1962

February 20.

AMARSARJIT SINGH

v.

THE STATE OF PUNJAB

(AND CONNECTED PETITIONS AND APPEALS)

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

Resumption of jagirs—Cis-Sutlej jagirs—Jagirdars, if sovereigns—Assignment of revenue by British Government—Implied grant—Legislative competence of enactment—The Punjab Resumption of Jagirs Act, 1957 (Punjab 39 of 1957), ss. 2(1), 2(5)—Constitution of India, Seventh Schedule, List II, entries 18, 45.

The Punjab Resumption of Jagirs Act, 1957, came into force on November 14, 1957, and the State of Punjab proceeded to take action thereunder for resuming the jagirs. The petitioners who were holders of certain jagirs in that State known as the Cis-Sutlej jagirs claimed that they could not be resumed under the provisions of the Act because they did not fall within the definition of Jagir contained in s. 2(1) of the Act on the grounds that there was at no time any grant of the Cis-Sutlej jagirs to their holders. much less any assignment of land revenue to them, and that even if there was such a grant, it was not one made by or on behalf of the State Government as required by s. 2(1) (a) of the Act. The history or these jagirs showed that the jagirdars were originally rulers of the territories when they took possession of them by conquest in 1763, but in course of time after the British came on the scene, they were gradually stripped of all their powers as sovereigns, and in 1852 the British took over the collection of revenue of the jagir lands and out of the collections the jagirdars were paid their share. Subsequent to 1852 there was a course of legislation relating to the jagirs. The question was whether the assignment of land revenue to the Cis-Sutlej jagirdars was made on the basis of an implied grant. The petitioners case was that as the Cis-Sutlej Chiefs were never conquered, the payment of land revenue to them must be related to their status as sovereigns and that the collection of the land revenue was made only under an implied arrangement with them.

Held, that the status of the Cis-Sutlej jagirdars was only that of subjects and that the payment of revenue to them by

the British Government was only on the basis of an implied grant to them.

Though the Cis-Sutlej Chief were not conquered by the British, since the latter were in fact exercising sovereign powers over the area it must be held that sovereignty had passed to them otherwise than by conquest.

M/s. Dalmia Dadri Cement Co. Ltd. v. *The Commissioner of Income-tax*, [1959] S. C. R. 729, *Thakur Amar Singji* v. *State of Rajasthan*, [1955] 2 S. C.R. 303 and *Vajesingji Jorawar Singji* v. *Secretary of State*, [1924] L.R. 51 I.A. 357, relied on.

Held, further that the British Government which had made the grant was the "State Government" within the meaning of s. 2(5) of the Punjab Resumption of Jagirs Act 1957, and that the Jagirs in question were within the definition of "Jagir" in s.2(1) of the Act.

Held, also, that the Act was within the legislative competence of the State of Punjab under entries 18 and 45 of List II of the Seventh Schedule to the Constitution of India.

ORIGINAL JURISDICTION: Petitions Nos. 82 of 1960 and 148, 168 to 174 and 357 to 361 of 1961.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

WITH

Civil Appeals Nos. 453 to 474 of 1961.

Appeals from the judgment and order dated May 25, 1959, of the Punjab High Court in Civil Writ Nos. 428, 303, 398, 402, 459 to 462, 421, 472, 473, 475, 490, 503, 509, 519, 520, 555, 590, 710 and 712 of 1958.

AND

Civil Appeal No. 50 of 1962.

Appeal by special leave from the judgment and order dated May 25, 1959, of the Punjab High Court in Civil Writ No. 347 of 1958.

Achhru Ram and *Naunit Lal*, for the petitioner (in Petn. No. 82 of 60) and the appellant (in C. A. No. 50 of 62).

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I. N. Shroff, for the petitioners (in Petn. No. 148 of 61) and the appellants (in C. As. Nos. 457 to 474 of 61).

Hardev Singh and *Y. Kumar*, for the petitioners (in Petns. Nos. 168 to 174 and 357 to 361 of 61).

C. K. Daphtary, Solicitor-General of India, K. L. Gosain, B. R. L. Iyengar, Lakshmi Chand and *I. N. Shroff*, for the appellants (in C.As. Nos 453 and 456 of 1961).

K. L. Gosain, B. R. L. Iyengar, Lakshmi Chand and *I. N. Shroff*, for the appellants (in C. A. No. 454 of 1961).

B. R. L. Iyengar, Lakshmi, Chand and *I.N.Shroff*, for the appellants (in C. A. No. 455 of 1961).

S. M. Sikri, Advocate-General, for the State of Punjab, N. S. Bindra and *P. D. Menon*, for the respondents (in all petitions and Civil Appeals).

M. C. Setalvad, Attorney-General of India, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain*, for Intervener No.1 (Satinder Singh).

K. L. Mehta, for Intervener No. 2 (Raghvinder Singh and others).

1962. February 20. The Judgment of the Court was delivered by

Aiyar J.

VENKATARAMA AIYAR, J.—The question that arises for our decision in the above writ petitions and appeals is whether certain jagirs in the State of Punjab known as the "Cis-Sutlej" jagir are liable to be resumed under the provisions of the Punjab Resumption of Jagirs Act, 1957 (Punjab Act No. 39 of 1957), hereinafter referred to as "the Act". This Act came into force on November 14, 1957, and the respondent State then proceeded to take action thereunder for resuming the jagirs. A number of petitions were thereupon filed in the

High Court of Punjab under Art. 226 of the Constitution challenging the validity of the Act, and of the proceedings taken by the respondent State thereunder on the ground, firstly, that the Act was *ultra vires* the powers of the State Legislature and that its provisions were unconstitutional and void; and, secondly, that even if the Act was *intra vires* the jagirs held by the petitioners were not "jagirs" as defined in the Act, and were therefore not liable to be resumed under its provisions. By their judgment dated May 25, 1959, the learned Judges held that the legislation was within the competence of the State, and that it did not contravence any of the constitutional provisions. They further held that the jagirs held by the petitioners fell within the definition of "jagir" under the Act, and were liable to be resumed thereunder, and that accordingly no writ could be issued against the State for proceeding under the provisions of the Act. By their Order dated January 27, 1960, the learned Judges granted leave to appeal to this Court under Art. 133 (1) (a), and pursuant to the same, Civil Appeals Nos. 453 to 474 of 1961 have been preferred to this Court. Appeal No. 50 of 1962 by special leave is also directed against the Judgment of the Punjab High Court in a Writ Petition under Art. 226. Some of the jagirdars have also filed petitions in this Court under Art. 32 of the Constitution, impugning the Act and the action of the State thereunder on the same grounds as those raised in the appeals. We have accordingly heard arguments of learned Counsel both in the writ petitions and in the appeals, and this Judgment will govern all of them.

Though a number of grounds have been taken in the pleadings, impugning the Act as *ultra vires* and its provisions as unconstitutional, in the argument before us, the only contention that was pressed was that the Cis-Sutlej jagirs do not fall

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within the definition of jagirs contained in the Act and that accordingly the State had no authority to resume them under the provisions of the Act. And this contention is sought to be sustained on two ground: (i) that there was at no time any grant of the Cis-Sutlej jagirs to their holders, much less any assignment of land revenue to them; and (ii) that even if there was such a grant, it was not one made by or on behalf of the State Government as required by s. 2 (1). It is argued that if either of these contentions succeeds, the jagirs in question would fall outside the purview of the Act, and the State would have no right under its provisions to resume them.

It will be convenient at this stage to set out the relevant provisions of the Act. Section 2 (1) defines "jagir" as follows:—

> " "Jagir" means—
>
> (a) any assignment of land revenue made by or on behalf of the State Government; or
>
> (b) any estate in land created or affirmed by or on behalf of the State Government carrying with it the right of collecting land revenue or receiving any portion of the land revenue; or
>
> (c) any grant of money made or continued by or on behalf of the State Government which purports to be or is expressed to be payable out of the land revenue; or
>
> (d) any grant of money including anything payable on the part of the State Government in respect of any right, privilege, perquisite or office; and
>
> includes any such grant or assignment existing in favour of Cis-Sutlej jagirdars."

"Jagirdar" is defined in s. 2 (2) as meaning the holder of a jagir. Section 2 (5) defines State Government as follows:—

"State Government"—

(a) as respects any period before the 1st November 1956, shall mean:—

(i) the Government of the Patiala and East Punjab State Union or any of the Indian States which formed into the Patiala and East Punjab States Union on the 20th August, 1948 and

(ii) the Government of the State of Punjab and all predecessor Governments thereof by whatever name called, the Governor-General or the Governor-General in Council, as the case may be, and the Sikh Rulers, but shall not include the Central Government as defined in the General Clauses Act, 1897, after the period commencing on the 15th August, 1947.

(b) as respects any period after the 1st November, 1956 shall mean the Government of the State of Punjab."

Section 3 enacts that—

"Notwithstanding anything to the contrary contained in any law or usage any grant settlement, sanad or other instrument, or any decree or order of any Court or authority, all jagirs shall, on and from the commencement of this Act, be extinguished and stand resumed in the name of the State Government.

It is common ground that the jagirs which are concerned in the present writ petitions and appeals consist of a right to the revenue payable on lands, and not of any estate such as will fall under s. 2 (1) (b) of the Act and that they must fall, if at all within s. 2 (1) (a). Therefore the discussion narrows

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itself to the question whether there was, as required by s. 2 (1) (a) of the Act, any assignment of the revenue of these jagirs and whether such assignment was by the State Government.

On the first question, as to whether there was assignment of land revenue, the contention of the petitioners and of the appellants—and they will hereafter be referred to compendiously as jagirdars—is that the so called jagirs are not jagirs as ordinarily understood, that they were not the subject matters of any grant by any State that they were in fact originally independent States held by rulers with sovereign rights, that in course of time the British Government imposed their sovereignty over them, and finally took over the administration of the State and paid the revenue collected therefrom to the rulers, not as person to whom the land-revenue had been assigned, because there was no such assignment but as sovereigns of the States. Therefore, it is contended, the co-called jagirs are not within the difinition of s. 2 (1).

That brings us on to the question of the true status of the Cis-Sutlej jagirdars. The origin of these jagirs goes back to 1763. The collapse of the Moghul Empire had created a void in the political stage of this country, and many were the powers which stepped in with the ambition of establishing their sovereignty. The British had established their rule and had extended their dominion up to the Jumna. The Sikhs had also developed during this period from being a purely religious sect into a military organisation, and established several States beyond the Sutlej. The tract of territory between the Jumna and the Sutlej was at this time under the administration of a weak Afghan Governor called Zain Khan. The policy of the British during this period was to hold the Jumna as the frontier, and so they were indifferent to the fate of this Cis-Sutlej area. But the Sikh Chiefs

beyond the Sutlej could not resist the temptation of overthrowing the Afghan Governor, seizing his territory and establishing themselves as its rulers. In 1763 the storm burst when a number of them crossed the Sutlej, overwhelmed the Afghan Governor and occupied the whole country upto Jumna. "Tradition still describes", says Cunningham in his History of the Sikhs, P. 110, "how the Sikhs dispersed as soon as the battle was won and how riding day and night each horseman would throw his belt and scabbard, his articles of dress and accoutrement, until he was almost naked into successive villages to mark them as his." When the conquest was over each Chief declared himself the ruler of the territory which he was able to occupy, and constituted himself its sovereign.

This state of affairs continued until 1806. By this time, Ranjit Singh the "Lion of the Punjab", had built up a powerful State across the Sutlej. He had already subdued the petty rulers within that area and was turning his attention to the territories south of the Sutlej and had occupied some of them. The Cis-Sutlej rulers became alarmed about their future and appealed for protection to the British, who had, by this time, changed their policy of non-intervention. The appeal was welcome, and met with prompt response. The result was that in 1809 the British entered into a treaty with Ranjit Singh whereby he surrendered his acquisitions south of Sutlej and agreed not to interfere with the Cis-Sutlej States. And this was followed by a proclamation by Colonel Ochterlony in May 1809 whereby the Cis-Sutlej Chiefs were assured of their rights as sole owners of their possessions and exempted from payment of tribute, but were required to furnish supplies to the British Government and assist them against their enemies. The British Government also promulgated a rule that whenever any of the rulers died without issues, his State would lapse to the British Government.

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This was the position until 1846 when a drastic change in the situation took place. In 1845, there was war between the British and the Sikhs, and in that war the Cis-Sutlej rulers far from helping the British against the Trans Sutlej Sikhs, were either unsympathetically neutral or actively hostile to them, and that brought about a change in the policy of the British Government towards them. The position is thus stated by Kensington in the Ambala Gazetteer at p. 26:—

> "Having thus already lost the confidence of the Government the Sikh Chiefs in the Sutlej campaign forfieted all claim to consideration. It was seen that the time had arrived for the introduction of sweeping measures of reform and the Government unhesitatingly resolved upon a reduction of their privileges. Several important measures were at once adopted. The police jurisdiction of most of the chiefs was abolished, the existing system being most unfavourable to the detection and punishment of crime. All transit and customs duties were also abolished; and thirdly, a commutation was accepted for the personal service of the chief and his contingent. The despatch of the Governor General embodying this resolution was dated November 7th, 1846."

While the sweeping changes aforesaid were being introduced, the second Sikh War broke out and that ended in the annexation of the Punjab. And with that the need for maintaining appearances and for recognising the Cis-Sutlej Chiefs as rulers came to an end. The British Government then proceeded to act swiftly and firmly, and in June, 1849, they made a declaration that the Chiefs should "cease to hold sovereign powers, should lose all criminal, civil and fiscal jurisdiction, and should be considered as no more than ordinary subjects of the British Government in the possession of certain exceptional

privileges" (1). Pursuant to this declaration, the Chiefs were stripped of all their governmental functions,and the final *denouement* 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.

On these facts, the question is whether it can be said that their was an assignment of the land revenue to the jagirdars. Express grants to them, there were none. The point in debate before us is whether grants of the land revenue could be implied from the facts stated above.

A somewhat similar question came up for decision before this Court in *Thakar Amar Singhji* v. *State of Rajasthan* (2) with reference to a class of jagirdars in the State of Rajasthan known as Bhomicharas. They were once the rulers of the territories which were claimed to be jagirs, and later on the State of Jodhpur imposed its suzerainty over them and exacted an annual payment called "Foujbal". The Bhomicharas contended that they had come into possession of the territories as rulers and held them as rulers and not as jagirdars under grants made by any ruler. In repelling this contention, this Court held that a grant may be implied as well as express, and that on the facts which were proved, the Bhomicharas, though they held originally as rulers, must be held to have been reduced to the status of subjects, and that their position was that of jagirdars under an implied grant. The position of the Cis-Sutlej jagirdars bears a close analogy to that of the Bhomicharas in *Thakur Amar Singhji's case* (2). They became rulers of the territories when they took possession of them by conquest in 1763. The first inroads into their

(1) Griffin's "Rajas of the Punjab", P. 199.
(2) [1955] 2 S.C.R. 303.

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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. It is not disputed that as a result of all these acts they were reduced to the position of ordinary subjects, that indeed being the objective of the British Government as avowed in their declaration of June, 1849. It is with reference to this background that we must examine the true character of the revenue settlement made in 1852. If 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.

Learned Counsel for the jagirdars however demur to this conclusion. They contend that the position of the Cis-Sutlej jagirdars differs fundamentally from that of the Bhomicharas in *Thakur Amar Singhji's case* (1), that the latter were conquered by the rulers of Jodhpur and compelled to pay to them a tribute called "Foujbal", but that the Cis-Sutlej Chiefs were never conquered by the British, and never paid any tribute to them, that they were receiving revenue from the lands as rulers before the British came on the scene, and that they continued to receive the same without a break even after the British had established themselves, and that there was nothing which the British Government did from which a resumption and a re-grant could be inferred. Under the circumstances, it is said, the payment of land revenue to them must be related to their status as sovereigns, and if the British Government took upon themselves the work of settlement and collection of land revenue, it was

(1) [1955] 2. S. C. R. 303.

on their behalf and under their authority and under an implied arrangement with them.

The assumption underlying this argument is 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 of land revenue to them could not be as jagirdars holding under an implied grant from the Government. That, however, 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 same result can be achieved in any other mode which has the effect of establishing its sovereignty. Thus, discussing what is an "act of State", the Judicial Committee observed in *Cook* v. *Sir James Gordon Sprigg* (1) :—

> "The taking possession by Her Majesty, whether by cession or by any other means by which sovereignty can be acquired, was an act of State."

To the same effect are the following observations of Lord Dunedin in *Vajesingji Joravarsingji* v. *Secretary of State for India in Council* (2) :—

> "When a territory is acquired by a sovereign State for the first time, that is an act of State. It matters not how the acquisition has been brought about. It may be by conquest, it may be by cession following on treaty, it may be by occupation of territory hitherto unoccupied by a recognised ruler."

Laying down the law in similar terms, this Court observed in *M/s. Dalmia Dadri Cement Co. Ltd.* v. *The Commissioner of Income-tax* (3) :—

> "The expression 'act of State' is, it is scarcely necessary to say, not limited to hostile

(1) (1899) A.C. 572. (2) (1923-24) L. R. 51 I. A. 357.
(3) [1959] S.C.R. 729, 739.

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action between rulers resulting in the occupation of territories. It includes all acquisitions of territory by a sovereign State for the first time, whether it be by conquest or cession. *Vide Vajesingji Joravar Singji* v. *Secretary of State* and *Thakur Amar Singji* v. *State of Rajasthan*."

And, more recently, this question has been considered by this Court in *Promod Chandra Deb* v. *The State of Orissa* (1), and the result was thus stated :—

> "'Act of State' is the taking over of sovereign powers by a State in respect of territory which was not till then a part of its territory, either by conquest; treaty or cession, or otherwise."

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.

Viewed in this light, the case does not present much of a problem. It has been already seen that from 1809 onwards, the Chiefs had been gradually stripped of their powers as sovereigns and that the process of disintegration was completed in 1849. It is indeed conceded on behalf of the jagirdars that after that date it was the British Government which was exercising sovereign powers over the territories and that the Chiefs had been reduced to the status of its subjects. But the contention that is urged is that even when every thing else had been

(1) Writ Petitions Nos. 79 of 1957, 167 and 168 of 1958 and 4 of 1959 decided on November, 16, 1961.

lost, there was still one relic of sovereignty left with them and that was the right to receive the land revenue. If this were the true position, the status of the jagirdars would be that of subjects of the British in respect of all matters except as to the right to receive revenue, in respect of which alone they would have to be regarded as sovereigns. This is clearly untenable, because a person cannot be both a sovereign and a subject at the same time. Dealing with this identical contention, this Court observed in *Thakur Amar Singhji's case* (1) :

> "The status of a person must be either that of a sovereign or a subject. There is no *tertium quid*. The law does not recognise an intermediate status of a person being partly a sovereign and partly a subject, and when once it is admitted that the Bhomicharas had acknowledged the sovereignty of Jodhpur their status can only be that of a subject. A subject might occupy an exalted position and enjoy special privileges, but he is none the less a subject ; and even if the status of Bhomicharas might be considered superior to that of ordinary jagirdars, they were also subjects." (pp. 336-337)

If the status of the Cis-Sutlej 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.

But it is contended that the implication of a grant in favour of the jagirdars could not be made here as in the case of Bhomicharas in *Thakur Amar Singhji's case* (1), because a proposal for resumption and re-grant of the territories of the Cis-Sutlej Chiefs was actually put forward in 1846 but was negatived. Reference was made to the following

(1) [1955] 2 S. C. R. 303.

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account thereof given in J. M. Douie's "Punjab Land Administration Manual", 1931, p. 45 para 102:—

> "It was indeed proposed in 1846 after the first Sikh War to declare all the estates forfeit on account of the laches of their holders, and to re-grant them under *sanads* from the British Government. But Lord Hardinge deemed it impolitic to proclaim to all India the misconduct of the Cis-Sutlej Chiefs and negatived proposal. In a sense then the Cis-Sutlej jagirdars, great and small, are mediatized rulers, and little though they have as a body deserved at our hands, this fact should not be lost sight of in our dealings with them."

The argument is that though a grant could be implied in certain circumstances where no express grant was forthcoming, that could not be done when a proposal for grant is shown to have been actively considered and rejected. This contention sounds plausible but breaks down when the reason for the rejection of the proposal is examined. That was, as stated in the despatch of Lord Hardinge dated November 17, 1846, that "a general measure of resumption would create alarm and must be preceded by a public declaration of the disloyalty of the largest portion of the Sikh protected States explaining the grounds of forfeiture," and this was considered inexpedient. Consistently with this reason it is impossible to hold that the British Government, in declining to make a resumption and re-grant, intended to continue the recognition of the Chiefs as sovereigns. On the other hand, the true inference to be drawn is that the British wanted to give the chieftains only the status of jagirdars but for reasons of policy they sought to do it in such manner as to avoid publicity, and that is why the proposal for making resumption and re-grant was not adopted. In the very despatch of

Lord Hardinge dated November 17, 1846, wherein the proposal for resumption and re-grant was dropped, it was stated that there was no need for it as the same ends could be obtained by adopting certain measures such as the taking over of the police administration and customs and the like. The reason, therefore, for not making a resumption and an express grant is one which would support an inference of implied grant.

An argument is also sought to be built on the description given of the Cis-Sutlej jagirdars as "mediatized rulers" in the extract from J. M. Douie's "Punjab Land Administration Manual" already given, that their status is that of sovereigns. This expression was originally used with reference to German Princes in Holy Roman Empire who, having been at one time vassals of the Emperor, were subsequently subjugated by other Princes who were also vassals of the Emperor. The meaning of the word "mediatise" in modern usage is given in the Oxford English Dictionary, Vol. VI, p. 292, as "annex (principality) to another State, leaving former sovereign his title and (usually) more or less of his rights of Government". It might be correct to speak of the Chiefs as mediatized rulers in 1846, when, though deprived of their powers in matters of police and customs, they continued to exercise civil and fiscal powers. But when they were divested in 1849 of all their Governmental powers they ceased to be rulers, "mediatized" or otherwise, and when the revenue settlements were made in 1852, they had no vestige of sovereignty left in them, and had become ordinary subjects of the British with some privileges.

The true character of the revenue settlements made with the Cis-Sutlej jagirdars is brought out correctly, in our opinion, in the following observations in Baden Powell's "Land Systems of British India", Vol. II at p. 701:—

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> "Under our Settlement arrangements, the jagirdar now receives the revenue, the original land holding communities or individuals being settled with and retaining full proprietary rights. He in fact is a mere assignee of the revenue, taking part of what otherwise would go to the State."

Even more explicit is the statement of the position by Kensington in the Ambala Gazetteer, pp.27-28:—

> "The final step necessitated by the march of events was taken in 1852 when the revenue settlement begun for British villages in 1847 was extended to the villages of the chiefs. Thereafter the chiefs have ceased to retain any relics of their former power except that they are still permitted to collect their revenues direct from their villages, the cash assignment of revenue. They have sunk to the position of jagirdars but as such retain a right to the revenue assigned to them in perpetuity."

It was argued by the learned Advocate-General who appeared for the respondent that subsequent to 1852 there has been a course of legislation relating to the jagirs which proceeds on the basis that their holders were subjects. The preamble to the Punjab Land Revenue Act, 1871 (Act 33 of 1871), under which land revenue was settled is as follows:—

> "Whereas the Government of India is by law entitled to a proportion of the produce of the land of the Punjab to be from time to time fixed by itself and whereas it is expedient to consolidate and define the law relating to the settlement and collection thereof, and to the duties of the Revenue Officers in the Punjab."

It is under this Act that the revenue settlements for the jagir lands are also made. This shows that in exercising fiscal jurisdiction, the British Government

considered itself as acting in its sovereign capacity. Then there is Punjab Descent of Jagirs Act, 1900 (Punjab Act IV of 1900), which introduced in the Punjab Laws Act, 1872, ss. 8 to 8C enacting rules of descent "in respect of succession to any assignment of land revenue" and providing for the recognition of successors to the deceased jagirdars by the Provincial Government on certain conditions specified therein. We have then the Punjab Jagirs Act V of 1941 dealing with the same topic. The preamble to the Act states that "it is expedient to consolidate the law governing the assignments of land revenue and other grants hitherto known as jagirs, and to make more precise provisions regarding the manner in which such assignments are to be made or continued in the future." Jagir is defined in s. 2 in terms substantially the same as under the present Act. This Act repeals ss. 8 to 8C of the Punjab Laws Act, 1872, which were inserted by the Punjab Descent of Jagirs Act IV of 1900, and reproduces them in ss. 7 to 10. Section 7(1)(b) provides for the acceptance by the jagirdars of the rules of descent framed by the Government by executing a written instrument, and it has been stated before us that the jagirdars have accepted the rules in the manner provided in the section. By way of sample, the copy of the acceptance executed by the petitioner in Writ Petition No. 82 of 1960 has been marked as part of the record. 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 must be mentioned that in *Abdul Ghafoor Khan* v. *Amar arjit Singh*, Regular Second Appeal No. 561 of 1946 in the Punjab High Court there are observations of the learned Judges, Mahajan and Teja Singh, JJ., that there was no gift of the jagir lands or assignment of the land revenue by the British Government to the Cis-Sutlej jagirdars, and they are relied on as authority for the contention that

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there was no grant to them express or implied. But the point for decision in that case was whether these jagirdars could alienate their interests beyond their life-time. It was held that they could not and the reason therefor was thus stated: --

> "After the annexation of the Punjab they (Cis-Sutlej jagirdars) were deprived of all vestiges of sovereignty that still remained in them and they were transformed and given the status of jagirdars, but their possessions, holding and dominions whether in land or other properties like forts and buildings were not in any way disturbed or taken away. They held them in the same status and position as before."

The dispute in that appeal related to properties of the kind mentioned above and not to land revenue, and we are unable to regard the observations relied on for the jagirdars as authority for the position that no grant in respect of the assignments of the land revenue could be implied in their favour.

In the result we must hold that the jagirs which are subject-matter of these proceedings fall within s. 2(1)(a) of the Act.

It is next contended that even if an assignment of land revenue could be implied in favour of the jagirdars, that could only be held to have been made by the British Government and not by the State Government as required by s. 2(1)(a), and that, in consequence, the respondent had no right to resume the jagirs in question under the provisions of the Act. Whatever force there might have been in this contention, if the question had to be decided only on the terms of s. 2(1)(a), we have in s. 2(5) a definition of State Government which

is decisive of the question. According to that definition, "State Government" includes "the Government of the State of Punjab, and all predecessor Gevernments thereof, by whatever name called, the Governor-General or the Governor-General-in-Council as the case may be." It is not disputed that these words are wide enough to include the British Government which made the grant, but it is contended that this definition was not in the Act as originally enacted and was inserted by the Punjab Resumption of Jagirs (Amendment) Act, 1959, and that the rights of the parties should be determined in accordance with the law as it stood prior to the amendment. There is no force in this contention, because under s. 1(2) of the Amendment Act, retrospective operation is given to it as from November 14, 1957.

But then it is urged that the amendment was not within the legislative competence of the Legislature of the State of Punjab and is null and void. The grounds therefor are thus stated in Petition No. 82 of 1960 :—

> "This is nothing but a colourable legislation. The State legislature has no authority to convert Central Government into State Government and legislate on Central subject. The so-called jagir being not a grant by the State Government, the impugned Act has no application and the amended definition of State Government is a fraud on the Constitution." (para 17).

There is no substance in the contention that the Amendment Act is colourable and incompetent. The subject-matter of the legislation is resumption of jagirs. Though the contention was raised in the petitions that this was not a topic within the competence of the State Legislature, as there was no such entry in List II to the Seventh Schedule, no

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argument was advanced in support of it. And clearly it could not be, as legislation on resumption of jagirs in one relating to lands, and land revenue and would clearly fall under entries 18 and 45 of List II, which are as follows :

> Entry 18 :—"Land, that is to say, rights in or over land, land tenure including the relation of landlord and tenant, and the collection of rents transfer and alienation of agricultural lands; land improvement and agricultural loans; colonization."
>
> Entry 45 :— "Land revenue, including the assessment and collection of revenue, the maintenance of lands records, survey for revenue purposes and records of rights, and alienation of revenue."

If the principal legislation is *intra vires*, it is difficult to see how an amendment thereof with respect to matters properly pertaining to the subject-matter covered by it could be *ultra vires*. It is immaterial for the purpose of resumption, whether the lands sought to be resumed were granted by the State of Punjab as it is now constituted or by any Government which preceded it. So long as the lands are within the State of Punjab, the legislature has full competence to enact a law providing for their resumption under entries 18 and 45. Indeed if the words "made by or on behalf of the State Government" in s. 2 (1)(a) had been omitted in the principal Act and jagir defined simply as "any assignment of land revenue" the legislation would have been *intra vires*, and in that case the State could have resumed the jagirs by whomsoever they might have been granted. But it chose to add the words "made by or on behalf of the State Government", and that gave occasion for the contention that the legislation did not in fact reach jagirs granted by the British Government. Then, with a view to clarify the position,

and set the controversy at rest, the legislature intervened and enacted the Amendment Act of 1959, inserting the impugned definition of "State Government". We are unable to see what the lack of *vires* is under which this amendment suffers. We must reject this contention also.

This diposes of all the points raised on the merits in the Writ Petitions and Civil Appeals. In Civil Appeal No. 453 of 1961 preferred by one of the jagirdars, Umrao Singh, his son Satinder Singh intervened, and he asks that suitable directions might be given for protecting his interests in the compensation amount which is payable to the appellant under the Act. He states that under the law the Cis-Sutlej jagirdar is not an absolute owner of the jagir, that he has only a right to enjoy it without any power of alienation and that after his life time the next lineal descendant would take it free from all encumbrances created by the previous owner, that the rights of the jagirdar over the compensation amount due on resumption under the Act could only be the same as over the jagir, and that if that is paid to him, his reversionary rights would be jeopardised and that therefore adequate provision should be made for protecting them. Our attention has been invited to the decision of this Court in *Satinder Singh* v. *Umrao Singh* (1), where compensation awarded on the acquisition of jagir lands was apportioned equally between the jagirdar and his son. But there the lands had been acquired under the Land Acquisition Act, 1894, which contains provisions for deciding who is entitled to the compensation amount. But here we are hearing an appeal against an order dismissing a Writ Petition under Art. 226, challenging the *vires* and applicability of the Punjab Resumption of Jagirs Act, 1957, and adjudication of rival claims to the compensation amount will be wholly foreign to its scope.

(1) A. I. R. (1961) S. C. 908.

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But it is pointed out for the intervener that on his application this Court has ordered stay of payment of a part of the compensation amount to the appellant pending the disposal of the, appeal, and that a similar direction might now be made in the Judgment, staying payment of a part of the amount for a specified period, so as to enable him to take steps to protect his rights. But that was an interim order made pending the appeal, and no such order could be passed in the appeal unless it follows on a decision of the rights of the parties, which is, an already stated, outside the scope of the present proceedings, *vide the state of Orissa v. Madan Gopal Rungta* (1). We do not therefore propose to say anything on the rights of the intervener or give any directions with reference to the payment of the compensation amount. It is open to the intervener to take other and appropriate proceedings to vindicate his rights.

Before concluding, it has to be noted that in Writ Petition No. 148 of 1961 there are as many as 72 Petitioners, some of whom are stated not to belong to the category of Cis-Sutlej jagirdars. Their joinder is clearly improper. It is also said that three of them, Petitioners Nos. 66, 68 and 69, had filed Writ Petitions under Art. 226 of the Constituation in the Punjab High Court, raising the same contentions as in the present, that the said petitions had been dismissed on the merits, and no appeal had been preferred against the Orders of dismissal, and in consequence, the concerned petitioners cannot, on the decisions of this Court, maintain this petition. But as we are dismissing these petitions on the merits, no further notice need be taken of these points. In the result, the petitions are dismissed with costs, one hearing fee, and the appeals are dismissed with costs one set.

Petitions and appeals dismissed.

(1) [1952] S.C.R. 28.