owned or held by individual members of the family for the purpose of determining the land holding on which tax is to be levied but section 3 of the Act, as now in force, does not provide for that aggregation. Since no order passed by any authority under the Act has been challenged in this petition, no order for the quashing of any order or proceedings can be passed. Of course, the assessing authorities under the Act will act in acordance with the law as enuniciated above unless amended. The writ petition is decided in the above terms and the parties are left to bear their own costs.

(23) In the other petitions (Civil Writ Petitions Nos. 1737, 2053 to 2055, 2088, 2097, 2102, 2105, 2108, 2116, 2117, 2288, 2507, 2931, 3258, 3298, 3300, 3305, 3306, 3308, 3310, 3315, 3316, 3322, 3324, 3325, 3330, 3332, 3333, 3337, 3339, 3346, 3351, 3355, 3357, 3358, 3360, 3361, 3365, 3369, 3370, 3372, 3375 to 3377, 3379, 3381, 3282, 3286, 3688, 3389, 3392, 3395, 3396, 3403, 3405 to 3408, 3410, 3411, 3413, 3414, 3416, 3419, 3421, 3422, 3425, 3430, 3431, 3433 to 3435, 3438, 3444, 3445, 3456, 3457, 3462, 3464 to 3466, 3473, 3476, 3477, 3483, 3489, 3492, 3494, 3496, 3497, 3500, 3504, 3508, 3509, 3513, 3515, 3517, 3519 to 3525, 3528, 3530, 3531, 3539, 3543, 3544, 3547, 3554 to 3557, 3560, 3562, 3565, 3571, 3573, 3575, 3588, 3592, 3594, 3595, 3597, 3598, 3600, 3603, 3622, 3623, 3628, 3634, 3645, 3655, 3656, 3659, 3661, 3674, 3677, 3681 to 3685, 3691, 3692, 3694, 3696, 3697, 3701, 3703, 3706, 3708, 3730, 3732, 3740, 3741, 3743, 3750, 3769, 3773 and 3877 of 1974) heard along with C.W. 2089 of 1974 also, no specific order of any assessing authority under the Act has been challenged. Only the *vires* of the sections of the Act dealt with above were challenged. These petitions also stand disposed of in the same term as C.W. 2089 of 1974.

K.S.K.

FULL BENCH

Before Bal Raj Tuli, Man Mohan Singh Gujral and D. S. Tewatia, JJ.

ASHOK KUMAR.,—*Petitioner.*

versus.

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ No. 2535 of 1966

September 10, 1974.

Punjab Security of Land Tenures Act (X of 1953)—*Punjab Security of Land Tenures Rules* (1956)—*Rules* 6(2), 6(3) *and Form 'D'—Appointment of heir by a widow to her husband under custom—Whether divests*

her of the husband's estate from the date of appointment—Such appointee—Whether becomes a person interested in the proceedings for declaration of surplus area out of that estate—Name of the appointee neither in Form 'D' nor in Revenue Records—Order declaring surplus area passed without issuing notice to him or his becoming aware of the proceedings—Whether can be reviewed at his instance.

Held, that under custom the title of a person validly appointed by a widow to be an heir to her husband relates back to the date of appointment and the effect of such appointment is to divest the estate in the hands of the widow. The widow ceases to have any right, title or interest form the date of adoption and the ownership thence forward vests in the adopted son. Consequently such an adopted son becomes a person interested in the proceedings for the declaration of surplus area under the Punjab Security of Land Tenures Act, 1953 and the Rules framed thereunder. For holding an inquiry under sub-rule (3) of rule 6 of the Punjab Security of Land Tenures Rules, 1956, before any area is declared surplus, the Circle Revenue Officer, no doubt, has to issue notices under rule 6(2) of the Rules only to such persons whose names are mentioned in form 'D' or to those whose names can be ascertained from the revenue records. It is not necessary for him to make any investigation to find out as to who are the persons interested, but this does not mean that if subsequently a person interested comes forward, he is not to be given a hearing. The order declaring the surplus area can be reviewed if it has been passed behind the back of an interested person and without his being aware of the proceedings for the declaration of the surplus area. In case the Collector or the authorities under the Act find that the person interested has all along been aware of the proceedings and has been guilty of laches in coming forward to contest the proceedings, he will not be entitled to a hearing on merits. On the other hand, if the question of deliberate laches or unexplained delay in approaching the Collector after being aware of the proceedings under the Act is not involved, a person whose interests are likely to be affected by such declaration of surplus area has a right to be heard and is entitled to claim a decision on merits by approaching the Collector for this purpose notwithstanding the fact that his name is neither mentioned in Form 'D' nor in the revenue records as a person interested.

Case referred by Hon'ble Mr. Justice Man Mohan Singh Gujral on 7th August 1974 *to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice B. R. Tuli and Hon'ble Mr. Justice Man Mohan Singh Gujral further referred the case to the Full Bench. The Full Bench consisting of Hon'ble Mr. Justice B. R. Tuli, Hon'ble Mr. Justice Man Mohan Singh Gujral and Hon'ble Mr. Justice D. S. Tewatia, finally decided the case on 10th September,* 1974.

Petition under Article 226 *of the Constitution of India praying that a writ in the nature of* Certiorori, Mandamus, *Prohibition or any other appropriate writ, order or direction be issued quashing the entire surplus proceedings from the year* 1959 *onwards and subsequent proceedings taken*

after the consolidation of holdings and also the impugned orders, dated 22nd of August, 1966 (Annexure 'A') and 31st of October, 1966 (Annexure 'B') and further praying that pending the final disposal of the writ petition, dispossession of the petitioner be stayed.

S. P. Jain, Advocate, *for the petitioner.*

H. N. Mehtani, Assistant Advocate-General, Haryana, *for the respondents.*

JUDGMENT

GUJRAL, J.—This writ pettion under Articles 226 and 227 of the Constitution of India is directed against the order of the Collector, Gurgaon, dated 31st October, 1966, whereby he had dismissed the petition filed by the petitioner for review of the earlier order of the Collector dated 4th December 1959.

(2) The facts necessary for the decision of this petition are not seriously in dispute and may be stated thus. Land measuring 174 *bighas* 1 *biswa* situated in village Bhandor was originally owned by Choudhry Manohar Lal and after his death it was mutated in the name of his wife Maqtul Kaur respondent No. 4. In obedience to the wishes of Manohar Lal, his widow Maqtul Kaur adopted the petitioner as a son to her deceased husband through a registered adoption deed dated 27th July 1952. Not realising that by this adoption the petitioner had become owner of the entire land of his adoptive father, Maqtul Kaur gifted 33 *bighas* of land to the petitioner out of the land situated in village Bhandor. At the time of the adoption and this gift the petitioner was a minor. During the next three or four years Maqtul Kaur somehow developed a strain of hostility towards Ashok Kumar, petitioner; and to give practical shape to these feelings of animosity, Maqtul Kaur sold about 41 *bighas* of land to Polu Ram, etc., in 1957 and 1958 and gifted the remaining land to her daughters on 20th May, 1958. On learning about the alienations, Ashok Kumar challenged them through a civil suit which was ultimately decreed by the Subordinate Judge First Class, Rewari, and this decree was maintained up to the High Court in Regular Second Appeal No. 161 of 1961 decided on 23rd October, 1963. The decree being for possession of the land left by Manohar Lal, Ashok Kumar obtained possession in execution of this decree on 15th April, 1964.

(3) After the coming into force of the Punjab Security of Land Tenures Act (hereinafter called the Act) proceedings were started to declare surplus area out of the land left by Manohar Lal and, as

in the revenue records this land at the relevant time stood in the name of Maqtul Kaur, notice was only issued to her and in Form D only she was shown as being in possession of the land. Probably, as on account of the adoption, she had no right, title or interest left in the land, Maqtul Kaur did not put up a serious resistance in these proceedings and not only allowed an adverse order to be passed by the Collector but did not even challenge this order in appeal and thereby permitted it to assume finality. This order of the Collector was passed on 4th December, 1959. It may be mentioned at this stage that at the time the proceedings were taken the petitioner was still a minor.

(4) After the termination of the proceedings under the Act Ashok Kumar obtained possession of the land in execution of the decree obtained by him and subsequently he was allotted other land during consolidation proceedings in lieu of the land that he had inherited from his adoptive father Manohar Lal. On 27th July, 1966, the petitioner received a notice under section 24-A(2) of the Act calling upon him to select his reserve area out of the land allotted to him in consolidation proceedings and it was then that the petitioner learnt for the first time that some area out of his inherited land had earlier been declared as surplus. In the firm belief that there was no surplus area in his hands the petitioner at once filed objections before the Circle Revenue Officer and contested the notice. By order dated 22nd August, 1966, the Circle Revenue Officer held that he had no jurisdiction to hear any objections regarding the validity of the order passed by the Collector declaring the land of Maqtul Kaur as surplus and directed the applicant to approach the Collector in case he had any grievance about this matter. Having failed to obtain relief, the petitioner filed a review application and on this petition, the Collector passed the impugned order.

(5) The petition was contested on behalf of respondents 1 to 3 and Shri Adhyapak Singh, Under Secretary to Government, Haryana, Revenue Department, filed an affidavit in support of the position taken by the respondents. The stand taken by the respondents is that as in the revenue records Maqtul Kaur was recorded as the owner of the land on 15th April, 1953 and was also shown in possession of the land measuring 146 *bighas* 16 *biswas* in Form D, the surplus area was correctly assessed by the Collector by ignoring the alienations made in 1957 and 1958. It was also

asserted that at the time the surplus area was declared, the petitioner had no *locus standi* to appear in those proceedings, and under the relevant rules was not entitled to the issuance of any notice to him. It was further canvassed that, as the order declaring surplus area was passed after hearing the party who was entitled to notice, it was not open to review subsequently at the instance of the petitioner and in support of this contention reliance was placed on the observations in *Hardev Singh and others.* v. *The State of Punjab and others* (1). As the relevant observations in *Hardev Singh's* case needed elucidation in the light of the facts of the present case, the petition was referred to a larger Bench and it is in this manner that the writ petition has come up before us for decision.

(6) The principal and in fact the only argument advanced on behalf of the petitioner is that as after his adoption in 1952 he had become the lawful owner of the land left by his adoptive father Choudhry Manohar Lal and Maqtul Kaur had been divested of all right, title and interest in the land, he was the "person interested" within the meaning of rule 6 of the Punjab Security of Land Tenures Rules, 1956 (hereinafter called the 1956 Rules) and that firstly a notice ought to have been issued to him and secondly, if, due to lack of knowledge on the part of the concerned authorities about his rights the notice was not originally issued to him, he ought to have been heard when he applied for a review of the earlier order. Continuing the argument it is urged that the petitioner being a minor at the time of the adoption and the passing of the order declaring surplus area and not being aware of the proceedings under the Act and the passing of final order till a notice was issued to him under section 24-A(2) of the Act, the earliest he could approach the authorities under the Act was on receipt of the notice for selecting the reserve area. In this situation, according to the petitioner, it could not possibly be held that the review petition was barred by time.

(7) It is not disputed that under sub-rule (3) of rule 6 of the 1956 Rules the Circle Revenue Officer has to hold an inquiry before any area is declared surplus and this inquiry has to be held "after giving the persons concerned an opportunity of being heard." As to who are the persons concerned, R. S. Narula, J., as his Lordship

(1) 1971 P.L.J. 283.

then was, made the following observations in *Hardev Singh's* case (supra) :—

> "It is, therefore, manifest that notice under rule 6(2) has to be issued in the proceedings before the Circle Revenue Officer only to such persons whose names may be mentioned in Form 'D' prepared by the Patwari or whose names may be shown in the relevant revenue records available to the Circle Revenue Officer as either vendees or donees or other transferees or tenants of the land which is proposed to be included in the surplus area of the original landowner."

It was further ruled in the above case that the Act or the 1956 Rules do not envisage any investigation by the Circle Revenue Officer as to who would be the possible persons interested in the proceedings before him and that it would be a sufficient compliance of the rules if notice is issued to the persons whose names are mentioned in Form D or whose names could be available from the revenue records.

(8) Basing himself on the above observations in *Hardev Singh's* case, Shri H. N. Mehtani, appearing on behalf of the State, contends that in the proceedings for the declaration of surplus area notices having been issued to the persons mentioned in Form D or to the persons whose names could be ascertained from the revenue records the order passed on 4th December, 1959 was wholly unexceptionable and that the Collector is not bound to review the order subsequently at the instance of the petitioner as at the time when the order dated 4th December, 1959 was passed the petitioner was not the person interested within the meaning of sub-rule (3) of rule 6 of the 1956 Rules and had no right, title or interest in the property. Continuing the argument it is urged that the persons interested having already been heard when the order dated 4th December, 1959, was passed, the Collector was under no obligation to hear the petitioner and to review the order.

(9) Under custom the title of a person validly appointed to be an heir relates back to the date of appointment and the effect of such appointment is to divest the estate in the hands of the widow. In other words, from the date of adoption the widow ceases to have any right, title or interest and the ownership thence forward vests

in the adopted son. This being the position of law, though the petitioner had obtained a decree in his favour in October, 1963 and had obtained possession on 15th April, 1964, his title to the property related back to the date of adoption and he consequently was a person interested in the proceedings for the declaration of surplus area. The argument to the contrary advanced by the learned counsel for the respondent is consequently not tenable.

(10) The second aspect of the argument is equally without merit. No doubt, in *Hardev Singh's* case it was ruled that it was not necessary for the Circle Revenue Officer to make an investigation to find out as to who were the persons interested, but from these observations it does not follow that if subsequently a person interested came forward, he was not to be given a hearing and the order could not be reviewed if it had been passed behind his back and without his being aware of the proceedings. All that is emphasised *in Hardev Singh's* case is that notices must be issued to the persons mentioned in Form D or to those whose names could be ascertained from the revenue records. The observations in *Hardev Singh's* case do not carry the implication that merely because a person's name does not find mention in Form D or in the revenue records he was to be denied a hearing even if he himself came forward to contest the proceedings for the declaration of surplus area and was in fact a person whose interests would be vitally affected by an adverse decision in the proceedings. I am, therefore, of the opinion that the argument to the contrary of Shri Mehtani is based on a misconception of the ratio of the decision in *Hardev Singh's* case and is without merit. It is, however, not intended to hold that in case the Collector or the authorities under the Act formed the view that the person interested was all along aware of the proceedings and was guilty of laches in coming forward to contest the proceedings, he would be entitled to a hearing on merits. On the other hand, if the question of deliberate laches or unexplained delay in approaching the Collector after being aware of the proceedings under the Act is not involved, a person whose interests are likely to be affected by such declaration of surplus area has a right to be heard and is entitled to claim a decision on merits by approaching the Collector for this purpose notwithstanding the fact that his name is neither mentioned in Form D nor in the revenue records as a person interested.

(11) For the foregoing reasons, this petition is allowed and the order of the Collector dated 31st October, 1966, is quashed. The

Collector is directed to decide the surplus area case of the petitioner after giving him full opportunity of hearing. Having regard to the circumstances, there will be no order as to costs.

TULI, J.—I agree.

TEWATIA, J.—I agree.

B. S. G.

FULL BENCH

Before R. S. Narula, C.J., Bhopinder Singh Dhillon and M. R. Sharma, JJ:

ZILE SINGH ETC.,—*Petitioners.*

versus.

THE STATE OF HARYANA ETC.,—*Respondents.*

Civil Writ No. 3573 of 1973

September 18, 1974.

Punjab Gram Panchayat Act (IV of 1953 as amended and applied to State of Haryana)—Sections 13-B and 13-O(1)(c)—Election of all the panches to a Panchayat at one time—Whether can be called in question by a single election petition—Prescribed authority—Whether has the jurisdiction to entertain and decide such petition on merits—Impleading of all the elected panches in the petition—Whether necessary.

Held, that under Punjab Gram Panchayat Act, 1953 as amended and applicable to State of Haryana, all the panches to a Panchayat are elected in a single combined process of election, and it is the elected Panches who (after the statutory co-option if any) proceed to elect their Sarpanch out of themselves. The result of an entire election is affected in a case of improper rejection of any nomination paper, and that is why the election is liable to be set aside on mere proof of improper rejection of any nomination paper, though it is not set aside without proof of material affect on the election of the person elected in case of illegal or improper acceptance of a nomination paper. Where all the Panches are elected at one time, a single election petition to call in question the entire election is competent. The Prescribed Authority under section 13-O(1)(c) of the Act has the jurisdiction to entertain such petition and on coming to the conclusion that the nomination papers of any candidate had been improperly rejected, set aside the election of all the Panches. However, in order to satisfy the principles of natural justice and also in view of the applicability of the provisions of the Code of Civil Procedure to the proceedings before the