State of Punjab (now haryana) and Others

Vs

Amar Singh and Another

Civil Appeals Nos. 1755 And 1756 Of 1967

(V. R. Krishna Iyer, R. S. Sarkaria, D. G. Palekar JJ)

21.01.1974

JUDGMENT

KRISHNA IYER, J. (for himself and Palekar, J.) -

1. These two appeals by the State of Haryana challenge the High Court's approach to an interpretation of two crucial provisions of a land reforms law, namely, Section 10A and 18 of the Punjab Security of Land Tenures Act 1953, (X of 1953) (for short called "the Act"). Counsel for the appellants complaints that if the view upheld by the High Court of subordinating Section 10A to Section 18 were not upset by this Court, large landholders may extricate their surplus lands in excess of the ceiling set, through legal loopholes, such as have been practised in the present case. If make-believe deals and collusive proceedings, he argues, may manoeuvre through the legal net cast by Section 10A of the Act interdicting alienations and orders which diminish the surplus pool intended for re-settlement by the State of ejected tenants, the agrarian reform measure would be reduced to a paper tiger or socio-economic eyewash. Certainly, land reforms are so basic to the national reconstruction of the new order envisaged by the Constitution that the issue raised in this case deserves our anxious attention. We have to bear in mind the activist, though inarticulate, major premise of statutory construction that the rule or law must run close to the rule of life and the Court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute on imputed legislative presumptions and assumed social values valid in a prior era. An aware Court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compel-led by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up.

2. A brief survey of the relevant facts leading up to the legal controversy seeking resolution in these appeals will help focus forensic attention on the provisions of the Act which bear upon the issue. A lady by name Lachhman had considerable agricultural property, far in excess of the relatively liberal ceiling set by the Act which came into force on April 15, 1953. She had a daughter Shanti Devi and son-in-law Amar Singh, respondent in Civil Appeal No. 1755 of 1967, whose brother Indraj is the respondent in the connected Appeal No. 1756 of 1967. Annexure-B to the writ petitions is an order dated May 11, 1962, passed under the Act and the Rules by the Collector (Surplus Area) Sirsa. It is this order which has been successfully attacked in the writ petitions and is the subject-matter of the present appeals. The facts stated therein have not been reversed in the judgment of the High Court and we have to proceed on the assumption that those statements are correct. We are concerned with three khasras Nos. 177, 265 and 343, in all over 131 acres of land. At the commencement of the Act, khasra No. 177 was under Mst. Lachhman's self-cultivation but there were two tenants under her, Chandu and Sri Chand, on the other two plots. Together, these three plots constitute a large slice

out of her surplus area and are now claimed by the respondents, Amar Singh and Indraj, as their own under a purchase ordered by the Assistant Collector who is the compe-tent authority under Section 18 of the Act (Annexure-A to the writ petitions). Appellant's Counsel urges that the history of the derivation of title of these claimants needs to be sceptically studied, the relationship of the parties being that of mother and daughter, son-in-low and brother, and the heavy impact being slicing off a good chunk from the surplus area, otherwise available for re-settlement of evicted tenants.

3. At the outset it must be mentioned that the two tenants, Chandu and Sri Chand, who were on the land on the determinative date (April 15, 1953) presumably showed no interest in claiming rights granted to tenants under the Act, which were subject, of course, to their possessing lands less than the 'permissible area'. We have no information in this case what the total extent of lands in the possession of these two tenants was and whether they had chosen to keep other lands in preference to the ones under Mst. Lachhman. We need not speculate on how or why they left the suit plots but may note that they were on the holding on the key date in 1953 and if later they did not keep their possession (abandoned or surrendered) the tenancy terminated and on the facts of this case the lands came into the actual possession of the landholder, Mst. Lachhman, no other legal inference being possible than that the leases were extinguished and the lands reverted to the landlady on general principles of law. In short, we have to proceed on the assumption that one plot, namely, Khasra No. 177, had always been in the self-cultivation of the landlady and that the two tenanted plots namely, Khasras Nos. 265, and 343, came into the khas possessions of the landlady subsequent to the crucial date. Apprehending the statutory peril to these lands which were admittedly outside her "reserved area", Mst. Lachhman went through the exercise of making a gift of the three lands to her daughter, Smt. Shanti (vide mutation No. 445 decided on December 24, 1953 and referred to in Annexure-B). Subsequently, it is seen that Amar Singh, husband of Shanti, and Indraj, brother of Amar Singh, purported to apply for purchase of the landholder's right in these three plots under Section 18 of the Act making Lachhman and Shanti Co-respondents and alleging that they were tenants qualified for the statutory benefit. The Assistant Collector before whom the application was made for purchase under Section 18 has said in Annexure-A to both the writ petitions that these two ladies "are said to be big landowners but ... had not got this land reserved for their own purpose." Curiously enough, in both the purchase petitions the parties avoided even an enquiry by the Assistant Collector as is evident from the following statement from Annexure-A :

> "Before the proceedings could start the parties have come to terms and they have actually put in Court a compromise deed which they have backed up by their statements."

Maybe, because these dubious moves if exposed to the examination of an officer might prove a fiasco, the close relations who figured as petitioner and respondents lulled the Assistant Collector into mechanically acting on the compromise without enquiring into any of the eligibility factors before a purchase could be ordered.

4. There is another set of facts which needs mention at this stage. Even before the purchase proceedings were initiated by the writ petitioners, the Collector had, as early as April 1961, declared the surplus area of Lachhman ignoring alienations and including the three khasra numbers. But on appeals carried both by the landholder and her son-in-law and his brother, the Commissioner ordered a further enquiry. Meanwhile, purchase proceedings were started and, by a quick compromise, orders of purchase were obtained. But all these proved exercises in futility because the Collector, Surplus Area, again ignored the leases to the writ petitioners as collusive and the orders

of purchase as ineffective in the impugned order, Annexure-B. However, the High Court set aside Annexure-B so that the petitioners before it, the son-in-law and his brother, were restored to their purchases, and the State lost the lands "rom the surplus pool. The aggrieved State canvasses the correctness of the supersession of Section 10A by Section 18 and of certain other legal reasoning approved by the Court, as its impact on the working of the land reform scheme would be disastrous. Anyway, the law laid down in this case was affirmed by a Full Bench of that Court. Having regard to all those circumstances a serious analysis and attempt at harmonisation of the various provisions of the Act is necessary now.

5. A flash-back to the genetic evolution of the Act and the legislative mutations by mandatory effort to make the law effective, and to unmake judicial decisions which weakened the working of it, will help understand the current bio-chemistry of the Act. Any interpretation unaware of the living aims, ideology and legal anatomy of an Act will miss its soul substance - a flaw which, we feel, must be avoided particularly in socio-economic legislative with a dynamic will and mission. Now to the legislative itself. A brief introduction is found in the reference order of the Full Bench (Shamsher Bahadur J.) in Mam Raj v. State of Punjab (ILR (1969) 2 Punj & Har 680, 682, 683) :

> "The Act passed on 15th of April, 1953, was not the first legislation on the subject and the contours of many of the concepts had already taken shape in the two earlier enactments on the subject, namely, the Punjab Tenants (Security of Tenure) Act, 1950 (Act No. 22 of 1950) and Punjab Tenants (Security of Tenure) Amendment Act, 1951 (President's Act 5 of 1951). The Act, which at once consolidated and amended the existing law on the subject, was designed "to provide for the security of land tenure and other incidental matters". As is clear from the preamble, the primary object was the protection of tenants whose ejectments recently from holdings held by landowners owning vast tracts of lands, had taken place on a massive scale. In restoring the rights of tenants ejected after 15th of August, 1947, care was taken that landlords with small holdings were not subjected to harassment by the tenants. For this reason, the concepts of "small landowner", "permissible area" and "reservation" were introduced. A small landowner was described as a person whose entire holding in the State of Punjab did not exceed the permissible area which though fixed at 100 standard acres in the Act of 1950 was reduced to 30 standard acres in the Act. A landowner owning large areas was entitled to reserve the permissible area, and many of the provisions of the Act dealt with the manner and exercise of this right of reservation. The right of the landowner to eject tenants from the reserved or permissible areas was recognized in the Act though under Section 9-A (introduced by Punjab Act 11 of 1955) the tenants liable to ejectment on this score had to be accommodated in surplus areas, a minimum period of ten years' tenancy was fixed under Section 7 in respect of tenants who were in occupation of land outside the reserved areas and the right of the tenants who had been ejected after the 15th August, 1947, for restoration of the tenancies was recognised. Provisions were made for the exercise of the other rights of the tenants, the most important of these being the right to purchase the leased lands under Section 18 of the Act."

6. The triple objects of the agrarian reform projected by the Act appear to be (a) to impart security of tenure (b) to make the miller the owner, and (c) to trim large land holding, setting sober ceilings. To convert these political slogans into legal realities, to combat the evil of mass evictions, to create peasant proprietorships and to ensure even distribution of land ownership a statutory scheme was fashioned, the cornerstone of which was the building up of a reservoir of land carved out of the

large landholdings and made available for utilization by the State for re-settling ejected tenants.

7. The scheme of agrarian re-organisation contemplated by the statute is simple. The Legislature fixed a limit on ownership expressively described as "permissible area". Landowners who exceeded this area were allowed to reserve for themselves the best lands they desired to keep and this parcel or parcels of land was meaningfully designated as "reserved area". Of course, if the filed to intimate his selection within six months from the commencement of the Act to the Patwari concerned, the prescribed, authority was empowered to select the parcel or parcels of land which such person was entitled to retain for himself. The Legislature found that many landowners had failed to make the reservation in time and so by the Amending Act 46 of 1957 a further period of six months from the commencement of the later Act was given for selecting the land/lands they meant to keep, and further again gave the prescribed authority power to select the parcel or parcels of land on behalf of the defaulting landholders. The intendment of the statute was that the reserved area was to be self-cultivated and so landowners were competent to eject tenants from the reserved area, although, generally speaking, evictions had been barred. As a matter of fact, landholders were directed to start self-cultivation within six months from the date of reservation or the date on which they got possession by eviction. Small holders, i.e., persons who owned less than the permissible area, were not only not disturbed by the statute in regard to their ownership but were also allowed to evict tenants from their parcels of land so that they may also become self-cultivators this process of making the proprietor cultivator naturally would result in the co-existence of possession and ownership at the cost of ejectment of tenants from their holdings. Since agrarian reform must promote not eviction of lessees but security of tenure for them it became necessary for the State to create a considerable surplus pool of lands coughed up by large owners who held beyond the permissible areas. All the tenant refugees from resumed lands were to be rehabilitated on surplus lands and such tenants, enjoying fixity of tenure, would continue to pay rents to the owners. Another limb of the peasant proprietorship plan was the conferment of the right to purchase the landlord's right on long-standing tenants with six years continuous occupancy. If the scheme in the book had worked well on the ground the Act would have paved the way for a new rural map of economic relations even though the problem of the landless poor may perhaps have survived. Such was the conspectus of the legislative scheme.

8. It is obvious that this blue-print for a peaceful transformation of agrarian relations assumes the availability of a large surplus area on which the State can settle tenants from the reserved areas and small landholders' holdings. Thus the key to the success of the scheme is the maximising of the surplus land reservoir and sealing off legal leakages through private alienations, collusive orders and decrees and the like; and so care was taken to interdict alienations and ignore decrees and orders which diminished the surplus pool.

9. At this stage it may be useful to sketch out the broad outlines of the statute with specific reference to its provisions and changes. The Act of 1953 had been amended often, for the professed reason, at least once, that judicial pronouncements have had the effect of defeating the objectives with which the law was enacted. Substantial amendments were made in 1955, 1957 and 1962. The objects and reasons of Punjab Act 14 of 1962, which brought in certain significant restrictions on alienations and acquisitions of large landholders starts off in the statement of objects thus :

> "Some of the recent judicial pronouncements have the effect of defeating the objectives with which the Punjab Security of Land Tenures Act, 1953, was enacted and amended from time to time. It was intended that the surplus area of every landowner recorded as such in the revenue records should be made utilisable for the

settlement of ejected tenants."

Certain specific decisions and their impact on the legislative operation were mentioned, and then the statement of objects proceeded :

> "In order to evade the provisions of Section 10A of the parent Act interested person, being relations, have obtained decrees of Courts for diminishing the surplus area. Clause (4) of the Bill seeks to provide that such decrees should be ignored in computing the surplus area."

We mention this only to emphasize that the Legislature has been anxious to guard against erosion of the surplus pool by alienatory manoeuvres or even decrees and orders obtained through judicial or quasi-judicial processes.

10. The Act defines "permissible area" "in relation to a landowner or a tenant as 30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 acres, such 60 acres". [Section 2(3)]. The landlord who has a vaster extent may utilise the specific lands the wants to keep for himself and this is called "reserved area". Section 2(4) defines "reserved area" as "the area lawfully reserved under the Punjab Tenants (Security of Tenures Act) 1950 (Act XXII of 1950), as amended by President's Act of 1951 .....". The area other than the reserved area, i.e., the balance left over, is defined as "surplus area", a concept introduced by Act XI of 1955. It is useful to extract the definition which runs thus :

> "'Surplus Area' means the area other than the reserved area, and, where no area has been reserved, the area in excess of the permissible area selected under Section 5-B or the area which is deemed to be surplus area under sub-section (1) or Section 5-C and includes the area in excess of the permissible area selected under Section 19-B; but it will not include a tenant's permissible area :
>
> Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of the same of getting possession thereof after ejecting a tenant from it, whichever is later, or if the landowner admits a new tenant, within three years paid six months."

11. At this stage it may be mentioned that a landowner is not only entitled to self-cultivate his reserved area but is obliged to do so within the period stipulated in the provision to Section 2 (5-a) lest such un-self-cultivated land become surplus area. But for fear that absentee landlords may pretend to be self-cultivating while really leasing out their lands to close relations, the statute defines, "self cultivation" as cultivation by the landowner personally or through his wife or children or through prescribed relations. It may be noted that a son-in-law is not one of those relations (vide Rule 5 of the Punjab Security of Land Tenures Rules, 1956).

12. Sections 5, 5A and 5B deal with the reservation of land by large landholders and the procedure in that behalf. What is important to note is that in the present case the landholder has made her reservation and the properties in dispute fall outside it and are therefore included in the surplus area. Immunity from eviction of tenants is conferred by Section 9 but a landlord is entitled to eject a tenant from the area reserved under this Act. However, such ejectment shall not be given effect to by way of dispossession unless the displaced tenant "is accommodated on a surplus area in accordance with the provisions of Section 10A or ...." Of course, if the tenant is a close relation of

the landlord within the prescribed category this protection does not ensure to him as per the second proviso to Section 9A. It is noteworthy that a son-in-law is not one such relative. It is obvious that a large number of tenants, would be ejected by small landholders and large landholders from their reserved area under Section 9 of the Act. Naturally, legislative concern for their rehabilitation found expression in Section 10A(a) which runs thus :

> "10A(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9."

The success of the scheme, therefore, depends on the extent of the surplus pool. For one thing, large landholders, when deprived of their excess area, as well as small landholders, in order to be viable, have to secure actual possession of what they are eligible to keep, this being the legislative justice shown to landowners by the Act. Actual possession could follow only if the potential for re-settlement of dispossessed tenants were sufficient. That is why the Legislature has jealously protected the surplus pool which plays a pivotal role in the whole programme. For this purpose Section 10A(b) was brought in in 1955 and it reads :

> "10A(b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act shall after the utilization thereof of clause (a)."

Plainly, there is a wide interdict against any transfer or other disposition of land comprised in the surplus area, if it will affect the utilisation thereof for the re-settlement of tenants ejected or to be ejected under clause (i) of sub-section (1) of Section 9. Such a strategic provision which takes care of the surplus reservoir of land must receive a benignantly spacious construction. There can, therefore, be no doubt that the expression "transfer or other disposition of land" must definitely cover leases which, by very definition, are a species of transfer of land. It looks as if other devices were resorted to by large landowners to defeat the surplus area scheme of Section 10A. Courts and other authorities were approached and, through their processes, decrees and orders were secured whereby lands out of the surplus area could be salvaged by the landowner. The Legislature finding this anti-ceiling phenomenon clamped down a blanket ban on the adverse operation of "any judgment, decree or order of a Court or other authority, obtained after the commencement of this Act and having the effect of diminishing" the area of a person which could have been declared as his surplus area. Section 10A(c) may be usefully reproduced in this context :

> "110A(c) For the purposes of determining the surplus area of any person under this Section, any judgment, decree or decree or order of a court or other authority obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

13. It is extremely important to remember that while this provision was enacted in 1962 and while Section 10A(b) prohibiting alienations was passed in 1955, both these provisions were given retrospective effect as from the decisive date, namely, April 15, 1953. The deep concern of the Legislature is clear from all this.

14. Right from the beginning one of the primary objects of the statute had been to enable tenants to purchase the landlord's right and become full owners and in this behalf was enacted Section 18 which has figured very much in the controversy in these appeals. It states :

> "18(1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner -
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> (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or
>
> #(ii) ....(iii) ....##
>
> shall be entitled to purchase from the landowner the land so, held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act :
>
> Provided that ....
>
> Provided further that ....."

The further sub-sections of Section 18 deal with the process of purchase, the Assistant Collector being the authority empowered to order such purchase.

15. In the appeals before us there is an apparent competition for primacy between Section 18 and Section 10-A(b) and (c), and perhaps it may be relevant to refer to Section 23 also. This last Section reads :

> "No decree or order of any court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provisions of this Act."

As we will presently see we are called upon to reconcile the claims and contentions put forward by either side on the strength of the provisions we have just mentioned.

16. Let us interpret and apply the law to the facts of this case. The learned Judge, Narula, J., stated at the outset :

> "I have to take the fact as found by the Collector for the purposes of determining the surplus area of the landowner and consequently for determining the rights of the petitioners so far as they are sought to be interfered with by the impugned order."

We agree. The same Judge formulated the legal questions falling for decision in these words :

> "(1) Whether the expression 'transfer' or 'other disposition of land' in clause (b) of Section 10A of the Act, include involuntary transfer of a part of the holding of a landowner by operation of an order forcing the landowner to sell a part of his holding to a tenant under Section 18 of the Act;
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> (2) Whether the order of any other authority referred to in clause (c) of Section 10A of the Act includes an order of the authorities under the Act itself passed under

> Section 18 thereof in favour of a tenant, which order has become final either at its original stage or at the appellate or revisional stage; and
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> (3) In case of conflict between Section 10A and Section 18 of the Act, which of the two provisions has supervening effect or overrides the other."

We do not wholly agree with this itemisation but it is good enough to focus attention on the relevant area of legal controversy. One further point pressed in both Courts may be noticed, viz., that the order of purchase of the concerned officer not having been set aside binds the other authority determining the surplus area and so the question is whether one officer under the Act could ignore an order by another officer under a different provision of the Act, having regard to comity of Courts and jurisdictions. As indicated already, the principal discussion in the judgment under appeal has turned on the claim to primacy of Section 18 as against Section 10A and so it is as well that we state right now what stand we propose to take in resolving apparent conflicts in the provisions of a socially-oriented, project-implementing legislation. Every such statute has a soul and an integrated personality - minor deformities may mar this unity, especially when piecemeal amendments and unskilled drafting occur. The basic judicial approach must be to discover this soul of the law and strive to harmonise the many limbs to subserve the pervasive spirit and advance the social project of the enactment. Seeming confrontations between provisions must be resolved into a co-operative co-existence. This interpretative activism persuades us in this case to reconcile what the High Court has conceived to be a conflict between Section 10A and Section 18.

17. Here, there are 3 khasra Nos. two of which (Nos. 265 and 343) were outstanding on tenancy with Chandu and Sri Chand at the relevant date, April 15, 1955 (which, admittedly, is the date with reference to which "permissible area", "reserved area" and "surplus area" have to be fixed). The third item, khasra No. 177, had on the relevant date been with the landowner directly The High Court treats them as two categories, not without reason. What was within tenants on the relevant date may well be part of their permissible area since 'landowner' in Section 2 (1) includes a lessee. Moreover, a permissible area of a tenant is excluded by definition from 'surplus area', obviously because the tenant can stabilise himself on his permissible area and it is not intended to dislodge him therefrom for re-settling other tenants under Section 10A. Therefore, Narula, J., concludes :

> "A survey of the above mentioned provisions of the Act leaves no doubt that if Chandu and Shri Chand who were the tenants of the land now comprised in the tenancy of Amar Singh on April 15, 1953, had continued to be the tenants of that parcel of land, subsequently the land in their tenancy could not be included in the permissible area of the landowner. On the other hand it would have been the right of Chandu and Shri Chand to either get the said land declared as their own permissible area or to exercise their right under Section 18(1) of the Act by making an application under sub-section (2) thereof to purchase the said parcel of land."

The learned Judge proceeds to negative the argument that the legal result is different when the sitting tenants on the relevant date have quit and new tenants have been inducted subsequently :

> "Surplus area and permissible area of a landowner has to be determined in view of the situation as it existed on the 15th of April, 1953 and subsequent alienations have to be completely ignored. Though subsequent acquisitions by the landowner may in certain circumstances be included in the surplus area as accretions, no such thing can happen in respect of that parcel of land which could not be included in the surplus

> area of the landowner on 15th of April, 1953, which was again not with the landowner on the date when the Collector sought to determine his/her surplus area. In other words, once a piece of land is excluded from the surplus area of a landowner on account of its forming the subject-matter of the holding of a tenant in occupation (who is not related to the landowner in the prohibited manner) on the 15th of April, 1953, the mere subsequent change of the holder of the tenancy will not make the tenancy premises revert to the surplus area of the landowner. It is, therefore, clear that the land comprised in Khasras Nos. 265 and 343 (subject-matter of the tenancy in favour of Amar Singh) could not fall within the definition of surplus area in the hands of the landowner and Section 10A of the Act could not apply to it."

18. We are afraid there is a fallacy in this reasoning. It is true that a mere change in tenancy by transfer of the lease as such, as distinguished from a landlord inducting a new tenant on land the prior lease over which has been terminated and possession restored to the landlord, may not perhaps offend 10A although situations may arise even in such cases leading to a different conclusion. We need not investigate this possibility further. In the present case, the exclusion of the two khasras from the surplus area depends on their being part of the permissible area of Chandu and Sri Chand. To salvage the lease in his favour, Amar Singh, the new tenant, must prima facie show that this alienation does not violate Section 10A(b) which prohibits all transfers and other dispositions which diminish the suplus area of the landowner concerned. He has, therefore, to make out (a) that the demised lands do not form part of the landlord's surplus area or (b) that, as was vehemently argued but may with little legal qualms be rejected, a lease is not a 'transfer or other disposition of property. The High Court has disposed of this latter submission with the simple but impeccable observation "that the creation of a lease is a transfer or a demise referred to in Section 105 of the Transfer of Property Act admits of no doubt". The purpose of the prohibitive provision is to strike at every alienatory essay and the natural meaning of 'transfer or other disposition of land', apart from the contextual compulsion, embraces leases. The contention that even wide words must oblige the landlord's plea for a narrow meaning viz., absolute transfer of ownership, is beyond us to accept.

19. Do the lands, khasras Nos. 265 and 343, because of outstanding leases on April 15, 1953, swim out of the surplus area ipso facto ? We think not. For that they must be comprised in the permissible area of the tenant. Here we have no information placed by him who wants to prove it affirmatively that these plots lie within the permissible area of 30 standard acres, by definition, of Chandu and Sri Chand. That they did not continue in possession after the Act is not disputed. If they were in possession of other lands either as owners or tenants, and such holding was 30 acres or more, it was open to them to relinquish these lands being in excess of their permissible area, in which case, not being the permissible area of the tenant and being in excess of the reserved area of the landlord, these lands would be surplus area of the landlord within the definition under Section 2 (5-a). In the absence of proof that the lands in dispute were comprised in the permissible area of the prior tenants, it is not possible to hold that they do not come within the surplus area of the landlord, Mrs. Lacchman. On the contrary, the likely inference flowing from the disappearance from the scene of Chandu and Sri Chand and their failure to claim to remain as tenants or to purchase is that these were not their permissible area. It is not as if every bit of land that is with a tenant on the relevant date is his permissible area. It has to fulfill the requirement of Section 2(3). No such test has been satisfied here. Nor can it be argued that even if a tenant gives up his interest in the holding the statute will haunt him with rights. 'Permissible area' is not a concept in the abstract but, as Section 2 (3) mentions, is 'in relation to a landowner or a tenant', In relation to Chandu and Sri Chand no claim to permissible area or consequential rights has been set up and Amar Singh is not a transferee from them but a de novo tenant. It follows that the two khasras should be computed as part of the

surplus area of Mst. Lachhman and Section 10A(b) operates to invalidate the alleged lease to Amar Singh as its clear impact is to diminish the surplus area of the landowner. He had, therefore, no right as a tenant to purchase under Section 18.

20. The more serious question raised turns on the effect of the purchase orders, Annexure-A, on Section 10A(c). The High Court reasoned - and this was repeated before us as Counsel's argument - that while it is true that for determining the surplus area of a person 'any judgment, decree or order of a court or other authority' obtained after the commencement of the Act and having the effect of diminishing his surplus area 'shall be ignored', this mandate does not apply to orders of authorities under the Act, like the Assistant Collector exercising powers under Section 18. The learned Judge quotes the object of Section 10A(c) :

> "In order to evade the provisions of Section 10a of the parent Act interested persons, being relations, have obtained decrees of Courts for diminishing the surplus area. Clause 4 of the Bill seeks to provide that such decrees should be ignored in computing the surplus area."

From this the Court infers that 'other authorities' in Section 10A(c) are arbitrators or such like agencies and not authorities under the Act. It is useful to read the objects and reasons relating to the clause of a bill to illumine the idea of the law, not to control its amplitude. Moreover, the purpose, as revealed in the statement of object is plain. The Legislature wanted to insure the invulnerability of the surplus pool provision to attacks, by ignoring judicial and quasi-judicial orders of every sort. In this behalf two provisions were made, namely, Sections 10A and Section 23, primarily the former. In fact, we are concerned only with Section 10A (b) and (c).

21. The High Court has taken the view that Section 10A(b) cannot affect involuntary transfers and since a purchase effected under Section 18 effects an involuntary transfer it is not hit by Section 10A(b). The further view taken is that the expression "other authority" in Section 10A(c) refers only to authorities other than those under the Act; the Assistant Collector who has ordered the purchase under Section 18 being outside Section 10A(c) his order cannot be ignored by the Collector on the strength of Section 10A(c). A third point converging to the same conclusion taken by the Court is that when an order under Section 18 has become final, the Collector acting under Section 10A(c) cannot but be bound by it until it is set aside in appeal or revision or other appropriate proceedings even though the Assistant Collector's order under Section 18 was passed on a compromise between the parties.

22. We may now consider the soundness of these three grounds separately. The object of Section 10A(c) cannot be fulfilled unless the widest meaning were given to the expression "court or other authority". Nor is there any basis for truncating the ambit of "other authority" in the manner the High Court had done. "Other authority" is every other authority within or without the Act. The reason given by Narula, J., to exclude the officer passing orders under Section 18 from "other authorities" is that "the result would be that the benefit sought to be conferred by Section 18 on the tenants would be completely nullified and obliterated" In this connection he further observed :

> "In every case, order under Section 18 of the Act, would be passed after the Act came into force. If an order under Section 18 has to be ignored by the operation of clause (c) of Section 10A, every order under Section 18, must be ignored while declaring the permissible area of the landowner. There is no discretion in the authorities to apply the provisions of clause (c) of 10A or not to apply them. The

provision is mandatory. If, therefore, clause (c) of Section 10A could be utilised for abrogating the effect of an order under Section 18 of the Act, the whole scheme of the Act for distribution of land to be the tenants and for conferring a right on a tenant to purchase the land within the limits of permissible area, would be flouted."

23. Having given serious consideration to the pros and cons we are not satisfied that this argument is valid; on the contrary, if upheld it may stultify Section 10A and the scheme of the statute altogether. Obviously, if every order of purchase sanctioned under Section 18 can successfully diminish surplus area of a landowner, a spate of such orders would be procured by previous arrangement between the landowner and his nominee tenants or even bona fide alienees. The present case is a capital illustration of the fraud and collusion that may follow on such an interpretation. Indeed, there is no provision in Section 18 to give notice to the Collector who is to declare the surplus area and so the State which is vitally concerned in the resettlement of ejected tenants utilising the surplus area has no opportunity to present its case against the fraudulent character of the proceedings under Section 18 before the Assistant Collector. The State, not being a party to that order, in any case can not be bound by it, whatever may be the effect as between the parties to those proceedings. We are concerned here with a challenge by the State to the efficacy of the order, Annexure-A, and so we cannot muzzle the plea of the State that the order under Section 18 is void if there are good grounds to hold with it.

24. Nor is there force in the argument that the benefit under-Section 18 would be "completely nullified and obliterated" if Section 10A(c) were to apply to it. It is wrong for the Court to have said that "in every case" orders under Section 18 would have to be ignored. That is not the result of Section 10A. All the three sub-clauses of that Section read together show that if the landlord by any act or omission of his suffered a diminition in the surplus area by a transfer, voluntary or otherwise, in favour of another, contrary to the right of the State Government to dispose of it, such a transfer only is liable to be set aside. The tenants described in Section 18 in whose favour the authority sanctions the purchase of the land are not transferees whose transfers have to be set aside as being contrary to the right of the State Government. Actually, the bulk of the cases under Section 18 would be by tenants who are eligible to purchase by virtue of six years' continuous occupation under Section 18 (1). Their purchases would often be from land which is their permissible area. Every tenant with six years' standing, be, it before or after the commencement of the Act, will be entitled to buy the ownership. Of course, if he is within the reserved area he is liable to be evicted even before he purchases but if he is outside the landlord's reserved area he can move for purchase. Such a purchase being from the permissible area of the tenant is outside the surplus area of the landlord and does not diminish "the area of such person which could have been declared as his surplus area". Ex hypothesi 'surplus area' excludes a tenant's permissible area. Therefore, even if that land falls outside the reserved area of the landowner, if it is within the tenant's permissible area, its purchase by the tenant cannot diminish the landowner's surplus area.

25. Another substantial category, who may buy under Section 18 without reducing the surplus area, is the re-settled tenants. When the State acting under Section 10A(c) accommodates an ejected tenant the utilization of the surplus land pro tento is fulfilled. Such a rehabilitated tenant of the landlord, after the six years' term, can qualify to buy under Section 18. Such a purchase only fulfills the second object of the statute of making the tiller the owner and does not in any way diminish the surplus area of the landlord. For, with the re-settlement of an ejected tenant that land, for all practical purposes, is no longer available for the only purpose for which the surplus pool is meant, viz., re-settlement of ejected tenants. Thus, it is clear that Section 18 is not rendered otiose by the view that orders thereunder which diminish the surplus area are bad or violation of Section 10A(c).

Indeed, the principal category adversely affected by our view would be post-statutory collusive tenants, who are in most cases likely to be brought in by landlords experimentally to rescue those lands from the surplus pool, and even in bona fide cases they do not deserve sympathy since they damage the prospects of displaced tenants from being re-settled. It may as well be noted here that the person who is entitled to purchase under Section 18 is a tenant, i.e. a person lawfully inducted on the land as a tenant. Once a land is held to be a part of the surplus land of the landlord, it rests with the State Government for being disposed of for re-settlement of tenants and any disposition of the same by the landlord after April 15, 1953 would be invalid against the State Government's claim to dispose of it. That is the effect of Section 10A(c) and (b). Therefore, in respect of any land to which the State Government makes a claim for re-settlement, on the ground of its being surplus land, any person inducted by the landlord after April 15, 1953 could have no title to it as a tenant and would not be able to avail of Section 18. To sum up, the 'other authorities' in Section 10A(c) includes officers under Section 18. Secondly, the plain meaning of Section 10A(c) is that any order by any authority which shrinks the surplus area of the landlord is invalid to the extent laid down in clause. Thirdly, orders, orders under Section 18 if they diminish the surplus area suffer the same fate the Annexure-B fails to shield Mst. Lachhman's lands against orders re-settling ejected tenants thereon.

26. Shri Dhingra relied on Sahib Ram v. The Financial Commissioner, Punjab ((1970) 3 SCR 796 : (1970) 1 SCC 524) but that decision only rules that a tenant, who completes his 6 year qualifying occupation required by Section 18 after April 15, 1953 is not excluded. Vaidialingam, J., took care to refer to the case under appeal now before us (Amar Singh's case) and said that it dealt with the scope of Section 10A and did not bear upon the point before them.

27. The last point urged by Shri Dhingra for the respondent-and accepted by the High Court - is that the order, Annexure-A, having become final could not have been ignored in Annexure-B. Here it serves the discussion to remember that the leases in question have been found by the Collector to have been collusively got up to dwindle the surplus area of the landowner. The Collector in Annexure-B finds :

> ".... and it is crystal clear that Amar Singh and Indraj had not been in continuous cultivating possession of this land for full six years, the other copy of Khasra Girdawari put in this case and which is to be found at page 27 of the file, shows the possession over this law of Indraj and Amar Singh only from the year 1957-58 and so their possession over it for full six years is not complete as yet".

He has also stated that he was convinced "that the landowner has conspired with her son-in-law Amar Singh and his brother Indraj to retain this area in contravention of the law". A third pregnant fact is that the proceedings under Section 18 were prima facie collusive, and to burke an enquiry into the eligibility of the alleged tenants to purchase under Section 18 an expedient was resorted to. "Before the proceedings could start" says Annexure-A, "the parties have come to terms and they have actually put in court a compromise deed which they have backed up by their statements, ". Thus, no finding on the basis facts of entitlement to purchase have been recorded by the authority under Section 18 because he has merely stated in Annexure-A :

> "As per statements of the parties, I allow Amar Singh to purchase the land in suit."

28. These facts have to be assumed since a controversy thereon in the writ Court or in this Court cannot be permitted. We are, therefore, concerned to see whether on such a factual basis any legal

consequences compelling the Court to uphold Annexure-A, and thus judicially condoning what is a fraud on the statutory scheme, follow.

29. An order like Annexure-A ordinary binds the parties only and here the State which is the appellant is seriously prejudiced by that order but is not a party to it. Therefore, it cannot bind the State pro-prio vigore. It was argued by Shri Dhingra that the State__ could have moved by way of appeal or review and got the order set aside if there was ground and that not having done so it was bound by the order. As a matter of fact, the State, which is not a party to the proceedings, does not have a right of appeal. The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellant Court "if he would be prejudically affected by the judgment and if it would be binding on him as res judicata under Explanation 6 to Section 11." (see Mulla : Civil Procedure Code, 13th Edn., Vol. 1. p. 421). Section 82 of the Punjab Tenancy Act, 1887, which may perhaps be invoked by a party even under the Act, also speaks of applications by any party interested. Thus, no right of review of appeal under Section 18 can be availed of by the State as of right. 30. If the State is not precluded from proving the invalidity of Annexure-A, it is clear that the said order is unsustainable. Section 18 applies only to tenants, i.e., not anyone who claims to be, but legally is one. Here who has granted the leas? Mst. Lacchman ? How could she, after gifting away to her daughter ? And no lease from daughter Shanti is set up although obscurely both mother and daughter are made respondents. Secondly, Section 18 qualifies for purchase only those tenants who had 6 years continuous occupation. Here, no the Collector's finding, Amar Singh and Indraj came by possession only in 1957-58 and, as he points out in Annexure-B, the six year period is not complete at the time of application. The reason why even before the proceedings began parties presented a compromise and avoided an enquiry is not far to seek. In short, the state could and did make out the incompetence of the respondents to purchase under Section 18 and Annexure-A being also stricken by the vice of Section 10A (b) and (c).

31. Shri Dhingra urged that Section 18(1)(iii) did contemplate purchase rights for persons who had no possession when the Act came into force and their purchases must necessarily diminish the surplus area. This seeming attractiveness vanishes when we notice that Section 18(1)(ii) and (iii) provide for two classes of hard cases where unjust evictions prior to the Act coming into force had deprived them of their rights. For all practical purposes the Act clothes them with such rights as they would have enjoyed had they not suffered unjust evictions. That is why specific provision was made in Section 18 for them. The exception proves the rule. The paramountcy of Section 10A cannot be subverted by illegitimate use of the processes under Section 18.

32. Purchases under Section 18 being involuntary, Section 10A(b) would not be hit, as it deals only with voluntary transfers, according to Shri Dhingra. While we need not finally pronounce on this argument, it is worthy of note that the expression 'transfer' is wide enough to cover transfers by operation of law unless expressly excluded an in Section 2(d) of the Transfer of Property Act. Moreover, special exclusions to save transfers by way of inheritance and compulsory land acquisition by State have been made which could have been supererogatory had involuntary transfers automatically gone out of the pale of Section 10A(b).

33. Another argument was suggested that the order, even though passed on a compromise was as valid and binding as one passed on contest, May be, that as a broad proposition one may assent to it. But where a compromise goes against a public policy prescription of a statute or a mandatory direction to the Court to decided on its own certain foundational facts, a razi cannot operate to defeat the requirement so specified or absolve the Court from the duty. The resultant order will be

ineffective. After all, by consent or agreement, parties cannot achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, "by private agreement, converted into a decree, parties cannot empower themselves to do that which they could not have done by private agreement alone". (See Mulla : Civil Procedure Code, Vol. II, p. 1300). The true rule is that "the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded the command of the Judge". The learned author, Mulla in his commentary on Order XXIII, R. 3 (Civil Procedure Code, Vol. II. pp. 1299-1300) cites many authorities for this proposition and observes :

> "If a decree is passed under this rule on a compromise which is not lawful, the Court should not enforce the decree in execution proceedings. Thus, a sale of an office attached to a temple is against public policy. Hence, if in a suit against the holder of such an office a compromise is arrived at whereby the holder of the office consents to the office being sold in satisfaction of the debt due to the plaintiff, and a decree is passed on the compromise, the Court should notwithstanding the consent decree refuse to sell the office in execution. It is clear that if the matter had rested in contract only, the Court could not have enforced the sale in a suit brought for that purpose. The mere fact that the contract is embodied in a decree does not alter the incidents of the contract."

It may be right to conclude that any authority, like the Collector, here, enjoined to apply Section 10A(b) and (c) may decline to act on a compromise which has ripened into an order if the agreement between the parties disposes of property in violation of a statutory mandate. He can and must lift the veil and look the agreement of the parties in the face. The vice of contravention of Section 10A(b) is writ large in Annexure-A

34. A few decisions of this Court bearing on the efficiency of consent decrees were cited at the bar and they are exhaustively dealt with in Chari v. Seshadri ((1973) 1 SCC 761). The other rulings of this Court - all rendered under the Rent Control Law - are Bahadur Singh v. Muni Subrati ((1969) 2 SCR 432 : (1970) 2 SCJ 153); Kaushalya Devi v. K. L. Bansal ((1969) 1 SCC 59 : (1969) 1 SCR 1048), and Ferozi Lal Jain v. Man Mal ((1970) 3 SCC 181). The core principle or ratio that is revealed in these cases is that in cases where a statute, embodies a public policy and consequentially prescribes the presence of some conditions for grant of reliefs, parties cannot bypass the law by the exercise of a consent decree or order and mere judicial imprimatur may not validate such decree or order where the Court or Tribunal is not seen to have applied its mind to the existence of those conditions and reached its affirmative conclusion thereon. Such mindless orders are a nullity but where the stage of the proceedings, the materials on record and/or the recitals in the razi disclose the application of the judicial mind, the order is beyond collateral attack merely on the score that it does not ritualistically write into the judgment what is needed by the statute. The important facet of the law clarified in these decisions is that where high public policy finds expression in socioeconomic legislation contractual arrangements between interested individuals sanctified into consent or compromise decrees or orders cannot be binding on instrumentalities of the State called upon to enforce the statute, although the tribunals joined to enforce the law may take probative note of the recitals in such compromise or consent statements in proof of facts on which their jurisdictions may have to be exercised. Further, if there is no evidence either by way of admissions in consent statements and razis or otherwise on the record, the reliefs sanctioned by the statute cannot be granted and orders or decrees which purport to grant them sans proof of the legal requirements will be a nullity.

35. In Kaushalya Devi v. K. L. Bansal (supra), the Court was concerned with a suit for eviction under the Rent Control law. On being satisfied about the statutory grounds the Court could decree possession. The Plaintiff set out two grounds both of which were denied in the written statement. When the pleadings of the landlord and the tenant were in this state, both parties filed a compromise memo in and by which they agreed to the pasing of a decree of eviction against the tenant. Representations to the same effect were also made by the Counsel for both parties. The Court passed the following order (SCC page 60) :

> "In view of the statement of the parties' Counsel and the written compromise, a decree is passed in favour of the plaintiff against the defendant."

The tenant did not vacate the premises within the time mentioned as per the compromise memo. On the other hand, he filed an application under Section 47. C.P.C., pleading that the decree is void as being in contravention of Section 13 of the Delhi statute. The High Court held that the decree was a nullity, as the order was passed solely on the basis of the compromise without indicating that any of the statutory grounds mentioned in Section 13 existed. Following the decision in Bahadur Singh v. Muni Subrat (supra), this Court upheld the order of the High Court.

36. In Ferozi Lal Jain v. Man Mal (supra), the landlord's grounds for eviction were denied by the tenant but they reported compromise with prayer for a decree for eviction. This Court ruled (at p. 183, para 6) :

> "From the facts mentioned earlier, it is seen that at no stage, the Court was called upon to apply its mind to the question whether the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the Court had proceeded solely on the basis of the compromise arrived at between the parties. That being so there can be hardly any doubt that the Court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity."

37. In both these cases the decrees based solely on the razi and without the Courts applying their mind, were a nullity. The order of the Assistant Collector, Annexure-A, bears resemblance to the situation in these two cases. On the other hand K. K. Chari's case (supra) is a study in contrast. There was plethora of evidence to prove the ground of eviction and the Court directed eviction based on the terms of the compromise and after making a reference to the provisions for eviction. Vaidialingam J has explained this aspect elaborately.

38. The order, Annexure-A, was passed before evidence was let in because even before the trial began reported compromise and gave statement accordingly. Not a word is to be found in the order indicating the Court's mind adverting to the requirements of Section 18 of the Act, the contrary being the evidence. Indeed, unlike in K. K. Chari's case, no material existed on record to warrant a finding (a) regarding the tenancy (b) continuous occupation for over 6 years (c) the surplus area being unaffected. Nor even recitals amounting to admissions on facts of entitlement to purchase were made. The order was a nullity denuded of evidence and absent judicial satisfaction. Strictly speaking, conclusive razis cannot affect the State which has the right to utilize surplus lands for re-settling tenants. Certain proceedings, e.g., election petitions and actions under Section 92, C.P.C., once set in motion, transcend, private interests and public authorities cannot pass orders on collusive representations without regard to public interest or independent satisfaction, Annexure-A ex facie

was a nullity. It is unfortunate that the Assistant Collector has, with insipient insouciance, lent his authority to a compromise, where care and conscientiousness would have averted the error. We are satisfied that Annexure-A is unavailing against the State and its officers in accommodating ejected tenants on the lands in question. The public policy of Section 10A cannot be outwitted by consent orders calculated to defeat the provision and without the statutory authority charged with the enquiry being satisfied about the bona fides of and eligibility for the purchase. So viewed, the respondents in these appeals cannot on the strength of the purchase orders exclude those lands from the operation of Section 10A(a) of the Act.

39. The Legislature, charged with the constitutional mandate of Article 38 and Article 39 has passed the Act and amended it from time to time in furtherance of the major purpose of distributive justice. The judicial wing of the State, viewing the law in the same wave-length, interprets and applies it. But the executive instrumentality of the State has an activist role to play if the arm of the law were not to hang limp and social justice is not to be a cynical phrase. Good laws and correct interpretations are not enough. Quick, conscientious and public-minded enforcement of the provisions is the responsibility of Government and its officers. In the present case the Assistant Collector's order, Annexure-A, has fortified an attempted fraud on the statute. It was stated at the Bar that a score of years notwithstanding, the processes of fixing reserved areas and surplus areas on the strength of which alone conferment of proprietory right on tenants and re-settlement of ejected tenants could proceed, are still lingering. If this is true Government has much to answer for and litigation abounds where delays in executive enforcement occur. We expect that this land reform measure will not be a slow motion picture but a strict and swift procedure so that parties affected may know where they stand. There is an 'executive' dimension to law's delays which defeats the rule of law. It must be remembered that the third reading of a bill and the last appeal in Court are not the final scene in the drama of law and society. A post-audit on the enforcement of social legislation, all social scientists will agree, is a material aspect of law-in-action, inter alia to avoid the administrative cutting edge of the law becoming blunt.

40. With these hopeful observations we allow the State appeals but we direct that in the circumstances parties will bear their costs throughout.

SARKARIA, J.

(dissenting) - I have gone through the judgment prepared by my learned brother, Krishna Iyer, J. Since I cannot fully subscribe to the reasoning and the view taken therein, I have though it fit to record my own opinion separately.

42. These two appeals (Nos. 1755 and 1756) on certificate granted under Article 133(1)(e) of the Constitution by the Punjab High Court, raise questions with regard to the interpretation and inter-relationship of the provisions of Sections 2(5-a), 10A and 18 of the Punjab Security of Land Tenures Act (X of 1953) (for short, the Act). The questions for determination, as formulated by the High Court, are :

> "(i) Whether the expression 'transfer' or 'other disposition of land' in clause (b) of Section 10A of the Act, include involuntary transfer of a part of the holding of a landowner by operation of an order forcing the landowner to sell a part of his holding to a tenant under Section 18 of the Act;
>
> (ii) Whether the order of any 'other authority' referred to in clause (c) of Section 10A

of the Act includes an order of the authorities under the Act itself passed under Section 18 thereof in favour of a tenant, which order has become final either at its original stage or at the appellate or revisional stage; and

(iii) In case of conflict between Section 10A and Section 18 of the Act, which of the two provisions has supervening effect or overrides the order."

43. To the above, I may add a fourth question which arises in Amar Singh's case (C.A. 1755 of 1967) and has been dealt with by the High Court :

"(iv) Whether any land held by tenants on April 15, 1953 within the permissible area of those tenants, can be included in the 'surplus area' of the landowner, if, at the time the Surplus Area Collector takes up the determination of the matter, that land is found to be comprised in the tenancy of persons other than the original tenants."

44. The material facts are these :

"On April 15, 1953, when the Act came into force, Smt. Lachhman (hereinafter referred to as the 'landowner') owned 101. 6 standard acres, equivalent to 404.10 ordinary acres, of land in the revenue estates of two village, namely, Darba Kalan and Nahran Wali. Out of this holding of the landowner, we are concerned only with fields Nos. 177, 265 and 343, situate in the area of Darba Kalan. On the determinative date (April 15, 1953), Field No. 177, measuring 64 bighas and 12 biswas which is the subject-matter of C. A. 11756/67, was in the personal cultivation of the landowner, while Field Nos. 265 and 343, measuring 67 bighas and 19 biswas, were in the occupation of two tenants, namely, Sri Chand and Nathu.

45. It is not clear from the record whether the landowner had made the reservation or selection of her permissible area in the prescribed manner, within time. But the learned Counsel for the parties before us are agreed that Field Nos. 265, 343 and 177 in question do not from a part of her reserved or permissible area.

46. It appears from the Surplus Area Collector's order that in 1955 (vide mutation No. 144), the landowner tried to gift this land in favour of her daughter, Shanti Devi, who, in turn, attempted to sell the same to her husband, Amar Singh, and the latter's brother, Indraj. These were ignored by the Surplus Area Collector as per his order, dated April 24, 1961, while declaring the surplus area of the Against that order, Amar Singh and Indraj carried an appeal to Commissioner. The landowner also preferred a separate appeal.

47. On May 2, 1961, Amar Singh made an application under Section 18 of the Act before the Assistant Collector, 1st Grade, for purchase of the land comprised in Field Nos. 265 and 343, on the ground that he has been in its continuous occupation as a tenant for the requisite period. A similar application was made on the same date, by his brother, Indraj, for the purchase of Field No. 177. After serving notice on all concerned, Shri Hardyal Singh, Assistant Collector 1st Grade allowed these applications on September 15, 1961, on the basis of a compromise between the appellants and the landowner. In compliance with that order, Amar Singh, deposited in the Treasury, Rs. 13,590 which had been determined as the purchase price by the said Collector. Indraj also in his case deposited the price assessed by the Collector. The effect of these proceedings and the orders of the Collector was that Amar Singh and Indraj, the tenants, in the words of Section 18, itself, "shall be

deemed to have become the owners of the land."

48. The Commissioner on December 21, 1961, taking notice of the statutory purchases of these fields by Amar Singh and Indraj under Section 18, allowed their appeal and remanded the case to the Collector for de novo enquiry regarding the area in occupation of Amar Singh and Indraj as tenants under the landowner.

49. After the remand, in the course of de novo enquiry, the same Officer, Shri Hardyal Singh, as Collector, Surplus Area, passed the impugned order, dated May 11, 1962, whereby be declared 408.10 ordinary acres equal to 101.61 standard acres as the surplus area of Smt. Lachhman and included in that area the land in question (comprised in Field Nos. 265, 343 and 177) of which according to his earlier order, Amar Singh and Indraj were deemed to have become owners by purchase under Section 18. He ignored his order, dated September 15, 1961, on the ground that Amar Singh and Indraj had not been in continuous occupation of these fields as tenants for the full term of six years and that "in fact the landowner has conspired with her son-in-law, Amar Singh, and his brother Indraj, to retain this area in contravention of the law". It was added that the said order was based on a compromise and was a "collusive one".

50. Amar Singh and Indraj filed two separate writ petitions under Art. 226 of the Constitution for the grant of a writ of certiorari for bringing up and quashing the order; dated May 11, 1962, of the Surplus Area Collector and for a writ of mandamus directing the respondent State not to dispossess them from the fields purchased by them under Section 18.

51. The High Court by its common Judgment, dated October 4, 1966, answered the three questions referred to above, as under :

> "(i) The expressions "transfer" and "other disposition of land" in clause (b) of Sections 10A of the Punjab of Lard Tenures Act of 1953, do not include completed sales effected under Section 18 of the Act;
>
> (ii) In exercise of the powers conferred by cause (c) of Section 10A of the Act, the authorities under the Act cannot exclude from consideration an order of the Assistant Collector or Collector under Section 18 of the Act, whereby a part of the holding of the landowner has vested absolutely in the erstwhile tenant; and
>
> (iii) If any conflict were detected between Section 10A and Section 18 of the Act, the special provision of law contained in the letter Section would override the earlier and general provision".

52. Regarding Question (iv) in Amar Singh's case, it was held that since Fields Nos. 265 and 343 were, on April 15, 1953, comprised in the tenancy of Sri Chand and Nathu as part of their permissible area, they could not, in view of the definition given in Section 2 (5-a), be included in the surplus area of the landowner, and the subsequent change of the holder of the tenancy did not make the tenancy land revert to the Surplus, Area. That was, according to the High Court, an additional reason why Section 10A was not attracted in Amar Singh's case.

53. In order that the questions raised in these appeals may be considered in the proper perspective, it is necessary to notice briefly the object, the scheme and the relevant provisions of the Act.

54. Chronologically, the Act is not the first measure enacted by the State to give effect to its policy

of abolishing intermediaries and regulation of agricultural tenancies with the object of securing tenure or procuring ownership of land to the tiller. The first piece of legislation was the Punjab Tenants (Security of Tenure) Act, 1950. The contours of the concepts "permissible area" and "reserved area" first made their appearance in this statute. Under that Act, a landowner was entitled to reserve 100 standard acres for his self-cultivation; and the protection against eviction was not available to tenants on the reserved area. The 1950 Act was amended by Punjab Tenants (Security of Tenure) Amendment Act, 1951 which reduced the permissible area of a landowner to 50 standard acres, and extended the tenure of the tenants from 4 to 5 years.

55. The Acts of 1950 and 1951, were repealed and replaced by Act 10 of 1953 with which we are concerned. The preamble says that the Act is a piece of legislation "to provide for the security of land tenure and other incidental matters". The Act classifies landowners into "small landowners" and "other landowners". A "small landowner" as defined in Section 2(2), means a landowner whose entire land does not exceed the "permissible area". Owners other than small landowners fall in the second category. "Landowner" means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887) and also includes an "allottee" and "lessee" as defined in clauses (b) and (c) respectively, of Section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949. Under the Explanation added to the clause, a mortgagee, in respect of the land mortgaged with possession is also to be deemed a 'Landowner'. "Landowner" is not comprehensively defined in the Land Revenue Act, Clause (2) of Section 3 of that Act makes it clear that "landowner" does not include a tenant. Thus, it is to be noted that lessees from the landowner (being other than those falling under Section 2(e) of the Land Resettlement Act, 1949) do not come within the definition of "landowner" given in the Act.

56. The five-fold object of the Act as endorsed by Subba Rao, J., (as he then was) speaking for this Court in Gurbax Singh v. State of Punjab ((1967) 1 SCR 926 : AIR 1967 SC 502 : (1968) 1 SCJ 54) is to -

> (i) provide a permissible area of 30 standard acres to a landowner/tenant which he can retain for self-cultivation;
>
> (ii) provide security of tenure to tenants by reducing their liability to ejectment as specified in Section 9;
>
> (iii) ascertain surplus areas and ensure re-settlement of ejected tenants on those area;
>
> (iv) fix maximum rent payable by tenants; and
>
> (v) confer rights on tenants to pre-empt and purchase their tenancies in certain circumstances.

57. We are primarily concerned with the provisions relating to (i), (iii) and (v). What is to be borne in mind is that while self-contained and comprehensive provisions in Sections 17 and 18 for effective achievement of object (v) were made from the very inception of the Act, object (iii) did not assume shape and content till Punjab Act XI of 1955 was enacted.

58. The concepts 'permissible area' and 'reserved area' were re-shaped by the Act of 1953. 'Permissible are' in relation to a landowner or a tenant has been defined to mean "30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 acres, such 60 acres". Reserved area' as defined in Section 2(4) means "area lawfully reserved under the Punjab

Tenants (Security of Tenure) Act, 1950 (Act XXII of 1950), as amended by President's Act of 1951, hereinafter referred to as the "1950" Act or under this Act".

59. "Reserved area" is dealt with in Sections 2, 5, 5-B, 9 and 18 of the Act.

60. Section 5 lays down that :

> "any landowner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed within six months from the date of the commencement of the Act".

Since, for one reason or the other, many landowners could not exercise their right of reservation within the period of six months originally fixed by the 1953 Act, Sections, 5-A, 5-B and 5-C were inserted by the Amending Act 46 of 1957 which came into force on December 20, 1957. Section 5-B enacts that :

> "a landowner who has not exercised his right of reservation under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in Section 5-A and in such form and manner as may be prescribed".

The requisite form was prescribed by Punjab Government Notification No. 3223-LR-II-57/1624 published in Gazette Extraordinary of March 22, 1958. Consequently, a landowner could make the selection of his permissible area within six months of that date.

61. In Gurbax Singh v. State of Punjab (supra), this Court held that 'selection' in Section 5-B is similar to 'reservation' in Section 5 and that, in terms, Section 5-B gives the landowner another chance of make the reservation if he had not exercised his right of reservation earlier under Section 5. It was clarified that "reservation" and "selection" involve the same process and indeed, to some extent, they are convertible, for, one can reserve land by selection and another select land by reservation.

62. Thus if the right of selection is exercised under Section 5-B, by the landowner, his permissible area would become his 'reserved area'; to that extent, the two concepts would represent one and the same thing.

63. The next provision to be noticed is in Section 9 which says inter alia that "no landowner shall be competent to eject a tenant except when such tenant is a tenant on the area reserved under this Act or is a tenant of a small Landowner". Its sub-section (2) provides that "notwithstanding anything contained hereinbefore a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area".

64. Before proceeding to Section 18, it will be proper at this stage to advert to the concept "surplus area". This concept was born in 1955 when Act XI of that year inserted in the principal Act several provisions including Section 2(5-a) which (as modified by a subsequent Act) runs thus :

> "Surplus area" means the area other than the reserved area, and, where no area has

been reserve, the area in excess of the permissible area selected (under Section 5-B or the area which is deemed to be surplus area under cl. (1) of Section 5-C) (and includes the area in excess of the permissible area selected under Section 19-B) but it will not include a tenant's permissible area :

Provided that it will include the reserve area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the landowner admits a new tenant, within three years of the expiry of the said six months".

This definition will be considered further while dealing with proposition (iv). At this place it will be sufficient to have a general idea of the interrelationship of "permissible area" and "surplus area", and the right of the landowner to deal with the surplus area. A Full Bench of Punjab and Haryana High Court in Dhaunkal v. Man Kauri ((1970) 72 Punj LR 882 : AIR 1970 Punj 431 : ILR (1970) 2 Punj 220), speaking through Mehar Singh, C.J. summed up the inter-connection between these concepts thus :

"According to these provisions (of Sections 5, 5-A, 5-B, 5-C read with Rule 6 of the 1956 Rules framed under the Act) a landowner or a tenant who has more than 30 standard acres of land has to select or reserve his permissible area and the excess is available as surplus area. The Collector attending to such cases has to determine, therefore, three things; (a) the permissible area of a landowner, (b) the permissible area of a tenant, and (c) the surplus area. The details for the determination of these matters are to be found in 1956 Rule ..... Rule 6 .... is really material ..... No doubt in the Act, there is no specific provision which says that a decision has to be given by any authority whether a permissible area has or has not been rightly reserved or selected by a landowner or tenant concerned, but when the provisions of the Act with the rules are considered, it becomes plain that while determining the surplus area with a landowner or a tenant the question of his permissible area comes to be determined ..... so that, if there is a question in regard to the validity of reservation or selection of permissible area, it must come for consideration before the Collector when he disposes of the surplus area of a particular landowner or tenant ..."

65. Declaration of 'surplus area' does not have the effect of expropriating the landowner of that area. The only effect of such declaration is that the Government gets a right to utilize the surplus area, if necessary, for settlement of ejected tenants. The tenants, thus settled on the surplus land become by operation of law, the tenants of the landowner. They are bound under the rules, to attorn and pay rent to the landowner. The latter's rights of ownership remain intact, who is even entitled to evict the settled tenants in certain contingencies specified in the Act. The landowner's right to transfer the surplus area is also not taken away, but the transferee even if a small landowner, will not be rid of the liability to accommodate evicted tenants whom the Government may wish to re-settle under Section 10A (a). The Act does not take away the right of the landowner to induct tenants on such area, or the rights of the tenants so indicted, to purchase the land under Section 18 if it has continuously remained comprised in their tenancy for the requisite period.

66. Section 9(1)(i) provides for eviction of a tenant from the area of a landowner reserved under the Act. Section 9A safeguards such a tenant against dispossession of his tenancy so long as he is not accommodated on a surplus area or other land by the State Government. There is a positive

indication in the 2nd Proviso to Section 9A that a landowner has a right to induct tenants on his land even after the commencement of the Act. The Proviso says :

> "that if a tenancy commences after the commencement of this Act, and the tenant is also an owner and is related to his landlord in the manner prescribed, he shall not be entitled to the benefit of this Section."

67. Now let us have a close look at the provisions of Section 18, which as amended by Punjab Act 11 of 1955 runs thus :

> "18(1) Notwithstanding anything to the contrary contained in any law usage or contract, a tenant of a landowner other than a small landowner -
>
> (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or
>
> (ii) who has been restored to his tenancy under the provisions of this Act and whose periods, of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amount to six years or more, or
>
> (iii) who was ejected from his tenancy after the 14th day of August, 1947 and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment,
>
> shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of the commencement of this Act;
>
> Provided ..
>
> Provided further ...
>
> (2) A tenant desirous of purchasing land under sub-section (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the landowner and to all other persons interested in the land and after making such inquiry, as he thinks fit, shall determine the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.
>
> #3. ** ** **4. (a) ** ** **##
>
> (b) On the purchase price or the first installment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.

#(c) * *(5) to (7) * *"##

This Section is the keystone of the arch of peasant-proprietors' complex which the Act seeks to build. The non obstante clause with which the Section starts, indicates the overriding operation of its provisions. It provides a self-sufficing machinery enabling tenants to purchase lands comprised in their tenancies. Broadly speaking, the existence of three conditions is necessary for the exercise of this right. They are : (a) the landowner whose area is sought to be purchased is not a 'small landowner' i.e. one owning less than 30 standard acres; (b) the land to be purchased does not form a part of the 'reserved area' of the landlord which has become fixed by reservation under Section 5, or selection under Section 5-B; (c) the applicant has been in continuous occupation of the land, as a tenant, for a period of six years or more on the date of the application.

68. For our purpose, condition (b) is the most important. By excluding a landowner's reserved permissible area from the operation of Section 18, it confines a tenant's right of purchase to that land which falls within the 'surplus area' of the landowner, or, was on April 15, 1953, within the 'permissible area' of that tenant.

69. As observed by this Court in Sahib Ram v. Financial Commissioner, Punjab and Ors. (supra)(SCC page 533, para 20) :

"Under Section 18(1) three categories of tenants have been given a right to purchase from the landowner the land so held by him. They are :

(i) a tenant who has been in continuous occupation of the land for a minimum period of six years;

(ii) a tenant restored to his tenancy under the Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejectment and after restoration amounts to six years or more; and

(iii) a tenant who was ejected from his tenancy after August 14, 1947 and before April 15, 1953, and who was in continuous occupation of the land comprised in his tenancy for a period of sic years or more immediately before his ejectment."

70. Category (iii) has become extinct and clause (iii) of Section 18(1) has become redundant because the exercise of the right of purchase by this category was limited to a period of one year, only, after the commencement of the Act. Only a small number of cases fall under category (ii). Most of the tenant-purchasers belong to category (i) which may be further divided into these sub-categories :

(a) Tenants who were on the land on April 15, 1953 and continued to be in occupation of their land for the requisite period up to the date of the application;

(b) Tenants who were inducted on the surplus area by the landowner sometimes after the determinative date and who thereafter remained in continuous occupation of the land for the requisite term;

(c) Tenants who were re-settled on the surplus area by the Government, and

thereafter remained in continuous occupation of the land for the requisite period.

71. Quite a number of tenants who invoke Section 18, come under sub-category (b). In the instant case, Amar Singh and Indraj are tenants of this sub-category. In Sahib Ram's case (supra) also, this Court was dealing with a case of tenants of this subcategory. Vaidialingam, J., speaking for the Court, enunciated the law on the point, thus (SCC page 535, paras 26 and 27) :

> "So far as we could see there is no prohibition under the Act placing any restrictions against the right of the landowner creating new tenancies after the date of the Act. In fact, the second proviso to Section 9A clearly indicates to the contrary. It deals with contingency of tenancy coming into force after the commencement of the Act.

Section 18(1)(i) gives a right to tenant to purchase the land; and that right has to be examined when an application under Section 18 is made and cannot be deemed on the ground that he was not a tenant for more than six years on April 15, 1953. There is not limitation placed under clause (i) of Section 18(1) that the tenant who exercises his right should be a tenant on the date of the Act or that the should have completed the period of six years on April 15, 1953 and there is not warrant for reading in Section 18(1)(i) clauses which it does not contain. It is enough if the continuous period of six years has been completed on the date when the tenant files the application for purchase of the land".

72. The validity or otherwise of the orders of purchase made under Section 18 by the Collector in favour of Amar Singh and Indraj will be discussed a little later, at its appropriate place. Suffice it to say here, that in view of the law settled in Sahib Ram's case (supra), Amar Singh and Indraj- provided the other conditions were satisfied - would be entitled to purchase the land comprised in their tenancies notwithstanding the fact that the said land was a part of the surplus area of the landowner and these tenancies were created by her after April 15, 1953.

73. It will now be appropriate to examine Section 10A. It is one of the important Sections, the interpretation of the provisions of which is in question. It reads :

> "10A (a) The State Government or any Officer empowered by it in this behalf, shall be competent to utilise any surplus area for the re-settlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9.
>
> (b) Notwithstanding anything contained in any other law for the time being in force, and (save in the case of land acquired by the State Government under any law for the time being in force or by any heir by inheritance) no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).
>
> Explanation-Such utilization of any surplus area will not affect the right of the landowner to receive rent from the tenant so settled.
>
> (c) For the purposes of determining surplus area of any person under this Section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored".

74. Section 10A with its sub-clause (a) and (b) was added by Punjab Act XI of 1955. Punjab Act 4

of 1959 inserted the saving clause (within brackets) in clause (b). Later, Punjab Act 14 of 1962, inserted clause (c) and gave retrospective effect to all the provisions of Section 10A from April 15, 1953.

75. The Statement of Objects and Reasons published in the Punjab Gazette Extraordinary on April 16, 1955, lists among others, the main objects of Act XI of 1955 :

> "to prevent large-scale ejectment of tenants to introduce new concepts of surplus area and its utilization by the State Government for the re-settlement of ejected tenants .... to coordinate the ejectment of tenants with their re-settlement on surplus area .... to prevent sales and other dispositions of land adversely affecting the continuance of tenancies and the extent of available surplus area; to reduce the period (from 12 to 6 years) entitling a tenant to purchase the land comprised in his tenancy and to provide for easier terms of purchase; and other incidental matters."

76. The professed object of the concept of "Surplus area" and re-settling ejected tenants on such area finds its manifestation in the insertion of Section 2(5-A) and Section 10A(a); while the object of entitling tenants to purchase their tenancy lands on easier terms is reflected in the amendments made in Section 18.

77. According to the Statement of Objects and Reasons published in Punjab Gazette Extraordinary, dated April 27, 1962, the main purpose of the Amending Act 14 of 1962 was two-fold : The first was to neutralize the effect of certain decisions and to plug the loopholes revealed in the interpretation among others, of Sections 2(5-a), 6, 10-A(b), 18, 19B. Among those decisions was one of the Financial Commissioner holding that Section 6 did not protect the claim of tenants under Section 18 to purchase the proprietary rights in respect of the land held by them in tenancy. The second was to ignore in computing the surplus area "decrees of courts for diminishing the surplus area" which "interested persons, being relatives, have obtained", "in order to evade the provisions of Section 10A of the parent Act". That was why clause (c) was inserted in Section 10A.

78. I have referred in extenso to the Objects and Reasons which led to these Amendments to show that while the Legislature was anxious to preserve surplus area for settlement of evicted tenants and for that purpose enacted Section 10A, it did not in its wisdom, think it fit, to curtail the ambit of Section 18 so as to exclude tenants inducted by the landowner on the surplus area from purchasing their tenancy lands through the machinery of this Section. So far as the right to purchase their tenancies is concerned, tenants inducted by the landowner and tenants settled by the Government, on the surplus area, remain on an equal footing. The Amendments did not in relation to the new Section 10A, relegate Section 18 to a position of "subordinate alliance". The non obstante clause of Section 18 has not been touched. Indeed, the amendments of Section 18 inter alia, by providing for easier terms of purchase and reducing the qualifying period from 12 to 6 years, have made the machinery of the Section more comprehensive, efficient and attractive for tenants desirous of purchasing their tenancies.

79. The Amendments have not changed the basic scheme of the Act, according to which, the jurisdiction of the Prescribed Authority assessing the surplus area under Sections 5-B and 5-C read with Rule 6 of the 1956 Rules, and acting under Section 10A is distinct and separate from the jurisdiction of the Assistant Collector 1st Grade dealing with an application under Section 18. 'Collector' has been defined by Rule 2 (iii-A) of the 1956 Rules, to mean "the Collector of the district or any other officer not below the rank of Assistant Collector 1st Grade empowered in this

behalf by Government". Rule 4-B provides that the Prescribed Authority for the purposes of Section 5-B(2) and Section 5-C shall be (i) the Collector if the lands owned or held by the landowner or tenant are situate in one district; and (ii) the Special Collector - as defined in Rule 2 (iv) - if the lands so owned or held are situated in more than one district. Section 18(2), however, confers the jurisdiction to try and determine applications for purchase made under that Section specifically, on Assistant Collector of First Grade.

80. An order of the Prescribed Authority made under the aforesaid provisions has been made appealable under Sub-Rule (8) of Rule 6; whereas the provision in regard to appeal, review and revision against an order of the Assistant Collector First Grade made under Section 18, by virtue of Section 24 of the Act, is the same as provided in Sections 80, 81, 83 and 84 of the Punjab Tenancy Act, 1887.

81. Section 80 of the Tenancy Act provides for "Appeals", Section 82 for "Review" and Section 84 for "Revisions". Sections 81 and 83 of that Act relate to limitation and computation of limitation for Appeals and applications, for review. Under Section 82 of Tenancy Act, Revenue Officers have the powers of reviewing their own orders and those of their predecessors, if no appeal against those orders has been filed. In the case of Assistant Collectors of all Grades, the exercise of this power is always subject to the previous sanction of the Collector. Though a period of 90 days for making an application for review is provided in sub-clause (b) of the proviso to Section 82(1), yet no limitation has been provided within which a Revenue Officer may suo motu review or move for sanction to review an order. Under Section 84 the Commissioner and the Financial Commissioner have concurrent revisional jurisdiction. The revisional powers of the Financial Commissioner under Section 84 are in no way less extensive than those of the High Court under Section 115 of the Code of Civil Procedure. In a sense, his revisional powers are wider. He has power to revise an order against which an appeal lies (see Amir Chand v. State of Haryana (1971 Punj LJ 449) decided by a Division Bench of the Punjab and Haryana High Court). No statutory limitation for making an application for revision has been provided, but as a matter of practice the revision-petitions are ordinarily not entertained after a period of 90 days unless sufficient cause for the delay is shown. The Financial Commissioner can interfere in revision suo motu at any time, if the circumstances of the case so warrant.

82. There is nothing in the Act or the Rules framed thereunder or in the Tenancy Act saying as to who can file an appeal or revision against the decision or order of the Collector exercising jurisdiction under Section 18. But in view of the long array of judicial decisions including that of the Financial Commissioner, there can be no doubt that the State Government or its Department can, if aggrieved, or prejudiced by such a decision, go in appeal or revision against it.

83. Firstly, there is a catena of authorities which, following the dictum of Lindley, L.J., in re Securities Insurance Co. ((1894) 2 Ch 410) have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he is either bound by the order or is aggrieved by it or is prejudicially affected by it. As a rule, leave to appeal will not be refused to a person who might have been made co nomine a party (see Province of Bombay v. W. I. Automobile Association (AIR 1949 Bom 141 : ILR 1949 Bom 591 : 51 Bom LR 58); Heersing v. Veerka (AIR 1958 Raj 181 : ILR (1958) 8 Raj 380) and Shivaraya v. Siddamma (AIR 1963 Mys 127); Executive Officer v. Raghavan Pillai (AIR 1961 Ker 114 : ILR (1961) 1 Ker 77 : 1968 Ker LT 939) In re B., an Infant ((1958) 1 QB 12); Govinda Menon v. Madhavan Nair (AIR 1964 Ker 235 : ILR (1963) 2 Ker 424 : 1963 Ker LJ 600).

84. Secondly, the ruling of the Financial Commissioner in Punjab State v. Dr. Iqbal Singh, (1965 Punj LJ 110) which is binding on all the authorities and Revenue Officers exercising jurisdiction, under the Act clinches the matter. There, the decision of the Special Collector declaring surplus area was reversed by the Additional Commissioner. The State, filed against that decision of the Additional Commissioner, a revision-petition before the Financial Commissioner. Objection was taken with regard to the competency of the State to file that petition, on two grounds :

> (i) that the order was appealable and the revision was incompetent and
>
> (ii) that the State was not a party to the original proceeding.
>
> 84-A. The Financial Commissioner treated the revision as an appeal, and overruled the objection in these terms :
>
> "The argument on behalf of the respondents overlooks the fact that the Revenue Officers act in a quasi-judicial capacity in deciding such cases and if the Punjab State is aggrieved by their orders it is as much entitled to contest them through a remedy provided under the law as private parties are. In fact, there will be no justification for discrimination against the Punjab State in this regard and for holding that it suffers from any disability in the matter of agitating against decisions which are to its detriment."

The above being in accord with the general principles settled by the long chain of authorities, noticed earlier, appears to be a correct exposition of the law on the point.

85. In the present case, neither the landowner, nor the State made any attempt to get the decision, dated September 15, 1961, of the Collector under Section 18 set aside or modified by way of appeal, review or revision or other appropriate proceedings. In a sense, therefore, that decision had become final and conclusive.

86. The stage is now set for examining the contentions canvassed at the bar with regard to the correctness or otherwise of the findings of the High Court.

87. Mr. Mahajan, learned Counsel for the appellant-State contends that the Collector, Surplus Area had rightly ignored the sale orders dated September 15, 1961, of the Collector purportedly passed under Section 18, in favour of Amar Singh and Indiraj and that the view taken by the High Court is wrong, because -

> (a) the lease made by the landowner in favour of these respondents, was itself a "transfer of land" affecting the utilization of surplus area, and as such, was hit by clause (b) of Section 10A, and the orders obtained on the basis of that lease could not stand on a better footing;
>
> (b) the expression "transfer" in clause (b) of this Section includes involuntary transfers, also, brought about by operation of law, with only two exceptions which are specifically mentioned in that clause;
>
> (c) these orders were consent orders and were not based on any independent finding of the Collector as to the existence of the essential condition viz., that the applicants were in continuous occupation of the lands, as tenants, for the requisite period, but

were the result of compromise and collusion between the landlady and her relation-tenants, and as such, were null and void;

(d) these orders had the effect of diminishing the surplus area and as such, were orders of "other authority" hit by clause (c) of Section 10A;

(e) Section 18 has to be construed in a manner which does not defeat the object of Section 10A. These two Sections can be reconciled only if the operation of Section 18 is confined to those purchases which do not adversely affect the extent or utilization of surplus area.

88. In reply, Mr. S. N. Dhingra, learned Counsel for the respondents, maintains that a 'lease' cannot be regarded as a 'transfer' or disposition of land' within the meaning of clause (b) of Section 10A, because according to its general scheme and object, the Act not only recognises the right of a landowner to create new tenancies on his surplus area after April 15, 1953, but further gives to such a tenant the right to purchase his tenancy under Section 18. Reliance has been placed on this Court's decision in Saheb Ram's case (supra). Laying stress on the omission of the word 'lease' from clause (b) of Section 10A, Counsel has referred to the use of the word 'lease' in addition to the word 'transfer' in somewhat similar provision relating to future acquisitions in Section 19A and 19B, to show that whatever the Legislature intended to bring a 'lease' within the sweep of such a provision, it expressly did so.

89. Reiterating the reasoning of the High Court, Mr. Dhingra submits that a 'sale made in accordance with an order of the Collector under Section 18 cannot be ignored by the Prescribed Authority, Surplus Area, either as a 'transfer' under clause (b) or as an order of "other authority" under clause (c) of Section 10A. Any other interpretation, according to the Counsel, will render nugatory Section 18 which is a self-contained provision intended to achieve one of the primary objects of the Act. In support of these arguments, reliance has been placed on a later Full Bench judgment of the Punjab and Haryana High Court in Mam Raj and Ors. v. State of Punjab (supra) which affirmed the propositions of law laid down in the judgment under appeal. Shyamlal v. State of Gujarat ((1965) 2 SCR 475 : AIR 1965 SC 1251 (2) Cri LJ 256) was also cited.

90. Replying to Mr. Mahajan's contention (c), Counsel submits that this was not a case where the orders of the Collector passed under Section 18 could be said to be a nullity. The Khasra Girdawari before the Collector with the admission of the landowner, superadded, was sufficient material, on the basis of which of Collector making the orders of purchase in favour of the tenants could be satisfied about their being in continuous occupation of their tenancy lands for the requisite period. Great emphasis has been placed on the fact that in reply to the writ petition of Amar Singh, the State in their written statement had admitted Amar Singh's averment as to his being a tenant of the land for the requisite period. Even the Surplus Area Authority, it is pointed out, conceded in his impugned order that according to the copy of the Khasra Girdawari on the file, Amar Singh and Indiraj were in occupation of the land as tenants since 1957-58, though such occupation was held to be of less than six years. In these circumstances, proceeds the argument, the orders dated September 15, 1961, passed by the Collector under Section 18, on the basis of compromise, could not be treated as totally void and non est; at the most they were erroneous orders passed by the Collector in the exercise of the distinct jurisdiction particularly conferred on him by Section 18 (2). The only remedy - adds the Counsel - of the aggrieved person or the State was by of appeal or revision as provided by the statute and since those orders were not so challenged, they had become final. The Prescribed Authority, Surplus Area - it is emphasised, while assessing the surplus area, had no

jurisdiction to sit in appeal or revision over the orders of the Assistant Collector, First Grade passed under Section 18.

91. Reference in this behalf has been made to Sections 24 and 25 of the Act, Sections 80 to 84 of the Punjab Tenancy Act and K. K. Chari v. R. M. Seshadri (supra); Mohanlal Goenka v. Benoy Krishna Mukherjee; (1953 SCR 377, 392 : AIR 1953 SC 65 : 1953 SCJ 130) Dhaunkal v. Man Kauri (supra) and Mam Raj v. Punjab State (supra).

92. It will be appropriate to take contention (c), first canvassed by Mr. Mahajan because it is the linch-pin of the entire case.

93. The question is, whether the compromise orders, were wholly void or merely voidable. If they were of the former kind, they would be a nullity which does not from its very nature needs setting aside, and consequently, they could be treated as non-existent whenever and wherever their legality comes in question. And, the Prescribed Authority Surplus Area would be entitled to ignore such orders as non est, independently of the provisions of Section 10A. In that view of the matter, the necessity of determining as to whether those orders were hit by clauses (b) and (c) of that Section would not arise.

94. If the orders were of the latter type, i.e. voidable or erroneous, passed by the Assistant Collector acting within his jurisdiction under Section 18, they could be avoided or questioned only by way of appeal review or revision as provided by the statute or in other appropriate proceedings known to law, and the Prescribed Authority or Collector, Surplus Area would not be entitled to go behind them and question their validity or propriety. He shall have to accept them as they are. In that view of the matter, the question will still remain whether such an order of the Assistant Collector passed by him in the exercise of his jurisdiction in favour of a tenant under Section 18, can be ignored as a 'transfer' under clause (b) or as an order of "other authority" under clause (c) of Section 10A, on the ground that it adversely affects the utilization or extent of surplus area ?

95. An order is null and void if the quasi-judicial tribunal passing it lacks inherent jurisdiction over the parties and the subject-matter. Such was not the case here. The Assistant Collector who made the orders dated September 15, 1961, was duly invested with the quasi-judicial jurisdiction under Section 18 (2). All the jurisdictional facts for making the orders under that Section existed. There is no dispute that Smt. Lachhman was not a 'small landowner'. It is common ground that Fields Nos. 263, 343 and 177 did not fall within her reserved area. It was not controverted that in May 1961, when the purchase applications were made, Fields Nos. 263 and 343 were comprised in the tenancy of Amar Singh and Field No. 177 in that of Indiraj. According to the observation of the Surplus Area Collector, the copy of the Khasra Girdawari on the file showed that their possession as tenants was from 1957-58 i.e. for about 41/2 years only, preceding the application and thus according to him they had failed to show their continuous possession for the requisite period of six years. It is important to note further that Amar Singh in para 2 of his writ petition pleaded :

> "That on the 2nd of May 1961, the petitioner having been in continuous occupation of land comprised in his tenancy for a period of six years applied under Section 18 of the .... Act for purchase of the above land, and by his order dated 15th September, 1961, Shri. Hardial Singh, Assistant Collector 1st Grade Sirsa, District Hissar, allowed the petitioner to purchase the above land at a price of Rs. 13,590 ...."

This averment of Amar Singh was admitted in the counter-affidavit filed on behalf of the State in

these terms :

> "Para 2 of the petition is admitted"

96. In the written statement filed by the State - apart from a general statement that "in view of the facts explained by the Collector in his order dated May 11, 1962, the surplus area .... has been rightly declared" - it was not specifically pleaded that the purchase order dated September 15, 1961, made by the Collector under Section 18 was collusive, void or without jurisdiction on the ground that Amar Singh and Indiraj had not been in occupation of these fields for the full statutory period. Nor could Amar Singh and Indiraj be denied the status of 'tenants' and the rights and privileges attaching thereto, merely because they were related to the landowner, the 'son-in-law' and 'son-in-law brother' not being among the "relatives" prescribed in Rule 5 of the 1956 Rules, whose cultivation [in view of Section 2 (9) of the Act] may be deemed to be the "self-cultivation" of the landowner.

97. To sum up, the allegation in the purchase applications about the applicant's being in continuous occupation of these fields comprised in their tenancies for the requisite period, coupled with the Khasra Girdawari on file and the admissions made by the landlady in the compromise, furnished sufficient material on the basis of which the Assistant Collector, at the time of making the orders of purchase on September 15, 1961, could have been satisfied about the existence of all the facts essential for the exercise of his jurisdiction under Section 18. It is not correct to say that on the facts of the instant case, the Assistant Collector passed those orders solely on the basis of the compromise without applying his mind to the case. Application of mind is evident from the circumstance that the Assistant Collector further assessed the price to be paid by each of the applicants who thereafter, deposited the same in the Government Treasury on September 29, 1961. And, it was in the making of such deposits that the appellants were deemed to be the owners of those fields. The mere fact that the Assistant Collector did not record a finding in so many words that he was satisfied from such and such material in regard to the existence of the basic conditions necessary for making the order under Section 18, did not render his order a nullity when such material was otherwise evident on the record.

98. In the view I take I am fortified by the decision of this Court in K. K. Chari v. R. M. Seshadri (supra). That was a case of a compromise order of eviction passed by the Rent Control Court under Section 10 of the Madras Building (Lease and Rent Control) Act, 1960. But by analogy, the ratio of that decision is an apposite guide for the present case. There, the landlord brought an action under the said Rent Act, for eviction of his tenant, Seshadri from a house on the ground that he required it for his bona fide use and occupation. The tenant, at first, controverted the landlord's claim, but subsequently, both the parties filed a compromise, in terms of which the Court passed a decree of eviction. The tenant resisted the execution of that decree, on the ground that the decree was based on compromise or consent without the Court having satisfied itself by an independent consideration regarding the bona fide requirement of the property by the landlord for his own occupation; and as such the decree contravened Section 10 of that Act, and was a nullity. The Bench unanimously rejected this objection of the judgment-debtor tenant. Vaidialingam, J., (Dua, J., concurring) laid down the law thus (at page 774, para 30) :

> "The true position appears to be that, an order of eviction based on consent of the parties is not necessarily void if the jurisdictional fact viz., the existence of one or more of the conditions mentioned in Section 10 were shown to have existed when the Court made the order. Satisfaction of the Court, which is no doubt a prerequisite for

> the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question, and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on which the order of eviction was based."

The above principle was reiterated and applied by this Court in Nagindas Ramdas v. Dalpatram Inchharam ((1974) 1 SCC 242).

99. Judged by the basis principle enunciated in the above decisions, the order dated September 15, 1961, passed by the Assistant Collector under Section 18, was not a nullity which could be ignored as non est by the Prescribed Authority. Even if those orders were erroneous, they could be impeached only by way of appeal etc. as provided in the Act because the error was committed by the Collector within the exercise of his jurisdiction. A court or any quasi-judicial tribunal acting within its jurisdiction can decide rightly as well as wrongly. To use the felicitious words of S. K. Das, J., vide Smt. Ujjam Bai v. State of Uttar Pradesh, (AIR 1962 SC 1621 : (1963) : 1 SCR 778) such administrative bodies or officers acting in a judicial capacity "are deemed to have been invested with the power to err within the limits of their jurisdiction" and their decisions must be accepted as valid unless set aside in appeal. This general principal was reiterated by this Court in Ittyavira Mathai v. Varkey Varkey (AIR 1964 SC 907, 910 : (1964) 1 SCR 495) as under :

> "It is well settled that a court having jurisdiction over the subject-matter of the suit and over the parties thereto, though bound to decided right may decide wrong, and that even though it decided wrong it would not be doing something which it had no jurisdictions to do. It had the jurisdiction over the subject-matter of the suit and over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said, Courts have jurisdiction to decide right or to decide wrong and even though they decide wrong the decrees rendered by them cannot be treated as nullities ..... It merely makes an error of of law (which) can be corrected only (on appeal) in the manner laid down in the Civil Procedure Code."

100. The above principles are applicable with greater force to the present case. The Prescribed Authority, Surplus Area, and the Collector competent to make an order under Section 18 are both Assistant Collectors of the First Grade, that is co-ordinate authorities exercising separate and distinct jurisdictions. One cannot sit in appeal or revision over the orders of the other. If one feels that a certain order passed by the other in the exercise of distinct jurisdiction is erroneous it is open to it to get it rectified in the appropriate manner provided by the Act, i.e. by way of appeal, review or revision. As has already been observed earlier, the State or the Department, if aggrieved or prejudiced by a decision of an authority under this Act can avail of the remedy of appeal available under the Act. In any case, it can move the Financial Commissioner to set right the illegality or impropriety in revision. The Financial Commissioner, it may be recalled, has wide powers in revision to correct such errors committed by the inferior authorities in the exercise of their jurisdiction and there is no time-limit to the exercise of this revisional power by the Financial Commissioner.

101. Section 25 of the Act provides :

> "Except in accordance with the provisions of this Act, the validity of any proceedings

of order taken or made under this Act shall not be called in question in any Court or before any other authority."

102. On analysis of the Section, it is clear that it gives a two-fold mandate. On one hand it debars the jurisdiction of Courts or other authorities to question the validity of any proceeding or order taken or made under the Act, and on the other it prohibits the impeachment of such orders or proceedings in a manner which is not in accordance with the provisions of the Act. It indicates that decisions of the authorities under the Act can be challenged only by way of appeal review or revision as provided in Sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887, made applicable by Section 24 of the Act, or in the Rules made under the Act.

103. The Punjab and Haryana High Court has consistently taken this view. The Full Bench in Dhaunkal v. Man Kauri (supra) also held that the Assistant Collector while dealing with the purchase application under Section 18 has no jurisdiction to sit in appeal or revision over the order of the surplus Area Collector passed in surplus area proceeding and he has no jurisdiction to ignore that order.

104. The rule equally holds good in the converse. In the Full Bench decision in Mam Raj v. Punjab State (supra), it was held that once an application of the tenant under Section 18 has been allowed and the order is not set aside in appeal or revision, the same becomes final and remains immune to an attack against its validity on any ground including that of collusion, before the co-ordinate authorities under the Act dealing with the question of determination of surplus area. If I may say so with respect, this proposition laid down by the Full Bench is unexceptionable.

105. The above being the law on the point, it is clear that the orders dated September 15, 1961, not having been impeached by way of appeal, review or revision as provided by the statute, or in other proceedings recognised by law, had become final and conclusive, and the Prescribed Authority, Surplus Area was bound to accept them as valid. He could not go behind them, or himself sit in appeal over them. It was all the more disconcerting in this case because the Collector who passed the orders under Section 18 and the Collector who ignored those orders as Prescribed Authority, Surplus Area, happened to be the same Officer.

106. This takes me to the next question viz., if the order dated September 15, 1961, were not a nullity, could they be ignored under Section 10A on the ground that they amounted to "transfer" or orders of "other authority" affecting the utilization or causing the diminition of surplus area ?

107. Before embarking upon a consideration of this question, it is necessary to remember two fundamental canons of interpretation applicable to such statutes. The first is that if choice lies between two alternative constructions, "that alternative is to be chose which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system" (see Maxwell : Interpretation of Statute, 12th End., page 45). The second is that if there is an apparent conflict between different provisions of the same enactment, they should be so interpreted that, if possible, effect may be given to both (see King Emperor v. Benoari Lal Sarma. (72 IA57 AIR 1945 PC 48 : (1944) 49 CWN 178 (PC))

108. Let us now apply the above principle to the construction of Sections 10A and 18. It was already been noticed that Section 18 is designed to promote one of the primary objects of the Act viz., of procuring ownership of land of the tiller, on easy terms. It has also been seen that the self-

sufficing machinery of this Section is available for purchase their tenancies to the tenants inducted before or after April 15, 1953, by the landowner on land not being a part of his permissible area, equally with tenants settled on such area by the Government. In a way, every sale made by the operation of Section 18 in favour of a tenant admitted by the land-owner on his surplus area, causes diminition of the surplus area or affects the utilization thereof by the Government. If such sales were to be ignored under Section 10A, then it will reduce the working of the system of the Act to a mockery. It will mean "war" between Sections 18 and 10A. Such a construction of the Act will present a spectacle of manifest contradiction and absurdity of an Act giving a right by one hand and taking away the same by another. The adoption of such an interpretation may not completely, "obliterate" Section 18, as the High Court has said but it will certainly truncate it. A potent and substantial limb of Section 18, which according to the ruling of this Court in Sahib Ram's case (supra) entitles the category of tenants inducted by the landowner after April 15, 1953, to purchase their tenancies, would stand - as it were - "amputated" by judicial operation; such an interpretation will run counter to the fundamental principles of construction. The conflict between the two provisions can be avoided only if we read the general words "other authority" in Clause (c) of Section 10A, ejusdem generis with the specific words "judgment, decree or order of a court", which immediately precede them. Thus construed, these general words, "or other authority" will not take in an authority exercising jurisdiction under Section 18 (2) of the Act.

109. Nor can the words "transfer or other disposition of land" in clause (b) of Section 10A, be construed to include a transfer which results by the process of Section 18. The meaning of these words must be restricted to volitional dispositions of land made by the landowner, and cannot be extended to cover involuntary transfers brought about by operation of law or circumstance beyond the control of the landowner. The two types of involuntary transfers, namely, acquisition of land by Government under legal compulsion, or by an heir by inheritance which were inserted by the Amending Act 4 of 1959 in the saving clause of this provision and were later given a retrospective effect from April 15, 1953, are only clarificatory or illustrative of the original intent of the Legislature. These two instances are not exhaustive of the involuntary transfers which are outside the sweep of clause (b).

110. This interpretation of "transfer" has been consistently adopted by the Punjab and Haryana High Court in several cases. Some of them in which involuntary transfers of a kind other than those specifically mentioned in the saving clause of clause (b) camp up for consideration are reported in Bhajan Lal v. Punjab State and Bishen Singh ((1968) 70 ILR 664) v. Punjab State. ((1968) 47 LLT 284) This case decided by Mahajan J., proceeds on an interpretation of the same words used in Section 32-FF of the Pepsu Tenancy and Agricultural Lands Act, 1953, which is in pari materia with Section 10A of the Punjab Act; Lakshmi Bai v. State of Haryana ((1971) 73 Punj LR 815).

111. The above is the only reasonable interpretation of the words "transfer or other disposition of land" in Section 10A(b) which is consistent with the content and object of Section 18, and can reconcile and keep effective both the Sections.

112. Though the contention of Mr. Dhingra that the words "transfer or other disposition" in the said clause (b) do not embrace within their scope tenancies or leases created by the landowner - because such a right of the landowner is recognised by the Act vide Sahib Ram's case (supra) - is not altogether without force, yet I do not think it necessary to decide that point. The lease created by Smt. Lachhman ceased to subsist as soon as the Collector made the orders of purchase under Section 18 in favour of the erstwhile tenants. The question, whether the extinct lease which preceded the purchase orders, was a "transfer" or not, does not, therefore, survive for decision.

113. In the light of what has been said above, I am firmly of the opinion that the view taken by the High Court with regard to the interpretation and inter-relationship of Section 10A and 18 is sound and the answers given by it to the first three questions of law set out at the commencement of this judgment, are correct. I would therefore, uphold the same.

114. Now I turn to question No. 4, which arises in Amar Singh's case only : It is common ground that Fields Nos. 265 and 343 on April 15, 1953, were comprised in the tenancy of Sri. Chand and Nathu. The total area of these two fields is 67 bighas and 19 biswas equivalent to 42 ordinary acres, approximately. It is apparent from the record that the land in these two fields is entirely Barani and has no irrigation facilities, whatever. According to the scale adopted by the Collector, Surplus Area, for such land, these 42 ordinary acres will make 10.5 standard acres. The total area of Smt. Lachhman which has been found surplus is about 80 standard acres. The land comprised in these two fields is thus only one-eighth of her surplus area.

115. At no stage before the High Court, was it contended that Sri. Chand and Nathu held or owned in the State any other land apart from the said fields. In this Court, also, either in the grounds of appeal or otherwise, no such allegation or contention has been made. The "permissible area" which can be held or retained by a tenant under the Act is 30 standard acres. That is to say, the permissible limit of the area which could be held in common by Sri. Chand and Nathu, was 60 standard acres. Since it has been nobody's case that Sri. Chand and Nathu held any other area, and the land comprised in these two fields being 10.5 standard acres, was far less than their permissible limit, the High Court presumed - and I think, not wrongly that Fields Nos. 265, and 343 were held by the tenants Sri. Chand and Nathu within their permissible area.

116. It is well settled that surplus area has to be determined with reference to the situation as it obtained on April 15, 1953, when the Act came into force. This proposition is clear from Section 19F, also, which says that the Prescribed Authority shall be competent to determine the surplus area, referred to in Section 10A, of a landowner out of the lands owned by such landowner immediately before the commencement of the Act. If there still remained any doubt on this point, the same must be deemed to have been authoritatively dispelled by the decision of this Court in Bhagwan Das v. The State of Punjab ((1966) 2 SCR 511 : AIR 1966 SC 1867 : (1967) 1 SCJ 783). A plain reading of the definition of 'surplus area' in Section 2 (5-a) which has been quoted in a foregoing part of this judgment, shows that land held by a tenant within his permissible area, cannot be included in the surplus area of the landowner. Since on the determinative date i.e. April 15, 1953, Field Nos. 265 and 343, measuring 10.5 standard acres only, were held by the tenants, Sri. Chand and Nathu, within their permissible area, these fields could not, in view of the mandate of Section 2 (5-a), be included in the 'surplus area' of Smt. Lachhman. At the time, when the surplus Area Collector took up determination of the surplus area (which as pointed out in Dhaunkal's case (supra) implies incidental verification of the permissible areas of the landowner and the tenants, also) these fields were still comprised in a tenancy, though the holder of the tenancy was a different tenant. In these circumstances, the change of the tenant will not make these Fields accrete to the surplus area of the landowner. Such change of the tenant does not amount to a future "acquisition of land comprised in that tenancy of the landowner within the contemplation of Section 19A or 19B of the Act. Such a situation came up for consideration before a Division Bench (consisting of Sharma and Khosla, JJ.) of the Punjab High Court in Harchand Singh v. Punjab State ((1964) 66 PLR 285 : 1963 PLJ 144). Sharma, J., who spoke for the Bench, made these observations :

> "There can be no doubt that in the instant case the surplus area was to be determined on the date the Act came into force i.e. 15th April 1953, and further that the area in

> the cultivating possession of a tenant if within the prescribed limit was also to be excluded from consideration. Section 10A governs the disposition of land which was comprised in a surplus area at the commencement of the Act and not the land which was not surplus on that date or had become surplus after the coming into force of the Act. The latter case was evidently covered by Section 19A and 19B of the Act ..... the mere change in tenancies will not attract the provisions of these Sections provided the area which the tenant comes to occupy thereby does not exceed the permissible area. By changing a tenancy a landlord also cannot be said to have acquired the land comprising the tenancy because the land (which) belonged to him before hand continued to belong to him after the change in tenancy. The term 'acquire' has not been defined in the Act and so we have to accept its dictionary meaning as, "To make property one's own. To gain permanently. It is regularly applied to permanent acquisition's (Bouvier's Law Dictionary and Concise Encyclopedia, Eighth Edition, Vol. I, p. 114)."

These observations, in my opinion, contain a correct statement of law on the point.

117. For the foregoing reasons, I would hold that these two fields could not be included in the surplus area of the landowner, Smt. Lachhman and Section 10A was not attracted to a disposition of these fields either by an order made under Section 18 or otherwise.

118. In the result, I would dismiss both these appeals, leaving the parties to bear their own costs in this Court.

ORDER

119. In accordance with the judgment of the majority, the appeals are allowed, but in the circumstances, the parties will bear their costs throughout.

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