A

MAHARAJ SINGH

v.

STATE OF UTTAR PRADESH & OTHERS

November 2, 1976

B

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.]

U.P. Zamindari Abolition & Land Reforms Act, 1950—*Section* 117—*Scope of—State vests lands in Gaon Sabha—Suit for ejectment—Gaon Sabha did not appeal—State—If had* locus standi.

Words & phrases—Vest—Person aggrieved—Appurtenance—Meaning of

C

By virtue of s. 4 of the U.P. Zamindari Abolition & Land Reforms Act, 1950, the right, title and interest of all the intermediaries in every estate including *hats,* bazars and *melas* stood terminated and vested absolutely in the State. Section 9 provides that all wells, trees in *abadi* and all buildings situate within the limits of an Estate, belonging to an intermediary, shall continue to belong to or be held by such intermediary and the site of the buildings which is appurtenant thereto, shall be deemed to be settled with him by the State Government. Section 117(1) empowers the State Government to vest lands in D Gaon Sabhas or other local authorities. Under s. 117(6) the State Government has power to resume from a Gaon Sabha the lands vested in it. By a notification under s. 117(1) the State Government vested the land in the village in the Gaon Sabha.

On the estate in dispute, the defendant who was the quondam zamindar, had been conducting a cattle fair. The estate had on it, among others, a few structures. The plaintiffs' (the State and the Gaon Sabha) suit for ejectment of the defendant from the estate was dismissed by the trial court. The Gaon Sabha, E however, did not appeal; but the State went in appeal to the High Court as 'a person aggrieved'. The High Court negatived the defendant's contentions that as a result of the notification under s. 117(1) the land having vested in the Gaon Sabha, the State Government had no *locus standi* and that it was not a person aggrieved, but allowed the defendant to keep all the structures and a space of 5 yards running round each building.

Dismissing the appeal,

F HELD : (1) The State has title to sustain the action in ejectment. The Government, despite vesting the estates in Gaon Sabhas has, and continues to have, a constant hold on these estates, when it chooses, to take away what it had given possession of to a Gaon Sabha. This is plainly 'present legal interest' in the Government and a sort of *precarium tenans* in the Sabha. [1082 D; 1079 F-G]

(a) The Act contemplates taking over of all zamindari rights as part of land reform. Instead of centralising management of all estates at State level, the G Act gives an enabling power to make over these states to Gaon Sabhas. Apart from management, no power is expressly vested in the Sabhas to dispose of the estates absolutely. If the State thinks fit to amend or cancel the earlier vesting declaration or notification it can totally deprive the Sabha of, and resume from it, any estate. The vesting in the State was absolute but the vesting in the Sabha was limited to possession and management subject to divestiture by Government. Such a construction of vesting in two different senses in the same section is sound because the word 'vest' has many meanings. The sense of the H situation suggests that in s. 117(1) 'vested in the State' carries a plenary connotation, while 'shall vest in the Gaon Sabha' imports a qualified disposition confined to the right to full possession and enjoyment so long as it lasts. To postulate vesting of absolute title in the Gaon Sabha by virtue of the declaration under s. 117(1) is to stultify s. 117(6). [1081 A-C; F-G]

(b) The State is 'a person aggrieved'. He, who has a proprietary right, which has been or is threatened by violation, is an 'aggrieved person'. The right to a remedy apart, a larger circle of persons can move the court for the protection of defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the *lis* and the plaintiff need not necessarily be personal. A person aggrieved is an expression which has expanded with the larger urgencies and felt necessities of our time. [1082 E-F] A

(c) The amplitude of 'legal grievance' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them. Test suits, class actions and representative litigation are the beginning and the horizon is expanding with persons and organisations not personally injured but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs. [1083 A-C] B C

Dhabolkar [1976] 1 S.C.R. 306 followed.

'*Locus standi*' has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old. Therefore, the State, in the present case, is entitled to appeal under s. 96 of the Code of Civil Procedure. [1084 D]

(2) Where a wrong against community interest is done, 'no *locus standi*' will not always be a plea to non-suit an interested public body chasing the wrongdoer in court. In the instant case the Government is the 'aggrieved person'. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management Committee and is liable to be divested. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State is to be a helpless spectator of its purposeful bounty being wasted or lost. [1083 H; 1084 A-B] D E

(3)(a) The touchstone of 'appurtenance' is dependence of the building on what appertains to it for its use as a building. Obviously the *hat*, bazar, or *mela* is not an appurtenance to the building. Even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for a *hat* or *mela*, the land is not appurtenant to the principal subject granted by s. 9, namely, buildings. [1085 G]

(b) The larger objective of s. 9 is to settle with the former intermediary only such land as is strictly appurtenant to buildings, all the rest going to the State for implementation of the agrarian reform policy. [1084 G] F

(c) The large open spaces cannot be regarded as appurtenant to the terraces, stands and structures. What a integral is not necessarily appurtenant. A position of subordination, something incidental or ancillary or dependent is implied in appurtenance. That much of space required for the use of the structures *as such* has been excluded by the High Court itself. Beyond that may or may not be necessary for the *hat* or *mela* but not for the enjoyment of the *chabutras* as such. [1085 B-C] G

(d) 'Appurtenance' in relation to a dwelling, includes all land occupied therewith and used for the purposes thereof. The word 'appurtenances' has a distinct and definite meaning. *Prima facie* it imports nothing more than what is strictly appertaining to the subject-matter of the devise or grant. What is necessary for the enjoyment and has been used for the purpose of the building, such as easement, alone will be appurtenant. The word 'appurtenances' includes all the incorporeal hereditaments attached to the land granted or demised, such as rights of way, but does not include lands in addition to that granted. [1086 D-E] H

(e) What the High Court has granted viz., 5 yards of surrounding space is sound in law. [1086 H]

A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1 of 1976.

Appeal by Special Leave from the Judgment and Order dated 23-5-1975 of the Allahabad High Court in First Appeal No. 392/64.

Shanti Bhushan, V. P. Goel and *Subodh Markendeya,* for the Appellant.

B

L. N. Sinha, Solicitor-General of India and *O. P. Rana,* for the Respondent No. 1.

Bal Kishan Gaur and *Amlan Ghosh,* for Respondent No. 2.

Yogeshwar Prasad and *Rani Arora,* for Respondent No. 3.

C The Judgment of the Court was delivered by

KRISHNA IYER, J.—Two principal submissions, whose implications perhaps are of profound moment and have public impact, have been, at wide-ranging length, urged in this appeal by certificate, by Shri Shanti Bhushan, for the appellant/defendant and, with effective brevity, controverted by the Solicitor General, for respondent/1st plaintiff. The two focal points of the controversy are : (a) Is the appeal to the High Court by the State/1st plaintiff at all competent, entitlement as a 'party aggrieved' being absent, having regard to the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1951) (for short, the Act) ?; and (b) Is it sound to conceptualise 'area appurtenant to buildings' in s. 9 of the Act so narrowly as has been done by the High Court ? There were two plaintiffs—the State of Uttar Pradesh and the Gaon Sabha of Bedpura claiming common but alternative reliefs. The suit was for injunction or ejectment, on title, of the sole defendant who was the quondam zamindar of the 'estate' which is the subject matter of the suit. The trial Court dismissed the suit whereupon the 2nd plaintiff dropped out of the litigation, as it were, and the State alone pursued the matter by way of appeal against the decree. The High Court partially allowed the appeal and the aggrieved defendant is the appellant before us.

D

E

F

An *expose* of the facts may now be given to the extent necessary for explaining the setting of the contention between the parties. The State of Uttar Pradesh extinguished all zamindari estates by the Act and implemented a scheme of settlement of lands with intermediaries, tenants and others by first vesting all estates in the State and empowering it to vest, divest and re-vest from time to time according to flexible needs and *ad hoc* requirements, the same estates in Gaon Sabhas or other local authorities. Settlement of trees, buildings and other specified items in the intermediaries was also part of the agrarian reform. A skeletal picture of the legislation may now be projected. But, before that, a short sketch of the actual dispute may illumine the further discussion.

G

H The suit lands were part of an estate owned and possessed by the defendant-zamindarini. The statutory consequence of the abolition of all zamindaris by force of s. 4 is spelt out in s. 6, to wit, the

cesser of the ownership of the zamindar and vesting of title and possession in the State. By a notification under s. 117(1) of the Act the area of lands was vested by the State in the 2nd plaintiff Gaon Sabha. The legislative nullification notwithstanding, the defendant who had been conducting a lucrative bi-weekly cattle fair, the best in the district, persisted in this profitable adventure strengthened by s. 9 of the Act which settles in the intermediary all buildings and area appurtenant thereto. This resulted in possessory disputes between the Gaon Sabha and the defendant—proceedings under s. 145 upholding the latter's possession and the present suit for declaration of title and consequential injunction or ejectment.

The estate, which is the site of the rural cattle market, has a large number of trees on it, a temple in one plot, a (veterinary) clinic in another and quite a number of cattle stands and other auxilliary structures which are facilities for the bovine display and transaction of business. Taking advantage of the provisions of the Act, the defendant successfully claimed before the High Court that the trees and the two plots with the shrine and the *oushadhalaya* should be deemed to have been settled with her. Her ambitious demand, based on some provisions which we will presently X-ray more carefully, was that the entire estate with all the buildings thereon was enjoyed as a *unum quid* and the vacant lands were as much necessary for the meaningful running of the cattle fair as the structures themselves. To dissect and detach the buildings from the vacant spaces was to destroy the functional wholeness of the service rendered. In short, the large intervening areas surrounding the *chabutras* and other edifices were essential adjuncts or appurtenant lands which, together in their original entirety, should be settled under s. 9 of the Act with the erstwhile intermediary *viz.*, the defendant. The High Court declined to go the whole hog with the defendant but granted the plea to the limited degree of giving all the structures and a space of 5 yards running round each 'building'. In the view of the Court *hats,* bazars, and *melas* could not be held by a private owner under the scheme of the Act and reliance on the conduct of the cattle market as an indicator of 'appurtenant' area was, therefore, impermissible. The suit was decreed *pro tanto.*

The Gaon Sabha, when defeated in the trial Court, discreetly stepped out of the risks of an appeal but the Government, first plaintiff, claiming to be gravely aggrieved, challenged the dismissal of the suit and was faced with the plea that the land having vested in the Gaon Sabha, on the issue of the notification under s. 117(1) of the Act, the State had no surviving interest in the property and, therefore, forfeited the position of a 'person aggrieved', who alone could competently appeal against a decree. This contention, negatived by the High Court, has been reiterated before us with resourceful embellishments and that, logically, is the first question of law falling for our decision and is the *piece de resistance,* if we may say so, in this appeal. If the 1st plaintiff's entire interests, by subsequent plenary vesting in the 2nd plaintiff, have perished, the former cannot, as of right, appeal under s. 96 C.P.C. Survival after death is unknown to

A real property law and suits, without at least apprehended injury, are beyond the ken of the procedural law. To put it in a nutshell, has the State current interest in the estate, sufficient to sustain an appeal ?

The anatomy of the Act, so far as this dispute is concerned, needs to be set out and alongside thereof, the exercises in statutory construction necessary to resolve the two legal disputes. The Act had for its B primary object, as testified by its Preamble, the extinction of intermediary rights *viz.*, zamindaris and the like. The goal of the legislation must make its presence felt while the judicial choice of meanings of words of ambiguous import or plurality of significations is made. Section 4 is the foundational provision, the very title deed of the State, and it runs, to read :

C "s. 4. *Vesting of estates in the State.*—

(1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estate situate in the Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (herinafter called the date of vesting), all such estates shall stand transferred to and vest D except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in sub-section (1) in respect only of such area or areas as may be specified and all the provisions of E sub-section (1), shall be applicable to and in the case of every such notification."

Section 6 sets out the legal consequences of such vesting more specifically. We may extract the provision :

"6. *Consequences of the vesting of an estate in the State.*—

F When the notification under section 4 has been published in the Gazette then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification relates, namely—

G

(a) all rights, title and interest of all the intermediaries—

(i) in every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village *abadi,* holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, *abadi* sites, *hats,* bazars and *melas* H other than *hats,* bazars and *melas* held upon land to which clauses (a) to (c) of sub-section (1) of Section 18 apply, and

(ii) in all sub-soil in such estates including rights, if any in mines and minerals, whether being worked or not;

shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;

* * * * *

Reading the two sister sections together, certain clear conclusions emerge. Emphatically, three things happened on the coming into force of the Act. By virtue of s. 4 the right, title and interest of all intermediaries in every estate, including *hats,* bazars and *melas,* stood terminated. Secondly, this whole bundle of interests came to be vested in the State, free from all encumbrances, the quality of the vesting being absolute. Thirdly, one and only one species of property in *hats,* bazars and *melas* was expressly excluded from the total vesting of estates in the State, *viz.,* such as had been held on lands to which s. 18(1)(a) to (c) applied. Section 9, at this stage, needs to be read since it is geared to the nationalisation of zamindaris by providing for settlement, under the State, of some kinds of landed interests in existing owners or occupiers. Section 9 states :

> *"Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof.—*
>
> All wells, trees in *abadi,* and all buildings situate within the limits of an estate, belonging to or held by an intermediary or tenant or other person, whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or persons, as the case may be, and the site of the wells or the buildings which are appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed "

A close-up of this section is called for since the basic plank of the defendant's case is the claim to the whole set of plots as building and appurtenant area of land statutorily settled with her. If she is such a settlee, the substantive merit of the plaintiff's title fails. We will examine this aspect after a survey of the sections relevant to the *locus standi* of the State is done.

So we shift to Chapter VII which relates to Gaon Sabhas vesting by the State of resumed estates in them and the limitations and other conditions to which it is subject. Attributed legal personality by s.3, the Gaon Sabhas are bodies corporate which, under the various provisions of Chapter VII, have been invested with legal viability right to own and hold property, to transfer and otherwise deal with movables and immovables and manage their landed assets through the executive agency of Land Management Committees. This comprehensive proprietary personality of the Sabha is indisputable but unhelpful for our purpose.

A The controversy before us comes into focus when we read s. 117(1), (2) and (6), all the limbs being taken as belonging to a legally living corporate body. Section 117, cls. (1) and (2), provide :

"117. *Vesting of certain lands etc., in Gaon Shabhas and other local authorities.*—

B (1) At any time after the publication of the notification referred to in Section 4, the State Government may, by general or special order to be published in the manner prescribed, declare that as from a date to be specified in this behalf, all or any of the following things, namely—

* * * *

C (v) hats, bazars and melas except hats, bazars, and melas held on land to which the provisions of clauses (a) to (c) of sub-section (1) of section 18 apply or on sites and areas referred to in section 9, and

* * * *

D which had vested in the State under this Act shall vest in the Gaon Sabhas or and other local authority established for the whole or part of the village in which the said things are situate, or partly in one such local authority (including a Gaon Sabha) and partly in another:

Provided that it shall be lawful for the State Government to make the declaration aforesaid subject to such exceptions and conditions as may be specified in the notification.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, the State Government may, by general or special order to be published in the manner prescribed in the Gazette, declare that as from a date to be specified in this behalf, all or any of the things specified in clauses (i) to (vi) of sub-section (1) which alter their vesting in the State under this Act had been vested in a Gaon Sabha or any other local authority, either under this Act or under section 126 of the Uttar Pradesh Nagar Mahapalika Adhiniyam 1959 (U.P. Act II of 1959) shall vest in any other local authority (including a Gaon Sabha) established for the whole or part of the village in which the said things are situated."

Section 117(6) injects a precarious does into the system of estates vested in Gaon Sabhas by sub-s.(1) and goes on to state:

"117(6). The State Government may, at any time, by general or special order to be published in the manner prescribed, amend or cancel any declaration or notification made in respect of any of the things aforesaid, whether

generally or in the case of any Gaon Sabha or other local authority, and resume such thing and whenever the State Government so resumes any such thing, the Gaon Sabha or other local authority, as the case may be, shall be entitled to receive and be paid compensation on account only of the development, if any, effected by it in or over that thing:

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

* * * *

Before moving further, we may glance at a group of sections which have more than peripheral impact on the legal equation between Government and Sabha *vis a vis* estates vested in the latter by the former. Section 119 carves out a power for the State Government to take away *hats,* bazars and melas vested in a Gaon Sabha and transfer them to a zilla parishad or other authority. Sections 122A and 122B create and regulate the Land Management Committee which is to administer the estates vested in the Sabha and s. 126, quite importantly, gives the power to the State Government to issue orders and directions to the Management Committee.

Pausing here for an instant, let us look back on the status of the State which, through its Executive branch, vests a resumed estate in a Gaon Sabha, retaining power, at any time, and without conditions or even compensation (save for actual developmental work done), to divest the land so vested and make it over to another like local authority. In such a situation where the State remains the legal master with absolute powers of disposition over the land vested *pro tempore* in a particular Gaon Sabha, can it be postulated that it has no legal interest in the preservation of that over which it has continuous power of operation, creation and deprivation? Government, despite vesting estates in Gaon Sabhas on the wholesome political principle of decentralisation and local self-government, has and continues to have a constant hold on these estates, may be like a brooding omnipotence descending, when it chooses, to take away what it had given possession of to a Sabha. This is plainly present legal interest in Government and a sort of *precarium tenans* in the Sabha, notwithstanding the illusory expression 'vesting' which may mislead one into the impression that an absolute and permanent ownership has been created.

An overview of these legal prescriptions makes one sceptical about the statutory ideology of autonomous village self-government since, so far as estates are concerned, these Sabhas have been handcuffed and thrown at the mercy or mood of the State Government. The pragmatics of the Act has reduced Gaon Sabhas to obedient

A holders, for the nonce, of the limited bounty of estates vested in them —a formal, fickle, homage to Art. 40 of the Constitution!

Shri Shanti Bhushan did draw our attention to certain cousin statutes and other remotely related provisions but the soul of his submission does not suffer by their omission in the discussion. We pass
B on to the spinal issues agitated before us.

Locus standi

The estates first vest in the State. The fulfilment of the purpose of the Act, the setting in which the corner-stone for the statutory edifice is laid and the categorical language used, especially 'free from all encumbrances', leave no doubt in our minds, nor was it disputed
C before us, that this initial vesting is absolute and inaugurates the scheme of abolition. The consequence of vesting articulated by s. 6 only underscore this conclusion.

What next ensues, when the State Government, acting under s.117(1), notifies a further vesting in a Gaon Sabha is the cardinal question. Does the State retain a residuary legal interest, sufficient
D to make it a 'person aggrieved', competent to challenge in appeal an adverse decree? And can the State canvas for the position that a proprietary right persists in it *albeit* its act of vesting the same estate earlier in a local authority? Does the key word 'vest' connote and denote divergent things in the same section and Act *vis a vis* Government and the Gaon Sabha? Had drafting skills been better, this unlovely ambiguity could have been avoided. But courts have no
E choice but to take the text as it is. Zeroing in on the relevant provisions, we are inclined to concur with the High Court. With certitude one may assert that the State has that minimal interest to follow the proprietary fortunes of the estate so as to entitle it to take legal action to interdict its getting into alien hands.

F The legislative project and the legal engineering visualised by the Act are clear and the semantics of the words used in the provisions must bend, if they can, to subserve them. To be literal or be blinkered by some rigid canon of construction may be to miss the life of the law itself. Strength may be derived for this interpretative stand from the observation in a recent judgment of this Court(1)

G "A word can have many meanings. To find out the exact connotation of a word in a statute, we must look to the context in which it is used. The context would quite often provide the key to meaning of the word and the sense it should carry. Its setting would give colour to it and provide a cue to the intention of the legislature in using it. A word, as said by Holmes, is not a crystal, transparent and unchanged; it is the skin of a living thought and may
H vary greatly in colour and content according to the circumstances and the time in which it is used."

(1) *Thiru Manickaru & Co.* v. *The State of Tamil Nadu.* [1977] 1 S.C.R. 950.

In the instant case the Act contemplates taking over of all zamindari rights as part of land reform. However, instead of centralising management of all estates at State level, to stimulate local self-government, the Act gives an enabling power—not obligatory duty—to make over these estates to Gaon Sabhas which, so long as they are in their hands, will look after them through management committees which will be under the statutory control of Government under s.126. Apart from management, no power is expressly vested in the Sabhas to dispose of the estates absolutely. The fact that as a body corporate it can own and sell property does not mean that the estates vested in a Sabha can be finally sold away, in the teeth of the provisions striking a contrary note. For, under s.117(6), if, for any reasons of better management or other, the State (Government is but the operational arm of the State and cannot, as contended, be delinked as a separate entity, in this context)—the State thinks fit to amend or cancel the earlier vesting declaration or notification, it can totally deprive the Sabha of, and resume from it, any estate. This plenary power to emasculate or extinguish the Sabha's right to the estate is tell-tale. True, this cut-back on the amplitude of the vesting is not an incident of the estate created but is provided for by the Act itself. Even so, we have to envision, in terms of realty law, what are the nature and incidents of the interest vested in the Sabha—full ownership divestible under no circumstances or partial estate with the paramount interest still surviving in *praesenti* in the State?

It is reasonable to harmonize the statutory provisions to reach a solution which will be least incongruous with legal rights we are cognisant of in current jurisprudence. Novelty is not a favoured child of the law. So it is right to fix the estate created by s.117 into familiar moulds if any. Such an approach lends to the position that the vesting in the State was absolute but the vesting in the Sabha was limited to possession and management subject to divestiture by Government. Is such a construction of 'vesting' in two different senses in the same section, sound? Yes. It is, because 'vesting' is a word of slippery import and has many meanings. The context controls the text and the purpose and scheme Project the particular semantic shade or nuance of meaning. That is why even definition clauses allow themselves to be modified by contextual compulsions. So the sense of the situation suggests that in s.117(1) of the Act 'vested in the State' carries a plenary connotation, while 'shall vest in the Gaon Sabha' imports a qualified disposition confined to the right to full possession and enjoyment so long as it lasts. Lexicographic support is forthcoming, for this meaning. Black's Law Dic-

A tionary gives as the sense of 'to vest' as 'to give an immediate fixed right of present or future enjoyment, to clothe with possession, to deliver full possession of land or of an estate, to give seisin'. Webster's III International Dictionary gives the meaning as 'to give to a person a legally fixed immediate right of present or furture enjoyment'.

B The High Court has sought some Engilsh judicial backing(1) for taking liberties with strict and pedantic construction. A ruling of this Court(2) has been aptly pressed into service.

There is thus authority for the position that the expression 'vest' is of fluid or flexible content and can if the context so dictates, bear the limited sense of being in possession and enjoyment. Indeed, to postulate vesting of absolute title in the Gaon Sabha by virtue of C the declaration under s.117(1) of the Act is to stultify s.117(6). Not that the legislature cannot create a right to divest what has been completely vested but that an explanation of the term 'vesting' which will rationalise and integrate the initial vesting and the subsequent resumption is preferable, more plausible and better fulfils the purpose of the Act. We hold that the State has title to sustain he acion in D ejectment.

Aside from this stand, it is easy to take the view that the 1st plaintiff is a person aggrieved and has the competence to carry an appeal against the dismissal of the suit. Of course, he who has a proprietary right, which has been or is threatened to be violated, is surely an 'aggrieved person'. A legal injury creates a remedial right in the injured person. But the right to a remedy apart, a lar- E ger circle of persons can move the court for the protection of defence or enforcement of a civil right or to ward off or claim compensation for a civil wrong, even if they are not proprietarily or personally linked with the cause of action. The nexus between the *lis* and the plaintiff need not necessarily be personal although it has to be more than a wayfarer's allergy to an unpalatable episode. 'A person F aggrieved' is an expression which has expanded with the larger urgencies and felt necessities of our times. Processual jurisprudence is not too jejune to respond to societal changes and challenges:

> "Law necessarily has to carry within it the impress of the past traditions, the capacity to respond to the needs of the present and enough resilience to cope with the demands of the future. A code of law, especially in the social fields, G is not a document for fastidious dialectics; properly drafted and rightly implemented it can be the means of the ordering of the life of a people."(3)

(1) *Richardson* v. *Robertson* (1862) 6 LR 75; & *Hiride* v. *Chorlton* (1866) 2 CP 104, 116.

H (2) *Fruit & Vegetable Merchant's Union* v. *The Delhi Improvement Trust*, AIR 1957 SC 344.

(3) Address by—Khanna J. at the Birth Centenary of Sir Tej Bahadur *Sapru* d/16-10-76 at Allahabad.

The classical concept of a 'person aggrieved' is delineated in Re : *Sidebotham ex p. Sidebotham* (1880 14 Ch.D. 258). But the amplitude of 'legal grievance' has broadened with social compulsions. The State undertakes today activities whose beneficiaries may be the general community even though the legal right to the undertaking may not vest in the community. The State starts welfare projects whose effective implementation may call for collective action from the protected group or any member of them. New movements like consumerism, new people's organs like harijan or mahila samajams or labour unions, new protective institutions like legal aid societies operate on the socio-legal plane, not to beat 'their golden wings in the void' but to intervene on behalf of the weaker classes. Such burgeoning of collective social action has, in turn, generated gradual processual adaptations. Test suits, class actions and representative litigation are the beginning and the horizon is expending, with persons and organisations not personally injured but vicariously concerned being entitled to invoke the jurisdiction of the court for redressal of actual or imminent wrongs.

In this wider perspective, who is a 'person aggrieved'? *Dhabolkar* (1974 1 SCR 306) gives the updated answer :

> "The test is whether the words 'person aggrieved' include 'a person who has a genuine grievance because an order has been made which prejudicially affects his interests'."
> (p. 315)

> "American jurisprudence has recognised, for instance, the expanding importance of consumer protection in the economic system and permitted consumer organisations to initiate or intervene in actions, although by the narrow rule of *'locus standi'*, such a course could not have been justified (see p. 807—New York University Law Review, Vol. 46, 1971). In fact, citizen organisations have recently been compaigning for using legal actions for protection of community interest, broadening the scope of 'standing' in legal proceedings (see p. 403—Boston University Law Review, Vol.51, 1971).

> In the well-known case of *Attorney-General of the Gambia* v. *Peirra Sarr N. 'Jie* 1961 A.C. 617), Lord Denning observed about the Attorney-General's standing thus :

> ".... The words 'person aggrieved' are of wide import and should not be subjected to a restrictive interpretation. They do not include, of course, a mere busy body who is interfering in things which do not concern him; but they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests." (p. 324-325)

Where a wrong against community interest is done, 'no *locus standi*' will not always be a plea to non-suit an interested public body chasing the wrong-doer in court. In the case before us, Govern-

A ment, in the spacious sense of 'person aggrieved' is comfortably placed. Its right of resumption from the Gaon Sabha, meant to be exercised in public interest, will be seriously jeopardised if the estate slips into the hands of a trespasser. The estate belonged to the State, is vested in the Gaon Sabha for community benefit, is controlled by the State through directions to the Land Management B Committee and is liable to be divested without ado any time. The wholesome object of the legislature of cautiously decentralised vesting of estates in local self-governing units will be frustrated, if the State, the watchdog of the whole project, is to be a helpless spectator of its purposeful bounty being wasted or lost. It must *act,* out of fidelity to the goal of the statute and the continuing duty to salvage public property for public use. Long argument is otiose to make C out a legal grievance in such a situation of peril and, after all, the star of processual actions *pro bono publico* has to be on the ascendant in a society where supineness must be substituted by activism if the dynamic rule of law is to fulfil itself. *'Locus standi'* has a larger ambit in current legal semantics than the accepted, individualistic jurisprudence of old. The legal dogmas of the quiet past are no longer adequate to assail the social injustices of the stormy D present. Therefore, the State, in the present case, is entitled to appeal under s. 96 of the Code of Civil Procedure.

The second, and from a practical point of view equally potent ground of defence, is that 'appurtenant' space envelops the whole area around the buildings and the suit for recovery of possession deserves to be dismised *in toto.* Let us examine this submission.

E Section 9 of the Act obligates the State to settle (indeed, it is deemed to be settled) with the intermediary certain items in the estate. That provision has been set out earlier. The short enquiry is whether the entire land is 'appurtenant' to the buildings. The contention of the defendant flows along these lines. The structures accepted by the High Court as 'buildings' within the scope of s. 9 F were part of a cattle fair complex. Even the mandir and the *oushadalya* fitted in to the *hat* total and the integrity of the whole could not be broken up without violating the long years of common enjoyment. It would also be a double injury: (a) to the defendant; and (b) to the community. The *hat* or *mela* could not be held by the defendant if the land were snatched away and the Government could do nothing on a land without the buildings belonging to the G defendant. Maybe there is some sociological substance in the presentation but the broader purpose of the section cannot be sacrificed to the marginal cases like the present. The larger objective is to settle with the former intermediary only such land as is strictly appurtenant to buildings, all the rest going to the State for implementation of the agrarian reform policy.

H The key to the solution of the dispute lies in ascertaining whether land on which the cattle fair was being held was appurtenant to the buildings or not on the strength of its use for the *hat.* The Solicitor General made a two-pronged attack on the defendant's proposition.

Firstly, he argued that *hats*, bazars and *melas* were a distinct interest in the scheme of Indian agrestic life and agrarian law. This right had been virtually nationalised by the Act and only the State or the Gaon Sabha, save where s. 18(a) to (c) otherwise provided, could hold a fair. A ruling by this Court on an analogous subject lends support to this contention (See *State of Bihar* v. *Dulhin Shanti Devi* : AIR 1967 SC 427 relating to Bihar Land Reforms Act). A

The heated debate at the bar on this and allied aspects need not detain us further also because of our concurrence with the second contention of the Solicitor General that the large open spaces cannot be regarded as appurtenant to the terraces, stands and structures. What is integral is not necesarily appurtenant. A position of sub-ordination, something incidental or ancillary or dependant is implied in appurtenance. Can we say that the large spaces are subsidiary or ancillary to or inevitably implied in the enjoyment of the buildings qua buildings? that much of space required for the use of the structures *as such* has been excluded by the High Court itself. Beyond that may or may not be necessary for the *hat* or *mela* but not for the enjoyment of the *chabutras* as such. A hundred acres may spread out in front of a club house for various games like golf. But all these abundant acres are unnecessary for nor incidental to the enjoyment of the house in any reasonable manner. It is confusion to miss the distinction, fine but real. B C D

"Appurtenance', in relation to a dwelling, or to a school, college ....includes all land occupied therewith and used for *the purpose thereof* (Words and Phrases Legally Defined—Butterworths, 2nd edn). "The word 'appurtenances' has a distinct and definite meaning.... *Prima facie* it imports nothing more than what is strictly *appertaining to the subject-matter of the devise or grant*, and which would, in truth, pass without being specially mentioned : Ordinarily, what is necessary for the enjoyment and has been used for the purpose of the building, such as easements, alone will be appurtenant. Therefore, what is necessary for the enjoyment of the building is alone covered by the expression 'appurtenance'. If some other purpose was being fulfilled by the building and the lands, it is not possible to contend that those lands are covered by the expression 'appurtenances'. Indeed 'it is settled by the earliest authority, repeated without contradiction to the latest, that land cannot be appurtenant to land. The word 'appurtenances' includes all the incorporeal hereditaments attached to the land granted or demised, such as rights of way, of common .. but it does not include lands in addition to that granted'. (Words and Phrase, supra). E F G

In short, the touchstone of 'appurtenance' is dependence of the building on what appertains to it for its use as a building. Obviously, the *hat*, bazar or *mela* is not an appurtenance to the building. The law thus leads to the clear conclusion that even if the buildings were used and enjoyed in the past with the whole stretch of vacant space for a *hat* or *mela*, the land is not appurtenant to the principal subject granted by s. 9, *viz.*, buildings. H

This conclusion is inevitable, although the contrary argument may be ingenious. What the High Court has granted, *viz.*, 5 yards of

A surrounding space, is sound in law although based on guess-work in fact. The appeal fails and is dismissed but, in the circumstances, without costs.

P.B.R. *Appeal dismissed.*

1338SCI/76—GIPF.