

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 08.02.2017

(1) CWP No.14723 of 2015 (O&M)

Gram Panchayat Majrian Petitioner.

Versus

Union of India and others Respondents.

(2) CWP No.23268 of 2014 (O&M)

Kandhi Area Bachao Sangarsh Committee Petitioner.

Versus

State of Punjab and others Respondents.

(3) CWP No.24096 of 2014 (O&M)

Mohinder Pal Petitioner.

Versus

State of Punjab and others Respondents.

(4) CWP No.85 of 2016 (O&M)

Pakhar Singh and others Petitioners.

Versus

Union of India and others Respondents.

(5) CWP No.17216 of 2016 (O&M)

Raja Shivdev Inder Singh Petitioner.

Versus

State of Punjab and another Respondents.

**CORAM: HON'BLE MR. JUSTICE S.S. SARON
HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr. Puneet Bali, Senior Advocate, with
Mr. Vibhav Jain, Advocate, and
Mr. Arun Gupta, Advocate,
for the petitioner in CWP No. 14723 of 2015.

Mr. Anil Kumar Rana, Advocate, for
Mr. Lokesh Sinhal, Advocate,
for the petitioner in CWP No. 24096 of 2014.

Mr. Aman Kashyap, Advocate,
for the petitioner in CWP No. 23268 of 2014.

Mr. Deepak Thapar, Advocate,
for the petitioners in CWP No. 85 of 2016.

Mr. V.K. Arora, Advocate,
for the petitioner in CWP No. 17216 of 2016.

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab,
for respondent - State of Punjab.

Mr. Brijeshwar Singh Kanwar, Advocate,
for respondent - Union of India.

S.S. SARON, J.

This order will dispose of CWP No. 14723 of 2015 titled 'Gram Panchayat Majrian and others v. Union of India and others' as also the connected petitions, i.e. 'Mohinder Pal v. State of Punjab and others' CWP No. 24096 of 2014; 'Kandhi Area Bachao Sangarsh Committee vs. State of Punjab and others' CWP No. 23268 of 2014; 'Pakhar Singh and others v. Union of India and others' CWP No. 85 of 2016 and 'Raja Shivdev Inder Singh v. State of Punjab and another' CWP No. 17216 of 2016. The facts, however, are taken from Gram Panchayat Majrian and others v. Union of India and others (supra).

The petitioner - Gram Panchayat Majrian seeks quashing of the notifications dated 23.09.1914 and 20.11.1950 issued under Section 3 of the Punjab Land Preservation Act, 1900 ('PLP Act' - for short) as the same are against the provisions of the Punjab Land Preservation (Chos) (Amendment) Act, 1942 (XI of 1942) to the PLP Act; besides, these are termed as vague, non-descriptive and cannot be applied in view of the provisions of PLP Act as amended from time to time. A further prayer has been made to quash the

notification dated 03.02.2003 issued under Section 4 of the PLP Act in respect of village Majrian, Hadbast No.343, Tehsil Kharar, District Mohali. The said notification dated 03.02.2003 is also termed as vague and non-descriptive, besides, against the provisions of the PLP Act as amended from time to time and based on notification dated 09.06.1961 issued under Section 3 of the PLP Act, which notification is non-existent and, therefore, no restrictions under Sections 4 and 5 of the PLP Act can be enforced on a non-existent notification dated 09.06.1961 and the said notification is illegal, without jurisdiction, unconstitutional and has no affect of obliterating the fundamental rights enshrined under Articles 19 (1) (g), 21, 31A and 300A of the Constitution of India.

The petitioner Gram Panchayat Majrian states that it is espousing the cause of inhabitants living within the revenue estate of village Majrian, who are facing great difficulties because of imposition of unregulated restrictions by the PLP Act as well as lack of civic amenities, which has affected their right to life protected under Article 21 of the Constitution of India. The Sarpanch of Gram Panchayat Majrian, namely, Smt. Suman Lata has been duly authorized by resolution dated 22.05.2015 to file the petition.

According to the petitioner - Gram Panchayat, five hamlets, i.e. Gurah, Jayanti Majri, Bagindi, Kasouli and Karondewal, fall within the revenue estate of village Majrian, Hadbast No.343. The total area of land measuring 4103 acres was earlier closed in terms of Sections 4 and 5 of the PLP Act. However, on expiry of the notification in 1991, an area of 675 acres of land only had been notified in 1987. This was further re-notified in the year 2003. An area of 1248 acres, which was under cultivation and habitation, was

delisted from the purview of the PLP Act in 2010. As a consequence, no land remained notified under the PLP Act after 2010.

The petitioner alleges that on expiry of the period specified in the notifications issued under Sections 4 and 5 of the PLP Act, the operation of notification issued under Section 3 of the PLP Act would also cease/expire. In case, there was still a need to provide for better preservation and protection of certain portions of the territories of Punjab, the Government ought to issue a fresh notification under Section 3 of the PLP Act and only then the notifications under Sections 4 and 5 of the PLP Act could be issued.

The primary grievance of the petitioners in the present petition and in the connected petitions and which has been urged during the course of hearing is that since the year 1900, i.e. for over a hundred years, the lands which have been notified under Section 3 of the PLP Act; besides, regulations, restrictions and prohibitions have been invoked in exercise of powers conferred by Sections 4 and 5 of the PLP Act as also the directions issued to require execution of work and taking of measures under Section 5-A of the PLP Act make the land of the land owners to be locked and closed and that too without complying with the mandate and provisions of the PLP Act. Apart from the land being closed and locked and thereby rendering it into disuse, there has been no payment of compensation, which is mandated by the PLP Act.

An affidavit dated 23/24.08.2016 of Mr. Kuldip Kumar, IFS, Principal Chief Conservator of Forests, Head of Forests Forces (HoFF), Punjab, Department of Forests and Wildlife Preservation, Punjab, has been filed on behalf of State of Punjab through Principal Secretary to Government

of Punjab, Department of Forests, Chandigarh and the Principal Chief Conservator of Forests, Department of Forests, Mohali (respondents No. 2 and 3) in Gram Panchayat Majrian's case.

It is *inter alia* submitted that similar writ petition, titled 'Lt. Col. B.S. Sandhu v. Union of India and others' (CWP No. 10478 of 2013) and 'Harmesh Kumar and others v. Union of India and others' (CWP No.12105 of 2013), were filed in this Court in which prayer for quashing the same notifications dated 23.09.1914, 20.11.1950 and 03.02.2003 were made. A Division Bench of this Court dismissed the petition in case of Lt. Col. B.S. Sandhu's case (supra) vide order dated 15.05.2013 and in Harmesh Kumar's case (supra) on 29.05.2013. The said petitioners, i.e. Lt. Col. B.S. Sandhu and Harmesh Kumar etc. filed SLP (C) No.19226 of 2013 and SLP (C) No.20235 of 2013 respectively in Hon'ble the Supreme Court against the aforesaid orders dated 15.05.2013 and 29.05.2013. Both the said SLPs were dismissed vide order dated 25.03.2015. The order dismissing the said two SLPs, it is to be noticed, was passed in the case, Dashmesh Educational Society v. Punjab Urban Development Authority and others, (2015) 8 SCC 311.

It is further submitted that land measuring 4103 acres was closed under Section 4 of the PLP Act in village Majrian. The date of notification, the period for which it was to apply, district, tehsil, village and the total area that was affected has been mentioned. A reference has been made to three notifications dated 27.06.1956, 09.11.1987 and 03.02.2003 read with corrigendum dated 04.07.2008 by which in the notification dated 03.02.2003, the words "Balance area to be notified" may be read as "Balance area notified". In terms of the said notifications, the entire area of village Majrian

measuring 4103 acres was closed under Section 4 of the PLP Act. Therefore, the contention of the petitioner that only 675 acres was notified vide notification issued on 09.11.1987 and further re-notified on 03.02.2003 was wrong. It is also submitted that it was wrong to contend that no procedure under Section 7 of the PLP Act had ever been adopted. It is submitted that the notification issued in 1914 and 1950 complement each other. Section 3 of the PLP Act has been extended to and has been declared to be in force in the local areas specified in the Schedule to the notification dated 23.09.1914 in which village Majrian is at serial No. 11. The notification dated 20.11.1950 has been issued whereby Section 3 of the PLP Act has been applied to all revenue estates in Tehsil Kharar, District Ambala in respect of land measuring 371 square miles. The said two notifications cover entire village Majrian. It is also submitted that prohibitions in the notification covered by Section 3 of the PLP Act are not only applicable to 675 acres but to the entire 4103 acres of village Majrian. It is further submitted that in the notification dated 03.02.2003, there was a clerical mistake inasmuch as the date 09.06.1961 had been wrongly mentioned. The same has been corrected. In fact, the date and number of notification as also the year 2014 has been corrected to 1914 vide two corrigenda dated 09.03.2016.

It has been made clear that the entire area of village Majrian was duly notified under Section 3 of the PLP Act vide notifications dated 23.09.1914 and 20.11.1950. Besides, notifications dated 20.11.1950, 09.06.1961, 09.11.1987 and 03.02.2003 have been issued under Section 4 of the PLP Act, which cover the entire 4103 acres of land in village Majrian. Land measuring 1248 acres under cultivation and habitation in village

Majrian was conditionally de-listed from the list of forest areas and the said area was also deleted from the PLP Act vide notification dated 24.08.2011. This, it is submitted, is admitted by the petitioner and by itself proves the contention of the petitioner that only an area of 675 acres was re-notified to be wrong. As on date, there is no land which is not closed in village Majrian.

It is also submitted that the areas notified under PLP Act were earlier included in the Annual Administrative Reports of the Forest Department as 'Forest' because vast areas closed under the PLP Act support natural forest and wildlife and cultivated and habitation areas closed under the PLP Act were delisted from the list of forest areas subsequently. It is reiterated that notifications issued under Section 3 of the PLP Act are dated 23.09.1914 and 20.11.1950; besides, notifications issued under Section 4 of the PLP Act are dated 20.11.1950, 09.06.1961, 09.11.1987 and 03.02.2003 which cover the entire 4103 acres area of village Majrian.

An additional affidavit dated 22/27.09.2016 has been filed by Mr. Mahavir Singh, IFS, Conservator of Forests, Shiwalik Circle, Punjab, Department of Forests and Wildlife Preservation, Punjab. The position regarding the corrigendum dated 09.03.2016 has been further explained which is primarily to the effect that in the notification dated 03.02.2003 under Section 3 of the PLP Act, the notification dated 09.06.1961 may be read as notifications dated 23.09.1914 and 20.11.1950. The notifications issued under the PLP Act in respect of village Majrian were issued in 1914 i.e. 23.09.1914, 1950 i.e. 20.11.1950 and 2003 i.e. 03.02.2003. Village Majrian, it is submitted, falls in the administrative jurisdiction of Shaheed Ajit Singh Nagar district. This village was part of Ambala district before re-organization of

Punjab and was part of Ropar district later. The old records relating to the said notifications in which compensation and process followed under Section 7 of the PLP Act are part of the offices of aforesaid Deputy Commissioners of Ambala and Ropar; Divisional Forest Officer, Ropar; Conservator of Forests, Shiwalik Circle; Principal Chief Conservator of Forests, Punjab and Financial Commissioner-cum-Principal Secretary, Department of Forests and Wildlife Preservation, Government of Punjab. The required record is not only very old but also pertains to several offices in Punjab and also the office of Deputy Commissioner, Ambala, Haryana. It takes not only a lot of time, but also great resources and efforts to obtain the relevant records from these offices. Efforts were being made to obtain relevant information from concerned offices and the said information, it is stated, would be submitted to this Court in due course after obtaining the same.

The process for determination of compensation is outlined in Punjab Gazette dated 07.09.1899 as follows:-

“The restrictions of existing rights under Sections 4 and 5 of subject to the payment of compensation which is provided for in Sections 14 and 15 of the Bill; and the Deputy Commissioner will therefore published (sic. publish) the orders directing such restrictions in every town and village affected, and in doing so will warn all persons who claim compensation for the restriction of rights to appear before him within a fixed period of not less than two months to prove their claims. Sections 14 and 15 make, I think it will be admitted, provision for a

full and fair enquiry into such claims, and the amount of compensation awarded will, like all other orders of the Deputy Commissioner with two small exceptions, be subject to appeal, revision and review as in the case of orders of a Collector under Sections 13-16 of the Punjab Land Revenue Act.”

It is submitted that regarding grant of compensation under Section 7 of the PLP Act, it has been informed that no claim was received by the Forest Department from any land owner. In response to letter of Divisional Forest Officer, Ropar dated 08.02.1955, the Deputy Commissioner, Ambala, vide memo dated 04.03.1955, returned the said letter to the Divisional Forest Officer regarding the warning notice for compulsory closure of land under Section 5 of the PLP Act in villages Tarapur, Siswan, Nagal, Majrian, Sunk, Parach, Nada, Kansil, Suketri and Darra Khorani, Tehsil Kharar, District Ambala observing that Section 7 or 7-A of the PLP Act applies only after a notification had previously been issued in respect of a certain area under Sections 3, 4 and 5-A and not before. Therefore, it was clear that the action under Section 7 or 7-A was required to be taken after notification under Sections 4, 5 or 5-A. The Divisional Forest Officer, Ropar, vide letter dated 16.03.2004, had requested the Deputy Commissioner/Sub Divisional Magistrate to convey ‘No Objection Certificate’ for closing the area of village Majrian under Section 4 of the PLP Act for a period of 15 years and prior thereto ‘No Objection Certificate’ was issued by the Teshildar, Kharar and Sub Divisional Magistrate, Kharar on 29.07.2002 for closing the area under Section 4 for a further period of 15 years. ‘No

Objection Certificate' was also issued by Tehsildar, Kharar and Sub Divisional Magistrate, Kharar on 14.01.2003 for closing the area of Majrian under Section 5 of the PLP Act.

After issuing notification by the State Government, the Divisional Forest Officer, Rupnagar vide letter dated 16.03.2014, sent a copy of the notification to the Deputy Commissioner, Rupnagar for forwarding the same to the Tehsildar, Kharar for ordering him to direct the concerned Halqa Patwari to make an entry in the 'roznamcha wakiyati' and also make public announcement regarding the same in the concerned area by way of proclamation and send copies of the 'rapat roznamcha' for office record. A copy of the said letter was also endorsed to the Tehsildar, Kharar along with a copy of the notification for information and necessary action.

It is, therefore, submitted that the department followed the process regarding compensation. The concerned officials of the Revenue Department, it is stated, were responsible for preparation of compensation statements. No record was available concerning the compensation statements in the office of the Conservator of Forests, Shiwalik Circle Punjab, Department of Forests and Wildlife Preservation, Punjab at present and efforts were being made to obtain relevant information from the concerned offices and the said information would be submitted in this Court in due course after obtaining the same. It is submitted that the notifications under Sections 3 and 4 of the PLP Act are not liable to be struck down on account of non-compliance of the provisions of Section 7 (1) (b) as the said Clause (b) of Section 7 (1) is independent of Sections 3 and 4 and, therefore, for non-compliance of the provisions of Section 7, the notifications under

Sections 3 and 4 are not liable to be struck down. Reliance in this regard is placed on a judgment of this Court in Capt. Ranjha Singh and others v. Union of India, 1989 PLJ 400. Besides, it is submitted that opportunity of hearing before passing of any order under Sections 4 or 5 is not necessary as for passing any order under Sections 4, 5 and 5-A, the procedure has been provided in Section 6. For awarding compensation, procedure has been provided in Sections 7 and 14. Reliance for this is placed on a judgment of this Court in Gram Panchayat Tejli v. State of Haryana, 1973 PLJ 161.

It is submitted that a perusal of the notifications show that the land owners have been regulated from doing such acts which are detrimental to the land, but the total management has not been assumed by the State Government. The Divisional Forest Officer has also been given powers to grant permits for felling of trees for the purpose of sale of timber. All the rights of cutting trees and timber, the collection or removal of any forest produce including grass, flower, fruit and honey, for domestic, agricultural and other purposes of the land owners/right holders is not prohibited but is only regulated. The land owners can also obtain permits for grazing certain number of category of cattle. Besides, the relaxations mentioned in the notification, the rights of ownership remain vested in the land owners/right holders. Therefore, the restrictions are regulatory in nature and the land owners are permitted to obtain permits for any restrictive activity. As such, no right of the land owners is taken by the government in pursuance of the notifications under the PLP Act. It is submitted that even land owners of agricultural land elsewhere in the State are also subject to certain statutory regulations to use their land for real estate, industrial and any other purposes.

Necessary approvals of the 'Competent Authority' are also required for the same. The land owners of such agricultural land do not have absolute and unrestricted rights to use their land as they like without necessary approval. Similarly, land owners of the areas notified under the relevant laws can also obtain necessary approval for any restricted and regulated activity.

Insofar as the issue of 'Compensation' is concerned, it is submitted that the Forest Department did not receive any claim from any land owner. It is further submitted that land owners in the area are more than compensated as the Forest Department is investing enormous resources for establishing new plantations, maintenance of natural trees and for soil conservation works which were all being undertaken at the State Government's expense on the private/panchayat lands notified under the PLP Act. The government obtained financial assistance from the World Bank and the Japan Bank of International Corporation for this purpose. All this expenditure was being incurred on these private forest areas by the government without any cost recovery. All the forest produce from these areas including grass, firewood, timber, etc. were the sole property of the land owners.

Section 5-A of the PLP Act, it is submitted, empowers the State Government to direct the concerned land owner to undertake requisite measures for soil and water conservation works at their own expense. However, being alive and sensitive to the poor socio-economic conditions of the land owners of Kandi area, recourse to Section 5-A of the PLP Act has very seldom been taken by the State Government. Even in rare cases when notifications had been issued under Section 5-A, the cost of afforestation, soil

conservation and other maintenance works has invariably been borne by the State Government and is not recovered from the land owners. The fact that the entire expenditure on the private forests notified under the PLP Act is incurred by the State Government whereas all the forest produce is the property of the land owners, represents more than adequate 'Compensation' to the land owners. Otherwise also, 'Compensation' is to be paid, if existing 'rights' are curtailed. Since the land owners are the absolute owners of all the forest produce, none of their ownership 'rights' are infringed through the notifications under the PLP Act.

In addition to undertaking plantation and soil conservation works free of cost in the private areas notified under the PLP Act, Forest Department is also providing 90% subsidy for fencing of cropped area for protecting agricultural crops of farmers from wildlife. The affidavit primarily states that the land in village Majrian is forest land.

Short reply by way of counter-affidavit dated 15.10.2015 of Ms. Amaninder Kaur, Sub Divisional Magistrate, Kharar, Punjab, has been filed on behalf of respondent No. 4, i.e. the Deputy Commissioner, Mohali. In the said reply, it has *inter alia* been stated that insofar as the grievance of the petitioner for de-notification of the area falling in the revenue estate of village Majrian, Hadbast No.343 and removal of the restrictions/regulations and prohibitions as imposed under Sections 4 and 5 of the PLP Act was concerned, the same relates to the Department of Forests and Wildlife Preservation.

During course of hearing of the case, Mr. Puneet Bali, Senior Advocate, on 28.09.2016, submitted that affidavit of the Deputy

Commissioner, Mohali (respondent No.4) would be necessary for ascertaining the position regarding payment of compensation and making an enquiry before publication of notifications under Sections 4 and 5 of the PLP Act.

Mr. Daljit Singh Mangat, IAS, Deputy Commissioner, Mohali, has filed his affidavit dated 17.11.2016 in which it has been stated that notification dated 03.02.2003 had been issued under Sections 4 and 5 of the PLP Act by the Department of Forest and Wildlife Preservation (Forest Branch). The said notification dated 03.02.2003 was issued prior to the formation of district Shaheed Ajit Singh Nagar which came into existence on 14.04.2016. Regarding the question of announcement of award by the predecessor of Mr. Daljit Singh Mangat, Deputy Commissioner, it is mentioned that the same had to be announced by the Deputy Commissioner, Roopnagar, as the land in village Majrian at that time fell within the area of district Roopnagar. Record had, however, been checked from the office of Deputy Commissioner, Roopnagar regarding notification under Sections 4 and 5 of the PLP Act in respect of notification dated 03.02.2003. It is mentioned that no record was found in the office of Deputy Commissioner, Roopnagar in this regard. According to report received from the Sub Divisional Magistrate, Kharar, vide letter No.SPL-1 dated 04.11.2016, it is mentioned that no record in respect of compensation paid to the concerned land owners of the respective villages mentioned in the notification dated 03.02.2003 was available in his office. Copy of the report has been placed on record. It is submitted that as per report received from the Naib Tehsildar, Majri, vide his office letter No.1192 dated 24.10.2016, no compensation had been paid to the concerned land owners of the respective villages mentioned

in the notification dated 03.02.2003. As per this report, 'rapat' No.524 had been entered in the 'roznamcha wakyati' of village Nada on 15.07.2003.

Therefore, the position is that no compensation has been paid to the land owners in consequence of the issuance of notifications under Section 4 and 5 of the PLP Act. In fact, even the process of carrying out the exercise for payment of compensation was not initiated.

Mr. Puneet Bali, learned Senior Advocate, appearing for the petitioner - Gram Panchayat Majrian submits that the question whether the land is that of forest or not is not in issue in view of the Supreme Court judgment in the case of Lt. Col. B.S. Sandhu v. State of Punjab (supra).

Mr. Vinod S. Bhardwaj, Additional Advocate General, Punjab, appearing for the respondent - State, however, submits that all the contentions as raised in the present petitions were raised before this Court in Lt. Col. B.S. Sandhu's case (CWP No. 10478 of 2013, decided on 15.05.2013 - supra) and in Harmesh Kumar's case (CWP No. 12105 of 2013, decided on 29.05.2013 - supra) and SLPs No. 19226 and 20235 of 2013 have been dismissed by the Supreme Court on 25.05.2015 along with the decision of Hon'ble the Supreme Court in the case of Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra).

The question that arises for consideration in the present petitions is that as to whether there can be prolonged continuation of notifications under the PLP Act without enquiry in terms of the provisions contemplated by the PLP Act; besides, whether compensation is liable to be paid to the land owners whose lands have been locked by invoking the provisions of the PLP Act. A further question that arises is whether the land can be said to be

so and declared as forest land under the PLP Act even though it may be forest land under the Indian Forest Act, 1927 and the Forest (Conservation) Act, 1980.

In order to appreciate the controversy, the salient features of the provisions of the PLP Act, may be noticed.

The State of Punjab before partition of the country and its re-organization in terms of the Punjab Re-organization Act, 1966 (Act 31 of 1966) had notified the PLP Act (Act No. II of 1900). The PLP Act received the assent of the Lieutenant Governor of the Punjab on 28.08.1900; that of the Governor General on 10.10.1900 and was published in the Punjab Government Gazette on 15.11.1900. The PLP Act has been enacted as:

“An Act to provide for the better preservation and protection of certain portions of the territories of [¹] Punjab [²] [³].

The purpose of the PLP Act, therefore, shows that it has been enacted for the better preservation and protection of certain portions of the territories of the Punjab. Initially, the preamble of the PLP Act, i.e. before the Punjab Land Preservation (Chos) (Amendment) Act, 1942 (XI of 1942), envisaged that it was to provide for better preservation and protection of certain portions of the territories of Punjab situate within or adjacent to the Siwalik mountain range or affected or liable to be affected by the

¹ Substituted for the words “East Punjab” (which had been inserted for the word “Punjab”) by Indian Independence (Adaption of Bengal and Punjab Acts) Order, 1948, by the Adaption of Laws (Third Amendment) Order, 1951.

² The words, “situate within or adjacent to the Siwalik mountain range” omitted by the Punjab Land Preservation (Chos) Act, 1942 (XI of 1942), Section 2.

³ The preamble of the PLP Act originally in 1900 was as follows:-

“An Act to provide for the better preservation and protection of certain portions of the territories of the Punjab situate within or adjacent to the Siwalik mountain range or affected or liable to be affected by the debouement of forests within that range, or by the action of streams and torrents, such as are commonly called Chos flowing through or from it”

The preamble was omitted by the Punjab Land Preservation (Chos) Act, 1942 (XI of 1942), Section 3.

deboisement (i.e. deforestation of tropical rain forests), within that range, or by the action of streams and torrents, such as are commonly called ‘chos’, flowing through or from it.

The PLP Act has been amended from time to time. Section 1 of the PLP Act reads as under:-

- “1. Short, title and commencement – (1) This Act may be called the Punjab Land Preservation [⁴] Act, 1900.
- ⁵(2) It shall extend to the whole of the State of Punjab.
- ⁶(3) It shall come into force at once.”

Section 2 of the PLP Act relates to 'definitions', the same reads as follows:-

- “2. In this Act unless a different intention appears from the subject or context:-
- (a) the expression "land" means land within [⁷] any area preserved and protected or otherwise dealt with in manner in this Act provided, and includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

⁴ The brackets and the word “(Chos)” omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 2 (a).

⁵ Sub-section (2) inserted by the Punjab Land Preservation (Chos) (Amendment) Act, 1942 (XI of 1942) Section 4 (a). It was substituted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 2 (b). The sub-section as such substituted was substituted again by the present sub-section by the Punjab Act I of 1951, Section 2. It was extended to the territories, which, immediately before the 1st November, 1956, were comprised in the State of Patiala and East Punjab States Union by Punjab Act No. 18 of 1958.

⁶ The original sub-section (2) re-numbered as sub-section (3), by the Punjab Land Preservation (Chos) (Amendment) Act, 1942 (XI of 1942), Section 4 (a).

⁷ The word “local” omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 3 (a).

- (b) the expression "Cho" means a stream or torrent flowing through or from the Siwalik mountain range within [Punjab]⁸;
- (c) the expression "tree", "timber", "forest produce" and "cattle", respectively, shall have the meanings severally assigned thereto in section 2 of the Indian Forest Act, [1927]⁹;
- (d) the expression "person interested" includes all persons claiming any interest in compensation to be made on account of any measures taken under this Act [¹⁰];
- (e) the expression "Deputy Commissioner" includes any officer or officers at any time specially appointed by the [State]¹¹ Government to perform the functions of a Deputy Commissioner under this Act;
- ¹²[(f) ---- the expression "right-holder" includes-
 - (i) persons not being tenants or mortgagees having rights to or in land; and

⁸ "Punjab" was substituted for the words "East Punjab" by the Indian Independence (Adaption of Bengal and Punjab Acts) Order, 1948, by the Adaption of Laws (Third Amendment), Order, 1951.

⁹ Substituted for the figures "1878" by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 3 (b). See the Indian Forest Act, 1927 (XVI of 1927), Section 2.

¹⁰ The word "and" omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 3 (c).

¹¹ The word "State" has been substituted for the word "Provincial" by the Adaption of Laws Order, 1950 in the PLP Act.

¹² Added by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 3 (d).

- (ii) persons having rights of collection of forest produce or of grazing or pasture; and
- (g) the expression "erosion" includes the removal or displacement of earth, soil, stones or other material by the action of wind or water.]”

Sections 3 to 7 and 7-A of the PLP Act fall under the heading 'Notification and Regulation of Areas', which read as follows:-

Notification and Regulation of Areas

¹³[“3. Notification of areas. - Whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly].

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters. - In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government may by general or special order, temporarily [¹⁴] regulate, restrict or prohibit -

¹³ Substituted for the original Section 3 by the Punjab Land Preservation (Chos) (Amendment) Act, 1942 (XI of 1942), Section 5, which was published in Government Gazette (Extraordinary) Punjab on 21.11.1942. Section 3 before its substitution was as follows:-

“3. Notification of areas: Whenever it appears to the Local Government that it is desirable to provide for the better preservation and protection of any local area, situate within or adjacent to the Siwalik mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of chos, such Government may by notification, make a direction accordingly.”

¹⁴ The words “or permanently” omitted by the Punjab Land Preservation (Chos) Amendment Act, 1926 (VII of 1926), Section 2.

- (a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so-quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bona fide domestic or agricultural purposes ¹⁵[of right-holder in such area];
- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing or retention of sheep ¹⁶[goats or camels];
- (f) the examination of forest-produce passing out of any such area; and
- (g) the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use there-

¹⁵ Added by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 4 (a).

¹⁶ Substituted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 4 (b), for the words, "or goats".

from, or to pasture sheep, ¹⁷[goats or camels] or to cultivate or erect buildings therein and the production and return of such permits by such persons.

5. Power in certain cases to regulate, restrict or prohibit, by special order within notified areas, certain further matters. - In respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under section 3, the State Government may, by special order temporarily [¹⁸] regulate, restrict or prohibit -

- (a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3;
- (b) the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under section 3;
- (c) the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of

¹⁷ Substituted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 4 (c), for the words, "or goats".

¹⁸ The words "or permanently" were omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1926 (VII of 1926), Section 3.

this sub-section of any forest-produce ¹⁹[for any purposes]; and

(d) the admission, herding, pasturing or retention of cattle generally other than sheep, ²⁰[goats and camels], or of any class or description of such cattle.

²¹[5-A. Power to require execution of works and taking measures. - In respect of areas notified under section 3 generally or the whole or any part of any such area, the State Government, may, be general or special order, direct -

- (a) the levelling, terracing, drainage and embanking of fields;
- (b) the construction of earth-works in fields and ravines;
- (c) the provision of drains for storm water;
- (d) the protection of land against the action of wind or water;
- (e) the training of streams; and
- (f) the execution of such other works and the carrying out of such other measures as may, in the opinion at the State Government, be

¹⁹ Substituted for the words “for *bona fide* domestic or agricultural purposes”, by the Punjab Land Preservation (Chos) (Amendment) Act, 1905 (IV of 1905).

²⁰ Substituted for the words “and goats”, by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 5.

²¹ Inserted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 6.

necessary for carrying out the purposes of this Act].

6. Necessity for regulation, restriction or prohibition to be recited in the order under ²²[Sections 4, 5 or 5-A]; Publication of order. - Every order made under ²³[section 4, 5 or 5-A] shall be published in the ²⁴[Official Gazette] and shall set forth that the State Government is satisfied, after due inquiry, that regulations, restrictions, ²⁵[prohibitions or directions] contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

7. Proclamation of regulations, restrictions and prohibitions and admission of claims for compensation for rights which are restricted or prohibited. - (1) When, in respect of any [²⁶] area, a notification has been published under section 3, and -

(a) upon such publication any general order, made under section 4 ²⁷[or section 5-A], becomes applicable to such area, or

²² Substituted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), for the words and figures "Section 4 or 5", Section 7 (a).

²³ *ibid.*

²⁴ Substituted for the word "Gazette" by the Government of India (Adaption of Indian Laws) Order, 1937, as amended by the Government of India (Adaption of Indian Laws) Supplementary Order, 1937.

²⁵ Substituted for the words "or prohibitions", by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 7 (b).

²⁶ The word "local" omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 8 (a).

²⁷ Inserted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 8 (b).

(b) any special order ²⁸[under sections 4, 5 or 5-A], is made in respect of such area, the Deputy Commissioner shall cause public notice of the provisions of such general or special order to be given, and if the provisions of any such order restrict or ²⁹[prohibit the exercise of] any existing rights, shall also publish in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which ³⁰[the exercise of any such rights is so restricted or prohibited] a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof, fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount

²⁸ Substituted for “section 4 or section 5” by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 8 (c).

²⁹ Substituted for the word “extinguish” by the Punjab Land Preservation (Chos) (Amendment) Act, 1926 (VII of 1926), Section 4.

³⁰ Substituted for the words “any such rights are so restricted or extinguished” by the Punjab Land Preservation (Chos) (Amendment) Act, 1926 (VII of 1926), Section 4.

and particulars of the compensation (if any) claimed
in respect thereof.

(2) Any claim not preferred within the time fixed in the
proclamation made under sub-section (1), shall be
rejected:

Provided that with the previous sanction of the
Commissioner, the Deputy Commissioner may admit any
such claim as if it had been made within such period.

³¹[7-A. (1) When an order has been issued under section
5-A, the Deputy Commissioner may by notice require the
owner or occupier of the land to execute such works or
take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which
the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such a
notice as aforesaid may, within thirty days from the
service of such notice or within such longer period as the
Deputy Commissioner may allow in this behalf, serve a
notice of his objections on the Deputy Commissioner in
such manner as may be provided by the rules made under
this Act.

(4) If and in so far as an objection under this section is
based on the ground of some informality, defect or error in
or in connection with the notice, the Deputy

³¹ Inserted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (IV of 1944), Section 9.

Commissioner shall dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds, that is to say:-

(a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owner instead of on the occupier, and that it would have been equitable for it to have been so served;

(b) that some other person, being the owner, occupancy tenant, mortgagee with possession, or lessee, or farm holder, or possessing some other right in or over the land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

(c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required;

the objector shall serve a copy of his notice of objection on each other person referred to, and on the hearing of the objection the Deputy

Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner under sub-section (6) are to be borne by the objector and such other person:

Provided that no such order shall be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard.

In exercising his power under this sub-section the Deputy Commissioner shall have regard –

(a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of works and measures required; and

(b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of

any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 18, if the person required by the notice to execute works or to take measures fails to execute the works or to take the measures indicated within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing:

(1) Provided that it shall not be necessary for the Deputy Commissioner to wait for the decision of any objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section;

³²[(2)]

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in

³² Proviso (2) omitted by Punjab Act 1 of 1951, Section 3. The proviso omitted was as follows:-

“(2) Provided further that the maximum amount that shall be recoverable in respect of any land in regard to which the work has been executed or the measure taken shall not exceed –
(a) where the work is required to be executed or the measure to be taken by the owner, ten times the land revenue assessed on all the lands owned by him in the Punjab; and
(b) where the work is required to be executed by the occupier, ten times the land revenue assessed on all the lands occupied by him in the State in which such land is situated.”

this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner as may be prescribed in the rules made under this Act, and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Deputy Commissioner may by general or special order authorize any revenue officer subordinate to him to enquire into any objection that may be brought under this section;

Provided that no final order on any such objection shall be passed except by the Deputy Commissioner himself.

(11) In making an order on objections brought under this section, the Deputy Commissioner shall be guided by such rules, if any, as the State Government may make in this behalf.

(12) For the purposes of this section, the expression "estate" shall have the meaning assigned thereto in the Punjab Land Revenue Act, 1887.]”

Sections 14 and 15 of the PLP Act fall under the heading 'Inquiry into Claims and Award of Compensation', which read as follows:-

Inquiry into Claims and Award of Compensation

“14 Inquiries into claims and awards thereupon.

(1) The Deputy Commissioner shall –

- (a) fix a date for inquiring into all claims made under section 7 [³³] and may in his discretion from time to time, adjourn the inquiry to a date to be fixed by him;
- (b) record in writing all statements made under section 7;
- (c) inquire into all claims duly preferred under section 7 [³⁴]; and
- (d) make and award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which, and the person, or persons in whose favour, the right claimed is established, the extent to which it is to be restricted or ³⁵[prohibited] and the nature and amount of the compensation (if any) awarded.

³³ The words “or section 12” omitted by the Punjab Land Preservation (Chos) Second Amendment Act, 1926 (VII of 1926), Section 5.

³⁴ *ibid.*

³⁵ Substituted by the Punjab Land Preservation (Chos) Second Amendment Act, 1926 (VII of 1926) for the word “extinguished”, Section 5.

(2) For the purposes of every such inquiry, the Deputy Commissioner may exercise all or any of the power of a Civil Court in the trial of suits under the Code of Civil Procedure ³⁶[Act XIV of 1882].

(3) The Deputy Commissioner shall announce his award to such persons interested, or their representatives, as are present, and shall record the acceptance of those who accept it. To such as are not present, the Deputy Commissioner shall cause immediate notice of his award to be given.

15. Method of awarding compensation and effect of such award.

(1) In determining the amount of compensation, the Deputy Commissioner shall be guided, so far as may be, by the provisions of sections 23 and 24 of the ³⁷[Land Acquisition Act, 1894], and, as to matters which cannot be dealt with under those provisions, by what is just and reasonable in the circumstances of each case.

(2) The Deputy Commissioner may, with the sanction of the State Government and the consent of the person entitled, instead of money award compensation in land or by reduction in revenue or in any other form.

³⁶ Act XIV of 1882, subsequently replaced by the Code of Civil Procedure, 1908 (Act V of 1908).

³⁷ Repealed by Section 114 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013) published in the Gazette of India Extraordinary Part II – Section 1 on 27.09.2013.

(3) If, in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

(4) [³⁸]

Sections 16 to 18 of the PLP Act, under the heading “Procedure, Records and Appeal” read as follows:-

Procedure, Records and Appeal

“16. Record of rights in respect of notified area. –

(1) For every area, notified under section 3 or section 8, the Deputy Commissioner shall prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in section 4 and section 5 –

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8,

(b) regulated, restricted, [³⁹] or ⁴⁰[prohibited] by an order under section 4 or section 5;

³⁸ Repealed by the Punjab Land Preservation (Chos) Second Amendment Act, 1926 (VII of 1926), Section 6. Sub-section (4) before its omission was as follows:-

“(4) When compensation has been awarded or when no compensation is claimed, in respect of any right the exercise of which has been permanently prohibited, such right shall vest absolutely in the Government and shall not revive upon the rescission of the notification or proclamation affecting the area in which it originally existed.”

³⁹ The word “suspended” omitted by the Punjab Land Preservation (Chos) Second Amendment Act, 1926 (VII of 1926), Section 7.

⁴⁰ Substituted for the word “extinguished” by the Punjab Land Preservation (Chos) Second Amendment Act, 1926 (VII of 1926)”, Section 7.

(2) When any award is made under section 14, its effect upon any right shall also be recorded therein.

17. Mode of proclaiming notifications and of serving notices, orders and processes, issued under the Act. –

(1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner shall cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates.

(2) The procedure prescribed in sections 20, 21 and 22 of the Punjab Land Revenue Act, 1887 (Act XVII of 1887), shall be followed, as far as may be, in proceedings under this Act.

18. Appeal, review and revision. –

Every order passed and every award made by a Deputy Commissioner under this Act, shall, for the purposes of appeal, review and revision, respectively, be deemed to be the order of a Collector within the meaning of sections 13, 14, 15 and 16 of the Punjab Land Revenue Act, 1887.

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.”

A reading of the above provisions show that Section 3 enjoins that whenever it appears to the State Government that it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in

any area subject to erosion or likely to become liable to erosion, such Government may by notification make a direction accordingly.

Section 4 enjoins that in respect of areas notified under Section 3 generally or the whole or any part of any such area, the State Government may by general or special order temporarily regulate, restrict or prohibit the actions as enumerated in clauses (a) to (g) thereof. The restrictions or prohibitions include the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3; the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so-quarried or burnt prior to the publication of the notification under section 3; the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bona fide domestic or agricultural purposes of right-holder in such area; the setting on fire of trees, timber or forest produce; the admission, herding, pasturing or retention of sheep goats or camels; the examination of forest-produce passing out of any such area; and the granting of permits to the inhabitants of towns and villages situated within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use there-from, or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

Section 5 provides that in respect of any specified village or villages, or part or parts thereof, comprised within the limits of any area notified under Section 3, the State Government may, by special order

temporarily regulate, restrict or prohibit the aspects as enumerated in clauses (a) to (d) thereof. That is to say the cultivating of any land ordinarily under cultivation prior to the publication of the notification under Section 3; the quarrying of any stone or the burning of any lime at places where such stone or lime had ordinarily been so quarried or burnt prior to the publication of the notification under Section 3; the cutting of trees or timber or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce for any purposes; and the admission, herding, pasturing or retention of cattle generally other than sheep, goats and camels, or of any class or description of such cattle.

Section 5-A confers powers on the State Government to require execution of works and take measures in respect of areas notified under Section 3 generally or whole of any part of any such area and by a general or special order direct the works as enumerated clauses (a) to (f) thereof. The work provided therein includes the levelling, terracing, drainage and embanking of fields; the construction of earth-works in fields and ravines; the provision of drains for storm water; the protection of land against the action of wind or water; the training of streams; and the execution of such other works and the carrying out of such other measures as may, in the opinion at the State Government, be necessary for carrying out the purposes of the PLP Act.

Section 6 requires that every order under Sections 4, 5 or 5-A is to be published in the official gazette and the State Government is to set forth that after due enquiry it is satisfied that regulations, restrictions, prohibitions

or directions contained in the order are necessary for the purpose of giving effect to the provisions of the PLP Act.

In terms of Section 7 when in respect of any area, a notification has been published under Section 3 and upon such publication any general order, made under Section 4 or Section 5-A becomes applicable to such area or any special order under Sections 4, 5 or 5-A is made in respect of such area, the Deputy Commissioner is to cause public notice of the provisions of such general or special order to be given. Besides, if the provisions of any such order restrict or prohibit the exercise of any exiting rights are also to be published in the language of the country and in every town and village the boundaries of which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited a proclamation stating the regulation, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof, fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

Section 7-A (1) enjoins that when an order has been issued under Section 5-A, the Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice. Every such notice in terms of sub-section (2) is to state the time within which the works are to be executed or measures are to be

taken. A person aggrieved by an order contained in such a notice in terms of sub-section (3) is to within thirty days from the service of such notice serve a notice of his objections on the Deputy Commissioner. If and insofar as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Deputy Commissioner in terms of sub-section (4) is to dismiss the objection, if he is satisfied that the informality, defect or error was not a material one. Besides, if the objection is brought on all or any of grounds mentioned in clauses (a) to (c) of sub-section (5), the objector is to serve a copy of his notice of objection on each other person referred to, and on the hearing of the objection the Deputy Commissioner may make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other person towards the cost of the work or measure, or as to the proportions in which any expenses which may become recoverable by the Deputy Commissioner under sub-section (6) are to be borne by the objector and such other person. In terms of the proviso, no such order is to be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard. The Deputy Commissioner while exercising his power under sub-section (5) is to have regard (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of works and measures required; and (b) in any case, to the degree of benefit to be derived by the different persons concerned. In terms of sub-section (6), notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute

any work or to take any measure is to be required to obtain the consent of any other person before complying with such notice or order. Sub-section (7) enjoins that subject to such right of objection as aforesaid and the right of appeal under Section 18, if the person required by the notice to execute works or to take measures fails to execute the works or to take the measures indicated within the time thereby limited, the Deputy Commissioner may himself or by an agent execute the works or take the measures and recover from that person the expenses reasonably incurred by him in so doing. The proviso enjoins that it is not necessary for the Deputy Commissioner to wait for the decision of any objection other than an objection under clause (a) of sub-section (5), or an appeal against any decision on such objection, before taking action under this sub-section. In terms of sub-section (8), if the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Deputy Commissioner or such other date as is fixed by him, such cost is recoverable as arrears of land revenue and a certificate issued by the Deputy Commissioner in this behalf is to be final and conclusive evidence of the sum so recoverable and the person liable for the same. Sub-section (9) provides that every order issued under this section is to be published in such manner as may be prescribed in the rules made under the PLP Act, and upon such publication every person affected thereby is to, unless the contrary be proved, be deemed to have had due notice thereof. Sub-section (10) provides that the Deputy Commissioner may by general or special order authorize any revenue officer subordinate to him to enquire into any objection that may be brought under this section. However, in terms of the proviso, no final order on

any such objection is to be passed except by the Deputy Commissioner himself. In terms of sub-section (11), in making an order on objections brought under this section, the Deputy Commissioner is to be guided by such rules, if any, as the State Government may make in this behalf. Sub-section (12) provides that for the purposes of this section, the expression "estate" is to have the meaning assigned thereto in the Punjab Land Revenue Act, 1887.

Sections 14 and 15 relate to and deal with regard to inquiry into, claims and award of compensation. In terms of Section 14, the Deputy Commissioner is to fix a date for inquiring into all claims made under Section 7, besides, record in writing all statements made under said Section 7. He is to inquire into all claims duly preferred under Section 7 and make and award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which, and the person, or persons in whose favour, the right claimed is established, the extent to which it is to be restricted or prohibited and the nature and amount of the compensation (if any) awarded. For the purposes of every such inquiry, the Deputy Commissioner may exercise all or any of the power of a Civil Court in the trial of suits under the Code of Civil Procedure. The Deputy Commissioner is required to announce his award to such persons interested, or their representatives, as are present, and is to record the acceptance of those who accept it. To such who are not present, the Deputy Commissioner is to cause immediate notice of his award to be given.

Section 15 provides the method of awarding compensation and effect of such award. It is provided therein that in determining the amount of compensation, the Deputy Commissioner is to be guided, so far as may be, by

the provisions of Sections 23 and 24 of the Land Acquisition Act, 1894, which now after the repeal of the said Act by Section 114 (1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act No. 30 of 2013), which has been notified and published in the Gazette of India Extraordinary Part II - Section 1 on 27.09.2013, is to be followed and the Deputy Commissioner is to be guided by the said provisions. Besides, the matters which cannot be dealt with under those provisions, then by what is just and reasonable in the circumstances of each case. The Deputy Commissioner may, with the sanction of the State Government and the consent of the person entitled, instead of money award compensation in land or by reduction in revenue or in any other form. If, in any case, the exercise of any right is prohibited for a time only, compensation is to be awarded only in respect of the period during which the exercise of such right is so prohibited.

Section 16 relates to record of rights in respect of a notified area and it is provided that for every area, notified under Section 3 or Section 8, the Deputy Commissioner is to prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in Sections 4 and 5 existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8; besides, regulate, restrict or prohibit by an order under Section 4 or Section 5. Moreover, when any award is made under Section 14, its effect upon any right is also to be recorded therein. Section 17 of the PLP Act relates to the mode of proclaiming notifications and of serving notices, orders and processes, issued under the PLP Act. It is provided that upon the publication of a notification

issued under any of the provisions of the PLP Act, the Deputy Commissioner is to cause public notice of the substance thereof to be given at convenient places in the locality to which such notification relates. The procedure prescribed in sections 20, 21 and 22 of the Punjab Land Revenue Act, 1887 is to be followed, as far as may be. Section 18 relates to appeal, review and revision. Every order passed and every award made by a Deputy Commissioner under the PLP Act for the purposes of appeal, review and revision, respectively, is to be deemed to be the order of a Collector within the meaning of Sections 13, 14, 15 and 16 of the Punjab Land Revenue Act, 1887. In terms of the proviso, nothing in the PLP Act contained is to be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

As has been noticed above, after enactment of the PLP Act in 1900, an amendment was made to Sections 4 and 5 of the PLP Act in the year 1926. The words “or permanently” were omitted by the Punjab Land Preservation (Chos) Amendment Act, 1926, thereby clarifying the intent of the legislature that the regulatory, restrictive and prohibitory measures issued and contemplated under Sections 4 and 5 of the PLP Act were to be on temporary basis. Besides, an amendment was also made in Sections 7 of the PLP Act by the Punjab Land Preservation (Chos) Amendment Act, 1926 whereby the word ‘extinguish’ was substituted by the words “prohibit the exercise of” so as to read that the Deputy Commissioner is to cause public notice of the provisions i.e. the regulatory, restrictive or prohibitive provisions of such general or special order to be given, and if the provisions of any such

order restrict or prohibit the exercise of any existing right it shall also be published in the language of the country and in every town and village etc. The substitution of the word “extinguish” clearly spells out that the intention of the legislature was to provide for temporary measures only and these are not to be permanent in nature. Besides, the omission of Section 15 (4) of the PLP Act (*footnote 38-supra*) which was to the effect that when compensation had been awarded or when no compensation was claimed, in respect of any right the exercise of which has been permanently prohibited, such right shall vest absolutely in the Government and shall not revive upon the rescission of the notification or proclamation affecting the area in which it originally existed; further clearly shows that the regulatory, restrictive or prohibitory measures were to be temporary in nature only.

The respondent - State of Punjab has issued two notifications under Section 3 of the PLP Act expressing its desire to provide for the better preservation and protection of any local area, situate within or adjacent to the Shiwalik mountain range or affected or liable to be affected by the debodisement of forests in that range or by the action of ‘chos’. The first notification issued under Section 3 is dated 23.09.1914. The relevant extract of the notification insofar as village Majrian is concerned reads as under:-

“The 23rd September 1914

No.458: Notification: Whereas it appears to the Local government that it is desirable to provide for the better preservation and protection of certain local areas situated within or adjacent to the Siwalik mountain range and affected or liable to be affected by the debodisement of the

forest in that range and by the action of Chos, His Honour the Lieutenant Governor of the Punjab is therefore pleased to direct in exercise of the powers conferred by section 3 of the Punjab Land Preservation (Chos) Act, 1900 (II of 1900), that the provisions of the said Act shall be extended to, and they are hereby declared to be in force in the local areas specified in the schedule to this notification annexed.”

District	Tehsil	Serial No.	Village	Whole village or part of a village	North	South	East	West	Remarks
Ambala	Kharar	1.	Chandi-garh	Part	Patiala State	Line	Line	Darra (2)	Note: “Line” means demarcated under the orders of the Deputy Commissioner, Ambala, by boundary pillars situated along or in the vicinity of the western skirt of the Siwalik range and shown on the field maps now being prepared.
		2 to 10	xxxx	Xxxx	xxxx	xxxx	xxxx	xxxx	
		11.	Majrian	Part	Patiala State	Line and Sunk (10)	Patiala State	Nagal (12)	
		12 to 22	xxxx	Xxxx	xxxx	xxxx	xxxx	xxxx	

In terms of the above notification, for the better preservation and protection of certain local areas situated within or adjacent to the Shiwalik mountain range and affected or liable to be affected by the deboisement of the forest in that range and by the action of ‘chos’, His Honour the Lieutenant Governor of the Punjab was pleased to direct in exercise of the powers conferred by Section 3 of the PLP Act that the provisions of the said Act were declared to be in force in the local areas specified in the Schedule to the said

notification. In the Schedule village Majrian is mentioned at serial No. 11. Apart from village Majrian, there were 21 other villages of the area then in District Ambala, Tehsil Ropar.

The notification under Section 4 of the PLP Act was issued on the very same day, i.e. 23.09.1914, which reads as under:-

“No. 459: Notification: Whereas the Local Government is satisfied after due enquiry that the restrictions and prohibitions hereinafter contained are necessary for the purpose of giving effect to the provision of the Punjab Land Preservation (Chos) Act, 1900. His Honour the Lieutenant Governor of the Punjab, in exercise of the powers conferred by section 4 of the said Act, is hereby pleased to prohibit throughout the local areas specified in Punjab Government Notification No.458 dated 23rd September, 1914:-

- A) The clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the said notification.
- B) The quarrying of stone or the burning of lime at places where such stone or lime has not ordinarily been so quarried or burnt prior to the publication of the said notification.
- C) The cutting of trees and collection or removal of timber for sale as a means of profit, income or

livelihood, or for any other purpose not bona fide domestic or agricultural.

- D) The setting on fire of trees, timber or forest produce.
- E) The admission, herding, pasturing or retention of sheep or goats.

Sd/- J.P. Thompson,
Revenue Secretary to Government, Punjab.”

In terms of said notification No. 459, the Local Government was satisfied after due enquiry that the restrictions and prohibitions contained therein were necessary for the purpose of giving effect to the provisions of the PLP Act and His Honour the Lieutenant Governor of the Punjab, in exercise of the powers conferred by Section 4 of the said Act, was pleased to prohibit throughout the local areas specified in Punjab Government Notification No.458 dated 23.09.2014 issued under Section 3 of the PLP Act. The acts are mentioned in clauses (A) to (E).

Thereafter, the second notification dated 20.11.1950 was issued under Section 3 of the PLP Act. The said notification reads as follows:-

“The 20th November, 1950

No.6530-D-50/5727. Whereas it appears to the Governor of Punjab that areas specified in the Schedule hereunto annexed are either subject to erosion by the removal or displacement of earth, soil, stones or other materials by the action of wind or water, or are likely to become subject to erosion and that it is desirable to provide to the

conservation of sub-soil water and the prevention of erosion in the said areas.

Now, therefore, the Governor of Punjab is pleased, in exercise of the powers conferred by section 3 of the Punjab Land Preservation Act, 1900, as subsequently amended to make directions accordingly:-

Schedule

District	Tehsil	Villages	Area
Ambala	Kharar	All revenue estates included in this tehsil	371 square mile

Note: The areas lying within the aforesaid tract, to which section 3 of the said Act has already been applied, shall be considered to have been excluded from the above schedule.”

Below the said notification under Section 3 of the PLP Act, the regulations, restrictions and prohibitions in terms of Section 4 have been imposed. The same are as follows:-

“No.6530-D-50/5728. Whereas the Governor of Punjab is satisfied after due enquiry, that the regulations, restrictions and prohibitions, hereinafter contained, are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900, the Governor of Punjab in exercise of the powers conferred by section 4 of the said Act, is hereby pleased to prohibit, the following acts for a period of five years with effect from the date of this

notification, the said areas forming part of the villages in the Kharar Tehsil of the Ambala District specified in the Schedule annexed to Punjab Government notification No. 6580-D-50/5727, dated the 20th November 1950.

The cutting of trees of timber or collection or removal or subjection to any manufacturing process of any forest produce other than flower, fruit and honey, save for bonafide domestic or agricultural purposes, provided that the owners of the land may remove and sell tree or timber after obtaining a permit to do so from the Divisional Forest Officer, Ambala Forest Division, such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of Forest conservancy.

Schedule

District	Tehsil	Villages	Area
Ambala	Kharar	All revenue estates included in this tehsil	371 square mile

Note: The areas lying within the aforesaid tract, to which restrictions and prohibitions under section 4 of the said Act has already been applied, shall be considered to have been excluded from the above schedule.”

The above notifications dated 20.11.1950 show that it was considered desirable to provide to the conservation of sub-soil water and the prevention of erosion in the said areas. The Governor of Punjab, in exercise

of the powers conferred by Section 3 of the PLP Act, as subsequently amended, made directions that all revenue estates included in Tehsil Kharar, District Ambala, measuring 371 square miles had been notified.

The notification under Section 4 of the PLP Act was issued on the same day i.e. 20.11.1950. The Governor of Punjab expressed his satisfaction after due enquiry, that the regulations, restrictions and prohibitions, contained therein, were necessary for the purpose of giving effect to the provision of the PLP Act, therefore, in exercise of the powers conferred by section 4 of the said PLP Act, the acts as mentioned therein were prohibited for a period of five years effect from the date of the said notification dated 20.11.1950. The notification applied to the areas forming part of the villages in the Kharar Tehsil of the Ambala District specified in the Schedule annexed to Punjab Government notification No. 6580-D-50/5727, dated 20.11.1950. The prohibited acts that are mentioned are the cutting of trees of timber or collection or removal or subjection to any manufacturing process of any forest produce other than flower, fruit and honey, save for bona fide domestic or agricultural purposes, provided that the owners of the land may remove and sell tree or timber after obtaining a permit to do so from the Divisional Forest Officer, Ambala Forest Division. Such permits prescribe such conditions for sale as may from time to time appear necessary in the interest of Forest conservancy.

In respect of the notes that are appended to the notifications dated 20.11.1950, i.e. the note under Section 3 as also the note under Section 4 notifications which are to the effect that the areas lying within the aforesaid tract, to which Sections 3 and 4 of the said PLP Act respectively had already

been applied, are to be considered to have been excluded from the Schedules annexed thereto, it has been stated by Mr. Mahavir Singh, IFS, Conservator of Forests, Shiwalik Circle, Punjab, Department of Forests and Wildlife Preservation in his affidavit that the aforesaid notes clarify that the said notifications apply to the entire 371 square miles area of the respective Schedules excluding the areas lying (sic. covered) within the schedule area to which Section 3 or Section 4 of the PLP Act whatsoever may be the case had already been applied earlier vide notification No.458 of 23.09.1914. The effect of the said notes has been that the areas to which Sections 3 and 4 of the PLP Act had already been applied earlier would continue under the provisions of the PLP Act and it was excluded from the Schedules that are mentioned in the notifications dated 20.11.1950.

The next notification dated 27.06.1956 was issued under Section 4 of the PLP Act for a period of 30 years. The said notification reads as under:-

“FOREST DEPARTMENT

The 27th June, 1956

No.3548-Ft.-56/2036:- Whereas the Governor of Punjab is satisfied after due enquiry, that the regulations, restrictions and prohibitions hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900, the Governor of Punjab, in exercise of the powers conferred by Section 4 of the said Act, is hereby pleased to prohibit the following acts, for a period of 30 years with effect from the date of this notification in the area specified in the

Schedule annexed to this notification, the said area forming parts of the villages in Kharar and Rupar Tehsils of the Ambala District specified in the Schedule annexed to the Punjab Government, notification No. 6530-D-50/5727, dated the 20th November, 1950 and No. 387-D-51/459, dated the 5th February, 1951.

1. The clearing or breaking up or cultivating of Malkiat land not ordinarily under cultivation prior to the publication of the said notifications, provided that the breaking up of the land for cultivation may be permitted by the Divisional Forest Officer, Rupar Forest Division.

2. The quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the said notifications, except with the permission of the Collector of the Ambala District, who will consult the Divisional Forest Officer, Rupar Forest Division before according such permission.

3. The cutting of trees or timber or the collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey, save for bona fide domestic or agricultural purposes, provided that the owners of the land may sell trees or timber after first obtaining a permit to do so from the Divisional Forest Officer, Rupar Forest Division, such permit will prescribe such conditions for sale as

may from time to time appear necessary in the interest of Forest conservancy.

4. The setting on fire of trees, timber or forest produce.
5. The admission, herding, pasturing or retention of sheep, goats and camels, provided that in cases where sickness necessitates the keeping of goats for milk, the Divisional Forest Officer, Rupar Forest Division may issue a permit at his discretion for the retention of limited number of staff fed (sic. - stall fed) goats to be specified for a specified period.

SCHEDULE

District	Tehsil	Name of village and Hadbast No.	Total Area	AREA IN ACRES			Balance area notified
				Deduct Area already closed or acquired			
				Indian Forest Act	Chos	Acquired by Capital authorities and declared reserved Forest	
Ambala	Kharar	xxxx	xxxx	xxxx	xxxx	xxxx	xxxx
		Majrian 343	4.105	..	3,428	..	677
		xxxx	Xxxx	xxxx	xxxx	xxxx	xxxx
		Total	43,578	183	29,667	106	1,2622

S.R. Varma, Secretary”

In terms of the above notification dated 27.06.1956, the Governor of Punjab was satisfied after due enquiry that the regulations, restrictions and prohibitions contained therein were necessary for the purpose of giving effect to the provisions of the PLP Act. Therefore, in exercise of the powers conferred by Section 4 of the PLP Act, the Governor was pleased to prohibit the acts mentioned therein, for a period of thirty years with effect

from the date of said notification in the areas specified in the Schedule annexed to the said notification. The said areas formed parts of the villages in Kharar and Ropar Tehsils of Ambala District. In the Schedule, village Majrian Hadbast No. 343 is mentioned.

The next notification under Section 4 of the PLP Act was issued on 09.06.1961 which reads as under:-

“The 9th June, 1961

No.4811-Ft-VI-61/3164:- Whereas the Governor of Punjab is satisfied after due enquiry that the regulations, restrictions and prohibitions, hereinafter contained are necessary for the purpose of giving effect to the provisions of the Punjab Land Preservation Act, 1900 the Governor of Punjab in exercise of the powers conferred by Section 4 of the said Act, is hereby pleased to prohibit the following acts, for a period of 30 years with effect from the date of this notification in the areas specified in the Schedule annexed to this notification, the said areas forming part of the villages in Kharar Tehsil of the Ambala District notified under section 3 of the said Act and specified in the schedule annexed to Punjab Government Notification No.6530-D-50/5727, dated 20th November, 1950.

The cutting of trees or timber or collection or removal or subjection to any manufacturing process of any forest produce other than flower, fruit and honey save for bona fide domestic or agricultural purposes provided that the owners of the land may remove and sell trees or timber after obtaining a permit to do so

from the Divisional Forest officer, Rupar Forest Division, such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of Forest conservancy.”

SCHEDULE

District	Tehsil	Villages	Area
Ambala	Kharar	All revenue estates included in this tehsil	371 square mile

Note:- The areas lying within the aforesaid tract to which the restrictions and prohibitions under section 4 of the said Act have already been applied, shall be considered to have been excluded from the above schedule.”

In terms of the above notification, the Governor of Punjab was satisfied after due enquiry that the regulations, restrictions and prohibitions, contained therein were necessary for the purpose of giving effect to the provisions of the PLP Act. Therefore, in exercise of the powers conferred by Section 4 of the PLP Act, the Governor of Punjab, was pleased to prohibit the acts as mentioned therein, for a period of thirty years with effect from the date of said notification in the areas specified in the Schedule annexed to the said notification. The said areas formed part of the villages in Tehsil Kharar of District Ambala notified under section 3 of the PLP Act and specified in the Schedule annexed to the Punjab Government notification No.6530-D-50/5727 dated 20.11.1950. The acts prohibited relate to cutting of trees or timber or collection or removal or subjection to any manufacturing process of any forest

produce other than flower, fruit and honey and save for bona fide domestic or agricultural purposes provided that the owners of the land could remove and sell trees or timber after obtaining a permit to do so from the Divisional Forest Officer, Ropar Forest Division. The area of revenue estates measuring 371 square miles in Tehsil Kharar, District Ambala is mentioned. In terms of the note, the areas lying within the aforesaid tract, to which the restrictions and prohibitions under Section 4 of the PLP Act had already been applied, were to be considered to have been excluded from the above Schedule.

The next notification dated 09.11.1987 was issued under Section 4 of the PLP Act, which is to the following effect:-

“PUNJAB GOVERNMENT
FOREST DEPARTMENT

NOTIFICATION

The 9th November, 1987

No.39 (13) Ft.III-86/23339:- Whereas the areas mentioned in the annexed schedule, are comprised within the limits of the local areas notified under Section 3 of the Punjab Land Preservation Act, 1900, vide Punjab Government Notification No.4811-Ft.IV-61/8163, dated 9th June, 1961.

2. And whereas in respect of the said areas the President of India is satisfied after the enquiry that the regulations, restrictions and prohibitions hereinafter specified are necessary for the purpose of giving effect to the provisions of the Act.

3. Now, therefore, the President of India, in exercise of the powers conferred by Section 4 of the said Act, is pleased to

prohibit the following acts for a period of 15 years with effect from the date of this notification in these areas:-

(1) The clearing or breaking of cultivation of Malkiyat land not ordinarily under cultivation prior to the publication of this notification, provided that the breaking up of the land for cultivation may be permitted by the Divisional Forest Officer, Forest Division, Ropar.

(2) The quarrying of stones or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of this Notification except with the permission of the Collector of Roopnagar District who will consult the Divisional Forest Division, Ropar before according such permission.

(3) (i) The cutting of trees or timber collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey, save for bona fide domestic or agricultural purposes provided that the owner of the land may sell trees or timber after first obtaining the permit to do so from the Divisional Forest Officer, Forest Division, Ropar. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

(ii) Provided further that owners of land shall not be required to obtain permit for cutting of trees of less than

one metre girth at stump level from the cultivation fields
for sale in that area.

- (4) The setting on fire of trees timber or forest produce.
- (5) The admission, herding, pasturing or retention of goats and camels provided that in cases where sickness necessitates the keeping of goat for milk the Divisional Forest Officer, Forest Division, Ropar may issue a permit on his discretion for the retention of a limited number of stall-fed goats to a specified period .

SCHEDULE

District	Tehsil	Village and H.B. No.	Areas in Acres			
			Total area of the Villages	Area already closed under Cho Act	Area closed already under Section 29	Balance Area notified
Ropar	Kharar	xxxx Majarian (343) xxxx	xxxx 1403 xxxx	xxxx 3428 xxxx	xxxx .. xxxx	xxxx 675 xxxx

Sd/- (M.S. Gill)
Financial Commissioner, Development and
Secretary to Government, Punjab
Forest Department”

The said notification relates to the areas mentioned in the Schedule annexed therewith and comprised within the limits of the local areas notified under Section 3 of the PLP Act vide notification dated 09.06.1961. It is mentioned that in respect of the said areas, the President of India was satisfied, after due enquiry, that the regulations, restrictions and prohibitions specified therein were necessary for the purpose of giving effect to the

provisions of the PLP Act. Therefore, in exercise of the powers conferred by Section 4 of the PLP Act, the President of India, was pleased to prohibit the acts as mentioned therein for a period of fifteen years with effect from the date of said notification in those areas. The prohibitions are incorporated in clause (1) (5) of the said notification. In the Schedule, village Majrian is mentioned.

The last of the notifications was issued on 03.02.2003 which reads as follows:-

“PUNJAB GOVERNMENT
DEPARTMENT OF FOREST & WILDLIFE PRESERVATION
FOREST BRANCH

The 3rd February, 2003

No.39/118/2002-Ft-III/1486:- Whereas the areas mentioned in the annexed Schedule, are comprised within the limits of the local areas notified under Section 3 of the Punjab Land Preservation Act, 1900, vide Punjab Government, Notification No. 4811-Ft.IV-61/8163, dated 9th June, 1961⁴¹.

And whereas in respect of the said areas, the Governor of Punjab is satisfied after the enquiry that the regulations, restrictions and prohibitions hereinafter specified are necessary for the purpose of giving effect to the provisions of the Act.

Now, therefore, the Governor of Punjab, in exercise of the powers conferred by Section 4 of the said Act, is pleased to

⁴¹ The number and date of notification have been corrected vide two corrigenda dated 09.03.2016 by substituting notification No. 458 dated 23.09.1914 and No. 6530-D-50/5727 dated 20.11.1950.

prohibit the following acts for a period of 15 years with effect from the date of this notification in these areas:-

- (1) The clearing or breaking or cultivation of Malkiyat Land not ordinarily under cultivation prior to the publication of this notification, provided that the breaking up of the land for cultivation may be permitted by the Divisional Forest Officer, Rupnagar, Forest Division Rupnagar.
- (2) The quarrying of stones or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of this Notification except with the permission of the Collector of Rupnagar District who will consult the Divisional Forest Officer, Rupnagar, Forest Division, Rupnagar before according such permission.
- (3) The cutting of trees or timber for the collection or removal or subjection to any manufacturing process of any forest produce other than grass, flower, fruit and honey, save for bona fide domestic or agricultural purposes provided that the owner of the land may sell trees or timber after first obtaining the permit to do so from the Divisional Forest Officer, Rupnagar, Forest Division, Rupnagar. Such permit will prescribe such conditions for sale as may from time to time appear necessary in the interest of forest conservancy.

Provided felling and sale of Poplar and Euc (sic. – Eucalyptus) trees from cultivated fields will not require any prior permission but the owner will intimate the concerned Forest Range Officer, and Divisional Forest Officer, at least 15 days prior to the felling through registered post about his intention to cut trees.

- (4) The setting on fire of trees, timber or forest produce.
- (5) The admission, herding, pasturing or retention of goats and camels, provided that in cases where sickness necessitates the keeping of goat for milk the Divisional Forest Officer, Rupnagar Forest Division, Rupnagar may issue a permit at his discretion for the retention of a limited number of stall-fed goats to be specified for a specified period.

SCHEDULE

Under Section 4 of Land Preservation Act, 1900

District	Tehsil	Village and H.B. No.	Total Area of the Village (acre)	Area already closed under Choe Act (acre)	Area already closed under Section 29 (acre)	Balance area to be notified (acre)
Rupnagar	Kharar	xxxx Majrian (343) xxxx	xxxx 4103 xxxx	xxxx 3428 xxxx	Xxxx ... Xxxx	xxxx 675 xxxx

Chandigarh

The 21st January, 2003

R.P.S. Pawar

Financial Commissioner and Secretary to
Government, Punjab

Department of Forests and Wildlife Preservation”

In terms of the above notification dated 03.02.2003, the
Governor of Punjab after enquiry being satisfied that the regulations,

restrictions and prohibitions as specified therein were necessary for giving effect to the provisions of the PLP Act imposed the same for fifteen years.

The said notification dated 03.02.2003 has been corrected by two corrigenda dated 09.03.2016. The first corrigendum reads as follows:-

“GOVERNMENT OF PUNJAB
DEPARTMENT OF FORESTS & WILDLIFE
PRESERVATION (FOREST BRANCH)
CORRIGENDUM

No. 39/11/2011-FT-III/707342/1

Dated: 09.03.2016

In the first para of Notification issued with Punjab Government No.39/118/2002-Ft-III/1486 dated 03.02.2003 under Section 3, the words “Punjab Government, Notification No.4811-Ft-IV-61/8163 dated 09.06.1961” may be read as “Punjab Government, Notification No. 458 dated 23.09.2014 and Punjab Government Notification No.6530-D-50/5727 dated 20.11.1950.”

Chandigarh
02.03.2016

VISWAJEET KHANNA
Financial Commissioner & Secretary
to Government of Punjab, Department
of Forests & Wildlife Preservation.”

The second corrigendum issued on the same date reads as under:-

“GOVERNMENT OF PUNJAB
DEPARTMENT OF FORESTS & WILDLIFE
PRESERVATION (FOREST BRANCH)
CORRIGENDUM

No. 39/11/2011-FT-3/707342/1

Dated: 09.03.2016

In the first para of Notification issued with Punjab Government No.39/118/2002-Ft-III/1486 dated 03.02.2003 under Section 3, the words “Punjab Government, Notification

No. 4811-Ft-IV-61/8163 dated 09.06.1961” may be read as
“Punjab Government, Notification No. 458 dated 23.09.1914 and
Punjab Government Notification No. 6530-D-50/5727 dated
20.11.1950.”

Chandigarh
02.03.2016

VISWAJEET KHANNA
Financial Commissioner & Secretary
to Government of Punjab, Department
of Forests & Wildlife Preservation.”

Therefore, the notification dated 03.02.2003 provides that the
areas mentioned in the Schedule including the land in village Majrian notified
under Section 3 of the PLP Act vide Punjab Government Notification No. 458
dated 23.09.1914 and Punjab Government Notification No. 6530-D-50/5727
dated 20.11.1950 continue to be under prohibition for a period of fifteen years
with effect from the date of notification, i.e. 03.02.2003.

Another notification has been issued on 24.08.2011 under
Sections 4 and 5 of the PLP Act imposing temporary regulations, restrictions
and prohibitions. The said notification reads as under:-

“PUNJAB GOVERNMENT

DEPARTMENT OF FOREST & WILDLIFE PRESERVATION

(FOREST BRANCH)

The 24th August, 2011

No.39/11/2011-FT-3/6827. – 1. Whereas under Section 4 and 5
of the Punjab Land Preservation Act, 1900 there is a provision of
imposing temporary regulations, restrictions or prohibitions in
areas governed under the Act.

2. Whereas Punjab Government while giving effect to the
provisions of the Punjab Land Preservation Act, 1900, imposed

certain temporary regulations, restrictions or prohibitions with regard to clearing, breaking and cultivation of land, quarrying of stones, burning of lime, cutting of trees or timber or collection or removal of any forest produce, the admission, hearing (sic.-herding), pasturing or retention of any cattle etc. in detailed areas as contained in the schedules of the Punjab Government, notification in respect of villages given in Table below (total area of these villages also given in annexure III): –

TABLE-I

Sr. No.	District	Name of the villages	H.B. No.	Last Current Notification	
				Notification No.	Whether under Section 4 or 5 of PLPA
1-14.	S.A.S. Nagar (Mohali)	xxxx	xxxx	xxxx	xxxx
15.	-do-	Majrian	343	No.39/15/99-FT-III-15852 dated 4 th November, 1999	4
16-23.	-do-	xxxx	xxxx	xxxx	xxxx

3. (a) Whereas the State Government filed an affidavit, dated 21st February, 1997 detailing action taken for cessation of all non-forest activities in forest areas (both government and private) in the Hon'ble Supreme Court of India concerning the interim orders of the Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202/1995 and a copy of the report regarding

details of government/private forests (name, location, area, legal status), details of areas once forests but presently degraded denuded and details of plantation (government/private) were enclosed with the affidavit as *Annexure-G*.

(b) The State Government in the affidavit, dated October 1999 submitted that the Expert Committee constituted by the State Government included cultivated/habitation areas closed under Punjab Land Preservation Act, 1900 in the list of forest areas only because these areas were included in the Annual Administrative Reports of the Department as “Areas closed under the PLPA, 1900” and the State Government informed and apprised the Hon’ble Supreme Court of the views and in-principle decision of the State Government to delete all those areas closed under PLPA, 1900 which were under cultivation and habitation from the list of forest areas as contained in *Annexure-G* enclosed with the aforesaid affidavit, dated 21st February, 1997.

4. Whereas on 9th September, 2005, the Hon’ble Supreme Court of India in IA No. 976 in IA No. 727 ordered Ministry of Environment and Forests to consider the proposal of the State of Punjab as contained in communication, dated 4th July, 2000 in accordance with the rules, procedure and guidelines laid down under Forest Conservation Act, 1980 and the lands to be considered would be such lands which are under *bona fide* agricultural use.

5. (a) Whereas in compliance of the orders of the Hon'ble Supreme Court of India, dated 9th September, 2005, Ministry of Environment and Forests, Government of India, - vide F. No. 8-19/2006-FC, dated 16th March, 2006 conveyed in-principle approval to de-list 65,670.26 ha. cultivated and habitation areas closed under Punjab Land Preservation Act, 1900 from the list of forests areas for *bona fide* agricultural use and other livelihood needs subject to the following conditions:-

- (i) The State Government shall ensure that no commercial activity is permitted on such de-listed land.
- (ii) The de-listed land shall be used only for *bona fide* use for agriculture and for sustaining the livelihood of the people/owner of the land.
- (iii) A detailed list of such lands showing the land use and status of such land before 25th October, 1980 and after that up to 12th December, 1996, shall be furnished to this Ministry before final approval.

(b) Further, Ministry of Environment and Forests, Government of India, - vide F.No. 8-19/2006-FC dated 24th July, 2009 conveyed approval for delisting of 55,339.95 ha. cultivated and habitation area closed under Punjab Land Preservation Act, 1900 subject to the following conditions:-

- (i) The State Government shall ensure that no commercial activities are permitted on such de-listed land;
- (ii) The de-listed land shall be used only for *bona fide* use of agriculture and for sustaining the livelihood of the people/owner of the land;
- (iii) If inadvertently, any notified or otherwise forest areas are found to have been included in the present list of areas being considered for de-listing, such areas shall not be deemed to have been de-listed from the list of forest areas of the State.

6. Therefore, keeping in view the above, in so far as villages covered under notifications as contained in Table I above are concerned, the Government of Punjab is placed (sic. - pleased) to delist/denotify the land measuring 2238.82 ha. cultivated and habitation area of these villages closed under section 4 and 5 of PLPA, 1900 comprised in the Khasra numbers as detailed in columns related to the year 1996 in Annexure-I and also from the list of forest areas as contained in Annexure-G enclosed with the affidavit dated 21st February, 1997 of the State Government in Hon'ble Supreme Court of India in Writ Petition (Civil) No. 202 of 1995. Consequently, the restrictions, regulations and prohibitions imposed under Section 4 and 5 of PLPA, 1900 shall cease to be applicable in the delisted areas as detailed in

Annexure-I of this notification. The abstract of village wise area delisted is as per table II below:-

TABLE-II

Sr. No.	District	Tehsil	Name of the village	H.B. No.	Area under Cultivation and Habitation as on 12 th December, 1996 (Area in ha.)		
					Cultivation	Habitation	Total
1	2	3	4	5	6	7	8
1-14.	Mohali	Kharar	xxxx	xxxx	xxxx	xxxx	xxxx
15.	-do-	-do-	Majrian	343	459.11	46.15	505.26
16-23	-do-	-do-	xxxx	xxxx	xxxx	xxxx	xxxx

7. The above deletion is subject to the final judgment in Civil Appeal No. 4682-4683 of 2005 of B.S. Sandhu vs. Government of India and others, Civil Appeal No. 4798 of 2005 of Bhartiya Kisan Union TH. Vice President vs. State of Punjab and others, Civil Appeal No. 4799-4800 of 2005 of Suresh Sharma and others v. B.S. Sandhu and others, Special Leave Petition (Criminal) No. 7647 of 2009 with Criminal Misc. No. 17535 of 2009 of Harsh Kumar Sharma vs. Central Bureau of Investigation and others pending before Hon'ble Supreme Court of India.

8. This de-listed area will be administered in accordance with the decisions taken in the meeting held under Chairmanship of Worthy Chief Secretary, Punjab on 26th April, 2010 as contained in the proceedings issued, - vide Punjab Government Memo No.

39/578/2005-Forest-3/2945, dated 4th May, 2010 (copy enclosed at Annexure-II).

Chandigarh
The 5th May, 2011

D.S. BAINS, I.A.S.
Financial Commissioner and Secretary
to Government of Punjab, Department
of Forests and Wildlife Preservation.”

Schedule of Khasra nos. and area of villages of SAS Nagar

District where restrictions, regulations and prohibitions under

section 4/5 of Punjab Land Preservation Act, 1900 are removed.

District	Tehsil	Name of village	Hadbast No.	Khasra No.	Area (Kanal-Marla)	Khasra No.	Area (Kanal-Marla)
1	2	3	4	5	6	7	8
SAS Nagar (Mohali)	Kharar	Majrian	343				
				782	2-10		
				783	1-07		
				784	1-05		
				785	2-00		
				786	1-12		
				787	2-17		
				788 Min	4-00	788 Min	4-05
				789	4-00		
				790	4-05		
				791	0-15		
				792	0-03		
				793	1-02		
				794	0-15		
						795	0-14
						796	0-08
						797	0-03
						798	0-10
		Total Area in Kanal-Marla		Kitte 2796	9075-13	Kitte 626	913-09
		Grand Total area in Acre			1134 Acre		114 Acre
		Grand Total Area in Ha.			459.11 Ha.		46.15 Ha.

A perusal of the aforesaid notifications dated 23.09.1914 and 20.11.1950 under Section 3 of the PLP Act; besides, notifications dated

23.09.1914, 20.11.1950, 27.06.1956, 09.06.1961, 09.11.1987 and 03.02.2003 under Section 4 of the PLP Act as also the two corrigenda dated 09.03.2016 show that the land of the petitioner has been locked since 23.09.1914 under the PLP Act. Moreover, the notification dated 24.08.2011 shows that an area of land measuring 1134 acres in village Majrian has been removed from the restrictions, regulations and prohibitions. The remaining land, however, continues to remain locked.

During the course of hearing, it is somewhat an accepted and admitted position on behalf of the State that no enquiry as contemplated by the provisions of the PLP Act has been conducted as to whether it is desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion for which the government is to make a direction accordingly in terms of Section 3 of the PLP Act; besides, whether in respect of the areas so notified under Section 3, the government would require by general or special order temporarily to regulate, restrict or prohibit the various acts for prevention of the conservation of sub-soil water or prevention of erosion in any area subject to erosion or likely to become liable to erosion as contemplated by Section 4.

The provisions of the PLP Act have been noticed *in extenso* with its amendments from time to time. In terms of Section 3 of the PLP Act an enquiry is liable to be conducted by the State Government as to whether it is indeed desirable to provide for the conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion for which the government is required to make a direction accordingly in terms of Section 3 of the PLP Act. In case such a direction is

made under Section 3, then a further enquiry would also be necessary as to whether generally or the whole or any part of the areas so notified under Section 3, the government would be required by general or special order temporarily to regulate, restrict or prohibit the various acts for prevention of the conservation of sub-soil water or prevention of erosion in any area subject to erosion or likely to become liable to erosion as contemplated by Section 4.

Section 4 of the PLP Act as it stood before the Punjab Land Preservation (Chos) Amendment Act, 1926 (VII of 1926) conferred power on the government to regulate, restrict or prohibit by general or special order certain matters within the notified area and by general or special order temporarily “or permanently” regulate, restrict or prohibit the acts provided in clauses (a) to (g). However, by the said Amendment of 1926, the words “or permanently” have been omitted (*footnote 14 - supra*). Amendment was also made in Sections 7 of the PLP Act by the Punjab Land Preservation (Chos) Amendment Act, 1926 whereby the word “extinguish” was substituted by the words “prohibit the exercise of ” so as to read that the Deputy Commissioner is to cause public notice of the provisions i.e. the regulatory, restrictive or prohibitive provisions of such general or special order to be given, and if the provisions of any such order restrict or “prohibit the exercise of” any existing right, in contradistinction to the prohibitive measures, it was required also to be published in the language of the country and in every town and village etc. The substitution of the word “extinguish” by the words “prohibit the exercise of” also spells out that the intention of the legislation to the effect that it was to provide for temporary and prohibitive measures only and these were not to be permanent in nature. Besides, the omission of Section 15 (4) of the PLP

Act (*footnote 38-supra*) was regarding the payment of compensation and that when compensation had been awarded or when no compensation was claimed, in respect of any right the exercise of which has been permanently prohibited, such right shall vest absolutely in the Government and shall not revive upon the rescission of the notification or proclamation affecting the area in which it originally existed; further brought out the intention of the legislation that the regulatory, restrictive or prohibitory measures were to be temporary in nature only.

The intention of the legislation, therefore, has been that the regulatory measures for restricting or prohibiting the acts and actions contemplated in terms of the PLP Act are to be temporary in nature, and permanent regulations, restrictions or prohibitions are not contemplated and are not to be enforced.

The preamble of the PLP Act which originally spelt out the aims and objects was to provide for the better preservation and protection of certain portions of the territories of Punjab situate within or adjacent to the Siwalik mountain range or affected or liable to be affected by the debodisement of forest within that range, or by the action of streams and torrents as are commonly called 'chos' through or from it; was omitted by the Punjab Land Preservation (Chos) Act, 1942 (Act No. XI of 1942) (*footnote 3-supra*). Therefore, the object of the amendment was that the debodisement, within a certain range, by the action of streams and torrents, such as are commonly called 'chos' flowing through or from it as also the area situate within or adjacent to Siwalik mountain range, for which the PLP Act is being primarily invoked, has been amended or rather omitted. The debodisement of forest by

the action of streams and torrents as are commonly called 'chos' through or from it, as one of the aims and objects of the PLP Act is now no longer there and the object of the PLP Act, as it now stands, is to provide for the better preservation and protection of certain portions of territories of Punjab.

Therefore, in case the government indeed feels threat to the forests in the area, then it is liable to take remedial measures under the other statutory provisions like the Forest Act, 1927; the Forest (Conservation) Act, 1980 etc.; however, continued application and invocation of the PLP Act without enquiry is quite improper and inappropriate. Besides, the word 'chos' in the title of the Act has been omitted by the Punjab Land Preservation (Chos) (Amendment) Act, 1944 (Act No. IV of 1944) (*footnote 4 - supra*).

This goes to show that the provisions of the PLP Act are now broader and provide for better preservation and protection of certain portions of the territories of Punjab but nevertheless the provisions of the PLP Act are not to be mechanically applied without conducting an enquiry which is contemplated by the said Act itself. In fact, for the last more about 100 years, the provisions of the PLP Act are being invoked by merely following the earlier notifications and in that process making mistakes too. Therefore, leave alone an enquiry being conducted to the satisfaction of the State Government, the PLP Act is being enforced, in a manner which can be said to be without necessary and proper enquiry.

This aspect is evident from the fact that the notifications under Section 3 of the PLP Act were issued as far as back 23.09.1914 and 20.11.1950. In this manner, Section 3 continues to apply to the areas which have been so notified without further re-consideration or any enquiry.

Besides, the regulations, restrictions and/or prohibitions and the requirement of execution of works and taking of measures also continue to apply in terms of Sections 4, 5 and 5-A by periodic notifications from time to time. The prohibitive measures in terms of Section 4 it appears were notified for an indefinite period on 23.09.1914 to the local areas specified under Section 3 notification dated 23.09.1914. However, in terms of the notification dated 20.11.1950, the prohibited acts were to be for a period of five years with effect from the date of notification to the areas forming part of the villages in Kharar tehsil of Ambala district specified in the Schedule annexed with the Section 3 notification dated 20.11.1950. Thereafter, in terms of notification dated 27.06.1956, the prohibited acts in terms of Section 4 were for a period of thirty years from the date of the said notification in respect of the areas specified in the Schedule annexed to the notification, the said areas forming part of villages in Kharar and Ropar tehsils of Ambala district specified in the Schedule annexed to the Punjab Government notification dated 20.11.1950 under Section 3 of the PLP Act. These periods of five years and thirty years for which the notifications dated 20.11.1950 and 27.06.1956 respectively were to apply, were followed by issuance of notification dated 09.06.1961 also under Section 4 for a period of thirty years with effect from the date of notification in the areas specified in the Schedule annexed with the notification, the said areas forming part of the villages in Kharar tehsil of Ambala district notified under Section 3 and specified in the Schedule annexed to the Punjab Government notification dated 20.11.1950 under Section 3. In fact, the notification dated 27.06.1956 was for a period of thirty years; however, another notification was issued in a period of five years only

on 09.06.1961 which was for a further period of thirty years, i.e. till the year 1991. In the meantime, however, another notification dated 09.11.1987 was issued in terms of Section 4 for a period of fifteen years from the date of said notification in respect of areas notified under Section 3 notification dated 09.06.1961 (sic.)⁴². The period of fifteen years from 09.11.1987 expired in 2002. It is after the period had expired that the State Government issued notification dated 03.02.2003 under Section 4 of the PLP Act prohibiting certain acts for a period of fifteen years with effect from the date of said notification in respect of areas mentioned in the Schedule annexed comprised within the limits of the local areas notified under Section 3 vide notification dated 09.06.1961. This date and the number of the notification dated 09.06.1961 was corrected vide two corrigenda dated 09.03.2016 to read notifications No. 458 dated 23.09.1914 and No. 6530-D-50/5727 dated 20.11.1950, both issued under Section 3, a reference to which has been made supra. The period of fifteen years from the notification dated 03.02.2003 is to expire in 2018.

The continuing notifications issued under the PLP Act show that the land of the area stands notified under Section 3 and is subject to regulations, restrictions and/or prohibitions under Sections 4 and 5, besides, is also subject to execution of works and taking of measures in terms of Section 5-A.

The provisions of Sections 3 of the PLP Act, in fact, require that whenever it appears to the State Government that it is desirable to provide for conservation of sub-soil water or the prevention of erosion in any area or

⁴² In fact, the notification dated 09.06.1961 was issued under Section 4 of the PLP Act and this should have been mentioned as notification under Section 3 dated 20.11.1950.

likely to become liable to erosion that the government is to by a notification make a direction accordingly. The desire of the government to provide for conservation of sub-soil water or the prevention of erosion is to be expressed by some material, data and may be even by a debate and consultation. Besides, the regulatory, restrictive and/or prohibitive measures contemplated by Sections 4 and 5 as also the requirement of execution of works and taking of measures as contemplated by Section 5-A would require an enquiry so that a balance is maintained between better preservation and protection of certain portions of the territories of Punjab by invoking the provisions of the PLP Act and at the same time the lands of the land owners and inhabitants of the villages affected by the invocation of the provisions of the PLP Act are protected. However, the previous notifications, as have been noticed above, are being followed on the expiry of the same or even before that and after expiry of an earlier notification thereby making the provisions of the regulatory measures to be permanent in nature even though these are to be temporary only, as noticed above.

Section 4 of the PLP Act confers the powers on the State Government by general or special order to temporarily regulate, restrict or prohibit the acts as mentioned in clauses (a) to (g). Section 5 confers further powers in certain cases to regulate, restrict or prohibit by special order within notified area under Section 3, certain further matters and Section 5-A confers powers to require execution of works and taking measures. Section 6 provides for the necessity for regulation, restriction or prohibition to be recited in the order under Sections 4, 5 or 5-A. Therefore, it is required to be recited in the order passed in exercise of powers conferred under Sections 4, 5 or 5-A, as

the case may be, the necessity for passing the orders. No such necessity has been recited in any of the orders that have been passed or the notifications that have been issued. Rather the State Government is required to record its satisfaction after due enquiry that the regulatory measures are recited in the orders/notifications for giving effect to the provisions of the PLP Act.

By invoking the provisions of the PLP Act particularly that of Sections 3 to 5-A, the right of the owners to use their land is restricted and/or prohibited, as the case may be. The legislation is *ex proprietary* in nature as it temporarily restricts and/or prohibits certain actions on the land owned by a person, by the government under eminent domain. For carrying out the purpose and effect of the PLP Act, an enquiry as to whether it is necessary to restrict or prohibit certain acts is of utmost necessity and is required to be reflected in the orders that are passed.

The question of payment of compensation in respect of the lands that have been locked is liable to be gone into by the State Government so that due compensation is paid to the land owners affected by the invocation of the PLP Act. Independent of requirement of an enquiry to be conducted for issuing directions to provide for conservation of sub-soil water or the prevention of erosion in any area as also for invoking regulatory, restrictive or prohibitive actions and requiring execution of work and taking of measures under the PLP Act, the question of payment of compensation to the land owners whose rights or user of their own land are prohibited and/or restricted is liable to be gone into and compensation paid in accordance with the provisions of the PLP Act.

Section 7 of the PLP Act provides for proclamation of regulations, restrictions and prohibitions and admission of claims for compensation for the rights which are restricted or prohibited. In respect of any area when a notification under Section 3 has been published and upon such publication any general order is made under Section 4 or 5-A to such area or any special order under Sections 4, 5 or 5-A is made in respect of such area, the Deputy Commissioner is to cause public notice of the provisions of such general or special orders to be given and if the provisions of any such order restricts or prohibits the exercise of any existing rights, it is also to be published in the local language so as to inform the affected persons by a proclamation stating the regulations, restrictions and prohibitions that have been imposed and fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any compensation in respect of any right so restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and extent of such right and the amount and particulars of the compensation, if any claimed in respect thereof. No material has been placed on record to show as to whether any proclamations of the regulations, restrictions and prohibitions affecting the rights of the owners were made.

Affidavit of Mr. Mahavir Singh, IFS, Conservator of Forests, Shiwalik Circle, Punjab, Department of Forests and Wildlife Preservation, Punjab, as already noticed, has been filed. It is *inter alia* submitted therein that the Divisional Forest Officer, Ropar, vide letter No.11453 dated 16.03.2004, requested the Deputy Commissioner/Sub Divisional Magistrate to convey 'No Objection Certificate' for closing the area of village Majrian

under Section 4 of the PLP Act for a period of 15 years. Earlier 'No Objection Certificate' was issued by Tehsildar, Kharar and Sub Divisional Magistrate, Kharar on 29.07.2002, for closing the area under Section 4 of the PLP Act further for a period of 15 years. It is further stated that 'No Objection Certificate' was also issued by the Tehsildar, Kharar and Sub Divisional Magistrate, Kharar on 14.01.2003 for closing the area of Majrian under Section 5 of the PLP Act. It is further mentioned that in consequence of the aforesaid letter dated 16.03.2004, a copy of the notification was sent to the Deputy Commissioner, Rupnagar to forward the same to the Tehsildar, Kharar and order him to direct the concerned Halqa Patwari to make an entry in the 'roznamcha wakiyati' and also make public announcement regarding the same in the concerned area by way of 'mushtri munadi' (proclamation) and send copies of 'rapat roznamcha' for record. A copy of the said letter was endorsed to Tehsildar, Kharar along with a copy of the notification for information and necessary action.

Therefore, according to the Forest Department, it had followed the process regarding compensation. It is also mentioned that the concerned officials of the Revenue Department were responsible for preparation of compensation statements; besides, it is mentioned that no record was available concerning the compensation statements in the office of the Forest Department at present and efforts were being made to obtain relevant information from concerned offices and the said information would be submitted in this Court in due course after obtaining the same.

Admittedly, the position is that no compensation has been paid to the land owners or for that matter even the process for payment of

compensation was never initiated in accordance with the provisions of Sections 14 and 15 of the PLP Act. However, according to learned State counsel, compensation was not claimed by the land owners. Mr. Puneet Bali, learned Senior Counsel and also other counsel appearing for the respective petitioners submit that there was no proclamation inviting claims for compensation which, it is stated, is evident from the affidavit dated 17.11.2016 of Mr. Daljit Singh Mangat, IAS, Deputy Commissioner, Mohali. Indeed, the said affidavit of Mr. Mangat accepts the issuance of notification dated 03.02.2003 under Section 4 of the PLP Act whereby the acts enumerated in clauses (1) to (5) therein have been regulated, restricted and/or prohibited for a period of fifteen years with effect from the date of notification. It is also mentioned that the record from the office of Deputy Commissioner, Rupnagar regarding award (sic. - notification) under Sections 4 and 5 of the PLP Act was checked, but no record in this regard was found in the office of the Deputy Commissioner, Rupnagar. It is also mentioned that reports were received from the Sub Divisional Magistrate, Kharar and Naib Tehsildar, Majrian, and in terms of the reports that were received, there was no record available regarding payment of compensation to the concerned land owners of the respective villages mentioned in the notification dated 03.02.2003. Therefore, the question of claiming compensation for the restrictions or prohibitions that had been imposed did not arise.

As has already been noticed, in terms of Section 7 of the PLP Act, on publication of a notification under Section 3 and upon such publication any general order made under Section 4 or Section 5-A becomes applicable to such area or any special order is made under Sections 4, 5 or

5-A, the Deputy Commissioner is to cause public notice of the provisions of such general or special order to be given regarding restrictions; besides, a proclamation is to be issued fixing a period of not less than three months requiring any person claiming any compensation in respect of any rights so restricted.

There is indeed no material on record to show that a proclamation as envisaged by the provisions of Section 7 had been issued. The procedure for making a proclamation though is silent, however, it may be made by going to the area in respect of which directions have been issued, besides, regulatory, restrictive or prohibitive acts have been notified and execution of works and taking of measures have been required and do some act which would indicate the desire of the government to do the said acts. It may be in the form of a proclamation by beat of drum or otherwise or by hanging a written declaration at the spot; besides, informing the 'Chowkidar' of the area and making an entry in the 'roznamcha wakiyati' of the revenue Patwari.

In the circumstances, no enquiry into the claims and award of compensation was conducted in terms of Section 14 of the PLP Act. Therefore, even the method of awarding compensation and effect such an award as contemplated by Section 15 was not followed. In fact, the process for determination of compensation had been outlined in the Punjab Gazette dated 07.09.1899 as stated in the affidavit of Mr. Mahavir Singh, IAS, Conservator of Forests, which is reproduced supra and incorporated in the provisions of Sections 14 and 15 of the PLP Act. In terms of Section 16 of the PLP Act, for every area, notified under Section 3 or Section 8, the Deputy

Commissioner is to prepare a record setting forth the nature, description, local situation and extent of all rights mentioned in Sections 4 and 5, existing within such area at the time of the publication of the notification relating thereto under Section 3 or Section 8, besides, regulated, restricted and/or prohibited by an order under Section 4 or Section 5. When any award is made under Section 14, its effect upon any right is to be recorded therein. These procedures envisaged by the provisions of the PLP Act have admittedly not been carried out. Since there was no proclamation, the claim for any compensation was not raised by the affected persons.

The payment of compensation for deprivation of property is a part of constitutional right under Article 300A of the Constitution. A Five Judge Bench of the Supreme Court in Rajiv Sarin and another v. State of Uttarakhand, (2011) 8 SCC 708, considered the effect of deprivation of property and the entitlement for compensation to those deprived of the property. The appellants in the said case in 1945 acquired proprietary rights as intermediaries in a forest estate in Uttarakhand. After the commencement of the Constitution (Forty-second Amendment) Act, 1976 which came into effect from 03.01.1977 the subject "forests" was included in Schedule VII List III of the Constitution as Entry 17-A. The rights, title and interest of every intermediary in respect of forest land situated in the specified areas ceased w.e.f. 01.01.1978 and the same vested in the State Government in pursuance of a Gazette Notification dated 21.12.1977.

The appellants in the said case were served with a notice under Rule 2 of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Rules, 1965 informing them of the said vesting of their lands in the

State w.e.f. 01.01.1978. The notice also invited objections and statement, if any, relating to the compensation qua the property in question. The appellants challenged the said notice and validity of the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960 (KUZALR Act - for short), as amended by U.P. Act 15 of 1978. The appellants also challenged the order of the High Court which had been passed on the basis of Sections 18 (1) (cc) and 19 (1) (b) of the KUZALR Act wherein it had been held that they were not entitled to any compensation as they had not derived any income from the forests.

Partly allowing the appeal, the Supreme Court *inter alia* held that any law which deprived a person of his private property for private interest would be amenable to judicial review. Though the concept of public purpose had been given quite a wide interpretation, nevertheless, “public purpose” remained the most important condition in order to invoke Article 300A of the Constitution. Besides, the right to property being no more a fundamental right, a legislation enacted under the authority of law as provided in Article 300A of the Constitution is not amenable to judicial review merely for alleged violation of Part III of the Constitution. However, the laws added to Schedule IX to the Constitution, by violating the Constitutional amendment after 24.12.1973, would be amenable to judicial review on a ground like violation of the basic structure of the Constitution. It was further held that right to property is no longer a fundamental right. In view of the aforesaid position, the entire concept of right to property had to be viewed with a different mindset than the mindset which was prevalent during the period when the concept of eminent domain was the embodied provision of fundamental

rights. But even now as provided under Article 300A of the Constitution the State could proceed to acquire land for specified use but by enacting a law through State Legislature or by Parliament and in the manner having force of law.

With regard to claiming compensation, it was said that all modern constitutions which are invariably of democratic character provide for payment of compensation as a condition to exercise the right of expropriation. Acquisition of land and thereby deprivation of property was possible and permissible in accordance with the statutory framework enacted and when the State exercises the power of acquisition of a private property thereby depriving the private person of the property, provision was generally made in the statute to pay compensation to be fixed or determined according to the criteria laid down in the statute itself. It was observed that it must be understood in this context that the acquisition of the property by the State in furtherance of the directive principles of State policy was to distribute the material resources of the community including acquisition and taking possession of private property for public purpose. It does not require payment of market value or indemnification to the owner of the property expropriated. Payment of market value in lieu of acquired property is not a condition precedent or sine qua non for acquisition. It must be clearly understood that the acquisition and payment of amount are part of the same scheme and they cannot be separated. It was considered as true that the adequacy of compensation could not be questioned in a court of law, but at the same time the compensation could not be illusory. A distinction and difference had been drawn between the concept of “no compensation” and the concept of “nil

compensation”. As mandated by Article 300A, a person could be deprived of his property but in a just fair and reasonable manner. In an appropriate case the Court may find “nil compensation” also justified and fair if it was found that the State had undertaken to take over the liability and also had assured to compensate in a just and fair manner. But the situation would be totally different if it was a case of “no compensation” at all. A law seeking to acquire private property for public purpose cannot say that “no compensation” would be paid.

The case before Hon’ble the Supreme Court was a case of payment of “no compensation” at all. In the said case, the forest land which had vested in the State by operation of law, it was observed, could not be said to be non-productive or unproductive by any stretch of imagination. The property in question was definitely a productive asset. That being so, the criteria to determine possible income on the date of vesting would be to ascertain such compensation paid to similarly situated owners of neighbouring forests on the date of vesting. Even otherwise, it was observed, that the revenue authority could always make an estimation of possible income on the date of vesting if the property in question had been exploited by the appellants therein and then calculate compensation on the basis thereof in terms of Section 18 (1) (cc) and 19 (1) (b) of the KUZALR Act.

Awarding ‘no compensation’, it was held, attracted the vice of illegal deprivation of property even in the light of the provisions of the Act and was, therefore, amenable to writ jurisdiction. That being so, the omission of Section 39 (1) (e) (ii) of the UP Zamindari Abolition and Land Reforms Act, 1950 (‘UPZALR Act’ - for short), as amended in 1978, was held to be of

no consequence since the UPZALR Act left no choice to the State other than to pay compensation for the private forests acquired by it in accordance with the mandate of the law. Therefore, while upholding the validity of the KUZALR Act and particularly Sections 4-A, 18 (1) (cc) and 19 (1) (b) thereof, the Assistant Collector was directed to determine and award compensation to the appellants therein by following a reasonable and intelligible criterion evolved on the aforesaid guidelines provided and in the light of aforesaid law as has been enunciated. The appellants were also held entitled to interest at 6% per annum on the compensation amount from the date of dispossession till the date of payment provided possession of the forest was handed and taken over formally by the respondent physically and provided that the appellants were totally deprived of physical possession of the forest. In case the physical/actual possession had not been handed over by the appellants to the State Government or had been handed over at some subsequent date, i.e. after the date of vesting, the interest on the compensation amount, it was ordered, would be payable only from the date of actual/physical possession of the property in question and not from the date of vesting.

In K.T. Plantation Pvt. Ltd. and another v. State of Karnataka, (2011) 9 SCC 1, a Five Judge Bench of the Supreme Court considered as to what extent the principles of eminent domain would apply where there is deprivation of property. It was held that the deprivation of property by statute within the meaning of Article 300A, generally speaking, must take place for public purpose or public interest. The concept of eminent domain applies when a person is deprived of his property. It postulates that the purpose must

be primarily public and not primarily of private interest and merely incidentally beneficial to the public. It was said that Article 300A of the Constitution proclaims that no person could be deprived of his property saved by authority of law, meaning thereby that a person could not be deprived of his property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature.

The right to claim compensation or the obligation to pay, though not expressly included in Article 300A, it was said, could be inferred in that Article. Public purpose though was a pre-condition for deprivation of a person from his property under Article 300A but the right to claim compensation was also inbuilt in that Article and when a person is deprived of his property, the State had to justify both the grounds which may depend on scheme of the statute, legislative policy, object and purpose of the legislature and other related factors.

In Sayyed Ratanbhai Sayeed (D) through LR's and others v. Shirdi Nagar Panchayat and another, (2016) 4 SCC 631, the Supreme Court referred to its judgment in Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353, and said that it had been proclaimed in the context of Article 300A of the Constitution of India, that right to property was not only a constitutional or statutory right but also a human right to be construed in the realm of individual rights, such as right to health, livelihood, shelter, employment etc. It was reminisced that in a welfare state, statutory authorities are bound not only to pay adequate compensation but were also under a legal obligation to rehabilitate the persons displaced. The spectre of the uprooted persons becoming vagabonds with anti-national

propensities in case of non-fulfillment of such obligations by the State was portended with concern.

In Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd., (2007) 8 SCC 705, the Supreme Court said that the right of property is now considered to be not only a constitutional right but also a human right. It was observed that ex-proprietary legislation, as is well known, must be given a strict construction. The Act in the said case being regulatory in nature as by reason thereof the right of an owner of property to use and develop stands restricted, requires strict construction. An owner of land ordinarily would be entitled to use or develop the same for any purpose unless there exist certain regulations in a statute or statutory rules.

The Supreme Court, therefore, in the context of Article 300A of the Constitution reiterated the position that right to property apart from being other rights like constitutional or statutory rights is nevertheless a human right to be construed in the realm of individual rights like health, livelihood, shelter, employment, etc.

Therefore, it is quite evident that payment of compensation when a person is deprived of his property is a necessary consequence of the restrictions and prohibitions that are imposed. In the present case, the right of entitlement to compensation is engrained in the statutory provisions of the PLP Act itself. In the circumstances, there is no reason by the State authorities and the Deputy Commissioner concerned should not carry out the modalities for payment of compensation as provided for in the PLP Act in a case where land has been notified under Section 3 and restrictions or prohibitions have been imposed under Section 4.

Learned counsel for the State has relied on the case in Capt. Ranjha Singh and others v. Union of India and others (supra). In the said case, it was held that notifications under Sections 3 and 4 of the PLP Act cannot be struck down on the ground that no public notice was issued under Section 7 (1) (b) of the PLP Act. The notifications had been challenged by the petitioners therein primarily on the ground that while issuing the said notifications, there was no application of mind and the same had been issued arbitrarily affecting the rights of the petitioners and, secondly, there was no compliance of Section 7 of the PLP Act which provides for proclamation of regulations, restrictions, and prohibitions, besides, admission of claims for compensation for rights which were restricted or extinguished (sic.)⁴³. In the said case, it was held that there was nothing arbitrary in issuing the notification under Sections 3 and 4 of the PLP Act. The decision to that effect was taken as far back as 1976 in a meeting of the Punjab State Sub Mountain and Kandi Area Advisory Council though its compliance was made in the year 1985 by issuing the said notifications. From the pleadings of the parties in the said case, it was held that it could not be successfully argued that the said notifications suffered from non-application of mind, as had been contended on behalf of the petitioners therein.

As regards non-compliance of Section 7 of the PLP Act, some force was found. In the return that was filed, there was no specific averment that the provisions of Section 7 of the PLP Act had been complied with nor any such copy had been placed on record to show that the Deputy

⁴³ The rights in fact are regulated, restricted or prohibited only and not extinguished as the word “extinguish” was substituted by the word “prohibit” in Section 7 (1) (b) of the PLP Act by the Punjab Land Preservation (Chos) (Amendment) Act, 1926 (VII of 1926), Section 4.

Commissioner caused any public notice of the provisions as contemplated under clause (b) of sub-section (1) of Section 7 of the PLP Act. It was, however, held that the said clause was independent of Sections 3 and 4 and, therefore, on account of non-compliance of the provisions of Section 7 of the PLP Act, the notifications under Sections 3 and 4 of the PLP Act could not be struck down. The Deputy Commissioner, however, was directed to comply with the provisions of Section 7 of the PLP Act within six months from the date of the order. The Deputy Commissioner was also to take into consideration the period from 1985 to 1989 for payment of compensation to the persons affected by the said notifications.

Learned counsel for the State has further relied on the case in Gram Panchayat Tejli v. State of Haryana (supra). In the said case, the petitioner Gram Panchayat was in possession of land measuring 80 acres in village Tejli, District Ambala. Its income was being used for the welfare of the public. The land was used for common purposes in the village. Some land was given on lease for a period of five years to several brick-kiln owners. The leases were made with them after taking permission from the Block Development Officer. The Haryana Government issued a notification dated 15.05.1970 under Section 4 of the PLP Act which was assailed by the petitioner Panchayat in the said case. It was contended on behalf of the petitioner therein that the powers conferred on the State Government were excessive and no guidelines whatsoever had been provided for taking the action under Section 4. The principles of natural justice, it was stated, had been violated as no opportunity was given to the petitioner to defend its

interests before passing an order under Section 4 of the PLP Act; besides, the petitioner had been deprived of its right in the land for the last twenty years.

The respondent contested the petition and stated that the notification was issued under Section 4 of the PLP Act for a period of twenty years and the object of the same was to conserve the forests and to check the land erosion. The compulsory closure of the lands was stated to be in the interest of afforestation and soil conservation. The area had been closed for management under scientific and silvicultural principles and as soon as the land improves, its management would revert back to the owners. By way of an additional affidavit, it was further stated that an enquiry was made before issuance of the notification for finding of facts like number of cattle grazing requirements, total area of waste land of the village, watering places, etc.

According to learned counsel for the respondent in the said case, the PLP Act was enforced in the case of emergency and it was not necessary that any opportunity should be given to the petitioner therein before passing any order under Section 4 or 5 of the PLP Act.

No force was found in the contentions of the petitioner therein. The purpose of the PLP Act, it was said, was to preserve and protect portions of the territories of Punjab as the fertile plains were being damaged and eroded near the Shiwalik ranges. In order to take emergent measures for the protection of the aforesaid areas, notification under Section 3 of the PLP Act was issued by the State Government which was in its discretion. Section 6 of the PLP Act was noticed; which provides that before passing any order under Section 4, the State Government is to satisfy itself after due enquiry that regulations, restrictions, prohibitions or directions contained in Sections 4, 5

and 5-A were necessary for the purpose of giving effect to the provisions of the PLP Act. If the legislature had wanted that an opportunity should be given to a particular person before passing any order against him, it could do so. It was only in those cases where the legislature did not provide any procedure that the principles of natural justice were applied.

It was held that the owners of the properties were not deprived of their properties, but the government to provide for conservation of sub-soil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion applies the provisions of the PLP Act. It does not decide the rights of the parties. In such case, it was said that it was not necessary that opportunity hearing should be given. An affidavit of the Divisional Forest Officer had been filed in the said case that the land under dispute suffered from soil erosion and before issuing the notifications by the government due enquiry was made and protection of the land in dispute through restrictions on use was considered essential to ensure conservation of soil.

It was further said that a reading of the notification in the said case would show that the petitioner therein had been stopped from doing such acts which were detrimental to the land. Besides, the Divisional Forest Officer, Ambala had been given powers to permit the owners to break the land for cultivation. He had also been given powers to allow the owners to sell the trees or timber. The cutting of trees and timber, the collection or removal of any forest produce including grass, flower, fruit and honey, for the domestic agricultural purposes of right holders in the land is also not prohibited. It is further categorically maintained that in the relaxations

mentioned in the Notification, it is provided that any person affected can claim compensation, in respect of his rights restricted or prohibited by the Notification. The compensation, it was said, was to be determined by the Deputy Commissioner under Section 14 of the PLP Act. The persons affected have been given further right to appeal in case they are not satisfied with the order of compensation. It was held that in case the right of management is taken by the Government, it cannot be said that a person has been deprived of any right guaranteed by Article 19 of the Constitution.

Therefore, it is to be noticed that in Ranjha Singh's case (supra), the notification issued under Section 3 and 4 of the PLP Act were not invalidated as decision to the said effect had been taken as far as back in 1976 in the meeting of Punjab State Sub-Mountain and Kandi Area Advisory Council though its compliance was made in the year 1985. From the pleadings of the parties in the said case, it was held that it could not be successfully argued that the said notifications suffered from non-application of mind. In any case, force was found as regards the non-compliance of the provisions of Section 7 of the PLP Act and it was said that the notifications under Section 3 and 4 of the PLP Act, however, could not be struck down on account of non-compliance of the provisions of Section 7. The notifications under Sections 3 and 4 were not struck down in the facts of the said case as these were found not to be suffering from non-application of mind nevertheless direction was issued to the Deputy Commissioner to comply with the provisions of Section 7 of the PLP Act. In the case of Gram Panchayat Tejli v. State of Haryana (supra), it was said that the procedure for passing orders under Sections 4, 5 and 5-A of the PLP Act has been provided

under Section 6 and that an opportunity of hearing is not provided. It was said that it is only in those case where the legislature did not provide any procedure that the principles of natural justice are applied. Therefore, the notifications issued under the PLP Act in the said case imposing regulatory, restrictive and/or prohibitory measures were not invalidated for non-compliance of the principles of natural justice. However, it was said that for awarding compensation procedure has been provided in Sections 7 and 14. It was said that any person affected can claim compensation in respect of his rights restricted or prohibited by the notifications. The compensation is to be determined by the Deputy Commissioner under Section 14 of the PLP Act. The persons affected have been given further right to appeal in case they were dissatisfied with the order of compensation. In case right of management had been taken by the government, it could not be said that a person had been deprived of any right guaranteed by Article 19 of the Constitution. In the circumstances, the said judgments are confined to their own facts but nevertheless the right to claim compensation by the affected person has been endorsed and confirmed.

Learned counsel for the State has also placed reliance on the judgment in Lt. Col. B.S. Sandhu's case CWP No. 10478 of 2013 (supra). It is to be noticed that the petition in the said case was dismissed on 15.05.2013 by this Court. The order reads as follows:-

“The petitioner prays for issuance of a writ of certiorari quashing notifications, Annexures P-7, P-8, P-9, P-13 and P-15 issued under Section 4 of the Punjab Land Preservation Act, 1900 (hereinafter referred to as “the

PLPA”) and notifications, Annexures P-10, P-11, P-14 and P-16, issued under Section 5 of the PLP Act as also the notification, Annexure P-17, being illegal and void ab initio.

Counsel for the petitioner, in essence, seeks to undo a notification issued almost a century ago, on the plea that as Section 3 of “the PLPA”, was amended, the said notification issued before amendment, is no longer valid, as no fresh notification was issued under the amended Section 3 of “the PLPA”. Apart from the fact that a dispute regarding the land, in question, has, admittedly, already been decided by this Court and is pending adjudication before the Hon'ble Supreme Court, we are not inclined to entertain the petition at this belated stage, particularly when the notification in question has been in existence for the last more than 100 years. The land, in dispute, has been held to be forest land. The attempt appears to be to raise some sort of a ground for the purpose of the pending Special Leave Petition.

In view of what has been stated hereinabove, the writ petition is dismissed.”

Further, the writ petition of Harmesh Kumar and others CWP No. 12105 of 2013 (supra) was also dismissed on 29.05.2013 in terms of the following order:-

“Counsel for the petitioners fairly concedes that similar Civil Writ Petition No.10478 of 2013 (Lt. Col. B.S. Sandhu (Retd.) v. Union of India and others), has already been dismissed, on 15.05.2013.

The writ petition is, accordingly, disposed of, in terms of the above order.”

The said petitioners, i.e. Lt. Col. B.S. Sandhu and Harmesh Kumar etc, filed SLP (C) No.19226 of 2013 and SLP (C) No.20235 of 2013 in Hon'ble the Supreme Court against the aforesaid orders dated 15.05.2013 and 29.05.2013. Both the said SLPs were dismissed vide order dated 25.03.2015 passed in the case, Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra). The relevant extract of the order dated 25.03.2015 insofar as the aforesaid SLPs are concerned reads as follows (pages 316-317 of SCC):-

“15. The short contention of the petitioners in the SLP is that the Notifications issued under Sections 4 and 5 of the Punjab Land Preservation (Chos) Act, 1900 (hereinafter referred to as the '1900 Act'), which were challenged before the High Court were issued under the provisions of Section 3 of the 1900 Act prior to the amendments made to the said Section 3 in 1914 and the somewhat comprehensive amendment of the entire 1900 Act effected in the year 1942. According to the petitioner, Section 3 having been amended in 1914 and the very object and purpose of the 1900 Act having been also altered by the

amendment of 1942, the subsequent Notifications issued under Sections 4 and 5 in the year being under the old Section 3 of the 1900 Act are *non est* in law.

16. The High Court declined to go into the pleas raised in the writ petition on the ground that the writ petitions are highly belated and in any case a dispute pertaining to the land is pending before this Court. The said dispute, as already noticed, arose in Civil Appeal Nos. 4682-4683 of 2005⁴⁴ which has since been remanded to the High Court and have also been re-decided/re-answered by the High Court.

17. Insofar as delay in filing the writ petitions is concerned, a series of notifications, issued from time to time, had been challenged by the petitioner. The last of the notifications under challenge is of the year 2004. The petitioner apparently came into possession of the property much earlier i.e. in the year 1988. If that be so, it was necessary for the petitioner to bring his challenge before the High Court well in time; instead the writ petitions were filed in the year 2013.

18. The view taken by the High Court on account of delay therefore cannot be faulted though the High Court appears to have computed such delay from the date of first

⁴⁴ B.S. Sandhu v. Government of India, (2014) 12 SCC 172 (decided on 21.05.2014).

notification issued under Section 3 of the 1900 Act overlooking the subsequent notifications issued which were also under challenge. Even if the subsequent notifications (of the year 2004) are taken into account, the eventual conclusion of the High Court cannot be faulted.

19. For the aforesaid reasons, we do not consider it appropriate to entertain the SLPs any further. Both SLPs (C) Nos. 19226 and 20235 of 2013 are dismissed.”

In Dashmesh Educational Society’s case (supra), the plaintiff, a registered body, sought permission for setting up of forest hill country club/ resort within the area of village Karoran, Tehsil Kharar, District Ropar. One of the issues in the case was whether the provisions of the PLP Act; the Indian Forest Act, 1927; the New Punjab Capital (Periphery) Control Act, 1952 and the Forest (Conservation) Act, 1980 were attracted. An order dated 12.10.2004 was passed by this Court in ‘Court on its own motion v. State of Punjab and others’ (CWP No. 1134 of 2004) 2004 (4) RCR (Civil) 619 (DB) (P&H) to the effect that the land in question in the said case which was the same in the case of Dashmesh Educational Society was forest land and no non-forest activity was permissible thereon. The said order was challenged before Hon’ble the Supreme Court and the appeals were disposed of by order dated 21.05.2014 [B.S. Sandhu v. Government of India, (2014) 12 SCC 172]. In terms of the said order, the Supreme Court set aside the decision of this Court in ‘Court on its own motion v. State of Punjab and others’ (supra), which was to the effect that the entire land in village Karoran, District Ropar, was forest land for the purpose of Section 2 of the Forest (Conservation) Act,

1980. The case was remanded to this Court for a fresh hearing and decision.

Pursuant to the said order passed by Hon'ble the Supreme Court, this Court considered the matter and directed a physical verification of the land to be made for determination as to whether the same or any part thereof is forest land or not. This determination was ordered by this Court in separate but connected proceedings in the case, Gram Panchayat, Bari Karoran v. State of Punjab and others, CWP No. 22756 of 2013, decided on 28.05.2014 (DB). In the said case of Gram Panchayat, Bari Karoran, challenge was to two notifications dated 13.08.2010 to the extent they imposed what was alleged to be necessary restrictions with regard to use of land which had been de-notified under the PLP Act. Initially, this Court was of the opinion that the final view of Hon'ble the Supreme Court in B.S. Sandhu v. Government of India (supra) be awaited. This was in the context that the stand taken in the affidavit of the Financial Commissioner and Principal Secretary to Government of Punjab itself was that this Court in 'Court on its own motion v. State of Punjab and others' (supra) had categorically held that all areas notified under the PLP Act were forest areas and attracted the provisions of the Forest (Conservation) Act, 1980 and the Indian Forest Act, 1927. The judgment in B.S. Sandhu's case (supra) was then delivered, which showed that the Supreme Court proceeded to examine the opinion of the High Court whereby latest entries of the revenue records were discarded and records of the Forest Department were taken into account to hold that the land in question was forest land. It was observed that the Supreme Court did not agree with the conclusion of this Court that the land notified under Section 3 of the PLP Act and regulated by prohibitory directions notified under Sections

4 and 5 thereof was forest land. It was opined that the land that was notified under Section 3 of the PLP Act and regulated by orders of the local government under Sections 4 and 5 may or may not be forest land. The ratio of the Supreme Court judgment, it was held, was that whether the land is forest land or not would depend on the land records and merely because the land is notified under Section 3 of the PLP Act would not *ipso facto* make it forest land. The second limb was that the land was to be recorded as forest land as on 25.10.1980 irrespective of its classification and ownership. The writ petition, i.e. Gram Panchayat, Bari Karoran v. State of Punjab and others (supra), was disposed of with the following agreed terms:-

- “(i) It is for the State Government to proceed to identify the forest land in terms of the parameters laid down by the Hon’ble Supreme Court in Civil Appeal Nos.4682-4683 of 2005 titled as B.S. Sandhu vs. Government of India and others, decided on 21.5.2014 (supra) based on the revenue record and the test laid therein;
- (ii) The notifications would in substance apply only in case the land in question is forest land in the revenue record;
- (iii) Insofar as land of the petitioner is concerned, the aforesaid exercise be carried out to take a call on whether what is alleged by the petitioner, i.e., it is not forest land is correct or not and a reasoned decision be communicated to the petitioner on or

before 03.07.2014, as prayed by learned Additional Advocate General;

- (iv) If the land in question is not forest land, then appropriate development works as per the Final Master Plan and Notified Area Committee of Naya Gaon should be undertaken as the claim is that the ground reality is really pathetic on account of all development works having stopped; and
- (v) The directions already contained in the order dated 4.3.2014 for action qua construction unauthorisedly carried out on a proposed road and clearance of garbage would be implemented on or before 03.07.2014 with visible photographs.

The petition accordingly stands disposed of.

List for compliance on 11.07.2014.”

The case ‘Court on its own motion v. Col. B.S. Sandhu (Retd.) and others’, CWP No. 1134 of 2004, after remand by Hon’ble the Supreme Court vide order dated 21.05.2014, was disposed of on 04.07.2014 by a Division Bench of this Court by observing that it was agreed that the said petition be disposed of in terms of the aforesaid order dated 28.05.2014 in the case, Gram Panchayat, Bari Karoran v. State of Punjab and others (supra) with one caveat. The learned Additional Advocate General expressed some apprehension arising from the use of words ‘revenue record’. This was in the context of the phraseology used in the judgment of Hon’ble the Supreme Court where a reference to government records had been reflected in the

conclusions of the Court. It was agreed that use of the words ‘revenue record’ was only in that context and, thus, that expression in the order be substituted by ‘Government records’, as referred to in the conclusions of Hon’ble the Supreme Court. Learned counsel for respondent No. 1 and applicants in CM No. 7298 of 2014, however, expressed apprehension that the State may, in terms aforesaid, ignore the revenue record. The Division Bench, however, saw no reason for such an apprehension for the reason that when the reference is to government records, certainly, the revenue record form a part of the government record. The petition and the application were accordingly disposed of.

Special Leave to Appeal (C) CC No(s). 15642/2014 titled Tanu Bedi v. B.S. Sandhu (Retd.) and others was filed in Hon’ble the Supreme Court against the order dated 04.07.2014 passed in the case ‘Court on its own motion v. Col. B.S. Sandhu (Retd.) and others’, CWP No. 1134 of 2004. Hon’ble the Supreme Court, on 26.09.2014, passed the following order:-

“Permission to file Special Leave Petition is granted.

We are not inclined to entertain this Special Leave Petition. The Special Leave Petition is dismissed.

However, we make it clear that the order of the High Court should be read in the context of our order dated 21st May, 2014 (*footnote 44 - supra*) in particular, the observations made in paragraph 50⁴⁵ which reads as under:-

⁴⁵ Para 22 of B.S. Sandhu v. Government of India, (2014) 12 SCC 172.

“Thus, what the High Court was called upon to decide is whether the land on which the Forest Hill Golf and Country Club of Col. B.S. Sandhu was situated was forest land as on 25.10.1980 irrespective of its classification or ownership. This is a factual question and the High Court should have decided this factual question on the basis of Government records as on 25.10.1980 and other materials filed before the High Court, but the High Court has instead decided this question by reference to the provisions of the PLP Act, 1900 and the records of the Forest Department in which the land was shown to be under the Forest Department in which the land was shown to be under the Forest Department because of the fact that the land was closed under the PLP Act, 1900 several decades before the enactment of the Forest (Conservation) Act, 1980.”

The direction of the High Court has to be carried out by the State as stipulated therein as well as in the manner stated in the above-quoted paragraph.”

The case Gram Panchayat, Bari Karoran v. State of Punjab and others, decided on 28.05.2014, was listed for compliance on 11.07.2014. CM No. 7841 of 2014 was filed seeking modification of the order dated 28.05.2014 on account of apprehension expressed by the learned Advocate

General arising from the use of the words 'revenue record', which was clarified in terms of order dated 11.07.2014 passed in the case 'Court on its own motion v. Col. B.S. Sandhu (Retd.) and others' (supra). The case was further adjourned for carrying out certain directions.

Special Leave to Appeal (C) No (s). 16646/2014 titled 'State of Punjab and others v. Gram Panchayat, Bari Karoran and others' arising out of the final judgment dated 28.05.2014 in Gram Panchayat, Bari Karoran v. State of Punjab, CWP No. 22756 of 2013, was filed in Hon'ble the Supreme Court which was dismissed as having become infructuous on 14.08.2014.

In Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra), Hon'ble the Supreme Court said that after remand by the Supreme Court of the case B.S. Sandhu v. Government of India and others (supra), the consequential consideration of the matter by the High Court; the directions for survey and the report of survey were subsequent facts which could not be overlooked or ignored while rendering orders in the said appeals. It was observed that though valiant efforts had been made by the learned counsel for the appellants to restrict the scope of the arguments to certain other specific issues and not to develop on the aforesaid aspects of the case, the same were too significant to be overlooked or ignored. In fact, specific issues/substantial questions of law were framed by the High Court in the second appeal⁴⁶ in question with regard to the land being covered by the provisions of the Forest (Conservation) Act, 1980. The High Court, however, did not feel it necessary to go into the said question except for the purpose of *prima facie* decision thereon for determining as to whether the State Forest Department was a necessary party in the civil suit. It was held

⁴⁶ Punjab Urban Development Authority v. Dashmesh Educational Society, (2005-1) PLR 238.

that in view of the subsequent developments which had been noted there was no escape from the necessity of consideration of the question as to whether the land on which the resort/country club was sought to be established being a part of Karoran village was forest land within the meaning of the Forest (Conservation) Act, 1980.

Therefore, in the present cases as well it is for the State Government to go into all the aspects of the case and also determine whether the provisions of the PLP Act are liable to be invoked or continued in respect of the lands in question. Besides, in case these are forest lands, the said question would have to be gone into so as to determine whether the lands fall within the meaning of the Forest (Conservation) Act, 1980.

It is to be noticed that the question of the validity of the notifications that were assailed is not to be gone into and as has been noticed above, it is the requirement of holding a proper and effective enquiry so as to effectively consider whether it is desirable for the State Government to provide for the conservation of sub-soil water or the prevention of erosion in an area subject to erosion or likely to become erosion in terms of Section 3 of the PLP Act and whether the earlier notifications dated 23.09.1914 and 20.11.1950 under Section 3 of the PLP Act are liable to be continued. This aspect has been considered *in extenso* above and the State Government is liable to go into the same. Besides, the State Government is also liable to examine as to whether the regulatory, restrictive and/or prohibitive measures as contemplated by Sections 4 and 5 of the PLP Act are liable to be continued after the expiry of the period of fifteen years from the date of the notification dated 03.02.2003, i.e. from 2018. Besides, whether there is requirement for

execution of work and taking of measures in terms of Section 5-A of the PLP Act. These aspects would require consideration.

Independent of the above, the question whether the lands are forest area or not within the meaning of the Forest (Conservation) Act, 1980 and/or the Indian Forest Act, 1927 would also require consideration in view of the order dated 21.05.2014 passed by Hon'ble the Supreme Court in the case of B.S. Sandhu v. Government of India (supra), which is reiterated in Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra) as also in Tanu Bedi v. B.S. Sandhu and others (supra).

The contention of Mr. Bhardwaj, learned Additional Advocate General, Punjab, that all these questions have already been considered in the earlier decisions would not be the correct position in view of the above referred Supreme Court orders. It may also be noticed that the question whether the land is covered by the Forest (Conservation) Act, 1980 would require consideration primarily in context of the said Act. Hon'ble the Supreme Court in B.S. Sandhu v. Government of India (supra) held that a reading of clauses (a) to (g) of Section 4 of the PLP Act would show that activities such as cultivation, pasturing of sheep and goats and erection of buildings by the inhabitants of towns and villages situated within the limits of the area notified under Section 3 can be regulated, restricted or prohibited by a general or special order. All these activities were not normally carried out in forests. Similarly, the government was empowered by special order to regulate, restrict or prohibit the cultivating of any land or to admit, herd, pasture or retain cattle generally other than sheep and goats. These activities were not normally carried out in forests. Therefore, land which is notified

under Section 3 and regulated by orders under Sections 4 and 5 of the PLP Act may or may not be 'forest land'. It was further said that the conclusions of the High Court in the said case that the entire land of village Karoran, District Ropar, which had been notified under Section 3 of the PLP Act and is regulated by the prohibitory directions notified under Sections 4 and 5 thereof, is 'forest land', is not at all correct in law. The Supreme Court further in B.S. Sandhu's case (supra) made a reference to an earlier judgment in T.N. Godavarman Thirumulkpad v. Union of India and others, (1997) 2 SCC 267, wherein on the meaning of the words "forest" and "forest land", it was stated as follows:-

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated as reserved, protected or otherwise for the purpose of Section 2 (i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the

conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof.”

The exercise for determination of the lands as ‘forest’ and ‘forest lands’ is liable to be done in consonance with the statutory provisions of the Forest (Conservation) Act, 1980 and/or the Indian Forest Act, 1927 and guided by the principles as enunciated by Hon’ble the Supreme Court in the above stated cases, besides, the statutory provisions.

Apart from the holding of an enquiry as to whether the provisions of the PLP Act are to be continued after 2018 after the expiry of lock in period of fifteen years from the date of notification dated 03.02.2003 and also the determination as to whether the lands are ‘forest’ or ‘forest land’, the question regarding determination and payment of compensation in accordance with the provisions of Sections 14 and 15 of the PLP Act is required to be carried out as it has not been shown by the respondents that necessary proclamation of the regulations, restrictions and prohibitions in terms of Section 7 of the PLP Act had been made. At the same time, the petitioners have also not claimed their right for compensation within a reasonable time and it would be inappropriate at this stage to grant compensation to be determined from as far as back as 1914 or for that matter even 1950 when the notifications under Section 3 followed by Section 4 of the PLP Act were issued. However, by adopting a balancing process, it would be just and proper to grant compensation to the petitioner for a period of three years from the date of filing their respective writ petitions.

In the circumstances, it would be just and expedient to uphold the impugned notifications dated 23.09.1914 and 20.11.1950 issued under Section 3 as the also the notification dated 03.02.2003 issued under Section 4 of the PLP Act.

The reasons for upholding the Section 3 notifications are that these were issued several years earlier and challenge to the same has been dismissed by this Court on the ground of delay in B.S. Sandhu's case (supra) and Harmesh Kumar's case (supra), which orders have been upheld by Hon'ble the Supreme Court vide order dated 25.05.2015 passed in Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra).

The notification dated 03.02.2003 issued under Section 4 of the PLP Act even though it is not shown that the State Government had satisfied itself after due enquiry that the regulations, restrictions, prohibitions or directions contained in the said notification dated 03.02.2003 were necessary for the purpose of giving effect to the provisions of the PLP Act but nevertheless the notification is not to be invalidated at this stage as it espouses a public cause as also the fact that it was issued about fourteen years back and the duration of same is for fifteen years till 2018, which is about to expire.

The State Government shall, however, preferably before the expiry of the period of fifteen years from the date of notification dated 03.02.2003 and in any case within a period of one year from the date of receipt of copy of the judgment, carry out an exercise for consideration as to whether it is desirable to continue with the directions of the PLP Act in an area for the conservation of sub-soil water and prevention of erosion in any

area subject to erosion or likely to become liable to erosion and further satisfy itself after due enquiry whether the regulations, restrictions, prohibitions and/or directions by general or special order are necessary within the notified areas for the purpose of giving effect to the provisions of the PLP Act. In case these are to be continued, then the procedure provided by the PLP Act must be adhered to and followed by making necessary publication in the official gazette and also a proclamation of the regulations, restrictions, prohibitions or directions in the area in respect of which a notification has been published under Section 3 and that upon such publication any general order made under Section 4 or 5-A has become applicable to such area or any special order under Sections 4, 5 or 5-A is made in respect of such area.

It shall also be determined by the State Government as to whether the lands in question are 'forest' or 'forest land' primarily in terms of the provisions of the Indian Forest Act, 1927, the Forest (Conservation) Act, 1980 etc. as also the judgments of the Supreme Court in B.S. Sandhu v. Government of India (supra), which is reiterated in Dashmesh Educational Society v. Punjab Urban Development Authority and others (supra) as also in Tanu Bedi v. B.S. Sandhu and others (supra); besides, T.N. Godavarman Thirumulkpad v. Union of India and others (supra). The exercise of payment of compensation to the land owners whose land has been locked by the provisions of the PLP Act shall also be carried out in accordance with the provisions of Sections 14 and 15 and all land owners or affected persons entitled for compensation shall be paid the compensation, which shall be restricted to a period of three years from the date of filing the petitions by them or on their behalf.

(233) CWP No.14723 of 2015 (O&M), CWP No. 23268 of 2014 (O&M)
CWP No. 24096 of 2014 (O&M), CWP No. 85 of 2016 (O&M) and
CWP No. 17216 of 2016 (O&M)

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The writ petitions are accordingly disposed of in the above terms.

(S.S. SARON)
JUDGE

(DARSHAN SINGH)
JUDGE

08.02.2017
Ramesh

Note: 1. Whether reasoned/speaking : Yes
2. Whether reportable : Yes