

To

30-07-21

Shri Ram Lal Thakur

Chairperson, High Powered Committee on Land laws

Government of Himachal Pradesh

SUBJECT: With regard to the illegal partitioning of shamlat land in District Sirmaur and non-implementation of orders of the 2016 of SDM Shillai

Sir,

It is with great urgency and concern that we as concerned citizens, representatives and members of civil society groups in Himachal and residents of the district of Sirmaur are writing to you to bring to your attention a matter of serious social-economic injustice and legal/administrative irregularity in Sirmaur district that calls for your immediate attention. This matter is with regard to the partitioning and mutation of common land categorised as 'shamlat deh' or 'shamlat' in the administrative records by revenue authorities and officials in favour of private individuals across different parts of the district. We understand that the same is being done given the 2001 amendment in the HP Village Common Land Vesting and Utilisation Act 1974. However, in this regard we would like to raise the following points of concern and legalities that need to be taken into account:

1. Sanctity and constitutional significance of the HP Village Common Land Vesting and Utilisation Act 1974

Owing to the goals of land reforms in the country post-independence, it was decided that a spate of laws and policy measures would be introduced in the states to remove the social and economic inequities in relation to ownership, tenancy and management of land. As part of these reforms land was to be given to the tiller and also land re-distribution was to be done to ensure that cultivation-based livelihoods are made viable. As part of this national agenda a spate of laws, around 8 key legislations, were introduced in Himachal Pradesh, one of which was **HP Village Common Land Vesting and Utilisation Act 1974**.

The key objective of this law was vesting of village common lands (forest surrounding villages, river banks, common grazing lands, paths etc previously owned and managed by *panchayats*) with the State so that the same may be distributed to eligible landless persons (farmers with less than an acre of land in their possession). After vesting with the revenue administration of the State this land was categorised into two – allottable pool and reserved pool. The former was meant to be granted to landless people as *nautor*, while the latter category was reserved for common purposes – grazing, pastures and for village welfare activities.

It needs to be noted that while this was a state law it was passed with Presidential assent and placed at Serial 139 in the 9th Schedule of the Constitution. Along side it also attracts various

other fundamental articles of the constitution meant to guarantee the right to life and equitable distribution of resources.

As per figures from a 2004 government committee report more than 10 lakh acres (7.88 lakh reserved pool and 2.74 lakh allottable category) of *shamlat* land was available with the State in the given year.

2. Non-implementation of Land reforms and the dependence of marginalized landless communities on 'Shamlat' land

It also needs to be put on record that while the intention of this law was pro-poor as well as favouring larger public interest by the protection of the commons, its implementation on the ground remained poor and lackadaisical.

In a district like Sirmaur close to 30% of the population belongs to the Scheduled Caste categories and are marginalized or landless farmers. Under the old Jajmani or Beth system, Scheduled Caste families used to do bonded labor for the privileged caste families. These communities were typically 'settled' on the Shamlat land of the village (panchayat) and were completely dependent on shamlat lands as commons – for livestock rearing and other forest related activities. With the passage of various land reform laws, many of them broke new lands under 'nautor' but the process of allotment in revenue records remained incomplete.

On the other hand, the landed classes continued to exercise their control over the common lands – privately apportioning grasslands (*ghasnis*) and grazing lands (*charands*) as per their requirements. The Scheduled castes as landless and socially vulnerable groups had little or no say in this process and continued to have a precarious tenure on land – both common and private.

3. 2001 sweeping amendment leading to privatization of village commons and apportioning of land meant for the landless

In 2001, the State Government of Himachal Pradesh introduced a sub-section (d) in Section 2 of the **HP Village Common Land Vesting and Utilisation Act 1974**. According to this amendment *"land recorded as 'shamlat tika Hasab Rasad Malguzari' or by any such other name in the ownership column of jamabandi and assessed to land revenue and has been continuously recorded in cultivating possession of the co-sharers so recorded before 26th January 1950 to the extent of their shares" (except for lands already utilized by the State) would no longer be vested with the State (and thus be restored to the 'original owners' or right holders). This was to be done through the process of mutation.*

Those were revenue tax payers and owners of land before 1950 were ONLY the landed castes because the Scheduled Caste community were only landless tillers or bonded labourers at the time. So the process of the informal apportioning of land that was undertaken over the years by the landed castes now received a legal validity through the 2001 amendment. Whereas on the grounds these lands are either inhabited by landless people mostly belonging to scheduled castes having houses, farms or are being used by them as grass plots/pastures. Despite this ground

reality, the process of mutation was started without protection to the rights of these rights holders and by 2016 6.9 lakh bigha of land was mutated in favour of the 'old owners' in Sirmaur district alone.

S.No	Name of tehsil/Uptehsil	Shamlat land vested in the state government in 1974	Shamlat land mutated as per the 2001 amendment	Shamlat land remaining with the State
1	Rajgarh	72989.6	59631.16	8193.12
2	Pachhad	67471.16	83194.18	4276.18
3	Renuka ji	136616.14	115850.6	16061.11
4	Nohradhar	45720	43313.1	2406.19
5	Nahan	36046.12	26621.01	7298.00
6	Dadahu	47942.1	39628.9	7776.8
7	Paonta Sahib	31470.05	31050.12	419.13
8	Kamrau	56960.07	52546.03	1119.10
9	Shillai	71032.18	46349.3	4.06
10	*Ronhat	46762.06	45172.17	1589.9
11	*Narag	47792.12	40590.02	2612.00
12	*Pajhauta	40831.11	30846.2	
13	*Haripurdhar	30418.03	25053.18	5364.05

Source: Response to RTI Application received from revenue offices Sirmaur in 2016

Over the years there have been thousands of such mutations where the ownership was exclusively decided based on the 2001 amendment and whether these people with 100 bighas of land or 500 bighas of land, have still got land through these mutations. Thus, a large number of people who have become entitled to the problem are also those who violate the Land Ceiling Act. This has not only violated Section 8(A) of the Principal Act, according to which the rightful owner of this land can be a landless or a person owning less than 1 acre of land, but such implementation has a huge impact on the existence of the Principal Act. Further, the provisions of the Land Tenancy Act, 1972 and the Land Ceiling Act have given special rights and protection to the Mijaras (tenants) and certain limitations have also been imposed on the property of the land. The 2001 amendment is the exact opposite of the provisions of these laws. Additionally, due to this amendment, old owners started disrupting the collective development works on Shamlat land in many places. (Directions under 2001 amendment enclosed)

4. No cognizance of 2016 order of SDM Shillai exposing the flaws of the 2001 amendment

In view of the negative effects of the 2001 amendment, mostly importantly, the consolidation of land ownership by the already powerful landed 'upper' castes, a petition was filed by the Shillai unit of DYFI in the SDM Court of Shillai Tehsil in 2016. The petition highlighted the obstacles raised by the landholders on the use of shamlat land for common purposes based on the 2001 amendment. In this case the Sub-divisional Magistrate issued a critical order that made scathing observations on the nature and extent of mutations that occurred owing to the 2001 amendment in the **HP Village Common Land Vesting and Utilisation Act 1974**. The key observations include:

(i) Extent of land grab: As per the order 104143 bigha of land was vested in the state government under the **HP Village Common Land Vesting and Utilisation Act 1974** and about 99.94% has been reverted to the original co-share owners under the provision of the 2001 amendment

(ii) Anomalies in the Mutation procedure: In relation to this case, the Revenue Department Shillai while implementing the Section 3(2)(d) of the 2001 amendment, did not follow due procedure and without due diligence, made 'complete changes' to the revenue records - implementing '*tabdil malkiyat*' (transfer of ownership rights). Whereas the process of partition and mutation requires a detailed ground truthing on some 8 points by revenue officials in the field. The order highlights that these were not followed.

(iii) Indiscriminate implementation of amendments without assessing the ground conditions: Before implementation of the amendment to the Principal Act of 1974 no special investigation was carried out on the status of implementation of the 1974 rules. All the changes that have taken place till date are done without any detailed regional study, by sitting in the *Patwar Khanas* with whatever documents were available and based on personal information. The same procedure was followed while implementing the 2001 amendment. As a result of wrong implementation of Amendment Act of 2001, some influential proprietors are claiming a lion's share over reverted lands and thereby succeeded in exerting more influence over illiterate and poor people; some even succeeded in invoking traditional authorities, reviving pre-independence situation and symbolically declaring erstwhile officers valid.

(iv) Benefit of the influential people and tampering of common development: It is clear from the sub-section (d) of section 3(2) of 2001 amendment and the clarification letter by F.C.(R) dated 12.12.2001 that the land already vested in the state government cannot be used for any other work. But in this case the land was being continuously gifted by the then existing Revenue Agency which was registered in the name of the original Revenue Department before the 2001 amendment. This made the future of existing PWD Roads, I&PH schemes, block development schemes, dispensaries, schools etc. dependent on the goodwill of some influential co-owners. It had the greatest impact on the people of poor villages and they have to live in regular danger and fear. There is a lack of health facilities as ambulances are not allowed to go on private or 'not passed' roads.

Based on these observations and findings the SDM ordered:

- a) Set aside and reverse the impugned mutations detailed in the order along with the mutations left out
 - b) Pre- 2001 status with respect to the land in question be maintained by ACs in Shillai. Effect 'tabdil malkiyat' as provided by Amendment Act of 2001, only after complying the dictates of F.C cum Pr.Secy (Revenue).
 - c) The HODs of all functional as well as developmental departments situated within sub division Shillai, including forest, HPPWD, I&PH, electricity board, Block etc. to prepare inventory of land "utilized or possessed" by then and after 1974, and to present the same before SDO(c) Shillai, so that the 'tabdil malkiyat' in relevant cases may take effect.
 - d) All the revenue officers within Shillai sub division shall cause to prepare a list of encroachments as well as sale-purchase agreements/pacts with respect to land in question if any, and to proceed as per law in relevant cases.
- A time limit of 6 months was given for all of them.

The above said order is water-tight and based on facts and legal grounds and needed to be immediately put into action. However, after 5 years there seems to be little action or follow-up in this matter. In fact, it is evident that in this period, the process of mutations has carried on unabated in the region.

5. 2001 amendment has exacerbated caste-based atrocities and discrimination

The 2001 amendment has not only further exacerbated the caste based discrimination in the state by consolidating control of so called upper castes on land, this has also become a source of atrocities on scheduled caste communities. We have received complaints and cases especially from the district Sirmaur about threats received by members of the Scheduled castes who have tried to raise questions in the matter of partitioning using the 2001 amendment. Pressure is being exercised by landed caste members to sign away their legitimate rights on land under their occupation. The steps taken by the officials in carrying out these mutations are illegal and attract provisions of violations under Section 3(1)(f)(g)(y)(z) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 as it is related to eviction of Scheduled Caste communities from the land under their occupation and common use.

Demands and Recommendations:

In the light of the above said grave scenario we are making the following demands

1. A moratorium on the implementation of the 2001 amendment.
2. As part of the above Immediate Review Committee needs to be set up to bring out a white paper examining the impact of 2001 amendment in the state and nature of partitioning that has

taken place. The committee must contain members of the National Scheduled Castes Commission, State Human Rights Commission as well as members of different state and district authorities. The committee must carry out public hearings and take testimonies of affected persons from the landless castes apart from examining all the records. The report of the committee must be tabled in the Vidhan Sabha and an open debate should be held on the same.

The constitutional validity of the 2001 amendment needs to be re-examined along with its implications for other land laws like the Tenancy laws and the Land Ceiling Act 1972 which puts a limit on the amount of land holding and also bars future acquisition beyond permissible limits.

3. Implementation of the 2016 orders of SDM Shillai whereby all partitions carried out under the 2001 amendment be declared null and void. Extension of the order to the entire district and state of Himachal Pradesh.

4. Immediate orders for clearing cases of nautor and other land allotments made to landless and marginalized communities in the state, especially of the allotable pool lands under the common land vesting law.

We urge you to take the matter seriously in light of its legal implications and also the violation of principles of socio-economic justice enshrined in the constitution of this country.

Sincerely

Mast Ram, Jamnu Ram, Kishori Lal, Birbal Singh, Gulab Singh, Ramesh Chand, Sunder Singh, Joginder Singh, Layak Ram and others

Shamlat Sangharsh Samiti

Endorsed by

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