

PUNJAB AND HARYANA HIGH COURT

Ranjit Ram

Vs

The Financial Commissioner

(B.S Sandhawlia, C.J. B Dhillon and G Mital, JJ.)

15.05.1981

JUDGMENT

B.S. Dhillon, J.

1. In L. P. A. Nos. 479 of 1978 and 221 of 1980, and C. W. P. Nos. 264 of 1978, 3746 of 1979 and 2172 of 1980, which have been referred to Full Bench the following common question of law arise for decision.

(1) Whether a landowner whose land has been declared surplus under the Punjab Security of Land Tenures Act, 1953(hereinafter referred to as the Punjab Law) or under the Pepsu Tenancy and Agricultural Lands Act, 1955(herein after referred to as the Pepsu Law) and who has not yet been diverted of the ownership of the surplus area before the enforcement of the Punjab Land Reforms Act. 1972(hereinafter referred to as the Reforms Act) is entitled to select the permissible are his family ad for each of his adult sons in view of the provision of Section 4 read with Section 5(I) of the Reforms Act?

(2) Whether the exemption granted under the Pepsu Law and under Rule 8 of the Punjab Security of Land Tenures Rules, 1956, stand repealed by the Reforms Act ?

(3) Whether the tenant who purchased land under the provision of Section 18 of the Punjab Law is entitled to resist the recovery by way of arrears of land revenue for the amount yet due under the order passed under Section 18 of the Punjab Law of the plea that the amount of compensation so awarded is in excess than the one now provided under the provision of Section 15 of the Reforms Act?

2. In all these cases, the land of the landowners had been declared surplus before the coming into force of the Reforms Act. but the landowners had not yet been divested of the ownership as they were not dispossessed under the provision of the Pepsu Law in one case and tenants were not

settled after the surplus area was declared under the Punjab Law in the other cases. The landowners who have major sons have claimed on behalf of them that each one of the major sons of the landowners is entitled to permissible area in view of the provision of Section 4 and 5 and other provision of the Reforms Act. It is not disputed that the landowners were not divested of the ownership of the land before the Reforms Act was enforced. It may be pointed out that the Reforms Act was enforced on 2-4-1973 and the appointed day under the Act has been fixed to be 24th January, 1971 with a view to appreciate the points involved in the cases, it would be necessary to make mention of the salient features of the Punjab Law and the Pepsu Law. Under the Punjab Law, every landowner whether minor or major, was entitled to his or her permissible area. The land which was found to be beyond the permissible area of the landowner was to be declared surplus. However, the landowner did not cease to be the owner of the surplus land till the same was purchased by the tenants in accordance with the provision of Section 18 of the Punjab Law, the landowner is divested of the ownership of the land on the payment of the first installment by the tenant to the landowner in pursuance of the order passed under Section 18 of the Punjab Law. Till then the landowner continues to be the owner of the land even though declared surplus. It would thus be seen that under the provision of the Punjab Law a landowner could continue to be the owner of the land beyond the permissible area but he was entitled to the permissible area for his self-cultivation. Under the Pepsu law, the position was different. Each landowner was entitled to the permissible area as defined under the said law. The area which was beyond the permissible area was declared surplus and when the possession of the surplus land was taken over by the State Government, the landowner is divested of the ownership of the land and the same vests in the State Government. The land so declared surplus and taken possession of, can be utilised by the State Government for resettlement of the tenant by framing utilisation scheme. It would thus be seen that under the Pepsu law a landowner could not remain owner of the land more than the permissible area and the land vested in the State Government from the date the possession of the same was taken over by the State. It may further be noticed that under the Punjab Law and Pepsu Law, each landowner was considered as a separate unit and the concept of family was absent. Thus if a minor son of a landowner owned land in his own right, he was entitled to the permissible area, even though he was a member of the family.

3. The concept of the compulsory acquisition of land declared surplus as enshrined in the Pepsu Law has been brought in, in the Reforms Act, No person, as defined in the Reforms Act, can remain owner of the land more than the permissible area. The area so declared surplus under the Reforms Act shall vest in the State Government when possession is taken over by it under Section 9 of the Reforms Act, but as regards the unit of permissible area there is a considerable departure in the Reforms Act. The method of valuation has also undergone a great change.

4. The relevant provisions of the Punjab Land Reforms Act, 1972, in this regard may usefully be reproduced at this stage:--

"Section 3(1)":

"appointed day" means the twenty fourth day of January 1971.

(2) and (3) *** (4) "family in relation to a person means the person, the wife or husband, as the case may be of such person and his or her minor children, other than a married minor daughter;

(5) and (6) *** (7) 'minor' means a person who has not completed the age of eighteen years;

(8) and (9) *** (10) "person" includes a company, family, association or other body of individuals, whether incorporated or not and any institution capable of holding property;

(11) to (14) *** (15) 'surplus' area' means the area in excess of the permissible area, Section 4.(1), Subject to the provisions of Section 5, no person shall own or, hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area.

(2) "Permissible area" shall mean in respect of :--

(a) land under assured irrigation and capable of yielding at least two crops in a year (hereinafter in this Act referred to as "the first quality land"), seven hectares; or

(b) land under assured irrigation for only one crops in a year, eleven hectares; or

(c) barani land, 20. 5 hectares; or

(d) land of other classes including Banjar land, an area to be determined according to the prescribed scale with reference to the intensity of irrigation productivity and soil classification of such classes, having regard to the respective valuation and the permissible area of the classes of land mentioned at (a), (b) and (c) above subject to the condition that the area so determined shall not exceed 21.8 hectares"

Provided that :--

(i) Where land consists of two or more classes the permissible area shall be determined on the basis of relative valuation of such classes of land subject to the condition that it does not exceed 21. 8 hectares;

(ii) Whether the number of members of a family exceeds five, the permissible area shall be increased by one-fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members.

(3) Notwithstanding anything contained in sub-section (2), where any land is comprised in an orchard on the appointed day, such land shall for the purposes of determining the permissible area, be treated as barani land.

(4)(a) Where a person is a member of a registered co-operative farming society, his share in the land held by such society together with his other land, if any or if such person is a member of a family together with the land held by every member of the family shall be taken into account for determining the permissible area.

(b) Where a person is a member of a family, the land held by such person together with the land held by every other member of the family, whether individually or jointly, shall be taken into account for determining the permissible area.

(5) In determining the permissible area, any land which was transferred by sale gift or otherwise, other than a bona fide sale or transfer, after the appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred and the onus of proving the transfer as bona fide shall be on the transferor.

(6) For the purpose of valuation of land one and quarter hackers of banjar land shall be treated as equivalent in value to one hectare of Barani land (7) For evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of this Act as well as the land acquired by him after such commencement by inheritance, bequest or gift from a person to whom he is an heir shall be evaluated as if the evaluation was being made on the appointed day and the land acquired by him after such commencement in any other manner shall be evaluated as if the evaluation was being made on the date of such acquisition.

Section 5. Selection of permissible area and furnishing of declaration by certain persons:--(1) Every person, who on the appointed day or at any time thereafter, owns or holds land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area shall select his permissible area intimate his selection to the Collector, and where land is suitable in more than one district to the Collectors, concerned, through a declaration to be furnished in such form and manner and within such period as may be prescribed and if such person has an adult son, he shall also be entitled to select separate permissible area in respect of each such son, out of the land owned or held by him subject to the condition that the land so selected together with the land already owned or held by such son, shall not exceed the

permissible area of each such son.

Provided that where land is situate in more than one patwari circle, the declaration shall be supported by an affidavit in the prescribed form.

(2) In making the selection such a person, shall include, firstly land mortgaged without possession and, secondly, land under self-cultivation and date of commencement of the period prescribed for furnishing the declaration under sub-section (1), but shall not include area declared surplus under the Punjab Law, the Pepsu Law or this Act other than the area which was except from utilisation by the State Government immediately before such commencement.

Section 6. Collection of information in case declaration is not furnished. If any person fails to furnish the declaration in accordance with the provision of Section 5, the Collector shall obtain the requisite information in the prescribed manner.

Section 7. Determination of permissible and surplus areas:--(1) On the basis of the information given in the declaration furnishing under Section 5 or the information obtained under Section 5, as the case may be and after making such inquiry as he may deem fit, the collector shall by an order determine the permissible area and the surplus area of a landowner or a tenant, as the case may be.

(2) If any person referred to in sub-section (1) of Section 5 fails to furnish the declaration or files declaration containing information which is false or which he knows or has reasons to believe to be false or which he does not believe to be true, he shall be punishable with imprisonment which may extend to two years or with fine which may extend to two thousand rupees, or with both.

(3) Deleted.

(4) For the purpose of determining the surplus area of any person:--

(i) any judgment decree or order of a court or other authority obtained on or after the appointed day and having the effect of diminishing the surplus area of such a person;

(ii) a tenancy created on or after the appointed day in any land which has been or could have been declared as surplus area of such a person under the Punjab Law, the Pepsu Law or this Act; shall be ignored.

Section 8. Vesting of unutilised surplus area in the State Government:--Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provision of Section 15 the surplus area, declared as such under the Punjab Law of the Pepsu law which has

not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall on the taken by or on behalf of the State Government vest in the State Government from all encumbrance and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant, in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession only the mortgage rights shall vest in the State Government.

Section 9. Power to take possession of surplus area :--(1) The Collector may, by an order in writing, after an area has become surplus under the Punjab Law or the Pepsu Law or becomes surplus under this Act direct the landowner or tenant or any other person in possession of such area to deliver possession thereof, with in ten days of the service of the order on him, to such person as may be specified in the order.

(2) If the landowner or tenant or any other person in possession of such area refuses or fails without reasonable cause to comply with the order made under sub-section (1), the Collector may take possession of that area and may, for that purpose, use such force as may be necessary.

Section 11. Disposal of surplus area:--(1) The surplus area, which has vested in the State Government under Section 8, shall be at the disposal of the State Government.

(2) The State Government may, by notification in the official Gazette, frame a scheme for utilising the surplus area under the Punjab Law, the Pepsu Law or this Act by:--

(a) conferment of rights of ownership on tenants in respect of such land as is comprised in the surplus area of the landowner of such a tenant; and

(b) allotment to tenants members of Scheduled Castes and Backward Classes and landless agricultural workers, of an area not exceeding two hectares of the first quality land or equivalent area, provided that the total area held or owned by any such allottee, after the allotment shall no exceed two hectares of first quality land or equivalent area (3) Any scheme framed by the State Government under sub-section (2) may provided for the terms and condition as which the rights of ownership are to be conferred on the tenants ad also the terms and conditions on which the right of ownership are to be conferred on the tenants and also the terms and condition of which the land comprised to the surplus area is to be allotted.

(4) The State Government may, by notification in the Official Gazette add to, amend, vary or revoke any scheme made under this section.

(5) 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 any law for the time being in force or by an heir by inheritance, no transfer by an heir by inheritance no transfer by an heir by inheritance, no transfer or other disposition of land which is comprised in the surplus area under the Punjab Law, the Pepsu Law or this Act. shall affect the vesting thereof in the State Government or its utilisation under this Act.

(6) The utilization of any surplus area before the commencement of this act will not affect the right of the terms to purchase land in accordance with the purchase land in accordance with the provision land in accordance with the provision of Section 15 of the right of the landowner to receive rent from the tenant settled on the surplus area till the tenant becomes the owner thereof.

(7) Where succession has opened after the surplus area or any part thereof, has been determined by the Collector, the saving specified in favour of an heir by inheritances under sub-section (5) shall not apply in respect of the area so determined.

Section 15. Saving of certain rights of tenants to purchase land:--(1) Notwithstanding anything contained in this Act, a tenant who was entitled to purchase the land comprised in his tenancy under Section 18 of the Punjab Law or Section 22 of the Pepsu law as the case maybe immediately before the commencement of the Act shall be entitle to purchase such land from the landowner on the same terms and condition as were applicable immediately before such commencement.

Provided that:--

(i) the amount payable by the tenant for the land shall be equivalent to ninety times the land revenue (including rates and cesses) payable for such land or give hundred rupees per hectares, whichever is less, and

(ii) the procedure for purchase of such land shall be an is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act.

(2) An application for the purchase of land under Sub-Section (1) shall be made to the Assistant Collector of the first grade having jurisdiction who shall, after giving notice to he landowner and after making enquiry in the prescribed manner, determine the amount payable in respect thereof.

(3) The tenant may pay the amount determined under sub-section (2) either in lump sum of in half-years installments not exceeding fifteen in the manner prescribed.

(4) On the payment of the entire amount or the first installment thereof, as the case may be 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 of the land, put him in possession thereof, subject to the provision of the Punjab Tenancy Act, 1887.

(5) If a default is committed in the payment of any of the installments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(6) If the land is subject to mortgage at the time of purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage amount shall be a charge on the purchase price.

"Section 17. Abrogation of pending decrees orders and notices:--No decrees, or order of any Court or authority and no notice or ejectment shall be valid save to the extent to which it is consistent with the provision of this Act."

"Section 26. Power to make rules:--(1) The State government may, by notification in the official Gazette, make rules for carrying out the purposes of this act.

(2) x x x x x Section 28. Repeal and saving :--(1) The Punjab Security land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 in so far as these are inconsistent with the provision of this Act, are hereby repealed.

(2) The repeal of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall be affect-

(i) The proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactments which shall be continued and disposed of as if this act had not been passed, and the surplus area so determined shall vest in and be utilised by the State Government in accordance with the provisions of this Act and the cases pending before the Pepsu land Commission immediately before the date of commencement of the Act shall stand transferred to the Collector of the district concerned for disposal.

Provided that such proceedings shall, as far as may be, continued and disposed of from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act:

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area referred to above, in accordance with the provision of this Act;

- (ii) the previous operation of the said enactment or anything duly done or suffered thereunder,
- (iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactment in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed:

Provided that such proceeding of remedy shall, as far as may be instituted, continued or enforced in accordance with the procedure specified by or under this Act"

5. From the scheme of the Reforms Act, it is obvious that the concept of the permissible area of a landowner has undergone a basic change. The surplus area has not to be determined in relation to a family which has been defined under Reforms Act. Landowner has been given right to select permissible area for his adult son or sons, as the case may be in addition to the permissible area of the family. This aspect of the Reforms Act appears to be beneficial for the landowners, it may be observed that the real object of the enactment of the Reforms Act is to divest the landowner of the ownership of the land more than the permissible area and to distribute the same to land loess people. The Legislature took note of the fact that if a landowners adult son does not own any land or owns land less than the permissible area, the landowner is also entitled to select the permissible area from his land for his adult son. This provision is also to further the object of the Act as the land is being given to a land less person even though the landless person happens to be the son of the landowners.

6. But the provisions of the Reforms Act are also unfavorable to the land owner in other respect. Under the Punjab law even minors, who owned land were entitled to the permissible area. Thus if a landowner has minor children, who owned land each one of them was entitled to have permissible area of his own right. This right has not been taken away as according to the definition of family, the same shall consist of the person, wife or husband as the case may be, of such person and his or heir minor children other than the married minor daughter as dependent. The family has now been given its permissible area and the minor children of there permissible area.

7. As already observed, even if the land of a landowner has been declared surplus, either under the Punjab Law or under the Pepsu Law, and if the land of landowner has not been utilized and further has not been purchased by the tenant in case of Punjab Law, and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu Law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under Section 8 of the

Reforms Act. Where there has been provision of the land under Section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab Law or the Pepsu Law which has not been utilised till the commencement of the Reforms Act, shall on the date or the date on which the possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances. It would thus be seen that such landowner's surplus area shall vest in the State Government on the date of taking of possession by the State Government under Section 8 of the Reforms Act and till then the landowners are not divested of the ownership of the surplus land. Thus, if a landowner owns or holds land which is beyond the permissible area as defined under Section 4 and 5 of the Reforms Act, his case shall have to be processed again by the Collector and the determination of the permissible area and the surplus area has to be according to the mandate of Section 4 and 5 of the Reforms Act, Sub-Sec (1) of Section 4 of the Reforms Act contains a clear bar that no person shall own or hold land in excess of the permissible area and when the case is re-processed by the Collector, the permissible area as provided for in Section 4 and 5 of the Reforms Act has to be allowed to the landowner. It may be observed that the permissible area as defined under subsection (2) of Section 4 of the Reforms Act is subject to the provisions of S. 5 of the Reform Act. This is so because a clear provision has been made to this effect in sub-section (1) of Section 4 of the Reforms Act. Under Section 5 of the Reforms Act. Under Section 5 of the Reforms Act if a landowner has an adult son, he shall also be entitled to select separate permissible area in respect of such son out of the land owned or held by him subject to the condition that the land selected together with the land already owned or held by such son shall not exceed the permissible area of each such son. It would thus be seen that merely because the case of a landowner had already been processed under the Punjab Law or the Pepsu Law would not be a bar for the application of the provision of Section 4 read with Section 5 of the Reforms Act. The provisions of sub-section (1) of Section 5 of the Reforms Act entitle the landowner to select permissible area for his adult son from the land owned or held by him in addition to the permissible area of the family. It is clear that the rest of the provision made in sub-section (1) and (2) of Section 5 of the Reforms Act are procedural. A landowner has been given option to furnish a declaration containing his selection of permissible area in which he is bound to include, firstly land mortgaged with possession and secondly land under self-cultivation. However, under the provision of sub-section (2) of Section 5 of the Reforms Act a landowner cannot have preference to include the land declared surplus under the Punjab Law or the Pepsu Law other than the area which was exempt from utilisation by the State Government immediately before the commencement of the Reforms Act. The contention raised by the learned counsel for the State that since the area which has been declared surplus under the Punjab Law or Pepsu Law, other than which was exempt from utilisation cannot be preferred to be included in the declaration for reservation of the permissible area, therefore, landowner is not entitled to select permissible area for his adult son from the land so

declared surplus is really without any merit. As already observed, the permissible area of a landowner as defined in sub-section (2) of the Section 4 of the Reforms Act is subject to the provision of Section 5. Section 5 entitled the landowner to select permissible area for his adult son in addition to the permissible area of his family. The right of the landowner to get permissible area for his adult son in addition to the permissible area of the family cannot be taken away merely by his not filing a declaration under Section 5 of the Reform Act. If such landowner fails to make a declaration under Section 5 of the Reforms Act the Collector has been enjoined upon to obtain requisite information in the prescribed manner in accordance with the provision of section 5 of the Reforms Act. Section 7 of the Reforms Act enjoins duty on the Collector to pass an order determining the permissible area and the surplus area of a landowner or a tenant, as the case may be. It cannot be successfully contended that in case a landowner fails to make declaration under Section 5 of the Reforms Act, his adult son will not be given permissible area by the Collector when an order is passed under Section 7 of the Reforms Act. The failure of a landowners to furnish the declaration under Section 5 of the Reforms Act has been made an offence under the provision of sub-section (2) of the Section 7 of the Reforms Act and a landowner is liable to be imprisoned for a term which may extend to two years or with fine, which may extend to two thousand rupees, or with both. If the Legislature intended that in a case where the landowner fails to make declaration he will not be entitled to get permissible area for his adult son when so determined under Section 7 of the Reforms Act, it would have clearly made provision of this effect in sub-section (2) of Section 7. Since landowner has been given right to get permissible area for his adult son as well omission of the landowner to file the declaration would not take away the right of his entitlement to get permissible area for his adult son in addition to the permissible area of the family collector is duty bound while passing an order under Section 7 of the Reforms Act to allow permissible area for the adult son as well. It is clear that the entitlement of the land owners to get permissible area for his adult son is out of the land of the landowner held or possessed by him whether already declared surplus or not sub-section (2) of Section 5 of the Reforms Act is only procedural section and an omission by the landowner of not filing a declaration under Section 5 of the Reforms Act would not take away his right for getting permissible area for his adult son when the Collector has been enjoined upon under Section 7 of the Reforms Act to pass an order determining the permissible area and the surplus area of a landowner. It may be appropriate observed at this place that the permissible area and surplus area is to be determined keeping in view the provision of Section (1) of the 5 of the Reform Act. The combined reading of the said provision would provide guidelines to the Collector to determine the permissible area or the surplus area of the landowner, I have already come to the conclusion that the remaining provision of Section 5, which deal with the procedure for selection are procedural and the same cannot be made use of by the Collector under Section 7, so as to nullify the mandatory provisions of Section 4 and Section 5(1) which define

permissible area and surplus area. If the Legislature intended to exclude the land which has already been declared surplus from the operation of the provisions of the Reforms Act, a clear provision would have been made to that effect in S. 5(1) of the Reforms Act, but on the contrary. I find that the landowner has been entitled to selected separate permissible area in respect of his adult son out of the land owned or held by him. As already observed till the landowner is divested of the rights of ownership, he continues to hold and own the land.

8. The matter may be examined from another angle. Even if for arguments sake it be presumed that there is contradiction in the provision of section 5 so as to hold that whereas the first part of Section 5(1) gives substantive right to the landowner to select permissible area for his adult son in addition to the permissible area of his family, the other part of sub-section (1) and sub-Section (2) of section 5 restrict his choice only to the area specified therein even then the part of the section which given them sanative right to the landowner to select the permissible area for his adult son has to take precedence and the remaining part which is procedural has to give way. It is, therefore, clear that from whatever way the matter is viewed the answer to question No. 1 has to be in the affirmative.

9. The learned single Judge in C. W. P. No. 4074 of 1973 which is under appeal L. P. A. No. 458 of 1978, relied on a bench decision of this Court in Nachhattar Singh v. The Collector Agrarian Bhatinda, 1975 Pun LJ 8. It may be observed that this decision was given at notice of motion stage and not after regular hearing, I have very carefully examined this judgment and I am of the opinion that the decision in Nachhattar Singh's case (supra) is not the correct view of the legal position as enshrined in the provisions of the Reforms Act. The learned Judges, who delivered the Judgment of course, made mention of the provision of Section 4 and 5 of the Reforms Act, but did not consider the implication of the provision of Section 4 and 5 read with Section 7 of the Reform Act. It is no doubt true that under the provision of Section 8, the area which has been declared surplus under the Punjab Law or the Pepsu Law, can also vest in the State Government but this section cannot be interpreted to mean that the area of a landowner declared surplus whose case falls within the purview of Section 4 and 5 of the Reforms Act, can be taken possession of under Section 8 of the Reforms Act. There maybe cases where the surplus area has been declared under the Punjab Law or the Pepsu Law, but such cases do not fall within the purview of Section 4 and 5 of the Reforms Act. In those cases the area as declared surplus becomes final and the State Government under the provision of Section 8 of the Reforms Act is entitled to take possession of the same so as to divest he owner of the ownership of the land so declared surplus. Thus the provision of Section 8 of the Reforms Act would be fully complied with then possession in such cases is taken by the State. Section 8 of the Reforms Act cannot be interpreted in seclusion The said provision is subject to the provision of Section 4 and 5 read with

Section 7 of the Reforms Act. The legislature clearly intended that landowners, who own land more than the permissible area as defined in the Reforms Act. Their cases had to be processed again on the touch stone of the provision of Section 4 and 5 of the Reforms Act. This conclusion or ours is further reinforced when I find that in view of the provision of Section 28(2) of the Reforms Act, all pending cases at the time of enforcement of the Reforms Act have to be processed in accordance with the provision of the Punjab Law or Pepsu Law, as the case may be the cases of the landowners who owned land more than the permissible area either under the Pepsu Law or under the Punjab Law, could be only of two categories firstly the cases which already stand concluded before the enforcement of the Reforms Act, and secondly the cases which were yet pending at the commencement of the Reforms Act. The Legislature clearly provided that all such pending cases shall be processed as if the Land Reforms Act had not been passed, but the area so declared surplus shall vest in the State Government in accordance with the provision of the Reforms Act. Cases can be visualised where landowners might have been given permissible area, which area may happen to be more than the permissible area under the Reforms Act. such cases after the pending proceedings are disposed of in accordance with the provision of the previous acts, the Legislature intended that the same may be reprocessed in accordance with the provision of Section 4 and 5 of the Reforms Act. Thus the scheme of the Act appears to be clear that all cases shall first be processed in accordance with the provision of the Punjab Law or the Pepsu Law, as the case may be and if out of those cases, any case satisfies the ingredients of Section 4 and 5 of the Reforms Act, the same shall have to be reprocessed. It would thus be seen that finality in all cases where the area had been declared surplus, has not been given by the Legislature and some cases which fall within the purview of Section 4 and 5 of the Reforms Act, shall have to be reprocessed even if the area had already been declared surplus under the Punjab Law or the Pepsu Law. The learned Judges in Nachhattar Singh's case (supra) did not consider the effect of the area having not vested in the State government and thus the landowner continuing to be the owner of the land and holding the same I accordingly overrule the bench decision in Naccattar Singh's case (supra).

10. In my considered opinion the language used by the Legislature in enacting the provision of Section 5(2), 8, 9(1), 11(2) and 11(5) of the Reforms Act, it not of any help one way or the other to answer question No. 1, I have already come to the conclusion that the provision of sub-section (2) of section 5 are only procedural and cannot be taken to have amended the definition of permissible area and surplus area as defined under Section 4 read with section 5(1) of the Reforms Act. Section 8 of the Reforms Act deal with the vesting of unutilized surplus area in the State government. As already observed this section will have full play even if question No. 1 is answered in the affirmative. It cannot be successfully contended that Section 8 will become redundant if question No. 1 is answered in affirmative. Section 9(1) deals with he power of the

Collector to take possession of surplus area and does not give any guidance for interpreting the definition of permissible area and surplus area as contained in Section 4 and 5 of the Reforms Act. under Section 11(2) the State government, by notification in the official Gazette, has been empowered to frame a scheme for utilizing the surplus area under the Punjab Law, the Pepsu Law or the Reforms Act sub-section (5) of S. 11 provides that save in the case of land acquired by the State government under any law for the time being in force or by an inheritance, no transfer or other disposition of land which is comprised in the surplus area under the Punjab Law, the Pepsu Law or Reforms Act, shall affect the vesting thereof in the State government or its utilization under the Reforms Act. Even if question No. 1 is answered in the affirmative the provision of sub-sec (2) or sub-sec (5) of Section 11 will have full play. As regards the provision of Section 28 of the Reforms Act, I have already observed in the earlier part of the judgment that the said provision does not give an indication that where a person owns to holds land in excess of the permissible area, as defined in Section 4 and Section 5(1) of the Punjab Law, their cases have to be reprocessed in accordance with the provision of the Reforms Act.

11. For the reasons recorded above, I answer question No. 1 in the affirmative and hold that a landowner, whose land has been declared surplus under the Punjab Law or under the Pepsu Law and who has not yet been divested of the ownership of the surplus area before the enforcement of the Reforms Act, is entitled to select the permissible area for his family and for each of his adult sons in view of the provision of Section 4 read with section 5(1) of the Reforms Act.

12. As regards question No. 2 Section 32-A of the Pepsu Law provided that notwithstanding anything contained to the contrary in any law, custom, usage or agreement, no person shall be entitled to own or hold as landowner or tenant land under his personal cultivation within the State which exceeds in the aggregate the permissible limit Section 32-K of the Pepsu Law is as follows:--

"32-K. (1)The provision of Section 32-A shall not apply to-

- (i) orchards where they constitute reasonably compact areas;
- (ii) specialised farms engaged in cattle breeding,, dairying or wool raising;
- (iii) sugarcane farms operated by sugar factories;
- (iv) efficiently managed farms which consist of compact blocks on which heavy investment or permanent structural improvements have been made and whose break-up is likely to lead to a fall in production;

(v) lands belonging to registered co-operative societies formed for the purpose of co-operative farming provided the land owned by an individual member of the society does not exceed the permissible limit, and

(vi) Where a landowner given an undertaking in writing to the Collector that he shall, within a period of two years from the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, Plant an orchard in any area of his land not exceeding ten standard acres, such area of land.

(2) Where a landowner has, by an undertaking given to the Collector, retained any area of land with him for planting an orchard and fails to plant the orchard within a period of two years referred to in clause (vi) of sub-section (1), the land so retained by him shall on the expiry of that period vest in the State Government under Section 32-E and compensation therefor shall be payable in accordance with the provision of this Chapter, (3). Notwithstanding anything contained in this Act (a) the exemption specified in Clause (vi) of sub-section (1) shall not be allowed unless the orchard planted within the period specified therein is found to be an orchard also at the time of granting the exemption.

(b) the exemptions specified in cls. (i), (ii), (iii), (iv) and (v) of Sub-section (1) shall not be allowed unless the orchards constituting reasonably compact areas or the specialised farms engaged in cattle breeding, dairying or wool raising or the sugarcane farms operated by sugar factories or the efficiently managed farms or the lands belonging to registered co-operative societies, as the case maybe are found to be so also at the time of granting the exemption.

(c) The exemption specified in clause (iv) of sub-section (1) shall not be allowed unless the efficiently managed farm satisfies the condition hereinafter appearing in the succeeding sub-sections.

(4) For determining whether a farm should be exempted under clause (iv) of sub-Section (1), the Pepsu Land Commission shall award to the farms, In respects of the harvests of Rabi and Kharif for the year 1956, marks in the following manner:--

(a) the total number of marks shall be one thousand and the various features, including the feature relating to yield, of crops per standard acre, for which marks are to be awarded and the maximum marks to be awarded for each feature shall be such as may be prescribed,

(b) The marks shall be awarded for each feature subject to the maximum marks prescribed for the feature,

(c) in awarding marks for the feature relating to yield of crops, the Pepsu Land commission shall apply such standards of yield crops per standard acre as may be prescribed;

(d) the award of marks shall be in relation to the yield of each prescribed crop in a particular harvest;

(e) area under crops for which standard yield are not prescribed or areas on which prescribed crops are sown but such areas are less than five per centum of the total area of the farm, shall be ignored for the purposes of awarding marks;

(f) For awarding marks to a farm for the feature relating to yield of crops, the average of the marks awarded for the yield of each prescribed crops shall be regarded as the marks awarded to that farm for the feature relating to yield of crop;

(g) for awarding marks in respect of each harvest, the evaluation of land under each crops for converting into standard acres, shall, notwithstanding anything to the contrary I Section 32-NN, be made in relation to the class of land I existence at the time of such harvest;

(h) in awarding marks, the Pepsu Land Commission shall give due allowance for any loss in the yield of crops due to any natural calamity or circumstances beyond the control of the landowner.

(i) where any area of the farm has not been brought under any crop on any ground, other than the normal rotation of crops or circumstances beyond the control of the person concerned, the Pepsu Land Commission may deduct from the total number of marks awarded to he farm such number of marks not exceeding one hundred as it may deem fit;

(j) no farm which is awarded less than eighty per centum of the total number of marks prescribed in respect of all features shall be exempted under clause (iv) of sub-section (1).

(5) Every person, to whom any exemption is granted under clause (iv) of sub-section (1), shall furnish from time to time to such authority and in such form and manner such periodical information relating to the produce of different crops the programme regarding different agricultural operation such as use of improved seeds and fertilizers, adoption of plant protection measures like spraying and maintenance of standards of yield of crops as may be prescribed.

(6) Every exemption of a farm under clause (iv) of sub-section (1) shall be liable to be reviewed by a board consisting of the Commissioner of the Division concerned as Chairman and tow other persons having special knowledge or practical experience f land or agricultural problems as members to be appointed by the State government by notification who may be paid such allowance as maybe prescribed.

(7) The first review under sub-section (6) shall be made by the board after the expiry of at least three years from the date on which exemption to a farm is granted and thereafter periodical reviews shall be made by the board so that a period of no less than three years shall intervene between consecutive reviews.

(8) In reviewing the exemption of efficiently managed farms, the board, shall take into account the periodical information furnished in respect of the farm under sub-section (5) and shall as far as may be, be guided by the same provision of this Act and the rules made thereunder as are applicable to the grant of exemption under this section and marks shall be awarded by the board for all the harvest during the period between the grant of exemption and the review or the period between two consecutive reviews as the case may be.

(9) If, during the course of any review, the Board finds that any area of land included in a farm exempted under clause (iv) of sub-section (1) is inherited by an heir of the landowner and such area of land with the lands, if any, already owned by him, does not exceed in the aggregate the permissible limit, the Board shall advise the State Government that such area of land should be excluded from the farm exempted under clause (iv) of sub-section (1); and where such advice is so tendered by the Board, the Board shall if such heir so desires, exclude such area of land for the purpose of reviewing the exemption relating to the farm from the date of inheritance.

(10) The Board shall after each review advise the State Government whether the exemption of any farm should continue or should be withdrawn or whether any area of land included in the farm should be excluded therefrom under sub-section (9).

(11) The advice tendered by the board under sub-section (10) shall be binding on the State Government.

(12) Where an exemption in respect of any farm is withdrawn by the State Government on the advice of the board:--

(a) if a landowner is alive, the whole of the area of such; and

(b) if the landowner is dead, the whole of the area of such farm. Except to the extent of the land which is inherited by the heirs of the land-owner and which with the lands, if any already owned by such heirs, does not exceed in the aggregated the permissible limit; shall be declared to be the surplus area. Provided that such declaration shall not be made without giving an opportunity of being heard to the landowner or the heirs as the case may be.

(13) In declaring the surplus area, under this section, the provision of this Act, shall as far as maybe, apply.

(14) Any rules made under Section 25 for giving effect to the provision of this section maybe made retrospectively from the 30th October, 1956."

13. The Pepsu Land Commission was to be constituted in accordance with the provision of Section 32-P of the Pepsu Law for advising the State Government with regard to exemption of lands from the ceiling in accordance with the provision of Section 32-K of the Pepsu Law. As is clear the provisions of Section 32-A shall not apply to the lands which were sought to be exempted under the provisions of Section 32-K of the Pepsu Law. It would be seen from the provision of Section 32-K that in some categories of land exempted under this provision a periodical review has been provided and the exemption could thus be withdrawn. The only other provision which deals with the exemption under the Pepsu Law is section 51 wherein the lands belonging to the persons defined in clauses (a) and (b) were exempted from the provision of the Act, under Section 51-A of the Pepsu Law, the lands granted for gallantry before January 26, 1950 were also exempted.

14. Under the Punjab Law there is no specific provision in the Act to provide for exemption. However, the State Government in pursuance of the power vested in it under Section 27 of the Punjab Law framed the rules called the Punjab Security of Land Tenures Rules, 1956(hereinafter referred to as the Rules). Part-III of the Rules deals with exemption of certain areas from the surplus area. The relevant provisions of this Part-III are as follows:--

"B. Exemption of orchards, tea estates, co-operative garden colonies and well-run farms.--(1) If any landowner wishes to claim exemption on the ground that his surplus area is under a tea estate, or forms part of a well-run farm he may, within a period of thirty days from the date of publication of Revenue Department, Notification No. (632-A. R. I (II)-61/492, dated the 13th February, 1961), or from the date of the order, passed by the Collector or the Special Collector, declaring the surplus area, or where an appeal against such order has been preferred to the Commissioner, whichever, is earlier apply in Form H together with relevant information in Form-J to the Collector of the District, In which the land for which exemption is claimed is situate.

(2) Cases relating to co-operative garden colonies and orchards received by the Committee before the date of publication of the notification referred to in sub-rule (1) shall be disposed of by the Collector or the Special Collector as the case may be accordance with the provision of the Act.

(9) Committee to decide landowners' applications for exemptions of orchards and well-run

farms.-(1) On receipt of the application in Form H, the Collector shall place it before a committee consisting of himself, as Chairman, one non-official member and an official of the Agriculture Department, both to be nominated by Government. Government may if considered necessary also nominate an officer of the Revenue Department to represent it on the Board.

(2) The Committee shall before dekling the applications, give the landowner an opportunity of presenting his case. Proceedings before the Committee will be of a Character and the Chairman shall record the decision of the Committee, giving reasons briefly for the decision taken and announce it to the party concerned.

In the event of a difference of opinion between the members of the Committee the majority view shall prevail, and where opinion is equally divided, the Chairman will decide which of the two view shall prevail.

(10) Considerations on which a landowner's application in form h is to be decided - (1) In deciding the landowners application the committee shall exclude from the surplus area to be utilised for the resettlement of ejected tenants:--

(a) * * * * *

(b) Any area that is under (*****) tea estate provided such (*****) tea estate was in existence at the commencement of the Act.

(c) Any area that is part of well-run farm.

(2) To decide if a farm is well-run the Committee shall assign it marks in the manner explained in Rule 11, and classify it as follows:--

Class A-It if is awarded 80 per cent or more marks.

Class B-It if is awarded 60 to 80 per cent marks.

Class C-It is awarded less than 60 per cent marks (3)(a) A Class "a" farm shall be deemed be a well-run farm.

(b) Fifty per cent of the area under a farm of Class 'B' shall be left with the owner, according to his choice, ad the rest declared as available for resettlement of tenants, ejected or liable to ejection.

(c) The entire area under a farm of Class "c' shall be declared as available for resettlement of such tenants.

(4) * * * * *

11. Assignment of marks to farms for the purpose of classification--(1) The maximum marks to be awarded to a farm for the purpose of classification, shall be 1,000.

(2) The features for which marks are awardable are those given in Schedule A, and marks shall be awarded to' each features, subject to the maximum marks noted against each I this Schedule:

Provided that in allotting marks for 'yields' the Committee shall apply the standard yield given in schedule B (subject to such suitable adjustments as may be considered necessary on account of natural calamities).

11-A Revision of Classification of well-run farms--(1) The classification of Class "A' or class "B" farm referred to in sub-rule (2) of rule 10 shall be liable to be reviewed by the committee.

(2) The First review shall be made by the Committee in the months of January and February after the expiry of at least three years from the date on which exemption to a farm is granted and thereafter periodical review shall be made by the committee so that a period of not less than three years shall intervene between two consecutive reviews.

(3) Every person to whom as exemption is granted under Rule 10, shall furnish information to the Collector of the district in which the land is situate, in Form--J-I personally or through his recognized agent or by registered post (acknowledgement due).

(4) In reviewing the exemption of well-run farms the committee shall take into account the information furnished in respect of the farm in Form-J-I and shall, as far as maybe be guided by the same rules as are applicable to the grant of exemptions in respect of areas claimed to be under well-run farms and marks shall be awarded by the Committee for the harvest immediately preceding the first or subsequent reviews as the case may be.

(5) If, during the course of any review the committee finds that any area of land included in a farm exempted under Rule 10, is inherited by an heir of the landowner and such area of land with the other lands if any already owned by him, does not exceed in the aggregate his permissible area, the Committee shall if such heir so desires exclude such area of land for the purpose of reviewing the exemption relating to the farm the date of inheritance.

(6) If, an a result of review the whole or any part of the farm because of having ceased to earn exemption in accordance with the classification given in subrule (2) of Rule 10, is declared available by the Committee for resettlement it maybe utilised by the Circle Revenue Officer in accordance with the procedure laid down in these rules.

Provided that such declaration shall not be made without giving an opportunity of being heard to the landowner or the heir, as the case may be.

"12. Appeal from the Committee's decision.--A landowner aggrieved by a decision of the Committee may, within 30 days from the date of announcement of its decision appeal to the government whose decision shall be final."

15. In view of the provision of section 14 of the Reforms Act, the lands belonging to religious or charitable institution defined under this provision, have been exempted from the operation of Chapter -II of the Act, Section 27 of the Reforms Act provides that the provision of this Act shall not apply to the lands mentioned in this section. In view of the provision of Section 28(1) of the Reform Act, the provision of Punjab Law and Pepsu Law in so far as they are inconsistent with the provisions of the Reforms Act have been repealed. It would thus be seen that in the statute itself the lands which were sought to be exempted either from the operation of Chapter-II or from the provision of the Reforms Act have been specified and the categories of lands which were exempted either under the Punjab Law or the Pepsu Law and which do not find mention in any of the above mentioned provision of the Reforms Act have thus been withdrawn. Indication to this effect is also available from the provision of sub-section (2) of Section 5 of the Reforms Act wherein a land-owner has been permitted to include exempted land in his selection of permissible area while making the declaration. If the exempted lands were entitled to continue with the exemption there was no question of the said lands being brought within the purview of Section 4 and 5 of the Reforms Act. It is clear that under the Punjab Law, there was no provision in the Act and the exemptions were only granted under Part-III of the Rules. The said rules in so far as they are inconsistent with the provision of the Rules framed under the Land Reforms Act called the Punjab land reforms Rules, 1973 have also been repealed in view of the provision of Rule 23 of the said Rules. That being the position, I am of the opinion that the exemption which do not find mention in the provision of the Land Reforms Act stand automatically withdrawn.

16. As regards the third question the provision of Section 15 of the Reforms Act have already been reproduced in the earlier part of the judgment. The provision of sub-section (1) of Section 15 of the Reforms Act, save the rights of the tenant to purchase land which had accrued to him under Section 18 of the Punjab Law or Section 22 of the Pepsu Law. This provision does not give any fresh right to the tenants to purchase land, but has only kept intact the right which had vested in the tenants in view of the provision of the Punjab Law or the Pepsu Law, it is also clear that this provision is applicable to such cases only where the order of purchase either under section 18 of the Punjab law or under Section 22 of the Pepsu Law has not yet been passed before the enforcement of the Reform Act. The quantum of compensation has been reduced as compensation has been reduced as compared to the earlier quantum provided under Section 18 of

the Punjab Law. It is clear from the provision of Section 15(1) of the Reforms Act that the quantum of compensation mentioned therein will apply to cases where the order determining compensation had not yet been passed. The other provision that the tenant shall become owner of the land on the payment of entire amount or the first installment thereof in the Punjab Law and the Reforms Act remains the Same. Similarly the provision regarding the recovery of the defaulted payment of the installments from the tenants by the land-owner by way of land revenue are verbatim the same in the Punjab Law and in the Reforms Act. The contention of Mr. Behl, the learned counsel for the tenants, that since the quantum of compensation. Has been varied under the new Act therefore the recovery of payment of any installment due as arrears of land revenue in pursuance of the order passed under Section 18 of the Punjab Law before the enforcement of he Act, would run counter to the provisions of Section 15 of the Reforms Act, is without any merit. As already observed the quantum of compensation has been reduced under Section 15(1) of the Reforms Act. regarding the land which is yet to be purchased by the tenants. This provision clearly deals with those cases which are yet to arise after the enforcement of the Act, but cases where orders have already been passed determining the compensation under Section 18 are nowhere intended to be reopened by the legislature. It may be observed that according to the Punjab Law and so also the Reforms Act, the tenant becomes the owner of the land the moment he pays the first installment of the compensation. The land-owner is divested of the ownership of the land which from the date vests in the tenants. There is no inconsistency as regards the provisions o recovery in the Punjab Law and in the Reforms Act. The provision are analogous. Had the provision regarding the recovery of the arrears of installments as arrears of land revenue been omitted in the Reforms Act, a plausible argument cold be raised that there was inconsistency and that the order passed under the Punjab Law was not valid. Since I have come to the conclusion that the mode of recovery under the Punjab Law are invalid, and the provision of Section 17 of the Reforms Act are of no consequence this state, reference may be usefully made to the provision of clause (ii) of sub-section (2) of Section 28 of the Reforms Act and s also to clause (iii) of said sub-section under these clauses, the previous operation of the Punjab Law and the Pepsu Law or anything duly done or suffered thereunder shall not be affected by the repeal. When an order under Section 18 of the Punjab Law is passed and the land is transferred to the tenant subject to the condition of payment of compensation to the land-owner right of both the parties stand determined both the sides suffer rights and liabilities and such right ad liabilities have been kept intact in spite of the repeal of he previous enactment. Similarly the right of a land-owner to recover the defaulted installment as arrears of land revenue has been kept intact under clause (iii) as well under this clause, all rights, privileges, obligation or liabilities acquired, accrued or incurred under the Punjab Law and the Pepsu Law in so far as the same are not inconsistent with the provision of the Reforms Act, such rights, privilege obligation or liabilities may be instituted continued or enforced as if the Punjab Land Reforms Act had not yet been

passed, provided such proceedings or remedy as far as may be instituted continued or enforced in accordance with the procedure specified by or under the Reforms Act. Thus right of a landowner to recover the defaulted payment of compensation as arrears of land revenue is also saved by this sub clause of Section 28 of the Reforms Act. From whatever angle the matter may be viewed, the conclusion is obvious that the repeal will in no way affect the right of a landowner to recover the defaulted payment of compensation in cases where the liabilities of the parties stand determined before the enforcement of the Reforms Act. I answer the third question accordingly.

17. The propositions of law having been laid down all these cases may now be put up for hearing before the appropriate benches for disposal. I order accordingly. There shall be no order as to costs.

Gokal Chand Mital, J.

18. On a careful perusal of the judgment of B. S. Dhillon, J. while I agree with the reasoning Nos. 2 and 3 formulated in the opening part of his judgment, I have not been able persuade myself to agree with the answer proposed to question No. 1 and, therefore, proceed to give my own reasons therefor. To My mind question No. 1 deserved to be posed as follows:--

1. Whether a landowner owning land in excess of the permissible area under Section 4 of the Punjab Land Reforms Act, 1972, can under Section 5 of that Act, select permissible area for himself and for each of his adult sons, out of the surplus area declared under the Punjab Security of Land Tenures Act, 1953, or the Pepsu Tenancy and Agricultural Lands Act, 1955, of which possession had not been taken over by the State Government till the Commencement of that Act?

19. In the cases before us, the surplus area had been declared before the coming into force of the Punjab Land Reforms Act, 1972(Act No. 10 of 1973)(hereinafter called the Act) either under the Punjab Security of Land Tenures Act, 1953, (hereinafter called the Punjab Law) or under the Pepsu Tenancy and Agricultural Lands Act, 1955(hereinafter called the Pepsu Law). However, in spite of declaration of the surplus area the landowners continued in possession even of the land declared surplus till the filing of the writ petitions and even till today when possession of the surplus area declared under the Punjab Law or the Pepsu Law was sought to be taken after the coming into force of the Act. writ petitions were filed in this Court to challenge that action on the ground that till proceedings are taken under the Act for declaration of surplus area, the landowners cannot be dispossessed, inasmuch as the provision of the Act are inconsistent with the provision of the Punjab Law or the Pepsu law and therefore the orders declaring surplus area under those laws have to be ignored in view of Section 28(1) read with Section 17 of the Act. In

order to appreciate the contention, it will be useful to notice the relevant provision of the Punjab Law and the Pepsu Law first.

20. Under the Punjab Law, each individual, whether minor or major was entitled to a separate permissible area. There was no concept of family as a unit under that Law. After the declaration of surplus area, the same could be utilized by resettlement of tenants. The utilisation was complete only on taking of possession by the resettled tenants (See Financial Commissioner, Haryana v. Smt. Kala Devi, AIR 1980 SC 309). The landowner in spite of resettlement continued to be the owner of the surplus area and was entitled to the rent from the resettled tenants and at no stage the State Government became owner of the surplus area. Under the Pepsu law also each individual, whether minor or major, was entitled to a separate permissible area and there also there was no concept of family as a unit. After the declaration of the surplus area, the moment possession of the surplus area was taken by the State Government, it vested in it free from all encumbrances and the surplus area so vested could be utilised for the resettlement of tenants. Here, the ownership of the landowner ceased and the State became the owner. This brings me to the consideration of the various relevant provisions of the Act.

21. The Act brought a vital change and for the first time the concept of family as a unit was introduced. Section 3(4) defines 'family' which included husband, wife and their minor children other than a married minor daughter. Section 3(15) defines 'surplus' area' to mean the area in excess of the permissible area. Section 4(1) provides that no one would own or hold land in excess of permissible area subject to the provisions of Section 5. Section 4(2) defines the 'permissible area'. The method of calculation of permissible area under the Act is different from the Punjab Law and the Pepsu Laws and as such the permissible area under the Act would be different from the permissible area under those Laws. Section 5(1) provides that every person, who owns or holds land as land owner or tenant in excess of the permissible area on the commencement of the Act, or at any time thereafter, would be entitled to select this permissible area and would intimate his selection to the collector or collectors concerned, as the case may be, within the prescribed period. It further provides that if such person has an adult son, he shall also be entitled to select separate permissible area in respect of each such son out of the land owned or held by him subject to the condition that the land so selected together with the land already owned or held by such son shall not exceed the permissible area of each such son.

22. Suppose before the enforcement of the Act a landowner (similar would be the position of a tenant holding more land than permissible area) owned land more than his permissible area both under the Punjab Law and the Pepsu Law, as the case maybe, and his surplus area had been declared. Similarly, his wife and minor children owned land which was either within the permissible area or more than the permissible area or some of them owned within the permissible

area and the others more than the permissible area. If the surplus area declared in the hand of the landowner, his wife and minor children is either not utilised under the Punjab Law or is not taken possession of by the State under the Pepsu law, in spite of declaration of surplus area in their hands, the resultant effect on the enforcement of the Act would be that the holding of the landowner, his wife and minor children would be clubbed together and would constitute as one unit in the hands of the landowner,. Since on the commencement of the Act the landowner would be owning more than the permissible area, therefore, by virtue of Section 5(1) the land owner would be entitled to select his permissible area and in case he has adult son on the commencement of the Act, he would also be entitled to select permissible area for each one of them inclusive of the land owned by each one of them.

22-A. The next question which arises for consideration is whether the landowner would be entitled to select his own permissible area also of his adult sons out of the total and owned by the landowner, his wife and minor children or out of the land other than the one which was declared surplus, either under the Punjab law or the Pepsu Law, whether in the hands of the land owner, his wife and minor children or out of the surplus area also which continued to be in their possession on the date of commencement of the Act in spite of declaration of surplus area. My answer to the aforesaid question is that the landowner would be entitled to select the permissible area for himself and for each of his adult sons only out of the permissible area allowed to the landowner, his wife and minor children under the Punjab Law or the Pepsu Law and not from out of the surplus area declared under those Laws in his hands or in the hands of his wife and minor children. In coming to this conclusion, I draw support from a combined reading of Sections 5(2), 8, 9(1), 11(2), 11(5) and 28(2)(i), read with both the provisos, and Section 28(2)(ii) and 28(2)(iii) of the Act. The aforesaid provisions, for facility of reference, deserve to be reproduced hereunder along with sub section (1) of Section 5 of the Act:--

"5. Selection of permissible area and furnishing of declaration by certain persons.

(1) Every person, who on the appointed day or at any time thereafter, owns or holds land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another, in excess of the permissible area, shall select this permissible area, and intimate his selection to the Collector, and where land is situate in more than one district, to the Collectors concerned, through a declaration to be furnished in such form and manner and within such period as maybe prescribed and if such person has an adult son, he shall also be entitled to select separate permissible area in respect of each such son, out of the land owned or held by him, subject to the condition that the land so selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son:

Provided that where land is situate in more than one patwari circle, the declaration shall be supported by an affidavit in the prescribed form.

5(2). In making the selection, such a person shall include, firstly, land mortgaged without possession and, secondly, land under self-cultivation on the date of commencement of the period prescribed for furnishing the declaration under sub-section (1), but shall not include area declared surplus under the Punjab Law, the Pepsu Law or this Act, other than the area which was exempt from utilisation by the State Government immediately before such commencement.

8. Vesting of unutilised surplus are in the State Government.

Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of Section 15, the surplus area, declared as such under the Punjab Law, or the Pepsu Law, which has not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government.

9. Power to take possession of surplus area.

(1) The Collector may, by an order in writing, after an area has become surplus under the Punjab law or the Pepsu Law or becomes surplus under this Act, direct the landowner or tenant or any other person in possession of such area to deliver possession thereof, within ten days of the service of the order on him, to such persons as may be specified in the order.

* * * * *

11. Disposal of surplus area (1) * * * * * (2) The State Government may, by notification in the official Gazette, frame a scheme for utilising the surplus area under the Punjab law, the Pepsu law or this Act by,-

(a) Conferment of rights of ownership on tenants in respect of such land as is comprised in the surplus area of the landowner of such a tenant, and

(b) allotment to tenants, members of Scheduled Castes and backward Classes and landless

agricultural workers, of an area not exceeding two hectares of the first quality land or equivalent area, provided that the total area held or owned by any such allottee, after the allotment, shall not exceed two hectares of the first quality land or equivalent area.

* * * * * (5) "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 the surplus area under the Punjab law, the Pepsu Law or this Act, shall affect the vesting thereof in the State government or its utilisation under this Act.

* * * * *

28. Repeal and Saving (1) * * * * * (2) The repeal of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect-

(i) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactment's, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act;

Provided that such proceedings shall, as far as may be, be continued and disposed of, from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act: and the cases pending before the Pepsu Land Commission immediate before the date of commencement of this Act shall stand transferred to the Collector of the district concerned for disposal:

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area, referred to above, in accordance with the provisions of this Act,

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder;

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not in consistent with the provisions of this Act and any providing or remedy in respect of such right, privilege, obligation or liability maybe instituted, continued or enforced as if this Act had not been passed.

Provided that such proceeding or remedy shall, as far as may be, be instituted, continued or enforced in accordance with the procedure specified by or under this Act."

23. While a landowner has been allowed to select his permissible area as also for his adult sons under Section 5(1) of the Act, Section 5(2) gives the guidelines as to how the selection is to be made. In making the selection, firstly the land mortgaged without possession has to be included and the land under self-cultivation but there is a specific prohibition not to include the area declared surplus under the Punjab Law, the Pepsu Law or the Land Reforms Act. However, out of the surplus area declared under the Punjab Law or the Pepsu Law, an exception has been made in regard to the land which was exempted from utilisation by the State Government. Therefore, in case out of the surplus area declared a specific exemption was granted by the State Government. Therefore, in case out of the surplus area declared a specific exemption was granted by the State Government from utilisation of the entire or part thereof, then to the extent of exemption of land the bar from making selection from the surplus area was not to operate and from the exempted surplus area the selection could be made. To put it in more simple words, a landowner could make selection of permissible area for himself and for his adult sons from the land other than the surplus area declared under the Punjab Law or the Pepsu law, minus the land which was exempted from utilisation by the State government under the Punjab law or the Pepsu law. Therefore, if in a case no land was exempted from utilisation under the Punjab Law or the Pepsu Law out of the surplus area declared under those laws, no selection could be made therefrom but in cases where exemptions had been granted by the State Government, the selection could be made from the exempted area also.

24. It was urged on behalf of the landowners that Section 5(1) of the Act gave right to a landowner to make selection of his permissible area as also of his adult sons land that right could not be curtailed by sub-section (2) which was merely a procedural provision and, therefore, sub-section (1) would override sub-section (2). I am not impressed with this argument at all. To my mind, both the sub-sections are substantive provisions and are part of the same section and have to be read together and if both the sub-sections can be given effect to, then the effect must be given. I am of the opinion that both sub-sections (1) and (2) of Section 5 of the Act can stand together and full effect can be given to them and there is no inconsistency therein. The aforesaid view of mine is fully borne out from a perusal of the remaining sections of the Act quoted above. Section 8 clearly provides that the surplus area declared under the Punjab law or the Pepsu Law, which has not been utilised till the commencement of the Act, shall vest in the State on the date on which possession is taken by or on behalf of the State Government. If after the commencement of the Act, a landowner was allowed to select his permissible area out of the surplus area declared under the Punjab law or the Pepsu law then it could not be provided in Section 5 that the unutilised surplus area under the Punjab law or the Pepsu Law shall vest in the State Government the moment possession is taken. Section 9(1) authorises the Collector to direct a landowner by an order in writing to deliver possession of the surplus area declared under the

Punjab law or the Pepsu Law within a period of ten days of the service of the order failing which, under Section 9(2) possession could be taken by use of such force as may be necessary. Again, Section 11(2) provides for the disposal of the surplus area whether declared under the Punjab law, the Pepsu law or the Ac. If the surplus area declared under the Punjab Law or the Pepsu Law could not be utilised before the Act came into force, then it could clearly be provided that all those orders would lapse, or would apse atleast to the extent they are utilised, and proceedings for declaration of surplus are would betaken under the Act. But, that is not the case according to Secs. 8, 9 and 11(2). The matter becomes still more clear on a reading of Section 28 which deals with repeal and saving clause. While section 28(1) repeals only those provisions of the Punjab law or Pepsu Law in so far as they are inconsistent with the provisions of the Act, the saving clause contained in Section 28(2)(i) still provides that the proceedings for the determination of the surplus area pending immediately before the commencement of the Act, whether under the Punjab Law or under the Pepsu Law, shall be continued and disposed of as if the Act had not been passed and the surplus area so determined shall vest in, and be utilised by, the State government in accordance with the provisions of this Act. In spite of the repeal clause and the fact that the permissible area under the Punjab law and the Pepsu law is different from that under the Act, and while each individual, whether minor or major, could hold permissible area under the Punjab Law and the Pepsu law, a family consisting of the landowner, his wife and minor children has been made one unit who can hold permissible area under the Act, which clearly goes to show that the provisions of the Punjab Law and the Pepsu Law are inconsistent with the provisions of the Act, yet the saving clause provides that the pending proceedings under the Punjab law or the Pepsu Law are to be continued and disposed of as if the Act had not been passed and the surplus area so determined has t vest in the State government in accordance with the provisions of the Act. Therefore, in spite of the fact that' surplus area was not declared under the Punjab law or the Pepsu Law by the time the Act came into force, yet it was provided that the proceedings would be continued and disposed of as if the Act had not been passed. By this deeming provision, it will have to be assumed as if the Act has not come into being with the result that there would be no inconsistency and the proceedings will have to be disposed of under the Punjab Law and the Pepsu Law. The first proviso, however, provides that the proceedings shall be continued and disposed of in accordance with procedure specified in the Act. According to this proviso, the substantive provisions of the Punjab Law and the Pepsu law would continue, but only for procedural matters the Act would be followed. The procedural part would related to the officer who has to complete the proceedings for declaration of the surplus area as named in the Act. The second proviso makes the matter still more clear. After the surplus area is determined under the Punjab Law or the Pepsu law, under clause (1), such determination would not affect a fresh determination of the surplus area in accordance with the provisions of the Act and the utilisation of the surplus area declared under the Act. It has specifically been mentioned

in the proviso that the surplus area declared under the Act would be other than the surplus area referred to above, meaning thereby the surplus area declared under the Punjab Law or the Pepsu law by an order after the coming into force of the Act. Therefore, the Legislature insists wisdom made it very clear at every stage that the surplus area declared under Punjab Law or the Pepsu law, even if not utilised till the commencement of the Act, or the Pepsu Law after the enforcement of the Act would still continue to be surplus area, which the State can acquire by taking possession under Section 9 of the Act and the moment possession is taken under Section 9, it would vest in the State under Section 8. As already observed earlier, from the surplus area declared under the Punjab law or the Pepsu law, there is one exception made with regard to that part of the surplus area which was exempted from utilisation by an order of the State Government under those laws and out of such exempted area the landowner was allowed to select for himself and for his adult sons but he was not allowed to select either for himself or for any of his adult sons out of the unexempted surplus area. The aforesaid view is further strengthened from a reading of Section 28(2)(ii). This provision specifically saves the operation of the Punjab law as also the Pepsu Law for anything duly done under those Laws. Therefore, the orders of surplus area made under the Punjab Law and Pepsu law have been saved by this provision. However, Section 5(2) provides for an exception as the landowner is allowed to select even from the exempted surplus area. While according to Section 28(2)(iii) of the Act, the rights, privileges, obligations or liability acquired, accrued or incurred under the Punjab Law or the Pepsu Law were kept intact, the proceeding or remedy was sought to be instituted, continued or enforced in accordance with the procedure specified by the Act. Therefore, even if the surplus area proceedings were pending on the commencement of the Act, and were disposed of thereafter finally, the appeals, further appeals and revisions were to be filed not in accordance with the Punjab Law or the Pepsu Law but in accordance with the procedure prescribed by the Act. Otherwise, the substantive rights had to be determined under the Punjab Law or the Pepsu Law by the authorities under the Act.

25. If sub-section (2) of Section 5 of the Act had not been enacted, it could reasonably be argued that selection can be made by a landowner for himself and also for his adult sons out of the entire land owned by him on the appointed day, including the unutilised surplus area declared under the Punjab Law or the Pepsu Law, but the doubt, if any, has been removed by making a clear provision in sub-section (2) as to how the selection is to be made. In sub-section (2) it has clearly been provided that in making selection the surplus area under the Punjab Law or the Pepsu Law shall not be included, subject to the exception of exempted land. Suppose section 5 were not divided into two sub-sections and after the conclusion of the present sub-section (1) and before the proviso the word 'and' was added and then what is contained in sub-section (2) continued with a comma, and the proviso was added at the end, then the question shows such Section 5 would be interpreted. would it be said that some part of this section is substantive and the other is

procedural? To my mind, it would be a wholesome provision providing for permissible area as also the method for selection of permissible area. If in that eventuality, whole of Section 5 will have to be given effect to, then I do not think it is permissible to make different interpretation if the section is divided into two parts. From this view point also, I am of the opinion that a landowner while making selection for himself or for his adult sons is debarred from including the area which was declared surplus under the Punjab law or the Pepsu Law, with the exception of exempted area. The aforesaid views is further strengthened by a reading of sub-section (5) of Section 11 of the Act. This sub-section provides that a transfer or other disposition of land which is comprised in the surplus area under the Punjab Law or the Pepsu Law or the Act, shall not affect the vesting thereof in the State Government or its utilisation under the Act. However, two exceptions have been made. Those exceptions are that if the land is acquired by the State Government under some law or by an hereby inheritance. In that case fresh proceedings will have to be taken for declaration of the surplus area in the hands of the landowner or the heirs as the case may be. Therefore, it further shows that even if a landowner had transferred whole of his permissible area before the commencement of the Act and was left only with the unutilised surplus area under the Punjab law or the Pepsu Law on the date of commencement of the Act, he could not come forward and say that he would be entitled to file a fresh declaration under Section 5(1) of the Act to select permissible area for himself and for his adult sons out of the unutilised surplus area because he is prohibited to do so by virtue of sub-section (2) of Section 5, except from the exempted area. Even if he had made a transfer or other disposition of the unutilised surplus area under the Punjab law or the Pepsu Law, before the commencement of the Act, the said transfer or disposition would be ignored by virtue of sub-section (5) of Section 11 of the Act and the same shall not affect the vesting thereof in the State Government or its utilisation under the Act. Therefore, to hold that under Section 5(1) of the Act, a landowner would be entitled to select his permissible area out of the unutilised land declared surplus under the Punjab Law or the Pepsu law would be setting at naught the entire Reforms Act. The clear object on a reading of all the aforequoted provisions is that the surplus area declared under the Punjab law, the Pepsu law or the Act would be available for vest in the State Government and for its utilisation under the Act.

26. Then it was sought to be argued that by virtue of Section 4(1), Section 4(2) would be subject to Section 5 and, therefore, the landowner would be entitled to select permissible area for himself as also for his adult sons even from the unutilised surplus area declared under the Punjab Law and the Pepsu law. To my mind, this argument goes against the landowners and not in their favour. If section 5 had been subject to Section 4, then there may have been some merit in the argument but advisedly the Legislature has made Section 4 subject to Section 5 and, therefore, even if on selection the landowner is not able to make up his permissible area or for any of his adult sons, he will have to remain content with the same and in no case he would be able to make

up his permissible area from the unutilised surplus area declared under the Punjab law or the Pepsu Law except from the exempted surplus area, if any. The object of making Section 4 subject to Section 5 was twofold. One, if a landowner is not able to select his permissible area up to the extent provided by Section 4(2), because he cannot do so from the surplus area declared under the Punjab Law, or the Pepsu Law, it would stand reduced to the area available for selection and, secondly, in cases where a landowner is able to select permissible area for himself and for each of his adult sons, the total area so selected would be far in excess of the permissible area allowed by Section 4(2). In cases Section 4 had not been made subject Section 5, the landowner would not have been able to own more than the permissible are and, therefore, would not have been able to select separate permissible are for each of his adult sons as the land selected by him for his sons, in law, is also owned by him. Since section 4 is subject to Section 5, therefore, by virtue of Section 5 the permissible are wold stand enlarged than permitted by section 4. If it had not been so provided, it would have been for the courts to reconcile Sections 4 and 5. Therefore, even this matter goes against the petitioners.

27. It is true that the Act was published on 2nd April 1973, but the appointed day was defined as 24th day of January, 1971. The land held by a landowner had to be determined on the appointed day or the evaluation thereof had to be made as if it was being made on the appointed day, according to Section 4(5) and (7) of the Act. While determining the permissible area, any transfer by sale, gift or otherwise other than bona fide sale or transfer after the appointed day but before the commencement of the Reforms Act had to be ignored. Section 4(5) of the Act has reference to bona fide sales or transfers made during the interregnum between the appointed day and the commencement of the At. Section 5(1) of the Act talks about the ownership of a landowner on the commencement of the Act, meaning thereby that all transfers made thereafter will be ignored in finding out his ownership on the commencement of the Act further shows that the land declared surplus under the Act would be unaffected with regard to its vesting in the State Government and its utilisation under the Act in spite of any transfer or other disposition made by a landowner. Further, two exceptions have been made. One is with regard to the acquisition by the State under any law for the time being in force and the other is acquisition by an heir by inheritance. In the first case, the surplus area will have to be re-determined in the hands of the landowner and in the second case the order of surplus area of the landowner will lapse on his death with regard to the surplus area which had not vested in the State and the surplus are will have to be re-determined in the hands of the heir or heirs as the case maybe. Similar was the position under the Punjab law and the Pepsi Law. Reference may be made in this regard to Section 10-A (b) of the Punjab Law, where a provision has been made in terms identical to Section 11(5) of the Act. the resultant effect is that at point of time a landowner was entitled to transfer or dispose of the land comprised in the surplus area before its possession was taken over

by the State or affect the vesting thereof. Keeping in consonance with it, a specific provision was made in Section 5(2) of the Act that in cases falling under Section 5(1) of the Act, the selection would be made in such a manner that no part of the surplus area under the Punjab Law or the Pepsu Law, even if not taken possession of by the State till the enforcement of the Act, shall be included in the permissible area either for himself or for his adult sons while making the Selection. It is true that by virtue of Section 5(1) of the Act, the landowner would be treated owner of the surplus area declared under the Punjab Law or the Pepsu Law of which possession has not been taken over by the State and therefore, would be a case in which fresh proceedings will have to be taken under the Act either for selection of the permissible area under Section 5(1) or for determination of the surplus area under Section 7 of the Act but in either event the area declared surplus under the Punjab Law or the Pepsu law would remain untouched and would continue to be surplus area under the Act as well. If this plain interpretation is not adopted, then a land owner who may have sold his entire permissible area before the appointed day and was in possession of the surplus area on the appointed day and continued to be in possession till the Act came into force, which was more than the permissible area under the Act then although Section 5(1) would be attracted, he would be able to select permissible area for himself as also for each of his adult sons out of the surplus area declared under the Punjab Law or the Pepsu law. To avoid this, the entire Punjab law or the Pepsu Law, were not repealed which is plain from a reading of Section 28(1) of the Act. the repeal was only to the extent those Acts were inconsistent with the provisions of the Act. Similarly, if a landowner had transferred whole of the surplus area whether declared under the Punjab law or the Pepsu Law of which he was in possession immediately before the appointed day and the remaining land in his possession was less than the permissible area under the Act, neither Section 5(1) nor Section 7 of the Act would apply. Still by virtue of the Punjab Law or the Pepsu Law, as also the various provisions of the Act including Sections 8, 9, 11(2) and 11(5), the surplus area under those Acts would continue to be surplus area under the Act and the same would vest in the State the moment possession is taken and would be utilised as such notwithstanding the transfer made by the landowner. Again, Sections 28(1), 28(2)(ii) and (iii) of the Act would come into play with the result that by virtue of Section 10-A (b) of the Punjab law, the transfers would be ignored. Moreover, a reading of Section 10-A (b) of the Punjab Law along with Section 11(5) of the Act would show that at no point of time could a landowner deal with the surplus area in his possession so as to deprive the State of taking possession of the same and utilisation thereof in accordance with law. Any interpretation to the contrary will take away the beneficial legislation made for land reforms in the State.

28. This brings me to the consideration of the provisions of Section 7 of the Act. Under Section 7(1), the collector has to process both the cases, whether it is one where the declaration was

furnished by a landowner under Section 5(1) of the Act or where the landowner fails to furnish the declaration and information is collected by the Collector himself under Section 6 of the Act. In both cases, while making the determination of surplus area, the Collector will have to keep in view the provisions of both the sub-sections of Section 5. The moment the Collector will have to keep in view the provision of Section 5, obviously he will have to refer to section 4 of the Act because the permissible area mentioned in Section 5 has been defined in Section 4. Therefore, while making determination of surplus area under Section 7(1) in any of the two eventualities, a landowner would be entitled to claim permissible area for himself as also for his adult sons. Any failure of the landowner to file a declaration under Section 5(1) would not deprive him from seeking an election of separate permissible area for each of his adult sons. The only penalty clause is contained in Section 7(2) and where a landowner fails to furnish the declaration as required by section 5(1) of the Act, the Collector has been authorised to reduce the permissible area of that person as provided in that sub-section. Since the fault was with the landowner, the penalty has been provided on him only and not on the adult sons. The landowner would be entitled to select fully permissible area for his adult sons. Even under the Punjab Law or the Pepsu Law, a provision like Section 7(2) is contained where for the fault of the landowner to file declaration within the prescribed time, penalty has been provided and those penalty provisions have withstood the test of vires up to the highest Court of the land. Besides sales or other dispositions which could reduce the land owned by a landowner, sub-section (4) of Section 7 further provides that in determining the surplus area of any person, judgments, decrees or orders of the Court or other authority obtained after the commencement of the Act, having the effect of diminishing the surplus area, are to be ignored. Similarly, the tenancies created after the commencement of the Act in respect of land which has been declared surplus or could be declared as such under the Punjab Law or the Pepsu Law or the Act are to be ignored. Therefore, it is made still more clear that the collector while determining the surplus area under Section 7 of the Act cannot touch the surplus area declared under the Punjab Law or the Pepsu law although it remained in possession of the landowner up to the date of commencement of this Act, even judgments, decrees and orders of Court or authority or tenancies obtained or created after the commencement of the Act, having the effect of diminishing the surplus area are also to be ignored.

29. With this background, I proceed to consider the reasoning adopted by B. S. Dhillon, J., I agree with the following observations:--

"There may be cases where the surplus area has been declared under the Punjab Law or the Pepsu Law, but such cases do not fall within the purview of Sections 4 and 5 of the Reforms act. In those cases the area so declared surplus becomes final and the State Government under the

provisions of Section 8 of the Reforms Act is entitled to take possession of the same to as to divest the owner of the ownership of the land so declared surplus. Thus, the provisions of Section 8 of the Reforms Act would be fully complied with when possession in such cases is taken by the State."

But, with all respect, I am not able to agree with the reasoning recorded thereafter in respect of cases where a landowners more than the permissible area on the enforcement of the Act. In those cases, a different interpretation of Section 8 is no justified. It is true that in all those cases a landowner would be entitled to file a declaration under Section 5(1) selecting permissible area for himself as also for 3 each of his adult sons but while doing so, the mandate of Section 5(2) shows that the selection would not be made out of the area declared surplus either under the Punjab Law or the Pepsu Law. Therefore, if a landowner is not allowed to make selection out of the surplus are declared under the Punjab Law of the Pepsu Law, although he was in possession thereof on the commencement of the Act, the same result would follow with regard to the interpretation of Section 8. To bring all landowners under the same partition of law and without discrimination, ample provision has been made in the Act because all transfers, dispositions, judgments, decrees or orders, and creation of tenancies are to be ignored so as not to affect the vesting and utilisation of the surplus area, whether declared under the Punjab Law, the Pepsu Law or the Act for that very reason, the surplus area under the Punjab Law or the Pepsu law has been kept intact in spite of the fact that in certain cases a fresh declaration may have to be made, which are covered by section 5 read with Section 4 of the Act. The resultant effect is that the surplus are declared under the Punjab Law or the Pepsu Law would continue to be surplus area under the Act also a whenever the case is covered by Section 5 of the Act, fresh proceedings would be started but since the landowner would never be able to select permissible are out of other surplus area declared under the Punjab Law or the Pepsu Law, therefore, the surplus are under the Act would either be the same or more as the case may be. Similarly, if section 5 of the Act is attracted again after the surplus are was declared or determined under the Act even in that eventuality the fresh surplus are would be in addition to the surplus area already declared. Therefore, the uniform interpretation of Section 6 would be that all surplus area declared under the Punjab Law or the Pepsu Law, which remained in possession of the landowners till the commencement of this Act would continue to be surplus area and would be available for taking possession under Section 9 of the Act and the moment possession is taken it would vest in the State by virtue of Section 8 and would be available to the State for utilisation under Section 11 of the Act, irrespective of the fact whether the surplus area belongs to a landowner whose case falls within the ambit of Section 5 read with Section 4 of the Act or not. No manner of doubt is left by the following words used in Section 8 of the Act:

".....the surplus area, declared as such under the Punjab Law or the Pepsu Law, which has not been utilised till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the state Government, free from all encumbrances,.....".

I have not been able to persuade myself to place two different interpretations on Section 8, as has been done by B. S. Dhillon, J.

30. A reading of Section 5(1) read with Section 11(5) of the Act would show that even if provision for selection of permissible area and determination thereof has been made under the Act, because on the commencement of the Act a landowner may own more than the permissible area under the Act, Section 5(1) further provides that if at any time there after a landowners more than the permissible are, Sections 5 to 7 would be attracted. But that, would not affect the vesting and utilisation of the surplus area declared on the earlier occasion under the Act. The surplus area declared again would be other than the one which has already been declared. There can be one more eventuality. Incase after determination of surplus area and before its possession is taken over by the State under Section 9 some part of the permissible are I acquired by the State Government under any law for the time being in force, with the result that the permissible area of the landowner stands diminished by virtue of Section 11(5) the and owner would be entitled to claim fresh selection of permissible area and in order to make up the permissible area he will have to make selection out of the surplus area already declared but in his plus area already declared but in his possession. Similar is the position under the Punjab Law and the Pepsu Law and reference may in this regard be made to S. 10-A (b) of the Punjab Law. This also goes to show that once surplus area is declared, whether under the Punjab Law, the Pepsu Law or the Act, the State would be entitled to take possession thereof under Section 9 subject to two impediments, those being where the permissible area s reduced either because of acquisition of any part by the State Government under any law for the time being in force, or where the landowner dies and succession opens out. In the first case, there will be fresh determination of surplus area in the hands of the landowner and in the second case in the hands of the legal representatives.

31. This brings me to the consideration of the provision of Section 11(5) and 11(7) of the Act. This matter has already been considered by a Full Bench of this Court in Smt. Ajit Kaur v. The Punjab State, 1980 Pun LR 354(AIR 1981 Punj & Har 8). According to the majority decision, section 11(5) would apply to cases where surplus area was declared under the Punjab Law or the Pepsu Law and on the opening of succession thereafter and of course, before possession of the same was taken over by the State. Similarly according to the majority decision, Section 11(7) would apply where surplus area is declared by the Collector under the Act and in that eventuality

if the landowner dies before the surplus area is taken possession of by the State, the heirs will get no benefit and the surplus area would be taken possession of by the State without fresh determination in the hands of the heirs. According to the minority view, Section 11(5) of the Act would apply to the declaration of the surplus area under all the three provisions, namely the Punjab Law, the Pepsu Law and the Reforms Act and even if it is under the Reforms Act, on the death of the landowner, the surplus area will have to be determined afresh in the hands of the heirs. The Full Bench judgment was cited before us but no argument was raised to challenge the correctness thereof and, therefore, it is not necessary to go into the question of its correctness. Therefore, on the basis of the majority decision the surplus area under the Punjab Law or the Pepsu Law, which continued to be in possession of the landowner till the commencement of the Act, would be available for vesting in the State and utilisation thereof under the Act and can be opened only in two eventualities, namely of acquisition by the State under any law for the time being in force or in the case of death of the landowner.

32. This brings me to the consideration of the Division Bench judgment of this court in *Nachhattar Singh v. The Collector*, 1975 Punj LJ 8. The view I have taken above in consonance with the view taken by the Division Bench. However there is an obvious mistake about the point of time of vesting of the surplus area declared under the Punjab Law or the Pepsu Law and a clerical mistake about the appointed day, At the bottom of page 11 of the report, it is observed as follows:--

"If it was intended to reopen the cases of surplus area decided under the Punjab or Pepsu Law then there was no point in providing that such areas would vest free from all encumbrances in the State Government on the appointed date, that is 24th of January, 1972"

The appointed date is 24th January, 1971. As regards vesting in the State Government Section 8 of the Act is relevant. It provides for vesting in the State from the date on which possession of the surplus area is taken by or on behalf of the State Government and not from the appointed date. Therefore, the vesting takes place not from the appointed date but from the date of taking of possession. Except for the above, I am in complete agreement with the view rendered in the aforesaid decision by M. R. Sharma and R. N. Mittal JJ.

33. For all the aforesaid reasons, the orders of surplus area passed under the Punjab Law or the Pepsu Law have been saved by the various provision of the Act and as such would not be hit by the Section 17 of the Act.

34. For the reasons recorded above, I summarise the following inevitable conclusions:--

(i) That the surplus area declared under the Punjab Law or the Pepsu Law, or any part thereof, of

which possession was not taken by the State before the Commencement of the Act (the Land Reforms Act), can be taken possession of under Section 9 of the Act and the moment possession is taken over by the State, it would vest in the State from that date by virtue of Section 8 for being utilised under Section 11 of the Act;

(ii) that a landowner who owns land more than the permissible area under the Act on its commencement would be entitled to select permissible area for vided in Section 5(1) of the Act but while making such selection, the landowner shall not be entitled to include any area declared surplus under the Punjab Law, the Pepsu Law or this Act, as provided by Section 5(2);

(iii) that in cases where out of the surplus area some area was exempted from utilisation by an order of the State Government, the landowner would be entitled to make selection from the exempted surplus area;

(iv) that while determining the permissible area under Section 7(1), even if a landowner fails to file a declaration as required by Section 5(1) of the Act, yet the collector will have to follow the mandatory provision of Section 5(1) and 5(2) and would provide permissible area to the landowner as also to his adult sons;

(v) that the penalty provided in Section 7(2) of the Act would operate while determining the permissible area of the landowner;

(vi) that in case a landowner dies after the determination of the surplus area under the Punjab Law or the Pepsu Law but possession of the same is not taken over by the State before his death, there will be fresh determination of the surplus area in the hands of the heirs and in that eventuality, the State would not be entitled to take possession of the surplus area declared under the Punjab Law or the Pepsu Law, under Section 9 of the Act. however in cases of determination of surplus area under the Act, the aforesaid exception would not apply because of section 11(7) of the Act and notwithstanding the death of the landowner the surplus area can be taken possession of by the state and utilised according to law;

(vii) that while the surplus area is in possession of the landowner, whether declared under the Punjab Law, the Pepsu Law or the Act if the State government acquires any part of the land out of the permissible area under any law for the time being in force, which has the result of reducing the permissible area of the landowner, the State will no be able to take possession of the surplus area until surplus area is determined afresh. After the permissible area is allowed to the landowner, the balance would be declared surplus of which alone the State would be able to take possession.

35. To conclude, my answer to the three questions is as follows:--

(i) Disagreeing with B. S. Dhillon, J., my answer in the negative.

(ii) Agreeing with B. S. Dhillon, J., my answer is in the affirmative.

(iii) Agreeing with B. S. Dhillon, J., my answer is in the negative.

S.S. Sandhawalia, C.J.

36. I have the privileges of perusing the exhaustive and lucid judgments recorded by my learned brothers B. S. Dhillon and G. C. Mital, JJ. With due deference and G. C. Mital, J., I agree with Dhillon, J.

ORDER

37. In accordance with the majority view it is held as under:--

(1) That a landowner whose land has been declared surplus under the Punjab Security of Land Tenures Act 1953, or under the Pepsu Tenancy Agricultural Land Act, 1955, who has not been divested of the ownership of the surplus area before the Punjab Land Reforms Act, 1972, is entitled to select the permissible area for his family and for each of his adult sons in view of the provision of Section 4 read with Section 5(1) of the Punjab Land Reforms Act.

It is further unanimously held:--

(2) That the exemptions granted under the Pepsu Tenancy and Agricultural Land Act, 1955, and under Rule 8 of the Punjab Security of Land Tenures Rules, 1956, not stand repealed by the Punjab Land Reforms Act, 1973.

(3) That the tenant, who purchased the land under the provision of Section 18 of the Punjab Law is not entitled to resist the recovery by way of arrears of land revenue for the amount yet due under the orders passed under Section 18 of the Punjab Security of Land Tenures Act on the compensation so awarded is in excess than the one now provided under the provision of Section 15 of the Punjab Land Reforms Act.

38. In the light of the aforesaid answers to the legal questions posed before the Full Bench, all these cases would now go back for a decision on merits before a Division Bench. There shall be no order as to costs.

39. Order accordingly

