***Before Amit Rawal J.***

**BUDH RAM AND OTHERS**—*Petitioners*

*versus*

**STATE OF HARYANA AND OTHERS**—*Respondents*

**CWP No.9435 of 2009**

February 27, 2017

***Haryana Ceilings on land Holdings Act, 1972—Ss.18(6), 12(3), 7 and 9—Punjab Security of Land Tenures Act, 1953—Redetermination of surplus area—Invoking of suo moto power by Financial Commissioner after lapse of 11 years is not permissible—Once the determination has become final upto the High Court and the surplus stood vested and mutated in favour of the State and further allotted to the petitioners—The land stood utilized and not available for re-determination—Settled things cannot be unsettled at anytime—Allotment was never challenged thereafter—Held, re-determination is arbitrary and is without jurisdiction—Order set aside.***

*Held that*, entertained/invoked by the Financial Commissioner, particularly in view of the notification (Annexure P-9), *ibid*, wherein two benches consisting of two members had been constituted for various divisions and districts, thus, the then Financial Commissioner Shri K.C.Sharma, Haryana Revenue Disaster Management Department did not have any jurisdiction.

(Para 15)

*Further held that*, from the perusal of the aforementioned findings, it is concluded that the suo-motu power, sought to be exercised after five years of the passing of the final order, cannot be left at the whims and sweet-will of the revisional authority whenever and wherever it wants to do. Even otherwise, once the matter with regard to the surplus area had already been adjudicated/determined, it could not have been re-opened on account of the reasons assigned in the impugned orders, i.e., with regard to one of the son of Ishar Singh.

(Para 17)

*Further held that*, on the appointed date, the land stood vested in the State of Haryana, in essence it cannot be said that the land remained unutilised, therefore, the land owner would have a right/subsisting cause to seek re- determination. Here in the present

case, the matter with regard to the surplus area came to an end in 1995.

(Para 20)

*Further held that*, the allotment in favour of the petitioners, as reflected, has not been challenged. The allotment itself is a reflection of utilisation of the land. The respondents have not been able to bring on record any iota of evidence or documents to establish that the allotment was only a paper transaction, in essence whether the allottees had been put into use or not.

(Para 22)

Arun Jain, Senior Advocate with
Ajay Jain, Advocate,
*for the petitioners* in all the writ petitions.

Gopal Sharma, Advocate,
*for the petitioner* in COCP.

Sandeep Singh Mann, Sr.DAG, Haryana, for the State.
Sarwan Singh, Senior Advocate
with Mr.N.S.Rapri, Advocate,
for the private respondents.

**AMIT RAWAL, J.**

(1) By this order, I intend to dispose of seven Civil Writ Petition bearing Nos.9435, 9437 to 9439, 9454, 9455, 9456 of 2009 and one COCP bearing No.2014 of 2011 as the common questions of law and fact are involved in all these cases. The facts are being taken from CWP No.9435 of 2009.

(2) The petitioners have challenged the impugned orders dated 28.8.2006 (Annexure P-6) passed by respondent No.2- the Financial Commissioner and Principal Secretary to Government Haryana, Revenue Disaster Management Department, 31.10.2008 and 18.4.2009 (Annexures P-7 and P-8) of respondent No.3, i.e., the Prescribed Authority-cum-Sub Divisional Officer (Civil), Rewari.

(3) Mr.Arun Jain, learned Senior Counsel assisted by Mr.Ajay Jain, Advocate representing the petitioners in all the writ petitions submitted that for appreciating the controversy involved in the present writ petitions, it would be apt to refer state of things happened before 28.8.2006. As per the submissions and facts revealed from the writ petitions, the surplus area of the land owner, namely, Ishar Singh, was decided under the Punjab Security of Land Tenures Act, 1953 (for short

"Punjab Act") and a part of his holding, including 114 kanals 12 marlas out of land measuring 975 kanals 1 marla was declared as surplus. The aforementioned order was challenged by Ishar Singh before the Surplus Prescribed Authority (Revenue) seeking exemption of the area from the applicability of the Punjab Act and the Haryana Ceiling on Land Holdings Act, 1972 (for short "Haryana Act") on the premise that under Act No.26 of Haryana Act, the applications/declaration letters were submitted, which were decided way back in the year 1978, but the fact remained that the land continued to remain in possession of the land owners and was not utilised, therefore, the Prescribed Authority did not declare him as a big land owner as the area under his possession was within the permissible limit, in essence the declaration of the land as surplus was a paper transaction. The Prescribed Authority, vide order dated 22.5.1990 (Annexure P-1), after noticing the provisions of the law, held that the surplus area as per the provisions of Section 12(3) of Haryana Act had already vested in the State of Haryana on appointed date, i.e., 24.1.1971 and the mutation thereof had been entered in the name of State of Haryana and, therefore, the right to exempt any area from surplus was rejected.

(4) The aforementioned order was assailed by Ishar Singh land owner by filing an appeal before the Collector, District Rewari, who, vide order dated 20.11.1991, dismissed the appeal by holding that the land, after being declared surplus had already been utilised and vested in the State of Haryana. Having failed to achieve the success in the appeal, Ishar Singh/L.Rs and other concerned persons filed a revision before the Commissioner, which was also dismissed vide order dated 6.3.1992 and the second revision before the Financial Commissioner, Haryana also met with the same fate, where it was also found that the land stood already utilised by selling it out to the allottees as per the law prevailing and, therefore, there was no occasion for re-opening the declaration of the land being surplus and the matter even reached upto this Court vide Civil Writ Petition No.1368 of 1994 (Ishar Singh Versus The State of Haryana & others) and this Court, vide order dated 30.1.1995 (Annexure P-5) dismissed the same. Mr.Jain further submits that the matter rested here in 1995. The details of allottees, land, date of possession and report Roznamcha commencing from 1963 onwards, have been extracted in Para 3 of the writ petition, which read as under:-

| S. No. | Area K-M | Name of Allottee | Date of possession and Report Roznamcha No. |
|---|---|---|---|
| 1 | 24-0 | Shiv Lal s/o Ram Narain | 14.07.63 450 |
| 2 | 16-0 | Surjan s/o Mangalia | 20.06.63 410 |
| 3 | 18-8 | Bani Singh s/o Mangal | 14.07.63 - |
| 4 | 16-0 | Tirkha s/o Ramji Lal | 14.07.63 451 |
| 5 | 24-0 | Kudia s/o Badri | 14.07.63 449 |
| 6 | 24-0 | Badlu s/o Jhabbu | 23.11.63 - |
| 7 | 24-0 | Polia s/o Umrao | 20.06.63 408 |
| 8 | 16-0 | Ram Kumar s/o Kishan Lal | 25.05.63 364 |
| 9 | 22-0 | Rattan s/o Lilu | 25.05.63 357 |
| 10 | 24-0 | Chunni Lal s/o Ram Chander | 25.05.63 368 |
| 11 | 24-0 | Ram Sarup s/o Sama | 25.05.63 370 |
| 12 | 24-0 | Jaggan s/o Gugan | 25.05.63 369 |

(5) He further submitted that the orders, Annexures P-1 to P-5, attained finality and it had been concurrently held by all the authorities, including this Court that Ishar Singh land owner had no right, title and interest in the land declared surplus under the Punjab Act. The successors- in-interest of Ishar Singh, after period of eleven years from the date of dismissal of the writ petition (Annexure P-5), approached the Financial Commissioner-respondent No.2, who, on the administrative side took suo- motu reference and held that the calculation with regard to the surplus land was not correct and Dalip Singh son of Ishar Singh approximately 55 years old might have been major on the appointed date and, therefore, having not taken care of his right, the matter required re-probe and, thus, ordered for reopening the entire process with regard to the permissible area, which, Dalip Singh was entitled to at the time of filing of the declaration form. He has drawn the attention of this Court to the order dated 28.8.2006. The operative part of the same reads thus:-

> "Deputy Commissioner Mohindergarh sent reference dated 15.09.1988 vide No.67-68/368, wherein he had mentioned that on 24.01.1971, the land owner was having land

> measuring 1289 kanals 08 marlas out of which 975 kanal 1 marla had been declared as surplus under Punjab Act, 1953 and 307 kanal 14 marla land remained. Vide mutation No.813, 594 kanal 16 marla has been vested in the State. If we calculate, the land owner had been given excess benefit of 975 kanal 17 marla-594 kanal 16 marla-380 kanal 5 marla and no age certificate had been taken at the time of Declaring the Declaration form and sent the case for taking Suo-Motu Action. In this recommendation District Court Mohindergarh has informed that Surplus Collector had declared 975 kanal 1 marla land of the land owner as surplus which needs to be checked. As per the report of Kanoongo surplus, Sh.Dalip Singh s/o Ishwar Singh is approximately 55 years old and he might be major on the appointed day and this case needs to be decided afresh taking away the correct land of the land owner in surplus and allowing the correct permissible area to the land owner for which he was entitled at the time of filing his declaration form. The PC/Collector Surplus Rewari is, therefore, directed to decide this case afresh after taking the proof of age of Dalip Singh on 24.04.1971 from the Sarpanch/lambardar/chowkidar or the respectable of the village or any other evidence as per Law within three months."

(6) The aforementioned order was passed in the absence of the allottees, whose right and interest had seriously been prejudiced and it was also against the principles of natural justice.

(7) He further submitted that the exercise of suo-motu proceedings under Section 18 (6) of the Haryana Act is not sustainable on the ground that in view of the notification dated 18.7.2005 (Annexure P-9), the power to deal with the matters pertaining to different districts has been given to only two benches consisting of two officers, the detail of which reads as under:-

> "In exercise of the powers conferred by the provisions of Sub Section (2) of Section 7 of the Punjab Land Revenue Act, 1887 read with Rule 5 of the Haryana Financial Commissioners (Distribution of Business) Rules, 1975 and all other powers enabling him in this behalf, the Governor of Haryana, hereby constitutes two benches of the following Financial Commissioners to collectively hear and decide all surplus cases of the Haryana State relating to appeals,

revisions and applications under the Act:-

| Sr.No. | Name of F.C.'s | Name of the Division allocate |
|---|---|---|
| 1. | First Bench | i) Sh.S.P.Sharma, IAS<br>ii) Sh.K.S.Bhola, IAS<br>Districts of Hisar and Gurgaon Divisions alongwith all old cases pending with other F.C.'s |
| 2. | 2nd Bench | i) Sh.R.N.Prasher, IAS<br>ii) Sh.N.Bala Baskar, IAS<br>Districts of Ambala & Rohtak Divisions alongwith all old cases pending with other F.C.'s" |

(8) In support of his contention, he relied upon the ratio decidendi culled out by Hon'ble the Supreme Court in ***Sampuran Singh*** versus ***The State of Haryana and others***[1]to contend that Sections 7 and 9 of the Haryana Ceiling Act do not permit surplus area declared under Punjab Security of Land Tenures Act to be adjusted by re-opening and re- computation. Even if surplus land in Haryana allowed to remain in possession of landowner, title stood vested in State free from all encumbrances from cut off date, i.e., 23.12.1972. He also relied upon the judgment of Division Bench of this Court in ***Ujagar Singh and others*** versus ***State of Haryana and others***[2]to contend that the plea raised in the matter on behalf of the landowner of not affording opportunity of hearing at the time of allotment was negated, in essence the landowner was not required to be given any notice when the Government decided to give land by allotment. Similar is the view of the Division Bench of this Court in ***Dharam Pal and others*** versus ***State of Haryana and others***[3] Even the suo-motu powers cannot be taken up after the gap of eleven years. This question was debated upon by the Full Bench of this Court in ***Latoor Singh and others*** versus ***State of Haryana and another***[4]. Much emphasis has been laid on paragraphs 9 to 12.

(9) The aforementioned orders assailed before the authorities are not sustainable in the eyes of law. The authorities below failed to appreciate that the matter with regard to declaration of land being

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[1] 1994 PLJ 267
[2] 2012 (3) RCR (Civil) 960
[3] 2002 (1) PLJ 188
[4] 2016 (4) R.C.R. (Civil) 16

surplus came to be rested way back in 1995, i.e., on 30.1.1995, when the successor-in-interest of Ishar Singh did not succeed upto this Court. He also relied upon Annexure P-11, the written statement filed on behalf of SDO (C), Rewari in CWP No.1368 of 1994 (Ishar Singh Versus The State of Haryana and others), wherein the names of all the persons, who have been allotted land, have been referred to. In CWP No.9456 of 2009, reference has been made to certificates of allotment (Annexures P-10 to P-12) issued in favour of Shiv Lal, Budh Ram and Manglu and, thus, concluded the arguments by laying emphasis that since the surplus area stood vested in the State, the matter regarding re-determination of permissible area cannot be re-opened.

(10) Per contra, Mr.Sarwan Singh, learned Senior Counsel assisted by Mr. N.S. Rapri, Advocate, representing the private respondents submitted that once the process was initiated under the old Act 1953, the provisions of the old Act would apply, in essence the petitioners do not have any locus-standi to challenge the impugned orders, whereby the Financial Commissioner has taken suo-motu notice. It is only the State, which can do so. In support of his contention, relied upon order dated 31.10.2008 (Annexure P-7), whereby in pursuance to the suo-motu cognizance taken by the Financial Commissioner and Financial Secretary to Government, the SDO (C), on perusal of the surplus record and after obtaining the opinion of the District Attorney, held that landowner Ishar Singh son of Sheoji Singh had 1462 kanals 8 marlas of land on 24.1.1971 and out of which, 1254 kanals 1 marla land was cultivable, whereas 208 kanals 7 marlas was Gair Mumkin. Out of the cultivable land, 161 kanals 9 marlas was with dohlidarans and 4 kanals 12 marlas was with bhondedarans and, therefore, the total area of the landowner came to be 1088 kanals, in essence the order of the Financial Commissioner had been implemented and, therefore, the writ petitions are not maintainable. In the allotment letters, there is no name of Budh Ram.

(11) He further submitted that the land allotted to the allottees, who have further sold the same to the subsequent vendees, cannot be connected with the land declared surplus, thus, the petitioners have no stake in respect of the re-determination of the surplus area. The land of Ishar Singh, predecessor-in-interest of respondent Nos.4 to 12, was considered under the surplus proceedings by the then Prescribed Authority, Rewari and after due consideration of the revenue record, the same were finally decided vide order dated 18.8.1978 (Annexure R-1), where the land was kept out of the surplus pool. The said order had

attained finality as no appeal was filed against the same and, therefore, neither the Haryana State nor any body else has any right to interfere in the land of Ishar Singh. It is only because of some irregularities and mistakes on the part of the revenue officer, the mutation of some of the land was sanctioned in favour of the State, which has been rightly set-aside by the Prescribed Authority vide impugned orders Annexures P-7 and P-8, thus, the order dated 22.5.1990 (Annexure P-1) in view of the order dated 18.8.1978 (Annexure R-1) passed against Ishar Singh in the surplus proceedings is not sustainable.

(12) He further submitted that no notice regarding affecting the mutation in favour of the State of Haryana was ever served upon Ishar Singh or his successors and to buttress his argument, has referred the order dated 27.8.1996 of the Hon'ble Supreme Court passed in **Civil Appeal** No.10549 of 1995 (***Sawant Singh Versus State of Haryana & Ors.***), (Annexure R-2/4) in respect of the same village to contend that once it is held under the Haryana Act that the landowner is not holding such surplus area, therefore, the mutation could not have been entered in favour of the State by applying the provisions of the Punjab Act. In support of his contention, relied upon the judgment rendered by this Court in ***Bhupinder Singh*** versus ***The State of Punjab and others***[5], wherein it has been held that allottees or tenants in surplus area are not necessary party. He also relied upon the judgment of this Court in ***Darbara Singh and others*** *versus* ***Haryana State and others***[6] to contend that by merely putting allottee into possession, allotment is not complete. Only when allottee fulfills and complies with the mandatory provisions of Sections 10A and Rules 18, 20-A, 20-B and 20-C that allotment is complete. Also relied upon the Full Bench of this Court in ***Ranjit Ram*** versus ***The Financial Commissioner, Revenue, Punjab and others***[7]to contend that a landowner, whose land has been declared surplus under the 1953 Act or Pepsu Tenancy and Agricultural Lands Act, 1955 and who has not yet been divested of ownership of surplus area before the enforcement of Punjab Land Reforms Act, the landowner is entitled to select permissible area for his family and for each of his adult sons in view of the provisions of Section 4 read with Section 5(1) of the Punjab Land Reforms Act and, therefore, the exercise of the suo-motu powers by the Financial Commissioner in correcting the irregularity and

[5] 1980 PLJ 72
[6] 1989 PLJ 85
[7] 1981 PLJ 259

miscalculation, cannot be said to be perverse, rather is sustainable in the eyes of law.

(13) In rebuttal, Mr.Jain has relied upon the Full Bench decision rendered in ***Sardara Singh and others*** versus ***The Financial Commissioner and others***[8]**,** wherein the Full Bench, while taking into consideration the provisions of 1953 Act and as well as the Land Reforms Act, 1972, held that once the surplus area had been mutated in favour of the State Government and allotted to the private individuals, on the application of the landowner submitted thereafter for re-determination on account of the death of the relative or non-determination of the share of his son, the matter cannot be re-opened as the order of the Collector had become final.

(14) I have heard the learned counsel for the parties, appraised the paper book and of the view that there is force and merit in the submissions of Mr.Jain.

(15) The facts on record would reveal that the matter regarding re- determination of the surplus/permissible area had attained finality commencing from Annexure P-1 to Annexure P-5, i.e., upto this Court. The question which arises for determination in this Court is whether the suo- motu power, after a gap of eleven years, can be exercised or entertained/invoked by the Financial Commissioner, particularly in view of the notification (Annexure P-9), *ibid*, wherein two benches consisting of two members had been constituted for various divisions and districts, thus, the then Financial Commissioner Shri K.C.Sharma, Haryana Revenue Disaster Management Department did not have any jurisdiction.

(16) In ***Latoor Singh's*** case (supra), this Court while relying upon the judgment rendered by the Hon'ble Supreme Court in ***Loku Ram*** versus ***State of Haryana***[9] held as under:-

> "9. The legal issue involved in the present petition is as to whether suo-motu power could be exercised by the Financial Commissioner under Section 18 (6) of the Act after 11 years of passing of the order even if there is no time limit as such fixed in the Act for exercise of that power. The issue was considered by Hon'ble the Supreme Court in Santosh Kumar Shivgonda Patil and others' case (supra). It was a case under

[8] 2008 (2) R.C.R. (Civil) 744
[9] 2000 (1) R.C.R. (Civil) 141

Maharashtra Land Revenue Code, 1966 (for short, 'the Code'). The suo-motu power was sought to be exercised in the year 1993 against the order passed by the subordinate authority in the year 1976. The suo-motu power therein could be exercised under Section 257 of the Code. While referring to the earlier judgments of Hon'ble the Supreme Court in ***State of Gujarat v. Patil Raghav Natha, (1969) 2 SCC 187****; **Mohd. Kavi Mohamad Amin v. Fatmabai Ibrahim, ((1997) 6 SCC 71*** *and* ***State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd., 2007(6) Recent Apex Judgments (R.A.J.) 158 : (2007) 11 SCC 363****, it was opined that even if a statute does not prescribe any time limit for exercise of revisional power, it does not mean that the same can be exercised at any time. It has to be exercised within reasonable time. Things settled cannot be unsettled after lapse of long time. In that case, reasonable time was opined to be three years. Exercise of power after 17 years was held to be abuse of process of law.

Relevant paragraph 16 thereof is extracted below:

"16. It seems to be fairly settled that if a statute does not prescribe the time-limit for exercise of revisional power, it does not mean that such power can be exercised at any time; rather it should be exercised within a reasonable time. It is so because the law does not expect a settled thing to be unsettled after a long lapse of time. Where the legislature does not provide for any length of time within which the power of revision is to be exercised by the authority, suo motu or otherwise, it is plain that exercise of such power within reasonable time is inherent therein. Ordinarily, the reasonable period within which the power of revision may be exercised would be three years under Section 257 of the Maharashtra Land Revenue Code subject, of course, to the exceptional circumstances in a given case, but surely exercise of revisional power after a lapse of 17 years is not a reasonable time. Invocation of revisional power by the Sub-Divisional Officer under Section 257 of the Maharashtra Land Revenue Code is plainly an abuse of process in the facts and circumstances of the case assuming that the order of the Tahsildar passed on 30.3.1976 is flawed and legally not correct. Pertinently, Tukaram Sakharam Shevale, during his

lifetime never challenged the legality and correctness of the order of the Tahsildar, Shirol although it was passed on 30.3.19765 and he was alive up to 1990. It is not even in the case of Respondents 1 to 5 that Tukaram was not aware of the order dated 30.3.1976. There is no finding by the Sub-Divisional Officer either that the order dated 30.3.1976 was obtained fraudulently."

10. The aforesaid judgment of Hon'ble the Supreme Court was followed by a Division Bench of this court in ***State of Haryana and others v. Chandgi Ram*** (supra), where the order passed invoking revisional jurisdiction after 11 years was held to be bad.

11. The issue was subsequently considered by this court in ***Chandgi Ram v. State of Haryana and others***, where the suo-motu power was sought to be exercised after 11 years of passing of the order. It was opined that exercise of suo-motu power cannot be left at the whims and sweet-will of the revisional authority whenever and wherever it wants to do so. To similar effect is the judgment of this court in Puran Singh's case (supra).

12. For the reasons mentioned above, in the present case suo-motu power having been exercised by the Financial Commissioner after 11 years of passing of order by the Prescribed Authority, the same cannot be said to be reasonable and legally sustainable. The learned Single Judge had gone wrong on the theory of prejudice, which simply cannot be applied and an order, which cannot otherwise be legally sustained, be upheld merely on that ground. The things which stood settled way back in the year 1981 could not be unsettled. No third party interest has stepped in, as admittedly the land though declared surplus initially was not allotted to any one and the appellants even remained in possession throughout."

(17) From the perusal of the aforementioned findings, it is concluded that the suo-motu power, sought to be exercised after five years of the passing of the final order, cannot be left at the whims and sweet-will of the revisional authority whenever and wherever it wants to do. Even otherwise, once the matter with regard to the surplus area had already been adjudicated/determined, it could not have been re-opened on account of the reasons assigned in the impugned orders, i.e.,

with regard to one of the son of Ishar Singh.

(18) In ***Sardara Singh's*** case (supra), the Full Bench held as under:-

> "39. We may take the assistance of the judgment of the Supreme Court in Ajmer Kaur's case (supra) where the phrase "determine by the Collector" used in Section 11(7) was read to mean that the order of the Collector had attained finality. In that case the order of the Collector had been passed in 1976 when the land was declared surplus. The appeal was dismissed in 1979. Subsequently, the surplus land had been mutated in favour of the State Government in 1982 and allotted to private individuals in 1983. The landowner had filed an application in 1985 for redetermination in view of the death of his wife but the Supreme Court held that determination by the Collector in 1979 had become final and could not be reopened in 1985."

(19) Similar is the view in ***Janga*** versus ***Zora Singh***[10] and as well as in ***Sampuran Singh's*** case (supra). The relevant findings arrived at by the Hon'ble Supreme Court in ***Sampuran Singh's*** case read thus:-

> "2. Shri Bansal, learned counsel for the appellant raised two-fold contentions. Firstly he contended that since the land, though declared surplus, having been allowed to be in possession and enjoyment of the appellant, that is to remain otherwise unutilised, the appellant was entitled to seek the reopening of his declaration in which his sons had since become majors . Under Sections 7 and 9 of the Haryana Act, computation of surplus land had to be done among himself and his three sons. We find no force in this contention. The Punjab Act while fixes 31 standard acres as ceiling area, the Haryana Act fixes 17½ standard acres as ceiling area and permits under Section 9, the determination of surplus land. If there was a major son living separately, his unit could be computed separately as his share. In that process, the surplus land is liable to adjustment under Section 9 of Haryana Act. That does not, however, permit the surplus area declared under Punjab Act to be adjusted by reopening and recomputation. Neither the Haryana Act nor the Punjab Act

[10] 2003 (4) RCR (Civil) 811

contains any such provision. On the other hand the provision in Section 33(2) (ii) that pending proceedings under Punjab Act should be completed under 1953 Act and the surplus land would vest in the State is a clear indication to the contrary. A full bench of the Punjab and Haryana High Court in ***Jaswant Kaur v. State of Haryana [AIR 1977 Punjab and Haryana 221]*** interpreting Section 12(3) of Haryana Act held that the surplus lands on and from December 23, 1972 shall stand vested under Section 12(3) of the Haryana Act in the State. In other words, from that date the lands stand vested in the State of Haryana free from all encumbrances, becoming available under the Haryana Act for allotment of surplus land to the tenants and the landless labourers for cultivation. This Court also considered the effect of that judgment in ***Jodh Ram (dead) by LRs. v. Financial Commissioner, Haryana, Chandigarh & Ors., 1994(1) R.R.R. 334 : [1994 (1) SCC 27]*** and held that by operation of Section 8 read with Section 12 and also of the Punjab Act, any alienation made prior to July 13, 1958 alone was saved and the lands remaining undisposed of, till the date of vesting would continue to vest in the State and the surplus landholder does not have any right, title or interest in the land and he cannot even seek eviction of any tenant inducted by the State into that land. In view of these decisions, we have no hesitation to conclude that though the surplus land was allowed to remain in possession of the previous landholder, the title stood vested in the State free from all encumbrances on and from December 23, 1972. Further the mere enjoyment of surplus land allowed by the State to the previous landholder does not create any right in him to claim any title in such land. Therefore, the question of fresh computation among the appellant and his three sons, who later became majors, does not arise."

(20) On the appointed date, the land stood vested in the State of Haryana, in essence it cannot be said that the land remained unutilised, therefore, the land owner would have a right/subsisting cause to seek re-determination. The unending greed/desire of the land owner has to be reigned. There is no dispute to the ratio decidendi culled out in the judgment relied upon by Mr.Sarwan Singh, learned Senior Counsel, and as well as the proposition of law laid down by the Full Bench in ***Ranjit Ram's*** case (supra). The Full Bench had an occasion to put

a caveat by holding that until and unless the landowner is not divested of the ownership of the surplus area, he is entitled to select the permissible area. Here in the present case, the matter with regard to the surplus area came to an end in 1995. The Prescribed Authority, Rewari, vide order dated 22.5.1990 (Annexure P-1), determined the area, which attained finality upto this Court vide order dated 30.1.1995 (Annexure P-5) and all those authorities had held that the landowner was divested of the surplus area and such land stood vested in the State of Haryana in view of the provisions of Section 12(3) of the Haryana Act, thus, the matter could not be raked up in 2006. The authorities below, thus, in my view, i.e., Annexures P-6 and P-7 have not taken into consideration the aforementioned provisions of law and, therefore, the orders under challenge are not sustainable.

(21) I would be committing fallacy in case I do not refer to Annexure R-2, referred above. The facts and circumstances of each case have to been seen for adjudication. In the present case, the land stood mutated in favour of the State and, therefore, the same would not apply in strict senso to the facts and circumstances of this case.

(22) The allotment in favour of the petitioners, as reflected, has not been challenged. The allotment itself is a reflection of utilisation of the land. The respondents have not been able to bring on record any iota of evidence or documents to establish that the allotment was only a paper transaction, in essence whether the allottees had been put into use or not vis-a-vis specific averment in the written statement qua the same, thus, the ratio decidendi culled out in ***Darbara Singh's*** case (supra), would not apply.

(23) Resultantly, the impugned orders, being not sustainable being outcome of arbitrary exercise of power and without jurisdiction, are hereby set-aside and the writ petitions stand allowed.

(24) Since the impugned orders are set-aside and the writ petitions are allowed, no cause of action survives in COCP No.2014 of 2011. Hence, the same is dismissed.

*Payel Mehta*