# THE INDIAN LAW REPORTS

SUPREME COURT

*Before B. Jagannadhadas, T. L. Venkatarama Ayyar, Bhuvaneshwar Prasad Sinha, and Sudhanshu Kumar Das, JJ.*

RAJA RAJINDER CHAND,—*Appellant*

*versus*

MST. SUKHI AND OTHERS,—*Respondents*

**Civil Appeals Nos. 196 to 201 of 1953.**

1956

Oct., 23rd

*Grants—Made by the subject and those made by the sovereign—Difference between—Construction of such grants—Punjab Land Revenue Act (XVI of 1887)—Sections 31 and 44*—Wajib-ul-Arz—*Entries in—Value of—Code of Civil Procedure (Act V of 1908)—Section 100—Inference of surrender or relinquishment of a sovereign right from* Wajib-ul-Arz *entries—Whether one of fact—Nadaun Jagir in Kangra District—Whether appellant entitled to pine trees standing on the lands of the defendants.*

*Held*, that the ordinary rule applicable to grants made by a subject does not apply to grants made by the sovereign authority ; and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important relaxations in favour of the subject. If the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect ; and the operative part, if plainly expressed, may take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the Sovereign ; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign

ought to be more regarded than the Sovereign's profit. The views of the revenue authorities as to the effect or construction of a grant or the intention of Government in respect of a grant, do not conclude the matter or bind the civil Courts.

*Held,* that under section 31 of the Punjab Land Revenue Act, 1887, *Wajib-ul-Arz* is a part of the record-of-rights and entries made therein in accordance with law and the provisions of Chapter IV of the Act and the rules thereunder, shall be presumed to be true (*vide* section 44.) The *Wajib-ul-Arz* or village administration paper is a record of existing customs regarding rights and liabilities in the estate; it is not to be used for the creation of new rights or liabilities. The *Wajib-ul-arz* though it does not create a title, gives rise to a presumption in its support which prevails unless the presumption is properly displaced. It is also true that the Wajib-ul-arz being part of a revenue record is of greater authority than a *Riwaj-i-am* which is of general application and which is not drawn up in respect of individual villages. Whether the statutory presumption attaching to an entry in the *Wajib-ul-arz* has been properly displaced or not must depend on the facts of each case.

*Held,* that the Supreme Court does not normally go behind a concurrent finding of fact but the question whether from the *Wajib-ul-arz* entries an inference of surrender or relinquishment of a sovereign right by government can be properly drawn is not a pure question of fact, depending as it does on the true scope and legal effect of those entries. The entries in the *Wajib-ul-arz* in this case do not establish the claim of the appellant that there was a surrender or relinquishment of a sovereign right in favour of his predecessor nor has the appellant been able to establish his right to all pine trees standing on the cultivated and proprietary lands of the defendants.

(On appeal from the judgment and decree of the Punjab High Court, dated the 30th December, 1949, in Civil Regular Appeals Nos. 1567, 1568, 1569, 1570, 1573 and 1574 of 1942 arising out of the decree, dated the 31st July, 1942, of the Court of the District Judge, Hoshiarpur, in Appeals

Nos. 104|35 of 1941-42, 101|32 of 1941, 103|34 of 1941-42, 15|73 of 1941, 102|33 of 1941|42 and 120 of 1941 arising out of the decrees, dated the 24th July, 1941, of the Court of Subordinate Judge, 4th Class, Kangra, in Suits Nos. 544, 548, 545, 547, 546 and 549 of 1940.)

*For the Appellant* : Mr. Rang Beharilal, Senior Advocate. (Mr. K. R. Chaudhury, Advocate, with him).

*For the Respondents* : Mr. Ganpat Rai, Advocate.

*For the Intervener* : Mr. S. M. Sikri, Advocate-General for Punjab. (Mr. Jindra Lal and Mr. R. H. Dhebar, Advocates, with him).

JUDGMENT.

The Judgment of the Court was delivered by

S. K. DAS, J.—These are six appeals by the plaintiff Raja Rajinder Chand, the superior landlord (*ala-malik*) of Nadaun Jagir in the District of Kangra. He brought six suits in the Court of the Subordinate Judge of Kangra for a declaration that he was the owner of all pine (chil-pinus longifolia) trees standing on the lands of the defendants within the said Jagir and for a permanent injunction restraining the latter from interfering with his rights of ownership and extraction of resin from the said trees. He also claimed specified sums as damages for the loss caused to him from the tapping of pine trees by different defendants from March, 24, 1940, up to the date when the suits were brought. The defendants, who are the *adna-maliks* (inferior landlords), pleaded that they were the owners in possession of the lands on which the trees stood, that the trees were their property, and that the plaintiff had no right to the trees nor had he ever exercised any right of possession over them. S. K. Das, J.

Three questions arose for decision on the pleadings of the parties. The first question was—whether

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all pine trees standing on the lands in suit were the property of the plaintiff, i.e., the present appellant. The second question was one of limitation, and the third question related to the quantum of damages claimed by the appellant.

The learned Subordinate Judge, who dealt with the suits in the first instance, held that the present appellant had failed to prove his ownership of the trees. He further held that the suits were barred by time. On the question of damages, he held that if the appellant's claim to ownership of the trees were established, some of the defendants in four of the suits would be liable for small amounts of damages. In view, however, of his findings on the questions of ownership and limitation, he dismissed the suits. Raja Rajinder Chand then preferred appeals from the judgment and decrees of the learned Subordinate Judge, and the appeals were heard by the learned District Judge of Hoshiarpur. The latter reversed the finding of the learned Subordinate Judge on the question of ownership and held that the present appellant had established his right to the trees in question. He also reversed the finding of the learned Subordinate Judge on the question of limitation, but accepted his finding as to damages. Accordingly, he allowed the appeals, set aside the judgment and decrees of the learned Subordinate Judge, and gave the appellant the declaration and order of injunction he had asked for, as also damages in four of the suits as assessed by the learned Subordinate Judge. The defendants then preferred second appeals to the Punjab High Court. On the main question as to whether the present appellant had been able to establish his right to the trees, the learned Judges of the High Court differed from the learned District Judge and, agreeing with the learned Subordinate Judge, held that the present appellant had not been

able to establish his right to the trees. On the question of limitation, however, they agreed with the learned District Judge. In view of their finding that the appellant had failed to establish his right to the trees, the appeals were allowed and the suits brought by the appellant were dismissed. The High Court gave a certificate that the cases fulfilled the requirements of section 109(c) and section 110 of the Code of Civil Procedure. These six appeals have come to this Court on that certificate. We have heard these appeals together, as the questions which arise are the same. The present judgment will govern all the six appeals.

The short but important question which arises in these appeals is whether the present appellant has been able to establish his right to all pine (chil) trees standing on the suit lands of the defendants. The question is of some importance, as it affects the rights of *ala* and *adna maliks* in Nadaun Jagir. The respondents have not contested before us the correctness of the finding of two of the Courts below that the suits were not barred by time; therefore, the question of limitation is no longer a live question and need not be further referred to in this judgment.

Though the main question which arises in these six appeals is a short one, a satisfactory answer thereto requires an examination of the history of the creation of Nadaun Jagir, of the land revenue and revisional settlements made of the said Jagir from time to time, and of the various entries made in the records-of-rights prepared in the course of those settlements. Before we advert to that history, it is necessary to indicate here the nature of the claim made by the present appellant. The plaints of the six suits were very brief and did not give sufficient particulars of the claim made by the appellant. We

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may take the plaint in Suit No. 544 of 1940 by way of an example; in para 1 it was stated that the land in question in that suit was in tappa Badhog and the appellant was the superior landlord thereof; then came para 2 which said—

> "The land is situate in Nadaun Jagir. All the pine trees standing on the aforesaid land belong to the plaintiff. He alone enjoys benefit of those trees. This has always been the practice throughout".

In a later statement of replication dated October, 26, 1940, the plainiff-appellant gave some more particulars of his claim. The learned Subordinate Judge, who tried the suits in the first instance, observed that the present appellant based his claim to ownership of the trees on three main grounds: first, on the ground that the land itself on which the trees stood belonged formerly to the ancestors of the present appellant (namely, the independent rulers of Kangra) and they gave the land to the ancestors of the *adna maliks* but retained their right of ownership in all pine trees; secondly, after the conquest of Kangra by the British, the rights of ownership in the pine trees belonged to the British Government and the rights were assigned to Raja Jodhbir Chand, the first grantee of Nadaun Jagir; and thirdly, the right of the appellant in the trees had been "vouchsafed" by the entries made in the *Wajib-ul-arz* and recognised in several judicial decisions. The Courts below considered the claim of the appellant on the aforesaid three grounds, and we propose to consider these grounds in the order in which we have stated them.

It is now necessary to advert to the history of the creation of Nadaun Jagir so far as it is relevant for

considering the claim of the appellant on the first two grounds. Admittedly, the suit lands lie in Badhog and Jasai tappas comprised within the Jagir of Nadaun in the district of Kangra. The last independent ruler of Kangra was Raja Sansar Chand who died in the year 1824. Raja Sansar Chand was a Katoch Rajput and had children from two women; one of them, who was a Katoch lady, was his properly married wife and Raja Sansar Chand had a son by her, named Raja Anirudh Chand. The other woman was of the Gaddi tribe and by her Raja Sansar Chand had a son, named Raja Jodhbir Chand. The great antiquity of the Katoch royal line is undoubted, and the history of the Kangra State from the earliest times right up to its conquest by the Sikhs under Maharaja Ranjit Singh has been traced in the Kangra District Gazetteer (1924-25) at pp. 52 to 76. We are not concerned with that history prior to the time of Raja Sansar Chand. The Gazetteer states (p. 75) that Raja Sansar Chand was for 20 years the "lord paramount of the hills and even a formidable rival to Ranjit Singh himself; but his aggressive nature led him on in his bold designs and he fell at last a victim to his own violence". With him the glory of the Katoch line passed away and what remained to his son Anirudh Chand was little more than a name. Anirudh Chand was summoned several times to the Sikh camp and on the third occasion of his visit to that camp, he was met by a very unacceptable demand. Raja Sansar Chand had left two daughters, and Raja Dhian Singh of Jammu, one of the principal officers of Maharaja Ranjit Singh, asked one of the daughters to be given in marriage to his son, Hira Singh. Anirudh Chand was afraid to refuse, though in reality he regarded the alliance as an insult to his family honour; because by immemorial custom a Katoch Raja's daughter may not marry any one of lower rank than her father, i.e., a Raja or an heir-apparent. Anirudh Chand was a

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Raja in his own right and the descendant of a long line of kings, while Dhian Singh was a Raja only by favour of his master. Anirudh Chand prevaricated for some time; but he was determined to sacrifice everything rather than compromise the honour of his ancient line. He secretly sent away his family and property across the Sutlej and on hearing that Maharaja Ranjit Singh had started from Lahore for Nadaun, he fled into British territory. Maharaja Ranjit Singh came to Nadaun, and Jodhbir Chand gave his two sisters to the Maharaja. Jodhbir Chand was then created a Raja, with Nadaun and the surrounding country as his Jagir. Mian Fateh Chand, younger brother of Raja Sansar Chand, offered his grand-daughter to Raja Hira Singh. He was also rewarded with the gift of a Jagir known as the Rajgiri Jagir and received the rest of the State on lease on favourable terms. His son, however, failed to pay the amount agreed upon. The State was then annexed to the Sikh kingdom, and only the Rajgiri Jagir was reserved for the royal family. Thus by 1827-28 Kangra had ceased to be an independent principality and was to all intents and purposes annexed to the Sikh kingdom, the son of Mian Fateh Chand and Raja Jodhbir Chand occupying merely the position of Jagirdars under the Sikhs. The present appellant, Raja Rajinder Chand, is a direct lineal descendant of Raja Jodhbir Chand, being fourth in the line of descent.

Then followed the Sikh wars and the establishment of British rule in Kangra. The first Sikh war ended in March, 1846, in the occupation of Lahore and the cession to the British Government of the Jullundur Doaba and the hills between the Sutlej and the Ravi. In 1848, the second Sikh war began and Raja Parmudh Chand, one of the sons of Raja Anirudh Chand, raised the standard of rebellion in Kangra. The rebellion however failed. Meanwhile, Jodhbir Chand remained conspicuous for his fidelity to the

British Government; both in the Sikh war and in the Katoch insurrection he did good service to the British. He obtained a Sanad from the British Government in 1846. A copy of that Sanad was not available, but a copy of a Sanad granted on October, 11, 1848, which renewed and clarified the earlier Sanad, was produced and exhibited on behalf of the present appellant. We shall have occasion to refer to this Sanad in detail at a later stage.

Having thus indicated in brief the earlier history with regard to the creation of Nadaun Jagir in favour of Raja Jodhbir Chand, we now proceed to consider the first two grounds of the claim of the appellant. The learned Judges of the High Court held, in agreement with the learned Subordinate Judge, that the present appellant could no claim the sovereign rights of Raja Sansar Chand who was independent ruler of Kangra. For this finding they gave two reasons; firstly, Raja Jodhbir Chand was an illegitimate son of Raja Sansar Chand and could not succeed to the rights of the Raja; secondly, whatever rights Raja Sansar Chand had as an independent ruler of Kangra came to an end (so far as his descendants were concerned) with the annexation of his territory by the Sikhs, and Raja Jodhbir Chand merely got an assignment of land revenue to the tune of Rs. 30,000 by the grant of Nadaun Jagir by Maharaja Ranjit Singh. We accept these as good and convincing reasons for discountenancing the claim of the appellant that the sovereign rights of the independent rulers of Kangra in respect of all royal trees (including pine trees) within Nadaun Jagir had come down to him. For the purposes of these cases we may accept the position, in support of which there is some historical material, that Raja Sansar Chand had a right to all royal trees including pine trees within his territory; but it is clear to us that neither Raja Jodhbir Chand nor the

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present appellant succeeded to the rights of the independent rulers of Kangra. Raja Jodhbir Chand was a grantee under a grant first made by Maharaja Ranjit Singh and then by the British Government. The precise terms of the grant made by Maharaja Ranjit Singh are not known. The terms of the grant made by the Governor-General on October, 11, 1848, are to be found in the Sanad of that date. Therefore, the position of the appellant cannot be any higher in law than that of Raja Jodhbir Chand and the claim of the appellant that he had succeeded to the rights of the independent rulers of Kangra is clearly un-founded. Dealing with this part of the appellant's claim the learned District Judge, who found in favour of the appellant, relied on certain observations quoted at p. 365, and again at p. 378, of the Kangra District Gazetteer (1924-25), observations on which learned counsel for the appellant has also relied. The observations are taken from Mr. Lyall's Settlement Report. Mr. Lyall said:

> "Under the Rajas (meaning the old Katoch rulers) the theory of property in land was that each Raja was the landlord of the whole of his raj or principality, not merely in the degree in which everywhere in India the State is, in one sense, the landlord, but in a clearer and stronger degree
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> .....
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> Each principality was a single estate, divided for management into a certain number of circuits.....
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> The waste lands, great or small, were the Raja's waste, the arable lands were made up of the separate holdings of his tenants. The rent due from the holder of each field was payable direct to the Raja, unless he remitted it as an act of favour to the holder, or assigned it in Jagir to a third party

in lieu of pay, or as a subsistence allowance .....

Every one of several interests in land, whether the right to cultivate certain fields, to graze exclusively certain plots of waste, work a water-mill, set a net to catch game or hawks on a mountain, or put a fish-weir in a stream, was held direct of the Raja as a separate holding or tenancy. The incumbent or tenant at the most called his interest a 'warisi' or inheritance, not a 'maliki or lordship".

Mr. Lyall further observed that "all rights were supposed to come from the Raja ; several rights, such as holdings of land, etc., from his grant; others, such as rights of common, from his sufferance". At p. 377 of the Gazetteer a summary is given of the conditions of land tenure under the rule of the Katoch Rajas. It is stated that there were two rights in the soil recognised under the Raja's rule—the paramount right of property which was vested in the Raja and the right of cultivation derived by grant from the Raja, which was vested in the cultivators. The first right extended to the whole of the principality; the second primarily extended only to the plot specified in the grant, but carried with it further rights of common in adjacent waste. It is then observed that this system of land tenure came down practically unchanged until the introduction of British rule, and though the period of Sikh dominion intervened, the Sikhs did not appear to have altered the system. The learned District Judge relied on the aforesaid observations for his finding that the appellant had the ownership of all royal trees in accordance with the system of land tenure which prevailed during the time of the old Rajas. In our view, the learned District Judge was in error with regard to this part of the claim of the

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appellant. Mr. Lyall began his settlement work in 1865 and his report was dated July, 30, 1872. He continued and revised the earlier settlement work of Mr. Barnes. It is worthy of note that neither Mr. Barnes nor Mr. Lyall undertook any actual settlement operations in Nadaun, though Mr. Lyall gathered very valuable historical data regarding the conditions of land tenure which prevailed in the district of Kangra under the old Katoch Rajas. It is one thing to say that the system of land tenure prevailing under the old Katoch rulers continued in spite of the Sikh *interregnum*, but it is quite a different thing to say that Raja Jodhbir Chand, the grantee of a Jagir, succeeded to the rights of the independent Katoch rulers. The rights of the last independent Katoch ruler, under the system of land tenure which prevailed at the time, passed first to the Sikhs who became the rulers of Kangra and then to the British after the Sikh wars. The learned District Judge failed to appreciate the distinction between the sovereign rights of an independent ruler and the rights of a grantee under a grant made by the sovereign ruler. It is pertinent to quote here the following observations of Lord Dunedin in *Vajesingji Joravarsingji* v. *Secretary of State for India in Council* (1).

> "When a territory is acquired by a sovereign State for the first time that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto un-occupied by a recognised ruler. In all cases the result is the same. Any inhabitant of the territory can make good in the municipal courts established by the new sovereign only such rights as that

(1) [1924] L.R. 51 I.A. 357, 360.

sovereign has, through his officers, recognised. Such rights as he had under the rule of predecessors avail him nothing".

Mr. Douie in his Punjab Settlement Manual (1899) said (p. 69):

"The Sikhs drove the hill Rajas of Kangra into exile or degraded them into mere Jagirdars, and the British Government when it took over the country did not restore them to their old position".

The question as to whether the sovereign ruler having a right in all royal trees made a grant of that right to Raja Jodhbir Chand or surrendered that right in favour of Raja Jodhbir Chand or any of his successors-in-interest is a different question which will depend on the terms of the grant or on other evidence showing that the right had been surrendered in favour of the appellant or his predecessors-in-interest. That is a question which we shall presently discuss. The learned District Judge was however wrong in thinking that, according to the system of land tenure which prevailed under the old Rajas or under the Sikhs, Raja Jodhbir Chand got any right to all pine trees within Nadaun Jagir.

That brings us to the second ground and to a consideration of the terms of the Sanad dated October, 11, 1848, on which also the appellant based his claim. The Sanad was in these terms:

"Fresh Sanad re: Settlement upon Raja Jodhbir Chand Katoch of the villages named hereinafter, situate in Taalluqa Nadaun, possessed by him.

Whereas the mountainous country together with the Doaba tract had come under the occupation of the

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British Company in pursuance of the treaty which took place between the British Government and the Sirkar of Lahore on March 9, 1846: The Jagir of Choru, Bara, etc., situate in the Ilaqa of Nadaun the name of each Tappa whereof together with the number of its villages and its Jama is given herein below and the total Jama whereof was Rs. 26,270-10-3 per annum approximately, i.e., as much of the Ilaqa of Nadaun as was in the possession of the said Raja at the time of the commencement of tumult of battle whether less or more than the present one, has been granted in perpetuity, generation after generation, to Raja Jodhbir Chand and his male legitimate descendants who are not from the womb of a slave girl under the orders of the Most Generous Gracious, Exalted and Excellent Nawab Sir Henry Hardinge G.C.B. Governor-General, ruler of the territory of India, communicated in writing in English bearing the signature of Mr. Edward, Deputy Chief Secretary to His Excellency, in reply to the Commissioner's report No. 147, dated July 24, 1847, and also as contemplated in the previous order of the Nawab Governor-General, dated August 7, 1846, subject to the following conditions:—

(1) In no way shall criminal jurisdiction in respect of the said Ilaqa vest in the Raja Sahib. The entire administration and the power of hearing every sort of complaint between the Riaya (subjects) and the said Raja shall remain in the hands of the British Government's officers.

(2) The Raja Sahib shall not be at liberty to receive on any pretext Mahsul for any commodity from any Mahajan and trader or from the Riaya (subjects) by way of Zakat (octroi), or anything on account of excise and intoxicants. He shall receive

only revenue from the Riaya living in the villages of his Jagir according to the British Government's rules of practice. In case of contravention of the said rules of practice cash shall be fixed by the Government for the said Raja Sahib or his descendants.

(3) After the death of the said Raja Sahib this Jagir shall be divided among his real sons according to the practice followed by Hindus. It shall not devolve on his descendants from a slave girl.

(4) It shall be essential for the Raja Sahib to construct at his own expense public roads, eleven cubits in width, in his Ilaqa.

(5) It is proper for the Raja Sahib to be always ready to serve the Government wholeheartedly and to bear good moral character.

Hence it is obligatory on the said Raja Sahib not to set his foot on the borders of others beyond his own. He should treat this Sanad as a Sanad absolute.

Previously on September 22, 1846, a Sanad was issued by the Exalted Henry Montgomery Colonel Lawrence from Simla without thorough enquiry and without the name of each village being entered therein. In that Sanad the entire Jama is shown to be Rs. 32,000 approximately. According to the statements of officials of the Raja Sahib the said Jama includes amounts on account of excise, Bhum Chari (cattle grazing), etc. That was found to be wrong. Now the present Sanad with the name of each Tappa and the number of villages and Jama thereof being entered in it is issued by this Court subject to the

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above-mentioned conditions after an enquiry having been made and a report having been submitted to the Nawab Governor-General."

Appended to the Sanad was a list of tappas and villages comprised within the Jagir of Nadaun. The list also mentioned in the third column the amount of Jama for each tappa.

The question now is whether the aforsaid Sanad was a grant primarily of land revenue; or it made a grant of other royal rights including the right to all pine trees which is the particular right under consideration in the six suits brought by the appellant. It is, we think, well settled that the ordinary rule applicable to grants made by a subject does not apply to grants made by the sovereign authority; and grants made by the Sovereign are to be construed most favourably for the Sovereign. This general rule, however, is capable of important relaxations in favour of the subject. It is necessary to refer here to such only of those relaxations as have a bearing on the construction of the document before us; thus, if the intention is obvious, a fair and liberal interpretation must be given to the grant to enable it to take effect; and the operative part, if plainly expressed, may take effect notwithstanding qualifications in the recitals. In cases where the grant is for valuable consideration, it is construed in favour of the grantee, for the honour of the Sovereign; and where two constructions are possible, one valid and the other void, that which is valid ought to be preferred, for the honour of the Sovereign ought to be more regarded than the Sovereign's profit (see para 670 at p. 315 of Halsbury's Laws of England, Vol. VII, section 12, Simonds Edition).

It is worthy of note that so far as the lands in possession of tenants or subjects were concerned, the

Sanad did not grant any right other than the right to receive revenue; condition No. 2 of the Sanad made it quite clear that the grantee would receive only revenue from the subjects living in the villages of his Jagir according to the British Government's rules of practice, and that the grantee was not at liberty to receive on any pretext "mahsul" for any commodity from any Mahajan or trader or any octroi, etc., from any of the subjects. If the intention was to grant the right to pine trees standing on the lands of the subjects, one would expect it to be mentioned in condition No. 2. The mention of the Jama in the Sanad is also significant. In the earlier Sanad the entire Jama was shown to be Rs. 32,000, because according to the statements of the officials of the Raja Sahib, the said Jama included amounts received on account of cattle grazing, etc., that was found to be wrong and the correct Jama was found to be Rs. 26,270-10-3. The Sanad concluded with these words:

> "Now the present Sanad with the name of each tappa and the number of villages and Jama thereof being entered in it is issued subject to the above-mentioned conditions, etc".

In the recital portion of the Sanad also it was stated that the Jagir of certain tappas, together with the number of villages comprised within the tappas and the Jama mentioned in the list, the total Jama being Rs. 26,270-10-3, was granted to Raja Jodhbir Chand. The other conditions subject to which the grant was made showed that no sovereign rights were granted to the Jagirdar. In para 69 at p. 96 of his report Mr. Lyall gave a list of the principal Jagirs of Kangra and stated that Raja Jodhbir Chand had a Jama or revenue demand of Rs. 36,079 in perpetuity ; he said—

"Out of the total Jama Rs. 6,079 are the assessment

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of assigned Khalsa lands which the Raja pays to Government as nazarana; Rs. 33,000 is the value of the grant, but the Raja puts his collection at Rs. 30,000 only, exclusive of Khalsa tikas". The aforesaid remarks, made not very long after the grant, also support the view that the grant was primarily an assignment of land revenue and whatever other rights might have been included, the right to all pine trees on cultivated lands of the subjects was not within the grant. We agree, therefore, with the High Court that on a true and proper construction of the Sanad, it is impossible to spell out of its terms a grant in favour of Raja Jodhbir Chand of the right to all pine trees on cultivated and proprietary lands.

We proceed now to examine the third ground of the claim of the appellant, viz., that part of his claim which is based on the entries in the *Wajib-ul-arz* of 1892-93 (Ex. P-5), 1899-1900 (Ex. P-6) and 1910-1915 (Ex. P-4) and other connected documents. This part of the claim of the appellant has been the most controversial and difficult to determine. The learned Subordinate Judge expressed the view that the aforesaid entries did not help the appellant, because they related to pine trees standing either on uncultivated waste lands or *nautor* (recently reclaimed) lands and not to such trees on proprietary and cultivated lands. The learned District Judge held on appeal that in the *Wajib-ul-arz* of 1892-93 (Ex. P-5) all pine (chil) trees were held to be the property of Government; this led to a dispute between the Raja and Government and subsequent documents, an entry was made in favour of the Raja showing that Government had relinquished or surrendered their right to the Raja. He did not agree with the learned Subordinate Judge that the entries related to pine trees standing on waste or reclaimed lands only. The learned Judge

who delivered the leading judgment of the High Court gave and considered a long string of quotations from many documents and then came to the conclusion that the authority of the *Wajib-ul-arz* entries was open to doubt and the Raja had failed to make out his claim; the learned Judge did not clearly find, however, if the entries related to waste and reclaimed lands only.

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Learned counsel for the appellant has very strongly submitted before us that the view of the learned District Judge was correct and should have been accepted by the High Court; learned counsel for the respondents has argued, on the contrary, that the trial Judge and the learned Judges of the High Court came to a definite finding, which he has characterised as a finding of fact, with regard to the *Wajib-ul-arz* entries and this Court should not go behind that finding. We do not think that these appeals can be disposed of on the short ground that this Court does not normally go behind a concurrent finding of fact. Indeed, in respect of the *Wajib-ul-arz* entries, there is no concurrent finding in these cases; the trial Judge thought that the entries related to waste and recently reclaimed lands, whereas the High Court doubted the very authority of the entries. Moreover, the question whether from the *Wajib-ul-arz* entries an inference of surrender or relinquishment of a sovereign right by Government can be properly drawn is not a pure question of fact, depending as it does on the true scope and legal effect of those entries. We cannot, by resorting to a short cut as it were, relieve ourselves of the task of examining the *Wajib-ul-arz* entries and considering their true scope and legal effect.

We have already referred to Mr. Barnes' Settlement (1850-52) and pointed out that he did not undertake any actual settlement operations in Nadaun. The

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next person who dealt with the settlement of Kangra was Mr. Lyall, afterwards Sir James Lyall, Lt. Governor of the Punjab. He began his work in 1865 and wrote his report in 1872. He also did not undertake any settlement of Nadaun. Alex. Anderson was the next person who dealt with the settlement of Kangra. By notification No. 25, dated January 26, 1888 a general re-assessment of the land revenue of Kangra district was ordered and by notification No. 26 of the same date a preparation of the record-of-rights in the Jagirs of Guler, Siba, and Nadaun was undertaken. Mr. O'Brien undertook the settlement, but died on November 28, 1893, and it was left to Mr. Anderson to write the report. It may be stated here that Mr. Anderson wrote two reports: one was the Forest Settlement Report of 1887 and the other was the Revised Settlement Report of Kangra of 1897. On April 27, 1910 two other notifications were published, directing a revision of the existing record-of-rights in Dera and Hamirpur Tehsils (Nadaun being within Hamirpur Tehsil). As a result, Messrs Middleton and Shuttleworth undertook a revisional settlement, which was the Settlement of 1910-15. We have in these cases to deal with the entries made in O'Brien's Settlement (1892-93), Anderson's Settlement (1899-1900), and the Settlement of Messrs. Middleton and Shuttleworth (1910-15).

Before dealing with the actual entries made, it is necessary to refer to a few more matters arising out of the settlement operations of Messrs. Barnes and Lyall. The expressions *'ala-malik'* and *'adna-malik'* have been used often in the course of this litigation. What do those expressions mean? In Mr. Douie's Punjab Settlement Manual (1930 edition) it is stated in para 143: "Where the proprietary right is divided the superior owner is known in settlement literature

as *ala malik* or *talukdar*, and the inferior owner as *adna-malik*.....

In cases of divided ownership the proprietary profits are shared between the two classes who have an interest in the soil". How this distinction arose, so far as the record-of-rights in the Jagirs are concerned appears from para 105 at p. 60 of Mr. Anderson's report. Mr. Anderson said:

> "The first great question for decision was the status of the Raja and of the people with respect to the land, which was actually in the occupancy of the people, and next with respect to the land not in their actual occupancy, but over which they were accustomed to graze and to do certain other acts. Mr. O'Brien decided that the Raja was superior proprietor or Talukdar of all lands in his Jagir, and the occupants were constituted inferior proprietors of their own holdings and of the waste land comprised within their holdings as will be shown hereafter; he never fully considered the rights in waste outside holdings. The general grounds for the decision may be gathered from Mr. Lyall's Settlement Report and from the orders on the Siba Summary Settlement Report, but I quote at length the principles on which Mr. O'Brien determined the status of occupants of land, not merely because it is necessary to explain here the action that he took, but also in order that the Civil Courts which have to decide questions as to proprietary rights may know on what grounds the present record was based".

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Mr. Anderson then quoted the following extract from Mr. O'Brien's assessment report to explain the position:—

> "In places where the possession of the original occupants of land was undisturbed, they were classed as inferior proprietors; but where they had acquired their first possession on land already cultivated at a recent date, or where the cultivators had admitted the Raja's title to proprietorship during the preparation and attestation of the *Jamabandis*, they were recorded as tenants with or without right of occupancy as the circumstances of the case suggested...
>
> .....
>
> In deciding the question old possession was respected. Where the *ryots* had been proved to be in undisturbed possession of the soil they have been recorded as inferior proprietors".

The same principles were followed in Nadaun; long possession with or without a patta or lease from the Raja was the test for recording the *ryot* as an inferior proprietor (*adna-malik*).

Bearing in mind the aforesaid distinction between *ala-malik* and *adna-malik*, we proceed now to examine the actual entries made in the *Wajib-ul-arz* of 1892-93 (Ex. P-5), of 1899-1900 (Ex. P-6) and of 1910-15 (Ex. P-4). In Ex. P-5 the relevant entry in paragraph 11 was:—

> "The owners shall, however, have no right to pine trees. They can neither cut them nor get the same without permission, for it has been laid down in the Forest Settlement Reports that the Raja Sahib gave

leases to reclaim such lands whereon the Government jungles, i.e., the Government pine trees exist. For this reason, the Government maintained their right to the pine trees. (*See* para 78 of the English report regarding jungles)".

In Ex. P. 6, the relevant entry was—

"Except the chil (pine) trees all the trees situated in the *Khata* of any person in the Tikas of the Jagir are the property of the owner of the *Khata*. The chil trees growing in such *Khatas* in the Tikas of the Jagir are the property of Raja Sahib".

In Ex. P. 4, the entry was—

"Excepting the pine trees all the trees standing in the *Khata* of any person in the Tikas of the Jagir save those proprietary lands the trees whereof have been held belonging to the Government during the recent Settlement and which have been mentioned above are the property of the owner of the *Khata*. In the Tikas of Jagir, all the pine trees of such *Khatas* excepting those standing on such proprietary lands, and which have been held to be property of the Government during the recent settlement and mention whereof has been made above, are the property of Raja Sahib".

The question before us is as to the true scope and legal effect of these entries. Do they establish a grant of the right to chil trees or, what is the same thing, a surrender of that right, in favour of the Raja by Government ? In these cases we are not concerned with trees on public waste lands, nor with forest trees; and as the High Court has pointed out, we do not know if the lands in suit were initially private waste

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or recently reclaimed lands. The Jamabandis show that they are proprietary and cultivated lands of *adna-maliks*. Therefore, the question before us is the right to chil trees on proprietary and cultivated lands in possession of *adna-maliks*.

It is not disputed that under section 31 of the Punjab Land-Revenue Act, 1887, *Wajib-ul-arz* is a part of the record-of-rights, and entries made therein in accordance with law and the provisions of Chapter IV of the Act and the rules thereunder, shall be presumed to be true (*vide* section 44). The *Wajib-ul-arz* or village administration paper is a record of existing customs regarding rights and liabilities in the estate; it is not to be used for the creation of new rights or liabilities. (*See* para 295 of the Punjab Settlement Manual, pp. 146-147, 1930 ed.) In appendix VIII of the Settlement Manual, Section E, are contained instructions with regard to the *Wajib-ul-arz* and instruction No. 2 states:—

> "The statement shall not contain entries relating to matters regulated by law, nor shall customs contrary to justice, equity or good conscience, or which have been declared to be void by any competent authority, be entered in it. Subject to these restrictions, the statement should contain information on so many of the following matters as are pertinent to the estate:
>
> . . . . . .
>
> (h) The rights of cultivators of all classes not expressly provided for by law (for instance, rights to trees or manure, and the right to plant trees) and their customary liabilities other than rent.
>
> . . . . . .
>
> (j) The rights of Government to any *nazul* property, forests, un-claimed, unoccupied, deserted, or waste lands,

quarries, ruins or objects of antiquarian interest, spontaneous products, and other accessory interest in land included within the boundaries of the estate.

.....

(l) Any other important usage affecting the rights of landowners, cultivators or other persons interested in the estate, not being a usage relating to succession and transfer of landed property".

In the cases before us, the appellant did not base his claim on custom, though referring to his right he said in his plaint—"this has been the practice throughout". What he really meant by "practice" was the land system prevailing under the old independent Katoch rulers. We have already held that the appellant did not get the sovereign right of the independent Katoch rulers; nor did the grant made in 1848 give him any right to the royal trees. The entry in the *Wajib-ul-arz of* 1892-93 (Ex. P. 5) is not really in his favour; it states that trees of every kind shall be considered to be the property of the owners (*adnamaliks*), but the owners shall have no right to pine trees ; for this last part of the entry which is some what contradictory of the earlier part, a reference is made to para 78 of Anderson's Forest Settlement Report as authority for it. That paragraph, however, stated in clear terms—"No orders have been passed by me in regard to trees on fields, as the present enquiry extended only to the waste land". It is obvious that the entry in the *Wajib-ul-arz* of 1892-93 went much beyond what was stated in para 78 of Mr. Anderson's report, and so far as the right to pine trees on proprietary and cultivated lands was concerned, the statement made a confusion between Government jungles, recently reclaimed land and proprietary land.

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On its own showing, the entry was not the statement of an existing custom, because it referred to para 78 of the Forest Settlement Report; far less did it show any surrender or relinquishment of a sovereign right by Government in favour of the Raja. Indeed, it is difficult to understand how the surrender or relinquishment of such a right can be the subject of a village custom or can be within the scope of an entry in the *Wajib-ul-arz*. The original grant in favour of Raja Jodhbir Chand was by means of a Sanad, and one would expect any additional grant or surrender to be embodied in a similar document. At any rate, if the intention of Government was to surrender a sovereign right in favour of the Raja, one would expect such intention to be expressed in unambiguous language. In Khalsa villages, Goverment did surrender their right to trees on *Shamilat* lands of *adna-maliks* on the authority of letter No. 347 of January 6, 1867. Taking the most favourable view for the appellant, the entries in the *Wajib-ul-arz* in these cases can be said to express the views of certain revenue authorities as to the rights of the Raja or the intention of Government; but the views of the revenue authorities as to the effect or construction of a grant or the intention of Government in respect of a grant, do not conclude the matters or bind the Civil Courts. (See *Rajah Venkata Narasimha Appa Row Bahadur* v. *Rajah Narayya Appa Row Bahadur* (1).

The same comments apply to the *Wajib-ul-arz* of 1899-1900 (Ex. P. 6) and of 1910-15 (Ex. P. 4). They no doubt say that the pine trees on the lands comprised within the *Khatas* of *adna-maliks* are the property of the Raja Sahib. None of them indicate, however, on what basis the right to *chil* trees on proprietary and cultivated lands of the *adna-maliks* is to be held the property of the Raja Sahib. If the revenue authorities made the entries on the basis of the land system of

(1) [1879] L.R. 7 I.A. 38, 48.

the old Katoch rulers or on the basis of the Sanad of 1848, they were clearly wrong. If, however, there was a surrender by Government of the right in favour of the Raja, one would expect it to be mentioned unambiguously in the entries; one would further expect the same to be mentioned in the *Jamabandis* (Exhibits D. 7 and D. 8) of the *adna-maliks*. The *Jamabandis* do not, however, show any restriction on the rights of *adna-maliks* with regard to the trees on their lands. A reference may be made here to another document (Ex. D. 2) which is an extract of the *Wajib-ul-arz* (para 12) of 1892-93, dealing with the rights of *ala-maliks* and *adna-maliks*. The entry shows that the Raja Sahib was to get 15 per cent. on the net revenue in respect of the entire land owned by the *adna-maliks* as *talukdari* dues which had been fixed, the *talukdari* dues were fixed to compensate the Raja Sahib for all sorts of dues, such as *banwaziri domiana, etc.*, It is improbable that after the fixation of such talukdari dues, a grant of a further right in respect of *chil* trees on the lands of *adna-maliks* will be made but will not be specifically mentioned in para 12 of the *Wajib-ul-arz*, which dealt particularly with the rights of *ala-* and *adna-maliks*. Learned counsel for the appellant drew our attention to Ex. D. 6, an extract of para 11 of the *Wajib-ul-arz* of 1914-15, at the bottom of which there is a note that the Zamindars (*adna-maliks*) were present and every paragraph had been read out to them and the same were correct. The argument before us is that the *adna-maliks* admitted the *Wajib-ul-arz* of 1914-15 to be correct. We cannot accept that argument; firstly, we do not think that the endorsement at the bottom of Ex. D. 6 is an admission by *adna-maliks* of the correctness of the entries made in other paragraphs of the *Wajib-ul-arz*, as for example, para 10 (Ex. P. 4) which related to the rights of Government in respect of the *nazul* lands, etc. Secondly, even if the endorsement amounts to such an admission as is

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contended for by learned counsel for the appellant, we do not think that it is conclusive or decisive of the right which the appellant is claiming. Ex. P. 2, dated May 27, 1886, showed that even so far back as at that date, some of the *adna-maliks* had complained that the Raja's men had cut and taken away some *chil* trees on their lands. It is quite improbable that after such a complaint the *adna-maliks* would admit the right of the *ala-malik* to *chil* trees on their lands. In para 296 of the Punjab Settlement Manual, Mr. Douie observed that the *Wajib-ul-arz* in the first regular settlements was sometimes a formidable document, but its real value as evidence of village custom was not always proportionate to its length. He quoted with approval the observations of Sir Arthur Brandreth to the following effect: "Some few points have been ascertained in each case, but in general the villagers did not know their customs very well, and when they put their seals to the paper, no doubt they thought it very grand, though they did not know what it was about, as they could little understand the language. The rules are of two sorts; one, the rules laid down by Government, or points on which the whole pargana have the same custom, and, secondly, the special customs of the particular manor; these together take up a great number of pages, and the villagers are confused by the long code of rules, and merely say 'yes, yes' and put their seals to the paper, hoping it is nothing very dreadful."

A large number of decisions in which entries of the *Wajib-ul-arz* or the *Riwaj-i-am* and the value to be given to them were considered, have been cited before us. In some of them, entries in the *Wajib-ul-arz* were accepted as correct and in others they were not so accepted, notwithstanding the statutory presumption attaching to the entries under section 44 of the Punjab Land Revenue Act, 1887. We do not think that any useful purpose will be served by examining those decisions in detail. The legal position is clear enough.

As was observed by the Privy Council in *Dakas Khan* v. *Ghulam Kasim Khan* (1), the *Wajib-ul-arz,* though it does not create a title, gives rise to a presumption in its support which prevails unless the presumption is properly displaced. It is also true that the *Wajib-ul-arz* being part of a revenue record is of greater authority than a *Riwaj-i-am* which is of general application and which is not drawn up in respect of individual villages (*Gurbaksh Singh* v. *Mst. Partapo*) (2). Whether the statutory presumption attaching to an entry in the *Wajib-ul-arz* has been properly displaced or not must depend on the facts of each case. In the cases under our consideration, we hold, for the reasons already given by us, that the entries in the *Wajib-ul-arz* with regard to the right of the Raja in respect of chil trees standing on cultivated and proprietary lands of the *adna-maliks,* do not and cannot show any existing custom of the village, the right being a sovereign right; nor do they show in unambiguous terms that the sovereign right was surrendered or relinquished in favour of the Raja. In our view, it would be an unwarranted stretching of the presumption to hold that the entries in the *Wajib-ul-arz* make out a grant of a sovereign right in favour of the Raja; to do so would be to hold that the *Wajib-ul-arz* creates a title in favour of the Raja which it obviously cannot.

It is necessary to state here that in the *Wajib-ul-arz* of 1899-1900 (Ex. P. 6) there was a reference to certain orders contained in letter No. 1353, dated March, 11, 1897, from the Senior Secretary of the Financial Commissioner. This *Wajib-ul-arz* also showed that certain amendments were made on May, 26, 1914, by an order of Mr. Shuttleworth, the then Settlement Officer. There is a further note that the amendment was cancelled on January 23, 1917. In the High Court judgment there is a reference to the notes mentioned above

(1) A.I.R. 1918 P.C. 4
(2) [1921] I.L.R. 2 Lah. 346

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and the learned Judge who gave the leading judgment observed that the aforesaid notes showed that the state of affairs prevailing at that time was somewhat confused and fluid. It is probable that each revenue officer was expressing his own opinion about the matter. An attempt was made in the High Court to get some of the unpublished original documents of Government to clarify the entries in the *Wajib-ul-arz*. The Government of the Punjab, however, claimed privilege in respect of those documents, which claim was upheld in the High Court. We have re-examined that claim, and though the State was not a party to this litigation, we heard the learned Advocate-General for the State. We found the claim to be valid under the law as it stands at present.

We have assumed that the entries in the *Wajib-ul-arz* of 1899-1900 and of 1910-15 related to cultivated and proprietary lands of *adna-maliks*, though they were entered in a paragraph which dealt with the rights of Government in respect of ownership of the *nazul* lands, jungles, unclaimed property, etc. Even on that assumption, we have come to the conclusion that the entries in the *Wajib-ul-arz* do not establish the claim of the appellant that there was a surrender or relinquishment of a sovereign right in favour of his predecessor.

It remains now to notice some other evidence on the record. Learned counsel for the appellant has referred us to several judgments, Exs. P. 9, P. 7, P. 8 and P. 4, (wrongly marked as Ex. P. 6). Referring to these judgments, the learned trial Judge said that it was not clear whether those judgments related to lands which were private waste or *nautor* (reclaimed) lands. Apart, however, from that difficulty, we are of the view that the judgments do not advance the case of the appellant any further. They proceeded primarily on the entries in the Wajib-ul-arz, the effect of which entries we have already considered at great length

Admittedly, no plea of *res judicata* arose on these judgments, and they were merely evidence of an assertion and determination of a similar claim made by the Raja in respect of other lands within the Jagir.

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As to the oral evidence in the case, none of the Courts below placed any great reliance on it. The learned Subordinate Judge did not accept the oral evidence given on behalf of the appellant; the learned District Judge, referring to the oral evidence of the respondents, said that he could not accept that evidence in preference to the overwhelming historical and documentary evidence led by the appellant. With regard to the appellant's witnesses he seemed to think that some of them at least were reliable. The learned Judges of the High Court did not refer to the oral evidence except for a slight reference to the statement of Salig Ram, the Raja's attorney, who appears to have stated that the Raja got his rights in 1893-94; how the Raja got his rights then was not explained. Learned counsel for the appellant has referred us to the evidence of one Babu Kailash Chander (witness No. 2 for the appellant), who was a Forest Range Officer. This gentleman said that the trees standing on the land belonging to the landlords were exclusively owned by the Raja Sahib. In cross-examination he admitted that he had no knowledge of the trees in suit nor did he know on which lands the trees were standing. He admitted that he knew nothing about the rights of the Jagirdar and the landlords *inter se* with regard to the lands in dispute. It is obvious that such evidence does not prove the case of the appellant. Had the Raja been in possession of the pine trees for such a long time as he now claims, one would expect him to produce some documents showing his income, etc., from the trees. No such documents were produced.

For these reasons, we hold that the appellant has failed to establish his claim to the pine trees, and the decision of the High Court is correct. The appeals fail

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and are dismissed. In the circumstances of these cases, where much of the doubt as respects the right claimed arose out of the entries made in the *Wajib-ul-arz*, the High Court properly directed that there would be no order for costs either in the High Court or in the Courts below. We think that that order was correct, and we also pass no order as to costs of the hearing in this Court.

SUPREME COURT

APPELLATE CIVIL

*Before B. Jagannadhadas, Bhuvaneshwar Prasad Sinha, and Syed Jafer Imam, JJ.*

THE FRUIT AND VEGETABLE MERCHANTS UNION,—*Appellant*

*versus*

THE DELHI IMPROVEMENT TRUST,—*Respondent*

**Civil Appeal No. 328 of 1955.**

1956

Nov. 6th

*Delhi and Ajmer Rent Control Act (XXXVIII of 1952)—Section 3(a)—Market constructed by Delhi Improvement Trust on Government land with a loan from the Government—Whether property of the Government or the Trust—Act, whether applicable thereto—United Provinces Town Improvement Act (VIII of 1919)—Sections 54-A and 72(1)(e)—Position of the Trust vis-a-vis the Government—"Vest"—Meaning of.*

*Held*, that it cannot be said that either under the provisions of the United Provinces Town Improvement Act, (VIII of 1919) or in accordance with the terms of the agreement, or the two taken together the market became the property of the Improvement Trust. The market, as also the land on which it stands, is the property of the Government and the operative provisions of the Delhi and Ajmer Rent Control Act, 1952, do not apply to the premises in question.

*Held*, that having regard to the provisions of sections 54-A and 72(1)(e) of the United Provinces Town Improvement Act and rules 21, 36, 38 and 156 framed thereunder

and the agreement between the Government and the Improvement Trust, the title to the Nazul land on which the market was constructed, was not conveyed by the Government to the Trust. The Trust was in the position of a statutory agent of the Government, and had erected the structure with money belonging to Government but advanced at interest to the Trust. In such a situation the structure also would be the property of Government, though for the time being it may be at the disposal of the Trust for the purpose of managing it efficiently as statutory body. Simply because the Trust erected the structure in question and later on paid up the amount advanced by Government for the purpose would not necessarily lead to the legal inference that the structure was the property of the Trust.

*Held,* that the word "vest" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authority. It has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.

(On appeal from the judgment and decree, dated the 5th May, 1954, of the High Court of Punjab at Chandigarh, in Regular First Appeal No. 115 of 1953, arising out of the decree, dated the 6th June, 1953, of the Court of the Subordinate Judge, 1st Class, Delhi in Suit No. 26 of 1953).

*For the Appellant*: Dewan Chaman Lal, Senior Advocate, (Mr. Rattan Lal Chawla, Advocate, with him).

*For the Respondent*: Mr. M.C. Setalvad, Attorney General for India. (Mr. Porus A. Mehta and Mr. R. H Dhebar, Advocates, with him).

JUDGMENT.

The Judgment of the Court was delivered by

Sinha, J. SINHA, J.—The main question for determination in this appeal from the concurrent decisions of the courts below is whether the Delhi and Ajmer Rent Control Act, XXXVIII of 1952 (which hereinafter will be referred to as the Control Act), is applicable to the premises in question. The courts below have come to the conclusion that in view of the provisions of section 3(a) of the Control Act the market called the New Fruit and Vegetable Market, Subzimandi, under the administration of the respondent, the Delhi Improvement Trust, (which hereinafter will be referred to as the Trust), is Government property to which the provisions of the Act are not attracted. This appeal has been brought to this Court on a certificate granted by the High Court of judicature of the State of Punjab that the case involved a substantial question of law as to the legal status of the respondent *vis a vis* the Government.

The sequence of events leading up to the institution of the suit by the appellant "the Fruit and Vegetable Merchants Union, Subzimandi" a registered body under the Indian Trade Unions Act, 1926, XVI of 1926, giving rise to this appeal may shortly be stated as follows:—

By an agreement, dated March, 31, 1937, (Exhibit D. 5) between the Secretary of State for India in Council and the Delhi Improvement Trust, which will have to be set out in detail hereinafter and the construction of which is the main point in controversy between the parties, a certain area of the land admittedly belonging to Government was placed at the disposal of the

Trust for the "orderly expansion of Delhi under the supervision of a single authority". The said property was compendiously called "the Nazul Estate". By a letter, dated May 1|2, 1939, (not exhibited but filed in the High Court at the appellate stage), the Chairman of the Trust forwarded a copy of the resolution No. 551, dated April 24, 1939 (Exhibit D. 15) to the Chief Commissioner of Delhi. The resolution sets out the scheme for the construction of the new Subzimandi Fruit Market on a gross area of 10.87 acres including certain lands which till then did not vest in the Trust. The Chairman asked for administrative sanction of the Government of India to place the additional area at the disposal of the Trust on the same terms as those applicable to the Nazul Estate aforesaid held under the agreement, Exhibit D. 5. The resolution aforesaid sets out the object and history of the scheme. It contains the categorical statement that "Government is the owner of all the land included in the scheme. The position according to the revenue records is given in the statement on the next page". The scheme then sets out in great detail the several structures to be constructed and the profit and loss figures. Under the heading "Computation of revenue surplus" occur the following significant statements very much relied upon by the appellant:—

> "The revenue surplus of Rs. 4,530 is made up as follows; and is based on the recommendation that the Trust shall own and maintain the market".

Under the heading "Future Jurisdiction" the following significant passage occurs:—

> "At this stage, if the suggestion is accepted that the Trust should own and run the market at least until it is firmly established, and in view of the fact that Government are the

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sole owners of the land, no difficulty is anticipated due to divided territorial jurisdiction of the two local authorities and no change is proposed".

The letter enclosing the resolution of the Trust as aforesaid contains a summary of the scheme, a portion of which is as follows:—

> "An estimated capital expenditure of Rs. 4.73 lakhs is involved. On this capital expenditure there will be a capital deficit of Rs. 4.20 lakhs and a recurring revenue surplus of Rs. 4,530. This financial result assumes ownership and management of the market by the Trust, and takes into account all charges on maintenance and day-to-day management which would otherwise fall to a local body. The scheme involves no acquisition of land, but assumes transfer free of charge of an area of 10.87 acres of Government land, all of which except for 1,510 square yards, falls within the limits of the Civil Lines Notified Area Committee" (Underlined by us.)

In answer to this communication from the Trust, the Chief Commissioner sent the letter (Exhibit D. 8), dated May, 13, 1939, sanctioning under section 22-A of the Trust Law the scheme of the "New Fruit and Vegetable Market" as proposed in the resolution aforesaid at a cost not exceeding Rs. 4,73,186. The sanction is in terms made subject to the remarks (1) that "the whole of the land required for the construction of the new market is the property of the Government", and (2) that "the trust will administer the new market on its completion". It will thus appear that it was clearly understood that the land on which the market was to be constructed would continue to be the property of

the Government in modification of the proposal made by the Trust as aforesaid, the Trust only being vested with the power to administer the new market.

On receipt of the letter aforesaid of the Chief Commissioner, the Chairman of the Trust requested the former to obtain the orders of the Government of India to place the additional land required for the market at the disposal of the Trust under section 54-A of the United Provinces Town Improvement Act, VIII of 1919 (which will hereinafter be referred to as the Improvement Act), as extended to the Province of Delhi, "on the same terms applicable to other Nazul estate held under the agreement between the Trust and the Government of India" (Exhibit D. 7). By this letter dated August 10, 1939, (Exhibit D. 6) the Chief Commissioner forwarded the orders dated June 21, 1939, of the Government of India agreeing to the proposal aforesaid of the Trust placing the additional area at the disposal of the Trust on the original terms aforesaid. This is the genesis of the New Fruit and Vegetable Market, Subzimandi, which will hereinafter be referred to as the Market, for a period of six years with effect from May 25, 1942, at an annual rent of Rs. 35,000 rising every year by Rs. 2,000 to Rs. 45,000 in respect of the sixth year of the lease. In anticipation of the termination of the lease period aforesaid the Trust advertised the auction of the market for a fresh settlement. That occasioned the suit for an injunction by the plaintiff against the Trust in the Court of the Senior Subordinate Judge of Delhi, instituted on March 18, 1948. The Court granted the plaintiff an interim injunction restraining the defendant from putting the market to auction. The said *ex parte* order of injunction was contested by the Trust with the result that the trial Court dissolved that injunction. The plaintiff carried an appeal to the High Court of Punjab at Simla. During the pendency of the appeal a settlement was arrived at between the

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parties and the plaintiff's offer of Rs. 1,50,000 as annual rent of the market on the expiry of the lease was accepted by the Trust. This settlement is evidenced by the resolution of the Trust dated February 24, 1949, (Exhibit D. 13). In pursuance of that settlement a fresh lease was executed. By the indenture (Exhibit D. 4), dated April 22, 1949, the plaintiff was granted a fresh lease for the period May 25, 1948 to March, 31, 1950, at an annual rent of Rs. 1,50,000. One of the terms of the lease, which is a registered document, was—

> "That the lessee shall on expiry of the lease or on its determination by the lessor, vacate the premises and deliver its peaceful possession to the lessor. If the lessee fails to do so, he shall be liable to pay double the rent as liquidated damages for the unauthorised period of occupation till such time as he vacates it or he is ejected by process of law".

Paragraph 22 of the indenture aforesaid contains the following important admission:—

> "that both the lessor and lessee agree that the premises in dispute are owned by the Government and the provisions of the Delhi Ajmer Merwara Rent Control Act (1947) do not apply to the same".

The effect of this admission is also one of the controversies between the parties and shall have to be adverted to later.

It appears that during the pendency of the second lease aforesaid, negotiations had started between the parties for extension of the period of the lease. The plaintiff made an offer of a fresh lease for a further period of five years at an annual rent of rupees two

lakhs. But the Trust by its resolution dated May 25, 1950 (Exhibit D. 12), agreed only to extend the period by two years "on the existing conditions, subject to enhancement of rent to Rs. 2 lakhs per year". The plaintiff's case in the plaint is that these onerous terms successively enhancing the rent to Rs. 2 lakhs per year were agreed to by it as it had no other alternative in view of the plaintiff's need. The plaintiff has been paying the enhanced rent of Rs. 2 lakhs per year in view of the resolution aforesaid of the Trust but has all the same started proceedings under section 8 of the Control Act, for fixation of standard rent in respect of the market. The Trust got an advertisement inserted in the Hindustan Times, New Delhi, dated March 5, 1953, inviting tenders for the lease of the market for a period of three years from April 1, 1953. The plaintiff's case in the plaint is that the tenancy in favour of the plaintiff still subsisted and had not been terminated in accordance with law. That was the cause of action for the plaintiff to institute the present suit on March 9, 1953. The plaintiff's prayer in the plaint is that a decree for a permanent injunction may be passed in favour of the plaintiff restraining the defendant from evicting the plaintiff from the market.

The suit was contested by the Trust on the allegations that the market had been constructed on Nazul land under the authority of the Delhi State Government with Government funds, that the market was Government property and was only being managed by the defendant on behalf of the Government, that the Control Act by virtue of section 3(a) thereof was not applicable to the premises in question and that, therefore, the plaintiff was liable to be ejected as the term of its lease had expired. Reliance was also placed on behalf of the defendant on the provisions of the Government Premises (Eviction) Act, XXVII of 1950, read with the Requisitioning and Acquisition of Immovable Property Act, XXX of 1952.

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On those pleadings a number of issues were joined between the parties of which the most important is issue No. I—

> "Whether the property in dispute belongs to the Government within the meaning of section 3(a) of the Rent Control Act, 1952"?

Both the courts below have answered that issue in the affirmative, that is to say, in favour of the defendant. The plaintiff prayed for and obtained the necessary certificate from the High Court that the case involved substantial questions of law as to the interpretation of the relevant statute and the agreement (Exhibit D. 5) between the Government of India and the Delhi Improvement Trust. Hence this appeal.

It has been contended on behalf of the appellant that on a true construction of the provisions, particularly section 54-A of the Improvement Act, as applied to the Province of Delhi and the agreement (Exhibit D. 5) between the Government of India and the Trust, as also of the correspondence that passed between the Chief Commissioner of Delhi and the Trust, the land on which the market was constructed and the structure itself belonged to the Trust and that therefore the provisions of the Control Act were applicable to the tenancy created by the Trust in favour of the plaintiff, and that being so, the plaintiff could not be ejected by the defendant on the expiry of the term or the extended term of the lease. On the other hand, it has been argued on behalf of the defendant-respondent that the Trust is the statutory agent of the Government and has to function in accordance with the provisions of the statute aforesaid, namely, the Improvement Act. The agency was created under the provisions of section 54-A(1) of the Improvement Act, the terms of the agreement being incorporated

in the indenture, Exhibit D. 5, dated March 31, 1937. The argument further is that in accordance with the scheme as embodied in the agreement the Government was to hand over to its agent, the Trust, Government property which vests in possession of the agent who has to manage and develop the property funds made available to it by Government. Proper accounts have to be kept by the Trust of the monies thus advanced by Government in a separate account. The Trust has also to pay a certain fixed sum by way of revenue on the property placed at its disposal. The income from the property in the hands of the Trust has to be applied to payment of interest on money advanced by Government at a specified rate, as also to expenses for the management and improvement of the property and any surplus left over out of the income of the property in the hands of the Trust after meeting all the outgoings has to be placed at the disposal of Government to be spent according to its directions. Thus the case of the respondent is that no legal title was created in favour of the Trust and the land, as also the structures constructed by the Trust with the monies thus advanced by Government are the property of the Government. The Trust as the statutory agent has only to manage and develop the property in accordance with schemes sanctioned by Government. Consequently, it was argued that the market in question belongs to Government and is not governed by the Control Act.

The question as to in whom the title to the market in question vests may be discussed in two parts, (1) title to the land on which the market is situate, and (2) title to the buildings admittedly constructed by the Trust. Adverting first to the question of title in respect of the land, it is common ground that before it was placed at the disposal of the Trust it was Government property. The question, therefore, naturally

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arises whether either by the provisions of section 54-A relied upon by both the parties in this connection, or by virtue of the terms of the indenture aforesaid or by the combined operation of the two, title to the land has become vested in the Trust. The appellant contends it is so vested. The respondent contests this proposition and contends that there are no words in the statute or in the agreement which either separately or together can be said to have transferred the pre-existing title of the Government to the Trust. It is pointed out on behalf of the respondent that section 54-A only authorises Government to place the land in question "at the disposal of the Trust" which has to hold it in accordance with the terms agreed upon between them, as evidenced by the indenture (Exhibit D. 5). Let us examine those terms. The agreement provides, *inter alia*, that with a view to the orderly expansion of Delhi under the supervision of a single authority the Government agreed to place at its disposal "the Nazul Estate" (described in schedule I), with effect from April 1, 1937. One of the conditions stipulated was that the "Trust shall hold and manage the said Nazul Estate on behalf of the Government". These words cannot be construed as transferring title to the Nazul Estate from Government to the Trust. They amount to constituting the Trust as an agent of the Government to hold possession of the property and to manage the same for the purpose for which the Trust had been created. The Trust is enjoined to use its best endeavours for the improvement and development of the said Nazul Estate in accordance with the provisions of the Improvement Act, "provided that no expenditure shall be incurred upon the purchase of land to be added to the said Nazul Estate unless the proposal to make the purchase has been specifically included in an Improvement Scheme sanctioned under section 42 of the said Act". Particular reliance was placed on behalf of the appellant on the following

terms in the indenture to show that the title to the Nazul Estate vested in the Trust:

> "The Trust may sell or lease any land included in the said Nazul Estate in pursuance of the provisions of an Improvement Scheme sanctioned under section 42 of the said Act.....
>
> The Trust may, otherwise than in pursuance of an Improvement Scheme sanctioned under section 42 of the said Act, sell any land included in the said Nazul Estate".

In order to appreciate the true legal position it is necessary here to examine some of the provisions of the Improvement Act bearing on this aspect of the case. Section 22-A occurring in Chapter III-A vests the Trust with the power to undertake any works and incur any expenditure for the improvement or development of the area to which the Act may have been extended. Section 23 in Chapter IV sets out in detail what is meant by "An Improvement Scheme". It lays down that the acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme, the construction or reconstruction of buildings, the sale, letting or exchange of any property comprised in the scheme and doing of all incidental acts necessary for the execution of the scheme may be undertaken by the Trust. Section 24 sets out the different types of improvement schemes including a general improvement scheme, a re-building scheme, a re-housing scheme, a development scheme, etc., and the sections following section 24 lay down in detail the scope of the different types of improvement schemes enumerated in section 24. Section 42 requires the Chief Commissioner to announce an

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improvement scheme sanctioned by him by notification and thereupon the Trust embarks upon the execution of the scheme. Then comes Chapter V dealing with the powers and duties of the Trust when a scheme has been sanctioned. In this chapter occur sections 45 to 48 which provide for the vesting of certain properties in the Trust. Section 45 lays down the conditions and the procedure according to which any building, street, square or other land vested in the Municipality or Notified Area Committee may become vested in a Trust. Similarly, section 46 deals with the vesting in the Trust of properties like a street or a square as are not vested in a Municipality or Notified Area Committee. These sections, as also sections 47 and 48 make provision for compensation and for empowering the Trust to deal with such property vested in it. The vesting of such property is only for the purpose of executing any improvement scheme which it has undertaken and not with a view to clothing it with complete title. As will presently appear, the term "vesting" has a variety of meaning which has to be gathered from the context in which it has been used. It may mean full ownership, or only possession for a particular purpose, or clothing the authority with power to deal with the property as the agent of another person or authority.

Coming back to the terms of the indenture with reference to the power of the Trust to sell or lease any land included in the Nazul Estate, certain conditions are laid down for the exercise of the aforesaid power to transfer. The Trust is empowered to sell any land included in the Nazul Estate on its own authority only in cases where the sale is for full market value and which does not exceed Rs. 25,000. In other cases the

transaction has to be sanctioned either by the Chief Commissioner or by Government and in every case the forms of conveyances and leases by the Trust have to be approved by Government. It would thus appear that the power to transfer by way of sale, lease or otherwise vested in the Trust is not an unlimited or an unqualified power but a power circumscribed by such conditions as the Government or the Chief Commissioner, as the case may be, thought fit to impose. The imposition of those conditions is not consistent with the title to the property vesting absolutely in the Trust. On the other hand, the imposition of those conditions is more consistent with the proposition contended for by the learned Attorney-General on behalf of the respondent that the Trust was only constituted a statutory agent on behalf of the Government in accordance with the provisions of the Improvement Act and the terms of the indenture, Exhibit D. 5. It is noteworthy that there are no provisions either in the Improvement Act or in the indenture, Exhibit D. 5, to the effect that the title to the Nazul Estate vested in the Trust. It must, therefore, be held that no grounds have been made out for holding that title to the land on which the market stands was conveyed by Government to the Trust.

We turn now to the question whether apart from title to the land, title to the building standing upon the land is vested in the Trust. In order to examine the contentions raised on behalf of the appellant it is necessary to set out the remaining portion of the terms of the indenture aforesaid. The Trust was to assume full liability for all expenditure to be incurred upon works of improvement and to arrange for the completion of those works to the satisfaction of Government. The Trust is also enjoined to maintain in accordance with the statutory rules separate accounts of all revenue realised from, and all expen-

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diture incurred upon, the said Nazul Estate and to pay to Government the sum of Rs. 2 lakhs being the equivalent of the net annual revenue in respect thereof subject to certain conditions, not material to this case. Then follows the most important clause in these terms:—

> "Any surplus funds in the Nazul Development Account remaining at the end of each financial year when the said sum has been paid shall be put at the disposal of Government and shall be applied until further orders of Government to the further improvement and development of the said Nazul Estate and/or to the repayment of loans made to the Trust as Government may direct".

Government on its part undertook to finance either in part or in whole such schemes as may be agreed between the parties and also to advance loans at interest equal to Government rates for the time being for loans to Local Authorities. It was in pursuance of the terms aforesaid that the scheme of the building of the market in question was put through at an estimated cost of a little less than five lakhs of rupees.

It is clear upon the terms of the agreement shortly set out above that the market was constructed by the Trust on Government land with Government funds advanced by way of loan at interest. On those facts what is the legal position of the Trust *vis-a-vis* the Government in respect of the ownership of the property. It is important, therefore, to determine the true nature of the initial relationship between the Government and the Trust. The learned counsel for the appellant conceded that that relationship could not be described in terms of ordinary legal import, that is to say, in terms of mortgagor and mortgagee,

or lessor and lessee, or licensor and licensee. He contended that it was a peculiar relationship which could not be defined in exact legal phraseology, but all the same, that the Trust was the owner of the market, especially in view of the fact that, as admitted by the defendant's counsel at the trial, the Trust had repaid the entire amount of five lakhs odd advanced by Government for the construction of the market. This result, it was further contended, follows from the terms of section 54-A of the Improvement Act. The Attorney-General appearing on behalf of the respondent also strongly relied upon the terms of that section for his contention that the relationship between the Trust and the Government was that of agent and principal. It is, therefore, necessary to examine closely the provisions of that section which is in these terms:—

"(1) The Government may, upon such terms as may be agreed upon between the Government and the Trust, place at the disposal of the Trust any properties, or any funds or dues, of the Government and thereupon the Trust shall hold or realise such properties, funds, and dues in accordance with such terms.

(2) If any immovable property, held by the Trust under subsection (1) is required by the Government for administrative purposes, the Trust shall transfer the same to the Chief Commissioner upon payment of all costs incurred by the Trust in acquiring, claiming or developing the same, together with interest thereon at such rate as may be fixed by the Chief Commissioner calculated from the day on which this Act comes into force or from the date on which such costs were incurred, whichever is the later.

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> The transfer of any such immovable property shall be notified in the Gazette and such property shall thereupon vest in the Chief Commissioner from the date of the notification".

The section quoted above finds place in Chapter V-A, headed "Government Property Held by Trust". It is manifest upon a reading of the entire section that there are no express words of conveyance whereby title is transferred by Government to the Trust either absolutely or upon certain conditions. As applied to the present case, subsection (1) only provides that the Government would place the property in question at the disposal of the Trust which shall hold the same in accordance with the terms as may be agreed between them, that is to say, in accordance with the terms of the agreement aforesaid, (Ex. D. 5). Placing the property "at the disposal of the Trust" does not signify that Government had divested itself of its title to the property and transferred the same to the Trust. Clause 12 of the agreement (Ex. D. 5) to the effect that "Government may at any time on giving six months' notice terminate this agreement" clearly indicates that the Government had created this agency not on a permanent basis but as a convenient mode of having its schemes of improvement implemented by a single agency with wide powers of management and expenditure of funds placed at its disposal, either by way of income from the property or by way of advance from Government funds. Subsection (1), therefore, does not in express terms or by necessary implication confer any title on the Trust in respect of the market. The Trust only holds the market and realises the income therefrom which is disbursed in accordance with the terms of the agreement and the rules framed by the Chief Commissioner in exercise of the powers conferred on him by clause (e) of subsection (1) of section 72. Our attention was called to some of those

statutory rules, particularly rules 21, 36, 38 and 156 read along with the forms and the Appendix. It is not necessary to discuss those rules in detail because on a consideration of those rules we are satisfied that they are more consistent with the Trust being a statutory agent of the Government, which has to maintain separate accounts in respect of nazul property. Any reappropriation from nazul to non-nazul or *vice-versa* could not be made by the Trust without the prior sanction of the Chief Commissioner. The method of keeping accounts in respect of the nazul estate would show that the Trust had to function as the statutory agent of the Government in the matter of the administration of the Trust funds with particular reference to the nazul estate with which we are immediately concerned. But it has been argued on behalf of the appellant that subsection (2) of section 54-A quoted above postulates that the Trust is the owner of the property, otherwise the subsection would not speak of the Trust having to transfer immovable property held by it to the Chief Commissioner in certain contingencies, upon payment of all costs incurred by the Trust in acquiring, reclaiming or developing that property together with interest calculated in the way set out in that subsection. It should be noted in this connection that what the Government was required to pay was not the market value of the property but only the cost incurred by the Trust. That provision apparently was made for the purpose of accounting between the different branches of the Trust activities. If title really vested in the Trust, it would be entitled to receive from Government the price of the property and not merely required to be reimbursed in respect of the actual expenditure on the scheme. Particular reliance was placed upon the words "and such property shall thereupon vest in the Chief Commissioner". It was argued that unless the property previously vested in the Trust it could not upon the transfer contemplated by subsection (2) vest in the Chief Com-

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missioner. This argument assumes that the word "vest" necessarily signifies that title to the property resides in the Trust. But the word "vest" has several meanings with reference to the context in which it is used. In this connection reference may be made to the following observations of Lord Cranworth in *Richardson* v. *Robertson* (1):—

> "....the word 'vest' is a word, at least, of ambiguous import. *Prima facie* 'vesting' in possession is the more natural meaning. The expressions 'investiture', 'clothing',—and whatever else be the explanation as to the origin of the word, point *prima facie* rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage 'vesting' ordinarily means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word 'vesting' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession".

Similarly with reference to the provisions of a local Act (5 Geo. 4, c. lxiv), it was held that the word "vest" did not convey a freehold title but only a right in the nature of an easement. The following words of Willes J. in *Hinde* v. *Chorlton* (2) are relevant:—

> ".....there is a whole series of authorities in which words, which in terms vested the freehold in persons appointed to perform

(1) [1862] 6 L.T. 75, 78.
(2) [1866-67] C.P. Cases 104, 116.

some public duties, such as canal companies and boards of health, have been held satisfied by giving to such persons the control over the soil which was necessary to the carrying out the objects of the Act without giving them the freehold".

In the case of *Coverdale* v. *Charlton* (1), the Court of Appeal on a consideration of the provisions of the Public Health Act, 1875, (38 and 39 Vict. C. 55) with particular reference to section 149, has made the following observations at p. 116:—

"What then is the meaning of the word 'vest' in this section? The legislature might have used the expression 'transferred' or 'conveyed', but they have used the word 'vest'. The meaning I should like to put upon it is, that the street vests in the local board qua street; not that any soil or any right to the soil or surface vests, but that it vests qua street".

Referring to the provisions of section 134 of the Lunacy Act, 1890 (53 and 54 Vict. c. 5) in the case of *In re Brown* (*A lunatic*) (2), it has been laid down by Lindley, L.J., that the word "vested" in that section included the right to obtain and deal with, without being actual owner of, the lunatic's personal estate.

In the case of *Finchley Electric Light Company* v. *Finchely Urban District Council* (3), adverting to the provisions of section 149 of the Public Health Act, 1875 (*supra*) Romer, L.J., has made the following observation at pp. 443 and 444:—

"Now that section has received by this time an authoritative interpretation by a long series

(1) [1878-79] 4 Q.B.D. 104.
(2) [1895] 2 Ch. 666.
(3) [1903] 1 Ch. 437.

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of cases. It was not by that section intended to vest in the urban authority what I may call the full rights in fee over the street, as if that street was owned by an ordinary owner in fee having the fullest rights both as to the soil below and as to the air above. It is settled that the section in question was only intended to vest in the urban authority so much of the actual soil of the street as might be necessary for the control, protection, and maintenance of the street as a highway for public use. For that proposition it is sufficient to refer to what was said by Lord Halsbury L. C. and by Lord Herschell in *Tunbridge Wells Corporation* v. *Baird* (1).....That section has nothing to do with title ; it is not considering a question of title. No matter what the title is of the person who owns the street, the section is only considering how much of the street shall vest in the urban authority.....".

That the word "vest" is a word of variable import is shown by provisions of Indian statutes also. For example, section 56 of the Provincial Insolvency Act (V of 1920) empowers the court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, sections 16 and 17 of the Land Acquisition

(1) [1896] A.C. 434.

Act (Act I of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the property is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them.

The question of the ownership of the structure built upon Government land by the Trust may be looked at from another point of view. We have already held that the Trust was in the position of a statutory agent of Government and had erected the structure with money belonging to Government but advanced at interest to the Trust. In such a situation the structure also would be the property of Government, though for the time being it may be at the disposal of the Trust for the purpose of managing it efficiently as a statutory body. Simply because the Trust erected the structure in question and later on paid up the amount advanced by Government for the purpose would not necessarily lead to the legal inference that the structure was the property of the Trust. In this connection reference may be made to the decision of this Court in *Bhatia Co-operative Housing Society Ltd.*,

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v. *D. C. Patel* (1). The case is not on all fours with the facts of the present case. But the following observations of Das J. (as he then was) at p. 195 of the report are pertinent:—

> "It is true that the lessee erected the building at his own cost but he did so for the lessor and on the lessor's land on agreed terms. The fact that the lessee incurred expenses in putting up the buildings is precisely the consideration for the lessor granting him a lease for 999 years not only of the building but of the land as well at what may, for all we know, be a cheap rent which the lessor may not have otherwise agreed to do. By the agreement the building became the property of the lessor and the lessor demised the land and the building which, in the circumstances, in law and in fact belonged to the lessor. The law of fixtures under section 108 of the Transfer of Property Act may be different from the English law, but section 108 is subject to any agreement that the parties may choose to make. Here, by the agreement the building became part of the land and the property of the lessor and the lessee took a lease on that footing".

In our opinion, therefore, it cannot be said that either under the provisions of the Improvement Act or in accordance with the terms of the agreement (Ex. D. 5) or the two taken together, the market became the property of the Trust. We have already noticed the relevant portions of the correspondence that passed between Government and the Trust to show that though at the initial stages the

(1) [1953] S.C.R. 185.

Trust proposed that the ownership of the market should vest in the Trust the final terms agreed between the parties in accordance with the provisions of section 54-A left the ownership with Government. We have come to this conclusion without reference to the admission of the plaintiff contained in para 22 of the indenture (Ex. D. 4) quoted above. It is, therefore, not necessary for us to consider the question raised by the learned Attorney-General that the plaintiff was bound by that admission or whether that admission is vitiated by any pressure of circumstances or duress as pleaded by the plaintiff. Certainly that admission is a piece of evidence which could be considered on its merits even apart from the question of estoppel which had not been specifically pleaded or formed the subject matter of a separate issue.

In view of our finding that the market, as also the land on which it stands, is the property of Government, the conclusion follows that the operative provisions of the Control Act do not apply to the premises in question. That being so, it must be held that there is no merit in this appeal. It is accordingly dismissed with costs.

APPELLATE CIVIL

*Before Bhandari, C. J., and Khosla and Kapur, JJ.*

SARDAR KAPUR SINGH,—*Petitioner*

*versus*

THE UNION OF INDIA,—*Respondent*

**Supreme Court Appeal No. 2 of 1956.**

1957

Jan., 4th

*Constitution of India, Articles 133 and 226—High Court declining to issue a writ under Article 226 of the Constitution—Such order, whether can be regarded as a judgment, decree or final order within the meaning of Article 133 of the Constitution—Proceedings under Article 226—Nature of—Whether civil proceedings.*