

Punjab Land Reforms Act 1972 (Punjab Act No. 10 of 1973)

STATEMENT OF OBJECTS AND REASONS OF ACT 10 OF 1973

Two enactments, namely, the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Land Act, 1955, are in force in the State of Punjab While the former Act applies to those parts of the state which were comprised in the State of Punjab immediately before the 1st November, 1965, the latter applies to those territories of the erstwhile State of Pepsu Which now form part of the State of Punjab. It was considered necessary that a single unified law should be applicable to the entire State in so far as provisions relating to imposition of land ceiling acquisition of proprietary rights by tenants and ancillary matters are concerned. The aforesaid two enactments will remain in force in regard to matter not covered by this Bill.

After giving careful consideration to the various aspects of land reform measures, which are necessary in the interest of social justice as also agricultural production, it has been decided that the ceiling limits be suitably reduced; that the entire surplus area should vest in the State Government and that the criteria of eligibility for allotment of such areas should be made broad-based. It has been considered necessary to withdraw certain exemptions which were allowed under the tow existing measures.

This Bill is being enacted to achieve the above objective.

STATEMENT OF OBJECTS AND REASONS OF ACT 40 OF 1973

The bill is designed to replace the Punjab Land Reforms (Amendment) Ordinance, 1973, which was issued with a view to carrying out certain

suggestions/amendments considered necessary by the Government of India and the State Government.

STATEMENT OF OBJECTS AND REASONS OF ACT 22 OF 1976

The existing provision of punishment in Punjab Land Reforms Act, 1972, is not considered deterrent enough to deal with the land owner who don not furnish any declaration regarding their land or file declarations which are false. It is proposed to enhance the existing punishment. Hence this Bill.

Received the assent of the President of India on the 28th March, 1973 and holdings, first published for general information in the Punjab Government Gazette (Extraordinary) dated, the 2nd April, 1973.

An Act to consolidate and amend the law relating to ceiling on land holdings, acquisition of proprietary rights by tenants and other ancillary matters in the State of Punjab.

An Act to consolidate and amend the law relating to ceiling on land holdings, acquisition of proprietary right by tenants and other ancillary matter in the State of Punjab.

CHAPTER I

Preliminary

1.Short title, extent and commencement — (1) This Act may be called the Punjab Land Reforms Act, 1972.

2.It extends to the whole of the State of Punjab.

3.It shall come into force at once.

2. Declaration as to giving effect to certain directive principles - It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Articles 39 of the Constitution of India.

COMMENTS

Definition of the word “land--” We are unable to agree that the Act deals only with the land and not the buildings or other super-structures on such land. The definition of the word “land” extracted above would show that it includes “ sites of buildings, and other structures of such land”. In the context in which clause (a) appears in section 2(5) and in view of the fact that there is a comma after the words “sites of buildings” we are of the view that the words “sites” in clause (a) does not qualify the words “other structures on such land” It should be interpreted as including other structures on such land as also sites of buildings. Bal Raj Ahuja vs State of Punjab and another, 1988 PLJ 423.

3Definitions - In this Act’ unless the context otherwise requires—

(1)“appointed day” means the twenty-fourth day of January, 1971;

(2)“banjar land” means land which has remained uncultivated for a continuous period of not less than four years immediately preceding the date on which the question whether such land is banjar or not arises;

(3)“Collector” means the Collector of the district or any other officer not below the rank of Assistant Collector of the first grade empowered in this behalf by the State Government;

(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)“land” means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes sub-servient to agriculture, or for pasture, and includes:-

(a)the sites of buildings, and other structures on such land; and

(b)banjar land;

(6)“landowner” shall have the meaning assigned to it in Punjab Land Revenue Act,1887, (Punjab Act XVII of 1887);

(7) “minor” means a person who has not completed the age of eighteen years;

(8) “orchard” means a compact area of land having fruit bearing trees grown there- on in such number that they preclude, or when fully grown would preclude, a substantial part of such land from being used for any other agricultural purpose but shall not include under banana or guava trees or land comprised in vineyard;

(9) “Pepsu Law” means the Pepsu Tenancy and Agricultural Lands Act, 1955

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

(11) “prescribed” means prescribed by rules made under this Act;

(12) “Punjab Law” means the Punjab Security of Land Tenures Act, 1953;

[(13) “self-cultivation” means cultivation by a landowner either personally or through any member of his family or through his brother, or through a servant or hired labour under the personal supervision of the landowner or supervision of a member of his family, subject to the condition that the servant or hired labour is paid wages in cash or in kind or partly in cash and party in kind but not as a share of the produce;]

(14) [----]

(15) “surplus area” means the area in excess of the permissible area;

(16) “tenant” has the meaning assigned to it in the Punjab Tenacy Act, 1887 (Act XVI of 1887) and includes a sub-tenant and self-cultivating lessee, but shall not include a present holder as defined in clause (f) of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949;

(17) all other words and expressions used herein and not defined but defined in the Punjab Tenancy Act, 1887 (Punjab Act XVI of 1887), or the Punjab Land Revenue Act, 1887 (Punjab Act XVII of 1887) shall have the meaning assigned to them in either of those Acts.

COMMENTS

Tenant on appointed day – if the petitioner was a tenant on the appointed day and had continued to be a tenant continuously it would be manifestly unfair to deprive him of tenants permissible area merely because he subsequently purchased a part of the tenancy. Whether he in fact was entitled to tenants permissible area, is a matter to be examined by the Collector. *Raja Ram vs. State of Punjab*, 1992 LLT 26 (F.C. Punjab)

Definition of landowner: - It is admitted case of the petitioner that he is in possession of the land of Smt. Angoori Devi and that litigation is pending is pending in civil Court. The claim of the petitioner on the basis of a Will of Jai Singh, original owner, stands negated by the Civil Court and now the matter is stated to be pending in the High Court in appeal. If the appeal is decided in favour of the petitioner he would be owner of the land and, thus, a landowner. That being the position, this piece of land could be included for determination of the surplus area as belonging to the petitioner. Even if he fails in the civil suit, his case is covered in the definition of land owner as reproduced above. He is in possession of the land and enjoying its profits. The authorities were, thus, justified, though on different grounds, in including this piece of land in the area of the petitioner for determination of the surplus area in his hand. *Shri Jasmer Singh Bhatti Vs Punjab State and others*, 1989 PLJ 288.

Tenants on the appointed day -- The Senior State Counsel, on the other hand, advanced the same arguments as have been set forth in the impugned order of the Commissioner that Smt. Kaushalya Devi being a real sister of big landowner, is residing with them and, therefore, she is not entitled to tenants permissible area. So far as Ramesh Kumar and Raj Kumar Petitioners No. 2 and 3 are concerned, they have been shown as tenants on the appointed day under the order of Civil Court and such an

order is to be ignored in accordance with the relevant provisions of the Act. *Kaushalaya Devi vs State of Punjab*, 1992 LLT 36 (F.C. Punjab).

The stand of respondent no. 1 is that the contents of sub-para (iv) are not admitted as the case was decided on merits by the lower Court after giving full weightage to the evidence produced by the petitioners.

Respondent No. 2 has also given an evasive reply and has stated that there were no other tenants on the land of the petitioners on the appointed day, except Net Ram, who had been allowed his tenants' permissible area. It is, therefore, apparent to me that this aspect of the matter has not been adequately dealt with the authorities and the assertions made in the writ petition have not been emphatically denied. I am, therefore, of the view that as far as determination of the tenants' permissible area is concerned, the matter needs to be gone into once again. The petition is allowed on the limited ground mentioned above, and the orders Annexures P-2 and P-4 are accordingly quashed. A directions is issued to the Collector having jurisdiction in the matter to re-determine the tenants' permissible area and thereafter re-assess the surplus area in the hands of the landowner. *Sahi Ram vs State of Punjab through Collector, Ferozepure*, 1992 (1) SLJ 928

Declaring the land surplus—While declaring the land surplus in his hand the land proessed by him which was owned by Smt. Angur Devi was also taken into consideration. It has been held by the Court that Smt. Anguri Devi ws the sole owner of the suit land, the same could not be taken into consideration while declaring the land surplus in the hands of Jasmer Singh. He further submitted that the said land was also considered while declaring surplus area in the hands of Smt. Anguri Devi as well. Learned Singh Judge has discussed the entire matter in detail. The definition of 'landowner' as given in Punjab Land Reforms Act is the same as defined in Section 3(2) of the Punjab Land Revenue Act. *Jasmer Singh vs. State of Punjab and others*, 1990 PLJ 595

CHAPTER II

Ceiling on Land

4. Permissible area – (1) Subject to the provisions of section 5, no person shall own or hold as landowner or mortgagee with the 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 crop in a year, eleven hectares; or

(c) barani land, 20.5 hectares; or

(d) land of other classes including banjar land, and area to be determined accordingly 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 sub classes of land, subject to the condition that it does not exceed 21.8 hectares;

(ii) where the number of member 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 purpose 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 hectares 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.

COMMENTS

Vendees of the land in the year 1979 i.e. after the appointed day– As far as the Revenue Officer Revision No.795 of 1985-86 is concerned, appeal has been rightly rejected by the Commissioner as the petitioners were vendees of the land in the year 1979 i.e. after the appointed day and no benefit could be given to them under the provisions of Punjab Land Reforms Act, 1972. Admittedly they had purchased the surplus area after the enforcement of the Act and no benefit could be given to them and land purchased by them had already been declared surplus by the order of the Collector. *Gurdarshan Singh alias Darshan Singh vs. State of Punjab etc.*, 1990 PLJ 311

Tenant on the appointed day – If the petitioner was a tenant on the appointed day and had continued to be a tenant continuously it would be manifestly unfair to deprive him of tenants permissible area merely because he subsequently purchased a part of the tenancy. Whether he in fact was entitled to tenants permissible area, is a matter to be examined by the Collector. *Raja Ram vs. State of Punjab*, 1992 LLT 26 (F.C.Punjab)

If the petitioner was tenant on the appointed day and had continued to be a tenant continuously, it would be manifestly unfair to deprive him of tenants permissible area merely because he subsequently purchased a part of the tenancy. *Raja Ram vs. State of Punjab*, 1988 PLJ 87

Surplus area—It is clear that the possession of the area declared surplus under the old Act continues to be with the landowner i.e. the petitioner till today. It implies that the surplus area has not been utilised. That

being so, the Collector was to re-determine the area under the new Act afresh in terms of the authorities cited by the petitioner. *Behari Lal vs. State, 1992 LLT 38 (F.C.Punjab)*

It shall, however, be open to the authorities to re-assess the land in the hands of Surinder Kaur, who as referred above is daughter-in-law of Ajmer Singh, under the provisions of Punjab Land Reforms Act, 1972. It is, therefore, made clear that if any such exercise is done, the vendees from Ajmer Singh shall also be heard. *Ajmer Singh(died) vs. State of Punjab PLJ 583*

No proof of the date of birth – It would be seen that at the time when the order Annexure P-1 was passed, no proof had been furnished by petitioner No.1 by Lekh Ram himself (though he was present in Court) which could show that he was an adult on the appointed day. When the matter was taken up by the Special Collector after remand, yet again no evidence was produced with regard to the date of birth of Lekh Ram. The Commissioner while recording the order Annexure P-3 found once again that there was no proof of date of birth of Lekh Ram on the file. Before the Financial Commissioner, however, the petitioners sought to produce some additional evidence in the shape of certificate showing the date of marriage of Lekh Ram as 16th February, 1970 and the Voters List of 1984 showing Lekh Ram as being 33 years of age. The learned Financial Commissioner, however, found that the date of marriage could not prove the date of birth of Lekh Ram and the voters list obviously was an after thought and was thus required to be ignored. The learned Financial Commissioner also relied on a certificate produced from the Govt. Primary School Daulatpur by Hari Chand respondent No.2 which showed Lekh Ram's date of birth as 24th December, 1956 which did not confer adulthood on him on the appointed day. After considering the arguments, I am of the view that on the facts as pleaded and proved, it is difficult to take an opinion different from the one taken by the authorities below. The matter with regard to the date of birth of Lekh Ram has been gone into on a number of occasions and the findings have been found against him. The evidence sought to be produced before the Financial Commissioner has obviously been created later as it was not produced

before the Collector or the Commissioner and as such I find no reason whatsoever to disagree with the findings of the authorities below. *Sahi Ram vs State of Punjab through Collector, Ferozepur*, 1992(1) SLJ 928=1992 PLJ 313.

Cause of action -- On behalf of the appellants, it was stated that the land, which was declared surplus, remained in the possession of Inder Singh the landowner till his death, which took place on the 26th November, 1983. After his death the appellants land had not been utilized by the State Government, with the result that the appellants had not been divested of its possession. After the death of the father of the appellants, a fresh cause of action again accrued to them and their rights are protected in view of the Full Bench judgment of the Punjab and Haryana High Court reported in 1980 PLJ 354. Since Inder Singh and three adult sons, on the appointed day, they are entitled to take benefit of Section 11(5) and (7) of the Punjab Land Reforms Act. In pursuance of the remand order of the High Court, the father of the appellants filed objections which were accepted by the Collector (Agrarian) by his order dated the 9th November, 1983 and the notice was withdrawn. The appeal filed by the State before the Commissioner had been accepted erroneously and the case remanded to the Collector with the direction that the case should be kept pending till decision of the Supreme Court in *Ranjit Ram's case*. The order of the Commissioner in any case deserved to be set aside as no surplus land remained in the hands of the legal heirs of Inder Singh. *Gurdev Singh and others vs State of Punjab and another* 1988 PLJ 317.

Benefit of Section :- The Collector(Agrarian) was not justified in rejecting the the application of Harinder Rai petitioner for giving him the benefit of Section 5 of the Punjab Land Reforms Act on the ground that his appeal having been dismissed by the Commissioner and the case having been taken up in pursuance of the remand order of the Commissioner in the case of *Saroj Rani etc.*, Harinder Rai petitioner could not be permitted to raise the plea of adult son etc. However, in view of the law laid down by the Punjab and Haryana High Court in the judgement reported in 1984 PLJ 385 such a objection could be raised

before the Financial Commissioner even if it had not been raised before the Collector. The Collector should have given an opportunity to Harinder Rai to lead evidence on this point. Moreover, as per judgement reported in 1983 PLJ 319, the case of Harinder Rai Petitioner could not have been decided under the Punjab Security of Land Tenures Act, 1953 after the coming into force of the Punjab Land Reforms Act, 1972 with effect from 24.3.1973. The surplus area had to be re-determined under the new Act. Besides, the surplus area having not been utilised prior to the coming into force of the Punjab Land Reforms Act, it had to be re-determined under the new Act. The utilisation made during the pendency of the litigation would not in any way affect the interest of the petitioners. On this point, I am supported by the judgement of the Punjab and Haryana High Court reported in 1982 PLJ 223. After the coming into force of the new Act of 1972, the petitioner was entitled to reserve the land for his adult son and other members of his family, as per the law laid down by the Full Bench of the Punjab and Haryana High Court in Ranjit Ram's case (1981 PLJ 259). The aforesaid judgement also lays down that where surplus area declared under the old Act had not been utilised before the coming into force of the Punjab Land Reforms Act, 1972 it has to be re-determined in accordance with the provisions of the Act of 1972. Under Section 5(1) of the Act of 1972, each son of a landowner who was adult on 24.1.1971 had to be allowed a separate unit of 7 hectares while determining the surplus area, if any. *Harinder Rai Ahuja vs. State and others, 1989 PLJ 612*

Petitioner was adult on the appointed day – The Commissioner has rejected the plea of petitioner Om Parkash that he be given tenants's permissible area on the ground that Om Parkash is the adopted son of the landowner Mohari Ram and, therefore, cultivation by Om Parkash becomes self-cultivation by the landowner, in that view of the matter it was incumbent on the Commissioner to determine the claim that the petitioner was adult on the appointed day, therefore, entitled to a separate permissible unit. *Om parkash vs. State of Punjab, 1992 LLT 22(F.C.Punjab)*

The eldest son of the landowner Manmohan Singh was major on the appointed date. But he was granted citizenship of Australia on 8.6.1973. Certificate is on the file of the Collector on the date of decision of the case by the Collector(Agr.) in the year 1976. Manmohan Singh was not a citizen of India and as such, no benefit of additional unit being son of the landowner be given to him. The landowner had sold approximately 19 acres of land in village Sadhowal in the year 1973-74. As the sale was made after appointed date so this is to be ignored and the land will be counted in the hands of the big landowner. Similarly any land subsequently acquired by the landowner will also be counted towards his total holding. The Collector(Agr.) has given benefit of adult son to Harpreet Singh, who attained majority in the year 1979. This is wrong as the benefit of adult son is to be counted as on 24.1.1971 and not afterwards. As mentioned in the order of Collector(Agr.), Garhshankar dated 30.1.1980 the landowner has concealed material facts in his affidavit dated 19.2.1976 filed in connection with the proceedings before the Collector(Agr.) under the Land Reforms Act. This may be looked into all the land standing in the name of his son should be counted and appropriate action be taken under Section 23 of the Land Reforms Act, 1972. This is a fit case to impose a cut of two hectares as envisaged in the Act. *Gurbachan Singh Vs. Harbans Singh & others, 1991 PLJ 226.*

Remand – The matter is remitted to the Commissioner for fresh decision in accordance with law. It shall be open to the parties to take all arguments on facts and law before the Commissioner, who shall dispose of the matter within a period of two months from the date he takes it up. *Jagat Singh vs. Punjab State, 1992(2) LLR458= 1992(1) CLJ 631*

Absence of notice – The order of the Special Collector, Annexure P-6, as well as of the Appellant authority, Annexure P-7 and that of the Provisional Authority confirming the order Annexure-P6, deserve to be quashed being void ab initio due to non-giving of notice to the present petitioner and it is a case which do call for fresh determination of the surplus by the requisite Authority after giving notice to the petitioners, but in the present case this exercise will be in futile nature as under the Provisions of Section 4 and 5 of Punjab Land Reforms Act, 1972, the

petitioner being the adult sons of Sarwan Singh, respondent No.2 shall also be entitled to get their permissible area of land, as admittedly the possession of the land declared surplus had not been taken over by the State till now. Moreover, the ownership of the surplus area of land would vest in the State only after its possession has been taken over from the owner under Section 32-E of the Pepsu Act. *Charanjit Singh and others vs. State of Punjab and others, 1990 PLJ 8*

Bona-fide vendee – The petitioner purchased the land from the big landowner in the year 1974 during the pendency of the proceedings and the surplus area case was decided on 26.3.1975. So far as notice to the petitioner is concerned at the time of declaration of surplus area the petitioner was not a bona fide vendee and was not required to be heard and the sale being not covered by Section 4(5) of the Punjab Land Reforms Act, 1972 was rightly ignored. The petitioner acquired the land eyes open and subject to all liabilities and defects from which it suffered in the hands of the big landowner. *Kashmira Singh vs. State of Punjab and another, 1991 PLJ 89.*

Necessary parties-- The tenants were necessary parties before the declaration of the surplus area and that their grand-father Jhanda Singh was a tenant; over 86 Kanals 19 Marlas of land which had to be declared tenants permissible area. Now the concept of tenants' permissible area was not specifically incorporated in the New Act, unlike the Old Act, but a Division Bench of this Court in *Jagraj Singh and others vs. The State of Punjab and others, 1978 PLJ 59* spelled out such a concept and extended the concept to the New Act to conclude that tenant must be in occupation of land on the appointed day i.e. January 21, 1971, in order to claim a tenant's permissible area. *Bhag Singh and another vs. Financial Commissioner and others, 1989 PLJ 541*

Notice – With the coming into force of the Punjab Land Reforms Act, 1972, it was incumbent on the Collector to have given due notice to the big landowner in whose hands surplus area had been assessed under the old Act and to have considered the objections in the light of the provisions of the Punjab Land Reforms Act, 1972. As Inder Singh had

three adult sons on appointed day, he was competent to retain a separate unit for each of his adult sons. To that extent, surplus area which was declared under the old Act but had not been utilised upto the coming into force of the new Act would have to suffer reduction to the extent necessary. In this case, the Collector, Sangrur found that no surplus land remained with the landowner after allowing separate permissible area to the adult sons. *Gurdev Singh and others vs. State of Punjab and another*, 1988 PLJ 317

S.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 and intimate his selection 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 had an adult 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 patwar 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 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 utilization by the State Government immediately before such commencement.

COMMENTS

Consolidation proceedings—During the consolidation proceedings, which took place in the year 1964, they had been given the benefit of the aforesaid transfer of land and area measuring 486 Kanals 1 Marla had

been allocated on their qurrah. It was alleged by them that the surplus area case of their father having been decided on their absence by the Collector(Agrarian) was ex parte qua them and thus liable to be reviewed. The Collector vide his order dated 13th February, 1975 rejected the aforesaid application on the ground that the earlier order of the Collector, Bhatinda dated the 9th January, 1961 whereby the surplus area case of the landowner was decided had been upheld both by the Financial Commissioner and the Punjab and Haryana High Court on the 26th April, 1963 and the 19th April, 1973 respectively. *State of Punjab vs. Harbans Singh and others, 1989 PLJ 52*

Reassessment – In Ranjit Ram’s case a Full bench of this Court has held that if a landowner whose land had been declared surplus dies before the land had been utilised the land was to be reassessed in terms of Section (5)1) of the Punjab Land Reforms Act, 1972, in the hands of his adult sons. *Sawaran Singh vs. State of Punjab and others, 1993 PLJ 329*

It is clear that the possession of the area declared surplus under the old Act continues to be with the landowner i.e. the petitioner till today. It implies that the surplus area had not been utilised. That being so, the Collector was to re-determine the area under the new Act afresh in terms of the authorities cited by the petitioner. *Behari Lal vs, State, 1992 LLT 38(F.C.Punjab)*

It shall however, be open to the authorities to re-assess the land in the hands of Surinder Kaur, who as referred above is daughter-in-law of Ajmer Singh, under the provisions of Punjab Land Reforms Act, 1972. It is, therefore, made clear; that if any such exercise is done, the vendees from Ajmer Singh shall also be heard. *Ajmer Singh vs. State of Punjab, 1992 PLJ 583*

On behalf of the appellants, it was stated that the land, which was declared surplus, remained in the possession of Inder Singh, the landowner till his death, which took place on the 26th November, 1983. After his death the appellants who are his legal heirs have been in possession of the land as owners. The disputed land had not been utilized by the State Government, with the result that the appellants, a fresh

divested of its possession. After the death of the father of the appellants, a fresh cause of action again accrued to them and their rights are protected in view of the Full Bench judgment of the Punjab and Haryana High Court reported in 1980 PLJ 354. Since Inder Singh and three adult sons on the appointed day, they are entitled to take benefit of Section 11(5) and (7) of the Punjab Land Reforms Act. In pursuance of the remand order of the High Court, the father of the appellants filed objections which were accepted by the Collector (Agrarian) by his order dated the 9th November, 1983 and the notice was withdrawn. The appeal filed by the State before the Commissioner had been accepted erroneously and the case remanded to the Collector with the direction that the case should be kept pending till decision of the Supreme Court in Ranit Ram's case. The order of the Commissioner in any case deserved to be set aside as no surplus land remained in the hands of the legal heirs of Inder Singh. Gurdev Singh and others vs State of Punjab and another, 1988 PLJ 317.

Since the plaintiffs are in continuous possession till today, the surplus area is to be re-determined under the new Act i.e. under the Punjab Land Reforms Act which was enforced on 2.4.1973. In support of his contention reference was made to Ranjit Ram vs. The Financial Commissioner, Revenue Punjab and others, 1981 PLJ 59. The Suit filed on 22.12. 1975 i.e. after coming into force of the above said Act. No such plea was taken in the plaint by the plaintiff. That being so, he could not be allowed to take such plea for the first time at the time of arguments. Moreover, if he is in continuous possession on account of the stay order passed by the Courts, that will not entitle the plaintiff to claim benefit of the provisions of the above said Act. Balbir Singh vs. State of Punjab and others, 1991 PLJ 395

Only sons are entitle for a separate unit and not grandsons—The two sons of the landowners have already been given benefit of two separate units and, as such, there is no force in this contention in the argument of counsel for the petitioner that grandson is also entitled. In the definition of family as given in Section 3 of sub-section (4) of Punjab Land Reforms Act, 1972 it is mentioned that “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 daughter. In the definition on children of the landowner have been allowed but not grand children. *Udham Kaur and others vs State of Punjab and others*, 1990 PLJ 607.

Notice—Since the land had not been utilised upto the date notice under Section 9(1) was issued so it was incumbent upon the Collector to re-determine the area under the new Act, 1972, and benefit of adult sons be given to original landowner who had two adult sons in a family of 8 members on the appointed date. But there is no force in these arguments as the land had been declared surplus under the Punjab Security of Land Tenures Act, 1953 well before the commencement of the Punjab Land Reforms Act, 1972. So the order of Collector Agarian declaring surplus is attained finality and the case cannot be re-opened in the guise of purchase by the present petitioners. *Kuldip Singh and others vs. The State of Punjab*, 1993 PLJ 249.

Surplus area—The determination of surplus area has neither been challenged by the big landowner during his life time and nor by his heirs at any time. Even after his death his heirs have not staked their claim for re-determination of surplus area. It is a common knowledge that heirs of a big landowner to ask for re-determination of surplus area after his death if they likely to gain on re-determination. However, where the heirs of a big landowner are already big landowners in their own right or have become big landowners after inheritance from a deceased landowner, they may not claim re-determination of surplus area.

Hanuman vs. State of Punjab and others, 1993 PLJ 134

Res-judicata -- The appellant having been present in all these proceedings these orders were very much in his knowledge. After he failed to prefer an appeal/revision against the orders determining the surplus area within the limitation prescribed under the Act., the petitioners have forfeited the right to challenge the same which operates as res judicata between the petitioners and the State Government. *Paro Bai etc. vs. State*, 1989 PLJ 46

Gift deed -- The Commissioner had not gone into the bona fide or otherwise of the gift made in favour of Smt. Sukhwinder Kaur and has dismissed the appeal by merely stating that the gift having been made after the appointed day, was not valid. He has urged that this was contrary to the provisions of Section 5 of the Punjab Land Reforms Act, whereby a bona fide transfer even if it be by way of a gift made after the appointed day was to be protected, I find force in the argument of the counsel for the petitioner. It is clear to me that the Commissioner has not given a finding in terms of Section 5 of the Act as it was incumbent on him to give a finding with regard to the bona fides or otherwise of the gift made in favour of Smt. Sukhwinder Kaur. *Jagat Singh vs. Punjab State through the Financial Commissioner and Secretary Revenue Punjab, Chandigarh, 1992(1) SLJ 1205 = 1992(1) PLR 677 = 1992(1) Rev.LR 308 = 1992 PLJ 281 = 1992(2) LLR 485*

Determination of claim—The Commissioner has rejected the plea of petitioner Om Parkash that he be given tenants' permissible area on the ground that Om Parkash is the adopted son of the landowner Mohari Ram and, therefore,, cultivation by Om Parkash becomes self-cultivation by the landowner, in that view of the matter it was incumbent on the Commissioner to determine the claim that the petitioner was adult on the appointed day and, therefore, entitled to a separate permissible unit.

Om Parkash vs. State of Punjab. 1992 LLT 22(F.C. Punjab)

Appointed day -- The eldest son of the landowner Manmohan Singh was major on the appointed date. But he was granted citizenship of Australia on 8.6.1973. Certificate is on the file of the Collector on the date of decision of the case by the Collector(Agr.) in the year 1976. Manmohan Singh was not a citizen of India and as such, no benefit of additional unit being son of the landowner be given to him. The landowner had sold approximately 19 acres of land in village Sadhowal in the year 1973-74. As the sale was made after appointed date so this is to be ignored and the land will be counted in the hands of the big landowner. Similarly any land subsequently acquired by the landowner will also be counted towards his total holdings. The Collector(Agr.) has given benefit of adult son to Harpreet Singh, who attained majority in the year 1979. This is wrong as

With the coming into force of the Punjab Land Reforms Act, 1972, it was incumbent on the Collector to have given due notice to the big landowner in whose hands surplus area had been assessed under the old Act and to have considered the objections in the light of provisions of the Punjab Land Reforms Act, 1972. As Inder Singh had three adult sons on appointed day, he was competent to retain a separate unit for each of his adult sons. To that extent, surplus area which was declared under the old Act but had not been utilised upped the coming into force of the new Act would have to suffer reduction to the extent necessary. In this case, the Collector, Sangrur found that no surplus land remained with the landowner after allowing separate permissible area to the adult sons.

Gurdev Singh and others vs. State of Punjab and another, 1988 PLJ 317

Tenant's permissible area-- The stand of respondent No.1 is that the contents of sub-para (iv) are not admitted as the case was decided on merits by the lower Courts after giving full weightage to the evidence produced by the petitioners. Respondent No.2 has also given an evasive reply and has stated that there were no other tenants on the land of the petitioners on the appointed day, except Net Ram, who had been allowed his tenants' permissible area. It is, therefore, apparent to me that this

aspect of the matter has not been adequately dealt with the authorities and the assertions made in writ petition have not been emphatically denied. I am, therefore, of the view that as far as determination of the tenants' permissible area is concerned, the matter needs to be gone into once again. The petition is allowed on the limited ground mentioned above, and the orders Annexures P-2 and P-4 are accordingly quashed. A direction is issued to the Collector having jurisdiction in the matter to re-determine the tenants' permissible area and thereafter re-assess the surplus area in the hand of the landowner. *Sahi Ram vs. State of Punjab through Collector, ferozepur, 1992(1) SLJ 928*

Benefit of own wrong—The surplus land was allotted to them but they could not take possession in view of the stay order granted by the authorities under the Pepsu Act and by the High Court when the order passed by the authorities under the Pepsu Act was challenged in a writ petition. The landowner cannot be allowed to take benefit of his own wrong. He approached the High Court, got a stay order and the allottees could not obtain possession because of the stay. Mr. Tiwari may be right to the extent that the possession could not be delivered to his clients because of the stay order granted by this Court. Nevertheless, the fact remains that the landowner was not divested of the ownership of the surplus land and in view of the mandatory provisions of Section 4 read with section 5(1) of the Act, he is entitled to select permissible area for his family and for each of his adult son. *Rajinder Singh and another vs. State of Punjab and others, 1989 PLJ 168*

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

7. Determination of permissible and surplus area – (1) On the basis of the information given in the declaration furnished under section 5 or the information obtained under section 6, 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 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 a declaration containing which is false or which he knows or has reason to believe to be false or which he does not believe to be true, he shall be punishable with the imprisonment which may extend to two years, or with fine which may extend to two thousand rupees or with both].

(3) [--]

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

(i) any judgement decree or order of a Court or other authority obtained [on or after the appointed day] and having the effect of dismissing the surplus area of such 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 person under the Punajb Law, the Pepsu law or this Act;

COMMENTS

Tenant's Permissible area –If the petitioner was tenant on the appointed day and had continued to be a tenant continuously it would be manifestly unfair to deprive him of tenants permissible area merely because he subsequently purchased a part of the tenancy. Whether he in fact was entitled to tenants permissible area, is a matter to be examined by the Collector. *Raja Ram vs. State of Punjab, 1992 LLT 26(F.C.Punjab)*

Purchase of land – It is not known whether, for purposes of assessment, the land so purchased under Section 18 of the Punjab Security of Land tenures Act was included in the land owner's total holding or not, and if included, as alleged by the petitioner, the reasons for doing so and ignoring the purchases. I therefore, direct that the Collector may examine this aspect carefully and carry out a review of the order dated 22.11.1976 in which he must hear not only the petitioner but the

departmental authorities, the landowner and the tenants-purchasers with an opportunity to them to lead evidence in cases the purchases were based only on account of the landowner and not on the evidence on entries in the revenue record. Until this examination is done, the surplus area should not be utilised. *Devi Lal vs. State etc., 1988 PLJ 202*

Absence of notice – No notice whatsoever was given to the petitioners though they were tenants on the appointed day i.e. 24.1.1971. The surplus area case of the big landowner was filed under the New Act as he died on 8.8.1985 and the surplus area was to be re-determined in the hands of the legal heirs but the Special Collector(Agrarian) Fazilka, vide his order dated 26.5.1987 upheld the order dated 28.9.1962 which was passed under the Old Act whereas he should have determined the surplus area in the hands of legal heirs of the big landowner under the New Act. He should have decided it on merits. *Waryam Ram etc. vs. The State of Punjab etc., 1991 PLJ 35*

Re-opening of case – The area was declared surplus in the year 1960/1980 and these orders have not been set aside. The surplus area under the tenancy of Jagat Ram was allotted to him on 24.3.1982 and he deposited the purchase amount on 30.3.1982 in the Treasury. It has been held in C.W. No.8230 of 1976 as reported in 1980 PLJ 571 that after deposit of first instalment the tenant becomes the landowner. After the deposit of Rs.5900/- in the Treasury on 30.3.1982 the allottee, Jagat Ram, became the landowner. Due to death of the original landowner in the year 1984 this aspect of the case cannot be reopened as the land stood utilized during the life-time of the landowner who did not challenge this order either in appeal or revision. *Jagat Ram (now deceased) rep. By his sons vs. State and another, 1990 PLJ 548*

Withdrawal of the notice – The Collector had withdrawn notice under Section 9(1) of the Punjab Land Reforms Act vide his order dated 23.1.1984. There is nothing on the file to show that the petitioners are relations of the landowners and there is also finding of the Collector that the petitioners are not related to the landowners in any way. The petitioners purchased the land by a valid order and the Collector had

rightly withdrawn notice under the Punjab Land Reforms Act. Moreover, the petitioners were not before the learned Commissioner at the time of passing of the order adversely affecting their case. The Commissioner could not pass the order against the petitioners adversely affecting their interest without affording opportunity of being heard to them. Keeping in view the above discussion and facts and circumstances of the case, I agree with the contentions raised by counsel for the petitioners in Revenue Officer. *Gurdarshan Singh alias Darshan Singh vs. State of Punjab etc.*, 1990 PLJ 311

Separate permissible unit – the Commissioner has rejected the plea of the petitioner Om Parkash that he be given tenants' permissible area on the ground that Om Parkash is the adopted son of the land owner Mohari Ram and, therefore, cultivation by Om Parkash becomes self-cultivation by the landowner, in that view of the matter it was incumbent on the Commissioner to determine the claim that the petitioner was adult on the appointed day and, therefore, entitled to a separate permissible unit. *Om Parkash vs. State of Punjab*, 1992 LLT(22) (F.C.Punjab)

The eldest son of the landowner Manmohan Singh was major on the appointed date. But he was granted citizenship of Australia on 8.6.1973. Certificate is on the file of the Collector on the date of decision of the case by the Collector(agr.) in the year 1976. Manmohan Singh was not a citizen of India as such, no benefit of additional unit being son of the landowner be given to him. The landowner had sold approximately 19 acres of land in village Sadhowal in the year 1973-74. As the sale was made after appointed date so this is to be ignored and the land will be counted in the hands of big landowner. Similarly any land subsequently acquired by the landowner will also be counted towards his total holdings. The Collector(agr.) has given benefit of adult son to Harpreet Singh, who attained majority in the year 1979. This is wrong as the benefit of adult son is to be counted as on 24.1.1971 and no afterwards. As mentioned in the order of the Collector(Agr.) Garhshankar dated 30.1.1980 the landowner had concealed material facts in his affidavit dated 19.2.1976 filed in connection with the proceedings before the Collector(Agr.) under the Land Reforms Act. This may be looked into and

all the land standing in the names of his sons should be counted and appropriate action be taken under Section 23 of the Land Reforms Act, 1972. This is a fit case to impose a cut of 2 hectares as envisaged in the Act.

The order of Collector Agrarian dated 12.5.1976 continues to be the basic order with regard to determination of surplus area quantum. It is matter of fact and is conceded by the counsel for the State also that Chanan Ram, petitioner, was not given notice. This is his legal right. On this ground alone I have to remand the case to Collector Agrarian, Abohar, to give a hearing to the petitioner and pass an order on the validity or otherwise of the relief claim by Chanan Ram. Collector Agrarian, Abohar, is directed to give the petitioner an early hearing. *Chanan Ram vs. State of Punjab and others, 1991 PLJ 794*

The petitioners have not been granted opportunity of hearing only on the ground that the sales had taken place after the “appointed day”. The fact remains that the petitioners had got registered sale deeds in their favour. They were in actual physical possession of the land. By the impugned action they were likely to be deprived in their land. The civil rights were bound to be affected. *Sabar Khan and others vs. Financial Commissioner (Appeals) Punjab and others, 1993 PLJ 208*

Sale -- The sale in favour of the petitioner by the original landowner was made in the year 1974 and mutation too was sanctioned on 30th October, 1974, whereas the order of the Collector was made in 1977. I am of the view that the petitioner had a right to show before the authorities below that the sale effected in his favour was bona fide one which entitled him to the retention of the area sold to him. It is also clear from the impugned orders Annexures P-3 and P-4 that the solitary ground on which the Commissioner as also Financial Commissioner had dismissed the revision petition filed by the petitioner was that they were time barred. I am of the view that the orders impugned before those authorities were made without issuing any notice to the petitioner, and as such, were void in the eye of law. *Bhupinder Singh vs. State of Punjab*, 1992 PLJ 462

Separation of the possession – Where there is a mere separate of the possession as distinguished from a partition, the entire holding still remains the joint property of all the co-sharers; and though each sharer holds separate possession of a portion of the holding, and may be allowed to manage such portion and appropriate the whole of its proceeds, he is yet not competent to deal with it in any manner which would be prejudicial to the joint proprietary interest of all the co-sharers in each and every part of the holding. Thus all that she holds in that joint khata is a joint right and this joint right has not been for any exclusive right to any specific khasra numbers. Since none of her rights has been infringed while deciding the surplus area case of Siri Ram, she, in fact, has no locus standi even to file an appeal against the order of the Collector Agrarian dated 6.6.1973 declaring the surplus area of Siri Ram. Apart from this, the petitioner Ved Wanti had no locus standi in filing the appeal or even the present revisions petition when her right has not at all been touched by the Collector vide his order dated 6.6.1973. *Ved Wanti vs. State of Punjab and others, 1990 PLJ 124*

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 Pespu Law, which has not been utilized 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.

COMMENTS

The land in dispute after being declared surplus in 1962 continues to be surplus and from the date the above quoted provisions of Land Reforms Act came into force, all surplus land stands vested in the State Government from the date of possession thereof is taken by or on behalf of the State Government. Apart from this Section 8 of the Punjab Land Reforms Act vests all the surplus area declared under the Punjab Law in the State Government and no exemption has been provided in the Punjab Land Reforms Act and nor does the Punjab Security of Land Tenures Act contain any provision under which this land can be exempted by any authority. *Anokh Singh etc. vs. State of Punjab, 1988 PLJ 331*

The tenants were delivered possession in the year 1962 and after passage of time they became eligible for enforcement of P.Rights. There is no bar that the allottee should apply at a given time. As indicated above, after 1962 the land was not available and the judgement of Ranjit Ram's case 1981 PLJ 259 FB is not applicable in these case. As rightly held by the Id. Commissioner in his impugned order that execution of Patta Nama was a mere technicality after the delivery of possession and upsetting the order by the Collector Agrarian, Jalandhar without obtaining the prior permission of the competent authority is illegal and rightly set aside by the Id. Commissioner. *Swaran Singh vs. State of Punjab and another, 1990 PLJ 485*

Under Section 8 of the 1972 Act, the land vests in the State Government free from all encumbrances only on the date on which possession thereof is taken by or on behalf of the State Government. In this case when possession was taken, that is, on 28th March, 1983, the landowner had died and it has to be seen whether the matter of surplus area had to

be re-determined in the hands of his heirs or the taking of possession after the death of landowner is in accordance with law. *Karnail Singh vs. State of Punjab and others*, 1989 PLJ 95

SECTION 9

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 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.

COMMENTS

Notice – As the petitioner had purchased 32 Kanals out of the entire holding Mool Chand, they received a notice dated October 28, 1975 under Section 9(1) of the Punjab Land Reforms Act, 1972 for delivering the possession of the surplus area. Without determining the surplus area afresh in accordance with the judgement of this Court in CWP No.3211 of 1969, the writ petitioners could not be asked to deliver possession. They could only be asked to deliver possession in case it is found that the area since Mool Chand has died, it would have to be seen whether there is any surplus area in the hands of the heirs of Mool Chand. *Roop Singh vs. State of Punjab*, 1991 PLJ 560

Applicability of provisions -- If the provisions of Section 14 of the Reforms Act were intended not to apply to the surplus area determined and finalized under the Punjab Act and this provision was only intended for the purpose of declaration of permissible area as contemplated by section 4, 5 and 6 of this Act, the said provision could not have been placed in Chapter II of the Act, the said provision could not have been

placed in Chapter II of the Act. A separate provision beyond Chapter II of the Act would have been made. This section again would not have started with a non obstante clause. This leads me to a conclusion that Section 14 which is a part of Chapter II of the Reforms Act applies to a case of the present nature, and if the petitioner is able to establish the conditions imposed by the said section he is entitled to the relief but if otherwise all or any of the conditions are not satisfied, the order declaring the surplus area of the petitioner's land under the Punjab Act would stand and the authorities would be well justified in seeking possession thereof in terms of Section 8 and 9 of the Punjab Act. *Mahant Sewa Dass Chela Mahant Rattan dass vs. State of Punjab*, 1992(2) Rev.LR 562

It is not the case of the State that land in the hands of the petitioner or other heirs of Inder Singh is also surplus. Be that as it may, the earlier order of the Collector cannot be given any effect and the authorities under the Punjab Land Reforms Act can at the most calculate the land of each of the successors of Inder Singh and if any of them has land, in excess of the permissible area under the Punjab Land Reforms Act, the same may be declared as surplus, *Albel Singh vs. State of Punjab*, 1992(2) CLJ 360

Proceedings under Section 9-- Are in the nature of execution proceedings after the surplus area has been determined under Section 5 of the Act. As far as the petitioner is concerned, his surplus area was originally declared in 1976 and it was on remanded by the Commissioner that the surplus area was re-assessed in 1980 and the surplus area of the appellant was deduced from 0.5235 to 0.2813 hectares of first quality land. The appellant having been present in all these proceedings there orders were very much in his knowledge. After he failed to prefer an appeal/revision against the orders determining the surplus area within the limitation prescribed under the Act, the petitioners have forefeited the right to challenge the same which operate as res judicata between the petitioners and the State Government. *Puro Bai etc. vs. State*, 1989 PLJ 46

Notice -- The process-server has himself recorded that the petitioners were away. As they were away he pasted the notice on the doors of their residence and had a proclamation made through the Chowkidar. This is not proper service. Further effort should have been made to serve notice on the petitioners personally and failing that on an adult member of the family. This summary resort to proclamation was not at all appropriate.

Pirithi Raj etc. vs. state of Punjab, 1988 PLJ 391

Possession – The surplus area declared was not utilised before the death of the landowner nor its possession was taken by the State Government. Even if possession had been taken by the State Government before the death of the landowner in whose hand the area was declared surplus by virtue of section 8 of the 1972 Act, the land would have vested in the State Government free from all encumbrances from the date of taking possession. Since even possession was not taken before the date of death the taking of possession on 28.3.1983 as also the order of allotment dated 30.3.1983 are without jurisdiction and were rightly set at naught by the learned Financial Commissioner. *Karnail Singh vs. State of Punjab and others, 1989 PLJ 95*

10. Amount payable for the surplus area -- (1) The Collector or the officer authorised by the State Government in this behalf shall determine the amount to be paid for the land which has vested in the State Government under section 8, in accordance with the principles hereinafter set out, that is to say—

(i) for the first three hectares of land, twelve times the fair rent, subject to a maximum of five thousand rupees per hectare;

(ii) for the next three hectares of land, nine times the fair rent subject to a maximum of three thousand seven hundred and fifty rupees; per hectare; and

(iii) for the remaining land, six times the fair rent, subject to a maximum of two thousand and five hundred rupees per hectare.

Explanation – For the purposes of this sub-section, `fair-rent' shall mean the value of one fifth of the gross produce of the land determined in the prescribed manner by the Collector or the officer authorised in this behalf by the State Government.

(2) For the purposes of sub-section (1), the Collector or the officer authorised by the State Government shall prepare a statement in such form and manner as may be prescribed and shall, after following the prescribed procedure, apportion the amount amongst the persons, including tenants, having interests in the land.

(3) where in the surplus area of any person mortgagee rights have vested in the State Government, the amount payable to the mortgagee shall be the mortgage money due to the mortgagee, or the amount payable under this section, whichever is less.

(4) The amount shall be payable either in lump sum or in half-yearly instalments not exceeding fifteen in the manner prescribed.

Provided that the amount shall be applied firstly to discharge Government dues, secondly to meet the claims of secured creditors and then to pay dues of other claimants.

COMMENTS

The writ petition in this case has acquired the constitutional validity of the provisions of the Act authorizing the declaration, utilization and taking possession of the land declared surplus without making any provision for payment of compensation for structural improvements, cemented khals, valuable standing timber, garden and crops and the amount provided for the land declared surplus and taken possession under Section 10 is illusory and the provisions are illegal, void and ultra vires Articles 300-A of the Constitution and the inherent right of the petitioner to be paid just compensation. However, what is contended by the learned counsel is that Section 10 of the Act, in effect, does not provide for payment of compensation for structural improvements, cemented khals, valuable under timber, garden and crops and that

therefore, that provision is ultra vires of Articles 300-A of the Constitution and the inherent right of the petitioner to be paid just compensation *Bal Raj ahuja vs. State of Punjab and another, 1988 PLJ 423*

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 utilizing the surplus area under the Punjab law, the Pepsu law or this Act by –

(a) conferment of rights of ownership or 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 of the 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 land or equivalent area.

(3) Any scheme framed by the State Government under sub-section (2) may provide for the terms and conditions on which the rights of ownership are to be conferred on the tenants and also the terms and conditions on which the land comprised in 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 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 utilization under this Act.

(6) The utilization of any surplus area before the commencement of this Act will not affect the right of the tenant to purchase land in accordance with the provisions 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 inheritance under sub-section (5) shall not apply in respect of the area so determined.

COMMENTS

Re-determination of area – In the light of this authoritative pronouncement it appears wholly unnecessary to examine the matter any further and it can safely be ruled that after the death of a landowner in whose hands some area has been found to be surplus under the provisions of the Act and remained un-utilised till the date of his death or the enforcement of Land Reforms Act (No.10 of 1973) it has to be re-determined in the hands of his heirs. This re-determination has to be made not only when the land of the deceased landowner has actually been inherited by his natural heirs by way of succession but also on the notional basis that it has been so inherited. Further, in the instant case the State authorities cannot have in both ways, i.e., to ignore the decree Annexure P-2 in the light of section 10-A© during the life time of Kesar Singh and give effect to it after his death. This decree having been ignored in the light of the above-noted provision, had continued to be ignored while assessing the permissible limits of the heirs of Kesar Singh. On account of his death, the order of the Collector dated December 19, 1960 determining his permissible limit had become inoperative as opined in Sarmukh Singh' case (supra) and his land had ceased to be his holding as ruled in Smt. Ajit Kaur's case (supra). Therefore, any land declared as surplus with Kesar Singh vide order dated December 19, 1960 could neither be treated as his land while in the hands of the petitioner nor can it be so taken away by the State authorities for purposes of utilisation under the Act. *Piar Kaur vs. State of Punjab, 1989 PLJ 503*

The plaintiff not the suit property through a Will and, therefore, the plaintiffs are not entitled to the benefit of Section 10-A(b) of the Punjab Security of Land Tenures Act. The said benefit can only be made available if the land is acquired by the State Government under any law for the time being in force or by an heir by inheritance. Disposition of property by Will is no sense can be termed as inheritance. Merely because landowner died was of no consequences as regards the rights of the State to utilize the surplus area. *State of Punjab vs. Gurcharan Singh and others, 1991 PLJ 421*

The surplus area case of respondent No.2, big landowner was finalized on 26.5.1977 and at that time, the petitioners were not tenants on the land. The petitioners came on the land only in year 1984 i.e. after 5 years of its having been declared surplus which shows connivance of the big landowner beyond doubt . By referring to 1983 PLJ 23 and 1985 PLJ 226, the petitioners cannot equate themselves with the petitioner(s) in those cases. Since the present petitioners were neither tenants on the appointed day nor was the land under their tenancy on 26.5.1977, when it was declared surplus in the case of respondent No.2, their claims were rightly rejected by the Collector. *Jagdish vs, State and another, 1991 PLJ*

After the finality of the case an attempt has been made to re-open the case due to the death of Guru Mahant Rattan Dass. This is not a case of inheritance as the Chela i.e. the present petitioner has stepped into the shoes of his Guru and he cannot have better title than Guru. The land declared surplus in the hands of Guru will remain surplus in the hands of Chela after the death of Guru because it is not a case of natural

inheritance. The second plea taken by the Land Reforms Act exemption should have been granted. As the case already been decided under the Punjab Security of Land Tenures Act, 1953 under which no exemption was provided to the religious and charitable institution and it has not been prved on record that the institution is religious and charitable one, so the plea for granting exemption is not tenable and has no force.

Mahant Sewa Dass Chela Mahant Rattan Dass vs. The State, 1991 PLJ 710

12. Bar on future acquisition of land in excess of permissible area –

(1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of this Act, no person, whether as landowner or tenant, shall acquire or possess by transfer, exchange, lease agreement or settlement any land, which with or without the land already owned, or held by him, in the aggregate, exceeds the permissible area:

Provided that nothing in this section shall apply to land held by a co-operative society of the land owned or held by an individual member of the society together with his share in the land held by such a society does not exceed the permissible area.

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void.

13. Power to separate share of landowners in joint lands – (1) Where a person owns land jointly with other persons and his share of such land or part thereof has been or is to be declared as surplus area, the Collector, on his own motion, may, after summary enquiry and after affording to such a person an opportunity of being heard, separate his share of such land or part thereof on the land owned by him jointly with the other persons.

(2) Where, after the declaration of the surplus area of any person and before the utilization thereof, his land has been subjected to the process of consolidation, the Collector shall also be competent to separate the surplus area of such a person out of the area of Land obtained by him after consolidation in the manner referred to in sub-section (1).

COMMENTS

Joint Holding – A joint holding which should be separated in terms of Section 13(1) of the Punjab Land Reforms Act before the permissible and the surplus area can be specified. It does not seem from the orders passed that this has been done. The reply on behalf of the State is that this separation can be done even after determining the surplus area and further that the landowner has made a selection of the specific khasra numbers to be placed in the surplus area. It does not appear that other co-sharers have been heard on this selection. It is possible that they might object to this selection if they are in possession of the khasra numbers proposed to be declared surplus. It would therefore be desirable if separation in terms of Section 13(1) is done and the landowner directed to make his selection of the khasra numbers to be included within the permissible area in terms of the order of separation passed. For this purpose, the other co-sharers will also have to be heard before a decision on the selection is made. *Pirthi Singh vs. State of Punjab, 1988 PLJ 86*

Appeal against order of Assistant Collector – To be only before Collector or other competent revenue authority – On behalf of the petitioner, it was mainly contended that since the order of the Assistant Collector 1st Grade was passed only under sub-section (1) of Section 117 of the Act, no appeal lies against such an order before the Court of Additional District Judge and as such the impugned order passed by the Additional District Judge, Bhiwani cannot be legally sustained, in view of lack of inherent jurisdiction of the said Court which dealt with the matter as an appellate Court. There is considerable merit in the contention raised by the learned counsel for the petitioner. No appeal lies against the order of the Assistant Collector 1st Grade passed in this case in as much as the said order was passed only under sub-section (1) of Section 117 of the Act and not under any of the clauses of sub-section (1) of Section 117 of the Act. Appeal against the order of the Assistant collector could only be filed before the Collector or other competent revenue authority and certainly not before the District Judge. *Mam Chand vs. Banarsi and others, 1993 PLJ 34 = 1993(2) SLJ 2019*

Partition – The State can get the land partitioned under Section 13 of the Act, 1972 or under Section 111 of the Punjab Land Revenue Act, 1887. No right of the petitioners has been infringed and as such the revision petitions sought to be dismissed. The provisions of Section 13(1) of the Act, 1972 allow absolute freedom to the Collector Agrarian to declare the surplus area without separating the joint holding of the co-sharers. *Gian Singh vs. State of Punjab and others, 1991 PLJ 224*

SECTION 14

14. Exemption of lands belonging to religious or charitable

institutions – Notwithstanding any judgement, decree or order of any court or authority, the provisions of this Chapter shall not apply to lands belonging to any religious or charitable institution of a public nature in existence immediately before the date of commencement of this Act, but not belonging to the mahant, mohtamim or manager thereof;

Provided that the exemption specified herein shall be admissible till such time only as the land or income therefrom is utilized for the specified purpose of such institutions and shall not be admissible to the lessees of such lands.

Explanation – For the purpose of this section, ‘religious or charitable institution’ means –

(i) a temple;

(ii) a gurudwara;

(iii) a gaushala;

(iv) a wakf as defined in clause (ii) of section 3 of the Wakf Act, 1954 (Parliament Act 29 of 1954); or

(v) any other religious place of the public nature.

COMMENTS

The land declared surplus in the hands of Gurur will remain surplus in the hands of Chela after the death of Guru because it is not a case of natural inheritance. The second plea taken by the counsel for the petitioner is that the institution is religious one and under the Land Reforms Act exemption should have been granted. As the case already been decided under the Punjab Security of Land Tenures Act, 1953 under which no exemption was provided to the religious and charitable institution and it has not been proved on record that the institution is religious and charitable one, so the plea for granting exemption is not tenable and has no force. *Mahant Sewa Dass Chela Mahant Rattan Dass vs. the State, 1991 PLJ 710*

The main plea taken on behalf of the petitioner is that Akhara Braham Buta is religious and charitable Institution of a public nature and this is stands exempted under Section 14 of the Punjab Land Reforms Act and the tenants-respondents have no right to make applications for purchase under Section 18 of the Punjab Security and Land Tenures Act, 1953 read with Section 15 of the Punjab Land Reforms Act. The respondents do not fulfill the requisition conditions as laid down in Section 18 of the Punjab Security of Land Tenures Act; that Section 15 of the Land Reforms Act cannot overdrive the provisions of Section 14 of the Act; that the respondent is not in possession of the land in dispute from the year 1953. Had they been in possession, the tenants permissible area would have been declared. *Akhara Braham Buta vs. Shri Inderjit (since dead) Rep. By his L.Rs., 1991 PLJ 503*

CHAPTER III

Miscellaneous

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 may be, immediately before the commencement of this Act, shall be entitled to purchase such land from the landowner on the same terms and conditions, 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 cases) payable for such land or five hundred rupees per hectare, which ever is less; and

(ii) the procedure for purchase of such land shall be as 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 purpose of land under sub-section (1), shall be made to the Assistant Collector of the first grade having jurisdiction who shall, after going notice to the 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 or in half yearly instalments not exceeding fifteen in the manner prescribed.

(4) On the payment of the entire amount or the first instalment 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 possession thereof, subject to the provisions of the Punjab Tenancy Act, 1887.

(5) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall on application by the person entitled to receive it, be recoverable on the purchase price.

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

COMMENTS

When the old landowner has died, the entire case had become open and the surplus area had to be re-determined in the hands of his heirs and the benefit thereof could be derived by the vendees too. He was further

emphatic that surplus area proceedings would not reflect on proceedings under Section 15 of the New Act and may even wipe them off. *Bhag Singh and another vs. Financial Commissioner and others, 1989 PLJ 541*

SECTION 16

16. Summary eviction and fine – (1) Any person who is in wrongful or unauthorised possession of any land.

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act; or

(b) to use and occupation of which he is not entitled under the provisions of this Act;

may, on an application made within a period of one year of such wrongful or unauthorised possession, and after summary enquiry, be ejected by the Collector, who may also impose on such person a penalty not exceeding one thousand rupees.

(2) The Collector may direct that the whole or any of the penalty imposed under sub-section (1) shall be paid to the person who has sustained any loss or damage by the wrongful or unauthorised possession of the land.

17. Abrogation of pending decrees, orders and notices – No decree or order of any court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provisions of this Act.

18. Appeal, review and revisions -- The provision in regard to appeal, review and revision under this Act shall, so far as may be, the same as provided in sections 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1987 (Act XVI of 1887).

COMMENTS

After he failed to prefer an appeal/revision against the orders determining the surplus area within the limitation prescribed under the Act, the petitioners have forfeited the right to challenge the same which

operate as res judicata between the petitioners and the State Government, *Paro Bai etc. vs. State, 1989 PLJ 46*

The time limit for filing appeals under the Punjab Land Reforms Act is governed by Section 81 of the Punjab Tenancy Act, 1887, which is admittedly a special and local law and that being so, the time limit mentioned therein is to be adhered to strictly and cannot be extended by having recourse to the provisions of Limitation Act which is not applicable to cases where the limitation for filing appeals etc. has been prescribed in any special or local law as discussed in para 4 above. *Paro Bai etc. vs. State, 1989 PLJ 46*

19. Correction of clerical errors – Clerical and arithmetical mistakes in any order passed by any officer or authority under this Act or errors arising therein from any accidental slip or omission may at any time be corrected by such officer or authority either of his own motion or on an application received in this behalf from any of the parties.

20. Court fees -- Notwithstanding anything by contained in the Court-fees Act, 1872 (**VII of 1872**), every application, appeal or other proceeding under this Act shall bear a court-fee stamp of such value as may be prescribed.

21. Bar of jurisdiction – (1) save as provided by or under this Act, the validity of any proceeding or order taken or made under this Act shall not be called in question in any court or before any other authority.

(2) No civil court shall have jurisdiction to entertain any suit, or proceed with any suit instituted after the appointed day, for specific performance of a contract for transfer of land which effects the right of the State Government to the surplus area under this Act.

22. Indemnity – No suit or other legal proceedings shall lie against any authority in respect of anything done in good faith in pursuance of the provisions of this Act.

Note – The section indemnifies all the authorities for their lawful action under the provisions of this Act. The action of the authority, however,

must be in good faith and in pursuance of the provisions of this Act. As provided in section 3(22) of the General Clauses Act, 1887, a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not.

23. Penalty for making false statements -- If doing, the course of any proceedings under this Act, any person makes a declaration or a statement or furnishes any information which is false or which he knows or has reason 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.

COMMENTS

The eldest son of the landowner Manmohan Singh was major on the appointed date. But he was granted citizenship of Australia on 8.6.1973. Certificate is on the file of the Collector on the date of decision of the case by the Collector (Agr.) in the year 1976. Manmohan Singh was no citizen of India and as such, no benefit of additional unit being son of the landowner be given to him. The landowner had sold approximately 19 acres of land in village Sadhowal in the year 1973-74. As the sale was made after appointed date so this is to be ignored and the land will be counted in the hands of the big landowner. Similarly any land subsequently acquired by the landowner will also be counted towards his total holdings. The Collector(Agrs.) has given benefit of adult son to Harpreet Singh, who attained majority in the year 1979. This is wrong as the benefit of adult son is to be counted as on 24.1.1971 and not afterwards. As mentioned in the order of the Collector(Agr.) Garhshankar dated 30.1.1980 the landowner had concealed material facts in his affidavit dated 19.2.1976 filed in connection with the proceedings before the Collector (Agr.) under the Land Reforms Act, 1972. This is a fit case to impose a cut of 2 hectares as envisaged in the Act. *Gurbachan Singh vs. Harbans Singh and another, 1991 PLJ 226*

24. Mode of recovery – Any amount payable under this Act including the amount of penalty imposed under this Act may be recovered as

arrears of land revenue.

Note – under this section any amount payable under this Act including the amount of penalty imposed under this Act is recoverable as arrears of land revenue. For procedure regarding recovery of arrears of land revenue see section 67 to 99 Punjab Land Revenue Act, 1887.

25. Power to remove difficulties -- If any difficulty arises in giving effect to the provisions of the Act, the State Government may, by order published in the official gazette make such provision or give such directions not inconsistent with the provisions of this Act, as appears to it be necessary or expedient for removing such a difficulty.

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) Every rule made under this section shall be laid, as soon as may be after it is made, before the House of the State Legislature while it is in session for a total period of ten days which may be comprised in one session or two successive sessions, and if before expiry of the session in which it is so laid or the session immediately following the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect as the case may be so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

27. Exemption of certain lands from the operation of the Act -- The provisions of this Act shall not apply to –

(a)lands owned by or vested in the State Government otherwise than under the provisions of this Act, or lands taken on lease by the State Government;

(b)lands belonging to or vested in a local authority or the Punjab Agricultural University or any corporation owned or controlled by the Central Government or the State Government;

(c)lands owned by or vested in or taken on lease by the Central Government;

(d)lands owned by the Bhoodan Yagna Board under the Punjab Bhoodan Yagna Act, 1955; and

(e)lands owned or held by an agricultural co-operative credit society, land Mortgaged Bank, the State or Central Co-operative bank or any other Bank;

(f)lands owned by an educational institution, recognised by Government which is engaged in the education and research in agricultural sciences and has been conducting such education and research on the appointed day;

(g)lands owned by an educational trust of public nature in existence on the appointed day];

Provided that nothing in this section shall apply to a lease of any of the authorities or institutions referred to above.

Explanation – For the purposes of clause © “bank” means a banking company as defined in section 5 of the Banking Regulation Act, 1949, and includes the State Bank of India constituted under the State Bank of India Act, 1955, a subsidiary bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959, a corresponding new bank as defined in the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and Agricultural Refinance Corporation constituted under the Agricultural Refinance Corporation Act, 1963.

28. Repeal and Saving – (1) The Punjab Security and Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955, in so far as these are inconsistent with the provisions of this Act, are hereby repeated.

(2) The repeal of the enactments mention 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 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 the 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 immediately before the date of commencement of this Act shall transferred to the Collector of the district concerned for disposal].

Provided further that nothing in this section shall affect the determination and utilisation of 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 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 proceedings or remedy shall, as far as may be, instituted continued or enforced in accordance with the procedure specified by or under this Act.

COMMENTS

Entitlement to select permissible area afresh – a landowner who owns land more than the permissible are under the Act on its commencement

would be entitled to select permissible area for himself as also for his adult sons as provided 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). *Sukhcharah Singh vs. State of Punjab, 1993 PLJ 56*

The Collector (Agrarian) was not justified in rejecting the application of Harinder Rai petitioner for giving the benefit of section 5 of the Punjab Land Reforms Act on the ground that his appeal having been dismissed by the Commissioner and the case having been taken up in pursuance of the remand order of the Commissioner and the case of Saroj Rani etc., Harinder Rai petitioner could not be permitted to raise the plea of adult son etc. However, in view of the law laid down by the Punjab and Haryana High Court in the judgement reported in 1984 PLJ 385 such a objection could be raised before the Financial Commissioner even if it had not been raised before the Collector. The Collector should have given an opportunity to Harinder Rai to lead evidence on this point. Moreover, as per judgement reported in 1983 PLJ 319, the case of Harinder Rai Petitioner could not have been decided under the Punjab Security of Land Tenures Act, 1953 after the coming into force of the Punjab Land Reforms Act, 1972 with effect from 24.3.1973. The surplus are had to be re-determined under the new Act. Besides, the surplus area having not been utilised prior to the coming into force of the Punjab Land Reforms Act, it had to be re-determined under the new Act. The utilisation made during the pendency of the litigation would not in any way affect the interest of the petitioners. On this point, I am supported by the judgement of the Punjab and Haryana High Court reported in 1982 PLJ 223. After the coming into force of the new Act of 1972, the petitioner was entitled to reserve the land for his adult son and other members of his family, as per the law laid down by the Full Bench of the Punjab and Haryana High Court in Ranjit Ram;s case (1981 PLJ 259). The aforesaid judgement also lays down that where surplus are declared under the old Act had not been utilised before the coming into force of the Punjab Land Reforms Act, 1972 it has to be re-determined in accordance with the provisions of the Act of 1972. Under Section 5(1) of the Act of 1972, each son of a

landowner who was adult on 24.1.1971 had to be allowed a separate unit of 7 hectares while determining the surplus area, if any. *Harinder Rai Ahuja vs. The State and others, 1989 PLJ 612*

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