In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 13864 of 2012 (O&M)**
Reserved on : 05.3.2024
Date of Decision: 19.3.2024

Sushil Kumar and others ......Petitioners

Versus

State of Haryana and others .....Respondents

2. **CWP No. 11524 of 2017**

Indraj @ Chander and another ......Petitioners

Versus

Commissioner, Hisar Division, Hisar and others .....Respondents

3. **CWP No. 12064 of 2018**

Smt. Mamo and others ......Petitioners

Versus

State of Haryana and others .....Respondents

4. **CWP No. 13807 of 2015**

Rajpal ......Petitioner

Versus

State of Haryana and others .....Respondents

5. **CWP No. 15298 of 2012**

Srikant and others ......Petitioners

Versus

State of Haryana and others .....Respondents

6. **CWP No. 15452 of 2015**

Subhash Chand and others ......Petitioners

Versus

Financial Commissioner (Revenue) Haryana and others .....Respondents

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7. **CWP No. 16836 of 2014**

Ompal and another ......Petitioners

Versus

State of Haryana and others .....Respondents

8. **CWP No. 18962 of 2023**

Mamta Devi ......Petitioner

Versus

State of Haryana and others .....Respondents

9. **CWP No. 19008 of 2013**

Subhash and others ......Petitioners

Versus

State of Haryana and others .....Respondents

10. **CWP No. 19244 of 2018**

Shiv Charan (deceased) through his LRs and others ......Petitioners

Versus

State of Haryana and others .....Respondents

11. **CWP No. 20519 of 2012**

Ram Pal @ Surinder Kumar and others ......Petitioners

Versus

State of Haryana and others .....Respondents

12. **CWP No. 20690 of 2013**

Daulat Ram and others ......Petitioners

Versus

State of Haryana and others .....Respondents

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13. CWP No. 23105 of 2012

Man Singh and another ......Petitioners

Versus

State of Haryana and others .....Respondents

14. CWP No. 23113 of 2018

Hardei (deceased) through LRs ......Petitioner

Versus

Financial Commissioner, Haryana and others .....Respondents

15. CWP No. 23138 of 2018

Siri Ram and others ......Petitioners

Versus

Financial Commissioner, Haryana and others .....Respondents

16. CWP No. 24621 of 2023

Duli Chand ......Petitioner

Versus

State of Haryana and others .....Respondents

17. CWP No. 24765 of 2013

Balwan Singh and others ......Petitioners

Versus

State of Haryana and others .....Respondents

18. CWP No. 26003 of 2023

Lalit Kumar ......Petitioner

Versus

State of Haryana and others .....Respondents

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19. **CWP No. 26506 of 2015**

Shri Niwas Gupta and others ......Petitioners

Versus

State of Haryana and others .....Respondents

20. **CWP No. 3958 of 2023**

Balak Nath @ Madhu Baba Chela Baba Bhut Nath ......Petitioner

Versus

State of Haryana and others .....Respondents

21. **CWP No. 28859 of 2023**

Shree Baba Burarik Mandir Samiti ......Petitioner

Versus

State of Haryana and others .....Respondents

22. **CWP No. 3015 of 2014**

Laxmi Narayan ......Petitioner

Versus

State of Haryana and others .....Respondents

23. **CWP No. 16917 of 2023**

Karnel Singh ......Petitioner

Versus

State of Haryana and others .....Respondents

24. **CWP No. 19744 of 2023**

Karnel Singh ......Petitioner

Versus

State of Haryana and others .....Respondents

25. **CWP No. 21019 of 2023**

Raj Kumar and others ......Petitioners

Versus

State of Haryana and others .....Respondents

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26. **CWP No. 22371 of 2023**

Om Parkash @ Omparkesh ......Petitioner

Versus

State of Haryana and others .....Respondents

27. **CWP No. 22561 of 2023**

Mahant Gian Dass @ Mahan Gyandas ......Petitioner

Versus

State of Haryana and others .....Respondents

28. **CWP No. 22564 of 2023**

Asthal Nandu Panthi Bala Dehhaja Dhoildar ......Petitioner

Versus

State of Haryana and others .....Respondents

29. **CWP No. 6839 of 2023**

Jai Narain and others ......Petitioners

Versus

State of Haryana and others .....Respondents

30. **CWP No. 7233 of 2023**

Pinky Sharma ......Petitioner

Versus

State of Haryana and others .....Respondents

31. **CWP No. 7906 of 2023**

Mamta Dagar and another ......Petitioners

Versus

State of Haryana and others .....Respondents

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32. **CWP No. 8357 of 2023**

Ram Singh and another ......Petitioners

Versus

State of Haryana and others .....Respondents

33. **CWP No. 8362 of 2023**

Ram Kishan Verma and others ......Petitioners

Versus

State of Haryana and others .....Respondents

34. **CWP No. 7173 of 2013**

Rohtash and others ......Petitioners

Versus

State of Haryana and others .....Respondents

35. **CWP No. 8611 of 2015**

Ishwar Prasad Aggarwal ......Petitioner

Versus

State of Haryana and others .....Respondents

36. **CWP No. 16019 of 2012**

Mahender and others ......Petitioners

Versus

State of Haryana and others .....Respondents

37. **CWP No. 3584 of 2020**

Harish and others ......Petitioners

Versus

State of Haryana and others .....Respondents

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Neutral Citation No:=2024:PHHC:040490-DB

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE LALIT BATRA**

Argued by: Mr. Anupam Gupta, Senior Advocate (Amicus Curiae) with
Mr. Sukhpal Singh, Advocate.

Mr. Amit Jain, Advocate
for the petitioner(s). (in CWP Nos. 15298 of 2012,
20519 of 2012, 3015 of 2014 and 13807 of 2015).

Mr. Amit Jain, Senior Advocate with
Mr. Chetan Salathia, Advocate
for the appellant (in RSA-2717-2007).

Mr. Sanjiv Gupta, Advocate for the petitioner(s)
(in CWP-13864-2012, CWP-11524-2017 and CWP-3584-2020)

Ms. Pratibha Yadav, Advocate
for the petitioner(s) (in CWP-8362-2023).

Mr. Sumit Sangwan, Advocate
for the petitioner(s) (in CWP-21019-2023).

Mr. B.S.Bairagi, Advocate
for the petitioner(s) (in CWP-12064-2018) and
for respondents No. 5 to 12 (in CWP-28859-2023).

Ms. Sumitra, Advocate for
Mr. Vikram Singh, Advocate
for the petitioner(s) (in CWP Nos. 13862 of 2012 and
CWP Nos. 6839, 22371, 16917, 22561, 22564, 19744,
26003 of 2023 and 28859 of 2023).

Ms. Saachi Mahajan, Advocate
for the petitioner(s) (in CWP-8611-2015).

Mr. Abhilaksh Grover, Advocate
for the petitioner(s) (in CWP-26506-2015).

Mr. Ashok Tyagi, Advocate
for the petitioner(s) (in CWP-19244-2018) and
for respondents No. 4 to 14 (in CWP-15298-2012).

Mr. Pankaj Kalia, Advocate for
Mr. Karanvir Singh Kahlon, Advocate
for the petitioner(s) (in CWP-8611-2015).

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Pardeep Prakash Chahar, Sr. DAG, Haryana,
Mr. Saurabh Mago, DAG, Haryana,
Ms. Kushaldeep Kaur, Advocate and
Mr. Shivam Garg, Advocate.

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Ms. Kamaldeep Kaur, Advocate for
Mr. Adarsh Jain, Advocate
for respondent No. 15 (in CWP-16019-2012).

Mr. Sant Lal Barwala, Advocate
for respondent No. 3 (in CWP-12064-2018).

Mr. Anshul Chahal, Advocate for Mr. R.S.Kundu, Advocate
for respondents No. 4 to 13 (in CWP-15452-2015).

Mr. Jai Vir Yadav, Senior Advocate with
Mr. Tarun Yadav, Advocate
for respondent No. 11 (in CWP-20519-2012).

Mr. Chaman Deep, Advocate
for respondent No. 5 (in CWP-26003-2023) and
for respondent No. 6 (in CWP-16917-2023).

Mr. Anil Dutt, Advocate
for respondent No. 5 (in CWP-18962-2023)

Mr. Rajinder Chhokar, Advocate
for respondents No. 4 to 8 (in CWP-20519-2012) and
for respondents No. 5 to 27 (in CWP-7173-2013).

Mr. Rohit Rattewal, Advocate for
Mr. Ashish Yadav, Advocate
for respondents No. 3 to 12
(in CWP-13864-2012 and CWP-26506-2015).

Ms. Savita Chahar, Advocate
for the applicant-respondent No. 6
(in CM-3949-CWP-2024 in CWP-22564-2023).

Mr. S.P.Chahar, Advocate for respondent No. 5
(in CWP Nos. 22561 and 22564 of 2023).

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SURESHWAR THAKUR, J.

1. Since all the writ petitions (supra) make a common challenge to the constitutional vires of the impugned notifications, whereby in terms of Haryana Act No. 1 of 2011 (for short 'the Act of 2011') nomenclatured as The Haryana Dholidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights Act, 2010), vis-a-vis, from the appointed date, the Dholidars, Butimars, Bhondedars and Muqararidars, who were entered as

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such, in the revenue records for more than 20 years on the date when the Act (supra) came into force, and, in other cases when 20 years have not been yet completed, and entries (supra) are entered in the revenue records, thereupon, the persons (supra) fulfilling the relevant tenure condition, thus in terms of Section 3 thereof become invested with all rights, title and interest over those lands whereovers such persons hold recorded cultivation.

2. In all the writ petitions (supra), the revenue records detail, that all the petitioners concerned, in the column of ownership thereof, are recorded thereins as owners thereof, and, in the column of cultivation thereofs, thus entries respectively of Dholidar, Butimar, Bhondedar and Muqararidar, becomes entered, vis-a-vis, the respective respondents, in the writ petitions (supra).

Grounds of challenge

3. The learned counsels appearing for the petitioners/land owners in the writ petitions (supra) make a joint submission, that the said Act is contrary to the provisions of Article 300-A of the Constitution of India. They fortified the said submission through canvassing, that unless adequate compensation thereunders became determined, therebys the Act (supra), thus breaches the mandate of Article 300-A of the Constitution of India, and, as such is required to be declared ultra vires the said constitutional provision. In other words they submit that, since the Act (supra), but snatches the right, title and interest of the landlords over the disputed lands, and, vests such rights in the respondents concerned, who become entered in the revenue records with status' (supra), thereby the Act (supra) rather is expropriatory, and, is required to be declared as ultra vires the Constitution. Therefore, the same is required to be quashed, and, set aside.

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4. They further submit, that the Act (supra) when is not oriented towards therebys it making agrarian reforms, resultantly it also does not enjoy the constitutional immunity as enshrined in Article 31-A of the Constitution. It is further submitted, that despite the Statement of Objects and Reasons, which becomes extracted hereinafter, and, as becomes enunciated in the bill, which became introduced in the State Legislative Assembly concerned, and, which became successfully passed, whereafter it received assent from the constitutional authority concerned, yet it is argued, that the said Statement of Objects and Reasons are colorable, and, thereby they do not foist any constitutional immunity to the Act (supra) from the constitutional mandate, enshrined in Article 31-A of the Constitution, whereunders excepting those legislative mechanisms rather bringing agrarian reforms, thus the rights to property, but cannot be snatched by the State, except through makings assessment of adequate, and, reasonable compensation.

STATEMENT OF OBJECTS AND REASONS

The object and purpose of the Bill, is to vest proprietary rights in Dohlidars or Butimars or Bhondodars and Muqararidars or any other similar category of persons to be notified by the State Government at a later date. Even though these persons have been cultivating these lands for several generations, they are not able to sell, alienate, lease or mortgage such land or raise loans from financial institutions, resulting in undue hardship to their families. Persons belonging to these categories have been rendering services to their community and retaining the land for subsistence but they are not absolute owners of land, compounding their misery.

Most of these Dohlidars, Butimars, Bhondedars and Muqararidars are small or marginal farmers. In order to mitigate the misery of their indigent families, it has been thought fit to vest them with proprietary rights of land of which they are the actual tillers. These special category of persons have been retaining this land for many generations, so the land under their cultivation is in the form of grant in perpetuity. Since they had not been paying any rent to the landowners and they had made vast improvement to these holdings by clearing

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the jungles and levelling the undulated terrains, it has been felt that a token compensation would meet the ends of justice. To confer proprietary rights on Dohlidars, Butimars, Bhondedars and Muqararidars and to provide for payment of token compensation to the landowners whose rights are extinguished and for certain consequential and incidental matters, this legislative measure of agrarian reforms is being proposed.]

5. The provisions of Articles 31-A and 300-A of the Constitution are extracted hereinafter.

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

](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 extinguishments or modification of any such rights, or

(b) the taking over of the management of any property by the Stale for a limited period either in the public interest or in order to secure the proper management of the property, or

(c) the amalgamation of two or more corporations either in the public interest or in order to secure the proper management of any of the corporations, or

(d) the extinguishment or modification of any rights of managing agents, secretaries and treasurers, managing directors, directors or managers of corporations, or of any voting rights of shareholders thereof, or

(e) the extinguishment or modification of any rights accruing by virtue of any agreement, lease or licence for the purpose of searching for, or winning, any mineral or mineral oil, or the premature termination or cancellation of any such agreement, lease or licence,

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 [article 14 or article 19]:

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:

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

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Neutral Citation No:=2024:PHHC:040490-DB

structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.

(2) In this article,-

(a) the expression "estate", shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include-

(i) any jagir, inam or muafi or other similar grant and in the States of Tamil Nadu and Kerala, any janmam right;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression "rights", in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue.

"300A. Persons not to be deprived of property save by authority of law

No person shall be deprived of his property save by authority of law."

6. In CWP-13864-2012, there has been a reference to the definition of Dohildar, to the definition of Butemar, to the definition of Bhondedar, and, to the definition of Muqararidar. The said definitions, as become assigned to the terms (supra) are respectively extracted hereinafter.

***Dholidar:**- It is a kind of tenant within the meaning of section 4 (5) of the Punjab Tenancy Act. His status does not differ from that of a tenant (Baba Nand Ram Chela Parag V. Gram Panchayat village Malkos 1976 PLJ 586: 1976 RLR 645). Section 4 (3) (a) of Punjab village Common Lands Act has saved the possession of dholidars over a part of shamlat deh and accorded a status similar to that of an occupancy tenant. Henceforth, a dholidar shall be an occupancy tenant of the shamlat deh vested or deemed to have vested in Panchayat "Amar Nath V. Gram Panchayat 1967 CurLJ 548. Dholidar is a trustee who is entitled to retain its possession but has no power to alienate by means of sale, mortgage or gift 1993 PLJ 437."*

***BUTEMAR**:-Butemar is a kind of tenant who clears jungle and brings the land under cultivation and he exercises the*

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followings rights:-

(a) He cannot be ejected as long as he exercises to cultivate.
(b) His occupancy rights is pertitalle in the direct line.
(c) He can cut self agricultural purposes. timber grown for
(d) He can build houses, but if he vacates his holding he removes only the material he has paid for himself.
(e) He can generally sink kacha well but not a pucca well without his landlord's permission.
(f) He can temporarily but not permanently be some person who broke waste land are also called Butemars.

***Bhonda and Bhondedar**:-Bhondedar is a grant of few bighas of land for some secular service such as duties of village watchman or messenger. Bhondedar may be rejected on failure to fulfil conditions of his tenure, and perhaps in some cases at will of the proprietors. Bhonda is simply an old fashioned method of paying for services. Succession in Bhondedari tenancy is not heritable. The different Bhondedaries have different modes of succession.*

***Muqariridar**:- The person who is inferior in degree to a Malik Makbuza is a Muqarridar, who is regarded as having an inheritable estate in the land in the occupier from which he cannot be ousted so long as he pays the fixed quit rent to the proprietors."*

7. Consequently, it is submitted, that since the above persons who enjoy the above capacities over the disputed lands, thus make them to be not acquiring any permanent tenure over the lands in respect whereof they are entered in the relevant column of the jamabandi(s). Consequently, it is submitted, that right (supra) was a purely limited right, and, was extinguishable at the instance of the landlord, and, as such the landlord was required to be adequately compensated, thus qua his rights of reversion over the disputed lands, rather becoming extinguished by the instant statute, thus through conferment of right, title, and, interest thereovers, vis-a-vis the above categories. Therefore, it is argued, that when the said right has been snatched or expropriated, inasmuch as, without any reasonable, and, adequate compensation becoming assessed, vis-a-vis, the landlords concerned. Resultantly, it is contended, that the Act (supra) is cleverly camouflaged in the garb of Article 31-A of the Constitution.

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Submissions on behalf of the learned counsels for the respondents

8. The learned counsels for the respondent have submitted, that the proprietary rights vested in the aforesaid Act are not contrary to the basic principles of the Constitution, because these persons have been cultivating these land for several generations, yet they are not able to sell, alienate, lease or mortgage such land or raise loans from financial institutions and most of these Dohlidars etc. are small or marginal farmers. In order to mitigate the misery of their indigent families, it has been thought fit to vest them with proprietary rights over those lands whereovers they are making cultivations. These special category of persons have been retaining this land for many generations, so the land under their cultivation is in the form of grant in perpetuity. It is further contended, that since they had not been paying any rent to the landowners, and, had made vast improvements over their cultivating holdings, thus by clearing the jungles and leveling the undulated terrains, thereby it has been felt that a token compensation would meet the ends of justice. To confer proprietary rights on Dohlidars etc., and, to provide for payment of token compensation to the landowners whose rights are extinguished and for certain consequential and incidental matters, this legislative measure by agrarian reforms, thus being made.

9. The learned counsels have further submitted, that the provisions of the Act are not contrary to the mandate of law. The owners are being given an opportunity to contest the claim reared in the petitions submitted by the respondents. It is further contended, that the provisions of the said Act are not in contravention to the fundamental right of the petitioners as contained in Article 31A of the Constitution of India. They further submit, that the provisions of the said Act are not contrary to Article 300-A of the

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Constitution of India, and, that the action of the Government also is not in violation of Article 300 A of the Constitution of India. It is further submitted, that these special categories of persons have been retaining those lands, for many years and they had not been paying any rent to the land owners concerned.

10. For appreciating the submissions (supra), as became addressed before this Court by the learned counsels for the petitioners, and, by the learned counsels for the respondents, it is but imperative to extract the provisions of the Act of 2011, provisions whereof are extracted hereinafter.

> *"1. (1) This Act may be called Haryana Dohlidar, Butimar, Bhondedar and Muqararidar (Vesting of Proprietary Rights) Act, 2010.*
>
> *(2) It extends to the whole of the State of Haryana.*
>
> *(3) It shall come into force on such date as the State Government may by notification in the Official Gazette appoint.*
>
> *(4) This Act shall be applicable to Dohlidar, Butimar, Bhondedar, Muqararidar or any other similar class or category of persons which the State Government may notify in the Official Gazette.*
>
> *2. In this Act, unless the context otherwise requires,-*
>
> *(a) "appointed day" means in relation to Dohlidar, Butimar, Bhondedar or Muqararidar, recorded as such in revenue record for more than twenty years, the day on which this Act comes into force and in other cases where twenty years have not yet been completed and such person is recorded as Dohlidar, Butimar, Bhondedar or Muqararidar on or before the date of commencement of this Act, the day on which the person fulfils the condition of twenty years;*
>
> *(b) "Collector" means the Collector of the district in which the land, in respect of which such rights are vested in a Dohlidar, Butimar, Bhondedar or Muqararidar under this Act, is situated and includes any officer not below the rank of an Assistant Collector of the First Grade specially empowered by the State Government to perform the duties of a Collector under this Act;*
>
> *(c)"Commissioner" means the Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);*
>
> *(d) "Dohlidar, Butimar, Bhondedar or Muqararidar" means a person who has been recorded as such in the revenue record and includes his predecessor and successor*

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in interest;

(e)"Financial Commissioner" means the Financial Commissioner appointed under the Punjab Land Revenue Act, 1887 (Punjab Act 17 of 1887);

(f) "land" means land which is occupied by a Dohlidar, Butimar, Bhondedar or Muqararidar and given to him by landlord in lieu of services rendered and includes the sites of buildings and other structures on such land;

(g) "landowner" means a person under whom a Dohlidar, Butimar,· Bhondedar or Muqararidar holds land and includes his predecessors and successors;

(h) "State Government" means the Government of the State of Haryana the Administrative Department.

3. Notwithstanding anything to the contrary contained in any other law, custom, usage or deed for the time being in force, on and from the appointed day-

(a) all rights, title and interest including the contingent interest, if any, recognized by any law, custom, usage or deed for the time being in force with respect to the land and vested in the landowner shall be extinguished, and such rights, title and interest shall vest in the Dohlidar, Butimar, Bhondedar or Muqararidar or any other similar class or category of persons, which the State Government has notified in the official Gazette, under whose occupation the land is, free from all encumbrances, if any, created by the landowner;

(b) the landowner shall cease to have any right to collect or receive any rent or service in respect of such land.

4. (1) Any landowner whose rights have been extinguished under section 3 may, within twelve months from the appointed day, apply to the Collector, in such form, as may be prescribed, for the compensation payable to the landowner by the Dohlidar, Butimar, Bhondedar or Muqararidar:

Provided that the Collector may entertain the application after the expiry of the said period of twelve months if he is satisfied that the applicant was prevented by sufficient cause from filing the application in time.

(2) On receipt of an application under Sub-section (1), the Collector shall issue notice to the parties concerned and after giving the parties an opportunity of being beard and after making such enquiry, as may be prescribed, shall make an awltd,for compensation payable at the rate of Five hundred rupees per acre by the Dohlidat, Butimar, Bhondedar or Muqararidar to the landowner.

(3) Where there is any dispute as to the person or persons who are entitled to the compensation, the Collector shall decide such dispute and if the, collector finds that more than one person is entitled to compensation, he shall' apportion the, amount thereof amongst such persons.

(4) Where the compensation is payable to a minor or to a

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person having a limited interest the Collector may make such arrangements as may be equitable having regard to the interest of the minor or the person concerned.

(5) The Dohlidar, Butimar, Bhondedar or Muqararidar shall be liable to pay the compensation in lump sum.

(6) If the Dohlidar, Butimar, Bhondedar or Muqararidar fails to deposit the compensation within two months of the receipt of the award announced by the collector, the land shall vest in the landowner.

(7) If the land is subject to a mortgage at the time of payment of compensation, the land shall pass to the Dohlidar, Butimar, Bhondedar or Muqararidar unencumbered by the mortgage or charge but the mortgage debt shall be a charge on the compensation payable.

(8) If there is no such charge as aforesaid, the Collector, shall subject to any directions which he may receive from any court, pay the compensation to the landowner.

(9) If there is such a charge, the Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the compensation as is required for the purpose and pay the balance, if any, to the landowner, or retain the compensation pending the decision of civil court as to the person or persons entitled thereto.

5. An appeal shall lie from an original or appellate order made under this Act as follows, namely:-

(a) any order made by the Collector to the Commissioner; and

(b) any order of the Commissioner to the Financial Commissioner:

Provided that when an original order is confirmed on first appeal, a further appeal shall not lie.

6. The period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against and shall be as follows, namely:-

(a) when the appeal lies to the Commissioner sixty days; and

(b) when the appeal lies to the Financial Commissioner ninety days.

7. (1) The Collector, Commissioner or Financial Commissioner may either on his own motion or on the application made within ninety days by the party interested, review and on such review. modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the officer under whose control he is immediately subject to;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the

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passing of the order, or unless the applicant satisfies the concerned officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed,

(2) An appeal shall not lie from an order refusing to review, or conforming on review, a previous order.

8. (1) The Financial Commissioner may at any time call for the record of any case pending before ,or disposed of by any officer subordinate to him.

(2) A Commissioner may call for the record of any case pending before, or disposed of by the Collector under his control.

(3) If in any case in which a Commissioner has called for a record and he is of opinion that the proceedings taken or the order made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Financial Commissioner.

(4) If, after examining the record called for by him under Sub-section (1) or submitted to him under Sub-section (3), the Financial Commissioner is of opinion that it is inexpedient to interfere with the proceedings or the order, he shall pass an order accordingly.

(5) If, after examining the record, the Financial Commissioner is of opinion that it is expedient to interfere with the proceedings or the order on any ground on which the High Court in the exercise of its revisional jurisdiction may under the law for the time being in force interfere with the proceedings or an order or decree of a civil court, he shall fix a day for hearing the case, and may, on that or any subsequent day to which he may adjourn the hearing or which he may appoint in this behalf, pass such order as he thinks fit in the case.

(6) Except when the Financial Commissioner fixes, under Sub-section (5), a day for hearing the case, no party has any right to be heard before the Financial Commissioner while exercising his powers under this section.

9. Notwithstanding anything contained in any contract or in any law for the time being in force ,no claim or liability whether under any decree or order of a civil court or otherwise, enforceable against a landowner for any money which is charged on, or is secured by a mortgage of, any land held by a Dohlidar, Butimar, Bhondedar or Muqararidar, shall be enforceable against the said land.

10. Save as otherwise expressly provided in this Act, every order made by the Collector, Commissioner or Financial Commissioner shall be final and no proceeding or order taken

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or made under this Act, shall be called in question by any court or before any officer or authority.

11. No prosecution, suit or other legal proceeding shall lie against the State Government or any officer or authority for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules made thereunder.

12. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, by order published in the Official Gazette, make such provisions or give such directions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty.

13. (1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which an application for compensation may be made by the landowner;

(b) the form of notice and the manner in which notices may be served under this Act;

(c) the manner in which inquiries may be held under this Act;

(d) the manner in which appeals and applications for review and revision may be filed; .

(e) any other matter which has to be or may be prescribed under this Act."

<u>Submissions on behalf of the learned Amicus Curiae</u>

11. Moreover, the learned Amicus Curiae with his insightful, and, proven wisdom, has made a valiant attempt to validate the constitutional vires of the Act (supra). The learned Amicus Curiae has drawn the attention of this Court to the Punjab Act No. X1 of 1925, whereby the Punjab Tenancy Act, 1887 became amended. He submits, that thereins the term Muqararidar has been defined, as follows:-

'Muqarraridar' means any person who holds land in the Attock District and who, on the date of the commencement of the Punjab Tenancy (Amendment) Act, 1925, was recorded in the revenue records as muqarraridar in respect of such land or who, after the said date was so recorded with his consent and the consent of the proprietor of such land and includes the successors in interest of a muqarraridar."

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12. He further submits, that when therebys after sub-Section 3 of said Act, Section 4 became added with the hereafter coinage.

> *"For the purposes of this section a muqarraridar shall be deemed to be a tenant having a right of occupancy*"

13. Consequently, he submits, that when a Muqararidar has been stated thereins to be a tenant having the right of occupancy. Resultantly, he argues that when thereby in undivided Punjab, thus pre reorganization of States, taking place, the territories which now fall within the domain of the State of Haryana, also became included thereins. Therefore, the provisions (supra) did also hold operation in those parts of the said undivided Punjab, which now fall within the jurisdictional domain of the newly carved therefrom State of Haryana. In sequel, when a Muqararidar thereunders, thus has been conferred the status of an occupancy tenant. Resultantly, he submits, that since the apposite legislation, but irrespective of any descriptions being made in the relevant columns of the relevant revenue records, thus declaring a Muqararidar to be holding a limited extinguishable tenancy under his landlord, are purposeless, and, thereby the Act of 2011, only recognizes the previously conferred rights of occupancy, in a Muqararidar, and, thereby the said conferment of right, title and interest over the lands concerned, thus upon the Muqararidars, rather is neither expropriatory, nor invites theretos the mandate of Article 300-A of the Constitution.

14. The learned Amicus Curiae has also drawn the attention of this Court to the Punjab Act No. IX of 1953, which also then covering the territorial areas of the newly created therefrom State of Haryana. Resultantly, he submits, that since the Punjab Act No. IX of 1953, was introduced with the object, as stated thereins, objects whereof becomes

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extracted hereinafter.

> *"In March, 1949, Government appointed Land Reforms Committee to examine the tenancy legislation in force in the Punjab and to suggest ways and means to ameliorate the economic condition of tenants. One of the recommendations of that Committee was that the rights of Ala Maliks and Talukdars should, on payment of compensation, be extinguished. This recommendation was accepted by Government on the ground that Ala Maliks and Talukdars had no real connection with the land. As the Constitution in the State was under suspension last year for sometime the President enacted the Punjab Abolition of Ala Malikiyat and Talukdari Rights Act, 1951, in order to give effect to the recommendation made by the Land Reforms Committee. This Act came into force with effect from 15th June, 1952, and seeks to extinguish the rights of Ala Maliks and Talukdars on payment to them of compensation at eight times the amount of annual rent or other dues, if any, by the Adna Maliks or whether partly by the Adna Maliks or whether partly by Adna Malik and partly by Government, and vest these rights in the Adna Maliks."*

15. Moreover, when in Section 2 thereof, the term adna malik becomes defined as under:-

> *"(a) adna malik means, in the case of land in which the proprietary rights are divided between superior and inferior owners, the inferior owner."*

16. Further, when through Section 3 thereof, there is abolition of rights of ala maliks, and, vestings of full proprietary rights in adna maliks, and, when vis-a-vis the adna maliks, there are beneficient statutory provisions engrafted respectively in Sections 4, 5 and 7 of the Act (supra). Consequently, he argues, that the Dholidars, Butimars, Bhondedars and Muqararidars, thus can be taken to be adna maliks, and, therebys the Haryana Act No. 1 of 2011 but is in furtherance of recognition of the right of "adna malik", inhering respectively in the Dholidars, Butimars, Bhondedars and Muqararidars. The learned Amicus Curiae has continued to thus submit, that the landlords if are ala maliks, and, the Dholidars, Butimars, Bhondedars and Muqararidars, rather are adna maliks, therebys when in terms of the Statement of Objects and Reasons, which becomes extracted

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hereinabove, the Haryana Act No. 1 of 2011, when confers proprietary rights upon the said categories, thus on the plank of theirs being adna malik, and, consequently, extinguishes the rights of the landlords, who are ala maliks, thereby when the said statute also alike the unimpugned Punjab Act No. IX of 1953, stipulates the compensatory mechanisms, vis-a-vis the ala maliks/landowners, In consequence, he submits, that when the instant Act, is thus parametria to the Punjab Act of 1953, as such, when the constitutionality of the Punjab Act of 1953 has remained unchallenged, thereupon when the said Act is constitutionally valid. Resultantly, the instant Act which is parameteria to the Punjab Act 1953, likewise also cannot be challenged, on the touchstone of its breaching, the mandate of Article 300-A of the Constitution of India, nor it can be challenged on the ground, that it is not oriented towards its bringing agrarian reforms, wherebys alone it enjoys the constitutional immunity, as enshrined in Article 31-A of the Constitution of India.

17. The learned Amicus Curiae has referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Raja Rajinder Chand versus Mst Sukhi and others***, reported in ***AIR 1957 SC 286.*** He refers to para 16 of the judgment (supra), para whereof becomes extracted hereinafter. He submits, that after the Hon'ble Apex Court, drawing the distinction inter se the adna malik and ala malik, ultimately in paragraph 24, para whereof becomes extracted hereinafter, concluded that the cultivated and proprietary lands of adna maliks, as became entered in the relevant wajib-ul-arz, thus did not result in the adna malik surrendering or forfeiting his recorded rights either vis-a-vis sovereign or qua his predecessor.

> *"16. Before dealing with the actual entries made, it is necessary to refer to a few more matters arising out of the*

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settlement operations of Messrs Barnes and Lyall. The expressions 'ala-malik' and 'adna-malik' have been used often in the course of this litigation. What do those expressions mean? In Mr. Douie's Punjab Settlement Manual (1930 edition) it is stated in para 143: "Where the proprietary right is divided the superior owner is known in settlement literature as ala malik or talukdar, and the inferior owner as adna- malik..... In cases of divided ownership the proprietary profits are shared between the two classes who have an interest in the soil". How this distinction arose, so far as the record-of-rights in the Jagirs are concerned, appears from para 105 at p. 60 of Mr. Anderson's report. Mr. Anderson said:

> *"The first great question for decision was the status of the Raja and of the people with respect to the land, which was actually in the occupancy of the people, and next with respect to the land not in their actual occupancy, but over which they were accustomed to graze and to do certain other acts. Mr. O'Brien decided that the Raja was superior proprietor or Talukdar of all lands in his Jagir, and the occupants were constituted inferior proprietors of their own holdings and of the waste land comprised within their holdings as will be shown hereafter; be never fully considered the rights in waste outside holdings. The general grounds fir the decision may be gathered from Mr. Lyall's Settlement Report and from the orders on the Siba Summary Settlement Report, but I quote at length the principles on which Mr. O'Brien determined the status of occupants of land, not merely because it is necessary to explain here the action that he took, but also in order that the Civil Courts which have to decide questions as to proprietary rights may know on what grounds the present record was based".*

Mr. Anderson then quoted the following extract from Mr. O'Brien's assessment report to explain the position:

> *"In places where the possession of the original occupants of land was undisturbed, they were classed as inferior proprietors; but where they had acquired their first possession on land already cultivated at a recent date, or where the cultivators had admitted the Raja's title to proprietorship during the preparation and attestation of the Jamabandis, they were recorded as tenants with or without right of occupancy as the circumstances of the case suggested.... In deciding the question old possession was respected. Where the ryots had been proved to be in undisturbed possession of the soil they have been recorded as inferior proprietors".*

The same principles were followed in Nadaun: long possession with or without a patta or lease from the Raja was the test for recording the ryot as an inferior proprietor (adna- malik).

x x x x

24. We have assumed that the entries in the Wajib-ul-arz of 1899-1900 and of 1910-15 related to cultivated and proprietary lands of adna-maliks, though they were entered in a paragraph

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> *which dealt with the rights of Government in respect of ownership of the nazul lands, jungles, unclaimed property, etc. Even on that assumption, we have come to the conclusion that the entries in the Wajib-ul-arz do not establish the claim of the appellant that there was a surrender or relinquishment of a sovereign right in favour of his predecessor."*

18. He further submits, that when the claim of the appellant thereins, as ala malik over the disputed lands in the said decision, were made to succumb to the rights of adna malik (inferior landlords). Therefore, he submits, that Dholidars, Butimars, Bhondedars and Muqararidars, who were entered as cultivators over the disputed lands, and/or as adna maliks, thus were inferior land owners vis-a-vis the superior land owners, who became so declared in the column of ownership, therebys through the making of the impugned legislation, there is a recognition of said right of adna maliks over the disputed lands. Resultantly, he submits, that the said rights of adna maliks over the disputed lands, who he submits are the Dholidars, Butimars, Bhondedars and Muqararidars, thus cannot be said to succumb to the rights of the superior landlords i.e. the ala maliks, who are entered in the jamabandis, as owners of the disputed lands, nor the ala maliks have any right to resume the disputed lands. If so, he submits, that the challenged Haryana Act of 2011, is thus a measure of agrarian reforms, and, thus only countenances the rights of inferior landlords, who are the above persons, and, thereby the Haryana Act of 2011, is protected by the constitutional immunity conferred, vis-a-vis it, thus by Article 31-A of the Constitution of India.

19. The learned Amicus Curiae has referred to a decision rendered by the Hon'ble Apex Court in case titled as ***Sri Ram Ram Narain Medhi versus The State of Bombay***, reported in ***AIR 1959 Supreme Court 459 (V 46 C 57)***. The relevant paragraphs of the judgment (supra) are extracted

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hereinafter.

> *"31. We are, therefore, of opinion that the expression estate " had the meaning of any interest in land and it was not confined merely to the holdings of landholders of alienated lands. The expression applied not only to such " estate " holders but also to land holders and occupants of unalienated lands.*
>
> *x x x x*
>
> *This goes to show that an occupant holds the land under a tenure and occupancy is a species of land tenures. The provisions contained in s. 73(A) relating to the power of the State Government to restrict the right of transfer and the provisions in regard to relinquishments contained in SS. 74, 75 and 76 also point to the same conclusion. These and similar provisions go to show that occupancy is one of the varieties of land tenures and the Bombay Land Revenue Code, 1879, comes within the description of " existing laws relating to land tenures in force" in the State of Bombay within the meaning of Art. 31A (2)(a). Baden Powell has similar observations to make in regard to these provisions in his Land Systems in British India, Vol. 1 at p. 321:-*
>
> *"Nothing whatever is said in the Revenue Code about the person in possession (on his own account) being " owner " in the Western sense. He is simply called the " occupant ", and the Code says what he can do and what he cannot. The occupant may do anything he pleases to improve the land, but may not without permission do anything which diverts the holding from agricultural purposes. He has no right to mines or minerals.*
>
> *These are the facts of the tenure; you may theorize on them as you please; you may say this amounts to proprietorship, or this is a dominium minus plenum; or anything else."*
>
> *33. There is no doubt therefore that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in Bombay at the time when the Constitution (Fourth Amendment) Act, 1955, was passed and Art. 31A in its amended form was introduced therein and the expression "estate " had a meaning given to it under s. 2(10) there, viz., " any interest in land " which comprised within its scope alienated as well as unalienated lands and covered the holdings of occupants within the meaning thereof.*
>
> *x x x x*
>
> *35. These instances culled out from some of the provisions of the 1948 Act go to show that the agrarian reform which was initiated by that Act was designed to achieve the very same purpose of distribution of the ownership and control of agricultural lands so as to subserve the common good and eliminate the concentration of wealth to the common detriment which purpose became more prominent when the Constitution was ushered in on January 26, 1950, and the directive principles of State Policy were enacted inter alia in Arts. 38 and 39 of the Constitution. With the advent of the Constitution*

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these provisions contained in the 1948 Act required to be tested on the touch-stone of the fundamental rights enshrined in Part III thereof and when the Constitution (First Amendment) Act, 1951, was passed introducing Arts. 31A and 31B in the Constitution, care was taken to specify the 1948 Act in the Ninth Schedule so as to make it immune from attack on the score of any provision thereof being violative of the fundamental rights enacted in Part III of the Constitution. The 1948 Act was the second item in that schedule and was expressly saved from any attack against the constitutionality thereof by the express terms of Art. 31B.

36. The impugned Act which was passed by the State Legislature in 1956 was a further measure of agrarian reform carrying forward the intentions which had their roots in the 1948 Act. Having regard to the comparision of the various provisions of the 1948 Act and the impugned Act referred to above it could be legitimately urged that if the cognate provisions of the 1948 Act were immune from attack in regard to their constitutionality, on a parity of reasoning similar provisions contained in the impugned Act, though they made further strides in the achievement of the objective of a socialistic pattern of society would be similarly saved. That position, however, could not obtain because whatever amendments were made by the impugned Act in the 1948 Act were future laws within the meaning of Art. 13(2) of the Constitution and required to be tested on the self-same touchstone. They would not be in terms saved by Art. 31B and would have to be scrutinized on their own merits before the courts came to the conclusion that they were enacted within the constitutional limitations. The very terms of Art. 31B envisaged that any competent legislature would have the power to repeal or amend the Acts and the Regulations specified in the 9th Schedule thereof and if any such amendment was ever made the vires of that would have to be tested. Vide Abdul Rahiman v. Vithal Arjun 59 Bom LR 579 : (AIR 1958 Bom 94)

37. That brings us back to the provisions of Art. 31A and to a consideration as to whether the impugned Act was a legislation for the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights within, the meaning of sub- article (1)(a) thereof We have already held that the Bombay Land Revenue Code, 1879, was an existing law relating to land tenures in force in the State of Bombay and that the interests of occupants amongst others fell within the expression " estate " contained therein. That, however, was not enough for the petitioners and it was further contended on their behalf that even though the impugned Act may be a law in regard to an "estate" within the meaning of the definition contained in Art. 31A(2)(a) it was not law providing for the acquisition by the State of any estate or any rights therein or for the extinguishment or modification of any such rights. The impugned Act was certainly not a law for the acquisition by the State of any estate or of any rights therein

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because even the provisions with regard to the compulsory purchase by tenants of the land on the specified date transferred the title in those lands to the respective tenants and not to the State. There was no compulsory acquisition of any "estate " or any rights therein by the State itself and this provision could not help the respondent. The respondent, however, urged that the provisions contained in the impugned Act were enacted for the extinguishment or modification of rights in " estates " and were, therefore, saved by Art. 31A(1)(a). It was on the other hand urged by the petitioners (1) that the extinguishment or modification of any such, rights should only be in the process of the acquisition by the ,State of any estate or of any rights therein and (2) that the provisions in the impugned Act amounted to a suspension of those rights but not to an extinguishment or modification thereof We shall now proceed to examine these contentions of the petitioners.

38. Art. 31A(1)(a) talks of two distinct objects of legislation; one being the acquisition by the State of any estate or of any rights therein and the other being the extinguishment or modification of any such., rights. If the State acquires an estate or any rights therein that acquisition would have to be a compulsory acquisition within the meaning of Art. 31(2)(A) which was also introduced in the Constitution by the Constitution (Fourth Amendment) Act, 1955, simultaneously with Art. 31A(1) thereof. There was no provision made for the transfer of the ownership of any property to the State or a Corporation owned or controlled by 'the State with the result that even though, these provisions deprived the landholders of their property they did not amount to a compulsory acquisition of the property by the State. If this part of Art. 31A(1)(a) is thus eliminated what we are left with is whether these provisions of the impugned Act provided for an extinguishment or modification of any rights in " estates ". That is a distinct concept altogether and could not be in the process of acquisition by the State of any " estate " or of any rights therein. Acceptance of the interpretation which is sought to be put upon these words by the petitioners would involve the addition of words " in the process of the acquisition by the State of any estate or of any rights therein " or " in the process of such acquisition " which according to the well known canons of construction cannot be done. If the language of the enactment is clear and unambiguous it would not be legitimate for the Courts to add any words thereto and evolve therefrom some sense which may be said to carry out the supposed intentions of the legislature. The intention of the Legislature is to be gathered only from the words used by it and no such liberties can be taken by the Courts for effectuating a supposed intention of the Legislature. There is no warrant at all, in our opinion,' for adding these words to the plain terms of Art. 31A(1)(a) and the words extinguishment or modification of any such rights must be understood in their plain grammatical sense without any limitation of the type suggested by the

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petitioners."

20. The learned Amicus Curiae has thereafter referred to a judgment rendered by this Court in ***CWP No. 1196 of 1980***, titled as ***Baba Badri Dass versus Sh. Dharma and others.*** The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"13. In Baba Nand Ram's case (1976 Pun LJ 586) (supra) the special contract conceived of by A. D. Koshal, J. in which the dohlidar undertakes not to pay any rent to the landowner but binds himself to perform certain other obligations to others, as it appears to us, is not 'a special contract' but for which he would be liable to pay rent for that land to 'that other person'. It appears to us that the service rendered by a dohlidar to institutions or persons other than the creator of the dohli, strictly speaking does not fall either within the concept of rent or within that of a tenant. The liability to pay rent to the creator of the dohli, or the latter's right to claim rent in the event of the terms of dohli not being faithfully observed, is altogether missing in the nature of the creation of the tenure. It is equally inconceivable how a validly created trust in the event of the trustee or his successors-in-interest failing or refusing to perform their duties could warrant the abolition of the trust causing extinguishment of dohli rights or that the property reverts to the original proprietors. The observations of the Bench in Dharma's case (1976 Rev LR 641) (supra) are in the nature of obiter dicta and do not seem to have arisen on the facts of that case. We, therefore, hold that though a dohlidar is not an owner of the land as the term is well understood yet he is otherwise a landowner for the purposes of the Act. The other questions whether he is trustee or that his alienation are void ab initio do not arise in the present case, though we have our doubts about the correctness of the view in that regard taken by the Lahore High Court in Sewa Ram's case (AIR 1922 Lah 126) (supra)*
>
> *14. A passing reference need be made that out of the four classes of owners mentioned to have emerged in para 175 of Douie's Settlement Manual, the ala malikan have ceased to exist and the adna malikan have come to be full proprietor. That instance of dual ownership was abolished by the Punjab Abolition of Ala Malikiyat and Talukdari Act, 1950. This obliterates classes of owners mentioned at serial numbers (a) and (c) and merged in class mentioned at serial number (b). Just two kinds of owners are prevalent now--(i) who are owners of land or their heirs and (ii) landowners on the basis of possession.*
>
> *15. The concept of perpetual tenancy as conceived of in S. 8 of the Punjab Tenancy Act in the light of Ss. 5, 6 and 7 has also become non-existent on account of the Punjab Occupancy*

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> *Tenants (Vesting of Proprietary Rights) Act, 1952. Occupancy or perpetual tenants have been made owners of the land. This Act came about to carry out agrarian reforms and to remove the intermediaries. And if the dohlidar is a perpetual tenant as conceived of in Sewa Ram's (AIR 1922 Lah 126) and Khema Nand's cases (AIR 1937 Lah 805) (supra) of the Lahore High Court followed in the cases of Bharat Dass (1973 Rev LR 280) and Baba Nand Ram (1976 Pun LJ 586) by this Court, then there is no reason why such like tenure should be allowed to exist in the fact of the aforementioned statute. The reason is obvious. The succession to occupancy tenancy was governed by S. 59 of the Punjab Tenancy Act, whereas succession to the dohli tenure is either natural or traditional. The occupancy tenure is capable of sale carrying with it a peremptory obligation to offer it in the first instance to the land-owner. There is no such obligation in the dohli tenure treating it for the moment, though no holding, that it is transferable. The occupancy tenancy rights are capable of being sold in execution of a decree against the occupancy tenant but the rights of a dohlidar are not subject to such permissible process of Court under the law as understood. Alienations made by occupancy tenants are voidable at the instances of the landowner. For these reasons, which are only some of them, we differ from the view that the dohli tenure is of a perpetual tenancy or is ever covered by the concept of tenancy at all. The view to the contrary taken by above referred to two decisions of the Lahore High Court does not appear to us to be correct. We do not expressly follow the decisions of the Lahore High Court in Sewa Ram's case (AIR 1922 Lah 126) and Khema Nand's case (AIR 1937 Lah 805) and overrule the single Bench decisions afore-quoted taking the view based thereon on this aspect.*
>
> *16. Now when the dohlidar is not a purpetual tenant as held by us, typification of the dohli tenure in Douie's Settlement Manual as an instance of malik kabza and hence that of a landowner for the purposes of the Land Revenue Act and derivatively for the purposes of the Act, appears to us crystal clear. He is a landowner because he is in possession of the land. We take the view as taken by H. R. Sodhi, J. in Mahant Sirya Nath's case (1969 Pun LJ 27) (supra) and hold that a dohli tenure is an instance of malik kabza and a dohlidar, a landowner for the purposes of the Act."*

21. The learned Amicus Curiae has also referred to a decision rendered by the Hon'ble Apex Court in case titled as ***State of Kerala and another versus The Gwalior Rayon Silk Manufacturing (WVG.) Co. Ltd. etc.***, reported in ***(1973) 2 Supreme Court Cases 713***. The relevant

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paragraphs of the judgment (supra) are extracted hereinafter.

> *45. Article 31A having been read down to relate to agrarian reform,rightly, if we may say so-in the feudal context of the country and the founding faith in modernisation of agriculture informed by distributive justice, the controversy in the present case demands a study of the anatomy and cardiology of the statute, not its formal structure but it-, heart beats.*
>
> *46. What do we mean by agrarian reform? The genesis of the concerned constitutional amendments, and the current economic thinking must legitimately illumine the meaning, along with lexicographic aids and judicial precedents. "We must never forget it is a Constitution we are expounding." The seventies of our century pour new life into old concepts and judges must have the feel of it. So viewed, the technology of agrarian reform for a developing country which traditionally lives in its villages envisages the national programmes of transmuting rural life from feudal medievalism into equal, affluent modernism-a wide canvass overflowing mere improvement of agriculture and reform of the land system.*
>
> *47. The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganisation of the land system or distribution of land. It is intended to realise the social function of the land and includes we are merely giving, by way of illustration, a few familiar proposals of agrarian reform-creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to facilitate proper marketing of the village produce, putting up of silos, ware- houses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximising production and help solve social problems that are found in relation to the life of the agricultural community.The village man, his welfare, is the target.*
>
> *48. Moving the first constitution Amendment Bill, the then Prime Minister, who was in a large sense the protagonist of constitution framing for the country, observed :*
>
> > *"Now apart from our commitment, a survey of the world today, a survey of Asia today will lead any intelligent person to see that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the. difficulties and dangers, apart from being an injustice in itself."*
> >
> > *"..... But inevitably, in big social changes some people have to suffer. We have too think in terms of large schemes of*

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> *social engineering, not petty reforms but of big schemes like that."*

At the end of an extensive debate he again emphasized

> *"May I remind the House that this question of land reform is most intimately connected with food production. We talk about food production and grow-more-food and if there is agrarian trouble and insecurity of land tenure nobody knows what is to happen. Neither the zamindar nor the tenant can devote his energies to food production because there is instability."*

This reference to the apposite parliamentary debate reveals the special significance and extensive connotation of 'agrarian reform' in its application to Indian conditions. Indeed, art. 31A(2)(iii) itself by referring to land for pasture and sites of buildings and other structures occupied by cultivators, agricultural laborers and village artisans gives clear hints of agrarian well-being being pivotal to land reform in its larger legitimate connotation. Agricultural economists have focussed attention on the need of under-developed countries to upgrade the standard of living of village communities by resort to schemes for increasing food production and reorganising the land system. The main features of the agrarian situation in India and in other like countries are the gross inequality in land ownership, the disincentives to production and the desperate backwardness of rural life. As one Latin American has stated:

> *"Agrarian reform ought to be an inseparable part of an agricultural policy which furthers the advance of that aspect of economic activity in harmony with overall economic development. Agrarian reform likewise pursues social and political ends congruent with economic goals, such as the cultural elevation of the peasants, their liberation from a vestiges of feudalism, their well-being, their group solidarity, and their participation in public life through the mechanism of democracy."*

It is thus clear to those, who understand developmental dialectic and rural planning that agrarian reform is more humanist than mere land reform and, scientifically viewed, covers not merely abolition of intermediary tenures, zamindaris and the like but restructuring of village life itself taking in its broad embrace the socioeconomic regeneration of the rural population. The Indian Constitution is a social instrument with an economic mission and the sense and sweep of its provisions must be gathered by judicial statesmen on that seminal footing."

22. The learned Amicus Curiae has further made a reference to a decision rendered by the Hon'ble Apex Court in case titled as ***Dattatraya Govind Mahajan and others versus State of Maharashtra and another***,

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reported in ***(1977) 2 Supreme Court Cases 548***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *23. We must realise the vital role in Indian economic independence that the land question plays before approaching the constitutional issues urged before us. The caste system and religious bigotry seek sanctuary in the land system. Social status syndrome, resisting the egalitarian recipe of the Constitution, is the result of the hierarchi- cal agrarian organisation. The harijan serfdom or dalit proletarianism can never be dissolved without a radical redistribution of land ownership. Development strategies, income diffusion programmes and employment opportunities, why, even the full realisation of the social and economic potential of the 'green revolution' demand agrarian reform.*
>
> *x x x x*
>
> *The intimate bond between poverty and hierarchy in agrarian societies, the impact of the social framework of agriculture on the castesystem, the inhibition of feudal tenures on the productive energies of the peasantry, are subjects which have been studied by cultural anthropologists, sociologists and economists and, in consequence, the Constitution has included agrarian reform as a crucial component of the New Order.*
>
> *x x x x*
>
> *26. Small wonder that the framers of the Constitution were stirred by the proposition that freedom in village India become's 'free' only when the agrarian community comes into its own and this necessitates radically re-drawing the rural real estate map. A sensitized awareness of this background is essential while assessing the legal merit of the submissions made by Shri Tarkunde which has fatal potential vis-a-vis the three impugned legislations in question.*
>
> *x x x x*
>
> *29. I have, right at the outset, hammered home the strategic significance of land reforms in the planned development .of our resources, the restoration of the dignity and equality of the individual and the consolidation of our economic freedom. No land reforms, no social justice. And so, the framers of the Constitution, finding the fearful prospect of agrarian re-structuring being threatened by fundamental rights' archery, decided to armour such reform programmes with the sheath of invulnerability viz., the Ninth Schedule plus Art. 3lB. Once included in this Schedule, no land reform law shall be arrowed down by use of Part III. A complete protection was the object of the 1st Amendment, and to blunt the edge of this purpose by interpretative tinker- ing with legalistic skills is to cave in or assist unwit- tingly the slowing down of the process which is the key to social transformation. The listening posts of the constitu- tional court are located, not in little grammar nor in lexicography nor even in pedantic reading of Provisos and Explanations based on vintage rules but in the profound forces which have led to the provision and in the comprehensive concern expressed in the wide language used. While any argument in Court has to be decided on a study of the meaning of the words of the statute vis-a-vis the constitutional provisions, the very great stakes of the country in agrarian legislation, which we have been at pains to emphasize, enjoin upon the Judges the need to bestow the closest circumspection in evaluating invalidatory contentions. Every*

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> *presumption in favour of validity, semantics permitting, every interpretation upholding vires, possibility existing, must meet with the approval of the Court. Of course, if any of the provisions of the Act, tested by the relevant constitutional clause, admits of no reconciliation, the Act must fail though, since the Court has its functional limitation in rescuing a legislature out of its linguistic folly."*

23. The learned Amicus Curiae has also referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Indra Sawhney versus Union of India and others***, reported in ***(2000) 1 Supreme Court Cases 168***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *36. It is now fairly well settled, that legislative declarations of facts are not beyond judicial scrutiny in the Constitutional context of Articles 14 and 16. In Keshavananda Bharati Vs. State of Kerala [1973 (4) SCC 225], the question arose - in the context of legislative declarations made for purposes of Article 31-C whether the court was precluded from lifting the veil, examining the facts and holding such legislative declarations as invalid. The said issue was dealt with in various judgments in that case, e.g. Judgments of Ray, J. (as he then was), Palekar, Khanna, Mathew, Dwivedi,JJ, and Beg, J. and Chandrachud, J. (as they then were) (see summary at PP. 304-L to O in SCC). The learned Judges held that the Courts could lift the veil and examine the position in spite of a legislative declaration. Ray, J. (as he then was) observed:*
>
> > *"The Court can tear the veil to decide the real nature of the statute if the facts and circumstances warrant such a course".....''a conclusive declaration would not be permissible so as to defeat a fundamental right".*
> >
> > *Palekar, J. said that if the legislation was merely a pretence and the object was discrimination, the validity of the statute could be examined by the Court notwithstanding the declaration made by the Legislature and the learned Judge referred to Charles Russell vs. The Queen [(1882) 7 AC 829] and to Attorney General vs. Queen Inswane Co. [(1878) 3 AC 1090]. Khanna,J. held that the declaration could not preclude judicial scrutiny. Mathew,J. held that declarations were amenable to judicial scrutiny. If the law was passed only 'ostensibly' but was in truth and substance, one for accomplishing an unauthorised object, the Court, it was held, would be entitled to tear the veil. Beg,J. (as he then was) held that the declaration by the legislature would not preclude a judicial examination. Dwivedi, J. said that the Courts retain the power in spite of Article 31-C to determine the correctness of the declaration. Chandrachud, J. (as he then was) held that the declaration could not be utilised as a cloak to evade the law and the declaration would not preclude the jurisdiction of the Courts to examine the facts.*
>
> *x x x x*
>
> *42. It appears to us therefore, from what we have stated above in sub paras (a) to (g) that the Kerala Act had shut its eyes to realities*

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> *and facts and it came forward with a declaration in sub-clause (a) of Section 3 which, perhaps, it was mistakenly believed was not amenable to judicial scrutiny. Unfortunately, the law is otherwise.*
>
> *43. In view of the facts and circumstances, referred to above, we hold that the declaration in sub-clause (a) of section 3 made by the legislature has no factual basis in spite of the use of the words `known facts'. The facts and circumstances, on the other hand, indicate to the contrary. In our opinion, the declaration is a mere cloak and is unrelated to facts in existence. The declaration in section 3 (a) is, in addition, contrary to the principles laid down by this Court in Indira Sawhney and in Ashok Kumar Thakur. It is, therefore, violative of Articles 14 and 16(1) of the Constitution of India. Sub-clause (a) of Section 3 is, therefore, declared unconstitutional."*

24. The learned Amicus Curiae has also referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***State of Gujarat versus Mirzapur Moti Kureshi Kassab Jamat and others***, reported in ***(2005) 8 Supreme Court Cases 534***. The relevant paragraph of the judgment (supra) is extracted hereinafter.

> *"71. The facts stated in the Preamble and the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment. They indicate the thought process of the elected representatives of the people and their cognizance of the prevalent state of affairs, impelling them to enact the law. These, therefore, constitute important factors which amongst others will be taken into consideration by the court in judging the reasonableness of any restriction imposed on the Fundamental Rights of the individuals. The Court would begin with a presumption of reasonability of the restriction, more so when the facts stated in the Statement of Objects and Reasons and the Preamble are taken to be correct and they justify the enactment of law for the purpose sought to be achieved."*

25. The learned Amicus Curiae has referred to a judgment rendered by the Hon'ble Apex Court in case titled as ***Novartis AG versus Union of India and others***, reported in ***(2013) 6 Supreme Court Cases 1***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"27. The best way to understand a law is to know the reason for it. In Utkal Contractors and Joinery Pvt. Ltd. and others v. State of Orissa and others[7], Justice Chinnappa Reddy, speaking for the Court, said:*
>
> > *"9. … A statute is best understood if we know the reason for it. The reason for a statute is the safest guide to its*

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> *interpretation. The words of a statute take their colour from the reason for it. How do we discover the reason for a statute? There are external and internal aids. The external aids are statement of Objects and Reasons when the Bill is presented to Parliament, the reports of committees which preceded the Bill and the reports of Parliamentary Committees. Occasional excursions into the debates of Parliament are permitted. Internal aids are the preamble, the scheme and the provisions of the Act. Having discovered the reason for the statute and so having set the sail to the wind, the interpreter may proceed ahead…" (emphasis added)*

28. Again in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and others[8] Justice Reddy said:

> *"33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction." (emphasis added)"*

Analysis of the submissions addressed before this Court by the learned Amicus Curiae, the learned counsels for the petitioners, and, by the learned State counsel, and, the reasons for upholding the impugned legislation.

26. Dholidars, Butimars, Bhondedars and Muqararidars are in view of expostulations of law made in the judgments (supra), thus adna maliks or inferior occupancy tenants over the disputed lands, besides in terms of the

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provisions, as carried in the Punjab Act of 1925, wherebys the Muqararidars but are only adna maliks under the superior landlords i.e. ala maliks. Consequently, when in terms of the judgment made by the Hon'ble Apex Court in Raja Rajinder Chand's case (supra), whereby such adna maliks become declared to not succumb their cultivating rights over the disputed lands, vis-a-vis the sovereign. Therefore, therebys besides upon a reference to para 175 of Douie's Settlement Manual, whereins, the concept of ala maliks has been stated to cease to exist, and, the adna maliks have been recognized to be full proprietors. Therefore, when the concept of dual ownership became abolished by the Punjab Abolition of Ala Malikiyat and Talukdari Act, 1950 (for short 'the Punjab Act of 1950'). Resultantly when therebys only two categories of owners are prevalent now, inasmuch as owners of lands, and, owners on the basis of possession. In sequel, when it has also been declared in Douie's Settlement Manual, that a Dholi tenure is an instance of malik kabza, and, the Dholidar is the land owner for the purpose of the Land Revenue Act. In consequence, when the holistic purpose of the Punjab Act of 1950, was thus to abolish the intermediaries besides rather therebys the tiller of the land was deemed to be the full proprietor of the land tilled by him, and/or the malik kabza being the predominant factor for causing the cessation of rights of intermediaries vis-a-vis the lands tilled by the such malik kabza, who may respectively be Dholidars, Butimars, Bhondedars and Muqararidars.

27. Therefore, if the Punjab Act of 1950 caused the cessation of rights of ala maliks or intermediaries over those lands, which became tilled by the cultivators, who respectively now may be Dholidars, Butimars, Bhondedars and Muqararidars, and, who through the impugned legislation

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become conferred with proprietary rights over the disputed lands. In sequel, since the impugned legislation, thus alike the legislation(s) (supra), rather has caused removal of the intermediaries or caused the extinguishment of rights of ala maliks. As but a natural corollary thereto, the instant legislation when erases the ill dominance over the disputed lands of the superior owners or of the intermediaries, and, recognizes the predominant factor of the lands being tilled by Dholidars, Butimars, Bhondedars and Muqararidars, who despite holding the disputed lands since generations, and, that too without any payment of any rent, wherebys they are deemed to be holding the lands in perpetuity, yet become barred to make alienation(s) of the disputed land in any mode. Therefore, the fetter or encumbrance upon such perpetual grants, besides as made qua the above categories, is most unjust, unfair, and, inequitable, and, as such was required to be eased or relaxed, as done through the impugned legislation.

28. Moreover, when the statute(s) (supra) abolished intermediaries, and, recognized the rights of tillers, besides when the said statutes were well calibrated towards making agrarian reforms. Therefore, the Statement of Objects and Reasons (supra), which accompanied the bill, which resulted in the assented impugned legislation becoming passed, thus makes voicing about therebys agrarian reforms becoming established. Furthermore, when in a judgment made by the Hon'ble Apex Cout in *State of Gujarat*'s case (supra), it has been stated that the Statement of Objects and Reasons appended to any legislation are evidence of legislative judgment, and, that the said Statement of Objects and Reasons, rather constitute important factors which amongst others are to be taken into consideration by the Court in judging the reasonableness of any restriction imposed on the Fundamental

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Rights of the individuals. Moreover, when it has also been delineated thereins, that the Statement of Objects and Reasons provides a mirror to the reasons for the introduction of the bill, which subsequently became assented to. Consequently, when a keen reading of the Statement of Objects and Reasons (supra) is manifestive, that therebys the impugned Act (supra), thus causing the removal of intermediaries, and, rather recognizing of rights of kabza malik who are Dholidars, Butimars, Bhondedars and Muqararidars over the disputed lands. Resultantly, when the said Statement of Objects and Reasons is clearly indicative of the legislative intent. Therefore, the legislative intent (supra) occurring in Article 31-A(2) whereby the terms any jagir, inam or muafi or other similar grant, any land held under ryotwari settlement, any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, thus become echoed, besides the expression "rights", in relation to an estate, does also become stated to include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue. Paramountly when the above expressions are candidly echoed to fall within the purview of constitutional immunity assigned to the contemplations made in Article 31-A of the Constitution of India. Consequently, the impugned legislation wherebys occurs the purported snatchings of proprietary rights of ala maliks or proprietors over the disputed lands, and, concomitantly rights, titles, and, interest over the disputed lands rather become vested in the adna maliks, thus therebys enjoys constitutional immunity within the ambit of Article 31-A of the Constitution of India. Resultantly the agrarian reforms, as effected by the impugned legislation, thus makes Article 300-A of the

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Constitution of India, rather to be not applicable thereto nor also if only token compensation becomes assessed, vis-a-vis the ala maliks or superior landlords, thus the said assessment of compensation is neither illusory nor expropriatory, but on the contrary, the said token compensation is both reasonable, and, sufficient. The reason for making the said conclusion is comprised in the trite factum, that since the beginning the Dholidars, Butimars, Bhondedars and Muqararidars, as adna maliks or as occupancy tenants were constantly tilling the lands, and yet they were not entitled to make alienations thereof, nor were they able to mortgage such lands or raise loans from financial institutions. Therefore, reiteratedly also the said token compensation cannot be said to be either unreasonable or arbitrary, nor it can be said to be expropriatory vis-a-vis the land owners concerned, as reiteratedly given the prolonged cultivation made over the disputed lands by the Dholidars, Butimars, Bhondedars and Muqararidars, thereby the said token compensation is deemed to be reasonable.

29. The fine constitutional purpose of agrarian reforms is achieved, through the impugned legislation, especially when a reading of the Statements of Objects and Reasons (supra) makes explicit expression of the impugned legislation being maneuvered to achieve agrarian reforms. Resultantly, when as stated (supra), the impugned legislation becomes clothed with constitutional immunity, in terms of Article 31-A of the Constitution of India, besides when thereto the provisions of Article 300-A of the Constitution of India, do not become attracted. Moreover, when the impugned legislation has dispensed with the ill workings of agro feudalism, thus detrimental to the prolonged cultivations without rent being made over the disputed lands, by the above categories of persons. As but a natural

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corollary thereto, the freedom from agro feudal fiefdom, as becomes bestowed, upon the above categories of persons but is necessarily a laudable agrarian reform, and, therebys the impugned legislation is required to be complemented rather than the same being declared to be ultra vires the Constitution.

Final order

30. Consequently, the vires of the impugned legislation is maintained, and, upheld. The Dholidars, Butimars, Bhondedars and Muqararidars are permitted to institute an application in terms of the impugned Act before the empowered statutory authorities, who on receiving the said application, shall proceed to in accordance with law make an order conferring proprietary rights, upon the applicants concerned, and, thereafter shall ensure that the records of rights do become accordingly updated.

31. With the afore observations, all the petitions (supra) stand disposed of.

32. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 19, 2024
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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