

ITEM NO.1A
(For Judgment)

COURT NO.11

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS
CIVIL APPEAL NO(s). 3751-3752 OF 2002

STATE OF H.P. & ANR

Appellant (s)

VERSUS

SIRI DUTT(DEAD) BY LRS. & ORS.

Respondent(s)

WITH Civil Appeal NO. 4109 of 2002

Date: 29/09/2010 These Appeals were called on for Judgment today.

For Appellant(s) Mr. Naresh K. Sharma, Adv.

For Respondent(s) Ms. Madhu Moolchandani, Adv.

Mr. Rajinder Mathur, Adv.

Hon'ble Mr. Justice G.S. Singhvi pronounced the Judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Asok Kumar Ganguly.

The appeals are allowed, the impugned judgments are set aside and those passed by the lower appellate Court are restored. The competent authority shall now be free to take possession of the suit land, which was subject matter of Suit Nos. 85/1 of 1985 and 44/1 of 1987 after complying with the provisions of Section 3(5) and (6) of the Act read with Rules 3 and 5 of the Rules. With a view to obviate further litigation in the matter, we direct the State Government to pay compensation to the respondents in accordance with Section 3(3) of the Act. This shall be done within a period of six months from today. The parties are left to bear their own costs.

(Satish K. Yadav)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed non-reportable Judgment is placed on the file)

2

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 3751-3752 OF 2002

State of Himachal Pradesh and another

...Appellants

Versus

Shri Siri Dutt (Dead) by L.Rs.

...Respondents

and others

With

CIVIL APPEAL NO. 4109 OF 2002

State of Himachal Pradesh and another ...Appellants

Versus

Shri Prem Dutt and others ...Respondents

3

J U D G M E N T

G.S. Singhvi, J.

1. These appeals are directed against judgments dated 21.4.1997 and 20.5.1998 of the learned Single Judges of the Himachal Pradesh High Court whereby they allowed the second appeals preferred by the plaintiffs-respondents (hereinafter referred to as 'the respondents') and restrained the defendants-appellants (hereinafter referred to as 'the appellants') from interfering with their right, title and interest as well as possession over the suit properties without following the procedure established by law. In his judgment dated 21.4.1997 rendered in Second Appeal No. 98/1992, which is under challenge in Civil Appeal No.4109 of 2002, the learned Single Judge also made payment of compensation as a condition for taking possession of the land.

2. We shall first notice the factual matrix of Civil Appeal Nos. 3751-3752 of 2002.

2.1 The respondents filed Suit No.44/1 of 1987 for grant of a declaration that they are the owners of land measuring 381 bigha 8 biswas comprised in Khewat Khatuni No.20/56-66 (old) and Khewat Khatuni No.23/53-63 (new) situated in Mauza Nehra Kandhol, Pargana Boachali, Tehsil and District Solan. They pleaded that the land was in possession of their forefathers since time immemorial and after partition, the same was in their individual and exclusive possession. They also raised the plea of adverse possession by

4

asserting that their possession over the suit land was continuous, open and uninterrupted and the same had never been used by the

village community for common purposes. They further pleaded that the land has been wrongly recorded as 'Shamlat Deh' in the revenue record and by taking advantage of the wrong entry, it was mutated in the name of the State and illegally allotted to some persons. They prayed for correction of the revenue entries, cancellation of the illegal allotments and for restraining the appellants from interfering with their ownership and possession.

2.2 In the written statement filed on behalf of the appellants, it was pleaded that the suit land had vested in the Government and the same is being used by the villagers as 'Shamlat land'. The claim of the respondents that they are the owners in possession of the suit land since the time of their ancestors was controverted by asserting that they do not have any right, title or interest over it except the right of grazing etc. The respondents' assertion that they are in individual possession of the suit land was also denied. It was then averred that the suit land is banzar and charad and the revenue entries are correct. The plea of adverse possession raised by the respondents was contested by asserting that the land was 'shamlat' and the same was being used by the villagers. The allotment made in favour of landless persons was defended by asserting that the State Government was competent to do so. The appellants also questioned the maintainability of the suit on the ground of non compliance of Section 80 of the Code of Civil

5

Procedure (CPC). Another plea taken by them was that the civil court does not have jurisdiction to decide the issues raised in the suit.

2.3 On the pleadings of the parties, the trial Court framed the following issues:

- 1) Whether plaintiffs from the time of forefathers are coming in possession of the suit land as owners, as alleged? OPP.
- 2) Whether the suit land has never been brought in use by the entire village for common use? OPP.

- 3) Whether revenue entries about the suit land are wrong, illegal? OPP.
- 4) Whether the suit is not maintainable? OPP
- 5) Whether this Court has no jurisdiction to try the suit? OPD.
- 6) Whether the suit is bad for want of compliance with section 80 C.P.C.? OPD.
- 7) Relief.

2.4 After considering the rival pleadings and evidence, the trial Court partly decreed the suit and restrained the appellants from interfering with the respondents' possession over land measuring 35.7 bighas comprised in Khewat No.22, Khatauni Nos.54 to 62 till they were ordered to hand over possession in accordance with Section 3(3) of the Himachal Pradesh Village Common Lands Vesting and Utilization Act, 1974 (for short, 'the Act').

The trial Court referred to Jamabandis of the years 1943-44 (Ex.P1), 1955-56 (Ex.P2), 1959-60 (Ex.PB), 1967-68 (Ex.P4), 1972-73 (Ex.PC) and 1982-83 (Ex.PD) and made the following observations:

"Vide Jamabandi for the year 1972-73 the suit land is comprised in Khewat No.23 Khatunies Nos.53 to 63 measuring 381-8 Bighas out of which Khewat No.23 Khtauni No.53 measuring 337-6 Bighas is recorded in possession of MAKBUZA MALIKAN under Shamlat Deh Hasab Rasad Zhere Khewat, but there is also reference about 9 mutations vide which Nautor were granted to different persons. Rest of the land of Khewat No.23 Khatuni No.54 to 62 measuring 35-7 Bighas is recorded in individual possession of different persons as co-sharers and part of the land of Khewat No.23 Khatuani No.63 is recorded in possession of "SHARE AAM" and this measures 8-15 Bighas.

These entries about columns of ownership and possession are continuing since long as is apparent from Ex.P2 Jamabandi for the year 1955-56, Ex.P1 Jamabandi for the year 1943-44, Ex.P4 Jamabandi for the year 1967-68, Ex.PB Jamabandi for the year 1959-60.

But after coming into operation of the Common Lands Act, entries pertaining to ownership from Shamilat Deh Hasab Rasad Zhera Khewat were changed in the name of "PRADESH SARKAR" (State of Himachal Pradesh) and major portion of the land 147-14 Bighas of Khewat No.41 Khewatni No.57 was shown in the allotable Pool and Khatuni Nos.59 measuring 169-0 Bighas was kept for common use of the land owners of the village. The land which was shown in individual possession of certain co-owners was continued to be shown as such and the land earlier recorded as "SHARE AAM" was recorded in that capacity."

The trial Court then referred to Section 3 of the 1974 Act and held as under:

"It is, therefore, implicit that ownership in the name of State of Himachal Pradesh qua the land in suit got changed by virtue of Provisions of Section 3 of the Common Lands Act. Vide this section all rights, title, and interest of any land owner in the land in any estate stand extinguished free from all encumbrances vesting such rights in the State of Himachal Pradesh. Here such vesting of the ownership is compulsory by the provisions of section 3 of the common Lands Act and completely do away with possessory or Proprietary rights of any person of such land without any encumbrances. However, such vesting in the State of Himachal Pradesh do not come into play if the case falls within exception of section 3(2)

7

of Common Lands Act. The suit land prior to 1st November, 1966 is comprised in Himachal Pradesh but there is no evidence that it has been partitioned by the co-sharers through process of the law or land owners alienated by way of Sale, gift or exchange or they built residential house or cow shed on it. Hence exception of section 3(2) of the Common Lands Act, is not attracted in the present Act.

But by stroke of law right, title or interest of the land owners i.e. plaintiffs have been effected so under Section 3(3) of the Common Lands Act, they are entitled for amount assessed in accordance there with and before they are directed to deliver the possession of the land shown in their possession are entitled to receive amount by way of compensation assessed according to section 3(3) of the Common Lands Act.

In view of this discussion, I hold and conclude that plaintiffs are not possessing the suit land as owners but they are possessing certain portion of the land as recorded in their possession as co-owners in Jamabandi for the year 1972-73 so Issue No.1 decided against plaintiffs accordingly. The entries about suit land have rightly been changed after coming into operation of Common lands Act, so issue No.3 decided against the plaintiffs, Majority of the land in suit is shown in common use of the villages and even PW 1 Dina Nath concede that all owners of the village are possessing the land and every person can cut grass from any portion of the land.

Suit in entirety is not maintainable as plaintiffs are not owners of the suit land but the suit is maintainable to the extent of the land they are recorded in individual possession, can not be disturbed unless they are paid amount by way of compensation under section 3(3) of the Common Lands Act."

(underlining is ours)

2.5 Both, the appellants and the respondents challenged the judgment of the trial Court by filing separate appeals. The lower appellate Court referred to "Wazib-Ul-Arz" (Ex.P3) prepared at the time of settlement of 1910 which depicted that proprietors of the village in the erstwhile State of Bhagat of which the land formed

part had only limited rights of grazing cattle, collecting grass

8

and leaves etc. over Shamilat Deh lands and no proprietor had right to break the land and to bring it under cultivation and held that there is presumption of truth attached to the record of rights comprising of Jamabandis which the respondents have failed to rebut and, therefore, the entire land must be treated as 'Shamlat Deh'.

The lower appellate Court referred to Section 3(2) and (3) of the Act and held that suit land does not fall in any of the exceptions enumerated in sub-section (2) and that payment of compensation by

the State was not a condition precedent for dispossessing the respondents and, at best, they are entitled to receive compensation. The lower appellate Court noted that the landless

persons to whom the land was allotted by the State Government were not made parties and held that the suit was liable to be dismissed on the ground of non-joinder of necessary parties.

On the basis of

these conclusions, the lower appellate Court reversed the decree passed by the trial Court and dismissed the suit.

2.6 The learned Single Judge did not disturb the concurrent finding of the two courts on the issue of ownership of the suit land and vesting thereof in the State (para 14 of the impugned judgment) but held that they cannot be dispossessed without following due process of law. On the issue of non-joinder of the

persons to whom land had been allotted by the State Government, the learned Single Judge observed that the concerned authorities would look into the matter and take appropriate decision in accordance with the law.

9

3. We may now briefly notice the facts of Civil Appeal No. 4109 of 2002.

3.1 Tula Ram and 96 others all residents of Village Dharat , Pargana Sumna Basal, Tehsil and District Solan, filed Suit No.85/1

of 1985 for declaration that they are owners in possession of land comprised in Khata Khatauni No.42 Min/81, 82, 84 to 93 measuring 315 bighas 18 biswas situated at Village Dharot, Pargana Sumna

Basal and that mutation No. 217 of 1976 showing the State of

Himachal Pradesh as owners is illegal. They further prayed that the appellants be restrained from interfering with their ownership and possession.

3.2 In the written statement filed on behalf of the appellants, the assertions of the respondents regarding ownership and possession of the suit land was denied and it was pleaded that with effect from the date of coming into force of the Act, the land had vested in the State Government.

3.3 On the pleadings of the parties, the trial court framed the following issues:

- 1) Whether the suit land is not a Shamilat land as alleged?
OPP.
- 2) Whether the plaintiffs are owners and in possession of the suit land as alleged?
OPP.
- 3) Whether the revenue entry in favour of the Nagar Panchayat and State of H.P. is wrong?
10
OPD.
- 4) Whether the suit is barred under the provisions of H.P. Village Commons land Act?
OPD
- 5) Whether this Court has no jurisdiction to try the suit?
OPD.
- 6) Whether the plaintiff is entitled to the relief of declaration and injunction?
OPD.
- 7) Relief.

3.4 After considering the leadings and evidence of the parties, the trial Court negatived the respondents' claim of ownership and declared that by virtue of Section 3(1)(c), all the rights, title and interest of the land owners stood extinguished and the land

vested in the State Government. The trial Court further held that land measuring 0-2 biswas, Khasra No. 408/186 and 0-10 biswas, Khasra No. 428/186 Khewat No.42 Min Khatauni No. 91 is not Shamlat land because construction had been raised over it and by virtue of Section 3(2)(c) of the Act, the same will not vest in the State Government. Finally, the trial Court passed a decree in favour of three plaintiffs, Ram Dutt, Jai Ram and Shiv Ram declaring them to be owners of the land comprised in Khasra Nos.408/186 and 428/186 and restrained the appellants from interfering with their possession. The appellants were also directed not to dispossess the plaintiffs from the land comprised in Khewat No.42 Min Khatuni Nos. 84 to 92 without following the procedure established by law and without payment of compensation assessed in accordance with
11
Section 3(3).

3.5 The cross appeals filed by the parties herein were disposed of by the learned District Judge vide judgment dated 27.6.1991 and the decree passed by the trial Court was reversed.

3.6 The learned Single Judge allowed the second appeal preferred by the respondents and restored the decree passed by the trial Court.

ARGUMENTS

4. Since, learned counsel for the parties addressed arguments by adverting to the pleadings of their respective clients in Suit No. 44/1 of 1987, we shall be dealing with the same keeping in view the facts set out in paragraphs 2.1 to 2.6.

5. Learned counsel for the appellants argued that the impugned judgment is liable to be set aside because the learned Single Judge allowed the second appeals filed by the respondents without framing any substantial question of law as required by Section 100 CPC. He further argued that once the learned Single Judge held that the

respondents cannot be granted declaration that they are the owners in possession of the suit land or that the same does not vest in the State, the injunction granted in their favour is liable to be set aside. Learned counsel submitted that payment of compensation in terms of Section 3(3) of the Act is not a condition precedent

12

for taking possession of the land which vested in the State and the only right available to the village proprietors is to receive the amount calculated as per the formula contained in that section.

He

lastly submitted that the learned Single Judge committed serious error in recording a finding that the respondents would be deemed

to be in possession of the entire land because the same was

recorded in some of the "jamabandis" as 'Shamlat Deh Hasab Rasad

Zare Khewat' and in the column of possession, the words 'Makbuja

Malikan' were used.

Learned counsel referred to 'Wazib-Ul-Arz'

(Exhibit P3) prepared in 1910 in respect of the State of Bhagat in

which proprietors of the village were shown to have limited rights

of grazing cattle, collecting grass and leaves but had no right to

break the land or to bring it under cultivation and the statement

of PW-1, Dina Nath that all owners of the village are possessing

the land and every person can cut grass from any portion of the

land and argued that the finding recorded by the learned Single

Judge on the issue of the respondents' possession of the entire

land is perverse and is liable to be set aside.

6. Learned counsel for the respondents supported the impugned

judgment and argued that the learned Single Judge did not commit

any error by granting a declaration that the appellants cannot

dispossess the respondents except after following the procedure

established by law and giving them opportunity of hearing.

Learned

counsel emphasized that even if the land is deemed to have vested

in the State by operation of Section 3(1)(c) of the Act, the

13

respondents cannot be dispossessed without complying with the rules

of natural justice engrafted

in the provisions of the Act and the

Himachal Pradesh Common Lands Vesting and Utilization Rules, 1975.

Learned counsel then argued that the respondents will be deemed to have become owners of the land by adverse possession because they were in continuous possession for last many years without any objection or obstruction. Learned counsel also referred to the additional affidavit of Shyam Dutt Sharma and order dated 29.7.2004 passed by Sub-Divisional Collector, Solan and argued that the respondents are entitled to retain possession in view of the amended Section 3.

7. We have considered the respective submissions. Sections 2

(d), 3, 6 and 8 of the Act, the relevant extracts of the amendments made in 2001 and 2005 as also Rules 3, 4, 5, 6, 7 and 9 of the Rules which have bearing on the decision of this appeal read as under:

The 1974 Act.

"2. Definitions.- In this Act, unless there is anything repugnant in the subject or context,-

(d) "landowner" means a person having a share in the shamilat land as recorded in the land records and includes a panchayat.

3. Vesting of rights in the State Government.- (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 including the contingent interest, if any, of the landowner in the lands in any estate-

(a) vested in a Panchayat under Section 4 of the
14

Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) except lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or garah deh,

(b) described in the revenue records as shamilat taraf, patties, pannas and thola and not used according to revenue records for the benefits of the village community or a part thereof or for common purposes of the village in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966; (31 of 1966) and

(c) described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and

patti in the areas comprised in Himachal Pradesh, immediately before first November, 1966,

shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances.

(2) The provisions of sub-section (1) of this section shall not apply to lands described in clauses (b) and (c) of that sub-section if, before the date of commencement of this Act-

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

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

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

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

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

15

(ii) for the remaining land, fifteen times the annual land revenue including rates and cesses chargeable there:

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

(4) xxx xxx xxx

(5) The Collector may, by order in writing, at any time after the land vests in the State Government, direct the landowners to deliver possession thereof within 10 days from the service of the order to such person as may be specified in the order.

(6) If the landowners refuse or fail without reasonable cause to comply with the order made under sub-section (5), the Collector may take possession of the land and may for that purpose use such force as may be necessary."

6. Determination of amount payable to landowners.- (1) The Collector shall cause a notice to be served in the prescribed form and manner to the landowner, whose rights have been extinguished under sub-section (1) of section 3, stating therein, the area of land vested in the State Government and the amount proposed therefore, immediately after the commencement of this Act, calling upon him to prefer objections, if any, within 60 days from the receipt of the notice.

Provided that the Collector may entertain the objections

after the expiry of the said period of 60 days if he is satisfied that the landowner was prevented by sufficient cause from filing the objections within the prescribed time.

(2) The Collector after giving the landowner or landowners, as the case may be, an opportunity of being heard and making such inquiry as may be necessary, shall make an award determining the amount payable by the State Government to the land owners in accordance with the provisions of sub-section (3) of section 3 and also apportion the amount thereof among the landowners.

(3) Where the amount is payable to a minor, the Collector may make such arrangements as may be equitable having regard to the interest of the minor.

16

8. Utilisation of land vested in the State Government.-

(1) All lands vested in the State Government under this Act shall be utilized for the following purposes:-

- (a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate; and
- (b) the remaining land -
 - (i) for allotment to a landless person or any other eligible person; or
 - (ii) for allotment of site to a handicapped or houseless person for the construction of a house;

under a scheme to be framed by the State Government by notification in the Official Gazette and the allottee shall pay an amount at the rate of forty-eight times of the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four."

(2) The land reserved under clause (a) of sub-section (1) of this section shall be demarcated by such Revenue Officer and in such manner as may be prescribed.

(3) Any scheme framed by the State Government under clause (b) of sub-section (1) of this section may provide for the terms and conditions on which the land is to be allotted.

(4) The State Government may, by notification in the Official Gazette, add to, amend, vary or revoke any scheme made under this section."

By the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 2001, which was brought into force with effect from the date the original Act was enforced, various sections including Section 3 were amended. Clause (d), which was added in sub-section (2) of Section 3, reads as under:

"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of

the Co-sharers so recorded before 26th January, 1950 to

17

the extent of their share therein."

By the Himachal Pradesh Village Common Lands Vesting and Utilization (Amendment) Act, 2005, which was enforced on 8.7.2005, the following sub-sections were added to Section 3(2):

"(2-a) The land reverted back to co-sharers under clause (d) of sub-section (2) shall not be transferred by such co-sharers, by way of sale, gift, mortgage or otherwise, during a period of twenty five years from the date of mutation of such land.

(2-b) No Registrar or the Sub-Registrar, appointed under the Registration Act, 1908, shall register any document pertaining to transfer of such land, which is in contravention of sub-section (2-a) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (2-a), shall vest in the State Government free from all encumbrances."

Rules.

3. Taking possession of the land.- (1) As soon as may be after coming into force of the Act, the Collector, shall ask the Tehsil Revenue Officer to send in Form 'A' details of the shamlat land estate wise that has vested in the State Government.

(2) On receipt of the details of the shamlat land under sub-rule (1), the Collector shall proceed to take over possession of the land under sub-sections (5) and (6) of section 3.

4. Mutation of land in favour of State Government.- After the possession of shamlat land has been taken under the preceding rule, the Collector shall ask the Tehsil Revenue Officer to mutate the land in favour of the State Government.

5. Notice to be served on the landowner.- The notice to be served on the landowner under section 6 shall be in Form 'B' and on the basis of orders passed by the Collector under rules 6 and 7. The notice shall be served in the manner prescribed under the rule made under The Punjab Land Revenue Act, 1887, for service of notice issued by the Revenue Officers.

18

6. Demarcation of land under section 8.--(1) On receipt of the information in Form 'A' the Collector shall start a file of demarcation of land for grazing and common purposes and the land to be earmarked for allotable pool and send the same to the Tehsil Revenue Officer for proper demarcation of the land for grazing and common purposes and for allotable pool. The percentage of the land to be reserved for grazing and common purposes shall be fixed in consultation with the estate right-holders keeping in view the provisions of section 8. The Tehsil Revenue Officer and the Collector shall be guided for demarcation of shamlat land for the said purposes by the following consideration:-

- (1) total cattle population of the estate;
- (2) the number of eligible persons in the estate;
- (3) total acreage of existing cultivated land excluding area under illegal possession/encroachments;
- (4) total area of charand lands;
- (5) the land which is used for common purposes like cattle ponds, manure pits, sand bihag, kuhis, paths and the land recorded in the khataunis, of 'Sharai-am' and 'Rafai-am' shall continue to be so used and reserved for common purposes;
- (6) the land on which the tree growth is thick and is required to be maintained as forest in the public interest, shall be excluded from the allotable pool;
- (7) as far as possible the grazing areas and allotable pool areas shall be demarcated in compact blocks keeping the principles of consolidation of land holdings in view; and
- (8) land allotted under contracts, agreement and leases by the Panchayats in respect of the land vested in the State Government when cancelled under section 4 of the Act shall form part of the allotable pool.

(2) The Tehsil Revenue Officer after a thorough survey and inspection of the shamilat lands shall demarcate the land and shall get the separate lists of khasra numbers that are reserved for the common purposes and the land to be given to eligible persons attached to the file. He shall also place on the file an index map of the village delineating the shamilat land and showing the demarcation

19

of the grazing land, the land reserved for common purposes and the land reserved for allotable pool. The Tehsil Revenue Officer shall then submit his proposal of demarcation to the Collector.

(3) The Collector after scrutinizing the proposal sent by the Tehsil Revenue Officer shall fix a date for announcing his order after giving the inhabitants of the estate concerned an opportunity of being heard and shall pass the order regarding the percentage of area of land reserved for grazing and common purposes and areas reserved for the allotable pool.

(4) The Collector may amend or vary the percentage as referred to in sub-rule (3) with previous approval of the State Government.

7. Preparation of records of unmeasured shamilat land.-- In case the shamilat land in an estate is unmeasured, the Collector shall prepare record of rights for the same in view of the provisions of Chapter IV of the Himachal Pradesh Land Revenue Act, 1954, or of Chapter IV of the Punjab Land Revenue Act, 1887, as the case may be, and thereafter demarcate the land and pass order in the manner prescribed in rule 6.

9. Settlement of disputes.- If a dispute arises

regarding entry of the land vested in the State Government, the Collector shall be competent to decide the same after a summary inquiry."

8. Section 3 provides for vesting of rights in certain lands in the State Government. By virtue of non obstante clause contained in Section 3(1), overriding effect has been given to the provisions of that section not only qua any other law for the time being in force, but also any agreement, instrument, custom or usage or any decree or order of any court or other authority and has the effect of extinguishing all rights, title and interests including the contingent interest of the land owners in any estate. Clause (a) of Section 3(1) relates to the lands vested in a Panchayat under Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 except those used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or garah deh. Clause (b) relates to the lands described in the revenue records as shamilat taraf, patties, pannas and thola which is not used for the benefit of the village community or a part thereof or for common purposes of the village. Clause (c) relates to the areas which formed part of Himachal Pradesh before 1.11.1966 and the lands described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and patti.

20

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

10. The argument of the learned counsel for the respondents that the suit land had not vested in the State Government was negatived

not only by the trial Court and the lower appellate Court but also by the learned Single Judge, all of whom concurrently held that with effect from the date of enforcement of the Act i.e., 29.8.1974 (this is the date of publication of the Act in Himachal Pradesh

21

Gazette after the President of India gave assent), the land vested in the State Government and there is no reason for this Court to interfere with that finding.

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

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

22

this, in his statement, PW-1 Dina Nath admitted that all owners of the village were possessing the land and every person could cut grass from any portion of the land. The entries contained in the jamabandis also do not prove open and uninterrupted possession of

the respondents over the suit land.

In Khewat No.23 Khatauni No.53

of the year 1971-73, 337.6 bighas of land was recorded in possession of Makbuja Malikan under Shamlat Deh Hasab Rasad Zare Khewat but there were 9 mutations in the name of different persons. Only 37.5 bighas was recorded in individual possession of different persons as co-sharers. 8 bighas 15 biswas of Khewat No.23 Khatauni

No.53 was recorded as Share Aam.

On the basis of these entries,

the respondents cannot claim that they have acquired title over the suit land by adverse possession.

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

14. The next question which needs to be addressed is whether the learned Single Judge was right in injuncting the State from dispossessing the respondents except after complying with the

23

relevant statutory provisions and the rules of natural justice. At

the cost of repetition, we deem it necessary to mention that the trial Court had found that the respondents were in possession of 37.5 bighas only and accordingly declared that their possession cannot be disturbed unless they are paid compensation under Section 3(3). The lower appellate Court reversed this part of the judgment of the trial Court and held that payment of compensation was not a condition precedent for dispossessing the respondents.

Though, the

learned Single Judge did not find any patent error in the approach adopted by the two courts in evaluating the pleadings and analyzing the evidence of the parties, yet he virtually reversed the finding recorded on the issue of possession simply by observing that the

land had been recorded as 'Shamlat Deh Hasab Rasad Zare Khewat' and in the column of possession the expression 'Makbuza Malikan' and this, in the opinion of the learned Single Judge, indicated possession of the proprietors. The learned Single Judge then proceeded to hold that the respondents cannot be dispossessed except after the procedure prescribed by law. While doing so, the learned Single Judge ignored that as early as in 1910 the land was shown to be in possession of village proprietors and not of any individual. Therefore, the finding recorded by the learned Single Judge suggesting that the respondents were in possession of the suit land cannot but be treated as perverse.

15. The legality and correctness of the direction given by the learned Single Judge that the respondents cannot be dispossessed

24

except by following the procedure prescribed by law needs to be examined in the light of Section 3(5) and (6) of the Act read with Rules 3 to 5 of the Rules. In terms of these provisions, the Collector is required to give notice to the land owners to deliver possession of the land. If the noticee fails to deliver possession, the Collector can take coercive measures for taking possession. Therefore, the only thing which the Collector will be required to do is to give notice to the respondents to hand over possession of the suit land to the designated officer.

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

been incorporated in the Act, which has admittedly not been done.

17. In the result, the appeals are allowed, the impugned judgments are set aside and those passed by the lower appellate Court are restored. The competent authority shall now be free to take possession of the suit land, which was subject matter of Suit Nos.

25

85/1 of 1985 and 44/1 of 1987 after complying with the provisions of Section 3(5) and (6) of the Act read with Rules 3 and 5 of the Rules. With a view to obviate further litigation in the matter, we direct the State Government to pay compensation to the respondents in accordance with Section 3(3) of the Act. This shall be done within a period of six months from today. The parties are left to bear their own costs.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
September 29, 2010.