In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 22738 of 2016 (O&M)**
Reserved on : 05.3.2024
Date of Decision: 19.3.2024

Balbhadur Singh (deceased) through LRs and others .....Petitioners

Versus

State of Punjab and others .....Respondents

2. **CWP No. 28952 of 2018**

Ishwar and others .....Petitioners

Versus

State of Haryana and others .....Respondents

3. **CWP No. 15461 of 2023**

Kashmir Singh Saini and others .....Petitioners

Versus

State of Haryana and others .....Respondents

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

Argued by: Mr. Anupam Gupta, Senior Advocate with
Mr. Sukhpal Singh, Advocate
for the petitioners (in CWP-22738-2016).

Mr. Saurabh Bajaj, Advocate
for the petitioners (in CWP-28952-2018).

Mr. Vikram Singh, Advocate and
Ms. Sumitra, Advocate
for the petitioner(s) (in CWP-15461-2023).

Mr. Maninder Singh, Sr.DAG, Punjab
(in CWP-22738-2016)

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
(in CWP-28952-2018, CWP-15461-2023).

Mr. Amrik Singh, Advocate
for respondent No. 14 (in CWP-22738-2016).

Mr. Naresh Kaushik, Advocate
for respondent No. 3 (in CWP-28952-2018).

****

SURESHWAR THAKUR, J.

1. Since all the writ petitions (supra) make a common challenge to the constitutionality of the impugned notification(s), wherebys it omitted Section 2(g)(i), as earlier thereto became carried in the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the Act of 1961'), therefore, all the writ petitions (supra) are liable for being decided through a common verdict.

2. In ***CWP-22738-2016***, the petitioners seek the quashing of the notification dated 23.7.2007 issued by the Government of Punjab, enacting the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 2007 (Punjab Act No. 6 of 2007) (for short 'the Act of 2007'), vide which Section 42-A of the Act has been inserted in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act of 1948'), and also seek the quashing of the notification dated 27.4.1976. The petitioners also seek the quashing of the order dated 28.12.2015 whereby the claim of the petitioners with regard to the makings of changes in the revenue record regarding their ownership, thus has been dismissed.

3. In the petition (supra), it is averred that the instant petition pertains to land measuring 755 kanals 19 marlas situated at village Jodhwal, Sub Tehsil Shri Machhiwara Sahib, Tehsil Samrala, District Ludhiana. It is further averred therein that village Jodhwal was set up by a person namely

Udaisi, in the name of his father Jodh. The said Udaisi was recorded as owner of land measuring 755 kanals 19 marlas of village Jodhwal, as per Kursinama of village Jodhwal. The said Kursinama is also known as Wajib-ul-Arz of the said village. It is futher averred in the petition (supra), that the said wajib-ul-arz was prepared in the year 1881-82. It is also averred thereins, that in the column of ownership of jamabandi for the year 1912-13, there exists an entry of shamlat deh hasab paimana haquiat, and, in the jamabandis for the year 1916-17 and for the year 1944-45, mutation qua gift deeds, mortgage and inheritance was incoroporated. It is further averred thereins, that in the year 1960-61, consolidation of the village Jodhwal took place and in missal hakiat ownership of 511 share was incorporated in sajra-nasab of the year 1960-61, and, the ownership of the proprietors of the village was kept intact. It is further averred therein that after consolidation, thus the jamabandi was prepared in the year 1961-62, whereins, the revenue department concerned wrongly incorporated the entries of shamlat deh, thus in the ownership column thereofs.

4. Since the asked for correction became declined, through the making of the impugned annexure. Therefore, a challenge is made to the impugned Annexure P-31 in CWP-22738-2016. On a reading of the impugned annexure, it appears that the present petitioners had claimed the benefit of the omitted provision, but since the said claim became founded, upon the said omission, besides in view of the land being reserved for the village common purpose. Resultantly, it was held that the challenge to the entry of mutation No. 991 was both a frail, and, feeble challenge theretos.

5. However, since the remedy for making a challenge to mutation No. 991, irrespective of a decision becoming made by this Court in

CWP-18929-2015, rather was through the institution of a declaratory suit before the jurisdictionally competent statutory authority or before the jurisdictionally Civil Court concerned. Since in the operative part of the judgment (supra), this Court has reserved the said liberty, thereby after upholding the said reserved liberty to the petitioners, the petition is disposed of.

6. In ***CWP-15461-2018***, the petitioners seek the quashing of the notification dated 7.12.2020 issued vide Haryana Act No. 30 of 2020 vide which item (1) of clause (g) of Section 2 of the Act of 1961 has been omitted vide the impugned amendment Act.

7. In ***CWP-28952-2018***, the petitioners seek the quashing of the order dated 29.5.2018, whereby the order passed by the Collector concerned, dated 26.7.2011 was set aside, and, the application of the respondent-Gram Panchayat concerned, constituted under Section 7(2) of the Act of 1961, thus became allowed.

8. In the petition (supra), it is averred that the petitioners are the proprietors of village Mohammad Nagar, Tehsil and District Karnal. The said village is subjected to the river action of river Yamuna. At the time of consolidation, the wazib-ul-arz was prepared, whereins, it was specifically mentioned that there existed no shamlat land in the afore village, and, the land was being managed by the proprietors, and, that the village is subjected to the river action, and, therefore the land of the said village always keeps on increasing. It is further averred thereins, that in the column of ownership of the jamabandis for the years 1962-63, 1968-69, 1973-74, 1978-79, 1983-84, 1988-89 [Annexure P-2 (Colly)], the proprietors of the village are recorded as owner in possession of the disputed land, and, in the column of

cultivation, the petitioners are recorded as gair marusis. Moreover, in the jamabandi for the year 1962-63, it is recorded that the village (supra) is subjected to the river action.

9. Since the petitioners are entered in the relevant revenue records, as gair marusis over the disputed lands, thereby when they have the limited status (supra) over the disputed land. Resultantly, the petitioners' limited status over the disputed lands, rather was amenable for becoming curtailed, through an eviction petition becoming filed against them. Signifiantly also, when the said revenue entries, as carried in the revenue records remained unchallenged through adduction of cogent evidence, thereby the said entries acquire conclusivity. In sequel the orders made on the eviction petition by the statutory authorities below, are liable to be upheld.

10. Be that as it may, if on account of evident changes in the course of river Yamuna, which results in alluvion deposits becoming made on the banks of river Yamuna, therebys if in terms of the apposite savings clauses, any member of the village proprietary body, is entitled to claim ownership over the said alluvion deposits, thereby thus it is permissible hence for reasons assigned hereinafter, rather for such individual proprietors to institute a declaratory suit before the jurisdictionally competent statutory forum/jurisdictionally competent Civil Court concerned.

Submissions of the learned counsels for the petitioners

11. The learned counsels appearing for the petitioners at the very outset submit, that they would be abandoning their challenge to the constitutionality of the notification, issued by the Government of Punjab enacting the Act of 2007 vide which Section 42-A has been inserted in the Act of 1948. The said abandoning of challenge to the above added provision

in the Act of 1948, is planked on the ground, that the constitutionality of the said provision has been upheld in a decision made by this Court in *CWP No. 15509 of 2009*, titled as *Mahatam Singh and others versus State of Punjab and others*. However, the learned counsels concerned, consensually submit that the said provisions have only prospective effect, and, do not have any retrospective effect.

12. Provisions of Section 42-A of the Act of 1948 are extracted hereinafter.

> *"**42A. Prohibition to partition the land reserved for common purposes**.- Notwithstanding anything contained in this Act or in any other law for the time being in force, or in any judgement, decree, order or decision of any court, or any authority, or any officer, the land reserved for common purpose whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utilized for common purposes."*

13. However, in view of the ad idem submissions made by the learned counsels for the petitioners, and, by the learned counsels for the respondents, that the added provision (supra) holds only prospective effect, and, not retrospective effect, therebys the benefit of the said added provision, if previously has been assigned to the proprietors concerned, therebys the said awardings of beneficient grace thereofs, to the proprietors concerned, would not at all become affected by this Court making a judgment with respect to the constitutionality of the said added provision.

14. The constitutionality of the notification dated 27.4.1976 (Annexure P-2) (in CWP-22738-2016) is, however, under test, wherebys through an assented Punjab Act No. 19 of 1976, an amendment was carried to Section 2(g)(i), whereby the earlier thereins occurring provision,

provision whereof becomes extracted hereinafter, rather has been deleted.

> *"becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records."*

15. Apparently, a petition under Section 11 of the Act of 1961 is subjudice before the Collector concerned, and, which has been instituted at the instance of the petitioners herein, whereins, they claimed the making of a declaratory decree vis-a-vis the disputed lands. However, since in terms of the omission (supra), the petitioners become disabled to plank any submission rested, upon the deleted provision (supra), thereby this Court is obligated to render a decision in respect of the constitutional validity of the said deletion.

16. Be that as it may, after making a decision in respect of the constitutionality of the said deletion, this Court would proceed to relegate the petitioners in ***CWP-22738-2016***, to pursue their remedies before the Collector concerned, wherebefore whom their petition under Section 11 of the Act of 1961 is, thus subjudice. The reason being that the evidence adducing discharging onus in respect of the benefit, if any, to be derived from the decision, as made by this Court, wherebys for reasons assigned hereinafter, it proceeds to reject the constitutionality of the deleted provision (supra), rather has to be discharged by the apposite petitioners.

17. During the pendency of the instant petitions, this Court had made a detailed order dated 29.5.2023, as relates to the said deletion. The relevant paragraphs of the order (supra) are reproduced hereinafter.

> *"8. He submits that the above deletion or repealing, thus has infringed the constitutional mandate of reasonableness and non-arbitrariness. He submits that in the wake of the above,*

only the writ court has the jurisdiction to make an adjudication upon the constitutionality or the ultra vires or otherwise, of the Punjab Village Common Lands (Regulation, Amendment) Act, 1976 (hereinafter referred to as the 'Act of 1976'), and, the learned Collector concerned, who becomes seized with the above petition, has no jurisdiction to do so.

9. It is but also submitted by the learned counsels appearing for the respondents, and, with theirs being ad idem with the learned counsel for the petitioners, that the said omission is prima facie prospective and is not retrospective. Furthermore also, though a challenge is made to the vires of Section 42-A of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. However the challenge to the vires of the said provision, has been negated, by a decision made by this Court, on 20.5.2011, in CWP-15509-2007, case titled Mahatam Singh & ors. Vs State of Punjab & ors.

10. Even otherwise, as declared by this Court, in a decision rendered on 17.03.2023, in case titled "Subegh Singh V/s State of Punjab and others", the said amendment has only prospective effect, and, does not have any retrospective effect. The impact of the above prima facie, is that, at this stage, if the consolidation officer and/or the competent revenue officer concerned, had assigned the petition lands rather through the above referred to order(s), as made lastly in the year 1965, thus to the predecessor(s)-in-interest of the petitioners. Resultantly, the assignment of the disputed lands to the petitioners, irrespective of petition(s) (supra) being subjudice, before the statutory authorities below, does prima facie became clothed with an aura of sanctity. In other words, the investment of rights in the land owners or in the cultivators, over the disputed lands, thus prima facie become saved or protected, rather through the verdict(s) as made lastly in the year 1965 (Annexure P-8), by the learned Financial Commissioner concerned.

11. The above prima facie inferences are obviously tentative, and are, as stated above, meant to maneuver the direction in which the matter would subsequently travel.

12. There is a reference in Annexure P-31, to the omission through the amending act, i.e. Act of 1976, being made of Section 2(g)(1) of the Act of 1961, whereby the prior thereto orders, as, passed by the authorities (supra), do appear to lose their legal efficacy, and thereby endanger the rights, title and interest, if any, of the petitioners over the disputed lands.

13. Even though, through the above amending Act of 1976, whereby there is an omission of Section 2(g)(1) of the Act of 1961, whereby earlier thus through the previous unrepealed exclusionary clause, thus the beneficent grace thereof rather became assigned to the predecessor(s)-in-interest of the petitioners, thus prima facie occurs, the truncation(s) or snatching(s) of the rights as bestowed upon the predecessor(s)-in-interest of the petitioners, through Annexure P-8. Moreover, since the said assignment of the apposite beneficent grace, relates to river action, rather saving the disputed lands from their vestment in the shamlat deh. The above was done in the face of the situations or locations then, of the disputed lands. However, the disputed lands, do visibly transit from one portion of the river banks to the other portion thereof, as they are subjected to riverian action. Therefore, it is contended before this Court, by the learned counsels appearing for the respondents, that the said controversy relating to applicability of riverian action to the disputed lands, thus became a disputed question of fact, thereby the said disputed question of fact rather is unamenable for being adjudicated upon in the instant writ petition.

14. Be that as it may, the above purported disputed question of fact does not as such arise. The reason being, that in the reply to the petition, as becomes furnished by the respondents, there occurs a speaking therein, that the disputed lands, are as

such, occurring on the banks of river Sutlej. Resultantly, prima facie it appears, that the said omitting or repealing amendment, whereby the said earlier statutory protection assigned to the petition lands, thus becomes annulled or repealed, and which, as stated (supra), hence has only prospective effect. Resultantly also in the wake of transits of disputed lands from one portion of the river banks, to the other portion thereof, though may prima facie ultimately threaten the rights, if any, of the cultivators over such lands, which are subject or amenable to river action, whereby the situation of the disputed lands shifts, and/or, the disputed lands are brought from one portion of the banks of the river Sutlej, to the other portion of the banks of the river Sutlej. The resultant effect thereof may prima facie, be that, the situational existence(s) of the disputed lands over those assigned khasra numbers, as revealed in the order, as became lastly drawn in the year 1965 whereby then the disputed lands, became assigned to the predecessor-ininterest of the petitioners, thus may have undergone a change or the disputed lands may have transited from the said khasra numbers to some other khasra numbers, but owing to changes in the course of the river Sutlej, and/or, on account of alluvion or diluvion. Therefore, prima facie, if the situational existence(s) of the disputed lands since 1965, though may have thus undergone a change, but yet when prima facie the said change in the situational existence(s) of the disputed lands since 1965, up to now, thus may be related to riverian action. Therefore, prima facie, the learned counsels may argue whether such situational changes, as brought about, through riverian action, thus yet protects all the rights of the cultivators whose lands are situated on the banks of river Sutlej, and, which are subject to alluvion or diluvion, and/or, to such other riverian action(s), as arises from the change(s) in course(s) of river Sutlej. Moreover, prima facie, the said riverian action(s) may when hold the concomitant results (supra), thereupon the same may also prima facie be acts of vismajor. The resultant

effects thereof, on the challenged repealing amendment, thus also may be argued.

15. If so, the learned counsel for the petitioners argues, that the said situational differences of the disputed lands since 1965, upto now, especially when the disputed lands since then, uptil now, have shifted from one portion of the banks of the river Sutlej, to the other portion thereof, thus may not result in the shifted cultivations of the cultivators, thus being made amenable to yet become threatened, rather in the light of the said repealing amendment, whereby the earlier exclusionary clause, to the definition of shamlat deh, as occurring in Section 2(g)(1) of the Act of 1961, thus becomes abrogated or repealed.

16. Therefore, the learned counsel for the petitioners argues, that if the said repealing amendment, to the apposite savings clause, as was prior thereto occurring in Section 2(g) of the Act of 1961, is held to be intra vires, and, without assignment of compensation to the petitioners, thereby the constitutional right of property, as invested in the petitioners, thus would become untenably snatched or expropriated, and, that too without payment of compensation to the land owners. Therefore, he submits, that the said apposite repealing amendment is ultra vires the constitutional mandate of the right to property and is required to be struck down. The above argument is permitted to be further addressed by the learned counsel for the petitioners on the subsequent date of hearing.

17. Therefore, the matter is kept part heard, and the learned counsel for the petitioners, and, the learned counsels for the respondents, are permitted to argue, on the ultra vires or otherwise of the Amending Act of 1976, whereby the earlier exclusionary clause to the definition of shamlat deh lands, as was occurring in Section 2(g)(1) of the Act of 1961, has thus been repealed."

Submissions of the learned counsels for the petitioners

18. Mr. Anupam Gupta, Senior Advocate has referred to Volume

III of the Districts and States Gazetteers of the Undivided Punjab. He makes a pointed reference to the facts as delineated thereins, facts whereof become extracted hereinafter.

> *"Ludhiana is the most south-eastern of the five districts of the Jullundur Division. Its main portion lies between 30° 33' and 31° 1' North Latitude and 75° 25' and 76° 27' East Longitude. Before the passing of the Riverain Boundaries Act the Sutlej formed the northern boundary of the District, and roughly speaking it may still be so considered. There are however villages to the south of the river which belong to Jullundur, and others to the north of it belonging to Ludhiana. Between Ludhiana and Hoshiarpur the river is still the boundary. To the east the District adjoins Ambala, and to the west Ferozepore, while it is separated from Delhi and Hissar by the territories of Patiala, Jind, Nabha, and Maler Kotla which cut into it on the south; to the north, east and west its boundaries are fairly symmetrical. The political history of our acquisitions in these parts accounts for the detached villages stretching as far south as 30° 5', while two or three groups of Patiala villages lie within Samrala Tahsil. The compact portion of the District has a length along the Sutlej of nearly 60 miles; while the breadth, north and south, is about 24 miles, except where Patiala territory juts into it between the Ludhiana and Samrala Tahsils.*
>
> *The District is divided into three Tehsils-Samrala to the east, Jagraon to the west, and Ludhiana in the middle. Half way along the northern border of the District and six miles south of the Sutlej is the town of Ludhiana, the head-quarters of the administration. Besides lying on the Grand Trunk Road 191 miles from Delhi and 76 from Ferozepore, Ludhiana is an important junction on the North-Western Railway, from which the Ludhiana-Dhuri-Jakhal and Ludhiana-Ferozepore Railways take off. With the exception of those outlying villages which lie among the Native States to the south, no part of the District is more than 30 miles from head-quarters. All*

important places are linked up either by rail or metalled roads so that the communications of the District are the most complete in the Province.

The outlying or Jangal villages number 39, with an area of 125 square miles.

The mean elevation of the District is about 800 feet above sea-level, at Samrala the elevation is 870 feet, at Ludhiana 806 feet and at Jagraon 764 feet. The District has no very striking natural features. The main physical divisions are a low-lying alluvial tract along the river (here called Bet) and the uplands (Dhaia.)

The river Sutlej debouches from the Shvaliks just above Ropar some 20 miles east of tho boundary of Samrala Tahsil, it flows due west along the District for some 60 miles, and turns, as it leaves Jagraon Tahsil, slightly to the north towards its junction with the Beas. When at its lowest, in the middle of the cold weather, the river is very shallow and the main stream seldom exceeds 150 yards in breadth and 3 to 4 feet in depth. Except during the rainy season it is fordable at almost all points but when in flood it spreads two or three miles over the country and even where confined by the Phillaur Bridge Works to its narrowest, measures nearly a mile of running stream. The opening of the Sirhind Canal has, of late years, considerably reduced, except during flood, the volume of water in the river. The Ferries are noticed in Chapter II (page).

Like all Punjab rivers the Sutlej constantly shifts its course during floods. During the last 20 years (1882 to 1903) it has at several points moved about a mile towards the south of its former bed in the Ludhiana and Samrala Tahsils, and about a mile towards the north in the Jagraon Tahsil, near Talwara. According to local tradition it flowed about 120 years ago just under the ridge which separates the Dhaia from the Bet, The old towns and villages of Bahlolpur, Machhiwara, Kum, &c., were built on its banks. The division between uplands and

lowlands is everywhere distinctly marked by the ridge or high bank (dha), between which and the present bed of the river lies the Bet. To the east of the District the river and the high bank are five or six miles apart, and this is the width of the Bet for the first 30 miles, but below the town of Ludhiana it gradually narrows until in Jagraon Tahsil it is only one or two miles in width and finally disappears.

Immediately under the high bank along the old course of the Sutlej now runs a perennial stream called the Budha Nala which takes its rise near Chamkaur, in the Rupar Tahsil of Ambala, and enters this District under Bahlolpur. Passing just below the town of Ludhiana it flows into the Sutlej in Tahsil Jagraon, a few miles east of the Ferozepur border. When swollen by floods in the rains it has a considerable volume of water and covers the surrounding country but ordinarily, although there is in places a good deal of swamp, the stream is only a few yards across. The water, except during floods, is perfectly clear and is used freely for drinking purposes. It is rarely, if ever, used for irrigation. In explanation of this fact it is reported to contain a strong infusion of salts, but the main reason is that it is easier and more economical to dig small unlined wells, in which water is obtained at from 2 to 10 feet below the surface."

19. The learned senior counsel submits, that therebys but evidently with river Satluj suddenly diversifying its course during floods. Therefore, he submits, that the said change of course by river Satluj, results in the lands of private proprietors occurring on the banks thereof, thus becoming heaped with deposits. Resultantly, he argues, that to such deposits, the land owners concerned become invested with a right to claim title theretos, as the land owners concerned, may enjoy ownership rights thereovers rather in terms of the various saving clauses to the definition of shamlat deh. The said savings clause thus to the definition of shamlat deh are embodied in Section 2(g)(ii)

to (ix), saving clauses whereof are reproduced hereinafter.

> *"(ii) has been allotted on quasi permanent basis to displaced persons.*
>
> *[ii-a) was shamilat deh, but, has been allooted on quasi permanent basis to a displaced person, or, has been otherwise transferred to any person by sale or by any other manner whatsoever after the commencement of this Act, but on or before the 9th July, 1985]*
>
> *(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January,1950.*
>
> *(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed.;1 [and is not in excess of the share of the co sharer in the shamilat deh.*
>
> *(v) is described in the revenue records as Shamilat, Taraf, Patti Panna an Thola and not used; according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village.*
>
> *(vi) lies outside the abadi deh and was being used as gitwar, bara manure pit, house or for cottage industry, immediately before the commencement of this Act].*
>
> *(vii) [……]*
>
> *(viii) was Shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or*
>
> *(ix) was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act."*

20. Furthermore, he submits that when the said saving clauses to the definition of shamlat deh are to be integrated, besides are to be read in alignment with the said river actions whereby alluvion deposits become made onto the lands of the land owners concerned, thus through river

actions. Moreover, when such lands adjunct to the rivers concerned, are protected from vestment in the shamlat deh, rather on the premise of theirs becoming provenly covered by the relevant savings clauses, thus to the definition of shamlat deh. Therefore, the learned senior counsel submits, that in the face of the said relevant omission, as caused by the relevant Amending Acts, there would be a complete ill obviable redundancy to the said saving clauses to the definition of shamlat deh. As a corollary, he submits, that to save the relevant saving clauses from becoming unworkable or being rendered otiose or redundant, therebys the apposite omission, as made by the apposite Amending Acts, thus naturally is to acquire the vice of unconstitutionality. Furthermore, he submits, that when the said omission is expropriatory, and, that too obviously without determination of compensation vis-a-vis the riparian land owners concerned, who may become entitled to receive the beneficient grace of the savings clauses to the definition of shamlat deh, thus on alluvion deposits being made on such saved lands, rather from the definition of shamlat deh. Resultantly, the learned senior counsel argues, that thereby the said omission has blatantly caused breach to the mandate of Article 300-A of the Constitution of India.

21. The learned senior counsel proceeds to submit, that since the river Satluj, and/or other rivers thus during theirs flowing, but make changes in their respective courses, thereby when such changes, swamp, inundate, submerge, and, make untillable such lands, which are adjunct to or adjacent to their respective river banks. However, yet on such earlier submerged lands in the rivers concerned, rather becoming relieved or eased from submergence, thus on happening of subsequent changes in the course of river Satluj, as such, when thereby such lands become exposed to the skies.

In sequel, when earlier to such exposure to the skies, the said lands may be amenable to become endowed the benefit of the apposite savings clause, and/or may be well amenable to become assigned to the land owners concerned. Therefore, reiteratedly the ill effect of the said omission is that, such rights becoming completely snatched or expropriated. Moreover, he submits, that when on changes in the courses of the rivers concerned, thus taking place, and, resultantly, the earlier submerged lands in the rivers concerned, thus becoming exposed to skies, if were amenable to be receiving the beneficient grace of the apposite savings clauses to the definition of shamlat deh lands. Consequently, he argues that the said deletion has rather expropriated the well application of the relevant savings clauses to the definition of shamlat deh lands.

22. The learned senior counsel has referred to Volume 100 of Halsbury's Laws of England, whereins, occurs respectively the definitions of accretion, alluvion and dereliction, besides the effect of accretion, alluvion and dereliction, and, the basis of the doctrine of accretion as well as the extent of the doctrine of accretion. The said definitions are extracted hereinafter.

> ***39. Meanings of 'accretion', alluvion' and 'dereliction'****. The doctrine which is conveniently called 'the doctrine of accretion' recognises the fact that where land is bounded by water, the forces of nature are likely to cause changes in the boundary between the land and the water.*
>
> *'Accretion' means the gradual and imperceptible receding of the sea or inland water, and alluvion means the gradual and imperceptible deposit of matter on the foreshore. Both lead to an addition to the land or foreshore.*
>
> *'Dereliction' means the gradual and imperceptible encroachment of water onto land causing a reduction in the*

surface area of the foreshore.

40. Effect of accretion, alluvion and dereliction*. The presumption of law is that where land or foreshore is subject to accretion or alluvion and the added land is above high-water mark, the addition belongs to the owner of the dry land to which it is added, and if the added land is above the low-water mark it belongs to the owner of the foreshore. Evidence can be adduced to rebut this presumption, but that evidence must be strong.*

Where the opposite process, dereliction, takes place and the tidal water gradually and imperceptibly[3] encroaches upon land which was formerly situated above high-water mark, that land becomes the property of the owner of the foreshore and the ownership of land which was formerly part of the foreshore passes to the owner of the bed of the tidal water".

41. Basis of the doctrine of accretion*. The old basis of the doctrine of accretion was thought to be that from day to day, week to week and month to month a person cannot see where his old boundary was[1], and that that which cannot be perceived in its progress is taken to be as if it had never existed. A more realistic view is that the doctrine is required for the protection of property and recognises the fact that a riparian owner may lose as well as gain from changes in the water boundary or level; but whatever is the true explanation of the doctrine, what is certain is that it requires a distinction to be made between such progression as may justly be considered to belong to the riparian owner and such large changes or avulsions as should more properly be allocated to his neighbour.*

42. Sudden changes*. Where the change of boundary between the land and the water is not slow and imperceptible but sudden or as a result of deliberate artificial reclamation, the presumptions as to ownership" do not apply and the change causes no change in the ownership of the land.*

43. Extent of the doctrine of accretion*. The doctrine of*

accretion applies equally to the property of the Crown or a subject, It applies whether the change is caused by natural means or artificial means lawfully employed, provided the change is not the direct result of deliberate reclamation. So long as the change is gradual and imperceptible", the doctrine applies, even though the former boundaries of the land concerned were defined or ascertainable."

23. He has also referred to the effect of riparian grant, as has been defined thereins, definition whereof becomes extracted hereinafter.

"78. Effect of riparian grant*. A conveyance, transfer or lease of land described abutting on or bounded by a river and made by a person who himself has the soil as far as the centre line of the stream is presumed to include half the bed of the river even though it is not expressly referred to as part of the land conveyed or demised. The presumption applies:*

(1) even though the grant is by plan and quantity and the grantor is owner of the whole of the river bed;

(2) where specific or scheduled measurements, or delineations or colouring on a plan attached to the conveyance or lease, do not include any part of the river";

(3) where the river is very wide³;

(4) where the land is conveyed by Act of Parliament; and

(5) (formerly) to the grant of a manor on its subinfeudation".

However, the presumption does not apply in the case of an award under an Inclosure Act, and it may be rebutted by showing:

(a) that a private or several fishery not belonging to the grantor exists over the half of the river bed in question;

(b) that at the time of the grant of the riparian land there was no intention on the grantor's part to part with the bed

as far as the centre line"; or

c) that the grantor did not own the bed of the river"

24. The learned senior counsel has also referred to American Jurisprudence Second Edition Volume 78, whereins, there are elucidations with respect to the title and rights in general; effect upon boundaries. The said elucidations are extracted hereinafter.

"***411. Generally.***

It is the general rule that where the location of the margin or bed of a stream or other body of water which constitutes the boundary of a tract of and is gradually and imperceptibly changed or shifted by accretion, reliction, or erosion, the margin or bed of the stream or body, as so changed, remains the boundary line of the tract, which is extended or restricted accordingly. The owner of riparian, land thus acquires title to all additions thereto or extensions thereof by such means and in such manner, and loses title to such portions as are so worn or washed away or encroached upon by the water, in the absence of any provision or agreement to the contrary. The law respecting the acquisition of title by accretion is independent of the law respecting the title to the soil under water." But where the change takes place suddenly and perceptibly either by reliction" or avulsion, as where a stream from any cause suddenly abandons its old and seeks a new bed, such a change works no change of boundary or ownership. 40 Title to land is not lost even temporarily by avulsion.

In most jurisdictions, the character of the stream or body of water as tidal nontidal, navigable or nonnavigable of the is immaterial as respects the application foregoing rules relating to accretion, reliction, erosion, and avulsion. As elsewhere observed, however, in some civil-law jurisdictions the application of such rules is limited to streams."

The law of accretion and reliction applies both to waters

in which the title to the bed is in the state and to those where the riparian owner's title extends to the thread of the stream. It also applies alike to streams that do and to those that do not overflow their banks, and where dikes and other defenses are or are not necessary to keep the water within proper limits. One who has acquired title to land by adverse possession is entitled to any accretions thereto, regardless of the time of their formation.

Changes in streams or bodies of water constituting the boundary between states or nations by deliction, reliction, erosion, or avulsion as affecting such boundaries, are discussed under other titles. The division or apportionment as between adjoining proprietors, of land formed by accretion in front of their tracts is discussed in subsequent sections of this subdivision."

25. The learned senior counsel has relied upon a judgment rendered by the Privy Council in case titled as ***Raja Srinath Roy and others versus Dinabandhu Sen and others*** reported in ***AIR 1914 Privy Council***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

"The streams in the Gangetic delta are capricious and powerful. In the course of ages the land itself has been deposited by the river, watch always carries a prodigious quantity of mud in suspension. The river comes down in flood with resistless force, and throughout its various branches is constantly eroding its banks and building them up again. It crawls or races through a shifting network of streams. Sometimes its course changes by imperceptible degrees; sometimes a broad channel will shift, or a new one open in a single night. Slowly or fast it raises islands of a substantial height standing above high water level and many square miles in extent. Lands so thrown up are called "churs," and it is by chur-lands formed at some unknown though probably not remote date that the northern and southern channels in question are at present divided.

x x x x x

It was admitted that the common law of England as such does not apply in the mofussil of Bengal, but the argument was that

principles established under and for English conditions afford a sound guide to the rules which should be enforced in India. Their Lordships have given these arguments careful consideration, though they would in any case be slow to disturb decisions by which rules have been established for Bengal governing extensive and important rights such as rights of julkar, and unless they could be shown to be manifestly unjust or flagrantly inexpedient, their Lordships would not supersede them. The Indian Courts have in many respects followed the English law of waters. Sometimes their rules are the same; sometimes only similar.

x x x x x

The question how far a rule established in this country can be usefully applied in another, whose circumstances, historical, geographical, and social, are widely different, is well illustrated by the case of navigability as understood in the law of the different States of the United States of America.

x x x x x

The Courts of the different States, minded alike to follow the common law Where they could, found themselves in the latter part of the eighteenth and the early part of the nineteenth centuries constrained by physical and geographical conditions to treat it differently.

x x x x x

It was urged that the established rule with regard to alluvion should be applied to rights of julkar; that since the right to accretions and the liability to derelictions of soil attached only to gradual accretions or to erosions taking place by imperceptible degrees, so too the right of the owner of the fishery to "follow the river" ought to be limited to cases where the river's encroachments were gradual, and ought not to be extended to an irruption as sudden, and accomplished as rapidly as was the formation of the channel in question in the defendants lands. It is to be observed that here too Indian law, doubtless guided by local physical conditions, has adopted a rule varying somewhat from the rule established in this country. Where under English conditions the rule applies to " imperceptible" alterations, Regulation XI of 1825, Articles 1 and 4, speak of "gradual accession." The analogy of the English rule can

hardly be prayed in aid when Indian legislation has thus an established and different rule on the same subject. Further, as the Indian rule is established now beyond question, it may perhaps be said without offence of the Indian as of the English rule, that it represents rather a compromise of convenience than an ideal of justice, for that which is a man's own does not become another's any more agreeably to ideal justice by being filched from him gradually instead of being swallowed whole. In any case the analogy is not in pari materia. Property in the soil is one thing; enjoyment of a profit a prendre in flowing water may in some respects be another. True, the profit a prendre is to be enjoyed in alieno solo; such is its nature. True too that at the time of the grant, the grantor has no power to create this incorporeal hereditament where his ownership of the soil does not extend; but when the power to grant arises from sovereignty, and has never been decided to be limited to the bounds of the grantor's proprietorship as it may continue to exist from time to time, the mere fact that the julkar right is classified in the language of the English law of real property as a profit a prendre in alieno solo does not prevent its proprietor from being entitled to follow the river in its natural change. The fish follow the river and the fisherman follows the fish; this may be right or wrong, but the question is not settled by asking under what circumstances of natural physical change the proprietor of an acre of dry land, which has vanished from sight, can claim to have still vested in him an equal area of river bed on the same site, or another acre of dry land transferred by the river and attached by accretions to another proprietor's land.

Lastly, it is said to be unjust that a land-owner should not only lose the use of his land when the river overflows it, but also the right to fish over his own acres and in his own waters, in order that another may unmeritoriously fish in his place. There is some begging of the question here; the waters are not his waters, nor is the change confined to the flooding of his fields. It is the river that has made his land is own; the water are the tidal navigable waters the great stream. In physical fact the landowner enjoys his land by the precarious grace of the river, whose identity is so persistent, and whose character is so predominating, as almost to amount to personality; and is it fundamentally unjust that in law too he should

lose what he has lost in fact, and be precluded from taking in substitution for his lost land an incorporeal right which has been granted not to him but to another? The sovereign power lawfully invests its grantee with julkar rights in part of the river; is it unjust that when that river shifts its course, changing in locality but not in function, the owner of those rights should still enjoy them in that self-same river, instead of being despoiled of them by the course of nature, which he could neither foresee nor control? There must be some rule and there must be some hardship. To say the least there is no such proof that one rule is better than the other as would even approach the conclusion that the rule established should now be set aside.

Their Lordships are of opinion that no reason sufficiently Cogent has been found to warrant them in disregarding the settled Indian authorities, and being further of opinion that the plaintiffs established their claim at the trial, they will humbly advise His Majesty that the appeal should be allowed with costs here and below, and that the judgment appealed from should be set aside and the judgment of the Trial Judge restored."

26. Therefore, the learned senior counsel submits, that the Indian rivers have a propensity either to make sudden changes or to make perceptible changes, but he submits, that the land owned by the private owners lying along the banks of the rivers, irrespective of whether the said lands are inundated or upon change of course of rivers, thus taking place they become exposed to the skies yet the private ownership over such respective submerged lands or to those lands, as become exposed to skies, but cannot become snatched, as has been done through the omission (supra).

27. The learned senior counsel has referred to the judgment titled as ***Secretary of State versus Raja of Vizianagaram and another***, reported in ***AIR 1922 Privy Council 105***. The relevant paragraphs of the judgment

(supra) are extracted hereinafter.

> *"x x x x x*
>
> *In dealing with the great rivers in India and comparing them with the rivers in this country, it is necessary to bear in mind the comparative rapidity with which formations and additions take place in the former.*
>
> *x x x x x*
>
> *In other words, the actual rate of progress necessary to satisfy the rule when used in connection with English rivers is not necessarily the same when applied to the rivers of India. The application of the rule is, in their Lordships' opinion, correctly laid down in the judgment of Mr. Justice Ayling in the present case when he says :-*
>
> > *"It seems to me the recognition of title by alluvial accretion is largely governed by the fact that the latter is due to the normal action of physical forces; and the different conditions of Indian and English rivers is such that what would be abnormal and almost miraculous in the latter is normal and commonplace in the former, as pointed out by their Lordships of the Privy Council in Srinath Roy v. Dinabandhu Sen (3)."*

28. The learned senior counsel has also referred to the judgment titled as ***Secy of State versus Foucar and Co. Ltd.***, reported in ***AIR 1934 Privy Council 17***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"x x x x x*
>
> *The principle that gradual accretion enures to the land which attracts it is one that has been recognised from very early times. Thus Lord Stair, writing in 1681, says :*
>
> > *"Appropriation by alluvion is admitted in all nations, for thereby the abjection of another's ground insensibly and imperceivably, by the running of a river, becomes a part of the ground to which it is adjected; because it is uncertain from whose ground such small and imperceivable particles are carried by the water, and thereby also the frequent questions that would arise between the proprietors upon the opposite banks of rivers are prevented; and though the abjection may be perceivable and considerable in a tract of time it market no difference if at no particular instant the abjection be considerable; as the motion of the palm of a horologe is insensible at any instant, though it be very perceivable when put together in less than a quarter of an hour." ('Stairs' Institutes of the law of Scotland," II, 1, 35.)*
>
> *The basis of the rule has been differently stated at*

different times, but their Lordships think it must be regarded as a rule of "general convenience and security," (per Shaw in A.G. of S. Nigeria v. John Holt and Co. (1915) AC 599=84 LJ PC 90=112 LT 955 at 612) and as necessary for the "mutual adjustment and protection of property" (per Lord Abinger in Hull and Selby Railway Co. (2) at 832). In India the doctrine has been embodied in the law of Bengal by Regn. 11 of 1825, and of Oudh by Act 18 of 1876, and it is equally well established in Madras, where there is no statutory enactment on the subject (per Lord Hobhouse, Shri Balsu Ramalaksmamma v. Collector of Godaveri (3). In Bombay the right is recognised, but is restricted by the Land Revenue Code of 1879, Section 4, to accretions not exceeding an acre in extent.

Under these circumstances it would, their Lordships think, be difficult to hold, as the appellant contends, that the doctrine is wholly inapplicable to Burma, where under Act 13 of 1898 the ultimate test is to be "justice, equity and good conscience"

x x x x x

The chance was inherent in the grant. The river gives, just as it may take away, and if the gift is gradual, little by little, from day to day, or from week to week, the law for the reasons explained above, deems what is added to have been part of what was granted : in the words of Baron Alderson (Hull and Selby Railway's case "that which cannot be perceived in its progress is taken to be as if it never had existed at all'."

It would, in their Lordships' opinion, require much more precise words than those appearing in the section above quoted to exclude the application of a doctrine so well established and founded upon such broad considerations.

x x x x x

For the reasons given their Lordships think that the decree passed by the High Court, against which this appeal has been brought, was right, that the appeal fails, and that it should be dismissed with costs, and they will humbly advise His Majesty accordingly."

29. The learned senior counsel has further referred to the judgment titled as ***Southern Centre of Theosopy Inc vs. State of South Australia***, reported in [***1982] 1 AII ER***. The relevant paragraph of the judgment (supra) is extracted hereinafter.

"Before examining the authorities, which are copious and in their result clear, their Lordships find it advisable to consider briefly the nature of the doctrine of accretion. This is a doctrine which gives recognition to the fact that where land is bounded

by water, the forces of nature are likely to cause changes in the boundary between the land and the water. Where these changes are gradual and imperceptible (a phrase considered further below), the law considers the title to the land as applicable to the land as it may be so changed from time to time. This may be said I to be based on grounds of convenience g and fairness. Except in cases where a substantial and recognisable change in boundary has suddenly taken place (to which the doctrine of accretion does not apply), it is manifestly convenient to continue to regard the boundary between land and water as being where it is from day to day or year to year. To do so is also fair. If part of an owner's land is taken from him by erosion, or diluvion (ie advance of the water) it would be most inconvenient to regard the boundary as extending into the water; the landowner his treated as losing a portion of his land. So, if an addition is made to the land from what was previously water, it is only fair that the landowner's title should extend to it. The doctrine of accretion, in other words, is one which arises from the nature of land ownership from, in fact, the long-term ownership of property inherently subject to gradual processes of change. When land is conveyed, it is conveyed subject to and with the benefit of such subtractions and additions (within the limits of the doctrine) as may be take place over the years. It may of course be excluded in any particular case, if such is the intention of the parties. But if a rule so firmly founded in justice and convenience is to be excluded, it is to be expected that the intention to do so should be plainly shown. The authorities have given recognition to this principle. They have firmly laid down that where land is granted with a water boundary, the title of the grantee extends to that land as added to or detracted from by accretion, or diluvion, and that this is so whether or not the grant is accompanied by a map showing the boundary, or contains a parcels clause starting the area of the land, and whether or not the original boundary can be identified."

30. The learned senior counsel has also referred to a judgment titled as ***William E. Banks versus William B. Ogden***, reported in (1865) ***69 US 57=17L Ed 818***. The relevant paragraph of the judgment (supra) is extracted hereinafter.

> *"The rule governing additions made to land, bounded by a river, lake or sea, has been much at the discussed and variously settled by usage and by and if positive law. Almost all jurists and legislators, however, both ancient and modern, have agreed that the owner of the land thus bounded, is entitled to these additions. By some, the rule has been vindicated on the principle of natural justice, that he who sustains the burden of losses and of repairs, imposed by the contiguity of waters, ought to receive whatever benefits they may bring by accretion; by others, it is derived from the principle of public policy, that it is the interest of the community that all land should have an owner, and most convenient, that insensible additions to the shore should follow the title to the shore itself."*

31. The learned senior counsel has also referred to a judgment titled as ***Bonelli Cattle Company versus State of Arizona***, reported in ***414 US 313 = 38 L Ed 2d 526***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

> *"Federal law recognizes the doctrine of accretion whereby the "grantee of land bounded by a body of navigable water acquires a right to any gradual accretion formed along the shore." Hughes v Washington, 389 US 290, 293, 19 L Ed 2d 530, 88 S Ct 438 (1967); accord, Jones v Johnston, 18 How 150, 156, 15 L Ed 320 (1856). When there is a gradual and imperceptible accumulation of land on a navigable river bank, by way of alluvion or reliction, the riparian owner is the beneficiary of title to the surfaced land:*
>
> > *"It is the established rule that a riparian proprietor of land bounded by a stream, the banks of which are changed by the*

> *gradual and imperceptible process of accretion or erosion, continues to hold to the stream as his boundary; if his land is increased he is not accountable for the gain, and if it is diminished he has no recourse for the loss" Philadelphia Co. v Stimson, 223 US 605, 624, 56 L Ed 570, S Ct 340 (1912)."*

32. The learned senior counsel has also made a reference to a judgment passed by this Court in ***CWP No. 15509 of 2009, titled as Mahatam Singh and others versus State of Punjab and others***. The relevant paragraph of the judgment (supra) is extracted hereinafter.

> *"Section 42-A, as introduced by the Consolidation Act, 2007, does not indicate any of these purposes. The preamble of the Act or the reasons or objects for bringing about the amendment are not relevant and are not to be referred to if the language of the Statute is clear and unambiguous. The literal interpretation should be the preferential mode for understanding the scope, applicability, purpose and effect of the Statute. Reference to supportive and explanatory text which is not part of the provisions of the Statute should not be resorted to."*

33. The learned senior counsel has further relied upon a judgment rendered by the Hon'ble Apex Court in case titled as ***Bhagat Ram and others versus State of Punjab and others*** reported in ***(1967)2 SCR 165***. The relevant paragraphs of the judgment (supra) are extracted hereinafter.

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

accordingly.

x x x x x

In the result we hold that the scheme is hit by the second proviso to art. 31 A in so far as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, proceed according to law. There would be an order as to costs."

Submissions on behalf of the learned counsel appearing for the State of Punjab, and, for the State of Haryana

34. In CWP-28952-2018, the learned State counsels submit, that the instant petition has been filed by the petitioners by concealing the material facts. He further submits that the petitioners have miserably failed to produce on record any documentary evidence to prove that they have remained in cultivating possession of the disputed land prior to 26.1.1950. The learned counsels further submit, that vide notification dated 26.10.2004, issued by the Govt. of Haryana, village Mohammadnagar has already been declared a part of Gram Panchayat Nasirpur, and, due to illegal possession of the petitioners, the Gram Panchayat concerned is facing huge financial loss from earlier time.

35. The learned State counsels submits, that the provisions of sub-Section (2) of Section 1 of the Punjab Village Common Lands (Regulation) Act, 1953, are not applicable to the lands which become shamlat due to river action. They further submit, that the lands which had become shamlat deh due to river action after the commencement of Shamlat Law or will become shamlat deh due to river action after the commencement of the Act of 1961, shall not be within the ambit of shamlat deh.

36. The learned State counsels further submit, that it is settled law

that the relevant date for determination of the character of the land with reference to section 2(g) is the 9th January, 1954, and, that the revenue entries in Jamabandi prior to 09.01.1954 is a relevant fact for the purpose of section 2(g) of the Act read with provisions of the Punjab Village Common Lands (Regulation) Act 1953. In the present case the land in question is recorded as Shamilat Deh Hasab Rasad Rakba Khewat as per mutation . In terms of section 2(g)(i) of the Act of 1961 Act, Shamilat deh includes land which is described in the revenue record, as Shamilat deh. He further submits, that the disputed land would be used for all the common purposes of the village and no person from the village can claim the right of ownership over the same. The learned counsels further submit, that no revenue record has been brought on record by the petitioners which can prove that the proprietary land of the petitioners has become shamlat deh due to river action.

Analysis of the submissions addressed before this Court by the learned senior counsel, and, by the learned State counsels respectively appearing for the State of Punjab, and, for the State of Haryana, and, the reasons for accepting the submissions of the learned senior counsels for the petitioners, and, for rejecting the submissions of the learned State counsels concerned, and, thereby this Court declaring the relevant omission to be ultra vires Article 31-A of the Constitution.

37. Initially, this Court is bound to re-extract the relevant deleted provision, provision whereof becomes extracted hereinafter.

> *"becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records."*

38. The statutory coinages (supra) which are carried thereins do candidly spell the pointed factum, that the lands subjected to river action,

and, thereby theirs becoming shamlat deh, excepting the lands entered, as pasture, pond or playground in the revenue records, thus therebys becoming protected from vestment in the shamlat deh, and/or thereby the lands covered within the said statutory coinage, are deemed to not vest in the shamlat deh, and, are rather deemed to vest a leverage in the individual proprietors to well stake ownership rights thereovers.

39. The coinage which exists thereins, and, which requires an earmarked focus, is “lands reserved as shamlat deh lands” in those villages which become subjected to river action. The meaning of the said coinage is that the said reservations are to be made through employment of the relevant provision, as engrafted in the Act of 1948. Therefore, if on account of pro rata cuts being made, upon the legitimate holdings of the estate holders concerned, thus therebys lands are reserved as shamlat lands for the benefit of the village proprietary body. Furthermore, if therebys but in accordance with law, there is a right invested in such estate holders to seek re-partition, and, re-distribution thereofs to them. Moreover, in case such reserved lands for the benefit of the village proprietary body, thus are situated in those mohals or villages which are subjected to river action, wherebys the lands earlier reserved in manner (supra) for the benefit of the village proprietary body do not become amenable, for theirs in terms of the sharat wazib ul arz, thus becoming so utilizable. Resultantly when therebys the estate holders concerned, from whose legitimate holdings pro rata cuts are made for creating such reservations, rather on account of the apposite provisions existing in the Act of 1948, but were entitled to seek re-distribution, and, re-partition thereofs to them. However, when on account of the said provision becoming deleted, they become forestalled to seek re-distribution or re-

partition to them of such lands affected by river action. Resultantly, therebys there is an untenable snatching, and, expropriation of such rights of re-distributing, and, re-partitioning to such estate holders, and, that too without assessment of compensation to them. In sequel, in the above situation, the omitted provision is blatantly expropriatory, and, militates against the statutory rights of re-partition, and, re-distribution, thus invested in the estate holders, besides is militative of the constitutional right, as enshrined in Article 300-A of the Constitution of India.

40. Moreover, the said omitted provision also accepted, and, recognized that if on account of river action, the lands become shamlat deh, thus qua the thereovers made alluvion deposits but subject to the individual proprietor, evidently proving, that they had lands adjunct to the rivers concerned, and, also evidently proving that the said lands but were earlier ably covered within the ambit of the relevant savings clauses, rather the individual proprietor concerned, but becomes entitled to claim ownership rights. However, again subject to the rider that the assertion so made by the individual proprietor concerned, became ably rested upon his owning lands on the banks of the river concerned. In other words, if the said alluvion deposits, were proved in tandem with the relevant savings clauses, thereby irrespective of a revenue entry in the column of ownership in the relevant revenue records, detailing the owner to be shamlat deh hasab rasad khewat, yet proof of individual cultivating possession in terms of the relevant savings clauses, rather not making such shamlat lands to vest in the panchayat deh or in the shamlat deh. Furthermore, the reservations of lands, as shamlat deh, in villages subjected to river action, excepting the lands entered in the revenue records, as pastures, ponds or playgrounds, but cannot

be said to be such rigid reservations, wherebys there is no leverage to the individual proprietors concerned to establish qua such reservations of shamlat lands in villages subjected to river action, but becoming be eased or relaxed, rather on dependence being made on the pre consolidation records or dependence being made, on any of the provisions of the savings clauses, to the definition of shamlat deh. Moreover, the re-partitioning, and, re-distribution under the relevant statutory provisions can also be claimed over such shamlat dands, which become affected by rivarian actions, as therebys they do become unutilizable for the village common purposes, and/or are rather through strenuous efforts or exacting labour, thus required to become re-put to cultivation.

41. Therefore, it appears that the impugned deletion has scuttled, and, pre-empted the individual proprietor concerned, to make any dependence on any of the savings clauses to the definition of shamlat deh. Moreover, the said omission has also completely precluded the individual cultivators concerned, to in respect of the alluvion deposits, seek a claim yet planked, upon the relevant savings clause, to the definition of shamlat deh. In sequel, the snatching of the said right from the individual cultivators concerned, who own lands abutting the rivers concerned, rather is grossly expropriatory, thereby the said omission is militative against Article 300-A of the Constitution of India.

42. The learned senior counsel has also not ideally made a reference to the erudite texts on the subjects, rather the allusions theretos, do well illumine the subject under consideration.

43. Succinctly put, the erudite texts pointedly suggest, that a riparian owner may lose as well as gain from changes in the water boundary

or level. Moreover, any lands abutting a river makes the riparian owner, who owns the soil, to be presumed to own half the bed of the river, irrespective of the said ownership over half of the bed of the river not becoming expressly made in the grant. Nonetheless, the said presumption is rebuttable if there was no intention as such on the part of the bed as far as the centre line.

44. In the light of what is stated above, the individual cultivators, who own lands abutting the rivers concerned, which undergo changes in their courses, thereby do become entitled to alluvion deposits, as become made on the lands, adjunct to the rivers, thus on the premise, that riparian owners own lands but not only on the banks of the rivers but also such ownership extending upto the half of the bed(s) of the rivers concerned, therebys on exposure to the skies of such beds of the rivers concerned, rather on change in courses of the rivers, thus taking place, thereby the riparian owner has a right to claim ownership thereovers, unless of course there is evidence suggestive, that the revenue records did not express such fact thereins. In consequence, the entries of ownership in the revenue records, though may detail the riparian owner to be shamlat deh hasab rasad khewat, and, though only in the column of cultivation thereof, there may occur the names of individual proprietors, but if such individual proprietors claims rather the application to them of the apposite savings clauses, besides adduce cogent evidence qua the benefit of the apposite savings clauses becoming assigned to them. Resultantly therebys the said private cultivators, thus would enjoy the ownership rights over those lands which become exposed to the skies, on the occurrence of changes in courses of the rivers concerned.

45. In short, though this Court has declared the impugned deletion

to be ultra vires the Constitution. However, it is yet imperative for the riparian owner to prove, that he holds the land abutting the banks of the river concerned, besides is also required to imperatively prove that earlier to the changes in the courses of the river taking place, he had a well leverage to on the basis of application to him of the apposite savings clauses, thus stake a claim for ownership rights thereovers.

46. Moreover, reiteratedly the statutory right of re-distribution, and, re-partition of reserved lands, thus to the estate holders concerned, especially when such reservations are made from pro rata cuts being made from their legitimate land holdings also cannot be expropriated, but with a rider that the such reserved lands were existing on the banks of the rivers concerned, and/or were rivarian lands.

47. Moreover, river actions are uncontrollable by humans, rather are events of vis major. Resultantly, when the movement of rivers cannot become frozen nor can become statasized by human action, therebys when a riparian owner neither can foresee, nor control the flow of the rivers. In sequel, when on account of river action, the extent of his ownership over the soil, is subtracted, therebys when on a future change in course of river, thus qua the alluvion deposits, thus causes increase in his ownership. Therefore, when the individual cultivator who owns land adjunct to the banks of the river concerned, faces the risk of his losing the land on account of submergence thereof in the river. In sequel, he has to be assigned the benefit of alluvion deposits, as occur on the banks of river on account of the change in course of the river. The said riparian owner also becomes entitled to claim ownership over those lands, which become exposed to the skies, on the change in course of rivers, but of course on the banks of such rivers, the

individual owner holding individual title, and/or subject to the individual owner establishing his title over the lands adjunct to the river, as therebys the riparian owner can claim his owning land upto the middle of the stream, and, can also claim, thus on the exposure of such lands to the skies, as happens on account of change in course of the rivers, that he has ownership rights thereovers.

48. Tritely put, also the acquisition of title, thus in the above modes to shamlat deh lands affected by river action but also cannot be precluded through the omission (supra). Since the impugned deletion, thus does cause the relevant obstacles, thereby also the impugned legislation is liable to be declared to be ultra vires Article 31-A of the Constitution of India.

49. To the considered mind of this Court, the above are fine principles which are covered by the various judgments which are recorded hereinabove. However, the said principles have been deviated by the deleted provision, and, rather through the deleted provision, thus the legislature has attempted to foresee that there would be no change in the course of river, besides has attempted to untenably perceive, that forevers the rivers would take a direction as the legislature deems fit. The said perceptions, and, contemplations were not within the domain of the legislature, as thereby the doctrine of vis major has been attempted to be untenably curtailed.

50. For all the reasons assigned hereinabove, this Court is of the firm view, that the deleted provision has completely truncated the rights of riparian owners vis-a-vis the alluvion deposits, as made on the banks of the river whereons they hold rights of ownership, besides has also snatched the rights of the riparian owners to claim ownership over those lands which are earlier submerged in the rivers, and, which become exposed to the skies on

account of change in courses of the rivers, as the riparian owners have the right upto the middle of the bed of the river.

51. However, reiteratedly the effect of the above conclusion, is not to be taken to be relieving the individual cultivator concerned to, rather evidently own lands adjunct to the rivers concerned, both in terms of the relevant savings clauses to the definition of shamlat deh, besides he is also required to be establishing his statutory right to claim re-distribution, and, re-partition to him of the lands subjected to rivarian action, and, which became so reserved from a legitimate pro rata cut being made from his legitimate holdings. Therefore, it would be imperative upon the individual land owner concerned, to, before the jurisdictionally competent statutory forum or before the jurisdictionally competent Civil Court concerned, establish that he owns land adjunct to the river concerned, and, that therebys to the alluvion deposits, as made thereovers he has a right to stake ownership. Moreover, the individual cultivator concerned, is also required to establish, if he intends to stake a claim of ownership to earlier submerged lands which later became exposed to the skies, on account of change in the course of rivers, that he owns lands adjunct to the river concerned.

52. Be that as it may, the revenue officials concerned, do not appear to be making constant surveys, in respect of the lands abutting the rivers concerned, either in the State of Punjab, and, in the State of Haryana. The said constant land surveys were imperative to ensure that as and when change in courses of rivers take place, thereby the revenue officials concerned, visiting the lands abutting the rivers concerned, and, as such theirs updating the records manifestive, that the private cultivators, who were earlier holding the lands adjunct or adjacent to the banks of the rivers,

thus on occurrence of changes in courses of the rivers concerned, do become reflected in the revenue records to become entitled to claim ownership over such alluvion deposits. The updation of records is required to be made by references to the earlier records whereins such riparian owners are reflected to be owning lands adjunct or adjacent to the river banks concerned. Moreover, since the riparian owners may also become entitled to claim ownership over the earlier submerged lands which later become exposed to skies, on account of changes in courses of the rivers concerned, thereby too, the revenue agencies both in the State of Punjab, and, in the State of Haryana are required to on such changes in courses of rivers concerned, taking place, and/or therebys the beds of the water bodies concerned, becoming exposed to the skies, make survey measurements of the relevant riparian sites, and, to thereafter vis-a-vis the earlier recorded riparian owners make updation of records. Furthermore, the revenue agencies concerned, are also required to facilitate the riparian owners to claim the benefits of rights or re-distribution, and, re-partition to them of the appositely reserved lands, which become so reserved on account of pro rata cuts being made from their respective legitimate holdings, especially when such lands are also subjected to rivarian action. Significantly since the rivarian actions may render unutilizable those lands which become so reserved for the common user of the village proprietary body, especially when therebys qua such lands the estate holders have a right to claim re-distribution and re-partition to them. Resultantly, the revenue agencies, more especially, of the consolidation department, are required to be constantly making survey measurements of the relevant sites, so that the records of rights are updated, in terms of the relevant provisions of the Act of 1948. Furthermore, the above would

ensure reverences being meted to the well recognized principle relating to riparian ownership, that a riparian owner acquires title to all additions thereto or extensions thereof by such means and in such manner, and loses title to such portions as are so worn or washed away or encroached upon by the water, in the absence of any provision or agreement to the contrary.

53. As stated (supra), there is complete deficit of manpower, and, staff in the revenue departments concerned, respectively working in the State of Punjab, and, in the State of Haryana, for the makings of the imperative constant surveys in commensuration, with changes of courses of rivers, which flow within the territories of the said States, so that therebys, the records of rights are updated. The said deficit of manpower is required to be immediately overcome through a direction being passed by this Court, respectively upon the Additional Chief Secretaries (supra) in the revenue State of Punjab, and, in the revenue State of Haryana, to within three months from today, employ in those territories, which are subjected to river action, thus two kanungos, and, two Patwaris each in the halqas concerned.

54. The necessity of the above also arises from the factum, that the constant measurements are to be made of the lands subjected to rivarian action, and, thereafter the records of rights are required to be updated, so that the said updation of records, facilitates the riparian owners to well stake claim of ownership vis-a-vis the alluvion deposits, as become made on their respectively owned lands, thus adjunct to the water bodies concerned. Contrarily if the said measurements are not done or not constantly done in terms of the change in courses of rivers, which flow within the territories of the States of Punjab and Haryana, therebys there is likelihood of trampling over the established rights of the riparian owners, who evidently own lands

adjunct to the water bodies concerned, and, who also thereby own lands upto the middle of the bed of the rivers concerned, and, who on exposure of such river beds to the skies, thus on the occurrence of change of courses of the rivers become entitled to stake ownership rights thereovers.

Final order

55. With the afore findings, and, observations the petitions (supra) are disposed of. The impugned enactment is declared to be ultra vires the constitution, and, also is declared ultra vires the savings clauses to the definition of shamlat deh, besides is declared ultra vires to the rights of re-distribution, and, re-partition, as invested in the estate holders concerned, thus in terms of the relevant provisions of the Act of 1948.

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

57. A compliance affidavit qua the directions (supra) be filed before this Court on 4.7.2024.

(SURESHWAR THAKUR)
JUDGE

(LALIT BATRA)
JUDGE

March 19th, 2024
Gurpreet

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