2023:PHHC:039546-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Reserved on: 07.02.2023
Date of decision: 17.03.2023

(1) CWP-27471-2022
SUBEGH SINGH ...PETITIONER
VERSUS
STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(2) CWP-15980-2022 (O&M)
BHAMBOOL SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(3) CWP-15690-2022
GIAN CHAND @ GIAN SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(4) CWP-15698-2022
JANAK RAJ AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(5) CWP-15890-2022
SHIV KUMAR AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ... RESPONDENTS

(6) CWP-15896-2022
AVTAR SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(7) CWP-15898-2022
KAMAL SINGH AND ANR. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(8) CWP-16071-2022
GURBACHAN SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(9) CWP-16154-2022
RINKU SAINI AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(10) CWP-16157-2022
MAAN SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(11) CWP-16243-2022
PARAMJEET KAUR ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(12) CWP-16261-2022
RAM PAL AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(13) CWP-16311-2022
RAMESH KUMAR AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(14) CWP-16341-2022
GURCHARAN SINGH ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(15) CWP-17226-2022
AMRIK SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(16) CWP-16365-2022
GARIB DASS AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(17) CWP-16424-2022
AJAY AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(18) CWP-16465-2022
RANBIR SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(19) CWP-16505-2022
HARBHAJAN SINGH AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(20) CWP-16666-2022

NAR SINGH AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(21) CWP-16696-2022

GURJANT SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(22) CWP-16700-2022

JAI SINGH AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(23) CWP-16573-2022

BALJIT SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(24) CWP-16628-2022

RAJINDER KAUR ...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(25) CWP-16705-2022

RAJINDER KAUR ...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(26) CWP-16911-2022

DHAN PAT AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(27) CWP-17494-2022

MANGA RAM AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(28) CWP-17495-2022

RAVISH TREHAN AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(29) CWP-17510-2022

SADHU RAM AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(30) CWP-17550-2022

ROOP CHAND AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(31) CWP-17667-2022
TEJPAL AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(32) CWP-17713-2022
DALBIR SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(33) CWP-17833-2022
JEET SINGH AND ANR. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(34) CWP-17910-2022
DULI CHAND AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(35) CWP-18015-2022
SUBASH RANA AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(36) CWP-18208-2022
SANJU AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(37) CWP-18332-2022
RAJENDER SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(38) CWP-18346-2022
ZILE SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(39) CWP-18540-2022
M/S KARAMYOGI SHELTERS PVT LTD ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(40) CWP-19033-2022
ASHOK KUMAR AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS. ...RESPONDENTS

(41) CWP-19887-2022
GURDEV SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(42) CWP-19689-2022
NASIB SINGH AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(43) CWP-20320-2022
GIAN CHAND AND ANR ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(44) CWP-20761-2022
MAHABIR PRASAD SHARMA AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND ORS ...RESPONDENTS

(45) CWP-14843-2022
KULDEEP SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(46) CWP-14949-2022
SATYA PAL AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(47) CWP-19203-2022
DALWINDER SINGH AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(48) CWP-20131-2022
ROSHNI DEVI AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(49) CWP-20432-2022
SEETA RAM AND ANR. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(50) CWP-20982-2022
YASHPAL SINGH AND ORS. ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(51) CWP-23145-2022
RANJIT SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(52) CWP-25671-2022

SHINGARA SINGH AND ANR. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(53) CWP-28217-2022

VED PARKASH AND ORS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(54) CWP-28174-2022

BANTA RAM AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(55) CWP-28463-2022

AMIT INDER SINGH AND ANOTHER ...PETITIONERS

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(56) CWP-28218-2022

UMED SINGH AND ORS.

...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(57) CWP-29062-2022

RANJEET SINGH AND OTHERS ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(58) CWP-29363-2022

GURBAX SINGH AND ORS. ...PETITIONERS

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(59) CWP-28792-2022

ASHOK KUMAR ...PETITIONER

VERSUS

STATE OF HARYANA AND OTHERS ...RESPONDENTS

(60) CWP-26653-2022

SUBEGH SINGH ...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(61) CWP-25490-2022

SUMITRA NEGI AND ANR ...PETITIONERS

VERSUS

STATE OF PUNJAB AND ORS ...RESPONDENTS

(62) CWP-25670-2022
KULDEEP SINGH ...PETITIONER
VERSUS
STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(63) CWP-29334-2022
NIRMAL SINGH AND OTHERS ...PETITIONERS
VERSUS
STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(64) CWP-27294-2022
SUKHWINDER SINGH ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(65) CWP-230-2023
ALI SHER AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(66) CWP-30230-2022
SUKHDEV SINGH AND ORS ...PETITIONERS
VERSUS
STATE OF PUNJAB AND ANOTHER ...RESPONDENTS

(67) CWP-27917-2022
BHUPINDER SINGH ALIAS BALWINDER SINGH ...PETITIONER
VERSUS
STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(68) CWP-425-2023
KULDEEP SINGH ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(69) CWP-563-2023
GEHAL SINGH AND ORS ...PETITIONERS
VERSUS
STATE OF PUNJAB AND OTHERS ...RESPONDENTS

(70) CWP-26059-2022
MOHAN LAL SHARMA ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(71) CWP-2003-2023
MANOJ KUMAR AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(72) CWP-23797-2022
SANDEEP KUMAR AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(73) CWP-24085-2022
SULE KHAN AND ORS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(74) CWP-4396-2023 (Reserved on: 02.03.2023)
RAM DASS ALIAS RAM KALAN ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(75) CWP-4670-2023 (Reserved on: 14.03.2023)
NAVEEN @ NAVEEN BALA ...PETITIONER
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

(76) CWP-2591-2018 (Reserved on: 16.03.2023)
BHARAT PAL AND OTHERS ...PETITIONERS
VERSUS
STATE OF HARYANA AND OTHERS ...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI

Argued by : Mr. Kushagra Mahajan, Advocate
for the petitioners in CWP-26653-2022 and CWP-27471-2022.

Mr. S.S.Dinarpur with Mr.Arvind Singh and Mr. Sumit Gujjar,
Advocates for the petitioners in CWP-15890-2022, CWP-15690-2022, 16154-2022, 16157-2022, 16243-2022, 16261-2022, 16311-2022, 16341-2022, 16911-2022, 16628-2022, 16705-2022, 17494-2022, 17510-2022, 17550-2022, 17667-2022 and CWP-23797-2022.

Mr. Danish Dawesar, Mr. Nipun Bhardwaj
and Mr. Vinod Bhardwaj, Advocates for the petitioners
in CWP-20131-2022.

Mr. Piyush Aggarwal, Advocate
for the petitioners in CWP-425-2023.

Mr. Ravneet Singh Joshi, Mr.Shivam Sharma
and Mr. Akash Patyal, Advocates
for the petitioner in CWP-20432-2022.

Mr. V.K.Jindal, Sr.Advocate with Mr. Vijayveer Singh, Advocate
for the petitioner in CWP-20761-2022.

Mr. Vikram Singh Dhakla, Advocate for the petitioners
in CWP-2355-2018(O&M),
18514-2019, 6204-2019, 6213-2019,

9165-2019, 19663-2019, CM-963-CWP-2023 in/and
CWP-15980-2022(O&M), 15698-2022, 15896-2022,
15898-2022, 16071-2022, 17226-2022,
16365-2022, 16424-2022, 16465-2022,
16505-2022, 16666-2022, 16696-2022, 16700-2022,
17713-2022, 17833-2022, 17910-2022, 18208-2022,
18332-2022, 18346-2022, 19689-2022, 20320-2022,
14843-2022, 14949-2022, 19203-2022, 23145-2022, 28174-2022,
28217-2022, 29062-2022, 29363-2022, 27294-2022,
230-2023, 563-2023, CM-19890-CWP-2022 in/and
CWP-24085-2022(O&M) and CWP-4396-2023 and for respondent Gram Panchayat in CM-2178-2023 in/and CWP-25147-2014 (O & M).

Mr. Brijender Kaushik, Advocate,
for respondent no.5 in CWP-230-2023.
Mr. Udit Garg, Advocate
for respondent no.6 in CWP-19033-2022.

Mr. Aashish Aggarwal, Sr.Advocate
with Ms. Nidhi Gabbhar, Advocate for the petitioners
in CWP Nos.18015, 19033-2022, 25490 and 18093 all of 2022.

Mr. Adarsh Jain, Advocate for Ms. Kamaldeep Kaur, Advocate
for the petitioner in CWP-17495-2022 and in CWP-2591-2018.

Mr. Sushil Jain, Advocate,
for the petitioners in CWP-24085-2022.

Mr. Abhinav Singla and Mr. Rakesh Gupta, Advocates,
for the petitioner in CWP-18540-2022.

Mr. Hitesh Malik, Advocate with Mr. Jivesh Malik, Advocate
for the petitioner in CWP-20982-2022.

Mr. Vikas, Advocate, for the petitioner in CWP-27917-2022.

Mr. Himanshu Sharma and Mr. Ravi Kant Sharma, Advocate
for the petitioner in CWP-28218-2022.

Mr. Lajpat Rai Sharma, Advocate
for Mr. Vivek Khatri, Advocate for the petitioners in CWP-16573-2022.

Mr. Sumit Gujjar, Advocate
for Mr. S.S.Dinarpur, Advocate
for the petitioner in CWP-4670-2023.

Mr. Raman Sharma, Addl. A.G.Haryana.

Mr. Maninder Singh, DAG, Punjab.

Ms. Monika Jalota, Sr.DAG, Punjab.

Mr. P.P.Chahar, DAG, Haryana.

Mr.Arvind Bansal, Advocate
for respondent no.6 – Gram Panchayat
in CWP-25490-2022 and CWP-25670-2022.

None for the remaining petitioners.

SURESHWAR THAKUR, J.

1. Since all the writ petitions relate to common questions of law, therefore, the same are being disposed of through a common order.

FACTUAL BACKGROUND

2. The writ petitioners belong to the States of Haryana as well as Punjab. They are aggrieved by the Executive Instructions issued by the respective State Governments for the purpose of purported implementation of the Judgment dated 07.04.2022 of the Hon'ble Supreme Court, rendered in case titled as ***'State of Haryana Vs. Jai Singh and Others, 2022 AIR (SC) 1718'***. Since, the States of Haryana and Punjab have issued their respective set of instructions, thus, it will be useful to reproduce them separately.

State of Haryana:-

3. The State of Haryana firstly issued instructions dated 21.06.2022, relevant part whereof reads as follows:-

> *"All the Deputy Commissioners in the State*
>
> *Memo No DLR-7202* *Chandigarh. Dated-21-06-2022*
>
> *Subject: Implementation of the Apex Court judgment dated 07.04.2022 pertaining to vesting of Shamlat Deh and Jumla Mushtarka Malkan in the Panchayat Deh or Municipal Bodies concerned.*
>
> *On the subject cited above, it is brought to your kind notice that the Hon'ble Supreme Court of India in Civil Appeal no.6990 of 2014 titled as The State of Haryana through Secretary to Government of Haryana versus Jai Singh & others and other connected civil appeals has given a detailed judgment dated 07.04.2022 arising primarily out of Jai Singh & ors versus State of Haryana. 2003(1) PIJ 429: 2003 SCC online P & 11 409 (FB) in short Jai Singh II and Suraj Bhan & ors versus State of Haryana & another. 2017(2) RCR (Civil) 934 P&II (FB). The judgment is available on the website of Supreme Court of India. ic.https://main.sci.gov.in/. Annexure I summarises the salient features of the judgment. From a detailed perusal of the shove Judgment dated 07.04.2022, there is imminent need to carry out the following actions by the officers of Revenue Department:-*

1) Mutations shall be entered by halqa patwari of land recorded as Shamlat Deh. Shamlat Deh hasab rasad zare khewat or Shamlat Deh hasab rasad paimana malkiyat in the revenue records, i.e.. latest jamabandi or misil-haquial. ie., first jamahandi after revenue settlement or consolidation, as per section 2(g)(1) of the 1961 Act immediately in favour of the Panchayat Deh concerned, compared by the Field Kanungo and thereafter, sanctioned positively by the Assistant Collector 2 Grade i.e. Circle Revenue Officer concerned.

2) It is further made clear that any person can subsequently take recourse to section 13A of the Punjab Village Common Lands (Regulation) Act, 1961 before the Collector, if falling in any of the exceptions mentioned from (i) to (ix) of the section 2(g) of the 1961 Act. It is worthwhile to mention here that exception (i) of the ibid section has been deleted by the Punjab Village Common Lands (Regulation) Haryana Amendment Act. 2020 (Haryana Act No.30 of 2020) pertaining to river action, Further, exception (vii) was deleted by the Haryana Act no 18 of 1995 pertaining to 14 Bhojas of Morni.

3) In case of merger of any revenue estate in the municipal limit at any time. wherein previously panchayat was in existence, one mutation of Shamlat Deh lands as detailed above shall be entered and sanctioned in favour of Panchayat Deh and subsequent mutation entered & sanctioned in favour of concerned Municipal body.

4) Mutations shall also be made and sanctioned accordingly for lands described as Jumla Malkan or Jumla Malkan Wa Digar Hagdaran Arazi Hassab Rasad, Jumla Malkan or Mushtarka Malkan, which are created by making a prorata cut of land for common purposes during consolidation of holdings as described in Section 2(g)(6) of the Act of 1961. Entries shall also be made in the cultivator column of the Jamabandi, by writing Maqbuza Panchayat Deh/ Maqbuza Municipal Committee Council Corporation, and same shall be sanctioned by CRO concerned. These lands cannot be alienated or partitioned in any manner at any stage.

5) All pending cases of partition of Shamlat Deh & similar lands, and funds Mushtaraka Malkan & similar lands, which are with Revenue Courts, be filed consigned in view of the Apex Court Judgment, and no fresh cases to be entertained.

(II) Departments of Development & Panchayats and Urban Local Bodies may be requested to take following action on the following issues

1. Wherever Jumla Mushtarka Malkan and similar common purpose lands have been partitioned/alienated, the process regarding reclaiming the property in light of the Supreme Court Judgement, may be decided and acted upon. If cases pertaining to Jumla Malkan and Mushtarka Malkan are pending in the High Court an application may be moved before the same, as per the Apex Court Judgment to request formal dismissal and closure of such cases. The revenue department will help in identifying such partitioned lands.

2. The land of Jumla Mushtarka Malkan is reserved during consolidation by applying a pro-rata cut from the lands of all landowners. In this land, there are two categories:
(a) That which falls within permissible ceiling limit.
(b) That which falls outside permissible ceiling limit.
It is mentioned in the judgment that the land of common purposes not necessarily falling within permissible ceiling limits would vest with Gram Panchayat. Therefore, irrespective of the description of land in the Revenue Records, all lands reserved for common purposes must be entered in the property register of Gram Panchayat.

3. It has also come to the notice of the Government that several lands which were entered in revenue record as Shamlat Deh and similar entries have been wrongly partitioned/alienated. This was never permissible under the Act. Therefore, Department of Development and Panchayat may move to restore such land to Panchayat.

4. Urban Local Bodies Department may take action as proposed for the Development and Panchayat Department above, in respect of Jumla Mushtarka Malkan lands and Shamlat Deh lands included in extended municipal bodies limits, wherein these lands were received as legacy from the erstwhile gram panchayats.

Keeping in view the gravity and sensitivity of the matter, the above directions be implemented urgently in letter and spirit, and especially in conformity with the Apex Court Judgment as enunciated above. A fortnightly progress report may be filed on action taken

Sd/-
Director, Land Records
For Financial Commissioner. Revenue &
Additional Chief Secretary to Govt. of Haryana
Revenue & Disaster management Department."

4. It may be seen from the above reproduced instructions, that the State of Haryana issued omnibus administrative instructions to enter mutations in respect of the lands which were recorded as *Shamlat Deh Hasab Rasad Zare Khewat or Shamlat Deh Hasab Rasad Paimana Malkiyat* in the Records of Rights, i.e., latest Jamabandi but after the Revenue Settlement or Consolidation as per Section 2(g)(i) of the Punjab Village Common Lands (Regulation) Act, 1961 (for short 'the 1961 Act'). The mutations were directed to be sanctioned in respect of the lands recorded as *Jumla Malkan or Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad* which were created by the proprietors of a village, through, making a pro-rata cut of land,

hence for common purposes but during consolidation of holdings under the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. All pending cases of partition of *Shamlat Deh* or similar lands were directed to be consigned. The Departments of Development and Panchayats as well as Urban Local Bodies were directed to take necessary action for reclaiming the property in the light of Judgment of the Hon'ble Supreme Court.

5. Thereafter, the State of Haryana issued another set of instructions dated 18.08.2022, relevant part whereof reads as follows:-

> *"Subject: Instructions regarding implementation of the Apex Court judgment dated 07.04.2022 pertaining to vesting of 'Shamlat deh' and 'Jumla Mustarka Malkan' in the Panchayat deh or Municipal Bodies concerned-clarification thereof.*
>
> *Kindly refer to this office Memo No. DLR-7202 dated 21.06.2022 on the subject noted above.*
>
> *2. The instructions issued vide above referred letter are hereby reiterated with following clarifications:-*
>
> *(i) The lands recorded as shamlat in the revenue record at the time of consolidation/settlement and later on changed in the ownership of other persons may be corrected in the revenue record only after issuing a notice to those persons recorded as owner in revenue records and after providing adequate opportunity of hearing to them. Pending the hearing, in the column of remarks of the record of rights, an entry may be made that till decision of the notice, the said land is a subject of scrutiny and not to be transferred to third party.*
>
> *(ii) In respect of Jumla/Mustarka Malkaan Land, in the column of possession/cultivation, the entries, whatsoever is in record, be corrected/ changed as 'through Gram Panchayat/Municipality concerned'. However, in case any individual(s) is recorded in cultivation column, that may be got corrected by following due procedure of law such as by filing eviction petition or application of correction of girdawari.*
>
> *(iii) The pending partition proceedings in respect of Jumla/Mustarka Malkaan lands, as mentioned above (ii), may be decided by the concerned authority keeping in view the law laid down by the Apex Court in the above mentioned judgment. Relevant Para 84 of the judgment of the Apex Court is reproduced below for ready reference:-*
>
> > *"... we find that the land reserved for common purposes cannot be repartitioned among the proprietors only because at a particular given time, the land so reserved has not been put to common use.....Since, 'common purpose' is a dynamic expression, as it keeps changing due to the change in requirement of the society and the passing times, therefore once the land has been reserved for common purposes, it cannot be reverted to the proprietors for*

> *redistribution. Therefore, the conclusion no. (iii) arrived at by the High Court is set aside as unutilized land is not available for redistribution amongst the proprietors. The finding recorded by the different benches of the High Court are clearly erroneous and not sustainable. Thus, the conclusion no. (iii) arrived at by the High Court in Jai Singh II is set aside."*
>
> *(iv) In those cases where the lands originally recorded as shamlat or Mustarka Malkan had already been partitioned or alienated and third party rights have been created, the Panchayats Department and the Urban Local Bodies Department may initiate proceedings in accordance with law to get back/restore such lands.*
>
> *You are, therefore, requested to strictly implement the instructions issued vide above referred memo dated 21.06.2022 in view of the above clarifications.*
>
> *Sd/-*
>
> *Deputy Secretary, Revenue*
>
> *for Financial Commissioner, Revenue and Additional Chief Secretary to Government of Haryana, Revenue and Disaster Management and Consolidation Departments Chandigarh."*

6. The only significant change in the revised instructions dated 18.08.2022 was that the State Government realized that there were several instances where *Mustarka Malkan* lands had been already partitioned or alienated or third party rights had been created. The Panchayat Department and Urban Local Bodies Department were, thus, directed to initiate "*proceedings in accordance with Law to get back/ restore such lands"*.

7. As regards the State of Punjab, it issued instructions dated 11.10.2022, relevant portions whereof are to the following effect:-

> *"Sub: Instructions regarding vesting of shamlat land and jumla mushtarka malkan land in the concerned Gram Panchayat or concerned municipal Bodies in compliance with judgment titled as State of Haryana versus Jal Singh and others reported as 2022(2)RCR(Civil)803, decided on 07.04.2022.*
>
> *It has been observed that grabbing of Panchayat land in the periphery of Chandigarh has been taking place from time to time and other parts of State since long.*

2 Thousands of acres of Panchayat land has been grabbed by some persons. Several cases have come to notice that Governmental authorities have taken indifferent attitude towards a patent fraud being committed in respect of such lands. The Additional Directors/Directors Consolidation have passed many orders changing ownership of land from Shamlat Deh' to 'Hassab Rasad Ragba Khewar or Jumla Mushtarka Malkan enabling further distribution of such land to private owners. These orders are patently illegal and smack of fraud, collusion and conspiracy,

3. In a recent judgment titled as State of Haryana versus Jai Singh and others reported as 2022 (2) RCR (Civil) 803, the Hon'ble Supreme Court of India, in para no. 106 and 108 of the Judgment, has held as under:

106. Neither 1961 Act nor 1948 Act contemplates re- distribution of land to the proprietors. It is irrevocable act which cannot be undone. Therefore, once land vest with Panchayat, it can be used for common purposes of Community and will never revert back to the proprietors.

108. The entire land reserved for common purposes by applying pro rata cut to be utilized by Gram Panchayat for present and future of village community and that no part of land can be re-partitioned amongst proprietors."

4. To implement the above judgment of the Hon'ble Supreme Court, it has become necessary to issue the following directions to all the concerned officers in the State:-

i. *Mutations shall be entered by Halqa Patwari of land recorded as Shamlat Deh, Shamlat Deh Hasab Rasad Zare Khewat or Jumla Malkan or Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad or Mushtarka Malkan in the revenue records, in favour of the Gram Panchayat concerned, and thereafter, sanctioned by the Circle Revenue Officer concerned.*
ii. *Any person can subsequently take recourse to section 11 of The Punjab Village Common Lands (Regulation) Act, 1961 before the Collector, if he is aggrieved by the sanctioning of mutation.*
iii. *In case of merger of any revenue estate in the municipal limit. mutation of Shamlat Deh lands, as detailed above be entered and*

sanctioned in favour of Gram Panchayat and subsequent mutation be entered & sanctioned in favour of concerned Municipal body.

iv. *All the pending cases before various authorities under the Punjab Village Common Lands (Regulation) Act, 1961 or The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 shall be disposed of by the concerned authorities in view of the judgment of Hon'ble Apex Court referred above. An Affidavit in all the CWPs pending in the Hon'ble High Court in respect of such matters be filed by the respective authorities, referring to the Hon'ble Supreme Court judgment in the case of State of Haryana vs. Jai Singh and others.*

5. Departments of Rural Development & Panchayats and Urban Local Bodies are requested to take following action on the following

i. Wherever Jumla Mushtarka Malkan and similar common purpose lands have been partitioned/alienated, the process regarding reclaiming the property in light of the Supreme Court Judgment, may be initiated immediately. The Revenue Department will help in identifying such partitioned lands.

ii. It has also come to the notice of the Government that several lands which were entered in revenue record as Shamlat Deh and similar entries have been wrongly partitioned/alienated. This was never permissible under the The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. Department of Rural Development and Panchayat may move to restore such land to Panchayat.

iii. Urban Local Bodies Department may take action as proposed for the Rural Development and Panchayat Department above. in respect of Jumla Mushtarka Malkan lands and Shamlat Deh lands included in extended municipal bodies limits, wherein these lands were receive an legacy from the erstwhile gram panchayats.

6. You are requested to take the following steps for the implementation of the judgment of the Hon'ble Supreme Court of India cited as State of Haryana versus Jai Singh and others reported as 2022(2)RCR(Civil)803-

i. Issue directions to all the revenue officers/revenue officials for strict compliance of the directions and to sanction mutations in favour of the Gram Panchayat, at the earliest. Any lapse on the part of concerned authorities shall be subject to strict departmental action.

Possession of the land may be taken by the Department of Rural Development and Panchayats by adopting due course of law.

ii. Issue directions to start with the work primarily focusing on the panchayat lands falling or adjoining the cities/urban areas, to "rectify the illegalities/transfer of Panchayat/ municipal land to private persons/ proprietors.

iii. If Issue directions to the concerned officers for taking action as per ratio of the Judgment for the land falling under the jurisdiction of Urban Local Bodies

Fortnightly status report regarding the progress of work be also sent to this department. *Sd/-*

Additional Chief Secretary-cum-

Financial Commissioner Revenue....”

8. Thereafter, the District Collectors also issued instructions to the Circle Revenue Officers, like dated 26.10.2022 issued by the District Collector, SAS Nagar, which are in the following terms:-

“OFFICE OF THE DISTRICT MAGISTRATE, S.A.S. NAGAR
PH:0172-2219500, FAX: 0172-2219501
EMAIL:Sk.sasnagar@gmail.com

To

All Circle Revenue Officers,

Mohali, Kharar, Derabassi

No.2955-57/SK/SKC.2/dated 26.10.2022

Subject:- Instructions regarding vesting of shamlat land and jumla mushtarka malkan land in the concerned Municipal Bodies in compliance with judgment titled as State of Haryana Vs Jai Singh & others reported as 2022(2) RCR (Civil) 803, decided 07.04.2022

On the subject it has been written by Government of Punjab that it has come to the notice that the Panchayati Area adjacent to

Chandigarh Periphery is being grabbed at different times in different areas of the State due to which thousands of Acres of Panchayat Land has been grabbed by different persons. Many cases have come into the notice of the Government in this regard. In this regard many orders have been passed by Additional Director/ Director Consolidation many times to not to transfer Shamlat Deh, Hasab Rasad Rakba Khewat or Jumla Mushtarka Malkan Area in favour of private owners. In this regard the Hon'ble Supreme Court of India has passed to following order in State of Haryana Vs Jai Singh and others reported as 2022 (2) RCR(Civil) 803 decided on 07.04.2022 in para no. 106 and 108 as under:-

"106. Neither 1961 Act nor 1948 Act contemplates re-distribution of land to the proprietors. It is irrevocable act which cannot be undone. Therefore once land vest with Panchayat it can be used for common purposes of Community and will never revert back to the proprietors.....

108. The entire land reserved for common purposes by applying pro rata cut be utilized by Gram Panchayat for present and future needs of Village community and that no part of land can be re-partioned amongst proprietors."

The Government has written to abide by the orders passed by Hon'ble Supreme Court of India in the above said case as under :-

i) Issue directions to all the revenue officers/revenue officials for strict compliance of the directions and to sanction mutation in favour of Gram Panchayat, at the earliest. Any lapse on the part of concerned authorities shall be subject to strict departmental action.

Possession of the land may be taken by department of Rural Development and Panchayats by adopting due course of law.

ii) Issue direction to start with the work primarily focusing on the panchayat/municipal land to private persons/proprietors.

iii) Issue directions to the concerned officers for taking action as per ratio of judgment for the land falling under the jurisdiction of Urban Local Bodies.

In this regard the copy of the letter received is being attached herewith for

compliance in toto.

Sd/-

Deputy Commissioner, SAS Nagar"

9. In purported compliance of the above reproduced instructions, the Revenue Officers, like Naib Tehsildar, Majri, District SAS Nagar, also issued circular dated 27.10.2022 which is reproduced as under:-

"To

Area Kanungo, Majri,

Mullanpur Garibdas, Khizrabad.

No: 1915-17/ Reader dated 27.10.2022

Subject:- Instructions regarding vesting of Shamlat Land and Jumla Mushtarka, Malkan Land in the concerned Gram Panchayat or concerned Municipal Bodies in compliance with Judgment titled as "State of Haryana VS Jai Singh and others" reported as 2022 (2) RCR (Civil) 803 decided 07.04.2022.

Reference: In regard to Letter No.-2955-57/S.K.K.C. Dated 26.10.2022

On the above subject and letter under reference it is being written that Panchayati Area adjacent to Chandigarh periphery is being usurped in the different areas at different times in state due to which thousands of acres of Panchayati land has been usurped by different - different persons. Many such cases have come to knowledge of Government. In this regard it is being written to you that orders have been passed to not to change Shamlat Deh to Hassab Rasad Khewat or Jumla Mushtrarka Malkan enabling further distribution of such land to private owners. These orders are patently illegal and smack of fraud, collusion and conspiracy.

By annexing the copy of the above orders with this letter, the mutation of above said lands be entered in the name of Gram Panchayat and be produced. No negligence be done regarding these orders and importance be given to it.

(Attached-Report) *Sd/-*

Naib Tehsildar Majri"

10. The above reproduced Executive Instructions issued by the States of Haryana and Punjab are under challenge in this batch of writ petitions on various grounds. On the other hand, both the States, duly supported by the Gram Panchayats/ Municipalities have defended these instructions, as according to them, the same have been necessitated to ensure the compliance of the Hon'ble Supreme Court Judgment in *Jai Singh's case (supra)*.

11. It is, therefore, necessary, at this stage, firstly to understand the nature of controversy and the import of Judgment of the Hon'ble Supreme Court as rendered in *Jai Singh's case (supra)*. It may be noticed at the outset that there cannot be any quarrel and even the petitioners have not argued to that effect, that the Judgment of the Supreme Court has to be given effect in its true letter and spirit. It is, therefore, first necessary to understand as to what was the controversy before the Hon'ble Supreme Court and what has been eventually laid down thereins as law of the land, and thus, is required to be implemented by the States of Punjab and Haryana.

12. A careful reading of the elaborate and self-explanatory Judgment of the Hon'ble Supreme Court in *Jai Singh's case (supra),* unfolds the principles as to how the concept of *Shamlat Deh* came into existence. It is sufficient to mention that the concept of *Shamlat Deh*/ *Shamlat* Law originated way back in 19th century and the nature and purpose of the lands which were earmarked or reserved as *Shamlat Deh*/ *Shamlat* Law, as duly explained in the treatised and various reference books, have been quoted by the Hon'ble Supreme Court to eloquently explain these concepts.

13. In the context of the limited controversy before us, this Court is only required to refer to the relevant provisions of the two Statutes, namely, (i) The East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948] (for short 'the 1948 Act') and (ii) the 1961 Act, i.e., the Punjab Village Common Lands (Regulation) Act, 1961. It may also be put forth at the outset that the limited scope of

judicial review to be exercised by this Court is, to find out whether both the States of Haryana and Punjab correctly understood the scope and import of the judgment of the Apex Court. This Court will navigate through such areas only which were neither raised nor adjudicated by the Hon'ble Supreme Court but have cropped up as a result of the impugned administrative instructions.

14. So far as the 1948 Act is concerned, it was originally enacted to provide for compulsory consolidation of agricultural holdings and to prevent their fragmentation. Subsequently, Section 2(bb) was inserted by the Punjab Act 22 of 1954, whereby, definition of 'Common Purpose' was added to mean any purpose in relation to common need, convenience or benefit of the village and it included (a) extension of the village abadi; (b) providing income for the Panchayat of the village; (c) village roads and paths, drain, wells, ponds or tanks, water course etc.; (d) schools and playgrounds, dispensaries, hospitals and institutions of like nature etc.

15. Section 18 of the 1948 Act, thereafter, empowered the Consolidation Officer to reserve the lands for 'common purposes' at the time of consolidation. Section 18 of 1948 Act reads as follows:-

> *"**18. Lands reserved for common purposes**.-- Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Consolidation Officer to direct-*
>
> *(a) that any land specifically assinged for any common purpose shall cease to be so assigned and to assign any other land in its place;*
>
> *(b) that any land under the bed of a stream or torrent flowing through or from the Shiwalik mountain range within the [State] shall be assigned for any common purpose;*
>
> *(c) that if any area under consolidation no land is reserved for any common purpose including extension of the village abadi, or if the land so reserved is inadequate, to assign other land for such purpose."*

16. Section 19 of the 1948 Act provides for publication of the Draft Scheme of Consolidation by the Consolidation Officer after inviting objections from any person who is affected by such Scheme, whereas Section 20 of the 1948 Act

contemplates confirmation of the Scheme. Section 20 of the 1948 Act is to the following effect:

> *"**20. <u>Confirmation of scheme</u>**.- (1) The [State] Government may by notification appoint one or more persons to be Settlement Officers (Consolidation) and, by like notification, specify the area in which each such officer shall have jurisdiction. The Consolidation Officers in the area under the jurisdiction of the Settlement Officer (Consolidation) shall be subordinate to him subject to any conditions which may be prescribed.*
>
> *[(2) If no objections are received to the draft scheme published under sub-section (1) of section (1) of Section 19 [6]{---} and also if no written or oral objections to {the draft scheme} are received under sub-section (3) by the Settlement Officer (Consolidation), he shall confirm the scheme.*
> *(3) If any objections are received to the draft scheme published under sub-section (1) of section 19 [8]{---} or if any written or oral objections are received by the Settlement Officer (Consolidation) before the confirmation of {the draft scheme} by him, the Settlement Officer (Consolidation) may after taking the objection into consideration together with the remarks thereon of the Consolidation Officer and also after considering the written or oral objections, either confirm the scheme with or without modifications, or refuse to confirm it. In case of such refusal the Settlement Officer (Consolidation) shall return the draft scheme, with such directions as may be necessary, to the Consolidation Officer, for reconsideration and re-submission.]*
> *(4) Upon the confirmation of the scheme under sub-section (2) or (3), the scheme as confirmed shall be published in the prescribed manner in the estate or estates concerned."*

17. The 1948 Act further provides that once the Consolidation Scheme has been confirmed under Section 20 of the Act and the lands of the proprietors/ land-owners have been consolidated, thus, the Records of Rights would be accordingly prepared under Section 22 of the 1948 Act and such Records of Rights shall be deemed to have been prepared under Section 32 of the Punjab Land Revenue Act, 1887. Section 22 has a material bearing on the controversy and it says as follows:-

> *"**22. <u>Preparation of record-of-rights</u>**.- (1) The Consolidation Officer shall cause to be prepared a new record-of-rights in accordance with the provisions contained in Chapter IV of the Punjab Land Revenue Act,*

1887 (XVII of 1887) in so far as these provisions may be applicable for the area under consolidation, giving effect to the repartition [and order in respect thereof made] under the preceding section.

(2) Such records of rights shall be deemed to have been prepared under Section 32 of the Punjab Land Revenue Act, 1887 (XVII of 1887).”

18. Subsequently, vide Punjab Act 39 of 1963, Section 23-A was inserted in the 1948 Act whereby 'management' and 'control' of the lands reserved for ‘common purposes’ were directed to vest in the Gram Panchayat or the State Government. Section 23-A reads as follows:-

*“**23 A. Management and control of lands for common purposes to vest in Panchayats or State Government** – As soon as a scheme comes into force the management and control of all lands assigned or reserved for common purposes of the village under section 18, -*
(a) in the case of common purposes specified in sub-clause (iv) of clause (bb) of section 2 in respect of which the management and control are to be exercised by the State Government, shall vest in the State Government; and
(a) in the case of any other common purpose, shall vest in the Panchayat of that village;
and the state Government or the Panchayat , as the case may be , shall be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interests of the owners of such lands shall stand modified and extinguished accordingly:
Provided that in the case of land assigned or reserved for the extension of village abadi or manure pits for the proprietors and non-proprietors of the village, such land shall vest in the proprietors and non-proprietors to whom it is given under the scheme of consolidation.”

19. On a conjoint reading of the provisions of the 1948 Act, referred to above, it stands crystallized that the legislative object of the Act was to consolidate the lands of the village proprietors so as to avoid fragmentation. The Act also conceptualized reservation of some lands for 'common purposes’ of the village' and the Consolidation Officer was authorized to reserve a pool of land for such ‘common purposes’. The proposed reservation of land for ‘common purposes’ as well as the Draft Scheme of Consolidation of the lands of proprietors was required to be published to invite objections and after consideration of such objections, there was an

imperative requirement qua publication of the Final Scheme, on the basis of which, Records of Rights, i.e., entries in the revenue records regarding ownership and cultivating possession, thus, was to be made. Such entries do carry a presumption of truth qua the recorded ownership(s) and possession(s). Similarly, by virtue of Section 23-A, the management and control of the lands reserved for 'common purposes' was ordered to be vested in the Gram Panchayats/ State Government, as the case may be. In this manner, the 1948 Act made a statutory scheme of ear-marking of a particular parcel of land as reserved for 'common purposes', the management and control of which was handed-over to the Gram Panchayats or the State Government.

20. We may now advert to the Scheme of the 1961 Act which was enacted for the purpose of vesting ownership of *Shamlat Deh* lands in the Gram Panchayats, defining as to what will form part of the *Shamlat Deh* and then qua ownership of such *Shamlat Deh* lands vesting in the Gram Panchayat. For the purposes of resolving the controversy, it will be first necessary to reproduce Section 2 (g) of the 1961 Act which defines *Shamlat Deh,* as it existed before its amendment vide Haryana Act 9 of 1992, and the same reads as under:-

> *"(g) 'shamilat deh' includes-*
>
> *(1) lands described in the revenue records as shamilat deh excluding abadi deh;*
>
> *(2) shamilat tikkas;*
>
> *(3) lands described in the revenue records as shamilat, tarafs, pattis, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
>
> *(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or gorah deh; and*
>
> *(5) lands in any village described as banjar Qadim and used for common purposes of the village according to revenue records;*

Provided that shamilat deh at least to the extent of twenty-five per centum of the total area of the village does not exist in the village."

21. Section 3 of the 1961 Act, as applicable to Haryana, provided that the Act shall apply to the lands which were governed by the *Shamlat Deh* law as well as lands which have been defined as *Shamlat Deh* under the 1961 Act. Rights, title and interest in such lands were vested in the Gram Panchayat though Section 4 of the Act.

22. The definition of *Shamlat Deh* under Section 2(g) of the 1961 Act was subsequently expanded by the State of Haryana vide Haryana Act 9 of 1992, which came into being w.e.f 11.02.1992. The amended definition whereby some more categories of land were included in *Shamlat Deh* read(s) as under:-

"(g) "shamilat deh" includes-
(1) lands described in the revenue records as [shamilat deh or Charand] excluding abadi deh;
(2) shamilat tikkas;
(3) lands described in the revenue records as shamilat, Tarafs, Pattis, Pannas and Tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;
[(4) lands used or reserved for the benefit of the village community including streets, lanes, playgrounds, schools, drinking wells, or ponds situated within the sabha area as defined in clause (mmm) of Section 3 of the Punjab Gram Panchayat Act, 1952 excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under Section 23-A of the aforesaid Act;]
[(4a) vacant land situate in abadi deh or gorah deh not owned by any person;]
(5) lands in any village described as banjar qadim and used for common purposes of the village, according to revenue records;"

23. It is equally significant to note at this stage that certain categories of lands have been expressly excluded by the Legislature and the same do not form part

of *Shamlat Deh* as is evident from the following exclusion clause contained in Section 2 (g) of the 1961 Act:-

> *"but does not include land which:-*
>
> *(i) becomes or has become shamlat deh due to river action or has been reserved as shamlat in villages subject to river action except shamlat deh entered as pasture, pond or playground in the revenue records;*
>
> *(ii) has been allotted on quasi-permanent basis to a displaced person;*
>
> *[(ii-a) was shamilat deh, but has been alloted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act bur on or before the 9th day of July, 1985;]*
>
> *(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950;*
>
> *(iv) having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co-sharer in the shamlat deh and is so recorded in the jamabandi or is supported by a valid deed;*
>
> *(v) is described in the revenue records as shamlat taraf, pattis, pannas and thola and not used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village*
>
> *(vi) lies outside the abadi deh and is used as gitwar, bara, manure pit or house or for cottage industry, immediately before the commencement of this Act;]*
>
> *(vii) [-----]*
>
> *(viii) was shamlat deh, was assessed to land revenue and has been in the individual cultivating possession of co-sharers not being in excess of their respective shares in such shamlat deh on or before the 26th January, 1950; or*
>
> *(ix) is used as a place of worship or for purposes subservient thereto;"*

24. Coming back to the genesis of the controversy, it would be noticed only as a matter of history that the constitutional validity of the Haryana Act 9 of 1992 which came into force on 11.02.1992, was challenged before the Full Bench of this Court and the above stated amendment was struck down but the Judgment of the Full Bench was set aside by the Hon'ble Supreme Court in Civil Appeal No. 5480 of 1995

decided on 06.08.1998 and the matter was remitted for fresh adjudication of the questions of law noticed by the Hon'ble Supreme Court.

25. Thereafter, a full Bench of this Court in '***Jai Singh and others Vs. State of Haryana 2003 SCC Online P&H 409',*** broadly, accepted the claim of the proprietors of the village to the extent below:-

> *"49. The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contributed the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the significant difference is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purpose as per the scheme.*
>
> *xxx xxx xxx*
>
> *62. In view of the discussion made above, we hold that:-*
>
> *(i) sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948;*
>
> *(ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1)read with Section 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24and no other lands;*
>
> *(iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14read with Rules 5 and 7 and entered in the column of ownership as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the proprietors, shall not vest with the Gram Panchayat or the State Government, as the case may be, on the*

> *dint of sub-section (6) of Section 2(g)and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;*
>
> *(iv) all such lands, which have been, as per the consolidations scheme, reserved for common purposes, whether utilised or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc."*

26. Subsequently, a Five Judge Bench of this Court, in ***Suraj Bhan Vs. State of Haryana (2017) 2 PLR 605,*** held that the observations in *Jai Singh's case (supra)* conferring right, title and ownership in Gram Panchayats in respect of *Jumla Mushtarka Malkan Land,* were improper and invalid. The claim of the proprietor/ land owners, in a way, was accepted in entirety.

27. The above-cited Full Bench decisions of this Court in *Jai Singh's case, Suraj Bhan's case and one Vir Singh's case* also, became the subject matter of challenge before the Hon'ble Supreme Court on behalf of the State of Haryana and the Gram Panchayats on one hand, and the land owners/ proprietors on the other, who were partially dis-satisfied with the Full Bench decision of this Court in *Jai Singh's case*. It is while deciding this controversy, that the Hon'ble Supreme Court has rendered the decision dated 07.04.2022 in ***'State of Haryana Vs. Jai Singh and Others, 2022 AIR (SC) 1718'***, the implementation whereof is the subject matter of consideration in these writ petitions.

28. It is sufficient for our purposes to state that the Hon'ble Supreme Court has upheld the Constitutional validity of Haryana Act 9 of 1992 and the lands which were sought to be included in the definition of *Shamlat Deh* by virtue of that amendment, have been held to have vested in the Gram Panchayats or the Municipalities as the case may be. The Hon'ble Supreme Court has held as follows:-

> *"53. We find that such conclusion in Parkash Singh or Suraj Bhan that 'Jumlan Malkan' or 'Mushtarka Malkan' land so described in the revenue record would not vest with the Panchayat is not based on the*

correct reading of judgment of this Court in Ranjit Singh. Once land had been reserved for common purposes, irrespective of description in the revenue record, such land would vest with Panchayat or the State. The only condition is that it should not be within permissible limits of the proprietors.

54. Still further, in Parkash Singh, it has been held that the forum available to a person, who raises a dispute regarding title in "Jumla Mushtarka Malkan" is the principal Court of civil jurisdiction having jurisdiction in the matter, as provided by Section 9 of the Code of Civil Procedure, i.e., a Civil Court. Though the said judgment is in the context of the State of Punjab, but the said finding is not sustainable for the reason that "Jumla Mushtarka Malkan" is a land reserved for common purposes during consolidation. Though Rule 16(ii) of the 1949 Rules prescribes that the common purposes land after applying pro-rata cut would be described in the revenue record but the expression "Jumla Mushtarka Malkan" or "Mushtarka Malkan" is a land of the proprietors for the benefit of the village community for common purposes. Therefore, if the revenue records as "Jumla Mushtarka Malkan" or "Mushtarka Malkan" in the ownership column, it is the authority under the 1961 Act and the machinery provided thereunder which would exercise jurisdiction to determine the dispute as to whether it is reserved for common purposes or not.

55. We do not find any merit in the arguments raised by learned counsel for the proprietors that the explanation enlarges the scope of the common purposes for which land was reserved under the scheme in terms of 1948 Act. Rule 16(ii) of 1949 Rules specifically mentions that the entry in the column of ownership of records would be Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad. The other expression used in the explanation is Jumla Mustarka Malkan or Mustarka Malkan, which means the ownership of all the proprietors. They are commonly used in the revenue record but they are not larger in scope than the entry contemplated in the revenue record as Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad. Therefore, neither sub-section6 nor the explanation is contrary to Article 300-A as the land stood acquired without payment of compensation being part of the agrarian reforms, when pro- rata cut was applied on the land of the proprietors.

56. We do not find any merit in the arguments raised that on the basis of insertion ofSection 13C and 13D by virtue of amendment in the year 1981 and insertion of Section 5A and 5Bby virtue of amendments carried out in 2007 or on the strength of Section 11 of the 1961 Act as originally enacted, the legality and validity of the Amending Actis any way affected. The Panchayat was conferred ownership rights over the land when pro-rata cut was applied on the land of the proprietors to reserve land for the common purposes under the 1948 Act. The Panchayat is therefore the absolute owner of such property which came to be vested in the Panchayat with the commencement of shamilat law. The entire right, title or interest in the said land forming part of second category mentioned above vests with the Panchayat in view of the judgment of this Court in Ranjit Singh.

106. The argument of the proprietors that the land which is not capable of being used for common purposes of the inhabitants of a particular

village shall be reverted to the proprietors is untenable and unsustainable. The land has been put to common pool by applying pro-rata cut. Once pro-rata cut has been applied, the management and control of such land vest with the Panchayat. There is no question of reverting the land to the proprietors. As discussed above, the land which is not part of the permissible limits under the land ceiling laws stand acquired and vested with the Panchayat in terms of judgment of this Court in Ranjit Singh. However, in respect of the land forming part of permissible limits of the proprietor under the land ceiling laws, the management and control vest with the Panchayat. Neither the 1961 Act nor the 1948 Act contemplates redistribution of land to the proprietors. It is an irrevocable act which cannot be undone. Therefore, once land vest with the Panchayat, it can be used for common purposes of the community and will never revert back to the proprietors.

108. Consequently, we hold that Act No. 9 of 1992, the Amending Act is valid and does not suffer from any vice of constitutional infirmity. The entire land reserved for common purposes by applying pro-rata cut had to be utilized by the Gram Panchayat for the present and future needs of the village community and that no part of the land can be re-partitioned amongst the proprietors."

29. As noticed at the outset, the impugned instructions have been issued by the States of Punjab and Haryana with a view to implement the dictum of the Hon'ble Supreme Court, relevant parts whereof have been extracted above.

30. Learned counsel for the petitioners have raised multiple challenges to the impugned Executive Instructions; *inter-alia,* contending that:-

(i) Haryana Act 9 of 1992 whereby new categories of lands with different nomenclatures have been included in the *Shamlat Deh* came into force on 11.02.1992. The lands which were first time declared as part of *Shamlat Deh* by virtue of this amended provision, were earlier not part of the *Shamlat Deh.* The 1992 amendment Act which has first time vested right, title and interest in favour of the Gram Panchayat in respect of these new categories of lands, being an ex-proprietary Legislation in nature has come into force prospectively. It was vehemently urged that the Legislature had neither expressly nor by implication introduced the 1992 Act, with retrospective effect. The impugned Executive Instructions have drawn no distinction in relation

thereto and the same have been issued on the presumption that the lands which were first time included in *Shamlat Deh* in 1992, are part of *Shamlat Deh* as it stood defined under the original Act of 1961;

(ii) The Legislature in Explanation to the newly inserted clause (6) has expressly provided that the lands entered in the column of ownership of records of rights as *Jumla Malkan Wa Digar Haqdaran Arazi Hassan Rasad, 'Jumla Malkan or Mustarka Malkan* **'SHALL BE'** *Shamlat Deh* within the meaning of this Section. It is pointed out that the expression 'shall be' is of great significance and it boosts their contention that Haryana Act 9 of 1992 has come into force prospectively;

(iii) A specific argument was raised before the Hon'ble Supreme Court on behalf of the State of Haryana that Section 2(g)(6) of the 1961 Act, added by way of Haryana Act 9 of 1992 is only 'clarificatory' and 'declaratory' amendment of the existing Law. In this regard, they referred to Para 35 of the Judgment of the Supreme Court, which reads as under:-

> "35. It was further contended that Section 2(g)(6) in 1961 Act is not a new provision but is only a clarificatory and declaratory amendment of the existing law. Shamilat Deh is the land owned by Gram Panchayat to be used for common purposes under Section 2(g)(1)of 1961 Act before consolidation. This Court in a judgment reported as Sukhdev Singh V. Gram Sabha Bari khad (1997) 2 SCC 518 held that land recorded in the revenue record as shamilat deh in the year 1914-15 could not detract from the nature of the land as it was merely recorded to be in possession of the owners as per respective shares in khewat in a pre-consolidation shamilat land. The Court held as under:
>
> "2……. Firstly, the entry in 'jamabandi' of 1914-15 which recorded that the land was in possession of the owners was quite innocuous, because it was made for the reason that it was in nobody else's possession. The fact that even then it was recorded in the 'Jamabandi' as "shamlat deh" shows that the particular character of the land was recognised even as far back as 1914-15, and it could not detract from that nature of the land merely because it was further stated in the 'jamabandi' that it was in the possession

of the owners "as per respective shares in khewat."
[emphasis applied]

(iv) It was contended that the above-stated argument has not been accepted by the Supreme Court and it is well settled that a plea raised on behalf of a party which has not been expressly accepted shall be deemed to have been rejected;

(v) As regards vesting of lands in Gram Panchayats, which were reserved for common purposes under Section 18 of the 1948 Act, learned counsels for the petitioners pointed out numerous instances which have been specifically pleaded in their respective writ petitions that a substantial part of the lands which were initially proposed to be kept for 'common purposes' were returned/redistributed amongst the proprietors of the village by the Consolidation Officers under the Consolidation Scheme itself and, thus, the entries in the Record of Rights were accordingly made as per Section 22 of the 1948 Act. The ownership and cultivating possession of such land has been constantly recorded in the names of proprietors of the village. These lands were never utilized or ear-marked for any common purpose. Section 23-A of the 1948 Act, therefore, does not apply to such lands. However, merely because at one point of time, before finalization of Consolidation Scheme, such lands were shown in the common pool, thus, the impugned Executive Instructions are being construed to mean as if such lands also, irrespective of subsequent redistribution, amongst proprietors, continue to form part of lands reserved for 'common purposes' and, thus, are amenable to Section 23-A of the 1948 Act. No distinction is being made in respect of these lands under the garb of implementation of the Judgment of the Hon'ble Supreme Court. It is pointed out that there are

various cases where the lands were ear-marked for 'common purposes' in the Consolidation Scheme but such inclusion was challenged by the proprietors and villagers before the Assistant Collector(s). Their claims were accepted and quasi-judicial orders were passed before Haryana Act 9 of 1992 came into force. Such lands were directed to be returned to the proprietors, who had contributed their respective lands on pro-rata basis. The Gram Panchayats never challenged these orders before any Statutory Forum and the same have attained finality in the last over 50/60 years. These orders passed by the competent Courts were duly implemented and Record of Rights were prepared showing such lands under the exclusive ownership, title, and possession of the proprietors. Since, these lands have already been redistributed amongst the proprietors before Haryana Act 9 of 1992 came into force, Clause (6) added to Section 2(g) of the 1961 Act has no applicability at all qua these lands.

(vi) There are several instances where lands were initially proposed for 'common purposes' but were later on distributed amongst the proprietors much before Haryana Act 9 of 1992 came into force. The entry of ownership rights of such proprietors was never challenged before the Revenue Court or the Civil Court. These proprietors subsequently sold these lands for consideration by way of registered sale deeds and the lands have exchanged hands several times. The sale deeds were registered by the State Authorities decades back and the subsequent *bona-fide* purchasers have been recorded as true owners of the lands for all intent and purposes. Neither their sale deeds nor possessory rights have been questioned by the Gram Panchayats or the Municipalities.

They have verified the title with due diligence and having found that their vendors were owners on the basis of registered sale deeds, as, executed for consideration, rather for several decades, thus, the said lands were purchased or sold. In all such cases, the sale deeds cannot be set aside except by way of declaration by the Civil Court and the land owners are entitled to statutory protection of Section 41 of the Transfer of Properties Act, 1882;

(vii) The question whether a parcel of land had been partitioned amongst the proprietors before Haryana Act 9 of 1992 or whether such land continued to be reserved for 'common purposes' even thereafter, is essentially a question of fact and it varies from case to case. No omnibus executive instructions can be issued to transfer ownership of such lands merely by changing mutations/revenue records;

(viii) It was contended that onus was on the Gram Panchayat/ Municipality or the State Government, as the case may be, to establish on a case to case basis, that the land continues to be reserved for 'common purposes', whether utilized or not, and, thus, such lands are liable to be included in *Shamlat Deh* in view of amended definition which came into force w.e.f 11.02.1992;

(ix) The petitioners laid a specific reliance on clause (iii) of Exclusion Clause of Section 2(g) of the 1961 Act, which provides that the land which 'has been partitioned and brought under cultivation by individual land-holders before 26.01.1950', is excluded from the definition of *Shamlat Deh.* Reference to Clause (iv) has also been made to point out that where the lands were originally owned by the proprietors before 26.01.1950, and if such lands have been subsequently

exchanged or purchased through valid conveyance deeds, same are also excluded from the ambit of *Shamlat Deh.*

31. On the other hand, learned State Counsel as well as counsels for the Gram Panchayats defended the Government Instructions, *inter-alia*, contending that:-

(i) In view of the Judgment of the Hon'ble Supreme Court in *Jai Singh's case (supra),* the ownership of lands which fall within Clause (6) of Section 2(g) of the 1961 Act, are required to be declared to have vested in the Gram Panchayat;

(ii) Haryana Act 9 of 1992, though notified on 11.02.1992, had retrospective effect;

(iii) the lands which were reserved for 'common purposes' under the Consolidation Scheme prepared under the 1948 Act, are liable to be vested in the Gram Panchayat, and, thus, the amending provisions relate back to the status of the lands reserved for common purposes even before the 1961 Act came into force;

(iv) the bounden duty of the State to implement the decision of the Hon'ble Supreme Court was urged time and again;

(v) Strong reliance was placed upon Section 5(B) of the 1961 Act which has been inserted by Haryana Act 8 of 2007 and reads as under:-

*"**5B. <u>Certain transfer not to affect Panchayat's rights.</u>**- (1) Any transfer of land, gifted, sold, exchanged or leased before or after the commencement of this Act, made in contravention of the prescribed terms and conditions, shall be void and the gifted, sold, exchanged or leased land so transferred shall revert to, and reinvest in, the Panchayat free from all encumbrances.*

(2) The Government or any officer authorized by it may, either suo motu or on application made to him by a Panchayat or an inhabitant of the village or the Block Development and Panchayat Officer, examine the record for the purpose of satisfying himself as to the legality or propriety of any sale, lease, gift, exchange, contract or agreement executed before or after commencement of this Act, if such sale, lease, gift, exchange,

contract or agreement is found detrimental to the interest of the villagers and is no longer required in the interest of the Panchayat, the Government may, after making such enquiry as it may deem fit, cancel the same and no separate proceedings under any law shall be required to cancel the sale, lease, gift or exchange. The Panchayat shall be competent to take over the possession of such premises including the constructions thereon, if any, for which no compensation shall be payable.]"

32. These writ petitions were heard on 15.09.2022 and on 13.01.2023, and, then the following substantial questions of law were respectively formulated:-

*"**Question No.1**: As to whether the verdict pronounced by the Hon'ble Apex Court in case "The State of Haryana through Secretary to Govt. of Haryana Vs. Jai Singh and Others", verdict whereof, became rendered in Civil Appeal No.6990 of 2014, can be assigned retrospective effect, inasmuch as, even to those lands which were otherwise saved from vestment under the previous Acts respectively nomenclatured as "The Punjab Village Common Lands (Regulation) Act, 1961" as well as "The Punjab Village Common Lands (Regulation) Act, 1953".*

***Question No.2**: Learned counsels appearing for some of the writ petitions submit, that though prima facie the verdict drawn by the Hon'ble Supreme Court in "**The State of Haryana through Secretary to Govt. of Haryana Vs. Jai Singh and others' Civil Appeal No.6990 of 2014,** does have retrospective affect but they also submit that since in some of the writ petitions, sale transactions or some other transactions, did occur, and, that such transactions occurred prior to 2007. Therefore, they submit that the assented legislative enactment as made by the State of Haryana, thus incorporating Section 5-B in Haryana Village Common Land (Regulation) Act, 1961, when has not been assigned any retrospective effect nor when the said amendment has been considered in Jai Singh's case (Supra). Therefore, they submit that a further substantial question of law is also required to be formulated by this Court, with respect to the applicability of the amendment of 2007 (Supra) as made in the Haryana Village Common Land (Regulation) Act, 1961 hence to all those sale transaction(s) which occurred much prior thereto. The said submission is not opposed by the counsels for the*

*opposite side. Therefore, this Court is constrained to also formulate the hereinafter substantial question of law "**whether in the wake of the assented to amendment, made by the Haryana State Legislative Assembly, wherethrough, Section 5-B became incorporated in the Haryana Village Common Land (Regulation) Act, 1961, does or does not, cover the sale transaction which occurred prior thereto, and, especially when such issue was not under consideration before the Hon'ble Supreme Court in Jai Singh's case (Supra), besides especially also when it has not been assigned any retrospective effect.**"*

Question No. 1:-

33. As a general principle of law, it is well settled that the distinguishing factor which determines whether there may be retrospective or prospective application of amendments in Legislation, is whether it impacts substantive or procedural rights. Where substantive rights are involved, there cannot be any implicit retrospectivity of any amending law, unless there is an explicit provision to give retrospective effect. Substantive rights remain unaffected by changes in the main legislation, as declared in the Judgment of Hon'ble Apex Court delivered in case ***Shyam Sunder and Ors. Vs. Ram Kumar, reported in 2001 (8) SCC 24,*** that any subsequently introduced amending provision, does carry a presumption that it has only a prospective effect, unless expressly or impliedly assigned retrospectivity to the apposite amended statutory provision. Moreover, it has also been pronounced and propounded therein, that since there is a presumption against the retrospective application of any amending statute or against the retrospective application of a newly introduced provision, whereby the earlier invested substantive rights are contemplated to be snatched. Therefore, the burden lies on the party claiming retrospective application, to the amended provision, to show that the impugned statue was intended either expressly or impliedly to have retrospective effect. A similar view has been underlined by the Hon'ble Apex Court in judgments rendered in case ***Thirumalai Chemicals Ltd. Vs. Union of India (2011 (6) SCC 739 ; Moti Ram Vs. Suraj Bhan***

and others (AIR 1960 SC 655) ; Parkash and Others Vs. Phulavati and others (2016 (2) SCC 36) ; Katta Sujatha Reddy Vs. M/s Siddamsetty Infra Projects (AIR 2022 SC 5435).

34. Therefore, any indefeasible substantive right cannot be abridged through a subsequent amendment. Moreso, when it has also been expostulated in judgment (supra), that there is a presumption against retrospectivity application of a statute. However, with a rider that, assigning of retrospectivity to an expropriatory legislation or to an amending provision or an amending statute or to a legislative provision but snatching an indefeasibly invested substantive right, rather is to be either expressly or impliedly made. Thus, an expropriatory legislative provision is to be either expressly or impliedly assigned retrospectivity. If, to an expropriatory legislative measure or to an expropriatory amended provision rather no express or implied retrospectivity is assigned. Thus, it would hold only prospective effect.

35. Having bestowed our deep attention to the rival submissions in light of the settled law, we find that question No. 1 essentially pertains to the date of effectivity of Haryana Act 9 of 1992 as also Section 5-B, which came to be inserted in the year 2007. It goes without saying that Haryana Act 9 of 1992, having been upheld by the Hon'ble Supreme Court has to be given its full effect in accordance with the Legislative intentment. In this regard, a comparative analysis of the definition of *Shamlat Deh* as it existed before Haryana Act 9 of 1992 came into force, when Clause (6) came to be inserted, throws significant light. It may be seen that the lands which were reserved for 'common purposes' under Section 18 of the 1948 Act were handed over to the Gram Panchayat for the purposes of 'management' and 'control' only through Section 23-A of the 1948 Act in the year 1963. There is no quarrel that Section 23-A never vested ownership or title of such lands in the Gram Panchayat. Had it been so, there would have been no necessity for the Legislature to

enact Haryana Act 9 of 1992. It may further be seen from the Explanation appended to Clause 6 of Section 2(g) of 1961 Act, as added in 1992, saying that the lands recorded as *Jumla Malkan or Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad, Jumla Malkan or Mushtarka Malkan,* were first time included in the definition of *Shamlat Deh* and the Legislature has consciously used the word 'shall be', thus, explicitly declaring that these lands were to be treated as *Shamlat Deh* hitherto only. However, the other important aspect is that the management and control of such land had already been vested in the Gram Panchayat by virtue of Section 23-A of the 1948 Act. On a harmonious construction of both the provisions, we have no doubt in our mind that if the lands, ear-marked for 'common purposes', which were recorded as *Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad, Jumla Malkan,* were reserved by the Consolidation Officer for 'common purposes' under Section 18 of the 1948 Act, and if these lands did not revert back to the proprietors, before 11.02.1992, and the management and control thereof had already got vested in the Gram Panchayat under Section 23-A of the 1948 Act, then by virtue of Haryana Act 9 of 1992, the ownership and title of such lands gets vested in the Gram Panchayats. The *litmus* test, thus, to be applied is that, if in the column of ownership in the Records of Rights, the lands were recorded as *Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad, Jumla Malkan*, at the time of consolidation and such lands were reserved for common purposes in the Consolidation Scheme, followed by their management and control with the Gram Panchayats, then ownership of such lands may stand vested in the Gram Panchayats by virtue of the Haryana Act 9 of 1992. However, if such lands had already been returned and partitioned amongst proprietors and in the column of ownership in Records of Rights these lands were shown to be owned and possessed by individual proprietors, thus, the management and control of such lands never came be vested in the Gram

Panchayats, and, but as a natural corollary, Clause (6) added by Haryana Act 9 of 1992 cannot be made operative qua these lands. It is, thus, held that where the lands which were at one point of time proposed to be meant for 'common purposes' but at the time of consolidation or thereafter before 11.02.1992, rather were returned to the proprietors and were never reserved or ear-marked for common purposes, then such lands did not come under the management and control of the Gram Panchayats and ownership and title of such lands remained unaffected by Haryana Act 9 of 1992. These lands, therefore, cannot be subjected to the rigours of the 1992 Act, merely because at one point of time there was a stray entry showing them to be ear-marked or proposed for a 'common purpose', even though the same were subsequently returned to the original proprietors under orders made by empowered revenue officers concerned.

36. Similarly, where the lands, though were kept for 'common purposes' under the Consolidation Scheme, but subsequently on account of any *lis* between the proprietors and the Gram panchayats, such lands had been partitioned amongst the proprietors and they continued to be recorded as owners in possession for decades, thus, also the management and control of such lands cannot be stated to have vested in the Gram Panchayat. We have been persuaded to scan the Revenue Records for decades, including before or after Section 23-A of 1948 Act came into force, to fortify the petitioners' contention that the lands owned and possessed by them never ever came under 'management' and 'control' of the Gram Panchayat. The consequent effect will be that Clause (6) added by Haryana Act 9 of 1992 will remain inapplicable qua these lands also. It goes without saying that an order passed by the competent Revenue or Civil Court shall be binding on the parties unless set aside by a superior forum. If it has attained finality and has been implemented, the clock cannot be reversed and it cannot be deemed to have been set aside by implication of a Law.

Hon'ble Supreme Court has held in *State of Punjab Vs Gurdev Singh, AIR 1992, SC,111* that order, howsoever illegal it may be, would continue to have existence for all ostensible purposes unless set-aside in appropriate proceedings taken against it.

37. On the other hand, the lands which were reserved for the common purposes in the Consolidation Scheme and are continuing to be so reserved, followed by handing-over of their management and control with the Gram Panchayats, the ownership of such lands stand vested in the Gram Panchayats/ Municipalities, as the case may be, in view of the effect of Haryana Act 9 of 1992, which has been held to be *intra-vires,* by the Hon'ble Supreme Court in *Jai Singh's case (supra)*. The other important aspect is in respect of those lands which stood excluded from the definition of *Shamlat Deh* even under the unamended Act, i.e, Clause (iii) or (iv) of the Exclusion Clause contained in Section 2(g) of the 1961 Act. In respect of the above lands falling in the apposite exclusionary definition of S*hamlat Deh,* thus, it is not only difficult but undesirable also, for a Writ Court to determine the questions of fact to find out as to whether any particular land falls within these two exclusionary clauses or not. These are definitely factual issues but which can be determined only by a competent Court of jurisdiction. It, however, goes without saying that if a proprietor is able to show that the land owned by him falls within any of these Exclusion Clauses, he is entitled to be protected from the wrath of the Haryana Act 9 of 1992. In other words, the Haryana Act No. 9 of 1992 does not erode the efficacy or workability of the relevant exclusionary clause(s). The reason being that no retrospectivity is assigned to the said Act. Moreover, also on the further ground that the said exclusionary clause(s) have remained un-repealed or un-annulled.

38. It is on a conjoint understanding of the Scheme of Statutes of 1948 and 1961, as discussed above, coupled with the Legal position on retrospectivity as it has withstood the law till date, that we are of the considered view that the Haryana Act 9

of 1992 has to be understood and given prospective effect, but it is also retroactive in case of those lands which have already been reserved for common purposes and were never distributed/repartitioned amongst the proprietors. We hold so also for the reason that though a specific argument was raised before the Hon'ble Supreme Court in *Jai Singh's case (supra)* that Haryana Act 9 of 1992 is clarificatory and declaratory in nature, but the said plea has not been accepted by the Apex Court expressly or impliedly. Their Lordships have held that ownership of lands which were under the management and control of Gram Panchayats under the 1948 Act, stand vested in the Gram Panchayats by virtue of Haryana Act 9 of 1992. The ownership of such lands would, thus, stand transferred from the date when the said Act came into force on 11.02.1992. It also appears to us that where the Revenue Courts have already partitioned the lands, illustratively recorded as *Jumla Mustarka Malkan etc*., amongst the proprietors and the Gram Panchayats have accepted such Orders, which have been acted upon for a long duration of time, such action of the authorized courts will draw a presumption of truth under Section 35 of the Indian Evidence Act, 1872 and the said presumption cannot be snatched unless aggrieved concerned makes a lawful recourse either in the Civil Court or to any empowered statutory authority. In our considered view, the Executive fiat cannot be pressed into aid by the State to annul such judicial or quasi-judicial orders and to transfer ownership of lands with a stroke of pen after decades.

39. In short, the presumption, as attachable to any order, made by any revenue officer in discharge of his public duties, when has been ill attempted to be ridden of its efficacy, and, that too without any opportunity of hearing to the person affected by such arbitrarily drawn instruction(s), letter or communication. Therefore, it appears to us that the impugned instruction(s)/letters have been issued in a most slip shod and perfunctory manner, and without any application of mind, either to the

Judgment of Hon'ble Apex Court in ***Jai Singh's case (supra)*** or to any of the other statutes or legal principles which are carried in the respective statutory provisions. These instructions run counter to and are in the completest derogation to the mandate pronounced by the Hon'ble Apex Court in ***Wazir Chand Vs. State of Himachal Pradesh AIR 1954 SC 415*.** The aforesaid view has been reiterated by the Hon'ble Supreme Court in **Bishamber Dayal Chandra Mohan and Others Vs. State of UP (1982) 1 SCC 39.**

40. Another important provision which requires reiteration here is Section 22 of the 1948 Act. Under this provision, the entries in the Record of Rights, i.e., the revenue record are affected on the basis of the Consolidation Scheme prepared by the Consolidation Officer. Sub-Section (2) thereof further provides that 'such record of rights shall be deemed to have been prepared under Section 32 of the Punjab Land Revenue Act, 1887'. It soundingly means that, once a Consolidation Officer causes to prepare a new Record of Rights and pursuant thereto, entries in the revenue records are made, such entries shall carry a presumption of truth in respect of ownership and possessory rights of the land. The petitioners have pointed out numeorous instances where, after the redistribution of lands amongst proprietors, Records of Rights were prepared under Section 22 of the 1948 Act, and in that the individual proprietors were shown to be owners in exclusive possession of specific khasra/kila numbers. That being so, such lands where ownership and possessory rights have been duly recorded under Section 22 of the Act, shall fall outside the purview of Section 18 read with Section 23-A of the 1948 Act and as a necessary corollary, these lands cannot be subject matter of inclusion of *Shamlat Deh* in Clause (6) of Section 2(g) of 1961 Act.

41. The other equally, important question is of the *bona-fide* purchasers. It could not be disputed on behalf of the respondents during the course of hearing that various parcels of land, which, at one point of time, long before Haryana Act 9 of

1992 came into force were though proposed or shown for 'common purposes' but were partitioned amongst the proprietors either by Consolidation Officer under the Consolidation Scheme itself or subsequent thereto by the Revenue Courts. Pursuant to such orders, the land owners/ proprietors came to be recorded as individual owners in respect to their holdings. They have sold their lands to *bona-fide* purchasers for valuable consideration in due course of time. The vendees also acted with due diligence and verified the ownership rights in the revenue record, i.e., Record of Rights for decades. Such vendees having found that the vendors were duly recorded as exclusive owners in possession of the land in the record of rights prepared pursuant to Section 22 of the 1948 Act, thus, acted upon and purchased the lands for consideration. In our considered view such *bona-fide* purchasers stand on altogether a different pedestral. Not only this, there are several instances where the lands have exchanged hands repeatedly and the present ownership vests, may be, in the third or fourth set of vendees and so on. Such cases, stand on a different footing. We may hasten to add that no such specific question arose for consideration before the Hon'ble Supreme Court in *Jai Singh's case (supra)*. This question has arisen only on account of the fact that in the first set of instructions issued by the States of Punjab and Haryana, no protection to *bona-fide* purchasers was extended. In the later instructions dated 18.08.2022, in Clause (iv), the State of Haryana has directed the Gram Panchayats and Urban Local Bodies to 'initiate proceedings in accordance with law to keep back/restore such lands. The expression "in accordance with law", in our considered view necessarily requires a declaration of annulment of registered sale deeds for which only a Civil Court is competent to do so in accordance with the provisions of the Registration Act, 1908. ***(Ref.: Thota Ganga Laxmi and another Vs. Government of Andhra Pradesh and other, (2010) 15 SCC 207).***

42. When we hold that the *bona-fide* purchasers stand on a different pedestral, we are expected to respect the intendment behind Section 41 of the Transfer of Properties Act, 1882. As per the said provision, where an ostensible owner of the property has transferred ownership rights for consideration, such transfer shall not be voidable on the ground that the transferor was not authorized to make it. The only requirement is that the transferee must show due diligence before transfer takes place. Section 41 of the Transfer of Properties Act reads as under:-

> *"**41. Transfer by ostensible owner**.—Where, with the consent, express or implied, of the persons interested in immoveable property, a person is the ostensible owner of such property and transfers the same for consideration, the transfer shall not be viodable on the ground that the transferor was not authorised to make it: Provided that the transferee, after taking reasonable care to ascertain that the transferor had power to make the transfer, has acted in good faith."*

43. As we have noticed earlier, the Record of Rights prepared under Section 22 of the 1948 Act, read with Section 32 of the Punjab Land Revenue Act, 1887 were the bench-mark to determine whether the transferee or the subsequent vendee acted with due diligence. After having verified that the vendor was recorded to be owner in possession of land for decades, such vendee entered into a *bona-fide* sale transaction, it shall get due protection of Section 41 of the Transfer of Properties Act. The fact as to whether there was no due diligence or whether the transfer of title suffers from any type of imperfection, is an onus which lies on the Gram Panchayat or the Municipality, for which they are required to approach the Civil Court of appropriate jurisdiction.

Question No. 2

44. In all fairness, learned State Counsel as well as Counsels for Gram Panchayats have placed heavy reliance on Section 5-B inserted by Haryana Act 8 of 2007 in the 1961 Act which has already been reproduced in the earlier part of this verdict. This provision provided that any transfer of land, gifted, sold, exchanged or

leased before or after the commencement of this Act made in contravention of the prescribed terms and conditions shall be void and the gifted, sold, exchanged or leased land so transferred shall revert to and re-vest in the Gram Panchayat free from all encumbrances.

45. As held earlier, there are two different sets of land included in the *Shamlat Deh*. The first set of lands are those which were included in Section 2(g) of the 1961 Act at the time of its original enactment. The second set of lands came to be included in *Shamlat Deh* by virtue of Haryana Act 9 of 1992. Section 5-B, in our considered opinion provides that if any land, regardless of the fact that it was included in *Shamlat Deh* and vested in the *Shamlat Deh,* has been sold, transferred, exchanged or leased contrary to the Scheme of the Act, such conveyance deed is to be declared void without affecting the rights and title of the Gram Panchayat. The most crucial fact would be as to whether the land was ever included in the *Shamlat Deh* and/or it can be held to have vested in the Gram Panchayat as *Shamlat Deh*? If answer is in affirmative, and there is any conveyance deed in respect of such lands, same shall get annulled by virtue of Section 5-B of the Act. However, if the land never came to be included, within the purview of the *Shamlat Deh* either by virtue of unamended definition, say for example, under the Exclusion Clause, or it never formed part of the 'common purposes' under the 1948 Act or if it had already been partitioned/ redistributed amongst the land owners/proprietors, before 11.02.1992,the land never fell within the contours of *Shamlat Deh* under Section 2(g) of 1961 Act, whether originally or amended subsequently. Therefore, Section 5-B will be applicable only when it is proved before a competent court of law that the land was actually *Shamlat Deh* and hence the conveyance deed in relation thereto should be declared inoperative. The consequent effect would be that the authorities will have to engage themselves in appropriate legal proceedings before a Court of competent

jurisdiction, firstly to determine whether the land is *Shamlat Deh or not.* If it is finally proved that the land was indeed *Shamlat Deh*, Section 5-B(2) can be resorted to restore the land in favour of the Gram Panchayat. However, no such power can be exercised unilaterly only on the basis of one sided presumption that the land is *Shamlat Deh.* The determination of title of land as to whether or not it is *Shamlat Deh* but through proceedings before a court of competent jurisdiction and in accordance with the principles of natural justice is a *sine-qua-non* for invoking the powers under Section 5-B of the 1961 Act.

46. Though most of the writ petitioners have appended copies of Records of Rights and other documents to show that the land owned by them did not form part of the *Shamlat Deh* under the unamended provisions and/or such lands were not reserved for 'common purposes' or had been redistributed amongst the proprietors under the orders of the Consolidation Officers or the Revenue Court, as the case may be, we are not inclined to accept such claims for the reason that each case is based upon its own facts. The petitioners/ proprietors as well as Gram Panchayats/ Municipalities both have corresponding rights and duties to establish their *inter-se* claims against each other before an appropriate forum. We, thus, leave it open to the authorities in terms of the directions issued hereinafter for getting resolved the question of their proprietorship/ title followed by a necessary consequence in terms of Haryana Act 9 of 1992 or Act 8 of 2007 in the Haryana Act.

47. As regard to the State of Punjab, we find that no additional discussion is required to be engaged for the reason that firstly, the provisions of the 1961 Act, as applicable in the State of Punjab including the amendments carried out through Punjab Act 9 of 1922 are broadly similar to the corresponding provisions of the Act as applicable to the State of Haryana. Since the dictum of the Supreme Court Judgement in *Jai Singh's case* is equally binding on the State of Punjab, the

mechanism to implement the said Judgment in both the States therefore, requires commonality.

48. Section 42-A of the 1948 Act, provisions whereof have been extracted hereafter, provide that the land reserved for 'common purposes' whether specified in the Consolidation Scheme or not shall not be partitioned amongst the proprietors of the Village and it shall be utilized and continue to be utilized for 'common purposes'. The above provision came to be inserted vide Punjab Act No. 6 of 2007 in the 1948 Act and has to apply prospectively. Thus, the natural consequence thereof would be that the lands which already stand partitioned/re-distributed amongst the proprietors prior to Punjab Act No. 6 of 2007, would not get affected and the orders passed by competent Courts of Jurisdiction under which the said partition/re-distribution has been made, cannot be eroded through recourse to the said insertion.

> ***42-A 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 judgment, decree, order or decision of any court, or any authority or any officer, the land reserved for common purposes whether specified in the consolidation scheme or not, shall not be partitioned amongst the proprietors of the village, and it shall be utitlized and continue to be utilized for common purposes.*

49. Lastly, it is clarified that the findings and observations made herein above are only in respect of the issue(s) which did not arise for consideration of the Hon'ble Apex Court in *Jai Singh's Case*. As a matter of fact, these issues have cropped up as a resultant aftermath of the executive instructions issued by both the States for the suggested compliance of the dictum of the Highest Court of the land. It is further clarified as an abundant precaution that we have not expressed any opinion on the individual merits of any case, such being beyond the scope of writ jurisdiction of this Court. On facts, the prescribed authorities under the 1961 Act, Gram Panchayats, Municipalities and the State Governments will take appropriate

decisions, keeping the facts of each case in mind and shall proceed further as directed hereinafter.

Conclusions:

50. In the light of the above discussions, we hold that:-

(i) Executive Instructions dated 21.06.2022 and 18.08.2022 issued by the State of Haryana and dated 11.10.2022 issued by the State of Punjab whereby ownership rights of the lands in question are sought to be transferred in favour of the Gram Panchayat/Municipalities, through Executive fiat, are held to be contrary to the very scheme of the Statute and are hereby quashed, particularly in view of the fact that these executive instructions cannot result into arbitrary cancellation of valid title over the properties.

(ii) Accordingly, the States of Haryana as well as Punjab shall give effect to the Judgment of the Hon'ble Supreme Court in *Jai Singh's case (supra)* in the following manner:-

(a) Where the lands continue to be shown as reserved for 'common purposes', whether utilized or unutilized, the ownership of such land shall vest in the Gram Panchayat or the Municipalities, as the case may be.

(b) However, if the lands which were proposed or shown to be reserved for common purposes have been partitioned, amongst the proprietors or redistributed amongst them, under the Consolidation Scheme, such lands are held to have never come under the management and control of the Gram Panchayats and, thus, ownership in relation thereto does not vest in the Gram Panchayats

by virtue of the provisions, like Haryana Act 9 of 1992. Conspicuously, also given that the Punjab Act No. 6 of 2007 as relates to the 1948 Act, rather has only prospective effect, and, it does not erode the validly made orders either by the jurisdictionally competent Courts, and, or by the empowered revenue authorities whereby partitions and re-distribution of lands are made, may be even from the common pool.

(c) The Gram Panchayat or the Municipality shall be at liberty to approach the competent Court of law for vesting of ownership rights in them in respect of the lands where there is serious dispute as to whether the same had been reserved for common purposes and/or were never distributed/ returned amongst the proprietors through an order of a competent court or of any competent statutory authority.

(d) where there is no dispute in respect of lands reserved for common purposes and the management and control whereof had been transferred to the Gram Panchayat under Section 23-A of the 1948 Act, ownership of such lands shall vest in the Gram Panchayat/Municipality in view of the fact that provisions like Haryana Act 9 of 1992 have been declared *intra vires* by the Hon'ble Supreme Court in *Jai Singh's Case;*

(e) In the case of lands which at one point of time were shown or proposed to be reserved for common purposes but have been returned/ re-distributed amongst the proprietors under the orders of the Revenue Court/ Consolidation Officer and when ‘management’ or ‘control’ of lands was never transferred to the

Gram Panchayats under Section 23-A of the 1948 Act, such lands also can not be automatically presumed to have vested in Gram Panchayats or Municipalities;

(f) Where lands falling in the categories as illustrated in direction No.(b) and (e) above, have been sold/re-sold to bonafide purchasers after due diligence and for valuable consideration, the title or possessory rights of such *bona-fide* purchasers shall remain unaffected, save and except, when the sale deeds in their favour are set aside by the courts of competent jurisdiction.

Final order by this Court.

51. The substantial questions of law are accordingly answered. The writ petitions are disposed of. The impugned notifications/instructions, as respectively made by the State of Haryana, and, by the State of Punjab, are to the extent that are militative, to the prospective assignments of force, by this court, to the Haryana Amending Act, 1992, the Punjab Amending Act, 2022, and, to the Punjab Act No. 6 of 2007, are quashed and set aside, on the above, and, the hereinafter mentioned five counts, and, shall henceforth have no force and operation.

i) They are in breach to the mandate of the judgment made by the Hon'ble Apex Court in **Jai Singh's case (supra),** whereby only a very limited retrospectivity is assigned to the amended provisions (supra).

ii) They are ultra vires the rules of natural justice.

iii) They are ultra vires the lawfully made assignment(s) to the assignees concerned, hence by any empowered revenue officer.

iv) That when they assign untenable retrospectivity, to the amended provisions, but yet they do make any contemplations qua payments of compensation to the land owners concerned. Thus, they are quashed and set aside.

v) They are ultra vires the constitutional right of property, as enshrined in Article 31A, and, in Article 300 A of the Constitution of India.

56. Since the main case(s) itself have been decided, thus, all the pending application(s), if any, also stand(s) disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

17.03.2023
kavneet singh

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