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appeal and set aside the objections of the judgment-debtors. In the circumstances, there would be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan and Prem Chand Pandit, JJ.

GANPAT,—*Petitioner.*

versus

JAGMAL AND OTHERS,—*Respondents.*

Civil Writ No. 1573 of 1960.

1963

May, 17th.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 6 and 18—Right of the tenant to purchase the land under his tenancy—Transfers made after 15th August, 1947—Whether to be ignored—Period of six years of tenancy to entitle the tenant to exercise his right of purchase—Whether must have expired before the commencement of the Act.

Held, that if a tenant is still a tenant of the land at the date when he wants to exercise his right of purchase under section 18 of the Punjab Security of Land Tenures Act, 1953, all transfers between the 15th August, 1947 and the 2nd February, 1955, have to be ignored excepting *bona fide* sales or mortgages with possession or transfers resulting from inheritance as is provided in section 6 of the Act as amended by Punjab Act XIV of 1962.

Held, that it is not necessary that a tenant must have been a tenant for a period of six years on the 15th April, 1953, the date of the commencement of the Act, before exercising his right of purchase under section 18 of the Act. The object of the Act is to afford relief to tenants and the surplus area has been created for tenants and, there can be no objection on principle in letting the tenant acquire rights of ownership if he satisfied the requirements of section 18. The Act puts an overall limit on the

landholding and no tenant can by purchase acquire land more than the permissible area, including the land held by him as an owner.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued quashing the order passed by the Financial Commissioner dated the 29th September, 1960.

H. L. SIBAL, ADVOCATE, for the Petitioner.

NARINDER SINGH, R. K. AGGARWAL, ADVOCATES AND H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, WITH M. R. SHARMA, ADVOCATE, for the Respondents.

ORDER

MAHAJAN, J.—This order will dispose of Civil Writs Nos. 1753 of 1960, 393 and 397 of 1961 and 456 of 1961 and Civil Miscellaneous Petition No. 3071 of 1961. Civil Writ No. 1753 of 1960 is under Article 226 of the Constitution, Civil Writs Nos. 393 and 397 of 1961 and Civil Writ No. 456 of 1961 are under Article 226/227 and Civil Miscellaneous Petition No. 3071/1961 under Article 227. All these petitions are directed against a similar order passed either by the Commissioner or the Financial Commissioner in all these cases setting aside the orders of the revenue authorities below allowing the tenants to purchase the lands in their possessions in pursuance of the rights conferred on them by section 18 of the Punjab Security of Land Tenures Act (10 of 1953)—hereinafter referred to as the Act. Mahajan, J.

The petitoners, in all these petitions, are the tenants of the lands transferred by the landowners by gift to the donees who claimed to be small landowners. It is common ground that the lands in possession of the donees including the donated lands do not put them in the category of landowners. In other words, they are small landowners within the meaning

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of sub-section (2) of section 2 of the Act. The donors, however, in all these cases are landowners. Section 18 permits a tenant of a landowner other than the tenant of a small landowner to purchase land held by him other than the land included in the reserved area of the landowner. Before he can purchase the land he is to satisfy a number of conditions laid down in section 18 of the Act. It has been found by the appropriate authorities under the Act that the tenants do satisfy those requisite conditions. The controversy is whether these transfers by gift can be recognised in view of certain provisions of the Act. If they are recognised the transferees being small landowners, the tenants' applications for purchase of land under section 18 of the Act must fail. If, on the other hand, these transfers are not to be recognised, the tenants' applications for purchase of the land must succeed. It is common ground that before the gifts were executed by the landowners in favour of the donees, the tenants, who are seeking to purchase the land under section 18 of the Act, were the tenants of the transferor-landowners. It is maintained that these transfers have to be ignored in view of the provisions of section 6 of the Act. This section has been enacted for the purpose of determining the area owned by a landowner for the purposes of the Act. It provides that all transfers of land excepting *bona fide* sales or mortgages with possession or transfers resulting from inheritance made after the 15th August, 1947, and before the commencement of the Act, that is, the 15th April, 1953, shall be ignored. In other words, a transfer made by a landowner has to be ignored when the question arises as to how much area the landowner holds at the commencement of the Act.

The contention of the respondents, on the other hand, is that these transfers cannot be ignored. These

transfers pass title to the tranferees and as the land is the property of the transferees and the transferees do not hold land more than the permissible area, they fall within the definition of the small landowner and as such the tenants cannot purchase those lands under section 18 of the Act.

At this stage, it will be proper to set out the facts giving rise to these petitions.

Civil Writ No. 1753-1960.

The landowners in these case are Jagmal and Mahipat. Jagmal gifted the land to his sons Balwant Singh and Kulwant Singh on the 26th June, 1952. Mahipat gifted the land to his sons Devi Lal and Nathu Ram on the 29th December, 1952. The tenants under Jagmal and Mahipat was Ganpat, who applied for the purchase of the land held by him under section 18 of the Act, to the Assistant Collector on the 27th August, 1956. He, however, did not implead Nathu Ram as a party. His application was allowed. The donees went up in appeal to the Collector, who dismissed the same. They then went up in revision to the Commissioner and the contention raised before him was that the donees were small landowners, but the Commissioner rejected this contention in view of section 6 of the Act. The Commissioner, however, held that as Nathu Ram was not made a party in the application, no order with regard to the purchase of his share could be passed and the tenant would be entitled to purchase only three-fourths share of the land held by him. The donees being dissatisfied moved the Financial Commissioner in further revision. The Financial Commissioner allowed the petition in view of his previous decision in *Suba Singh* v. *Arjan Singh* (1).

(1) (1961) L.L.T. 12.

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Civil Writs Nos. 393 *and* 397-1961.

The land in dispute is situate in village Bheri Akbarpur, district Hissar. Surja (in Civil Writ No. 393 of 1961) and Magha (in Civil Writ No. 397 of 1961) were the tenants under Rajendar Mohan, the landowner. Rajendar Mohan gifted the land in dispute in both these cases to his son Vijay Mohan, on the 28th March, 1952. The son selected the donated land for the purposes of reservation under section 5 of the Act.

Surja and Magha made applications under section 18 of the Act for the purchase of the land forming part of their tenancy. On the 19th March, 1959, their applications were allowed by the Assistant Collector of the 1st Grade. Vijay Mohan, the donee, contested the applications on the ground that the land in dispute formed part of his reserved area and, therefore, it could not be purchased by Surja and Magha in view of the provisions of section 18 of the Act. This contention was not accepted in view of the provisions of section 6 of the Act. The gift was treated as *non est* and the donated land was treated as the land of the donor. Vijay Mohan went up in appeal to the Collector against this order and the same was rejected by him on the 14th July, 1959. Vijay Mohan then moved the Commissioner in revision without success. A further revision was taken by Vijay Mohan to the Financial Commissioner, who allowed the same on the 30th January, 1961, in pursuance of his decision in *Suba Singh's case.*

Civil Writ No. 456 *of* 1961.

The land in dispute, in this case, was owned by Munshi Ram. He orally gifted this land to his sons etc. in 1952. The petitioner, Partap Singh, became a tenant in Khasra No. 528 in Kharif 1953, which seems to have been gifted to Smt. Asha Rani, widow of

Nathu Ram. The tenant applied for the purchase of the land in Khasra No. 528 under section 18 of the Act on the 25th December, 1959. This application was allowed by the Assistant Collector, Fazilka, on the 31st October 1960. The donee, Asha Rani, appealed to the Collector who allowed the appeal and held that the tenant had no right to purchase this land in view of the decision of the Financial Commissioner in *Suba Singh's case.*

Civil Miscellaneous Petition No. 3071 *of* 1961.

Chhaju was the owner of the land in dispute. He gifted the land to his three sons Hari Singh, Kartar Singh and Hawa Singh. The result of these gifts, if they have to be recognised for the purposes of the Act, would be that Chhaju and his sons would become small landowners. An area of land measuring 32 Kanals 13 Marlas in Killa numbers 14/1, 14/9, 15/21, 6|21, 22|1, 22|2 and 22|9 was under the tenancy of Parsa, who was recorded as a tenant under Chhaju. Parsa applied under section 18 of the Act for the purchase of the land. The plea of the landowner was that he was a small landowner. This he would be, if the transfers are to be recognised for the purposes of this Act. The Assistant Collector held that the tenant satisfied the requisite conditions under section 18 of the Act and was entitled to the purchase of the land as Chhaju was not a small landowner—the transfers by him had to be ignored. Chhaju's appeal was allowed by the Collector in view of the decision of the Financial Commissioner in *Jagmal* v. *Ganpat* (Revision No. 65 of 1960). The decision in *Jagmal's case* is based on an earlier decision by the same learned Financial Commissioner, namely, in *Suba Singh's case.* The tenant then moved the Commissioner against the order of the Collector in revision. The same was dismissed by the Commissioner.

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It will be seen from the facts enumerated above that in all these cases the petitioners are the tenants and the respondents are either the landowner transferors or the small landowner transferees or both, who claim that the transfers by them or in their favour are good and cannot be ignored for the purposes of section 18 of the Act. Therefore, it will be proper at this stage to set out the provisions of section 18 of the Act under which the lands in dispute are sought to be purchased by the tenants. Section 18 is in these terms :—

> "18. (1) Notwithstanding anything to the contrary contained in any law, usage, or contract a tenant of a landowner other than small landowner—
>
> (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or
>
> (ii) * * * * * *
>
> (iii) * * * * * *
>
> shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) * * * * * * * * *".

The tenants rely on the provisions of section 6 of the Act for their contention that the transfers being prior to 15th April, 1953, the date on which the Act came into force have to be ignored for the purposes of determining the area owned by a landowner. Section 6 of the Act, as it originally stood, is in these terms:—

> "6. For the purposes of determining under this Act the area owned by a landowner, *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."

Before dealing with the various contentions advanced in these cases, it will be proper to examine the scheme of the parent Act and also to examine the various amendments that have been made in the parent Act from time to time as is usual with Punjab Legislations. Instead of simplifying matters these amendments have complicated them.

The Act, as its preamble denotes, is a measure to provide for the security of land tenure and other incidental matters. The expressions 'landowner', 'small landowner', 'permissible area' and 'reserved area' are defined in section 2 of the Act and the definitions are as under:—

"2(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.

2(2). 'Small landowner' means a landowner whose entire land in the State of Punjab does not exceed the 'permissible area'.

Explanation.—In computing the area held by any particular landowner, the entire land owned by him in the State of Punjab, as entered in the record of rights, shall be taken into account, and if he is a joint owner only his share shall be taken into account.

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2(3). 'Permissible area' means 30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 acres, such 60 acres :

Provided that no area under an orchard at the commencement of this Act shall be taken into account in computing the permissible area :

Provided further that for a displaced person—

(a) who has been allotted land in excess of 50 standard acres, the permissible area shall be 50 standard acres or 100 ordinary acres as the case may be,

(b) who has been allotted land in excess of 30 standard acres but less than 50 standard acres, the permissible area shall be equal to his allotted area,

(c) who has been allotted land less than 30 standard acres, the permissible area shall be 30 standard acres including any other land or part thereof, if any, that he owns in addition.

2(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, V of 1951, hereinafter referred to as the '1950 Act' or under this Act."

Section 5 provides for reservation of land. Section 6 has already been noticed and provides for ignoring certain transfers. Section 7 provides for the minimum period of tenancy and is in these terms :—

"7. Notwithstanding anything to the contrary contained in any other law for the time

being in force and except as expressly provided by this Act no tenant on land other than the reserved area of a landowner shall be liable to ejectment before the expiry of a period of ten years from the commencement of the this Act, or from the commencement of the tenancy whichever is later."

Section 8 provides for the heritability of the tenancy and section 9 sets out the grounds on which a tenant can be ejected. The relevant part of Section 9 is as follows :—

"9. Liability of tenant to be ejected.—

(1) Notwithstanding anything conntained in this Act or in any other law for the time being in force no tenant shall be liable to ejectment before the 30th April, 1954.

(2) A tenant shall, however, after the 30th April, 1954, be liable to be ejected if he—

(i) * * * * * *
(ii) * * * * * *
(iii) * * * * * *
(iv) * * * * * *
(v) * * * * * *
(vi) * * * * * *
(vii) * * * * * *

"(viii) is a tenant on the area reserved under this Act by a landowner or is a tenant of a small landowner."

Sections 10, 11, 12, 13, 14 and 15 deal with various rights conferred on the tenant and various obligations

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imposed on the landowner vis-a-vis the tenants and they are not material for our purposes. Section 16 deals with the saving of tenancies from the effect of *mala fide* transfers and is in these terms :—

> "16. Save in the case of *bona fide* sales and of lands 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 shall have the effect of reducing the minimum period of a tenancy as hereinbefore provided :
>
> Provided that in the case of a *bona fide* sale the tenant shall, subject to the rights of other pre-emptors as provided in the Punjab Pre-emption Act, 1913 (Act I of 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."

Section 17 deals with the rights of the tenant to pre-empt the sale of the land forming the subject-matter of his tenancy. Section 18 confers the right on the tenant to purchase the land held by him. The other provisions of the Act are not relevant for the purposes of the present cases.

It will thus be seen that for purposes of determining the area owned by a landowner under the Act, all transfers excepting *bona fide* sales or mortgages with possession or transfers resulting from inheritance made after 15th August, 1947, and before the commencement of the Act (15-4-1953) are to be ignored (Section 6). Section 16, on the other hand went further and prohibited mortgages with possession so far as they would have the effect of reducing

the minimum period of tenancy fixed under section 7. However, the tenants on the reserved area of a 'Landowner' and the tenants of a 'small landowner' could be evicted within the period prescribed by section 7 but that too after the 30th April, 1954.

The overall result of the provisions of the Act, which have been noticed above, is that for purposes of determining under the Act the area owned by a 'landowner' all transfers of land excepting a *bona fide* sale, an acquisition by Government or by an heir by inheritance have to be ignored. The tenant is to continue as a tenant for ten years unless he is a tenant on the reserved area or is a tenant of a 'small landowner'. Therefore, a tenant on the land which has been transferred and that transfer is not any one of the recognised transfers will contitnue to be the tenant on the land irrespective of the transfer. Therefore, if he satisfies the conditions which are a prerequisite to the exercise of his right of purchase under section 18 and one of the conditions being that the *land is held by the 'landowner'* he can purchase it. Thus for the purposes of section 18 a tenant cannot exercise his right of purchase by ignoring the transfer. This seems to be the true legal position with regard to all transfers made between 15-8-1947 and 15-4-1953, the date on which the Act came into force. It is significant that the transfers other than those excepted by section 6 do not become void or inoperative so far as the transferor and the transferee are concerned but they cannot be recognised when they come in conflict with the purpose and the provisions of the Act. *Bona fide* sales are outside the prohibition regarding transfers under section 6 between 15th August, 1947 and 15th April, 1953, and are also not prohibited even after the 15th April, 1953. See in this connection section 16. However, the tenant has the right to pre-empt such sales out of the reserved

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area of a 'landowner' if his suit for pre-emption is otherwise within time.

The basis of the Act is to put a ceiling on land holdings and for that purpose the holding of a 'landowner' has to be determined. In order to determine that holding, the area owned by him, at the date of the Act, has to be determined. For that purpose, certain transfers are not recognised while certain other transfers are recognised. On that determination depends the status of the 'landlord'. Either he falls into the category of a 'landowner' or a 'small landowner'. There is no provision in the Act to the effect that after the transfer the tenant is to be deemed to be still the tenant of the 'landowner' making the transfer. Only his eviction was barred for ten years,—*vide* section 7. If his landlord is a 'landowner' he can buy his holding unless his holding is part of the reserved area. But if he is the tenant of a 'small landowner' both these rights are denied to him. This being the fundamental structure of the Act, it has to be seen whether the amendments made in the Act from time to time have made any departure from its scheme and purpose.

So far as the amendments go, the first amendment in the Act was made by Act 57 of 1953, but this amendment has no bearing for our purposes. The second amendment was by Act 11 of 1955 and came into force on the 26th May, 1955. This amendment deleted section 7 and introduced a new sub-section (5a) in section 2 and section 10-A and substituted a new section 16 for the old section 16 in the parent Act. Sections 2(5a), 10-A and the substituted section 16 are in these terms :—

> "2. (5a) '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 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."

"10-A(a) The State Government, or any officer empowered by it in this behalf, shall be competent to utilise any surplus area for the resettlement of tenants ejected, or to be ejected under clause (i) of subsection (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 commencement of this Act, shall effect the utilisation thereof in clause (a).

Explanation.—Such utilisation of any surplus area will not affect the rights 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

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

The substituted section 16 did not bear the heading which the original section had, though in the official publication the same old heading is repeated along with the substituted section. In section 18, the only change brought about was that for the words "a period of 12 years" the words "a minimum period of six years" was substituted.

The amendment of section 16 put an embargo on all transfers of land after 1st February, 1955 excepting the acquisition of land by the State Government or by an heir by inheritance so far as the rights of the tenants under the Act were concerned. Therefore, up to this stage the position was that the transfers other than those permitted by the Act could not reduce the period of this tenancy guaranteed by the Act unless he was a tenant on the reserved area or was a tenant of a 'small landowner' otherwise the transfers would operate with full vigour.

With effect from the 15th April, 1953, to the 1st February, 1955 the only prohibition on transfers is to be found in section 10-A(b). According to this provision, no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act shall affect the utilisation of the surplus area by the State Government for the resettlement of tenants ejected or to be ejected under clause (i) of sub-section (1) of section 9. In other words the area held by a 'landowner' beyond the reserved area was given the connotation of a surplus area by section 2(5a). Over and above this provision, there is no prohibition between the 15th April, 1953, and the 1st February, 1955, regarding any kind of transfers

and for the first time by the substituted section 16 all transfers or dispositions of land after 1st February, 1955 could not have any effect on the rights of the tenants under the Act. The only exception was 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.

The next amendment was by Act 46 of 1957 and it has no bearing in so far as the present controversy is concerned. Thereafter the Act was further amended by Act No. 4 of 1959, which came into force on the 19th January, 1959. This Act amended section 10-A and introduced sections 19, 19-A and 19-B. The amended section 10-A and sections 19-A and 19-B read thus :

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

(b) Notwithstanding anything contained in any other law *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 utilisation thereof in clause (a).

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

19-A(a) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of

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Land Tenures (Amendment) Ordinance 1958, no person whether as landowner or tenant shall acquire or possess by transfer exchange, lease, agreement or settlement any land, which with or without the land already owned or held by him, shall in the aggregate exceed the permissible area :

Provided that nothing in this section shall apply to lands belonging to registered co-operative societies formed for purposes of co-operative farming if the land owned by an individual member of the society does not exceed the permissible area.

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void.

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

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

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

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

The changes introduced by Act No. 4 of 1959 excepted the lands acquired by the State Government or by an heir by inheritance from utilisation as surplus area. The utilisation of the surplus area was not to affect the rights of the landowner to receive rent from the tenant. No landowner or a tenant after the 30th July, 1958, could acquire or possess by transfer, exchange, lease, agreement or settlement any land, which, with or without the land already owned or held by him in aggregate, exceeded the permissible area. Such transfers were to be null and void. Section 19-B(1) recognized the transfers before the 30th July, 1958 and provided that if any acquisition by transfer, exchange, lease, agreement or settlement, with or without the lands already owned or held by any person exceeded in the aggregate the permissible area, then such person shall, within the prescribed period, furnish to the Collector 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. Therefore, it will be clear that up to this stage all transfers can pass title but the prohibited transfers under section 6 had to be

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owned by the landowner at the commencement of the Act. It was out of the total area owned that the 'landowner' had to carve out his reserved area and the rest was to fall in the category of surplus area. There is no prohibition on transfers excepting the one under section 10-A(b) and that only for the purposes of utilisation of the surplus area, from 15th April, 1953 to the 30th July, 1958, when by Ordinance and later on by the Act on the same lines, namely, the Amending Act No. 4 of 1959, all acquisitions of land over and above the permissible area by a landowner or a tenant were prohibited and were to be void. It is in this situation that the Financial Commissioner decided *Suba Singh's case.* The contention on behalf of the tenants is *that Suba Singh's case* is wrongly decided whereas the contention on behalf of the landowners is that it is correctly decided. I, therefore, reproduce hereunder the relevant part of this decision, which runs as under :—

> " * * * It is unfortunate that the Punjab Security of Land Tenures Act is unhappily worded, and is ambiguous and equivocal in some respects. Nevertheless section 16 is specific so far as the rights of tenants were concerned, and it categorically states that except for land acquired by Government or by inheritance no other transfer or disposition of land 'effected after the 1st February, 1955, shall affect the rights of the tenants thereon under this Act.' *This obviously means that transfers and dispositions made before the 1st February, 1955, are unaffected.* If the legislature also wished to disregard all transfers made before that date it could easily have said so. If it wanted to avoid dispositions made after the commencement of this Act and affecting the rights of the tenants all that the

Legislature had to do was to have substituted the words 'after the enactment of this Act' for the words 'after the 1st February, 1955.' *Since it has not done so it must be presumed that the rights of tenants* vis-a-vis *transfers made by landowners were sought to be protected after the 1st February, 1955, and not earlier.* As pointed out by the learned Commissioner, it is also significant that the right conferred on a tenant to pre-empt or purchase the land comprised in his tenancy follows the provisions of section 16. Turning to section 6 all that it states is that 'for the purposes of determining under this Act the area owned by a landowner all transfers of land except * * * * made after the 15th August, 1947, and before the commencement of this Act shall be ignored.' *The plain implication of the section if read along with section* 16, *to my mind, is that it is applicable to landowners only for determining their surplus area and its utilization under section* 10-*A for the resettlement of ejected tenants, and not for safeguarding the rights of tenants against transfers, etc.* For that purpose section 16 has been specifically provided with a categorical date line. It is a well recognised principle of interpretation that where there is more than one provision touching on the same subject, then the specific provision must over ride the general one. *Even if it is assumed for the sake of argument that this section also helps tenants under section* 18, *then it is apparent that there is a lacuna between the period from the commencement of this Act* (15*th April,* 1953) *and the* 1*st*

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February, 1955, specified in section 16. This means that landowners who made dispositions affecting the rights of tenants between these two dates are saved while their colleagues who made identical transfers after the 15th August, 1947, and before the commencement of this Act are to be penalised. This would be manifestly unfair and discriminatory. It could never have been the intention of the Legislature to bring about such a result, Consequently, the only proper interpretation that can be placed on the wordings and spirit of section 16 is that transfers and dispositions, except the protected ones, made after the 1st February, 1955, shall be disregarded if they adversly affect the rights of *the tenant, and those made earlier shall be ignored. The purpose of section 6, as already mentioned is to preserve and perpetuat the surplus area of landowner with the eject of fulfilling the obejctives of section 10-A, by ignoring certain transactions made by him between specified dates.*"

I am, therefore, clearly of the view that *Suba Singh's case* is rightly decided. This will be apparent from what I have already stated. Certain transfers between the 15th August, 1947, and the 15th April, 1953 were not to be recognised for the purposes of determining the area owned by a landowner. Apart from this, these transfers were good and valid transfers and did pass title from the transferor to the transferee. There was no similar prohibition with regard to transfers after the 15th April, 1953 up to the 30th July, 1958, for the obvious reason that the permissible area *vis-a-vis* each landowner had to be determined on the 15th April, 1953 and whatever was beyond that area was to be surplus area. The transfers out of the surplus

area were not to affect the right of the Government to utilise the same after the commencement of the Act, that is, after the 15th April, 1953. Therefore, if the transfers are good and pass title, the tenant who wants to exercise the right of purchase under section 18 has to satisfy the requirements of that provision and one of the requirements of the same is that the land which he seeks to purchase is held by a "landowner." In all the present cases the lands are owned by small landowners and are not held by a "landowner", and, therefore, the tenants cannot purchase the same. They can only purchase the same if the transfers by which the lands have vested in the small landowners are to be ignored. There is no provision under which they can be ignored for the purpose of section 18 of the Act, and for the first time a provision for ignoring them was made by section 16 after it was substituted by Act No. 11 of 1955, which provided that no transfer after the 1st February, 1955, shall affect the rights of the tenant in the land. Therefore, all transfers prior to the 1st February, 1955, canot be ignored for the purposes of section 18. This date seems to have been modified by enactment of section 19-B which in terms recognises all transfers up to the 30th July, 1958. However, it is not necessary to examine this matter any further because all the transfers in cases before us are of a date prior to the 1st February, 1955 and the reasoning of the Financial Commissioner in *Suba Singh's* case fully applies to them.

This brings me to the consideration of the amendment of the Act by the Punjab Security of Land Tenures (Amendment and Validation) Act (14 of 1962). This amending Act received the assent of the President on the 4th July, 1962, and was published in the official gazette on the 10th July, 1962. Sections 2(a), 4, 5, 7 and 10 of the amending Act are to be deemed to have come into force on the 15th April, 1953, while sections 2(b) and 6 shall be deemed to have

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come into force on the 30th July, 1958, and the remaining provisions of this Act came into force at once. Section 3 of the amending Act substituted for section 6 the following section 6 :—

> "6. No transfer of land, except a *bona fide* sale or mortgage with possession or a transfer resulting from inheritance, made after the 15th August, 1947, and before the 2nd February, 1955, shall affect the rights of the tenant on such land under this Act."

Therefore, if a tenant is still a tenant of the land at the date when he wants to exercise his right under section 18 by reason of this substituted section, all transfers between the 15th August, 1947, and the 2nd February, 1955, have to be ignored excepting *bona fide* sales or mortgages with possession or transfers resulting from inheritance. It is not disputed that if these transfers are ignored then the tenants will be the tenants of the 'landowners' and would be entitled to exercise the right of purchase under section 18.

It is also of significance that by section 10 of the amending Act section 10-A and section 2(5a) of the Act have to be deemed to have always been inserted in the principle Act on the 15th April, 1953. Therefore, when the principle Act was passed section 10-A and clause (5a) of section 2 have to be treated as its integral parts, and if these two provisions are treated on the statute book as from 15th April, 1953, along with the substituted section 6, the only conclusion possible is that the tenants in the present petitions have the right to acquire land by purchase under section 18 of the Act irrespective of the transfers by gift.

Mr. Sharma, State Counsel, contended that in order that a tenant can exercise his right under section

18 he must be a tenant for a period of six years on the 15th April, 1953. According to him, a tenant who has been brought on the land after the 15th April, 1953, and has been in possession of the land under his tenancy for a period of six years before he makes an application under section 18 will not be entitled to purchase the land. The only justification offered by the learned counsel for such a construction of section 18 is that the tenant would be entitled to purchase land out of the surplus area and thereby reduce the surplus area. This argument is wholly untenable for a number of reasons. Firstly, there is no such limitation placed by section 18 itself and there is no reason why something should be read into the plain language of section 18, which is neither ambiguous nor capable of two meanings. Secondly, section 7 of the parent Act granted protection to tenants who were on the land at the time the Act came into force or were to become tenants after the Act and it cannot be said that those tenants who came on the land after the Act were not tenants within the meaning of the definition in section 2(6) of the Act. Section 18 gives the right to a tenant and that right has to be examined at the time when an application under section 18 is made and cannot be denied on the ground that he was not a tenant for more than six years on 15th April, 1953. Thirdly, while defining surplus area in section 2(5a) the Legislature has excluded the tenant's permissible area from the definition. Therefore, the argument of the learned counsel is wholly fallacious and cannot be accepted. The object of the Act is to afford relief to tenants and the surplus area has been created for tenants and, there can be no objection on principle in letting the tenant acquire rights of ownership if he satisfied the requirements of section 18. The Act puts an overall limit on the land holding and no tenant can by purchase acquire land more than the permissible area, including the land held by him as an owner

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See in this connection section 20 of the Act. Therefore, no importance can be attached to Mr. Sharma's contention and the same is repelled.

Mr. Narinder Singh, learned counsel for some of the landowners, has submitted that *Suba Singh's case* has been correctly decided. I have already held that this is so, but the amending Act 14 of 1962 completely does away with the effect of that decision and, therefore, the decision in *Suba Singh's case* can be of no avail to the learned counsel. His second contention is that the substitued sections by Act 14 of 1962 will not apply to decided cases has also no substance because the tenants are still on the land and they can again apply for purchase of land under section 18. Therefore, it will not be appropriate in the exercise of the extraordinary jurisdiction by this Court under Article 226 of the Constitution to give a go-by to the unassailable legal position as it stands when this Court is called upon to adjudicate upon the rights of the parties. Thirdly, Mr. Narinder Singh has contended that in view of the provisions of section 19-B of the Act the alienations made after the 15th April, 1953, and before the 30th July, 1958, are saved. This provision has nothing to do with the right of the tenant to purchase the land. The transfers may be good for certain purposes and may not be good for other purposes. So far as the rights of the tenant under section 18 are concerned, any transfer by a landowner in excess of the reserved area has to be ignored barring those in case of which an exception has been made. That being so, this contention has also no force and the same is repelled. The learned counsel had placed reliance on the decision in *Bhalle Ram* v. *State of Punjab* (2), in support of his last contention. That decision has no bearing on the question which has been debated before us.

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For the reasons given above, the petitions by the tenants (Writ Petitions Nos. 1753-1960, 393 and 397 of 1961, 456 of 1961 and Civil Miscellaneous Petition No. 3071 of 1961) are allowed. The orders of the authorities below are quashed. In the circumstances of the case, the parties are left to bear their own costs.

PANDIT, J.—Without going into the question of the correctness or otherwise of the Financial Commissioner's decision in *Suba Singh's case*, I agree with my learned brother that in view of the later amendment of section 6 of the Act in 1962, the petitions filed by the tenants be allowed with no order as to costs. *B.R.T.*

APPELLATE CIVIL

Before Mehar Singh and Inder Dev Dua, JJ.

MOOL CHAND JAIN,—*Appellant.*

versus

RULIA RAM AND ANOTHER,—*Respondents.*

First Appeal From Order 1/E of 1963.

1963

May, 20th.

Representation of the People Act (XLIII of 1951)—Ss. 82 and 123—Candidate duly nominated but withdrawing within the period allowed for withdrawal—Allegations of bribery made against him in an election petition—Such candidate—Whether necessary party to the petition—effect of not impleading him—Promise to help such candidate's relative in another constituency in consideration of his withdrawal made by returned candidate—Whether amounts to bribery.

Held, that a candidate who has been duly nominated but withdraws within the period allowed for withdrawal is a candidate within the meaning of section 82(2) of the Representation of the People Act, 1951 and if allegations of corrupt practice of bribery are made against him in an election petition, he must be made a party to the petition. Failure to implead him as a respondent is a non-compliance with the provisions of section 82 and will entail the dismissal of the election petition under section 90(3) of the said Act.

Held, that the meaning of the word "gratification" in section 123(1) (B) of the Representation of the People Act,