REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 9871 OF 2018
(Arising out of S.L.P. [C] NO.23292 OF 2008)

SATLUJ JAL VIDYUT NIGAM LTD. ... APPELLANT(S)

VERSUS

RAJ KUMAR RAJINDER SINGH (DEAD) THROUGH LRS. & ORS. ... RESPONDENTS

WITH
C.A. NO.9874 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9281 OF 2014
C.A. NO. 9875 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9284 OF 2014
C.A. NO.9876 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9288 OF 2014
C.A. NO. 9877 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9289 OF 2014
C.A. NO. 9878 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9287 OF 2014
C.A. NO. 9879 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9285 OF 2014
C.A. NO. 9880 OF 2018 @ SPECIAL LEAVE PETITION [C] NO.9283 OF 2014
AND
C.A. NOS. 9872-73 OF 2018 @ SPECIAL LEAVE PETITION [C] NOS. 22539-22540 OF 2008

J U D G M E N T

ARUN MISHRA, J.

1. Leave granted.

2. The question involved is whether after the abolition of Jagirs by virtue of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as 'the Abolition Act'), the late Jagirdar or his legal representatives could have claimed the compensation on the land acquisition being made particularly when land has vested in the State of Himachal Pradesh, the land was not under the personal cultivation, and particularly when they have received the compensation under the Abolition Act, apart from that had also received the compensation under the provisions of H.P. Ceiling on Land Holdings Act, 1972 (hereinafter referred to as "the Ceiling Act").

3. The facts project how a litigant has filed a slew of litigations one after the other and faced with a situation that it was likely to be dismissed, he would withdraw it; again, file it on new grounds, or having lost it, would withdraw it again at appellate stage, and in the meantime, in different proceedings by playing fraud, getting unjust enrichment by receiving compensation at the expense of public exchequer.

4. The facts in the instant case reveal that Late Rajinder Singh, son of erstwhile ruler Late Maharaja Padam Singh was Jagirdar of the land, and thus was recorded as owner of thousands of bighas of land in Tehsil Rampur, Sub-Tehsil Nankhari and Tehsil Rohru of erstwhile Mohasu district which is presently a part of Shimla district and Tehsil Nichhar of district Kinnaur of State of Himachal Pradesh.

5. The land in village 'Jhakri' of 393 khasra numbers admeasuring 1011 bighas, 6 Biswas was declared to have vested in the State under section 27 of the Abolition Act and the intermediary Rajinder Singh as per order dated 14.11.1962 was permitted to retain only 64.12 bighas of land which was under his personal cultivation. In Himachal Pradesh, one acre comprises 5 bighas of land. Vide order dated 19.9.1964 passed by the Assistant Collector, the order of vesting was modified to the extent that he was given 13 bighas 12 Biswas of land comprised in Khatauni No.1 out of 14 Khasra numbers, i.e., 14, 122, 125, 142, 143, 165, 212, 238, 241, 288, 423, 494, 511 and 512. Some of the aforesaid survey numbers were unmeasured. However, the fact remains that the total area which was found to be under personal cultivation, was 13 bighas, 12 Biswas.

6. Late Jagirdar Rajinder Singh assailed the order of vesting dated 14.11.1962 by filing W.P. [C] No. 15/1962. Before the Judicial Commissioner who used to hear writ petitions at the relevant time,

held that the land which was not under personal cultivation, would not vest in the State unless and until compensation was paid.

7. Pursuant to the order of vesting, the competent authority under the Abolition Act i.e. Compensation Officer, Mahasu, vide order dated 12.4.1966 determined the compensation of Rs.28,019.45. Since the Zamindar had already received an amount of Rs.1,703.25 in excess from the tenants who had acquired proprietary rights under section 11 of the Abolition Act, same was deducted from the amount and the amount payable was found to be Rs.26,316.20 and it was actually paid on 6.5.1966.

8. As against the order passed by the Compensation Officer dated 12.4.1966, the appeal was preferred before the District Judge, Mahasu. The appeal was partly allowed and the direction which was made of deduction of Rs.1703.25 was set aside and the payment of entire Rs.28,019.45 was ordered without aforesaid deduction.

9. As against the decision of the Judicial Commissioner dated 14.11.1962, the matter travelled to this Court in C.A. Nos.1186-1191/1966. This Court held that vesting under section 27, the right, title and interest of the owner in landholding in case land revenue of the holding exceed Rs.125 per year, would vest free from all encumbrances in the State Government and the vesting is automatic and without being contingent on the happening of any other event.

Compensation and rehabilitation grant can be determined and paid later. This Court in the order dated 17.9.1969 made the following observations:

> "It is apparent that S.27 deals with lands the annual land revenue of which exceeds Rs.125 per year. It says in unequivocal terms that the right. title and interest of the owner in such lands shall be deemed to have been transferred land vested in the State Government free from all encumbrances. This essentially means that on the enforcement of the Act the vesting takes place automatically and without being contingent on the happening of any other event. The High Court in the full Bench decision referred to above took the same view and was right in observing that wherever the legislature intended to defer the date of vesting such as in S.11 and 15 clear provisions were made to that effect and the reasons thereof were obvious. In 8.11 the tenant had to exercise the option to acquire the right. title and interest of the landowner. The vesting of such rights-would necessary depends on the time of the exercise of such option. Similarly in 8.15. a future date had to be provided in view of its special provisions. We do not consider that the provisions of sub S.53 (3) and (4) of S.27 contain any indication that the vesting of rights of ownership in the Government would be dependent on the determination of compensation. The vesting takes place under sub-S. (1) immediately on the enforcement of the Act. Thereafter, under sub-S. (3) compensation has to be paid to the landowner in accordance with the provisions mentioned therein. Under sub 8(4) the State Government shall transfer the rights of ownership to a tenant who cultivates the land only on payment of compensation. That cannot prevent or have any bearing on the vesting which takes place under sub S(1). The payment of rehabilitation grant which is provided by sub 8(5) to a small landowner strengthens the reasoning in favour of vesting being automatic and immediate under sub S(1). <u>There can</u>

> be no manner of doubt that in respect of land which falls within the ambit of S.27(1) transfer and vesting of the rights of ownership to and in the Government takes place immediately on the enforcement of the Act and thereafter compensation and rehabilitation grant are payable.
>
> For all these reasons, the appeals are allowed and the decision of the learned Judicial Commissioner is set aside. The cases are remanded to the High Court for disposal of the questions which were not decided. In view of the entire circumstances, there will be no order as to costs."
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> (emphasis supplied)

This Court remitted the matter to the High Court for disposal of the questions which were not decided. In particular, the question of personal cultivation of Jagirdar as that land was only saved from vesting.

10. Faced with the observation made by this Court that the land which is not under personal cultivation vested automatically in the State and as after remand the High Court was required to decide the matter in view of the said observations of this Court, Rajinder Singh prayed for withdrawal of W.P. No.15/1962 with permission to file a civil suit. The High Court vide order dated 9.7.1970 permitted to withdraw the writ petition with liberty to file a civil suit. Thus, the mandate of this Court in the order dated 17.9.1969 to decide the question of personal cultivation was avoided by the withdrawal of writ petition.

11. Late Rajinder Singh then filed Civil Suit No.15/1970 in which he took a somersault and prayed for a declaration of title and sought a declaration that the suit property was not the 'land' under Section 2(5) of the Abolition Act and as such it did not vest in the State of Himachal Pradesh. The case of personal cultivation was abandoned by him. The trial court framed the issues; whether the plaintiff was in possession of the land in dispute and whether the disputed land, in whole or in part, vested in the State Government? The issue was also framed whether the land in dispute is covered under the definition of 'land' in the Abolition Act. What is the effect of the decision dated 12.4.1966? The issue was also framed with respect to the finality of the decision of the Compensation Officer dated 12.4.1966, and whether the suit was barred as the order had attained finality. The trial court also framed the issue with respect to the aspect whether the plaintiff had received compensation of the part of the area in dispute and, as such, estopped from filing the suit.

12. The suit 15/1970 filed in the High Court was dismissed on 26.6.1973. The High Court has held that the suit land was within the purview of the term 'land' as defined in the Abolition Act and the plaintiff was not in the personal cultivation of the said land. Hence, the entire land had vested in the State Government under section 27 of the Act on 26.1.1955, the date on which the Abolition Act came into

force. It was held that the plaintiff was not the owner of the said land. The High Court has recorded the following findings:

> "25. In this view of the matter I hold, that the land in dispute is decidedly land as defined in the Abolition Act and the plaintiff not being in the personal cultivation of such land, the entire of it has vested in the State Government under section 27 of the Act. The two issues are thus decided against the plaintiff.
>
> 41. In view of my decision given above for respective issues, the relief of declaration cannot be granted. The disputed land has automatically vested in the State Government under section 27 on 26th January 1955, when the Abolition Act came into force. As such the plaintiff is not the owner of such land. Since the plaintiff has not proved his "personal cultivation" for such land, the same is not exempt from vestment under sub-section (2) of section 27. The executive instructions issued by the defendants, for this reason, cannot be considered to be wrong or illegal. The plaintiff is not entitled to any relief."

The High Court in C.S. No.15 of 1970 also decided issue Nos.5, 11 and 12 and held that the suit was expressly barred by estoppel and also by *res judicata*. The suit being for the mere declaration was not maintainable and was barred under section 34 of the Specific Relief Act, 1963.

13. Rajinder Singh filed the appeal before Division Bench of the High Court as against the judgment and decree dated 26.6.1973 of Single Judge. The first appeal was ultimately withdrawn by making a statement by his counsel that the disputed land had been acquired

under the provisions of section 8 of the H.P. Ceiling on Land Holdings Act, and the compensation had been paid to the appellant. In view of the subsequent event, prayer was made to withdraw the suit and appeal as it had become infructuous. However, the High Court on 23.6.1986 permitted the appellant to withdraw the suit with permission to file a fresh suit in respect of the subject matter of the suit on the same cause of action in case there was any necessity to file such a subsequent suit, and the appeal was dismissed as infructuous. It is apparent that the appellant has accepted the factual position that land was declared surplus and he has received compensation of the disputed land under the provisions of the Ceiling Act, 1972. From which actual factual position and admission, he has tried to wriggle out falsely in the instant matter.

14. The withdrawal of suit C.S. No.15 of 1970 was aimed at defrauding the court as the trial court has held that the suit land was not personally cultivated as such, it had vested automatically in the State Government and it was the 'land' as defined in the Abolition Act and the plaintiff was estopped from filing a suit. During the pendency of the aforesaid matter in spite of the land having been vested in the State, under Abolition Act compensation was obtained second time under the provisions of the Ceiling Act, though the compensation was

earlier too paid to him as determined by the Compensation Officer in 1966.

15. The Ceiling Act was enacted in the year 1972 and it provided for consolidation of holding and amend the laws relating to ceiling on land holdings. Section 11 of the Act of 1972 provided that the surplus land would vest in the State, and would be deemed to have been acquired by the State Government free from all encumbrances for a public purpose on payment of a certain amount.

16. On 10.6.1980 the Collector (Ceiling) that is the Sub-Divisional Officer declared 10,027.5 bighas of land as surplus. It was not questioned by Rajinder Singh. Compensation was determined and also paid. The reference was made by the department that the additional land was required to be declared as surplus. On 5.9.1985, Financial Commissioner (Appeals) decided references and did not interfere in the aforesaid declaration of land as surplus, however conclusively held that additional land was required to be declared surplus. The declaration of 10,027.5 bighas of land as surplus vide order dated 10.6.1980 was not sufficient. The case was accordingly remanded. The limited remand order also attained finality. Ultimately order was passed by the Collector, Rampur Bushahr, Distt. Shimla, on 10.11.1993. It was observed that the compensation of Rs.57,888.80 had been received for the land that had already been declared surplus

i.e. 10027.5 bighas. It was also held that in the order dated 10.6.1980, two units of permissible area to the landowner and his minor son were erroneously allowed, therefore, the additional area of one unit given to minor son was declared as surplus. It was held that family of Rajinder Singh was entitled only for one unit and the final draft statement was accordingly published.

17. The area in question has also declared a surplus in 1980 and acquired by State under section 11 of Ceiling Act before the land acquisition was started in 1987 and the order dated 10.6.1980 declaring 10,027.5 Bighas of land as surplus so far as Rajinder Singh was concerned attained finality as it was not questioned by him.

18. As against the order dated 10.11.1993 declaring additional approximately 9000 bighas of land as surplus, the appeal was filed, the same was dismissed by the Commissioner on 30.8.1996. Against the said appellate order revision was filed before the Financial Commissioner and the same was dismissed on 18.1.2002. On 1.8.2013 the Commissioner passed an order upholding the mutation order against which revision was filed before the Financial Commissioner. Ultimately the review petition was also dismissed as not maintainable which the appellant is stated to have questioned.

19. With respect to the present acquisition proceedings out of which appeal arises, notification under section 4 was issued on 9.1.1987 for the acquisition of land for H.P. State Electricity Board for construction of an approach road at Jhakri. The Electricity Board was later on replaced by Nathpa Jhakri Power Corporation (NJPC) and later on by the appellant Satluj Jal Vidyut Nigam. The Land Acquisition Collector passed an award on 24.2.1989 determining the rate of compensation at the rate of Rs.20,000 per bigha. However, it was observed in the award that there was a dispute about the ownership of Rajinder Singh. Hence, it was ordered that compensation should not be disbursed in view of the pendency of ceiling proceedings. It be deposited in a bank instead of court. A reference was sought under section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the LA Act'). The Reference Court vide award dated 23.7.1991 determined the compensation at the rate of Rs.1 lakh per bigha.

20. Another acquisition proceeding was initiated by issuance of notification under section 4 which was published in the Official Gazette for the acquisition of land for the purpose of construction of residential colony for the Jhakri Hydel Power Project. On 11.7.1988 amended notification under section 4 was issued. On 27.2.1991 award was passed according to the classification of the land. On 4.7.1991, a supplementary award was passed. The references were made to the

Court. The Reference Court awarded Rs.1 lakh per bigha vide award dated 27.3.1997.

21. As against the award passed by the Reference Court appeals were preferred before the High Court. It was contended that the land acquisition proceedings were commenced in collusion with the Government officials. The land stood vested in the Government under the Abolition Act. There was no question of acquiring the same. A prayer was made in the appeals to file additional documents under Order 41 Rule XXVII and to amend the written statement. The High Court dismissed the said applications along with appeals.

22. As against the dismissal of the appeals and the applications, C.A. Nos.3741-52 and 3753-57 of 2001 were filed in this Court by the appellant. They were decided on 3.5.2001. The judgment of the High Court was set aside. The applications under Order 41 Rule XXVII and Order 6 Rule XVII were allowed. This Court in the final order dated 3.5.2001 observed:

> "In course of hearing of the appeals it was fairly agreed by learned counsel for the parties that keeping in view the facts and circumstances of the case and the contentions raised it will be apt and proper to remand the matter to the High Court for fresh disposal taking into consideration the averments in the amendment petition and the documents filed as additional evidence. Such an order in the fact situation of the case will serve the ends of justice.

> In view of the agreed position fairly stated by learned counsel for the parties and in our view, rightly, we allow these appeals, set aside the judgment of the High court which is under challenge; allow the petitions filed by the appellants under Order 6 Rule XVII CPC and under Order 41 Rule XXVII CPC and remand the matter to the High Court for fresh disposal in accordance with law after giving opportunity of hearing to the parties."

23. After the case was remitted to the High Court, appeals have been dismissed vide impugned judgment and order dated 25.2.2008. Aggrieved thereby the appeals have been preferred by Satluj Jal Vidyut Nigam.

24. The Reference Court decided 72 land reference cases wherein it was held that the respondents were neither the owner nor in possession of the land under acquisition, and the land in question stood vested in the State of Himachal Pradesh. The award was challenged by way of Regular First Appeal and the same is stated to be pending in the High Court.

25. Civil Appeals arising out of SLP [C] No.9281/2014 arise out of a common judgment dated 18.9.2013 passed by the High Court. Writ petitions were filed before the High Court by one of them by Sita Devi & Ors. being CWP No.2931/2010 with respect to a redetermination of compensation. They were decided by a common judgment and order dated 18.9.2013 and it has been held that notwithstanding the fact

that Rajinder Singh may not have a title, the status of the appellants had been held to be that of bona fide transferees earlier and that order has attained finality and was not questioned in appropriate proceedings. Thus, they were entitled to the re-determination of compensation under section 28A of the LA Act. Satluj Jal Vidyut Nigam has filed the appeals impugning the judgment in the year 2014.

26. It was urged on behalf of the appellant that the respondent Rajinder Singh has received compensation 3 times with respect to the same land. Firstly, in 1966-67 he had received a sum of Rs.28,019 as compensation due to the vesting of entire land in the State Government and the Compensation Officer had determined the same under the Abolition Act. The land, in any event, had vested in the State. The second time the compensation of Rs.57,388/- had been received in the year 1980-81 under the Ceiling Act, 1972. For the third time, the respondent has received compensation in a sum of Rs.60 lakhs. The respondent has committed a serious fraud. It was also urged that Rajinder Singh has filed W.P. No.256/1979, the High Court dismissed the writ petition and observed that the respondent has acted unfairly knowing fully well that the land had already vested in the State and made other observations regarding successive litigations preferred by the respondent and the withdrawal of RFA No.9/1973.

27. Learned Additional Solicitor General appearing on behalf of the appellants further urged that as per the principle, fraud vitiates, the respondents are not entitled to any compensation. They could not be permitted to take advantage of the continuance of wrong entry. There was no title left with Rajinder Singh as the land had vested automatically in the State under the Abolition Act. The LAO had also directed not to pay the compensation owing to the ceiling case in which Late Rajinder Singh has already received the compensation and land had been declared surplus. The question involved is not of determination of title under sections 18 and 30 of the LA Act but the title stood extinguished is apparent from Section 27 and ceiling proceedings of which evidence has been permitted to be adduced by this Court. Even the LAO and the Reference Court have ordered that there was no title with Rajinder Singh, as such, compensation was not to be paid. The effect of previous proceedings and the overall conduct of Rajinder Singh ought to have been taken into consideration by the High Court. The observation made by the High Court that it could not go into the question of the title of Rajinder Singh in the proceedings is wholly incorrect as it is the serious case of fraud, the title has already been adjudicated conclusively and lost in other proceedings. It was not a case of an adjudication of title in the present proceedings. The effect of Section 27 proceeding and that of ceiling Act case was required to

be considered. The High Court could not have permitted the perpetuation of fraud while dismissing the first appeal after this Court has remitted the matter to it.

28. It was further urged that the observation made by the LAC in his award in 1989 not to make payment of compensation, due to ceiling case was wholly legal and valid. Even the Reference Court has held in the cases that there was no title with the respondents and the appeal against the same R.F.A. is pending in the High Court. The High Court ought to have exercised the supervisory power as there was an error apparent on the face of the record and to prevent abuse of process of law. When the principle of 'fraud vitiates' is attracted, the label of proceedings is not material and the court is bound to look into same and relegation to a remedy of the civil suit could not be said to be appropriate in the facts of the instant case.

29. It was contended by learned senior counsel on behalf of LRs. of Late Rajinder Singh that the question of the pre-existing right of the State cannot be gone into in these proceedings. The land in question did not vest in the State under the Abolition Act. Even if the amendment of pleadings and additional evidence had been allowed by this Court, the pre-existing right of the State over the property cannot be gone into in proceedings under section 18 or 30 of the LA Act. It was not open to the State Government to question the title of the land-

owners in reference proceedings. The State had filed an appeal against the reference order which was dismissed on 3.6.2004 as barred by limitation. It was also contended that the land did not vest in the State as it was under personal cultivation. Under the Abolition Act, there was vesting of land which was under tenancy only. Land in question was not within the purview of the term 'land' as defined in section 2(5) in the Abolition Act, as such, there was no vesting of the same in the State. Though, 1011 bighas and 6 Biswas of land in village Jhakri vested in the State and mutation-order was made on 27.2.1962. However, certain other lands which were under personal cultivation had been excluded, later on, the Compensation Officer also passed an order determining compensation on 12.4.1966 which was in respect of tenancy land and not in respect of land under personal cultivation or the land not assessed to land revenue. Tenants have been given the rights over the land mentioned in the order dated 12.4.1966 passed by the Compensation Officer.

30. It was also contended that the land under personal cultivation was mentioned in the revenue records as 'Banjar Kadim' which could not be said to be 'land' within the meaning of Abolition Act nor it vested in the State Government. The area of Village Jhakri which was left with Rajinder Singh was 2119 bighas and 19 Biswas. The said land did not vest in the State. After remand of the case from this Court

under Section 27 of Abolition Act, the writ petition was withdrawn and civil suit No.15/1970 was filed and the same was dismissed by the High Court. The suit was also withdrawn in appeal as such there was no adjudication of the rights in the previous rounds of proceedings.

31. Learned counsel on behalf of the respondents further contended that at the time of land acquisition neither the land was finally declared surplus nor possession was taken under the Ceiling Act, as such it did not vest in the State unless the possession was taken. The acquisition of land under the LA Act is protected under the Ceiling Act. The statement made by the counsel on behalf of the Power of Attorney-holder of Rajinder Singh during the course of the first appeal withdrawing Suit No.15/1970 was incorrect. As the order passed by the Collector in ceiling case declaring the land surplus had been set aside by the Financial Commissioner. As such an incorrect statement was made before the High Court; maybe it was made in ignorance of the facts. Earlier vide order dated 10.6.1980, 10027.5 bighas of land was declared surplus and vide order dated 10.11.1993, additional 9679 bighas total 19706.5 bighas was declared as surplus. Even if compensation was collected, it would not make any difference as the land did not vest in the State unless possession was taken.

32. Following questions arise for consideration:

(i) whether land has vested in State under the Abolition Act, and effect of acceptance of compensation under the said Act?

(ii) Effect of the proceedings under the Ceiling Act?

(iii) Effect of withdrawal of Civil Suit No.15/1970 in appeal.

(iv) Whether the question of right, title or interest of Late Rajinder Singh or his successors to obtain compensation can be considered in the proceedings under sections 18 and 30 of the LA Act? Particularly, on the basis of the principle "fraud vitiates".

(v) Whether the respondents who are claiming on the basis of patta /transfer made by Rajinder Singh, are bona fide transferees and entitled to compensation?

Question No.1: In Re. the effect of the H.P. Abolition of Big Landed Estates, Act, 1953

33. After Independence was achieved, in order to bring the agrarian reforms, the Abolition Act was enacted in the State of Himachal Pradesh which came into force on Republic Day w.e.f. 26.1.1955. The Abolition Act has been enacted to provide for the abolition of the big landed estates and to reform the law relating to tenancies and to make provisions for matters connected therewith in Himachal Pradesh. 'Estate', 'land-owner' and 'holdings' have been defined in section 2(3) of the Abolition Act and have the meanings respectively assigned to these words in the Punjab Land Revenue Act, 1887 as in force in Himachal Pradesh immediately before 26.1.1950.

34. The terms ‘estate', ‘land-owner' and ‘holding' have been defined under sections 3(1), 3(2) and 3(3) of the Punjab Land Revenue Act, 1867are extracted hereunder:

> “3. Definition: - In this Act, unless there is something repugnant in the subject or context; (1) “estate” means any area— (a) for which a separate record-of-rights has been made; or (b) which has been separately assessed to land revenue, or would have been so assessed if the land-revenue had not been released, compounded for or redeemed; or (c) which the State Government may, by general rule or special order, declare to be an estate;
>
> (2) “land-owner” does not include a tenant or an assignee of land-revenue, but does not include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof , or in the enjoyment of any part of the profits of an estate;
>
> (3) “holding” means a share or portion of an estate held by the land-owner or jointly by two or more land-owners.”

35. Estate means any area for which a separate record of rights has been made; or which has been separately assessed to land revenue or would have been so assessed if the land revenue had not been released, compounded for or redeemed. Definition of ‘land-owner’ does not include a tenant or an assignee of land revenue, and holding

means a share or portion of an estate held by the landowner or jointly by two or more persons.

36. The word 'holding' as defined in the Punjab Land Revenue Act, 1887 would mean an estate which means any area for which a separate record of rights has been made or which has been separately assessed to land revenue, or would have been so assessed to land revenue in case it had not been released, compounded for or redeemed, or has been declared to be an estate by the State Government. Thus, expression 'holding' would include the area of an estate also if it is assessed or would have been assessed but for release, compounding or redeeming of land revenue. As per the definition of the estate in section 3(1) of the Punjab Act, estate means any area for which separate record of rights has been made. The expression land-owner used in Section 27 has to be understood as defined in section 3(2) of the Punjab Act. Similarly, the definitions of 'estate' and 'holding' in the Punjab Act assume significance.

37. The 'land' has been defined in section 2(5) of the Abolition Act thus:

> "(5) "land" means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes –
> (a) the sites of buildings and other structures on such land,

(b) orchards,
(c) g*hasnies;*"

38. The 'landlord' has been defined in section 2(6) of Abolition Act to mean a person under whom a tenant holds land, and to whom the tenant is or but for a contract to the contrary, would be liable to pay rent for the land. Chapter II of the Abolition Act deals with the rights of occupancy of a tenant. Acquisition of proprietary rights by tenants has been dealt with in Chapter III from sections 9 to 27. Section 9 provides for the appointment of Compensation Officer. Section 11 deals with the right of the tenant to acquire the interests of the landowner. A tenant other than a sub-tenant can apply under section 11 for the acquisition of right, title, and interest of the landowner in the land of tenancy held by him under the landowner. Section 12 deals with the determination of the amount of compensation payable by a tenant for the acquisition of the right, title and interest of the landowner. Section 15 deals with the acquisition by the State Government of the rights of the landowner. Same is extracted hereunder:

> "15. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter but subject to the provisions of clause (d) and clause (g) of sub-section (1) of Section 54, the State Government may by notification in the Gazette declare that as from such date and in respect of such area as may be specified in the notification, the

> right, title and interest of the landowner in the lands of any tenancy held under him by a tenant shall stand transferred to and vest in the State Government free from all encumbrances created in such lands by the landowner.
>
> (2) With effect from the aforesaid date –
> (a) the landowner shall cease to have any right to collect or to receive any rent or any share of the land revenue in respect of such lands and his liability to pay the land revenue in respect of the lands shall also cease;
>
> (b) the tenant shall pay direct to the State Government the rent he was liable to pay to the landowners before the date of the notification; and
>
> (c) the consequences mentioned in clauses (b) to (f) of section 84 shall *mutatis mutandis* ensue."

39. Section 16 of Abolition Act deals with payment of compensation to the landowners for the acquisition of their rights. Section 16 is extracted hereunder:

> "16. The landowner whose right, title and interest in lands have been acquired by the State Government under Section 15 shall be entitled to compensation which shall be calculated as far as practicable according to the provisions of sections 12 and 13."

40. Interest on compensation is payable under section 18 of Abolition Act. Section 19 deals with the claims for compensation and determination of such claims and in case of a dispute, it has to be

referred to civil court under section 20. Where the landowner is minor, it has to be deposited with the Collector or in any bank selected in this behalf by the State Government as provided in section 22. The Compensation Officer shall have the powers of a civil court under the Code of Civil Procedure for the purposes enumerated therein. Section 26 deals with the power to frame rules to carry out the purposes of the Chapter.

41. Section 27 of the Abolition Act deals with the vesting of rights of ownership in the Government. The right of the landowner whose landholding exceeds the annual land revenue of Rs.125 per year, the right, title and interest of such owner shall be deemed to be transferred and vested in the State Government free from all encumbrances. The vesting of such holding of the landowner is automatic in case revenue of the landholding is exceeded by Rs.125 per year. However, the only saving grace is provided under section 27(2) to the extent the land is under the personal cultivation of the landowner. The rights of intermediaries get automatically vested in the State Government under section 27(1), the landowner is entitled to receive compensation under section 27(3) to be determined by the Compensation Officer having regard to the provisions of sections 17 and 18 of the Abolition Act. Section 27 is extracted hereunder:

> "27. (1) Notwithstanding anything contained in the foregoing provisions of this

> Chapter, a landowner who holds land, the annual land revenue of which exceeds Rs.125 per year, the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free from all encumbrances.
>
> (2) Nothing contained in sub-section (1) shall apply in respect of such land which is under the personal cultivation of the landowner.
>
> (3) The landowner whose rights are acquired under sub-section (1) by the State Government, shall be entitled to receive compensation which shall be determined by the Compensation Officer having regard to Sections 17 and 18 of this Act, in accordance with the provisions of Schedule II, but in the case of such occupancy tenant who is liable to pay rent in terms of land revenue or the multiple of land revenue, the compensation payable to his landowner shall be computed in accordance with Schedule I.
>
> (4) The right, title and interest of the land-owner acquired under sub-section (1) or (2) shall be transferred by the State Government on the payment of compensation in accordance with Schedule I to such tenant who cultivates such land.
>
> (5) The State Government shall give rehabilitation grant according to the rules framed under this Act, to such small landowner whose right, title and interest have been extinguished and who does not have any other means of livelihood."

It is apparent from section 27 that it contains non-obstante clause and it is applicable to the land as defined in section 2(5) which

is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture. The definition is inclusive and wide and it covers the sites of buildings and other structures on such land, orchards, and ghasnies too. Thus, the definition of land being inclusive is very wide and in case the land revenue of the holding of Zamindar exceeds Rs.125 per year except for the land under personal cultivation, entire land holding would vest in the State Government and such vesting is automatic.

42. A reading of section 27 makes it clear that on the abolition of estates except for the land which is under personal cultivation of the landowner, vests in the State. Vesting is automatic and would not depend upon the payment of compensation and this has already been held by this Court vide order dated 17.9.1969 in the case filed by Late Rajinder Singh. It is crystal clear that vesting of the land is not confined to the land held under the tenancy right. The expression used in section 27 is “landowner” who holds the land. Thus, there is no scope for the submission that section 27 is applicable only to a land held by the tenant in tenancy. It is applicable to all kinds of land as defined in the Abolition Act held by the landowner and the definition of the land in Abolition Act is inclusive and would include all kinds of land in a town or village which is not occupied by any site of

the building. Thus, all land which is not occupied by any building situated in a town or building would vest in the State and a land which has been let for agricultural purpose or for purposes subservient to agriculture or for pasture including the sites of building and other structure of the land, orchard, and ghasnies would vest in the State. Thus, it is apparent that the land which is Banjar, Abadi, Gharat, Kalhu, and Gair-Mumkin are all covered under the definition of land.

43. The big estates were sought to be abolished by the H.P. Abolition Act. When section 27 of the Abolition Act and definition of land is read with 'holding' and 'estate' and 'landowner' as defined in the Punjab Land Revenue Act, 1887 it is clear that the land held by late Rajinder Singh definitely exceeded revenue of Rs.125 per year as is apparent from documents and various orders passed in the case. The object of the Abolition Act is to provide for the abolition of big landed estates and to bring land reform in the law relating to tenancies and to make provisions for matters connected therewith. The land holding of Late Rajinder Singh was a big estate and was definitely covered under the purview of the Act and in particular under section 27 and all the lands vested in the State except the land under his personal cultivation.

44. Thus, we are of the considered opinion that the area under personal cultivation which was saved in favour of Rajinder Singh was

64 bighas 12 Biswas only as specified. It is apparent from the order dated 27.2.1962 Khata No.1 Kita measuring 1011 bighas 6 Biswas vested in the ownership of Government of Himachal Pradesh in village Jhakri. In the review on 19.9.1964, there was only partial modification with respect to area 14 bighas 12 Biswas. The land revenue of land at Jakhri as apparent from Jamabandi of 1955-56 at the time when the Abolition Act came into force was Rs.155.58 it was more than Rs.125 as such the land which was Banjar kadim or otherwise not under personal cultivation had vested in the State.

45. Under the Abolition Act compensation was determined under the provisions of section 27(1) and was ordered to be paid by the Compensation Officer, Mahasu District, Kasumpti vide order dated 12.4.1966. Sum of Rs.28,019 had been paid to Rajinder Singh. Though payment of compensation was not a condition precedent for vesting of land it was automatic, Rajinder Singh was paid compensation also for the land mentioned in the order of Compensation Officer. Even if the compensation was not paid for some land, as that was not under personal cultivation had also automatically vested free from all encumbrances in the State.

46. The subsequent attempt made by Rajinder Singh to claim that the land was not covered under the definition of land, was wholly frivolous, unacceptable and was rightly rejected in C.S. No.15/1970

filed by Rajinder Singh. This Court in proceedings under section 27 of Abolition Act vide order dated 17.9.1969 ordered that the land only under personal cultivation was saved and not any other land. The finding recorded in the remand order on the question of law is binding otherwise also the position of law is what was held by this Court in the aforesaid decision. After this Court remitted the matter for examination of the question which was the land under personal cultivation that would only be saved from vesting. To avoid rigor of the order the writ petition was withdrawn by Late Rajinder Singh with liberty to file a civil suit and Suit No.15/1970 was filed. The stand taken was that the said land was Banjar, Abadi, Gharat, Kohlu, and Gair-Mumkin. The stand taken that the land was Ghasni that is wasteland and Banjar land itself indicated that the land was not under personal cultivation and thus as per the case set up in Civil Suit by the plaintiff, Rajinder Singh it was clear that he has abandoned the stand that the land was under personal cultivation and took the aforesaid stand. The said stand itself made clear that the land was not under personal cultivation, at the time of abolition and had vested in the State and we have no hesitation to arrive at the said conclusion based on the case set up by the plaintiff in the course of civil suit No.15/1970.

47. The Banjar land or Banjar Kadim is nonetheless the land as defined in section 2(5) of the Abolition Act. Apart from that, it is clear that ghasni land is also included in the definition of land, no doubt about it that growing of grass is for agriculture purpose. However, the pasture or grassland cannot be said to be under personal cultivation and such land would also vest in the State. The expression used is personal cultivation i.e. the cultivation by dint of his own labour. The agriculture is a wider term than personal cultivation and would include several aspects such as dairy-farming, the use of land as grazing, meadow or pasture land or orchard or other land or for market gardens or nursery grounds. The fructus naturales is the outcome of nature alone but such land cannot be said to be under personal cultivation as envisaged in the Abolition Act.

48. In *Jadab Singh & Ors. v. The Himachal Pradesh Administration & Ors.* AIR 1960 SC 1008, this Court considered the question of the abolition of estates which was declared invalid as having been passed by the State legislature which was not duly constituted. A validating Act was passed by the Parliament. This Court considered the legislature competence and constitutional validity of the Abolition Act. It was held that in view of Article 240 as it stood before its amendment by the Constitution (Seventh Amendment) Act, 1956, the Parliament was competent to enact the validating Act. The provisions of the

Abolition Act did not infringe Articles 19 and 31 of the Constitution of India and the Abolition Act fell within the protection of Article 31A of the Constitution and it was not open to challenge on the ground that it infringed Articles 19 and 31 of the Constitution. The intent of the Abolition Act is that the agrarian reforms by Abolition of Big Landed Estates have to be given the full effect. Once land has vested in the State, it was not open to Rajinder Singh on the basis of continuation of wrong entries in revenue records, to claim any right, title or interest much less compensation under the Ceiling Act as well as under the provisions of the LA Act. Thus, the entire land on the condition being satisfied with the landed holdings of a landowner the annual land revenue of which is Rs.125 or more, land vested in the State and not excess part over and above the land to which the said land revenue is ascribed, with the saving of personally cultivated land.

2. **In Re effect of proceedings under the Ceiling Act:**

49. We advert to the question as it has relevance though it is not necessary, in view of the findings recorded that land had vested in the State under the provisions of the Abolition Act.

50. The Ceiling Act came into force in 1972 providing a ceiling on agricultural holdings. Section 11 of the Ceiling Act is extracted hereunder:

> "11. Vesting of surplus area in the State Government-
> The surplus area of a person shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose on payment of amount hereafter provided and all rights, title, and interests (including the contingent interest, if any), recognised by any law, custom or usage for the time being in force, of all persons in such area shall stand extinguished and such rights, title and interests shall vest in the State Government free from any encumbrance:
>
> Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, only the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it."

51. Section 4 deals with the permissible ceiling area and section 6 defines a ceiling area in excess of the permissible area. The provisions of sections 4 and 6 are extracted hereunder:

> "4. Permissible area-
> (1) The permissible area of a landowner or a tenant or a mortgagee with possession or partly in one capacity or partly in another of person or a family consisting of husband, wife and up to three minor children shall be in respect of-
> (a) land under assured irrigation capable of growing two crops in a year- 10 acres.
> (b) land under assured irrigation capable of growing one crop in a year- 15 acres.
> (c) land of classes other than described in clauses (a) and (b) above including land under orchards-30 acres.

(2) The permissible area for the purposes of clause (c) of sub-section (1) for the districts of Kinnaur and Lahaul and Spiti, Tehsil Pangi and Sub-Tehsil Bharmaur of Chamba district, area of Chhota Bhangal and Bara Bhangal of Baijnath Kanungo Circle of Tehsil Palampur of Kangra district, and area of Dodra Kowar Patwar Circle of Rohru Tehsil and Pandrabis Pargana of Rampur Tehsil of Shimla district shall be 70 acres.

(3) The permissible area of a family under sub-section (1) shall be increased by one-fifth of the permissible area under sub-sections (1) and (2) for each additional minor member of a family subject to the condition that the aggregate permissible area shall not exceed twice the permissible area of family under sub-sections (1) and (2).

(4) Every adult son of a person shall be treated as a separate unit and he shall be entitled to the land up to the extent permissible to a family under sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-sections:
Provided that where the separate unit owns any land, the same shall be taken into account for calculating the permissible area for that unit.

(5) If a person holds land of two or more categories described in clauses (a), (b) and (c) of sub-section (1) and sub-section (2) of this section then the permissible area shall be determined on the following basis: -

(i) in the areas mentioned in sub-section (2) of this section, one acre of land mentioned in clause (a) of sub-section (1) shall count as one and a half acres of land mentioned in clause (b) of sub-section (1) and seven acres of land mentioned in clause (c) of sub-section (1); 1976.

(ii) in the areas other than the areas mentioned in sub-section (2) of this section, one acre of land mentioned in clause (a) of sub-section (1) shall count as one and a half acres of land mentioned in clause (b) of sub-section (1), and three acres of land mentioned in clause (c) of sub-section (1):

Provided that on the basis of ratio prescribed in clauses (i) and (ii), the permissible area shall be converted into the category of land mentioned in sub-section (2) and in clause (c) of sub-section (1) as the case may be, and the total area so converted shall not exceed 70 acres in case of clause (i) and 30 acres in case of clause (ii)].

(6) Where a person is a member of the family, the land held by such person together with the land held by all the members of the family shall be taken into account for the purpose of calculating the permissible area."

"6. Ceiling on land-
Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold whether as a landowner or a tenant or a mortgagee with possession or partly in one capacity and partly in another, the land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day."

52. The proceedings were initiated under the Ceiling Act and order was passed by Collector (Ceiling) on 10.6.1980 declaring 10,027 bighas 5 Biswas of land as surplus. It was mentioned in the order that the owner had taken compensation of Rs.57,888.80 which was

calculated under section 14 of the Act. Voucher details have been given as follows:

"

V.No.	Amount	Date of receiving compensation
61	18620-60	3.11.80
62	10900-00	5.11.80
63	15000-00	29.1.81
64	3935-65	20.3.81
65	9600-00	31.3.81

53. Now, the factum of withdrawal of the amount of compensation was disputed before us by contending that the compensation under the Ceiling Act had not been received. It passes comprehension that how it lies in the mouth to even contend in view of the clear statement made in the order passed by the competent authority and voucher numbers with the date on which payment had been made. Rajinder Singh did not question order dated 30.6.1980. On the contrary, reference was made by the Settlement Officer with respect to the order of the Competent Authority on the ground that his minor son was illegally allotted one unit. Financial Commissioner has taken the matter in Revision No.224/1982 against the aforesaid order. It was pointed out by the Settlement Officer that Rajeshwar Singh son of Rajinder Singh was minor and was not entitled to any land independently but was allotted one unit by the Collector (Ceiling). He was minor on the appointed day i.e. 24.1.1971 and Rajinder Singh and his family consisting of children including minor Rajeshwar Singh

were entitled to only one unit of permissible area. The Financial Commissioner in the order dated 5.9.1985 has held against Rajinder Singh that his minor son Rajeshwar Singh could not have been allotted one unit vide order of competent authority dated 10.6.1980, as such one unit more land has been allotted to the family than permissible under the ceiling law. It was also held that without enquiry transfers were held to be bona fide. Thus, the order passed by the SDO was set aside and the case was remanded to pass fresh order to declare the additional land as surplus than the one determined in the earlier order. The order of Competent Authority dated 10.6.1980 was not questioned by Late Rajinder Singh or his family members nor the order of Financial Commissioner passed on 5.9.1985 was questioned. It was not an order in favour of Rajinder Singh as contended on behalf of the respondents but was against his interest and remand order of 5.9.1985 directing additional land to be declared surplus also has attained finality. After remand, Collector (Ceiling) has declared additional land as surplus and total 19706 bighas 5 Biswas had been declared as surplus. As against the order passed by Collector (Ceiling) dated 10.11.1993, the appeal was preferred to the Commissioner which was dismissed on 30.8.1996. Revision filed against the said order was also dismissed on 18.1.2002 by the Financial Commissioner.

54. The fact is conclusively established that land in question had been declared as surplus and compensation under the Ceiling Act had also been received, even though the land had already vested in the State under the Abolition Act. Once the disputed land had been admittedly declared surplus in Ceiling Act vide order dated 30.6.1980, there was no question of payment of compensation to Rajinder Singh or to his legal representatives in proceedings initiated later on in the year 1987 under the L.A. Act. The Land Acquisition Collector in 1989 was justified in directing that the compensation determined should not be paid due to the effect of the Ceiling Act and that question was raised in the Reference Court also, it was incumbent upon the Reference Court to go into the aforesaid aspects. It was not fact situation that question of the title has been disputed and decided in reference proceedings but whether Rajinder Singh or his LRs. were entitled to claim compensation in view of the proceedings and that orders passed under the Abolition Act and Ceiling Act were definitely required to be gone into. Thus, we are of the considered opinion that once land has been declared surplus and compensation has been received. It was not open to receive it again in the land acquisition case.

(iii) In Re: Effect of withdrawal of C.S. No.15/1970 in appeal

55. Civil Suit No.15/1970 was dismissed on merits. Thereafter in the first appeal, it was withdrawn by Rajinder Singh before the Division Bench on 23.6.1986. Order dated 23.6.1986 passed by the High Court of withdrawal of C.S. No.15 of 1970 in first appeal No.9/1973 is extracted hereunder:

> "In the present appeal, the learned counsel for the appellant has given the statement that by an order dated 10.06.1980 passed by the Collector Rampur Bushahar in case State of Himachal Pradesh vs. Rajkumar Rajender Singh, under section 8 of Himachal Pradesh Land Ceiling Act, the disputed land has been acquired by the Respondent and the Appellant has been paid compensation for the same. He has further stated that in the view of this subsequent event he may be permitted to withdraw the suit and the appeal may be dismissed as having become infructuous.
>
> It is not disputed that the land in dispute in this appeal is also the subject matter of dispute in the order dated 10.06.1980 passed by the Collector Rampur Bushahar. As the land in dispute has been acquired and the appellant has been paid the compensation for the same, therefore, we are of the view that due to the subsequent events there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter and on the same cause of action. As a result, we allow the Plaintiff to withdraw the suit with permission to file a fresh suit in respect of the subject matter of the suit on the same cause of action in case there is any necessity to file such a subsequent suit. The suit is dismissed as withdrawn and the present appeal is dismissed as having become infructuous. The parties are left to bear their own costs of this appeal."

It was stated by the counsel for Late Rajinder Singh before the High Court in RFA No.9/1973 that compensation had been received by Rajinder Singh and order had been passed on 10.6.1980 by the Collector, Rampur under the Ceiling Act. The disputed land had been acquired by the State as such, the permission was sought to withdraw the suit and it was prayed that appeal be dismissed as infructuous. In our opinion, factually it was not an incorrect statement but it was correctly made in the High Court that land had been declared surplus and compensation had been received, the fact was supported by vouchers mentioned in the order dated 10.6.1980, and it was totally frivolous contention to the contrary raised by the respondents that compensation had not been received. It appears that the respondents have no respect for the truth and have tried to hoodwink the court at several stages by making false averments and statements to perpetrate fraud.

56. In essence, after this Court has remitted the matter to the High Court in the proceedings under the Abolition Act this Court has clearly held as per order dated 17.9.1969 in the case of Rajinder Singh that only the land under personal cultivation would be saved. Thereafter he has withdrawn the writ application of 1962, on the ground that disputed question of fact was raised in the writ application. It was in order to avoid adjudication in view observation of this Court made

against interest of Rajinder Singh in aforesaid order and the fact that as the land was not under personal cultivation, the writ petition was withdrawn and thereafter in C.S. No.15/1970 that was filed in which, Rajinder Singh had abandoned the case of land being under personal cultivation. On the contrary, raised the plea that it was not the "land" at all and as such it was not within the clutches of the Abolition Act.

57. A Single Bench of the High Court dismissed the suit on merits and has recorded the finding that the land was not under personal cultivation and it had vested in the State and it was the "land" as defined in section 2(5) of the Abolition Act. Thereafter Regular First Appeal which was preferred before the Division Bench was dismissed as infructuous and suit was withdrawn by aforesaid order dated 23.6.1986 on the ground that compensation had been received under the Ceiling Act, and land has been declared surplus. It is clear that once land has been declared surplus and compensation had been paid under the Ceiling Act. It was not the reason for withdrawal of Civil Suit No.15/1970 by the plaintiff Rajinder Singh that the land was personally cultivated by him. It was not at all open to Rajinder Singh or his LRs. to take inconsistent stands and contend in the present proceedings that land was under personal cultivation. They are estopped from doing it not only by conduct but by way of abandonment of the plea, having not taken it in C.S. No.15/1970. It

was not the ground made for withdrawal of suit that land was under personal cultivation. The effect is that order of vesting has attained finality even otherwise withdrawal of suit does not check running of limitation as provided in Order 23 Rule 2 CPC. It is futile and too late in the day to allow the respondent to lay such a claim.

58. As a matter of fact, the withdrawal of civil suit No.15/1970 was made on the statement of learned counsel on behalf of plaintiff Rajinder Singh that disputed land had been declared as surplus in the ceiling proceedings, compensation had been received and under the provisions of the Ceiling Act. The suit was permitted to be withdrawn with liberty to file fresh suit whereas there was no such formal defect. Be that as it may. Once suit has been withdrawn on the ground that land had been declared surplus and compensation had been received it would create estoppel against the plaintiff to contend to contrary and from claiming compensation under the LA Act notwithstanding permission to file suit because as a matter of fact also, the disputed land had been declared surplus on 30.6.1980 and additional land in 1993. The land declared as surplus in 1980 attained finality, as well as order of the Financial Commissioner on 5.9.1985. Both the orders also attained finality. Thus, the order of remand dated 5.9.1985 having attained finality, and it would not be possible to reopen it at any subsequent stage. Thus, the orders dated 30.6.1980 and 5.9.1985

having attained finality vis a vis to Rajinder Singh and compensation having been received, as the land in question was declared surplus under the Ceiling Act. No right, title or interest survived with Rajinder Singh or his successors to claim compensation under Land Acquisition Act.

59. The proceedings were initiated in the year 1987 for the acquisition of land whereas the order of ceiling was passed earlier in 1980 and 1985 and subsequently the surplus area was increased in 1993. By no stretch of any principle of law, Late Rajinder Singh or his successors could have claimed compensation in the proceedings in question initiated under the LA Act in the year 1987. In our considered opinion the respondents Rajinder Singh and his family were not entitled to claim any monetary compensation under the LA Act for the said land. The amount that had been withdrawn under the LA Act, was wholly impermissible and tantamount to playing fraud upon the legal system. As a matter of fact, compensation has been taken for the land in the proceedings under the Abolition Act. Even if compensation in respect of certain land was not payable or paid, vesting would not depend upon the same. Land not under personal cultivation of Jagirdars had vested in the State, as such it was not open even to obtain compensation for the very same land either under the provisions of the Ceiling Act which has been received or under the

provisions of the LA Act. It was wholly impermissible and illegal and tantamount to scam committed by fraudsters. The cases were withdrawn one after the other just to perpetuate the fraud on the legal system by raising the inconsistent pleas and taking unfair and undue advantage of the wrong continuation of entries in the revenue papers.

(iv) In Re: Question of title under sections 18 and 30 of LA Act and effect of fraud :

60. Learned counsel on behalf of the respondents contended that the existing right of the State cannot be decided in the proceedings under section 18 or 30 of the LA Act. Even if the amendment has been allowed, it will not prohibit the respondents to raise untenability of such an objection. Even if amendment along with additional evidence had been allowed, it will not prohibit the raising of the plea that State cannot challenge the title in such proceedings. Reliance has been placed on the decisions of this Court in *Sharda Devi v. State of Bihar*, (2002) 3 SCC 705, *Meher Rusi Dalal v. Union of India*, (2004) 7 SCC 362, *Ahad Brothers v. State of M.P.,* (2005) 1 SCC 545, and *U.P. Awas Evam Vikas Parishad v. Gyan Devi,* (1995) 2 SCC 326, to contend that only the quantum of compensation can be questioned by local bodies and not the title of the landowners.

61. In the instant case, as already discussed, the LAO in the award dated 24.2.1989 has ordered compensation not to be paid as the land

has been declared surplus in the ceiling matter and further proceedings were pending after remand of the case in which additional land was declared surplus which was allotted illegally to minor son Rajeshwar Singh. The position further worsened in 1993.

62. In *Sharda Devi v. State of Bihar*, (2003) 3 SCC 128, the question arose whether Reference under Section 30 of Land Acquisition Act, 1894 was maintainable at the instance of the State of Bihar as it was the owner of the land and the land vested in the State. It was held that the State is not a person interested as defined under Section 3(b) of the Land Acquisition Act, 1894. This Court observed:

> "26. The scheme of the Act reveals that the remedy of reference under Section 18 is intended to be available only to a 'person interested'. A person present either personally or through representative or on whom a notice is served under Section 12(2) is obliged, subject to his specifying the test as to locus, to apply to the Collector within the time prescribed under Section 18(2) to make a reference to the Court. The basis of title on which the reference would be sought for under Section 18 would obviously be a pre-existing title by reference to the date of the award. So is Section 29, which speaks of 'person interested'. Finality to the award spoken of by Section 12(1) of the Act is between the Collector on one hand and the 'person interested' on the other hand and attaches to the issues relating to (i) the true area i.e. measurement of the land, (ii) the value of the land, i.e. the quantum of compensation, and (iii) apportionment of the compensation among the 'persons interested'. The 'persons interested' would be bound by the award without regard to the fact whether they have respectively appeared before the Collector or not. The finality to the award spoken of by Section 29 is as between the 'persons interested' interse and is confined to the issue as to the correctness of the apportionment. Section 30 is not confined in its operation only to 'persons interested'. It would, therefore, be available for being invoked by the 'persons interested' if they were neither present nor represented in proceedings before the Collector, nor were served with a notice under Section 12(2) of the Act or when they claim on the basis of

> a title coming into existence post award. The definition of 'person interested' speaks of 'an interest in compensation to be made'. An interest coming into existence post-award gives rise to a claim in compensation which has already been determined. Such a person can also have recourse to Section 30. In any case, the dispute for which Section 30 can be invoked shall remain confined only (i) as to the apportionment of the amount of compensation or any part thereof, or (ii) as to the persons to whom the amount of compensation (already determined) or any part thereof is payable. **The State claiming on the basis of a pre-existing right would not be a 'person interested', as already pointed out hereinabove and on account of its right being pre-existing, the State, in such a case, would not be entitled to invoke either Section 18 or Section 30 seeking determination of its alleged pre-existing right.** A right accrued or devolved post-award may be determined in a reference under Section 30 depending on Collector's discretion to show indulgence, without any bar as to limitation. Alternatively, such a right may be left open by the Collector to be adjudicated upon in any independent legal proceedings. This view is just, sound and logical as a title post-award could not have been canvassed up to the date of the award and should also not be left without remedy by denying access to Section 30. Viewed from this angle, Section 18 and 30 would not overlap and would have fields to operate independent of each other." (emphasis supplied)

63. The question in the instant case is as to whether an incumbent can be permitted to play blatant fraud time and again and court has to be silent spectator under the guise of label of the various legal proceedings at different stages by taking different untenable stands whether compensation can be claimed several times as done in the instant case and its effect. Before the land acquisition had been commenced in 1987, the land more than 1000 bighas had been declared a surplus in ceiling case and compensation collected, which indeed disputed land at Jhakari, it would be a perpetuating fraud in case such a person is permitted to claim compensation for same very

land. Fraud vitiates the solemn proceedings; such plea can be set up even in collateral proceedings. The label on the petition is not much material and this Court has already permitted the plea of fraud to be raised. Moreover, Appeal arising out of 72 awards is still pending in the High Court in which Reference Court has declined compensation on the aforesaid ground.

64. Reliance has also been placed on the observations made in *Meher Rusi Dalal v. Union of India*, (2004) 7 SCC 362, in which this Court has dealt with the issue of apportionment of compensation for which claim was raised by the Union of India, not in the capacity of the owner but as a protected tenant. The claim of tenancy was not put forth before the LAO, though represented in the acquisition proceedings. This Court observed that in such a case it could reasonably be inferred that no right was being claimed and it ought to have been made before the LAO if it had any such claim in respect of pre-existing right. The LAO was not under a duty to make an enquiry. The claim of tenancy at the belated stage was an afterthought to frustrate the payment. The decision has no application to the instant case as the LAO in the awards passed, noted the factum of ceiling proceedings as such the effects of the same can always be considered.

65. In *Ahad Brothers v. State of M.P.,* (2005) 1 SCC 545, this Court observed that question of the title of the State over the acquired land, cannot be decided under Section 18 of Land Acquisition Act, 1894. This Court considered that when an award has been passed and the appellant was recorded as owner in the revenue papers, he was entitled to receive compensation. There is no dispute in the aforesaid proposition, however, in the instant case facts are different and a person cannot be permitted to receive the compensation of vested land in State under the Abolition Act and when the land had been declared surplus and compensation paid on wrong entry continued. The same wrong entry could not have been permitted to be utilised for award of compensation to a person under the LA Act. In the instant case, there had been earlier proceedings which makes it clear that Rajinder Singh was not entitled to claim compensation under the LA Act. It is apparent that there was no subsisting right, title or interest left with Rajinder Singh or his LRs., thus, they could not be permitted to obtain the compensation.

66. Fraud vitiates every solemn proceeding and no right can be claimed by a fraudster on the ground of technicalities. On behalf of appellants, reliance has been placed on the definition of fraud as defined in the Black's Law Dictionary, which is as under:

> "Fraud means: (1) A knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Fraud is usually a tort, but in some cases (esp. when the conduct is willful) it may be a crime. (2) A misrepresentation made recklessly without belief in its truth to induce another person to act. (3) A tort arising from a knowing misrepresentation, concealment of material fact, or reckless misrepresentation made to induce another to act to his or her detriment. (4) Unconscionable dealing; esp., in contract law, the unconscientious use of the power arising out of the parties' relative positions and resulting in an unconscionable bargain."

Halsbury's Law of England has defined fraud as follows:

> "Whenever a person makes a false statement which he does not actually and honestly believe to be true, for purpose of civil liability, the statement is as fraudulent as if he had stated that which he did know to be true, or know or believed to be false. Proof of absence of actual and honest belief is all that is necessary to satisfy the requirement of the law, whether the representation has been made recklessly or deliberately, indifference or reckless on the part of the representor as the truth or falsity of the representation affords merely an instance of absence of such a belief."

In KERR on the Law of Fraud and Mistake, fraud has been defined thus:

> "It is not easy to give a definition of what constitutes fraud in the extensive significance in which that term is understood by Civil Courts of Justice. The Courts have always avoided hampering themselves by defining or laying down as a general proposition what shall be held to constitute fraud. Fraud is infinite in variety... Courts have always declined to define it, ... reserving to themselves the liberty to deal with it under whatever form it may present itself. Fraud ... may be said to include property all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust or confidence, justly reposed, and are injurious to another, or by which an undue or unconscientious advantage is taken of another. Al surprise, trick, cunning, dissembling and other unfair way that is used to cheat anyone is considered as fraud. Fraud in all cases implies a willful act on the part of anyone, whereby another is sought to be deprived, by illegal or inequitable means, of what he is entitled too."

67. In *Ram Chandra Singh v. Savitri Devi,* (2003) 8 SCC 319, wherein it was observed that fraud vitiates every solemn act. Fraud and

justice never dwell together and it cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata. This Court observed as under:

> "15. Commission of fraud on court and suppression of material facts are the core issues involved in these matters. Fraud, as is well-known, vitiates every solemn act. Fraud and justice never dwell together.
>
> 16. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by word or letter.
>
> 17. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud.
>
> 18. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injury ensues therefrom although the motive from which the representations proceeded may not have been bad.
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> *** *** ***
>
> 23. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous.
>
> *** *** ***
>
> 25. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res-judicata."
>
> (emphasis supplied)

68. In *Madhukar Sadbha Shivarkar v. State of Maharashtra*, (2015) 6 SCC 557, this Court observed that fraud had been played by showing the records and the orders obtained unlawfully by the declarant,

would be a nullity in the eye of law though such orders have attained finality. Following observations were made:

> "27. The said order is passed by the State Government only to enquire into the landholding records with a view to find out as to whether original land revenue records have been destroyed and fabricated to substantiate their unjustifiable claim by playing fraud upon the Tehsildar and appellate authorities to obtain the orders unlawfully in their favour by showing that there is no surplus land with the Company and its shareholders as the valid subleases are made and they are accepted by them in the proceedings Under Section 21 of the Act, on the basis of the alleged false declarations filed by the shareholders and sub-lessees Under Section 6 of the Act. The plea urged on behalf of the State Government and the de-facto complainants-owners, at whose instance the orders are passed by the State Government on the alleged ground of fraud played by the declarants upon the Tehsildar and appellate authorities to get the illegal orders obtained by them to come out from the clutches of the land ceiling provisions of the Act by creating the revenue records, which is the fraudulent act on their part which unravels everything and therefore, the question of limitation under the provisions to exercise power by the State Government does not arise at all. For this purpose, the Deputy Commissioner of Pune Division was appointed as the Enquiry Officer to hold such an enquiry to enquire into the matter and submit his report for consideration of the Government to take further action in the matter. The legal contentions urged by Mr. Naphade, in justification of the impugned judgment and order prima facie at this stage, we are satisfied that the allegation of fraud in relation to getting the land holdings of the villages referred to supra by the declarants on the alleged ground of destroying original revenue records and fabricating revenue records to show that there are 384 sub-leases of the land involved in the proceedings to retain the surplus land illegally as alleged, to the extent of more than 3000 acres of land and the orders are obtained unlawfully by the declarants in the land ceiling limits will be nullity in the eye of law though such orders have attained finality, if it is found in the enquiry by the Enquiry Officer that they are tainted with fraud, the same can be interfered with by the State Government and its officers to pass appropriate orders. The landowners are also aggrieved parties to agitate their rights to get the orders which are obtained by the declarants as they are vitiated in law on account of nullity is the tenable submission and the same is well founded and therefore, we accept the submission to justify the impugned judgment and order of the Division Bench of the High Court."
>
> (emphasis supplied)

69. In *Jai Narain Parasrampuria v. Pushpa Devi Saraf*, (2006) 7 SCC 756, this Court observed that fraud vitiates every solemn act. Any order or decree obtained by practicing fraud is a nullity. This Court held as under:

> "55. It is now well settled that fraud vitiated all solemn act. Any order or decree obtained by practicing fraud is a nullity. [See - (1) Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319 followed in (2) Vice Chairman, Kendriya Vidyalaya Sangathan, and Anr. v. Girdhari Lal Yadav, (2004) 6 SCC 325; (3) State of A.P. and Anr. v. T. Suryachandra Rao, (2005) 6 SCC 149; (4) Ishwar Dutt v. Land Acquisition Collector and Anr., (2005) 7 SCC 190; (5) Lillykutty v. Scrutiny Committee, SC & ST Ors., (2005) 8 SCC 283; (6) Chief Engineer, M.S.E.B. and Anr. v. Suresh Raghunath Bhokare, (2005) 10 SCC 465; (7) Smt. Satya v. Shri Teja Singh, (1975) 1 SCC 120; (8) Mahboob Sahab v. Sayed Ismail, (1995) 3 SCC 693; and (9) Asharfi Lal v. Koili, (1995) 4 SCC 163.]"
>
> (emphasis supplied)

70. In *State of A.P. v. T. Suryachandra Rao*, (2005) 6 SCC 149, it was observed that where land which was offered for surrender had already been acquired by the State and the same had vested in it. It was held that merely because an enquiry was made, the Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud. Following observations were made:

> "7. The order of the High Court is clearly erroneous. There is no dispute that the land which was offered for surrender by the respondent had already been acquired by the State and the same had vested in it. This was clearly a case of fraud. Merely because an enquiry was made, Tribunal was not divested of the power to correct the error when the respondent had clearly committed a fraud.
>
> 8. By "fraud" is meant an intention to deceive; whether it is from any expectation of advantage to the party himself or from the ill will towards the other is immaterial. The expression "fraud" involves two elements, deceit, and injury to the person deceived.

The injury is something other than economic loss, that is, deprivation of property, whether movable or immovable or of money and it will include and any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver, will almost always call loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied. [See Dr. Vimla v. Delhi Administration, 1963 Supp (2) SCR 585 and Indian Bank v. Satyam Febres (India) Pvt. Ltd., (1996) 5 SCC 550]

9. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. (See S.P. Changalvaraya Naidu v. Jagannath, (1994) 1 SCC 1.)

10. "Fraud" as is well known vitiates every solemn act. Fraud and justice never dwell together. Fraud is a conduct either by letter or words, which includes the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. It is also well settled that misrepresentation itself amounts to fraud. Indeed, innocent misrepresentation may also give reason to claim relief against fraud. A fraudulent misrepresentation is called deceit and consists in leading a man into damage by willfully or recklessly causing him to believe and act on falsehood. It is a fraud in law if a party makes representations, which he knows to be false, and injury enures therefrom although the motive from which the representations proceeded may not have been bad. An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to a property would render the transaction void ab initio. Fraud and deception are synonymous. Although in a given case a deception may not amount to fraud, fraud is anathema to all equitable principles and any affair tainted with fraud cannot be perpetuated or saved by the application of any equitable doctrine including res judicata. (See Ram Chandra Singh v. Savitri Devi and Ors., (2003) 8 SCC 319.)

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13. This aspect of the matter has been considered recently by this Court in Roshan Deen v. Preeti Lal, (2002) 1 SCC 100, Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education, (2003) 8 SCC 311, Ram Chandra Singh v. Savitri Devi, (2003) 8 SCC 319 and Ashok Leyland Ltd. v. State of T.N. and Anr., (2004) 3 SCC 1.

14. Suppression of a material document would also amount to a fraud on the court, (see Gowrishankar v. Joshi Amba Shankar

Family Trust, (1996) 3 SCC 310 and S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1).

15. "Fraud" is a conduct either by letter or words, which induces the other person or authority to take a definite determinative stand as a response to the conduct of the former either by words or letter. Although negligence is not fraud it can be evidence of fraud; as observed in Ram Preeti Yadav, (2003) 8 SCC 311.

16. In Lazarus Estate Ltd. v. Beasley (1956) 1 QB 702, Lord Denning observed at pages 712 & 713: (All ER p. 345C)

> "No judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

In the same judgment, Lord Parker LJ observed that fraud "vitiates all transactions known to the law of however high a degree of solemnity".

(emphasis supplied)

71. In *A.V. Papayya Sastry v. Govt. of A.P.*, (2007) 4 SCC 221, this Court as to the effect of fraud on the judgment or order observed thus:

19. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed;

Fraud avoids all judicial acts, ecclesiastical or temporal.

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22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non-est in the eye of law. Such a judgment, decree or order --by the first Court or by the final Court-- has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings.

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38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the

> appeal finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.
>
> 39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and nonest and cannot be allowed to stand. This is the fundamental principle of law and needs no further elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as nonest by every Court, superior or inferior.

Supervisory jurisdiction of the court can be exercised in case of error apparent on the face of the record, abuse of process and if the issue goes to the root of the matter.

72. In *S.P. Chengalvaraya Naidu v. Jagannath,* (1994) 1 SCC 1, this Court noted that the issue of fraud goes to the root of the matter and it exercised powers under Article 136 to cure the defect. The Court observed:

> "5. The High Court, in our view, fell into patent error. The short question before the High Court was whether, in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court must come with clean hands. We are constrained to say that more often than not, the process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say

> that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.
>
> 6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Exhibit B-1S) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non-production and even non-mentioning of the release deed at the trial tantamounts to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Exhibit B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

73. In *K.K. Modi v. K.N. Modi*, (1998) 3 SCC 573, it was observed that one of the examples cited as an abuse of the process of the court is re-litigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to re-litigate the same issue which has already been tried and decided earlier against him.

74. Learned counsel for the respondent has placed reliance on the decision rendered in *Ujjagar Singh v. Collector, Bhatinda*, (1996) 5 SCC 14, wherein this Court examined the effect of coming into force of Punjab Land Reforms Act, 1972 and vesting of the surplus area in the State. In this case, the area in possession of landlord was declared

surplus under the Pepsu Act, but possession had not been taken by the State. It was held that area did not vest finally as the surplus area under the Pepsu Act, owing to coming into force of the new Act, the ceiling area must be determined afresh under the new Punjab Act. In the instant case, the order was passed in ceiling matter in the year 1980 and the adjudication order of Collector (Ceiling) was not questioned nor the order of remand to declare land as surplus and then the additional land was declared surplus in 1993. It was not the case of re-opening of the case. In fact, the land has vested in the State under the Abolition Act. Thereafter, compensation has been obtained, obviously once land has vested in the State, the possession of such land/open land is deemed to be that of the owner. In any view of the matter, in the facts and circumstances of the instant case, compensation could not have been claimed.

75. In *State of H.P. v. Harnama,* (2004) 13 SCC 534, this Court observed that possession of land was not taken and the tenant was in occupation of the land and had acquired ownership rights before the land was declared surplus as against the landlord. It was further observed that the land in question had been notified as surplus and the fact that the original owner of the land had been paid compensation, would be of no avail to the State if before the date of

actual vesting non-occupant tenant in possession of the land had acquired ownership rights. It is totally distinguishable and cannot be applied to the instant case.

76. Learned counsel on behalf of the respondent has referred to the decision rendered in *Madan Kishore v. Major Sudhir Sewal*, (2008) 8 SCC 744, wherein question arose with respect to entitlement of sub-tenant to apply under Section 27(4). It was held that the expression in Section 27(4), such tenant who cultivates such land, does not entitle a sub-tenant either to claim proprietary rights or apply for the same under Section 27(4). It was held that he was not a sub-tenant. The decision is of no help to the cause espoused on behalf of LRs. of Rajinder Singh.

In the peculiar facts projected in the case the principle fraud vitiates is clearly applicable it cannot be ignored and overlooked under the guise of the scope of proceedings under Section 18/30 of the LA Act.

In Re Q. No.5 Bona fide Transferees :

77. With respect to the appeals filed by SJVN Ltd. arising out of judgment and order of 2013 in the matter of bona fide transferees, filed in the year 2014, the High Court has held that the respondents are bona fide transferees from Rajinder Singh. However, it was pointed

out on behalf of the appellants that in 72 reference cases, the regular first appeal is still pending in the High Court. It has been held by the Reference Court that the claimants are not entitled to any compensation. In case regular first appeal is pending in the High Court as against the order of reference court against the respondents who claim to be bona fide transferees, obviously, the question of bona fide transferee has to be decided finally in the pending regular first appeal before the High Court. In case appeal has not been filed or has been decided, the compensation to follow the decision. We do not propose to give final verdict on issue at this stage. We leave the question open to the High Court to adjudicate. However, in case compensation has been paid to transferees, the compensation paid shall not be recovered till such time pending appeal is decided. In case no matter against transferees is pending and appeal has been decided in favour of land owners, obviously they have to be paid and this Order will not come in the way.

78. Resultantly, we allow the appeals and direct that the compensation that has been withdrawn by Late Rajinder Singh or his LRs. in the case of land acquisition, in original proceedings or under section 28-A shall be refunded along with interest at the rate of 12 percent per annum within 3 months from today to the

appellants/State, as the case may be, and compliance be reported to this Court. The appeals are accordingly allowed. We leave the parties to bear their own costs.

..... J.
(Arun Mishra)

New Delhi;
September 24, 2018.

..... J.
(S. Abdul Nazeer)