

Before the court of SDO@-cum- Collector , Sub-Division, Shillai, Distt. Sirmour,
H.P.

Ref No. Spl-01/2016

Date of Institution:30-06-2016

Date of decision :29-10-2016

In the Matter of

Democratic Youth Federation of India (DYFI) Unit Shillai(Through Sh Inder
Thakur & Others).

---Petitioner

V/S

All Gram Panchayats, Development Block Shillai (Through pradhan/Authorized
person).

----Respondent.

Sub:-Review with respect to shamlat Lands within Shillai Sub Division under
section 9-A of HP Village Common Land vesting and Utilization (Amendment)
Act, 2001

Present:-

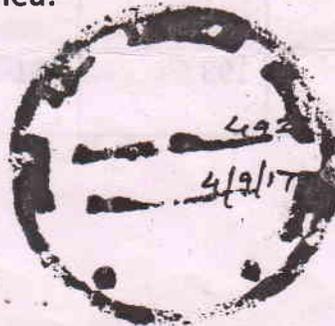
1. Sh. Inder Thakur, Distt. President, DYFI Sirmour.
2. Sh. Parkash Chand, Vice President GP Bakras.
3. Sh. Run Singh, President GP Bakras
4. Sh. Ramesh Chauhan, President GP Bella Bashwa
5. Respect Citizens of Locality Present.

ORDER:-

It has been observed , time and again, that Govt. department Like PWD, I &PH,
Block etc reiterate and registered their reservations for want of land for
development al purposes. During one of his visits the FC(A) cum Pr.Secy(PWD)
had instructed SDO(c) Shillai to ascertain the cause of this shortfall of land.
Accordingly a comprehensive report in this matter has been sent for his perusal
vide letter No. SDK/SDO(c) Shillai/2016-701, Dated 02-07-2016 . In the
meantime the democratic youth federation of India (DYFI) also filed a petition
on the same counts before this court, hence this proceedings.

That, following the footprints from above said report this court has decided
firstly, to ascertain the quantum of land effected due to the operation of HP
village common land vesting and utilization Act 1974 and its subsequent
amendments, Herein-contained:-

समावेष्टित
उपखण्डल शिल्लई
जिला सिरमौर (हि.प्र.)



O.K / Reader ✓

Reader's date
4/9/17

HALAN,PC

P.C. Panog	Mauza	Kite	Total	I.No	Ref.
1	Dahar 112/256 to 315	185	2053- 12	802 25/8/2002	No rapat
2	Jerwa	92	299-13	1105 to 1110 16/8/ to 25/8/2002	No rapat
	Junelli	88	333-18	do	do
Kinu Kulah	Pav 27 to 66 54	56	191-5	483 (25/08/02)	-
	Kulah 50 36 to 151	184	828-1	-	-
	Kinnu 91-232 to 258	54	295-9	-	-
	Panog 131/244 to 324	206	3978- 10	914(25/8/2002)	-
	Bindoli Khata no. 63/109 to 126	86	914-0	451 (25/8/2002)	-

In 1972 -: Shamlat land never vested in state govt. and it had already been partitioned vide misal no. 2/9 of 1972 (kite 445, total 1462-13, Intkal no 704(9/06/75) khata no (1967-1968

Shamlat	<u>850</u>	<u>851</u>	<u>851/1</u>	<u>853</u>	<u>853/1</u>
Patti Nichle	14-18	49-15	12-16	25-11	7-19
Jarva Hasab	<u>857</u>	<u>881</u>	<u>894</u>	<u>912</u>	
Rasad	1-19	1-6	0-6 (1-14	
Khenat					

P.C.Borad	Mauza	Kite	Total	I.No	Ref.
Borad	Borad 44/76 to	193	431-12	81 (25/07/02)	Rapat no. 374(23/07/02)

सिमावत,
उपमण्डल शिलाई
सिमौर (हि.प्र.)

	103				
	Bagnot 90/207 to 217	40	413-15	-	-
	Lanni 116/264 to 282	76	270-7	-	-
	Khalando 159/372 to 395	102	1081-6	-	-
Jaswi	Jasvi 96/180 to 218	164	823 -18	271 (25/07/02)	Rapat no. 372(22/07/02)
	Haryas 41/69 to 93	83	220-9	-	-
Koti	68 min./121 to 175	434	863-16	435 (23/07/02)	Rapat no 375 23/07/02
Bonch	Khats no. 97min. /995 to 278 min.	411	<u>2463-11</u> 2458-19	584 (26/07/02)	Rapat no 373(22/07/03) (4-12 used for sub-tehsil Ronhat)
Ajroli	Bijwa 45/93 to 113	58	653-15	444 (26/07/02)	Rapat no. 373 (22/07/03)
	Ajroli 71/161 to 172	50	185-4	-	-

Land Partitioned -: Koti – 8630 -16 ,intkal no. 510 (22-06-2010), Rapat number 391of 22-06-2010. Misal no. 1\9 decided on 09\12\2009 by A.C 1st grade , Shillai vide order no. 855.

P.C.	Mauza	Kite	Total	I.No	Ref.
Nainidhar					
Naina	Patti kalog <u>158</u>	75	820-18	<u>1089</u> 08/07/2002	

	394 to 422				
Rast	130min/ 331 to 448 and 450 min	375	<u>362-1</u> 3637-19	<u>772</u> 6/08/2002	34-2 Bighas in possession of govt.Deptt.
Shakholi	67/193 to 248	361	893-6	<u>620</u> 8/07/02	
Khadkaha	72-160 to 203	113	1748-14	<u>377</u> 10/06/02	

HALLAN,PC

	Mauza	Kite	Total	I.No	Ref.
Devthal	27/74 to 102 & 104	113	489 - 3	<u>192</u> 06/07/02	-
Loza Manal	230/369- 453	289	2993-17	<u>1365</u> 27/07/02	-
Hallan	214/ 369 to 441	408	2984 -10	<u>1460</u> 06/07/02	-
Tandiyo	-	89	0592-4	Never reverted under the act of '74.	-
Naya Panzod	-	-	1500-8	Taksim effected before 2002	-

DHARVA

	Mauza	Kite	Total	I.No	Ref.
DRABAL	104/173 TO 241	265	856.17	<u>963</u> 16/06/02	-
Jhakando	116/ 206 to 289	488	1626.0	-	-
Budeke	123/360 to 383	149	549-14	<u>848</u> 16/02/02	-
Kufti	-	57	394-2	-	-
Deval	147/372 to	70	249-3	-	-


 उपमंडल शिवाई
 जिला सिरमौर (हि.प्र.)

	384				
Bagnal	71/113 to 126	64	142-16	<u>676</u> 16/06/2002	-
Patti Dharva	42/213 to 265	36	3039-14	do	-

Total land with govt. 6858 - 06

Land reverted back to co- sharers----- 6858-06

KIYARI- GUNDAH

Gundah	Khewat / Khatoni no.	Khasra No
	537/1038 to 1406	1705 (salam -1325; min - 380

Batta -199), total measuring 17968 -6 big has (cultivable 935-2, non – cultivable - 17033-4).

Land vested in state govt. under act of 1974 – 18434 -18 land reverted back to co-shares vide act of 2001- 18433-6 (Intkal no.3656,

Shillai:- Concerning land comprised in khata no. 195 (716 to 945) khata no. 196 (946 to 947) and khata no 197 (948 to 959), kite -1204, total measuring 12769

Bighas , a private partition among 30 no. of co-sharers has already been effected vide intkal number 2067 in the year 1969-70.

Pab(Shilla) kh\kht no. 112(222 to 307) kite-277, 1196-16 Bighas, Intkal no.2047/31-03-02

Milla	Khata,khewat/kha no.	kite	Total	I.No.	Ref.
Milla Magnal Patti Milla	3370(192/408- 422)	21	29-13	<u>3370</u> 14/06/2002	-
Patti Magnal	267 (573 to 577	9	46-2	do	-
Salam Deh	371/min (764 to 940)	1114	5103-5	do	-
Patti Bindla	701 min (163to191)	236	1495-8	<u>100614</u> 06/02	-
	192 min (337 to 431)	14	457-0	1006	-


 उपमण्डल शिलाई
 जिला सिस्मौर (हि.प्र.)

Koti-Uttrao	199 min(337 to 431)	697	2699-0	<u>1075</u> 21/06/02	-
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KOTA - PAB

Kota	380min (719 to 889)	1102	6948-3	<u>2365</u> 14/06/02	-
Pab	39 min (123 to 164)	219	1005-6	<u>284</u> 14/06/02	-
Kyana	54 min (111 to 156)	220	872-10	<u>323</u> 14/06/02	-

CHAMRA - MOHRAD

Patti Kusanu	25	81	500-14	<u>783</u> 14/06/02	-
Patti Chamda	119(301 to 362)	220	2755-14	<u>783</u>	-
Patti Bobri	29	84	568-6	<u>718</u> 13/06/02	-

ZUAN

Zuan	61(113 to 116)	14	283-13	<u>376</u> 14/06/02	-
Patti Bagna	87 (136 to 171)	110	1030-7	<u>632</u> 31/05/02	-
Patti Sharog	114 (267 to 296)	274	994-11	<u>1047</u>	-

MANAL

Patti Manal	176	228	1363-11	<u>1800</u> 14/06/02	-
Patti Matiyana	218	2	1-0	1800	-

GWALI- PASHMI

	No	Kite	Total	I.No.	Ref.
Patti Pashmi	55 min	203	672-19	2342	-



समर्थन
उपमण्डल शिवाई
जिला सिरमौर (हि.प्र.)

In total, some 104143-0 bigha of land had vested in state govt. by the operation of H.P. Village Common land Vesting and Utilization act 1974, and out of this 104079 -12 bighas of land or 99.94% of land so vested has been reverted to co share through the allegedly misconceived implementation of s.3(2) (d) added vide Amendment Act of 2001---- A wholesale reversion after 27 years of original vestment. The entire land referred to above hereinafter called, the tabdeel malkiyat land in questions”.

In their petition before collector cum S.D.O. (c) Shillai the democratic youth federation of India (DYFI) sirmour unit, shillai categorically alleged that the entire development activities in shillai region had come to a sudden halt after allegedly ill- conceived implementation of H.P. village common land vesting and utilization (Amendment) Act 2001. They alleged that big land lords and influential people have encroached upon all water sources, roads, charands etc. in connivance with the revenue officials; in some instances such lands were wrongly put in the name of big landlords and influential people and the government as well as poor farmers had left without any land. The DYFI demanded to identify all such lands wrongly reverted back to joint-co sharers and its re-allotment to government and poor farmers and the land so re- reverted in future shall be put to common uses like playgrounds, sports hostel, sabzi mandi , bus station and other developmental works.

In retrospect, to eradicate the phenomenon of land lessness and to augment the pool of surplus land the govt. of H.P. enacted H.P. village Common land Vesting and Utilization Act 1974, here in after called the Principal Act. This Act placed shamlat (common) land at the disposal of the government for allotment among the landless and other eligible households.

The Principal Act sought to streamline the utilization of ‘Shamlet land’. In fact, separate rules with regards to the utilization of village common land prevailed on the eve of Punjab Reorganization Act, 1966. In Punjab, the governance of all such lands was done in terms of the Punjab Village Common land (regulation) Act, 1961, with certain exceptions in the Panchyats. The idea was, no doubt, laudable but in practice, the utilization of such lands by panchyats was open to criticism as certain unscrupulous elements occasionally circumvented the provision of the Act for their personal benefit. In old areas, however, such lands were either with the village communities or with the co- shares , with no control of the panchayats or the govt. under the principal Act certain categories of land were vested.


 सहायक,
 उपमण्डल शिलाई
 जिला सिरमौर (हि.प्र.)

Under the Himachal Pradesh Village Common Land Vesting and Utilization Act, 1974, certain categories of land were vested in the State Government . In terms of section 8 of the Act, the lands vested were as under :-

(a) Those areas which were vested in a Panchyat under section 4 of the Punjab Village Common Land (Regulation) Act, 1961, as enforced in merged areas of Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966. This precluded lands used or reserved for the benefit of village community including streets, lanes, play-grounds, Schools, wells and ponds within Abadideh or Gohrdeh.

(b) Those areas which were described in the Revenue records as shamlat taraf, patties and thola, and not used as per revenue records for the benefit of the village community or a part thereof for community purposes of the village . This applied to those areas which were added to Himachal Pradesh under section 5 of the Punjab re-organization Act, 1966.

(c) Those areas which were described in revenue records as shamlat, shamlat ,deh, taraf, shamat, shamlat chak and patti. This applied in respect of those areas which comprised Himachal Pradesh immediately before November 1,1966.

The above provisions shall not apply to land described in (b)and (c) categories above if, before the commencement of the Act:-

(1) Partition of such lands is made by individual co-sharers through a process of law by a competent court or authority;

(2) Transfer of such lands is made by the landowner by way of sale, gift or exchange; and

(3) That such land was built upon by an inhabitant by raising a residential house or cowshed.

The Collector may direct the land-owners of the lands vested in the Government to hand over the possession of such lands within ten days from the service of the orders. If they refuse or fail to hand over the possession of such vested lands without a reasonable cause, the collector may take the possession of such lands by force, if necessary.

The lands vested in Government can only be used for the following purpose:-

(i) An area not less than 50 per cent of the total area vested in Government was to be earmarked for grazing and other common purpose of the inhabitants of an estate.

(ii) The remaining 50 per cent of the area was to be allotted to landless persons or to a person whose holding was less than one acre to make to one acre. This

समाह्वित
उपमण्डल शिलाई
जिला सिरमौर (हि.प्र.)

scheme was framed by the Government for ameliorating the lot of landless persons.

(iii) Through an amendment made later, the vested land can now also be transferred to some other Departments, of the State Government or can be given on lease to an individual in connection with development activities of the state. However, this provision was subject to the condition that this will not reduce the land to less than 50 per cent reserved for common purposes for the inhabitants of an estate.

An exception (d) appended to s.3 (2) of the principal act has been inserted vide Amendment act of 2001. Which runs as?

"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the Co- sharers so recorded before 26th January, 1950 to the extent of their share therein."

Provided that the Previsions of this clause shall not be applicable to such lands which have already been put to use by Government.

Further, vide letter no. rev. B.A.(3) -8/2001 dated 12/12/2001 the F.C-cum – Secretary (Revenue) to the Govt. of H.P. has clarified that s.3 (2) (d) should be understood in its natural meaning as the word " cultivation" has not been defined in the Act. The plants which have perennial roots, trees shrubs and grass are included in crop. If one raises such crop, he naturally cultivates the land for the specified purpose. In Corps Juries Scandium vol.25, the purposes as cultivation have been explained." In the present tense cultivate has been defined as to improve the product of the earth by manual industry , management and improvement in order to till, prepare for crop manure ,plough, dress , sow and rape the cultivation will include good management and care and usually , but not always implies the planting of annual crops. The harvesting of such crops as perennial grass has been held to be utilization of land. If one adopted any physical process even to safeguard such crop he could be held to be cultivating it. If he has proved that he has protected it from the animals he could have been stated to be in cultivating possession of that land "

The gist of notification dated 12/12/2001 was plainly to revert back only those lands which were recorded as "shamlat Tika Hasb Rasad Malguzari" or by such other name in the ownership column of Jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers before 26th January 1950 to the extent of lands held under their cultivating possession , except the land already been put to use by the government after the


समाहती,
उपमण्डल शिवाई
सिस्मौर (हि.प्र.)

commencement of the principal Act of 1974. The notification goes on to direct that the land which has already been put to use by the govt. should not be disturbed. That the land so identified will be mutated back to the shamlat hasab rasad malguzari or whatever term might have been used for owned shamlat accordingly. The Act as per the provision of the Principal Act,

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

(a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate ; and

(b) the remaining land for allotment to a landless person or a person whose holding is less than one acre to make his holding one acre under a scheme to be framed by the State Government by notification in the Official Gazette. The allottee shall pay an amount at the rate of forty-eight times the land revenue and rates and cesses chargeable on the land allotted to him under the said scheme, either in lump sum or in six monthly instalments not exceeding four.

(2) The land reserved under clause

(a) of sub-section (1) of this section shall be demarcated by such Revenue Officer and in such manner as may be prescribed.

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

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

"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the Co- sharers so recorded before 26th January, 1950 to the extent of their share therein."

In khatri ram vs state of H.P. CWP No. 10077/2006 Honb'le High Court of H.P. held that the expression common purposes defined in s.8 -A is read down and explained to near those departmental activities which are akin to the agricultural pursuits read with expression common purpose defined in the Act and not the mining activities, to save it from being declared unconstitutional. Some of the relevant provision of H.P. village common land vesting and utilization rules 1975, here in after called the principal rules of 1975.

समूह
उपमंडल शिलाई
जिला सिरमौर (हि.प्र.)

That, after due cognizance of the instant matter which prima facie involved a genuine 'public interest' this court has decided to invoke the 'review provisions' prescribed vide s.9 of the principal Act seal with opportunities of being heard heard to the parties concerned. Accordingly, a notice/ summon was issued in the name of Pradhan of all the gram panchayats of revenue sub -division of Shillai and directed then to appear before this court on 12/07/2016, representatives of 27 out of total 29 panchayats presented on the appointed day. They were made abreast of each and every complexity of this case by this court in "open house" and that this court has also delivered to all public representatives so presented on that appointed day, a written material vide letter no. SDK/MC/SDM/SHO/2016-737 dated 12/07/2016 containing gist of the case with a request to convene meeting of all concerned under their respective jurisdiction and place before this court the written conclusion of meetings so convened on the next appointed date. Accordingly, most of the panchayats having lion's share in pre-1974 lands have convened special/ monthly meetings in advance and submitted their written comments in the instant matter before this court on the next appointed day. That, the generalization of their comments concluded a "general opposition in reverting back the village common land (converted the govt. land vide principal act of 1974) in question".

Let us pause for a while and discuss the word 'shamlat deh' first. To understand this, it is pertinent to mention Pre- Recognition Act history of above named lands in the erstwhile Punjab state. The institution of panchayats is a post-independence development in this area .That, in pre panchayats era The land 'Shamlat was mentioned in the revenue record as 'shamlat- deh' and 'shamlat patti'. The former happens to be the shalmat of entire village and the latter used to be the shamlat of a particular patti only. Linking above named entries with the provisions of Punjab village common land Act , the shamlat-deh vested in the gram panchayats as per sec.2 (g) (1) of the Act and shamlat pattli by virtue of s.2 (g) (3) of the Act. The common difference is that the land of shamlat patti vests in the gram panchayat only if the land is being used for the common purpose of the village, where as there exist no such requirement in case of 'shamlat deh'. This simply means that the latter whether used for common village purpose or not, will vest in the gram panchayats under all circumstances. On the other hand, land of shamlat patti being shamlat of a single patti, can vest in panchayat only if it has actually been used for common purpose of the village. In case, such land has not been used for common purpose of the village ,then such land is considered to be the ownership of the proprietors of that patti. But as per the various decisions of

समाह्वित,
 उपमण्डल शिलाई
 जिला सिरमौर (हि.प्र.)

Hon'ble High Court of Punjab and Haryana There was no necessity of imposing such a condition with regard to shamlat deh lands. The reason for the same is that if it had been so, then there be no shamlat lands left for the future generations or requirements of the village. It is therefore, evident from the above discussion that if as per revenue records the land is entered as shamlat – deh, then it will automatically vest in the gram panchayat irrespective of whether it has been used for common purpose or not.

Form the above analysis, it is evident that by mentioning the basis of share in the shamlat deh in the column of ownerships, the nature shamlat deh does not get change. Such land remains shamlat deh and vest in the gram panchayat under s.2 (g) (1) of the Punjab village common land Act. Similarly, the word makbuja malkan or "makpooja mukhtalif" in the column of cultivation are so mentioned because there was no other option. The same was held by Hon'ble Supreme court in sukhdev singh & oth. Vs gram sabha bari khod, 1977 PLJ150 (AIR 1977 SC 1003). Before moving further, certain statutory provision need to be extracted i.e. s.2 (g)

(1),

(3) ans (5) exception (viii) and s.4 of the Act :-

(g) "Shamilat deh" includes

(1) Land described in the revenue records as Shamilat deh excluding abadi deh.

(2) Shamilat Tikkas,

(3) Land described in the revenue records as shamilat, Tarafs, Pattis Pannas and Tholas and used according to revenue records for the benefit or the village community or a part thereof for common purposes of village.

(4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playgrounds, schools, drinking wells, or ponds within abadi deh or gora deh and

(5) Land in any village described as banjar qadim and used for common purposes of the village, according to revenue records, but does not include land which:

3 Proviso.....

4 [(i) becomes.....

(ii) has been allotted on quasi permanent basis to displaced persons.

(iii) has been partitioned and brought under cultivation by individual landholders before the 26th January, 1950.


उपमण्डल शिलाई
जिला सिरसा (हि.प्र.)

(iv)having been acquired before the 26th January, 1950, by a person by purchase or in exchange for proprietary land from a co sharer in the shamilat deh and is so recorded in the jamabandi or is supported by a valid deed.;1[and is not in excess of the share of the co sharer in the shamilat deh.

(v)is described in the revenue records as Shamilat, Taraf, Patti Panna an Thola and not used; according to revenue records for the benefit to the village community or a part thereof or for common purposes of the village.

2[(vi)lies outside the abadi deh and was being used as gitwar, bara manure pit, house or for cottage industry, immediately before the commencement of this Act].

3(vii)is Shamilat deh.....

(viii)was Shamilat deh was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950, or

4[(ix)was being used as a place of worship or for purposes, subservient thereto, immediately before the commencement of this Act].

(h)“Shamilat Law” means:-

(i) in relation to land situated in the territory which immediately before the 1st November, 1956, was comprised in State of Punjab, the Punjab Village Common Lands(Regulation) Act, 1953, or

(ii) in relation to land situated in territory immediately before the 1st . November, 1956, was comprised in state of Patiala and East Punjab States Union; the Pepsu Village Common Lands Regulation Act, 1954;

(i)“State Government” means the Government of the State of Punjab.

3. Lands to which this Act applies-

(1) The act shall apply and before the commencement of this Act the Shamilat Law shall be deemed always to have applied to all lands which are shamilat deh as defined in clause(g) of section 2.

(2)Zotwithstanding , anything contained in sub section (1) of section 4, where any land vested in the Panchayat under the shamilat law, but such. land has been excluded from Shamilat deh as defined in clause (g) of section 2, all rights, title



उपमण्डल शिलाई
जिला सिरमौर (हि.प्र.)

and interest of the Panchayat in such land shall, as from the commencement of this Act, cease and such rights, title and interest shall be revested in the persons in whom the vested immediately before the commencement of the Shamilat law and the Panchayat shall deliver possession of such land to such person or persons: Provided that where a Panchayat is unable to deliver possession of any such land on account of its having been sold or utilised for any of its purposes, such land shall not cease but the Panchayat shall, notwithstanding, anything contained in section 10, pay, to the person or persons entitled to such land, compensation to be determined in accordance with such principles and in such manner as may be prescribed.

4. Vesting of rights in Panchayat and non-proprietors.-

(1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land:-

(a) Which is included in the Shamilat deh of any village and which has not vested in a Panchayat under the Shamilat law shall at the commencement of this Act vest in a Panchayat constituted for such village, and where no such Panchayat has been constituted for such village, and where no such Panchayat has been constituted for such village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted ;

(b) Which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of Shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the Shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub section (2) shall affect or shall be deemed ever to have affected the :-

(i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhonedars, Butimars, Basikhopohus, Saunjidars, Muqarrirdars;

(ii) rights of persons in cultivating possession of Shamilat deh, for more than twelve years 1[immediately preceding the commencement of this Act] without



उपमण्डल शिर्डाई -
जिला फिरोज़ (हि.प्र.)

payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

(iii) rights of a mortgagee to whom such land is mortgaged with possession before the 26th January, 1950.

5. Regulation of use and occupation, etc of lands vested or deemed to have been vested in Panchayats-

(1) All lands vested or deemed to have been vested in a Panchayat under this Act, shall be utilised or, disposed of by the Panchayat for the benefit of the inhabitants of the village concern in the manner prescribed.

Provided that where two or more villages have a common Panchayat, Shamilat deh of each village shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that village.

Provided further that where there are two or more Shamilat tikkas in a village, the Shamilat tikka shall be utilised and disposed of, by the Panchayat for the benefit of the inhabitants of that tikka.

1 Provided further that where the cultivable area of land in Shamilat deh of any village, so vested or deemed to have been vested in panchayat is in excess of two-thirds of the total of that village (excluding abadi deh). then cultivable area upto the extent of two-thirds of such total area shall be left to the Panchayat and one-half of the remaining cultivable area of Shamilat deh, shall be utilised for the settlement of landless tenants any other tenants ejected or to be ejected of that village and the remaining cultivable area shall be utilised for distribution to small land owners of the village by the collector in consultation with the Panchayat, in such manner as may be prescribed].

(2) The area of Shamilat deh to be utilized for the purposes of the third proviso to sub-section (1) shall be demarcated by such officer in consultations with the Panchayat and in such manner as may be prescribed.

(3) The State Government or any officer authorised by it in this behalf may, from time to time, with a view to ensuring compliance with the provision of the



उपमण्डल शिलाई
जिला हिरमौर (हि.प्र.)

second proviso to sub-section (1) or sub-section (2) issue to any panchayat such directions as may be deemed necessary.

2(4) Nothing contained in the third proviso to sub section (1) and in sub-section (2) and sub-section (3) shall apply to the "Hilly area".

3(5) Notwithstanding anything contained in the preceeding sub-sections, on land vested or deemed to have been vested in the panchayat under this Act, shall be disposed of by way of sale, gift or exchange, so as to have with the Panchayat, cultivable area which is less than fifty percent of the total cultivable area vested or deemed to have been vested in the Panchayat]

That , lands described in the revenue record as shamlat deh simplicitor or followed by expresson like hasab paimana malkiat mundraja shajra nasab , or hasab hissa andraj shijra nasab or mushtarka jumla malkan hasab rasad raqba khewatder came to vest with the gram panchayat with the enactment of Punjab village common lands (regulation) act 1954. Reported judgments in such findings are :

- (1). Sukhdev singh & oth. Vs gram sabha bari khad . AIR 1977 SC 1003;
- (2). SHIVE CHARAN SINGH & OTH. VS gram panchayat Narika another, 1977 PLJ 453 ;
- (3). Kashmir singh vs oth. Vs Jt. Development commissioner. CWP No. 11722 of 1999
- (4). Tel ram vs gram sabha manabpur, 1976 PLJ 628.

Whether land in village described as banjar qudim can be deemed to be shamlat only if apart from being described as such , the same is used for the common purpose of the village?

In Tel Rams case (supra) , the double – bench of Hon’ble high court of Punjab & Haryana held that s.2(g) provides some of the eventualities under which the land can be treated as shamlat deh and these are contained in clauses (1) to (5). In the case in hand the requirements applicable to the order to bring the same within the definition of shamlat deh; no further reference to any other clauses is necessary.

Another division bench in Charan singh’s case noted:-

That, from the bare perusal of the sub-clauses , it would be evident that all the said sub-clauses are independent of each other and describe as to which type of


 समाविष्ट
 उपमण्डल शिलाई
 जिला सिरमौर (हि.प्र.)

land would be included in the shamlat deh. Sub-clause (1) covers the case of land described in the revenue records as shamlat deh; while sub-clause (5) covers the case of lands in the villages described as banjar qadim and used for common purpose of the village according to the revenue record. The Hon'ble court agreed that sub-clause (5) could cover the cases of lands which may belong to private persons but having been recorded as banjar qadim and used for common purpose of the village accordingly to revenue record, would become shamlat deh. It is evident that such a case could not fall within the purview of other clauses. Bench quoted that, it is clear that sub-clause (5) was enacted with a definite purpose to apply to the banjar qadim land used for the common purpose of the village according to the revenue record even if it belonged to any particular individual or individuals. If this sub-clause had not been added as an independent one, then the entire village community could have been deprived of valuable right at the sweet will of an individual proprietor. Further, the idea of the legislature seems to be clear that such land should vest in the gram panchayat as the same would be properly administered and managed by the gram panchayat. Thus it can't be said that sub-clause (5) was added by the legislature without any purpose. It is also equally clear that in case the legislature had intended to circumscribe the scope of sub-clause (1) by adding sub-clause (5) than sub-clause (5) would not have been added as a separate clause but would have been added as a proviso immediately after sub-clause (1). The manner in which the provisions have been arranged and drafted leave no manner of doubt that all the sub-clauses are independent and do not govern or circumscribe the scope of each other any manner.

In Maghi Ram's case, the court held that the expression "Shamilat Deh Hasab Mundaraza Shijra Nasab" denotes ownership of properties, in accordance with their share holding, prior to the enactment of the pepsu village common lands (regulation) act, 1954. The expression 'Makbuja Malkan' denotes possession in common, of the proprietary body, with no particular proprietors in possession of any portion of land, much less, in cultivating possession. Upon enactment of the pepsu act, in 1954, land described as 'Shamlat Deh' came to vest in a gram panchayat, thereby putting an end to the ownership of proprietors, without any exception. The pepsu act, was repealed and re-enacted as the 1961 act. Section 3(1) and s.3 (2) (i) of the 1961 Act, provide that land that was shamlat deh under the pepsu Act, shall continue to vest in the gram panchayat to the extent and in the manner, provided by s.2 (g) of the 1961 Act.

The vires of the Punjab village common lands (regulation) Act, 1954, which is para-materia to the pepsu act was upheld by a division bench of Punjab &

सहायक
उपमण्डल शिवाई
जै (वि.प्र.)

Haryana High Court in Hukum Singh & others vs the state of Punjab, AIR 1955 Punjab, 220. The validity of 1961 Act was upheld by a division bench of Hon'ble court above in Kangra Valley State Co. Ltd. vs Kaidar Nath & others, AIR 1964, Punjab 503 and thereafter by a constitutional bench of the Hon'ble Supreme Court in Ranjit Singh vs State of Punjab AIR 1965 (S.C.) 632 setting on rest any controversy that with the enactment of the Pepsu Act and the any 1961 Act, right title or interest of proprietors in 'shamlat Deh' stood extinguished in its entirety but stand restored only to the extent that such land is excluded from shamlat deh in accordance with the 1961 Act. Admittedly the land in dispute was shamlat deh on the enactment of the Pepsu Act. The land, therefore vested in the gram panchayat in 1954 and can only be excluded from "shamlat deh", if it is proved that it falls within any of the sub-sections of s.2 (g) of the 1961 Act, enacted to excluded land from 'shamlat deh'. The petitioners claim exclusion from shamlat deh under s.2 (g) (iii) of the 1961 Act and are, therefore require to prove :-

That they were in his possession as proprietors;

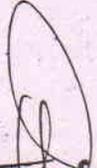
The land was partitioned ; and

Brought under cultivation by individual land owners before 26.01.1950.

In Prem Singh's case, the land was recorded as shamlat deh whereas, in the column of possession, the proprietors were recorded to be in possession as per the shariat-wajib-ul-arz. It was held:-

sec.2 (g) (1) of the 1961 Act, clearly, provides that land used as Charand (pasture) shall vest in a gram panchayat. The clauses of s.2 (g) are to be read separately and not collectively as such clause provides for separate situations in which "shamlat Deh" shall be included or excluded from "shamlat". Where, however, the land is charand, it is included in shamlat deh by section 2 (g) (1) of the 1961 Act and where it is describe as panna, patti, thola, or is a Banjar Qadim or as any other variety, it would not be excluded from "shamlat Deh", under any of the other clauses of s.2 (g) of 1961 Act. Section 2(g) (1) of the 1961 Act is an independent sub-section that postulates an automatic inclusion of 'charand', in shamlat deh. The fact that shariat waji-ul-arz records that land shall be used by proprietors where as non-proprietors shall be required to make a fixed payment clearly indicates that the land was to be used for common purpose of the entire village community.

In Bhag Singh's case wherein the land was held to be shamlat land and vesting in the panchayat. It was also held that the petitioner has failed to show that he was in possession of the land on 26.1.1950. Considering the respective contentions, the court held to the following effect :-


समीक्षा,
उपमण्डल शिलाई
(वि.प.)

A village consisted of and even today consists of land used for cultivation and land used for common purposes. The common land of a village is used and reserved for pastures, roads ponds, cremation ground etc. and is generally denote by the words 'shamlat deh'. The common land was owned by proprietors , in accordance with their share holdings, determined either in proportion to their proprietary holdings , i.e, Hasab Rasad Zare Khewat' or in accordance with land revenue paid , that is Hasab Rasad Paimana Malkiat. These words merely denoted the manner of calculating share holdings of proprietors, in shamlat deh, or shamlat patti and had no relevance to the nature of land. The common land belonging to a patti, a panna , a thola, or a Taraf, was represented by the words shamlat , patti , taraf, Pana or Thola , thereby undiating that the land was common land of a patti etc. shamlat deh was generally recorded in possession of proprietors by the words 'Makbooja Malkan' i.e. possession in common of the proprietary body, with no particular proprietor in separate possession. Where, however, a appropriator was in separate "cultivating possession" of any part of shamlat deh , his name was so recorded in a particular khasra number or number.

Shamlat Deh of a village vested in proprietors and was used and managed by then to the exclusion of non-proprietors. Shamlat Patti etc. vested in members of the Taraf,Patti,Panna or Thola shamlat Deh . shamlat patti could be leased , mortgaged , sold and partitioned by properties in according their share holdings. The enactment of the pepsu act and the Punjab village common land (regulation) act, 1953, collectively, called "shamlat law" brought about a paradigm shift in the ownership of shamlat Deh. 'shamlat law was enacted as a measure of agrarian reform so as to break the stranglehold of proprietor and extinguished their proprietary rights by permitting, for the first time, non- proprietors to use common land , without any let or hindrance. By these statutes land described as shamlat deh came to vest in a gram panchayat,without exception. " shamlat law was repealed and enacted as 1061 act. Section 2(g) (1) of 1961 act defines shamlat Deh to include lands described in the revenue records , as shamlat Deh subject , however to certain exceptions set out in s.2(g) and s.4 of the 1961 act. Despite the enactment of s.2 (g) (1) of the 1961 act, revenue authorities continued to record the expression "Hasab Rasad Zare Khewat" or "Hasab Rasad Paimana Malkiat" etc. after the words 'Shamlat Deh'. As already discussed these expresson do not relate to the nature of the land but denote the proprietary position, before enactment of pepsu act 1954, Punjab village common land (Regulation) act, 1953 and the Punjab village common lands (Regulation) act 1961, and are therefore, superfluous. The question has already been answered in

two separate judgements namely, Kashmir Singh Vs. joint development commission, Punjab & oth. 2006 (1) L.A.R.607 and Sita ram etc. Vs G.P. Ismaila etc. (CWP) No. 9368 of 2007) recorded by division benches on 20.06.2007.

That, the above said discussion applies in case of areas merged in Himachal from erstwhile Punjab state and in old Himachal areas, such lands were either with the village committees or with the co- sharers with no control of the panchayats or the govt.

Under the Himachal Pradesh village Common Land vesting and Utilization Act, 1974 certain categories of land were vested in the State Government . In terms of section 3 of the Act, the lands vested were as under :-

(a) Those areas which were vested in a Panchyat under section 4 of the Punjab Village Common Land (Regulation) Act, 1961, as enforced in merged areas of Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966. This precluded lands used or reserved for the benefit of village community including streets, lanes, play-grounds, Schools, wells and ponds within Abadideh or Gohrdeh.

(b) Those areas which were described in the Revenue records as shamlat taraf, patties and thola, and not used as per revenue records for the benefit of the village community or a part thereof for community purposes of the village . This applied to those areas which were added to Himachal Pradesh under section 5 of the Punjab re-organization Act, 1966.

(c) Those areas which were described in revenue records as shamlat, shamlat ,deh, taraf, shamat, shamlat chak and patti. This applied in respect of those areas which comprised Himachal Pradesh immediately before November 1,1966.

The above provisions shall not apply to land described in (b)and (c) categories above if, before the commencement of the Act:-

(1) Partition of such lands is made by individual co-sharers through a process of law by a competent court or authority;

(2) Transfer of such lands is made by the landowner by way of sale, gift or exchange; and


 सहायक
 उपमण्डल शिलाई
 जिला सिरमौर (हि.प्र.)

(3) That such land was built upon by an inhabitant by raising a residential house or cowshed.

The Collector may direct the land-owners of the lands vested in the Government to hand over the possession of such lands within ten days from the service of the orders. If they refuse or fail to hand over the possession of such vested lands without a reasonable cause, the collector may take the possession of such lands by force, if necessary.

The lands vested in Government can only be used for the following purpose:-

(i) An area not less than 50 per cent of the total area vested in Government was to be earmarked for grazing and other common purpose of the inhabitants of an estate.

(ii) The remaining 50 per cent of the area was to be allotted to landless persons or to a person whose holding was less than one acre to make to one acre. This scheme was framed by the Government for ameliorating the lot of landless persons.

(iii) Through an amendment made later, the vested land can now also be transferred to some other Departments, of the State Government or can be given on lease to an individual in connection with development activities of the state. However, this provision was subject to the condition that this will not reduce the land to less than 50 per cent reserved for common purposes for the inhabitants of an estate.

It is clear that status of shamlat land was different in case of old and new Himachal and that a proper legal regime was existed in case of the form, before introduction of parity after reorganization act. It was well settled that :-

The land described in the revenue record as shamlat Deh simplicitor or followed by any other expression, came to vest with the gram panchayat. The suffix attached to the word shamlat Deh defines the proprietary position and not the nature of the land.

A bare perusal of s.2 (g) (1) (3) (5) & exception (viii) and s.4 of the '1961 act' suggests that all the said clauses and sub-clauses are independent of each other and describe as to which type of land would be included in the shamlat Deh. After 1961 act & pepsu act or ("agrarian reforms") right, title or interest of proprietors in shamlat land stood extinguished in its entire but stood restored to

समाह्वित
उपमण्डल शिवाई
शिवपुर (हि.प्र.)

the extent that such land is excluded from shamlat-Deh in accordance with 1961 act.

Test for any applicant to claim exclusion from shmlat-Deh:-

That land was his possession as proprietors;

The land was partitioned ; and

Brought under cultivation by individual land owners before 26.07.1950.

Land being used for village common purpose or ' charand' land is shamlat --Deh.

Words makbooja malkan or makbooja mukhtalif denotes possession in common of entire proprietary body. Where, however a proprietor was in seperate "cultivating possession" of any part of shamlat Deh, his name was so recorded in a particular khasra number or numbers.

Sections 2 (d), 3, 6 and 8 of the Act, the relevant extracts of the amendments made in 2001 and 2005 as also Rules 3, 4, 5, 6, 7 and 9 of the Rules which have bearing on the decision of this appeal read as under:

The 1974 Act.

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

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

3. Vesting of rights in the State Government.- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement, instrument, custom or usage or any decree or order of any court or other authority all rights, title and interests including the contingent interest, if any, of the landowner in the lands in any estate-

(a) vested in a Panchayat under Section 4 of the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) as in force in the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966 (31 of 1966) except lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds within abadi deh or garah deh,

(b) described in the revenue records as shamilat taraf, patties, pannas and thola and not used according to revenue records for the benefits of the village community or a part thereof or for common purposes of the village in the areas


समावर्त
उपमण्डल शिलाई

उपमण्डल शिलाई

added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966; (31 of 1966) and

(c) described in revenue records as shamilat, shamilat deh, shamilat taraf, shamilat chak and patti in the areas comprised in Himachal Pradesh, immediately before first November, 1966, shall stand extinguished and all such rights, title and interests shall vest in the State Government free from all encumbrances.

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

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

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

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

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

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

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

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

(4) xxx xxx xxx (5) The Collector may, by order in writing, at any time after the land vests in the State Government, direct the landowners to deliver possession thereof within 10 days from the service of the order to such person as may be specified in the order. (6) If the landowners refuse or fail without reasonable cause to comply with the order made under sub-section (5), the Collector may take possession of the land and may for that purpose use such force as may be necessary."

6. Determination of amount payable to landowners.- (1) The Collector shall cause a notice to be served in the prescribed form and manner to the landowner, whose rights have been extinguished under sub-section (1) of section 3, stating therein,


समाह्वित
उपमण्डल शिलाई
जिला मिरजौर (डि.प्र.)

the area of land vested in the State Government and the amount proposed therefore, immediately after the commencement of this Act, calling upon him to prefer objections, if any, within 60 days from the receipt of the notice.

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

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

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

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

(a) an area not less than fifty per cent of the total area vested in the State Government under section 3 of this Act for grazing and other common purposes of the inhabitants of an estate; and

(b) the remaining land -

(i) for allotment to a landless person or any other eligible person; or

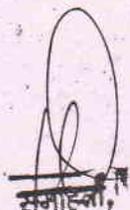
(ii) for allotment of site to a handicapped or houseless person for the construction of a house;

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

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

(3) Any scheme framed by the State Government under clause (b) of sub-section (1) of this section may provide for the terms and conditions on which the land is to be allotted. (4) The State Government may, by notification in the Official Gazette, add to, amend, vary or revoke any scheme made under this section."

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



उपमण्डल शिवाई
जिला सिरमौर (हि.प्र.)

"(d) land recorded as "shamlat tika Hasab Rasad Malguzari" or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the Co- sharers so recorded before 26th January, 1950 to the extent of their share therein."

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

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

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

Rules.

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

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

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

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

Demarcation of land under section 8.--(1) On receipt of the information in Form 'A' the Collector shall start a file of demarcation of land for grazing and common purposes and the land to be earmarked for allotable pool and send the same to the Tehsil Revenue Officer for proper demarcation of the land for grazing and common purposes and for allotable pool. The percentage of the land to be reserved for grazing and common purposes shall be fixed in consultation with the


 समाह्वय,
 उपमण्डल शिलाई

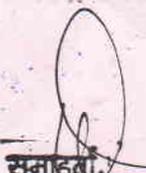
estate right- holders keeping in view the provisions of section 8. The Tehsil Revenue Officer and the Collector shall be guided for demarcation of shamilat land for the said purposes by the following consideration:-

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

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

(3) The Collector after scrutinizing the proposal sent by the Tehsil Revenue Officer shall fix a date for announcing his order after giving the inhabitants of the estate concerned an opportunity of being heard and shall pass the order regarding the percentage of area of land reserved for grazing and common purposes and areas reserved for the allotable pool. (4) The Collector may amend or vary the percentage as referred to in sub-rule (3) with previous approval of the State Government.

Preparation of records of unmeasured shamilat land.


समाहता
उपमण्डल शिमाई
जिला गिरनौर (डि.प्र.)

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

Settlement of disputes.- If a dispute arises regarding entry of the land vested in the State Government, the Collector shall be competent to decide the same after a summary inquiry."

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

After the Reorganization, the distribution of land in H.P. had its own problems. There were two faces of this problem. One provision of land for landless and two, increasing the size of holdings. The govt. felt that the surface area available under the ceiling act might not be very large. Therefore legislation was enacted to vest the shamilat lands in govt. by way of H.P. village common land vesting & utilization Act 1974. The Act not only sought to correct the anomaly that existed in the rules regarding its regulation in the old and new areas of Himachal but by vesting such land in government, it could distribute 50 per cent such land for settlement of landless and eligible persons and for the common purposes of the state right holders (B.L.Mehta Agrarian reform in Himachal).


समाहर्ता,

उपमण्डल शिलाई

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That ,under Principal Act of 1974, the scheme of vestment of shamlat lands in govt. of H.P. was promulgated vide s.3,4,5,6 and 7 of the Principal Act read with rule 3,4,5,6,7 and 9 of H.P.village common land vesting and utilization (Rules) 1975. And the scheme of utilization of said land was derised under s.8(1) (a) (b) (i) (ii), (2) (3) (4) and s.8-A (added vide Amendment act of 1981). The aforesaid Provisions have been re-produced above.

Hitherto , the Principal Act of '74 is kept in IXth schedule of the continuation of India and there enjoy special protections. As regards an Act contained in schedule - IX , an amendment can't be given retrospective effect because that would involve the Amendment of constitution itself and it can be amended only by the parliament as provided in Article 368. Any Amendment of an act placed in IXth schedule must, therefore, stand the test of fundamental rights unless it is otherwise protected. Evidently, the provision of Principal Act are more forceful and authentic then the subsequently undertaken Amendments, example, in the instant case after addition of s.3 (2) (d) vide Amendment act of 2001, nearly 99.94% of land vested in state govt. vide Principal Act 1974, had to reverted back to joint proprietary village body. Thus, rendered entire vestment and subsequent utilization proceedings, as intended by framers of Principal Act, entirely vicitated. In other words, the spirit of the principal act had lost or vanished. In state of H.P. vs Tarsem Singh & oth. (2001) Honb'le supreme court held that under sec.3 of the Act , all rights, titles and interests including the easementary rights stood extinguished and all such rights , title, interests vested in the state govt. free from all encumbrances.

I have through the records & observed that then in the instant case, the then field revenue agency of Shillai sub-division, while effecting changes originated due to the addition of sub- section (d) in section 3(2) vide Amendment act of 2001, never gave a second thought and either inadvertently or unmindfully effected 'wholesale changes' in revenue records without even observing the codal formalities, for e.g., except for new instances ; no 'Rapat - Roznamcha)' was entered before effecting Tabdil-Malkiyat (change in ownership) mutations, in compliance to the Amendment act of 2001.

That, otherwise in normal circumstances the then field agency required to initiate "a local enquiry" depicting following points before effecting wholesàle changes, Hereinafter called Settled propositions :-

- (a) Carefully reading the various relevant provisions of principal act of 1974, including the scheme of utilization of village common land as given under s.8 & 8-A of the Principal Act ;


 समाहर्ता,
 उपमंडल शिलाई
 जिला सिरमौर (हि.प्र.)

(b) Determining the exact proprietary status of the land before the appointed date i.e. 26-1-1950;

(c) Preparation of fard-kabza (possession-list) of individual proprietors ;

(d) Whether the land in question was partitioned and brought under cultivation by individual land owners before 26.01.1950;

(e) A must complying the provisions of rule 6 , 8 and 9 of H.P. village common land vesting & utilization (Rules) 1975 to ascertain quantum of land allotted to eligible persons, land under illegal possession/encroachment, chanand lands , land used for common purposes, lands under thick forest etc..etc;

(f) Instance where a proprietor was in exclusive 'cultivating possession' of any part of shamlt deh and to see whether his name was so recorded in a particular khasra number or numbers.

(g) Preparation of a separate misal in each case where government has utilized land for its own purpose;

(h) Cross-checking that whether the clarification issued on 12/12/2001 by the F.C-cum principal secretary (Revenue) to the govt. of H.P. has been fully complied or not;

(j) Any other detail sounds relevant.

Evidently, I have gone through the records and find out that even before implementing the Principal Act of 1974, no special enquiry as mandated under Principal Act and "Rules of 1975" had ever conducted in case of shillai sub-division and entire changes had been effected without conducting comprehensive field study and with the aid of available records. changes effected sitting within a patwarkhana or with personal knowledge. That, almost similar pattern was observed while implementing Amendment Act of 2001. The consequences of such a lax approach were devastating, and seriously hampered the developmental perspective of entire area. In one such glaring example keeping in view the serious water scarcity in shillai town, the Administration has identified a potent and perennial water source over land bearing khewat no.536, khatouni no.1218, khasra no, 1355 measuring 22-0 bighas village gundah, kism-gair-mumbin Nalla. The said source was sufficient to bring drinking water for 20-25 thousand people after constructing a gravity scheme. In jamabandi for the year 1998-99, the ownership of this Nalla or Khalla (water source) depicted as 'Sarkar Himachal Pradesh 'in ownership column and "Makbooja Mahakn Mall Rakba Charand" (Revenue Department) in ownership column. Interestingly, the same 'clean' entry changed after 2001 Amendment as 'Shamlat Hasad Rasad Khewat' in ownership column and "Makbooja Malkan" in possession column. Now, after this new entry

समाहर्षा,

उपमण्डल शिलाई

जिला सिरमौर (दिए)

some influential joint-proprietors vetoed the issuing of 'No- objection certificate favor of Gundah- shillai Gravitational Drinking Water Scheme and 20 thousand people left without drinking – water. Here, s.2(d) of the Amendment act and clarification letter of F.C.(R) of dated 12/12/2001 clearly states that lands already put to use by the govt. shall not be disturbed. And in this particular case, the then field Revenue agency kept on gifting away lands which were earlier recorded in the name of their Parent Revenue Department before the 2001 Amendment. Similarly, fate of all existing PWD roads, I&PH schemes, Block Developments scheme, dispensaries, schools etc. hinge on the "sweet-will" of a handful of influential co-proprietors. No horticulture, no forestry; un-matted roads insufficient or inadequate developmental schemes etc etc., put this area far behind, comparing with the rest of the state. I had noticed that people used to travel at their destinations half way or buses and rest of the half way an pick-ups - -- reason being the entire road was not passed due to non-widening or incompleteness, again, obstruction attributed to "sweet-will" of some co-sharers of shamlat lands; while travelling like cattle in pik-ups with drivers having fake-licenses in most of the cases, these simpleton poor villagers are under constant danger and threat. They had access to minimal health services because no ambulance is permitted to travel through "not-passed" roads. Shilai -Suinal-Bali Koti road is the glaring example of above noted details where 17 km of "kachhi" road exists on spot but only 3km is passed. PWD, PMJSY, NABARD etc scheme's gestation cost escalated to many fold but developmental departments had failed to obtain 'no - objections' of some stubborn co- proprietors; similar is the fate of soil conservation, forestry, MANREGA, rain water harvesting, Agriculture related and other schemes.

Further, as a result of wrong implementation of Amendment Act of 2001, some influential proprietors are claiming a lion's share over reverted lands and thereby succeeded exert more influence over illiterate and poor people; some even succeeded in invoking traditional authorities, reviving pre- independence situation and symbolically declaring erstwhile officers valid. Consequently, poor and gullible are forced to entrapped in vicious circle of debt forced to entrapped in vicious circle of concurring debt liability and never ending poverty. An angle of vast number of encroachments over "reverted – back" lands can also not be ruled out.

That other broader issues involved in the instant case are of jurisdiction and limitation. So, whether the penal clauses of limitation law applies in the instant

case , or otherwise ? or whether even the plea citing applicability of limitations law is tenable in the instant case ?

The Hon'ble supreme court of India in Union of India Vs K.D. krishan lal. AIR 1999 Delhi 349 (80) DLT 412; 1999 (50) DRJ 446; 1999(3) TAC 851: 1999(4) AD Del 740: 1999 (3) Rec Civ R 668, Held that Damage to public interest and public funder and to protect the interest of the state and to render substantial justice on merit are the relevant consignation for exercise of power to Condon delay.

Hon'ble court goes on to say "while the state can not be treated differently from any other litigant, the court is bound to take into consideration aspects like: Red tapism in the govt (ii) delays in correspondence, (iii.) habitual indifferences of govt. officials or govt. pleaders as distinct from usual diligence of ordinary litigants or lawyers for private parties, (iv) collusion or negligence by.

Govt. official or government pleaders or fraud , (V) damages to public interest or public funds or interest of the state,

(vi) Institutional or bureaucratic producers as well as delays arising thereon and

(viii) need to sender substantial justice on merits. The habitual indifference of govt. officers and the bureaucratic procedures have contributed to delay in filing appeal.

It is there that the applicants have never raised a plea of condonation of delay in their original plaint, though, they had raised oral request for such condonation later in the proceeding. In my opinion the question of limitation is inherent in the instant case and needs proper redressed and complying word by word the ratio-decidendi promulgated in the above said decision, Hon'ble Supreme Court of India made it crystal clear that the protection of public interest and public money is prime most factor while deciding limitation and things become more glaring where negligent attitude of government officials or patent procedural lapses are involved. In these circumstance I do not see anything unjust will happen in case the 'oral' plea of condonation of delay raised by the applicants be allowed. I therefore, decide the issue in favour of applicant. Moreover, defendants have never raised objection regarding limitation during entire proceedings. Before discussion jurisdictional aspect let us reproduce the statutory provisions.

"sec.9 (of principal act of 1974) An appeal from the order of a collector passed under this Act shall lie to the state govt. or any officer to the authorized by it, by a notification within 60 days of passing of the order."

"sec.9-A (Added vide Amendment Act of 2001) Review—


समाहता,
उपमण्डल शिलाई
जिला सिदकोर (हि.प्र.)

(1) The collector or the officers authorized by the state government under section 145, either on his own motion or on the application of any party interested, may review and on so reviewing, modify, reserve or confirm any order passed by himself or by any of his predecessors in office.

(2) No order shall be modified or reversed in review unless a notice has been given to the parties affected thereby to appear and be heard in support of the order.

(3) An order against which an appeal has been preferred shall not be reviewed.

(4) An application for review of an order shall not be entertained unless it is made within 90 days of the passing of the order, or unless the applicant satisfies the collector or an officer authorized by the state government that he had sufficient causes for not making the application within that period.

That this court has derived 'jurisdiction' to try the instant matter from above said provision, and from the bare perusal of statutory material, the fact of jurisdiction stood redressed.

Admittedly the provisions under Order 41 rule 3-A of C.P.C. are cardinal in nature

Perhaps only in those cases where it is not disputed by the opposite that there was sufficient cause 105 of in limitation act, the oral prayer may be accepted.

Sukman Vs Padam laws (M P H)-L050-8-57 H.C. of Madhya Pradesh.

In view of the above development, it would be just to accord the benefit of s.17

(1) (c) of the Indian limitation Act to the applicant.

Sec.17--- effect of fraud or mistake

(1) Where, in the case of any suit or application for which a period of limitation is prescribed by the act,-

(c) The suit or application is for relief from the consequences of a mistake.

sec.17 of the limitation act clearly deals with the effect of "mistake" where the suit or application is for the relief from the time when he first has the means of producing the documents or compelling its production and in the instant case, when the plaintiffs as well as the office of S.D.O (C) Shillai have discovered the mistake, the main object of this section is to keep the right of a person to sue suspended as long as he is not made aware of the mistake committed against him, such as period is excluded from the prescribed period of limitation. Section 17 of the limitation act is an 'enabling' section which postpones the starting point of limitation for suit and application.

In pallav seth Vs custodians and others, (C.A) 2016 of 2001, court has observed that the provisions of s.17 embody fundamental principles of justice and equity, viz; that a party should not be penalized for failing to adopt legal proceedings when the facts or material necessary for him to do so have been willfully

समाप्त
उपसभ्य शिलाई
जिला सिरमौर (हि.प्र.)

concealed from him and also that a party has acted fraudulently should not gain the benefit of limitation running in his favor by virtue of such fraud.

In the result, appeal is allowed the impugned mutations detailed above along with mutations left out, if any, are set aside and ordered to be "reversed". Also by invoking the provisions of HP village common land (amendment) Act 2005 of s.3(2)(2-a), I, here by, ^{after 2001} declare all the partitions of Joint Proprietary land held within the Shillai Sub division, ^{after 2001} infructuous, as such partitions amounts to "transfer" within the meaning of this Amendment Act. The A.C. 1st grade shillai, A.C 2nd grade ronhat and S.N.T (settlement) Shillai are hereby directed to maintain pre-2001 status with respect to the land in question; they are also directed to effect 'tabdil malkiyat' as provided by Amendment Act of 2001, only after complying the dictates of F.C. cum Pr.Secy (R). letter of dated 12/12/2001 and 'settled proposition' from (a) to (i) and 1-6 discussed above. Also, HODs of all functional as well as developmental departments situated within sub-division Shillai, including forest, HPPWD, I&PH, electricity board, Block etc. to prepare inventory of land "utilized or possessed" by then before and after 1974, and to present the same before S.D.O (c) Shillai, so that the 'tabdil malkiyat' in relevant cases may take effect.

Further, all the revenue officers within Shillai sub-division shall cause to prepare a list of encroachments as well as sale-purchase agreements / pacts with respect to land in question if any, and to proceed as per law in relevant cases. This shall be done within a period of six months. The aggrieved party may approached before the court of Ld. Divisional Commissioner, Shimla, above. A copy of this order will be sent to the revenue officers concerned. The case file be consigned to general record room (G R R) after due completion Announced.


 Sub-Divisional Officer Shillai
 उपमंडल शिलाई
 जिला सिरमौर (हि.प्र.)

Endst No. 1243

Date: 01/09/2017

Copy of order is forwarded to Tehsildar Shillai / N.T. Rohhat and N.T. Settlement Shillai for necessary action.