right is conceded under section 15, the section dealing with the exercise of the right cannot defeat him."

Though by the subsequent amendments of the Act, the provisions of sections 15 and 17, which were under consideration of the learned Judges in that case, have either been deleted or drastically modified, yet the principle of interpreting sections 15 and 17 laid down in *Fateh Mohammad's case* endures. Respectfully following that principle, I would say that the present case falls under the residuary clause (e) and not under clause (b) of section 17. The reasons, as already observed, are two-fold: Firstly, any other interpretation would destroy the equal right of pre-emption given to the brother's son of the vendor by section 15(1)(b) *Secondly,* and would also render section 13 meaningless. Secondly, under the first three clauses of section 15(1)(b) the right of pre-emption has been given to a few specified relatives and not to "the heirs," as such. It cannot, therefore, be said that the plaintiffs "claim as heirs" within the contemplation of clause (b) of section 17.

For reasons aforesaid, I would allow this appeal with costs, holding that the four rival plaintiff pre-emptors shall share the suit land in equal shares under clause (e) of section 17 of the Act.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Sarkaria, J.

CHHOTA SINGH AND OTHERS,—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 69 of 1967

November 15, 1967

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Ss. 32-D, 32-K, 32-P and 40—Advice of Pepsu Land Commission not included in the statement preferred under S. 32-D—Whether a valid ground for re-opening the matter—Clerical or arithmetical mistake in order—Whether can be made an execuse for review—Phase at any time in S. 32-D(4)—Meaning of—Proceedings

under S. 32-D—Notice of—Whether to be given to settlers—Constitution of India (1950)—*Article* 226—*Settler—Whether can file petition under Article* 226.

Held, that if the advice of the Pepsu Land Commission had not been included in the statement prepared under section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955, it was not a valid ground for re-opening the matter, because under sub-section (6) of section 32-D, the advice of the Commission is required to be included in draft statement only, if any exemption from ceiling is claimed by the landowner on any of the grounds enumerated in section 32-K. The words if claimed by the landowner's occurring in sub-section (2) of section 32-D are significant. They import a condition precedent to the seeking of such advice.

Held, that clerical or arithmetical mistake in any order passed by any officer or authority under the 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 under section 40 of the Act. Such a mistake, however, cannot be made an excuse for reviewing the orders on merits, because no such power of review is given by the Act to the State Government after its order or decision becomes final under sub-section (5) of section 32-D.

Held, the words 'at any time' occurring in sub-section (4) of section 32-D of the Act refer to a period of time before the order of the Collector or the State Government becomes final under sub-section (5). It is quite clear that the various steps envisaged by section 32-D had been taken and the Collector's order affirmed by the State Government under sub-section (3) had become final, the State Government had, under the Act, no express or inherent power to review that order on merits, except to rectify (under section 40 of the Act) a mere clerical error or mistake that might have crept in as a result of inadvertence or negligence. The policy of the law is that there should be finality in judicial matters and nobody should be vaxed again and again for the same cause. This wholesome principle constitutes the bedrock of sub-section (5) of section 32-D. Whereas it debars a landowner, tenant or an allottee from re-agitating a matter which has once been finally decided under sub-section (3), it equally fetters the power of the State to review, on merits, its own order passed under that sub-section. If the fate of such a soleman order and the scope of the power conferred under sub-section (4) were to depend on the unpredictable whims, political notions, and sweet will—without any limit as to time—of the State Government, the 'finality' of its order spoken of in sub-section (5) will have no more reality than the illusry figures formed by the evershifting bits of fragile glass in a kaleidoscope. If orders like the impugned one are passed frequently by lightly reviewing old orders, particularly after a lapse of several years, they will introduce an element of disconcerting instability in the administration of law a reproach which all process, judicial or quasi-judicial, must constantly and scrupulously endeavour to avoid.

Held, that as orders passed under section 32-D are quasi-judicial in character, it is imperatively necessary in accordance with the principles of natural justice as well as in terms of sub-section (4) of section 32-D to give a hearing to the settlers.

Held, that as soon as the settlement is made, and the settler, in accordance with the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, and the Utilization of Surplus Area Scheme, 1960, is put in possession of the land, the latter abiding by the terms and conditions of the settlement, gets a right to remain in use and occupation of the land allotted to him. The re-opening of the caes by the Commission as a delegate of the State Government, threatening to undo that settlement gives the settler a right to maintain a petition under Article 226 of the Constitution.

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 respondent No. 1.

B. S. WASU, ADVOCATE, for the Petitioners.

H. L. SARIN, SENIOR ADVOCATE WITH BAHAL SINGH MALIK, AVDOCATE, for Respondent No. 3.

NEMO for other respondents.

ORDER

SARKARIA, J.—This is a writ petition by Chhota Singh and five others of tehsil Phul, district Bhatinda, under Articles 226 and 227 of the Constitution. Respondent No. 1 is the State of Punjab; Respondent 2 is the Collector Agrarian (S.D.O.), Bhatinda, and Respondent No. 3 is Gurdial Singh *alias* Bogha Singh, son of Hazara Singh.

It is alleged in the petition and sworn to in the affidavit, that Gurdial Singh, Respondent 3, is a big landowner owning more than 30 standard acres of land in village Bugran, tehsil Phul. By an order, dated 3rd January, 1962, the Collector (Respondent 2) acting under section 32-D of the Pepsu Tenancy and Agricultural Lands Act, 1955, (Pepsu Act No. 13 of 1955), (hereinafter referred to as 'the act'), declared 22.48 standard acres as surplus area held by the landowner. Gurdial Singh (landowner) appealed under sub-section (3) of section 32-D of the Act to the Commissioner, Patiala, who was exercising delegated powers of the State Government, against that order. The appeal was dismissed on 1st May, 1962. Gurdial Singh filed a writ

petition (Civil Writ No. 1000 of 1962) in the High Court, impugning the aforesaid order of the Collector and Commissioner. This petition was dismissed *in limine* on 14th November, 1962.

Thereafter, on 21st December, 1962, the Collector, by an order, allotted that surplus area of Gurdial Singh respondent under the provisions of Utilisation of Surplus Area Scheme, 1960, which had been drawn up for resettlement of ejected tenants, to the present petitioner as follows :—

1.	Chhota Singh	5 standard acres.
2.	Nihal Singh.	2.98 "
3.	Genda Singh	5 "
4.	Kaka Singh.	3.62 "
5.	Jhaggar Singh.	5 "
6.	Zora Singh.	0.98 "

Aggrieved by allotment of that area, the landowner filed an appeal which was accepted by the Revenue Assistant (Collector) on 1st August, 1964, and the case was remanded for fresh decision. After the remand, the petitioners were again accommodated on the same area by the Prescribed Authority (Assistant Collector, Tehsildar Agrarian), on 13th September, 1964, and possession was also given to them.

The landowner again approached the Financial Commissioner in revision against that allotment to the petitioners but his revision-petition was dismissed on 16th October, 1964, on the ground that the landowner had no *locus standi* to question the utilisation of surplus area by the State. The same area was again confirmed in the name of the petitioners by the Prescribed Authority on 25th January, 1965. Gurdial Singh again filed an appeal which was rejected on 25th March, 1965 by the Revenue Assistant on the ground that the landowner had no *locus standi* to object. At this stage, the landowner put forth one Gurcharan Singh, who as a tenant of Gurdial Singh, filed an appeal against the order of the prescribed authority before the Collector, questioning the petitioners' allotment. Gurcharan Singh's plea was that he had a preferential right to the allotment of the land in question as against the petitioners. This appeal of Gurcharan Singh was accepted by the Collector, who, by his order, dated 5th August, 1965, set aside the allotment.

The petitioners went in revision to the Financial Commissioner against that order of the Collector. The revision-petition was accepted by the Financial Commissioner as per his orders dated 5th November, 1965, and the order of the Collector was set aside, with the observation that Gurcharan Singh having never filed his claim within time under the Utilisation Scheme, the Collector had no jurisdiction to consider his case. In the same order, the Financial Commissioner observed that Respondent 3 had somehow or the other managed to get back the possession of the land from which he had been dispossessed earlier, and that steps be taken forthwith for the delivery of possession of the allotted land to the petitioners.

Gurcharan Singh made a writ petition (Civil Writ No. 2955 of 1965) in the High Court, challenging the order of the Financial Commissioner and obtained an order from the Court staying his dispossession. The petitioners moved for the vacation of the stay order and prayed for a clarification whether the stay would ensure for the benefit of Gurcharan Singh alone. This clarification was made under orders, dated 11th February, 1966, of Dua J. Ultimately, the writ petition was dismissed by this Court on 26th August, 1966. Thus, so far as Gurcharan Singh was concerned, the matter became final. As the officials of the Department did not implement the order of the Financial Commissioner, the petitioners moved contempt proceedings in this Court against Respondent 3 and others (I am told that these proceedings have since been dismissed on 22nd March, 1967, by a Division Bench consisting of Bedi and Gurdev Singh, JJ.

Sometime in 1966, Gurdial Singh, Respondent 3, made a miscellaneous application to the Collector Agrarian (Respondent 2), praying that the order, dated 3rd January, 1962, of the Collector be set aside as the same was irregular and wrong from the very beginning. Thereupon, the Collector (Respondent 2) made a reference to the Commissioner for setting aside that declaration of surplus area. The Commissioner, Patiala, as a delegate of the State Government under section 32-D(4) of the Act, by his order, dated 30th December, 1966, set aside the order, dated 3rd January, 1962, of the Collector. It is this order, dated 30th December, 1966, that is being assailed in this writ petition.

It is alleged that in pursuance of the impugned order of Respondent 1, dated 30th December, 1966, the order of the Collector, dated 3rd January, 1962, and all the subsequent proceedings regarding the

allotment of the surplus area to the petitioners had been set at naught who were going to be dispossessed from that part of the allotted area which is still in their possession. The order dated 30th December, 1966, of the Commissioner is being impugned as unjust, illegal, *ultra vires*, void and without jurisdiction on these grounds:—

(1) Respondent 1 had no jurisdiction to reopen the case in his revisional powers as delegate of the State Government, when this Court had finally settled the matter by dismissing the Writ Petition No. 1000 of 1962, filed by Respondent No. 3, and Civil Writ No. 2955 of 1965, whereby the order, dated 3rd January, 1962, of the Collector had been challenged.

(2) The impugned proceedings before Respondents 1 and 2 were also barred as *res judicata*.

(3) There was no legal defect in the Collector's order, dated 3rd January, 1962, declaring some area of Respondent No. 3 as surplus.

(4) The petitioners were not made a party to the proceedings before Respondents 1 and 2, and the impugned order was passed behind their back and, as such, was violative of the principles of natural justice.

(5) That the order, dated 1st May, 1962, of the then Commissioner, Patiala, dismissing the appeal against order, dated 3rd January, 1962, of the Collector, had become final under the Act and the same was upheld by the High Court, while dismissing Civil Writ No. 1000 of 1962 *in limine*. Thereafter, the matter could not be reopened by Respondent 1 in his capacity as the delegate of the State Government under section 32-D (4) of the Act.

(6) Respondent 3 having omitted this ground in his writ petition, he is deemed to have waived the same.

(7) The State Government could exercise its revisional jurisdiction within a reasonable time and it could not arbitrarily reopen the case after the lapse of a long time. The impugned order was *mala fide*.

(8) On merits also, the impugned order could not be sustained, because there was no question of making any reference to

the Pepsu Land Commission under section 32-P read with section 32-K, because Respondent No. 3 had never claimed any exemption as contemplated by section 32-K of the Act.

The petitioners, therefore, pray that after summoning the record, a writ of *certiorari* quashing the impugned order, and other suitable direction or order be issued.

The first contention of Mr. Sarin, learned counsel for respondent 3, is that the petitioners have no *locus standi* to maintain this petition inasmuch as (a) they have no legal right to the allotment of the land in dispute, and (b) the impugned order is not a final order disposing of the matter to the deteriment of the petitioners, but it is only an order of remand. Developing his argument, Mr. Sarin maintains that the area in dispute after being declared surplus vested in the State Government and the impugned order of the State Government is only to the effect that the matter be re-examined and certain errors and mistakes rectified. He has emphasised that there was a difference of 2.5 acres in the area which was declared surplus and that which has been allotted to the petitioners. No orders have been issued that the petitioners be dispossessed of the land allotted to them. The affected parties, according to Mr. Sarin, were the landowner and the Government, and not the petitioners. According to the learned counsel, unless and until the petitioners can show that they had a legal right which has been infringed, they cannot invoke the extraordinary jurisdiction of this Court under Article 226. In support of this contention, reliance has been placed on *Calcutta Gas Company (Proprietary) Limited* v. *State of West Bengal* (1). Head-note (b) of the aforesaid case reads as follows :—

> "Article 226 in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right. The existence of the right is the foundation of the exercise of jurisdiction of the High Court under Article 226. The legal right that can be enforced under Article 226, like Article 32, must ordinarily be the right of the petitioner himself who complains of infraction of such right and approaches the Court for relief."

(1) A.I.R. 1962 S.C. 1044.

Keeping in view the law on the point as declared by the Supreme Court, the question that further falls to be determined is: whether the petitioners have any legal right in the land in dispute, the infraction of which they can complain and get redressed by this Court in these proceedings. In my opinion, the answer to this question must be in the affirmative. The undisputed facts are that this land which belonged to Respondent 3 was declared as 'surplus area' under section 32-D. Thereupon, under section 32-E, of the Act, it vested in the State who, in exercise of its powers under section 32-J and the Utilisation of Surplus Area Scheme, 1960, framed thereunder, allotted this land to the petitioners. Such an allottee under clause (f) of para 2(1) of the aforesaid scheme is called the 'settler'. It was common ground that the possession of the surplus area had been delivered to the settlers (petitioners) under para 11 of the Scheme. Para 12 of the Scheme lays down the conditions of settlement. It reads as follows:—

"12. (1) The settler—

(a) shall be liable to pay all Government dues such as land revenue, surcharge, special charge, special assessment, *abiana*, betterment levy, consolidation fee, in respect of the land allotted to him, from the date he takes possession of the same;

(b) shall be liable to pay the prescribed amount of compensation in the manner laid down in paragraph 13;

(c) shall become full owner of the land allotted to him when all payments due in respect of such land have been made; and

(d) shall not be competent to transfer his rights in the land allotted to him to any person till all the dues in respect of the land are cleared, except for the purpose of raising a loan from a Land Mortgage Co-operative Bank by mortgaging the same.

(2) In case the settler makes any default in the payment of whole of the amount of compensation or two successive instalments thereof, in the manner laid down in paragraph 13, the allotment, or such part thereof as may be sufficient to realize the amount which remains unpaid at the time when default is committed, shall be liable to be cancelled."

Para 13 makes provision for the manner of payment of compensation by the settler. As soon as the settlement is made, and the settler, in accordance with the provisions of the Act and the Scheme, is put in possession of the land the latter abiding by the terms and conditions of the settlement, gets a right to remain in use and occupation of the land allotted to him. In the instant case also, the petitioners were duly put in possession of the surplus area allotted to them. The reopening of the case by the Commissioner as a delegate of the State Government threatens to undo that settlement, and the rights which the petitioners got under that settlement have been put in jeopardy. I, therefore, hold that the petitioners have the necessary *locus standi* to maintain this petition.

As regards the merits of the case, the basis of the impugned order is two-fold: Firstly, the advice of the Pepsu Land Commission had not been included in the statement prepared under section 32-D of the Act. Secondly, the area declared surplus was 22.48 standard acres, but in the draft statement served on the landowner, this area was shown as 20.15 standard acres, and that this mistake or discrepancy has to be rectified.

The first was not a valid ground for reopening the matter because under section 32-D, sub-section (6); the advice of the Pepsu Land Commission is required to be included in the draft statement *only if* any exemption from the ceiling is claimed by the landowner on any of the grounds enumerated in section 32-K. The words 'if claimed by the landowner' occurring in sub-section (2) of section 32-D are significant. They import a condition precedent to the seeking of such advice. In this case, no such exemption was ever claimed by the landowner. There was thus no necessity of having the advice of the Pepsu Land Commission included in the draft statement.

As regards the second ground, it is not disputed that there was an error or mistake with regard to the precise area declared as surplus area. In the draft statement served on the landowner, this area was shown as 20.15 standard acres. However, an area of 22.48 standard acres was actually taken into possession as surplus area and further allotted to the petitioners per details indicated in a foregoing part of this judgment. Section 40 of the Act provides that clerical or 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. This clerical mistake, therefore, could be rectified under the aforesaid section 40, and consequential adjustments, by ratably reducing the area allotted to the petitioners; could be made. This mistake however could not be made an excuse for reviewing the orders on merits; because no such power of review is given by the Act to the State Government after its order or decision becomes final under sub-section (5) of section 32-D. This is clear from section 32-D, the material part of which reads as follows:—

"(1).....the Collector shall prepare a draft statement in the manner prescribed showing among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the landowner may retain by way of his permissible limit or exemption from ceiling and also the surplus area.

(2) The draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P regarding the exemption from ceiling if claimed by the landowner and be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. Any objection received within thirty days of the service shall be duly considered by the Collector and after affording the objector an opportunity of being heard order shall be passed on the objection.

(3) Any person aggrieved by an order of the Collector under sub-section (2) may, within 30 days of the order, prefer an appeal to the State Government or an Officer authorised by the State Government in his behalf.

(4) Without prejudice to any action under sub-section (3); the State Government may of its own motion call for any record relating to the draft statement at any time and, after affording the person concerned an opportunity of being heard; pass such order as it may deem fit.

(5) Any order of the State Government under sub-section (3) or sub-section (4), or of the Collector subject to the decision of the State Government under those sub-sections *shall be final.*

(6) The draft statement shall then be made final in terms of the order if the Collector or the State Government, as the case may be, or in terms of the advice of the Pepsu Land Commission regarding exemptions from the ceiling claimed by the landowner (if any), and published in the Official Gazette and no person shall then be entitled to question it in any court or before any authority.

(7) The final statement shall then be submitted by the Collector to the State Government as soon as may be and a copy thereof may on demand be given to the landowner or the tenant concerned."

In the present case, the draft statement had been prepared and published in the manner prescribed by sub-sections (1) and (2) of section 32-D and the Collector passed the order under the aforesaid sub-section (2) on 3rd January, 1962, declaring the land in dispute; i.e. 22.48 standard acres, as surplus area held by Respondent 3. The landowner availed of the right of appeal provided in sub-section (3) to the Commissioner, Patiala, exercising delegated powers of the State Government. The order of the Collector passed under sub-section (2) had become final on 1st May, 1962, when the Commissioner, Patiala, as a delegate of the State Government upheld the order of the Collector and dismissed the landowner's appeal. The impugned order, dated 30th December, 1966, does not, in my opinion, fall within the purview of sub-section (4) of section 32-D, because those powers could be exercised only before 1st May, 1962, i.e. prior to the Collector's order having become final under sub-section (5) of section 32-D. That stage had passed long ago, while the impugned order was made on 30th December, 1966.

Keeping in view the Scheme and the language of these provisions, it appears that the words 'at any time' occurring in sub-section (4) of section 32-D refer to a period of time before the order of the Collector or the State Government becomes final under sub-section (5). It is quite clear to my mind that after the various steps envisaged by section 32-D had been taken and the Collector's order, dated 3rd January, 1962, affirmed by the State Government under sub-section (3) had become final, the State Government had, under this Act, no express or inherent power to review that order on merits, except to rectify (under section 40 of the Act) a mere clerical error or mistake that might have crept in as a result of inadvertence or negligence.

It will be useful to mention here that the provisions of sub-section (3) and (4) of section 32-D of the Act are analogous to sections 21(4) and 42, respectively, of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (Act No. 50 of 1948). The language of section 42 of Punjab Act 50 of 1948 is similiar to that of sub-section (4) of section 32-D of the Act. Their Lordships of the Supreme Court in *Harbhajan Singh* v. *Karam Singh* (2) affirming a decision of this High Court, have laid down 'that there is no provision in the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act granting express power of review to the State Government with regard to an order made under section 42 of the Act. In the absence of any such express power, the Director, Consolidation of Holdings, cannot review his previous order of dismissing the application of the petitioner under section 42 of the Act.'

In Deep Chand and another vs. *Additional Director, Consolidation of Holdings, Punjab, Jullundur* (3) also a Full Bench of this Court has held, that an Additional Director of Consolidation is not empowered to recall or review his earlier erroneous and unjust order whenever it is discovered that the error was due to his own mistaken view of the merits of the controversy.

The impugned order amounts to a review of the previous order of the Commissioner as a delegate of the State Government passed under sub-section (3) of section 32-D of the Act on 1st May, 1962, whereby the landowner's appeal was dismissed and the Collector's order, dated 3rd January, 1962, was affirmed. The impugned order, therefore, is *ultra vires* and without jurisdiction in so far as it goes beyond directing a rectification of the clerical error with regard to surplus area.

The principle laid down in *Harbhajan Singh's case* by the Supreme Court, and *Deep Chand's case* by this Court applies with greater force to the facts of the present case, because not only the relevant provisions of the Act under consideration are similar, but the order of review has been passed after a lapse of 6 or 7 years. The policy of the law is that there should be finality in judicial matters and nobody should be vexed again and again for the same cause. This wholesome principle constitutes the bedrock of sub-section (5) of section 32-D.

(2) A.I.R. 1966 S.C. 641.
(3) I.L.R. (1964) 1 Punj. 665 (F.B.)=1964 P.L.R. 318.

Whereas it debars a landowners, tenant or an allottee from reagitating a matter which has once been finally decided under sub-section (3), it equally fetters the power of the State to review, on merits, its own order passed under that sub-section. If the fate of such a solemn order, and the scope of the power conferred under sub-section (4) were to depend on the unpredictable whims, political notions, and sweetwill—without any limit as to time—of the State Government, the '*finality*' of its order spoken of in sub-section (5) will have no more reality than the illusory figures formed by the evershifting bits of fragile glass in a kaliedoscope. If orders like the impugned one are passed frequently and lightly reviewing old orders, particularly after a lapse of several years, they will introduce an element of disconcerting instability in the administration of law—a reproach, which all process, judicial or quasi-judicial, must constantly and scrupulously endeavour to avoid.

Assuming—but not holding—that the order under sub-section (4) of section 32-D could be passed by the Commissioner at any time even after the order becomes final under the succeeding sub-section, then also the impugned order is liable to be struck down for the reason that it was passed at the back of the petitioners. Since the order strongly operates or threatens to operate to the detriment of the petitioners and the functions of the State Government or its delegate under section 32-D are quasi-judicial in character, it was imperatively necessary in accordance with the principles of natural justice as well as in terms of sub-section (4) of section 32-D to give a hearing to the petitioners. They were not even impleaded as respondents in those proceedings, much less any opportunity of being heard was afforded to them.

For reasons aforesaid, I would allow this petition, quash the impugned order of the Commissioner, and direct that, if so desired, only the clerical mistake or discrepency with regard to the surplus area in the draft statement prepared by the Collector, and the area allotted to the petitioner, be rectified and removed, if necessary, by making consequential adjustments. In the circumstances of the case, I would leave the parties to bear their own costs.

R.N.M.