Before Anil Kshetarpal, J.

STATE OF HARYANA THROUGH THE COLLECTOR AND ANOTHER—*Petitioners*

versus

M/S UNIVERSAL POULTRY BREEDING FARM AND ANOTHER—*Respondents*

RSA No.1022 of 2003

March 02, 2020

Punjab Security of Land Tenure Act, 1953—S.10-A—Haryana Ceiling of Land Holding Act, 1972—S.8(1) and 12—If succession opened before enforcement of 1972 Act, Section 10(A)(b) of the 1953 Act shall fully apply—Re-opening and re-determination of surplus land is required— Surplus land will not vest in State.

Held that, once the succession opened before the enforcement of the 1972 Act, Clause (b) of Section 10-A of the 1953 Act would have full play and merely because the 1972 Act has been enforced, it would not in any manner defeat the benefit and right of heirs of big land owner by inheritance. Still further, Clause (b) of Section 10-A starts with non-obstantive Clause. Thus, the Clause (b) has been placed at a higher pedestal than other provisions. On careful reading of Clause (b), it is apparent that reopening and redetermination of the surplus area is envisaged only in two eventualities, (i) when the land is acquired by the State Government (ii) by an heir by inheritance. Except these two eventualities, the surplus area case which has become final, cannot be reopened. Section 8(1) of 'the 1972 Act' also supports the aforesaid interpretation.

(Para 24)

R.K.S.Brar, Addl. A.G.,Haryana
for the appellants (inRSA-1022-2003)

Anupam Gupta, Sr. Advocate, with
Ashok Kumar, Advocate and
Sukhpal Singh, Advocate,
for the petitioner (in CWP-30428-2018)

Vishal Garg Narwana, Advocate
for the appellant (In RSA-2557-2010)

Arun Jain, Sr. Advocate, with

Abhishek Dhull, Advocate,
Amit Jain, Advocate
J.V. Yadav, Advocate
for respondent no.1 (in RSA-1022-2003).

Puneet Kumar Jindal, Sr. Advocate with
J.P. Rana, Advocate
for respondent No.2 (in RSA-1022-2003)

Shailendra Jain, Sr. Advocate with
Anupama Arigala, Advocate
for respondent Nos.3 to 7 (In RSA-1022-2003)

Gaurav Aggarwal, Advocate,
for the intervener (in RSA-1022-2003)

Harsh Bunger, Advocate
for the applicant (In CM-8507-C-2019 in RSA-1022-2003)

Ashish Gupta, Advocate,
for the applicant (in CM-9619-C-2017 in RSA-2557-2010).

ANIL KSHETARPAL, J.

(1) By this judgment, RSA-1022-2003, RSA-2557-2010 and CWP- 30428-2018 shall stand disposed of as common questions arise for determination.

(2) Although, this Court could have disposed of these two Regular Second Appeals simply by observing that judgment passed by this Court in RSA No.3001 of 1996 decided on 25.02.2019 covers the issue involved, however, keeping in view the importance of the issue involved and the judgment passed by a brother Judge, this Court has considered it appropriate to re-examine the entire issues in the context of judgment passed in RSA No.2301 of 2014, and other Supreme Court judgments cited by learned counsel for the parties.

(3) The question which needs adjudication is that "If the big land owner dies before utilization of the surplus land declared under the provisions of the Punjab Security of Land Tenures Act, 1953 (hereinafter to be referred as "the 1953 Act") and promulgation of the Haryana Ceiling on land Holding Act, 1972 (hereinafter to be referred as "the 1972 Act"), whether his legal heirs are entitled for redetermination of surplus case while taking note of land inherited by them or the 1972 Act would debar the authorities from redetermining the surplus land case in the hands of heirs of big land owner because

the surplus land now falls in the area of State of Haryana, governed by the 1972 Act?

(4) At the outset, it must be noticed that before creation of State of Haryana, the area which now forms part of States of Haryana, Punjab, Himachal Pradesh and Union Territory, Chandigarh was part of joint State of Punjab. With a view to bring about agrarians reforms and to achieve the goal as provided in Directive Principles of State Policy, the legislature enacted the 1953 Act providing for a ceiling on the holdings of agricultural land. The purpose behind the enactment was to confer ownership on the tiller.

(5) The 1953 Act lays down the procedure for declaration of surplus area and its utilization. For the purpose of decision of the present case, it would be apt to notice Sections 10-A, 10-B of the 1953 Act and Rules 20-A, 20-B and 20-C of the Punjab Securities of the Land Tenures Rules, 1956 (hereinafter to be referred as "the 1956 Rules") which are extracted as under:-

> "**Sections 10-A and 10-B of the 1953 Act:-**
>
> **10-A. Surplus area for resettlement of ejectedly tenants.-** (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.
>
> (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 his surplus

area shall be ignored

10-B. Saving by inheritance not to apply after utilisation of surplus area - Where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilised.

Rules 20-A, 20-B and 20-C of the 1956 Rules:-

20-A Issue of certificates– Every tenant shall be given a certificate in Form K-6 describing clearly the land allotted to him. A copy each of the certificate shall be sent to the Patwari concerned as well as the landowner on whose land the tenant is to be resettled, and another copy shall be retained on the file for record.

20-B Delivery of possession[(1) After orders of allotment of any surplus area have been passed the Circle Revenue Officer, shall move the Collector for passing necessary orders directing the landowner or the tenant, as the case may be, to deliver possession of the land in his surplus area to the Circle Revenue Officer, who shall be deemed to be an officer empowered by the Government under section 19-C for the purpose of delivery of possession].

(2) Every tenant resettled on the surplus area shall be bound to take possession of the land allotted to him within a period of two months of the date on which demarcation of the land is made at site in his presence or within such extended period, as may , for reasons to be recorded in writing, be allowed by the Circle Revenue Officer. The possession of the land shall be delivered to the tenant by the Circle Revenue Officer himself.

(3) The possession of the land on which a tenant is resettled shall ordinarily be given after the crops are cut. If, however, the Circle Revenue Officer deems it necessary to deliver possession of the land to any tenant before the crops are cut a statement showing the crop and the area under the same shall be prepared by the Patwari before the possession is taken by the tenant. A copy of the statement shall be furnished to the landowner as well as to the tenant.

20-C. Conditions of resettlement- The tenant, who is resettled under this part-

(a) shall be the tenant of the landowner in whose name the land in question stands in the revenue records.

(b) shall be liable to pay the same amount of rent as is customary in that estate for such lands subject to the maximum fixed under section 12 of the Act and

(c) shall in respect of the land upon which he is resettled execute a Qabuliyat or a Patta as given in Annexure 'C" appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land."

(6) After the State of Haryana was carved out, the legislature of Haryana enacted a separate statute-'the 1972 Act'. The Act was first published in Haryana Government Gazette (Extraordinary) of December 23, 1972. In the Act, the appointed day was defined as "24th day of January 1971". State of Haryana made significant changes from the 1953 Act. For the purpose of decision of the present case, Sections 8, 12, and 33 of the 1972 Act are relevant which are extracted as under:-

"**8. CERTAIN TRANSFERS OR DISPOSITIONS NOT TO AFFECT SURPLUS AREA.**

- (1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of-

(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and

(b) the permissible area under this Act, except a bona fide transfer, or disposition after the appointed day,

shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition:

Provided that any person who has received an advantage under such transfer, or disposition of land shall be bound to restore it, or to pay compensation for it, to the

person from whom he received it.

(2) The burden of proving the transfer or disposition to be a bona fide one shall be on the transfer.

(3) If any person transfers or dispossess of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed of to them.

12. VESTING OF SURPLUS AREA. --(1) The surplus area of a landowner shall, (from the date on which it is declared as such shall be deemed to have been acquired by the State Government for public purpose) and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) ofall persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee rights shall be deemed to have been acquired by the State Government and the same shall vest in it.

(2) The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.

(3) The area declared surplus or tenants permissible area under the Punjab law and the area declared surplus under

the Pepsu Law, which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared in pending proceedings to be decided under the Punjab Law or Pepsu Law shall be deemed to have vested in the State Government with effect from the date of such declaration.

(4) For the purpose of determining the surplus area under this Act, any judgment, decree or order of a court or other authority, obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored.

33. REPEAL AND SAVINGS.--(1) The provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby repealed.

(2) The repeal of the provisions of the enactments mentioned in sub-section (1), hereinafter to as the said enactments, shall not affect

(i) the applications for the purchase of land under Section 18 of the Punjab Law or Section 22 of the Pepsu Law, as the case may be pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;

(ii) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by the State Government in accordance with the provisions of this Act.

(3) Save as provided in sub-section (2), no authority shall pass an order if any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act."

(7) In order to implement the provisions of the Act, the 1972 Act and Haryana Utilization of Surplus and other Areas Scheme, 1976 was also notified.

(8) Interplay between various provisions of the 1953 Act and the 1972 Act, is the core issue which arises for consideration. While examining the aforesaid provisions, this Court while deciding RSA No.3001 of 1996 has concluded that if the big land owner dies before the enforcement of the 1972 Act and the succession opens, then the authorities under the 1953 Act are required to redetermine the surplus area case in the hands of respective heirs. The interpretation is based upon careful reading of Clause (b) of Section 10- A(a) of the 1953 Act read with the 1956 Rules.

(9) When these appeals came up for hearing, keeping in view the important issue involved, learned counsel for the State of Haryana and Sh. Anupam Gupta, Senior Advocate who appears for the petitioner in CWP No.30428 of 2018 were requested to assist the Court. Both the counsels were kind enough to assist the Court and draw attention of the Court to various pronouncements of the Hon'ble Supreme Court which have some bearing on the issue involved. It may be noted here that while deciding RSA No.3001 of 1996, this Court framed following question for adjudication:-

> "Whether inheritance of the property by natural succession before utilisation of the surplus land would require re-determination of the property in the hands of heirs or not as per the provisions of the Punjab Security of Land Tenures Act"

(10) Now the stage is set for examining various judgments which have been brought to the notice of this Court.

(11) First judgment, reference to which can be made is in the case of ***State of Punjab (Now Haryana) and others*** versus ***Amar Singh and another***[1]. The aforesaid judgment is based upon the interpretation of Sections 10-A and 18 of the 1953 Act. In the aforesaid case, land was declared surplus in the year 1961 and the issue before the Court was not with respect to interpretation of Clause (b) of Section 10-A in the context of death of big land owners and succession having opened during the period when the 1953 Act was applicable.

(12) Second judgment which has been relied upon is in the case of ***Dattatraya Govind Mahajan and others*** versus ***State of Maharashtra and another***[2]. In this case, constitutional validity of

---

[1] (1974) 2 SCC 70

[2] (1977) 2 SCC 548

legislative enactments notified by various State legislatures with a view to achieve the goal as specified in Directive Principles of State Policy came up for consideration. A constitutional Bench of the Hon'ble Supreme Court examined various enactments and by concurring judgments upheld the constitutional validity of the 1953 Act. However, in the aforesaid judgment also, Clause (b) of Section 10-A in the context of death of big land owner was not the issue involved.

(13) Next judgment, reference to which can be made is in the case of ***Amar Singh and others*** versus ***Ajmer Singh and others***[3]. In the aforesaid judgment, land in the hands of Maru was declared surplus in the year 1961 and review application filed by his three sons was also dismissed. However, once the land was allotted under the Utilization Scheme, proceedings were initiated by the son of Maru. In that context, the Hon'ble Supreme Court held that there is no provision under the Haryana Act to reopen the surplus determined under the Punjab Act. However, in the aforesaid judgment as well, Clause (b) of Section 10-A was neither pressed nor examined by the Court.

(14) Next judgment, reference to which can be made is in ***Jodha Ram (dead) by LRs*** versus ***Financial Commissioner, Haryana Chandigarh and others***[4]. In this case, a subsequent purchaser from the big land owner had filed a petition under Section 9(1)(i) of the 1953 Act, seeking eviction of a tenant. The land in the hands of big land owner was declared surplus on November 21, 1953. While interpreting Section 10-A (a) of 'the 1953 Act' and Sections 8 and 12 of 'the 1972 Act', the Hon'ble Supreme Court held that once the land has vested in the State, the land owner has no right to seek ejectment of the tenant. In the aforesaid judgment also, the question which was decided, was entirely different.

(15) Next judgment, reference to which can be made is in the case of ***Sampuran Singh*** versus ***State of Haryana and others***[5]. In the aforesaid judgment, again three sons of big land owner on attaining the age of majority, initiated proceedings by pleading that since they have continued in possession, therefore, the surplus area case is required to be redetermined. The aforesaid challenge was repelled by Hon'ble the Supreme Court. However, the issue in the present case is entirely different.

---

[3] 1994 Supplement (3) SCC 213
[4] (1994) 1 SCC 27
[5] 1994 Supplement (2) SCC 206

(16) Next judgment, reference to which can be made is in the case of ***Bhagwanti Devi (Smt.) and others*** versus ***State of Haryana and another***[6]. In the aforesaid judgment, the land was declared surplus in the hands of big landowner in the year 1960. Thereafter, application was filed under Rule 8 of the 1956 Rules seeking permission to utliize the surplus land continuing in their possession on the ground that they were cultivating the lands in a modern form. It was further claimed that sons of the big landowner have become major. The Court repelled the contentions while interpreting Sections 8 and 12 of the 1972 Act.

(17) Recently, there is another judgment passed by the Hon'ble Supreme Court in the case of ***Megh Raj (dead) through Legal Representatives and others*** versus ***Manphool (dead) through Legal Representatives and others***[7]. On careful reading of the aforesaid judgment, it is apparent that Hon'ble the Supreme Court just examined the bar of jurisdiction of the Civil Court in the context of Section 26 of the 1972 Act and held that jurisdiction of the Civil Court is barred.

(18) There is yet another judgment passed by the Hon'ble Supreme Court in the case of ***Ajad and others*** versus ***Dharampal and others***[8] which is also only with reference to interpretation of Section 26 of the 1972 Act.

(19) There is yet another judgment passed by the Hon'ble Supreme Court in the case of ***Surinder Nath Dewan*** versus ***State of Haryana and others***[9]. The aforesaid judgment is a brief order passed and there was no argument with reference to Clause (b) of Section 10-A of the Act. It was not a case of succession having opened before enforcement of 1972 Act on the death of big land owner.

(20) There are two Division Bench judgments of this Court relied upon by the counsels. First judgment is in the case of ***Ujagar Singh and others*** versus ***State of Haryana and others***[10]. In the aforesaid judgment, the Division Bench was considering the case in the context that sons of the big land owner had become major and what is its effect on the land which has been declared surplus under the 1953 Act. Inthe aforesaid judgment, the case was not examined in the context of Clause (b) of Section 10-A of the 1953 Act. Another Division Bench

---

[6] 1994 Supplement (3) SCC 101
[7] (2019) 4 SCC 636
[8] (1998) 9 SCC 161
[9] 1994 Supplement (3) SCC 135
[10] 2012 (3) RCR (Civil) 960

judgment in ***Dharam Pal and others*** versus ***State of Haryana and others***[11]**,** the issue examined was in the context of when big landowner had died after coming into force of the 1972 Act i.e. the Haryana Act. The Division Bench while relying upon various judgments passed by Hon'ble the Supreme Court noticed above, held that once ownership of the land declared surplus has vested in the State under Section 12 of the 1972 Act, there cannot be any redetermination.

(21) In this regard, it will be important to notice that a Three Judge Bench of this Court in the case of ***Jaswant Kaur and another*** versus ***State of Haryana and another***[12], has examined this aspect in the context of Constitution validity. Paras 8 and 9 of the aforesaid judgment is reproduced as under:-

> "8. The provisions of sections 4 and 8, particularly Section 8, appear on first impression to be inconsistent with the provisions of Section 12 (3) but, as we said earlier, it is our first duty to seek to avoid conflict by endeavouring to harmonise and reconcile every part so that each shall be effective. A closer and critical examination of the provisions shows that they are not irreconcilable and all of them fit well into the general scheme of the Act. Section 8 has not been repealed expressly, by Section 12(3) of the Act, nor can it be said, in the view that we are taking, that it was repealed by necessary implication. Section 12(3) was introduced by way of amendment by Act XVII of 1976. By Section 1(2) of the Amending Act, it is deemed to have come into force on 23-12- 1972. A harmonious way of construing sections 8 and 12(3) would be to give full effect to Section 8(1) up to 23-12-1972, that is to say, to exclude from the operation of Section 12(3), the transfers made up to 23.12.1972 which are protected by Section 8(1) of the Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30.7.1958. We see no reason why sections 8 and 12(3) should not be

[11] 2002 (1) Punjab Law Journal 188
[12] 1977 PLJ 230

construed in this harmonious manner so as to give effect to both the provisions. We find from the instructions issued from time to time that the Government has also construed the provisions in a similar manner. In Memo No. 5726-AR (IA)-76/28819, dated 15.9.76, addressed by the Financial Commissioner and the Secretary to Government,

Haryana, Revenue Department, to the Commissioners of the Ambala and Hissar Divisions etc., it is said:--

"The surplus area already purchased by the eligible tenants/persons under Section 18 of the Punjab Law and Section 22 of the Pepsu law should be considered to have been lawfully utilized and should not, therefore, be vested in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. Only such unutilized surplus area which was not purchased by the eligible tenants/persons under the Punjab Law or Pepsu Law should be deemed to have been vested in the State Government from the appointed day under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and may be mutated in favour of the State Government immediately and necessary action to allot such area to the eligible persons may be taken in accordance with the provisions of the Utilization of Surplus and Other Areas Scheme, 1976."

Again in Memo No. 6632-AR(II)-76/33309, dated 29.10.76 it is said,

"It has come to the notice of the Government that there is some lack of understanding in correctly interpreting the provisions of Section 8 and Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. In this regard it is clarified that Section 8 of the Haryana Ceiling on Land Holdings Act, 1972, inter alia prohibits transfers and dispositions of land in excess of the permissible area under the old Acts made after the 30th July, 1958, Therefore, transfers or dispositions of surplus area under the Punjab Law or the Pepsu Law made before the 30th July, 1958 stand regularised by law or in other words they would affect the surplus pool. As a result of this, the surplus area which had been transferred or disposed of by the landowners before 30.7.1958, shall not vest in the State Government under Section 12(3) of the Haryana Ceiling on Land

Holdings Act, 1972, and therefore, such area cannot be utilized in accordance with the Utilization of Surplus and Other Areas Scheme, 1976."

9. Shri Naubat Singh, the learned Assistant Advocate General, also agreed that we should harmonise Section 8 and Section 12(3) in the manner that we have done but he suggested that the date upto which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be the appointed day (24.1.1971) and not the date on which Section 12(3) came into force. We do not agree. Section 1(2) of Act XVII of 1976 expressly provides that the Act shall come into force on 23-12-1972. We must give some meaning and effect to it. In our view, the effect of Section 12(3) coming into force from 23-12-1972 on Section 8 is that transfers of the three categories specified by us made up to 23-12-1972 would be excluded from the operation of Section 12(3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected if made before 30-7-1958 and that all other land not excepted by Section 8 would vest in the State Government with effect from the appointed day."

(22) Next issue which needs consideration is whether in view of the bar of jurisdiction as provided under Section 26 of the 1972 Act, which is extracted as under, the civil suit is maintainable or not:-

"**26. BAR OF JURISDICTION.**--(1) No Civil Court shall have jurisdiction to -

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) Settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the Prescribed Authority.

(2) No order of the Financial Commissioner, the Commissioner, the Collector, or the Prescribed Authority made under or in pursuance of this AcT shall be called in question in any court."

(23) The aspect of maintainability of the civil suit in the context of Ceiling Laws has been examined by a Five Judge Bench of this Court in the case of ***State of Haryana and others*** versus ***Vinod Kumar and others***[13].

(24) After examining the various judgments passed by the Hon'ble Supreme Court including famous judgment of Hon'ble the Supreme Court in the case of ***Kamla Mills Ltd.*** versus ***State of Bombay***[14] by a Seven Judge Bench, it was held that if the Tribunal/Court, constituted under a Special Statute, is found to have acted in violation of principles of natural justice or against the procedure prescribed under the Special Statute, then the Civil Court has the jurisdiction. The Court went on to hold that Civil Court has primary jurisdiction over all civil disputes as per Section 9 of the Code of Civil Procedure. The provision excluding the jurisdiction of the Civil Court has to be strictly construed before holding that the jurisdiction of Civil Court stands ousted from examining a civil dispute. In the present case as noticed above, the competent authorities have not followed the mandate of Clause (b) of Section 10-A of the 1953 Act. Before enactment of the 1972 Act, the provisions of the 1953 Act were applicable even with regard to area which now forms part of State of Haryana. Once, the succession opened before the enforcement of the 1972 Act, Clause (b) of Section 10-A of the 1953 Act would have full play and merely because the 1972 Act has been enforced, it would not in any manner defeat the benefit and right of heirs of big land owner by inheritance. Still further, Clause (b) of Section 10-A starts with non-obstantive Clause. Thus, the Clause (b) has been placed at a higher pedestal than other provisions. On careful reading of Clause (b), it is apparent that reopening and redetermination of the surplus area is envisaged only in two eventualities, (i) when the land is acquired by the State Government (ii) by an heir by inheritance. Except these two eventualities, the surplus area case which has become final, cannot be reopened. Section 8(1) of 'the 1972 Act' also supports the aforesaid interpretation.

(25) Still further, from the reading of the Rules framed under the 1953 Act as extracted above, it is apparent that vesting of the surplus land in the State under the 1953 Act is only when the process of allotment is complete in accordance with the Rules and Qabuliyatnama

---

[13] AIR 1986 Punjab and Haryana 407

[14] AIR 1965 Supreme Court 1942

has been executed by the allottee after having been put in possession. This is the peculiar provision under the 1953 Act and the Rules framed thereunder which has been done away with in 'the 1972 Act' as now applicable to State of Haryana. In State of Haryana, Section 12 of the 1972 Act, as extracted above provides that the surplus area of the land owner vests with the State free from all encumbrances from the appointed day in case the area was declared surplus or the tenants permissible area under the Punjab Law or with respect to the area declared surplus in the Haryana Act from the date of such declaration. Thus, provisions of Section 12 of the 1972 Act brings significant changes with regard to vesting of surplus land. However, inheritance by an heir is saved by Section 8 of the Act of 1972 Act, so as to give full play to Clause (b) of Section 10-A of the 1953 Act.

(26) Mr. R.K.S. Brar, learned counsel appearing on behalf of the State of Haryana has drawn attention of the Court to a judgment passed by a coordinate Bench in RSA No.2301 of 2014 ***State of Haryana and another*** versus ***Rohit Talwar and others***, decided on 11.02.2016, to contend that in another suit by the purchaser from Smt. Sharbati Devi, it has been held that the surplus land declared in the hands of Smt. Sharbati Devi vests with the State from the appointed day i.e. 24.01.1971.

(27) This Court has carefully read the judgment passed in the case of Rohit Talwar (Supra). It may be noticed that before the esteemed Brother Judge, who decided the case of Rohit Talwar, the attention of the Court was not drawn to Section 10-A(b) of the 1953 Act. In fact, no argument with respect to effect of death of the big landowner particularly when the surplus land has not been utilized under the 1953 Act was raised.

(28) At this stage, it may be relevant to note that the Hon'ble Supreme Court in the case of ***Financial Commissioner, Haryana State and others*** versus ***Smt. Kela Devi and another***[15], has held that mere allotment of the land to the allottee under the 1953 Act is not sufficient and unless the formalities specified in the Act and the Rules are fulfilled, there is no vesting of land in the State under the 1953 Act. Paras 5 and 6 of the aforesaid judgment are extracted as under:-

> "5. In order to understand the full meaning and effect of the provisions of Section 10-A, it is necessary to make a cross-reference to Rules 18, 20-A, 20-B and 20-C of the

[15] (1980) 1 SCC 77

Punjab Security of Land Tenures Rules, 1956 (hereafter referred to as the Rules). Rule 18 deals with the procedure for allotment of "surplus area" to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and Rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of the land allotted to him within a period of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter alia, for the execution of a "qabuliyat" or "patta" by a resettled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect thereof. The process of utilisation contemplated by Section 10-A of the Act is therefore complete, in respect of any "surplus area", only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process.

6. Reference in this connection may also be made to Rule 20-D of the Rules which provides that in case a tenant does not take possession of the "surplus area" allotted to him for resettlement within the period specified therefor, the allotment shall be liable to be cancelled and the area allotted to him may be utilized for the resettlement of another tenant. It cannot therefore be doubted that a completed title does not pass to the allottee on a mere order of allotment, and that order is defeasible if the other conditions prescribed by law are not fulfilled."

(29) Keeping in view the aforesaid discussion, it is declared that on the death of Smt. Sharbati Devi, her succession opened and, therefore, the land was required to be redetermined under the 1953 Act in the hands of legal heirs because the death took place before the 1972 Act was enacted. Hence, the declaration of the surplus area in the hands of Sharbati Devi would not vest with State of Haryana on the appointed day i.e. 24.01.1971.

(30) Keeping in view the aforesaid facts, this Court finds no reason

to interfere with the concurrent findings of fact arrived at by both the Courts below. Hence, both the appeals bearing RSA-1022-2003 and RSA-2557- 2010 are dismissed.

(31) Accordingly, the writ petition bearing CWP No.30428 of 2018 is also disposed of.

(32) All the pending miscellaneous applications, if any, are disposed of, in view of the abovesaid judgment

Tejinderbir Singh