

PETITIONER:
STATE OF HARYANA AND ORS.

Vs.

RESPONDENT:
KARNAL CO-OP. FARMERS'S SOCIETY LIMITED ETC. ETC.

DATE OF JUDGMENT 04/03/1993

BENCH:
VENKATACHALA N. (J)
BENCH:
VENKATACHALA N. (J)
VERMA, JAGDISH SARAN (J)

CITATION:
1994 AIR 1 1993 SCR (2) 193
1993 SCC (2) 363 JT 1993 (2) 235
1993 SCALE (1) 812

ACT:

The Punjab Village Common Lands(Regulation) Act, 1961/The Punjab Village Lands(Regulation) Haryana Amendment Act, 1980 : ss. 2, 4, 5, 7, 13/ss, 4, 5, 7-Village Common lands-Shantilal deh'-Vesting of ill Panchayat Exceptions-Civil Court decrees, orders allowing claims of persons in possession of certain lands-Enactment by State Legislature abrogating Civil Court decrees/orders-Held Legislature has no power to abrogate civil court decrees/orders by a mere declaration by an enactment to that effect. A competent Legislature can make judicial adjudications ineffecting only by altering, removing or neutralising the legal basis in the unamended law on which such decisions were founded.

HEADNOTE:

The Punjab Village Common Lands(Regulation) Act, 1961 which operated in the State of Haryana, provided for regulating the rights in village common lands popularly and colloquially known as 'Shamilat deh'. Section 13 of the Act barred jurisdiction of civil courts, over any matter arising out of the operation of the Act. However, Sections 2(g) and 4(3) provided for exclusion of certain 'Shamilat deh' from their vesting in Panchayats. These provisions were utilised by innumerable persons to have recourse to civil courts and to obtain decrees against the panchayats concerned pleading that their lands and other properties were excluded from 'Shamilat deh' either under clause(g) of s.2 or sub-section (3) of s.4. Several Panchayats had no objection for grant of decrees in favour of persons who were not legally entitled for the decrees.

The State, in a bid to get rid of the decrees of civil court, enacted the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1974 and substituted ss.7 and 13 of the Punjab Village Common Lands (Regulation) Act, 1961 (The Principal Act) and incorporated new ss.13-A and 13-B therein. The substituted s.7 empowered an Assistant Collector to eject any person in wrongful or unauthorised possession of land or other immovable property in the 'shamilat deh' of the concerned village vested

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or deemed to have been vested in Panchayat under the

principal Act and put the Panchayat in possession thereof. The appellate power was vested in the Collector. Section 13 barred jurisdiction of civil court to entertain or adjudicate upon any question as to whether any land or other immovable property vests or does not vest in a panchayat under the Act. Section 13-A enabled the Assistant Collector, having jurisdiction over the village to set aside civil court decrees obtained by persons against Panchayats in respect of land or other immovable property on the ground of its being excluded from 'shamilat deh' under clause (g) of section 2 or any of the grounds mentioned in sub-section (3) of section 4 after examining the records and hearing the decree-holders.

When the decrees obtained by several persons from civil courts were sought to be interfered with by the Assistant Collector and the Collector, purporting to exercise the powers conferred upon them as a result of the Amendment Act of 1974, writ petitions were filed in the High Court challenging the constitutionality of the said provisions. The High Court held s.13A of the Amendment Act of 1974 as ultra vires, allowed the Writ Petitions and quashed the proceedings. The State also filed civil appeals and special petitions before this Court.

During the pendency of the civil appeals and special leave petitions before this Court which arise due to the Amendment Act of 1974, the State enacted the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980 (Amendment Act of 1981) to get over the judgments of the High Court. It amended s.7 and substituted ss.13, 13A and 13B of the Principal Act which had been incorporated by Amendment Act of 1974 and further incorporated ss.13C and 13D in the Principal Act. The new provisions were made operative retrospectively from 4.5.1961, the date of commencement of the Principal Act, with the result that s.13 barred the jurisdiction of civil courts retrospectively from 4.5.1961 to entertain or adjudicate upon any question whether any land or immovable property was 'shamilat deh' or was not 'shamilat deh' whereas s.13A empowered the Assistant Collector to adjudicate any right title or interest in any land or immovable property claimed to have vested or not vested in a Panchayat or whether such property was 'shamilat deh' or not, on a suit filed within two years from the date of commencement of the Amendment Act of 1981. The Proviso added to s.7 of the Principal Act invested in the Assistant

Collector the exclusive power of deciding the question of title in respect of 'shamilat deh' whenever raised. S.13C clothed the order made under new ss.13A and 13B with finality. S.13D, being given the overriding effect, enabled the Asstt. Collector exercising his powers under the new proviso to s.7 and new s.13A to exercise the same notwithstanding any contrary law, agreement, instrument, usage, decree or order of any court or authority. Section 7 of the Amendment Act, 1981 validated actions taken or decisions rendered there-under as if the Principal Act as amended by the Amendment Act of 1981 had been in force at all material times when such action was taken or a decision was rendered.

Several persons whose decrees obtained from the civil courts were likely to be interfered with by the authorities under the Amendment Act of 1981 challenged the constitutionality of its provisions by filing writ petitions in the High Court. It was contended that the State Legislature had no power to abrogate civil court decrees and orders passed in respect of the properties which were executed from 'shamilat

deh' after the provisions of the Principal Act came into force from 4.5.1961, by making a mere declaration under the provisions of the Amendment Act of 1981 that such decrees or orders could be treated as nullified by the Assistant Collector while deciding the claim afresh.

The High Court allowed the writ petitions holding that the retrospective abrogation of the jurisdiction of civil courts, validly exercised by them from 1961 onwards amounted to a trenching upon the judicial power by the legislature, and fictional substitution of the provisions with effect from the 4th day of May, 1961 and thereby giving retrospectivity thereto from the said date, was unconstitutional. The State riled the appeals.

The appeals and the special leave petitions arising out of the Amendment Act of 1974 were dismissed as infructuous.

Dismissing the appeals arising out of Amendment Act of 1981, this Court,

HELD: 1.1. Under our Constitution no Legislature has the power to abrogate civil courts' decrees or orders or judicial adjudications by merely declaring under a law made by it that such decrees or orders or adjudications are no longer valid or binding on the parties, for such power of declaration would be a judicial function which cannot be encroached upon

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by a Legislature and the only way by which a competent Legislature can make the judicial adjudications, decrees or orders ineffective is by fundamentally altering, removing or neutralising the legal basis in the unamended law on which they are based. [pp.213E-G; 216G-H; 217A]

Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors., [1970] 1 SCR 368, followed.

Government of Andhra Pradesh and Kutubullapur Gram Panchayat v. Hindustan Machine Tools Ltd, [1975] (Supp.) SCR 394; Smt. Indira Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347 and I.N. Saksena v. The State of Madhya Pradesh, [1976] 3 SCR 237, relied on.

Misrilal Jain etc. etc. v. State of Orissa & Another, [1977] 3 SCR 714, referred to.

Bajinder Singh and another v. The Assistant Collector 1st Grade, Guhla, Distt. Kurukshetra and others, 1983 (85) PLR 528, approved.

Sunder Dass v. Ran? Prakash, [1977] 3 SCR 60, distinguished.

1.2. In the instant case, the State Legislature, by the Amendment Act of 1981, has not made any provision to include the lands and immovable properties the subject of the civil court decrees in 'shamilat deh' so as to bring them within the purview of the principal Act. But, the provision made therein merely directs the Assistant Collector, in effect, to disregard or disobey the earlier civil courts' decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside 'shamilat deh' regulated by the principal Act. Such provisions inserted by the Amendment Act of 1981 in the principal Act by a Legislature are clearly unconstitutional for they are to be regarded as provisions made by encroaching upon the judicial power. [p.217A-C]

1.3. The High Court was right in holding that the provisions of the Amendment Act of 1981 which merely authorised the Assistant Collector to decide the claims to be made before him claiming certain lands or immovable properties as 'shamilat deh' vesting in Panchayats ignoring the judicial orders or decrees, by which any right, title or interest of private parties in such lands or immovable properties were

recognised, were unconstitutional. [p.217C-D]

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1.4. Consequently, the provisions of the Amendment Act of 1981, insofar as they are intended to operate retrospectively for nullifying the adjudications made by civil courts prior to that amendment Act, are invalid, inoperative and unconstitutional. [p.217D-E]

1.5. However, the provisions in the Amendment Act of 1981, can undoubtedly operate prospectively for adjudicating upon claims to 'shamilat deh' in proceedings initiated subsequent to the commencement of that Act, if they do not, in any way, disturb the finality of adjudications made earlier. [p.217E]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2605, 2607, 2608, 2610, 2611 and 2615 of 1977.

From the Judgment and Order dated 9.3.76 of the Punjab & Haryana High Court in C.W.P. Nos. 6799/74, 91/75, 466, 487, 532, & 2579 of 1975.

WITH

Special Leave Petitions (C) Nos. 1108 and 3042 to 3095 of 1978.

From the Judgment and Order dated 19.3.76, 6.4.77, of the Punjab & Haryana High Court in C.W.P. Nos. 1413, 1415/76, 5159/75, 164, 136, 138/76, 168/77, 284/76, 369, 237/76, 7448/75, 5163/75, 177, 733, 893, 370, 236, 170, 144, 234, 139/76, 4509/75, 235, 368, 145, 843/76, 7318/75, 894, 888/76, 5161/75, 1232, 137/76, 4940/75, 231, 238/76, 5522/75, 1197, 233, 163, 166, 5769/76, 5162, 5158, 5429/75, 140, 443, 239, 165, 1203, 734, 232, 889/76, 6562/75, 735 and 743 of 1976.

AND

Civil Appeals Nos. 1381 to 1387 of 1990.

From the Judgment and Order dated 18.3.83 of the Punjab & Haryana High Court in C.W.P. Nos. 5264-67/82 & 162-64 of 1983.

Avadh Behari, Mrs. Nisha Bagchi and Ms. Indu Malhotra for the Petitioners/Appellants.

M.L. Verma, S.K. Bagga, T.V. Mehta, Seeraj Bagga, Mrs. S.Bagga, Jitendra Sharma, P.P. Juneja, Ms. SJanani, Ms. H. Wahi for Gagrut & Co. (NP), G.D. Gupta and A.D. Sikri for the Respondents.

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The Judgment of the Court was delivered by VENKATACHALA. J. The above Civil Appeals and the Special Leave Petitions (Civil) are that of the State of Haryana. While the judgment in Civil Writ Petition No. 6799 of 1974 of the Punjab and Haryana High Court Kamal Co-op. Farmers Society Lid, Pehowa v. Gram Panchayat, Pehowa etc., 1976, Current Law Journal (Civil), 417 and other judgments rendered following it are impugned in Civil Appeals Nos. 2605, 2607, 2608, 2610, 2611 and 2615 of 1977 and Special Leave Petitions (Civil) Nos. 1108 and 3042 to 3095 of 1978, the judgment in Civil Writ Petition No. 565 of 1981. of the same High Court Bajinder Singh and another v. The Assistant Collector 1st Grade, Guhla, Dist(. Kurukshetra and others, (1983) 85 PLR 528 and other judgments rendered following it are impugned in Civil Appeals Nos. 1381 to 1387 of 1990. Since common questions arise for our decision in these Appeals and Special Leave Petitions, all of them could, conveniently be disposed of by this judgment.

The High Court's judgments appealed against in these Appeals and Special Leave Petitions are since based on its view of unconstitutionality of certain provisions in the Punjab

Village Common Lands (Regulation) Haryana Amendment Act, 1974 Amendment Act of 1974 and the Punjab Village Common Lands (Regulation) Haryana Act, 1980 Amendment Act of 1981, which have amended the provisions of the Punjab Village Common Lands (Regulation) Act of 1961 the principal Act, it would be advantageous to understand at the outset the historical background of the principal Act and the circumstances which led the State of Haryana to enact the Amendment Act of 1974 and further- to enact the Amendment Act of 1981.

Villages in pre-independent rural India having village common or communal lands meant for use by the whole village community was their common redeeming feature, in that, the inhabitants of the villages whose occupation was predominantly agriculture dependent on their livestock needed to give manure to their lands, to cart manure to their lands, to plough their lands and the carry on several other incidental agricultural operations, required common lands for using as pasturages, pools, ponds, thrashing-floors, cowdung pits, have stack areas, tethering areas and the like. Villages in the States of Punjab and Pepsu were of no exception. With the dawn of independence and rise in land value even in villages, powerful and greedy inhabitants in Villages became grabbers of village common lands depriving their use to the village community. Some of the State which were enabled by the Constitution of

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India organise village Panchayats as units of self-Government and encourage growth of agriculture and animal husbandry in villages by suitable legislative measures took prompt steps to legislate on common lands of the villages, so as to restore such lands for communal use and common benefit of all the inhabitants of the villages by vesting them in their respective Panchayats. Punjab Village Common Lands (Regulation) Act, 1953 and Pepsu Village Common Lands (Regulation) Act, 1954 are 1954 are two legislative measures enacted by the respective States of Punjab and Pepsu to vest the common lands of villages in their Panchayats for common benefit and advantage of the whole community of the village concerned. When under the States, Re-organisation Act, 1956 Pepsu State merged in Punjab State, the said Papsu Act continued to operate in the area of erstwhile Pepsu. When the operation of two legislative measures in the new Punjab State, which were in come respects not common, was found to be undesirable, the State of Punjab enacted the Villages Common Lands (Regulation) Act, 1961 referred to by us already as 'principal Act' and made it operative in the whole territory of Punjab State, with effect from 4th day of May, 1961. By the principal Act the two earlier Acts which had covered the field till then were repealed, as well. The principal Act, as stated in its preamble, sought by its provisions to consolidate and amend the law regulating the rights in village common lands popularly and colloquially known as 'shamilat deh' and 'abadi- deh'. As 'shamilat deh' was not defined in the repealed Acts adverted to and there prevailed uncertainty as to its nature, the principal Act defined 'shamilat deh' in section 2(g) thereof in an endeavour to achieve certainty, thus:

'(g) 'Shamilat-deh or Charand' includes

- (1) Land described in the revenue records as shamilat deh or charand excluding abadi-deh;
- (2) Shamilat tikkas;
- (3) Land described in the revenue records as Shamilat Tarafs Patti, Pannas and Tholas and used according to revenue records for the benefit of the village community or

a part thereof or for common purposes of the village;
 (4) Lands used or reserved for the benefit of the village, community including, streets, lanes, playground, schools, drinking wells or ponds within abadi-deh or

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gora- deh; and

(4a) 'Vacant land situate in abadi-deh or gora- deh not owned by any person';

(5) Lands in any village described as banjar quadim and used for common purposes of the village, according to revenue records; provided that Shamilat-deh or 'charand' at least to the extent of twenty five percent of the total area of the village does not exist in the village; but does not include land which:

(i) becomes or has become Shamilat-deh or 'cherand' due to river action or has been reserved Shamilat or charand in village subjects to river action except Shamilat-deh or 'Charand' entered as pasture, pond, or playground in the revenue records;

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

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

(iv) having been acquired before the 26th January 1950, by a person by purchase or in exchange for proprietary land from a cosharer in the shamilat-deh or charand and is so recorded in the jamna-bandi or is supported by a valid deed;

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

(vi) lies outside the abadi-deh and is used at gitwar, bara, manure pit or house or for cottage industry;

(vii) is shamilat-deh or 'charand' of village included in the fourteen revenue estates called Bhojas of Naraingarh

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Tehsil of Ambala District;

(viii) was Shamilat or 'charand' was assessed to land revenue and has been in the individual cultivating possession of cosharers not being in excess of their respective shares in such shamilat-deh or charand or or before the 28th January 1950; or

(ix) is used as a place of worship or for purposes subservient thereto."

By section 2(h) thereof meaning of 'shamilat-law' was given thus:

"(h) 'Shamilat-Law means :-

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

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

While sub-section (1) of section 3 of the principal Act declared that the Act shall apply and before the commencement of the Act the Shamilat Law shall be deemed to have applied to all lands which are 'shamilat deh' as defined in clause (g) of section 2 thereof, sub-section (2) thereof declared that notwithstanding, anything contained in sub-section (1) of section 4, where any land had vested in

the Panchayat under the shamilat law, but such land had been excluded from 'shamilat deh' as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of the Act, shall cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the shamilat law and the Panchayat was directed to deliver possession of such land to such person or persons. No doubt, sub-sections (2) and (1) of section 4 declared that any land which vested in a Panchayat under 'shamilat law' shall be deemed to have been vested in the Panchayat under the Act and notwithstanding anything to the contrary contained in any other law for the time being in force or in any agreement,

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instruments, custom or usage or any decree or order of any court or other authority, all rights, title and interest whatever in the land which is included in the shamilat deh of any village and which and not vested in a panchayat under the shamilat law' shall, at the commencement of the Act, vest in a Panchayat. But sub-section (3) thereof declared that nothing contained in clause (a) of sub-section (1) in sub-section (2) shall affect or shall be deemed ever to have affected the (i) existing rights, title or interests of persons who, though not entered as occupancy tenants in the revenue records, are accorded a similar status by custom or otherwise, such as Dholidars, Bhondedars, Butimars, Basikhupopohus, Sounjidars, Muqurridars; (ii) rights of persons who were in cultivating possession of 'shamilat deh', on the date of the commencement of the Act and were in such cultivating possession for more than twelve years immediately preceding the commencement of the Act without payment of rent or by payment of charges not exceeding the land revenue and ceases payable thereon; and (iii) rights of a mortgaged to whom such land is mortgaged with possession before 26th January, 1950, while sub-section (2) of section 3 declared that notwithstanding, anything contained in sub-section (1) of section 4, where any land has vested in the Panchayat under the 'shamilat law', but such land has been excluded from shamilat deh' as defined in clause (g) of section 2, all rights, title and interest of the Panchayat in such land shall, as from the commencement of the principal Act, cease and such rights, title and interest shall be revested in the person or persons in whom they vested immediately before the commencement of the 'shamilat law' and the Panchayat shall deliver possession of such land to such person or persons.

Then section 5 thereof provided for regulation of use and occupation, etc, of 'shamilat deh' lands vested or deemed to have been vested in Panchayats while section 13 thereof imposed a bar on the jurisdiction of civil courts, declaring that no civil court shall have any jurisdiction over any matter arising out of the operation of the Act.

Thereafter, when certain districts of the Punjab State were carved out to form Haryana State under the Punjab State Re-organisation Act, 1966, the principal Act came to operate in the newly formed Haryana State. Section 13 of the principal Act, as already pointed out, barred civil courts' jurisdiction only over matters which arose out of its operation while the grounds under clause (g) of section 2 and the grounds under sub-section (3) of section 4 gave enormous scope for exclusion of certain lands and other immovable properties from 'shamilat deh'. These provisions,

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pears, were utilized by several persons in the villages of State of Haryana to have recourse to civil courts and to obtain decrees therefrom in their favour and against the concerned Panchayats pleading that their lands and other immovable properties were excluded from 'shamilat deh' either under clause (g) of section 2 or sub-section (3) of Section 4. Unfortunately, several Panchayats against whom such suits had been filed, appear to have had not objection for grant of decrees in favour of persons who were not legally entitled for such decrees.

Obtaining of the said decrees by innumerable persons against the Panchayats, establishing their title and right to possession respecting lands and immovable properties which would have otherwise been 'shamilat deh' vested in the concerned Panchayats, appears to have ultimately led the State to enact Amendment Act of 1974, in a bid to get rid of the said decrees of civil courts, as becomes obvious from the nature of its salient provisions to which we shall presently advert.

Section 2 of the Amendment Act of 1974 by substituting the provision in section 7 of the principal Act empowered thereunder an Assistant Collector of First Grade to eject any person who is in wrongful or unauthorised possession of land or other immovable property in the 'shamilat deh' of the concerned village vested or deemed to have been vested in Panchayat under the principal Act and put the Panchayat in possession thereof, besides vesting in the Collector the appellate power to hear appeals preferred against the order of Assistant Collector of First Grade. Further, section 4 thereof substituted the provisions in section 13 of the principal Act, which read:-

"13. Bar of jurisdiction. No civil court shall have jurisdiction

(a) to entertain or adjudicate upon any question as to whether any land or other immovable property or any right or interest in such land or other immovable property vests or does not vest in a panchayat under this Act; or

(b) in respect of any other matter which any officer is empowered by or under this Act to determine; or

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(c) to question the legality of any action taken or any matter decided by any authority empowered to do so under this Act.'

Then section 5 thereof inserted new sections 13-A and 13-B in the principal Act. Section 13-A enabled the Assistant Collector, First Grade having jurisdiction over the village to set aside civil court decrees obtained by person against Panchayats in respect of land or other immovable property of the ground of its being excluded from 'shamilat deh' under clause (g) of section 2 or any of the grounds mentioned in sub-section (3) of section 4 with power conferred upon him under sub-section (3) thereof to examine the records and hear the decree-holder in order to satisfy himself as to whether the copies of the relevant entries of the revenue records in support of the averments made in the plaint had been produced during the trial of the suit and if satisfied that the copies of the said entries had not been so produced, to set aside the civil court decree concerned. It provided also for appeals being filed by the persons aggrieved by the order of the Assistant Collector, First Grade, to the Collector.

Section 13-B provided for transfer of suits pending in civil

courts in respect of land or other immovable property wherein the relief had been claimed on the ground of its being excluded from 'shamilat deh' under clause (g) of section 2 or on any of the grounds mentioned in sub-section (3) of section 4 against the Panchayat to the Assistant Collector, First Grade.

When the aforementioned decrees obtained by several persons from civil courts were sought to be interfered with by the Assistant Collector of First Grade and the Collector, purporting to exercise the powers conferred upon them under the said provisions Writ Petitions were filed by them in the Punjab and Haryana High Court challenging the constitutionality of the very provisions in the Amendment Act of 1974. The High Court which examined the constitutionality of the impugned provisions in Karnal Co-op. Farmers Society Ltd., Pehowa v. Gram Panchayat, Pehowa etc., (supra) expressed its view in the matter thus:

"The provisions of section 13A cannot be struck down on this ground (that the State Legislature cannot confer jurisdiction on tribunals to decide matters relating to lands

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and matters relating to procedure and limitation). The Legislature has, however, conferred arbitrary and unguided powers on the Assistant Collector to set aside the decrees of the civil Courts. The safeguard provided in section 13-A(3) to the effect that the Assistant Collector shall satisfy himself as to whether the copies of relevant entries of revenue records in support of averments in the plaint had been produced during the trial of the suit, is not a sufficient safeguard, and it may enable him to discriminate. He has been given almost uncanalised powers which may amount to a carte blanche to discriminate. Consequently, sub-section (3) of section 13-A is ultra vires the Constitution. The other sub-sections in section 13-A revolve around sub-section (3) and are, therefore, also ultra vires. It may be mentioned that the counsel for the petitioner has not challenged vires of section 13-B, added by the Amendment Act."

Because of the said view expressed by the High Court on the constitutionality of the impugned provisions of the Amendment Act of 1974, it allowed the Writ Petitions in which the proceedings initiated before the Assistant Collector of 1st Grade and the Collector under the Amendment Act of 1974 had been questioned and quashed those proceedings by several judgments rendered in those Writ Petitions. The State of Haryana which felt aggrieved by the said judgments of the High Court filed before this Court various Civil Appeals and Special Leave Petitions (Civil) questioning the aforesaid view of the High Court expressed on the constitutionality of the provisions of the Amendment Act of 1974 and the judgments rendered based on such view, as is indicated by us in the beginning of this judgment.

However, during the pendency of the said Civil Appeals and Special Leave Petitions (Civil) before this Court, the State of Haryana took recourse to bringing a legislative measure to get over the said judgments of the High Court rendered in the Writ Petitions. The said legislative measure is the Amendment Act of 1981. Statement of Objects and Reasons accompanying the Bill has given the objects and reasons as the why the Amendment Act of 1981 was being enacted thus :

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"In many places the shamlat deh has been occupied unlawfully by unscrupulous persons, acting some times in collusion with the representative of the Gram Panchayats. To combat this evil certain amendments were made to the Punjab Village Common Lands (Regulation) Act, 1961, in 1974. However, when tested in the High Court of Punjab and Haryana, certain of these provisions were struck down, vide judgment of the High Court. The present Bill seeks to remedy the infirmities found by the High Court. It also proposes to make some incidental changes to the Punjab Village Common Lands (Regulation) Act, 1961, to make some of its provisions more explicit so as to ensure more effective implementation."

Bringing into force of the said Amendment Act in the State of Haryana gave rise once again, to a fresh flood of litigation and made the persons whose decrees obtained from the civil courts were likely to be interfered with by the authorities under the Amendment Act of 1981 to challenge the constitutionality of its provisions by filing Writ Petitions in the High Court. The main Writ Petition decided by the High Court is Civil Writ Petition No. 565 of 1981-Bajinder Singh and another v. The Assistant Collector 1st Grade, Guhla, Distt. Kurukshetra and others (supra). The High Court on a detailed examination of the constitutionality of the impugned provisions of the Amendment Act of 1981 relying upon the decided cases of this Court, of the Federal Court and of its own expressed its view in the matter, thus :

"that the retrospective abrogation of the jurisdiction of civil courts, validly exercised by them from 1961 onwards by the impugned Section 4 of the Punjab Village Common Lands (Regulation) Haryana Amendment Act 2 of 1981, clearly amounts to a trenching upon the judicial power by the legislature. Consequently, the relevant part of the aforesaid section fictionally substituting section 13 with effect from the 4th day of May, 1961 and thereby giving retrospective thereto from the said date, is held to be unconstitutional and is hereby struck down."

It is the said view in the judgment which is made the basis for

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deciding the Writ Petition concerned and for deciding similar Writ Petitions by the judgments of the High Court rendered in that regard. Civil Appeal Nos. 1381 to 1387 of 1990 before us are those filed by the State of Haryana aggrieved by the said judgments and they are the Appeals which we are required to deal with.

Before proceeding to deal with the said Appeals of 1990, it would be convenient to dispose of Civil Appeals Nos. 2605, 2607, 2608, 2610, 2611 and 2615 of 1977 and Special Leave Petitions (C) Nos. 1108 and 3042 to 3095 of 1978. These Appeals of 1977 and Special Leave Petitions (Civil) of 1978 are those filed by the State of Haryana aggrieved against the High Court judgments based on its view of the provisions in section 13A(3) and other sub-sections of that section of the principal Act, as stood amended by the Amendment Act of 1974. But by enacting and bringing into force the Amendment Act of 1981, the Haryana Legislature has substituted the

controversial provisions of the principal Act which had stood amended by the Amendment Act of 1974. Hence, the view expressed by the High Court in its judgments under Appeals of 1977 and SLPs of 1978 of the State of Haryana of the now non-existing controversial provisions, does not survive for consideration. Consequently, Civil Appeals of 1977 and SLPs of 1978 are liable to be dismissed as having become infructuous.

As Civil Appeals Nos. 1381 to 1387 of 1990 which we shall now proceed to deal with are since directed against the judgments based on the view of the High Court that the material provisions in the Amendment Act of 1981 are, to a certain extent, unconstitutional it would be useful to advert to them and know the object sought to be achieved thereby before examining their constitutionality on the basis of arguments of learned counsel for the State of Haryana addressed to us.

Section 3 of the Amendment Act of 1981 has introduced a proviso in sub-section (1) of section 7 of the principal Act, which had stood amended by the Amendment Act of 1974, and it reads

"Provided that if in such proceedings the question of title is raised", the Assistant Collector of the first grade shall first decide the question of title under section 13A."

Then section 4 of the Amendment Act of 1981 has substituted section 13 of the principal Act, which had stood amended by the Amendment Act

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of 1974, and it reads :

"4. For section 13 of the principal Act, the following section shall be substituted and shall be deemed to have been substituted with effect from the 4th day of May, 1961, namely :-

'13. Bar of jurisdiction No civil court shall have jurisdiction

(a) to entertain or adjudicate upon any question whether-

(i) any land or other immovable property is or is not shamlat deh;

(ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under this Act;

(b) in respect of any matter which any revenue court, officer or authority is empowered by or under this Act to determine; or

(c) to question the legality of any action taken or matter decided by any revenue court, officer or authority empowered to do so under this Act.'"

Further, section 5 of the Amendment Act of 1981 has inserted new sections 13A and 13B in the principal Act by omitting old sections 13-A and 13-B, which had stood amended by Amendment Act of 1974, and it reads:

"In the principal Act, the existing sections 13A and 13B shall be omitted and shall be deemed to have been omitted, with effect from the 12th day of November, 1974; and following new sections shall be inserted and shall be deemed to have been inserted, with effect from the 4th day of May 1961, namely

'13A. Adjudication. (1) Any person or in the case of a Panchayat, either the Panchayat or its Gram Sachiv, the concerned Block Development and Panchayat Officer

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Social Education and Panchayat Officer or any other Officer duly authorised by the State Government in this behalf, claiming right, title or interest in any land or other immovable property vested or deemed to have been vested in the Panchayat under this Act, may, within a period of two years from the date of commencement of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, file a suit for adjudication, whether such land or other immovable property is shamlat deh or not and whether any land or other immovable property or any right, title or interest therein vests or does not vest in a Panchayat under this Act, in the court of the Assistant Collector of the first grade having jurisdiction in the area wherein such land or other immovable property is situate.

(2) The procedure for deciding the suits under sub-section (1) shall be the same as laid down in the Code of Civil Procedure, 1908.

13B. Appeal and revision

(1) Any person, aggrieved by an order passed under section 13A, may, within a period of thirty days from the date of the order, prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

(2) The Commissioner may suo motu at any time, call for the record of any proceedings before, or order passed by any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of the proceedings or order and pass such order in relation thereto, as he may deem fit.

Provided that no order adversely affecting any person shall be passed unless he has been afforded an opportunity of being heard.

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13C. Finality of orders. Save as otherwise expressly provided in this Act, every order made by the Assistant Collector of the first grade, the Collector or the Commissioner shall be final and shall not be called in question in any manner in any court.

13D. Provisions of this Act to be over-riding the provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law, agreement, instrument, custom, usage, decree or order of any court or other authority.'

Lastly, section 7 of the Amendment Act of 1981 which is a validation provision, reads :

"7. Notwithstanding any judgment, decree or order of any civil court, all actions taken, rules made and orders or decrees passed by

Revenue Court, Officer or authority under the principal Act as amended by the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, shall be deemed to have been validly taken, made or passed, as the case may be, as if the principal Act, as amended by the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1980, had been in force at all material times when such action was taken, rules were made and judgments, orders or decrees were passed by the Revenue Court, Officer or authority."

What is sought to be achieved by the above provisions of the Amendment Act of 1981, as seen from their purport is this : Section 7 of the principal Act as stood amended by the Amendment Act of 1974, had empowered the Assistant Collector of First Grade to eject any person in wrongful possession of land or other immovable property in 'shamilat deh' of the concerned village vested or deemed to have been vested in its Panchayat under the principal Act and to put such land or other immovable property in possession of the concerned Panchayat. But new section 13A of the principal Act inserted by the Amendment Act of 1981, empowered the Assistant Collector of First Grade to adjudicate upon any right, title or interest in any land or other immovable property claimed to be vested or not vested or deemed to have been vested or not vested in a

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Panchayat and such land or immovable property is 'shamilat deh' on a suit filed within two years from the date of commencement of the Amendment Act of 1981. Proviso to section 7 inserted in the principal Act by the Amendment Act of 1981 further invested in the Assistant Collector of First Grade who was empowered under section 7 of the principal Act to eject any person in wrongful possession of land or other immovable property in 'shamilat deh' of the concerned village, the exclusive power of deciding the question of title in respect of such land or property, whenever raised. While new section 13B inserted in the principal Act by the Amendment Act of 1981 created appellate and revisional authorities to sit in judgment over the orders to be made by the Assistant Collector of First grade under new section 13A investing in such authorities the needed appellate or revisional power, new section 13C inserted in the principal Act by the Amendment Act of 1981 provided for clothing of the orders made under new section 13A and new section 13B with finality. Then, the above new section 13D inserted in the principal Act by the Amendment Act of 1981 enabled the Assistant Collector of First Grade exercising his powers under the aforementioned new proviso to section 7 and new section 13A, to exercise the same, notwithstanding any contrary law, agreement, instrument, usage, decree or order of any court or other authority, due to the overriding effect given by it. Further, section 5 of the Amendment Act of 1981 made new sections 13A, 13B, 13C and 13D retrospective in their operation with effect from the 4th day of May, 1961, the date of commencement of the principal Act, itself. Further more, section 4 of the Amendment Act, of 1981 barred the jurisdiction of civil courts to (a) entertain or adjudicate upon any question whether (i) any land or immovable property is 'shamilat deh' or is not 'shamilat deh'; (ii) any land or other immovable property or any right, title or interest in such land or other immovable property vests or does not vest in a Panchayat under the Act, or (b) to determine any matter which is required to be

determined under the Act by any specified authority or officer or (c) to question the legality of any action taken or any matter decided by the authority or officer empowered by the provisions in the principal Act, that too, from 4th day of May 1961, the date of commencement of the principal Act itself

Finally, section 7 of the Amendment Act of 1981, validated actions taken or decisions rendered or actions deemed to have taken or decisions deemed to have rendered under the principal Act, as amended by the Amendment Act of 1981.

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When the constitutionality of the above provisions in the Amendment Act of 1981 was challenged before the High Court of Punjab and Haryana, by filing Writ Petitions, the question which arose for its decision was whether the provision in new section 13 inserted in the principal Act barring the jurisdiction of civil courts on matters enumerated therein retrospectively with effect from the 4th May, 1961, and the provisions in new proviso to section 7 and new section 13A empowering the Assistant Collector of First Grade to decide on matters covered by the new section 13 notwithstanding, that is, by overlooking or brushing aside or disobeying or disregarding civil courts' decrees or orders already made on such matters as provided for in new section 13D are to be regarded as constitutionally valid provisions.

Since the High Court, as already mentioned, took the view that the impugned provisions of the Amendment Act of 1981 were unconstitutional to the extent they sought to abrogate the existing civil courts' decrees or orders and allowed the Writ Petitions accordingly by the orders rendered in them, the State of Haryana feeling aggrieved by the said orders has questioned their correctness in the present Civil Appeals of 1990.

It would now be convenient to turn to the argument of the learned counsel for the State of Haryana directed against the High Court's view of unconstitutionality of the provisions of the Amendment Act of 1981 and the argument of learned counsel for respondents advanced supporting that view.

The High Court's view of the unconstitutionality of the provisions of the Amendment Act of 1981 insofar as they had the effect of abrogating the civil courts' decrees or orders on lands or immovable properties in 'shamilat deh' which had been made after coming into force of the principal Act and before the Amendment Act of 1981 was, according to the argument of the learned counsel for the appellant, unsustainable. That the State Legislature according to him, when undisputably had legislative competence to enact a law on 'shamilat deh', the High Court should have seen that such Legislature had the necessary competence to enact law on 'shamilat deh' retrospectively and, therefore, the provisions empowering the Assistant Collector of First grade to ignore or brush aside or disregard the civil courts' decrees or orders made earlier declaring that the lands or properties concerned in them as not being 'shamilat deh', were constitu-

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tional. Argument of the learned counsel was sought to be supported relying upon the decision of this Court in *Sunder Dass v. Rant Prakash*, [1977] 3 SCR 60, even though some other decisions were referred to incidentally. On the other hand, learned counsel for the respondents, who refuted the argument advanced for the appellant, urged that the view taken by the High Court on the unconstitutionality of the

provisions of the Amendment Act of 1981, was required to be upheld.

Haryana State Legislature had the competence to legislate on the subject of common lands in villages, that is, land or immovable property in 'shamilat deh' of the village was not under challenge. Haryana State Legislature could have, in exercise of its ancillary amending power, legislated on the subject of 'shamilat deh', retrospectively was also not under challenge. What was under challenge before the High Court was the Haryana State Legislature's power to abrogate the civil courts' decrees and orders granted in favour of certain persons after the coming into force of the principal Act from 4th May, 1961, to the effect that several lands and immovable properties in villages formerly regarded as 'shamilat deh', were excluded from 'shamilat deh' under the principal Act and that they being in possession or enjoyment of them were their absolute owners, by making a mere declaration under the provisions of the Amendment Act of 1981 that such civil courts' decrees or orders could be disregarded or disobeyed as nullities by the Assistant Collector of First Grade while deciding claims under section 7 and new section 13A of the principal Act that those lands or immovable property were 'shamilat deh' of the village.

Under our Constitution no Legislature has the power to abrogate civil courts' decrees or orders or judicial adjudications by merely declaring under a law made by it that such decrees or orders or adjudications are no longer valid or binding on the parties, for such power of declaration would be a judicial function which cannot be encroached upon by a Legislature and the only way by which a competent Legislature can make the judicial adjudications, decrees or orders ineffective is by fundamentally altering the law on which they are based, is well-settled.

In *Shri Prithvi Cotton Mills Ltd. & Anr. v. Broach Borough Municipality & Ors.*, [1970] 1 SCR 388, a Constitution Bench of this Court considered the constitutionality of the Gujarat Imposition of Taxes by Municipalities (Validation) Act, 1963, which had validated the imposition

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of tax declared to be illegal by Courts, and held thus

"Granted legislative competence, it is not sufficient to declare merely that the decision of the Court shall not bind, for that is (it) tantamount(s) to reversing the decision in exercise of judicial power which the legislature does not possess or exercise. A court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances."

In *Government of Andhra Pradesh and Kutubullahpur Grain Panchayat v. Hindustan Machine Tools Ltd.*, [1975] (Supp.) SCR 394, a three judge Bench of this Court considered the ambit of amended definition of 'house' in Andhra Pradesh Gram Panchayat Act, 1964, which included retrospectively factories, to get over the High Court's earlier judgment by which it was held that the tax imposed on factories by the Panchayat under the unamended Act was illegal, and held thus

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"The Legislature has power to pass a law prospectively as well as retrospectively. The Legislature can remove the basis of the decision rendered by a court. The Amending Act does not ask the instrumentalities of the

State to disobey or disregard the decision given by the High Court, but merely removes the basis of that decision."

In Smt. Indira Nehru Gandhi v. Shri Raj Narain, [1976] 2 SCR 347, this Court dealt with the question of Legislature's competence to validate the matters invalidated by orders of Courts by changing the law. Ray, C.J., adverted to the settled legal position, governing such situation, thus

"The power of the legislature to validate matters which have been found by judgments or orders of competent Courts and Tribunals to be invalid or illegal is a wellknown pattern. The Legislature validates acts and things done by which the basis of judgments or orders of competent courts and Tribunals is changed and the judgments and orders are made ineffective..... The effect of validation is to change the law so as to alter the basis of any judgment which might have been given on the basis of old

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law The rendering of a judgment ineffective by changing its basis by legislative enactment is not an encroachment on judicial power, but a legislation within the competence of the Legislature rendering the basis of the judgment non-est where invalid elections declared by reason of corrupt practices have been validated by changing the definition of corrupt practices in the Representation of the People Act, 1951, retrospectively the original judgment is rendered ineffective."

In Misrilal Jain etc. etc. v. State of Orissa & Another, [1977] 3 SCR 714, a seven-judge Bench of this Court, while considering the constitutional validity of certain provisions in Orissa Taxation (On Goods carried by Roads or Inland Waterways) Validation Act 18 of 1961, where fraud had been attributed to the Legislature, observed thus

"The impugned enactment is a valid exercise of legislative power and is in no sense a fraud on the Constitution. Since it is well established that the power to legislate carries with it the power to legislate retrospectively as much as prospectively, the circumstance that an enactment operates entirely in the past and has no prospectiv

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life cannot affect the competence of the Legislature to pass the enactment if it falls within the fist on which that competence can operate. As regards the power to pass a validating Act, that power is essentially subsidiary to the legislative competence to pass a law under an appropriate entry of the relevant fist If the vice from which an enactment suffers is cured by due compliance with the legal or constitutional requirement, the Legislature has competence to validate the enactment and such validation does not constitute an encroachment on the functions of the judiciary. The validity of a validating taxing law depends upon whether the legislature possesses the competence over the subject-matter of the law;"

In LN. Saksena v. The State of Madhya Pradesh, [1976] 3 SCR

237, dealing with the well-known pattern by which a competent Legislature could render judicial decisions ineffective observed, thus

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without more, directly over-rule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective. by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralising effect the conditions on which such decision is based.

of competent Courts and Tribunals by changing their basis by legislative enactment is a well known pattern of all validating Acts

In *Sunder Dass v. Ram Prakash* [1977] 3 S. C. R 60 a decision of this Court, on which the learned counsel for the appellant placed heavy reliance to sustain the constitutional 'validity of the provisions in the Amendment Act of 1981 which contained a bare declaration that the earlier judicial adjudication being not valid and binding could be ignored. The decision does not refer to anything which could sustain the validity of a bare declaration as the one with which we are concerned. In fact, this Court was concerned in that decision with a retrospective amendment made by a Legislature to a law so as to remove the basis on which a decree for eviction had been made. The Legislative device which had been adopted by the Legislature in that case for rendering the decree of a court ineffective by having recourse to retrospective amendment of the law so as to change the foundation of the decree which was sought to be made ineffective, was upheld as the right device. Hence, the decision relied upon for the appellant instead of sustaining the bare declaration with which we are concerned makes it unsustainable.

Thus, it becomes clear that a Legislature while has the legislative power to render ineffective the earlier judicial decisions, by removing or altering or neutralising the legal basis in the unamended law on which such decisions were founded, even retrospectively, it does not have the power to render ineffective the earlier judicial decisions by making a law which simply declares the earlier judicial decisions as invalid or not binding for such power if exercised would not be a legislative power but a judicial

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power which cannot be encroached upon by a Legislature under our Constitution.

In the instant case, the Haryana State Legislature, by the Amendment Act of 1981, has not made any provision to include the lands and immovable properties the subject of the civil court's decrees, in 'shamilat deh' so as to bring them within the purview of the principal Act. But, the provision made therein merely directs the Assistant Collector of First Grade, in effect, to disregard or disobey the earlier civil courts' decrees and judicial orders by which it had been held that certain lands and immovable properties fell outside 'shamilat deh' regulated by the principal Act. Such provisions inserted by the Amendment Act of 1981 in the principal Act by a Legislature are, clearly unconstitutional for they are to be regarded as provisions made by encroaching upon the judicial power. Hence, the view of the High Court that the provisions of the Amendment Act of 1981

which merely authorise the Assistant Collector of First Grade to decide the claims to be made before him claiming certain lands or immovable properties as 'shamilat deh' vesting in Panchayats ignoring the judicial orders or decrees, by which any right, title or interest of private parties in such lands or immovable properties are recognised, are unconstitutional requires to be upheld. Consequently, the provisions of the Amendment Act of 1981, insofar as they are intended to operate retrospectively for nullifying the adjudications made by civil courts prior to that Amendment Act, are invalid, inoperative and unconstitutional. However, the provisions in the Amendment Act of 1981, can undoubtedly operate prospectively for adjudicating upon claims to 'shamilat deh' in proceedings initiated subsequent to the commencement of that Act, if they do not, in any way, disturb the finality of adjudications made earlier. For the foregoing reasons, all these Civil Appeals and Special Leave Petitions fail and are accordingly dismissed. No costs.
R.P.
Appeals dismissed.
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