There is however, the other aspect namely of the power of the Court which is to be exercised to reach a just decision. This power is exercisable at any time.—"

In the present case, the prosecution did not wish to rebut the defence case. It merely wanted to rectify a technical flaw which became apparent as a result of decision of this Court in Som Nath's case (supra).

(6) For the reasons stated, we are of the considered view that the trial Court ought to have allowed the application of the prosecution for additional evidence of the kind mentioned therein, and avoided the snap decision by which it had acquitted the respondent.

(7) However, we cannot be oblivious of the other aspect, that is that the respondent has faced the prosecution since 1972 and that, too, for a petty offence involving possession of merely two bottles of liquor. In view of the above, we do not think it would serve the interest of justice to remand the case to the trial Court. For the foregoing reasons, we uphold the acquittal and dismiss this appeal.

K. T. S.

MISCELLANEOUS CIVIL

Before S. S. Sandhawalia and J. M. Tandon, JJ.

JAGRAJ SINGH and others,—*Petitioners.*

versus

STATE OF PUNJAB ETC.,—*Respondents.*

Civil Writ No. 366 of 1977

February 13, 1978.

Punjab Land Reforms Act (10 of 1973)—*Sections* 3(15), 4, 5(1), 7(1), 8 *and* 11(2)—*Tenants' permissible area—Concept of—Whether envisaged under the Act—Scheme for utilization of such area—Whether can be framed by the State Government—Determination of permissible and surplus area of landowners—Executive instructions requiring all tenancies to be ignored in the matter of such determination—Such instructions—Whether invalid.*

Held, that a plain reading of sub-section (1) of Sections 4 and 7 of the Punjab Land Reforms Act of 1972 leads to a clear conclusion that the Act does envisage the concept of tenants' permissible area and a person who does not otherwise own land, has a right to reserve and retain land in his occupation as a tenant as tenants permissible area subject to the extent detailed in sub-section (2) of Section 4. Under sub-section (1) of Section 5 only such tenants of the land are to be recognised for the purposes of the Act who occupied it as such on the appointed day, which under sub-section (1) of Section 3 is 21st of January, 1971. Section 8 of the Act does envisage surplus area of a tenant which would not have been the case if a tenant could not reserve and retain tenancy land as such under the Act. The tenancy rights further stand terminated with respect to the surplus area of a tenant and not with respect to his permissible area. (Paras 6 and 7)

Held, that the surplus land vested in the State Government under Section 8 of the Act is utilized in accordance with the statutory scheme formulated under sub-section (2) of Section 11 thereof. The condition precedent for applying the statutory utilization scheme to an area is that it has vested in the State Government. In other words if an area is not vested in the State Government the question of formulating the utilization scheme under sub-section (2) of section 11 of the Act for its disposal would not arise. Under sub-section (1) of section 7 of the Act only such area can be declared surplus which is in excess of the permissible area of a landowner or a tenant. It means that permissible area of a landowner, as also a tenants' permissible area cannot be declared surplus. It is, only the surplus area so declared that can vest in the State Government under section 8 of the Act. It is, therefore, clear that section 8 of the Act shall not apply to the tenants' area and such area shall not vest in the State Government and therefore. shall continue to remain immune from sub-section (2) of Section 11 of the Act. The State Government, consequently, is not competent under the Act to frame utilization scheme under sub-section (2) of Section 11 of the Act with respect to the tenants' permissible area.

(Para 9).

Held, that the proceedings to declare an area of a landowner or a tenant surplus under the provisions of the Act are quasi-judicial in nature and not purely administrative. No executive instructions can be issued by the State Government to the authorities under the Act on the matters to be decided by them in quasi-judicial capacity. Executive instructions to all authorities under the Act requiring them to ignore all tenancies in the matter of determination of permissible and surplus area of landowners are, therefore, bad on this ground.

(Para 7).

Civil Writ Petition under Articles 226 *and* 227 *of the Constitution of India praying that this writ petition be accepted and a writ of*

Certiorari or Mandamus or any other appropriate Writ, Order or Direction be issued :—

(*i*) *Calling for the relevant record from respondents Nos.* 1 *and* 2;

(*ii*) *Quashing the executive instructions, dated* 23*rd November,* 1976 *issued by Respondent No.* 1, *and*

(*iii*) *directing respondent No.* 1 *to frame a scheme under clause* (*a*) *of Section* 11(2) *of the Act for conferment of rights of ownership on tenants in respect of their tenancy land to the extent of permissible area or lesser as is held by them in their tenancy from before the appointed day.*

OR

In the alternative, this Hon'ble Court may grant any other relief to the petitioners to meet the ends of justice and also allow costs to the petitioners.

It is further prayed that pending decision in this writ petition, implementation of the instructions, dated 23*rd November* 1976 *and* 13*th December,* 1976 (*Annexure "P-1" and "P-2" be stayed till the final disposal of the Writ Petition.*

H. L. Sibal, Senior Advocate and G. C. Garg, Advocate with him, *for the Petitioner.*

D. N. Rampal, D.A.G. Punjab, *for the Respondents.*

JUDGMENT

J. M. Tandon, J.

(1) This writ petition under Articles 226 and 227 of the Constitution of India has been filed by Jagraj Singh and others, petitioners, for the issuance of an appropriate writ order or direction, quashing the executive instructions dated November 23, 1976 (copy annexure P-1), by way of clarification, issued by the State of Punjab, respondent No. 1 to all its Officers in the matter of determination of the permissible and surplus area under section 7 of the Punjab Land Reforms Act, 1972 (herein after referred to as the Act), and also to direct the State of Punjab, respondent No. 1 to frame a scheme under

clause (a) of section 11(2) of the Act for conferment of ownership rights on tenants in respect of their tenancy land to the extent of permissible area.

(2) The case of the petitioners is that they and their father Kehar Singh jointly cultivated unreserved land of respondents Nos. 3 to 5 in village Ghudha, Tehsil and District Bhatinda, as tenants since before 1960. Kehar Singh died in January, 1973. The land under their tenancy as also any land held by them as owners in the State of Punjab is less than the permissible area allowed under sections 4 and 5 of the Act. Respondents Nos. 3 to 5 are big land owners and proceedings for the determination of permissible and surplus area under section 7 of the Act are pending against them before the Collector, Agrarian, Muktsar, respondent No. 2. The State of Punjab respondent No. 1, issued executive instructions vide memo No. 6965-AR-5-76/38985, dated November 23, 1976 (copy annexure P-1) by way of clarification to all its officers working under the Act to ignore all tenancies comprised in the surplus area of the landowners while determining their permissible and surplus area under section 7 of the Act. The purport of the instructions is that all land comprised in the surplus area of the landowners vests in the State and the tenants holding it are to be dispossessed irrespective of the fact that they are old tenants or not. The State of Punjab further issued D. O. No. AR-5-76/41143, dated December 13, 1976 (copy annexure P-2) to all the officers working under the Act directing them to review all cases where tenants' permissible area had been reserved, in terms of the clarification conveyed vide letter dated November 23, 1976. The case of the petitioners further is that the interpretation of section 9 of the Act, as given in the instructions (annexure P-1) is wrong and against the spirit of the section itself. The petitioners are entitled to retain the tenancy land in their possession as tenants' permissible area under the Act. On the failure on the part of respondent No. 2 to issue a notice to them in the case regarding the determination of permissible area, of respondents Nos. 3 to 5, the petitioners applied to him for impleading them as parties as their rights were likely to be affected adversely in the event of the area of their landlords being declared surplus. Respondent No. 2, vide his order dated January 20, 1977 (copy annexure P-3), rejected the application of the petitioners holding that they were not necessary parties to the proceedings as the land in excess of the permissible area of the landowners would become surplus irrespective of the fact that old tenants were in occupation of the

same. Respondent No. 2 based his view on the instructions issued by the Government vide letter annexure P-1, wherein it had been elucidated that in the proceedings against the landowners no right accrued to a tenant in the matter of reservation of land as tenants' permissible area. The instructions, annexure P-1 and P-2, issued by the Government as also the order, annexure P-3 passed by respondent No. 2 are contrary to law and are liable to be quashed. They have, therefore, filed the present writ praying that the executive instructions issued by the Government be quashed and the State of Punjab, respondent No. 1, be directed to frame a scheme under section 11 of the Act for conferment of ownership rights on the tenants to the extent of their tenants' permissible area.

(3) The State of Punjab, respondent No. 1, in their written statement admitted that the petitioners are cultivating land measuring 387 *kanals and* 15 *marlas* of respondents No. 3 to 5 in village Ghudha, since 1959, but denied that there was any provision in the Act for reserving any land as tenants' permissible area. The fact that the petitioners' tenancy was less than the permissible limit was, therefore, irrelevant. The instructions contained in letter annexure P-1 clarifying the relevant provisions of the Act were claimed to be legally valid.

(4) The learned counsel for the petitioners has argued that the petitioners have a right under the Act to reserve and retain land in their occupation as tenants' permissible area and the instructions annexure P-1 issued by the State of Punjab are illegal and destructive of the express provisions of the Act as also its object and scheme. It has also been argued that the Government has no right to issue executive instructions like annexure P-1 to the authorities under the Act relating to matters which are to be disposed of by them in quasi-judicial capacity.

(5) The learned counsel for the State of Punjab, respondent No. 1, has contended that there is no concept of tenants' permissible area under the Act and as such the petitioners can claim no land thereunder as tenants. The instructions annexure P-1 clarify the true interpretation of the relevant provisions of the Act *qua* the rights of the tenants. The proceedings under the Act are neither quasi-judicial nor the petitioners have a right to be heard in the surplus area case of respondents Nos. 3 to 5.

(6) Surplus area has been defined in sub-section (15) of section 3 of the Act as the area in excess of the permissible area. Sub-section (1) of section 4 of the Act provides that subject to the provisions of section 5, no person shall own or hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area. The extent of the permissible area is given in sub-section (2) of section 4 of the Act. Section 5 deals with the selection of permissible area and the furnishing of declarations. Sub-section (1) of section 5 reads :

> "5(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 Collector .....".

The permissible and surplus area is determined under section 7 of the Act and its sub-section (1) reads :—

> "7(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 enquiry as he may deem fit, the Collector shall, by an order, determine the permissible area and the surplus area of a landowner or a tenant as the case may be."

A plain reading of sub-sections (1) of sections 4 and 7 leads to a clear conclusion that the Act does envisage the concept of tenants' permissible area and a person who does not otherwise own land, has a right to reserve and retain land in his occupation as a tenant as tenants' permissible area subject to the extent detailed in sub-section (2) of section 4. Under sub-section (1) of section 5 only such tenants of the land are to be recognised for the purposes of the Act who occupied it as such on the appointed day, which under sub-section (1) of section 3 is 21st of January, 1971. In view of these clear provisions in the Act, the argument of the learned counsel for the State that the petitioners cannot assert their claim qua any land of respondents Nos. 3 to 5 as tenants' permissible area under the Act cannot be sustained.

(7) The impugned instructions, annexure P-1, issued by the State of Punjab, read as under :—

"*Subject* : Punjab Land Reforms Act, 1972.

Reference : Your memo No. 4678/A 89 B. & R dated the 8th April, 1976.

It has been specifically provided in section 4(1) that no person shall own or hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area. The intention of the Act is that no person shall hold land in excess of permissible area in any capacity or partly in one or partly in another. The very purpose of the Act will be forfeited if the interpretation as sought to be put by you is accepted. That would mean that a landlord will be able to keep unlimited area without fear of the same being declared surplus. For instance, if a landlord has 100 hectares, he can keep 7 hectares as his own and on rest of the 93 hectares he can keep 14 to 15 tenants so that the land with each tenant does not exceed the permissible area of each tenant.

If a landowner holds land in excess of the permissible area that becomes surplus area irrespective of the fact whether tenants are sitting thereon or not. When it becomes surplus area, possession thereof can be taken by the State Government under section 8, after which it vests in the State Government.

Provision in section 8 laying down that in the case of surplus area of a tenant which is included within the permissible area of the landowner the right and interests of the tenant in such area shall stand terminated is there for obvious reasons. In the absence of such a provision, the relationship of tenant and landlord may have continued. Therefore, an express provision for determining the privity of contract between the landlord and the tenant in that behalf was necessary. The question of having a provision for determination of the right and interest of the landlord in the area in excess of the permissible area was not called for the simple reason that the same becomes surplus and

vests in the State Government irrespective of the fact whether the same is within the permissible area of a tenant or not.

No amendment of the Act is thus called for."

The instructions by way of clarification, reproduced above, are based on the hypothesis that no concept of tenants' permissible area is envisaged under the Act. This hypothesis is not only contrary to the specific provisions of the Act detailed above but is also destructive of its cardinal scheme. The termination of rights and interests of a tenant under section 8 of the Act in an area excess of tenants' permissible area but included within the permissible area of the landowner has been misused in the clarification, annexure P-1, for substantiating the inference that the Act does not envisage a concept of tenants' permissible area and that a tenant owning no land cannot reserve and retain tenancy land as tenants' permissible area. The termination of tenancy rights as provided in section 8 of the Act rather negatives the proposition propounded in the clarification, annexure P-1. This section does envisage surplus area of a tenant which would not have been the case if a tenant could not reserve and retain tenancy land as such under the Act. The tenancy rights further stand terminated with respect to the surplus area of a tenant and not with respect to his permissible area. The clarification, annexure P-1, is, therefore, misconceived and being contrary to specific provisions of the Act is liable to be struck down as bad. The proceedings to declare an area of a landowner or a tenant surplus under the provisions of the Act are quasi-judicial in nature and not purely administrative, as argued by the learned counsel for the State. No executive instructions can be issued by the State Government to the authorities under the Act on the matters to be decided by them in qoasi-judicial capacity. The instructions, annexure P-1, are therefore, bad on this ground as well.

(8) The instructions, dated December 13, 1976, annexure P-2, directing the authorities to review the cases in light of clarification contained in annexure P-1 can also be not allowed to stand. The order dated January 20, 1977, annexure P-3, of the Collector' Agrarian, respondent No. 2, passed on the basis of the clarification, annexure P-1, and declining to implead the petitioners as parties to the surplus case of their landlords and to hear them, is also liable to be set aside.

(9) The surplus land vested in the State Government under section 8 of the Act is utilised in accordance with the statutory scheme formulated under sub-section (2) of section 11 thereof. The condition precedent for applying the statutory utilisation scheme to an area is that it has vested in the State Government. In other

words, if an area is not vested in the State Government, the question of formulating the utilisation scheme under sub-section (2) of section 11 of the Act for its disposal would not arise. Under sub-section (1) of section 7 of the Act, only such area can be declared surplus which is in excess of the permissible area of a landowner or a tenant. It means that the permissible area of a landowner, as also a tenants' permissible area cannot be declared surplus. It is only the surplus area so declared that can vest in the State Government under section 8 of the Act. It is, therefore, clear that section 8 of the Act shall not apply to the tenants' permissible area and such area shall not vest in the State Government and, therefore, shall continue to remain immune from sub-section (2) of section 11 of the Act. The State Government, consequently, is not competent under the Act to frame a utilisation scheme under sub-section (2) of section 11 of the Act with respect to the tenants' permissible area, and as such no direction can be issued to the State Government in this behalf.

(10) In view of the discussion above, this writ petition is accepted and the impugned instructions, annexures P-1 and P-2, are quashed and further the order of the Collector Agrarian Faridkot (annexure—P-3) is set aside. The Collector, Agrarian, shall hear the petitioners in the surplus area case pending against their landlords and shall determine their rights according to law. There is no order as to costs.

S. S. Sandhawalia. J.—I agree.

H.S.B.

FULL BENCH

MISCELLANEOUS CIVIL

Before R. S. Narula C.J., Prem Chand Jain, Gurnam Singh, M. R. Sharma and R. N. Mittal, JJ.

OBEROI MOTORS, and another;—*Petitioners.*

versus

THE UNION TERRITORY ADMINISTRATION ETC.,—*Respondents.*

Civil Writ Petition No. 2191 of 1975

October 31, 1977.

Essential Commodities Act (X of 1955)—*Sections* 2(a), 3(2)(c), 5 *and* 7—*Chandigarh Motor Car and Tractor Tyres and Tubes Control Order* 1968 *as amended by the Chandigarh* (1*st Amendment*) *Order*