Karnail Singh vs State Of Haryana Through Secretary To ... on 16 May, 2024

Author: B.R. Gavai

Bench: B.R. Gavai

2024 INSC 424

REPORT

IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
REVIEW PETITION (CIVIL) NO.526 OF 2023
IN
CIVIL APPEAL NO.6990 OF 2014

KARNAIL SINGH ...PETITIO

VERSUS

STATE OF HARYANA & ORS. ...RESPONDENT

INDEX

I.	FACTUAL BACKGROUND……..	Paras
II.	SUBMISSIONS OF THE PARTIES	Paras
III.	CONSIDERATION ON THE SCOPE OF REVIEW JURISDICTION	Paras
IV.	CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II	Paras
V.	CONSIDERATION OF THE CONSTITUTION BENCH JUDGMENTS OF THIS COURT IN RANJIT SINGH, AJIT SINGH AND BHAGAT RAM	Paras
VI.	CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II REFERRING ITS EARLIER JUDGMENT IN GURJANT SINGH AND SEVERAL OTHER JUDGMENTS	Paras
VII.	CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II WITH REGARD TO DOCTRINE OF STARE DECISIS	Paras
VIII.	CONCLUSION	Para 6

Reason:

1

JUDGMENT

B.R. GAVAI, J.

I. FACTUAL BACKGROUND

1. The present review petition has been filed by the original respondent No.28 in the Appeal, seeking review of the judgment of this Court passed on 7th April 2022, thereby allowing the Civil Appeal No. 6990 of 2014 filed by the State of Haryana against the judgement and order passed by the Full Bench of the High Court of Punjab and Haryana at Chandigarh (hereinafter referred to as "Full Bench of the High Court") in Civil Writ Petition No. 5877 of 1992 dated 13th March 2003

2. The bare necessary facts giving rise to the present review petition are thus:

2.1 The State of Haryana, by way of Government Gazette Notification dated 11th February 1992 (hereinafter referred to as "Haryana Act No. 9 of 1992") inserted sub-clause (6) to Section 2(g) of the Haryana1 Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as "the 1961 Act") along with an explanation to the said sub-clause which received the assent of the President on 14th January 1992. The sub-clause (6) to Section 2(g) of the 1961 Act reads thus:

"2. In this Act, unless the context otherwise requires –

xxx xxx xxx

(g) "shamilat deh" includes-

xxx xxx xxx

(6) lands reserved for the common

purposes of a village under Section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.

Explanation – Lands entered in the column of ownership of record of rights as "Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rasad", "Jumla Malkan" or 1 For the word "Punjab" deemed to have been substituted w.e.f. 01.11.1966 vide Haryana Act No.15 of 2021, the Haryana Short Titles Amendment Act 2021 dated 05.04.2021. "Mushtarka Malkan" shall be shamilat deh within the meaning of this section." 2.2 Being aggrieved by the said amendment, the present review petitioner along with similarly situated landowners, holding land in villages, who contribute a share of their holdings to form a common pool of land called 'shamilat deh', meant exclusively for the common

purposes of the village inhabitants filed a batch of Writ Petitions before the High Court. Considering the matter to be involving important questions of law, likely to arise in a large number of cases and involving a large chunk of land; the Hon'ble Division Bench, then seized of the matter vide Orders dated 01 st June, 1993 directed the papers of the case to be placed before the Hon'ble Chief Justice for constituting a Full Bench of the High Court for determination of the vires of the Haryana Act No. 9 of 1992 and the explanation thereof. The Full Bench of the High Court vide judgement dated 18th January 1995 allowed the batch of Writ Petitions, wherein the judgement came to be recorded in CWP No. 5877 of 1992.

2.3 The State of Haryana challenged the decision of the Full Bench of the High Court before this Court vide Civil Appeal No. 5480 of 1995; wherein this Court held that certain essentials of Article 31-A of the Constitution of India were overlooked and remanded the matter back to the High Court for re-consideration of the issues in light of Article 31A of the Constitution of India. 2.4 Accordingly, the Full Bench of the High Court vide judgement and order dated 13th March 2003, partly allowed the petition in terms of the following:

> "In view of the discussion made above, we hold that:
>
> (i) The sub-section (6) of Section 2(g) of the Punjab Village Common Lands (Regulation) Act, 1961 and the explanation appended thereto, is only an elucidation of the existing provisions of the said Act read with provisions contained in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948.
>
> (ii) the un-amended provisions of the Act of 1961 and, in particular, Section 2(g)(1) read with Sections 18 and 23-A of the Act of 1948 and Rule 16(ii) of the Rules of 1949 cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands;
>
> (iii) the lands which have been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and entered in the column of ownership as Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat and in the column of possession with the Gram Panchayat or the State Government, as the case may be, on the dint of sub-section (6) of Section 2(g) and the explanation appended thereto or any other provisions of the Act of 1961 or the Act of 1948;
>
> (iv) all such lands, which have been, as per the consolidation scheme, reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be, even though in the column of ownership the entries may be Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat etc." 2.5 The Full Bench of the High Court also issued certain consequential

directions with regard to certain mutation entries made by the Revenue Authorities.

2.6 Being aggrieved thus, the State of Haryana filed a Civil Appeal No. 6990 before this Court, which came to be allowed by judgement and order under review dated 07th April 2022 (hereinafter referred to as "JUR"); and the Writ Petition of the Original Writ Petitioners was consequently dismissed. 2.7 Seeking review, the present Review Petition has been filed by the review petitioner. This Court on 31st January. 2023 passed the following order in the present Review Petitions:

> "List this review petition for hearing in open Court." 2.8 Subsequently, this Court on 10th April, 2023 passed the following order:
>
> "1. Permission to file review petition(s) is granted.
>
> 2. Delay Condoned.
>
> 3. Issue Notice on the I.A. (Diary) Nos.

69003 and 69005 of 2023 in Diary No. 14941 of 2022, M.A. (Diary) No. 13972 of 2023 and on the review petition(s), returnable on 24.04.2023.

4. In addition to normal mode of service, liberty is granted to serve the Standing Counsel for the State."

3. Accordingly, we have heard Shri Narender Hooda, learned Senior Counsel and Shri Pradeep Gupta, learned counsel appearing on behalf of the review petitioner, Shri Pradeep Kant, learned Senior Counsel and Shri B.K. Satija, learned Additional Advocate General appearing for the respondent-State of Haryana.

II. SUBMISSIONS OF THE PARTIES

4. Shri Narender Hooda submits that the JUR is totally contrary to the law laid down by the Constitution Bench of this Court in the case of Bhagat Ram & others vs. State of Punjab & others2 (hereinafter referred to as "Bhagat Ram"). It is submitted that the JUR also does not correctly consider the law laid down by the Constitution Bench of this Court in the case of Ranjit Singh and others vs. State of Punjab and others3 (hereinafter referred to as "Ranjit Singh") so also another Constitution Bench judgment of this Court in the case of Ajit Singh vs. State of Punjab & another4 (hereinafter referred to as "Ajit Singh").

(1967) 2 SCR 165 : AIR 1967 SC 927 (1965) 1 SCR 82 : AIR 1965 SC 632 (1967) 2 SCR 143: AIR 1967 SC 856

5. Shri Hooda submits that after considering the provisions of Section 23-A and Section 24 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (hereinafter referred to as "the Consolidation Act"), this Court in Bhagat Ram has clearly held that, till

possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. It has also been held that the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. He therefore submits that the Full Bench of the High Court in the case of Jai Singh & others vs. State of Haryana5 (hereinafter referred to as "Jai Singh II") has correctly relying on Bhagat Ram held that the land which is reserved, but not earmarked for any common purpose, would not come under the purview of Section 2(g)(6) of the 1961 Act, as inserted by Haryana Act No.9 of 1992. 2003 SCC OnLine P&H 409

6. Shri Hooda submits that the Constitution Bench of this Court in Ajit Singh was dealing with the lands which were reserved for common purposes such as khals, paths, khurrahs, panchayat ghars and schools etc. It was held that in view of Rule 16(ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949 (hereinafter referred to as "the Consolidation Rules"), the title still vests in the proprietary body, and the management of the said lands is done on behalf of the proprietary body. It was further held that the land was used for the common needs and benefits of the estate or estates concerned. This Court held that a fraction of each proprietor's land was taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate as mentioned above. It has been held that the proprietors naturally would also be entitled to a share in the benefits along with others. In the facts of the said case, this Court held that all such lands, which had been specifically earmarked in the Consolidation Scheme for the purposes mentioned therein and were used for the purposes therein for the benefit of the proprietors among others, would not amount to acquisition, but a 'modification' of the rights. It was held that, by such 'modification', the beneficiary was not the State and as such, would not be hit by the second proviso to Article 31-A of the Constitution of India.

7. Shri Hooda further submits that even in Ranjit Singh, the Consolidation Scheme earmarked lands reserved under Section 18(c) of the Consolidation Act for various common purposes. The Constitution Bench of this Court held that the provisions for the assignment of lands to village Panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning grounds etc. enures for the benefit of rural population and it must be considered to be an essential part of the redistribution of holdings and open lands.

8. Shri Hooda further submitted that in a catena of judgments, this Court has held that the lands, though reserved but not earmarked and put for any common purpose under the Consolidation Scheme prepared under Section 14 of the Consolidation Act read with Rules 5 and 7 of the Consolidation Rules and entered in the column of ownership as 'Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat' and in the column of possession with the proprietors, also known as Bachat lands, would not vest in the Gram Panchayat or the State Government. Shri Hooda submits that based on such judgments, thousands of transactions have been entered into between the parties. It is submitted that, though invoking the doctrine of stare decisis was not necessary, this Court in the JUR has not even touched that aspect of the matter. All the judgments which have been holding the field for decades and thousands of transactions which have been entered into between the parties, have been set at naught at the stroke of a pen by the JUR.

9. Shri Hooda further submits that in view of the JUR, the rights of the parties which were crystalized by the judgments of the High Court and which was affirmed by this Court by judgment dated 27th August, 20016 have also been adversely affected without such parties having been heard. He therefore submits that the JUR needs to be recalled and the appeals filed by the State deserve to be dismissed.

10. Per contra, Shri Pradeep Kant, learned Senior Counsel appearing on behalf of the respondent-State of Haryana submits that the present review petition itself is not maintainable. It is submitted that the review applicant was a party respondent to the appeal and the JUR has been delivered after hearing the learned counsel for the parties. It is submitted that the scope of review is very limited. It is also submitted that under the guise of a review, a party cannot be permitted to reagitate and reargue 2001 SCC OnLine SC 1488 [State of Punjab vs. Gurjant Singh and others (CA Nos.5709-5714 of 2001 @ SLP(C) Nos.16173-16178 of 2000) the questions which have already been addressed and decided. He placed reliance on the following judgments of this Court in support of his submissions:

(i) Sow Chandra Kante and another vs. Sheikh Habib7

(ii) Parsion Devi and others vs. Sumitri Devi and others8

(iii) Kerala State Electricity Board vs. Hitech Electrothermics & Hydropower Ltd. and others9

(iv) Kamlesh Verma vs. Mayawati and others10

(v) Union of India vs. Sandur Manganese and Iron Ores Limited and others11

(vi) Shanti Conductors Private Limited vs. Assam State Electricity Board and others12 (1975) 1 SCC 674 (1997) 8 SCC 715 (2005) 6 SCC 651 (2013) 8 SCC 320 (2013) 8 SCC 337 (2020) 2 SCC 677

(vii) Shri Ram Sahu (Dead) through legal representatives and others vs. Vinod Kumar Rawat and others13

11. With the assistance of the learned counsel for the parties, we have scrutinized the material on record. III. CONSIDERATION ON THE SCOPE OF REVIEW JURISDICTION

12. At the outset, we must reiterate that the scope of review by this Court is very limited. The scope of review jurisdiction has been delineated by this Court in a catena of judgments. We would not like to burden the present judgment by reproducing all those judgments. This Court in the case of Kamlesh Verma vs. Mayawati and others (supra), after surveying the earlier law laid down by this Court has summarized the principles thus:

"Summary of the principles

20. Thus, in view of the above, the following grounds of review are maintainable as stipulated by the statute:

(2021) 13 SCC 1 20.1. When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram v. Neki [(1921-22) 49 IA 144 : (1922) 16 LW 37 : AIR 1922 PC 112] and approved by this Court in Moran Mar Basselios Catholicos v. Most Rev. Mar Poulose Athanasius [AIR 1954 SC 526 : (1955) 1 SCR 520] to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in Union of India v. Sandur Manganese & Iron Ores Ltd. [(2013) 8 SCC 337 : JT (2013) 8 SC 275] 20.2. When the review will not be maintainable:

(i) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(ii) Minor mistakes of inconsequential import.

(iii) Review proceedings cannot be equated with the original hearing of the case.

(iv) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(v) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(vi) The mere possibility of two views on the subject cannot be a ground for review.

(vii) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(viii) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(ix) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived."

13. It is thus settled that the review would be permissible only if there is a mistake or error apparent on the face of the record or any other sufficient reason is made out. We are also equally aware of the fact that the review proceedings cannot be equated with the original hearing of the case. The review of the judgment would be permissible only if a material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. We are also aware that such an error should be an error apparent on the face of the record and should not be an error which has to be fished out and searched.

14. In the light of the aforesaid principles, we will have to examine the present case.

IV. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II

15. The background in which Jai Singh II has been decided has already been stated by us in the beginning. In the first round of litigation, the High Court had held the provisions of Section 2(g)(6) of the 1961 Act to be unconstitutional being violative of second proviso to Article 31-A of the Constitution of India. This Court in the first round has set aside the judgment of the Full Bench of the High Court and remanded the matter for deciding the factual aspect as to whether the lands in question were within the ceiling limit or not.

16. As such, the scope of the dispute in the second round was very limited. The Full Bench of the High Court, after coming to a finding of fact that the lands in question were within the ceiling limit, partly allowed the petition. The operative part of the judgment of the Full Bench of the High Court has already been reproduced by us hereinabove in paragraph 2.4.

17. The State was not aggrieved with the findings on issue nos.

(i), (ii) and (iv).

By clause (i), the Full Bench of the High Court held that sub-section (6) of Section 2(g) of the 1961 Act and the explanation appended thereto is only an elucidation of the existing provisions of the said Act read with the provisions contained in the Consolidation Act.

By clause (ii), it held that the unamended provisions of the 1961 Act and, in particular, Section 2(g)(1) read with Sections 17 and 23-A of the Consolidation Act and Rule 16(ii) of the Consolidation Rules cover all such lands which have been specifically earmarked in a consolidation scheme prepared under Section 14 read with Rules 5 and 7 and confirmed under Section 20, which has been implemented under the provisions of Section 24 and no other lands.

By clause (iv), the Full Bench of the High Court held that, all such lands in the consolidation scheme which were reserved for common purposes, whether utilized or not, shall vest with the State Government or the Gram Panchayat, as the case may be; even though in the column of ownership the entries may be ‘Jumla Mustarka Malkans Wa Digar Haqdaran Hasab Rasad Arazi Khewat’ etc.

18. The grievance of the State was only with regard to clause

(iii), wherein it has been held that the lands which had been contributed by the proprietors on the basis of pro-rata cut on their holdings imposed during the consolidation proceedings and which have not been earmarked for any common purpose in the consolidation scheme prepared under Section 14 read with Rules 5 and 7 and have been entered in the column of ownership as 'Jumla Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat', and in the column of possession with the Gram Panchayat or the State Government, would not vest in the Gram Panchayat or the State Government but continue to vest with the proprietors.

19. This Court in the JUR has held that conclusion no.(iii) arrived at by the High Court was erroneous and not sustainable and accordingly set it aside. It has been held that the unutilized land was not available for redistribution amongst the proprietors. This Court further held that the findings recorded by the different benches of the High Court were clearly erroneous and not sustainable. This Court held that the land reserved for common purposes cannot be re-partitioned amongst the proprietors only because at a particular given time, the land so reserved has not been put to common use. This Court held that the 'common purpose' is a dynamic expression as it keeps changing due to the change in requirement of the society and the passing times and therefore, once the land has been reserved for common purposes, it cannot be reverted to the proprietors for redistribution.

20. The limited enquiry that would be permissible for us in these proceedings is as to whether the said finding is a material error, manifest on the face of the order, undermines its soundness or results in the miscarriage of justice or not.

21. At the cost of repetition, we reiterate that it will not be permissible for us to hear the matter as if it was an appeal arising from the JUR.

V. CONSIDERATION OF THE CONSTITUTION BENCH JUDGMENTS OF THIS COURT IN RANJIT SINGH, AJIT SINGH AND BHAGAT RAM

22. For considering the controversy, a reference to three Constitution Bench Judgments of this Court would be necessary.

23. The first one is in the case of Ranjit Singh. In the said case, the Constitution Bench of this Court was concerned with the consolidation proceedings in which portions of land from those commonly owned by the appellants therein as proprietors, had been reserved for the village Panchayat and handed over to it for diverse purposes; whereas, other portions had been reserved either for non-proprietors or for the common purposes of the villages. In the said case, in the village Virk Kalan, 270 kanals and 13 marlas had been given to the village Panchayat for management and realization of income, even though the ownership was still shown in village papers as Shamilat Deh in the names of the proprietors; 10 kanals and 3 marlas had been reserved for abadi to be distributed among persons entitled thereto, and 3 kanals and 7 marlas had been reserved for manure pits. Similarly, in village Sewana, certain lands were set apart for the village Panchayat for

extension of the abadi and to enable grants of certain land to be made to each family of non-proprietors and certain lands had been reserved for a primary school and some more for a phirni. Similarly, in village Mehnd, land had been reserved for the village Panchayat, a school, tanning ground, hospital, cremation ground and for non- proprietors. The proprietors were not paid compensation for the lands and as such, taking away and allotment of the lands was the subject matter of challenge in those appeals in the said case.

24. The appeals before this Court were heard and closed for judgment on 27th April 1964. The judgment had to be postponed till after the vacation. However, before the Court could reassemble after the vacation on 20th July 1964, the Constitution (Seventeenth Amendment) Act, 1964 received the assent of the President i.e. on 20th June, 1964. Vide the said Amendment, a new sub-clause (a) in clause (2) of Article 31-A was substituted retrospectively and added a proviso to clause (1). The appeals were set down to be mentioned on July 20/23, 1964, and counsel were asked if, in view of the amendment, they wished to say anything. However, neither of parties wished to argue. The appeals were thus decided on the old arguments, though it was clear to the Court that the amendment of Article 31-A, which had a far-reaching effect, must have affected one or other of the parties. The Constitution Bench upheld the judgment of the High Court which had held that the transfer of shamilat deh owned by the proprietors to the village Panchayat for the purposes of management and the conferral of proprietary rights on non- proprietors in respect of lands in abadi deh was not ultra vires Article 31 inasmuch as, no compensation was payable.

25. It must be noted that the judgment of the High Court was rendered by interpreting Article 31-A as it existed prior to the Constitution (Seventeenth Amendment) Act, 1964. This Court though called upon the parties to address the Court on the effect of the Constitution (Seventeenth Amendment) Act, 1964, no arguments were advanced. As such, in Ranjit Singh, this Court did not have the occasion to consider the effect of the Constitution (Seventeenth Amendment) Act, 1964 by which the second proviso was added to Article 31-A of the Constitution of India. In that view of the matter, the judgment of the Constitution Bench of this Court in Ranjit Singh will not have a bearing on the present matter.

26. In the case of Ajit Singh (supra), again the challenge was to the scheme made under the provisions of the Consolidation Act. One of the grounds raised before the High Court as well as this Court was that the compensation must be paid to the appellant for the land reserved in the scheme for various purposes in accordance with the second proviso to Article 31-A(1) inserted by the Constitution (Seventeenth Amendment) Act, 1964.

27. It will be relevant to refer to the following paragraphs in Ajit Singh:

> “6. Coming now to the third point raised by Mr Iyenger, we may first mention that it was held by this Court in Ranjit Singh v. State of Punjab [(1965) 1 SCR 82] that the Act was protected from challenge by Article 31-A. It is necessary to set out the relevant constitutional provisions. The relevant portion of Article 31-A reads as under:

> "31-A. (1) Notwithstanding anything contained in Article 13, no law providing for—
>
> (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights.....

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31:

> Provided that * * * Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto, unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof.
>
> (2)(b) the expression 'rights' in relation to an estate shall include any rights vesting in a proprietor, sub-

proprietor, under-proprietor, tenure- holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue." Relevant portions of Articles 19 and 31 may also be set out because the learned counsel have laid stress on the language employed therein.

"19. (1) All citizens shall have the right—

(f) to acquire, hold and dispose of property.

31. (1) No person shall be deprived of his property save by authority of law.

(2) No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for compensation for the property so acquired or requisitioned and either fixes the amount of the compensation or specifies the principles on which, and the manner in which, the compensation is to be determined and given; and no such law shall be called in question in any court on the ground that the compensation provided by that law is not adequate.

(2-A) Where a law does not provide for the transfer of the ownership or right to possession of any property to the State or to a corporation owned or controlled by the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property."

7. It would be noticed that Article 31- A(1)(a) mentions four categories; first acquisition by the State of an estate;

second, acquisition by the State of rights in an estate; third, the extinguishment of rights in an estate, and, fourthly, the modification of rights in an estate. These four categories are mentioned separately and are different. In the first two categories the State "acquires" either an estate or rights in an estate. In other words, there is a transference of an estate or the rights in an estate to the State.

When there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. But if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate".

Similarly, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

8. It seems to us that there is this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. For example, suppose the State is the landlord of an estate and there is a lease of that property, and a law provides for the extinguishment of leases held in an estate.

In one sense it would be an extinguishment of the rights of a lessee, but it would properly fall under the category of acquisition by the State because the beneficiary of the extinguishment would be the State.

9. Coming now to the second proviso to Article 31-A, it would be noticed that only one category is mentioned in the proviso, the category being "acquisition by the State of an estate". It means that the law must make a provision for the acquisition by the State of an estate. But what is the true meaning of the expression "acquisition by the State of an estate". In the context of Article 31-A, the expression "acquisition by the State of an estate" in the second proviso to Article 31-A(1) must have the same meaning as it has in clause (1)(a) to Article 31-A. It is urged on behalf of the respondents before us that the expression "acquisition by the State of any estate" in Article 31-A(1)(a) has the same meaning as it has in Article 31(2-A). In other words, it is urged that the expression "acquisition by the State of any estate" means transfer of the ownership or right to possession of an estate to the State. Mr. Iyengar on the other hand urges that the expression "acquisition by the State" has a very wide meaning and it would bear the same meaning as was given by this Court in State of West Bengal v. Subodh Gopal Bose [(1964) SCR 587] , Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd. [(1953) 2 SCC 791 :

> (1954) SCR 674] Saghir Ahmad v. State of U.P. [(1955) 1 SCR 707] and Bombay Dyeing and Manufacturing Co. Ltd. v. State of Bombay [(1958) SCR 1122] . In these cases this Court had given a wide meaning to the word "acquisition". In Dwarkadas Shrinivas of Bombay v. Sholapur Spinning & Weaving Co. Ltd. [(1953) 2 SCC 791 :
>
> (1954) SCR 674] Mahajan, J., observed at p. 704 as follows:

> "The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily. It does not necessarily imply the acquisition of legal title by the State in the property taken possession of." He further observed at p. 705:
>
> "I prefer to follow the view of the majority of the Court, because it seems to me that it is more in consonance with juridical principle that possession after all is nine-tenths of ownership, and once possession is taken away, practically everything is taken away, and that in construing the Constitution it is the substance and the practical result of the act of the State that should be considered rather than its purely legal aspect." Bose, J., observed at p. 734 as follows:
>
> "In my opinion, the possession and acquisition referred to in clause (2) mean the sort of 'possession' and 'acquisition' that amounts to 'deprivation' within the meaning of clause (1). No hard and fast rule can be laid down. Each case must depend on its own facts. But if there is substantial deprivation, then clause (2) is, in my judgment, attracted. By substantial deprivation I mean the sort of deprivation that substantially robs a man of those attributes of enjoyment which normally accompany rights to, or an interest in, property. The form is unessential. It is the substance that we must seek."

10. Let us now see whether the other part of the second proviso throws any light on this question. It would be noticed that it refers to ceiling limits. It is well known that under various laws dealing with land reforms, no person apart from certain exceptions can hold land beyond a ceiling fixed under the law. Secondly, the proviso says that not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The underlying idea of this proviso seems to be that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law protected by Article 31-A unless at least compensation at the market rate is given. In various States most of the persons have already been deprived of land beyond the ceiling limit on compensation which was less than the market value. It seems to us that in the light of all the considerations mentioned above the words "acquisition by the State" in the second proviso do not have a technical meaning, as contended by the learned counsel for the respondent. If the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

11. But the question still remains whether even if a wider meaning is given to the word "acquisition" what has been done by the scheme and the Act is acquisition or not within the meaning of the second proviso. In other words, does the scheme only modify rights or does it amount to acquisition of land? The scheme is not part of the record, but it appears that 89B-18B- 11B (Pukhta) of land was owned by the Gram Panchayat prior to consolidation, which was used for common purposes.

Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying cut upon the rightholders on pro-rata basis. It does not appear that

any land, apart from what was already owned by the Panchayat, was reserved for providing income to the Panchayat. Therefore, in this case we are not concerned with the validity of acquisition for such a purpose."

28. A perusal of the aforesaid paragraphs would reveal that in paragraph 6, this Court reproduced the provisions of Article 31- A, as amended.

29. In paragraph 7, this Court carved out 4 categories covered by Article 31-A as under:

(i) acquisition by the State of an estate;

(ii) acquisition by the State of rights in an estate;

(iii) the extinguishment of rights in an estate; and

(iv) the modification of rights in an estate.

30. Analyzing the said provision, the Constitution Bench held that, in the first two categories, the State "acquires" either an estate or rights in an estate i.e., there is a transference of an estate or the rights in an estate to the State. The Constitution Bench held that when there is a transference of an estate to the State, it could be said that all the rights of the holder of the estate have been extinguished. It further held that, if the result in the case of the extinguishment is the transference of all the rights in an estate to the State, it would properly fall within the expression "acquisition by the State of an estate". It further held that, in the case of an acquisition by the State of a right in an estate it could also be said that the rights of the owner have been modified since one of the rights of the owner has been acquired.

31. In paragraph 8, the Constitution Bench carved out the difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other. It held that in the first case, the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State.

32. In paragraph 9, this Court recorded that in the second proviso to Article 31-A, only one category is mentioned i.e., "acquisition by the State of an estate". It observed that the law must make a provision for the acquisition by the State of an estate. It went on to analyze the true meaning of the expression "acquisition by the State of an estate". It was sought to be urged before this Court, that the expression "acquisition by the State" has a very wide meaning and it would bear the same meaning as was given by this Court in a catena of judgments.

33. In paragraph 10, this Court recorded that the second proviso to Article 31-A refers to ceiling limits. It was further observed that the proviso provides that, not only the land exempted from acquisition should be within the ceiling limit but it also must be under personal cultivation. The Court held that the underlying idea of this proviso was that a person who is cultivating land personally, which is his source of livelihood, should not be deprived of that land under any law

protected by Article 31-A unless at least compensation at the market rate is given. The Court held that the words "acquisition by the State" in the second proviso cannot be given a technical meaning, as was contended on behalf of the State. It held that, if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the second proviso to Article 31-A.

34. In paragraph 11, this Court recorded the facts in the said case. It recorded that some of the lands were owned by the Gram Panchayat prior to consolidation, which was used for common purposes. Some further area was reserved for common purposes as khals, paths, khurrahs, panchayat ghars and schools etc. after applying a cut upon the rightholders on pro-rata basis. It observed that apart from what was already owned by the Panchayat, no other land was reserved for providing income to the Panchayat. As such, the Court was not concerned with the validity of acquisition for such a purpose.

35. It will also be relevant to refer to the following paragraphs of the said judgment in Ajit Singh:

> "12. Rule 16 (ii) of the Punjab Holdings (Consolidation and Prevention of Fragmentation) Rules, 1949, provides:
>
> "In an estate or estates where during consolidation proceedings there is no shamlat Deh land or such land is considered inadequate, land shall be reserved for the Village panchayat and for other common purposes, under Section 18(c) of the Act, out of the common pool of the village at a scale prescribed by the Government from time to time. Proprietary rights in respect of land so reserved (except the area reserved for the extension of abadi of proprietors and non- proprietors) shall vest in the proprietary body of estate or estates concerned and it shall be entered in the column of ownership of record of rights as (Jumla Malkan wa Digar Haqdaran Arazi Hasab Rasad Raqba). The management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary body and the panchayat shall have the right to utilise the income derived from the land so reserved for the common needs and benefits of the estate or estates concerned." It will be noticed that the title still vests in the property body, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. In other words a fraction of each proprietor's land is taken and formed into a common pool so that the whole may be used for the common needs and benefits of the estate, mentioned above. The proprietors naturally would also share in the benefits along with others.
>
> 13. In Attar Singh v. State of U.P. [(1959) Supp 1 SCR 928 at p 938] Wanchoo J., speaking for the Court, said this of the similar proviso in a similar Act, namely, the U.P. Consolidation of Holdings Act (U.P. Act 5 of 1954) as amended by the U.P. Act 16 of 1957:

> "Thus the land which is taken over is a small bit, which sold by itself would hardly fetch anything. These small bits of land are collected from various tenureholders and consolidated in one place and added to the land which might be lying vacant so that it may be used for the purposes of Section 14(1)(ee). A compact area is thus created and it is used for the purposes of the tenure-holders themselves and other villagers. Form CH-21 framed under Rule 41(a) shows the purposes to which this land would be applied, namely, (1) plantation of trees, (2) pasture land, (3) manure pits, (4) threshing floor, (5) cremation ground, (6) graveyards, (7) primary or other school, (8) playground, (9) Panchayatghar, and (10) such other objects. These small bits of land thus acquired from tenure-holders are consolidated and used for these purposes, which are directly for the benefit of the tenure-holders. They are deprived of a small bit and in place of it they are given advantages in a much larger area of land made up of these small bits and also of vacant land." In other words, a proprietor gets advantages which he could never have got apart from the scheme. For example, if he wanted a threshing floor, a manure pit, land for pasture, khal etc. he would not have been able to have them on the fraction of his land reserved for common purposes.

14. Does such taking away of property then amount to acquisition by the State of any land? Who is the real beneficiary? Is it the Panchayat? It is clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". The Panchayat will manage it on behalf of the proprietors and use it for common purposes; it cannot use it for any other purpose. The proprietors enjoy the benefits derived from the use of land for common purposes. It is true that the non-

proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. On the facts of this case it seems to us that the beneficiary of the modification of rights is not the State, and therefore there is no acquisition by the State within the second proviso.

15. In the context of the 2nd proviso, which is trying to preserve the rights of a person holding land under his personal cultivation, it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash."

36. In paragraph 12, after reproducing Rule 16(ii) of the Consolidation Rules, this Court observed that the title still vests in the proprietary body. However, the management of the land is done on behalf of the proprietary body, and the land is used for the common needs and benefits of the estate or estates concerned. It further held that a fraction of each proprietor's land is taken and formed into a common pool so that the whole area may be used for the common needs and benefits of the estate, mentioned above. It further held that the proprietors naturally would also share in the benefits along with others.

37. In paragraph 14, this Court held that it was clear that the title remains in the proprietary body and in the revenue records the land would be shown as belonging to "all the owners and other right holders in proportion to their areas". This Court held that the Panchayat would manage it on behalf of the proprietors and use it for common purposes and that it cannot use it for any other purpose. This Court held that the proprietors also enjoy the benefits derived from the use of land for common purposes. It observed that the non-proprietors also derive benefit but their satisfaction and advancement enures in the end to the advantage of the proprietors in the form of a more efficient agricultural community. The Panchayat as such does not enjoy any benefit. This Court held, in light of the facts of the said case, that the beneficiary of the modification of rights was not the State, and therefore there was no acquisition by the State within the meaning of the second proviso.

38. In paragraph 15, this Court, referring to second proviso, held that it is impossible to conceive that such adjustment of the rights of persons holding land under their personal cultivation in the interest of village economy was regarded as something to be compensated for in cash.

39. It can thus be seen that in Ajit Singh, this Court was considering the portion of lands which was taken from the proprietors; formed into a common pool and used for common needs and benefits of the estate or estates concerned. It was held that the said land could not be used for any other purpose. It has further affirmed that the proprietors also enjoy the benefits derived from the use of land for common purposes.

40. It is further pertinent to note that in Ajit Singh, this Court held that the words "acquisition by the State" in the second proviso cannot be given a technical meaning. It has been held that if the State has in substance acquired all the rights in the land for its own purposes, even if the title remains with the owner, it cannot be said that it is not acquisition within the ambit of the second proviso to Article 31-A.

41. Justice M. Hidayatullah (as his Lordship then was) in his minority judgment disagreed with the majority view. He held that when the State acquires almost the entire bundle of rights, it is acquisition within the meaning of the second proviso and compensation at market rates must be given.

42. The third judgment of the Constitution Bench of this Court is in the case of Bhagat Ram, which would be the most relevant for the present purpose.

43. It will be relevant to note that judgments in both Ajit Singh and Bhagat Ram were delivered on the very same day.

44. In the said case (i.e. Bhagat Ram), the Court was considering the question, as to whether the reservation of land for income of the Panchayat is acquisition of land by the State within the ambit of the second proviso to Article 31-A?

45. It will be relevant to refer to the following observations of the Constitution Bench of this Court in Bhagat Ram in the judgment delivered by Hon. S.M. Sikri, J (as his Lordship then was):

> "2. The first question that arises is whether the scheme insofar as it makes reservations of land for income of the Panchayat is hit by the second proviso to Article 31-A. The scheme reserves lands for phirni, paths, agricultural paths, manure pits, cremation grounds, etc., and also reserves an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. We have already held in Ajit Singh case [(1967) 2 SCR 143] that acquisition for the common purposes such as phirnis, paths, etc., is not acquisition by the State within the second proviso to Article 31-A. But this does not dispose of the question whether the reservation of land for income of the Panchayat is acquisition of land by the state within the second proviso to Article 31-A. We held in that case that there was this essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other that in the first case the beneficiary is the State while in the latter case the beneficiary of the modification or the extinguishment is not the State. Here it seems to us that the beneficiary is the Panchayat which falls within the definition of the word "State" under Article 12 of the Constitution. The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines "common purpose" to include the following purposes:
>
> "... providing income for the Panchayat of the village concerned for the benefit of the village community." Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly."

46. It can thus be seen that, this Court held that there was an essential difference between "acquisition by the State" on the one hand and "modification or extinguishment of rights" on the other hand. It was held that in the first case, the beneficiary was the State while in the latter case, the beneficiary of the modification or the extinguishment was not the State. This Court held that since the Panchayat would fall within the definition of the word "State" under Article 12 of the Constitution, if the acquisition is for the purposes of providing income to the Panchayat, it would defeat the whole object of the second proviso. This Court held that the Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit.

47. The second argument which was advanced before this Court in Bhagat Ram was that acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964 came into force and therefore the scheme was not hit by the second proviso to Article 31-A. It was sought to be

argued that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964.

48. It will be relevant to refer to the following observations of this Court in the majority judgment in Bhagat Ram while rejecting the aforesaid submissions:

> "4. It is clear from this affidavit that possession has not been transferred in pursuance of the repartition. The learned Counsel for the petitioners relies on this fact and says that in view of Section 23-A and Section 24 the "acquisition" does not take place till all the persons entitled to possession of holdings under the Act have entered into possession of the holdings. Sections 23-A and 24 read as follows:
>
> "23-A. As soon as a scheme comes into force, the management and control of all lands assigned or reserved for common purposes of the village under Section 18, shall vest in the Panchayat of that village which shall also be entitled to appropriate the income accruing therefrom for the benefit of the village community, and the rights and interest of the owners of such lands shall stand modified and extinguished accordingly.
>
> 24. (1) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force and the possession of the allottees affected by the scheme of consolidation, or, as the case may be, by repartition, shall remain undisturbed until a fresh scheme is brought into force or a change is ordered in pursuance of provisions of sub-section (2), (3) and (4) of Section 21 or an order passed under Section 36 or 42 of this Act.
>
> (2) A Consolidation Officer shall be competent to exercise all or any of the powers of a Revenue Officer under the Punjab Land Revenue Act, 1887 (Act 17 of 1887), for purposes of compliance with the provisions of sub-section (1)."
>
> 5. It seems to us clear from these provisions that till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A. Not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Mr Gossain, the learned Counsel for the State, tried to meet this point by urging that by virtue of repartition under Section 21, the rights to possession of the new holdings were finalised and could be enforced. This may be so; but this cannot be equivalent to "acquisition" within the second proviso to Article 31-A.
>
> 6. In the result we hold that the scheme is hit by the second proviso to Article 31 A insofar as it reserves 100 kanals 2 marlas for the income of the Panchayat. We direct the State to modify the scheme to bring it into accord with the second proviso as interpreted by us, proceed according to

law. There would be an order as to costs."

49. It can thus clearly be seen that the Constitution Bench of this Court in Bhagat Ram held that, upon reading of Sections 23-A and 24 of the Consolidation Act it was clear that, till possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Though the counsel for the State tried to urge that, by virtue of repartition under Section 21, the rights to possession of the new holdings were finalized and could be enforced, this Court held that this cannot be equivalent to "acquisition" within the second proviso to Article 31-A of the Constitution of India.

50. The Full Bench of the High Court in the case of Jai Singh II has drawn a fine distinction between the land reserved for common purposes under Section 18(c) of the Consolidation Act which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, though they have actually not been put to any common use and may be put to common use in a later point of time on one hand and the lands which might have been contributed by the proprietors on pro-rata basis but have not been reserved or earmarked for common purposes in the scheme. It will be relevant to refer to the following observations of the Full Bench of the High Court:

> "The land reserved for common purposes under Section 18(c), which might become part and parcel of a scheme framed under Section 14, for the areas reserved for common purposes, vests with the Government or Gram Panchayat, as the case may be, and the proprietors are left with no right or interest in such lands meant for common purposes under the scheme. There is nothing at all mentioned either in the Act or the rules or the scheme, that came to be framed, that the proprietors will lose right only with regard to land which was actually put to any use and not the land which may be put to common use later in point of time. In none of the sections or Rules, which have been referred to by us in the earlier part of scheme envisages only such lands which have been utilized. That apart, in all the relevant sections and the rules, words mentioned are 'reserved or assigned'. Reference in this connection may be made to sub-section (3) of Section 18 and Section 23-A. The provisions of the statute, as referred to above, would, thus, further fortify that reference is to land reserved or assigned for common use, whether utilized or not.
>
> *** *** *** The lands which, however, might have been contributed by the proprietors on pro-rata basis, but have not been reserved or earmarked for common purposes in a scheme, known as Bachat land, it is equally true, would not vest either with the State or the Gram Panchayat and instead continue to be owned by the proprietors of the village in the same proportion in which they contribute the land owned by them. The Bachat land, which is not used for common purposes under the scheme, in view of provisions contained in Section 22 of the Act of 1948, is recorded as Jumla Mustarka Malkan Wa Digar Haqdaran Hasab Rasad Arazi Khewat but the

significant differences is that in the column of ownership proprietors are shown in possession in contrast to the land which vests with the Gram Panchayat which is shown as being used for some or the other common purposes as per the scheme.

We might have gone into this issue in all its details but in as much as the point in issue is not res-integra and in fact stands clinched by string of judicial pronouncements of this Court as well as Hon'ble Supreme Court, there is no necessity at all to interpret the provisions of the Act and the rules any further on this issue.

The Hon'ble Supreme Court in Bhagat Ram and ors. Vs. State of Punjab and ors. AIR 1967 Supreme Court 927, dealt with reservation of certain area in the consolidation scheme for income of the Panchayat. Brief facts of the case aforesaid would reveal that a scheme made in respect of consolidation of village Dolike Sunderpur was questioned on the ground that in as much as it makes reservation of land for income of the Gram Panchayat, it is hit by second proviso to Article 31-A of the Constitution of India. The scheme in question reserved lands for phirni, paths, agricultural paths, manure pits, cremation grounds etc. and also reserved an area of 100 kanals 2 marlas (standard kanals) for income of the Panchayat. It was held as under:

"The income derived by the Panchayat is in no way different from its any other income. It is true that Section 2(bb) of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, defines "common purpose" to include the following purposes:

"... providing income for the Panchayat of the village concerned for the benefit of the village community." Therefore, the income can only be used for the benefit of the village community. But so is any other income of the Panchayat of a village to be used. The income is the income of the Panchayat and it would defeat the whole object of the second proviso if we were to give any other construction. The Consolidation Officer could easily defeat the object of the second proviso to Article 31-A by reserving for the income of the Panchayat a major portion of the land belonging to a person holding land within the ceiling limit. Therefore, in our opinion, the reservation of 100 kanals 2 marlas for the income of the Panchayat in the scheme is contrary to the second proviso and the scheme must be modified by the competent authority accordingly." The ratio of the judgment aforesaid would clearly suggest that it is the land reserved for common purposes under the scheme which would be saved, which, otherwise, would be hit by second proviso to Article 31-A of the Constitution of India.

Surely, if the land, which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the one which is still left out after providing the land in scheme for common purposes, if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition within the ceiling limit of an individual without payment of compensation and would offend second proviso to Article 31-A of the Constitution of India."

51. As has been observed earlier, the Constitution Bench of this Court in Bhagat Ram, in no uncertain terms, held that till possession has changed under Section 24 of the Consolidation Act, the management and control does not vest in the Panchayat under Section 23-A of the said Act. It further held that not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. Construing this, the Full Bench of the High Court in Jai Singh II held that, if the land which has not been reserved for common purposes under the scheme and is Bachat or surplus land, i.e., the land which is still left out after providing the land under the scheme for common purposes; if it is to vest with the State or Gram Panchayat, the same would be nothing but compulsory acquisition of land within the ceiling limit of an individual without payment of compensation and would offend the second proviso to Article 31- A of the Constitution of India.

52. It can thus be seen that the judgment of the Full Bench of the High Court in Jai Singh II is based basically on the Constitution Bench judgment of this Court in the case of Bhagat Ram, which clearly held that, until possession has changed under Section 24, the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act. It further held that, not only does the management and control not vest but the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme.

53. In the JUR, except a cursory reference to Bhagat Ram in paragraph 11, this Court held that there was no dispute about the said proposition in the present appeals.

54. With great respect, we may state that when the judgment of the Full Bench of the High Court rested on the law laid down by the Constitution Bench of this Court in Bhagat Ram, the least that was expected of this Court in the JUR was to explain as to why the Full Bench of the High Court was wrong in relying on Bhagat Ram. However, leave aside the cursory reference in the JUR in paragraph 11, there is no reference in the entire judgment to Bhagat Ram. Though this Court in the JUR has referred to the Constitution Bench judgments in Ranjit Singh and Ajit Singh, there is not even a whisper about the Constitution Bench judgment in Bhagat Ram, except in paragraph 11, though it had a direct bearing on the issue in question.

55. The Constitution Bench judgment of this Court in Bhagat Ram in unequivocal terms held that the management and control does not vest in the Panchayat under Section 23-A of the Consolidation Act till possession has changed under Section 24 of the said Act. It further held that, the rights of the holders are not modified or extinguished till persons have changed possession and entered into the possession of the holdings allotted to them under the scheme. In the said case, the specific contention raised by the State that the requirements as contemplated under Sections 23, 24 and 21(2) of the Consolidation Act were already complete and as such, the acquisition had already taken place before the Constitution (Seventeenth Amendment) Act, 1964, was specifically rejected by this Court. Needless to state that, all these steps are subsequent to the assignment under Section 18(c) of the Consolidation Act.

56. In the light of these findings of the Constitution Bench of this Court in Bhagat Ram, the finding of this Court in the JUR that the vesting in the Panchayat is complete on mere assignment under Section 18(c) of the Consolidation Act is totally contrary to the findings recorded in paragraph 5 of the Constitution Bench judgment in Bhagat Ram.

57. As already discussed herein above, except the cursory reference in paragraph 11 in the JUR, this Court has not even referred to the ratio laid down by the Constitution Bench of this Court in paragraph 5 in Bhagat Ram. No law is required to state that a judgment of the Constitution Bench would be binding on the Benches of a lesser strength. Bhagat Ram has been decided by a strength of Five Learned Judges, this Court having a bench strength of two Learned Judges could not have ignored the law laid down by the Constitution Bench in paragraph 5 in Bhagat Ram.

58. We find that ignoring the law laid down by the Constitution Bench of this Court in Bhagat Ram and taking a view totally contrary to the same itself would amount to a material error, manifest on the face of the order. Ignoring the judgment of the Constitution Bench, in our view, would undermine its soundness. The review could have been allowed on this short ground alone. However, the matter does not rest at that. VI. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II REFERRING ITS EARLIER JUDGMENT IN GURJANT SINGH AND SEVERAL OTHER JUDGMENTS

59. It will be relevant to refer to the following observations of the Full Bench of the High Court in Jai Singh II:

> "Division Bench of this Court, in which one of us (V.K. Bali, J.) was a member, after referring to case law on the subject from 1967 to 1997 in Bhagat Ram vs. State of Punjab, (1967) 69, PLR, 287, Des Raj vs. Gram sabha of Village Ladhot, 1981 PLJ, 300, Chhajju Ram vs. The Joint Director, Panchayats, (1986-1) 89, PLR, 586, Gram Panchayat, Gunia Majri vs. Director Consolidation of Holdings, (1991-
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> 1) 99 PLR, 342, Gram Panchayat Sahara (formerly Dhuma) vs. Baldev Singh, 1977 PLJ, 276, Baj Singh vs. State of Punjab (1992-1) 101 RLR, 10, Kala Singh vs. Commissioner, Hisar Division, 1984 PLJ, 169, Joginder Singh vs. The Director Consolidation of Holdings (1997-2) 116 PLR 116, Bhagwan Singh vs. The Director Consolidation of Holdings, Punjab, (1997-
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> 2) 116 PLR, 472 and Gram Panchayat, Village Bhedpura vs. The Additional Director, Consolidation, (1997-1) 115 PLR, 391, held that the Bachat land, i.e., land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat". It was further held that "the unutilized land after utilizing the land earmarked for the common purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes".

There is no need to give facts of the judicial precedents relied upon in Gurjant Singh's case (supra) as the same stand mentioned already therein and reiteration thereof would necessarily burden this judgment. The decision of Division Bench of this Court in Gurjant Singh's case (supra) was tested, at the instance of the State of Punjab, in Civil Appeal No. 5709-5714 of 2001. Only, the general directions given in the judgment recorded in Gurjant Singh's case (supra) for distribution of land to the proprietors were set aside and that too on the concession of learned counsel, who represented the Respondents in the case aforesaid. Order passed by the Hon'ble Supreme Court on August 27, 2001, reads thus:-

> "Leave granted.
>
> Mr. Harsh N. Salve, learned Solicitor General, submitted that the State of Punjab takes objection only in regard to the following observations made in the impugned judgment:-
>
> "This exercise, it appears, has not been done throughout the State of Punjab and Haryana and villages forming part of Union Territory, Chandigarh, even though there is a specific provision for doing that.
>
> This exercise be done as expeditiously as possible and preferably within six months proceedings for repartition must commence. Liberty to apply in the event of non-
>
> compliance of directions referred to above." Learned counsel for the Respondent submits that they had no objection in deleting the aforesaid portions from the impugned judgment. We allow these appeals to be extent of deleting of the above said passage from the impugned judgment.
>
> These appeals are disposed of accordingly."

60. It is thus clear that the Full Bench of the High Court has referred to the judgment of the Division Bench of the said Court in the case of Gurjant Singh.

61. It is pertinent to note that in the case of Gurjant Singh, the Division Bench of the High Court had noted a series of judgments delivered by the said High Court relying on the law laid down by the Constitution Bench of this Court in Bhagat Ram. All these decisions had held that the land which remains unutilized after utilizing the land for the common purposes so provided under the consolidation scheme vests with the proprietors and not with the Gram Panchayat. It was further held that the unutilized land i.e., the Bachat land, left after utilizing the land earmarked for the common

purposes, has to be redistributed amongst the proprietors according to the share in which they had contributed the land belonging to them for common purposes.

62. It is to be noted that the JUR referred to the judgment in the case of Gurjant Singh and the order passed by this Court in Civil Appeal Nos.5709-5714 of 2001, wherein the State had objected only with regard to the observations wherein the time limit was provided for effecting redistribution of the Bachat land amongst the proprietors according to their share.

63. It is thus clear that the State itself did not press the appeals with regard to the directions for redistribution of the Bachat land amongst the proprietors according to their share. Its only grievance was with regard to the directions to do it within a specified period of time. However, this Court in the JUR held that the doctrine of merger would not be applicable. However, we do not wish to go into the correctness of that finding since we are sitting in review jurisdiction.

64. The JUR referred to various judgments of the Punjab & Haryana High Court which took the view that the Bachat lands are entitled for redistribution. The JUR cursorily observed in paragraph 84 that the findings recorded by the different Benches of the High Court are clearly erroneous and not sustainable.

When a catena of judgments were delivered by the various Benches of the High court relying on the judgment of the Constitution Bench of this Court in Bhagat Ram, the least that was expected in the JUR was a reasoning as to how the findings of the various Benches of the High Court including in Gurjant Singh, relying on the judgment of the Constitution Bench of this Court in Bhagat Ram, are erroneous.

65. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in Jai Singh II, which findings were given by relying on the judgment of the Constitution Bench of this Court in Bhagat Ram, and not showing as to how the findings therein were erroneous in law, would also amount to an error, apparent on the face of the record. VII. CONSIDERATION OF THE JUDGMENT OF THE FULL BENCH OF THE HIGH COURT IN JAI SINGH II WITH REGARD TO DOCTRINE OF STARE DECISIS

66. Thirdly, the Full Bench of the High Court in Jai Singh II in the alternative held that, a consistent view has been taken in more than 100 judgments by the Punjab & Haryana High Court and applying the doctrine of stare decisis, such a view cannot be upset. While holding so, the Full Bench of the High Court has relied on various judgments of this Court as well as the various High Courts. However, in the JUR, there is not even a reference to the reasoning given by the Full Bench of the High Court with regard to the applicability of the doctrine of stare decisis. There are catena of judgments of this Court explaining the doctrine of stare decisis and its application. However, we do not propose to go into them since the scope in review jurisdiction is limited. We do not wish to go into the question as to whether the doctrine of stare decisis would be applicable in the facts of the present case or not. However, the least that the JUR was expected was to consider the reasoning

given by the Full Bench of the High Court and to consider as to how the said reasoning was not sustainable in law. However, the JUR does not even refer to the said discussion in its judgment.

67. In our considered view, the non-consideration of the reasoning given by the Full Bench of the High Court in Jai Singh II, that on account of more than 100 decisions rendered by various Benches of the High Court, the doctrine of stare decisis is applicable, would also be an error apparent on the face of the record.

VIII. CONCLUSION

68. In that view of the matter, we are of the considered view that the JUR needs to be recalled on the aforesaid grounds mentioned by us.

69. In the result, we pass the following order:

(i) The Review Petition is allowed.

(ii) The judgment and order of this Court dated 7th April 2022 in Civil Appeal No. 6990 of 2014 is recalled and the appeal is restored to file.

(iii) The appeal is directed to be listed for hearing peremptorily on 7th August 2024 at Serial No.1.

.....J. [B.R. GAVAI] .....J. [SANDEEP MEHTA] NEW DELHI;

MAY 16, 2024