A

GRAM PANCHAYAT OF VILLAGE, JAMALPUR

v.

MALWINDER SINGH & ORS.

JULY 9, 1985

B [Y.V. CHANDRACHUD, CJ., S. MURTAZA FAZAL ALI, V.D. TULZAPURKAR, O. CHINNAPPA REDDY AND A. VARADARAJAN, JJ.]

Constitution of India 1950, Articles 31, 31A, 254 Seventh Schedule List II Entry No. 18 and List III Entry No. 41.

Assent of President to law sought for specific purpose - C Efficacy of assent - Limited to that purpose and cannot be extended beyond it.

Law made by Parliament - Law made by State Legislature - Inconsistency - Which law to prevail.

State Legislature whether competent to make law relating to D agrarian reform in respect of property which by process of law vested in Central Government or Custodian.

Administration of Evacuee Property Act 1950, Section 8 (2) & Punjab Village Common Lands (Regulation) Act 1953. Section 3 Central Act and State Act - Conflict - Whether exists - Evacuee E property - Vesting of - Shamlat-deh lands nature of - Explained.

Prior to the partition of India, the Shamlat-deh lands in Punjab were owned by the properietors of the other lands in the village, "Hasab Rasad Khewat" in the same proportion in which they owned the other lands. A person who did not own any other F land in the village could therefore have no proprietary right or interest in Shamlat-deh lands. There were some villages in Punjab which were mostly inhabited by Muslims, with the result that almost all the lands in those villages were owned by Muslim proprietors who, as a result of their proprietary interest in those lands had a proportionate undivided share in the Shamlat-G deh lands. They had only an 'undivided' share in the Shamlat-deh lands because such lands were not liable to be partitioned they could not be alienated and they were intended to be used and were in fact used, without exception, as undivided property of the proprietors of the other lands. Some of the villages in Punjab and many in Haryana were inhabited partly by Muslims and partly H by non-Muslims.

After the partition as a result of the unprecedented movement of population, most of the Muslims proprietors migrated to Pakistan whereas the non-Muslims continued to live in their villages. Multidimensional interlinked problems of administration of the properties of those who had left the country and rehabilitation of those that had poured into the country arose.

The question as to the management and the preservation of the property left by Muslim evacuees led to the passing of the East Punjab Evacuees (Administration of Property) Act, 14 of 1947. Section 4 thereof provided that all interests in the property whether movable or immovable of the evacuees vested in the Custodian appointed by the State Government. This Act of the State Legislature, was repealed and replaced by an Act passed by the Parliament, the Administration of Evacuee Property Act, 1950. That Act came into force on April 17, 1950. As a result of this provision the interest of all evacuees which had vested in the Custodian under the Punjab Act 14 of 1947, came to be vested in the Custodian appointed under the Central Act of 1950. In the villages which were wholly inhabited by Muslims and from which almost the entire population migrated to Pakistan, all the Shamlat-deh lands together with the other proprietary lands were declared evacuee property and came to be vested in the Custodian. In the villages which were inhabited both by Muslims and non-Muslims, the proprietary holdings of the Muslim evacuees vested in the Custodian and along with that the interest of the proprietors in the Shamlat-deh lands, such as it was also vested in the Custodian.

In the writ petitions filed in the High Court the controversy was between the right of the Gram Panchayats to the Shamlat-deh lands situated in those villages which fell within their jurisdiction and, on the other hand, the right of Rehabilitation Department of the Central Government to allot lands of that description, to the extent of the evacuee interest therein, to persons who migrated from Pakistan to India after the partition of the Country.

The contention of the Central Government and, of persons to whom its Rehabilitation Department has allotted the Shamlat-deh lands on their migration to India, is that the interest in such lands, of the Muslims who migrated to Pakistan is evacuee property which the Central Government has the right to allot under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. The contention of the Government of

Punjab and of the Gram Panchayats in Punjab and Haryana is that, by reason of the provisions of the Punjab Village Common Lands (Regulation) Act of 1953, the interest of all persons whether Hindus, Sikhs or Muslims, in the Shamlat-deh lands stood extinguished and those lands were placed by the said Act under the control and power of the respective Gram Panchayats.

The High Court held that there was repugnancy between the provisions of the Administration of Evacuee Property Act of 1950 and those of the Punjab Village Common Lands (Regulation) Act of 1953.

Allowing the appeal to this Court,

HELD: (By the Court) 1. There is a direct conflict between section 8(2) of the Administration of Evacuee Property Act 1950, and Section 3 of the Punjab Village Common Lands (Regulation) Act, 1953 on the question of vesting of evacuee property. [38 A]

2. The Punjab Act was reserved for the assent of the President though for the specific and limited purpose of Articles 31 and 31-A of the Constitution. That assent can not avail the State Government for the purpose of according precedence to the law made by the Legislature namely the Punjab Act of 1953 over the Law made by the Parliament namely the Central Act of 1950 even within the jurisdiction of the State. [41 F,42 F]

Rahman v. Sai ILR 9 Lahore 501 & **Ranjit Singh v. State of Punjab** [1965] 1 SCR 82 referred to.

Rattingan's Digest of Customary Law in the Punjab - Chapter X referred to.

(Per Chandrachud C.J., S. Murtaza Fazal Ali, V.D. Tulzapurkar and A. Varadarajan, JJ.)

1. (i) A mere reading of the two sections, Section 3 of the Punjab Act of 1953 and section 8(2) of the Central Act of 1950 would show that there is a direct conflict between the two provisions. Under s.4 of the East Punjab Evacuees (Administration of Property) Act 14 of 1947 which came into force on December 13, 1947 all interest in the property, movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. The Central Act of 1950 repealed by the East Punjab Act 14 of 1947. Under s. 8(2) of the Central Act of 1950 the evacuee

property which was vested in the Custodian appointed by the State Government under the repealed Act, was to be deemed to be evacuee property declared as such under the Central Act and became vested in the Custodian appointed under the Central Act. [38 A-B]

(ii) As a result of s. 3 of the Punjab Act of 1953 the Custodian appointed under the Central Act of 1950 was divested of the Shamlat-deh lands, to the extent of the interest therein of the Muslim proprietors who had migrated to Pakistan. [38 D]

(iii) If the Punjab Legislature had not passed the Act of 1953, the Custodian appointed or deemed to be appointed under the Central Act of 1950 could have dealt with the interest of the Muslim evacuees in the Shamlat-deh lands as evacuee property, though consistently with the limitations which operated upon that interest. He forfeited that power because, the Punjab Act of 1953 extinguished the interest of all persons, whether Hindus, Sikhs or Muslims, in the Shamlat-deh lands and vested all rights, title and interest in such lands in the respective panchayats having jurisdiction over the village. [38 F]

2. Article 254 of the Constitution deals with situations where there is inconsistency between the laws made by the Parliament and the laws made by the Legislature of a State. Since the law made by the Legislature of the State of Punjab namely, s. 3 of the Punjab Act of 1953 is repugnant to the law made by the Parliament which the Parliament was competent to enact namely s. 8(2) of the Central Act of 1950, the law made by the Parliament must prevail and the law made by the Punjab Legislature has to be held to be void to the extent of the repugnancy. The repugnancy is to the extent that whereas under the Central Act the interest of the evacuees in all properties including the Shamlat-deh lands vests in the Custodian appointed or deemed to be appointed under that Act, the Shamlat-deh lands vest in the Panchayats under the provisions of the State Act. [39 B-F]

3. The Punjab Act of 1953 was reserved for consideration of the President and received his assent on Decempber 26, 1953. Prima facie by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or Bye-laws governing the matter, including the evacuee interest therein. The Punjab Act was reserved for the assent of the President though for the specific and limited purpose of Articles 31 and

A 31-A of the Constitution. Since the Punjab Act of 1953 extinguished all private interest in Shamlat-deh lands and vested those lands in the Village Panchayats and since the Act was a measure of agrarian reforms it was reserved for the considertion of the President. [41 E-F,H-42 A]

B In the instant case, the assent of the President is sought to the law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. Not only was the President not appraised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but his assent was sought for a different C specific purpose all together. [42 D-E]

4. Though the law made by the Parliament prevails over the law made by the State Legislature the interest of the evacuees in the Shamlat-deh lands cannot be dealt with effectively by the Custodian under the Central Act because of the peculiar incidents characteristics of such lands. The unfortunate result is that D the vesting in the Custodian of the evacuee interest in the Shamlat-deh lands is more or less an empty formality. It does not help the Custodian to implement the provisions of the Central law but it excludes the benign operation of the State Law. [42 H-43 A]

E 5. Parliament has passed a law which falls under entry No. 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry No. 18 of the State List. The law passed by the State Legislature being a measure of agrarian reform is conductive to the welfare of the community and there is no reason why that law should not have effect in its full ampli- F tude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. [43 F]

6. The Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950 even in so far as Shamlat-deh lands G are concerned. [43 G]

7. Under the Central Act of 1950, the Custodian is entitled to preserve and manage the interest of the evacuees in all evacuee properties, which would include the Shamlat-deh lands. Under the Punjab Act of 1953, the Shamlat-deh lands vest in the Pancha- H yat which carries the right of preservation and management of such lands. By reason of the State Act, the Custodian appointed under the Central Act of 1950 is divested of his Control over the

evacuee interest in the Shamlat-deh lands. The impact of this divestment, is that the Rehabilitation Department of the Central Government loses its power to allot such lands, to the extent of the evacuee interest therein, to displaced persons in order to satisfy their claims under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Such properties therefore, cannot from part of the Compensation pool. Nor can these properties, to the extent of the surplus remaining after allotment to displaced persons, be transferred by the Central Government to the State Government, under the 'Package Deal' of 1961. What vests in the Custodian is the interest of the evacuee as such together with all the interests to which it is subject. That interest cannot be freed from its incidents merely because it comes to be vested in the Custodian as evacuee property. The Custodian gets what the evacuee had, quantitatively and qualitatively. If the evacuees interest in Shamlat was incapable of alienation and if Shamlat-deh lands were regarded as reserved for the common use, the Custodian would have no right to allot them for the separate or exclusive use of displaced persons who migrated to India after the partition of the Country. If no allotment could be made under the Displaced Persons (Compensation and Rehabilitation) Act,1954 there would be no question of any surplus and, consequently, no occasion to transfer 'surplus' land to the State Government. The peculiar incidents of co-sharer's interest in the Shamlat-deh lands, and the severe limitations operating upon that interest renders the provisions of the Central Act of 1950, virtually innocuous and inoperative. The Custodian under that Act would have the husk of the title to the evacuees' interest in the Shamlat-deh lands as a result of the vesting of that interest in him, but beyond such vesting he would be powerless, in practice, to distribute those lands to the displaced persons. [39 G-40 F]

8. The hall-mark of the Shamlat-deh lands is their indivisibility and inalienability. [40 G]

(Per Chinnappa Reddy, J. concurring)

1. The question in the present case is not whether there was any conflict between the Central and State Legislations but whether the legislature of the State could make a law relating to agrarian reform in respect of property which included property which by a process of law has become vested in the Central Government or the Custodian. [49 H-50 B]

2. When the Parliament and the State Legislature, each of them legislate in their own field with respect to different subjects- in this case Evacuee Property and the Shamlat-deh, no reason is found to conclude that there was necessarily a conflict between the two legislations. [49 H]

3. There is no reason to why the State Legislature should be considered incompetent to make a law relating to agrarian reform. The Punjab Act of 1953 is indeed a law relating to agrarian reforms even though it affects lands vested in the Central Government or the Custodian. [50 B]

4. The effect of the Administration of Evacuee Property Act was not to take away the Character of Shamlat-deh as Shamilat-deh but only to vest in the Custodian such interest as the evacuee possessed in the Shamilat-deh. The interest which the erstwhile evacuees possessed was neither enlarged nor abridged. The land continued to be Shamilat-deh and it could be the subject of competent State Legislation as Shamilat-deh. If for the purpose of agrarian reform the legislature of the State enacted a law as it was competent to do and consent was accorded by the President under Article 31-A of the Constitution, there is no justification for the argument that there was any conflict between the Punjab Act and the Central Act. [49 D-E]

5. It would be wholly wrong to suggest that the zamindari becoming vested in the Custodian on account of the Muslim zamindari (intermediary) migrating to Pakistan, raiyati land in the village changed its character and the occupancy rights of the raiyats ceased in the lands, merely because the Zamindar migrated to Pakistan and the Zamindari became vested in the Custodian. Similarly lands in an erstwhile Zamindari set apart for pasture, as grazing grounds etc. did not lose their character as such on the migration of the Zamindar to Pakistan. [49 F-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1401(N) of 1973.

From the Judgment and Order dated 15.5.1973 of the Punjab and Haryana High Court in Civil Writ No. 2657 of 1970.

S.L.Aneja and K.L.Taneja for Appellant No. 1.
Hardev Singh and R.S.Sodhi for Appellant No. 2.

N.C.Talukdar, C.V. Subba Rao, R.N. Poddar and Miss A. Subhashini for the Respondent No. 2.

S.Ram Singh Bindra and Harbans Singh for the Respondent No. 1.

The following Judgments were delivered

CHANDRACHUD, C.J. Eight writ petitions were filed in the High Court of Punjab and Haryana, involving a common question of law as to the alleged repugnancy between the Administration of Evacuee Property Act of 1950 and, the Punjab Village Common Lands (Regulation) Act of 1953 (referred to herein as 'the Punjab Act of 1953'). Four, out of the eight writ petitions, relate to lands situated in the State of Haryana, while the remaining four relate to lands situated in the State of Punjab.

The controversy in the writ petitions is between the right of the Gram Panchayats to the Shamlat-deh lands situated in those villages which fall within their jurisdiction and, on the other hand, the right of the Rehabilitation Department of the Central Government to allot lands of that description, to the extent of the evacuee interest therein, to persons who migrated from Pakistan to India after the partition of the country. The contention of the Central Government and, of persons to whom its Rehabilitation Department has allotted the Shamlat-deh lands on their migration to India, is that the interest, in such lands, of the Muslims who migrated to Pakistan is evacuee property which the Central Government has the right to allot under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act of 1954. On the other hand, the contention of the Government of Punjab and of the Gram Panchayats in Punjab and Haryana is that, by reason of the provisions of the Punjab Act of 1953, the interest of all persons, whether Hindus, Sikhs or Muslims, in the Shamlat-deh lands stood extinguished and those lands were placed by the said Act under the control and power of the respective Gram Panchayat.

Prior to the partition of India on August 15, 1947 the Shamlat-deh lands in Punjab were owned by the proprietors of the other lands in the Village, "Hasab Rasad Khewat", that is to say, in the same proportion in which they owned the other lands. Therefore, a person who did not own any other land in the village could have no proprietary right or interest in the Shamlat-deh lands, But, though the interest of the proprietors of the other lands, in Shamlat-deh lands, was incidental to their proprietary

A interest in those other lands, such interest in the Shamilat was not a mere appendage to their interest in the other lands. Our learned Brother Chinnappa Reddy, has referred in his judgment to a leading decision of the Lahore High Court, [illegible] v. Sai ILR 9 Lahore 501 in which it was held that,if a proprietor alienated his land, the alienee would not acquire any interest in the B Shamilat by mere virtue of the alienation. That was but consequential to the well-established legal position in Punjab that the Shamlat-deh lands were intended for the common use of all sharers.

There were some villages in Punjab which were mostly inhabited by Muslims, with the result that almost all the lands C in those villages were owned by Muslim proprietors who, as a result of their proprietary interest in those lands, had a proportionate undivided share in the Shamlat-deh lands. They had only an 'undivided' share in the Shamlat-deh lands because such lands were not liable to be partitioned, they could not be alienated and, they were intended to be used and were in fact used, without exception, as undivided property of the proprietors D of the other lands. Indeed, our learned Brother has cited a passage from Rattigan's 'Digest of the Customary Law in the Punjab', which shows that Shamlat-deh lands were treated as reserved for common village purposes. Some of the villages in Punjab and many in Haryana, were inhabited partly by Muslims and partly by non-Muslims. Most of the Muslim proprietors migrated E to Pakistan whereas, the non-Muslims continued to live in their villages.

The question as to the management and preservation of the property left by Muslim evacuees led to the passing of the East Punjab Evacuees (Administration of Property) Act, 14 of 1947. F That was an Act of the Punjab Legislature, section 4 of which provided that all interests in the property whether movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. That Act, like similar Acts passed by the other State Legislatures, was repealed and replaced by an Act passed by the Parliament, viz; the Administration of Evacuee G Property Act, 1950, to which we will refer as the 'Central Act of 1950'. That Act came into force on April 17, 1950. Section 8(2) thereof provided that, if any property in the State had vested immediately before the commencement of the Act as evacuee property in any Custodian under any law repealed by the Act, that property shall, on the commencement of the Act, be deemed to be H evacuee property and shall vest in the Custodian appointed for

the State under the Act. As a result of this provision, the interest of all evacuees which had vested in the Custodian under the Punjab Act 14 of 1947, came to be vested in the Custodian appointed under the Central Act of 1950. In the villages which were wholly inhabited by Muslims and from which almost the entire population migrated to Pakistan, all the Shamlat-deh lands together with the other proprietary lands were declared evacuee property and came to be vested in the Custodian. In the villages which were inhabited both by Muslims and non-Muslims, the proprietary holdings of the Muslim evacuees vested in the Custodian and, along with that, the interest of the proprietors in the Shamlat-deh lands, such as it was, also vested in the Custodian.

The point which arises for our consideration and which has been answered in the affirmative by the High Court of Punjab and Haryana is whether, there is any repugnancy between the provisions of the Central Act of 1950 and those of the Punjab Act of 1953. (The latter Act has been referred to by the High Court as the Act of 1954 beacuse, though passed in 1953, it was numbered as Act 1 of 1954). Section 3 of the Punjab Act, which is said to be the focal point of the repugnancy, reads thus, in so far as relevent :

> "3. **Vesting of rights in Panchayats and in non-proprietors:**
>
> Notwithstanding anything to the contrary contained in any other law for the time being in force.....all rights, title and interest whatsoever in the land -
>
> (a) which is included in Shamlat-deh of any village, shall, on the apppointed date, vest in a Panchayat having jurisdiction over the village".

Section 8(2) of the Central Act of 1950 reads thus :

> "Where, immediatly before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act, and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act and shall continue to so vest."

A mere reading of the two sections, namely, section 3 of the Punjab Act of 1953 and section 8(2) of the Central Act of 1950, would show that there is a direct conflict between the two provisions. Under section 4 of the East Punjab Evacuees (Administration of Property) Act 14 of 1947, which came into force on December 13, 1947 all interest in the property, movable or immovable, of the evacuees vested in the Custodian appointed by the State Government. The Central Act of 1950 repealed the East Punjab Act 14 of 1947. Under section 8 (2) of the Central Act of 1950, the evacuee property which was vested in the Custodian appointed by the State Government under the repealed Act, was to be deemed to be evacuee property declared as such under the Central Act and became vested in the Custodian appointed under the Central Act. Thereafter came the Punjab Act of 1953 under which, "Notwithstanding anything to the contrary contained in any other law for the time being in force", all rights, title and interest whatsoever in the Shamlat-deh lands of any village, came to be vested in the Panchayat having jurisdiction over the particular village. It is quite clear that as a result of this provision, the Custodian appointed under the Central Act of 1950 was divested of the Shamlat-deh lands, to the extent of the interest therein of the Muslim proprietors who had migrated to Pakistan. If the Punjab Legislature had not passed the Act of 1953, the Custodian appointed or deemed to be appointed under the Central Act of 1950 could have dealt with the interest of the Muslim evacuees in the Shamlat-deh lands as evacuee property, though consistently with the limitations which operated upon that interest. He forfeited that power because, the Punjab Act of 1953 extinguished the interests of all persons, whether Hindus, Sikhs or Muslims, in the Shamlat-deh lands and vested all rights, title and interest in such lands in the respective Panchayats having jurisdiction over the village. It may be mentioned that the Punjab Act of 1953 was repealed and replaced by an Act of 1961, bearing a similar title. That Act defines the Shamlat-deh lands in a slightly different manner but, that difference is inconsequential for resolving the controversy which arise before us.

Having seen that there is a direct conflict between section 8(2) of the Central Act of 1950 and section 3 of the Punjab Act of 1953 on the question of vesting of evacuee property, the question which arises is as to which of these two Acts would prevail. That question has to be answered in the light of the provisions of the Constitution. Entry No. 41 in List III (Concurrent List) of the Seventh Schedule to the Constitution, reads thus :

> "Custody, management and disposal of property (including agricultural land) declared by law to be evacuee property".

Since the interest of the evacuees in the Shamlat-deh lands was deemed to be declared as evacuee property, both the State Legislature and the Central Legislature had the power to deal with that interest by virtue of Entry No. 41. Article 254 of the Constitution deals with situations where there is inconsistency between the laws made by the Parliament and the laws made by the Legislature of a State. Clause (1) of that Article, to the extent that it is relevant, reads thus :

> "(1) If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which parliament is competentto enact, ..., then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, ... shall prevail and the Law made by the Legislature of the State shall,to the extent of the repugnancy, be void."

Since the law made by the Legislature of the State of Punjab, namely, section 3 of the Punjab Act of 1953, is repugnant to the law made by the Parliament which the Parliament was competent to enact, namely, section 8(2) of the Central Act of 1950, the law made by the Parliament must prevail and the law made by the Punjab Legislature has to be held to be void to the extent of the repugnancy. The repugnancy is to the extent that whereas, under the Central Act, the interest of the evacuees in all properties, including the Shamlat-deh lands, vest in the Custodian appointed or deemed to be appointed under that Act, the Shamlat-deh lands vest in the Panchayats under the provisions of the State Act.

The consequences of this repugnancy are self-evident. Under the Central Act of 1950, the Custodian is entitled to preserve and manage the interests of evacuees in all evacuee properties, which would include the Shamlat-deh lands. Under the Punjab Act of 1953, the Shamlat-deh lands vest in the Panchayats, which carries with it the right of preservation and management of such lands. In brief, by reason of the State Act, the Custodian appointed under the Central Act of 1950 is divested of his control over the evacuee interest in the Shamlat-deh lands. The

most significant impact of this divestment, though somewhat of an academic nature, is that the Rehabilitation Department of the Central Government loses its power to allot such lands, to the extent of the evacuee interest therein, to displaced persons in order to satisfy their claims under the Displaced Persons (Compensation and Rehabilitation) Act, 1954. Such properties, therefore, cannot form part of the Compensation pool. Nor can these properties, to the extent of the surplus remaining after allotment to displaced persons, be transferred by the Central Government to the State Government under the 'Package Deal' of 1961. We said that the impact of repugnancy is somewhat of an academic nature because, what vests in the Custodian is the interest of the evacuee such as it is, that is to say, together with all the incidents to which the evacuee interest was subject. That interest cannot be freed from its incidents merely because it comes to be vested in the Custodian as evacuee property. The Custodian gets what the evacuee had, quantitatively and qualitatively. If the evacuee's interest in Shamlat was incapable of alienation and if Shamlat- deh lands were regarded as reserved for the common use of the villagers, the Custodian would have no right to allot them for the separate or exclusive use of displaced persons who migrated to India after the partition of the country. If no allotment could be made by the Custodian under the Displaced Persons (Compensation and Rehabilitation) Act of 1954, there would be no question of any surplus land, consequently, no occasion to transfer 'surplus' land to the State Government under the Package Deal of 1961. The peculiar incidents of the co-sharers' interest in the Shamlat-deh lands and the severe limitations operating upon that interest render the provisions of the Central Act of 1950 virtually innocuous and inoperative. The Custodian, under that Act, would have the husk of the title to the evacuees' interest in the Shamlat-deh lands as a result of the vesting of that interest in him but, beyond such vesting, he would be powerless, in practice, to distribute those lands to the displaced persons. The hall-mark of the Shamlat-deh lands is their indivisibility and inalienability, [See Rattigan's 'Digest', to which our learned Brother, Chinnappa Reddy, has made a copious reference].

If Article 254(1) stood by itself, there would have been no difficulty in holding that, for whatever it is worth, the Central Act of 1950 prevails over the Punjab Act of 1953 since, the two Acts which are relatable to Entry No. 41 of the Concurrent List, are repugnant to each other in the matter of vesting of the evacuee interest in Shamlat-deh lands. But, there is another

facet of this question without considering which, the question of competing priorities between the two Acts cannot be determined. It shall have been noticed that the provision contained in clause (1) of Article 254 is "subject to the provisions of clause(2)" of that Article. Clause (2) reads thus :

> "(2) Where a law made by the Legislature of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State :
>
> Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State."

The Punjab Act of 1953 was reserved for consideration of the President and received his assent on December 26, 1953. Prima facie, by reason of the assent of the President, the Punjab Act would prevail in the State of Punjab over the Act of the Parliament and the Panchayats would be at liberty to deal with the Shamlat-deh lands according to the relevant Rules or Bye-laws governing the matter, including the evacuee interest therein. But, there is a complication of some nicety arising out of the fact that the Punjab Act was reserved for the assent of the President, though for the specific and limited purpose of Articles 31 and 31-A of the Constitution. Article 31, which was deleted by the Constitution (Forty-fourth Amendment) Act, 1978 provided for compulsory acquisition of property. Clause (3) of that Article provided that, no law referred to in clause (2), made by the Legislature of a State shall have effect unless such law, having been reserved for the consideration of the President, has received his assent. Article 31-A confers protection upon laws falling within clauses (a) to (e) of that Article, provided that such laws, if made by a State Legislature, have received the assent of the President. Clause (a) of Article 31-A comprehends laws of agrarian reform. Since the Punjab Act of 1953 extinguished all private interests in Shamlat-deh lands and vested those lands in the Village Panchayats and since, the Act was a measure of agrarian reform it was reserved for the consideration of the

A President. The judgment of the High Court shows that the hearing of the writ petitions was adjourned to enable the State Government to place material before the Court showing the purpose for which the Punjab Act of 1953 was forwarded to the President for his assent. The record shows, and it was not disputed either before us or in the High Court, that the Act was not reserved for B the assent of the President on the ground that it was repugnant to an earlier Act passed by the Parliament, namely, the Central Act of 1950. In these circumstances we agree with the High Court that the Punjab Act of 1953 cannot be said to have been reserved for the assent of the President within the meaning of clause (2) of Article 254 of the Constitution insofar as its repugnancy with the Central Act of 1950 is concerned. The assent of the C President under Article 254(2) of the Constitution is not a matter of idle formality. The President has, at least, to be apprised of the reason why his assent is sought if, there is any special reason for doing so. If the assent is sought and given in general terms so as to be effective for all purposes, different considerations may legitimately arise. But if, as in the instant case, the assent of the President is sought to the D Law for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. Not only was the President not apprised in the instant case that his assent was sought because of the repugnancy between the State Act and the pre-existing Central Act on the vesting of evacuee properties but, his assent was sought for a different, specific E purpose altogether. Therefore, that assent cannot avail the State Government for the purpose of according precedence to the law made by the State Legislature, namely, the Punjab Act of 1953, over the law made by the Parliament, even within the jurisdiction of the State.

F This situation creates a conundrum. The Central Act of 1950 prevails over the Punjab Act of 1953 by virtue of Article 254 (1) of the Constitution read with Entry No. 41 of the Concurrent List; and, Article 254(2) cannot afford assistance to reverse that position since the President's assent, which was obtained for a specific purpose, cannot be utilised for according priority G to the Punjab Act. Though the law made by the Parliament prevails over the law made by the State Legislature, the interest of the evacuees in the Shamlat-deh lands cannot be dealt with effectively by the Custodian under the Central Act, because of the peculiar incidents and characteristics of such lands. The unfortunate result is that the vesting in the Custodian of the

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evacuee interest in the Shamlat-deh lands is, more or less, an empty formality. It does not help the Custodian to implement the provisions of the Central law but, it excludes the benign operation of the State law.

The line of reasoning of our learned Brother, Chinnappa Reddy, affords a satisfactory solution to this constitutional impasse, which we adopt without reservation of any kind. The pith and substance of the Punjab Act of 1953 is 'Land' which falls under Entry No. 18 of List II (State List) of the Seventh Schedule to the Constitution. That Entry reads thus :

> "Entry No. 18 - Land, that is to say, rignts in or over land, land tenures including the relation of landlord and tenant, and the collection of rents ; transfer and alienation of agricultural land; land improvement and agricultural loans; colonisation."

Our learned Brother has extracted a passage from a decision of a Constitution Bench of this Court in **Ranjit Singh v. State of Punjab** [1965] 1 S.C.R. 1982, which took the view that since, the Punjab Act of 1953 is a measure of agrarian reform it would receive the protection of Article 31-A. It may be recalled that the Act had received the assent of the President as required by the first proviso to that Article. The power of the State Legislature to pass law on matters enumerated in the State List is exclusive by reason of the provision contained in Article 246(3). In a nutshell, the position is that the Parliament has passed a law on a matter which falls under Entry No. 41 of the Concurrent List, while the State Legislature has passed a law which falls under Entry No. 18 of the State List. The law passed by the State Legislature being a measure of agrarian reform, is conducive to the welfare of the community and there is no reason why that law should not have effect in its full amplitude. By this process, the village panchayats will be able to meet the needs of the village community and secure its welfare. Accordingly, the Punjab Act of 1953 would prevail in the State of Punjab over the Central Act of 1950, even in so far as Shamlat-deh lands are concerned.

In the result, the judgment of the High Court is set aside and this appeal is allowed. There will be no order as to costs.

Civil Appeal Nos. 2044 of 1974 and 1963-65 of 1975 which were heard along with this appeal and which involve the same points are also allowed, with no order as to costs.

A Special Leave is granted in Special Leave Petition No. 7984 of 1981. The appeal is allowed, with no order as to costs.

Civil Appeal Nos. 2125 of 1978, 470 of 1969, 1832 of 1969, 1088 of 1969, 1726 of 1974 and 1728 of 1974 were delinked from the above group of matters as they involve questions relating to the 'package deal' of 1961. Those matters may be listed for B hearing at an early date.

CHINNAPPA REDDY, J. I agree with the conclusion of my lord the Chief Justice and I reiterate the proposition that the assent accorded by the President for the express purpose of Article 31-A is not capable of automatic transformation into C assent for the purpose of Article 254(2) of the Constitution.

In my view the question that really requires determination is not one of repugnancy between the Punjab Act and the Central Act but what is the product of the two Acts, each operating in its own assigned field? What is the effect of the Punjab Act of 1953 on the Central Act of 1950? Is it a case of Peter robbing D Paul?

In Rattigan's 'Digest of Customary Law in the Punjab', in the introduction to Chapter X (Village Common Land) it is noted that within the territorial limits of every village some portion of the uncultivated waste lands are reserved 'for purposes of common pasture, for assemblies of people, for the tethering of E the village cattle, and the possible extension of the village dwellings' and that 'Lands so reserved are jealously guarded as the Common property of the original body of settlers who founded the village or their descendants, and occasionally also those who assisted the settlers in clearing the waste and bringing it under cultivation are recognized as having a share in these reserved F plots'. It was further noticed "Even in villages which have adopted separate ownership as to the cultivated area, some such plots are usually reserved as village common, and in pattidar villages, it is not unusual to find certain portions of the waste reserved for the common use of the proprietors of each patti, and other portions for common village purposes. The former is desig- G nated as Shamilat-patti and the latter Shamlat-deh". It was said "As a general rule, only proprietors of the village (malikan-deh) as distinguished from proprietors of their own holdings (malikan makbuza khud) are entitled to share in the Shamlat-deh".

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While it appears to have been laid down that the right to share in the Village Common Land is an incident attaching to the ownership of agricultural land in the village, and that ordinarily those persons who hold land on which revenue is assessed and who are cosharers in the Khewat are entitled to a share in proportion to the revenue paid by them. See **Malik Mohammad Sher Khan v. Ghulam Mohammad** I.L.R. (XIII) Lahore 92 it also appears to be settled law in Punjab that the rights of a proprietor in the Shamilat' are not a mere accessory to the land held by him and therefore 'an alienation of the latter does not ipso facto confer any rights in the former to the alienee' (Vide **Rahman v. Sai**, I.L.R. (9) Lahore 501, and the cases noted therein). Further according to Rattigan's Digest "In the absence of custom none of the proprietors can do anything which alters the condition of the joint property without the consent of all the co-sharers". (Article 225). "Nor can any individual proprietor plant or cut trees on the common land, nor sink a well, nor appropriate houses built for common purposes except with such consent" (Article 226). "Nor in the absence of custom can the will of the majority of a village community prevail against that of the minority when the question is one as to the disposal of the common property in such a way as to preclude all use of it by the owners." (Article 227). Thus it is seen that Shamilat Deh or Village Common Land has certain distinctive and characteristic features of its own and even a majority of the co-sharers cannot destroy its character.

In 1947, at the time of the partition of India under the British into Independent India and Independent Pakistan, there was a terrible holocaust and an unprecedented movement of population, millions of Hindus and Sikhs moving from West Punjab to East Punjab and millions of Muslims moving from East Punjab and present Haryana to West Punjab. Multidimensional, interlinked problems of administration of the properties of those who had left the country and rehabilitation of those that had poured into the country soon arose.

It was noticed by this Court in **Indira Sohanlal v. Custodian of Evacuee Property**, [1955] 2 S.C.R. 1117, it was in order "to meet the unprecedented situation of sudden migration of vast sections of population on a large scale from West Punjab to East Punjab and vice versa, leaving most of the properties which they had, movable and immovable, agricultrual and non-agricultural, the concerned Governments had to take wide legislative powers to deal with the situation, to set up the necessary

administrative machinery, and to evolve and give effect to their policies in regard thereto from time to time". It was further noticed, "The earliest of these legislative measures so far as we are concerned, was the East Punjab Evacuees (Administration of Property) Act, 1947 (East Punjab Act XIV of 1947), which came into force on the 12th December, 1947. This Act was amended by the East Punjab Evacuees' (Administration of Property) (Amendment) Ordinance, 1948 (East Punjab Ordinacne No. 11 of 1948) and later by East Punjab Evacuees' (Administration of Property) (Amendment) Act, 1948,(East Punjab Act XXVI of 1948)." The various steps and administrative measures taken to settle the displaced agricultural population who came over from West Punjab, on the hurriedly abandoned lands of the Evacuees from East Punjab are to be found described in the Land Resettlement Manual by Shri Tarlok Singh who was then the Director General of Relief and Rehabilitation. It was later realised that the various Provincial Acts enacted by the several provincial legislatures should be replaced by a Central Law and a Central Administration. So there was first a Central Ordinance (27 of 1949) and then the Administration of Evacuee Property Act, 1950 which came into force on 17th April, 1950. The Act provided for a Centralised Law and a Centralised Administration and the creation of an office of Custodian General.

Under Section 8(2) of the Administration of Evacuee Property Act, 1950, all property which had vested in the Custodians appointed by the State Governments under the repealed State Acts were to be deemed to be evacuee property declared as such under Central Act and became vested in the Custodian appointed under the Central Act. Section 8 (2) which may be usefully extracted is as follows :

> "Where, immediately before the commencement of this Act, any property in a State had vested as evacuee property in any person exercising the powers of Custodian under any law repealed hereby, the property shall, on the commencement of this Act, be deemed to be evacuee property declared as such within the meaning of this Act, and shall be deemed to have vested in the Custodian appointed or deemed to have been appointed for the State under this Act and shall continue to so vest."

The effect of the operation of the Provincial and Central Acts relating to Evacuee Property was that Evacuee Property became

vested in the Custodian but it must be noted that what became vested in the Custodian was that property left behind by the evacuee, no more and no less. If the evacuee had left behind him Khewat land it became vested in the Custodian. If the evacuee had left behind him the right to a share in Shamlat-deh lands, that too became vested in the Custodian. The vesting, however, did not divest Shamilat-deh lands of their character as Shamlat-deh lands and convert them into Khewat land. Shamilat-deh lands could only continue and did continue to be Shamilat-deh even after they became vested in the Custodian and the Custodian could only deal with them as a Shamilat-deh lands in the same manner in which the Muslim properitors could have dealt with them had they not migrated to Pakistan. That was the position after the Parliament enacted the Administration of Evacuees Property Act, 1950.

At that stage came the Punjab Village Common Land Regulation Act of 1953 which has been held by this Court to be legislation aimed at agrarian reform. It had nothing to do and it did not purport to have anything to do with the administration of evacuee property. All Shamilat-deh lands whether they belonged to the proprietary body of villagers consisting only of non-evacuees or whether they belonged to the proprietary body of villagers the interests of some of whom had become vested in the Custodian under the various Evacuee Property laws, were dealt with by the Punjab Act without distinction. All Shamilat-deh lands, notwithstanding anything to the contrary contained in any other law for the time being in force, became vested in the village Panchayat. As we said earlier the Punjab Act was a law providing for agrarian reform and it neither purported to be nor was it a law regulating the administration of Evacuees Property.

In Ranjit Singh v. State of Punjab [1965] 1 S.C.R. 82, the very question arose whether a law providing for the taking away of Shamilat-deh lands from the proprietors and given over to the village Panchayat for allotment to non-proprietors was a law relating to agrarian reforms and whether such a law was protected by Article 31(A). It is worthwhile to recalling what the Constitution Bench said in answer to the question posed before them? They explained the amplitude of rural development and agrarian reforms in the following words :

> The High Court was also right in its view that the proposed changes in the Shamilat-deh and abadi-deh were included in the general scheme of planning of

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rural areas and the productive utilisation of vacant and waste lands. The scheme of rural development today envisages not only equitable distribution of land so that there is no undue imbalance in society resulting in a landless class on the one hand and a B concentration of land in the hands of a few on the other, but envisages also the raising of economic standards and bettering rural health and social conditions. Provisions for the assignment of lands to village panchayat for the use of the general community, or for hospitals, schools, manure pits, tanning groups etc. enure for the benefit of rural population C must be considered to be an essential part of the redistribution of holdings and open lands to which no objections apparently taken. If agrarian reforms are to succeed, mere distribution of land to the landless is not enough. There must be a proper planning of rural economy and conditions and a body like the village Panchayat is best designed to promote rural D welfare than individual owners of small portions of lands. Further, the village Panchayat is an authority for purposes of Part III as was conceded before us and it has the protection of Article 31-A because of this character even if the taking over of Shamilat-deh amounts to acquisition. In our opinion, the High Court E was right in deciding as it did on this part of the case."

"With respect to abadi-deh the same reasoning must apply. The settling of a body of agricultural artisans (such as the village carpenter the village blacksmith, F the village tanner,farrier wheelwright, barber,washerman etc.) is a part of rural planning and can be comprehended in a scheme of agrarian reforms. It is a trite saying that India lives in villages and a scheme to make villages self-sufficient cannot but be regarded as part of the larger reforms which consolidation G of holdings, fixing of ceilings on lands, distribution of surplus lands and utilising of vacant and waste lands contemplate. The four Acts, namely, the Consolidation Act, the Village Panchayat Act, the Common Lands Regulation Act and the Security of Tenure Act, are a part of a general scheme of reforms and any H modification of rights such as the present had the

protection of Article 31-A. The High Court was thus right in its conclusion on this part of the case also."

We have quoted this passage in extenso in order to emphasise the meaning to be attached to expressions like 'agrarian reforms', 'marketing', etc. for which various legislations have been made. Occasionally we notice that some courts have a tendency to confine these expressions to strait-jacket meanings, instead of giving a meaning of wide implications.

So we have the authoritative pronouncement of a Constitution Bench of this Court that the Punjab Act which had been reserved for the assent of the President and which did have the assent of the President is a law relating to agrarian reform and therefore immune from challenge, under Article 31-A, on the ground that the law infringed any of the Fundamental Rights enumerated in that Article. We have already noticed that the effect of the Administration of the Evacuees Property Act was not to take away the character of Shamilat-deh as Shamilat-deh but only to vest in the Custodian such interest as the Evacuee possessed in the Shamilat-deh. The interest which the erstwhile evacuees possessed in the Shamilat-deh was neither enlarged nor abridged. The land continued to be Shamilat-deh and it could be the subject of competent State Legislation as Shamilat-deh. If for the purposes of agrarian reform the legislature of the State enacted a law as it was competent to do, and consent to which was accorded by the President under Article 31-A of the Constitution, we do not see any justification for the argument that there was any conflict between the Punjab Act and the Central Act. To illustrate, it would be wholly wrong to suggest that on a Zamindari becoming vested in the Custodian on account of the Muslim Zamindar (intermediary) migrating to Pakistan raiyati land in the village changed its character and the occupancy rights of the raiyats ceased in the lands, merely because the Zamindar migrated to Pakistan and the Zamindari became vested in the Custodian. Similarly lands in an erstwhile Zamindar set apart for pasture, as grazing grounds etc. did not lose their character as such on the migration of the Zamindar to Pakistan. When the Parliament and the State Legislature, each of them legislate in their own field with respect to different subjects -in this case Evacuee Property and Shamilat-deh we do not find any reason to conclude that there was necessarily a conflict between the two legislations. The question in the present case is not whether

A there was any conflict between the Central and the State Legislations but whether the legislature of the State could make a law relating to agrarian reform in respect of property which included property which by a process of law had become vested in the Central Government or the Custodian. We do not see any reason why
B the State Legislature should be considered incompetent to make a law relating to agrarian reform, if indeed it is a law relating to agraraian reforms as it has been found to be so, in the present case, even it affects land vested in the Central Government or the Custodian. In this view of the matter, I agree with
C the order proposed by my lord the Chief Justice.

N.V.K. Appeal allowed.