(1975) 05 AHC CK 0032

Allahabad High Court

Case No: First Appeal No. 392 of 1964

State of U.P.		APPELLANT
	Vs	
Smt. Ram Sri and Another		RESPONDENT

Date of Decision: May 23, 1975

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 10(2), 96
- Criminal Procedure Code, 1973 (CrPC) - Section 145
- Limitation Act, 1908 - Article 112, 149, 47
- Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1961 - Section 9
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 117(1), 117(2) , 117(6), 4, 6

Citation: AIR 1976 All 121 : (1975) AWC 632

Hon'ble Judges: Yashoda Nandan, J; K.C. Agarwal, J

Bench: Division Bench

Advocate: Shanti Bhushan, for the Respondent

Final Decision: Partly Allowed

Judgement

K.C. Agarwal, J.

This is an appeal filed by the State of U. P. against the judgment and decree of the learned Civil Judge, Etawah, dismissing the suit. The suit was filed initially by the State of U. P. and the Gaoa Sabha, Mauza Vedpura (hereinafter referred to as plaintiffs Nos. 1 and 2) on 6-1-1959 for the reliefs of declaration that the plaintiffs Nos. 1 and 2 were the owners in possession of the plots situated in Mauza Vedpura, Pargana and district Etawah, and permanent injunction restraining the defendant not to interfere in the ownership and possession of the plaintiffs Nos. 1 and 2. The plaintiffs, in the alternative, also claimed that if they were not found in possession over the plots in dispute, including the trees standing thereon, they might be given

possession over the same excluding buildings. The suit was filed with regard to the following plots mentioned in the Chart given below. The said Chart would indicate the area of these plots separately as well as their character, as mentioned in the plaint.

Plot No.	Area	Character of plots
101	2.71Dec	Usar
102	1.63 Dec	Abadi
103	1.89 Dec.	Banjar
104	.14 Dec.	Abadi
105/1	.39 Dec.	
199/1	3.60 Dec.	Usar/
200	S.31 Deo.	Usar/ by amendment added.
201	2.49 Dec.	Rasta
204	.14 Dec.	Banjar
205	.77 Dec.	Banjar

2. The plaintiffs alleged that prior to the passing of the U. P. Zamindari Abolition and Land Reforms Act (Act I of 1951) (hereinafter referred to as ''the Act''), Smt. Ram Shri, briefly stated as the defendant, was the zammdar of the aforesaid Mauza, but on the abolition of zamindari her rights, title and interest in the said zamindari of village Vedpura, including the plots mentioned above, ceased to exist and were extinguished. The rights of the defendant vested in the State of U. P. that is, the plaintiff No, 1, which became the owner in possession of the zamindari since 1-7-1952. It was asserted that the defendant was neither the owner of the aforesaid

Banjar, Usar, Rasta and Abadi plots nor had she any right to hold any Mela or Bazar over those plots. After the Zamindari was abolished, the State of U. P. issued a notification u/s 117 of the Act, As a result of this notification, the aforesaid Banjar, Usar, Rasta and Abadi plots, and the trees standing on them, got vested in the plaintiff No. 2, which was coming in possession over the same. On these allegations the plaintiffs alleged that although the defendant had no right or interest in the plots in dispute yet she had been trying to interfere in holding the Bazar, which gave rise to two proceedings u/s 145, Criminal P. C. In those proceedings the Sub-divisional Magistrate found on 30-9-1957 that the plots were in possession of the defendant, and that she would continue to remain in possession over the same until she was evicted there from in due course of law. It was alleged in paragraph 18 of the plaint that although as a result of the notification .published in the gazette u/s 117 of the Act the plots in dispute and the trees standing thereon were vested in the plaintiff No. 2, which was entitled to get the relief for declaration and possession about the plots in question yet in order to avoid future controversy concerning the vesting of Bazar plots, trees and abadi plots in plaintiff No. 2, it was necessary that plaintiff No. 1 was also added as a plaintiff in the suit and also claimed the reliefs as prayed. It was specifically mentioned in the plaint that plaintiffs Nos. 1 and 2 would have no objection at all if the reliefs claimed in the suit were given to plaintiffs Nos. 1 and 2 or to either of them. This necessitated the filing of the present suit by plaintiffs Nos. 1 and 2.

3. Subsequently, an amendment was made in the plaint and Zila Parishad, Etawah, was added as plaintiff No. 3 in the suit on the allegation that as plaintiff No. 3 was managing the Mela and Bazar, therefore, plaintiff No. 3 was also entitled to the reliefs claimed in the suit.

4. The suit was contested by the defendant on a number of grounds, including that the plaintiffs were neither owners nor in possession of the plots in dispute, nor had they any tide or interest of any kind in the plots and the cattle market. The defendant asserted that none of the plots was Sanjar, Usar, Rasta etc. and, therefore there was no question of those plots being vested in the State of U. P. According to the case of the defendant, the plots were Abadi plots over which constructions belonging to her stood and, therefore, by virtue of those constructions those plots should be deemed to have been settled with her u/s 9 of the Act. The land which was lying vacant was claimed to be appurtenant to those constructions and, therefore, she asserted that she was entitled to continue in possession of the appurtenant land as well under the aforesaid section, She claimed that the trees standing on the aforesaid plots belonged to her. Initially, she also asserted that there was some grove standing on the land, but subsequently that plea was given up and, therefore, it is not necessary to deal with the same.

5. In the statement made under Order XVIII Rule 2 C. P. C., counsel for the plaintiffs stated that plots Nos. 101, 103, 199/1, 200, 204 and 205 were Banjar and Usar plots

plots Nos, 102, 104 and 105/1 were Abadi plots and plot No. 201 was the Rasta plot immediately before the date of vesting. With regard to plot No. 199/1, the statement made by the counsel for the plaintiffs was that there were some Kuchcha houses on this plot but they belonged to sweepers whereas the constructions standing on plots Nos. 104 and 105/1 belonged to Chamars. The counsel for the plaintiffs denied that there was any sehan or Chabutra in plots Nos. 102, 103 and 104. Sri J. N. Tewari, counsel for the defendant, also made a statement under Order XVIII Rule 2, C. P. C and denied that the plots in dispute were Usar, Banjar or Rasta at the time of vesting. According to his statement, at that time they were all abadi plots, plots Nos. 102, 103 and 104 had been carved out of the old grove No, 104 belonging to the husband of the defendant, whereas plot No. 102 was converted into abadi prior to 1319 Fasli, and the shops and the houses standing on the land belonged to her and not to Chamars, as was the case of the plaintiffs. He also stated that there were 125 or 150 Chabutras, and that they formed an enclosure of the entire area.

6. The suit was dismissed by the trial court on the findings that the land in suit was the cattle market site of the defendant and should be deemed to have been settled with her u/s 9 of the Act as buildings and land appurtenant thereto. The trial court held that there were 125 Chabutras on the land in dispute, and that a very big cattle, market was being held on the land in question twice in a week. These Chabutras were built all round the land for the cattle market for the use of the shop keepers and the customers. The issue of limitation was also decided in favour o the defendant. Aggrieved, the present appeal has been filed by the State of U. P. alone.

7. Learned counsel for the defendant raised a preliminary objection about the maintainability of the appeal on the ground that as the State of U. P. did not have any right or interest in the land involved in the present suit, having given the same to the Gaon Sabha, that is, plaintiff No. 2, by means of a notification issued u/s 117 of the Act, therefore, the appeal filed by the State of U, P. was not maintainable. He submitted that a relief in an appeal could be granted only to a person who was interested in its subject-matter, and as the State of U. P. had neither any interest in the properties involved in the present case nor had the plaintiff No. 1 any interest in the appeal, therefore, the appeal was liable to be dismissed on this ground alone without going into the merits of the same. Sri B. D. Agrawal, the learned Chief Standing Counsel appearing for the State of U. P., disputed the above contention of the learned counsel for the defendant and submitted that the State of U. P, was competent to file the appeal as it was a proper party in the suit, if not a necessary one.

8. Section 96 of the Civil P. C. deals with appeal from original decrees. It does not enumerate the persons who can file an appeal under the aforesaid section. It only lays down that an appeal shall lie from every decree passed by any court exercising original jurisdiction to the Court authorised to hear the appeals. It is, however, fundamental that in order to be entitled to file an appeal, the person must be

aggrieved against the judgment against which he is filing the appeal. In other words, the right to file an appeal against a judgment or decree exists only in the person who is aggrieved or prejudiced thereby. A party, therefore, who would benefit from the change in the judgment has an appealable interest. This interest, of course, should not be contingent speculative or futurities. It must be substantial, immediate and pecuniary. Such an interest must have invaded legal rights of the person filing an appeal. It is, therefore, clear that an aggrieved party is one who is injuriously affected by the judgment or whose rights are directly affected by the operation of the same. The question relating to the controversy as to when a person can be said to be aggrieved has been a subject-matter of decision in various cases. The well known judgment which laid down the definition of the phrase "Aggrieved person" is by James, L. J. in Re Sidebotham: Ex p. Sidebotham (1880) 14 Ch D. 458. It was observed that the words ''person aggrieved'' in Section 71 of the Bankruptcy Act of 1869 meant:

"not really a person who is disappointed of a benefit which he might have received if some order had been made. A ''person aggrieved'' must be a man who had suffered a legal grievance, a man against whom a decision has been pronounced which had wrongfully deprived him of something, or wrongfully refused him something or wrongfully affected his title of something."

9. The important thing which may be noted in this definition is that the person filing an appeal must have "legal grievance" against the decision which "wrongfully deprives him of something" or "affects his title to something". This definition was, however, subsequently treated as not exhaustive. Corpus Juris Secundum, Volume IV, page 356, I Edition, dealing with the same observed as follows:

"Broadly speaking, a party or person is aggrieved by a decision when, only when it operates directly and injuriously upon his personal, pecuniary or proprietary rights",

10. From these citations, it is clear that the mere fact that a judgment is wrong, does not entitle a person to file an appeal against the same. It is necessary that such a person must be deprived of the results of the litigation which he was expecting in his favour in case the judgment went against him. This will give rise to a grievance which may be taken up in appeal by such a person. Dealing with this in Re Riviere''s Trade Mark (1884) 26 Ch. D. 48 Lord Selborne observed;

"..... it must be a legal grievance, it must not be a stet pro rations voluntas the applicant must not come merely saying ''I do not like this thing to be done'', it must be shown that it tends to his injury, or to his damage, in the legal sense of the word".

11. In Adi Pherozshah Gandhi Vs. H.M. Seervai, Advocate General of Maharashtra, Bombay, the Supreme Court was also required to consider the scope and ambit of the words "person aggrieved" used in Section 37 of the Advocates Act, 1961. In that case one Adi Pherozshah Gandhi, who was an Advocate, was called upon by the Bar

Council of the State of Maharashtra to show cause as to why he should not be held guilty of misconduct. The Advocate offered his explanation asserting that he was innocent and was the victim of misunderstanding. The Disciplinary Committee were satisfied that he was not guilty of professional misconduct. The Committee, therefore, ordered that the proceedings be dropped, Aggrieved by the said order of the Disciplinary Committee, the Advocate General of the State of Maharashtra filed an appeal before the Bar Council of India. The appeal was contested by Adi Pherozshah Gandhi. One of the grounds taken by him was that the Advocate General had no locus standi to file the appeal. The objection was overruled by the Bar Council and the appeal was allowed. Consequently, the Advocate filed an appeal u/s 38 of the Bar Councils Act to Supreme Court. The Advocate contended that the order passed by the Bar Council of India was without jurisdiction as the appeal filed by the Advocate General before the said body was not maintainable. Dealing with the expression "any person aggrieved" used in Section 37 of the Advocates Act, 1961, the Supreme Court considered a number of English authorities on the above controversy and observed in paragraph 12 as under:--

"From these cases it is apparent that any person who feels disappointed with the result of the case is not a ''person aggrieved''. He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits someone who he thinks ought to be convicted does not by itself give rise to a legal grievance. These principles are gathered from the cases cited and do not, as I shall show later, do violence to the context in which the phrase occurs in the Advocates'' Act."

12. The Supreme Court, therefore, made it clear that in order to be entitled to file an appeal a person must have a legal grievance which might have deprived him of the benefit in case the judgment had gone the other way.

13. We will now examine the various provisions of the Act in order to find out whether the State of U. P. could be considered as an ''aggrieved person''. The preamble of the Act lays down that the Act was passed to provide for the abolition of the zamindari system which involved intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent on such abolition and acquisition and to make provision for other matters connected therewith. Section 4 of the Act provides for vesting of estates in the State. Consequently, all estates situated in Uttar Pradesh stood vested in the State from 1-7-1952. Consequences of vesting have been enumerated in Section 6 of the Act. It says that all rights, title and interest of all intermediaries in every estate, including land cultivable or barren, abadi holding or groves, hats, bazars and melas, other than

hats, bazars and melas held upon land to which Clauses (a) to (c) of Sub-section (1) of Section 18 apply, shall cease and be vested in the State of U. P. free from all encumbrances, Section 9 deals with the settlement of private wells, trees in abadi and buildings with the existing owners or occupiers thereof. Chapter VII concerns with the Gaon Sabha. A Gaon Sabha is a body corporate having been created u/s 3 of the U. P. Panchayat Raj Act. By Section 117 of the Act the State Government has been empowered by notification in the gazette to declare that from the date to be specified on this behalf all or any of the things mentioned in Section 117, which had been vested in the State under the Act, shall be vested in the Gaon Sabha or any other local authority established for the whole or part of the village in which the said things were situated. Sub-section (2) of Section 117 of the Act provides as under:

" Notwithstanding anything contained in this Act or in any other law for the time being in force the State Government may by notification in the gazette declare that as from the date to be specified all or any of the things specified in Clauses (i) to (vi) of Sub-section (1) which, in respect of any part of the village included after the seventh day of July, 1949 within the limits of a city, municipality, notified area, town area or cantonment under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959, the United Provinces Municipalities Act, 1916, the United Provinces Town Areas Act. 1914, or the Cantonments Act, 1924, as the case may be had vested in the State under this Act shall vest in the Gaon Sabha established for the remaining part of such village."

14. The other sub-section of Section 117 of the Act, which deserves to be noticed, is Sub-section (6). The said sub-section is as under;

"(6) The State Government may at any time, by notification in the Gazette, amend or cancel any declaration or notification made in respect of any of the things aforesaid, whether generally or in the case of any Gaon Sabha or other local authority, and resume such thing, and whenever the State Government so resumes any such thing, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, affected by it in or over that thing:

Provided that the State Government may after such resumption, make a fresh declaration under Sub-section (1) or Sub-section (2) vesting the thing resumed in the same or any other local authority (including a Gaon Sabha) and the provisions of Sub-sections (3), (4) and (5), as the case may be, shall mutatis mutandis, apply to such declaration."

15. Section 119 of the Act provides that notwithstanding anything contained in Sections 117 and 118, the State Government may at any time, by notification in the Gazette declare that, as from the date to be specified, hats, bazars, and melas etc. which had been vested in the Gaon Sabha would be transferred to and be vested in the Zila Parishad or any other authority. Section 122-A gives power of

superintendence, management and control of land etc. on the Land Management Committee. The Land Management Committee is an administrative body of a Gaon Sabha. Sub-section (2) of Section 122-A deals with the functions and duties of the Land Management Committee, which are, inter alia to settle and manage the land, conduct and prosecute a suit or proceedings against or by the Gaon Sabha, Section 122-B of the Act speaks of power of the Land Management Committee and the Collector. Section 126 deals with the power of the State Government to issue orders and directions for the purpose of being carried out by the Land Management Committee.

16. A review of the aforesaid pro-visions would indicate that the State Government became the owner of the entire estates, which were vested upon it consequent to the abolition of zamindari. All the intermediaries ceased to have any interest in the properties which passed on to the State Government consequent upon the issuing of the notification u/s 4 of the Act. The State was thus the absolute owner of the property.

17. In order, however, to provide for proper management of the properties, which were vested in the State Government, it was provided in Chapter VIII of the Act that the State Government could pass on all or anyone of the things mentioned in Section 117 of the Act to the Gaon Sabha. The Legislature has used the word ''vest'' in Section 117 of the Act as well. But, the vesting in Section 117 of the filings mentioned therein is altogether for a different object and purpose than one which is contemplated by Sections 4 and 6 of the Act. The purpose behind Section 117 is only a limited one for the purpose of superintendence, management and control, as laid down in Section 122-A of the Act. By the notification issued u/s 117 of the Act the State Government does not transfer the ownership in the property. It only transfers its possession. Sub-sections (2) and (6) of Section 117 of the Act bear out the above position. By Sub-section (2), as noted above, it has been laid down that notwithstanding the notification under Sub-section (1) of Section 117, the State Government can take it back from the Gaon Sabha in whose favour the vesting had initially taken place u/s 117, and may give the same to any other local authority, including another Gaon Sabha. Similarly, Sub-section (6) of Section 117 also empowers the State Government to amend or cancel any declaration made under Sub-section (1) of Section 117 and resume such thing whenever the State Government so desires. The State Government has only been made liable to pay compensation for the development which might have been carried on by the Gaon Sabha on the land given to it. These provisions thus make it fully clear that the Gaon Sabha, in whose favour a notification u/s 117 is made, does not become the absolute owner of the property. Had that been the fact, the State Government could not take it back from the Gaon Sabha, as provided in Subsections (2) and (8). The fact that the State Government has only been made liable to pay development charges and not the cost of the property taken back in pursuance to the notification under Sub-section (6) of Section 117 of the Act also establishes that what had been

passed on by the State Government under Sub-section (1) of Section 117 was only a right of management, superintendence and control. As a matter of fact, Section 122-A specifically deals with the power of the Land Management Committee saying that it will only have superintendence, management and control of the land. It is worthy of note that this Section or any other section in the Act does not empower the Gaon Sabha to alienate the land given to it u/s 117 permanently. Refusing to confer the power of alienation on the Gaon Sabha is antithesis to the right of ownership. In our opinion, therefore, the State Government does have an interest in the property despite the notification under Sub-section (1) of Section 117 of the Act, Any decision given by a court in which the State Government is a party is bound to injure or prejudice the interest of the State Government. The State Government would in that event be entitled to file an appeal against the same. While accepting me right of the State Government to file an appeal against the judgment given by it, we do not wish to lay down that the State Government is a necessary party in all the suits between the Gaon Sabha and others. We are concerned only with the limited question in this case whether the State Government having instituted the suit along with the Gaon Sabha could be said to be a person entitled to file an appeal, although the Gaon Sabha is a party in the same. As stated above, learned counsel for the defendant Sri Shanti Bhushan submitted that as the entire rights and liabilities had been transferred to the Gaop Sabha, therefore, the State Government ceased to have any interest in the subject-matter and, consequently, the State of U. P. had no right to file an appeal. But, we are unable to accept the above submission of the learned counsel for the respondent as, in our opinion, the same has no merits. The State Government, as stated above, had a legal grievance which had a tendency to injure its interest.

18. Learned counsel for the respondent, however, urged that upholding the right of the State Government to file an appeal would result in ignoring the latter portion of Sub-section (1) of Section 117 of the Act, which is as under:

".....which had vested in the State under this Act shall vest in the Gaon Sabha or any other local authority established for the whole or part of the village in which the said filings are situate,.....".

19. He submitted that the legislature has used the same words in Section 4 of the Act and as the same words have been used by the legislature in the same enactment at two places, the court should give the same meaning in order to carry out the purpose of the section. We are afraid that the above contention of the learned counsel for the respondent is devoid of all substance and must be repelled. There is a natural presumption that identical words used in the same section or in different parts of the same Act are intended to have the same meaning and effect throughout the Act. But, this is not an invariable rule. Where the subject matter, to which the words refer, is not the same in several places where they are used or the context in which the same words have been used is different, the meaning may very

well vary to meet the purpose of the Act. It is, therefore, the context which is important for the purpose of understanding the meaning. The word ''vest'' is not a word of fixed connotation or meaning. It has several meanings depending upon the context in which it has been used. The meaning of the word ''vest'' given in Black''s Law Dictionary, 4th Edition, is "to give an immediate fixed right of present or future enjoyment, to clothe with possession, to deliver full possession of land or an estate, to give seisin. Giving the details it has been said in this dictionary that "the normal sense of the word is to indicate a present and immediate interest as distinguished from one that is contingent". In Webster''s Third International Dictionary, the meaning of this word is "to place or give into possession or discretion of some person or authority. The other meaning given is "to give to a person a legally fixed immediate right of present or future enjoyment." In Richardson v. Robertson (1862) 8 LT 75, dealing with the same expression ''vest'' used in a local Act, Lord Cranworth observed as under;

"..... the word ''vest'' is a word, at least, of ambiguous import. Prima facie Vesting in possession is the more natural meaning. The expressions ''investiture'' --''clothing'' -- and whatever else be the explanation as to the origin of the word, point prima facie rather to the enjoyment than to the obtaining of a right. But I am willing to accede to the argument that was pressed at the bar, that by long usage Vesting ordinarily means the having obtained an absolute and indefeasible right, as contra-distinguished from the not having so obtained it. But it cannot be disputed that the word ''vesting'' may mean, and often does mean, that which is its primary etymological signification, namely, vesting in possession."

20. Dealing with the word ''vest'' with reference to the provisions of a local Act, Willes, J., in Hinde v. Chorlton (1866) 2 C. P. 104 . 116, held as under: --

"..... there is a whole series of authorities in which words, which in terms vested the freehold in persons appointed to perform some public duties, such as canal companies and board''s of health, have been held satisfied by giving to such persons the control over the soil which; was necessary to the carrying out the objects of the act with-out giving them the freehold."

21. The Supreme Court in The Fruit and Vegetable Merchants Union v. Delhi Improvement Trust AIR 1957 SG 344 was required to consider the meaning of the word ''vest'' used in U. P. Town Improvement Act. After considering the various provisions in the said Act, it came to the following conclusion:

" That the word "vest" is a word of variable import is shown by provisions of Indian Statutes also. For example, Section 56 of the Provincial Insolvency Act (5 of 1920) empowers the Court at the time of the making of the order of adjudication or thereafter to appoint a receiver for the property of the insolvent and further provides that, "such property shall thereupon vest in such receiver". The property vests in the receiver for the purpose of administering the estate of the insolvent for

the payment of his debts after realising his assets. The property of the insolvent vests in the receiver not for all purposes but only for the purpose of the Insolvency Act and the receiver has no interest of his own in the property. On the other hand, Sections 16 and 17 of the Land Acquisition Act (Act 1 of 1894), provide that the property so acquired, upon the happening of certain events, shall "vest absolutely in the Government free from all encumbrances". In the cases contemplated by Sections 16 and 17 the property acquired becomes the property of Government without any conditions or limitations either as to title or possession. The legislature has made it clear that the vesting of the property is not for any limited purpose or limited duration. It would thus appear that the word "vest" has not got a fixed connotation, meaning in all cases that the properly is owned by the person or the authority in whom it vests. It may vest in title, or it may vest in possession, or it may vest in a limited sense, as indicated in the context in which it may have been used in a particular piece of legislation. The provisions of the Improvement Act, particularly Sections 45 to 49 and 54 and 54-A when they speak of a certain building or street or square or other land vesting in a municipality or other local body or in a trust, do not necessarily mean that ownership has passed to any of them."

22. Having thus found that the word "vest" does not have a fixed connotation or meaning, we may now consider the relevant provisions of the Act having bearing on this point. We have already mentioned those provisions exhaustively. It is not necessary to repeat them. It would suffice to mention mat vesting of right, title or interest has the object of divesting the intermediaries whereas the vesting u/s 117 of the Act has the limited purpose of placing the Gaon Sabha into possession for the purposes of enabling the Gaon Sabha to acquire present and immediate right to enjoy the same. With reference to the context in which the word ''vest'' has been used in Section 117 (1) of the Act, it does not mean that Gaon Sabha was conferred with absolute title or right over the things mentioned therein after divesting the State of its title. As explained above, the Gaon Sabha has been given the right of superintendence, management and control. Title over these items regarding which notification u/s 117 (1) has been issued, still remains with the State. It is this retention of the title that justifies the power of resumption u/s 117 (6) of the Act. The submission of the learned counsel for the respondent that the State was merely a formal owner and does not have paramount title is wholly untenable. Faced with the distinction of phraseology used in Sub-sections (4) and (6) to that of Section 117 (1) of the Act, the learned counsel for the respondent asserted that the same was done by way of abundant caution and no special significance could be attached to it. We do not find any merit in this approach. The distinction made is obvious, deliberate and purposive incorporated to achieve different objects. We, accordingly, find that Section 117 (1) of the Act when it speaks of certain things vesting in the Gaon Sabha, it does not mean that ownership has passed therein to the Gaon Sabha.

23. Learned counsel for the respondent strongly relied upon a case in Mohammad Shafi v. Gram Sabha, Bisauli 1970 AWR (HC) 502 in support of his contention that

proprietary rights were vested in the Gaon Sabha in the things mentioned in Clauses (ii) to (vi) of Sub-section (1) of Section 117. It appears that Gram Sabha, Bisauli, district Etawah, instituted a suit against Mohammad Shafi for demolition of certain constructions made by him over plot No. 861, situated in village Bisauli. The claim of the Gram Sabha was based on its right of ownership. The suit was dismissed on 9-12-1965. During the pendency of the appeal preferred against the aforesaid decree, the State Government issued a notification u/s 3 (1) of the 0. P. Town Areas Act, 1914, on 13-7-1966 and declared Bisauli to be included in the Town Area of Achhalda with effect from 15-7-1966. Plot No. 861 was also one of the plots which were included in it. As a result of the aforesaid notification, with effect from 15-7-1966, the aforesaid plot No. 861 of village Bisauli got included in the territorial limits of the Town Area, Acchalda. Thereafter, Mohammad Shafi filed an application stating that as the Gram Sabha was no longer interested in the property, the same having gone to the Town Area, the suit filed by the Gram Sabha had become infructuous, The Civil Judge rejected the application of Mohammad Shafi on the ground that no notification divesting the Gram Sabha of this plot having been issued by the State Government u/s 117 (6) of the U. P. Zamlndari Abolition and Land Reforms Act, the proprietary interest of the Gram Sabha in this plot still continued. Aggrieved by the dismissal of the aforesaid application, Moham-mad Shafi had filed a revision in this Court. Dealing with this question, a Division Bench of this Court in this case of Mohammad Shafi (supra) held as under:

"Mere change in the territorial limits of a Gaon Sabha by transferring particular areas from the territorial limits of the Gaon Sabha to the territories of any other local authority (including a Town Area) would not automatically divest the Gaon Sabha of the things specified in Clauses (i) to (vi) of Sub-section (1) (Like land, forests, fisheries, hats, bazars, etc.). The rights in such things would stand divested transferred only if a notification in the Gazette declaring such divesting, and vesting in the Town Area, is published. Since no such notification was made by the State Government, the rights in the instant case, which vested in the Gaon Sabha, continued to remain so vested, and would not vest in the Town Area."

24. The facts of the case mentioned above would indicate that this Court was not considering the question of interest of the State in the land given to the Gram Sabha in pursuance to a notification u/s 117 (1) of the Act. It was concerned with a limited question of the effect of Sub-sections (2) and (6) of Section 117. It is true that while dealing with this controversy this Court used the words such as "proprietary interest of the Gram Sabha'', divesting, vesting would stand transferred. But, the mere use of these words in the judgment does not show that the Division Bench held that whatever was transferred to the Gram Sabha under Sub-section (1) of Section 117 was such an interest which divested the State Government altogether of its rights obtained by it in pursuance of the notification u/s 4 of the Act. This case, according to our view, is clearly distinguishable and does not apply to the facts of the present case. A judgment is authoritative only as to its ratio decidendi. If in the course of

arguments and decision of a case many incidental considerations arise which are all part of a logical process but have different degrees that will not make the observations made in that connection binding.

25. For the reasons given above, we overrule the preliminary objection raised by the learned counsel for the respondent and proceed to decide the appeal on merits.

26. Now coming to the merits, the issues which may first be taken up are issues Nos. 1 to 4. These issues were taken together by the court below and as the points involved for their decision are common, we also propose to do the same. It may be noticed that the counsel for the plaintiff stated under Order X Rule 2 C. P. C. that there were buildings over plots Nos. 102, 104 and 105/1 for the last 20 or 25 years. He also accepted that there were two temples and some houses on plot No. 102. With respect to the other plots, the statement made by the plaintiffs counsel was that they were Banjar, and that the defendant used to hold a cattle fair on the same before the date of vesting. Counsel for the defendant also made a statement under Order X Rule 2 C. P. C. He stated that all the plots in question were previously groves but they lost their character and were converted into abadi. He claimed that there were houses, Chabutras and shops over plots Nos. 119/1 105, 104, 103, 102, 101, 200, 204 and 205. With regard to plot No. 201, the statement was that it was not the passage, as claimed by the plaintiff, but was abadi of the defendant. The plaintiff produced four witnesses and also filed documentary evidence in support of its claim. The witnesses produced were Raghunandan (P. W. 1), Gopi Nath (P. W. 2), Rustara Singh (P. W. 3), and Chunni (P. W. 4), Raghunandan is an employee of the Zila Parishad, Etawah. He narrated the character of the land as Usar, Banjar, Rasta and abadi. The existence of some of the Chabutaras was also admitted by him. The statement of Gopi Nath was that the bazar was being held over the plots twice a week, and that there were 10 or 20 Chabutras in existence, which were scattered on all the four sides of the land in dispute. Rustam Singh testified that some of the shop keepers had collected heaps of mud over different portions of the land in dispute and the same were being used by them. The last witness of the plaintiff was Chunni, He turned hostile in the examination-in-chief, as a result thereof the plaintiff was permitted to cross-examine him. The total effect of the statement made by him was that he admitted that the land in dispute was enclosed by Chabutras from all the four sides and those Chabutaras and Madaiyas were in existence since long. He also stated that there were 30 or 32 mounds of earth and the total number of Chabutras which he saw at the spot was between 15 and 20. The total effect of the statement made by this witness is the acceptance of the existence of some Chabutras on the land in dispute for the last several years. Although the evidence of this witness was declared as that of a hostile witness yet the same will be read in the same, manner and to the same extent as that of any other witness. This was the total evidence produced from the side of the plaintiff on the nature and condition of the land as existing on the spot.

27. The defendant has produced as many as nine witnesses in support of her case. She also filed some documentary evidence, a reference of which will be made subsequently. The witnesses produced by the defendant were Shyam Behari (D. W. 1), Ganga Charan (D. W. 2), Ram Bharosey (D. W. 3), Bale Ram (D. W. 4), Lala Ram (D. W. 5), Lakhan Smgh (D. W. 6), Ram Charan (D. W. 7), Itwari (D. W. 8) and Maharaj Singh (D. W. 9), Shyam Behari was the Pradhan of village Vaidpur since 1961. He made the statement in the court on 5-11-1963. He was asked in the cross-examination whether he knew that the Gram Samaj was also one of the plaintiffs in the present suit. He had the courage to state that he did not know that the Gram Samaj was also a party in the present suit, and that he had come to depose in the court without taking the permission from the Deputy Collector. This statement of Shyam Behari that he did not know about the fact of the Gram Samaj being one of the plaintiffs of the present suit goes a long way to discredit his testimony. It is admitted on all hands that the bazar or Mela, which was being held over the land in dispute, was one of the famous and important Melas of this district. The plots in dispute involved in this litigation measured 17 acres. It is unbelievable that he did not know that the Gram Samaj was a party in this litigation in spite of his position of being pradhan of the village in question. His statement gives us an impression that he is a brazen-faced liar and it would be unsafe to rely on the testimony of this witness for the purpose of finding out the truth. The other witness, who has to be discarded, is Ram Charan. He was the Pujari in the temples situate over the land in dispute. He admitted that he used to receive salary from the defendant. He was in service since long. His statement read as a whole, also does not inspire confidence. On account of these facts, the statement made by him is also unworthy of belief. Ganga Charan stated that there were 100-125 Chabutras over the plots in dispute, He also stated that there were 15 or 16 shops and 14 or 15 houses on the land in dispute. He admitted that he was occupying one of the shops involved in the present case. He was asked in the cross-examination whether he had counted the Chabutras existing on the land in dispute. He stated, firstly, that he had done so, but, subsequently, changed his statement and said that labourers told him the number of the Chabutras. He could not also give the reason for counting them. The statement made by him that all these Chabutras existed over four or five plots again makes his testimony doubtful. We, therefore, do not find his statement believable on the question of existence of the number of Chabutras on the disputed land. His knowledge about the number of Chabutras is hearsay. Ram Bharosey, Bale Ram, Lakhan Singh, and Itwari repeated the same fact about the existence of 100-125 Chabutras over the land in dispute. These Chabutras, according to their statements, were in existence for the last 30 or 35 years. They also stated that all the plots in dispute were abadi. Although there is nothing particular against any of these witnesses which could render their testimony unbelievable but it appears to us that these witnesses have exaggerated the number of Chabutras existing on the land in dispute solely with a view to make statements in favour of the defendant. None of these witnesses gave details of the existence of particular number of

Chabutras over a particular plot. Each one of them repeated the parrot like story by stating that there were 100-125 Chabutras over the plots in dispute. The remaining witnesses are Lala Ram and Maharaj Singh. Lala Ram asserted that the houses, shops, temples and the Chabutras. could not be used without open space. He also stated that no portion of the land was Banjar, Usar or passage and that the houses, shops and Chabutras were in existence. He admitted in the cross-examination that he was not in a position to tell the particular plots in respect of which the dispute was going on and also the details about the situation of these Chabutras. So far as Maharaj Singh is concerned, he was a highly interested witness as he was the Mukhtar-i-am of the defendant and her real brother. The sum and substance of the discussion of the oral evidence of the witnesses produced by the defendant is that their statements about the number of Chabutras are vague, without necessary details and, therefore, we do not consider it safe to rely on the statements of these witnesses that there were 100-125 Chabutras over the land in dispute scattered all over the plots and that the same had rendered the land unfit for any other use.

28. Learned counsel for the defendant invited our attention to Exhibits A-34 and A-35. Ext. A-34 is a copy of the report of the Tehsildar, without bearing any date, to the Sub-Divisional Officer, in which it was mentioned that the defendant was holding her cattle fair over the land in dispute, A map was also prepared by him for showing the area of Mela covered by the report which was submitted by him. As mentioned above, although the exact date has not been given in that paper yet it does appear that it was submitted sometime in 1959. This report does not advance the case of the defendant inasmuch as there is nothing in it which could show that the entire area of the land involved in the present case was covered by constructions such as that which had been pleaded in the present suit by the defendant. The only thing which is established is that the defendant was holding her cattle market over these plots. This by itself would not entitle the defendant to get any right. Further, we are of the opinion that the report of the Tehsildar is an expression of his impression gathered by him at the spot. The report is evidence only of the fact that he had been deputed to make an enquiry and that he came to the conclusion mentioned by him in his report and shown in the map. It will, however, be incorrect to say that the report is admissible u/s 35 of the Evidence Act, as submitted by the learned counsel for the respondent. Had the defendant examined the Tehsildar as a witness, the report might have become admissible under some other provision of the Evidence Act.

29. It may be remembered that all the ten plots, which were involved in the present case, were situated in a. village which had been affected by the abolition of Zamindari. All the rights, title and interest of the intermediaries over the plots situate in this village were vested in the State and the State had thus become owner of the same. The defendant could succeed in getting these plots only when she established that they had been settled with her u/s 9 of the Act. Section 9 of the Act is an exception to the general state of affairs and, therefore, the burden lay on the

defendant to establish that the land was such to which the provisions of Section 9 applied. Although we have not accepted the statements of the witnesses of the defendant on the question of the number of Chabutras yet it does appear from their statements coupled with the evidence of the plaintiff''s witnesses and the statement made by the counsel for the plaintiff himself that there were some buildings and shops as well as temples and Aushdhalayas existing on the land. The extent of the land covered by these constructions has not been given, either by the plaintiff or by the defendant, The defendant simply asserted that the entire area was abadi covered by the constructions, already mentioned above. In view of this state of affairs, the court below rightly issued a Commission for the purpose of locating the plots as well as the buildings in dispute standing thereon. The Commissioner appointed was one Shri Murari Lal Shukla. He submitted his detailed and considered report on the points noted above, on 29-4-1961. The said report was accompanied with two maps, one of them was described by him as a bigger map. This map gives a clear idea of the situation of the plots as well as the constructions, including the Chabutras. So far as the buildings, shops and temples as well as the Aushdhalaya are concerned, they have been shown by him over plots Nos. 102, 101, 104, 303 and 199. The plaintiff as well as the defendant both had filed objections against the said report of the Commissioner. So far as the plaintiff is concerned, its objection was mainly directed against the existence of new pits and also some Chabutras which, according to its case, were in the shape of raised earth and not in the regular form. It did not say anything about the existence of buildings, shops, temples etc. The objection of the defendant with regard to Chabutras was as under:
"That the learned commissioner has shown almost all the Chabutras which form the outer boundary of the Mela plots area but some Chabutras have been left out and it has not been shown that they are the outer boundary of the Mela area. Besides the learned commissioner has omitted to mention that the thatches and tins are in front of the roofed shops."

30. After the above report was submitted, the commissioner was asked to submit an additional report with regard to the objections of the parties, mentioned above. The commissioner stated in his additional re port that none of the Chabutras was left which had not been shown or located in the map or mentioned in the report. After the above report was submitted, another objection was, thereafter, filed by the defendant to the additional report of the commissioner on 19-8-1961. She did not in this objection again disclose the number of the Chabutras which were in existence according to the defendant and vaguely asserted that the Chabutras were all old.

31. It, however, appears that after the statements of some of the witnesses of the defendant were recorded, the plaintiff moved another application for appointment of a commissioner in order to verify the correctness of the statements made by the witnesses of the defendant. One of the points for which the appointment of the second commissioner was sought by the plaintiff was that the commissioner be

directed to show the Chabutras if any not shown in the previous map. The request of the plaintiff was acceded to by the court. Sri Prem Chand, Vakil was, therefore, sent to make a local inspection of the site and to submit his report. He submitted a detailed report on 21-11-1963. In the said report he more or less agreed with the earlier report of the commissioner excepting that some new Chabutras in irregular shapes had come into existence. Sri Prem Chand stated in the report that the new Chabutras found were nothing but "Mitti ka Dher". He further pointed out in this report that some other Chabutras were nothing but levelled heaps of dust Reading the report as a whole, the position of the defendant is not improved. Against this report of the commissioner, objections were filed by the plaintiff and the defendant, which led to the filing of the additional report by the Commissioner. He, thereafter, appeared as a witness in the court as P. W. 5. In the additional report he had mentioned that there were 80 Chabutras whereas in the statement he tried to improve upon the report and stated that their number could be even 125,

32. The above discussion would show that while according to the first commissioner the total number of Chabutras wag not more than shown or located in the map but, according to Sri Prem Chand, their number could be 100 or even 125. Learned counsel for the respondent relied on the statement of Sri Prem Chand and urged that from the statement made by him it was clear that there were 125 Chabutras existing all over the land and, therefore, the defendant was entitled to the benefit of Section 9 of the Act in respect of all these Chabutras. He submitted that the report of the first commissioner was inadmissible in evidence inasmuch as the said commissioner having not been produced as a witness, the report submitted by him could not be read in evidence. Before dealing with the submission on the statement of Sri Prem Chand, we may deal with the legal aspect of the admissibility of the first report.

33. Order XXVI Rule 10 (2) of Civil P. C. lays down that the report of the commissioner and the evidence taken by him shall be evidence in the suit and shall form part of the record. It is, therefore, clear from the aforesaid provision that it is not necessary in order that the report becomes evidence that the statement of the commissioner should also be made in the court for the purpose of proving it. It is up to the choice of the party to examine a commissioner in respect of the matters referred to him or mentioned in his report. But the examination of the commissioner is not at all required by the aforesaid provision for the purpose of proving the report. The case relied upon by the learned counsel for the respondent in Haji Kutubuddin Vs. Allah Banda, is not at all relevant on the above controversy. It this case, the High Court did not hold that the statement of the commissioner was necessary in order to prove it or that without such a statement the same could not be read in evidence. We, therefore, do pot accept the submission of the learned counsel for the respondent that the report of the first commissioner was not admissible as he had not been produced as a witness.

34. As mentioned above, the report of the first commissioner was the result of a careful local investigation. The map prepared by him gives a clear picture of the situation at the spot and of the existence of buildings and Chabutras. From this report it is clear that there did not exist 100-125 Chabutras on the land in dispute as claimed by the defendant. It is noteworthy that in none of the objections filed against the report of the said commissioner, the defendant indicated the number of the Chabutras which were in existence at the spot, according to her case. She only vaguely asserted that all the Chabutras had not been shown. Reading the objections filed by the defendant closely it appears that her objection about the existence of the Chabutras was confined to few. This report of the first commissioner was substantially supported by the second report of Shri Prem Chand. It was subsequently in the additional report that something more was said by him. In the cross-examination however, he admitted that according to his view the earth sticking around the trees were also Chabutras. It, therefore, appears that while giving the number of the Chabutras in his statement or in his additional report Sri Prem Chand did not only keep in mind the Chabutras as shown by the first commissioner in the map but also took into consideration some other things which were described by him as "heap of mud", "newly constructed Chabutras", "circular Chabutras'' "earth sticking around the trees". Learned counsel for the respondent pointed out the explanation given by Prem Chapd in his statement why all Chabutras were not shown earlier and attempted to argue that from the statement made by him in the court it appeared that the number of Chabutras shown in the first map as well as in the report of the first commissioner was much less than existing on the spot. His explanation, however, appears to us wholly unsatisfactory. As we are not prepared to accept that a man who writes in his report that the Chabutras were recently made had used those words "recently made" not in the sense that they were not fresh constructions as deposed by him in his statement,

35. It appears to us from the statements of the witnesses as well as that of the Commissioner and the report that while giving the number of the Chabutras 100 to 125, the defendant also included a large numbet of "Thalas" and considered them as "Chabutras". The purpose of Thalas is to provide protection to the trees and they could not, therefore, be considered as Chabutras. It is these Thalas which have swelled the number of Chabutras to 100 or 125. In fact, these could not be considered as Chabutras as, in our opinion, in order that a construction is a Chabutra it must have its basic character of a terrace or a levelled place meant for the purpose of sitting. The construction must have been made with that end in view and simply because people sometime sit on "Thalas" or over the earth sticking around the trees, the same would not convert the same into Chabutras,

36. A controversy was raised by the learned Chief Standing Counsel appealing for the State that in order that a Chabutra was considered as a ''building'' within the meaning of Section 9 of the Act, it was necessary that it must be a pucca construction made out of bricks having some permanent structure. He referred to a

decision of the Supreme Court in Ghanshiam Das Vs. Devi Prasad and Another, . In this case, the Supreme Court was considering whether a brick kiln was a building within the meaning of Section 9 of the Act, Dealing with the word ''building'' it found that the same had not been defined in the Act, and, therefore, had to be considered in its ordinary grammatical sense unless there was something in the context or object of the Statute to show that it was used in a special sense different from its ordinary grammatical sense. It further said that construing the word according to the dictionary meaning, the existence of the roof was not necessary for a structure. We, therefore, find nothing in this case which may support the contention of the learned Chief Standing Counsel that the construction must be of a permanent character, that kuchcha Chabutras could not be considered as a ''building'' for the purpose of Section 9 of the Act. In India, as we know, a number of persons are living in kuchcha houses in every village and it cannot, therefore, be considered that the word ''building'' was used by the legislature in the sense propounded by the learned Chief Standing Counsel, The context or object of the Statute also leads us to the conclusion that the intention was to settle the buildings vested in the State u/s 4 of the Act. In doing so, the legislature cannot be held to have intended to deprive lakhs and crores of people of their residences by providing for that pucca constructions alone would be covered by Section 9 of the Act. A Chabutra is a building is not a matter of dispute as the same has been so found by the Supreme Court in State of Bombay Vs. Sardar Venkat Rao Krishna Rao Gujar, . The Supreme Court was dealing with regard to the interpretation of Section 5 (a) of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act No. 1 of 1951). In construing the word ''building'' it held that ''Ottas'' and "Chabutras" fell within the term ''building.'' An attempt to distinguish this case made by the learned Chief Standing Counsel on the ground that the Supreme Court found only a pucca Chabutra to be a ''building'' cannot succeed as there is nothing in this case which may lead us to that conclusion. We, therefore, find that a Chabutra is a ''building'' within the meaning of Section 9 of the Act irrespective of the fact that it is kuchcha. But, we wish to make it clear that in order that a kuchcha Chabutra is a building it must have the shape and construction of the nature which may make it a Chabutra. It is not every collection of mud howsoever significant in nature it may be, or that any construction meant or made for any other purpose is a Chabutra. The meaning of the word ''Chabutra'' is very well understood. It signifies a place constructed for the purpose of being used for sitting. The dictionary meaning of the word ''Chabutra'' given in English and Hindi Dictionary by Shakespeare is "a terrace or mound to sit and converse on, a platform, a custom house, a police office. Similar is the meaning of this word given in another dictionary of J. T. Platts, The meaning of the word ''Chabutra'' according to the dictionary is a terrace, levelled and raised piece of land or ground to sit and converse on, a platform, a market place, a police station, a tribunal or court of justice". These two meanings also indicate that it has to be a terrace or raised ground meant for the purpose of being used to sit and converse on. Although we agree with the learned counsel for the respondent that

Kuchcha Chabutra could be included u/s 9 of the Act, we do not find any substance in his submission that any kind of collection of mud ment for any purpose would answer the description of the word ''chabutras''.

37. Applying the above, we find that the learned counsel for the respondent Sri Shanti Bhushan is not right in his contention that there were 100-125 Chabutras on the disputed site. From the evidence on the record it appears to us that the number of Chabutras were clearly shown by the first commissioner in his map and those alone can be considered for the purpose of Section 9 of the Act In his report the first commissioner had made a mention of some circular Chabutras. But, as we have found that those circular Chabutras round the trees cannot be considered as ''building'', within the meaning of Section 9 of the Act, therefore, we hold that only those Chabutras which were shown by him in the map are ''building'' for the purpose of Section 9 of the Act.

38. The other question which remains to be examined is about the land appurtenant to the said buildings. Learned counsel for the respondent urged that as these Chabutras formed a complex and the entire land situate on the same was being used for (he purpose for which these Chabutras were built, therefore, the entire area of the land should be considered as appurtenant to these Chabutras and other buildings and, accordingly, the respondent was entitled to the benefit of Section 9 of the Act in respect of the entire land involved in the suit. We are unable to accede to the submission of the learned counsel for the respondent for two reasons. Firstly, this argument assumes that there were 125 Chabutras on the land in dispute but as we have found that the number of Chabutras are much less than claimed by the respondent, therefore, the question of treating the entire land as appurtenant does not arise. Secondly, the purpose of the land being appurtenant can only be one for the useful or beneficial enjoyment of the building. The word ''appurtenant'' has not been defined in the Act. The dictionary meaning of the word ''appurtenant'' is "usefully occupied". In Tomlin''s Law Dictionary, it has been said that the word can import nothing more than the words strictly appertaining to the subject-matter of the devise or grant and which would in truth pass without being specially mentioned. Another meaning of this word is "pertaining or belonging". In Webster''s III New International Dictionary, the meaning of this word given is "annexed or belonging legally to some more important thing, incident to and passing in possession". The word "appertaining" means something which is usually occupied with the main building. All these meanings, therefore, show that the land appurtenant should be something which is needed for the enjoyment of the main building and is enjoyed with it, being part of the same.

39. It is noteworthy that u/s 4 of the Act, all estates situate in Uttar Pradesh vested in the State. Consequently, all the rights and title of the intermediaries were abolished. Section 6 of the Act lays down that all rights, title and interest of all the intermediaries in hats, bazars and melas other than hats, bazars and melas held

upon the land to which Clauses (a) to (c) of subsection (1) of Section 18 apply, would be extinguished. Consequently, after the abolition of zamindari, the right to hold hats, bazars, and melas in every estate became exclusively that of the State. As a result thereof, after the date of vesting, nobody is entitled to carry on hats, bazars and melas, excepting upon the land to which Clauses (a) to (c) of Sub-section (1) of Section 18 apply.

40. This controversy came up for decision before the Supreme Court on two occasions. These cases are (1) State of Bihar and Others Vs. Dulhin Shanti Devi, and (2) State of Bihar Vs. Rameshwar Pratap Narain Singh and Others, . In both these cases it has been said that the State had and the proprietor had not with effect from the date of vesting of the estate in the State, the right to hold Mela on the land of the proprietor. The same is the effect of Sections 4 and 6 of the Act in the instant case. Consequently, after the abolition of zamindari, none could be held to have a right to hold hats, bazars and melas on the lands vesting in the State. This being the position, the land appurtenant to a building u/s 9 of the Act could be settled only for the purpose permissible under the Act and not contrary to the same. The respondent, therefore, cannot be given any land for the purpose of holding hats, bazars and melas on the ground that the same is appurtenant to buildings. In Gram Sabha v. G. S. Prasad Sahu 1971 All LJ 146 Mr. Justice K. B. Asthana (as he then was) also held as under:

"There is no inherent inconsistency or difficulty in holding that even in a plot where a market is held which vests in the State, if a structure stands belonging to the intermediary, that structure will be covered by the provisions of Section 9 of the Act."

41. These observations bear out that the right to hold hats, bazars and melas on the land appurtenant to a building vests in the State Government. We, accordingly, find that the respondent is not entitled to get the entire land as appurtenant to the Chabutras and other constructions.

42. The next issue which may now be considered is that of limitation. The court below found that the suit of the plaintiff was beyond time as the plaintiff never came in possession after the abolition of zamindari. It has also been found that as in the proceedings u/s 145 Criminal P. C. the land was released in favour of the defendant and since the plaintiff did not file a suit within limitation after the termination of those proceedings, the same was barred by time. As we have found that the land had been vested in the State on the 1st of July, 1952, the State Government would not lose its right to obtain possession of the land from the defendant simply because seven years'' time had passed by the time the suit had been filed. The period of limitation prescribed for the State Government to bring a suit for possession under the Limitation Act was 60 years. Further, the proceedings u/s 145 Criminal P. G. terminated in September 1957. Article 47 of the Limitation Act prescribes the period of three years from the date of final order for recovering the

property comprised in the said order. The suit was filed in the instant case on 6th July, 1959. Learned counsel for the respondent also found that the finding of the court below on the question of limitation was un-supportable and hence did not address us on the said issue at all.

43. So far as the trees standing on the abadi land are concerned, they have been shown by the Commissioner Murari Lal Shukla in his map. Neem trees have been shown by the letters N-1 to N-45, Sheesham trees by the letters S-1 to S-6, Imli trees by the letters 1-1 to 1-6, Babul trees by the letters B-1 to B-15, Banyan trees by the letters V-l to V-4. Since these trees were standing on the abadi, the defendant will be entitled to get these trees u/s 9 of the Act.

44. There is a well on plot No. 201, The same would be deemed to have been settled in favour of the defendant along with the land appurtenant to the same under the aforesaid section. The well as well as the land appurtenant has been shown in the map. mentioned above. The defendant will be entitled to get the well as well as the land appurtenant thereto shown in the said map.

45. So far as the Chabutras are concerned, all these Chabutras have been shown by the commissioner with the words Ch. Each Chabutra will be deemed to be a building u/s 9 of the Act and will be deemed to be settled with the defendant. Apart from these Chabutras, there are four other Chabutras which have been shown in the map of the commissioner but the word Ch. is not written against them. These Chabutras have been indicated in the following manner:

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P28 P63 P79 P83
P29 P64 P80 P84
P30 P65 P81 P85
P31 P66 P82 P86
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The aforesaid Chabutras are situated in plot No. 201. They would also be deemed to have been settled in favour of the defendant and she will be entitled to get the same.

46. So far as pits (Khadua) are concerned, they cannot be considered as trees. They were not in existence on the date of vesting. Therefore, the defendant will not be entitled to keep them in her possession.

47. The only things which are now left are the buildings. It appears that the whole of plots Nos. 102 and 104 are covered with the constructions, which amount to ''buildings'' u/s 9 of the Act. The land falling vacant in these plots can be considered appurtenant to these constructions''. The State Government would, therefore, not be entitled to get possession of these two plots.

48. So far as plot No. 101 is concerned, some constructions exist towards a corner apart from three Chabutras. As, in our opinion, the defendant is entitled to get them

u/s 9 of the Act, the suit of the plaintiff in respect of these constructions shown by letters X Y Z Z1 by us in the map would stand dismissed. The defendant will, however, get five yards land around each Chabutra as the land appurtenant thereto.

49. There are two small Chabutras in plot No. 105. The suit of the plaintiff would stand dismissed with regard to these Chabutras and the defendant will be entitled to get these Chabutras along with five yards space around them,

50. Coming to plot No. 199, we find that there is a house situate in the middle. The defendant claimed that she was the owner of this house. This was disputed by the State Government. It is, however, not necessary for us to go into the question of title. Suffice it to say that the plaintiff will not get any decree for possession of this house as well as over the four Chabutras shown in the map,

51. There is no construction in plot No. 103, excepting over its insignificant portion showing the Kotha of one Chato. The plaintiff will be entitled to get possession of this plot, except over the portion shown as the Kotha.

52. Plots Nos. 200, 201 and 205 only have some Chabutras, The suit of the plaintiff would stand decreed in respect of the entire land of these plots, excepting the Chabutras and the defendant will have five yards space around these Chabutras,

53. There are no constructions over plot No. 204. It will go to the State Government and the State Government will thus get a decree for possession over the same.

54. It appears that a sum of Rupees 983/8/- and Rs. 146/14/- were deposited on account of the profits from the cattle markets which were held during the attachment u/s 145 Criminal P. C. Since we have held that the defendant does not have any right to hold the cattle market, the plaintiff will be entitled to recover these amounts from the defendant.

55. For the reasons given above, the appeal succeeds in part and is allowed partly. The suit of the plaintiff appellant in respect of plots Nos. 102 and 104 is dismissed, whereas with regard to plots Nos. 101, 103, 105, 199, 200, 201, 204 and 205 the suit is decreed in respect of the areas mentioned in the Judgment. The judgment and decree of the Court below are set aside to the above extent and the same is modified to the extent noted above. The map 43-Ka-2 showing the necessary details shall form part of the decree. The plaintiff appellant will be entitled to receive costs of this appeal from the defendant, whereas the costs of the suit shall be borne by the parties themselves.