PUNJAB AND HARYANA HIGH COURT

Jaswant Kaur

Vs

The State of Haryana

Civil Writ Petition No. 3530 of 1976

(O. Chinnappa Reddy, Bhopinder Singh Dhillon, Gurnam Singh, Ajit Singh Bains and Harbans Lal, JJ.)

17.03.1977

JUDGMENT

O. Chinnappa Reddy, J.

1. These writ petitions represent perhaps, the final desparate attempt to stand up against the avalanche of land reforms initiated pursuant to the Directive Principles of State Policy. In these writ petitions, the vires of some of the provisions of the Haryana Ceiling on Land Holdings Act, 1972 (Act XXVI of 1972) is in question. The Act received the assent of the President on 22nd December, 1972 and was published in the Official Gazette on 23rd December, 1972. The Act was included in the Ninth Schedule to the Constitution on 7th September, 1974, and, thereby, it came under the protective umbrella of Article 31-B of the Constitution and became immune from attack on the ground of inconsistency with or abridgement of any of the Fundamental Rights guaranteed by Part III of the Constitution. However, on 9th September, 1974, in *Saroj Kumari v. State of Haryana*[1] , a Division Bench of this Court, who apparently were unaware of the inclusion of the Act in the Ninth Schedule, struck down certain provisions of the Act on the ground that those provisions offended the rights guaranteed by Part III of the Constitution. They held that the provisions were also not saved by Article 31-A of the Constitution, as those provisions which mainly related to 'Family Unit', could not be said to be in furtherance of clauses (b) and (c) of Article 39 of the Constitution. The Division Bench placed reliance on the decision of a Full Bench of this Court in *Sucha Singh Bajwa v. State of Punjab,*[2] where similar provisions of the Punjab Land Reforms Act had been struck down. The decision of the Full Bench in *Sucha Singh Bajwa v. State of Punjab* has since been reversed by the Supreme Court in Civil Appeal No. 1040 of 1975. The Supreme Court has held that the provisions of the Punjab Land Reforms Act are saved both by Article 31-A and Article 31-B of the Constitution. In view of the decision of the Supreme Court and in view of the circumstance, that the Division Bench did not notice the inclusion of the Haryana Act in the Ninth Schedule, the decision in Saroj Kumari v. State of Haryana cannot any longer be considered to be good law. But, it was argued by Shri Anand Swaroop that the Haryana Act was unworkable as some of its provisions were vague and mutually inconsistent. He submitted that such provisions as were vague, inconsistent and, therefore, unworkable should be struck down and that neither Article 31-A nor Article 31-B of

the Constitution would save such provisions. He drew our attention to the fact that in Saroj Kumari's case, the Division Bench, in addition to holding that the provisions of the Act offended the rights guaranteed by Part III of the Constitution, also gave the following additional reason for striking down the provisions of the Haryana Act :-

> "Apart from the reasons stated in the Full Bench judgment in Sucha Singh Bajwa's case, the provisions of the Act relating to the permissible area of the family suffer from the vice of vagueness and uncertainty and being incomplete and unworkable deserve to be struck down."

We put a straight question to Shri Anand Swaroop whether, apart from Saroj Kumari's case, he could cite any judicial precedent or academic authority to support the submission that the provisions of a statute could be declared *ultra vires* on such grounds. Shri Anand Swaroop frankly confessed there was none. He, however, relied on the analogy of the situation arising out of a part of the statute being struck down an unconstitutional, where the whole of the statute has to be struck down if what remains cannot be enforced without alterations and modifications of the statute. We do not think that the situation is in the least analogous. The principle of 'severability in application' or 'separability in enforcement' has been recognised by the Supreme Court when dealing with the contention that a law must be declared wholly void if it is constitutionally invalid in part. It has been held that if the valid and invalid provisions are distinct and separate and if what remains after striking out what is invalid is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. On the other hand, if the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, or if they form part of a single integrated scheme which is intended to be operative as a whole or if what is left is so thin and truncated as to be different in substance from what it was intended to be by the legislature, then the invalidity of the part of the statute will result in the failure of the whole. The ultimate test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Thus, where the principle of severability cannot be applied, the vice of unconstitutionality from which part of a statute suffers, attaches itself to the whole of the statute. This rule cannot possibly apply where no part of the statute is unconstitutional.

2. In India, where we do not have a 'due process' clause in the Constitution in the United States of America, it is unthinkable that a law enacted by the legislature, which it has the power to enact, which does not offend any of the Fundamental Rights guaranteed by Part III of the Constitution and which does not contravene any other provision of the Constitution, can be declared *ultra vires* either on the ground that the provisions of the statute are vague or on the ground that they are mutually inconsistent. In *Amritsar Municipality v. State of Punjab*[3], dealing with the observations of the Punjab High Court that legislation which was 'vague, uncertain and ambiguous' had to be struck down, the Supreme Court said :-

> "But the rule that an Act of a competent legislature may be "struck down" by the Courts on the ground of vagueness is alien to our Constitutional system. The Legislature of the State of Punjab was competent to enact legislation in respect of "fairs", vide Entry 28 of List II of the Seventh Schedule to the Constitution. A law may be declared invalid by the superior Courts in India if the Legislature has no power to enact the law or that the law

violates any of the fundamental rights guaranteed in Part III of the Constitution or is inconsistent with any constitutional provisions, but not on the ground that it is vague. It is true that in clause *C. Connally v. General Construction Co*[4]*.,* it was held by the Supreme Court of the United State of America that -

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law". But the rule enunciated by the American Courts has no application under our Constitutional set up. The rule is regarded as an essential of the "due process clause" incorporated in the American Constitution by the 5th and the 14th Amendments. The Courts in India have no authority to declare a statute invalid on the ground that it violates the "due process of law". Under our Constitution, the test of due process of law cannot be applied to the statutes enacted by the Parliament or the State legislatures."

3. In our view it is a misinterpretation of the judicial function to helplessly and indifferently abstain from the task of interpreting the provisions of a statute on the ground that the language is vague and obscure and to declare the provisions *ultra vires* for that reason. It is not the judicial function, as we see it, to be deterred by the obscurity of expression of the draftsman. Our task is more constructive than that. It is the duty of the Court, in relation to each forensic situation, to examine the language of the law, the context in which it was made, to discover the intention of the legislature and to interpret the law to make effective and not to frustrate the legislative intent. Interpret the law, we must, and we can always call in aid well-known canons of interpretation. In *Seaford Court Estates Ltd. v. Asher*[5] *,* Lord Denning said :-

".....a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature".

Lord Denning in his delightfully characteristic way, went on to say that while a Judge should not alter the material of which the Act is woven, he can and should iron out the creases. Late Professor Laski was perhaps right when he said, "The method of interpretation should be less analytical and more functional in character; it should seek to discover the effect of the legislative precept in action so as to give full weight to the social value A is intended to achieve."

4. Again, where the provisions of a statute appear to be mutually inconsistent, there are several well known rules of interpretation to guide the Court in giving proper meaning to the provisions of a statute. There is firstly the principle of harmonious construction, according to which the Court should seek to avoid any conflict in the provisions of a statute by endeavouring to harmonise and reconcile every part so that each shall be effective. There are then other rules such as the special shall prevail over the general, the last shall prevail over the earlier, an amendment

shall prevail over the original etc. With the aid of such and kindered rules of interpretation, the Court must ascertain the true legislative intent and apply it to the situation before it. The Judge cannot shrug his shoulders and remain placidly content with the observation that the provisions are irreconcilable.

5. We may now examine whether there is any justification for the submission that some of the provisions are vague and mutually inconsistent. For the purpose of determination of permissible area Section 4(1) divides land into three categories : (i) land under assured irrigation capable of growing at least two crops in a year, (ii) land under assured irrigation capable of growing at least one crop in a year, (iii) land of all other types including land under orchard. Section 4(5) further sub-divides land falling under (i) into two classes : (i) land under irrigation from privately owned tubewells, pumping sets etc. and (ii) land under irrigation from canals or from State tubewells. It was said that Section 4(1) which is the pivotal section was vague as the expression "Assured Irrigation" was not defined in the Act. We do not think that it is necessary for the Legislature to define each and every expression occurring in a statute. Where an expression is not defined it is primarily for the authorities constituted under the Act to interpret expression having due regard to the meaning ordinarily given to it by the man in the street, the meaning assigned to it in the special departmental parlance or jargon, the context in which the expression occurs in the statute and other relevant considerations. We do not have the slightest doubt that the expression 'assured irrigation' is an expression of well-known import with which all those connected with the land revenue administration are familiar. We are satisfied that there is nothing vague in the expression 'assured irrigation'. We do not propose to define or interpret the expression at this stage. We prefer to do so when the authorities constituted under the Act have placed their interpretation upon the expression and the matter comes up for our consideration in an appropriate manner. For the present purpose it is sufficient to say that we do not find the expression vague in the least.

6. It is as well that we examine at this juncture the provisions of the Act relating to permissible area and the rules prescribing the method of valuation for the purpose of determining permissible area. Section 4(1) prescribes the permissible area as (a) 7.25 Hectares in the case of land under assured irrigation capable of growing at least two crops in a year, (b) 10.9 Hectares in the case of land under assured irrigation capable of growing at least one crop in a year and (c) 21.8 Hectares in the case of land of all other types including land under orchards. Section 4(5) further provides that five Hectares of land under irrigation from privately owned tubewells, pumping sets etc. shall be equal to four Hectares of land under irrigation from canals as defined in the Northern India Canal & Drainage Act or from State tubewells as defined in the Punjab Tubewells Act. Section 4(4) originally provided that the permissible area shall be determined on the basis of valuation to be calculated in the prescribed manner taking into consideration the 'intensity of irrigation', ownership of the means of irrigation and the kind of soil such as Banjar, Sem, Thur or Kallar subject to the condition that the total physical holding did not exceed 21.8 Hectares. Section 4(4) was, however, amended by Act XVII of 1976 and the words "and the kind of soil such as Banjar, Sem, Thur or Kallar" were omitted and the words "and such other facts as may be prescribed" were substituted in their place. We may mention here that Act XVII of 1976 has also been included in the Ninth Schedule to the Constitution. Rules have been made prescribing the manner of calculation as stipulated in Section 4(4) of the Act. Land under assured irrigation capable of growing at least two crops in a year and irrigated by a canal or a State tubewell as mentioned in Section 4(1)(a) is treated as 'A' category land. Land under assured irrigation capable of growing at least two crops in a year and irrigated by private tubewells or pumping sets

as mentioned in Section 4(1)(a) read with Section 4(5) is treated as 'AA' category land. Land under assured irrigation capable of growing at least one crop in a year as mentioned in Section 4(1)(b) is treated as 'B' category land. Land of all other types including land under orchard as mentioned in Section 4(1)(c) is treated as 'C' category land. Rule 5(1) equates one unit of 'A' category land with 1.25 units of 'AA' category land, 1.5 units of 'B' category land or 3 units of 'C' category land. Rule 5(2) as originally made did not prescribe any formula for taking into account the 'intensity of irrigation' for the purpose of valuation. It did not take into account the nature of the soil of the land. It also suffered from certain other defects. It was declared *ultra vires* Section 4 in Saroj Kumari's case. Thereafter, it was deleted and new Rule 5(2) was substituted in its place. Meanwhile Section 4(4) was also amended as mentioned earlier. The new Rule 5(2) makes detailed provision for taking into account the 'intensity of irrigation'. Rule 5(2)(a) provides that where land is commanded for irrigation by a perennial canal, the area of such land shall be multiplied by half of the irrigation intensity ratio specified against such canal in Schedule 'A' and the figure thus arrived at shall be treated as 'A' category land and the remaining area of such land shall be treated as 'C' category land. It is also provided where whole or part of the land so commanded is described in the revenue record as Thur or Kallar, the area so described shall be multiplied by half of the irrigation intensity ratio specified against such canal in Schedule 'A' and the figure thus arrived at shall be treated as 'B' category land and the remaining of such a land shall be treated as 'C' category land. Similarly, detailed provision is made for land commanded for irrigation by a non-perennial or restricted perennial canal land commanded for irrigation by a Government tubewell and land for irrigating which canal water or Government tubewell is supplemented by water drawn from privately-owned tubewell or pumping sets, wells or other sources. Several illustrations are also given in the rules. Shri Anand Swaroop argued that Rule 5 was *ultra vires* Section 4 of the Act, inasmuch as it did not take into account the kind of soil as Â prescribed by Section 4(4) of the Act. He relied on the decision in Saroj Kumari's case. In Saroj Kumari's case, the learned Judges were considering Section 4(4) as it stood before it was amended by Act XVII of 1976. At that time, the words "the kind of soil such as Banjar, Sem, Thru or Kallar" occurred in Section 4(4). They were deleted from Section 4(4) by Act XVII of 1976. That removed the fundamental objection that Rule 5 was *ultra vires* because it did not take into account the nature of the soil as prescribed by Section 4(4). The other criticism of the Division Bench in regard to Rule 5 was directed against the second clause of Rule 5 which referred to the 'records of the girdawari conducted by the Canal Department for charging abiana'. It was said that no such record was maintained by the Canal Department and, therefore, Rule 5 was liable to be struck down. That defect has also been rectified. Rule 5(2) as it stood at the time of the decision of the Division Bench has been deleted and the present Rule 5(2) has been introduced. This does not suffer from any of the infirmities pointed out by the Division Bench in Saroj Kumari's case. Rule 5 as it now stands is *inter vires* Section 4 and valid.

7. Coming now to the attack based upon inconsistencies between the various provisions of the Act, it was directed almost exclusively against Section 12(3) (introduced by Act XVII of 1976), which provision, it was said was in conflict with Section 4(1) and Section 8 of the Act. Section 4(1) provides for the determination of permissible area in relation to a landowner as well as a tenant. Section 8 has the effect of saving certain transfers from the operation of the Act. It is useful to extract the whole of Section 8(1). It is as follows :-

> "8. *Certain transfers or dispositions not to effect surplus area.* -

(1) Save in the case of land acquired by the Union Government or State Government under any law for the time being in force or by a tenant under the Pepsu Law or the Punjab Law or by an heir by inheritance, no transfer or disposition of land in excess of :-

(a) the permissible area under the Pepsu Law or the Punjab Law after the 30th day of July, 1958 and

(b) the permissible area under this Act, except a *bona fide* transfer or disposition, after the appointed day,

shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer :

Provided that any person who has received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation for it to the person from whom he received it."

Section 12(1) provides that the surplus area of a landowner shall be deemed to have been acquired by the State Government for a public purpose from the date on which it is declared as such and that all rights, title or interest of all persons in such area shall stand extinguished, all such rights vesting in the State Government free from encumberances. Section 12(2) provides that the right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished. Section 12(3) against which, as we said, the attack was concentrated is as follows :-

"The area declared surplus or tenant's permissible area under the Punjab Law and the area declared surplus under the Pepsu Law which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared in pending proceedings to be decided under the Punjab Law or Pepsu Law shall be deemed to have vested in the State Government with effect from the date of such declaration".

The submission of the learned counsel was that there was glaring inconsistency between Section 12(3) and the two earlier provisions of Section 12(1) and Section 8. It was said that while Section 4(1) provided for the determination of the permissible area of the tenant also, Section 12(3) prescribed that the tenant's permissible area under the Punjab Law which had not so far vested in the Government shall be deemed to have vested in the State Government with effect from the appointed day. The argument was if the land vested in the Government what was the point of determining a tenant's permissible area under the Act ? It was again said that while Section 8 saved certain transfers from the operation of the Act, Section 12(3) made no such exception in favour of those transfers. For example; it was said that land which was declared surplus under the Punjab Security of Land Tenures Act but which was unutilized and later acquired by the Central Government would vest under Section 12(3) in the State Government notwithstanding the acquisition by the Central Government. Similarly, land purchased by a tenant under the provisions of Section 18 of the Punjab Security of Land Tenures Act would vest in the State Government under Section 12(3) notwithstanding the purchase by the tenant. So also, in the case of transfers by inheritance. Even transfers made before 20th July, 1958 (the date mentioned in

Section 8(1)(a), it was argued, would not be saved if they were made after the declaration of surplus area or tenant's permissible area under the Punjab Security of Land Tenures Act.

8. The provisions of Sections 4 and 8, particularly Section 8; on first impression to be inconsistent with the provisions of Section 12(3) but, as we said earlier, it is our first duty to seek to avoid conflict by endeavouring to harmonise and reconcile every part so that each shall be effective. A closer and critical examination of the provisions shows that they are not irreconcilable and all of them fit well into the general scheme of the Act. Section 8 has not been repealed expressly, by Section 12(3) of the Act, nor can it be said, in the view that we are taking, that it was repealed by necessary implication. Section 12(3) was introduced by way of amendment by Act XVII of 1976. By Section 1(2) of the Amending Act, it is deemed to have come into force on 23rd December, 1972. A harmonious way of construing Sections 8 and 12(3) would be to give full effect to Section 8(1) upto 23rd December, 1972, that is to say, to exclude from the operation of Section 12(3), the transfers made upto 23rd December, 1972 which are protected by Section 8(1) of the Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30th July, 1958. We see no reason why Sections 8 and 12(3) should not be construed in this harmonious manner so as to give effect to both the provisions. We find from the instructions issued from time to time that the Government has also construed the provisions in a similar manner. In Memo No. 5726-AR (IA)-76/28819, dated 15th September, 1976, addressed by the Financial Commissioner and the Secretary to Government, Haryana, Revenue Department, to the Commissioners of the Ambala and Hissar Divisions etc., it is said :-

> "The surplus area already purchased by the eligible tenants/ Persons under Section 18 of the Punjab Law and Section 22 of the Pepsu Law should be considered to have been lawfully utilized and should not, therefore, be vested in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. Only such unutilized surplus area which was not purchased by the eligible tenants/persons under the Punjab Law or Pepsu Law should be deemed to have been vested in the State Government from the appointed day under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and may be mutated in favour of the State Government immediately and necessary action to allot such area to the eligible persons may be taken in accordance with the provisions of the Utilization of Surplus and Other Areas Scheme, 1976."

Again in Memo No. 6632-AR(II)-76/33309, dated 29th October, 1976, it is said :-

> "It has come to the notice of the Government that there is some lack of understanding in correctly interpreting the provisions of Section 8 and Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. In this regard it is clarified that Section 8 of the Haryana Ceiling on Land Holdings Act, 1972, *inter alia* prohibits transfers and dispositions of land in excess of the permissible area under the old Acts made after the 30th July, 1958. Therefore, transfers or dispositions of surplus area under the Punjab Law or the Pepsu Law made before the 30th July, 1958 stand regularised by law or in other words they

would affect the surplus pool. As a result of this, the surplus area which had been transferred or disposed of by the landowners before 30th July, 1958, shall not vest in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and, therefore, such area cannot be utilized in accordance with the Utilization of Surplus and Other Areas Scheme, 1976."

9. Shri Nanbat Singh, the learned Assistant Advocate General, also agreed that we should harmonise Section 8 and Section 12(3) in the manner that we have done but he suggested that the date upto which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be the appointed day (24th January, 1971) and not the date on which Section 12(3) came into force. We do not a agree. Section 1(2) of Act XVII of 1976 expressly provides that the Act shall come into force on 23rd December, 1972. We must give some meaning and effect to it. In our view, the effect of Section 12(3) coming into force from 23rd December, 1972 on Section 8 is that transfers of the three categories specified by us made upto 23rd December, 1972 would be excluded from the operation of Section 12(3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected, if made before 30th July, 1958 and that all other land not excepted by Section 8 would vest in the State Government with effect from the appointed day.

10. We may mention here that though under Section 8, transfers out of surplus area declared under the Punjab Law are recognised upto 30th July, 1958 only, the Government by means of executive instructions have recognised, subject to certain conditions being fulfilled, transfers upto 15th April, 1966. Memo No. 5726-AR (LA)76/28819, dated 15th September, 1976 may be referred to in this connection.

11. In regard to the supposed conflict between Section 4 and Section 12(3), an examination of the other provisions of the Act would show that there is no conflict in truth and substance. Section 15(1) declares that the surplus area acquired or vested under Section 12 shall be at the disposal of the State Government. Section 15(2) enjoins a duty upon the State Government to frame a scheme for utilizing the surplus area by allotment of land to various categories of persons which include tenants. The proviso to Section 15(2) expressly provides for the allotment of land to various categories of tenants. They are :

"(i) a tenant holding land declared as the tenant's permissible area under the Punjab Law or the Pepsu Law, as the case may be, may be allotted land to the extent of the area held by him or the permissible area under this Act, whichever is less;

(ii) a tenant who was allotted and given possession of land in the surplus area by the State Government under the Punjab Law or the Pepsu Law, may be allotted land to the extent of the area so allotted to him;

(iii) a tenant liable to ejectment as a result of an ejectment order or decree passed against him under clause (i) of sub-section (1) of Section 9 of the Punjab Law or sub-section (1) of Section 7A of the Pepsu Law, may be allotted land to the extent of the area mentioned in Section 9A of the Punjab Law or Section 7A of the Pepsu Law, as the case may be;

(iv) a tenant, settled on the surplus area by the landowner before Kharif, 1968, who is not

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(a) landowner's relation of the category specified in clause (9) of Section 2 of the Punjab Law or the rules made thereunder; or

(b) the landowner's relative of the category specified in the rule made under sub-clause (ii) of clause (g) of Section 2 read with Section 52 of the Pepsu Law; or

(c) the landowner's relation of the category specified in the rule made under clause(s) of Section 3 read with Section 31 of this Act,

may be allotted land to the extent of two hectares of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value subject to the condition that the land so allotted and the land held by him, if any, do not exceed two hectares of land of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value; and

(v) a person from any other eligible category may be allotted land to the extent of two hectares of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value, subject to the condition that the land so allotted and the land held by him, if any, do not exceed two hectares of land of the category specified in clause (c) of sub-section (1) of Section 4 or land of equivalent value."

A scheme has in fact been framed by the State Government. Clause (4) of the Scheme enumerates the categories of persons eligible for allotment of surplus land. Category A is "a tenant holding land declared as the tenant's permissible area under the Punjab Law or the Pepsu Law, as the case may be." Category B is "a tenant who was allotted and given possession of land in the surplus area by the State Government under the Punjab Law or the Pepsu Law and is holding the same". Categories C, D and E are other classes of tenants, and, categories F, G, H and I are other classes of persons entitled to allotment. Clause (7) of the Scheme prescribes the principles and procedure of allotment. Sub-clause (i) of clause (7) provides : "*Inter se* priority amongst the eligible categories shall be in the same order in which these have been listed in Paragraph 4, i.e., Category A will take precedence over Category B and Category B will take precedence over Category C and so on" Sub-clause (ii) of clause (7) provides : "Eligible persons of Category 'A' will be allotted land to the extent of permissible area under this Act out of the areas held by them". Similarly, sub-clause (iii) provides "Eligible persons of Category B will be allotted the areas held by them". It is thus seen that the determination of tenant's permissible area under Section 4 is not an exercise in futility. It is intended to secure to him under the Scheme land to the extent of permissible area under this Act out of the area held by him. The ultimate effect of allotment under the Scheme would be to convert the tenancy rights which he previously possessed in the land into rights of ownership.

12. Shri K.P. Bhandari, the learned counsel for the petitioners in some of the writ petitions, argued that Section 12(3) was beyond the competence of the State Legislature as it did not provide compensation for the lands which had become vested in the State Government under Section 12(3) of the Act. He did not, however, elaborate the argument further presumably because of the inclusion of Act XVII of 1976 in the Ninth Schedule to the Constitution.

Shri Bhandari's principal submission was against Section 12(4) which is as follows :-

> "For the purpose of determining the surplus area under this Act, a judgment, decree or order by a Court or other authority, obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored.

Shri Bhandari submitted that it was beyond the competence of the Legislature to declare the decision of a Court of law to be void or of no effect as that would encroach upon the judicial function which under our Constitution, the Legislature is barred from performing. He relied on the well-known decisions of *Janapada Sabha Chindwara v. C.P. Syndicate*[7], *State of Tamil Nadu v. Rayappa*[7], and *Indira Nehru Gandhi v. Raj Narain*[8],. The principle enunciated is well-established but it has no application in the present case. Section 12(4) does not purport to set aside or reverse any decision of a Court. It does not purport to declare a decision to be null and void. All that it does not is to declare that a decree having the effect of reducing the surplus area of a person shall be ignored if made after the appointed day. Just as a transfer *inter vivos* which is not *bona fide* has to be ignored for the purpose of determining the surplus area, it is enacted that a decision having the effect of reducing the surplus area should also be ignored. The Legislature has not provided for any saying in favour of decrees obtained *bona fide* as distinguished from collusive decrees for the simple reason that it would be inappropriate for revenue authorities to go into the question whether the decree of a civil Court is collusive. The only effect of Section 12(4) is that a decree obtained after the appointed day cannot be taken into account in determining the surplus area of a person. Section 12(4) does not affect the validity of the decision in any other manner. The rights of persons who are parties to the decision such as they are, remain unaffected *inter se.*

13. It was urged by Shri M.S. Ratta, one of the learned counsel for the petitioners, that the amendment of Section 12(1) made by Act 40 of 1976, was bad as it made no provision for compensation. He urged that he was entitled to raise the question as Act 40 of 1976 was not included in the Ninth Schedule. Section 12 as it stood before it was amended by Act 40 of 1976, stated that "the surplus area of a landowner shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government, for a public purpose on payment of amount hereafter provided....." By Act 40 of 1976, the words "on the date on which possession thereof is taken by or on behalf of the State Government be deemed to have been acquired by the State Government for a public purpose on payment of amount hereafter provided." were omitted and the words "from the date on which it is declared as such, shall be deemed to have been acquired by the State Government for public purpose" were substituted. The omission of the words "payment of amount hereafter provided" according to Shri Ratta, showed that compensation was not intended to be payable. There is no substance whatever in the submission. Compensation need not be provided in the very section which provides for the vesting of the land in the Government. Section 16 of the Act expressly provides for payment of compensation at the rates shown in the table. In the face of the express provisions for payment of compensation, there is no point in saying that compensation is not provided by the statute.

14. Shri Grewal, learned counsel, argued that Section 9(4)(c) of the Haryana Act which provided that in the case of a family the declaration shall be furnished by the husband was repugnant to Section 14 of the Hindu Succession Act which conferred full rights to a woman on acquiring

property by succession. There is no substance in this submission. The Hindu Succession Act deals with succession to property owned by Hindu males and females. The Haryana Ceiling on Land Holdings Act does not affect or purport to affect the law of succession as declared by the Hindu Succession Act. There is no repugnancy whatever. Once a person succeeds to property, thereafter, he or she holds the property like any other person subject to the same laws to which they are subject and which may be made from time to time. A law relating to ceiling on agricultural land held by the members of a family cannot possibly be said to be a law relating to succession. We consider it unnecessary to dilate further on this question,

15. Shri Nagpal urged that no date was specified with reference to which surplus area had to be declared. The argument is entirely without substance. Section 7 expressly provides that no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with possession or partly in one capacity and partly in another land within the State of Haryana exceeding the permissible area on or after the appointed day. Appointed day is defined in Section 3(c) as 24th January, 1971. Another submission of Shri Nagpal was that the proviso to Section 8(1) did not define the expression "advantage". We do not think it was necessary for the legislature to define each and every expression occurring in a statute. It is for the authorities constituted under the Act to interpret the expression in accordance with the well-known principles of interpretation.

16. Shri H.S. Wasu, learned counsel for some of the petitioners, contended that his clients were vendees from a big landowner whose land had been exempted by the Government from the operation of the Punjab Security of Land Tenures Act for the purpose of development of the land as orchard and that in their cases the Government was estopped from enforcing the Haryana Ceiling on Land Holdings Act against them, notwithstanding the fact that the land sold to them was included in the surplus area of the landowner under the provisions of the Punjab Security of Land Tenures Act. According to Shri Wasu, because of the exemption granted by the Government, the vendees had invested huge amounts for the development of orchards, complying with all the rigorous conditions prescribed by the Government under the rules. He submitted that the Government was bound to stand by its earlier commitment and was barred by the principle of equitable estoppel from claiming that the land had come to be vested in the Government under Section 12 of the Haryana Ceiling on Land Holdings Act. He relied on the well-known case of *Union of India v. Indo-Afghan Agencies Ltd*[9]*.,* The simple answer to Shri Wasu's submission is that there call be no estoppel against the Legislature or its mandate. In *State of Kerala v. The Gwaller Rayon Silk Mfg. (Wvg.) Co. Ltd. Etc*[10]*., ,* the Government of Kerala had entered into an agreement with the Company undertaking not to legislate for the acquisition of private forests for a period of sixty years if the Company purchased forest lands for the purposes of its supply of raw materials. The Company purchased thirty thousand acres of private forests for Rs. 75,00,000. It was argued that the agreement not to legislate would operate as equitable estoppel against the State and, therefore the Kerala Private Forests (Vesting and Assignment) Act, 1971, could not be enforced against the Company. The Supreme Court rejected the contention observing :-

> "We do not see how an agreement of the Government can preclude legislation on the subject. The High Court has rightly pointed out that the surrender by the Government of its legislative powers to be used for public good cannot avail the company or operate against the Government as equitable estoppel."

Similarly, in *Mathra Parshad and Sons v. The State of Punjab*[11], , the Government, by a press note, had announced that no sales tax will be charged in respect of sales of tobacco which fell under the Tobacco Vend Fees and that any tax already recovered from a dealer would be refunded. A writ of Prohibition was sought against the Excise and Taxation Officer who was proceeding to levy sales tax notwithstanding the press note. The Supreme Court said :-

> "There can be no estoppel against the statute. If the law requires that a certain tax be collected, it cannot be given up, and any assurance that it would not be collected, would not bind the State Government, whenever it chose to collect it".

To a similar effect is the decision in *Excise Commissioner, U.P. v. Ram Kumar,*[12]. The whole question of equitable estoppel was considered at great length by a Division Bench of this Court of which one of us was a member in *State of Punjab v. Amrit Banaspati Co. Ltd*[13]., and it was pointed out that there can never be an estoppel to prevent the Parliament from making a law or to prevent the Government while functioning as a delegate of Parliament to make subordinate legislation contrary to the promises earlier held out by it in an executive capacity or to prevent the Government from carrying out the mandates of Parliament. It was further pointed out that the principle of equitable estoppel could not operate so as to prevent the Government from discharging the obligations imposed upon it by an Act of Parliament or to compel the Government to do something which was prohibited by statute or which was opposed to obvious legislative policy. We are, therefore, unable to accept the argument of Shri Wasu based on the principle of equitable estoppel. We may also mention that it is not correct to say that any land had been exempted from the operation of the Punjab Security of Land Tenures Act. In fact, there was no provision under the Punjab Security of Land Tenuress Act which enabled the Government to exempt any land from the operation of the Act. Rule 8 of the Punjab Security of Land Tenures Rules, however, enabled a landowner to apply to the Committee for exemption from utilization of his surplus area on the ground that his surplus area was under a tea-estate or formed part of a well-run farm. Under Rule 10 the Committee was empowered to exclude from the surplus area to be utilized for the resettlement of ejected tenants the whole or part of the tea-estate or well-run farm on the basis of the marks allotted in accordance with Rule 11. The Committee was also empowered to periodically review the classification after every three years. Thus the rules did not exclude a well-run farm from the surplus area of a big landowner but only prevented its being utilized for the resettlement of ejected tenants. The land retained its character of surplus area throughout. On the passing of the Haryana Ceiling on Land Holdings Act, it became vested in the State Government under Section 12 of the Act. It is true that Section 12 of the Haryana Ceiling on Land Holdings Act may work great hardship on persons who have purchased land from a big landowner and invested large sums of money in developing the land as orchard in the belief that the land would not be treated as surplus area of the big landowner. But that is a matter which the aggrieved persons have to take up with the Government for proper action to relieve them from the hardship. We can do nothing except to express our sympathy.

17. We now take up an important question which was raised by Shri Bhandari on, the constitutional validity of Section 20-A of the Haryana Ceiling on Land Holdings Act which bars the appearance of any legal practitioner before any officer or authority other than the Financial Commissioner. It was argued that Section 20-A was repugnant to Section 30 of the Advocates Act, 1961 which declares that every Advocate whose name is entered in the common roll shall be entitled as of right to practice (i) in all Courts including the Supreme Court, (ii) before any

Tribunal or persons legally authorised to take evidence, and (iii) before any other authority or person before whom such Advocate is by or under any law for the time being in force entitled to practice. There is no dispute that the authorities constituted under the Haryana Ceiling on Land Holdings Act are legally authorised to take evidence (vide Section 20 of the Act). There is also no dispute that but for Section 20-A of the Act, Advocates would be entitled by virtue of Section 30(ii) of the Advocates Act to appear before any officer or authority functioning under the Act. The argument of Shri Bhandari was that the Advocates Act was a law made by Parliament pursuant to Entries 77 and 78 of List I of the Seventh Schedule to the Constitution and, therefore, the State Legislature was not competent to make a law repugnant to it. It was argued that Section 20-A would not be saved by Article 254(2) of the Constitution since the Advocates Act was not a law made with respect to a matter enumerated in the Concurrent List. Shri Bhandari placed strong reliance on the decision of the Supreme Court in *O.N. Mohindroo v. Bar Council of Delhi*[14],. The question before the Supreme Court was whether Section 38 of the Advocates Act which gave appellate jurisdiction to the Supreme Court against orders made by the Disciplinary Committee of the Bar Council of India, was *ultra vires* Article 138(2) of the Constitution. Article 138(1) provides for the enlargement of the jurisdiction of the Supreme Court by law made by Parliament with respect to any of the matters in the Union List. Article 138(2) provides for the enlargement of the jurisdiction of the Supreme Court by law made by Parliament with respect to any matter upon which the Government of India and the Government of any State may specially agree. If the Advocates Act wholly fell within the Union List, the vires of the Act could not be challenged. If it fell within List III, then in the absence of agreement between the Central Government and the State Government, the Act would be invalid. The High Court of Delhi held that the Advocates Act was a composite legislation partly falling under Entries 77 and 78 of List I and partly in Entry 26 of List III. The Supreme Court after referring to Entries 77 and 78 of List I and Entry 26 of List III, observed as follows :-

> "Entries 77 and 78 in List I apart from dealing with the Constitution and Organisation of the Supreme Court and the High Courts also deal with persons entitled to practise before the Supreme Court and the High Courts. This part of the two entries shows that to the extent that the persons entitled to practise before the Supreme Court and the High Court are concerned, the power to legislate in regard to them is carved out from the general power relating to the professions in Entry 26 in List III and is made the exclusive field for Parliament. Barring those entitled to practise in the Supreme Court, and the High Courts, the power to legislate with respect to the rest of the practitioners would still seem to be retained under Entry 26 of List Ill. To what extent the power to legislate in regard to legal profession still remains within the field of Entry 26 is not the question at present before us and, therefore, it is not necessary to go into it in this appeal."

The Supreme Court then referred to the object of the Act and the various provisions of the Act including Section 30. It was then observed as follows :-

> "Though the Act relates to the legal practitioners, in its pith and substance it is an enactment which concerns itself with the qualifications, enrolment, right to practise and discipline of the Advocates. As provided by the Act once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practise in all Courts including the

> Supreme Court. As aforesaid the Act creates one common Bar, all its members being of one class, namely, Advocates. Since all those who have been enrolled have a right to practise in the Supreme Court and the High Courts the Act is a piece of legislation which deals with persons entitled to practise before the Supreme Court and the High Courts. Therefore, the Act must be held to fall within Entries 77 and 78 of List I. As the power to legislation relating to those entitled to practise in the Supreme Court and the High Court is carved out from the general power to legislate in relation to legal and other professions in Entry 26 of List 111, it is an error to say, as the High Court did, that the Act is a composite legislation partly falling under Entries 77 and 78 of List I and partly under 26 of List III."

Thus, it appears to be the view of the Supreme Court that Entries 77 and 78 of List I are concerned with the persons entitled to practise before the Supreme Court and the High Courts, that is to say, the Entries are concerned not merely with who are entitled to practise in the Supreme Court and the High Courts, but also with all other matters concerning them such as their qualifications, discipline, right including the right to practise elsewhere etc. In that view, the right of an Advocate whose name appears on the common roll to practise before any Tribunal or person legally authorised to take evidence, cannot be taken away by a State law. To the extent that Section 20-A bars the appearance of Advocates before any officer or authority it must be held to be repugnant to Section 30 of the Advocates Act and, therefore, invalid. We would like to add that the Haryana Ceiling on Land Holdings Act is a complicated piece of legislation and it would indeed be difficult for lay persons to understand some of its provisions without expert legal assistance. It is but necessary that those that need legal assistance to enable them to properly put forward their case, should not be deprived of that assistance. Cases arising under the Haryana Ceiling on Land Holdings Act are not like those which come before a Labour Court where, if Legal Practitioners are allowed to appear, a poor workman who is unable to engage the services of a lawyer may find himself pitted against a stalwart Advocate engaged by the management. Such a situation cannot possibly arise in cases under the Ceiling on Land Holdings Act. While it is not for us to question the legislative wisdom in enacting Section 20-A, we are unable to discover any reason for the provision. Perhaps it is founded on the unfounded distrust expressed by a wit :

> "In the heels of the higgling lawyers,
>
> Too many slippery ifs and buts and howevers,
>
> Too much hereinbefore provided whereas,
>
> Too many doors to go in and out of,
>
> When the lawyers are through
>
> What is there left Bob ?
>
> Can a mouse nibble at it
>
> And find enough to fasten a tooth in ?"

18. In the light of the foregoing discussion, all the writ petitions are dismissed subject to the following directions :-

Petitioners who have not so far filed their declarations are allowed one month's time from today to file their declarations.

2. Petitioners who have filed their declarations may pursue the remedies available to them under the Act.

3. All declarations will be dealt with by the authorities constituted under the Act in accordance with law, in the light of this judgment.

4. Petitioners apprehending to be dispossessed under Section 22 of the Act but claiming to be entitled to the protection of Section 8 are allowed fifteen days time from today to file applications before the Collector seeking protection. Meanwhile their possession will not be disturbed.

5. Section 20-A will not be enforced so as to prevent Advocates from appearing before any authority or officer functioning under the Act.

Bhopinder Singh Dhillon, J. - I agree.

Gurnam Singh, J. - I agree.

Ajit Singh Bains, J. - I also agree.

Harbans Lal, J. - I agree.

19. After the judgment was prepared, it was brought to our notice that Section 30 of the Advocates Act has not yet come into force. That, however, will not make any difference to our conclusion regarding the validity of Section 20-A of the Haryana Act. Until Section 30 of the Advocates Act comes into force, by virtue of Section 50(3)(c) of the Advocates Act, Section 14 of the Indian Bar Councils Act shall continue to be in force. Now Section 14(1) of the Indian Bar Councils Act is in *pari materia* with Section 30 of the Advocates Act and is as follows :

> "14. *Right of advocates to practise.* - (1) An Advocate shall be entitled as of right to practise -
>
> (a) subject to the provisions of sub-section (4) of Section 9, in the High Court of which he is an advocate; and
>
> (b) save as otherwise provided by sub-section (2) or by or under any other law for the time being in force in any other Court and before any other Tribunal or person legally authorised to take evidence; and
>
> (c) before any other authority or person before whom such Advocate is by or under the law for the time being in force entitled to practise."

An examination of the various provisions of the Indian Bar Councils Act, particularly Sections 1(2), 2(1)(a), 2 (1) (c), 3, 8, 9, 10, 14, 15 clearly shows that the Indian Bar Councils Act is

primarily concerned with the qualifications, enrolment, right to practise and discipline of Advocates entitled to practise in the High Courts even as the Advocates Act is concerned with the qualifications, enrolment, right to practise and the discipline of Advocates entitled to practise in the Supreme Court and in the High Courts. All that has been said by the Supreme Court with reference to the Advocates Act and by us with reference to Section 30 of the Advocates Act applies with the same vigour Section 14 of the Indian Bar Councils Act. Section 20-A of the Haryana Act is, therefore, *ultra vires.*

Bhopinder Singh Dhillon, J. - I agree.

Gurnam Singh, J. - I agree.

Ajit Singh Bains, J. - I also agree.

Harbans Lal, J. - I agree.

Case Referred.

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