unauthorised and illegal. At the same time, the State was not acting without jurisdiction in attaching the bus for recovery of the amount, whatever it may be, which was due as arrears of passenger tax in respect of the vehicle in dispute itself, for the period prior to the date of its transfer. I am given to understand by Mr. P. S. Jain, learned counsel for the petitioner that the vehicle in question has been disposed of by the Government during the pendency of this writ petition. Mr. Mongia has no instructions on this subject.

I, therefore, allow this writ petition and direct that on payment of only that much amount which is found to be due as arrears of passenger tax in respect of the vehicle in dispute for the period prior to April, 1964 by the petitioner, the vehicle (PNB 1180) shall be returned to the petitioner forthwith. I further direct that if the vehicle has in the meantime been disposed of, balance of its net sale proceeds after deducting therefrom the amount specified in the preceding sentence should be paid out to the petitioner immediately. I make no order as to costs.

K. S. K.,

CIVIL MISCELLANEOUS

Before Mehar Singh, C.J., on different between Harbans Singh and

J. N. Kaushal, JJ.

SAMPURAN SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 525 of 1966.

October 25, 1967.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 5, 5-A,5-B, 5-C, 10-A and 19-B—Scope of—Surplus area with landowner—Powers of State Government to utilise—Extent of—S. 10-A(a) and (b) and S. 19-B(1)—Object of—Introduction of Words "Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant, acquires" in S. 19-B—Purpose of—Acquiring of area by landowner by inheritance after commencement

of the Act, so as to make his total area in excess of permissible area—Transfer of some area before steps are taken regarding declaration of surplus area—Whether illegal—Interpretation of Statutes—Legislation curtailing rights to hold and enjoy property—Whether to be interpreted strictly.

Held, (per Mehar Singh, C.J. agreeing with Harbans Singh, J.)—that when section 10-A of the Punjab Security of Land Tenures Act, 1953 is considered with sections 5-A to 5-C and with the definition of the expression 'small landowner'; 'permissible area' and 'surplus area', it becomes clear that once there is with the landowner 'surplus area', the State Government has the right to utilise the same under clause (a) of section 10-A for settlement of tenants, but according to clause (b) of that section transfers or dispositions, other than acquisition by the State Government or as an heir by inheritance; are to be ignored for the purpose of utilisation of surplus land under clause (a), and this is of the surplus area at the commencement of the Act, that is to say on April 15, 1953. Sub-section (1) of section 19-B provides for a manner of making selection of permissible area substantially as in sections 5-A to 5-C of the Act and then provides in sub-section (4) that "the excess land of such person shall be at the disposal of the State Government for utilisation as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct."

Held, that the words "subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant acquires" in section 19-B were inserted to make it clear that a person who acquired land after the coming into force of the Act by one of the modes mentioned in sub-section (1) of section 19-B, did so subject to the provisions of section 10-A. In other words, if he acquired the land out of the surplus area of the person from whom he made the acquisition, that area was available as surplus area for utilisation under section 10-A, but obviously if he made acquisition out of the permissible area, then section 10-A as referred to in sub-section (1) of section 19-B would not be applicable. So that reference to section 10-A in the very beginning of sub-section (1) of section 19-B has been to make it clear that acquisition from the surplus area of a person from whom the acquisition is made does not cease to be surplus area in the hands of the person who makes the acquisition even though the latter has in his possession area, with the area thus acquired, no more than 30 standard acres or less, and thus permissible area. The area which is within the permissible limit of the person from whom the acquisition is made, is clearly then covered by sub-section (4) of section 19-B, for it is, by itself or along with any area already owned by the person making the acquisition, results in the area with him in excess of the permissible area limit, then the excess is made available to the State Government for, utilisation as surplus area according to clause (a) of section 10-A.

Held, that the transfers, otherwise good and valid according to law are not rendered ineffective, affecting the title of third persons, because a landowner

has to, after acquiring land by inheritance after the date of the commencement of the Act, proceed to act according to sections 5-A and 5-B read with section 19-B and when he does so and the area with him is in excess of the permissible area, which area under sub-section 4 is utilisable under section 10-A(a). There is nothing in those sub-sections from which it can be read that this restriction or control over the right of ownership of a landowner comes about from the mere fact that he has to make return according to sections 5-A and 5-B and if surplus area is found with him, the same can be utilised under section 10-A. In regard to the surplus area in the past on the date of the commencement of the Act, the position is clear, but in regard to area coming as surplus with a landowner in future having regard to section 19-B, the situation is not, so that the transfer by such a landowner is to be or can be ignored.

Held (per J. N. Kaushal, J:—*Contra*), that section 10-A(b) was enacted for the purpose of ignoring the transfers, comprised in a surplus area on the commencement of the Act and sections 19-A and 19-B were enacted for the purpose of ignoring future acquisitions of land in excess of permissible area after the commencement of the Act. The scheme of sections 19-A and 19-B as amended up-to-date, clearly points in that direction. Section 19-A makes the acquisitions of land in excess of permissible area after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, that is, 30th July, 1958, void, and section 19-B makes all future acquisitions including acquisitions by inheritance which have the effect of making the land surplus in the hands of the landowner available to the State Government for utilisation as surplus area. This section is comprehensive and deals with all acquisitions made after the commencement of the Act. The acquisition may be by inheritance, or bequest, or gift from a person to whom the landowner is an heir, or it may be after the commencement of the Act and before 30th July, 1958, by transfer, exchange, lease, agreement or settlement, or it may be an acquisition made after the commencement of the Act in any other manner. It is thus clear that no acquisition after the commencement of the Act has been left out of the purview of section 19-B. The moment such acquisition makes the area in excess of the permissible area with or without the land already owned by the landowner, it becomes available for utilisation by the State Government as surplus area. It is not necessary for the legislature to say in so many words, that the transfers out of the excess area would be ignored for the purpose of utilisation for the resettlement of the tenants. The legislature has achieved the object which it had in view when it amended the Act by inserting sections 19-A and 19-B by Punjab Act 14 of 1962.

Held, (per Harbans Singh, J.), that the legislation which is in the nature of curtailing the ordinary rights of a person to hold and enjoy property, should not be given an extended meaning which does not expressly or by necessary implication follow from the provisions in the Act.

Case referred by a Division Bench consisting of the Hon'ble Mr. Justice J. N. Kaushal and the Hon'ble Mr. Justice Harbans Singh, on 4th January, 1967, to a third Judge for decision owing to the difference of opinion. The case was finally decided by the Hon'ble the Chief Justice on 25th October, 1967.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus *or any other appropriate writ, order or direction be issued quashing the impugned order of the Financial Commissioner (Revenue), Punjab, dated 13th November, 1965, in which the previous orders of the authorities have merged.*

P. S. MANN ADVOCATE, for the Petitioner.

D. S. TEWATIA, ADVOCATE, for the Respondents.

ORDER

KAUSHAL, J.—Sampuran Singh petitioner is a landowner in village Sadanpur, tehsil Naraingarh, district Ambala. In the year 1951, he held 450 bighas and 9 biswas of land and he transferred by way of gift one-half of his entire holding in favour of his mother. Out of the land left with him, he mortgaged with possession 12 bighas and 5 biswas, another area of 19 bighas was banjar, and 15 bighas and 7 biswas was *Ghair Mumkin*. At the time of the commencement of the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Act), that is, on 15th April, 1953, he was a small land-owner as he was not holding land more than 30 standard acres. After the commencement of the Act, the petitioner again mortgaged with possession an area of 17 bighas and 8 biswas. One bigha and 18 biswas was acquired by the Government, 8 biswas of land was under orchard, and 20 bighas and 9 biswas of land was donated by the petitioner by way of Bhoomi Dan to the Bhoodan Yajna Board.

On 19th February, 1958, the mother of the petitioner died and he succeeded to her estate. The result was that the holding of the petitioner after inheritance from his mother increased to 373 bighas and 5 biswas. The petitioner thereafter transferred 182 bighas of land to one of his sons through a registered gift-deed dated 11th February, 1959. Certain transfers by way of mortgages with possession were also made on 2nd June, 1958, 5th June, 1958, and 9th June, 1958. As a result of these transfers, the holding of the petitioner was again reduced to an area which fell within the permissible limit. He did not file any return as required by the rules

either at the time of the commencement of the Act or after he succeeded to his mother's estate on her death. The Sub-Divisional Officer, Naraingarh, exercising the powers of Collector under the Act,—*vide* his order dated 28th April, 1964, declared 117 bighas and 5 biswas, equivalent to 13 standard acres and $11\frac{3}{4}$ units, as surplus in the hands of the petitioner (Annexure 'A'). While passing this order, the said officer ignored the four transfers which were made by the petitioner on 2nd June, 1958, 5th June, 1958, 9th June, 1958, and 11th February, 1959. The petitioner filed an appeal before the Commissioner, Ambala Division, which was dismissed on 9th March, 1965 (annexure 'B'). A revision was filed before the Financial Commissioner, Revenue, Punjab, Chandigarh, but the same was also dismissed on 30th November, 1965 (annexue 'C'). The present petition under Articles 226 and 227 of the Constitution of India has been filed for quashing the above-mentioned order.

Mr. P. S. Mann, who appears for the petitioner, has contended that the authorities acting under the Act could not ignore the four transfers which were made by the petitioner after he succeeded to the estate of his mother on 19th February, 1958. According to him, since in the Act there was no provision which prohibited the transfers, it was not open to the authorities to consider the transferred area as a part of the holding of the petitioner for the purpose of determining the surplus area.

According to Mr. D. S. Tewatia, who appears for the Advocate-General, the moment the petitioner's holding increased from the permissible area when he acquired property by inheritance from his mother, the excess became available at the disposal of the State Government for utilisation as surplus area. Reliance was placed by the learned counsel on section 19-B of the Act.

In order to appreciate the rival contentions, it will be useful to mention that the present Act as amended till 1955 was examined by the Supreme Court in *Atma Ram* v. *State of Punjab and others* (1). After examining the various provisions of the Act, the following observations were made by their Lordships:—

> "Thus, the Act seeks to limit the area which may be held by a landowner for the purpose of self-cultivation, thereby releasing 'surplus area' which is be utilized for the purpose of

(1) A.I.R. 1959 S.C. 519.

resettling ejected tenants, and affording an opportunity to the tenant to become the landowner himself on payment of the purchase price which, if anything, would be less than the market value. It, thus, aims at creating what it calls a class of 'small landowner', meaning thereby, holders of land not exceeding the 'permissible area'—[section 2(2))]".

There can thus be no doubt that the Act was passed with the purpose of creating 'small land-owners' and releasing 'surplus area' for resettling ejected tenants. In order to achieve these twin purposes, the Act was amended a number of times and important amendments were made by Punjab Act 4 of 1959 and Punjab Act 14 of 1962. A few provisions of the Act, which are relevant for the present discussion, need reproduction. 'Permissible area' has been defined in section 2, sub-section (3), as follows:—

" 'Permissible area' in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres, ..." (There is a proviso with which we are not concerned.).

'Surplus area' has been defined in section 2(5-a) and read:—

" 'Surplus area' means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be the surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B, but it will not include a tenant's permissible area; . . . . ." (Proviso) is not relevant for the present discussion.)

'Reserved area' has been defined in section 2, sub-section (4) and reads—

" 'Reserved area' means the area lawfully reserved under the Punjab Tenants (Security of Tenures) Act, 1950 (Act XXII of 1950), as amended by the President's Act of 1951, hereinafter referred to as the '1950 Act' or under this Act."

Section 10-A, 10-B, 19-A and 19-B of the Act are as under:—

"10-A(a). The State Government or any officer, empowered by it in this behalf, shall be competent to utilise any

surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9.

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

Explanation.—Such utilization of surplus area will not affect the right of the landowner to receive rent from the tenant so settled.

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

10-B. Where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utlised.

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19-A. (1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, 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, shall in the aggregate exceed the permissible area:

Provided that nothing in this section shall apply to lands belonging to registered co-operative societies formed for purposes of co-operative farming if the land owned by an individual member of the 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.

19-B. (1) Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant acquires by inheritance or by bequest or gift from a person to whom one is an heir any land, or, if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, or if, after such commencement, any person acquires in any other manner any land which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situated in more than one *patwar* circle he shall also furnish a declaration required by section 5-A.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit and select the land for him in the manner specified in sub-section (2) of section 5-B.

(3) If such person fails to furnish the declaration, the provisions of section 5-C shall apply.

(4) The excess land of such person shall be at the disposal of the State Government for utilisation as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct."

Section 10-A did not exist in the original Act 10 of 1953. It was added by Punjab Act 11 of 1955 and is deemed to have been inserted with effect from 15th April, 1953, vide section 10 of

Punjab Act 14 of 1962. The words in sub-section (b) of section 10-A, which are shown within brackets and which read "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", were not to be found in section 10-A, when it was added by Punjab Act 11 of 1955; they were inserted by Punjab Act 4 of 1959. Sections 19-A and 19-B were inserted in the Act of 1953 by Punjab Act 4 of 1959. Section 19-B was later on amended by Punjab Act 14 of 1962 and the nature of the amendment will be indicated a little later. The object of adding sections 19-A and 19-B, as given in the statement of 'objects and reasons', is stated thus—

> "2. Government have also decided—
>
> * * * * * *
>
> (b) to prohibit further acquisition of land in excess of the permissible area by inheritance, transfer, exchange, lease, agreement or settlement;
>
> * * * * * *".

While considering sections 10-A, 19-A and 19-B of the Act in *Bhalle Ram and others* v. *The State of Punjab and others* (2) Mahajan, J., held that section 10-A of the Act stood impliedly repealed by sections 19-A and 19-B of the said Act. It was also held that certain transfers which had been effected before the 30th July, 1958, were not hit by the provisions of the Act and they had to be taken into account while fixing the permissible area which can be held by the transferees and the transferred area could not be treated as the property of the transferer for purposes of its being declared as surplus. In order to nullify the effect of this decision, section 19-B was amended by the Punjab Legislature by Punjab Act 14 of 1962. In the statement of 'objects and reasons' for this amendment, it was stated as follows—

> "In another civil writ No. 1342 of 1960 re: Bhalle Ram and others *v.* State of Punjab and others, the High Court has interpreted section 19-B as if it impliedly repealed section 10-A(b) in respect of the transfers from the surplus area made between 15th April, 1953, and 30th July, 1958, and as if such transfers could not be ignored under section 10-A(b) for the purpose of computing the surplus area. The view taken by the High Court would considerably diminish the

(2) 1962 P.L.R. 331.

surplus area of a landowner as available on 15th April, 1953. Section 19-B was never enacted with that object. The purpose of enacting section 19-B was to take over the surplus area of those who became big landowners after 15th April, 1953, by acquiring more lands and not to reduce the surplus area of those who were big landowners on 15th April, 1953 . . . . ."

The amendments which were made in section 19-B were as follows—

"(1). In sub-section (1), for the words 'if, after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land', the following words shall be substituted, namely—

'Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or by bequest or gift from a person to whom he is an heir any land, or, if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, or, if, after such commencement, any person acquires in any other manner any land,'; and

(2) In sub-section (2), the words 'and select the land for him in the manner specified in sub-section (2) of section 5-B' shall be added at the end."

There can thus be no doubt that section 19-B was enacted for the purpose of taking over the surplus area of those who became big landowners after 15 April, 1953, by acquiring more lands. Mr. Mann, learned counsel for the petitioner, concedes that if the petitioner had not transferred the area to which he succeeded through inheritance to his mother, it would have been rightly declared as surplus under section 19-B of the Act. His only contention is that since the petitioner transferred the excess area, he again became a small landowner. Since the transfer of the excess area is not barred, according to the learned counsel, it was not open to the authorities

to ignore the transfers. There is an obvious fallacy in the argument. According to section 19-B, if any person after the commencement of the Act acquires by inheritance or by bequest or gift from a person to whom he is as heir any land which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he is required within the prescribed period to furnish a return to the Collector in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain. There can be no doubt that the filing of the return is only a matter of procedure. It is the machinery which is provided for the benefit of the landowners as well as for the authorities, so that the full particulars of the lands may be supplied and the landowners may be given a chance to select the lands as their permissible area. The filing of the return, however, has nothing to do with the liability of the area being declared as surplus, which is in excess of the permissible area. This is made abundantly clear by sub-section (4) of section 19-B. This sub-section declares in unequivocal terms that the excess land of such person (whose land exceeds in the aggregate the permissible area after he acquires land by inheritance) shall be at the disposal of the State Government for utilisation as surplus area. The sub-section does not say that the excess land shall be at the disposal of the State Government if it is found to be in the possession and ownership of the landowner at the time he files the return or at the time the Collector proceeds to declare the area as in excess. The liability of utilisation of the excess area as surplus area is automatic and the point of time which is relevant for this purpose is when the area becomes in excess namely as soon as it descends to the landowner through inheritance. Surely, the intention of law could not be defeated by the landowner by transferring the excess area before filing the return.

The contention of the learned counsel for the petitioner that there is a lacuna in the Act, is not correct. The argument that in the absence of a provision like section 10-A(b), transfer of areas which become surplus by acquisitions after the commencement of the Act cannot be ignored, does not stand the test of scrutiny. Section 10-A(b) was enacted for the purpose of ignoring the transfers, comprised in a surplus area on the commencement of the Act, and sections 19-A and 19-B were enacted for the purpose of ignoring future acquisitions of land in

excess of permissible area after the commencement of the Act. The scheme of sections 19-A and 19-B as amended up-to-date, clearly points in that direction. Section 19-A makes the acquisitions of land in excess of permissible area after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, that is, 30th July, 1958, void, and section 19-B makes all future acquisitions including acquisitions by inheritance which have the effect of making the land surplus in the hands of the landowner available to the State Government for utilisation as surplus area. This section is comprehensive and deals with all acquisitions made after the commencement of the Act. The acquisition may be by inheritance, or bequest, or gift from a person to whom the landowner is an heir, or it may be after the commencement of the Act, and before 30th July, 1958, by transfer, exchange, lease, agreement or settlement, or it may be an acquisition made after the commencement of the Act in any other manner. It is thus clear that no acquisition after the commencement of the Act has been left out of the purview of section 19-B. The moment such acquisition makes the area in excess of the permissible area with or without the land already owned by the landowner, it becomes available for utilisation by the State Government as surplus area. It was under the circumstances not necessary for the legislature to say in so many words that the transfers out of the excess area would be ignored for the purpose of utilisation for the resettlement of the tenants. In my opinion, the legislature has achieved the object which it had in view when it amended the Act by inserting sections 19-A and 19-B by Punjab Act 4 of 1959 and later on amending section 19-B by Punjab Act 14 of 1962.

In the view that I have taken, this petition cannot succeed and it is hereby dismissed. In the circumstances, there will be no order as to costs.

HARBANS SINGH, J.—I have carefully gone through the judgment proposed by my learned brother but, with great respect, regret my inability to agree with the conclusion arrived at by him.

The fact and the provisions of law that are applicable in the case have been given in detail in the judgment of my learned brother and need not be repeated. Sub-section (3) of section 2 of Punjab

Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), gives the definition of the "permissible area" and sub-section (5-a) that of the "surplus area". Sections 5 and 6-B deal with the details and method of reservation or selection of the permissible area. This much area the landowner is entitled to cultivate himself and, if, at the commencement of the Act or thereafter, it is under cultivation of the tenants, he can seek ejectment of such tenants from the aforesaid permissible area reserved or selected by him. Sub-clause (a) of section 10-A gives power to the State Government to utilise the surplus area for the settlement of tenants ejected or to be ejected under section 9. Now, these provisions do not in any way adversely affect the right of a person to sell away or otherwise transfer what would have been surplus with him. If the transfer is made to someone in whose hands the same would not be surplus, then the land would become permissible area in the hands of the transferee. This would have diminished considerably the surplus area that could be available with the State Government for the resettlement of ejected tenants, and it was to avoid this, that sub-clause (b) of section 10-A was enacted. The relevant part of it is as follows:—

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

Sub-clause (c) was further enacted providing that the judgments, decrees or orders of a Court or any other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person, which could have been declared as surplus shall be ignored. Therefore, according to sub-clause (b), all transfers were to be ignored so far as the right of the State Government to utilise, for the resettlement of the tenants, that area, which was surplus at the commencement of the Act, was concerned. One of the main exceptions made was that if the transfer took place as a result of inheritance, then, so far as the heir was concerned the land, which was originally surplus in the hands of the deceased, may not necessarily be treated as surplus. Section 10-B is, however, an exception to this saving clause, and this is to the effect that if the surplus area in the hands of the deceased has actually been

utilised, then the saving clause would not apply in respect of the area so utilised. The result of the above provisions, therefore, was—

(1) If A has more than the permissible area, he can reserve only the permissible area;

(2) The surplus area can be utilised by the Government. But for clause (b) of section 10-A, he could have transferred his surplus area to persons in whose hands, it would not be surplus. This he cannot now do because of clause (b) of section 10-A which has been made retrospective in operation with effect from 15th day of April, 1953; and

(3) Even in spite of clause (b) of section 10-A, the surplus area, which could have been utilised by the Government but has not been utilised by the Government, if it goes by inheritance from A to B, C and D, then in spite of the provisions of clause (a) of section 10-A, B, C and D can retain the area.

These provisions, therefore, do not deal with any acquisition made after 15th day of April, 1953, and, consequently, if any body came to hold more than the permissible area after this date, the same was not affected at all; he was in the same position as a person was before the Act came into force. To avoid this, sections 19-A and 19-B were introduced. Section 19-A made void all acquisitions, after the enforcement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, by "transfer, exchange, lease, agreement or settlement" of any land which in the hands of the person would make land in his possession exceed the permissible area. This does not deal with the acquisition by inheritance, nor does it deal with an acquisition by a person if in his hands the total land including the acquisition does not exceed the permissible area. This section 19-A applied to acquisitions after 1958.

Section 19-B, *inter alia*, deals with future acquisition of land by inheritance. According to it, such a person, who acquires land by inheritance which together with any other land held by him makes his holding exceed the permissible area, is required to submit a return and also to select up to the permissible area the land he would like to keep. Under sub-section (4) excess land of such a person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A. Consequently, by virtue of sub-sections (1), (2), (3) and (4) of section 19-B, future

acquisitions by inheritance, which make the total holding of the acquirer exceed the permissible area, are also affected by the provisions of sub-sections (3) and (5-a) of section 2, sections 5, 5-A, 5-B and clause (a) of section 10-A. There is, however, nothing in this section corresponding to or making clause (b) of section 10-A applicable. In terms clause (b) of section 10-A only applies to "disposition of land which is comprised in a surplus area *at the commencement of this Act.*" Therefore, its provisions cannot apply to any disposition of land which is comprised in an area which becomes surplus after the commencement of the Act. Sub-section (4) of section 19-B only makes clause (a) of section 10-A applicable to such areas which become surplus by acquisition or inheritance, but it does nothing more. If before such a surplus area is actually utilised, it no longer remains surplus area because the person holding the same tranfers it to some one in whose hand it is no longer surplus there being no prohibition against such a disposition—such an area cannot actually be utilised because it is not available at the time when it is sought to be utilised. There can be no manner of doubt that the Act recognizes the distinction between the right of the Government to utilize the surplus area and its actual utilization. See in this respect clause (a) of section 10-A and section 10-B.

I feel that this interpretation of section 19-B, in no way, militates against the policy underlying this legislation. The idea of this legislation obviously is to create a class of small land-holders and tenants and to utilise the surplus area for the purpose of settling tenants ejected from the areas held or reserved by the small land-holders. It was for this purpose that the legislation (clause (b) of section 10-A of the Act) ignored all transfers made after 15th of April, 1953, the date on which the Act came into force, for the purpose of utilization of the surplus. The only exception made was in case of inheritance if the land had not been utilised already. If any person, after the date of the enforcement of the Act, comes to hold more than the permissible area, the object of the Act would have been frustrated, because that would have, once again, created the category of big land-holders. That is now provided against by sections 19-A and 19-B. If, however, a person comes to hold more than the permissible area, not by his own voluntary act or that of another person, but by an act of God, i.e. by inheritance, and further, if he, by his own voluntary act, again keeps only the permissible area with him and transfers the surplus with him to persons in whose hands the holdings do not exceed the permissible area, then the main object of the Act, i.e. to create small land-holders, is fully achieved. Furthermore I do not see any reason why, to a

legislation of this type, which is in the nature of curtailing the ordinary rights of a person to hold and enjoy property, should be given an extended meaning which does not expressly or by necessary implication follow from the provisions in the Act.

In the present case, even before the time allowed under the Act to give a declaration expired, the petitioner had transferred the land which was surplus with him to persons in whose hands the land was no longer surplus. He was left with nothing more than the permissible area and I have no doubt in my mind that such transfers were in no way hit by the provisions of section 19-B. I, therefore, make the rule absolute and grant the declaration that the transfers made by the petitioner are proper and the land so transferred cannot be treated as surplus. The petitioner will have his costs of this petition.

ORDER OF THE DIVISION BENCH

In view of the difference of opinion, this matter would now be placed before my Lord the Chief Justice for being considered by a third Judge.

MEHAR SINGH, C.J.—The facts are not in dispute in this petition under Articles 226 and 227 of the Constitution by Sampuran Singh petitioner who owned 450 Bighas and 9 Biswas of land in village Sadanpur of Tehsil Naraingarh in Ambala District. In the year 1951 he transferred one-half of that area by gift to his mother, in other words, he gifted 225 Bighas and 4½ Biswas to her. The Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), came into force on April 15, 1953. Before that date, out of the remaining half of the holding with him, he had mortgaged with possession 12 Bighas and 5 Biswas, while an area of 19 Bighas was *banjar* and an area of 15 Bighas and 7 Biswas was *gair-mumkin*. This total area of 46 Bighas and 12 Biswas would not, under the provisions of the Act, be a part of his holding. The reason is that the last two categories of land do not come under the definition of the word 'land' as in section 2(8) of the Act, and the first category is excluded by the explanation to section 2(1) giving the definition of the expression 'landowner'. So on April 15, 1953, the date of the coming into force of the Act, he had left with him 178 Bighas and 12½ Biswas of land which was admittedly less than 30 standard acres, and hence within the area provided for in the definition of 'permissible area' in section 2(3) of the Act. He was thus a small landowner as that expression is defined in section 2(2)

of the Act. Thereafter he mortgaged with possession an area of 17 Bighas and 8 Biswas; an area of 1 Bigha and 18 Biswas was acquired by the Government, an area of 20 Bighas and 9 Biswas was donated by him to the Bhoodan Yajna Board; and an area of 8 Biswas was exempt from consideration being an orchard, thus making a total of 40 Bighas and 3 Biswas. So, deducting 40 Bighas and 3 Biswas out of 178 Bighas and 12½ Biswas, the holding left with the petitioner was 138 Bighas and 9½ Biswas, apparently much less than 30 standard acres. It was thereafter that on February 19, 1958, his mother died and he inherited from her the very land gifted by him to her, the area of which was 225 Bighas and 4½ Biswas. This area plus the area of 138 Bighas and 9½ Biswas with him made a total of 363 Bighas and 14 Biswas. This area, it is admitted on both sides, was in excess of the permissible area of 30 standard acres according to section 2(3) of the Act. The excess came within the definition of the expression 'surplus area' as in section 2(5-a) of the Act. On June 2, 5 and 9, 1958, he mortgaged parts of his holding with possession and on February 11, 1959, he made a gift of 182 Bighas of land to one of his sons by a registered gift deed. In consequence of those four transfers the holding in his hands was reduced to an area less than 30 standard acres, in other words, less than the permissible area and he again reduced himself to the status of a small landowner as that expression is defined in section 2(2) of the Act. The Collector considered his holding on April 28, 1964, and declared an area of 117 Bighas and 5 Biswas, equal to 13 standard acres and 11¾ units, surplus in his hands by an order, copy Annexure 'A' in which order he ignored the above-mentioned four transfers by the petitioner. There followed an appeal to the Commissioner and a revision application to the Financial Commissioner, and at both the stages the petitioner was unsuccessful, whereafter he made the present petition questioning the correctness of the orders of the three revenue authorities.

The Act came into force, as stated, on April 15, 1953. Sections 3 and 4 of the Act refer to reservations made under the earlier Acts and have no bearing so far as the present case is concerned. Section 5 of the Act gives an opportunity to a landowner to reserve out of his entire holding permissible area for self-cultivation. Then section 5-A provides for an affidavit whereby a landowner is required to state his holding to the prescribed authority within a period of six months from the date of the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957 (Punjab Act 46 of 1957), which date was December 20, 1957. Section 5-B provides for selection of permissible area by a landowner where he had failed to exercise the right of

reservation under the Act. Section 5-C deals with penalty for failure of the landowner to furnish the declaration under section 5-A. Section 6 then provides that no transfer of land, with certain exceptions, is to affect the rights of a tenant on such land after August 15, 1947 and before February 2, 1955. Section 16 of the Act gives similar protection to the tenant after February 1, 1955. Section 5-A was inserted by Punjab Act 46 of 1957 in the Principal Act and sections 5-B and 5-C by the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Punjab Act 14 of 1962). Section 10 of the last-mentioned Act made the operation of section 10-A of the Principal Act retrospective from April 15, 1953. Section 10-A of the Act is important for the purpose of this case and runs as below:—

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

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

Explanation.—Such utilization of any surplus area will not affect the right of the landowner to receive rent from the tenant so settled.

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

It is clear, when this section is considered with sections 5-A to 5-C and with the definition of the expressions 'small landowner', permissible area', and 'surplus area', that once there is with the landowner surplus area the State Government has the right to utilize the same under clause (a) of section 10-A for settlement of tenants, but according to clause (b) of that section transfers or dispositions, other than acquision by the State Government or an heir by inheritance, are to be ignored for the purposes of utilization of surplus land under clause

(a), and this is of the surplus area at the commencement of the Act, that is to say on April 15, 1953. This section was initially inserted in the Principal Act by section 8 of the Punjab Security of Land Tenures (Amendment) Act, 1955 (Punjab Act 11 of 1955), and has suffered amendments, before taking present shape, under section 2 of the Punjab Security of Land Tenures (Amendment) Act, 1959 (Punjab Act 4 of 1959), and section 10 of Punjab Act 14 of 1962. Punjab Act 11 of 1955 came into force on May 26, 1955. So there was a period between April 15, 1953, and May 26, 1955, during which there may have been surplus area with a landowner and a tenant on such surplus area may have had protection from ejectment, but there was no provision for the utilization of the surplus area otherwise by the Government and hence no occasion to make any provision with regard to any transfers out of such surplus area. Such provision was made for the first time by the insertion of section 10-A in the Principal Act by section 8 of the last-mentioned Act. So that there was that period within which a landowner, on the date of the commencement of the Principal Act having surplus area, may have transferred whole or part of his surplus area to third persons. Such transfers are not declared by any provision of the Act as either void or voidable. So third persons, in such a case, would get good title to the land transferred to them. It was to meet such diminution in the surplus area that clause (b) of section 10-A as newly inserted by section 8 of Punjab Act 11 of 1955 provided that 'notwithstanding anything contained in any other law for the time being in force no transfer or other disposition of land which is comprised in surplus area at the commencement of the Act, shall affect the utilization thereof in clause (a)'. Obviously it was clear to the Legislature that unless this provision was made specifically, a transfer from surplus area by a landowner would, if the area was 30 standard acres or less, become the permissible area of the transferee, and hence would not be available as surplus area for settlement of tenants. If a provision like clause (b) of section 10-A was not made on May 26, 1955, when Punjab Act 11 of 1955 came into force, surplus area of some of the landowners may well have been reduced by becoming the permissible area of the transferees from them. It has been said by the learned counsel appearing for the respondents in this case that this provision of clause (b) was entirely unnecessary in the face of the wording of section 10-A (a) and the Legislature only introduced it as a matter of abundant caution. This apparently is not correct, for the existence of clause (a) of section 10-A would not, in any way, have affected in the least transfers made between April 15, 1953, and May 26, 1955. The area would not

have been surplus in the hands of the trassferor as landowner because he had parted with that area by a transaction good and valid according to law, and if the transferred area was 30 standard acres or less it would not be surplus in the hands of the transferee being within this permissible area. So that to save such land from thus being not available for settlement of tenants, the Legislature was compelled to enact the provision in clause (b) in section 10-A, and it is not correct that it was merely inserted as a matter of abundant precaution. This is the state of affairs so far as the surplus area on the date of the commencement of the Act, that is to say on April 15, 1953, is concerned. Unless the Legislature provided, as in clause (b) of section 10-A, the area transferred from his surplus area by a landowner would not have been available for utilization under clause (a) of that section.

Subsequently by fresh legislation was considered the matter of (a) landlord coming to hold an area in excess of permissible area, and thus surplus area by events happening after the date of enforcement of the Act, that is to say after April 15, 1953, which may have been the result of inheritance or acquisition by other normal methods such as transfer, exchange, lease, agreement or settlement. This matter was then dealt with by section 4 of Punjab Act 4 of 1959 which inserted in the Act provisions, among others, of secions 19-A and 19-B. The Punjab Act 4 of 1959 came into force on January 19, 1959. Section 19-A bars future acquisition in excess of permissible area and declares such acquisition by transfer, exchange, lease, agreement or settlement as null and void. Section 19-B is, therefore, directly in point in the present case and, as it was introduced by section 4 of Punjab Act 4 of 1959, it read thus :—

"19-B. *Future acquisition of land by inheritance, in excess of permissible area* :—

(1) If, after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir any land or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not

exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situated in more than one patwar circle, he shall also furnish a declaration required by section 5-A.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit.

(3) If such person fails to furnish the declaration, the provisions of section 5-C shall apply.

(4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct."

It will be seen that sub-section (1) of this section provided for a manner of making selection of permissible area substantially as in sections 5-A to 5-C of the Act and then provided in sub-section (4) that "the excess land of such person shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A or for such other purposes as the State Government may by notification direct". In *Bhalle Ram* v. *The State of Punjab* (2), this section came for consideration by Mahajan, J., who held that transfers made up to July 30, 1958, were not to be taken into consideration in determining the surplus area available for utilization under section 10-A in the hands of the landowner transferor, because the transferred area in the hands of the transferee became his permissible area. The learned Judge then pointed out that section 10-A thus stood impliedly repealed by sections 19-A and 19-B. The learned Judge in *Bhalle Ram's case* was considering the case of transfers made by a landowner of his surplus area before July 30, 1958, and the question that the learned Judge was answering was whether the surplus area of the landowner transferor was to be considered with or without the area transferred by him? The answer he gave, having regard to the provisions of sub-section (1) of section 19-B was that such transfers could not be taken into consideration in determining the surplus area with the landowner transferor in regard to transfers made up to July 30, 1958, and to that extent section 10-A did not come into picture because there was no area

available as surplus area with the landowner transferor which could, be utilized under that section, the surplus area with the landowner transferor having by reason of the transfers become permissible area in the hands of the transferees. It is necessary to state it here clearly that the learned Judge was considering the case of the surplus area with the landowner transferor and his conclusion was that because of sub-section (1) of section 19-B, section 10-A of the Act did not apply to such a landowner transferor. It was to meet this judgment that sub-sections (1) and (2) of section 19-B were amended by section 6 of Punjab Act 14 of 1962, the other sub-sections were not touched, and sub-sections (1) and (2) of section 19-B of the Act, as thus amended, are—

"19-B. (1) Subject to the provisions of section 10-A if after the commencement of this Act, any person, whether as landowner or tenant, acquired by inheritance or by bequest or gift from a person to whom he is an heir any land, or if after the commencement of this Act and before the 30th July, 1958, any person has acquired by transfer, exchange, lease, agreement or settlement any land, or if after such commencement, any person acquires in any other manner any land, which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situated in more than one patwar circle, he shall also furnish a declaration required by section 5-A.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit and select the land for him in the manner specified in sub-section (2) of section 5-B."

The material change for the present purpose is the insertion of the words "subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as landowner or tenant, acquires". As stated, these words were inserted to meet the approach of the learned Judge in *Bhalle Ram's case* with the

effect that a person who acquired land after the coming into force of the Act by one of the modes mentioned in sub-section (1) of section 19-B, did so subject to the provisions of section 10-A, in other words, if he acquired the land out of the surplus area of the person from whom he made the acquisition, that area was available as surplus area for utilisation under section 10-A, but obviously if he made acquisition out of the permissible area, then section 10-A as referred to in sub-section (1) of section 19-B would not be applicable. So that reference to section 10-A in the very beginning of sub-section (1) of section 19-B has been to make it clear that acquisition from the surplus area of a person from whom the acquisition is made does not cease to be surplus area in the hands of the person who makes the acquisition even though the latter has in his possession area, with the area thus acquired, no more than 30 standard acres or less, and thus permissible area. There remains the question of acquisition from an area which was within the permissible limit of the person from whom the acquisition is made, and that is clearly then covered by sub-section (4) of section 19-B, for if it, by itself or along with any area already owned by the person making the acquisition, results in the area with him in excess of the permissible area limit, then the excess is made available to the State Government for utilisation as surplus area according to clause (a) of section 10-A.

The petition first came for hearing before Harbans Singh and Kaushal, JJ. The learned Judges differed in their approach. Harbans Singh, J., has been of the opinion that there are two stages of finding surplus area, one at the commencement of the Act and the other in consequence of subsequent acquisitions after the commencement of the Act. On this approach the learned Judge found that with regard to the first category of cases clause (b) of section 10-A has specifically provided that transfers out of the surplus area would be ignored for the matter of utilisation of such area under clause (a) of section 10-A, and the learned Judge pointed out that in the absence of such a provision those transfers, good and valid in law, would have led to a situation in which transferor's surplus area may have become transferee's permissible area and thus not available for utilisation under clause (a) of section 10-A. The learned Judge then points out that with regard to the second category of cases, that is to say acquisition after the coming into force of the Act, which is a matter dealt with in section 19-B of the Act, there is no provision that transfers of surplus area after such acquisition are to be ignored as in the case of transfers from surplus area at

the commencement of the Act. There being no such provision, the transfers stand good and valid in law and if by reason of such transfers the transferee's holding is within the permissible area, the land thus transferred cannot be traced back as surplus area of the person acquiring the whole or part of the land after the coming into force of the Act. Kaushal, J., took the contrary view and mainly relying upon sub-section (4) of section 19-B, which has already been reproduced above, observed—"This is made abundantly clear by sub-section (4) of section 19-B. This sub-section declares in unequivocal terms that the excess land of such person (whose land exceeds in the aggregate the permissible area after he acquires by inheritance) shall be at the disposal of the State Government for utilisation as surplus area. The sub-section does not say that the excess land shall be at the disposal of the State Government if it is found to be in the possession and ownership of the landowner at the time he files the return or at the time the Collector proceeds to declare the area as in excess. The liability of utilisation of the excess area as surplus area is automatic and the point of time which is relevant for this purpose is when the area becomes in excess, namely, as soon as it decends to the landowner through inheritance.

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Section 19-A makes the acquisitions of land in excess of permissible area after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, that is 30th July, 1958, void and section 19-B makes all future acquisitions including acquisitions by inheritance which have the effect of making the land surplus in the hands of the landowner available to the State Government for utilization as surplus area. * * *

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The moment such acquisition makes the area in excess of the permissible area with or without the land already owned by the landowner, it becomes available for utilization by the State Government as surplus area." It is this difference of opinion between the learned Judges which has led to this reference.

The question on which the learned Judges have differed is, whether when a person has acquired land by inheritance after the date of commencement of the Act, that is to say after April 15, 1953, and his holding becomes in excess of the permissible area and he is under duty to proceed according to sections 5-A and 5-B of the Act, within the period prescribed, if he should happen to transfer

part of the land with him bringing his holding within the permissible area but he does that within the prescribed period within which he is to move under sections 5-A and 5-B and before he makes that move, is his transfer to be ignored for the purposes of the area of the land with him to find out whether it is only permissible area or whether in addition to the permissible area he has also surplus area or whether the transfer being good and valid in law and there being no parallel provision applicable to such a transfer as under clause (b) of section 10-A, land of such transferor is to be considered not in the hand of such landowner but in the hand of his transferee ? What is urged on the side of the petitioner by his learned counsel is the very same argument which was urged by him before the learned Judges, and the argument is that there are two stages at which the question of surplus area with a landowner is considered. One stage is the commencement of the Act on April 15, 1953, and the second stage is any time any acquisition is made by a landowner after the date of the commencement of the Act. The learned counsel has urged that in regard to the first type of cases the transfers are ignored under clause (b) of section 10-A, but that is only with regard to the area surplus at the commencement of the Act, that is on April 15, 1953. This is an express provision. Without it the transfer would have been good and valid in law and the land transferred not available for utilisation under section 10-A. In regard to the second type of cases, while sub-section (4) of section 19-B does provide for utilisation of the excess area according to section 10-A(a), there is nothing in the Act which says that any transfer between the date of the acquisition by inheritance and the date of utilisation is to be ignored. The learned counsel points out that there is no case of automatic application of section 10-A with the effect that the right of transfer of the landowner is controlled or restricted or hedged in as in the case of surplus area on the date of the commencement of the Act according to clause (b) of section 10-A. The reply of the learned counsel for the respondents is that the situation is met by the opening words of sub-section (1) of section 19-B as at present, because the acquisition referred to in sub-section (1) of section 19-B is subject to the provisions of section 10-A. The learned counsel points out that here the whole of the section has been applied to such an acquisition. He seems to say that even clause (b) of section 10-A will apply to such an acquisition, but this, of course, is untenable because on the language of clause (b) it cannot possibly be applied to an area becoming surplus with a landowner after the date of the commencement of the Act. However, it has already been explained above that the words 'subject

to the provisions of section 10-A' in the beginning of sub-section (1) of section 19-B have reference to the surplus area of a person, from whom an acquisition is made, as he had at the commencement of the Act, and the question arises whether because of acquisition in the terms of sub-section (1) of section 19-B such surplus area may become permissible area in the hands of the person who acquires it, and the answer in *Bhalle Ram's case* was that it does and the effect of the words in the beginning of sub-section (1) of section 19-B, as reproduced above, is that it does not. The effect of those words is limited only to that extent. It is sub-section (4) of section 19-B by which is attracted section 10-A to the excess area as surplus, that is above the permissible area, when that excess area comes to be so after the date of the commencement of the Act. The learned counsel for the respondents has further contended that clause (b) of section 10-A has been enacted by the Legislature as a mere abundant precaution and in the face of clause (a) no such clause (b) was really necessary. It has already been shown that this is not the correct approach. So that there is no substance in the argument on the side of the respondents.

There is nothing either in sub-section (1) or sub-section (4) of section 19-B from which it can be spelt out that because a landowner has to, after acquiring land by inheritance after the date of the commencement of the Act, proceed to act according to sections 5-A and 5-B and when he does so and the area with him is in excess of the permissible area, which area under sub-section (4) is utilizable under section 10-A(a), the transfers, otherwise good and valid according to law, are rendered ineffective, thus affecting the title of third persons. There is nothing in those sub-sections from which it can be read that this restriction or control over the right of ownership of a landowner comes about from the mere fact that he has to make return according to sections 5-A and 5-B and if surplus area is found with him the same can be utilised under section 10-A. I think Harbans Singh, J., has rightly pointed out that the position is parallel when on the date of the commencement of the Act the area is surplus with a particular landowner and when subsequent to the date of he Act the area becomes surplus with a landowner by acquisition according to sub-section (1) of section 19-B. In either case the landowner has excess as surplus area with him. In both cases the area can be utilized under section 10-A, in the first case under clause (a) of that section and in the second case under that clause by sub-section (4) of section 19-B, but while in the first

case all transfers are to be ignored, there is no provision in the second case and no such provision can be read into any part of section 19-B. In regard to the surplus area in the past on the date of the commencement of the Act, the position is clear, but in regard to area coming as surplus with a landowner in future having regard to section 19-B, the situation is not so that the transfer by such a landowner is to be or can be ignored. Now, it cannot be that there has been oversight by the Legislature in this respect, for when section 19-B was inserted in the Act, clause (b) of section 10-A was already there and before the Legislature. It is only an argument of inconvenience that on this approach a landowner acquiring land by means as referred to in sub-section (1) of section 19-B, after the date of the commencement of the Act, and coming to hold area in excess of the permissible area may take advantage to reduce his area to the level of permissible area, but if the Legislature intended that he should not do so, it was open to it to meet the situation by enacting a provision of the type as in clause (b) of section 10-A. On this approach, I agree with the opinion expressed by Harbans Singh, J., and in my opinion the orders of the revenue authorities cannot be sustained because before any steps could be taken with regard to the excess area with the petitioner under section 10-B, he had already, by transfers good and valid in law, reduced his area within the limits of the permissible area. So the rule in this case is made absolute with the result that the orders of the revenue authorities are quashed as the transfers of land made by the petitioner are good and valid according to law and the area of those transfers cannot be treated as surplus area in the hands of the petitioner. The State will bear the costs of the petitioner in this petition.

R.N.M.

REVISIONAL CIVIL

Before Ranjit Singh Sarkaria, J

BANARSI DASS,—*Petitioner.*

versus

PANNA LAL AND OTHERS,—*Respondents.*

Civil Revision No. 31 of 1968.

January 12, 1968.

Code of Civil Procedure (Act V of 1908)—S. 115 and Order 1, Rule 10—Application under Order 1, Rule 10 dismissed—Revision against order of dismissal—Whether maintainable—Necessary and proper parties—Meaning of—When can a party be added in a suit—Circumstances as to stated.