vested in the tenants defeasible only on certain specified contingencies. The relationship of land holder and tenant was thus transformed into a relationship of creditor and debtor, the erstwhile landlord being entitled only to recover the price fixed under the provisions of the said Amendment Act in the manner provided therein under Section 32-G read with Section 32-H, the price which was to be paid by the tenant was to be determined by the Tribunal. Hon'ble the Supreme Court placed reliance on an earlier decision in *Sri Ram Ram Narain Medhi v. State of Bombay*, AIR 1959 SC 459, in which the vires of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1956 were challenged and it was inter alia held that this decision, i.e. the earlier decision, had concluded the most important question whether the petitioner's fundamental rights were infringed under Articles 14, 19 and 31, as the parent Act as well as the amending Act was protected by Article 31A of the Constitution. It was said that the question of discrimination or of compensation or its adequacy could not be gone into nor could the unreasonableness of the provisions under which the landlord's title had been extinguished, nor the manner in which the price was to be paid could be challenged. Once it had been held that Article 31A applied the petitioner could

not complain that his rights under Articles 14, 19 and 31 of the Constitution had been infringed. This protection was available not only to the Acts which come within its terms but also to Acts amending such Acts to include new items of property or which change some detail of the scheme of the Act provided firstly that the change was not such as it would take out of Article 31A or by itself was not such as would not be protected by it and secondly that the assent of the President had been given to the amending statute. To put it differently, it was said, that so long as the amendment also relates to a scheme of agrarian reforms providing for the acquisition of any estate or of any right thereunder or for extinguishment or modification of such right the mere transfer of the tenure from one person to another or the payment of the price in instalments or even the postponement of payment by a further period could not be challenged under Articles 14, 19 and 31. In the said case, it was noticed that the impugned legislation had merely amended that provision which related to the recovery of the amounts from the tenant who had become purchaser and the postponement of the time of ineffectiveness of sale till the Tribunal had tried and failed to recover the amount from the tenant purchaser.

168. The protection under Article 31A of the Constitution was, therefore, confined to the amendment so long as it related to a scheme of agrarian reforms providing for the acquisition of any estate or of any right thereunder or for extinguishment or modification of such right.

169. In *The Kannan Devan Hills Produce Company Ltd. v. State of Kerala*, AIR 1972 SC 2301, a Five Judge Bench of the Supreme Court held that the "concession area" lying contiguously in the Kannan Devan Hills village fell within the expression "janmam rights". These lands were treated under the heading "Pandaravaka Lands" which is a local equivalent of an estate under clause (2) of Article 31A. It was observed that the Kannan Devan Hills (Resumption of Lands) Act envisaged reservation of lands for promotion of agriculture and for welfare of agricultural population and assignment of remaining land to agriculturists and agricultural labourers. These purposes, it was said, were covered by the expression "agrarian reform" and the legislation was protected from challenge by Article 31A. Any fanciful connection with the promotion of agriculture or welfare of agricultural population, it was held, was not enough. The expression "agrarian reform" was wider than land reform. It included besides land reforms something more and that something more had been illustrated by the definition of "common purpose" in Section 2 (bb) of the Consolidation Act 1948.

170. The Five Judge Bench of Hon'ble the Supreme Court in *Kannan Devan Hills Produce Company Ltd. case* (supra), therefore, specifically ruled that agrarian reforms so as to have protection of the provisions of Article 31A of the Constitution must be something more as had been illustrated in the definition of "common purpose" contained in Section 2 (bb) of the Consolidation Act 1948, which has been referred to above in extenso so as to include various other "common purposes" for common use of inhabitants of the village.

171. In *Kunjukutty Sahib v. State of Kerala*, (1972) 2 SCC 364, a Five Judge Bench of Hon'ble the Supreme Court considered the provisions of the Kerala Land Reforms Act and inter alia held that to reduce the indebtedness of the tenants appreciably was a reasonable restriction on the rights of the creditors and the law thus providing amelioration of indebtedness of tenants was laudable and desirable object. But the person to whom the arrears of rent were due was also entitled to seek protection of his legitimate right and if the acquisition of arrears of rent was outside the protection of Article 31A, then the impugned provision could not be held to be invalid. It was further held that prima facie it had partaken of the character of forfeiture or confiscation of the discharged arrears. Article 39 of the Constitution to which reference had been made, it was observed, could be implemented by other permissible means without violating or abridging the just and legitimate right of those, to whom the arrears of rents were due.

172. In *Nagpur Improvement Trust and another v. Vithal Rao and others*, AIR 1973 SC 689, a Five Judge Bench of Hon'ble the Supreme Court considered the provisions of Paras 10 (2) and 10 (3) of the Schedule to the Nagpur Improvement Trust Act insofar as they added a new proviso to clause (3) (a) to Section 23 and a proviso to Section 23 (2) of the Land Acquisition Act, 1894. The reasons that were noticed related to the circumstance that the owner whose land was acquired under the Improvement Trust Act was paid compensation not according to the market value of the land but the market value according to the use to which the land was put at the date with reference to which the market value was to be determined in that clause. In other words, if the land was being used for agricultural purposes, even though it had a potential value as a building site, the potential value was to be ignored. Further, he did not get a solatium of 15% which he would have got if the land had been acquired under the Land Acquisition Act. The test of reasonable classification was considered by Hon'ble the Supreme Court. Besides, during the course of hearing, reliance was placed by the learned Senior Counsel for the appellants in the said case on Article 31A (1) (a) of the Constitution. It was held that now it was well settled that Article 31A (1) (a) had relevance to agrarian reforms and development and it had nothing to do with acquisition of land for building of a capital of a State.

(Emphasis Added).

173. In *State of Kerala and another v. The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. etc.*, AIR 1973 SC 2734, the Kerala Private Forests (Vesting and Assignment) Act was challenged on the ground that the said Act as a whole was violative of Articles 14, 19 (1) (f) (g) and 31 of the Constitution. The lands involved were private forest lands situated in the former Malabar District which, after the States Reorganization Act, 1956, stood transferred from the old State of Madras to the new State of Kerala. As a result of the aforesaid Act, these forest lands vested in the State, allegedly, as a measure of agrarian reform. A Full Bench of the Hon'ble Kerala High Court in AIR 1973 Kerala 36 held that the provisions of the

said Act were not protected by Article 31A of the Constitution. Accordingly, the said Act was declared as unconstitutional and void. Hon"ble the Supreme Court considered the question whether the said Act was protected by Article 31A (1) of the Constitution. A Five Judge Bench of Hon"ble the Supreme Court inter alia said that any law providing for the acquisition by the State of an "estate" is saved by Article 31A, subject to certain conditions, violation of Articles 14, 19 and 31 notwithstanding. Sub- article (2), it was held, explains the concept of "estate" and includes therein janmam rights. Although Article 31A is worded widely enough to rope in acquisition of any estate by the State regardless of purpose, the Supreme Court had cut back on this amplitude by limiting entitlement to agrarian reform legislation only. It was further held that once it was found that the legislative area is barricaded by Article 31A, it could not be breached by Articles 14, 19 and 31 and judicial break-in is constitutionally interdicted. But, at the same time, it is to be remembered that Article 31A is no charter of legislative freedom to refuse compensation altogether in every case. The Court, it was held, may not strike down a statute for non-payment of compensation but the legislature is expected, except in exceptional socio-historical setting, to provide just payment for the deprived persons.

174. In *Godavari Sugar Mills Ltd. v. S.B. Kamble*, (1975) 1 SCC 696, Hon"ble the Supreme Court culled out the following principles, which could be inferred from the decided cases in the said case in order to find whether an impugned enactment for acquisition of land is protected by Article 31A of the Constitution:-

"(1) Acquisition of land by the State in order to enjoy the protection of Article 31A should be for the purpose of agrarian reform.

(2) Acquisition of land by taking it from a senior member of the family and giving it to a junior member is not a measure of agrarian reform.

(3) Acquisition of land for urban slum clearance or for a housing scheme in neighbourhood of a big city is not a measure of agrarian reform.

(4) Acquisition of land by the State without specifying the purpose for which land is to be used is not a measure of agrarian reform.

(5) Schemes of rural development envisage not only equitable distribution of land but also raising of economic standards and bettering of rural health and social conditions in the villages. Provision for the assignment of land to a Panchayat for the use of the general community or for hospitals, schools, manure pits, tanning grounds ensure for the benefit of the rural population and as such constitute a measure of agrarian reform.

(6) Provision for reservation of land for promotion of agriculture and for the welfare of agricultural population constitutes a measure of agrarian reform. Agrarian reform is wider than land reform.

(7) If the dominant and general purpose of the scheme is agrarian reform, the scheme may provide for ancillary provisions to give full effect to the scheme.

(8) A provision fixing ceiling area and providing for the disposal of surplus land in accordance with the rules is a measure of agrarian reform."

175. A reading of the above principles that had been enumerated, it is evident that proposition (3) shows that acquisition of land for urban slum clearance or for housing scheme in a neighbourhood of a big city is not a measure of agrarian reform. Besides, proposition (5) shows that it is in consonance with the provisions of Section 2 (bb) of the Consolidation Act 1948 providing for reservation of land for common purposes.

176. In *Dattatraya Govind Mahajan v. State of Maharashtra*, (1977) 2 SCC 548, it was said that the object and purpose of introducing Articles 31A and 31B was to protect agrarian reform legislation from invalidation. Article 31B saved from invalidation an enactment specified in the Ninth Schedule even if it happened to be "inconsistent with or takes away or abridges any of the rights conferred by, any provisions of Part III of the Constitution". It was held to be immaterial whether such enactment was inconsistent with any provisions of Part III or had taken away or abridged any of the rights conferred by any such provisions, for both infirmities were cured by Article 31B. However, it was held by their Lordships that they were clearly of the view that the second proviso to Clause (1) of Article 31A conferred a fundamental right.

177. In the circumstances, even though right to property in view of the repeal of Article 31 of the Constitution, is no longer a fundamental right but nevertheless the second proviso to Article 31A of the Constitution has been held to be a fundamental right. In other words, in order to hold valid the legislation as an agrarian reform legislation, it must fall within the ambit and scope of the second proviso to Article 31A. The effect of omission of Article 31 of the Constitution by the Constitution (Forty-fourth Amendment) Act, 1978 w.e.f. 20.06.1979 is that it no longer is a fundamental right. In fact, at present in respect of property, there are mainly four constitutional provisions, i.e. Articles 31A, 31B and 31C, besides, Article 300A. Articles 31A, 31B and 31C are included under the Chapter of fundamental rights while Article 300A is a constitutional right simpliciter. The provisions of Articles 31A, 31B and 31C impose certain restrictions on the right to property and the main object of these provisions has been to provide immunity to various laws curtailing property rights for carrying out the objects of the directive principles and implement agrarian reforms. The Constitution (Forty-fourth Amendment) Act, 1978 eliminated right to property as a fundamental right. Article 31A which contained the said right was shifted to Article 300A of the Constitution. This shifting was done so as to keep the position intact and affirm, that no person was to be deprived of his property save by the authority of law. The amendment, however, expanded the power of the State to appropriate property for social welfare measures of agrarian reforms. However, it did not extend the right of the State to appropriate property or extend the immunity for measures other than agrarian reforms. The emergence of clauses A, B and C of Article 31 is in the realm of doctrine of "eminent domain". According to which,

the State can acquire private property and the acquisition would be justified if it is for public use. The essential ingredients of this doctrine are that the property which is taken for public use is compensated by paying compensation to its owner.

178. Hon'ble the Supreme Court in *Ram Chand and others v. Union of India and others*, (1994) 1 SCC 44, observed that the right to acquire an interest in land had assumed increasing importance as a result of requirement of such land more and more every day, for different public purposes and to implement the promises made by the framers of the Constitution. However, under the second proviso to Article 31A, the Constitution ensures that where any law makes provision for the acquisition by the State of land held by a person, under his personal cultivation, within the ceiling limit, it shall not be lawful for the State to acquire any portion of such land "unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof". It was held that by the Constitution (Forty-fourth Amendment) Act, 1978, clause (f) of Article 19 and Article 31 had been deleted and, as such, to hold property was no more a fundamental right. But, still the mandate under the second proviso to Article 31 A continued regarding payment of market value in respect of the land, the subject matter of acquisition.

179. In *Ahmedabad Municipal Corporation and another v. Ahmedabad Green Belt Khedut Mandal and others*, (2014) 7 SCC 357, it was observed that there was no fundamental right to hold property but the right to compensation on compulsory acquisition was still available under the second proviso to Article 31A (1) subject to the limitations as specified therein. It was further observed that Article 300A of the Constitution though created a human right being a constitutional provision, but it was not a fundamental right. Article 300A provides that no person can be deprived of his property except by authority of law.

180. In *Rajiv Sarin v. State of Uttarakhand*, (2011) 8 SCC 708, a Five Judge Bench of Hon'ble the Supreme Court considered the effect of deprivation of property and the entitlement for compensation to those deprived of the property. The appellants in the said case in 1945 acquired proprietary rights as intermediaries in a forest estate in Uttarakhand. The UP Zamindari Abolition and Land Reforms Act, 1950 (UPZALR Act) intended to abolish the zamindari and intermediaries and vest these lands in the State. The said UPZALR Act was applicable to the entire State of U.P. except the areas of Kumaun and Uttarakhand. Subsequently, the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (KUZALR Act) was enacted on 02.08.1960. The said KUZALR Act introduced land reforms in the State of U.P. in respect of Kumaun and Uttarakhand. The original KUZALR Act as applicable in Kumaun and Uttarakhand did not provide for vesting of private forests, and the definition of the word "land" in Section 3 (1) thereof excluded forest.

181. After the commencement of the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 03.01.1977 the subject "forests" was

included in Schedule VII List III of the Constitution as Entry 17-A. The U.P. Zamindari Abolition Laws (Amendment) Act, 1978 was passed on 30.11.1977 whereby the KUZALR Act was amended. The original KUZALR Act had received the President's assent on 10.09.1960 and the amendment had also received the President's assent on 26.04.1976. By a Gazette Notification dated 21.12.1977 under Section 4-A KUZALR Act, as amended by U.P. Act 15 of 1978, the rights, title and interest of every intermediary in respect of forest land situated in the specified areas ceased w.e.f. 01.01.1978 and the same vested in the State Government.

182. The appellants in the said case were served with a notice under Rule 2 of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 intimating them of the said vesting of their lands in the State w.e.f. 01.01.1978. The notice also invited objections and statement, if any, relating to the compensation qua the property in question. The appellants challenged the said notice and validity of the KUZALR Act, as amended by U.P. Act 15 of 1978. The appellants also challenged the order of the High Court which had been passed on the basis of Sections 18 (1) (cc) and 19 (1) (b) KUZALR Act, and it had been held that they were not entitled to any compensation as they had not derived any income from the forests.

183. Partly allowing the appeal, Hon^{ble} the Supreme Court inter alia held that any law which deprived a person of his private property for private interest would be amenable to judicial review. Though the concept of public purpose had been given quite a wide interpretation, nevertheless, "public purpose" remained the most important condition in order to invoke Article 300A of the Constitution. Besides, the right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution. However, the laws added to Schedule IX to the Constitution, by violating the Constitutional amendment after 24.12.1973, would be amenable to judicial review on a ground like violation of the basic structure of the Constitution. It was further held that right to property is no longer a fundamental right. In view of the aforesaid position, the entire concept of right to property had to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental rights. But even now as provided under Article 300A of the Constitution the State could proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law.

184. With regard to claiming compensation, it was observed that all modern constitutions which are invariably of democratic character provide for payment of compensation as the condition to exercise the right of expropriation. Acquisition of land and thereby deprivation of property was possible and permissible in accordance with the statutory framework enacted and when the State exercises

the power of acquisition of a private property thereby depriving the private person of the property, provision was generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It was observed that it must be understood in this context that the acquisition of the property by the State in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It was considered as true that the adequacy of compensation could not be questioned in a court of law, but at the same time the compensation could not be illusory. A distinction and difference had been drawn between the concept of "no compensation" and the concept of "nil compensation". As mandated by Article 300A, a person could be deprived of his property but in a just fair and reasonable manner. In an appropriate case the Court may find "nil compensation" also justified and fair if it was found that the State had undertaken to take over the liability and also had assured to compensate in a just and fair manner. But the situation would be totally different if it was a case of "no compensation" at all. A law seeking to acquire private property for public purpose cannot say that "no compensation" would be paid.

185. The case before Hon^{ble} the Supreme Court was a case of payment of "no compensation" at all. In the said case, the forest land which had vested in the State by operation of law, it was observed, could not be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, it was observed, that the revenue authority could always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants therein and then calculate compensation on the basis thereof in terms of Section 18 (1) (cc) and 19 (1) (b) of the KUZALR Act.

186. Awarding no compensation, it was held, attracted the vice of illegal deprivation of property even in the light of the provisions of the Act and was, therefore, amenable to writ jurisdiction. That being so, the omission of Section 39 (1) (e) (ii) of the UPZALR Act, 1950, as amended in 1978 was held to be of no consequence since the UPZALR Act left no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law. Therefore, while upholding the validity of the KUZALR Act and particularly Sections 4-A, 18 (1) (cc) and 19 (1) (b) thereof, the Assistant Collector was directed to determine and award compensation to the appellants therein by following a reasonable and intelligible criterion evolved on the

aforesaid guidelines provided and in the light of aforesaid law as has been enunciated. The appellants were also held entitled to interest at 6% per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the respondent physically and provided that the appellants were totally deprived of physical possession of the forest. In case the physical/actual possession had not been handed over by the appellants to the State Government or had been handed over at some subsequent date, i.e. after the date of vesting, the interest on the compensation amount, it was ordered, would be payable only from the date of actual/physical possession of the property in question and not from the date of vesting.

187. Therefore, it is quite evident that payment of compensation when a person is deprived of his property is a necessary consequence of the acquisition except of course where the acquisition has been made for agrarian reforms in which case also in view of the second proviso to Article 31A, compensation is payable in terms thereof.

188. In *K.T. Plantation Pvt. Ltd. and another v. State of Karnataka* (supra), a Five Judge Bench of Hon"ble the Supreme Court considered as to what extent the principles of eminent domain would apply where there is deprivation of property. It was held that the deprivation of property by statute within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain applies when a person is deprived of his property. It postulates that the purpose must be primarily public and not primarily of private interest and merely incidentally beneficial to the public. It was held that a law which deprives a person of his property for private interest would be unlawful and unfair; besides, undermine the rule of law and could be subjected to judicial review. However, the question as to whether the purpose is primarily public or private has to be decided by the legislature which of course should be made known. It was said that Article 300A of the Constitution proclaims that no person could be deprived of his property saved by authority of law, meaning thereby that a person could not be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it was said, could be inferred in that Article. Public purpose though was a pre-condition for deprivation of a person from his property under Article 300A but the right to claim compensation was also inbuilt in that Article and when a person is deprived of his property, the State had to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

189. In *Sayyed Ratanbhai Sayeed (D) through LRs and others v. Shirdi Nagar Panchayat and another*, Civil Appeal No.14016 of 2016, decided on 22.02.2016, Hon"ble the Supreme Court referred to its judgment in *Tukaram Kana Joshi and*

others v. Maharashtra Industrial Development Corporation and others, (2013) 1 SCC 353, wherein it had been proclaimed in the context of Article 300A of the Constitution of India, that right to property was not only a constitutional or statutory right but also a human right to be construed in the realm of individual rights, such as right to health, livelihood, shelter, employment etc. It was reminisced that in a welfare state, statutory authorities are bound not only to pay adequate compensation but were also under a legal obligation to rehabilitate the persons displaced. The spectre of the uprooted persons becoming vagabonds with anti-national propensities in case of non-fulfilment of such obligations by the State was portended with concern.

190. Earlier also, Hon'ble the Supreme Court in *Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.*, (2007) 8 SCC 705, said that the right of property is now considered to be not only a constitutional right but also a human right. It was observed that expropriatory legislation, as is well known, must be given a strict construction. The Act in the said case being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exist certain regulations in a statute or statutory rules.

191. Hon'ble the Supreme Court, therefore, in the context of Article 300A of the Constitution reiterated the position that right to property apart from being other rights like constitutional or statutory rights is nevertheless a human right to be construed in the realm of individual rights like health, livelihood, shelter, employment, etc.

192. The judgment of the Full Bench in *Rajender Parshad's* case (supra), which is the subject matter of reference to this larger Bench, cannot, therefore, be invalidated on the premise of the respondents that after deletion of Article 31 by the Constitution (Forty-fourth Amendment) Act, 1978 as right to property is nevertheless a constitutional right and also a human right although it is not a fundamental right under Part III of the Constitution. The petitioners before the Full Bench in *Rajender Parshad's* case (supra) claimed that they had purchased agricultural land, then within the Municipal limits of Kaithal by thirteen registered sale-deeds executed during the months of September and October, 1971. The purchased land was in the actual possession of different share-holders of the village "shamlat deh" who were, therefore, entitled to transfer the same. The petitioners claimed that thereafter they would put in and continued to be in actual peaceful possession of the land purchased by them. The Haryana Legislature enacted the Haryana Municipal Common Lands (Regulation) Act, 1974 w.e.f. 26.01.1973. The lands purchased by the petitioners in the said case were sought to be vested in the Municipal Committee, Kaithal without payment of any compensation whatsoever. The Full Bench found that the arena of controversy had narrowed down to as to whether the said acquisition or vesting of agricultural estate in the Municipal Committees without compensation by the

impugned provisions of the Act was not protected by the Constitution itself. In other words, the acid test that the impugned provisions had to pass was whether they were completely and totally protected by Article 31A (1) (a) of the Constitution. The Full Bench held that,

"A bare reading of Sections 1 to 10 would leave no manner of doubt that these provisions cannot even remotely be related directly to the question of land tenures or with the redistribution of agricultural holdings and consequently to agrarian reforms in its pristine connotation. Indeed even the learned counsel for the respondents were not able to urge seriously that the Act could possibly be brought within the ambit of agrarian legislation simpliciter as authoritatively laid down in Kochuni's case (supra)."

193. It was concluded that the Haryana Municipal Common Lands (Regulation) Act, 1974 was not a measure of agrarian reform and, therefore, could not enjoy the protection envisaged by Article 31A (1) (a) of the Constitution. Once that was so, it was held that in terms provided for the acquisition of land without payment of compensation which directly infringed the fundamental right enshrined in Article 31 of the Constitution. It was conceded before the Full Bench that in the absence of the vital and basic provisions regarding the vesting of the property in the municipality without compensation, the remaining provisions could not stand independently thereof. The whole of the statute, therefore, it was held, suffered from the vice of unconstitutionality and was struck down.

194. The fact that right to property in terms of Article 31 of the Constitution is now no longer a fundamental right would be inconsequential as it nevertheless is a constitutional and human right. Therefore, payment of compensation for acquisition of land is necessary concomitant duty and obligation of the State. The exception being where the land has been acquired for agrarian reforms, which has the protective umbrella of Article 31A of the Constitution, which also entails the payment of compensation of cases falling under the second proviso to Article 31A. In the circumstances, there is nothing to show that the Full Bench judgment in Rajender Parshad's case (supra) is liable to be invalidated. In fact, it is a good law even on date as Article 300A of the Constitution prohibits expropriation by the State without payment of compensation.

195. The learned counsel for the respondents have cited *Municipal Committee, Sirhind v. Parshotam Dass*, (1996) 8 SCC 324; *Notified Area Committee v. Des Raj*, (1995) 5 SCC 317; *Sulochana Chandrakant Galande v. Pune Municipal Transport*, AIR 2010 SC 2962; *Sundarjas Kanyalal Bhatija v. Collector, Thane*, (1989) 3 SCC 396; *State of Punjab v. Tehal Singh*, AIR 2002 SC 533; *Jilubhai Nanbhai Khachar v. State of Gujarat*, AIR 1995 SC 142 and *Bhupinder Singh v. Union of India*, 1996 (3) RCR (Civil) 180 (P&H) to contend that the extension of municipal limits over even a part of Sabha area, that part would form part of municipality and would cease to be a part of the Gram Panchayat and consequently right, title and interest over the area would vest in the municipality and it would not revert in the "khewatdars" (land owners).

196. In *Municipal Committee, Sirhind v. Parshotam Dass* (supra), the municipal limits of Sirhind Municipality was extended covering a part of Gram Sabha area of Nagar Panchayat and the disputed area came under the municipal limits. According to the plaintiffs, who had filed the suit, the Gram Sabha of the village having been abolished, the land in question, which was "shamlat deh" and was owned by the Gram Panchayat of village Brahman Majra, reverted to the original "khewatdars" under the proviso to Rule 3 of the Gram Panchayat Rules, 1965. Hon"ble the Supreme Court held that a combined reading of the provisions of the Gram Panchayat Act, 1952, the Rules made thereunder and the Punjab Municipal Act, 1911, unequivocally indicated that on and from the date of issuance of a notification extending the municipal limits over a part of the Sabha area that part of the Sabha area forms a part of the municipality and it is the municipality on whom right, title and interest over the area vests. It was said that the plaintiffs, who were the original "khewatdars", could not claim the property in question and it is the municipality which continued to be the owner of the disputed property.

197. In *Notified Area Committee v. Des Raj* (supra), the point for determination was as to whether land included in "shamlat deh" which had come to be vested in the concerned Gram Panchayat by virtue of Section 3 (a) of the VCL Act 1953 got divested because of what had been mentioned in the proviso to Rule 3 of the Gram Panchayat Rules, 1965 framed in exercise of powers conferred by Punjab Gram Panchayat Act, 1952. The lands in the said case to start with were being used for common purposes like "gair mumkin rasta" and "gau charand", but were shown as "shamlat deh" afterwards and came to be vested in the concerned Gram Panchayat pursuant to what had been provided in Section 3 of the VCL Act 1953. In pursuance of the provisions of the Municipal Common Lands Act 1974, the land was mutated in the name of Notified Area Committee, the appellant in the said case. The said Act was declared void by a Full Bench of this Court, reference to which has also been made above. The owners of the land filed a suit seeking declaration that the said land got reverted to them because of the proviso to Rule 3 of the Punjab Gram Panchayat Rules, 1965. The suit was dismissed by the trial Court and an appeal against the same was allowed by the learned Additional District Judge, Karnal. The High Court dismissed the second appeal in limine. Hon"ble the Supreme Court considered the question in the context of Rule 3 of the Punjab Gram Panchayat Rules, 1965, which reads as under:-

"3. Disposal of assets and liabilities of Panchayat—If the whole of the Sabha area is included in a municipality, cantonment or notified area all rights, obligations, property, assets and liabilities, if any, whether arising out of any contract or otherwise shall vest in the Municipal Committee, Cantonment Board or Notified Area Committee as the case may be.

Provided that the land, which vests in the panchayat under the Punjab Village Common Lands (Regulation) Act, 1961 or the land management and control of which vest in the panchayat under the East Punjab Holdings (Consolidation and

Prevention of Fragmentation) Act, 1948 shall revert to the co-sharers and owners thereof."

198. The proviso to Rule 3 aforesaid was omitted vide notification dated 22.12.1976. The land owners contended that the whole of the Sabha area must have been included for the land to vest in the Notified Area Committee; besides, even if this was not satisfied because of the proviso, the land reverted to them. The proviso despite its being omitted, it was contended that the land had been declared to be a part of the notified area on 06.10.1975 and the proviso operated by its own force on that day. Insofar as the non-inclusion of whole of the area of the gram panchayat was concerned, a reference was made to sub-section (2) of Section 8 of the Punjab Gram Panchayat Act, 1952 and it was held that the only effect of non-inclusion of the whole area of a Gram Panchayat was that the jurisdiction of the concerned Notified Area Committee would get reduced and would be confined to the part that was included. In the said case, there was nothing to show that the part of Gram Panchayat in which the suit land situate had not been included in the territorial area of the Notified Area Committee. As regards the operation of the proviso, it was held that it dealt with the land which had come to vest in the panchayat under the VCL Act 1961 while in the said case the land came to be vested in the concerned panchayat by the VCL Act 1953. It was held that the proviso speaks of things done or action taken under the VCL Act 1953 and allows them to continue in force unless and until superseded by anything done or any action taken under the VCL Act 1961. It was said that this proviso did not apply to rights which got vested by operation of the VCL Act 1953 and these were protected by Section 4 (c) of the Punjab General Clauses Act, 1898, according to which, the repeal of an enactment does not affect, inter alia, any right acquired under the repealed enactment. In the said case, the Gram Panchayat had acquired the right under the VCL Act 1953 and its repeal by the VCL Act 1961 did not in any way affect the right which the Gram Panchayat had acquired over the land in question. So, the proviso did not operate qua the lands in the said case. In view of the aforesaid legal position, it was held that what has been stated in Rule 3 of the Punjab Gram Panchayat Rules, 1965 either in its main part or in the proviso could not be called in the aid by the respondents to claim reversion of the land to them.

199. In *Sulochana Chandrakant Galande v. Pune Municipal Transport* (supra), the Urban Land (Ceiling and Regulation) Act, 1976 was enacted to provide for imposition of a ceiling on vacant land in urban agglomerations for acquisition of such land in excess of the ceiling limit, to regulate the construction of buildings on such land and for matters connected therewith. It came into force on 17.02.1976. On the said date, the suit land in the said case was not within the urban limits. However, it was included in the urban area residential zone only w.e.f. 17.05.1976 by extending the limits of Municipal Corporation. The suit land was acquired under the Urban Land Ceiling Act, 1976 in the years 1978-1979 and its possession was taken and handed over to Pune Municipal Transport for establishing a bus depot and staff quarters. A bus depot was constructed on a

part of the suit land in 1988. The appellant in the said case filed a revision petition on 06.04.1998, i.e. after ten years of the construction of bus depot, to contend that the land ought not to have been acquired under the said Urban Land Ceiling Act on the ground that on the date of commencement of the said Act, i.e. 17.02.1976, the suit land was not within the limits of urban area. The revision was allowed by the Hon"ble Minister exercising revisional powers vide order dated 29.09.1998. A writ petition against the same was filed by the Pune Municipal Transport, which was allowed by the High Court on 22.02.2006 in spite of the fact that the Urban Land Ceiling Act, 1976 stood repealed by the Urban Land (Ceiling and Regulation) Repeal Act, 1999 w.e.f. 18.03.1999. Hon"ble the Supreme Court held that the scheme of the aforesaid Urban Ceiling Act provides that the prescribed authority shall make an order declaring the surplus land. The land would be acquired by the State and the tenure holder is entitled to have an amount of compensation. It was held that Section 10 (3) of the said Urban Land Ceiling Act provided that after acquisition and publication of the notification under Section 10 (1) thereof, the land shall be deemed to have vested absolutely in the State Government free from all encumbrances with effect from the date so specified. It was held that, "free from encumbrances" meant vesting of land in the State without any charge or burden in it. Thus, the State had absolute title/ownership over it. Insofar as the change of user was concerned, it was said that 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. It was said that it was not the concern of the land owner how his land is used and whether the land was 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 and he has right to get compensation for the same and the person interested cannot claim the right of restoration of land on any ground whatsoever.

200. In *Sundarjas Kanyalal Bhatija v. Collector, Thane* (supra), a draft notification was issued by the Government of Maharashtra on 19.06.1982 under Section 3 (3) of the Bombay Provincial Municipal Corporation Act, 1949 proposing the formation of "Kalyan Corporation". It suggested the merging of municipal areas of Kalyan, Ambarnath, Dombivali and Ulhasnagar. Many objections and representations were received against the proposal objecting to the merger of their municipal areas into the Corporation. A writ petition was also filed by a community interested in a separate entity for Ulhasnagar which was withdrawn on the assurance of the government that the representatives would be given an opportunity of being heard before taking a final decision. Others who filed similar objections were not heard although their objections were considered. The government decided to exclude Ulhasnagar from the Kalyan Corporation. The other areas indicated in the draft notification were merged in the Corporation. Their challenge to the same on the ground that they were not heard was disposed of by the High Court without quashing the notification, but directing the government to reconsider the proposal within six months and also give

reasonable opportunity of being heard to the petitioners therein before taking any final decision in the matter. It was held by Hon''ble the Supreme Court that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation had neither the attraction of logic nor the support of law. The function of the government in establishing a Corporation under the Act in the said case was neither executive nor administrative. It was a legislative process indeed. Besides, the rules of natural justice were not applicable to legislative action plenary or subordinate. The procedural requirement of hearing was not implied in exercise of legislative powers unless hearing was expressly provided.

201. In *State of Punjab v. Tehal Singh* (supra), after the Punjab Panchayati Raj Act, 1994 came into force, the residents of village Khanpur represented to the Government for having an independent Gram Sabha for village Khanpur by including certain portions of area of Gram Sabha Wazidpur. The government after making an enquiry issued notification dated 24.10.1997 under Section 3 of the said Act and declared the territorial area Gram Sabha Khanpur comprising of "abadi" portions of village Wazidpur and villages Khanpur and Harijan Colony. By another notification of the same date, the government declared the establishment of Gram Sabha, Khanpur under Section 4 of the said Act. The government also constituted Gram Panchayat for the Gram Sabha, Khanpur. Respondent No.1 in the said case, who was Sarpanch of Gram Sabha, Wazidpur and respondent No.2, who was the Member of Gram Panchayat, Wazidpur challenged the validity of the notifications dated 24.10.1997 by way of a writ petition. It was contended on their behalf that no opportunity of hearing having been afforded before declaring the territorial area of village Khanpur inasmuch as before establishing Gram Sabha, Khanpur, the notifications were invalid; that, the locality Harijan Colony not being contiguous to village Khanpur, the said locality could not have been included in Gram Sabha Khanpur; besides, the notifications under Sections 3 and 4 of the said Act could not have been issued simultaneously. Hon''ble the Supreme Court considered the question whether the State Government was required to give an opportunity of hearing to the residents of the area excluded from Gram Sabha Wazidpur and included in Gram Sabha Khanpur before issuing notifications under Sections 3 and 4 of the said Act, respectively, declaring territorial area of Gram Sabha Khanpur and establishing Gram Sabha Khanpur.

202. After considering the provisions of Sections 3 and 4 of the said Act relating to establishment of Gram Sabha area and constitution of Gram Sabha and referring to the case of *Rameshchandra Kachardas Porwal and others v. State of Maharashtra etc.* (1981) 2 SCC 722 and *Union of India and another v. Cynamide India Ltd. and another*, (1987) 2 SCC 720, it was held that the principles of law that emerge from the aforesaid decision are - (1) where provisions of a statute provide for the legislative activity, i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action

forthwith which provide for certain consequences; (2) where the power to be exercised by the government under provisions of a statute does not concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not directed against an individual or to a particular situation; and (3) lay down future course of actions, the same is generally held to be legislative in character. Viewed in the light of the statement of law as stated by Hon^{ble} the Supreme Court, it was said that the provisions of Sections 3 and 4 of the said Act which provide for declaring territorial area of a Gram Sabha and establishing a Gram Sabha for that area do not concern with the interest of an individual citizen or a particular resident of that area. It was held that it was almost settled law that an act legislative in character - primary or subordinate, is not subjected to rule of natural justice. However, in case of subordinate legislation, the legislature may provide for observance of principles of natural justice or provide for hearing to the residents of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area.

203. In *Jilubhai Nanbhai Khachar v. State of Gujarat* (supra), the case related to vesting of mines, minerals and quarries in lands held by persons including "Girasdars" and "Barkhalidars" in the State which was held to be not violative of Article 300A of the Constitution. It was said that the material resources of community is of wide concept and must be broadly interpreted to bring within its sweep all resources, natural or physical resources, movable, immovable, corporeal and incorporeal, tangible or intangible properties etc. Private resources or property are part of material resources of the community. All things that produce wealth for the community are material resources. It was said to be clear that right to property under Article 300A is not a basic feature or structure of the Constitution. It is only a constitutional right. The Bombay Land Revenue Code and Land Tenure Abolition Laws (Gujarat Amendment) Act 8 of 1982, which was assailed, had the protective umbrella of the Ninth Schedule habitant under Article 31B and its invalidity was immuned from the attack by operation of Article 31A. Even otherwise, it fell under Article 39 (b) and (c) and it was saved by Article 31C. It was held that the word "property" used in Article 300A must be understood in the context in which the sovereign power of eminent domain is exercised by the State and expropriated the property. No abstract principles could be laid. Each case must be considered in the light of its own facts and setting. The phrase "deprivation of the property of a person" must be equally considered in the fact situation of a case. Deprivation connotes different concepts. Article 300A gets attracted to an acquisition or taking possession of private property, by necessary implication for public purpose, in accordance with the law made by the Parliament or of a State Legislature, a rule of a statutory order having force of law. It is inherent in every sovereign State by exercising its power of eminent domain to expropriate private property without owner's consent. *Prima facie*, State would be the judge to decide whether a purpose is a public purpose. But it is not the sole judge. This would be subject to judicial

review and it is the duty of the court to determine whether a particular purpose is a public purpose or not. Public interest has always been considered to be an essential ingredient of public purpose. However, every public purpose does not fall under Article 300A and neither does every exercise of eminent domain an acquisition or of taking possession under Article 300A. Generally speaking preservation of public health or prevention of damage to life and property are considered to be public purposes. Yet deprivation of property for any such purpose would not amount to acquisition or possession taken under Article 300A. It would be by exercise of the police power of the State. In other words, Article 300A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There has to be no deprivation without any sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300A. In other words, if there is no law, there is no deprivation. Acquisition of mines, minerals and quarries is deprivation under Article 300A.

204. The further question that was considered was whether the owner of the property entitled to compensation i.e. just equivalent or indemnification to the owner of the property expropriated. It was said to be common knowledge that when the State exercises its executive power to acquire private property, it is under the Land Acquisition Act, 1894 or similar State laws. Acquisition thereunder though was for public purpose, payment of compensation at the prevailing market value as on the date of the relevant notification published in the Official Gazette, is sine qua non. The State when exercises the power of eminent domain under Article 300A and acquires or requisitions or takes possession of the property of a citizen to give effect to any of the directive principles envisaged in Part IV of the Constitution, the question emerges whether the same yardstick of payment of just equivalent or indemnification to the owner of the property expropriated should be applicable or Article 300A per force bring it in operation? Since Article 30 (2) itself provided payment of compensation, when property was acquired preceding Twenty-fifth Constitution Amendment Act, 1971, the Supreme Court interpreted the word "compensation" as aforesaid, but when Article 30 (2) itself was omitted from the Constitution, the question arose whether payment of compensation is a sine qua non for deprivation of property under Article 300A. In any democracy governed by rule of law, it was said that Constitution is the supreme law of the land.

205. In *Bhupinder Singh v. Union of India* (supra), this Court held that the power exercised by the Administrator, Union Territory, Chandigarh in specifying the municipal area of the Municipal Corporation, Chandigarh under Section 3 of the Punjab Municipal Corporation Act, 1976, as extended to Chandigarh, is legislative in nature and the rule of audi alteram partem does not apply. In the absence of any provision specifically requiring a hearing to be given, the exercise of such power need, therefore, be preceded by notice or hearing.

206. It is to be noticed that in respect of the above judgments cited by the

learned counsel for the respondents, except for the judgment cited in *Jilubhai Nanbhai Khachar v. State of Gujarat* (supra), the spirit, amplitude and effect of the provisions of Article 300A of the Constitution was not subject matter of consideration. The effect of Article 300A of the Constitution is now delineated upon and given effect by the judgments of Hon''ble the Supreme Court in *Rajiv Sarin v. State of Uttarakhand* (supra) and *K.T. Plantation Pvt. Ltd. v. State of Karnataka* (supra) in which the payment of compensation as a condition to exercise the right of expropriation has been clearly provided for and the right to property has undoubtedly been held to be not only a constitutional right but a human right as well. Besides, a person whose land is acquired is entitled to compensation.

207. In *Municipal Committee, Sirhind v. Parshotam Dass* (supra) and in the *Notified Area Committee v. Des Raj* (supra), the issue was confined to the effect of reversion of land to the land owners in the context of Rule 3 of the Punjab Gram Panchayat Rules, 1965 and the original owners were held not entitled to claim the property in question in the context of said Rule. Besides, in *Notified Area Committee v. Des Raj* (supra), the proviso to Rule 3 of the Punjab Gram Panchayat Rules, 1965 was held to be inapplicable as the land came to be vested in the concerned Panchayat by operation of the VCL Act 1953 under which the Gram Panchayat had acquired its right and the repeal of the said VCL Act 1953 by the VCL Act 1961, it was said, did not in any way affect the right which the Gram Panchayat had acquired over the land.

208. In *Sulochana Chandrakant Galande v. Pune Municipal Transport* (supra), it is to be noticed that though the land owner was held not entitled for restoration of the land, but nevertheless was held entitled for compensation.

209. In *Sundarjas Kanyalal Bhatija v. Collector, Thane* (supra), *State of Punjab v. Tehal Singh* (supra) and *Bhupinder Singh v. Union of India* (supra), the question as to whether the residents of an area were entitled for a hearing in compliance with the principles of natural justice before changing their area in respect of the municipality or the Gram Sabha concerned, it was held that the function of the government in establishing a Corporation under an enactment was neither executive nor administrative, but was legislative to which the rules of natural justice were inapplicable and to which there is no dispute.

210. In *Jilubhai Nanbhai Khachar v. State of Gujarat* (supra), the right of the State for expropriation of property was upheld subject to determination and just payment of compensation. However, the same yardstick for payment of compensation could not be applied if it was to give effect to the directive principles envisaged in Part IV of the Constitution.

211. In the present case, when the land being taken over by a municipality and would, thus, have the characteristics of an urban area, it cannot be said that the same is for giving effect to the directive principles of the State policy or for agrarian reforms. Rather the common purposes for which the land was being

utilized by the "inhabitants of the village" would cease. Besides, there is no dispute to the proposition that the areas of the Gram Panchayat which are merged into the municipalities would not be entitled to a hearing in compliance with the principles of natural justice before their merger.

212. The protective shield of agrarian reforms as envisaged by Article 31A of the Constitution not being there with the "shamlat deh" lands vesting with the Municipality or the Municipal Corporation, as the case may be, then the persons who had a title or vestige of title to "shamlat deh" lands before these vested in the Panchayat in terms of Section 4 of the VCL Act 1961 would be entitled to compensation. Besides, the persons who come within the exclusionary clauses of Section 2 (g) of the VCL Act 1961 would also be entitled to compensation as the lands in their cases had not vested in the Panchayat in terms of Section 4 of the VCL Act 1961. The provisions for payment of compensation for "shamlat deh" lands to those who had ownership rights or vestige of title in them and to those who come within the exclusionary clauses are to be read in the provisions where the land that is acquired and vests with the Municipal Committee or Municipal Corporation, as the case may be, in terms of Section 161 (h) of the Municipal Act 1973 and Section 161 (g) of the Municipal Corpn. Act 1994 and compensation shall be paid to those who had ownership rights or vestige of title in accordance with law.

213. A person, who is in enjoyment and in use of his property as an owner, is not liable to be deprived of the same without payment of compensation, especially when it is not shown or indicated to be used towards implementation of the directive principles of the State policy for agrarian reforms so as to have the protective shield of Article 31A. The determination of compensation is to be done in accordance with law providing for acquisition of property by the State.

214. In respect of "Jumla Mushtarka Malkan" lands that are carved out during consolidation operation by imposing a pro rata cut and the proprietary body of the village is to be the owner and recorded in the revenue records as, "Jumla Malkan Wa Digar Haqdarar Arazi Hasab Rasad Raqba" while the management and control is to vest with the Gram Panchayat.

215. In Ajit Singh's case (supra), it was noticed by Hon^{ble} the Supreme Court that the title of the land which is taken for common purposes still vested in the proprietary body, the management of the land is done on behalf of the proprietary body, and the land is used for common needs and benefits of the estate or estates concerned. In other words, a fraction of each proprietor's land was taken and formed into a common pool so that the whole may be used for common needs and benefits of the estate or estates. The proprietors naturally would also share in the benefits along with others. Hon^{ble} the Supreme Court in respect of "Jumla Mushtarka Malkan" lands upheld the taking of lands for common purposes by imposing a pro rata cut without payment of compensation, as it was for common use of all in the village including the proprietors. It was said that under various laws dealing with land reforms, no person apart from

certain exceptions could hold land beyond a ceiling fixed under the law. The second proviso to Article 31A said that only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of the proviso seemed to be that a person who is cultivating the land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31A unless at least compensation at the market rate was given. Therefore, even where land is within the ceiling limit of an owner and is taken for agrarian reforms in terms of Article 31A of the Constitution, he is entitled for compensation. As such, it would be difficult to comprehend a situation where there is no protection of taking the land for agrarian reforms and yet the person having ownership and title in the land that is taken is to be deprived of compensation. In the circumstances, compensation for the land of a proprietor which merges in the municipality is to be paid provided the ownership and title of the claimant is established and the provisions for payment of compensation are to be read in respect of the land of a proprietor which is taken and merged in a municipal area.

216. The counsel appearing for the respondents have contended that the manner in which the compensation is to be paid and for determining the same would be a complicated and complex task. However, Mr. Sorabjee, learned Senior Advocate submitted that compensation is to be paid in accordance with law. Strong reliance has been placed on *B. Prabhakar Rao and others v. State of Andhra Pradesh and others*, 1985 (Supp.) SCC 432 (462). In the said case, the Government of Andhra Pradesh reduced the age of superannuation of its employees from 58 years to 55 years. Directives were issued to local authorities and public corporations under its control to do likewise. Ordinance No.5 of 1983 was promulgated which inter alia provided that every Government employee, not being a workman and not belonging to Last Grade Service shall retire from service in the afternoon on the last day of the month in which he attains the age of 55 years. After the notifications reducing the age of superannuation from 58 to 55 were issued, a large number of writ petitions were filed by the affected employees in the Supreme Court as also in the High Court of Andhra Pradesh challenging the vires of the provisions reducing the age of superannuation. The Supreme Court in its judgment pronounced on 18.01.1985 [reported as *K. Nagaraj and others v. State of Andhra Pradesh and another*, (1985) 1 SCC 523] upheld the impugned provisions and all the writ petitions were dismissed. In between, other events occurred and amendments were made to the legislation once again raising the age of superannuation to 58 years. An agreement was arrived at between the Government of Andhra Pradesh and the Action Committee of Employees and Workers in Andhra Pradesh which provided that the earlier position would be restored. The Supreme Court noticed that the final situation that emerged was that almost immediately after the age of superannuation was reduced, it was realized by the Government that a step in the wrong direction had been taken and that a serious wrong and grave injustice had been done to the employees as the implementation of the decision was delayed and some had

suffered by being compelled to retire between a certain period and they were denied the benefit of the legislation which increased the retirement age to 58 years. It was said that legislations to remedy wrongs ought not to exclude from their purview persons, a few of the wronged, unless the situation and the circumstances make the redressal of the wrong, in their case, either impossible or so detrimental to the public interest that the mischief of the remedy outweighs the mischief sought to be remedied. It was found that there was no such impossibility or detriment to the public interest involved in re-inducting into service those who had retired as a consequence of the legislation which was since thought to be inequitable and was sought to be remedied. It was observed that no calamitous consequences were mentioned in any of the counter affidavits. One of the submissions strenuously urged by the learned Advocate General of Andhra Pradesh and several other counsel who followed him was the oft-repeated and now familiar argument of "administrative chaos", it was said that there would be considerable chaos in the administration if those who had already retired were now directed to be re-inducted in service. Their Lordships of the Supreme Court observed that they were unable to agree with the said submission. Those that had stirred up a hornet's nest could not complain of being stung. The following observations in *M.R. in Bradbury v. London Borough of Enfield*, (1967) 1 WLR 1311 (1324) : (1967) 3 All ER 434, and on which Mr. Sorabjee has laid emphasis, were quoted:-

"It has been suggested by the chief education officer that, if an injunction is granted, chaos will supervene. All the arrangements have been made for the next term, the teachers appointed to the new comprehensive schools, the pupils allotted their places, and so forth. It would be next to impossible, he says, to reverse all these arrangements without complete chaos and damage to teachers, pupils and public. I must say this: if a local authority does not fulfil the requirements of the law, this Court will see that it does fulfil them. It will not listen readily to suggestions of "chaos". The department of education and the council are subject to the rule of law and must comply with it, just like everyone else. Even if chaos should result, still the law must be obeyed; but I do not think that chaos will result. The evidence convinces me that the "chaos" is much overstated.... I see no reason why the position should not be restored, so that the eight schools retain their previous character until the statutory requirements are fulfilled. I can well see that there may be a considerable upset for a number of people, but think it far more important to uphold the rule of law. Parliament has laid down these requirements so as to ensure that the electors can make their objections and have them properly considered. We must see that their rights are upheld."

(Emphasis added).

217. In the present case also, the question of chaos is much overstated. No such circumstances are mentioned that payment of compensation for the land that is taken would result in disastrous consequences, insoluble problems and

insurmountable difficulties would follow or how chaos would result.

218. In view of the above discussion, the legal position that emerges is as follows:-

(a) The "shamlat deh" lands as mentioned in Section 2 (g) of the VCL Act 1961 are the common lands of the village and are for the common use and benefits of the "inhabitants of the village" as contemplated by Section 5 of the said Act. In *Gram Panchayat of village Jamalpur v. Malwinder Singh* (supra), it was said that though, the interest of the proprietors of other lands, in "shamlat deh" lands, was incidental to their proprietary interests in those other lands, such interest in the "shamlat" was not a mere appendage to their interest in the other lands and that lands so reserved were zealously guarded as the common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation were recognised as having a share in these reserved plots. It was said, "as a general rule, only proprietors of the village (malikan-deh) as distinguished from proprietors of their own holdings (malikan makbuza khud) are entitled to share in the shamlat deh". It was also noticed that while it appeared to have been laid down that the right to share in the Village Common Land was an incident attaching to the ownership of agricultural land in the village and that ordinarily those persons who held land on which revenue was assessed and who were cosharers in the "khewat" were entitled to a share in proportion to the revenue paid by them. The ownership of land though was held to be in favour of the landowners; however, the VCL Act 1953 being a measure of agrarian reforms, it was held, would receive the protection of Article 31A of the Constitution;

(b) With the enlargement of the municipal limits by including the "shamlat deh" lands in the Municipal Corporation or Municipal Committee, as the case may be, the characteristics of the "shamlat deh" lands cease to exist and they no longer are for the purpose of any agrarian reforms;

(c) The acquisition of "shamlat deh" lands of the village by enlarging the area of a Municipal Council or a Corporation deprives the "inhabitants of the village" of their rights to enjoy the common property of the village. The "shamlat deh" lands were the common lands of the village for use and enjoyment of the inhabitants and residents of the village. This has been the intent of the VCL Act 1961 as also of the Consolidation Act 1948 as amended from time. These were not for the domain of the public in the urban areas of a Municipality or a Municipal Corporation, as the case may be.

(d) The purpose of reserving lands as "shamlat deh" or "Jumla Mushtarka Malkan" was to protect the rights of the holders and owners in the land against the competing claims of others, that is to say to avoid the claims of those who had not contributed towards the common purpose although they were/are entitled to full user and enjoyment of the same. With such lands vesting in a

Municipality or a Municipal Corporation they assume the characteristics of a town or urban area with no connection for use and enjoyment for the inhabitants of the village. Their acquisition by the State for the rural economy and agrarian reforms in view of Article 31A (1) of the Constitution, protected the State from the payment of compensation. With the "shamlat deh" lands now vesting in the Municipality or Municipal Corporation, as the case may be, and thus being a part of a town or an urban area, the protective shield against payment of compensation is no more there. In fact, the concept of "shamlat deh" is absolutely foreign and alien in the context of an urban or a town area. The very use of the words "shamlat deh" which is common land of the village for an urban area or a town falling within the limits of a Municipality or a Municipal Corporation is out of context. The town or an urban area may have its own common lands, but the same are not liable to be termed or called as "shamlat deh" lands for the common use of the inhabitants of the village.

(e) In the event of lands forming part of the municipal limit by the enlargement of the municipal area, the "shamlat deh" lands, which are recorded in the revenue records as "shamlat deh" simpliciter, would not entail as a document for grant of any compensation and the same would escheat to the State and may be taken to be escheated to the State in terms of Article 296 of the Constitution of India;

(f) However, where the lands are identifiable by title, semblance of ownership or vestige of title of a proprietor to the extent of his share by way of a document or by way of revenue records/jamabandis, the owner, so identified, shall be entitled for compensation as per his entitlement. Besides, if the lands come within the exclusionary clauses of Section 2 (g) of the VCL Act 1961, the owner of such lands would be entitled for compensation. It is, however, made clear that the onus to prove the right of ownership, semblance of ownership, vestige of title or that it comes within the exclusionary clauses of Section 2 (g) of the VCL Act 1961 shall be on the person so claiming, which he can establish on the basis of revenue records/jamabandis or other materials. The revenue records to which a presumption of truth is attached would, however, be subject to rebuttal;

(g) The entries in the revenue records carry a presumption of truth, which, however, are rebuttable and can be shown to be wrong by other material (s) on record. The entries, however, in case based on fraud or manipulation of revenue records, the same would not confer any right or title on the person so entered as owner in the records;

(h) The "Jumla Mushtarka Malkan" lands are distinct and separate from the "shamlat deh" lands. The ownership and title of the "Jumla Mushtarka Malkan" lands or the lands recorded as "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" vest in the proprietary body of the village and not in the Panchayat; however, the management and control of these lands vest in the Panchayats in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 as also the judgment

of the Five Judge Bench of the Supreme Court in Ajit Singh's case (supra);

(i) The "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands have been carved out in consolidation proceedings and operations carried out in accordance with the Consolidation Act 1948 and the Consolidation Rules 1949 by imposing a pro rata cut on the lands of the proprietors. The cut that has been made is clearly identifiable and discernible as it is so mentioned in the "Missal Haqiyat" (document of ownership), "Naksha Haqdarani" (document of share of the proprietors), "Khatauni Pamaish" (measurement of total land on the basis of its valuation) and "Khatauni Istemal" (first jamabandi after consolidation which mentions the old khasra numbers and the new khasra numbers). Therefore, where the shares of the proprietors in the "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands are identifiable and the land vests in the municipality, then the proprietors would be entitled for compensation to the extent of their share as they are admittedly owners of the same. In Ajit Singh's case (supra), it has specifically been held that the ownership of such land vests in the proprietary body of the village to the extent of its share in the holdings in the village;

(j) The judgment of Five Judge Bench of Hon'ble the Supreme Court in Bhagat Ram's case (supra) invalidating the reservation of certain areas in a consolidation scheme for income of the Gram Panchayat and holding it to defeat the whole object of the second proviso of Article 31A, is applicable for lands that are carved out for common purpose in terms of Section 2 (bb) of the Consolidation Act 1948 and are recorded in the revenue records as "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad Raqba", "Jumla Malkan" or "Mushtarka Malkan" etc. and is not for lands that are recorded as "shamlat deh". This is for the reason that the proprietary body of the village is recorded as owners of the lands recorded in the revenue records "Jumla Malkan Wa Digar Haqdarani Arazi Hassab Rasad Raqba", "Jumla Malkan" or "Mushtarka Malkan" etc. and only the management and control vests with the Gram Panchayat in terms of Section 23-A of the Consolidation Act 1948 and Rule 16 (ii) of the Consolidation Rules 1949 while the ownership and title of the "shamlat deh" lands vests with the Panchayat in terms of Section 4 of the VCL Act 1961. Therefore, the income derived from "shamlat deh" lands can be used for common purposes while reservation of lands for income of the Panchayat cannot be made in respect of lands carved out for common purposes in a consolidation scheme.

(k) Any observation in Jai Singh's case (supra) and Veer Singh's case (supra) to the extent it is taken as conferring a right, title and ownership in respect of "Jumla Mushtarka Malkan" lands on the Gram Panchayat would be improper and invalid notwithstanding Section 4 of the VCL Act 1961 in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 and the judgment of the Five Judge Bench of Hon'ble

the Supreme Court in Ajit Singh's case (supra);

(l) The definition of "shamlat deh" as has been defined in Section 2 (g) of the VCL Act 1961 includes "shamlat deh" simpliciter; besides, "shamlat tikkas" lands described in the revenue records as shamlat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village. The said terms have been elucidated above and the proprietors having share in these sub-divisions of the village land shall be entitled to compensation as per their share, which is identifiable, but they would not be entitled to any compensation where it is not so identifiable;

(m) At the cost of repetition, it is stated that the documents for the identification of the land would be the revenue records primarily, unless these are shown to be incorrect or are forged or fraudulent or have been invalidated by a competent Court of law;

(n) The requirement for paying compensation for the land that is acquired and vests with the Municipal Committee or Municipal Corporation, as the case may be, in terms of Section 61 (h) of the Municipal Act 1973 and Section 161 (g) of the Municipal Corpn. Act 1994 shall be read into that effect and compensation shall be paid in accordance with law.

219. The answers to the questions formulated by the Division Bench on 02.09.2013, as have been reproduced above, are as follows:-

(1) Full Bench judgment of this Court in Rajender Parshad's case (supra) holding the Municipal Common Lands Act 1974 to be ultra vires is good law notwithstanding the Constitution (Fortyfourth Amendment) Act, 1978.

(2&3) The proprietary rights of proprietors in "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands shall not vest in a Municipal Council/Corporation or Faridabad Complex under the Municipal Corpn. Act 1994 or the Municipal Act 1973 and neither can the proprietors be divested of their proprietary rights in "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands without payment of compensation by a mere declaration of such inclusion or vesting by Section 2 (g) (6) of the VCL Act 1961, the Municipal Corpn. Act 1994 or the Municipal Act 1973 in view of the clear mandate of a Five Judge Bench of Hon'ble the Supreme Court in Ajit Singh v. State of Punjab (supra).

(4&5) The provisions of the Municipal Corpn. Act 1994 and the Municipal Act 1973 which provide that rights in common lands shall vest in a Municipal Council/Corporation or the Faridabad Complex would amount to compulsory acquisition without payment of compensation, which is impermissible in law and is illegal and invalid.

(6) Article 300A of the Constitution of India fully applies to the present controversy inasmuch as no person is to be deprived of his property say by

authority of law. The right to claim compensation or the obligation to pay, though not expressly included in the Article can be inferred in the said Article. The public purpose is a pre-condition for deprivation of a person from his property under Article 300A and right to claim compensation is also inbuilt in that Article in view of *Rajiv Sarin v. State of Uttarakhand* (supra) and *K.T. Plantation v. State of Karnataka* (supra).

(7) Section 7 (4) of the Panchayati Raj Act 1994, Section 2 (22B) and Section 61 (h) of the Municipal Act 1973 and Section 2 (g) (6) of the VCL Act 1961 are intra vires subject to payment of compensation where the "shamlat" land or the "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands vest by enlargement or extension of the area of a Municipal Council or Corporation and failure to pay compensation would render the same to be ultra vires. Besides, the ownership of "Jumla Mushtarka Malkan" or "Jumla Malkan Wa Digar Haqdarani Arazi Hasab Rasad Raqba" lands shall not vest in a Panchayat notwithstanding Section 4 of the VCL Act 1961 in view of Section 2 (bb) and Section 23A of the Consolidation Act 1948; besides, Rule 16 (ii) of the Consolidation Rules 1949 and a Five Judge Bench judgment of Hon'ble the Supreme Court in *Ajit Singh's case* (supra).

220. In terms of order dated 19.03.2015 mentioning that an answer to the reference would entail appraising the correctness of a Full Bench judgment in *Rajender Prasad and others v. State of Haryana*, (supra) on the basis of two other Full Bench judgments of this Court in *Jai Singh v. State of Haryana* (supra) and *Veer Singh and others v. State of Haryana and others* (supra), it would, therefore, be appropriate if the matter is placed before Hon'ble the Acting Chief Justice for constituting a Larger Bench, our answer is that the judgment of the Full Bench in *Rajender Prasad's case* (supra) lays down the correct law and is held to be valid and upheld. The judgments in *Jai Singh's case* (supra) and *Veer Singh's case* (supra) are also upheld; however, any observations made in *Jai Singh's case* (supra) and *Veer Singh's case* (supra) holding or observing that the land of the "Jumla Mushtarka Malkan" shall vest in the Gram Panchayat is held to be invalid and inapplicable notwithstanding Section 4 of the VCL Act 1961, as already noticed above.

221. With the answers to the questions posed for the Full Bench, the cases shall be listed before the appropriate Bench, as per the roster, for consideration of each case individually.

Rekha Mittal, J.—I have perused the judgment recorded by my learned brother S.S. Saron, J. but respectfully express my inability to agree to the findings that compensation is to be awarded for land described as "Shamlat Deh Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", etc., upon their vesting in a Municipal Corporation.

223. The "shamlat deh" of a village came to vest in a Gram Panchayat under the Punjab Village Common Lands (Regulation) Act, 1953 (hereinafter to be referred

to as "the 1953 Act"), but without any reference to any distinction between "shamlat deh" and "Shamlat Deh Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", etc.

224. Section 3 of the 1953 Act, reads as follows:-

3. Vesting of rights in panchayats and in non-proprietors.—Notwithstanding anything to the contrary contained in any other law for the time being in force, and notwithstanding any agreement, instrument, custom or usage or any decree or order of any Court or other authority, all rights, title and interest whatever in the land--

(a) which is included in the Shamlat Deh of any village, shall, on the appointed ate, vest in a panchayat having jurisdiction over the village;

(b) which is situated in the Abadi Deh of a village and which is under the house owned by a non-proprietor, shall at the commencement of this Act vest in the said non-proprietor.

225. A perusal of Section 3 would reveal that "shamlat deh" came to vest absolutely in a Gram Panchayat by extinguishing all rights, title and interest that any proprietor had or may have had in the "shamlat deh" of a village. At this stage, it would be appropriate to point out that the expressions "Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", etc. refer to the mode and manner of calculating the shareholding of proprietors and not to their ownership. The words "shamlat deh" without these words would not mean that "shamlat deh" is not owned by the proprietors. The common land of village i.e. "shamlat deh" vested, before the 1953 Act, without exception in the proprietary body. Reference in this regard may be made to the Chapter on "Common Lands" in Ratingen's Digest on Customary Law. The expressions "Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", etc. thus merely denote the mode and manner of calculating shareholding of a proprietor and their absence after the word "shamlat deh" would not raise an inference that this land is not owned by the proprietary body. This distinction drawn between "shamlat deh" and "Shamlat Deh Hasab Rasad Zare Khewat", etc. is thus un-natural.

226. The Punjab Village Common Lands (Regulation) Act, 1961 (as applicable to State of Haryana) (in short "the 1961 Act"), defines "shamlat deh" in Section 2(g) as follows:-

"Shamilat deh" includes -

(1) lands described in the revenue records as Shamilat deh or Charand excluding abadi deh;

(2) shamilat tikkas;

(3) lands described in the revenue records as shamilat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

[(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;]

[(4a) vacant land situated in abadi deh or gorah deh not owned by any person;]

(5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;

but does not include land which -

(i) becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;

(ii) has been allotted on quasi-permanent basis to a displaced person;

[(ii-a) was shamilat deh, but has been allotted to any person by Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of July 1985;]

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;

(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamilat deh and is so recording in the jamabandi or is supported by a valid deed;

(v) is described in the revenue records as shamilat, taraf, pattis, pannas, and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;

(vi) lies outside the abadi deh and was being used as gitwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this Act;

(vii) --- (Omitted by Haryana Act 18 of 1995).

(viii) was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of cosharers not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or

(ix) is used as a place of worship or for purposes subservient thereto;

[(6) lands reserved for the common purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the

Gram Panchayat under Section 23-A of the aforesaid Act.

Explanation - Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdarar Arazi Hassab Rasad", "Jumla Malkan" or "Mushtarka Malkan" shall be shamilat deh with the meaning of this section;]

227. Section 3 of the 1961 Act (as applicable to State of Haryana), relevant in the present context, reads as follows:-

3. Lands to which this Act applies.—(1) This Act shall apply and before the commencement of this Act the Shamilat law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause (g) of section 2.

[(2) Notwithstanding anything contained in sub-section (1) of section 4,-

(i) where any land has vested in a panchayat under the shamilat law, but such land, other than excluded under sub-clause (ii-a) of clause (g) of section 2, has been excluded from shamilat deh as defined in clause (g) of section 2, all rights, title and interest of the panchayat in such land, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law ; and the panchayat shall deliver possession of such land to such person or persons :

Provided that where a panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, the rights, title and interest of the panchayat in such land shall not so cease but the Panchayat shall, notwithstanding anything contained in section 10, pay to the person or persons entitled to such land, compensation to be determined in accordance with such principles and in such manner as may be prescribed ;

(ii) where any land has vested in a panchayat under this Act, but such land has been excluded from shamilat deh under sub-clause (ii-a) of clause (g) of section 2, all rights, title and interest of the panchayat in such land, from the date of allotment of such land by the Rehabilitation Department of the State Government, shall cease and all such rights, title and interest shall vest in the person or persons to whom the land so excluded has been allotted by the Rehabilitation Department of the State Government on or before the 9th day of July, 1985 subject to the condition that-

(a) any sum of money realised by the Rehabilitation Department of the State Government as a result of allotment of such land ; or

(b) where no money was realisable by the Rehabilitation Department of the State Government as a result of allotment of such land, the amount of compensation in respect of such land as determined under sub-section (3) by the Collector of the district in which such a land is situated,

shall be paid by the Rehabilitation Department, of the State Government to the Development and Panchayats Department for onward disbursement to the

panchayat to which such shamilat deh belonged.

(3) As soon as may be, on the commencement of the Punjab Village Common Lands (Regulation) Amendment Act, 1996 the Development and Panchayats Department shall make a reference to the Collector of the District to determine the amount of compensation under sub-clause (b) of clause (ii) of sub-section (2) and the Collector of the District shall, keeping in view the market value of the shamilat deh at the time it was allotted, determine the amount of compensation.]

228. A perusal of Sections 2(g), 3 of the 1961 Act and provisions of the 1953 Act would make it evident that the "shamlat deh" of a village will vest absolutely in a Gram Panchayat extinguishing any right, title or interest held by a proprietor except to the extent of the exceptions carved out in Section 2(g) (1) to (6) and Section 2(g) (i) to (ix). The legislature did not draw a distinction between proprietary rights in "shamlat deh" and "Shamlat Deh Hasab Rasad Zare Khewat", etc., while providing for their absolute vesting in a Gram Panchayat, therefore, it would be beyond our jurisdiction to draw a distinction between "shamlat deh" and "Shamlat Deh Hasab Rasad Zare Khewat", etc. as has been held by the judgment recorded by brother Saron J. We cannot by way of judicial interpretation or by reference to the original ownership of shamlat deh, add to the words and expressions used in the aforesaid provisions.

229. Consequently, I am of the opinion and hold that land which is described as "shamlat deh" or "Shamlat Deh Hasab Rasad Zare Khewat", "Hasab Rasad Paimana Malkiat", etc. that came to vest in the Gram Panchayat under the 1953 and 1961 Act shall vest in the Municipal Committee/Municipal Corporation on the principle of escheat, etc. as recorded in the judgment written by Saron J., without the necessity of payment of compensation. Thus, I hold that "shamlat deh" whatever be the words that follow shall escheat to the Government as recorded at Pages 106, 107 and 166 sub-para (e) of the judgment without the necessity of payment of compensation to the proprietors.

230. After recording my dissenting judgment to the extent noted above, I agree with the other findings.