

Himachal Pradesh Land Revenue Act, 1954

6 of 1954

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Himachal Pradesh Land Revenue Act, 1954

6 of 1954

CHAPTER 1

Preliminary

1. Title, Extent And Commencement :-

(1) This Act may be called the Himachal Pradesh Land Revenue Act, 1954.

(2) It extends to the whole of the Himachal Pradesh.

(3) It shall come into force on such day as the State Government may, by notification, appoint in this behalf.

2. Repeal :-

(1) The enactments mentioned in the Schedule repealed to the extent specified in the third column thereof.

(2) Notwithstanding anything contained in the Himachal Pradesh (Application of Laws) Order, 1948, Acts, Regulations, Rules and Robkaras hiterto in force in Himachal Pradesh with respect to the making and maintenance of record of rights of land, the assessment and collection land revenue and cesses thereon and other matters relating to land and liabilities incidental thereto are repealed only to the extent to which they are inconsistent with the provisions of this Act.

(3) Any enactment or document referring to any enactment hereby repealed shall be construed as referring to this Act.

3. Savings :-

All rules, appointments, assessments, partitions and transfers made, notifications, proclamations, and orders issued, authorities and powers conferred, record of rights and other records framed, rights acquired and liabilities incurred, times and places appointed and other things done under the Acts, Regulations, Rules and Robkars hereby repealed shall be deemed to have been, respectively made, issued, conferred, framed, acquired, incurred, appointed and done under this act.

4. Definitions :-

In this Act, unless there is something repugnant in the subject or context -

(1) agricultural year" means the year commencing on the sixteenth day of June, or on such other date as the State Government may by notification appoint for any local area;

(2) "assessment circle" means a group of estates which in the opinion of the Financial Commissioner, to be recorded in an order in writing are sufficiently homogeneous to admit of a common set of rates being used as a general guide in calculating the land revenue to be assessed upon them;

(3) "arrears of land revenue" means land revenue which remains unpaid after the date on which it becomes payable;

(4) "defaulter" mean a person liable for an arrear of land revenue and includes a person who is responsible as surety for the payment of the arrear;

(5) "estate" means any area :-

(a) for which a separate record-of-rights has been made, or

(b) which has been separately assessed to land revenue

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[* * *]; or

(c) which the State Government may, by general rule or special order, declare to be an estate;

(6) "Gazette" means the official gazette for Himachal Pradesh.

(7) "holding" means a share or portion of an estate held by one landowner or jointly by two or more landowners;

(8) "Incumbrance" means a charge upon or claim against land arising out of private grant or a contract;

(9) "landowner" does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate;

(10) "land revenue" includes assigned land revenue and any sum payable in respect of land, by way of quit-rent or commutation for service, to the State or to a person to whom the State has assigned the right to receive the payment;

(11) "legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879;

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New clause added by Act 1 of 2004

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"(12). ["net-assets" of an estate or group of estates means the estimated average annual surplus produce of such estate or group of estates remaining after deduction of the ordinary expenses of cultivation as ascertained or estimated;

Explanation. - Ordinary expenses of cultivation include payments, if any, which the land-owner customarily bears whether in kind or in cash either in whole or in part in respect of, -

(i) water rates;

(ii) maintenance of means of irrigation;

(iii) maintenance of embankments;

(iv) supply of seed;

(v) supply of manure;

(vi) improved implements of husbandry;

(vii) concessions with regard to fodder;

(viii) special abatements made for fallows or bad harvests;

(ix) cost of collection of rent;

(x) allowance for shortage in collection of rent;

(xi) interest charges payable in respect of advances made in cash, free of interest, to tenants for the purpose of cultivation; and

(xii) wages or customary dues paid to artisans or menials whose products or labour are utilised for the purposes of cultivation and harvesting, and the share that would be retainable by a tenant if the land were let to a non-occupancy tenant paying rent, whether in cash or in kind, at the normal rate actually prevalent in the estate or group of estates;"; and]

[(12A) "net letting value" of a site put to non-agricultural use means the estimated annual rent of the site remaining after deduction of -

- (i) fair remuneration of the capital invested on building or machinery or both after deducting the depreciation on their value;
- (ii) house-tax, property tax; and
- (iii) maintenance charges not exceeding one months gross rent, as ascertained or as estimated in the manner prescribed;

Explanation. - Where no reliable date regarding the cost of building and machinery on a site is forthcoming or is not otherwise available, valuation and depreciation shall be based on the standards of the Public Works Department of Himachal Pradesh; and

(13) "notification" means a notification published by authority of the State Government in the official gazette;

(14) "pay" with its grammatical variations and cognate expressions, includes when used with reference to rent, deliver and render with their grammatical variation and cognate expressions.

(14-A) "prescribed" means prescribed by rule made under this Act" and;

(15) "rates and cesses" means rates and cesses which are primarily payable by landowners, and includes :-

(a) The local rate, if any, payable under the law in force in the State and any fee payable to local bodies including the Panchayats formed under the Himachal Pradesh Panchayat Raj Act, 1958 for the use for, or all benefits derived from the following works :-

- (i) The construction and repair of embankments and the supply, storage and control of water for agricultural purposes;
- (ii) The preservation and reclamation of soil and the drainage and reclamation of swamps;

(b) Village officers cesses; and

(c) Sums payable on account of village expenses.

(16) "rent", "tenant", "landlord" and "tenancy" have the meanings, respectively, assigned to those words in the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953;

(17) "Revenue Officer" Revenue Court in any provision of this Act, means a revenue Officer or Revenue Court having authority under this Act to discharge the functions of a Revenue Officer or Revenue Court as the case may be.

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(18)[***]

(19) "Survey mark" includes boundary mark;

(20) "village cess" includes any cess, contribution or due which is customarily leviable within an estate and is neither a payment for the use of private property or for personal service nor imposed by or under any enactment for the time being in force;

(21) "village officer" means a Nambardar, Patwari and any other officer so appointed by the State Government.

Footnotes:

1

. Deleted by Act 15 of 2000.

2. Inserted by H.P. Act No. 15 of 2000.

3. Added by Act No. 21 of 1976.

4. Substituted by Act No. 15 of 2000.

5. Omitted by AO 1973.

5. Exclusion of certain land from operation of Act

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[(1) Except so far as may be necessary for the record, recovery and administration of village cesses, and

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[for taking action against the encroachers under Section 163], nothing in this Act applies to land which is occupied as the site of a

3

[* * *] village and is not assessed to land revenue.

4

(2) A Revenue Officer may define, for the purpose of this act, the limits of the site of a village.

5

[Explanation 1. - For the purpose of this section a site within the limits of municipality, a small town or a notified area shall not be deemed to be the site of a village.

Explanation 2. - For the purpose of this section and section 150 land means land of all types (including forest land, ghasni land, cultivable or un-cultivable waste land and khadeter land) whether assessed to land revenue or not, used or likely to be used for any purpose, whether agricultural or otherwise, and includes -

(a) any building, whether constructed or under construction, and any part thereof; and

(b) the garden, ground and out houses, if any, appurtenant to such building or part thereof."]

It has been held as under

:-

that the Punjab Land Revenue Act does not bar the jurisdiction of civil Courts over lands where upon shops, factories and houses have been built Rameshwar Nath v. Jogeshwar Nath, AIR 1953 Punjab 250]

Footnotes:

1. The Punjab Land Revenue (Himachal Pradesh Amendment) Act, 1971 received the assent of the Governor, H.P. on Oct. 20, 1971 and was published in H.P. Gazette (Extraordinary) dated 5.11.1971.
2. Substituted by Act No. 19 of 1971.
3. Omitted by Act No. 5 of 1965.
4. Substituted by Act No. 21 of 1976.
5. Inserted by Act No. 19 of 1971.

5. Section 5 :-

6. Power To Vary Limit And Alter Number Of Tehsils, Districts And Divisions :-

The State Government may, by notification, vary the limits and alter the number of tehsils (sub tehsil), district and divisions into which [the State is divided]

Definitions. - Definition is explicit statement of the full connotation of a term.

1

According to well established principles of interpretation of statute even a definition clause is always subject to context in which the word is used. If the context so requires, a word may be given meaning not covered by the definition clause.

2

"Context otherwise requires". - Definition given in the Act is normally to be taken to apply whenever that word occurs in the statute. The definition, however, will not apply if the word appears in a subject or context which makes the application of the definition impossible and repugnant to the meaning of the context in which the word is found.

3

When the expression "context otherwise requires" is used with reference to any provision of the Act and it results in absurdity, then the definition given cannot be used and has to be discarded and then ordinary meaning as signified to it is to be used and not that the definition is to be explained to mean something different

which legislature itself did not contemplate.

Words not definitions Act but used in Act. - When a word or expression used in a statute is not defined, it should as far as possible be so interpreted as to be consistent with the scheme of the statute.

4

When a statute defines an expression or a word used in the statute, that definition must prevail: but otherwise reference must be made to general concept of the object.

5

Means. - When a statute says that a word or phrase shall mean not merely that it shall include - certain things or acts, the definition is a hard-and-fast definition, and no other meaning can be assigned to the expression than is put down in definition

6

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Includes. - Use of word includes would enlarge the scope of the definition.

7

The word includes is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases must be construed as comprehended, not only such things as they signify according their natural import but also those things which the interpretation clause declares that they shall includes.

8

The word include is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of statute. When it is so used, those words and phrases must be construed as comprehending not only such things as this signify according to their nature and import but also those things which the interpretation clause declare that they shall include. The word include is also susceptible of other constructions.

9

"Means" and "includes". - When a definition is intended to be exhaustive the Legislature, as a rule, uses the word means and not the word includes.

10

The Legislature uses the word "means" where it wants to exhaust the significance of the term defined and the word "includes" where it intends that while the term defined should retain its ordinary meaning its scope should be widened by specific enumeration of

certain matters while its ordinary meaning may or may not compromise, so as to make the definition enumerative but not exhaustive.

11

The word "includes" in the definition merely enlarges the meaning of the term and makes it includes matters which ordinarily may not have been included. It does not confine the meaning of the term to what is stated to be included within it.

12

The word includes is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute, and when it is so used these words and phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also things which the interpretation clause declares that they shall include.

13

The expression "means and includes" in a definition clause indicates exhaustive nature of the definition.

14

Footnotes:

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. Punjab Land Development and Reclamation Corporation v. Presiding Officer. 1990(3) SCC 682.

2. Bharat Steel Tubes v. State of Haryana, 1977 AIR 289 (P&H) (FB).

3. Rambandhu v. Bramanand, AIR 1950 C 524 : 54 CWN 586 : Des Raj Sant Ram v. Karam Chand, 1962 PLR 758 (FB).

4. Joseph D. Silva v. E., AIR 1947 Bombay 310 : 49 BLR 6 : 229 IC 178 : 48 Cr.L.J. 305 (FB).

5. Maqbool Alam Khan v. Mt. Khodija Begum, AIR 1949 P. 133 (FB), wherein Sharp v. Dawes. 1876 2 QBD 26 : 46 LJQB 104 : Nuth v. Tampline, 1881, 8 QBA 247 : 51 LJQB 177, Inland Revenue Commissioner v. Gribble, 1913, 3 KB 212 : 82 LJKB 900.

6 . Punjab Land Development and Reclamation Corp. Ltd. v. Presiding Officer, 1990(3) SCC 682, 717.

7. Municipal Corporation of Greater Bombay v. Indian Oil Corporation Ltd., 1991(1) RRR 51.

8. Regional Director, E.S.I. Corporation v. Highland Coffee Works, 1992(1) SCT 92 (SC).

9. C.I.T. v. Mehal Hotel, AIR 1972 SC 168.

10 Queen Empress v. Naroat, 1901 Awn 10 : Rex v. Kershaw, 6 E. and B. 1007 : 26 LJMC 19 : Rex v. Herman, 48 LJMC 106.

11. Province of Bengal v. Smt. Hingul Kumari Law, AIR 1946 Calcutta 217.
12. Rodger v. Harrison, 1893 IQB 161 : 62 LJQB 213 : Bans Gopal Sheo Narain v. P.K. Bannerji, AIR 1949 Allahabad 433.
13. Fateh Chand v. Akimuddin, AIR 1943 Calcutta 108.
14. Mahalakshmi Oil Mills v. State of A.P., AIR 1989 SC 335.

CHAPTER 2

Revenue Officers Class and Powers

7. Classes Of Revenue Officer :-

(1) There shall be the following classes of Revenue Officers namely :-

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"[(1) There shall be the following classes of Revenue Officers, namely :-

(a) the Financial Commissioner;

(b) the Commissioner;

(c) the Collector;

(d) the Assistant Collector of the first grade; and

(e) the Assistant Collector of the second grade."; and

(2) The Deputy Commissioner of a district shall be the Collector thereof.

(3) The State Government may appoint any Assistant Commissioner [* * *]

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or Tehsildar to be an Assistant and Collector of the first or of the second grade, as it thinks fit, and any Naib Tehsildar to be an Assistant Collector of the second grade.

(4) Appointment under sub-section (3) shall be by notification and may be of a person specially by name or by virtue of his office or of more persons than one by any description sufficient for their identification.

(5) Subject to the provisions of this Act, the jurisdiction of the Financial Commissioner extends to the whole of the Himachal Pradesh and of Commissioners and of the Collectors and Assistant Collectors to the divisions and districts respectively in which they are for the time being employed of land revenue is fixed for a period only and will be revised. For Collection he has to maintain records in a systematic manner and keep relevant statistics. He is also to ensure respect for rights conferred by the State.

Footnotes:

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. Substituted by Act No. 3 of 2001 and resubstituted by Act of 2004.

2. Deleted by Act, 1 of 2004.

8. Financial Commissioner :-

(1) There shall be one or more Financial Commissioners, who shall be appointed by the State Government.

(2) Where more Financial Commissioner than one have been appointed, the State Government may make rules as to the distribution among them of business under this or any other Act, and by those rules require any case or class or classes of cases to be considered and disposed of by the Financial Commissioners, collectively.

(3) When there is difference of opinion among the Financial Commissioners as to any decree or order to be made in a case which they are required by rules under the last foregoing subsection to consider, and dispose of collectively, the following rules shall apply namely :-

(a) Where the case is an appeal or a case on review or revision, it shall be decided in accordance with the opinion of the majority of the Financial Commissioner, or, if there is no such majority which concurs in a decision modifying or reversing the decree or order under appeal, review or revision, that decree or order shall be affirmed; and

(b) Where the case is not an appeal or a case on review or revision, the matter respecting which there is the difference of opinion shall be referred to the State Government for decision and the decision of that Government with respect thereto shall be final.

(4) The expression Financial Commissioner in this or any other Act shall when there are more Financial Commissioner than one, be construed as meaning one or more of the Financial Commissioners as the rules for the time being in force under sub-section (2) may require.

9. Appointment Of Commissioners Etc :-

Commissioner, Additional Commissioner, Deputy Commissioner, Settlement Officer, Commissioner, Sub Divisional Officer (Civil), Assistant Settlement Officer and Assistant Commissioner shall be appointed by the State Government.

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"9. [Appointment of Commissioner etc. - Commissioner, Additional Commissioner, Deputy Commissioner, Settlement Officer, Additional Deputy Commissioner, Sub Divisional Officer (Civil), Assistant Settlement Officer and Assistant Commissioner shall be appointed by the State Government.]"

Footnotes:

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. Substituted by Act No. 15 of 2000.

10. Appointment Of Tehsildars And Naib Tehsildar :-

The State Government shall fix the number of Tehsildars and Naib Tehsildars to be appointed.

11. Powers Of Revenue Officers :-

Except, where the class of Revenue Officers by whom any function is to be discharged is specified in this Act the State Government may, by notification, determine the function to be discharged under this Act by any class of Revenue Officers.

12. Superintendence And Control Of Revenue Officer :-

(1) The Financial Commissioner shall be subject to the control of the State Government.

(2) The general superintendence and control over all other Revenue Officers shall be vested in, and all such officers shall be subordinate to the Financial Commissioner.

(3) Subject to the general superintendence and control of the Financial Commissioner, a Commissioner shall control all other Revenue Officers in his division.

(4) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue Officers in his district.

It has been held as under as under

:-

(i) Later and not the earlier ruling of the Financial Commissioner is to be preferred. (1934 LLT 25 and 1935 LLT 19 Refer)

(ii) Standing orders issued by the Financial commissioner are executive instructions and do not have the force of law. Revenue Officers ought to follow them. In case of a conflict with a ruling or provisions of law the letter must prevail (1934 PLR 395 and 1932 LTT 79)

13. Power To Distribute Business And Withdraw And

Transfer Cases :-

(1) The Financial Commissioner or a Commissioner or Collector may by written order distribute in such manner as he thinks fit any business cognizable any Revenue Officer under his control.

(2) The Financial Commissioner or a Commissioner or collector may withdraw any case pending before any Revenue Officer under his control, and either dispose of it himself, or by written order refer it for disposal to any other Revenue Officer under his control,

(3) An order under sub-section (1) or sub section (2) shall not empower any officer to exercise any powers or deal with any business which he would not be competent to exercise or deal within the local limits of his own jurisdiction.

14. Appeals :-

Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows, namely:-

(a) to the Collector when the order is made by an Assistant Collector of either grade;

(b) to the Commissioner

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[***] when the order is made by a Collector;

(c) to the Financial Commissioner when the order is made by Commissioner:

Provided that :-

(i) when an original order is confirmed on first appeal, a further appeal shall not lie.

(ii) when any such order is modified or reversed on appeal by the Collector, the order made by the Commissioner on further appeal, if any, to him shall be final.

It has been held as under :-

(i) Second appeal is not provided. In the interest of justice, equity and fair play such an appeal should be treated as a revision (1978 SLJ (FC). If the appellate Court holds that trial Court has no jurisdiction the appeal should be decided on merits. 1960 LLT/19/1976 ILR 5 FC (HIM).

Appeal - Mutation - Civil suit pending - Held, that mutation is only a mode of updating of revenue records keeping in view the existing position - The mutation cannot be kept pending in anticipation of a subsequent turn of events - No stay order could be produced by the respondent - Appeal accepted. Satya Devi (Smt) v. Shri Nikka

Ram & Anr., 2005 (Suppl.) Cur.L.J. (H.P.) 196 (FC, H.P.)

- Appeal - Will, executed by the owner of the property - Revenue records - Held, that the revenue officers have only given effect to the contents of the Will executed by the owner of the property - No irregularity or illegality committed by the Revenue Department - Does not warrant any interference in revision - Revision dismissed. Surat Ram (Shri) v. Shri Sita Ram, 2005(Suppl.) Cur.L.J. (H.P.) 238 (FC, H.P.)

Rectification of errors - Held, that the settlement authorities are bound to rectify or correct the errors when brought to their notice by way of application by the effected parties - Impugned orders passed by he learned Commissioner are set aside -Case remanded for decision on merits. Roop Singh v. Smt. Shakuntla Khanna, 2003(1) Cur.L.J. (H.P.) 30 (F.C.)

Appeal - Held, that there is no procedural mistake in the orders of the courts below or has been pointed out by the appellant which would merit this Court to treat the present appeal as a revision in the interest of justice, equity and fairplay - Appeal not maintainable and is dismissed. Dev Prakash Bhatia (Shri) v. State of H.P., 2004(1) Cur.L.J. (H.P.) 569 (F.C.)

(ii) Inheritance - Held. that respondent Tarsem Singh has been rightly shown to succeed to the share of Smt. Mehtab Kaur vide the impugned mutation - Contention of the petitioner that the degree and judgment is not binding on the petitioner is not tenable - Petition dismissed. Naginder Singh v. Taran Singh. 2002(2) Cur.L.J. (H.P.) 194 (F.C.)

- Held, that order setting aside the exparte proceeding, if passed, should be a speaking order - In the instant case, Ld. Commissioner has not discussed the grounds on which he has based his order - A non-speaking order is not sustainable in the eyes of law - Revision allowed. Amar Singh (Shri) v. Shri Hari Singh & Ors., 2005(Suppl.) Cur.L.J. (H.P.) 191 (FC, H.P.)

(ii) Mutation - The mutation attested on the basis of "WILL." Challenged - Held. that the sessions Judge issued succession certificate on the basis of "WILL." - Further held, that the "WILL." can not have the part execution in respect of movable property, and have to be given effect in entirety - Appeal accepted. Amresh Sharma v. Baba Nand Ram Dass Chela Baba Lal Dass. 2002(2) Cur.L.J. (H.P.) 226 (F.C.)

(iii) Ownership - Held,. that it is a settled law that a party in order to prove its title to the landed property has to base its claim on some registered instrument which is not forth-coming in this case -

There has to be clear evidence of title on record for recording ownership rights in the revenue record - Appeal dismissed. Ujjal Singh v. Punjab Wakf Board, Ambala & another, 2002(2) Cur.L.J. (H.P.) 140 (F.C.)

- Power of Commissioner - Revision - Case proceeded exparte against the respondents - Held, the Ld. Commissioner, in the instant case, while adjudicating upon the matter in revision, has erred in not restricting himself to the scope of revision as envisaged under Section 115 of the C.P.C. - Revision allowed. Amar Singh (Shri) v. Shri Hari Singh & Ors., 2005(Suppl.) Cur.L.J. (H.P.) 191 (FC, H.P.)

(iv) Resettlement and Rehabilitation of Bhakra Dam oustees scheme, 1971 - Grant of land to oustees - Pleaded that the appellant can not be deemed to be an oustee on his own right - Held, that the entitlement of the appellant has to be reckoned, under the provisions of the Succession Act - Appeal allowed. Chepu Ram (Sh.) v. State of Himachal Pradesh & Ors. 2002(2) Cur.L.J. (H.P.) 45 (F.C.)

Footnotes:

1. Deleted by Act No. 21 of 1976.

15. Limitation For Appeals :-

Save as otherwise provided by this Act, the period of limitation for an appeal under the last foregoing section shall run from the date of the order appealed against, and shall be as follows, that is to say :

- (a) when the appeal lies to the Collector - thirty days.
- (b) when the appeal lies to the Commissioner - sixty days.
- (c) when the appeal lies to the Financial Commissioner - ninety days.

It has been held as under

:-

(i) Limitation - Condonation of delay - Held, that had the petitioner been vigilant about his right, he would have preferred an appeal before the concerned authority as filing of civil suit did not debar him from filing appeal against the orders of the Assistant Collector - No justification for condonation of delay of 13 years - Barred by limitation and laches - Revision petition dismissed. Baru v. Milkhi Ram & Ors., 2003(2) Cur.L.J. (H.P.)246 (F.C.)

(ii) Partition of land - Held, that revenue record not revealing exclusive possession of parties - Plea of private partition fallacious -

No private partition can be presumed to have taken place without severance of possession. *Kewla (Smt.) & Ors. v. Shri Daulat Singh & Ors.*, 2005(1) Cur.L.J. (H.P.) 561 (F.C.)

16. Review By Revenue Officers :-

(1) A Revenue Officer may, either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse, or confirm, any order passed by himself or by any of his predecessors in office :

Provided as follows :-

(a) when a Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of class below that of Collector proposes to review any order, whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the orders or unless the applicant satisfies the Revenue Officer that he had sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section, the Collector shall be deemed to be the successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise power as a Revenue Officer, and to whom there is no successor in office.

(3) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

It has been held as under

:-

(i) Although the powers of review are very wide yet the ground of review must be something which existed at the date of the order sought to be reviewed and a review will not be granted on the ground of the happening of some subsequent event (1939 LLT 38)

(ii) A material irregularity resulting in failure of justice should be corrected as and when it comes to notice of the Financial Commissioner. Efflux of time cannot be allowed to mitigate the effect of basic infirmity in the proceedings. 1977 ILR/792. An

Assistant Collector II grade referred a case to the Collector seeking his permission to review his earlier order. The Collector accepted the application for review and set aside the impugned order - Held that the Collector was not competent to accept the review application himself. He could only accept or reject the reference. 1982 SLJ 5.

17. Power To Call For, Examine And Revise Proceedings Of Revenue Officers :-

(1) The Financial Commissioner may at any time call for the record of any case pending before,

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[or disposed of by) any Revenue Officer subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.

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[(3) If in any case in which a Commissioner or Collector has called for a record he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner whose decision shall be final.]

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[(4) The Financial Commissioner may in any case, called for by himself under sub-section (1) or reported to him or under sub-section (3) pass such orders as he thinks fit:]

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[Provided that he shall not under this section pass an order reversing or modifying any proceeding, or order of a subordinate Revenue Officer and effecting any question of right between private persons without giving those persons an opportunity of being heard.]

It has been held as under :-

(i) The powers of revision vested in a Financial Commissioner are unfettered. He may revise an order which may even be appealable and yet not appealed against. Even if the limitation for appeals is over the Financial Commissioner can interfere in revision. 1982 SLJ 36 F.C.

(ii) The Collector and the Commissioner found nothing wrong with, the orders of Assistant Collector in partition proceedings wherein no illegality or irregularity had been committed no interference in

revision was called for. 1976 SLJ 5 F.C.

(iii) The Financial Commissioner before entertaining a revision petition under Section 17 has to satisfy himself that all other remedies available to the petitioner have been duly and diligently exhausted by him and that a prima facie case warranting interference is made out. 1978 SLJ Himachal Pradesh F.C. 8.

(iv) No specific time limit has been prescribed for entertaining revision petition by a Financial Commissioner. 1984 SLJ 67 (F.C.)

(v) Appeal - Adoption - Held, that question of adoption - Basti Ram about 119 years ago and his consequent dis-entitlement from any share in the joint lands in his ancestral property is to be decided by the civil Court - No embargo or stay etc. has been given - Plea has no bearing on the partition proceedings -Revision petition dismissed. Balbir Singh v. Partap Singh & Ors., 2003(2) Cur.L.J. (H.P.) 258 (F.C.)

(vi) Hindu Succession Act- Revision - Held, that in view of the clear cut findings by the Ld. District Judge, the plea of the petitioner that the respondent did not have possession of land and that she re-married after the death of her husband, as such had no right to alienate the property are not tenable -Consequently the mutation is held to be rightly attested -Revision petition dismissed. Shri Dev Raj v. Shri Tarapati & Ann, 2003(1) Cur.L.J. (H.P.) 368 (F.C.)

(vii) Appeal - Mode of partition - Held, that approved mode of partition with regard to land abutting road side has not been adopted - Partition of land abutting road side is struck down - Assistant Collector directed for carrying out partition of land abutting road side afresh. Sital Ram & Ors. v. Sant Ram & Ors., 2003(2) Cur.L.J. (H.P.) 392 (F.C.)

(viii) Appeal - Partition - Held, that non-provision of developed land for allotment to the concerned shareholder and non-preparation of "Fard Kabza" - Pertain to the stage prior to the formulation and approved mode of partition - Contention lacks any force and dismissed - Revision petition dismissed. Balbir Singh v. Partap Singh & Ors., 2003(2) Cur.L.J. (H.P.) 258 (F.C.)

(ix) Appeal - Succession - Held, that the succession of said Jogi Ram opened at the time when his real brothers were alive and therefore they were the legal heirs of the deceased - The estate should have devolved on him - Ld. Commissioner wrongly set aside the order of learned District Collector - Matter remanded to the Assistant Collector for disposal. Sesh Ram & Anr. v. Smt. Reshmu & Anr., 2003(2) Cur.L.J. (H.P.) 275 (F.C.) (x) Correction in the Revenue record - Held, Settlement Officer has already allowed

correction in favour of the petitioner to the extent of an area measuring 40.50 Sq. Meters in khata No. 798/1 - The officer did not allow the correction in this khata -Orders of Ld. Commissioner are set-aside and those passed by the Ld. Settlement Officer are affirmed. *Braham Dass v. State of Himachal Pradesh*, 2003(1) Cur.L.J. (H.P.) 243 (F.C.)

(xi) Correction in the Revenue record - Held, that the nature of claim petitioner has raised with regard to discription of title by way of adverse possession is not maintainable in this Court -Civil court is not appropriate forum to entertain such a claim -Revision petition dismissed. *Dev Kumar v. Raj Kumar*, 2003(2) Cur.L.J. (H.P.) 75 (F.C.)

(xii) Inheritance - Ownership Rights - Held, that once the position of Naru as tenant is clear - He is entitled to acquire ownership of Land under the provisions of section 104, of the HP Tenancy and Land Reforms Act, 1973 - His interest as tenant is inheritable under Section 45 of the Act. *Nar Singh v. Bhimi Ram*, 2002(2) Cur.L.J. (H.P.) 23 (F.C.)

(xiii) Ownership - Correction of Revenue Record - Held, that the civil court dismissed the suit of the present petitioner and recorded that the respondent No. 1 owner is in possession of the land - Petitioner could not prove his ownership and possession of the land - Further held, in view of he position agreed by both the sides the matter is decided in accordance with the judgment - Revision petition dismissed. *Baba Vishnu Deva Nand Chela Mahant Daulata Nand v. Mohinder Singh & Anr.*, 2003(1) Cur.L.J. (H.P.) 235 (F.C.)

(xiv) Partition - Held, subsequent purchaser could not and cannot maintain any claim that has the effect of dislodging the respondents from possession - Further held, petitioners claim if any lie against the original owners and not against the present respondent - Respondents who in our view, are entitled to maintain the possession that they acquire much before the present petitioners come on the scene - No justification to interfere with the orders of the Ld. Commissioner - Revision petition dismissed. *Santokh Singh (Shri) & Ors. v. Sukh Dev Singh (Shri) & Anr.* 2002(2) Cur.L.J. (H.P.) 121 (F.C.)

(xv) Partition - Held, that civil Court has decided the case against the petitioner, restraining him permanently from interfering in the peaceful possession of the respondent No. 5 -

Application filed by petitioner for partition cannot be allowed - Recommendations of learned Commissioner cannot be accepted - Revision petition dismissed. *Kishori Lal v. Gian Chand & Ors.*,

2003(2) Cur.L.J. (H.P.) 374 (F.C.)

(xvi) Partition - New Plea - Pleaded that the Revenue authorities not competent to partition Abadies - Held, that the allotment of Abadies to the parties have been affected in accordance with the mode of partition - It is not the case of the petitioners that house build, by them have been allotted to respondents in violation of the agreement - Further, held, that the petitioners have not taken the plea for allotment of land in any of the Court below and they thus cannot be allowed to set up new plea at this stage - Revision Petition is dismissed. Ashwani Kumar (Shri) & Ors. v. Paramjit Kumar (Shri) & Ors. 2002(2) Cur.L.J. (H.P.) 186 (H.P.)

(xvii) Partition of Land - Title - Held, that baring a portion of land, the rest of the land is cultivable land and the applicants were entitled to get their share partitioned - Further held, that no question of title is involved in the matter as per record -Revision Petition is dismissed. Tarsem Lal v. Harbans Lal & Ors. 2002(2) Cur.L.J. (H.P.) 263 (F.C.)

(xviii) Revision - Change of Classification of Land - Case time barred - Held, that no legal information can be held imputable to one of the petitioner Sh. Gita Ram on the ground that the knowledge was privy to other share holders - Limitation deserved to be condoned by the Ld. Commissioner and matter needed to be heard on merits - Impugned order set aside case remanded to Ld. Commissioner for disposing of the appeal on merits, as if the appeal has been filed within time limit before him. Geeta Ram & Ors. v. Nokh Ram, 2003(1) Cur.L.J. (H.P.) 403 (F.C.)

(xix) Revision - Common purpose land - Held the plea of the petitioners have not been substantiated by any material on record - No justification to interfere with the orders of the Ld. Commissioner - Revision being devoid of any merits -Dismissed. Dhani Ram & Anr. v. Dharam Singh & Ors., 2003(1) Cur.L.J. (H.P.) 326 (F.C.)

(xx) Revision - Correction of enteries - Held, that so far demarcation undertaken by the settlement Naib Tehsildar is concerned, detailed report of the S.N.T. has not pointed out any factual error in the report - Report was also considered by Ld. A.D.J. Kangra - Appeal decreed in favour of the present petitioner - In this view of mutation order passed by Ld. Commissioner is set aside - Revision petition accepted. Chain Singh & Anr. v. Onkar Singh, 2003(1) Cur.L.J. (H.P.) 378 (F.C.)

(xxi) Revision - Encroachment of Govt. Land - Held, that the order of District Collector Una, has since been held to be legal and valid by my predecessor - No fresh orders are required to be passed on

this reference - Proposition made therein stand already accepted by order of this Court - Revision petition is accordingly disposed of State of Himachal Pradesh v. Shri Bhagat Singh, 2003(1) Cur.L.J. (H.P.) 312 (F.C.)

(xxii) Revision - Entries of jamabandi - Title/ownership - Held, that the predecessors of the respondents Smt. Ishro Devi has been shown in possession of the land in question as per jamabandi - Petitioners have not been able to bring on record any evidence to rebut the entries of jamabandi to which presumption of truth is attached - No evidence to show the ouster of said respondent - Revision petition dismissed. Purshotam Chand & Ors. v. Subhash Chand & Anr., 2003(2) Cur.L.J. (H.P.) 22 (F.C.)

(xxiii) Revision - Interference in peaceful possession of land -Wrong preparation of tatima - Held, that a mere fact that a revenue official inadvertently caused out a wrong tatima on the relevant mutation does not extinguish his legally acquired title over the land - The orders of Commissioner Kangra Division dated 15.1.1998 as well as those of the Settlement Collector dated 18.6.1993 and the Tehsildar Settlement dated 31.1.1992 are set aside - Revision accepted. Charan Dass v. Smt. Subhadra Devi & Ors., 2004(1) Cur.L.J. (H.P.) 539 (F.C.)

(xxiv) Revision-- Mutation on the basis of "WILL" - Held, that the interest of non-occupancy tenancy is heritable and the said Smt. Rukmani was competent to make a "WILL" in respect of the land in question - Orders passed by A.C.-II grade are set aside - Case remanded for disposal as per recommendation made by the Id. Commissioner. Deep Ram v. Shri Hiru & Anr., 2003(1) Cur.L.J. (H.P.) 408 (F.C.)

(xxv) Revision - Partition - Held, that the mode of partition is set-aside and the matter is remanded to the Assistant Collector 1st Grade with the direction that the parties be given opportunity of being heard and decide the case afresh - Revision Petition accepted. Ram Justa (Sh.) v. Sh. Shiv Ram, 2003(1) Cur.L.J. (H.P.) 278 (F.C.)

(xxvi) Revision - Possession - Held, that the land is situated within the DPF and it is very strange that the lower revenue courts have ordered to record possession of private parties thereon - No question of recording of possession of any of the parties on the land in question - A.C. ordered to initiate eviction proceedings against the encroachers - Revision Petition dismissed. Dhanvar v. Bhagi Dass, 2003(1) Cur.L.J. (H.P.) 456 (F.C.)

(xvii) Revision - Violation of mode of partition - Held, that the

partition proceedings are complete in all respects, instrument of partition has been issued and possession in consequence thereof has also been delivered to the parties -

Recommendations made by the Ld. Commissioner are without any force and therefore turned down - Order passed by A.C. affirmed - Revision petition dismissed. Tara Chand & Anr. v. Smt. Pushpa Devi & Anr." 2003(1) Cur.L.J. (H.P.) 467 (F.C.) (xviii) Title - Held, that question of title is not a magic wand so as to suggest that whenever it is raised, it is incumbent upon the authorities to treat it as such without factually verifying the factum of such a question - Matter remitted to Assistant collector 1st Grade for holding preliminary inquiry to find out whether question of title really exists or not - Matter remitted to Assistant Collector 1st Grade for holding enquiry, whether question of title really exists or not. Jagiri Lal (Sh.) & Anr. v. Hem Raj (Shri) & Ors. 2002(2) Cur.L.J. (H.P.) 61 (F.C.)

(xxix) Partition - Mode - Held, that the contention of the petitioners that the Assistant Collector has not adhered to the mode of partition while carrying out the actual partition on the spot, has not been substantiated by adducing any evidence in support of the plea, also the contention of the petitioners that they were not afforded opportunity of hearing by the Revenue officers below is not correct. Tara Chand and others v. Puspa Dvi and others 2002(2) Cur.L.J. (H.P.) 137 (F.C.)

(xxx) Partition - Held, that there has been equal distribution of land and it cannot be said that the partition has been done in violation of the mode of partition - Petition dismissed. Chatar Singh v. Mehar Singh & others, 2002(2) Cur.L.J. (H.P.) 132 (F.C.)

(xxxi) Revision - Eviction from Govt. Land - Adverse Possession - Allotment of land at Market value - Held, that the claim of the petitioner as to adverse possession is not borne out from the record - Not entitled to relief - Claimed on the ground of longstanding possession maturing into title - Orders of lower Court held in order - Request for allotment of land be made before the appropriate authority - This order shall not prejudice the request of the petitioner. Jaimal Singh (deceased) through LRs. v. State of H.P., 2003(1) Cur.L.J. (H.P.) 394 (F.C.)

(xxxii) Agreement change of ownership - Held, the fact that the said agreement was presented by the respondent after a gap of almost four years before the Land Reforms Officer as an evidence seeking to prove his claim against the petitioner casts a shadow upon the implementation thereof - Revision petition allowed. Twarsi

Devi (Smt.) v. Shri Surat Singh, 2005(Suppl.) Cur.L.J. (H.P.) 325 (FC, H.P.)

(xxxiii) Correction in records was made - Appeal before the Additional Commissioner (Appeals) - Copy of order of settlement officer not filed alongwith appeal being not available in the records - Held, that Id. Commissioner could not have adjudicated upon the issue raised by the present petitioner before him in appeal without having pursued the case file of the order appealed against - Had the petitioner sought to get the record reconstructed as per the provisions of Rule 5 of Chapter 19A and Rule 4 of Chapter 16D of Volume IV of the Punjab High Court Rules and Orders, Instructions applicable to both Civil and Criminal Courts, by making a plea to this effect before the Id. Commissioner or by filing an application for correction of revenue entries before a competent authority, for consideration by him - Revision petition dismissed. Harminster Singh v. Smt. Dharshana Devi & Anr., 2005(Suppl.) Cur.L.J. (H.P.) 246 (FC, H.P.)

(xxxiv) Interference - Concurrent findings of fact - Where the authorities failed to exercise the jurisdiction - Interference warranted - Concurrent findings of fact by the Courts below are not an insurance against perversity - Revision petition allowed. Twarsi Devi (Smt.) v. Shri Surat Singh, 2005(Suppl.) Cur.L.J. (H.P.) 325 (FC, H.P.)

(xxxv) Mutation - Held, respondent No. 1 who was the exclusive owner qua her share in the land in dispute has executed registered gift deed in favour of the respondent No. 2, the validity or genuineness of which has not been challenged by the petitioner before any competent Court of law and hence the Revenue Officer was duty bound to give effect thereto in the revenue record by way of a mutation - Revision petition dismissed. Dharam Singh (Shri) v. Smt. Phoolan Devi & Anr., 2005(Suppl.) Cur.L.J. (H.P.) 63 (FC, H.P.)

(xxxvi) Owners in possession - Predecessors - Restoration of land - Held, that the predecessors of the present petitioner were recorded to be in possession of Khata/Khatauni No. 55/64, Khasra No. 3 and 5 measuring 172 Bighas in Mauza Jungal Saugal to the extent of 1 / 4 shares and this entry, evidently been deleted during settlement-operations - There is nothing in record to show how this entry has been deleted -The same are ordered to be restored, as the petitioner is willing to repay the loan amount. Bhupinder Singh (Retd.) (Major) v. State of H.P. through Collector Bilaspur, H.P. & Anr., 2005(Suppl.) Cur.L.J. (H.P.) 359 (FC, H.P.)

(xxxvii) Possession - Adverse possession - Held, that the plea of adverse possession being raised by the petitioner is not supported by any credible evidence - The plea of adverse possession was raised by the petitioner before the courts below and the Courts below have duly and diligently arrived at a concurrent finding of fact against this plea - Petitioner failed to raise any new point not adjudicated upon by the courts below -No material irregularity or illegality has been committed by these Courts - Revision petition dismissed. Charan Dass v. State of H.P., 2005(Suppl.) Cur.L.J. (H.P.) 400 (FC, H.P.)

(xxxviii) Revision - Partition - Held that the respondents are in equal shares with the petitioner and are entitled to seek partition of their shares recorded in the record of the rights -Petition rejected. Ram Raksh Pal v. Raksha Devi & Ors." 2003(1) Cur.LJ. (H.P.) 15 (F.C.)

(xxxix) Tenancy - Held, that in view of the inconsistent and contradictory pleas of the petitioners, their claim of sub-tenancy in absence of any specific contract therefor, with the respondent cannot sustain - Revision petition dismissed. Tota Ram & Ors. v. Sh. Jallah Ram & Ors., 2003(1) Cur.L.J. (H.P.) 27 (F.C.)

(xi) Expression at any time - Although sub-section (1) of Section 17 of H.P. Land Revenue Act uses expression at any time yet it cannot be indefinite - The word any time cannot be construed as eternity - The suo moto powers of Financial Commissioner has to be exercised within a reasonable time - It will be unreasonable to hold that the Financial Commissioner has unlimited powers to entertain a revision petition even after a lapse of sixteen years. State of H.P. Through Collector Kangra at Dharamshala v. Shri Moot Chand Diwan, 2005(Suppl.) Cur.L.J. (H.P.) 303 (FC, H.P.)

Footnotes:

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. Inserted by Section 3 of H.P. Act of 1955.

2. Substituted by Act No. 1 of 2004.

3 Substituted by Act 15 of 2000 and Re-substituted by Act No. 2004.

4; Substituted by Act 15 of 2000 and resubstituted by Act, No. 1 of 2004.

18. Power To Make Rules As To Procedure :-

(1) The State Government, may make rules consistent with this Act for regulating the procedure of Revenue Officers under this Act in

cases in which a procedure is not prescribed by this Act.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from, and delivery of possession of immovable property, and rules providing for those matters may confer on a Revenue Officer all or any of the powers, in regard to contempt, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has adjudged ejectment for, or delivery, or possession of such property.

(3) Subject to the rules under this Section, a Revenue Officer may refer any case which he is empowered to dispose of under this Act to another Revenue Officer for investigation and report, and may decide the case upon the report.

It has been held as under

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(i) Land Revenue Rules have been framed by the State Government under provisions of this Section. The provisions of Code of Civil Procedure are also applicable to the proceedings before Revenue Officers. 1971 SLJ 405.

19. Persons By Whom Appearance And Applications May Be Made Before And To Revenue Officers :-

(1) Appearances before a Revenue Officer, and applications to and acts to be done before him under this Act may be made or done -

(a) by the parties themselves, or

(b) by their recognised agents or a legal practitioner.

Provided that the employment of a recognised agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognised agents shall be such persons as the State Government may, by notification, declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceeding before Revenue Officer under this Act unless that officer considers for reasons to be recorded by him in writing, that the fees should be allowed :

20. Power Of Revenue Officer To Summon Persons :-

(1) A Revenue Officer may summon any person whose attendance he considers necessary for the purpose of any business before him as a Revenue Officer.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons or if the summons so-allows, by his recognized agent or a legal practitioner.

(3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue Officer may require.

21. Mode Of Service Of Summons :-

(1) A summons issued by a Revenue Officer shall, if practicable, be served -

(a) personally on the person to whom it is addressed or failing him,
(b) his recognised agent.

(c)

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(2) If service cannot be so made, or if acceptance of service so made is refused, the summons may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed, or if that person does not reside in the district in which the Revenue Officer is employed and the case to which the summons relates has reference to land in that district, then by posting a copy of the summons on some conspicuous place in or near the estate wherein the land is situated.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not, reasonably practicable, it may, if the Revenue Officer so directs be, served by delivery of a copy thereof to such of these persons as the Revenue Officer nominates in this behalf and by proclamation of the contents thereof for the information of the other person interested.

(4) A summons may, if the Revenue Officer so directs, be served on the persons named therein either in addition to, or in substitution for, any other mode of service, by forwarding the summons by post in a letter addressed to the person and registered under Part-III of the Indian Post Offices Act, 1898.

(5) When a summons is forwarded in a letter, and it is proved that the letter was properly addressed and duly posted and registered, the Revenue Officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course

of post.

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["Provided that in addition to issuing of summons, a Revenue Officer shall also issue proclamation calling upon the parties concerned to appear before him either in person or through as a duly authorised legal practitioner on the day fixed for first hearing, and to file objections, if any."]

Footnotes:

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. Omitted by Act No. 21 of 1976.

2. Added by Act No. 15 of 2000.

22. Mode Of Service Of Notice, Order Of Proclamation Or Copy Thereof :-

A notice, order or proclamation or copy of any such document, issued by a Revenue Officer for service on any person shall be served in the manner provided in the last forgoing section for the service of a summons.

23. Mode Of Making Proclamation :-

When a proclamation relating to any land is issued by a Revenue Officer it shall in addition to any other mode of publication which may be prescribed in any provision of this Act, be made by beat of drum or other customary method and by posting of a copy thereof on a conspicuous place in or near the land to which it relates.

23A. :-

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Footnotes:

1. Added by Act No. 15 of 2000 and deleted by Act No. 1 of 2004.

23B. Xxx :-

Footnotes:

1. Added by Act No. 15 of 2000 and deleted by Act No. 1 of 2004.

24. Place Of Sitting :-

(1) An Assistant Collector may exercise his power under this Act, at any place within the limits of the district in which he is employed.

(2) Any other Revenue Officer may only exercise his power under this Act within the local limits of his jurisdiction.

25. Holidays :-

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(1) Revenue Officers [* * *] shall observe holidays as are notified by the State Government for its employees."

(2) A proceeding had before a Revenue Officer on a day specified in the list as a day to be observed by him as a holiday shall not be invalid by reasons only of its having been had on that day.

Footnotes:

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. Inserted by Act 15 of 2000 & deleted by Act No. 1 of 2004.

26. Discharge Of Duties Of Collector Dying Or Being Disabled :-

When a Collector dies or is disabled for performing his duties, the officer who succeeds temporarily to the chief executive administration of the district under any order which may be generally or specially issued by the State Government in this behalf shall be deemed to be a Collector under this Act.

27. Retention Of Power By Revenue Officers On Transfer :-

When a Revenue Officer of any class who has been invested under the foregoing provisions of this Act with any powers to be exercised in any local area is transferred from that local area to another as a Revenue Officer of the same or a higher class he shall continue to exercise those powers in that other local area unless the State Government otherwise directs or has otherwise directed.

28. Conferment Of Powers To Revenue Officer :-

(1) The State Government may by notification confer on any person :-

(a) all or any of the powers of a Financial Commissioner, Commissioner or Collector under this Act, or

(b) all or any of the powers with which an Assistant Collector may be invested thereunder and may by notification withdraw any powers so conferred.

(2) A person on which powers are conferred under subsection (1) shall exercise those powers within such local limits and in such classes of cases as the State Government may direct, and except, as otherwise directed by the State Government shall for all

purposes connected with the exercise thereof, be deemed to be a Financial Commissioner, Commissioner, Collector or Assistant Collector, as the case may be.

(3) If any of the powers of a Collector under this Act are conferred on an Assistant Collector they shall, unless the State Government by special order otherwise directs be exercised by him subject to the control of the Collector.

It has been held as under

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(4) [* * *] It was held in 1964 LLT 159 that an order of an Additional Deputy Commissioner who is not vested with the powers of taking action against Kanungos and Patwaries, removing the name of a Patwari candidate from the list was not legal.

Footnotes:

1. Added by Act 15 of 2000 and deleted by Act No. 1 of 2004.

CHAPTER 3

KANUNGOS AND VILLAGE OFFICERS

29. Rules Respecting Kanungos And Village Officers :-

The State Government may make rules to regulate the appointment, duties, emoluments, punishment, suspension and removal of kanungos and village officers.

It has been held as under

:-

(i) A Collector while making an appointment of a Nambardar is to take into consideration the comparative merits of candidates viz. influence in the village, age, education, land owned in the village (Rameshwar Singh v. Prithi Singh, 1974 RLR 88) -

(ii) It is an advantage to have an ex-serviceman as Nambardar other things being equal 1960 LLT 63.

(iii) Normally the selection of a Nambardar is not disturbed till it is found to be in contravention of rules or against the principles laid down by the Financial Commissioner 1956 LLT 3. A nambardar who has resigned is not debarred from being reappointed on merits 1964 LLT 13.

(iv) Power of Commissioner - Revision - Case proceeded exparte against the respondents - Held, the Ld. Commissioner, in the instant case, while adjudicating upon the matter in revision, has erred in not restricting himself to the scope of revision as envisaged under Section 115 of the C.P.C. -Revision allowed. Amar Singh

(Shri) v. Shri Hari Singh & Ors., 2005(Suppl.) Cur.L.J. (H.P.) 191 (FC, H.P.)

(v) Punjab Land Revenue Rules - Appointment of Lambardar -Claim of LRs. - Held, that it has been established that the petitioner has died - Right to sue the matter for appointment to the post of Lambardar, does not survive upon his LRs. - Actio personalis moritus cum persona. Bishan Singh (Shri) & Ors. v. Sh. Kushal Singh & Ors., 2005(Suppl.) Cur.L.J. (H.P.) 227 (FC, H.P.)

(vi) Punjab Land Revenue Rules - Lambardar - Educational Qualification - Proof - Held, though a Lambardar is expected to be literate enough to carry out his duties satisfactorily, there is no mention of a formal educational qualification for eligibility of a candidate prescribed anywhere in the relevant rules. Sharda Devi (Smt.) v. Shri Baldev Singh, 2005(Suppl.) Cur.L.J. (H.P.) 317 (FC, H.P.)

(vii) Punjab Land Revenue Rules, Rule 17(ii)(d) - Appointment of a woman as Lambardar - - There is no real bar to the appointment of a woman as Lambardar provided she is otherwise eligible and qualified. Sharda Devi (Smt.) v. Shri Baldev Singh, 2005(Suppl.) Cur.L.J. (H.P.) 317 (FC, H.P.)

30. Village Officers Cess :-

(1) The State Government may by notification impose on all or any estates in the territories, for the time being administered by it a cess to be called the village officers cess, at such rate or rates not exceeding

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(five paise) per rupee of the annual value as it may think fit for remunerating Nambardars in these territories and for defraying other expenditure directly connected with the supervision of those officers or with the performance of their duties.

(2) "Annual value" in sub-section (1) means :-

(a) double the land-revenue for the time being assessed on any land, whether the assessment is leviable or not; or

(b) where the land-revenue has been permanently assessed or has been wholly or in part compounded for or redeemed, double the amount which, but for such permanent assessment, composition or redemption, would have been leviable; or

(c) where no land revenue has been assessed, double the amount which would have been assessed, if the average village rate had been applied :

Provided that, in any tract in which, under the settlement for the time in force, the improvement of the land owing to kuhl or other artificial irrigation has been excluded from account in assessing the land-revenue, and a rate has been imposed in respect of such improvement, that rate shall be added to the land-revenue for the purpose of computing the annual value.

(3) The Financial Commissioner may make rules for the collection, control and expenditure of the village officers cess.

(4) All cesses now levied in any local area for the purposes mentioned in sub-section (1) shall be deemed to have been lawfully imposed and shall, until the village officers cess is imposed in that local area under that sub-section, be deemed to be lawfully leviable and, for the purposes of this section, to be that cess.

Footnotes:

1

. Substituted for the words "half an anna" by Act No. 21 of 1976, Pub. in H.P. Rajpatra (Extra) 1976 at p. 123.

31. Restriction On Attachment Or Assignment Of Kanungos And Village Officers :-

(1) The emoluments of a village officer shall not be liable to attachment in execution of a decree or order of any civil or revenue court.

(2) An assignment of or charge on, or agreement to assign or, charge, any such emoluments shall be void unless it is authorised by rules made by the Financial Commissioner in this behalf.

CHAPTER 4 **RECORDS**

32. Records-Of Rights And Documents Included Therein :-

1

[(1) Save as otherwise provided by this Chapter, there shall be a record-of-rights for each estate.

(2) The record-of-rights for an estate shall include the following documents, namely:-

(a) Statements showing, so far as may be practicable:

(i) the persons who are landowner tenants or assignees of land revenue

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[in the estate or who] receive any of the rents, profits in the estate, or who are entitled to the produce of the estate or to

occupy land therein;

(ii) the nature and extent of the interests of those persons and the conditions and liabilities attaching thereto; and

(iii) the rent, land revenue, rates, cesses or other payments due from and to each of those persons and to the Government;

(b) a statement of customs respecting rights and liabilities in the estate.

(c) a map of the estate; and

(d) such other documents as the Financial Commissioner may, with the previous sanction of the State Government prescribe.

It has been held as under held as under

:-

(i) Although the revenue authorities rely on the entries in the revenue records yet if it is established by other evidence that certain transaction has taken place it cannot be ignored merely because it has not been given effect to in the revenue records (Neki Ram v. Punjab State 1965 PLJ).

(ii) Entries in Jamabandi prevail over those in Khasra Girdddwri (Nirmal Devi V. Gurdit Singh 1967 PLJ 13, 1967 LLT 70 (FC)]

Footnotes:

1

. Added by Act No. 21 of 1976.

33. Making Of Special Revision Of Record Of-Rights :-

(1) When it appears to the State Government that a record-of rights for an estate requires special revision, it may by notification direct that record-of-rights be made or that the record-of-rights be specially revised, as the case may be.

(2) The notification may direct that record-of-right shall be made or specially revised for all or any estates in any local area.

(3) A record-of-rights made or specially revised for an estate under this section shall be deemed to be the record-of rights for the estate, but shall not effect any presumption in favour of the State, which has already arisen from any previous record-of rights.

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"(4) The record of rights to be made or specially revised shall be done in the manner prescribed.

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(5) When a District or a part thereof for making of special revision of record of rights and assessment of land revenue is in process, the duty of preparing and maintaining of record of rights shall be

transferred to the Settlement Collector who shall exercise all the powers of the Collector under sub-section 2, 7 to 9.

(6) When the record of rights are made or specially revised, the same shall be published within the estate in the manner prescribed.

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(7) If any party interested files objections, against any entry in the record-of-rights within a period of 30 days, the same shall be decided by the Revenue Officer within a period of one month and after giving effect to the orders of the Revenue Officer, if any, in the record-of-rights of the estate, the record-of-rights shall be finally published within the estate in the manner prescribed.

(8) After the final publication of the record-of-rights under subsection (7), the settlement patwari shall supply to every person a copy of measurement Jamabandi and Tatima of newly measured Khasra numbers of his holding free of costs.

4

(9) [As soon as the work of making or special revision of record-of-rights and assessment of land revenue of an estate is over, a notification shall be issued declaring the making or revision of record-of-rights, as the case may be, to be closed.]

Footnotes:

1

. Added by Act No. 21 of 2000.

2. Added by Act No. 21 of 2000.

3. Sub Section 4 to 8 added by Act No. 21 of 2000 and further amended by Act No. 3 of 2001 and 1 of 2004.

4. Sub-section 9 added by Act no. 1 of 2004.

34. Periodical Record :-

1

[(1) The Collector shall cause to be prepared by the patwari of each estate yearly, or at such other intervals as the Financial Commissioner may prescribe, an edition of the record of rights amended in accordance with the provisions of this Chapter.

(2) This edition of the records of rights shall

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[* * *] comprise the statements mentioned in sub-section (2) clause (a) of Section 32 and as such other documents, if any, as the

Financial Commissioner may, with the previous sanction of the State Government prescribe.

(3) For the purposes of the preparation of the annual record, the Collector shall cause to be kept up by the patwari of each estate a register of mutations and such other registers as the Financial Commissioner may prescribe.

Footnotes:

1

. Substituted for the word "annual" vide HP Act 21 of 1976.

2. Omitted the Act No. 21 of 1976.

35. Making Of That Part Of The Periodical Record Which Relates To Landowners Etc. Assignees Of Revenue And Occupancy Tenants :-

1

[(1) Any person acquiring by inheritance, purchase, mortgage, gift or otherwise, any right in an estate as a landowner

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[etc.] assignees of land revenue, or tenant having a right of occupancy, shall report his acquisition of the right to the patwari of the estate.

(2) If the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the patwari.

(3) The patwari shall enter in his register of mutations every report made to him under sub-Section (1) or sub-section (2) and shall also make an entry therein respecting the acquisition of any such rights as aforesaid which he has reason to believe to have taken place and of which a report should have been made to him under one or other of those sub-sections and has not been so made.

(4) No Revenue Court shall entertain a suit or application by the person so succeeding or otherwise obtaining possession until such person has made the report required by this section.

(5) A Revenue Officer shall from time to time inquire into the correctness of all entries in the register of mutations and into all such acquisitions as aforesaid coming to his knowledge of which, under the foregoing sub-sections report should have been made to the patwari and entry made in that register and shall in each case make such order as he thinks fit with respect to the entry in the

3

[periodical] record of right acquired.

(6) Such entry shall be made by the insertion in that record of a description of the right acquired and by the omission from that

record of any entry in any record previously prepared which by reason of the acquisition has ceased to be correct.

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"(7) The Revenue Officer shall afford an opportunity of being heard to all the interested parties and also all the co-sharers in a joint holding in a mutation proceedings. After proper identification of the parties he shall get affixed signatures of

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[all the parties present]. If any party is illiterate, then the Revenue Officer shall get the thumb impression of such party affixed on the foil (parat sarkar) of the mutation.".

It has been held as under as under

:-

(i) A deed of adoption is to be presumed to be correct and the revenue authorities cannot question its authenticity in summary mutation proceedings. Party questioning authenticity should approach a civil Court (Ujagar Singh v. Dharam Singh, 1966 LLT 106 (FC).

(ii) Allegations of fraudulent - - Change of revenue entries - Certified copy of orders not attached - Held, the petition filed by the Collector without a certified copy of the impugned order dated 29.12.1988 cannot be adjudicated upon in absence of any record. State of H.P. Through Collector Kangra at Dharamshala v. Shri Moot Chand Diwan, 2005(Suppl.) Cur.L.J. (H.P.) 303 (FC, H.P.)

Footnotes:

1

. Inserted by Act No. 21 of 1976.

2. Substituted by Act No. 21 of 1976.

3. Substituted for the word "annual" vide HP Act 21 of 1976.

4. Added by Act No. 15 of 2000.

5. Substituted by Act 3 of 2001.

36. Marking Of That Part Of The Periodical Record Which Relates To Other Persons :-

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The acquisition of any interest in land other than a right referred to in sub-section (1) of the last foregoing section shall -

(a) if it is undisputed, be recorded by the patwari in the such manner as the Financial Commissioner may by rule in this behalf prescribe; and

(b) if it is disputed, be entered by the patwari in the register of

mutations and dealt with in the manner prescribed in subsections (5) and (6) of the last foregoing section.

Footnotes:

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. Substituted by Act No. 21 of 1976.

37. Determination Of Disputes :-

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[(1) If during the making, revision or preparation of any record or in the course of any enquiry under this Chapter, a dispute arises as to any matter of which an entry is to be made in a record or in a register of mutations, a Revenue Officer may of his own motion or on the application of any party interested, but subject to the provisions of net following Section and after such enquiry, as he thinks fir determine the entry to be made as to that matter.]

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(2) If in any such dispute Revenue Officer is unable to satisfy himself as to which of the parties thereto is in possession of any property to which the dispute relates, he shall ascertain through the Gram Panchayat constituted under the Himachal Pradesh Panchayati Raj Act, 1994 or any other agency, so prescribed by the Financial Commissioner or by summary enquiry who is the person best entitled to the property and shall by order direct that, the person be put in possession thereof, and that, an entry in accordance with that order, be also made in the record or register.]

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[(3) A direction of a Revenue Officer under sub-section (2) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction.]

It has been held as under

:-

(i) Correction of revenue entries - Ownership - Held, this approach cannot be justified since the ownership and rights as recorded in the record of rights the preceding settlement has to be kept in view for preparing the new record - The rights and titles as were continuing in the record as right cannot be ignored while preparing the new record. *Tulsi Ram (Shri) & Ors. v. Smt. Satya Chauhan & Anr.*, 2005(Suppl.) Cur.L.J. (H.P.) 320 (FC, H.P.)

Footnotes:

1

. Substituted by Act 15 of 2000 and re-substituted by Act No. 1 of 2004.

38. Restrictions On Variations Of Entries In Record :-

Entries in record of rights or in

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[periodical] records except entries made in records by patwaries under clause (a) of Section 36 with respect to undisputed acquisitions of interest referred to in that section, shall not be varied in subsequent records otherwise than by -

(a) making entries in accordance with facts proved or admitted to have occurred;

(b) making such entries as are agreed to by all the parties interested therein or are supported by a decree or order binding on those parties; and

(c) making new maps where it is necessary to make them.

It has been held as under :-

(i) Mutation proceedings are of summary nature and the Financial Commissioners are not supposed to take cognizance of intricate questions of law and facts, (1975 PLJ 91)

(ii) Even an unregistered will if executed voluntarily and with a free mind even in old age has to be considered as natural and genuine and cannot be brushed aside lightly only because it is not registered. (1975 PLJ 91).

(iii) Registration is not a guarantee of genuineness of a document by itself but it certainly is an important factor in considering the bona fides of the execution of the document. (1976 PLJ 270).

(iv) Proper forum for a party to challenge a registered document is a civil court (1978 PLJ 270)

(v) Khasra Girdawri is not a part of the record of rights. An application for correction of entries in Khasra Girdawari is to be dealt with under Section 36 of the Act (1978 SLJ 29 (FC).

(vi) Mutation order neither creates nor extinguishes any rights. It is only evidence of ownership. Decree passed by civil Court is final (1977 PLJ 74)

(vii) The Transfer of Property Act having been made applicable to gifts of immovable property mutation cannot be sanctioned on the basis of unregistered deeds of gift (1960 LLT 82).

(viii) Before sanctioning a mutation parties to the proceedings must be heard (1967 LLT 190 (FC)

(ix) If parties in a mutation proceedings have already gone to a

civil Court for settlement of their claim it is not necessary to await the decision of the civil court. A decision regarding mutation should be taken. If the subsequent decision necessitates alteration in the mutation register the register can be brought in conformity with the decision. (1967 PLJ 100 (FC))

(x) Before attesting a mutation a public enquiry has to be made by the Revenue Officer who must satisfy himself about the identity of parties. The parties have an opportunity to represent their case when an enquiry is held on the spot (1970 RLR 576).

(xi) It is irregular to attest a mutation without summoning all the parties interested. Such order of mutation is liable to be set aside in mutation (1932 LLT 35) (1978 SLJ 24 F.C.)

(xii) In voidable transfers the mutation can be attested only if the fact of transfer of possession is proved otherwise it has to be refused (1972 SLJ 17 (FC))

(xiii) Entries in the revenue records, even though carry a presumption of truth, are rebuttable (1983 SLJ 270)

(xiv) Correction of revenue entries - Ownership - Held, this approach cannot be justified since the ownership and rights as recorded in the record of rights preceding settlement has to be kept in view for preparing the new record - The rights and titles as were continuing in the record as right cannot be ignored while preparing the new record. *Tulsi Ram (Shri) & Ors. v. Smt. Satya Chauhan & Anr.*, 2005(Suppl.) Cur.L.J. (H.P.) 320 (FC, H.P.)

Footnotes:

1

. Substituted by Act No. 21 of 1976.

39. Mutation Fees :-

(1) The State Government may fix a scale of fees for all or any classes or entries in any record or register under this Chapter and for copies of any such entries.

(2) A fee in respect of any entry shall be payable by the persons in whose favour the entry is made.

40. Penalty For Neglect To Report Acquisition Of Any Right Referred To In Section 35 :-

Any person neglecting to make the report required by section 35 within three months from the date of his acquisition of a right referred to in that section shall be liable, at the discretion of the Collector to a fine not exceeding five-times the amount of the fee

which would have been payable according to the scale fixed under the last foregoing section if the acquisition of the right had been reported immediately after its accrual.

41. Obligation To Furnish Information Necessary For The Preparation Of Records :-

Any person whose rights, interests or liabilities are required to be entered in any record under this Chapter shall be bound to furnish on the requisition of any Revenue Officer or Village Officer engaged in compiling the record, all information necessary for the correct compilation thereof.

42. Right Of The Government In Mines And Minerals :-

All mines of metal and coal and all earth oil and gold washing shall be deemed to be the property of the Government

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[for the purposes of the state and the State Government shall have all powers necessary for the proper enjoyment of government right thereto.]

Footnotes:

1

. Added Act 21 of 1976.

43. Presumption As To Ownership Of Forests, Quarries And Waste Lands :-

(1) When in any record of rights completed before the eighteenth day of November, 1871, it is not expressly provided that any forest, quarry, unclaimed, unoccupied, deserted or waste land, spontaneous produce or other accessory interest in land belong to the landowners, it shall be presumed to belong to the Government.

(2) When in any record of rights completed after that date it is not expressly provided that any forest or quarry or any such land or interest belongs to the Government, it shall be presumed to belong to the landowners.

(3) The presumption created by sub-section (1) may be rebutted by showing -

(a) from the records or report made by the assessing officer at the time of assessment; or

(b) if the record or report is silent, then from a comparison between the assessment of villages in which there existed, and the

assessment of villages of similar character in which there did not exist any forest or quarry, or any such land or interest; that the forest, quarry, land or interest was taken into account in the assessment of the land revenue.

(4) Until the presumption is so rebutted, the forest, quarry, land or interest shall be held to belong to the Government.

It has been held as under :-

A right in land not specified in the revenue records prepared after 1871 as belonging to Government vests in the landowner and not the Government (Chuni Lal v. Haryana State, 1971 PLR 159 (D.B.))

44. Compensation For Infringement Of Rights Of Third Parties In Exercise Of Right Of The Government :-

(1) Whenever, in the exercise of any right of the State referred to in either of the two last foregoing sections, the rights of any person are infringed by the occupation or disturbance of the surface of any land, the State Government shall pay, or cause to be paid to that person compensation for the infringement.

(2) The compensation shall be determined as nearly as may be in accordance with the provisions of the Land Acquisition Act, 1894.

45. Presumption In Favour Of Entries In Records Of Rights And Periodical Records :-

Any entry made in a record of rights in accordance with the law for the time being in force, or a

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[periodical] record in accordance with the provisions of this Chapter and the rules thereunder, shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted therefor:

Provided that notwithstanding anything contained in this section any entry made in the areas comprised in Himachal Pradesh immediately before 1st November, 1966

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[during the period between the first day of April, 1948 and the first day of April, 1956] in record of rights or in a

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[periodical] record whereby the land is shown as under self-cultivation shall not be presumed to be true.

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"Provided further that the records of rights and periodical record,

prepared by means of computerisation in the prescribed manner shall be presumed to be true and shall be deemed to have been prepared under this Chapter."

It has been held as under as under

:-

(i) It has been held that presumption of truth attaches to a Shajra Nasab pedigree table which forms a part of record of rights in SLJ 1974 (Himachal Pradesh) 241 and SLJ 1981 326 & SLJ 1982(9)

(ii) Entries in revenue record - Change - Held, the onus was thus on the defendants to show either that the tenancy was relinquished by the plaintiff or that the plaintiffs was ejected from the land in dispute by process of law -Ownership of plaintiffs cannot be disputed - Appeal dismissed. Suresh Chand & Ors. v. Gurdas Ram & Ors., 2004(1) Cur.L.J. (H.P.) 155 (H.P.)

Footnotes:

1

. Substituted by Act No. 21 of 1976.

2. Substituted by Act No. 11 of 1955 for the words and figures "after April, 1948".

3. Added by Act 15 of 2000.

46. Suit For Declaratory Decree By Persons Aggrieved By An Entry In A Record :-

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[If any person considers himself aggrieved as to any right of which he is in possession by an entry in a record-of-rights or in a [periodical] record, he may institute a suit for a declaration of his right under Chapter VI of the Specified Relief Act, 1963].

It has been held as under

:-

(i) The civil court cannot direct, the revenue officer to make entries in the record-of-rights or khasra Girdawri which is in the purview of the revenue officer-1975 RLR/1.

(ii) Entries in the revenue records are an important piece of evidence on the question of occupation-1978 Curr. LJ 199.

(iii) Stray entries should be ignored-1978 RCR 237.

(iv) Entries in jamabandi would prevail over those in khasra Girdawri if at variance 1967 LLT 70.

Footnotes:

1

. Substituted by Act No. 1 of 2004.

47. Powers To Make Rules Respecting Records And Other Matters Connected Therewith :-

The Financial Commissioner may make rules-

- (a) Prescribing the language in which records and registers under this Chapter are to made;
- (b) Prescribing the form of those records and registers, and the manner in which they are to be prepared, signed and attested;
- (c) for the survey of land so far as may be necessary for the preparation and correction of those records and registers;
- (d) for the conduct of inquiries by Revenue Officer under this Chapter; and
- (e) generally for the guidance of revenue Officer and Village Officers in matters pertaining to records and registers mentioned or referred to in this Chapter.

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[(f) for computerization of record-of-rights and periodical records.

It has been held as under :-

- (i) Rules framed by the Financial Commissioner under the provision of this section have the force of law. the instructions issued by him however, are only directory and not mandatory-1972 SLJ 301(D.B.)

Footnotes:

1

. Added by Act No. 15 of 2000.

48. Record Of-Rights And Periodical Records For Groups Of Estates :-

(1) The Financial Commissioner may direct that a record-of-rights the made for any group of neighbouring estates, instead of separately for each of the estates.

(2) The provisions of this Chapter with respect to recorded of rights and

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[periodical] record for an estate shall then, so far as they can be made applicable, apply to record-of-rights and annual record of a group of estates.

Footnotes:

1

. Substituted by Act No. 21 of 1976.

49. Assessment Of Land Revenue :-

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

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[Explanation. - For the purpose of this sub-section the expression "village site" shall have the same meaning as is assigned to the expression "site of village" in section 5:]

(2) Land-revenue shall be assessed in cash.

(3) Land may be assessed to land revenue notwithstanding that the revenue by reason of its having been assigned, released, compounded for or redeemed, is not payable to the State Government.

(4) Land-revenue may be assessed-

(a) as a fixed annual charge payable in lump sum or by instalments;

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

Footnotes:

1

. Added by Act No. 21 of 1976.

50. Basis Of Assessment- The Assessment Of Land Revenue Shall Be Bases On An Estimate Of :-

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(a)

2

[the average money value of the net-assets of the estate or group of estates in which the land concerned is situated; or]

(b) in the case of special assessment of land put to non-agricultural use in an assessment circle or part thereof-

(i) on the average net letting value of category and class of sites, or

(ii) where for any reason it is not possible to ascertain the net letting value, on the average market value of sites as determined in the manner prescribed:

Provided that when special assessment is made under Section 63, notwithstanding the period fixed for the continuance of an assessment or the limit provided in section 51 or the area having been declared to be urban assessment circle, the land revenue may be assessed as fixed annual charge payable in a lumpsum or by instalments in accordance with the rules made under this Act.]

Footnotes:

1

. Substituted by Act No. 21 of 1976.

2. Re-substituted by Act no. 1 of 2004.

51. Limits Of Assessment :-

1

[If the land revenue is assessed as a fixed annual charge the amount thereof, and, if it is assessed in the form of prescribed rate, the average amount which, according to an estimate in writing approved by the State Government will be levied annually shall not, in the case of any assessment circle exceed one-fourth of the estimated money value of the net assets of such assessment circle or in the case of special assessment on a category and class of sites of land put to non-agricultural use in an assessment circle or part thereof.

- (a) exceed one-fourth of the estimated average net letting value; or
- (b) exceed two to four per cent of the average market value; or
- (c) in the case of sites lying vacant and out of use, exceed one per cent of the average market value:

Provided that nothing contained in this section shall effect any assessment in force at the time of the commencement of this Act]

Footnotes:

1

. Substituted by Act No. 15 of 2000 and resubstituted by Act No. 1 of 2004.

52. Notification Of Intended Re-Assessment And Instruction As To Principles Of Assessment :-

- (1) Assessment of land revenue may be general or special.
 - (2) A general re-assessment of the land revenue of any area shall not be undertaken without the previous sanction of the State Government and notification of that sanction.
- In granting such sanction the State Government may give such instructions consistent with the provisions of this Act and the rules

made there under as it may deem for.

53. Mode Of Determining Assessment :-

- (1) A general assessment shall be made a Revenue Officer.
- (2) Before making such assessment the Revenue Officer shall report through the Financial Commissioner for the sanction of the State Government his proposals with regard thereto.

54. Announcement Of Assessment :-

- (1) After consideration of the proposals submitted by the Revenue Officer under the provisions of Section 53 of the State Government shall pass such order as it may deem fit,

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[subject to provisions of sub-sections 3 & 4] subject to the provisions of sub-sections (3) and (4) and on the receipt of such order the Revenue Officer shall make an order determining the assessment proper for each estate concerned and shall announce it in such manner as the State Government may by rule prescribe.

- (2) At the time of announcing the assessment the Revenue Officer shall also declare the date from which it is take effect, and, subject to the other provisions of this Act, it shall take effect accordingly.

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[(3). Subject to the provisions of sub-section (4), the average rate of incidence on the cultivated area of the land-revenue imposed under the provisions of sub-section (1) on any assessment circle forming part of any area in respect of which a notification has been issued under sub-section (2) of Section 52 shall not exceed the rate of incidence of the land revenue imposed at the last previous assessment by more than one-third :]

Provided that the rate of incidence of the assessment imposed on any estate shall not exceed the rate of incidence of the last previous assessment on that estate by more than three-fourth.

- (4) The provisions of sub-section (3) shall not be applicable in the case of land, -

- (a) which has not previously been assessed to land revenue; or
- (b) which is under fruit bearing orchards; or
- (c) in which kuhls or other artificial irrigation has been introduced after the date of the orders passed under the provisions of sub-section (1) at the last previous assessment; or
- (e) whose last previous assessment was made under the provisions

of clause (b) of sub-section (1) of Section 63; or
(f) which has been declared by notification to be urban assessment circle :

Provided that for the purpose of calculating the increase in the incidence of the land revenue for the purpose of sub-section (3), all such land shall be excluded from calculation :

Provided further that all areas falling within the limits of a Municipal Corporation, Municipal Council, or Nagar Panchayat shall be declared as urban assessment circles and the State Government may by notification declare any other suitable area to be an urban assessment circle."].

Footnotes:

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. Deleted by Act 15 of 2000 and inserted by Act No. 1 of 2004.

55. Application For Reconsideration Of Assessment :-

(1) The landowner, may, within thirty days from the date of the announcement of the assessment, present a petition to the Revenue

Officer for a reconsideration of the amount, form or conditions of the assessment.

(2)

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[Deleted]

(3) The order passed by the Revenue Officer on the petition shall set forth his reasons for granting or refusing it.

Footnotes:

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. Deleted by Act 15 of 2000.

56. Confirmation And Duration Of Assessment :-

(1) An assessment the undertaking of which has been sanctioned under the provisions of section 52 shall not be considered final until it has been confirmed by the State Government.

(2) At any time before an assessment is so confirmed the Commissioner or Financial Commissioner may subject to the provisions of sub-section (3) modify the assessment of any estate.

(3) Before an enhancement is ordered and the provisions of sub-section (2) the Commissioner or the Financial Commissioner, as the case may be, shall cause reasonable notice to be given to the landowners by proclamation published in the manner described in

section 23 to show cause in a petition addressed to the Revenue Officer why the proposed enhancement should not be ordered and the Revenue Officer shall enquire into any objections raised by any landowner and submit such petition received with his report thereon to the Commissioner or the Financial Commissioner, who shall consider the petition and the report and shall also hear the petitioner if he so desires.

57. Duration Of Assessment :-

(1) the State Government shall, when confirming an assessment under sub-section (1) of Section 56, fix a period of time for which the assessment shall remain in force.

(2) The period fixed under sub-section (1) shall be

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[twenty years]:

Provided that -

(i) in order to bring the duration of assessment on a uniform basis within a district the State Government may sanction shorter term of any local area;

(ii) nothing in this sub-section shall affect any assessment in force at the time of commencement of this Act or apply to an area which has been declared to be an urban assessment circle under the provision of sub-section

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[4] of Section 5.

Footnotes:

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. Substituted by Act No. 1 of 2004.

2. Substituted by Act No. 21 of 2000 and re-substituted by Act No. 1 of 2004.

58. Assessment To Remain Till New Assessment Takes Effect :-

Notwithstanding the expiration of the period fixed for the continuance of an assessment under the last foregoing section, the assessment shall remain in force till a new assessment takes effect.

59. Refusal To Be Liable For Assessment Of An Estate And Consequences Thereof :-

(1) At any time within ninety days from the date of the

announcement if an assessment of the estate, the landowner or where there are more landowners than one, any of them who would be individually or collectively liable for more than half the sum assessed may give notice to the Revenue Officer or refusal to be liable for the assessment.

(2) When the Revenue Officer receives a notice under sub-section (1) the Collector may take possession of the estate and deal with it himself as nearly as may be, or refer it to the Gram Panchayat as if the annulment of the assessment thereof had been ordered as a process for the recovery of an arrears of land revenue due thereon.

(3) While the estate is in the possession of the Collector the landowner or landowners shall be entitled to receive from the State Government an allowance to be fixed by the Financial Commissioner, which shall not be less than five and more than ten per cent of the net income realised by the Government from the estate.

60. Distribution Of The Assessment Of An Estate Over Holdings Comprised Therein :-

(1) If the assessment announced under Section 54 is in whole or in part of a fixed assessment of an estate for a term of years, the Revenue Officer shall, before the date on which the first instalment thereof becomes payable, make an order distributing it over the several holdings comprised in the estate and make and publish a record of the distribution.

(2) The Collector may for sufficient reason make an order revising that record at any time while the assessment continues to be in force, and publish the record so revised.

(3) If the assessment announced under Section 54 is in the form of rates chargeable according to the results of each year of harvest, a Revenue Officer shall from year to year or from harvest to harvest as the conditions of the assessment may require, make and publish not later than one month before the first instalment of the land revenue falls due, a record of the amount payable in respect of each holding.

61. Application For Amendment Of The Distribution Of An Assessment :-

(1) Any person affected by a record made under subsection (1) or sub-section (3) of the last foregoing section or by the revision of a record under sub-section (2) of that section may, within thirty days

from the date of publication of the record, present a petition to the Revenue Officer for a reconsideration of the record so far as it affects him.

(2) The order passed by Revenue Officer on the petition shall set forth his reasons for granting or refusing it.

62. Appeals From Orders Under Sections 55 And 61 :-

An appeal from an order under the last foregoing section or sections shall lie to the Commissioner, and from the appellate order of the Commissioner to the Financial Commissioner.

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[* * *]

Footnotes:

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. Deleted by Act No. 21 of 1976.

63. Special Assessment :-

(1) Special assessment may be made by Revenue Officer in the following cases, namely :-

(a) when land revenue which has been released or assigned is resumed;

(b) when lands are sold, leased or granted by the State;

(c) when the assessment of any land has been annulled or the landowner has refused to be liable therefor, and the term for which land was to be managed by the Collector or his agent or let in farm has expired;

(d) when assessments of land revenue require revision in consequence of the action of water or sand or calamity of season or from any other cause;

(e) when revenue due to the State on account of pasture or other natural products of land, or on account of mills, fisheries or natural products of water or on account of other rights described in Section 42 or Section 43, has not been included in an assessment made under the foregoing provisions of this Chapter.

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(f) when assessment of land revenue requires revision in consequence of the land being put to a use different from that for which an assessment is in force; and

(g) when the land has been put to use for non-agricultural purposes such as brick-kilns, factories, cinemas, shops, hotels, houses, landing grounds and other similar purposes, whether or not

already assessed to land revenue :

Provided that in case of clauses (f) and (g) any use of land for purposes of an orchard or for produce or the use of houses on such land occupied for agriculture purposes or for purposes subservient to agricultural or small scale cottage industries or for any public, charitable or religious purposes shall not be considered as a use different from that for which an assessment is in force or for non-agricultural purposes :

Provided further that in case of clauses (f) and (g) residential houses in occupation of the owners with an annual rental value not exceeding eight rupees shall not be liable to special assessment.

(2) The Financial Commissioner may confirm any assessment made under this Section.

(3) The foregoing provisions of this Chapter with respect to general assessments shall, subject to such modifications thereof as the Financial Commissioner may prescribe by executive instructions issued under the provisions of Section 67 regulate the procedure of Revenue Officers making special assessments.

Footnotes:

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. Deleted by Act No. 21 of 1976.

64. Power To Make Rules :-

The State Government shall, subject to the provisions of section 65 from time to time, make rules prescribing :

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[(a) the method by which the estimate of the money value and of the net assets of an estate or group of estates shall be made; and]

(b) the method by which an assessment to land revenue shall be made;

(c)

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[Deleted];

(d) the manner in which assessment shall be announced;

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[(e) the manner in which the rate of incidence of the land revenue is to be calculated for the purpose of sub-section (3) of section 54.]

Footnotes:

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. Substituted by Act 15 of 2000 and further amended by 1 of 2004.

2. Deleted by Act No. 21 of 2000.

3. Deleted by Act No. 15 of 2000 and re-added by Act No. 1 of 2004.

65. Procedure To Be Followed In Making Rules :-

Before making any rules under the provisions of Section 64, the State Government shall publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby.

66. Rules And Executive Instruments Issued Before Commencement Of This Act, To Be Followed For The Purpose Of Assessment Operations Begun Before Issue Of Rules Made Under The Provisions Of Section 65 :-

Notwithstanding any thing contained in Section 65 for the purpose of all assessment operations begun before the date of publication of rules made after the commencement of this Act, the rules and executive instructions relating to the matters mentioned in clauses (a), (b), (c) and (d) of Section 64 which were in force before such publication shall remain in force.

67. Power To Issue Instructions :-

The State Government or the Financial Commissioner with the approval of the Government may for the guidance of Revenue Officers, from time to time, issue executive instructions relating to all matters to which the provisions of this Chapter apply, provided that such instructions shall be consistent with the provisions of this Act and rules made thereunder.

CHAPTER 6

COLLECTION OF LAND REVENUE

68. Security For Payment Of Land Revenue :-

(1) In the case of every estate the entire estate and the landowner or, if there are more than one, the landowners jointly and severally shall be liable for the land revenue for the time being assessed on the estate :

Provided that -

(a) the State Government may by notification declare that in any estate a holding or its owner shall not be liable for any part of the land revenue for the time being assessed on the estate except that part which is payable in respect of the holding; and

(b) when there are superior and inferior landowners in the same estate, the Financial Commissioner may by rule, or by special order in each case, determine whether the superior or interior landowners shall be liable for the land revenue, or whether both shall be so liable, and, if so, in what proportions. (2) A notification under proviso (a) to sub-section (1) may have reference to any single estate or to any class of estate or estates generally in any local area.

Each share-holder is liable not only for the demand due on his own holding, but also for any arrears that may arise in respect of another holding. When an estate consists of two or more recognised sub-divisions, pattis or tarafs the joint and several responsibility for an arrears arising in any particular subdivision should, in the first instance, be enforced against the share holders in the sub-division, and not against the whole community.

69. Further Security For Payment Of Land Revenue :-

(1) The land revenue for time being assessed on an estate or payable in respect of a holding shall be the first charge upon the rents, profits and produce thereof.

(2) Without the previous consent of the Collector, the rents profits or produce of an estate or holding shall not be liable to be taken in execution of a decree or order of any court until the land revenue chargeable against the rents, profits or produce, and any arrears of land revenue due in respect of the estate or holding have been paid.

70. Orders To Regulate Payment Of Land Revenue :-

(1) Notwithstanding anything in any record-of-rights, the Financial Commissioner may fix the number and amount of the instalments and the times, places and manner by, at and in which land revenue is to be paid.

(2) Until the Financial Commissioner otherwise directs, land revenue shall be payable by the instalments at the time and place and in the manner by, at and in which it is payable at the commencement of this Act.

71. Rules To Regular Collection, Remission And Suspension Of Land Revenue :-

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

Act to regulate the collection, remission and suspension of land revenue and may by those rules determine the circumstances and terms in and on which land revenue may be collected by the assignee.

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

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

72. Costs Recoverable As Part Of Arrears :-

The costs of any process issued under this Chapter shall be recoverable as part of the arrears of land revenue in respect of which the process was issued.

73. Certified Account To Be Evidence As To Arrears :-

A statement of account certified by a Revenue Officer shall be conclusive proof of the existence of an arrears of land revenue, or its amount and of the person who is the defaulter.

74. Process For Recovery Of Arrears :-

Subject to other provisions of this Act, an arrears of land revenue may be recovered by any one or more of the following process. namely:-

(a) by service of a writ of demand on the defaulter;

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(b) by arrest and detention of his person];

(c) by distress and sale of his movable property and uncut or ungathered crops;

(d) by transfer of the holding in respect of which the arrears is due;

(e) by attachment of estate or holding in respect of which the arrears is due;

(f) by annulment of the assessment of that estate or holding;

(g) by sale of that estate or holding;

(h) by proceedings against other immovable property of the defaulter.

Footnotes:

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. Clause (b) Added Act No. 21 of 1976).

75. Writ Of Demand :-

A writ of demand may be issued by a Revenue Officer on or after the day following that on which an arrears of land revenue accrues.

75A. Xxx :-

[(1) At any time after an arrears of land revenue has accrued a Revenue Officer, may issue a warrant directing an officer named therein to arrest the defaulter and bring him before the Revenue Officer.

(1) When the defaulter is brought before the Revenue Officer the Revenue Officer, the Revenue Officer may cause him to be taken before the Collector or may keep him under personal restraint or in the revenue lock up for a period not exceeding ten days and then, if the arrears is still unpaid, cause him to be taken before the Collector.

(2) When the defaulter is brought before the Collector, the Collector may issue an order to the officer-in-charge of the civil jail of the district directing him to confine the defaulter in the jail for such period not exceeding one month from the date of the order, as the Collector thinks fit.

(3) The process of arrest and detention shall not be executed against a defaulter who is a female, a minor, a lunatic or an idiot]

Footnotes:

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. Added by Act No. 21 of 1976.

76. Distress And Sale Of Movable Property And Crops :-

(1) At any time after an arrears of land revenue has accrued, the movable property under and ungathered crops of the defaulter may be distrained and sold by order of a Revenue Officer

(2) The distress and sale shall be conducted as nearly as may be, in accordance with the law for the time being in force for the attachment and sale of movable property under the decree of a Revenue Court constituted under the

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[Law for the time being in force]

Provided that, in addition to the particulars exempted by that law from liability to sale, so much of the produce of the land of the defaulter as the Collector think necessary for seed grain and for the subsistence, until the harvest next following, of the defaulter and his family, and of any cattle exempted by that law, shall be exempted from sale under this section.

Footnotes:

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. Substituted by Act No. 21 of 1976.

77. Transfer Of Holding :-

(1) At any time after an arrears of land revenue has accrued on a holding, the Collector may transfer the holding to any person being a landowner of the estate in which this holding is situate and not being a defaulter in respect of his own holding, on condition of his paying the arrears before being put in possession of the holding, and on such further conditions, as the Collector may see fit to prescribe.

(2) The transfer may, as the Collector thinks fit, be either till the end of the agricultural year in which the defaulter pays to the transferee the amount of the arrears which the transferee paid before being put in possession of the holding, or for a term not exceeding fifteen years and from the commencement of the agricultural year next following the date of the transfer.

(3) The Collector shall report to the Financial Commissioner any transfer made by him under this section, and the Financial Commissioner may set aside the transfer or alter the conditions thereof or pass such other order as he thinks fit.

(4) A transfer under this section shall not affect the joint and several liability of the landowners of the estate in which it is enforced.

(5) In respect of all rights and liabilities arising under this Act, the person to whom the holding is transferred shall, subject to the conditions of the transfer, stand in the same position as that in which the defaulter would have stood if the holding had not been transferred.

(6) When the transfer was for a term the holding shall, on the expiration of the term, be restored by the Collector to the defaulter free of any claim on the part of the State Government or the transferee for any arrears of land revenue or rates and cesses due in respect thereof.

78. Attachment Of Estate Or Holding :-

(1) At any time after an arrears of land revenue has accrued Collector may cause the estate or holding in respect of which the arrears is due to be attached and taken under his own management or that of 1[an agent appointed by him for that purpose] or that a Gram Panchayat.

(2) The Collector

[or the agent] or Gram Panchayat shall be bound by all the engagements which existed between the defaulter and his tenants, if any, and shall be entitled to manage the land and to receive all rents and profits accruing therefrom to the exclusion of the defaulter until the arrears has been satisfied or until the Collector restores the land to the defaulter.

(3) All surplus profits of the land attached beyond the cost of attachment and management and the amount necessary to meet the current demand for land revenue and rates and cesses shall be applied in discharge of the arrears.

(4) Land shall not be attached for the same arrears for a longer term than five years from the commencement of the agricultural year next following the date of the attachment, but, if the arrears is sooner discharged, the land shall be released and the surplus receipts, if any, made over to the landowner.

Footnotes:

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. Inserted by Act No. 21 of 1976.

79. Annulment Of Assessment Of Estate Or Holding :-

(1) When an arrears of land revenue has been due for a longer period than one month, and the foregoing are not deemed sufficient for the recovery thereof, the Financial Commissioner, may, in addition to or instead of all or any of those processes, order the existing assessment of the estate or holding in respect of which the arrears is due to be annulled.

(2) The provision of this section shall not be put in force for the recovery of an arrears of land revenue which has accrued on land :-

(a) while under attachment under the last foregoing section; or

(b) while under the charge of the Court of Wards.

(3) When the assessment of any land has been annulled, the Collector may, with the previous sanction of the Financial Commissioner, either manage the land himself or through an agent, or let it in farm to any person willing to accept the farm, for such term and on such conditions as may be sanctioned by the Financial Commissioner:

Provided that the term for which land may be so managed or farmed shall not be longer than fifteen years from the commencement of the agricultural year next following the date of the annulment.

(4) At some time before the expiration of that term the Collector

shall determine the assessment to be paid in respect of the estate or holding for the remainder of the term of the current assessment of the district or tehsil and, when that assessment has been sanctioned by the Financial Commissioner, shall announce it to the landowner.

(5) The landowner may give notice to the Collector of refusal to be liable for the assessment within thirty days from the date on which the assessment was announced to him.

(6) If notice is so given, the Collector may, with the previous sanction of the Financial Commissioner, take the estate or holding under direct management or farm it for, the remainder of the term of the current assessment of the district or tehsil, or for any period within that term which the Financial Commissioner may fix.

(7) When the assessment of a holding is annulled, the joint responsibility of the other landowners of the estate for the land revenue of that holding becoming due after the annulment shall be in abeyance until a new assessment takes effect.

(8) The Financial Commissioner may direct that any contract made by the defaulter, or by any person through whom the defaulter claims, with respect to any land comprised in an estate or holding of which the assessment has been annulled, shall not be binding on the Collector or his agent or farmer during the period for which the estate or holding remains under the management of the Collector or his agent or is let in farm.

80. Proclamation Of Attachment Or Annulment Of Assessment And Consequence Of The Proclamation :-

(1) When any land is attached under Section 78, or when the assessment of any land has been annulled under the last foregoing section, the Collector shall make proclamation thereof.

(2) No payment made by any person to the defaulter before the making of the proclamation on account of rent or any other asset in anticipation of the usual time for the payment shall, without the special sanction of the Collector, be credited to that person or relieve him from liability to make the payment to the Collector or his agent or farmer.

(3) No payment made after the making of the proclamation on account of rent or any other asset of the estate or holding to any person other than the Collector or his agent or farmer shall be credited to the person making the payment or relieve him from the liability to make the payment to the Collector or his agent or

farmer.

81. Sale Of Estate Or Holding :-

When an arrears of land revenue has accrued and the foregoing processes are not deemed sufficient for the recovery thereof, the Collector, with the previous sanction of the

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[Commissioner,] may, in addition to, or instead of, all or any of those processes, and subject to the provisions hereinafter contained, sell the estate or holding in respect of which the arrears is due:

Provided that land shall not be sold for the recovery of :-

(a) any arrears which has accrued while the land was under the charge of the Court of Wards, or was so circumstances that the Court of Wards might have exercised jurisdiction over it under the law in force;

(b) any arrears which has accrued while the land was under attachment under Section 78 of this Act; or

(c) any arrear which has accrued while the land was held under direct management by the Collector or in farm by any other person, under Section 79, after either an annulment or refusal to be liable therefor.

it has been held as under :-

(i) Sale of attached property for realisation of amount that falls due during period of attachment is prohibited in terms of clause

(b) above. Disregard of this mandatory provision will make the sale without jurisdiction. 1972 PLR 1009.

(ii) Recovery by sale of estate or holding can be resorted to when all the foregoing processes are deemed to be ineffective.

For obtaining the sanction of the Financial Commissioner a Deputy Commissioner is required to prove that the proprietor or the community is either hopelessly insolvent or stubbornly contumacious. (1967 PLJ 168).

Footnotes:

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. Substituted by Act No. 21 of 1976.

82. Effects Of Sale On Encumbrances :-

(1) Land sold under the last foregoing section shall be sold free of all encumbrances, and all grants and contracts previously made by any person other than the purchaser in respect of the land shall

become void as against the purchaser at the sale.

(2) Nothing in sub-section (1) shall affect :-

(a) a tenants right of occupancy, unless the right was created by the defaulter himself; or

(b) any lease at a fair rent, temporary or perpetual, for the erection of a dwelling house or manufacture, or for a mine, garden, tank, canal, place of worship, or burial ground, so long as the land continues to be used for the purposes specified in the lease; or

(c) any encumbrances, grant, contract, or right of occupancy specially saved by order of the Financial Commissioner and proclaimed as hereinafter provided.

83. Proceedings Against Other Immovable Property Of Defaulter :-

(1) If the arrears cannot be recovered by any of the processes hereinbefore provided, or if the

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[Commissioner] considers the enforcement of any of those processes to be inexpedient, the Collector may, where the defaulter owns any other estate or holding or any other immovable property proceed under provisions of this Act against that property as if it were the land in respect of which the arrear is due :

Provided that no interests save those of the defaulter alone shall be so proceeded against, and no encumbrances created, grants made or contracts entered into by him in good faith shall be rendered invalid by reason only of his interests being proceeded against.

(2) When the Collector determines to proceed under this Section against

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[immovable property] other than the land in respect of which the arrear is due, he shall issue a proclamation prohibiting the transfer or charging of the property.

(3) the Collector may at any time by order in writing withdraw the proclamation, and it shall be deemed to be withdrawn when either the arrear has been paid or the interest of the defaulter in the property have been sold for the recovery of the arrear.

(4) Any private alienation of the property, or of any interest of the defaulter therein, whether by sale, gift, mortgage, or otherwise, made after the issue of the proclamation and before the withdrawal thereof shall be void.

(5) In proceeding against property under this section "the Collector

shall follow, as nearly as the nature of the property will admit, the procedure prescribed for the enforcement of process against land on which an arrear of land revenue is due.

Footnotes:

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. Substituted by Act No. 11 of 1955.

2. Substituted by Act No. 11 of 1955.

84. Remedies Open To Person Denying His Liability For An Arrear :-

(1) Notwithstanding anything in section 73 when proceedings are taken under this Act for the recovery of an arrear the person against whom the proceedings are taken may, if he denies his liability for the arrear or any part thereof and pays the same under protest made in writing at the time of a payment and signed by him or his agent, institute a suit in a Civil Court for the recovery of the amount so paid.

(2) A suit under sub-section (1) must be instituted in a Court having jurisdiction in the place where the office of the Collector of the district in which the arrear or some part thereof accrued is situate.

85. Proclamation Of Sale :-

(1) On the receipt of the sanction of the

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[Commissioner] to the sale of any immovable property, the Collector shall issue a proclamation of the intended sale, specifying :

(a) the date, time and place of the sale;

(b) the property to be sold, and if it is an estate or holding, the land revenue assessed thereon or payable in respect thereof;

(c) if the property is to be sold for the recovery of an arrear due in respect thereof, the encumbrances, grants, contracts and rights of occupancy, if any, specially saved by order of the Financial Commissioner under Section 82, sub-section (2) clause (c);

(d) if the property is to be sold otherwise than for the recovery of an arrear due in respect thereof any encumbrance, grant of contract to which the property is known to be liable; and

(e) the amount for the recovery of which the sale is ordered.

(2) The place of sale specified under clause (a) sub-section (1) must be either the office of the Collector or some place appointed

by the Collector in this behalf and situate in or near the property to be sold.

It has been held as under

:-

(i) Law of contract applies to an auction sale Condition in the proclamation of sale whereby the Collector reserved the right to cancel the auction if the highest bid fetched less than reasonable price is valid. (Naurata Ram v. Asstt. Collector, Patiala, 1967 PLJ 68)

Footnotes:

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. Substituted by Act No. 21 of 1976.

86. Indemnity To Revenue Officer With Respect Of Contents Of Proclamation :-

A Revenue Officer shall not be answerable for any error, mis-statement or commission in any proclamation under the last foregoing section unless the same has been committed or made dishonestly.

87. Publication Of Proclamation :-

(1) a copy of the proclamation shall be served on the defaulter and be pasted in a conspicuous part of the office of the Tehsildar of the tehsil in which the property to be sold is situate.

(2) After a copy of the proclamation has been served on the defaulter and pasted in the office of the Tehsildar, a copy thereof shall be pasted in the office of the Collector.

(3) The proclamation shall be further published in a manner prescribed in Section 23 and in such other manner as the Collector thinks expedient.

88. Time And Conduct Of Sale :-

(1) The sale shall not take place on Sunday or other holiday, or till after the expiration of at least thirty days from the date on which the copy of the proclamation was pasted in the office of the Collector.

(2) The sale shall be by public auction, and shall be conducted either by the Collector in person or by a Revenue Officer specifically appointed by him in this behalf.

89. Power To Postpone Sale :-

The Collector may from time to time postpone the sale.

90. Stay Of Sale :-

If at any time before the bidding at the auction is completed the defaulter pays the arrear in respect of which the property has been proclaimed for the sale, together with the costs incurred for the recovery thereof, to the office conducting the sale, or proves to the satisfaction of that officer that he has already paid the same either at the place and in the manner prescribed under Section 70 or into the Government treasury, the sale shall be stayed.

91. Payment Of Deposit By Highest Bidder :-

When the highest bid at the auction has been ascertained the person who made that bid shall, on the requisition of the officer conducting the sale, pay to that officer a deposit of twenty-five per centum on the amount of his bid, and shall, on payment thereof, be declared to be the purchaser subject to the provisions of this chapter with respect to the exercise of any right of pre-emption.

92. Consequence Of Failure To Pay Deposit :-

If the person who made the highest bid fails to pay the deposit as required by the last foregoing section, the property shall forthwith be put up again and sold, all expense attending the first sale, and the deficiency of price, if any, which may happen on the resale, may be recovered from him by the Collector as if the same were an arrears of land revenue.

93. Time For Payment In Full :-

The full amount of the purchase money shall be paid by the purchaser before the close of the fifteenth day from that on which the purchaser was declared.

It has been held as under

:-

In the event of failure to comply, the auction purchaser is precluded from becoming the owner and the sale is a nullity. No extension of time for depositing the amount after the mandatory stipulated period can be given. (1971 SLJ 38 (FC) 1968 PLJ 153)

94. Procedure In Default Of Payment :-

In default of payment of the full amount of the purchase money within the period mentioned in the last foregoing section, the deposit referred to in section 91 shall, after defraying the expenses of the sale, be forfeited to the State Government and may, if the Collector, with the previous sanction of the Commissioner so directs, be applied in reduction of the arrears and the property shall be resold, and the defaulting purchaser shall have no claim in the property or to any part of the sum for which it may subsequently be sold.

95. Report Of Sale To Commissioner Or Financial Commissioner :-

Every sale of immovable property under this Chapter shall be reported by the Collector to the Commissioner.

96. Application To Set Aside Sale :-

(1) At any time within thirty days from the date of the sale, application may be made to the Commissioner to set aside the sale on the ground of some material irregularity or mistake in publishing or conducting it.

(2) But a sale shall not be set aside on that ground unless the applicant proves to the satisfaction of the Commissioner that he has sustained substantial injury by reason of the irregularity or mistake. It has been held as under :-

(i) The Commissioner entertained an application for setting aside a sale barred by one day's delay and referred it to the Deputy Commissioner for report. The latter confirmed the commission of irregularities in the sale resulting in substantial loss to the petitioner. Held, the Commissioner could not reject the application being time-barred - *Bachittar Singh v. State of Punjab*, 1972 PLJ 246 (ii) under Order 21 Rule 89 of the Civil Procedure Code the owner of the property or anyone having interest can file the application - 1970 PLR 438, 1975 RLR 315, 1974 Cur.LJ 43.

97. Order Confirming Or Setting Aside Sale :-

(1) After the expiration of thirty days from the date of the sale, if such application as is mentioned in the last foregoing section has not been made, or if such application has been made and rejected, the Commissioner shall make an order confirming the sale, and, if

such application has been made and allowed, the Commissioner shall make an order setting aside the sale.

(2) An order made under this section shall be final.

98. Refund Of Purchase Money On Setting Aside Of Sale :-

Whenever the sale of any property is set aside, the purchaser shall be entitled to receive back his purchase money within three months of the date of rejection of the sale after which date the purchaser will be entitled to interest at such rate not exceeding three per cent per annum as the Financial Commissioner thinks fit on the money deposited.

99. Proclamation After Postponement Or On Resale :-

A sale made after a postponement under section 89 and a resale consequent on a purchasers default under section 94 or on the setting aside of a sale under section 97, shall be made after the issue of a fresh proclamation in the manner hereinbefore prescribed for the sale.

100. On Confirmation Of Sale, Possession And Certificate To Be Granted To Purchaser :-

(1) After a sale has been confirmed in manner aforesaid the Collector shall put the person declared to be the purchaser into possession of the property sold, and shall grant him a certificate to the effect that he has purchased that property.

(2) The certificate shall state whether or not the property was sold for the recovery of an arrear due in respect thereof, and, if it was so sold, shall set forth the encumbrances, grants, contracts and rights of occupancy if any, specified in the proclamation of the sale as specially saved by order of the Financial Commissioner under section 82, sub-section (2), clause (c).

(3) The certificate shall be deemed to be valid transfer of the property but need not be registered as a conveyance.

(4) Any suit brought in any Court against the certified purchaser on the ground that the purchase was made on behalf of a person other than the certified purchaser shall be dismissed with costs.

(5) The certified purchaser of any immovable property shall be entitled to all rents and profits falling due in respect of the property after the date of the confirmation of the sale and be liable for all instalments of land revenue and rates and cesses falling due in

respect thereof after that date.

101. Proceeds Of Sale :-

(1) When a sale of immovable property under this Chapter has been confirmed, the proceeds of the sale shall be applied in the first place to the payment of any arrears, including cost incurred for the recovery thereof due to the State from the defaulter at the date of the confirmation of the sale, whether the arrears are of land revenue, or of sum recoverable as arrears of land revenue, and the surplus, if any, shall be paid to the persons whose property has been sold or, if the property sold was owned by more than one person, then to the owners either collectively or according to the amount of their recorded interests, as the Collector thinks fit.

(2) The surplus shall not, except under an order of a Court, be paid to any creditor of a person whose property has been sold.

(3) If the proceeds of the sale fall short of such arrears as are referred to in sub-section (1), the balance remaining due from the defaulter may be recovered from him by further proceedings under this Chapter or by any other means authorized by law.

CHAPTER 7

RECOVERY OF OTHER DEMANDS BY REVENUE OFFICERS

102. Recovery Of Certain Arrears Through Revenue Officer Instead Of By Suit :-

When a village officer required by rules under section 29 to collect any land revenue or any sum recoverable as arrears of land revenue satisfies the Revenue Officer that revenue or sum has fallen due and has not been paid by him the Revenue Officer may subject to any rules which the Financial Commissioner may make in this behalf, recover it as if it were an arrears of land revenue.

103. Other Sums Recoverable As Arrears Of Land Revenue :-

In addition to any sums recoverable as arrears of land revenue under this Act or any other enactment for the time being in force, the following sums may be so recovered namely:-

(a) fees, fines costs and other charges, including the village officers cess payable under this Act;

(b) revenue due to the Government on account of pasture or other natural products of lands, or on account of mills, fisheries or natural

products of water, or on account of other rights described in section 42 or section 43 in cases in which the revenue so due has not been included in the assessment of an estate;

(c) fees payable to local bodies including the Panchayat formed under

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[the Himachal Pradesh Panchayati Raj Act, 1968] for the use of or benefits derived from the following works:-

(i) the constructions and repair of embankments and the supply, storage and control of water for agriculture purposes;

(ii) the preservation and reclamation of soil, and the drainage and reclamation of swamps;

(d) sums leviable by or under the authority of the State Government as water-rates, or on account of the maintenance or management of embankments and other irrigation works, not being sums recoverable as arrears of land revenue under any enactment for the time being in force;

(e) sums payable to the State Government on account of rent and other dues in respect of land; and

(f) sums payable to the State Government by a person who is surety for the payment of any of the foregoing sums or of any other sum recoverable as an arrear of land revenue.

Footnotes:

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. Substituted vide Act No. 21 of 1976.

104. Recovery Of Arrears Due From Co-Sharers Paid By Nambardar :-

(1) Any Nambardar who has paid an arrear of revenue due on account of the share of any co-sharer whom he represents, may, within six months from the date of such payment, apply in writing to the Revenue Officer to recover such arrear on his behalf as if it were an arrear of Revenue payable to State Government.

(2) The Revenue Officer shall on receipt of such application, satisfy himself that the amount claimed is due to the Nambardar and may then subject to rules made under this Act proceed to recover, as if it were an arrear of land revenue such amount with costs and interests from the said co-sharer or any person in possession of his share.

(3) The Revenue Officer shall not be made a defendant in any suit in respect of an amount for the recovery of which an order has

been passed under this section. No appeal shall lie, from an order of a Revenue Officer under this section.

105. Application Of Chapter Vi To Sums Recoverable Under This Chapter :-

(1) The provisions of Chapter VI, shall, with respect of any sum mentioned or referred to in this Chapter, apply, so far as they can be made applicable as if the sum were an arrear of land revenue and the person from whom, either as principle or as surety, it is due where a defaulter in respect of such, an arrear.

(2) Unless any such sum is declared by any enactment for the time being in force to be recoverable as if it were an arrear of land revenue due in respect of the land charged therewith, the provisions of section 83 shall apply under sub-section (1) to the recovery thereof."

It has been held as under :-

(i) Where arrears of rent due to a Panchayat under some other enactment are declared as arrears of land revenue the only remedy available to an aggrieved person is to deposit the dues and then approach a competent civil court under section 84 of HP Land Revenue Act (corresponding section 78 of the Punjab Land Revenue Act)- Faqir Chand v. Gram Sabha, Lataur 1970 RLR 408.

CHAPTER 8

SURVEYS AND BOUNDARIES

106. Powers Of Financial Commissioner To Make Rules For Demarcation Of Boundaries And Erection Of Survey-Marks :-

(1) The Financial Commissioner may make rules as to the manner in which the boundaries of all or any estates in any local area are to be demarcated and as to the survey-marks to be erected within those estates.

(2) Rules under this section may prescribe, among other matters the form of survey-marks and the material to be used in their construction.

107. Power Of Revenue Officers To Define Boundaries :-

(1) A Revenue Officer may for the purpose of framing any record or making any assessment under this Act or on the application of any person interested, define the limits of any holding, field or other portion of an estate, and may, for the purpose of indicating those

limits, require survey-marks to be erected or repaired.

(2) In defining the limits of any land under sub-section (1) the Revenue Officer may, cause survey-marks to be erected on any boundary already determined by or by order of any Court, Revenue Officer or Forest Settlement Officer, or restore any survey-marks already set up, or by order of any Court of any such Officer.

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[Deleted]

It has been held as under :-

(i) Demarcation of boundary by a competent Revenue Officer under Section 107. Order of fresh demarcation by the Collector subsequently is illegal and without jurisdiction under subsection (3) of Section 17 the Collector is empowered only to call for record in a case and report such case together with his opinion for the orders of the Financial Commissioner - 1984 SLJ 378.

Footnotes:

1. Added by Act No. 15 of 2000 and deleted by Act No. 1 of 2004.

108. Power To Fix Boundary Between Riverain Estates :-

(1) When any two or more estates are subject to river action and the limits of any such estates are by any law, custom, decree or order applicable thereto, liable to vary according to variations may from time to time occur in the course or action of river, the State Government may order a permanent boundary line to be fixed between any such estates or such portion thereof as are liable to river action.

(2) Upon an order being made under sub-section (1), the Collector shall fix a boundary line between such estates or portion of such estates accordingly, and shall demarcate the same, in accordance with the rules (if any) made under section 106 and the provisions of Section 107.

(3) Every such boundary line shall be fixed with due regard to the history of the estates and the interests of the persons respectively owning them or possessing rights therein, in such a manner as may be just and equitable in the circumstances in each case.

(4) No such boundary line shall be deemed to have been permanently fixed until it has been approved by the Financial Commissioner.

109. Effect Of Fixing A Boundary Between Riverain Estates

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(1) Every boundary line fixed in accordance with the provisions of section 108 shall, notwithstanding any law or custom, or any decree or order of any court of law, to the contrary be the fixed and constant boundary between the estates affected thereby and the proprietary and all other rights in every holding, field or other portion of an estate situate on each side of the boundary line so fixed, shall, subject to the following provision, vest in the landowners of the estate which lies on that side of the boundary line on which such holding, field or other portion of an estate is situate :

Provided that, if by the operation of this section the proprietary or any other rights in any land which at the time a boundary line is fixed is under cultivation, or reasonably fit for cultivation or yields, and produce of substantial value would be transferred from the landowners and other right holders of any one estate to the land owners of any other estate, the Collector shall, by written order direct that the rights in such land shall, subject to provisions of Section 110 and Section 111 not be so transferred unless and until the land, in respect of which any such order is made, ceases to be, reasonably fit for cultivation, or to yield any produce of substantial value, and upon any such order being made, the transfer of the rights in such lands shall be suspended accordingly :-

Provided further that when any portion of the land specified in any such order ceases to be reasonably fit for cultivation or to yield any produce of substantial value, the order shall when the Collector, in writing so directs, cease to operate as to that portion.

(2) The decision of the Collector as to whether for the purposes of the proviso to sub-section (1) of this section, any land is or is not reasonably fit for cultivation or does not yield any produce of substantial value shall be final.

110. Application For Immediate Transfer Of Rights, Reserved Under The Proviso To Sub-Section (1) Of Section 109 Upon Payment Of Compensation And Procedure Thereupon. Award Of Compensation And Extinguishment Of Rights Thereby :-

(1) When any order has been made under the proviso to sub-section (1) of Section 109 the landowners (or any of them) in whom but for such order, the rights in the land specified therein would vest, may apply in writing, to the Collector to forthwith transfer the rights, the transfer of which has been suspended by

such order, upon payment of compensation for the same.

(2) When an application under sub-section (1) is made, the Collector shall --

(a) fix a day for the hearing of the application:

(b) cause notice of the application and of the day fixed for the hearing thereof, to be served on, or proclaimed for the information of all persons recorded as having rights in the land specified in the order made under the proviso to sub-section (1) of section 109, and all other persons interested or claiming to be interested therein;

(c) upon the day so fixed for hearing, or any day to which the hearing may be adjourned, inquire into the rights in the land and award compensation in respect of all rights, found established therein to the persons severally entitled thereto;

(d) inform the applicant of the aggregate amount of compensation so awarded and require him to deposit the amount with the Collector on or before a day to be fixed by him in that behalf:

Provided that, notwithstanding anything in this sub-section contained, it shall be lawful for the Collector, in his discretion and at any time before an award of compensation thereon has been made, to reject any application made under sub section (1).

(3) In awarding compensation under sub-section (2), the Collector shall be guided by the provisions of section 23 and section 24 of the Land Acquisition Act, 1894, so far as the same may be applicable to the circumstances of the case.

(4) Upto the fifteenth day of May next after the whole amount of compensation so awarded has been deposited with the Collector, the order made under the proviso to sub-section (1) of section 109, shall cease to operate, and the rights specified therein shall be transferred and vest in the manner prescribed in sub-section (1) of section 109, notwithstanding anything in the proviso thereof contained, and the Collector shall proceed to tender the compensation to the persons severally entitled to receive the same under his award. If any such person shall refuse to accept the sum so awarded and tendered to him, it shall be placed to his credit in the public treasury.

(5) When any order made under the proviso to sub-section (1) of section 109 shall, under the provisions of sub-section (4) of this section cease to operate and determine all rights reserved to any person by such order shall be extinguished.

111. Order Under The Proviso To Sub-Section :-

(1) of section 109 to cease to apply to rights voluntarily transferred to a landowner of the estate to which the land is transferred by fixing boundary. When any person possessing any rights in any land, in regard to the rights in which an order has been made under the proviso to sub-section (1) of section 109, voluntarily transfers such rights to any landowners of the estate, in the land owners of which, but for such order such rights would vest under the operation of subsection (1) of Section 109, the rights so transferred shall forthwith cease to be subject to such order.

112. Rights Transferred To Be Liable To All The Incidents Of Tenure Of The Estate To Which The Transfer Is Made :-

In every case in which, by the operation of section 109 or section 110 or section 111, proprietary or other rights in land are transferred from the landowners and other right-holders of any one estate to the landowners of any other estate, such rights shall be subject to all the incidents of tenure and liabilities which under any law or custom for the time being in force, apply to the rights of the landowners of the estate to which such rights are so transferred.

113. Meaning Of The Expression "Collector" In Sections 108 To 110 :-

For the purpose of sections 108, 109 and 110, respectively, the expression "Collector" shall be deemed to include any Revenue Officer appointed by the State Government to perform all or any of the functions of a Collector under any of the provisions thereof.

114. Deleted :-

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["114. Cost of erection and repair of survey-mark.--

(1) Subject to any rules which the Financial Commissioner may make in this behalf, survey-marks shall be erected or repaired at the cost of the State Government.]

(2)

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[During the making or special revision of record of rights, the Settlement Officer shall get the survey-mark erected, and therefore, it shall be the duty of the Collector of the District to maintain the survey-mark in good condition."].

Footnotes:

1. Substituted by Act 15 of 2000.

115. Recovery Of Cost Incurred By The Government :-

[Deleted]

Footnotes:

1. Substituted by Act 15 of 2000.

116. Power Of Revenue Offices To Enter On Land For Purpose Of Survey And Demarcation :-

Any Revenue Officer, and any person acting under the order of a Revenue Officer may, in the discharge of any duty under this Act, enter upon and survey land and erect survey marks thereon and demarcate the boundaries thereof, and do all other acts necessary for the proper performance of that duty.

117. Survey For Purpose Of Preparation Of Records :-

(1) When any land is being surveyed in pursuance of rules under Section 47, clause (c), and Revenue Officer directing the survey may, by notice or proclamation, require all persons having rights or interests in the land to indicate, within a specified time, by temporary marks of a kind to be described in the notice or proclamation, the limits of those rights or interests.

(2) If a person to whom the notice or proclamation is addressed fails to comply with the requisition, he shall be liable at the discretion of the Revenue Officer to fine which may extend to ten rupees.

118. Provision Of Flag-Holders And Chain-Men For Those Surveys :-

(1) For the purposes of the survey of any land in pursuance of rules under section 47, clause (c), the landowners shall be bound to provide fit persons to act as flag holders and chain-men.

(2) If the landowners fail to provide such persons or to provide them in sufficient number, such other persons as a Revenue Officer considers necessary may be employed and the cost of employing them recovered from the landowners as if it were an arrear of land revenue.

119. Professional Surveys :-

(1) If it is necessary to make a survey by other agency than that of Revenue Officer or village Officer or Village Officers, the State Government may publish a notification stating -

(a) the local area to be surveyed and the nature of the survey;

(b) the name of official designations of the officers by whom the survey is to be made; and

(c) the kind of survey marks to be erected by those officers.

(2) From the date of the notification the officers specified therein, and the person acting under their orders, shall have for the purposes of the survey the powers conferred on Revenue Officers by section 116.

120. Section 120 :-

[If any person, wilfully destroys or damages or removes the survey-mark lawfully erected, he may be ordered by a Revenue Officer to pay such fine not exceeding Rs. 2,000/- for each survey-mark so destroyed, damaged or removed and in the case of repetition of such an act, a fine not exceeding Rs. 5,000/- for each survey-mark, as may, in the opinion of Revenue Officer, be necessary to defray the expenses restoring the same and of rewarding the person, if any, who gave information of the destruction, damage or removal.

Explanation. - For the purpose of this Act, the expression "survey mark" shall include boundary mark and boundary pillars fixed, raised or erected while defining the limits of an estate or portion of estate or any holding and any field under Section 107 of this Act."]

Footnotes:

1. Substituted by Act no. 15 of 2000.

121. Report Of Destruction Or Removal Of Or Injury To Survey Marks :-

Every village officer of an estate shall be legally bound to furnish a Revenue Officer with information respecting the destruction or removal of, or any injury done to any survey-mark lawfully erected in the estate.

CHAPTER 9 **PARTITION**

122. Effect Of Partitions Of Estates And Tenancies On Joint Liability For Revenue And Rent :-

(1) A partition of land, either under this Chapter or otherwise, shall not, without the express consent of the Financial Commissioner, affect the joint liability of the land or of the landowners thereof for revenue payable in respect of the land, or operate to create a new estate, and, if any conditions are attached to that consent, those conditions shall be binding on the parties to the partition.

(2) A partition of a tenancy shall not, without the express consent of the landlord, affect the joint liability of the co-sharers therein for the payment of the rent thereof.

123. Application For Partition :-

Any joint owner of land, or any joint tenant of a tenancy in which a right of occupancy subsists, may apply to a Revenue Officer for partition of his share in the land or tenancy, as the case may be, if :-

- (a) at the date of the application the share is, recorded under Chapter IV as belong to him; or
- (b) his right to the share has been established by a decree which is still subsisting at that date, or
- (c) a written acknowledgement of that right has been executed by all persons interested in the admission or denial thereof.

It has been held as under :-

(i) One or other of the three conditions a, b, c, laid down in these conditions must be fulfilled by the applicant before he is entitled to apply for partition - 9 PR 85.

(ii) A widows right to apply for partition is unquestioned.

(iii) It is necessary that all persons who acquired rights in the joint holdings prior to the application for partition should be associated with the proceedings. 47 LLT 214.

(iv) Share of a joint owner can be deemed to be recorded under Chapter IV as belonging to him in accordance with Section 123 (corresponding Section 111 of the Punjab Land Revenue Act refers) if a mutation stands sanctioned in his favour - 1972 PLJ 373.

(v) A person whose share in a joint holding has been upheld by a decree of a civil court can apply for partition of his share in the land - 1972 LLT 1.

(vi) Suit for partition of a selected portion only out of joint holding cannot proceed without the assent or acquiescence of the defendants. If the latter object he may with the leave of the court amend the suit to include the entire joint holding or such portion as the parties agree to decide or else he is to submit to have the suit dismissed -

(vii) Partition - Joint ownership - Non Impleadment - Held, that it appears that the petitioners in order to procrastinate the proceedings has come up with this plea or else the said Vijay Kumar himself would have approached the revenue authorities to associate him with the partition proceedings in case he had any grievance - Parties to a proceedings cannot claim a right of a third party - Revision petition dismissed. Achhar Chand v. Jai Lal and others. 2002(2) Cur.L.J. (H.P.) 155 (F.C.)

(viii) Partition - Held, that it is a settled proposition of law that main order in the partition proceedings is the mode of partition, remaining proceedings are executory in nature - The petitioner has not shown any infraction of the mode of partition - No justification to remand the case to re-open the entire partition, when partition is complete - Revision petition dismissed. Hans Raj (Sh.) v. Shri Babu Ram, 2003(1) Cur.L.J. (H.P.) 272 (F.C.)

(ix) Private Partition - Held, that this is a case which satisfied none of the requisites, but to the contrary, majority shareholders except the petitioners, intend and agree for separation of their shares in the joint holdings plea of private partitioners cannot be maintained - Revision petition filed by respondent prior to her death stand accepted. Chet Ram (deceased) & Ors. v. Smt. Darshnoo Devi. 2002(2) Cur.L.J. (H.P.) 320 (F.C.)

(x) - Partition of land - Held, that revenue record not revealing exclusive possession of parties - Plea of private partition fallacious - No private partition can be presumed to have taken place without severance of possession. Kewla (Smt.) & Ors. v. Shri Daulat Singh & Ors., 2005(1) Cur.L.J. (H.P.) 561 (F.C.)

(xi) Possession - Joint Holding - Held, that this is a settled law that possession of a party in a joint holding can be maintained to the extent of its share - A party cannot be legally permitted to enjoy the fruit of possession on a share that legitimately belong to other share holders - Recommendations made by the learned Commissioner are accepted - A.C. is directed to proceed ahead with the partition proceedings. Hamal Chand v. Tara Chand, 2003(1) Cur.L.J. (H.P.) 22 (F.C.)

124. Restriction And Limitations On Partition :-

Notwithstanding anything in the last foregoing section -

(1) Places of worship and burial grounds held in common before partition shall continue to be so held after partition unless the

parties otherwise agree among themselves and record their agreement and file it with the Revenue Officer;

(2) Partition of any of the following properties, namely:-

(a) any embankment, watercourse, well or tank, and any land on which the supply of water to any such work may depend,

(b) any grazing ground, and

(c) any land which is occupied as the site of a town or a village and is assessed land revenue, may be refused if, in the opinion of the Revenue Officer, the partition of such property is likely to cause inconvenience to the co-sharer or other persons directly or indirectly interested therein, or to diminish the utility thereof to those persons; and

(3) The fact that a partition on the application of joint owner of land would render necessary the severance into two or more parts of the land comprised in the tenancy of a tenant having a right of occupancy may, unless the tenant assent to the severance, be a sufficient reason for the disallowance of the partition in so far as it would affect that tenancy.

125. Notice Of Application For Partition :-

The Revenue Officer, on receiving the application under section 123 shall, if it is in order and not open to objection on the face of it, fix day for the hearing thereof, and-

(a) cause notice of the application and of the day so fixed to be served on such of the recorded co-sharers as have not joined in the application, and if the share of which partition is applied for is a share in a tenancy, on the landlord also; and

(b) issue a proclamation calling on any person who may have objections to the partition to appear before him either in person or by a duly authorised agent on a day fixed for the hearing of the application and to state them.

It has been held as under :-

(i) An unchallenged order for ex-parte proceedings remains in force until the whole proceedings are exhausted and it is not necessary that at each stage of the proceedings he should be served afresh-
1940 LLT 16.

126. Addition Of Parties To Application :-

On the day fixed for the hearing, or on any day to which the hearing may be adjourned the Revenue Officer shall ascertain whether any of the other co-sharers desire the partition of their

shares also, and, if any of them so desire, he shall add them as applicant for partition.

It has been held as under :-

(i) It is necessary that all the transferees who acquired rights in the joint holding prior to the application for partition should be made parties. If there is going to be a partial partition it should not be allowed to proceed unless all the co-sharers agree to the same.

1968 LLT 214 (FC)

127. Absolute Disallowance Of Partition :-

After examining such of the co-sharers and other persons as may be present on that date, the Revenue Officer may if he is of opinion that there is good and sufficient cause why partition should be absolutely disallowed, refuse the application recording the grounds of his refusal.

It has been held as under :-

(i) It was held in that if the result of partition would be the creation of holdings of such minute size as to be of little use to the shareholders, it is desirable to disallow the partition of the property Sarup Singh v. Angrez Singh-1972 PLJ 443.

128. Procedure On Admission Of Application :-

If the Revenue Officer does not refuse the application under the last foregoing section, he shall ascertain the questions, if any, in dispute between any of the persons interested distinguishing between-

- (a) questions as to title in the property of which partition is sought:
- (b) questions as to the property to be divided, or the mode of making the partition.

129. Disposal Of Questions As To Title In Property To Be Divided :-

(1) When there is a question as to title in any of the property of which partition is sought, the Revenue Officer may decline to grant the application for partition until the question has been determined by a competent Court, or he may himself proceed to determine the question as though he were such a Court.

(2) Where the Revenue Officer himself proceeds to determine the question, the following rule shall apply, namely-

- (a) if the question is one over which a Revenue Court has

jurisdiction, the Revenue Officer shall proceed as a Revenue Court under the provision of

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[law for the time being in force];

(b) if the question is one over which a Civil Court has jurisdiction, the procedure of the Revenue Officer shall be that applicable to the trial of an original suit by a Civil Court and he shall record a judgment and decree containing the particulars required by a Code of Civil Procedure to be specified therein;

(c) an appeal shall lie from the decree of the Revenue Officer under clause (b) as though that decree were a decree of a Subordinate Judge in an original suit.

(d) upon such an appeal being made, the District Court or

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[High Court] as the case may be may issue an injunction to the Revenue Officer requiring him to stay proceedings pending the disposal of the appeal;

(e) from the appellate decree of a district Court upon such an appeal a further appeal shall lie to the

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[High Court] if such a further appeal is allowed by the law for the time being in force.

It has been held as under :-

(I) Firstly the Revenue Officer must determine if there is a question of title. It is different from determining the question of title itself - 1975 PLJ 86.

(II) It has been held that the intention of law is not that an Assistant Collector is bound to adjourn partition proceedings and refer the parties to a civil Court on the mere raising of a question of title. It is his duty to have a prima facie look at the evidence including the documentary evidence on record - 1975 PLJ 287.

(III) It has been held that neither in law nor in equity is there any warrant for the proposition that partition proceedings must be stayed the moment a litigant alters the magic formula that a question of title is involved - 1961 LLT 21.

(IV) F.C. shall not interfere in revision in the exercise of the discretion by a Revenue Officer to determine a question of title in partition proceedings - 1959 LLT 7.

(V) When a question of title arises the Revenue Officer may decide the matter as a civil Court, but when he chooses not to do so the only other course open to him is to decline to grant application for partition until the question of title is determined by a competent

court. He cannot direct one party or the other specifically and within a specified time to go to the competent court - 1958 LLT 95.
(VI) In addition to Chapter IX of H.P. Land Revenue Act, Chapter 18 of the Land Records Manual which details procedure for the guidance of the Revenue Officers which must be scrupulously followed by them - 1972 SLJ 9 (F.C.)

(VII) If an applicant has resorted to partition proceedings with the belief that he would thereby gain an advantage over the opposite party, question of title should be referred to civil court -1971 SLJ 3 (F.C.)

(VIII) Mere raising of question of title does not make it incumbent upon Revenue Officer to accept it as such Revenue Officer has to ascertain and determine whether a question of title is involved or not - 1982 SLJ 9.

(IX) Possession of a co-sharer settled in law - must be regarded as possession of all co-sharers - 1982 SLJ 9.

(X) Partition of land - Held, that revenue record not revealing exclusive possession of parties - Plea of private partition fallacious - No private partition can be presumed to have taken place without severance of possession. Kewal (Smt.) & Ors. v. Shri Daulat Singh & Ors., 2005(1) Cur.L.J. (H.P.) 561 (F.C.)

Footnotes:

1. Substituted by Act No. 21 of 1976.

130. Disposal Of Other Questions :-

(1) When there is a question as to the property to be divided, or the mode of making a partition, the Revenue Officer shall, after such inquiry as he deems necessary, record an order stating his decision on the question and his reasons for the decision.

(2) An appeal may be preferred from an order under subsection (1) within thirty days from the date thereof, and, when such an appeal is preferred and the institution thereof has been certified to the Revenue Officer by the authority to whom the appeal has been preferred the Revenue Officer shall stay proceedings pending the disposal of the appeal.

(3) If an applicant for partition is dissatisfied with an original or appellate order under this section and applies for permission to withdraw from the proceedings in so far as they relate to the partition of his shares, he shall be permitted to withdraw therefrom on such terms as the Revenue Officer thinks fit.

(4) When an applicant withdraws under the last foregoing

subsection, the Revenue Officer may, where the other applicants, if any, desire the continuance of the proceedings, continue them in so far as they relate to the partition of the shares of those other applicants.

It has been held as under :-

(i) Fragmentation of holding in partition proceedings should be avoided. The co-sharers should be persuaded to allow the partition to take place in such a manner that compact blocks fall to the share of each co-share. Possession would, therefore, not be always the overriding factor - 1971 LLT 87.

(ii) There is no sense in microscopic partition of each khewat. Where the land is of different kinds, each class should be partitioned among the co-sharers as per their share and in the process of such allotment value and rent must be taken into consideration - 1961 LLT 37.

131. Administration Of Property Excluded From Partition :-

When any such property as is referred to in section 124, clause (2), is excluded from partition, the Revenue Officer may determine the extent and manner to and in which the co-sharers and other persons interested therein may make use thereof, and the proportion in which expenditure incurred thereon and profits derived therefrom, respectively, or to be borne by and divided among those persons or any of them.

132. Distribution Of Revenue And Rent After Partition :-

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(1) The amount of revenue to be paid in respect of each of the holdings into which land has been divided on a partition, and the amount of rent to be paid in respect of each of the portion into which a tenancy has been so divided, shall be determined by the Revenue Officer making the partition.

(2) The determination of the Revenue Officer as to the revenue to be paid in respect of each holding shall, where the estate in which the holding is situate is subject to a fixed assessment, be deemed to be an order under Section 60, sub-section (1).

(3) Where new estates have been created at a partition and the land revenue has been fraudulently or erroneously distributed among them, the State Government may within twelve years from the time of discovery of the fraud or error, order a new distribution of the land revenue among several estates, on an estimate of the

assets of each estate at the time of the land revenue partition, to be made conformably to the best evidence and information procurable respecting the same.

Footnotes:

1. Substituted by Act No. 15 of 2000.

133. Instrument Of Partition :-

When a partition is completed, the Revenue Officer shall cause an instrument of partition to be prepared, and the date on which the partition is to take effect to be recorded therein.

It has been held as under :-

(i) order regarding delivery of possession has to be passed keeping in view the stipulations made in the instrument of partition - 1971 RLR 474.

134. Delivery Of Possession Of Property Allotted On Partition :-

An owner or tenant to whom any land or portion of a tenancy, as the case may be, is allotted in proceedings for partition shall be entitled to possession thereof as against the other parties to the proceedings and their legal representatives, and a Revenue Officer shall, on application made to him for the purpose by any such owner or tenant at any time within three years from the date recorded in the instrument of partition under the last foregoing section, give effect to that instrument so as it concerns the applicant as if it were a

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[decree of civil court for possession of immovable property.]

It has been held as under :-

(i) The section only declares that the instrument of partition is enforceable as a decree. It does not make the instrument a decree. if an application is not made within three years as prescribed then a Revenue Officer has no jurisdiction to deliver possession. The only remedy available to the aggrieved person is to go to the civil Court. PR 1894 1970 PLR 665

(ii) Preparation of instrument of partition is not a mere formality but it is a necessary document to make a partition legally effective.

Footnotes:

1. Substituted by Act No. 15 of 2000.

135. Affirmation Of Partition Privately Effected :-

(1) In any case in which a partition has been made without the intervention of a Revenue Officer for an order affirming the partition.

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"(2) On receiving the application, if the Revenue Officer, after hearing the parties, finds that, the partition has taken place and acted upon, he may make an order affirming the partition and get his order implemented by getting the mutation of private partition attested within one month and he shall also distribute the land revenue and rents involved in the holding in accordance with the shares partitioned therein.]

[(3) Where all the co-sharers make a report in writing duly signed by all of them to the patwari, that, they have privately partitioned the land separated the possession thereof amicably, the patwari shall make an entry of such report in his diary and enter the mutation which will be decided by the Revenue Officer after hearing the parties within three months."]

It has been held as under :-

Instrument of partition - Held, that after the amended subsection (3) of Section 135 of the Act, after the entry of private partition in daily diary and entry of mutation it is for the Revenue Officer to decide it after hearing two parties - No force in the submissions made that in the absence of preparation of instrument of partition, the status of parties continued to be that of co-sharers - No merit in appeal. Pritam Singh v. Dhian Singh & Ors., 2003(1) Cur.L.J. (H.P.) 36 (H.P.)

Footnotes:

1. Substituted sub-section (2) and sub-section (3) added by Act 15 of 2000.

136. Estimates And Levy Of Costs :-

(1) When the mode of partition is determined, the Revenue Officer shall cause the cost of making the partition to be estimated, and shall direct that the cost be levied in the first instance from the applicant for partition or from all the co-sharers in such instalments and at such times during the progress of the partition as may be prescribed by rules.

(2) If the amount first estimated is found insufficient supplementary estimates may be made from time to time, and the additional amount may be levied as above provided.

(3) The Financial Commissioner shall make rule for determining the costs of partitions under this Chapter and the mode in which such costs are to be apportioned.

137. Redistribution Of Land According To Customs :-

When by established custom any land in an estate is subject to periodical re-distribution a Revenue Officer may, on the application of any of the landowners, enforce the re-distribution according to the custom, and for this purpose may exercise all or any of the powers of a Revenue Officer in proceedings for partition.

138. Officers Who May Be Empowered To Act Under This Act :-

The Revenue Officer by whom proceedings may be taken under this Chapter shall be a Revenue Officer of a class not below that of Assistant Collector of the first grade.

CHAPTER 10 **ARBITRATION**

139. Power To Refer To Arbitration :-

(1) Any Revenue Officer may, with the consent of the parties, refer to arbitration any dispute arising before him in any matter under this Act.

(2) A Collector, or any Assistant Collector of the first grade may, without the consent of the parties, refer to arbitration any dispute before him without respect to -

(a) any matter of which an entry is to be made in any record or register under Chapter IV;

(b) any matter relating to the distribution of an assessment under section 60;

(c) the limits of any estate or of any holding, field or other portion of an estate;

(d) the property to be divided at a partition or the mode of making a partition.

It has been held as under :-

(i) The power of an Assistant Collector I Grade to refer any dispute for arbitration without the consent of the parties is discretionary. It is not possible for a revising authority to interfere where there has not been an irregularity of any kind in the exercise of jurisdiction - 1942 LLT 20.

140. Order Of Reference And Contents Thereof :-

(1) In referring a dispute to arbitration a Revenue Officer shall mark an order of reference, and specify therein the precise matter submit to arbitration, the number of arbitrators which each party to the dispute is to nominate, the period within which the award is to be delivered.

(2) The number of arbitrators which each party may nominate must be the same and must not exceed two.

(3) If from any cause arbitrators are not nominated, or an award is not delivered within the period fixed therefor in the order of reference, the Revenue Officer may from time to time enlarge that period, or may cancel the order of reference.

141. Nomination Of Arbitrators :-

When an order of reference has been made, the parties may each nominate the number of arbitrators specified in the order

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[and the revenue officer shall nominate one other arbitrator on behalf of the State Government.]

(2) The Revenue Officer may for reasons to be recorded by him make an order disallowing any nomination made by either party and require that party to make another nomination within a period to be specified in the order and if such other arbitrator is not nominated within the period so specified, the Revenue Officer may from time to time, enlarge the period or may cancel the order of reference.

(3) An order under the last foregoing sub-section shall be final.

Footnotes:

1. Added by Act No. 11 of 1955.

142. Substitution Of Arbitrators By Parties :-

If an arbitrator nominated by a party dies, desires to be discharged or refuses or becomes incapable to act, the party may nominate another person in his stead.

143. Nomination And Substitutions Of Arbitrators By Revenue Officer :-

If any of the following cases, namely:-

(a) If either of the parties fails to nominate an arbitrator under

sub-section (1) of section 141 within the period fixed in the order of reference; or

(b) if the nomination of an arbitrator has been disallowed under sub-section (2) of section 141, and another arbitrator is not nominated within the time specified in the order under that subsection or, having been so nomination is also disallowed; or

(c) if a party entitled to nominate an arbitrator in the place of another arbitrator under section 142 fails to nominate him within one week from the date of the communication to him of a notice requiring him to make the nomination; or

(d) if an arbitrator nominated by the Revenue Officer dies, desires to be discharged or refuses or becomes incapable to act, the Revenue Officer may nominate a person as arbitrator.

144. Process For Appearance Before Arbitrators :-

(1) The Revenue Officer shall, on the application of the arbitrators, issue the same processes to the parties and witnesses whom the arbitrators desire to examine as he may issue in any proceeding under this Act before himself.

(2) Any such party or witness shall be bound to appear before the arbitrators in obedience to a process issued under subsection (1) either in person or by agent, as the arbitrators may require.

(3) The person attending in obedience to the process shall be bound to state the truth upon any matter respecting which he is examined or makes statements and to produce such documents and other things relating to any such matter as may be specified in the process.

145. Award Of Arbitrators And Presentation Thereof :-

(1) The arbitrators shall make an award in writing under their hands concerning the matters referred to them for arbitration and state therein their reasons therefor, and any arbitrator dissenting from award made by a majority of the arbitrators shall state the grounds of his dissent.

(2) The arbitrator shall present the award to the Revenue Officer in person unless that officer permits them to present it by agent.

146. Procedure On Presentation Of Award :-

(1) When the award has been received, the Revenue Officer shall, if the parties are present, consider forthwith any objections which

they may have to make thereto, and, if they are not present, fix a date for the consideration thereof.

(2) Where a date has been fixed for the consideration of an award, the Revenue Officer shall on that date, or on any subsequent date to which an adjournment may be made, hear any objections which the parties may have to make to the award.

(3) The Revenue Officer may also, if he thinks fit, question the arbitrators as to the grounds of their award.

147. Effect Of Award :-

(1) The Revenue Officer may accept, modify or reject the award, recording his reasons for doing so in his decision, respecting the dispute which was referred to arbitration.

(2) An appeal shall lie from the decision as if arbitrators had not been appointed.

CHAPTER 11

SPECIAL JURISDICTION WITH RESPECT TO LAND

148. Power To Invest Officers Making Records Of Rights Or General Re-Assessments With Powers Of Civil Courts :-

(1) The State Government may, by order published in the Official Gazettee, invest any Revenue Officer making or specially revising records of rights in any local area in pursuance of a notification under Section 33 or making a general re-assessment of land revenue in any local area in pursuance of a notification under Section 52 or any Revenue Officer to whose control that officer is subject, with all or any of the powers of any Court constituted under the Himachal Pradesh Courts Order for the purpose of trying all or any specified classes of suits or appeals relating to land arising in the local area.

(2) The State Government may cancel an order under subsection (1) wholly or in part.

(3) While an order or any part of an order under that subsection continues in force, the powers conferred thereby shall be exercised by the officers invested therewith and not otherwise.

(4) Any cases pending before that officer under the order or a subsisting part of the order at the time of cancellation thereof may be disposed of by him as if the order or that part of it continued in force, unless the State Government directs, as it is hereby empowered to do, that those cases shall be transferred for disposal to the Courts by which they would have been disposed of if the

order had been published.

149. Control Over Such Officer And Appeals From And Revision Of Their Decree And Orders :-

(1) The State Government may by notification direct that the provisions of

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[this Act] with respect to the superintendence and control over Revenue Officers shall, subject to any modification of those provisions which the State Government thinks fit, apply to any Revenue Officer, except the Financial Commissioner, who has been invested with powers of Civil Court of any of the classes specified in Himachal Pradesh Courts Order and that appeal shall lie from his decrees and orders to, and his decrees and orders be subject to revision by a Revenue Officer invested under the last foregoing section with the powers of a Court which would be competent under the Himachal Pradesh Courts Order to hear appeals from or revise such decrees and orders if they had been made by a Court with the powers of which the Revenue Officer who made them has been invested.

(2) In the absence of any such notification, a Revenue Officer invested under sub-section (1) of Section 148 with the powers of any such Civil Court as aforesaid shall, with respect to the exercise of those powers be deemed to be such a Civil Court for the Himachal Pradesh Courts Order.

Footnotes:

1. Substituted by Act No. 11 of 1955.

CHAPTER 12

SUPPLEMENTAL PROVISIONS, REVENUE DEPOSIT

150. Power To Deposit Certain Sums Other Than Rent :-

In either of the following cases, namely :-

(a) when a Nambardar or other landowner or an assignee of land revenue, to whom any sum other than rent is payable on account of a liability under this Act, refuses to receive the sum from, or to grant a receipt therefor to the person by whom it is payable;

(b) when the person by whom any such sum is payable is in doubt as to the Nambardar or other landowner or the assignee of land revenue, entitled to receive it,

that person may apply to a Revenue Officer for leave to deposit the sum in his office, and the Revenue Officer shall receive the deposit

if, after examine the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, which may be chargeable on any notice to be issued of the receipt thereof.

(2) When a deposit has been so received, the liability of the depositor to the Nambardar or other landowner, or the assignee of land revenue, for the amount thereof shall be discharged.

151. Procedure In Case Of Deposit On Account Of A Payment Due To Government :-

If the deposit purports to be made on account of deposit on account of any payment due to the State, it may be credited accordingly.

152. Procedure In Case Of Other Deposits :-

(1) A Revenue Officer receiving a deposit purporting to be made on any other account shall give notice of the receipt thereof to every person who he has reason to believe claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the deposit pending the decision of a Civil Court as to the person so entitled.

(2) No suit or other proceedings shall be instituted against the State or against any officer of the State, in respect of anything done by a Revenue Officer under this section but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from a person to whom it has been paid by a Revenue Officer.

153. Orders Of Civil And Criminal Courts For Execution Of Processes Against Land Or The Produce Thereof To Be Addressed To Revenue Officer :-

Orders issued by any Civil or Criminal Court for the attachment, sale or delivery of any land, or interest in land, or for the attachment or sale the produce of any land, shall be addressed to the Collector or such Revenue Officer as the Collector may appoint in this behalf, and be executed by the Collector or that officer in accordance with the provisions of the law applicable to the Court issuing the orders and with any rules consistent therewith made by the [financial Commissioner with the concurrence of the

[High Court] and previous sanction of the State Government.

It has been held as under :-

(i) When a Collector exercises his functions under Section 68 of Civil Procedure Code he is acting judicially but is not a court -1945 LLT 13.

Footnotes:

1. Substituted by Act No. 21 of 1976.

154. Attachment Of Assigned Land Revenue :-

(1) Notwithstanding anything in any other enactment for the time being in force, an order issued by any Court for the attachment of assigned land revenue shall require the person by whom the revenue is payable to pay it to the Collector, and the Collector to hold it subject to the further orders of the Court.

(2) A payment to the Collector under sub-section (1) shall be an effectual discharge to the person making it.

155. Preservation Of Attached Produce :-

(1) The attachment of the produce of any land in pursuance of an order of any Court or other authority shall not prevent the person to whom the produce belongs from reaping gathering or storing it or doing any other act necessary for its preservation.

(2) The attaching officer shall do or cause to be done all acts necessary for the preservation of the produce if the person to whom it belongs fails to do so.

(3) When sale of produce follows on its attachment, the purchaser shall be entitled, by him or by any person appointed by him in this behalf, to enter on the place where the produce is and do all that is necessary for the purpose of preserving and removing it.

156. Section 156 :-

[***]

Footnote:

1. Deleted by Act 15 of 2000.

157. Village Cesses :-

(1) At any of the following times, namely :-

(a) when a record of rights is being made or specially revised for an

estate;

(b) when the local area in which an estate is situate is being generally reassessed and before the assessment has been confirmed;

(c) at any other time on an order made with respect to any estate by the State Government;

a Revenue Officer shall prepare a list of village cesses, if any, levied in the estate which have been generally or specially approved by the State Government or the title to which has, before the passing of this Act, been judicially established.

(2) The State Government may impose on the collection of any village cess comprised in the list such conditions as to police or other establishments connected with the village, market or fair in or on account of which the cess is levied, as it thinks fit.

(3) The State Government may declare whether any cess, contribution or due levied in an estate is or is not a village cess.

(4) A declaration of the State Government under the last forgoing sub-section shall be conclusive, and shall not be liable to be questioned in any Court.

158. Section 158 :-

[***]

Footnote:

1. Deleted by Act 15 of 2000.

159. Section 159 :-

[***]

Footnote:

1. Deleted by Act 15 of 2000.

160. Recovery Of Cost Of Assessing Assigned Land Revenue :-

(1) When land of which the land revenue has been assigned in whole or in part is reassessed, the assignee shall be liable to pay such a share of the cost of making the reassessment as the Financial Commissioner may determine to be just.

(2) That share may be recovered by the Collector by deduction of the amount thereof from the land revenue due to the assignee.

161. Power To Cancel The Remission Or Assignment Of Land Revenue :-

(1) Notwithstanding anything contained in any law or agreement, the State Government may, in accordance with rules, cancel any remission or assignment of land revenue, sanctioned before the enforcement of this Act.

(2) The State Government may, for the purpose of sub-section (1), make rules after previous publication in the Official Gazette.

162. Penalty For Failure To Attend Within Limits Of Estate In Obedience To Order Of Revenue Officers :-

If a person required by a summons, notice, order or proclamation proceeding from a Revenue Officer to attend at a certain time and place within the limits of the estate in which he ordinarily resides, or in which he holds or cultivates lands, fail to comply with the requisition, he shall be liable at the discretion of the Revenue Officer to a fine which may extend to fifty rupees.

163. Section 163 :-

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"(1) Where Government land or land which has been reserved for the site of the village or for common purposes or uses of the estate right holders or of the co-sharers therein, has been encroached upon by any person or co-sharers for any purpose including the construction of a building or other structures or by planting trees therein, then -

(a) the Revenue Officer may of his own motion or on the report of the patwari of the circle duly verified by the Kanungo of the circle or on the application of any estate right holder or co-sharers, after giving reasonable opportunity of being heard, shall eject him from such land by order, in the manner prescribed;

(b) if the encroacher has erected any building or other structure or has planted trees on the encroached land, the same shall, in the prescribed manner, vest in the State Government free from all encumbrances :

Provided that if the building or structure and attachments thereto are situated partly in the owned land of the encroacher and partly on the encroached land, the Revenue Officer shall be competent to demolish the portion of the building or structure on the encroached land if the encroacher fails to demolish it himself as ordered by the Revenue Officer; and

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(c) the Revenue Officer shall impose upon the encroacher a fine upto [Rs. 2,000/-] per bigha or part thereof, which shall be recoverable, as if it were an arrears of land revenue.

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(2) If a person who has been evicted from any land under this section again occupies the land without authority for such occupation, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to

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[five thousand] rupees or with both;

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["(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this Section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade

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[may proceed] to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil Court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

(5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.";

(7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this Section in respect of anything in good faith done or purported to have been done under the provisions thereof or the rules made thereunder.

It has been held as under :-

(i) A notice under Section 163 was issued to the respondent to show cause against his eviction from the suit land and imposition of fine-whereas respondent asserted that he has become owner of the suit land by way of adverse possession -The appeal is accepted -

The judgment and decree of the First Appellate Court are set aside. State of H.P. v. Gurnam Singh, 2001(1) Cur.L.J. (H.P.) 129

(ii) Adverse possession - Held that the petitioner applied for the lease of the land in the year, 1982 and participated in auction bid in the year 1970 demonstrates that he was not in possession of the land in question his claim as to adverse possession is devoid of any merit - Revision petition dismissed. Duni Chand & Anr. v. State of Himachal Pradesh, 2003(1) Cur.L.J. (H.P.) 215 (F.C.)

(iii) Encroachment - Eviction - Held that the land claimed under the colour of exchange is merely presumptive and has not come into existence - Petitioners are encroachers simpliciter on the land in question - The orders passed by the Assistant Collector are maintained - Petition dismissed. Jamit Singh (deceased) & Ors. v. State of Himachal Pradesh, 2002(2) Cur.L.J. (H.P.) 134 (F.C.)

(iv) Encroachment - Eviction - Held, that there appears to be inconsistency in the report with regard to actual area under encroachment submitted by field officials vis-à-vis the finding of fact by A.C. 1st grade on the spot - In view of the varying versions of the factual encroachment of the petitioner on the government land, it appears necessary to determine the factum of actual encroachment of the petitioners by A.C. 1st grade on the spot - In view of the varying versions of the factual encroachment of the petitioners - A.C. 1st grade should enquire into the matter afresh. Satya Pal v. Rattan Chand and others, 2002(2) Cur.L.J. (H.P.) 143 (F.C.)

(v) Jurisdiction - Appeal, held, that the perusal of record show that the District Collector has passed a well reasoned order in the matter, after obtaining detailed report from the Assistant Collector - Collector noted in his order that the predecessor of the petitioners purchased area of 872.914 sq. meters - This area during settlement operations has been measured 760.53 sq. meters - That these khasra numbers formed the area that belonged to the predecessor of petitioners in the settlement record - No illegality in the orders passed by the District Collector - No merit in reference. State of Himachal Pradesh v. Lal Chand (Shir) & Anr. 2002(2) Cur.L.J. (H.P.) 208 (F.C.)

(vi) Adverse possession - Appeal - Remanding back of case - Framing of issue - Held, that since no reply was filed by the respondent, no issues were to be framed - The evidence of the objector was recorded - The orders of the lower appellate Court are wholly inconsistent with the record - The orders of D.J. remitting the case back to the A.C. is set aside - District Judge directed to

decide the same on merits - Parties directed to appear before the Ld. District Judge, Kangra. *Kehar Singh v. State of H.P.*, 2005(2) Cur.L.J. (H.P.) 480 (H.P.)

(vii) Order of eviction passed by Assistant Collector was confirmed in appeal by the Collector under Section 14 of the Act - District Judge could not have entertained the appeal filed against the order passed by Assistant Collector, which was already challenged before Collector. *State of H.P. v. Bagshi Ram*, 2001(2) Cur.L.J. (H.P.) 520 (H.P.)

(viii) Assistant Collector passed order of eviction of the respondent under Section 163(i) - Respondent preferred appeal under Section 163(5) before district Judge - District Judge allowed the appeal and set aside the order of Asstt. Collector and remanded the matter to the Asstt. Collector with direction to decide afresh the matter in the light of section 163(3) & (4) - Held, the impugned order of District Judge passed under Section 163(5) is without jurisdiction - Set aside. *State of H.P. v. Lachhu Ram*, 2002(1) Cur.L.J. (H.P.) 78 (H.P.)

(ix) Appeal by State Challenging the competency and authority of the civil court to deal with the claim and grant relief in favour of the plaintiffs in the manner it has been done in the teeth of the bar engrafted in section 163 and 171 of the Act - Held, no infirmity or perversity in the judgment and decree of the courts below which otherwise are concurrent, to interfere in this appeal - Appeal dismissed. *State of H.P. v. Durga Singh*, 2001(1) Cur.L.J. (H.P.) 381 (H.P.)

(x) Possession - Eviction - Held, that Section 171 of the Act expressly exclude the jurisdiction of the civil courts in all matters which are within the jurisdiction of the Revenue officers - The present suit could not have been entertained by the civil Court for want of jurisdiction to try such suit - Appeal accepted. *State of Himachal Pradesh v. Sandhya Devi*, 2003(1) Cur.L.J. (H.P.) 314 (H.P.)

(xi) Encroachment - Eviction proceedings - Change of ownership - Held, when it was established by the filed enquiry that the respondent No. 1 has constructed her house on a part of old Khasra No. 592/348 now denoted Khasra No. 1062, Settlement Collector could not have chosen to get this area entered in the ownership of respondent No. 1 and at the same time could not have ordered carving out of Khasra No. 1064, 1070 and 1132 out of Khasra No. 685/347 which was in recorded ownership of Shri Udia Ram - The order of Settlement is illegal and beyond the competency of the

Settlement Collector - Revision petition allowed. Tulsi Ram (Shri) & Ors. v. Smt. Satya Chauhan & Anr., 2005 (Suppl.) Cur.L.J. (H.P.) 320 (FC, H.P.)

Provided that no encroacher shall be ejected under this clause unless he has been given a reasonable opportunity of showing cause against the ejection:

Provided that no court shall take cognizance under this subsection of an offence unless a report in writing is made by a Revenue Officer not below the rank of Assistant Collector First Grade."; and]

Explanation. - For the purposes of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be encroacher unless such person gets the lease extended or renewed.

Footnotes:

1. Substituted Sub-sections 3 to 6 and existing sub-section 3 renumbered as (7) by Act No. 15 of 1989
2. Substituted by Act of 3 of 2001.

163A. Regularisation Of Encroachment In Certain Cases :-

[Notwithstanding anything contained in section 163 of this Act, or any other law for the time being in force, the State Government may make rules regarding the regularisation of the encroachment on Government land."].

It has been held as under :-

Transfer of proceedings - Subordinate courts - Held, that there is no escape from the conclusion that while acting under subsections 3 and 4 of Section 163 the Assistant Collector 1st Grade is a Civil Court subordinate to the District Judge and D.J. has the powers to transfer the proceedings which are being tried by him as an original suit. Subhadara Chauhan & Ors. v. State of H.P. & Ors., 2004(2) Cur.L.J. (H.P.) 537 (H.P.)

Footnote:

1. Substituted by Act 15 of 2000.

164. Papers Kept By Village Officers To Be Deemed Public Documents :-

(1) Any record or paper which a village officer is required by law, or by any rule under this Act, to prepare or keep shall be deemed to be the property of the State Government.

(2) A village officer shall, with respect to any such record or paper in his custody, be deemed for the purpose of the Indian Evidence Act, 1872, to be a public officer having the custody of a public documents which any person has a right to inspect.

165. Costs :-

- (1) A Revenue Officer may give and apportion the costs of any proceedings under this Act in any manner he thinks fit.
- (2) But, if he orders that the cost of any such proceedings shall not follow the event, he shall record his reason for the order.

166. Computation Of Periods Limited For Appeals And Application For Review :-

In the computation of the period for an appeal from, or an application for the review of, and order under this Act, the limitation therefor shall be governed by the Indian Limitation Act, 1908.

It has been held as under :-

- (i) All sections of the Limitation Act which relate directly or indirectly to the reckoning of period allowed for appeals and application of review should be held to be applicable - 1956 LLT 31.

167. Restriction On Revenue Officers Bidding At Auction Or Trading :-

(1) A Revenue Officer, or person employed in a revenue office shall not-

(a) purchase or bid for, either in person or by agent, in his own name or in that of another, or jointly or in shares with others, any property which any Revenue Officer or Revenue Court in the district in which he is employed has ordered to be sold, or

(b) In contravention of any rules made by the State Government in this behalf, engage in trade in that district.

(2) Nothing in sub-section (1) shall be deemed to preclude any person from becoming a member of a company incorporated under the

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[Indian Companies Act, 1956, or any other law].

Footnotes:

1. Substituted Act No. 21 of 1976.

168. Power To Make Rules :-

(1) The Financial Commissioner may, in addition to the other rules which may be made by him under this Act, make rules consistent with this Act and any other enactment for the time being in force-

(a) fixing the number and amount of the instalments, and the

times, and places and the manner, by at and in which any sum other than rent or land revenue which is payable under this Act or of which a record has been made thereunder is to be paid;

(b) fixing the dates on which profits are to be divisible by Nambardar or other persons by whom they are realised on behalf of co-sharers;

(c) prescribing the fees to be charged for the service and execution of processes issued by Revenue Officers and Revenue Courts, the mode in which those fees are to be collected, the number of persons to be employed in the service and execution of those processes, and the remuneration and duties of those persons;

(d) regulating the procedure in cases where persons are entitled to inspect records of Revenue Officers or records or papers in the custody of Village Officers, or to obtain copies of the same and prescribing the fees payable for searches and copies;

(e) prescribing forms for such books, entries, statistics and accounts as the Financial Commissioner thinks necessary to be kept, made or compiled in Revenue Offices, or submitted to any authority;

(f) declaring what shall be the language of any of those offices; and

(g) generally for carrying out the purposes of this Act.

(2) Until rules are made under clauses (a) and (b) of subsection (1) the sums therein referred to shall be payable by the instalments at the times and places, and in the manner by, at and in which they are now payable.

(3) Rules made by the Financial Commissioner under this or any other section of this Act, shall not take effect until they have been sanctioned by the State Government.

169. Rules To Be Made After Previous Publication :-

The power to make any rules under this Act is subject to the condition of the rules being made after previous publication.

170. Powers Exercisable By The Financial Commissioner From Time To Time :-

All powers conferred by this Act on the Financial Commissioner may be exercised from time to time as occasion requires.

171. Exclusion Of Jurisdiction Of Civil Courts In Matters Within The Jurisdiction Of Revenue Officers :-

Except as otherwise provided by this Act-

(1) A Civil Court shall not have jurisdiction in any matter which the State Government or a Revenue Officer exercises any powers vested in it or him by or under this Act, and in particular.

(2) A Civil Court shall not exercise jurisdiction over any of the following matters, namely-

(i) any question as to the limits of any land which has been defined by a Revenue Officer as land to which this Act does or does not apply;

(ii) any claim to compel the performance of any duties imposed by this Act or any other enactment for the time being in force on any Revenue Officer, as such;

(iii) any claim to the Office of kanungo, or village officer, or in respect of any injury caused by exclusion from such office, or to compel the performance of the duties or a division of the emoluments thereof;

(iv) any notification directing the making or revision of a record of rights;

(v) the framing of a record-of-rights or annual record or the preparation, signing or attestation of any of the documents included in such a record;

(vi) the correction of any entry in a record-of-rights,

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[periodical] record or register of mutations;

(vii) any notification of the undertaking of the general reassessment of a district or tehsil having been sanctioned by the State Government;

(viii) the claim of any person to be liable for an assessment of land revenue or of any other revenue assessed under this Act;

(ix) the amount of land revenue to be assessed on any estate or to be paid in respect of any holding under this Act;

(x) the amount of, or the liability of any person to pay, any other revenue to be assessed under this Act, or any cess, charge or rate to be assessed on an estate or holding under this Act or any other enactment for the time being in force;

(xi) any claim relating to the allowance to be received by a land-owner who has given notice of his refusal to be liable for an assessment, or any claim connected with, or arising out of, any proceeding taken in consequence of the refusal of any person to be liable for an assessment under this Act;

(xii) the formation of an estate out of waste land;

(xiii) any claim to hold free of revenue any land, mills, fisheries or

natural products or land or water;

(xiv) any claim connected with, or arising out of, the collection by the State Government, or the enforcement by the Government of any process for recovery of land revenue or any sum recoverable as an arrear of land revenue;

(xv) any claim to set aside, on any ground other than fraud, a sale for the recovery of an arrear of land revenue or any sum recoverable as an arrears of land revenue;

(xvi) the amount of, or the liability of any person to pay any fees, fines, costs or the charges imposed under this Act;

(xvii) any claim for partition of an estate, holding or tenancy, or any question connected with, or arising out of proceedings for partition not being a question as to title in any of the property of which partition is sought;

(xviii) any question as to the allotment of land on the partition of an estate, holding or tenancy, or as to the distribution of land subject by established custom to periodical redistribution, or as to the distribution of land revenue on the partition of an estate or holding or on a periodical redistribution of land, or as to the distribution of rent on the partition of a tenancy;

(xix) any question connected with or arising out of or relating to any proceedings for the determination of boundaries of estates subject to river action under sections 108, 109, 110 and 111 respectively of Chapter VIII;

(xx) any claim to set aside or disturb a division or appraisal of produce confirmed or varied by a Revenue Officer under this Act;

(xxi) any question relating to the preparation of a list of village-cesses of the imposition by the State Government of conditions on the collection of such cesses;

(xxii) any proceeding under this Act for the commutation of the dues of a superior landowner;

(xxiii) any claim arising out of the enforcement of an agreement to render public service in lieu of paying land revenue; or

(xxiv) any claim arising out of the liability of an assignee of land-revenue to pay a share of the cost of collecting or reassessing such revenue, or arising out of the liability of an assignee to pay out of assigned land revenue, or of a person who would be liable for land revenue, if it had not been released, compounded for, or redeemed, to pay on the land revenue for which he would, but for such release, composition or redemption, be liable, such a percentage for the remuneration of a village officer as may be prescribed by rules for the time being in force under this Act.

[(xxv) any question as to any land or any right to or title or interest in the land which is an encroached land or in relation to which any person claims that it has vested or is deemed to have vested in him and that he cannot be ejected under subsection (1) of section 163;] and

(xxvi). the ejectment of any person under section 150 or the recovery of damages or fine payable under sub-section (1) of that section.]

It has been held as under :-

(i) This section bars the jurisdiction of a Civil Court to take cognizance of a matter which a Revenue Officer is competent to dispose of a suit for ejectment of an encroacher from Government land.-1971 SLJ 405.

(ii) Merely because a cryptic challenge can be made to merits of orders of a competent Revenue Officer it is no ground to hold that the orders are devoid of jurisdiction and can be challenged in Civil Court. An authority having jurisdiction can decide rightly or wrongly - 1977 PLJ 383.

(iii) If a tribunal abuses its powers or does not act under the Act but in violation of its provisions a suit in a civil court will always lie - 1963 PLR 912

(iv) Revenue authorities cannot be directed by civil Courts to make corrections in the records of rights or in khasra girdwari. It is within the purview of Revenue Authorities - 1975 PLJ 323.

(v) It is an established principle of law that if the act of the authorities under any Act is without jurisdiction then the jurisdiction of the civil Court is not excluded - 1976 PLR 441.

(vi) The jurisdiction of the civil Courts is not excluded in regard to lands on which houses, shops and factories have been built -AIR 1953 250 (Pb.)

(vii) The defendants have to establish that the claim made by a plaintiff is not within the cognizance of a civil Court - AIR 1922 157 (Lah)

(viii) In a case where partition was done and no objection was raised but later one party filed a suit raising a question of title, it was held to be a civil suit - 1913 PR/28.

(ix) A suit in a civil Court for declaration that there was an error in the partition proceedings did not lie - 182 PR 88.

(x) The provision prohibits a civil Court from ordering correction of an entry in the record of rights, annual record or register of

mutations. If, however, it is a suit for declaration of title to the land a subsidiary relief triable by a revenue court will not oust the jurisdiction of a civil Court - 1975 (LR Himachal 80).

(xi) Appeal by State Challenging the competency and authority of the civil court to deal with the claim and grant relief in favour of the plaintiffs in the manner it has been done in the teeth of the bar engrafted in section 163 and 171 of the Act - Held, no infirmity or perversity in the judgment and decree of the courts below which otherwise are concurrent, to interfere in this appeal - Appeal dismissed. State of H.P. v. Durga Singh, 2001(1) Cur.L.J. (H.P.) 381 (H.P.)

(xii) Partition of land - Held, that revenue record not revealing exclusive possession of parties - Plea of private partition fallacious - No private partition can be presumed to have taken place without severance of possession. Kewla (Smt.) & Ors. v. Shri Daulat Singh & Ors., 2005(1) Cur.L.J. (H.P.) 561 (F.C.)

(xiii) Possession - Eviction - Held, that Section 171 of the Act expressly exclude the jurisdiction of the civil courts in all matters which are within the jurisdiction of the Revenue officers - The present suit could not have been entertained by the civil Court for want of jurisdiction to try such suit - Appeal accepted. State of Himachal Pradesh v. Sandhya Devi, 2003(1) Cur.L.J. (H.P.) 314 (H.P.)

(xiv) The plaintiff claims possession of his 2/3rd share in the property, including houses, by way of partition and for rendition of accounts - Pleaded that the civil courts have no jurisdiction to direct the partition of the suit property in view of Section 171 of H.P. Land Revenue Act. Plea not tenable - Appeal dismissed. Nirmala (Smt.) v. Shri Hari Singh, 2001(1) Cur.L.J. (H.P.) 155 (H.P.)

(xv) Jurisdiction - Partition - Held, that the orders of the lower Court that Section 171 excludes the jurisdiction of the civil court in the matters within the jurisdiction of the Revenue Officer upheld - Appeal dismissed. Ishwar Dass & Anr. v. Mansha Ram & Ors., 2005(2) Cur.L.J. (H.P.) 247 (H.P.)

(xvi) Revision - Eviction from Govt. Land - Held, that the eviction order against the petitioner from the land in question affirmed subject to the condition that it be confirmed before evicting the petitioner that the land was not granted or regularized by the Settlement Officer during settlement operations of the area. Ghaula Ram v. State of Himachal Pradesh, 2003(1) Cur.L.J. (H.P.) 383 (F.C.)

(xvii) Revision - Eviction from Govt. Land - Regularisation -Held,

eviction orders have been rightly passed against the petitioner the same are affirmed - The petitioner may apply to the appropriate authority for such regularisation if a policy is brought out for such Regularisation - Orders shall not prejudice his right for which he would be otherwise entitled. *Dula Ram v. State of Himachal Pradesh*, 2003(1) Cur.L.J. (H.P.) 387 (F.C.)

(xviii) Revision - Partition - Limitation - Held, that the process was served by way of affixation - Petitioners cannot feign ignorance about the orders passed by A.C. - Consequently petition filed before the collector was barred by limitation -

Revision petition dismissed. *Sh. Sarv Dayal v. Smt. Kaushalya Pevl & Ore.*, 2003(1) Cur.L.J. (H.P.) 296 (F.C.)

(xix) Revision - Partition of Land Revenue Act, 1953 - Section 171 & 123 - Revision - Partition of Land - Held, mode of partition had been drawn as per judgment and degree of the Ld. A.D.J. Shimla - Petitioner has not been able to point out any specific deviation therefrom - Revision petition being devoid of any merit is dismissed. *Purshotam Lal v. Roop Chand & Anr.*, 2003(1) Cur.L.J. (H.P.) 396 (F.C.)

Footnotes:

1. Substituted by Act No. 21 of 1976.
2. Added by Act 15 of 1989.
3. Inserted by Act No. 19 of 1971 and renumbered by Act 15 of 1989.