

Sardar Umrao Singh, etc. v. The State of Punjab, etc.
(P. S. Pattar, J.)

In this view of the matter, we are of the opinion that no penalty was exigible in the circumstances of this case because the amount of Rs. 8,000/- which was held to be exigible for penalty was found by the Tribunal not to be so exigible.

For the reasons recorded above, we answer all the three questions referred to us in the negative, that is, in favour of the assessee and against the Department. No costs.

B. S. G:

CIVIL MISCELLANEOUS

Before D. K. Mahajan, C.J. & P. S. Pattar, J.

SARDAR UMRAO SINGH, ETC.,—*Petitioners.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

Civil Writ No. 854 of 1969

&

Civil Misc. No. 2205 of 1974.

May 8, 1974.

Punjab Land Revenue Act (XVII of 1887, as amended by Punjab Act I of 1968)—Section 48 and 64—Punjab Resumption of Jagirs Act (XXXIX of 1967)—Sections 3 & 5—Section 48 & 64, Land Revenue Act as amended, exempting land revenue on small holdings—Whether extinguish Cis Sutlej Jagirs—Government—Whether liable to pay Jagir amount to such Jagirdars inspite of the exemption of the land-revenue.

Held, that sections 48 and 64 of Punjab Land Revenue Act, 1887 as amended by Punjab Act I of 1968, exempt owners of small holdings of land from payment of land revenue. The Amending Act does not contain any provision to extinguish Cis Sutlej Jagirs and it has nothing to do with extinguishment or resumption of these jagirs. The Punjab Legislature has power to amend the Resumption of Jagirs Act, 1957 to resume the Cis Sutlej Jagirs, which were declared to be Military jagirs, but it did not do so. If the legislature wanted to extinguish these jagir amounts to the extent the land revenue was abolished on the small holding, it would have

a provision to that effect in the Amending Act. Consequently it cannot be said that by passing the Punjab Act No. 1 of 1968, the Government indirectly intended to achieve the object of extinguishing the Cis Sutelej jagirs which could be resumed or extinguished by making a specific provision in this Act or by amending the Punjab Resumption of Jagirs Act No. 39 of 1957. (Para 10).

Held, that the Government is liable to pay the jagir amount in full to the Cis-Sutelej jagirs inspite of the exemption of land revenue of small holdings after the passing of Punjab Act No. 1 of 1968. The Government can decrease or abolish the land revenue by Legislation, but it must pay compensation to the jagirdars, who are assignees of the land revenue; otherwise the legislation will be violative of articles 14, 19, 31 and 31-A of the Constitution. The fact that the Government abolished the land revenue by enacting Punjab Act No. 1 of 1968 and debarred itself from collecting the land revenue from small land-owners would not extinguish the Cis Sutelej Jagirs. It would be anomalous to hold that the Government can extinguish the Cis Sutelej Jagirs by simply exempting the land revenue payable on small holdings and assigned to the jagirdars by legislation. The Government has no power to extinguish the jagirs without payment of compensation and it cannot absolve itself from the liability of paying the jagir amounts.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of mandamus or any other appropriate writ, order or direction be issued declaring that the impugned Punjab Ordinance No. 2 of 1967 and Punjab Act No. 1 of 1968 are unconstitutional piece of legislation and hence liable to be struck down as such as they inter alia are violative of the provisions of Articles 14, 19 and 31 of the Constitution and also declaring that the petitioners are entitled to the payment of the Jagir money amounting to Rs. 51,051 per annum payable half yearly regularly with effect from Kharif 1967 to Kharif 1968 and thereafter and that the respondents are not entitled to and have no right to withhold the payment of the Jagir money to the petitioners and the respondents to pay regularly to the petitioners Jagir money amounting to Rs. 51,051 per annum, payable half yearly.

Civil Misc. No. 2205 of 1974 :

Application on behalf of the Respondent No. 1 under Rule 8 Chapter 4(F) (b) of the High Court Rules and Orders read with Section 151 of Civil Procedure Code praying that the additional affidavit be placed on the record of the case and be considered as a part of the return filed by respondent—State of Punjab.

A. K. Sen, Senior Advocate with Bakhtawar Singh, H. L. Sarin and M. L. Sarin, Advocates, for petitioner No. 2 and P. S. Jain and V. M. Jain, Advocates for petitioner No. 1.

S. K. Jain, Advocate for Advocate-General, Punjab.

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JUDGMENT

Pattar, J.—By this judgment the following two writ petitions shall be disposed of, as common questions of law are involved therein :—

- (1) C.W. No. 854 of 1969 ... S. Umrao Singh and another vs. The State of Punjab and another.
- (2) C.W. No. 3123 of 1972 ... S. Amar Surjit Singh vs, State of Punjab and others.

These are petitions filed by Sardar Umrao Singh and his son Satinder Singh and Amar Surjit Singh, under articles 226 and 227 of the Constitution of India to declare the Punjab Ordinance No. 2 of 1967 and the Punjab Land Revenue (Amendment) Act, 1967 (Punjab Act No. I of 1968) as unconstitutional being violative of the provisions of articles 14, 19 and 31 of the Constitution of India and to issue an appropriate writ, direction or order, that they are entitled to payment of Jagir money with effect from Kharif 1967 to Kharif 1968 and thereafter and that the respondents are not entitled to withhold the payment of this amount.

The facts of Civil Writ No. 854 of 1969 are that S. Umrao Singh, petitioner No. 1 is a Cis Sutlej Jagirdar of Manauli Estate and petitioner No. 2 Satinder Singh is his son. The petitioner No. 1 owns Cis Sutlej Jagir land in 24 villages in Tehsil Kharar and in 54 villages in Tehsil Rupar and the details of these villages and the Jagir land are given in Annexure 'A' and 'B' to the petition. The family of the petitioners is known as 'Singhpurian family'. Their ancestors were Cis Sutlej Chiefs in Ambala District and they are known as 'Singhpurian family'. Their ancestors were Cis Sutlej Chiefs in Ambala District and they are known as the Sardars of Manauli Estate. The Jagir amount, according to the allegations of the petitioners, was quantified at Rs. 51,051/-, whereas according to the return filed by the State, the amount is stated to be Rs. 43,353/6/6 instead of Rs. 51,051/-.

(3) In Civil Writ No. 3123 of 1972, the petitioner Amar Surjit Singh is a resident of village Malaudh, District Ludhiana and is

holder of Cis Sutlej Jagir and the quantified account of his Jagir is Rs. 67,135/11/4.

(4) The status of the holders of Cis Sutlej Jagirs and the nature of their Jagirs are fully discussed by the Supreme Court in *Amar Surjit Singh etc. v. State of Punjab* (1), and, therefore, it is not necessary to state all those facts mentioned in the petitions. The Supreme Court in the above case made the following observations with regard to the status of the petitioners :—

- (a) The Chiefs were stripped of all their governmental functions, and the final document took place in 1852 when the British took over the collection of revenue for the jagir lands. The rules for settlement of revenue were made by them, and the actual settlement and collection of revenue were made under their authority, and out of the collections the Jagirdars were paid their share.
- (b) On these materials, the conclusion would appear to be irresistible that the right of the jagirdars to receive land revenue rests on implied grants by the British Government."

It is alleged that the Jagirs of the petitioners were declared as Military Jagirs by the Government and are, therefore, exempt from the provisions of the Punjab Resumption of Jagirs Act, 1957 (Punjab Act No. 39 of 1957), by virtue of the definition of 'Jagir' in that Act, as amended from time to time. By reason of the amendment of section 3 of the Punjab Resumption of Jagirs Act, 1957; by Punjab Act No. 9 of 1961; a Military Jagir granted at any time before the 4th day of August; 1974 shall ensure for the life of the person; who is a Jagirdar immediately before such commencement and shall stand extinguished and resumed on his death. Therefore; this Jagir was kept alive for the lifetime of S. Umrao Singh, petitioner and would only extinguish and be resumed after his death. The same is the incidence of the Jagir of the other writ petitioner Amar Surjit Singh.

(5) The Governor of Punjab issued an Ordinance, the Punjab Land Revenue (Amendment) Ordinance, 1967, on 24th of June, 1967, whereby sections 48 and 64 of the Punjab Land Revenue Act, 1887

(1) A.I.R.: 1962 S:C: 1305:

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were amended. The original as well as the amended sections 48 and 64 are quoted side-by-side for facility of reference :—

Under Old Act

- (1) All land to whatever purpose applied and wherever situate is liable to the payment of land revenue to the Government except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force and such land as is included in the village site.

Explanation : For the purposes of this sub-section the expression 'village site' shall have the same meaning as is assigned to the expression 'site of village' in section 4.

- (2) Land revenue shall be assessed in cash.
- (3) Land may be assessed to land revenue notwithstanding that revenue, by reason of its having been assigned, released, compounded for or redeemed, is not payable to the Government
- (4) Land revenue may be assessed—
- (a) as a fixed annual charge payable in a lump sum or by instalments;

Under Amended Act

- (1) All land to whatever purpose applied and wherever situate, is liable to the payment of land revenue to the Government except such land as has been wholly exempted from that liability by special contract with the Government or by the provisions of any law for the time being in force and such land as is included in the village site.

Explanation : For the purposes of this sub-section the expression 'village site' shall have the same meaning as is assigned to the expression 'site of village' in section 4.

- (1-A) Notwithstanding anything in sub-section (1), land held by any person whether as a sole landowner or as a co-landowner in one or more holdings, or as a sole landowner and as a co-landowner in one or more holdings in any estate shall be exempt from the liability to the payment of land revenue, if—
- (i) the area of such land together with the area of

Under Old Act.

- (b) in the form of prescribed rates per acre or other unit of area applicable to the area recorded as sown, matured or cultivated during any harvest or during any year.

Under Amended Act

- land, if any, held by such person whether as a sole land-owner or as a co-landowner in one or more holdings, or as sole land-owner and as a co-landowner in one or more holdings in any other estate in the State of Punjab or outside it, does not exceed 5 standard acres ; and
- (ii) Such person furnishes such particulars of all the land held by him in the State of Punjab or outside it in such form and manner and at such time and to such authority (hereinafter in this section referred to as the prescribed authority) as may be prescribed by rules made under section 64.

Explanation : In the case of a Hindu Undivided family the land owned by such family shall, for the purpose of sub-section (1-A), be deemed to be the land of the land-owner in whose name it is entered in the record of rights.

- (1-B) In the event of a person furnishing to the prescribed authority, such particulars under Clause (ii) of sub-section (1-A) as are not found

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Under Old Act

Under Amended Act

to be correct, the prescribed authority may, after giving such person reasonable opportunity of being heard, direct him to pay by way of penalty in addition to the land revenue to which he is liable, an amount not exceeding twenty times the amount of land revenue payable.

- (2) Land revenue shall be assessed in cash.
- (3) Land may be assessed to land revenue, notwithstanding that revenue, by reasons of its having been exempted by virtue of the provisions of sub-section (1-A) assigned, released, compounded for or redeemed is not payable to the Government.
- (4) Land revenue may be assessed—
 - (a) as a fixed annual charge, payable in a lump sum or by instalments ;
 - (b) in the form of prescribed rates per acre or other unit of area applicable to the area recorded as sown, matured or cultivated during any harvest or during any year.

Under Old Act

(64) (1) The Financial Commissioner may make rules consistent with this Act to regulate the collection, remission and suspension of land revenue, and may by those rules determine the circumstances and terms in and on which assigned land revenue may be collected by the assignee.

(2) Where land revenue due to an assignee is collected by a Revenue Officer, there shall be deducted from the sum collected such a percentage on account of the cost of collection as the Financial Commissioner may by rule in this behalf prescribe.

(3) A suit for an arrear of assigned land revenue shall not be entertained unless there is annexed to the plaint at the time of the presentation thereof a document under the hand of the Collector specially authorising the institution of the suit.

Under Amended Act

64(1) The Financial Commissioner may make rules consistent with this Act—

(a) to regulate the collection, remission and suspension of land revenue, and may by those rules determine the circumstances and terms in and on which assigned land revenue may be collected by the assignee;

(b) to prescribe the form and manner in which, the time at which and the authority, to whom the particulars referred to in clause (ii) of sub-section (1-A) of section 48 shall be furnished.

(2) Where land revenue due to an assignee is collected by a revenue officer, there shall be deducted from the sum collected such a percentage on account of the cost of collection as the Financial Commissioner may by rule in this behalf prescribe.

(3) A suit for an arrear of assigned land revenue shall not be entertained unless there is annexed to the plaint at the time of the presentation thereof a document under the hand of the Collector specially authorising the institution of the suit.

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(6) This Ordinance was later on repealed and its place was taken by the Punjab Land Revenue (Amendment Act, 1967 (Punjab Act No. I of 1968). By this Act, sections 48 and 64 of the Punjab Land Revenue Act, 1887 were given retrospective effect with effect from Rabi of the agricultural year 1966-67 and section 4 of this Punjab Act No. I of 1968 was enforced with effect from 3rd of July, 1967. By virtue of section 48, sub-section (1-A), of this Act, the land-owners whose area of land did not exceed 5 standard acres or less are not liable to pay any land revenue. Later on, instead of 5 standard acres, the area of land was modified to 7 ordinary acres. The State of Punjab withheld the payment of the jagir money to the petitioners since Kharif, 1967 *inter-alia* contending that since 5 standard acres of land of land-owners (later on modified to 7 ordinary acres) has been exempted from payment of land revenue and no land-revenue is recovered from such land-owners, therefore, the assigned land revenue cannot be paid to the petitioners to whom the land revenue has been assigned and is an implied grant. The petitioners then filed these writ petitions alleging that the Punjab Ordinance No. 2 of 1967 and Punjab Act No. I of the 1968 may be struck down as unconstitutional being violative of articles 14, 19 and 31 of the Constitution of India, that these are colourable pieces of legislation, which indirectly amount to abolition of Jagir, to which the petitioners are legally entitled, that their right to the Jagir is their fundamental right to property to own and possess and enjoy the same as guaranteed by the Constitution and no legislation which impinges on their fundamental rights can be enacted by the State unless it provides for payment of compensation. The Ordinance No. 2 of 1967 and the Punjab Act No. I of 1968 were also alleged to be *ultra-vires* being violative of Article 31-A of the Constitution of India as the assent of the President of India was not obtained. It was further prayed that the petitioners are entitled to the payment of the Jagir money with effect from Kharif 1967 to Kharif 1968 and thereafter and the respondents are not entitled to withhold the payment of the Jagir money to them and they may be directed to pay the arrears of Jagir amount and to pay the same regularly in future.

(7) In their written statement, the State of Punjab, respondent No. 1, admitted the facts stated in the writ petitions to be correct. It was conceded that the Jagirs of the petitioners were declared as Military Jagirs by the Punjab Government. However, it was alleged that the amount of the Jagir of Umrao Singh, petitioner of petition No. 854 of 1969 was Rs. 43,353/6/6 instead of Rs. 51,051. It

was averred that in view of the enforcement of the Punjab Land Revenue (Amendment) Act No. I of 1968 exempting small land-owners owning land upto 5 standard acres (now 7 ordinary acres) from payment of land revenue, the Jagir money to this extent is to be reduced because Jagir is nothing but an assignment of land revenue and that the impugned Ordinance No. 2 of 1967 and Punjab Act No. I of 1968 are valid and are not violative of articles 14, 19 and 31 of the Constitution. It is maintained that Jagir is not resumed without payment of compensation, but the question involved in these cases is non-payment of specified land revenue, which has been remitted by the State Government.

(8) As mentioned above, there is no dispute between the parties regarding the facts of these cases. The petitioners and some other persons filed a writ petition challenging the validity of Punjab Resumption of Jagirs Act No. 39 of 1957 and this case is reported as *Amar Surjit Singh and others vs. State of Punjab*, (1), wherein it was held :—

“The holders of Cis Sutlej Jagirs became rulers of the territories when they took possession of them by conquest in 1763. The first inroads into their sovereignty were made in 1809 when the British established their suzerainty over them and further declared that the territories of the rulers who died without heirs would escheat to them. Then in 1846, the British Government deprived them of police jurisdiction, and the power to levy customs, and in 1849 of all their sovereign functions. As a result of all these acts they were reduced to the position of ordinary subjects. The final denouncement took place in 1852 when the British took over the collection of revenue for the Jagir lands. The rules for settlement of revenue were made by them, and the actual settlement and collection of revenue were made under their authority, and out of the collections the jagirdars were paid their share. As the jagirdars had sunk to the position of subjects on that date, the payment of revenues to them by the British Government can only be on the basis of an implied grant to them.

The argument that as the Cis Sutlej Chiefs were not conquered by the British, their status must necessarily be that of sovereigns, and that in consequence the payment

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of land revenue to them could not be as jagirdars holding under an implied grant from the Government, is not correct. It is settled law that conquest is not the only mode by which one State can acquire sovereignty over the territories belonging to another State, and that the result can be achieved in any other mode which has the effect of establishing its sovereignty. The fact, therefore, that the Cis Sutlej jagirdars were not conquered by the British does not conclude the question as to whether they are to be regarded as sovereigns or not. That must depend on who were in fact exercising sovereign powers over the territories in the States, the chiefs or the British. If the latter, then it must be held that the sovereignty over the area had passed to them otherwise than by conquest, and that the true status of the Chiefs was that of subjects.

A person cannot be both a sovereign and a subject at the same time. If the status of the Cis-Sutlaj Jagirdars is in all other respects that of subjects, the right to receive the revenue collections must also be ascribed to their character as subjects, and that can only be under an implied grant.

From the fact that a proposal for resumption and regrant of the territories of the Cis Sutlej chiefs was actually put forward in 1846 but was negatived, it could not be inferred that there was no implied grant in their favour. On the other hand, the reason for not making the resumption and express grant was one which would support an inference of implied grant.

From the course of legislation relating to Jagirs in the Punjab (viz., Punjab Land Revenue Act, 1871); Punjab Laws Act (1872) Sections 8 to 8C and Punjab Jagirs Act (5 of 1941); Sections 7 to 10 the conclusion would appear to be irresistible that the right of the jagirdars to receive land revenue rests on implied grants by the British Government."

The amount of the jagir of the petitioners in both these cases is not disputed. However, during arguments, it was conceded that some

of the land of which the land revenue was assigned to S. Umrao Singh, petitioner of petition No. 854 of 1969 was acquired for the Chandigarh Capital Project and its compensation was paid to him and as a result the amount of his jagir was reduced to Rs. 43,353/6/6. It is admitted that the jagirs of Amar Surjit Singh and Umrao Singh petitioners were declared Military jagirs and were exempt from resumption under the Punjab Resumption of Jagirs Act, No. 39 of 1957. It is undisputed that as a result of the passing of the Punjab Land Revenue (Amendment) Act, 1967 (Punjab Act No. I of 1968), the proprietors of land owning land not exceeding 5 standard acres, which area was later on modified to 7 ordinary acres, was exempted from paying land revenue and as a result of this reduction, a substantial reduction in jagir money has taken place.

(9) In para No. 26 of the return filed on behalf of the State by Shri V. P. Kapoor, Under Secretary, Revenue Department, in C.W. No: 854 of 1969, it was pleaded as under :—

“I admit this para. In view of the enforcement of the Punjab Land Revenue (Amendment) Act, 1968 (Punjab Act No. I of 1968) exempting small land owners owning land upto 5 standard acres from payment of land revenue, the jagir money to this extent is to be reduced because jagir is nothing but an assignment of land revenue.”

Similar is the position taken up by the respondent State of Punjab in the second writ petition. However, the Government did not mention in their return that how much reduction in the jagir money in each case will take place after the coming into force of the Punjab Land Revenue (Amendment) Act No. I of 1968.

(10) Having stated the facts and the relevant provisions of the various statutes. I proceed to discuss the contentions raised by the counsel for the parties. The learned counsel for the petitioners raised the following two contentions :—

- (1) That the Punjab Land Revenue (Amendment) Act I of 1968 does not extinguish the jagirs of the petitioners even though the land revenue has been exempted; and
- (2) In the alternative, it was contended that if it is held that this Act extinguished the jagirs, then this Act is unconstitutional being violative of articles 14, 19, 31 and 31-A of the Constitution.

It was contended that Punjab Act No. I of 1968 was passed to exempt owners of small holdings of land from the payment of land revenue

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and this Act does not contain any provision to extinguish the jagirs of the petitioners. This contention is correct and must prevail. If the legislature wanted to extinguish the jagir amounts to the extent the land revenue was abolished on the small holding, it would have made a provision to that effect in this Act, but this was not done. It is common case of the parties that the Punjab Legislature has power to amend the Resumption of Jagirs Act No. 39 of 1957 to resume the Cis Sutlej Jagirs, which were declared to be Military jagirs, but it did not do so. Consequently, it cannot be said that by passing the Punjab Act No. I of 1968, the Government indirectly intended to achieve the object of extinguishing the Cis Sutlej jagirs, which could be resumed or extinguished by making a specific provision in the Punjab Act No. I of 1968 or by amending the Punjab Resumption of Jagirs Act No. 39 of 1957.

(11) Further, the right to jagir is a fundamental right to property to own, to possess and to enjoy the same and, therefore, it cannot be resumed or extinguished by statute without payment of compensation/amount for the same in view of the provisions of articles 19 and 31 of the Constitution.

(12) In *State of Madhya Pradesh v. Ranojirao Shinde*, (2), it was held that right to a sum of money is a property.

(13) In *Messrs. Vrajlal Manilal and Co. and another v. State of Madhya Pradesh and others* (3), it was held :—

“When an enactment is found to infringe any of the fundamental rights guaranteed under Article 19(1), it must be held to be invalid unless those who support it can bring it under the protective provisions of Clauses (2) to (6) of that Article. To do so, the burden is on those who seek that protection and not on the citizen to show that the restrictive enactment is invalid.”

(14) In *Rustam Cavasjee Cooper v. Union of India* (4), it was held :—

“Clauses (1) and (2) of Article 31 subordinate the exercise of the power of the State to the basic concept of the rule of

(2) A.I.R. 1968 S.C. 1053.

(3) A.I.R. 1970 S.C. 129.

(4) A.I.R. 1970 S.C. 564.

law. Deprivation of a person of his property and compulsory acquisition may be effectuated by the authority of law. The law limiting the authority of the State must be within the competence of the Legislature enacting it, and not violative of a constitutional prohibition, nor impairing the guarantee of a fundamental right. A person may be deprived of his property by authority of a statute only if it does not impair the fundamental rights guaranteed to him.

Protection of the guarantee is ensured by declaring that a person may be deprived of his property by authority of law; Article 31(1) and that private property may be compulsorily acquired for a public purpose and by the 'authority of a law' containing provisions fixing or providing for determination and payment of compensation ; Article 31(2). Exercise of either power by State action results in abridgement total or partial—of the right to property of the individual. Article 19(1)(f) is a positive declaration in the widest terms of the right to acquire, hold and dispose of property, subject to restrictions (which may assume the form of limitation or complete prohibition) imposed by law in the interests of the general public. The guarantee under Article 19(1)(f) does not protect merely an abstract right to property; it extends to concrete rights to property as well."

If the contention of the counsel for the Punjab Government is accepted then it would mean that the jagirs of the petitioners would be extinguished, because the payment of land revenue on small holdings has been exempted. Consequently, this Punjab Act I of 1968 would be unconstitutional in view of the provisions of articles 31(1) and (2) and article 19 of the Constitution.

(15) The relevant portion of article 31-A of the constitution reads as under :—

"31-A (1) Notwithstanding anything contained in article 13, no law providing for—

- (a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

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(b)

(c)

(d)

(e)

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

Provided that where such law is a law made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

In the instant case, it is admitted that the Punjab Land Revenue (Amendment) Act, 1967 (Punjab Act No. I of 1968) was not reserved for the consideration of the President and did not receive his assent. Consequently, if this Act I of 1968 is taken to extinguish the jagirs of the petitioners, then it is void being violative of article 31-A (1)(a) of the Constitution as the assent of the President to pass this Act was not obtained.

(16) Section 5(1) of the Resumption of Jagirs Act No. 39 of 1957 provides that in consideration of the extinguishment and resumption of the jagir, the jagirdar or his successor, as the case may be, shall be paid a sum equal to seven times the amount payable annually to the jagirdar immediately before the extinguishment and resumption of the jagirs etc. Thus, according to this provision, the holders of all jagirs excepting Cis Sutlej jagirs were entitled to compensation for resumption of their jagirs. The contention of the Punjab Government that after passing the Punjab Act No. I of 1968 the jagirs of the petitioners are extinguished partly or totally because the land revenue payable on small holdings has been abolished cannot be accepted because it would tantamount to extinguish and resume the jagirs of the petitioners without payment of any compensation to them and thus there will be a discrimination and the Act would be hit by the provisions of article 14 of the Constitution.

(17) It is well settled law that if certain provisions of law construed in one way would make them consistent with the Constitution, and another interpretation would render them unconstitutional, the Court would lean in favour of the former construction;—vide *Kedar Nath Singh v. State of Bihar* (5), *R. L. Arora v. State of Uttar Pradesh and others* (6) and *Atma Ram Budhia v. State of Bihar* (7).

(18) In Craies on Statute Law, Edition 1971, at page 118, it is observed that it is a proper rule of construction not to construe an Act of Parliament as interfering with or injuring persons' rights, without compensation unless one is obliged to so construe it. Therefore, rights, whether public or private, are not to be taken away; or even hampered; by mere implication from the language used in its statute. At page 398 of the same book; it is observed that it is a well recognised rule that statutes should be interpreted; if possible; so as to respect vested rights; but such a construction should never be adopted if the words are open to another construction. This rule is especially important with respect to statutes for acquiring lands for public purposes. The Punjab Act No. I of 1968 deals with exemption of some small holdings from payment of land revenue and has got nothing to do with jagirs. According to the Punjab Government, the indirect effect of this legislation is the abolition of the jagirs. However, two constructions of this Punjab Act No. I of 1968 are possible and one of these interpretations is that it has nothing to do with the resumption of the jagirs of the petitioners and the other is that it indirectly abolishes the Cis Sutlej jagirs of the petitioners. If the latter interpretation is adopted, then this Act No. I of 1968 would be unconstitutional being violative of the provisions of articles 14, 19, 31 and 31-A of the Constitution. Therefore, in view of the law laid down in the above-mentioned Supreme Court cases, we would lean in favour of the construction that this Act has no application to the Cis Sutlej jagirs and is not unconstitutional.

(19) In *Chandra Mohan v. State of Uttar Pradesh and others* (8), it was held as under :—

“The fundamental rules of interpretation is the same whether one construes the provisions of the Constitution or an Act

(5) A. I. R. 1962 S. C. 955.

(6) A. I. R. 1964 S. C. 1230 page 1238.

(7) A. I. R. 1952 Patna 359.

(8) A. I. R. 1966 S. C. 1987.

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of Parliament, namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, if, however; two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well-established provisions of existing law nugatory."

To the same effect was the law laid down in *re* : The Kerala Education Bill, 1957 (9). In the instant case, the Resumption of Jagirs Act No. 39 of 1957 deals with extinguishment and resumption of jagirs only while the Punjab Land Revenue (Amendment) Act, 1967, (Punjab Act No. I of 1968) deals with exemption of small holdings from land revenue. Therefore, according to the principle of harmonious construction of these two statutes, it must be held that Punjab Act No. I of 1968 does not render the provisions of the Punjab Act 39 of 1957 nugatory and does not extinguish the jagirs at all and it applies only to the exemption of payment of land revenue assessed on small holdings. This Act No. I of 1968 is therefore not violative of articles 14, 19, 31 and 31-A of the Constitution and is a valid piece of legislation as it deals with exemption of land revenue on small holdings only. Consequently, this Act I of 1968 does not extinguish the jagirs of the petitioners, even though the land revenue on small holdings has been exempted.

(20) The next point for consideration is whether the Punjab State is liable to pay the jagir amount to the petitioners, even after the exemption of the land revenue on small holdings by passing the Punjab Act No. I of 1968. Section 2(b)(i) and (ii) of the Punjab Jagirs Act, 1941 lays down that 'jagir' includes any assignment of land revenue made or deemed to have been made under this Act and any assignment of land revenue made by competent authority, before the passing of this Act. Section 5 of this Act reads as follows :—

"Any land revenue assigned under the powers hereinbefore conferred shall be assessed and collected in the manner provided by the law for the time being in force for the assessment and collection of land revenue as it had not been so assigned."

Section 2(1) (a) of the Punjab Resumption of Jagirs Act, 1957 says that 'jagir' means any assignment of land revenue or remission thereof by way of *muafi* made by or on behalf of the State Government.

(21) It is undisputed that the amount of the jagir will decrease if as a result of regular settlement, the land revenue assessed is decreased or suspension and remission of land revenue is made on account of calamities of the season, such as, droughts, floods etc. as provided in Financial Commissioner's Standing Order No. 7. The counsel for both the parties during their arguments referred to paragraphs 31, 47, 48 and 51 of this Standing Order in support of their respective contentions and for facility of reference these paragraphs are reproduced below :—

31. "On a reduction of assessment being granted to a village in which a settlement of a resumed assignment of land revenue has been made, a proportionate reduction will be allowed upon such assignments.
47. Old Sikh jagirs that have been continued or confirmed by the British Government are, as a rule, grants of the revenue of certain lands, the valuation at the time of the grant being mentioned merely to give an idea of the bounty conferred.
48. When, however, an assignment of revenue of a specified amount has been made by the British Government after annexation as a new grant, it being left to a subordinate authority to determine the particular lands out of whose revenue it is to be met, it should, in the absence of anything to the contrary be construed merely as a grant of a fixed sum per annum in cash. The nature of such a grant cannot be altered by any arrangement that the subordinate authority may make for meeting it; that is to say, if that authority sets aside the revenue of certain lands to meet it, and that revenue falls off, otherwise than under the ordinary rules of suspensions and remissions (see paragraph 51 below), Government will have to make good the deficiency to the grantee; and on the other hand, if the revenue of those lands increases, the grantee will not be entitled to the increment. He will only receive what Government sanctioned for him viz., a fixed sum per annum in cash.

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51. Quite apart from the *kam-o-besh* rule, however, every assignment of the land revenue of a particular area, whether the assignment is of a fixed amount or not, is subject to reduction on account of suspensions and remissions of land revenue on account of calamities of the season. It is presumed that association with particular village is accepted by the jagirdars with the full knowledge that the revenue of these villages may not at times be collected in full. Special jagirs are however exempt from liability to reduction as the result of remissions under the sliding scale system of assessment."

If we read paragraphs 31, 48 and 51 together, it is clear that if reduction in revenue takes place on account of settlement operation or on account of suspension and remission of land revenue on account of calamities of the season, then proportionate reduction in the amount of the jagir will take place. However, if the revenue falls otherwise than under the ordinary rules of suspension or remission provided in paragraph 51, Government shall have to make good the deficiency to the grantee i.e. the jagirdar. Paragraph 48 provides that if on the other hand the revenue of the lands increases due to settlement operation or otherwise, then the jagirdar will not be entitled to the increment and he will only receive what Government sanctions for him viz. a fixed sum per annum in cash. Paragraph 48 further provides that when assignment of revenue of a specified amount has been made by the British Government after annexation as a new grant, it should, in the absence of anything to the contrary, be construed merely as a grant of a fixed sum per annum in cash. Therefore, the conclusion is irresistible that Government is liable to pay the jagir amount in full to the petitioners with effect from Kharif 1967 in spite of the exemption of land revenue of small holdings after the passing of Punjab Act No. I of 1968. The Government can decrease or abolish the land revenue by legislation, but then it must pay compensation to the jagirdars, who are assignees of the land revenue; otherwise the legislation will be violative of articles 14, 19, 31 and 31-A of the Constitution as held above. The right of the petitioners is to get the jagir amount which is an implied grant of the land revenue and if the Government abolishes the land revenue, then there is no escape from the conclusion that the Government is liable to pay the jagir amount to the petitioners. It may be mentioned that the Punjab Jagir Act, 1941 is in force and is not repealed and the jagirs of the petitioners have not been resumed and extinguished under the Punjab Resumption of Jagirs Act, 1957 (Punjab Act No. 39 of 1957), and,

therefore, they are entitled to get the jagir amounts from the Government. The fact that the Government abolished the land revenue by enacting Punjab Act No. I of 1968 and debarred itself from collecting the land revenue from small land-owners would not extinguish the jagirs of the petitioners. In this connection, the following observations mentioned above made by the Supreme Court in *Amar Surjit Singh vs. State of Punjab* (supra) are relevant and clinch this point and at the risk of repetition these are reproduced below :—

“The final denouncement took place in 1852 when the British took over the collection of revenue for the jagir lands. The rules for settlement of revenue were made by them, and the actual settlement and collection of revenue were made under their authority, and out of the collections the jagirdars were paid their share. As the jagirdars had sunk to the position of subjects on that date, the payment of revenues to them by the British Government can only be on the basis of an implied grant to them..... From the course of legislation relating to jagirs in the Punjab (viz. Punjab Land Revenue Act, 1871), Punjab Laws Act (1872) Sections 8 to 8C and Punjab Jagirs Act (5 of 1941) Sections 7 to 10, the conclusion would appear to be irresistible that the right of the jagirdars to receive land revenue rests on implied grants by the British Government.”

(22) By Punjab Act No. 39 of 1957, all jagirs were abolished on payment of compensation except the Cis Sutlej jagirs, which were declared Military jagirs by the Punjab Government. It would, therefore, be anomalous to hold that Government could extinguish the Cis Sutlej jagirs by simply exempting the land revenue payable on small holdings and assigned to the jagirdars by legislation and also absolving itself from the liability of paying the jagir amounts. The Punjab Government has no power to extinguish the jagirs without payment of compensation.

(23) To sum up, it is held that Punjab Act No. I of 1968 deals with exemption of land revenue on small holdings and it has nothing to do with the extinguishment and resumption of Cis Sutlej jagirs of the petitioners, which were declared Military jagirs by the Punjab Government. The exemption of land revenue by Punjab Act I of 1968 on holdings of land measuring 5 standard acres or 7 ordinary acres does not extinguish the jagirs of the petitioners and the Government is liable to pay full amount of the jagirs to them.

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(24) For the reasons given above, these petitions are accepted to this extent that the petitioners are entitled to payment of the full amount of the jagirs with effect from Kharif 1967 to Kharif 1968 and thereafter and that the Respondents have no right to withhold the payment of the jagir money to the petitioners and they are directed to pay the amount of jagirs to them. There will be no order as to costs.

Mahajan. C.J.—I agree.

K.S.K.

GENERAL SALES TAX REFERENCE

Before P. C. Pandit and R. N. Mittal, JJ.

MESSRS. SIDHU RAM ATAM PARKASH, GOHANA—*Appellant.*

versus

THE STATE OF HARYANA—*Respondent.*

General Sales Tax Reference No. 1 of 1973.

May 9, 1974.

Punjab General Sales Tax Act (No. 46 of 1948)—Section 4(2)—Felling of trees and converting them into planks, rafters etc.—Whether involves process of ‘manufacture’—Forest Contractor engaged in such business—Whether a ‘manufacturer’.

Held, that the word ‘manufacture’ means bringing into existence a new substance and does not mean merely to produce some change in a substance. ‘Manufacture’ implies a change, but every change is not ‘manufacture’. Something more is necessary and there should be transformation. A new and different article, having a distinctive name, character or use, must emerge. When trees are felled, made into logs either by manual labour or mechanical process, and then converted into planks, rafters and fire-wood, new substance does not come into being and the process is not covered by the definition of the word ‘manufacture’, and a forest contractor engaged in such business is not a ‘manufacturer’.

General Sales Tax Reference under Section 22(1) of the Punjab General Sales Tax Act, 1948 made by the Sales Tax Tribunal Haryana,—vide his order dated July 19, 1972, to this Court for opinion on the following question of law arising out of his order dated