(iii) that the declaration in question has been made *mala fide* or for wholly extraneous reasons;

the Court does not substitute its own opinion for that of the statutory authority, but merely holds, in effect, that in the eyes of law no declaration of urgency has ever been made. Whenever the Court comes to a finding of this type. it never hesitates in striking down the impugned notification, whereby the citizen is sought to be deprived of his valuable statutory right under section 5-A of the Act. Whether the declaration has been made without any basis or *mala fide* or without the authority concerned applying its mind to the facts of the case or not must, in the nature of things, depend on the facts and circumstances of each case and also depend on the material which the State chooses to place before the Court in which the legality of the declaration is questioned.

(31) With these observations I concur in the order proposed by my learned brother Shamsher Bahadur, J.

K.S.K.

FULL BENCH

Before Daya Krishan Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

THE KANIANWALI CO-OPERATIVE FARMING SOCIETY AT KANIANWALI AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No. 621 of 1968

April 30, 1969.

Punjab Security of Land Tenures Act (X of 1953 as amended by XIV of 1962)—S. 10-A(c)—Provision of utilization under—When to take effect—S. 19-B—Whether can operate independently of section 10-A—Amendment of section 19-B being operative from 30th July, 1958 and section 10-A operative from 15th April, 1953—Effect of—S. 10-A—Whether applies to all transfers after 15th April, 1953—Surplus land with an owner—Such land

transferred between 15th April, 1953 and 30th July, 1958—Transferred land and the land already held by the transferee not exceeding his permissible area—Such transfer—Whether valid—Interpretation of statutes—Statement of Objects and Reasons of an enactment—Whether can be referred to for finding the intention of the legislature.

Held, (by majority Shamsher Bahadur and R. S. Narula, JJ. Mahajan, J. Contra.) that the provision for utilisation introduced in clause (c) of section 10-A of Punjab Security of Land Tenures Act, 1953 is positively to take effect from the 15th day of April, 1953. In other words, any judgment, decree or order of a Court or other authority tending to scale down the possible surplus area of a landowner shall be ignored right back from 15th of April, 1953. (Para 18).

Held, that section 19-B of the Act is preceded by the *non-obstante* clause "subject to the provisions of section 10-A" whose plain meaning is that the overriding authority of the State Government under section 10-A to utilise the land as surplus will remain unaffected. The section having been specifically made subject to the provisions of section 10-A, cannot protect a Court decree or order which has been obtained after the 15th April, 1953, although it had been passed before the 30th of July, 1958 in so far as the utilisation of the land as surplus area is concerned. (Para 21).

Held, (per Narula, J.) that section 19-B of the Act saw the light of the day for the first time on July 30, 1958, when the Governor's Ordinance was promulgated. To imagine that an amendment to section 19-B could be made effective from a date prior to the one on which the principal section itself came into force is illogical. If section 19-B had been amended with effect from April, 15, 1953, the amendment would have been hung in the air as the principal provision into which the amendment had to be introduced was not in existence at any time before July 30, 1958. The maximum possible retrospective effect that could have been given by the Legislature to the amendement of section 19-B was from the date of the introduction of the principal provision and that was July 30, 1958; and this is what the Legislature did. The effect of amending section 19-B in 1962 with effect from July 30, 1958, is that for all legal and practical purposes all concerned must forget that the unamended section 19-B was ever introduced by the 1958 Ordinance and was ever on the statute book or in existence. The retrospective amendment of section 19-B with effect from July 30, 1958 makes the provision of that section subject to section 10-A of the Act right from the first day when section 19-B was enacted. (Para 31).

Held, that section 10-A of the Act applies to all acquisitions by transfer after April 15, 1953, and not only to those which were effected after July 30, 1958. Section 19-B(1) of the Act is deemed to have been subject to section 10-A from the very first day the provision came into existence, and at no time independent of section 10-A. (Para 35)

Held, (per Mahajan J. Contra.) that transfers of land, which is surplus in the hands of an owner, are not only valid ; but the surplus area will cease to be surplus in the hands of the transferee if in the aggregate the area already held by the transferee and the area acquired by him on transfer does not exceed his permissible or reserved area and whatever is in excess of his permissible and reserved area will be the surplus area. This will only hold good vis-a-vis transfers effected up to the 30th of July, 1958. All transfers thereafter would not have this result because the transfer being subject to section 10-A will not be taken into account under section 19-B. (Para 13).

Held, that no reference can be made to the objects and reasons of the enactment because the rule of construction is that the intention of the Legislature has to be gathered from the plain and express language of the statute. It is only, where the language is not plain or express that aid may, be derived from the objects and reasons for its interpretation. (Para 11).

Held, (per Narula, J.) that statement of objects and reasons for passing a law may be referred to for the purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which the amendment introduced by the Bill in the previous Act was made. (Para 29).

Case referred by the Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Gurdev Singh on 16th February, 1968 to a larger Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, Hon'ble Mr. Justice Shamsher Bahadur and Hon'ble Mr. Justice R. S. Narula finally decided the case on 30th *April*, 1969.

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 orders of respondents Nos.* 2 *to* 4, *dated* 30*th October*, 1967, 6*th March*, 1967 *and* 5*th April*, 1966 *respectively and releasing the land declared surplus from the surplus pool.*

D. S. NEHRA AND B. S. BAJWA, ADVOCATES, for the Petitioners.

A. S. SARHADI, SENIOR ADVOCATE WITH N. S. BHATIA, ADVOCATE, FOR ADVOCATE-GENERAL, PUNJAB, for the Respondents.

JUDGMENT

Mahajan, J.—This Full Bench has been constituted in order to resolve the conflict that has arisen in this Court, as to whether the provisions of the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Act No. 14 of 1962) are retrospective or prospective? One set of decisions has given retrospectivity to all the provisions of this Act including section 19-B; whereas the other set of decisions has merely given section 19-B, as amended by this Act, a prospective effect.

(2) In *Bhalle Ram and others* v. *The State of Punjab and others* (1), it was decided by me that transfers made before the 30th of July, 1958, of the surplus area by a land owner cannot be ignored vis-a-vis the transferee; and such transfer has to be taken into consideration, so far as the transferee is concerned, to find out whether the land with the transferee is in excess of the permissible area after taking into consideration the land already held by him. In other words, after adding the land obtained by the transfer to the land already held by the transferee, it has to be determined under section 19-B, whether there is any surplus land in the hands of the transferee.

(3) In the wake of *Bhalle Ram's decision*, the Legislature stepped in and enacted the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Act No. 14 of 1962). The Letters Patent Bench reversed *Bhalle Ram's* decision in view of the amendment. The decision of the Letters Patent Bench is reported as *The State of Punjab and others* v. *Bhalle Ram and others* (2). This decision of the Letters Patent Bench did not take into consideration the provisions of section 1 (2) of Act No. 14 of 1962, according to which section 19-B, as amended, was to take effect from the 30th of July, 1958. It was also not urged before the Letters Patent Bench that *Bhalle Ram's* decision could not be reversed because section 19-B was not retrospective. In short, the question of retrospectivity of section 19-B was not considered by the Letters Patent Bench. The decisions, which are in line with the decision of the Letters Patent Bench in *Bhalle Ram's case* are:—

(1) *Bhagat Gobind Singh* v. *Punjab State and others* (3);

(2) *The State of Punjab and others* v. *Shamsher Singh and* others (4);

and (3) *Hans Raj and others* v. *The State of Punjab and* others (5).

None of these decisions notices section 1(2) of Act 14 of 1962, which brought into operation section 19-B, as amended, with effect from the 30th of July, 1958.

(1) 1962 P.L.R. 331.
(2) 1963 P.L.J. 65.
(3) I.L.R. (1963) 1 Pb. 500=1963 P.L.R. 105=1963 Cur. L.J; 22;
(4) 1966 P.L.R. 41.
(5) 1967 Cur. L.J. 804.

(4) The matter again cropped up in *Gurcharan Singh and others* v. *The State of Punjab and another* (6), *and in that case*, I came to the conclusion that the position, as prevailed when *Bhalle Ram's case* was decided, continued to prevail up to the 30th of July, 1958, as was clear from section 1(2) of Act No. 14 of 1962, read with section 6 of that Act. This view found favour with Narula, J. in *Shrimati Atma Devi and others* v. *The State of Punjab and others* (7). The Letters Patent Bench decision as well as the decision in *Bhagat Gobind Singh's case* were brought to the notice of the learned Judge: and the learned Judge was of the view that in spite of the Letters Patent Bench decision and *Bhagat Gobind Singh's* decision, the rule in *Bhalle Ram's case* still held the field, as held by me in *Gurcharan Singh's case.*

(5) Therefore, it is clear from what has been stated above that the short controversy that we are called upon to resolve is, whether the amendment of section 19-B by Act No. 14 of 1962, operates from the 30th of July, 1958, or it has retrospective effect and would operate from the commencement of the Parent Act, that is, Punjab Security of Land Tenures Act, 1953, (Act No. 10 of 1953)?

(6) The previous history of the legislation along with its relevant amendments was noticed by me in detail in *Bhalle Ram's case;* and for facility of reference, I merely reproduce the relevant part of that decision:—

> "* * * * *In order to appreciate the contention of the learned counsel for the parties, it is essential to go through from the very start into the relevant provisions of the various Acts that have held the field from time to time. The first Act that was enacted in this behalf is the Punjab Tenants (Security of Tenure) Act, 1950. (Act No 22 of 1950), which came into force on the 6th November, 1950. The permissible area in this Act was kept at 100 standard acres and the provisions as to transfers are dealt with in sections 10, 11 and 12 and are in these terms:—
>
> '10. *Effect of Transfer.*—Subject to the provisions of section 11 and 12, and save in the case of lands acquired under any law for the time being in force, every transfer or

(6) 1967 Labour Law Times 155.

(7) 1969 P.L.J.1.

other disposition of land, whether by act of parties or by operation of law or by or in execution of a decree, unless duly completed or deemed to have been completed before the 1st May, 1950, shall be void and unenforceable in so far as it tends to reduce or has the effect of reducing the minimum period of tenancy hereinafter specified.

11. *Saving of* Bona Fide *Sale.*—Nothing contained in section 10 shall apply to a sale made, or intended to be made, in good faith and any tenant of the land which is the subject matter of such sale shall, unless the unexpired period of his tenancy fixed by or under the provisions of this Act is accepted by the vendee, be liable to ejectment under the provisions of the Punjab Tenancy Act, 1887 (XVI of 1887), as if he were a tenant from year to year:

Provided that, where the tenant is not accepted by the vendee, the tenant shall, subject to the rights of other pre-emptors as provided in the Punjab Pre-emption Act, 1913, be entitled to pre-empt the sale in the manner prescribed therein, and section 15 of the said Act shall be deemed to be amended accordingly.'

This Act was amended by the Punjab Tenants (Security of Tenure) Amendment Act, 1951 (President's Act 5 of 1951). So far as the present controversy is concerned, no change was made in the 1950 Act by this amendment. The 1950 Act was repealed by the Act and the Act came into force on the 15th April, 1953. Section 2 is the definition section and it is only necessary to notice the definitions of the phrases 'landowners', permissible area', 'reserved area', 'surplus area'; and these definitions are as under:—

'2. In this Act, unless the context otherwise require (1) 'landowner' means a person defined as such in the Punjab Land Revenue Act, 1887 (Act XVII of 1887), and shall include an 'allottee' and 'lessee' as defined in clauses (b) and (c), respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949 (Act XXXVI of 1949), hereinafter referred to as the Resettlement Act'.

Explanation.—In respect of land mortgaged with possession, the mortgagee shall be deemed to be the landowner.

(The definition of the 'landowner' in the Punjab Land Revenue Act is in these terms:—

'landowner' does not include a tenant or an assignee of land revenue, but does include a person to whom a holding has been transferred, or an estate or holding has been let in farm, under this Act for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate.')

(2) * * * * * *

(3) 'Permissible area' in relation to a landowner 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:

Provided that —

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area;

(ii) * * * * * *

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

(5) * * * * * *

(5-a) '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 as prescribed; but it will not include a tenant's permissible area:

PROVIDED that it will include the reserve area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant

from it, whichever is later, or if the land-owner admits a new tenant, within three years of the expiry of the said six months.

The other provisions which require notice in connection with the present controversy are sections 6, 10-A and 16 and are in these terms:—

'6. For the purposes of determining under this Act the area owned by a land owner, all transfers of land except *bona fide* sales or mortgages with possession, or transfers resulting from inheritance made after the 15th August, 1947, and before the commencement of this Act, shall be ignored.

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 no transfer or other disposition of land which is comprised in a surplus area at the commencemnt of this Act, shall affect the utilization thereof in clause (a).

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

16. 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 effected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act.'

The Act was again amended by the Punjab Security of Tenures (Amendment) Act 57 of 1953, but so far as the provisions concerning the present controversy are concerned no change was made. The next amendment of the Act was made by the Punjab Security of Land Tenures (Amendment) Act, 1955 (Act No. XI of 1955). Sub-section 3 of section 2 was replaced by the following sub-section:—

'(3) 'Permissible area' in relation to a landowner 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:

Provided that—

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area;

(ii) for a displaced person—

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be,

(b) who has been allotted land in excess of thirty standard acres, but less than fifty standard acres, the permissible area shall be equal to his allotted area,

(c) who has been allotted land less than thirty standard acres, the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition, and so also sub-section 5(a) of section 2 as under.—

'(5-a) '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 as prescribed; but it will not include a tenants' permissible area :

Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever, is later, or if the landowner admits a new tenant, within three years of the expiry of the said six months.'

Section 16 was also substituted by the following section:—

'16. 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 effected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act.'

The next amendment of the Act came into force in the year 1957 by the Punjab Security of Land Tenures (Amendment) Act, 1957, Punjab Act No. 46 of 1957). Certain changes were made in section

2 (5-a) by section of the amending Act with the result that section 2(5-a) after the amendment stands thus:—

'2(5-a) '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 surplus area under sub-section (1) of section 5-C, but it will not include a tenant's permissible area:

Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the land-owner admits a new tenants, within three years of the expiry of the said six months.'

The last amendment is by the Punjab Security of Land Tenures (Amendment) Act, 1959, (Punjab Act No. 4 of 1959). Section 10-A was amended by section 2 of the amending Act and new sections 19-A and 19-B were inserted. The amended section 10-A and sections 19-A and 19-B are in these terms:—

'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 a 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 land owner to receive rent from the tenant so settled.

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 land-owner, 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) If, after the commencement of this Act, any person whether as land-owner 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 may be mentioned that this Act was enacted in pursuance of the Punjab Security of Land Tenures (Amendment) Ordinance,

1958 (Punjab Ordinance No. 6 of 1958) which was repealed by the Amending Act No. IV of 1959.

It is in the light of these provisions relating to sales that the respective arguments of the parties have to be examined....."

(7) As already said, in the wake of *Bhalle Ram's* decision, the Legislature stepped in and enacted the Punjab Security of Land Tenures (Amendment and Validation) Act (No. 14 of 1962) Section 1(2) is as follows :—

> "1(2) Clause (a) of section 2, section 4, section 5, section 7 and section 10 shall be deemed to have come into force on the 15th day of April, 1953, clause (b) of section 2 and section 6 shall be deemed to have come into force on the 30th day of July, 1958, and the remaining provisions of this Act shall come into force atonce."

Sections 2(5-a), 10-A and 19-B were amended and some other new sections were added. The amended sections along with the relevant new provisions are set out below:—

OLD SECTIONS	NEW SECTIONS
2(5-a)-'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 surplus area under sub-section (1) of section 5-C, but it will not include a tenant's permissible area :	2(5-a) '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 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 :

OLD SECTIONS	NEW SECTIONS
Provided that it will include the reserved area, or part thereof where such area or part was not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the land-owner admits a new tenant, within three years of the expiry of the said six months.	Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the land-owner admits a new tenant, within three years of the expiry of the said six months.'
* * * * *	* * * * *
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.	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 a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).	(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).

OLD SECTIONS	NEW SECTIONS
Explanation.—Such utilization of any surplus area will not affect the right of the land owner to receive rent from the tenant so settled.	**Explanation.**—Such utilization affect the right of the land-owner to receive rent from the tenant so settled.
* *	* * *
	(c) For the purpose 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 surplus area shall be ignored.
19-B. (1) If, after the commencement of this Act, any person whether as land-owner or tenant, acquires 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 land 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	19-B—Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as land-owner 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 manner any land, which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, then

OLD SECTIONS	NEW SECTIONS
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.	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.	(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 provision of section 5-C shall apply.	(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.	(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.
* * * * *	* * * * *

(8) A new section 19-F has been added by Act No. XIV of 1962, which reads as under:—

"19-F. For the removal of doubts it is hereby declared—(a)

(a) that the State Government or any officer empowered in this behalf shall be competent and shall be deemed always to have been competent, to determine in the prescribed manner the surplus area referred to in section 10-A of a land-owner out of the lands owned by such land-owner immediately before the commencement of this Act; and

(b) that for evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencemenf of this Act, or the land acquired by him after such commencement by inheritance or by bequest or gift from a person to whom he is an heir, shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such commencement, and that the land acquired by him after such commencement in any other manner shall always be evaluated for converting into standard acres as if the evaluation was being made on the date of such acquisition."

Section 10 of Act No. XIV of 1962 provided that "section 10-A of the Principal Act, as amended by this Act, and clause (5-a) of section 2 of the Principal Act shall always be deemed to have been inserted in the Principal Act on the 15th day of April, 1953."

(9) Thus the position, that emerges after the amendment of the Parent Act (Act No. X of 1953) by the Amending and Validation Act (Act No. XIV of 1962) along with the amendments, that have been made from time to time between the dates of the passing of these two acts, is as follows:

Whatever area is over and above the reserved area or the permissible area of a land owner, as on 15th of April, 1953, will be the surplus area, provided on that area, there are no tenants within their permissible area. In other words if on the surplus land, there are tenants and their holdings do not exceed the tenant's permissible area, as defined in section 2(3) of the Parent Act, the so-called surplus area will not be surplus. It will only be surplus if, on the relevant date, it is in excess of the reserved or permissible area of the

owner and there are no tenants on the same up to the extent of the permissible area of the tenants. According to section 10-A, the State Government or any officer empowered by it in this behalf could utilize the surplus area for the resettlement of ejected tenants or tenants that might be ejected under section 9(1)(i) of the Act. Sub-section (b) of section 10-A provides as follows:—

> "10-A(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 land-owner to receive rent from the tenant so settled."

All transfers and dispositions of land comprised in the surplus area, as on 15th of April, 1953, will not affect its utilization for resettlement of tenants ejected under section 9(1)(i). If the matter stood here, there would be no difficulty. But the amended section 19-B provides that—

> "Subject to the provisions of section 10-A, if after the commencement of this Act, any person, whether as land-owner 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, 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 * * * * giving the particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain * * * "

Sub-section (4) provides 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 * * * *".

(10) It is common ground that after the coming into force of section 19-B, that is, with effect from the 30th of July, 1958, a transferee of a surplus area cannot change its character merely because he was holding land far below his reserved area or permissible area. It is also not disputed that the transfer of surplus area is not void unless the area obtained by transfer coupled with the area already held in the hands of the transferee exceeds the reserved area or the permissible area. The only question, which has been debate and which requires to be settled is, what is the position *qua* the surplus land transferred between the 15th of April, 1953, and the 30th of July, 1958, in the hands of a transferee when the land transferred and the land already held by the transferee do not exceed the reserved area or the permissible area in the hands of the transferee. According to *Bhalle Ram's* decision, the surplus land, after transfer in the hands of transferee, will cease to be surplus unless it is in excess of the reserved area or permissible area in the hands of the transferee. It is also plain that the Amending and Validation Act No. XIV of 1962 was enacted to do away with the import of that decision. The only question is, whether the Legislature did away with the same with effect from the 15th of April, 1953 or the 30th of July, 1958. The very fact, that the amended section 19-B was made operative from the 30th of July, 1958, shows that the Legislature never intended to make this provision retrospective. It was specifically held in *Bhalle Ram's case* that section 19-B overrides section 10-A because both the provisions could not stand together. What was surplus under section 10-A could cease to be surplus under section 19-B by reason of transfer of land, the validity of which was not impaired by law. The transfers were not to affect the utilization of the surplus. But by reason of section 19-B, that surplus, on transfer, would become the reserved or permissible area of the transferee and would thus cease to be the surplus area because, otherwise, a curious result will follow, namely, that the same land, though the surplus area of the transferor, woud not be the surplus area of the transferee after a transfer, in as much as, the same is not rendered void by any provisions of the Act. What I have said above finds further support from the definition of the surplus area. Only that area is surplus, which is in excess of the reserved or permissible area and vis-a-vis the transferee, the surplus of the transferor may cease to be surplus at all. If the intention of the Legislature was to take away the benefit conferred on the transferees by *Bhalle Ram's case*

retrospectively, section 19-B would have been given effect like sections 10-A and 2(5-a) with effect from the 15th of April, 1953. But that was not done and, in my opinion, advisedly. The Legislature did not want to unsettle the settled transactions.

(11) Mr. A. S. Sarhadi, learned counsel for the State, drew our attention to the objects and reasons leading to the enactment of Act XIV of 1962. No reference can be made to the objects and reasons of the enactment because the rule of construction is that the intention of the Legislature has to be gathered from the plain and express language of the statute. It is only, where the language is not plain or express that aid may be derived from the objects and reasons for its interpretation. The decision in *Bhalle Ram's case* was before the Legislature when it enacted Act No. XIV of 1962, and advisedly made section 19-B operative from the 30th of July, 1958, thus indicating that they did not want to take away the effect of that decision prior to the 30th of July, 1958. There seems to be no escape from this conclusion. Reference may also be made to the observations of the Supreme Court in *Arjan Singh and another* v. *The State of Punjab and others* (8), Hedge, J., who spoke for the Court, observed:—

> "* * It is a well settled rule of law that no provision in a statute should be given retrospective effect unless the legislature by express terms or by necessary implication has made it retrospective and that where a provision is made retrospective, care should be taken not to extend its retrospective effect beyond what was intended."

(12) No explanation has been offered by the learned counsel for the State why the Legislature made the amended section 19-B operative with effect from the 30th of July, 1958.

(13) After giving the matter my careful consideration, it appears to me that transfers of land, which is surplus in the hands of an owner, are not only valid; but the surplus area will cease to be surplus in the hands of the transferee if in the aggregate the area already held by the transferee and the area acquired by him on transfer does not exceed his permissible or reserved area and whatever is in excess of his permissible and reserved area will be the

(8) 1968 Curr. Law Journal 1.

surplus area. This will only hold good vis-a-vis transfers effected up to the 30th of July, 1958. All transfers thereafter would not have this result because the transfer being subject to section 10-A will not be taken into account under section 19-B. This section after amendment opens with the phrase—"Subject to the provisions of section 10-A * * * *".

(14) I now proceed to state the facts of the present petition: Hakam Singh, respondent No. 5, owned 348 Acres, 7 Kanals, 10 Marlas of land. This land was under the cultivation of petitioners Nos. 2 to 7, Kartar Singh and others. On the 14th of May, 1955, Hakam Singh gifted the land in dispute to petitioners Nos. 2 to 7. Thereafter, mutations were entered and sanctioned. As Hakam Singh had not reserved his area, proceedings were taken for declaration of the surplus area. On the 5th of April, 1966, the Revenue Assistant, as Collector, declared 288 Acres, 7 Kanals, 10 Marlas as surplus leaving an area of 60 Acres as the permissible area under section 5-B. Against this decision, an appeal was taken to the Commissioner and it was contended that petitioners Nos. 2 to 7 were the tenants prior to the 15th of April, 1953; and as such, any land which is over and above the reserved or permissible area and on which tenants are settled would not be surplus area in view of the definition of 'surplus area' in section 2(5-a). It was also urged that the transfer being prior to the 30th of July, 1958, and the area in the hands of the transferee including the lands held by them not being in excess of their reserved or permissible area, the area in dispute could not be declared as 'surplus area'. On the 6th of March, 1967, the Commissioner rejected the appeal. The Commissioner held that the donees petitioners Nos. 2 to 7 were not tenants though they were in cultivating possession as the sons of the donor. The contention, that the area ceased to be reserved area by reason of the transfers was also negatived. The case was remanded for the decision of certain matters which had not been decided. A revision was preferred against this order to the Financial Commissioner; but with no effect. This led to the present petition under Article 226 of the Constitution of India; and the only contention that has been urged before us; is that the transfers being to persons not holding land in excess of the reserved or permissible area, the surplus land in their hands would cease to be surplus because in their hands it is within the reserved or the permissible area.

(15) In view of my decision, that section 19-B is not retrospective and *Bhalle Ram's decision* holds the field with regard to the transfers effected prior to the 30th of July, 1958, this petition must succeed. The petition is accordingy allowed; and the order of the Financial Commissioner, the Commissioner and the Collector declaring the land in dispute to be surplus area is quashed. But in the circumstances of the case, there will be no order as to costs.

SHAMSHER BAHADUR, J.—The provisions of the Punjab Security of Land Tenures Act, 1953, as it stood amended by the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962, which have been set out in the judgment of my learned brother, Mahajan, J., are designed, as stated in the preamble itself "to provide for the security of land tenure and other incidental matters." Besides providing for security of land tenure, the scheme of the legislation makes it clear that tenants from reserved or permissible areas are liable to ejectment. The small landowner thus is as much a subject of protection as a tenant of a landowner whose holdings exceed the permissible area. The concept of 'permissible area' is applicable both to landlords and tenants. Tenants, who are liable to be evicted or have in fact been ejected under section 9, are to be resettled and indeed, it is provided in section 9-A that even a tenant who is liable to be ejected under clause (i) of sub-section (1) of section 9 shall not be dispossessed of his tenancy unless he is accommodated on a surplus area. The concept of 'surplus area' is the kernel of the legislation, and the Legislature obviously intended the creation of such areas for the purpose of resettlement of tenants who are liable to be ejected or in fact have been ejected.

(17) It is in furtherance of this central idea of resettlement of tenants that section 10-A has been enacted. I need not advert again to clauses (a), (b) and (c) of this section, the last one of which was inserted by the Punjab Security of Land Tenures (Amendment and Validation) Act, Punjab Act 14 of 1962 (also referred to as the Amending Act 14 of 1962). Clause (c) of section 10-A says that any judgment, decree or order of a court or other authority, obtained by a person and having the effect of diminishing the holding of the area of such person which could have been declared surplus, shall be ignored. The various provisions introduced by Amending Act 14 of 1962 were given retroactive operation by the Act and as it has been contended strenuously that the judgments which have either reversed the decision in *Bhalle Ram's case* or have not folowed it, have

omitted to take account of this provision, it is well to set it out again. Sub-section (2) of section 1 of the Amending Act says that—

> "Clause (a) of section 2, section 4, section 5, section 7 and section 10 shall be deemed to have come into force on the 15th day of April 1953, and section 6 shall be deemed to have come into force on 30th day of July, 1958,.....".

We are not concerned with clause (a) of section 2, which relates to the explanation added in regard to lands allotted to displaced persons. Section 4 of the Amending Act is now clause (c) of section 10-A, to which reference has been made. Section 5 of the Amending Act contains the newly inserted section 10-B, which says that in case where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of section 10-A, the saving provision in favour of an heir by inheritance under clause (b) of section 10-A shall have no effect in respect of the area which has actually been utilised; and lastly, section 10 which is to take effect from 15th April, 1953, is the over-all deeming provision which is in these terms:—

> "Section 10-A of the principal Act, as amended by this Act, and clause (5-a) of section 2 of the principal Act, shall always be deemed to have been inserted in the principal Act on the 15th day of April, 1953."

(18) Could there be a clearer intention of the Legislature that the provision for utilisation introduced in clause (c) of section 10-A was positively to take effect from the 15th day of April. 1953? In other words, any judgment, decree or order of a Court or other authority tending to scale down the possible surplus area of a londowner shall be ignored right back from 15th of April, 1953. It is well to emphasise again that sub-section (5-a) of section 2 inserted by Punjab Act No. 11 of 1955, definding the 'surplus area', was also deemed to have taken effect from 15th April, 1953. Now, the closing words inserted by Punjab Act 14 of 1962 in this sub-section (5-a) which defines 'surplus area' are to this effect:—

> ".....and includes the area in excess of the permissible area selected under section 19-B, ...".

The area selected as permissible area under section 19-B, inserted by Punjab Act 4 of 1959 and amended by Act 14 of 1962, has not been made sacrosanct and is made expressly subject to the provisions of section 10-A, which includes clause (c).

(19) The matter does not end here. Even sub-section (4) of section 19-B (section 6 of the Amending Act 14 of 1962) which no doubt under sub-section (2) of section 1 of the Amending Act 14 of 1962, has to take effect from 30th July, 1958, says 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 purpose as the State Government may by notification direct."

(20) This brings us to the consideration whether section 19-B can operate as an integral piece of legislation independently of section 10 A? Sub-section (2) of section 1 of the Amending Act 14 of 1962 says that section 6 "shall be deemed to have come into force on the 30th day of July, 1958". As amended by Act 14 of 1962, section 19-B, says that:—

"His Lordship read section 19-B and continued:—

(21) It is sought to be argued that transfers effected before 30th July, 1958, even though having the effect of diminishing the surplus area shall be taken into reckoning and not ignored. The section is preceded by the *non obstante* clause "subject to the provisions of setcion 10-A" whose plain meaning is that the overriding authority of the State Government to utilise the land as surplus will remain unaffected. What is saved by section 19-B read with sub-section (2) of section 1 of the Amending Act 14 of 1962 is the actual transfer. Words in a statute have to be given their plain meaning and every effort has to be made by Courts to give a harmonious construction to the various provisions even if some seeming contradiction is involved. If a workable construction could be evolved by retaining each word in the relevant provision, such a construction has to be preferred to the one which would involve the deletion of some of its clauses or the re-writing of its provisions. The matter seems to me to be obvious as the Amending legislation (Act 14 of 1962) which gives retroactive operation to section 10-A was enacted to meet the situation which had been created by *Bhalle Ram's*

case. The Letters Patent Bench of Dulat and Grover, JJ., in *State of Punjab v. Bhalle Ram* (2), while over-ruling the decision of Mahajan, J., made this observation towards the end:—

> "It is clear now from the amendments that the surplus area in connection with any landowner is to be determined on the basis of that landowner's holding as it existed on the 15th April, 1953, and the land, which is in fact surplus at that time, will remain surplus irrespective of any transfer made by the landowner subsequently."

What warrant is there to say that the Letters Patent Bench had not considered the effect of sub-section (2) of section 1 of the Amending Act 14 of 1962 which said that while the amended section 10-A would come into force from 15th April, 1953, the amended section 9-B would come into force on 30th July, 1958? It seems to me that the compulsive obligation behind sections 4 and 10 of Act 14 of 1962 being made operative with effect from 15th April, 1953, renders the position taken on behalf of the petitioners utterly untenable. The amended section 10-A is expressly stated to be deemed "to have been inserted in the principal Act on the 15th day of April, 1953".

(22) In *Bhagat Gobind Singh* v. *Punjab State* (1), which is a judgment of Mehar Singh, J., (as the Hon'ble the Chief Justice then was) and myself, it is stated at page 124 that:—

> "In section 19-B, before its amendment by Punjab Act 14 of 1962, provision was made for furnishing of declaration under section 5-A by a person acquiring land so as to determine his surplus area and in *Bhalle Ram* v. *The State of Punjab* (1), Mahajan, J., held that according to section 19-B the area acquired by the transferees including the area held by them is to be taken into account for the purpose of finding the surplus area in their hands... In the wake of this decision section 19-B has been amended by Punjab Act 14 of 1962 by adding in the beginning of sub-section (1) of it these words 'subject to the provisions of section 10-A' which means that the position has now been clarified that land in the hands of a transferee does not cease to be available for utilisation under section 10-A."

Section 19-B having been specifically made subject to the provisions of section 10-A, cannot protect a Court decree or order which has been obtained after the 15th April, 1953, although it had been passed before the 30th of July, 1958, in so far as the utilisation of the land as surplus area is concerned. Any construction of a statute which defeats its object is neither permissible nor legitimate.

(23) In another Bench decision in *Hans Raj* v. *State of Punjab* (5), I said, and Narula, J., concurred with me that a judgment, decree or order of a court obtained after 15th April, 1953, would not affect the declaration of the surplus area which has to be determined according to the holding of a person on the date of the commencement of the Act, i.e., 15th April, 1953. Reference was made to the Supreme Court decision in *Bhagwan Dass* v. *The State of Punjab* (9), where it was observed that "the scheme of the Punjab Security of Land Tenures Act appears to be that the entire land held by the landowner in the State of Punjab on the date of the commencement of the Act must be evaluated on that date and the status of the landowner and his surplus area, if any, must be then ascertained." Their Lordships of the Supreme Court had given consideration to all the provisions of the Act and it is impossible to spell out the contention which is now brought in the limelight that the earlier Bench decisions of this Court failed to take account of the provisions of sub-section (2) of section 1 of the Amending Act 14 of 1962. In my view, the situation has not changed to require any reconsideration. I am, therefore, unable to agree with Mahajan, J., that the decision in *Bhalle Ram's* case still holds the field. On the contrary *Bhalle Ram's* case was overruled not only by statute in express, terms but also by Division Bench Judgments of this Court.

(24) In my view, the petition ought to be dismissed and the order of the Financial Commissioner upholding the orders of the Commissioner and the Collector maintained

NARULA, J.—Having had the advantage of perusing the learned judgments prepared by my Lord Mahajan and Shamsher Bahadur, JJ., I would prefer to record my decision in this case as well as the reasons which have impelled me to reach that conclusion in my own words.

(9) 1966 P.L.R. 300.

(26) Out of his total holding of 348 Acres, 7 Kanals and 10 Marlas of land (valued at 160 Standard Acres and 13¾ Units) in village Kanianwali, tahsil Muktsar, district Ferozepore, Hakam Singh, respondent No. 5 (without reserving any area for self-cultivation) gifted the land in dispute in May, 1955, to his sons petitioners Nos. 2 and 3, their respective wives, petitioners Nos. 4 and 5, and to the respective daughters of his two sons who are petitioners 6 and 7. Mutation in respect of the said gifts was duly entered and sanctioned on May 14, 1955. By his order, dated April 5, 1966, the Collector (Agrarian), Ferozepore, ignored those transfers in exercise of the power conferred on him under section 10-A(b) of the Punjab Security of Land Tenures Act, 1953, as subsequently amended, and declared 288 Acres, 7 Kanals and 10 Marlas of Hakam Singh's original holding (including the land in dispute) as his surplus area. The Collector's order to ignore the transfers having been upheld right up to the Financial Commissioner, the transferees have in this petition under Articles 226 and 227 of the Constitution sought, *inter alia*, a decision to the effect that the said transfer could not be ignored as sections 10-A (b) and (c) did not apply to transfers effected between April 15, 1953, and July 30, 1958, as held in *Gurcharan Singh and others* v. *The State of Punjab and another* (6), and (ii) *Shrimati Atma Devi and others* v. *The State of Punjab and others* (7).

(27) On the other hand, the learned counsel, for the respondents have pressed for the abovesaid contention of the petitioners being repelled on the authority of the Division Bench judgments of this Court in:—

(i) *Bhagat Gobind Singh* v. *Punjab State and others* (3);

(ii) *The State of Punjab and others* v. *Shamsher Singh and others* (4); and

(iii) *Hans Raj and others* v. *The State of Punjab and others* (5)

As the two sets of decisions on the question of the applicability of section 10-A to transfers effected between April 15, 1953, and July 30, 1958, were not reconcilable this petition at the time of its admission on February 16, 1968, was directed by the Motion Bench to be placed before my Lord, the Chief Justice for its being heard by a Full Bench.

(23) Though all the relevant provisions of law have been set out by my learned brother Mahajan, J., I will briefly indicate the chronological odrer in which those provisions were enacted and then refer to the resultant situation. The Punjab Tenants (Security of Tenure) Act (22 of 1950), as amended by the Punjab Tenants (Security of Tenure) Amendment Act, 1951 (President's Act 5 of 1951) was repealed and replaced by the Punjab Security of Land Tenures Act (10 of 1953) (hereinafter called the principal Act), on and with effect from April 15, 1953. The Prevention of Ejectment (Temporary Powers) Ordinance, 1952, had by then already expired be efflux of time. The concept of "surplus area" was introduced for the first time into the principal Act by the Punjab Security of Land Tenures (Amendment) Act (11 of 1955) (hereinafter referred to as the 1955 Act), which came into force on May 26, 1955. One of the specified objects of enacting the 1955 Act was "to introduce the new concept of 'surplus area' and its utilisation by the State Government for the resettlement of ejected tenants." Another objective of the said enactment was "to prevent sales and other dispositions of land adversely affecting the continuance of tenancies and the extent of available surplus area.' The amendment made in the definition of "permissible area" by section 3 of the 1955 Act is not material for our purposes. Area other than the reserved area and where no area had been reserved, the area in excess of the permissible area selected as prescribed (excluding a tenant's permissible area) was defined as the "surplus area" in clause (5-a) added to section 2 of the principal Act by section 3 of the 1955 Act. Section 10-A (a) and (b) were inesrted into the principal Act by section 8 of the 1955 Act, in the following terms:—

His Lordships read section 10-A and continued:—

Sections 5-A to 5-C were then introduced into the principal Act by section 3 of the Punjab Security of Land Tenurse (Amendment) Act (46 of 1957), requiring every landowner or tenant, who owns or holds land in excess of the permissible area to furnish a declaration supported by affidavit in respect of the land owned or held by him, and permitting the land-owner who might not have exercised his right of reservation to select his permissible area and to intimate the selection to the prescribed authority; and further providing for the consequences and penalties of non-compliance with the furnishing of the declaration and making the selection. The definition of

"surplus area" as contained in section 2(5-a) of the principal Act was amended so as to substitute the expression "as prescribed" by the words "under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C." Next came, the Punjab Security of Land Tenures (Amendment) Ordinance No. 6 of 1958, promulgated by the Governor of Punjab on July 30, 1958. The date of promulgation of this Ordinance has to be borne in mind as it has a special significance for the purpose of dealing with with the somewhat vexed question on which my learned brothers have not been able to agree. The Ordinance amended clause (b) of section 10-A of the principal Act so as to save from its operation land acquired by the State Government under any law for the time being in force and land acquired by an heir by inheritance. Paragraph 4 of the Ordinance introduced into the principal Act sections 19-A to 19-D Section 19-B (1) as enacted under the Ordinance reads as follows:—

> "If, after the commencement of this Act, any person, whether as land-owner or tenant, acquires by inheritance or bequest or gift from a person to whom he is an heir 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."

Sub-section (4) of section 19-B was in the following terms :—

> "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."

The circumstances which led the Governor to promulgate the Ordinance can be gathered from the objects and reasons of the Punjab Security of Land Tenures (Amendment) Act (4 of 1959), which replaced the Oridinance on January, 19, 1959. One of the

said objects was "to prohibit further acquisition of land in excess of the permissible area by inheritance, transfer, exchange, lease, agreement, or settlement." The relevant provisions of the 1959 Act were practically the same as those of the 1958 Ordinance. Section 19-B (1) as originally introduced into the principal Act by the Ordinance was slightly amended by the 1959 Act and then read as follows :—

> "If, after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or bequest of 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 from 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."

Section 5 of the 1959 Act by which the Ordinance was repealed provided that notwithstanding such repeal, anything done or any action taken under the Ordinance shall be deemed to have been done or taken under the 1959 Act as if the Act had commenced on the 30th day of July, 1958.

(29) At the time when *Bhalle Ram's case* was decided on December, 5, 1961, section 19-B(1) and section 19-B(4) were in the same form as have been quoted above and as had been introduced into the principal Act by the 1959 Act. The basis of the judgment of my learned Brother Mahajan, J., in *Bhalle Ram's case* was that section 19-B had impliedly repealed section 10-A in so far as acquisitions covered by section 19-B were concerned. After preferring an appeal against the Single Bench judgment in *Bhalle Ram's case* and before the decision of the Letter Patent Appeal, the State Legislature passed the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Act 14 of 1962) (hereinafter called

the 1962 Act). It has been authoritatively held by their Lordships of the Supreme Court in *Kavalappara Kottarthil Kochuni @ Moopil Navel* v. *The States of Madras and Kerala and others,* (10), that statement of objects and reasons for passing a law may be referred to for the purpose of ascertaining the conditions prevailing at the time the Bill was introduced and the purpose for which the amendment introduced by the Bill in the previous Act was made. The purpose for which the Bill leading to the passing of the 1962 Act, was introduced into the Legislature can be gathered from the objects of the same. The relevant extracts from the "Objects" are given below :—

> "Some of the recent judicial pronouncements have the effect of defeating the objectives with which the Punjab Security of Land Tenures Act, 1953, was enacted and amended from time to time. * * * * * *
> * * * * * *
>
> 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 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. " * * *
> * * * * * *
> * * * * * *
>
> Accordingly clauses 3, 6 and 7 of the Bill seek to neutralise the effect of the aforesaid decisions. Clause 11 provides for the validation of certain orders made under the parent Act notwithstanding the decision first mentioned."

Clauses 3, 6 and 7 of the Bill ultimately became sections 3, 6 and 7 of the 1962 Act. Whereas section 3 was intended to neutralise

(10) A.I.R. 1960 S.C. 1080.

the effect of a Division Bench judgment of this Court in *Jagan Nath and others* v. *State of Punjab and others*, Civil Writ 1051 of 1960, and section 7 was intended to neutralise the effect of the judgment of this Court in *Surja* v. *Financial Commissioner, Punjab and others*, Civil Writ 486 of 1961, section 6 was expressly enacted "to neutralise the effect" of the judgment of this Court in *Bhalle Ram's case*. The object of introducing clause (c) into section 10-A by clause 4 of the Bill which led to the passing of the 1962 Act was to provide that the decrees which had been obtained by interested persons being relations, etc., for the diminishing of the surplus area should be ignored in computing the surplus area. Different dates of coming into force of different provisions were prescribed by sub-section (2) of section 1. As explained in a later part of this judgment, the fixing of different dates was not a matter of whim, but had to be done on a scientific basis in order to achieve the objectives of the amendments which were sought to be made by this Act. Clause (c) which was introduced into Section 10-A of the principal Act in the following words by section 4 of the 1962 Act was given retrospective effect from the 15th day of April, 1953 :

> "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."

Clause (a) of section 2 whereby an explanation was added to clause (3) of section 2 of the principal Act defining "permissible area" was likewise deemed to have come into force on April 15, 1953. Sections 5 and 7 of the 1962 Act by which sections 10-B, and 19-E and 19-F were introduced into the principal Act were likewise given retrospective effect from April 15, 1953. On the other hand the only two provisions of the 1962 Act which were deemed to have come into force on the 30th day of July, 1958, were sections 2(b) and 6. Under section 2(b), the following words and figures were added to the definition of "surplus area" as contained in clause (5-a) of section 2 of the principal Act, as amended by the 1955 Act :—

> "and includes the area in excess of the permissible area selected under section 19-B."

Section 6 of the 1962 Act is the crucial section which amended section 19-B in the following manner :—

"In section 19-B of the principal Act,—

(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 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."

(30) Section 19-B(1) as amended by the above-quoted provisions of section 6 of the 1962 Act is in the following terms :—

His Lordship read section 19B(1) and continued :—

(31) The material points of difference between the unamended section 19-B(1) as introduced by the 1959 Act on the one hand, and the said provision as amended by the 1962 Act on the other, are these :—

(i) In the unamended section it was not stated that it was subject to section 10-A. It was so stated in the amended section;

(ii) In the unamended section only three categories of acquisition by transfer were mentioned, viz :—

(a) acquisition by inheritance after the commencement of the Act;

(b) acquisition after the commencement of the Act by bequest or gift from a person to whom the person acquiring is an heir; and

(c) acquisition "after the commencement of this Act" and before the 30th of July, 1958, by transfer, exchange, lease, agreement or settlement.

In the amended section four kinds of acquisition of land are referred to. In addition to the three kinds of acquisition under the unamended section, the following four category was added :—

(d) acquisition "after such commencement" (i.e., after the commencement of the Act) by any person in any other manner.

Since the counsel for both sides laid so much emphasis on the effect of amending section 19-B with effect from July 30, 1958, in contradistinction to the retrospective effect given to the addition made in section 10-A from April 15, 1953, by the specific provisions of section 1(2) of the 1962 Act, it appears to be appropriate to deal with that argument at this very stage straightaway. The submission of the learned counsel for the petitioners to the effect that if the acquisitions during the period April 15, 1953, to July 30, 1958, referred to in section 19-B were also required to be made subject to section 10-A, the Legislature would have given effect to the amendment of section 19-B from April 15, 1953, appears to me to be wholly fallacious. It would be remembered that section 19-B saw the light of the day for the first time on July 30, 1958, when the Governor's Ordinance was promulgated. To imagine that an amendment to section 19-B could be made effective from a date prior to the one on which the principal section itself came into force is, in my opinion, illogical. If section 19-B had been amended with effect from April 15, 1953, the amendment contained in the words of sectoin 6 of the 1962 Act would have hung in the air as the principal provision into which the amendment had to be introduced was not in existence at any time before July 30, 1958. In these

circumstances there appears to me to be no answer to the proposition that the maximum possible retrospective effect that could have been given by the Legislature to the amendment of section 19-B was from the date of the introduction of the principal provision and that was July 30, 1958; and this is what the Legislature did. The effect of amending section 19-B in 1962 with effect from July 30, 1958, is that for all legal and practical purposes all concerned must forget that the unamended section 19-B was ever introduced by the 1958 Ordinance and was ever on the statute book or in existence. On the contrary the deeming provisions of section 1(2) of the 1962 Act read with section 5(2) of the 1959 Act result in section 19-B as amended in 1962 being deemed to have been on the statute book as we now find it right from July 30, 1958. In other words, we have to assume in the circumstances described above that the 1958 Ordinance introduced into the principal Act section 19-B as we find it after its amendment in 1962. In this connection it is significant to notice (as already pointed out) that retrospective effect from July 30, 1958, has been given only to those amendments effected by the 1962 Act which seek to amend the provisions which had been inserted into the principal Act only on July 30, 1958, for the first time by the Governor's Ordinance.

(32) The inference at which I have arrived by the above process of reasoning leads to the corollary that we must forget once for all the decision given by this Court in *Bhalle Ram's case*, as the provision of law on which the said decision was given is now deemed to have never existed. I say that the original provision never existed because that is the effect of a deeming provision which has replaced an old one from the date of inception of the original section. The necessary consequence is that we cannot think of section 19-B having ever existed without the clause "subject to the provisions of section 10-A", and we are compelled to assume by legal fiction that section 19-B(1) has always been subject to and never independent of section 10-A. This conclusion appears to me to be absolutely inescapable.

(33) The next important question which needs consideration in this respect is as to what is the meaning of the expression "after the commencement of this Act" used in section 19-B. In other words, the question is, which is the enactment to which reference

is made by the expression "this Act" in section 19-B(1) ? Learned counsel for the petitioner placed reliance on certain observations of Hedge, J., in the judgment of their Lordships of the Supreme Court in *Arjan Singh and another* v. *The State of Punjab and others* (8), for contending that the expression "after the commencement of this Act" in section 19-B(1) means "after the commencement of the 1959 Act", i.e., during the period commencing January 19, 1959. This, in my opinion, is the second fallacy in the way of thinking of the petitioners. In the *case of Arjan Singh and another,* the Supreme Court was dealing with the question of the date of the coming into force of section 32-KK of the PEPSU Tenancy and Agricultural Lands Act, 1955. In that connection it was observed that on a reading of the various provisions of the PEPSU Tenancy and Agricultural Lands (Amendment and Validation) Act, 1952, it appeared to the Supreme Court, that the Legislature intended that section 7 of that Act which introduced into the principal Act section 32-KK should be deemed to have come into force on 30th October, 1956. Hedge, J., observed :—

> "Evidently the draftsman when he drafted section 7 of the Act had in his mind the Amendment Act and not the principal Act. The words 'this Act' in section 7 of the Amendment Act (Section 32-KK of the principal Act) in our opinion were intended to refer to the Amendment Act and not to the principal Act."

His Lordship made it clear beyond any doubt that it is true that ordinarily when a section is incorporated into the principal Act by means of an amendment reference in that section to "this Act" means the principal Act, and that it was only in view of the particular significance of sub-section (2) of section 1 of the Amendment Act of 1962 in the PEPSU Act that the construction placed on the particular expression in *Arjan Singh's case* had become permissible. The learned Judge further observed that every statute had to be construed as a whole and the construction given should be a harmonious one. After carefully considering the matter, I am firmly of the opinion that the meaning to be assigned to the expression "this Act" in section 19-B(1) of the 1953 Act is the one which, according to the ratio of the judgment of the Supreme Court, has to be ordinarily resorted to, and that this is not an exceptional case where "this Act" can possibly mean any of the amending Acts

There are reasons, more than one, for taking this view. The first and foremost thing that has prevailed with me in this connection is that whereas it was permissible in the case of the PEPSU Act to construe "this Act" as the 1956 amending Act, it is not possible to do so in the present case for the simple reason that section 19-B was for the first time introduced into the principal Act by the Governor's Ordinance of 1958, and even at that time the expression used in section 19-B was "this Act". The use of the said expression in the section as introduced by the Ordinance is wholly inconsistent with the possibility of construing "this Act" in section 19-B as having relation to the Governor's Ordinance by which it was introduced. If the expession in section 19-B(1) as introduced by the Ordinance had been "this Ordinance", the thing would have been equally clear on the other side. The judgment of the Supreme Court in the *case of Arjan Singh and others* (8), is, therefore, of no avail to the petitioners.

(34) The only choice which is left to us to construe the expression "this Act" occurring in section 19-B (1) is either to relate it to the 1953 Act or the 1959 Act, or the 1962 Act. The question of relating it to any of the amending Acts which came into existence after the Ordinance does not arise as the very same expression existed in the provision referred to in paragraph 4 of the Ordinance itself. The expression "this Act", must, therefore, in my opinion, relate to the principal Act of 1953, and cannot possibly be related to any other enactment.

(35) What follows from the above conclusions is that section 10-A applies to all acquisitions by transfer after April 15, 1953, and not only to those which were effected after July 30, 1958. Once it is held, as I have held above, that section 19-B(1) is deemed to have been subject to section 10-A from the first day the provision came into existence, and at no time independent of section 10-A, and further that the acquisitions after the coming into force of the Act have reference to acquisitions after April 15, 1953, the petitioners cannot possibly succeed on the argument with which I am dealing at the moment.

(36) The validity of the four arguments of the learned counsel for the petitioners which appear to have appealed to my Lord

Mahajan, J., may now be tested. The first refers to the importance of the date July 30, 1958, being specified in sub-section (2) of section 1 of the 1962 Act as the date from which section 19-B was deemed to have been in existence in its amended form. This argument was noticed in all the three forms in which it was pressed by Mr. Nehra in the judgment of my learned brother Mahajan, J., in the following words:—

(i) "The very fact, that the amended section 19-B was made operative from the 30th of July, 1958, shows that the Legislature never intended to make this provision retrospective."

(ii) "If the intention of the Legislature was to take away the benefit conferred on the transferees by *Bhalle Ram's case* retrospectively, section 19-B would have been given effect like sections 10-A and 2(5-a) with effect from the 15th of April, 1953. But that was not done and, in my opinion, advisedly. The Legislature did not want to unsettle the settled transactions."

(iii) "No explanation has been offered by the learned counsel for the State, why the Legislature made the amended section 19-B operative with effect from the 30th of July, 1958."

(37) It is indeed true and equally unfortunate that the learned counsel for the State could not offer any explanation as to why the Legislature had made amended section 19-B operative with effect from the 30th of July, 1958, and not from April 15, 1953. But I have already given elaborate reasons for the Legislature having done so. So far as the intention of the Legislature to take away the benefit conferred on the transferees by *Bhalle Ram's case* retrospectively is concerned, it appears to me that the specified objects of enacting section 6 of the 1962 Act as contained in the relevant extracts from the "objects and reasons" of the Bill which led to the passing of that Act (quoted verbatim in an earlier part of this judgment) furnish complete answer to the said argument of Mr. Nehra. The express object of enacting section 6 of the 1962 Act whereby section 19-B of the principal Act was made subject to section 10-A was to neutralise completely the effect of the judgment of this Court in *Bhalle Ram's case*, and no exceptions appears to have been made in leaving any category of cases which could be governed by the judgment in

Bhalle Ram's case unaffected. Moreover, as already observed by me, the judgment of this Court in *Bhalle Ram's case* can no more be looked into for determining the controversy before us as the unamended section 19-B in respect of which the judgment was given is deemed to have never been in existence. The following observations of Lord Asquith of Bishopstone in the judgment of the House of Lords in *East End Dwellings Co., Ltd.*, v. *Finsbury Borough Council* (11), (at page 132) are apt in this connection:—

> "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."

The abovementioned dictum of the House of Lords was approved by their Lordships of the Supreme Court in *State of Bombay* v. *Pandurang Vinayak and others* (12), Mehar Chand Mahajan, J., who whote the judgment of the Supreme Court, held in that case as below:—

> "When a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusions."

Therefore, extending the deeming provision contained in the 1962 Amending Act to its logical conclusion and giving full effect thereto, we have to decide this case on the assumption that the unamended section 19-B had never seen the light of the day and that section 19-B had from its very inception been subject to the provisions of section 10-A. In my opinion, the intention of the Legislature to unsettle the settled transactions like the one in *Bhalle Ram's case* is manifest from the scheme of the amending Act.

(11) L.R. 1952 A. C. 109.
(12) A.I.R. 1953 S.C. 244.

(38) While allowing the appeal of the State against the decision of my Lord Mahajan, J., in *Bhalle Ram's case,* it was observed in the *State of Punjab and others* v. *Bhalle Ram and others* (2), by Dulat, J., (who prepared the judgment of the Division Bench and with whom Grover, J., concurred):—

> "It is clear now from the amendments that the surplus area in connection with any land-owner is to be determined on the basis of that land-owner's holding as it existed on the 15th April, 1953, and the land, which is in fact surplus at that time, will remain surplus irrespective of any transfer made by the land-owner subsequently. In these circumstances and in view of the express amendments of the Punjab Security of Land Tenures Act, the decision arrived at by the learned Single Judge in this case cannot stand."

So far as the inerpretation of the expression "this Act" in section 19-B(1) is concerned, what appears to have appealed to the Letters Patent Bench in *Bhalle Ram's case* was that the expression referred to the principal Act of 1953. It is in the same sense that this expression appears to have been impliedly construed in the cases of (1) *Bhagat Gobind Singh* (3) (supra), (2) *Shamsher Singh and others* (4) (supra), and (3) *Hans Raj and others* (5) (supra). The meaning which counsel for the petitioner wants to assign to the expression "commencement of this Act" in section 19-B(1) is July 30, 1958, that is, the date of the Ordinance. If this interpretation were to be correct, the relevant part of section 19(B)(1) would read as follows:—

As in the Act	*As sought to be interpreted by counsel*
"After the commencement of this Act and before the 30th July, 1958."	"After July 30, 1958 and before the 30th July, 1958."

This exposes the fallacy in this argument of learned counsel, I am, therefore, of the opinion that each of the three arguments of Mr. Nehra on which my Lord Mahajan, J., has based his judgment is not free from one or the other infirmity.

(39) There are certain additional considerations for holding that if *Bhalle Ram's case* were to be decided today, that is at any time after the original section 19-B had been wiped out and replaced by the amended section 19-B, the correct decision would have been the one which was arrived at by the Letters Patent Bench on May 7, 1963. Firstly, the amendment made by section 2(b) of the 1962 Act in section 2(5-a) of the principal Act contains a reference to section 19-B and the said amendment has been enforced from July 30, 1958, by sub-section (2) of section 1 of the 1962 Act. Though section 6 and section 2(b) stand on the same footing, so far as retrospective effect given to them by section 1(2) is concerned, a clear distinction about the date from which the relevant amendment introduced by those sections become effective has been brought about by section 10 of the 1962 which is in the following terms:—

> "Section 10-A of the Principal Act, as amended by this Act, and clause (5-a) of section 2 of the principal Act, shall always be deemed to have been inserted in the principal Act on the 15th day of April, 1953."

The language of the above quoted provision leaves no doubt in my mind that the Legislature expressly made section 10-A of the principal Act, as amended by the 1962 Act, effective from April 15, 1953, as it is stated in the said provision that the amended section 10-A shall always be deemed to have been inserted in the principal Act on the date of its inception. Secondly sub-section (4) of section 19-B which provides that excess land of the persons referred to in sub-section (1) shall be at the disposal of the State Government for utilisation as surplus area under clause (a) of section 10-A, necessarily refers to all the categories of persons acquiring land to whom reference is made in sub-section (1) of sectoin 19-B, including persons who had acquired land after April 15, 1953, but before July 30, 1958. Thirdly, clause (b) of section 19-F which provides, *inter alia;* that the land acquired by inheritance, etc., after the coming into force of the Act shall be evaluated for converting into Standard Acres as if the evaluation was being made on the date of such commencement (April 15, 1953), would be meaningless if section 19-B(1) were not to be subject to section 10-A right from 15th April, 1953. It is also significant that section 19-F starts with the phrase,—"for the removal of doubts it is hereby declared." Fourthly and lastly, I think that construing section 19-B(1) in the manner in which Mr. Nehra wants

us to construe it would be cutting at the very texture of the whole Act and interfering with the scheme of this branch of legislation. According to my reading of section 19-B, it was never intended to impinge on the scope of section 10-A, but was merely intended to enlarge the scope of the scheme and intention behind section 10-A. Lands which had become the surplus area of any land-owner, would never cease to be surplus area except in the two contingencies specifically mentioned in the Act, i.e., in the case of acquisition by the State Government or in the case of acquisition by inheritance (subject to section 10-B). The language of section 19-B shows that the purpose of enacting it was to take over the surplus area of those who become big land-owners after April 15, 1953, by acquiring additional lands and not to reduce the surplus area of those who were big land-owners on April 15, 1953. Once section 19-B is read in that light, it appears to become simpler to resolve the controversy which has been raging about its meaning for quite sometime. It is apparent that a transferee of a surplus area after the enactment of section 19-B, that is after July 30, 1958, cannot transform the same into his permissible area merely because his original holding, if any, plus the acquired area, would not exceed the permissible area. It is noteworthy that sub-sections (1) and (2) of section 19-A make the acquisition of any area exceeding one's permissible area after the coming into force of the 1953 Act, void, and of no effect. There is, therefore, no justification for taking out of the purview of section 10-A, the acquisitions made between April 15, 1953, and July 30, 1958.

I would therefore, hold:—

(i) that the retrospective amendment of section 19-B with effect from July 30, 1958, makes the provisions of that section subject to section 10-A of the Act right from the first day when section 19-B was enacted;

(ii) that at no time was section 19-B independent of and not subject to the provisions of section 10-A;

(iii) that the expression "this Act" in section 19-B (unamended as well as amended) has reference to the principal Act of 1953, and not to any subsequent amending legislation;

(iv) that the controversy about the decision of this Court in *Bhalle Ram's case* being correct or not is wholly irrelevant in the changed legislative field because of the unamended section 19-B being deemed to have never existed

and the amended section 19-B being treated as the only section which came into force and continues to apply to the category of acquisitions mentioned therein;

(v) that the law laid down by this Court in *Bhagat Gobind Singh's case* (3) (supra), as well as in the *State of Punjab and others* v. *Shamsher Singh and others* (4) (supra), and in the judgment of *Hans Raj and others* v. *The State of Punjab and others* (5) (supra) and also in the Letters *others* (2) (supra), is correct and unexceptionable;

(vi) that, with the greatest respect to my Lord Mahajan, J., the observations in the judgment of the learned Single Judge in *Gurcharan Singh and others* v. *The State of Punjab and another* (supra) which go contrary to the decision of the earlier Division Bench in the case of *The State of Punjab and others* v. *Bhalle Ram and others* (2) (supra), were not quite correct. For the same reason my decision in *Shrimati Atma Devi and others* v. *The State of Punjab and others* (7) (supra) on the point now in issue (which was based on the earlier Single Bench judgment in the *case of Gurcharan Singh and others* (6) with which I was bound) was also not correct;

(vii) that the making of the amendment to section 19-B retrospective with effect from July 30, 1958, only, has no effect on the material question, and that any land which is once included in the surplus area of a big land-owner never ceases to be surplus and is never taken out of the pale of the area which is liable to be utilised under section 10-A (a) except in the cases of acquisition by the State or acquisition by inheritance referred to in the Act; and

(viii) that the purpose of enacting section 19-B was to take over the surplus area of those who became big land-owners after April 15, 1953, by acquiring more lands from other land-owner, (otherwise than by inheritance subject to section 10(B) and not to reduce the surplus area of those who were big land-owners on April 15, 1953.

(40) The only point which was argued at some length by Mr. D. S. Nehra related to petitioner No. 1. His contention was

that petitioner No. 1 being a co-operative society was exempt from the operation of the principal Act, and inasmuch as the disputed surplus area of respondent No. 5 was in the cultivation of petitioner No. 1, co-operative society, no part of it could be made available for utilisation under section 10-A(a). This argument was, however, dropped by Mr. Nehra in the middle when he was faced with the amendment of the principal Act relating to the original exemption in favour of co-operative societies.

(41) For the foregoing reasons, I agree with my Lord Shamsher Bahadur, J., that the petitioners cannot succeed. I would accordingly dismiss this writ petition with costs.

ORDER OF THE COURT

(42) In accordance with the opinion of the majority this writ petition fails and is dismissed with costs.

K.S.K.

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