N.K.S.

FULL BENCH

Before S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, D. S. Tewatia, M. R. Sharma, R. N. Mittal & A. S. Bains, JJ.

KALWA,—*Appellant.*

versus

VASAKHA SINGH and another,—*Respondents.*

Regular Second Appeal No. 67 of 1969.

February 1, 1982.

Punjab Pre-emption Act (I of 1913)—Sections 15(1) & (2)—Punjab Security of Land Tenures Act (X of 1953)—Sections 17 & 17-A—Constitution of India, 1950—Article 14—Female selling inherited land—Sale covered by section 15(2)—Such sale—Whether

Kalwa *v.* Vasakha Singh and another
(S. S. Sandhawalia, C.J.)

pre-emptible by a tenant or a co-sharer or both—Section 15(2)—Whether an independent self-contained provision or merely a proviso to sectioon 15(1)—No class of pre-emptors referred to in section 15(2) in existence—Right of pre-emption—Whether could be exercised by the class of pre-emptors mentioned in sub-section (1) or by a tenant only—Interpretation of Statutes—Non-obstante clause in section 15(2)—Interpretation and scope of—Sections 17 and 17-A of the Punjab Security of Land Tenures Act—Whether confer a right of pre-emption on a tenant as such and include him in the class of pre-emptors—Non-conferment of the right of pre-emption on a tenant in section 15(2)—Whether renders this provision violative of Article 14—Precedent followed for two decades—Doctrine of stare decisis—Whether to be applied.

Held, (per majority S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, R. N. Mittal and A. S. Bains, JJ. D. S. Tewatia and M. R. Sharma, JJ. contra.) that the language of sub-section (2) of section 15 of the Punjab Pre-emption Act, 1913 is crystal clear. The sub-section begins with a non-obstante clause and is thus clear by way of an exception to the general provisions of the preceding sub-section (1). The effect of a non-obstante clause for purposes of construction of statutes is too well known to call for any elaboration. This sub-section was plainly intended by the legislature to provide for sales made by female owners and further only that class of female owners who had succeeded to the property either through their fathers or brothers or through their husbands. Specifically the legislature made a special provision for this class of vendors excluding them from general category. The plain purpose evident from the provisions of sub-section (2) is that it confined the right of pre-emption in this context to the lineal descendants of the last male holder (to the exclusion of the relations of the female vendor herself) and further constricted this right to the closest of relations only. On the hallowed rule of construction that a special rule of law would over-ride a general one it would be equally patent that in this context section 15(1) cannot possibly have any place. The legislature having made its intent clear and categoric in sub-section (2), it is not for the Court to sit in judgment over the wisdom of its policy, nor is there any doubt about the reasonableness of this provision. The pointer is clear that the whole brooding spirit of section 15(2) of the Act is to keep the alienated property in the lineal descendants of the last male holder and to confine the pre-emptive right to the closest relations. It is significant that under sub-section (2) even the distant relations of the last male holder are excluded [in sharp distinction to the long line of agnatic claimants under sub-section (1)], and the relations of the female vendor succeeding through a male owner are totally excluded with the clear purpose of preventing her from becoming a fresh stock for the purposes of pre-emption. Under sub-section (2) the legislature has

deliberately limited and diminished the class of number of pre-emptors. The whole object seems to be to cut down the number of pre-emptors in the case of female vendors who have succeeded to the property through the specified class of male-owners. Against this glaring intention of the legislature to turn the opposite way and extend the list of the class of pre-emptors by thrusting the whole lot of relations in sub-section (1) as also the co-sharers or tenants therein is frustrating the very object and the intent of the legislature in enacting sub-section (2). Thus, it is held that sub-section (2) of section 15 is an independent self-contained provision and cannot be read as a mere proviso to the preceding sub-section (1). As a necessary consequence, it is held that a tenant or a co-sharer has no right of pre-emption in cases falling squarely within sub-section (2) of section 15 of the Act.

(Paras 23, 42 and 46).

Held, (per majority S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, R. N. Mittal and A. S. Bains, JJ., D. S. Tewatia and M. R. Sharma, JJ., contra.) that sub-section (2) of section 15 is on the face of it not a part or a clause of the preceding sub-section (1) but has been clearly labelled *seriatum* as an independent one by itself. Therefore, it is a self-contained sub-section and to read it as a proviso or as an explanation to sub-section (1) is not warranted by any canon of construction. It is clearly labelled as an independent sub-section and because of the added fact that it opens with the words 'notwithstanding anything contained in sub-section (1)' it would in effect become analogous to a separate section. The impact and the true legal import of a non-obstante clause are so well-settled by principle and precedent that it is not easy to deviate therefrom. The clear effect of the words 'notwithstanding anything contained in sub-section (1)' is that the provision of the said sub-section must completely give way to what is provided for in sub-section (2) or to put it in other words it is a convenient mode of virtually repealing the earlier provisions of sub-section (1) for the purposes of the construction of the later sub-section (2). Thus, there is no warrant for converting a categoric non-obstante clause into a mere proviso. (Paras 27, 28 and 29).

Held, (per majority S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, R. N. Mital, R. N. Mittal and A. S. Bains JJ., D. S. Tewatia, and M. R. Sharma, JJ., contra.) that it was for the first time by Act 10 of 1960 that the legislature severely slashed the class of pre-emptors and because of the historical and peculiar necessities was compelled to introduce the tenants therein, though at the bottom rung of pre-emptors in section 15(1). It is patent that there is no fundamental or inherent right to pre-empt sales under the law and prior to 1960 the ordinary tenant did not fall in this class. No person, therefore, can lay claim to any inherent right of pre-emption unless it is conferred by recognised custom or expressly by statute.

The question of discrimination or violation of the equality clause in Article 14, therefore, cannot even remotely arise nor would it be open to anyone to negatively challenge the law on the ground that because it gives the right of pre-emption to certain other categories he would be equally entitled to the same.

(Para 24).

Held (per majority S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, R. N. Mittal and A. S. Bains, JJ., D. S. Tewatia and M. R. Sharma, JJ., contra.) that the provision of section 17 of the Punjab Security of Land Tenures Act, 1953 was incorporated in the Act primarily for protecting the tenant against the devious use of the pre-emption right for ousting him from his tenancy and thus from the back door take away the security of tenure and the right of purchase which was sought to be conferred upon him by Agrarian Legislation. Section 17 was certainly not enacted for any larger purpose of inducting the ordinary tenant as a necessary class of pre-emptors. Indeed, if this was the object then the provision would have been straightaway made in the Punjab Pre-emption Act and not deviously in an altogether different statute confined primarily to Agrarain Legislation. Again, section 17-A of the Punjab Security of Land Tenures Act also does not confer a right of pre-emption on the tenant and is indeed far from putting an ordinary tenant in the class of pre-emptors. All that section 17-A did was to raise a defence in favour of the tenant against the piratical right of pre-emption vested in others against him when a sale was made in his favour. Truly construed, section 17-A is indeed in derogation of the pre-emptive right conferred by the Punjab Pre-emption Act rather than any extension thereof. Thus, sections 17 and 17-A of the Punjab Security of Land Tenures Act cannot give the least handle to the tenants to claim an inherent right to enter the class of pre-emptors against sales covered by section 15(2) of the Punjab Pre-emption Act by a process of interpretation when the legislature has not chosen to place them therein.

(Paras 39, 40 and 41).

Held (per majority S. S. Sandhawalia, C.J., P. C. Jain, S. C. Mital, R. N. Mittal and A. S. Bains, JJ., D. S. Tewatia and M. R. Sharma, JJ., contra.) that the view taken by this Court consistently is that if a sale falls under section 15(2) of the Act, application of section 15(1) is excluded. After this authoritative enunciation of law by the Full Bench in *Karta Ram's case* there has been no hint of dissent. There has indeed been a total unanimity in this Court for two decades on this point. If numbers have any relevance, nearly twenty Judges of this Court at varying times have unreservedly opined that sub-section (2) is an independent provision by way of an exception to the preceding sub-section (1) and over-rides the same. In this context it must be held that the

long line of precedent should not now be deviated from even for reasons of judicial propriety well enshrined in the doctrine of *stare decisis* when it cannot be said that the view so far taken is manifestly erroneous, unjust or mischievous. (Paras 8 and 9).

Held (per D. S. Tewatia, J. contra. & M. R. Sharma, J. concurring) that in the event of failure for any reason whatsoever on the part of the pre-emptors listed under sub-section (2) of section 15 of the Act to pre-empt the sale, the pre-emptors listed under sub-section (1) of section 15 of the Act in the very sequence of priority would be entitled to lay a claim to pre-emption to a sale by vendors and of property envisaged in sub-section (2) of section 15 of the Act. (Para 100).

Held, (per M. R. Sharma, J., contra.) that:

(1) Section 15 of the Act has to be read as a whole ;

(2) On a proper interpretation, sub-section (2) of section 15 does not debar a co-sharer or a tenant to exercise right of pre-emption regarding the property inherited by a female ;

(3) Sub-section (2) is in the nature of a proviso to sub-section (1) and cannot be interpreted to destroy the effect of sub-section (1);

(4) If co-sharers and tenants are disallowed to exercise the right of pre-emption by placing a contrary interpretation on sub-section (2), that interpretation would violate the spirit of Article 14 of the Constitution;

(5) It would be wholly improper to take shelter behind the principle of stare decisis in the circumstances of this case. (Para 120).

Case referred by a Single Judge Hon'ble Mr. Justice M. R. Sharma to a Full Bench of seven Judges on 17th April, 1980 for the decision of an important question of law involved in the case. The full bench consisting of the Hon'ble the Chief Justice Mr. S. S. Sandhawalia, Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice S. C. Mital, Hon'ble Mr. Justice D. S. Tewatia, Hon'ble Mr. Justice M. R. Sharma, Hon'ble Mr. Justice R. N. Mittal and Hon'ble Mr. Justice A. S. Bains. The Full Bench after deciding the law point returned the case to the Single Judge on 1st February, 1982 for disposal in accordance with the answers rendered to the legal questions therein.

Kalwa *v.* Vasakha Singh and another
(S. S. Sandhawalia, C.J.)

Regular Second Appeal from the decree of the Court of Shri Joginder Singh Mander, Additional District Judge, Ambala City dated the 18th day of October, 1968 reversing that of Shri P. L. Sanghi, Senior Sub-Judge, Ambala, dated the 29th March, 1968 and dismissing the plaintiff's suit in toto and leaving the parties to bear their own costs throughout in civil appeal No. 74/13 and dismissing the suit in Civil Appeal No. 73/13 filed by the plaintiff.

C. B. Goel, Advocate, *for the Appellant.*

S. K. Goyal, Advocate, *for the Respondent.*

JUDGMENT

S. S. Sandhawalia, C.J.

1. Whether sub-section (2) of Section 15 of the Punjab Pre-emption Act, 1913 is an independent self-contained provision or is merely a proviso to the preceding sub-section (1) despite the non-obstante clause with which it begins—has come to be the spinal issue in this reference to a Bench of seven Judges.

2. It is because of a veiled doubt about the correctness of the settled law within this Court by a Bench of five Judges in *Karta Ram and another* v. *Om Parkash,* (1) and a co-equal Bench in *Prithi Pal Singh and others* v. *Milkha Singh and others* (2), that this reference seems to have been necessitated. Because of this and indeed in view of an implied challenge to the very doctrine of precedent which it involves, the matter calls for an exhaustive and in-depth examination.

3. For issues so pristinely legal, the facts would invariably pale into insignificance. Yet law even in abstract must retain its connection with the *terra firma* of the factual matrix. It suffices, therefore, to advert to the facts relevant to the legal issue in *Kalwa* v. *Vasakha Singh & others,* R.S.A. No. 67 of 1969. Jagdish Chand was the original owner of the land in dispute, with other co-sharers. On his death, mutation No. 72 was sanctioned on May 21, 1965 in favour of his two sons—Inder Partap Singh and Ravi, Sarla

(1) A.I.R. 1971 Pb. & Har. 423.
(2) A.I.R. 1976 Pb. & Har. 157.

Devi, Vijay Devi, Vijay Laxmi, his daughters; and Vidhya Wanti his widow, in equal shares. The heirs aforesaid sold the land to the vendees by a registered deed. Kalwa appellant brought a suit for pre-emption basing his claim on being a tenant of the land in dispute at the time of the sale and also being a co-sharer with the original owner Jagdish Chand and consequently with the vendors themselves. The suit was contested on behalf of the respondents and the material issues framed were Nos. (1) and (6) :

(1) Whether the plaintiff has got a preferential right of pre-emption ? OPP.

(6) Whether sale made by the females is pre-emptible ? OPP.

On these issues the trial court held that the plaintiff-appellant was not entitled to pre-empt the sales made by the females who had inherited through their father or husband as sub-section (2) of Section 15 of the Punjab Pre-emption Act, 1913 (hereinafter called 'the Act') alone was applicable. However, it was held that the plaintiff-appellant could pre-empt the share of only one male co-sharer, namely—Inder Partap and in 1/12th share of the entire land on payment of the proportionate price thereof.

4. On appeal the learned Additional District Judge categorically affirmed the finding of the trial court with regard to the sale made by the females (who had inherited the land from their father or husband), holding that the case fell squarely under section 15(2) of the Act and, therefore, the tenant or the co-sharer had absolutely no right of pre-emption thereunder. He further held that even with regard to the land sold by Inder Partap, the vendees also became co-sharers and therefore, Kalwa had no superior right of pre-emption in respect of this land as well. Allowing the appeal of the vendees and dismissing that of the appellant Kalwa, his suit was dismissed *in toto*.

5. The appellant-Kalwa then preferred the present regular second appeal which first came up for hearing before my learned brother Sharma, J., who entertained some doubts with regard to the correctness of the ratio of the earlier Full Benches in *Karta Ram and another* and also *Prithi Pal Singh's* cases (supra) and therefore referred the matter to a Bench of seven Judges.

6. Inevitably the controversy herein must revolve around the relevant provisions of the statute and indeed on the very words thereof. It is, therefore, apt to read the provisions of section 15 of the Act at the very outset :—

"S. 15(1) The right of pre-emption in respect of agricultural land and village immovable property, shall vest—

(a) where the sale is by a sole owner—

FIRST, in the son or daughter, or son's son or daughter's son of the vendor ;

SECONDLY, in the brother or brother's son of the vendor ;

THIRDLY, in the father's brother or father's brother's son of the vendor ;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof ;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors ;

SECONDLY, in the brothers or brothers' sons of the vendor or vendors ;

THIRDLY, in the father's brothers or fathers' brothers' sons of the vendor or vendors ;

FOURTHLY, in the other co-sharers ;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendors ;

SECONDLY, in the brothers or brothers' sons of the vendor ;

THIRDLY, in the father's brothers or fathers' brothers' sons of the vendors ;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any of them the land or property sold or a part thereof.

(2) *Notwithstanding anything contained in sub-section* (1)—

(a) where the sale is by a female, of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's son ;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors ;

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or through her son in case the son has inherited the land or property sold, from his father, the right of pre-emption shall vest,—

FIRST, in the son or daughter of such husband of the female ;

SECONDLY, in the husband's brother or husband's brother's son of such female."

7. The questions which emerge and are projected from the respective stands and contentions of the learned counsel for the parties may now be formulated for the sake of clarity. These are—

1. Whether the unanimous view of the Full Bench in *Karta Ram Mansa Ram and another* v. *Om Parkash Hirda Ram,* (1 supra), is wrong and, therefore, should be overruled ;

2. Whether the majority view of the Full Bench in *Prithi Pal Singh and others* v. *Milkha Singh and others,* (2 supra) is erroneous and calls for reconsideration ;

3. Whether sub-section (2) of section 15 of the Act is an independent self-contained provision or is merely a proviso to the preceding sub-section (1) despite the non-obstante clause with which it begins and ;

4. If so, whether a tenant alone, or both a tenant and a co-sharer can be clothed with the right of pre-emption in cases falling squarely in sub-section (2) of section 15 of the Act by a process of judicial interpretation despite the conspicuous absence of any reference to both.

Adverting now to question No. 1 it straightaway deserves highlighting that the ordinary tenants as a class of pre-emptors were introduced for the first time in the statute by the amendment in section 15 brought about by Punjab Act No. 10 of 1960. Earlier this class of pre-emptors found not the least mention in the statute. At the very threshold is the fact that a Bench of five Judges has already unanimously pronounced upon this major controversy before us in *Karta Ram's case* to the effect that sub-section (2) overrides the preceding section 15(1) and, therefore, the class of pre-emptors referred in section 15(1) cannot claim any right of pre-emption in cases falling under sub-section 15(2) despite the fact that there may be no person who can claim such a right thereunder. Again *Karta Ram's case* was not in isolation but only a culmination and re-affirmance of the longest line of unbroken precedent on this particular point within this Court. Immediately after the amendment by Act 10 of 1960 this very issue arose before this Court with regard to a sale made on the 11th of August, 1960, and was unreservedly answered by Shamsher Bahadur, J., by relying on *Budhan Chaudhry and others* v. *State of Bihar* (3), in the following words in *Debi Ram and another* v. *Smt. Chambeli and another* (4)—

> "*. * *. Likewise, in the present case, the clear effect of the words 'notwithstanding anything contained in sub-sect. (1) is that the provisions of sub-sect. (1) of section 15 giving right of pre-emption to a co-sharer under sub-clause (fourthly) of clause (b) must give way to what

(3) A.I.R. 1955 S.C. 191.
(4) 1963 P.L.R. 500.

is provided for in sub-section (2). In the case of the property to which females have succeeded through their father, brother or husband, the right of pre-emption is given only to very close relations and certainly not to co-sharers."

An identical view was then arrived at by D. K. Mahajan. J., in *Santa Singh* v. *Hazara Singh* (5), with the added reason that the special provisions of section 15(2) with regard to the sales by females in the specific circumstances would exclude the general provisions of section 15(1). Later after referring to the aforesaid authorities Harbans Singh, J. (as the learned Chief Justice then was) took an identical view in *Surjit Singh* v. *Nazir Singh* (6) and opined about the rationale of sub-section (2) of section 15 in the following terms :—

"There is no difficulty in understanding the idea behind the provisions made in sub-section (2). A female may acquire property either by inheritance or by self-acquisition or by gift from others. In each of these cases, she may be a sole owner of the property. The idea is that if the property has come to her by inheritance from her father's side descendants of that side should alone have a right to pre-empt, and if she had inherited the property from her husband, it should be the husband's relations who should have a right to pre-empt."

The Division Bench in *Jai Singh v. Mughia and others,* (6A) then set its seal of approval on the aforesaid view in the following terms :—

"* * *, But sub-section (2) of section 15 starts with a non-obstante clause, and, therefore, the provisions of sub-section (1) have to be read subject to sub-section (2). If a case falls within both the sub-sections, it is sub-section (2) which would apply to it, irrespective of the fact that it could also be covered by sub-section (1)."

(5) 1965 P.L.R. 132.
(6) 1965 P.L.R. 1100.
(6-A) 1967 P.L.R. 475.

Later, in *Mohinder Singh and others* v. *Balbir Kaur and another*, (6B), Tek Chand, J., opined in similar terms by holding that sub-section (2) of section 15 of the Act begins with a *non obstante* clause and is an exception to the rules laid down in sub-section (1). Therefore, where sub-section (2) is applicable the provisions of sub-section (1) would not operate. Consequently a Division Bench consisting of Chief Justice Mehar Singh and P. C. Jain, J., in *Surja Singh and others* v. *Chhotte and others* (7). (The case was decided on May 6, 1969 though reported much later), took an identical view in line with the aforesaid earlier precedent.

8. It was the aforesaid long and unbroken line of precedent within this Court which the Full Bench affirmed in *Karta Ram's case* (supra), in the following words with the observation that not a single authority taking a contrary view could be cited :—

> "There is no merit in this contention. The view taken by this Court consistently is that if a sale falls under section 15(2)(a) of the Pre-emption Act, the application of section 15(1) is excluded. In my opinion, the language employed in section 15(2)(a) is capable of no other interpretation. It says that in spite of anything that has been mentioned in section 15(1) where the sale has been made by a female and of property to which she has succeeded through her brother, then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption qua such a sale will not vest in anybody else, in spite of what has been stated in sub-section (1) of section 15 of the pre-emption Act. The language of the statute being clear and capable of no other interpretation, it is idle to suggest that in the absence of the persons who have a right of pre-emption under sub-section (2)(a) of section 15, other persons referred to in sub-section (1) of section 15 of the Pre-emption Act would also have a right to pre-empt.

(6B) 1968 P.L.R. 752.
(7) 1972 P.L.J. 732.

The persons mentioned in sub-section (1) of section 15 of the Pre-emption Act in such a case have no right of pre-emption is now well settled so far as this Court is concerned."

Again there has been no hint of dissent after the aforesaid authoritative enunciation of the law which was followed by the Division Bench consisting of Gurdev Singh and Gopal Singh, JJ. in *Smt. Birjee* v. *Prithi and others* (8) and by C. G. Suri, J. in *Amar Nath* v. *Smt. Nirmal Kumari and others*, (9), C. S. Tiwana, J. in *Anup Singh and another* v. *Ilam Chand* (10) and lastly by J. V. Gupta, J. in *Chander and another* v. *Chao Khan and another* (11), apart from a host of unreported decisions taking the same view both before and after the rendering of the judgment in *Karta Ram's case*.

9. It is manifest from the above that apart from the rationale the doctrine of *stare decisis* is at once attracted here. Ever since the amending Act 10 of 1960 whereby tenants-at-will were also clothed with the right of pre-emption there has been total unanimity in this Court for two decades on the point. If numbers have some relevance, nearly twenty Judges of this Court at varying times have unreservedly opined that sub-section (2) is an independent provision by way of exception to the preceding sub-section and in fact overrides the same. What deserves particular highlighting in this context is the fact that the very concept of the right of pre-emption has now been abolished within the State of Punjab. The Punjab Pre-emption Act stands wholly repealed and wiped off the statute book by Act No. 11 of 1973. As yet the pre-emption law remains in force in Haryana but even there sometimes rumblings are raised about the advisability of retaining it on the statute book. It is in this context that one has to examine whether this long line of settled law (except for the solitary and minority view of my learned brother Sharma, J., in *Prithi Pal Singh's* case, culminating in the categoric observations of Pandit, J., speaking for a unanimous Bench of five Judges, should now be given the

(8) A.I.R. 1973 Pb. & Har. 289.

(9) 1973 P.L.J. 321.

(10) 1978 P.L.J. 328.

(11) 1980 P.L.J. 7.

go-bye, thus completely unsettling the same and putting it in a ferment afresh. I am clearly of the view that the aforesaid long line of precedent should not now be deviated from even for reasons of judicial propriety well-enshrined in the doctrine of *stare decisis*. In a similar situation the Division Bench in *Mukhder Singh and another* v. *Rarakh Narayan Singh and others* (12) observed as follows :—

> "* * *. My other ground for adhering to the *cursus curiae* of this Court is substantially what has been pointed out recently by a Full Bench of this Court in *Babu Tribani Prasad* v. *Ram Asray Prasad* (13), and what has been expressed by Mukherjee, J., in the case of *Kedar Nath Hazra* v. *Manindra Chandra Nandy* (14), in these words :—
>
> 'The Courts must always hesitate to overrule decisions which are not manifestly erroneous and mischievous, which have stood for many years unchallenged and which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of property (*Coung* v. *Robertson*) (15A).
>
> I have already said that I am unable to hold that the view which has been held in this Court so far, is manifestly erroneous and it is obvious that it is the very opposite of being unjust or mischievous."

Again in *C. Varadarajulu Naidu* v. *Baby Ammal and another* (15), it was rightly highlighted that the evil of unsettling consistent judicial opinion would be much greater than the evil of laying down what is alleged to be bad law and that the Full Bench decisions should, so far as possible, be held to be binding unless they are glaringly bad or patently contrary to the statute itself. In this very

(12) A.I.R. 1931 Patna 285.
(13) A.I.R. 1931 Patna 241.
(14) (1910) 5 I.C. 309.
(15) A.I.R. 1964 Madras 448.
(15A) 30 (4) Macqueen 314.

vein H. R. Khanna, J., in *Maganlal Chhagganlal* (P.) *Ltd.* v. *Municipal Corporation of Greater Bombay and others* (16), has observed as follows :—

> "So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience."

Lastly in this context is the affirmation of the rule in *Maman Rao* v. *Union of India* (17) in the following terms :—

> "It is also true to say that for the application of the rule of *stare decisis*, it is not necessary that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of *stare decisis*. It is, therefore, sufficient for invoking the rule of *stare decisis* that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. *In other words, for the purpose of applying the rule of* stare decisis, *it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as* stare decisis."

10. Following the aforesaid authoritative enunciation of the doctrine, it must necessarily be concluded that the view in *Karta Ram's case* (supra), should now be unreservedly followed and upheld.

(16) A.I.R. 1974 S.C. 2009.

(17) A.I.R. 1981 S.C. 271.

11. However, I am not affirming the said view merely on the basis of *stare decisis*, but equally so on its soundness on principle and rationality. Indeed, Mr. C. B. Goel, the learned counsel for the appellant was unable to assail the ratio in *Karta Ram's* case (supra), by any meaningful argument apart from the one that there did not appear to be an exhaustive discussion of principle. therein. This argument loses sight of the fact that the Full Bench in *Karta Ram's case* (supra) was affirming a long line of unbroken precedent in court which had earlier given various rationales therefor and against which not a single contrary judgment could be cited as stands expressly noticed therein. Nevertheless, it was observed categorically therein apparently that because of the *non obstante* clause, the language of section 15(2) of the Act was capable of no other interpretation except that if a sale falls under Section 15(2) of the Punjab Pre-emption Act, the application of Section 15(1) of the Act would be wholly excluded. Earlier judgments had noticed the fact that sub-section (2) dealt specially with female owners. Not only this, it pertained to the special class of female owners who had inherited the property either through their fathers or brothers or through their husbands. Therefore, the sound canon of construction that a special provision would exclude and over-ride a general one, was equally attracted in interpreting section 15(2) of the Act. The basic idea underlying the enactment by the legislature of sub-section (2) had again been analysed in various judgment to be that of retaining such property within the family of the last male-holder only and that too within his relatively close relations alone. I do not find any reason what so ever to differ and disagree with the aforesaid premises which equally underlie the ratio in *Karta Ram's case* (supra). With the greatest respect, not only am I unable to agree that the observations of their Lordships in *Channan Singh and another* v. *Smt. Jai Kaur,* (18) in any way detract from or erode the ratio of *Karta Ram's case* (supra), but in effect buttress the same so unreservedly as to conclude the matter beyond any shadow of doubt. In *Channan Singh and another's case* (supra), Grover, J. speaking for the Bench analysed Section 15(2) of the Act as follows:—

> ".....The entire scheme of sub-section (2) of Section 15 is that *the right of pre-emption has been confined* to the issues of the last male holder from whom the property

(21) AIR 1970 SC 349.

which has been sold came by inheritance. Looking at clause (a) of sub-section (2) where the property which has been sold has come to the female from her father or brother by succession the right of pre-emption has been given to her brother or brother's son. As has been observed in *Mota Singh v. Prem Parkash Kaur,* (18A) *the predominant idea seems to be that the property must not go outside the line of the last male holder and the right has been given to his male lineal descendants.* Where the sale is by the son or the daughter of such female the right is given to the mother's brothers or their sons. The principle which has been kept in view is that the person on whom the right of pre-emption is conferred must be a male lineal descendant of the last male holder of the property sold. This is so with regard to clause (a) of sub. sec. (2). Coming to clause (b) where the sale is by a female of land or property to which she has succeeded through her husband or through her son in case the son has inherited the same from his father the right of pre-emption is to vest firstly in the son or daughter of such female and secondly, in the husband's brother or husband's brother's son of such female. *Now if the son or daughter of the female who has sold the property could refer to her son or daughter from a husband other than the one from whom the property devolved on her, it would be contrary to the scheme and purpose of sub-sec.* (2) *which essentially is to vest the right of pre-emption in the lineal descendants of the last male holder.....*"

It is manifest from the above that their Lordships have now authoritatively laid down that the intent of the legislature in enacting section 15(2) of the Act was the twin one of confining the right of pre-emption to the issue of the last male holder through whom she had succeeded to the property and to vest the right of pre-emption in the lineal descendants of the last male holders. After this authoritative enunciation, can it possibly be said that a tenant could possibly fit-in into the scheme of the lineal descendants of the last male holder in a sale by a female owner falling within section 15(2) of the Act ?

(18A) ILR (1961) 2 Punjab 614.

12. In the ultimate analysis, it must be concluded on question (I) that the judgment in *Karta Ram's case* (supra) lays down the law correctly and must continue to hold the field and is hereby affirmed.

13. Coming now to question (2), it perhaps suffices to notice that there was common consensus that the issue of the correctness of the majority view in *Prithi Pal Singh case* (supra), does not now directly arise here. Indeed, Mr. C. B. Goel, the learned counsel for the appellant did not raise a single argument against the same. This is even otherwise plain on a bare reference to the said judgment. The primary issue therein was—whether a Hindu female, who had acquired a limited estate prior to 1956, which was enlarged into full ownership by virtue of section 14(1) of the Hindu Succession Act would succeed through the last male holder or not? The majority view affirmed the earlier judgment of the Division Bench in *Jai Singh's* case (supra), to hold that a widow who originally succeeds to her husband's property as a limited owner under the Hindu Law is not deemed to have succeeded through her husband to the absolute and full ownership of the estate but did so by virtue of section 14(1) of the Hindu Succession Act. As a result of this finding the majority view categorically was that the sales by such a widow were pre-emptible only under sub-section (1), and sub-section (2) had no application to her case. Consequently any question with regard to the interpretation or applicability of sub-section (2) would not arise at all and therefore was not even gone into far from being answered, by the majority.

14. It is obvious that herein no question what so ever of any enlargement of the estate under Section 14(1) of the Hindu Succession Act by a female succeeding to a limited estate prior to 1956, even remotely arises. Therefore, the ratio of the majority judgment in *Prithi Pal Singh's case* (supra) cannot at all be attracted. Equally it calls for notice that the issues of the enlargement of a limited female owner's estate inherited before 1956 under Section 12(1) of the Hindu Succession Act has now become wholly academic after the passage of more than 25 years of its enactment. As noticed earlier, no challenge having been raised thereto, I see no reason to differ from the majority view in *Pirthi Pal Singh's* case to which I was a party and the same is hereby affirmed. Question No. (2) supra is, therefore, answered in these terms.

15. Now a plain look at question Nos. (3) and (4) would show that they would so dovetail into each other that it is obviously wasteful to deal with them separately because the issues relevant thereto overlap heavily. It is, therefore, proposed to deal with them together. Inevitably in construing these meaningful issues, the historical perspective of both the intrinsic concept of the right of pre-emption as also the relevant legislation thereon within this jurisdiction cannot possibly be avoided. The modern lawyer need go no further beyond the classic exposition of the purposes and the nature of the law of pre-emption in India by Mahmood, J. in *Gobind Dayal* v. *Inayatullah*, (19). Therein it was observed as follows:—

> ".....It is unnecessary to quote any more passage from the original Arabic text of the Hedaya, which distinctly go to show that the cause of foundation of the right of pre-emption is the conjunction of the pre-emptive tenement with the pre-emptional tenement, *that its object is to obviate the inconvenience or disturbance which would arise by the introduction of strangers, that the right* exists antecedently to sale, and that sale is a condition precedent, not to the existence of the right, but only to its enforcibility."

In this particular jurisdiction the rationale of the custom of pre-emption was noticed in the following terms by Sir James M. Douie in para No. 127 of the Punjab Settlement Manual (4th Edition):—

> "The members of the proprietary body in a true village community are often united by real or assumed ties of kinship. The admission of strangers into the brotherhood was always, in theory at least, a thing to be guarded against and village customs in the matter of inheritance and pre-emption are founded on this feeling....."

This was again more authoritatively laid down by Sir John Edge in delivering the judgment in *Kumar Digambar Singh* v. *Ahmad Sayeed Khan*, (20), in the following words :—

> "But in all cases the object is, as far as is possible, to prevent strangers to a village from becoming sharers in the village. ....."

(19) I.L.R. VII All. 775.

(20 A.I.R. 1914 Privy Council 11.

A Full Bench of this Court in upholding the constitutionality of the Punjab Pre-emption Act in *Uttam Singh* v. *Kartar Singh and others* (20A) held that the main objects underlying sections 15 and 16 were :—

(1) to preserve the integrity of the village and the village community ;

(2) to implement the agnatic theory of the law of succession ; and

(3) to avoid fragmentation of holding.

The seal of approval to this view has been given in *Ram Sarup and others* v. *Munshi and others* (21), in the following words :—

"* * * The grounds for upholding S. 15(a) as reasonable and in the interest of the general public therefore finally resolve themselves into two :

(1) to preserve the integrity of the village and the village community ; and

(2) to implement the agnatic rule of succession.

It would be manifest from the above that the basic rationale underlying the law of pre-emption, under this jurisdiction, is first to maintain the homogeneity and integrity of the agricultural tribe of the particular village community and to retain the property in accordance with the agnatic rule of succession.

16. Adverting now to the legislative history of the pre-emption law within this jurisdiction, it suffices to mention that the rules relating thereto were first enacted in the Punjab Civil Code of 1854. This was later replaced by the Punjab Laws Act (Act No. 4 of 1872) which in turn was amended in 1878. With regard to these provisions it suffices to notice that apart from the basic classes of agnatic pre-emptors only the occupancy tenant found a marginal mention at the bottom of the list of pre-emptors. Those well versed with the incidence of the rights of occupancy tenants need have no doubt that it virtually bordered on ownership. Ultimately by the Punjab Occupancy Tenants (Vesting of Proprietory

(20A) AIR 1954 Punjab 55.

(21) A.I.R. 1963 S.C. 553.

Rights) Act, 1953, this situation was accepted and they were clothed with the rights of ownership. That occupancy tenants form a class entirely apart from the ordinary tenants-at-will or other contractual tenants needs little elaboration. Significantly, therefore, both these classes found not the least mention in the earliest statutory laws of pre-emption. The first Pre-emption Act was enacted in 1905 and sections 11 to 15 therein deal with the right of pre-emption. A reference to the statements of Objects and Reasons of the said Act would show that herein again it was the primary concern for the homogeneity of the agricultural tribes and the maintenance of the agnatic theory of the law of succession which has led to this enactment for the statutory recognition and regulation of the pre-emption law as such. Significantly in the whole of the statute the tenant-at-will or other contractual tenants found not the least place. This Act was then repealed by the present Punjab Pre-emption Act, 1913. Herein again, as originally enacted, the tenants as a class of pre-emptors do not figure anywhere and this position continued for well-nigh half a century till the year 1960.

17. Meanwhile cosmic changes took place in the rural life of the region in the wake of the partition of the country in 1947. This engendered the efflux of the Muslim landholders of the region and the corresponding influx of refugees from West Pakistan as also the agrarian Legislation that followed soon thereafter and the changes in inheritance Laws by the Hindu Succession Act, 1956. Apart from the preceding Ordinances, the Punjab Tenants and Security of Tenures Act, 1950 and the Punjab Tenants (Security of Tenures) (Amendment) Act, 1951, were hurriedly brought on the statute book and then repealed and substituted by the Punjab Security of Land Tenures Act, 1953. This legislation apart from introducing the concept of a ceiling on land holdings also conferred a modicum of a security of tenures on the tenants and a right of purchase in them accruing from long-standing tenancies. However, experience showed that this beneficial legislation in favour of the tenants was sought to be set at naught by the dubious use of the piratical right of pre-emption by unscrupulous landlords. Lands under tenancy were transferred by collusive sales and then pre-empted by agnatic relations under the Punjab Pre-emption Act. It was to protect the tenants from this mis-use of the Pre-emption Act that section 17 of

the Punjab Security of Land Tenures Act was brought on the statute book. A bare look at this provision would show that in a very limited field and hedged by a number of qualifications tenants who had been in a continuous occupation of land exceeding four years were clothed with a right of pre-emption below the descendants of the vendor's grand-father patently to protect them from the abuse of a predatory right which had set at naught the benefits of a secured tenure and the ultimate right to purchase the areas comprised in their tenancies. It was in this context that for the first time a special class of tenants was allowed to enter the fields of pre-emptors primarily to protect them. However, section 17 of the Punjab Security of Land Tenures Act standing by itself was unable to provide an adequate cloak against the dubious practices on the part of the landlords. The Legislature had, therefore, to resort to amendment of the statute. The reasons for doing so authentically stated are instructive and deserve notice *in extenso* :—

> "*Statement of Objects & Reasons.*—It has come to the notice of Government that landowners who are not competent to eject their tenants from lands comprising their tenancies under the Punjab Security of Land Tenures Act, 1953, *are circumventing the provisions of that Act by executing male fide transactions of sales and mortgages with possession in respect of such lands in favour of the tenants. Subsequently such a sale is pre-empted under the Punjab Pre-emption Act*, 1913, *by an eligible pre-emptor with the connivance of the vendor (erstwhile landlord) and the pre-emptor takes possession of the land comprising the tenancy; likewise, such a mortgage is redeemed by the mortgagor (erstwhile landlord); and in either case the tenant is duped and deprived of his tenancy.* Government have decided to safeguard the rights and interests of tenants against such *mala fide* transactions; their tenancies will not be disturbed, and if these have been disturbed already, they will be restored to them by a summary procedure. The tenant (erstwhile vendee) will have also the option to claim, by a summary procedure, restoration of rights of ownership in respect of the pre-empted land on payment of the price paid to him by the pre-emptor."

To effectuate the aforesaid purpose section 17-A and section 17-B were inserted in the Punjab Security of Land Tenures Act, 1953.

18. It is with the aforesaid legislative back-ground that the amendment of section 15 of the Punjab Pre-emption Act by Act No. 10 of 1960 after the passage of 47 years of its original enactment falls into proper perspective. Thereby whilst the long list of the agnatic class of pre-emptors was considerably slashed the tenants had to be clothed with the right of pre-emption at the bottom of the agnatic claimants. This was obviously consequential to the earlier provisions of sections 17, 17-A and 17-B of the Punjab Security of Land Tenures Act. A reference to the Objects and Reasons of Act No. 10 of 1960 makes it manifest that this was not done because of any special concern of conferring a right of pre-emption on a tenant but primarily for affording a modicum of protection to the tenant against the piratical right of pre-emption which was being offensively used against him and to protect his right of purchase granted by section 18 of the Punjab Security of Land Tenures Act as also to reflect the changes in the Inheritance Laws brought about by the Hindu Succession Act. It is instructive to quote the relevant part thereof :—

> "There has been a continuous demand from the public to modify the Punjab Pre-emption Act, 1913. *Village life has been very considerably affected owing to the resettlement of displaced persons hailing from different places, who have since been given lands on quasi-permanent basis but this Act maintains distinction between these persons and local landowners. The Act also hampers private transfers of property to landless persons who are harassed by pre-emption suits after they have settled on the lands and reclaimed them. This also affects the distribution among the tenants of land rendered surplus as a result of ceiling imposed on holdings.* Further, restrictions on the sale of immovable property not only prevent developmental activities but are also inconsistent with the present democratic set-up. In order to remove these serious defects it is essential to amend the Punjab Pre-emption Act, 1913. The Bill aims at achieving these objects."

19. It would be obvious from the above that the legislature itself looked with great disfavour at the Pre-emption Law and the object of the amendment was to constrict the same which was effectuated by materially slashing a large class of pre-emptors existing in the earlier section 15. It was in this context that for the first time the tenants entered the list of pre-emptors and that too at the bottom rung of the agnatic class as also of the co-sharers so as to have virtually a minuscule and residuary right in their absence. It would thus be manifest that the ordinary tenant who is obviously a foreigner to the classic concept and the purpose of pre-emption law had to be introduced as a pre-emptor only because of the very peculiar necessities delineated above and particularly to protect him against the very threat to his right of tenancy and the consequential right of purchase conferred by Section 18. A reference to the subsequent Punjab Act No. 13 of 1964 introducing an amendment in paragraph first of clause (b) of sub-section (2) of Section 15 is again instructive whereby the step-son of the female vendor was inserted in preference to and in exclusion of her own son by another husband, which highlighted the emphasis on the agnatic theory as also the primary purpose of sub-section (2) to confine the right of pre-emption thereunder to the lineal descendants of the last male-holder only. That this was the recognised larger purpose of the Pre-emption Act, is manifest from Section 14 thereof which is as follows :—

> "No person other than a person who was at the date of sale a member of an agricultural tribe in the same group of agricultural tribes as the vendor shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe."

Lastly came the Punjab Act No. 11 of 1973 which wiped the whole of the Pre-emption Act off the statute book within the State of Punjab lock stock and barrel thus climaxing the great disfavour with which it had been looked upon, by its total repeal.

20. It would thus be manifest both from the nature of the right of pre-emption as also the history of the statutory law on the point that the clothing of a tenant with the right of pre-emption by Act No. 10 of 1960 was by way of a clear exception to the fundamental ideas underlying the concept of pre-emption itself. It neither advances

the agnatic theory of succession nor is conducive to the maintenance of the homogeneity of the agricultural tribe of the village community In fact it runs directly counter to both of them because the tenant may be a rank stranger to the agnatic line and equally an alien to the agricultural tribe which may constitute the proprietary body of the village. Learned counsel for the respondents was, therefore, on a firm footing that conferring the right of pre-emption on a tenant was entirely statutory and because of the peculiar necessities of the post-partition situation though in fact it ran against the basic tenets and objects of pre-emption. It calls for reiteration that the right of pre-emption conferred on the tenant under section 15(1) in 1960 was a pure creature of the statute. The real issue in this context, therefore, is whether this purely statutory conferment and that too by way of an exception to the very concept of pre-emption should now be extended and fictionally read into sub-section (2) as well where such a pre-emptor is conspicuous by its absence and where the clear language of the provision does not at all warrant it.

21. Now the true principle for the construction of pre-emption statutes is not in doubt and is well-settled beyond cavil by binding precedents within this Count as also of the final Court. These have totally tilted to the view that in essence the right of pre-emption is a piratical right and a fetter and a clog on the right of ownership which merely has its roots in out-moded custom and archaic history which had to be countenanced as a relic of a feudal past. The Division Bench in *Jai Singh* v. *Mughla* (supra) categorically opined :—

> "***The right of pre-emption is undoubtedly a restriction on the aforesaid fundamental right, though it is no doubt saved by clause (5) of Article 19 of the Constitution, as authoritatively held by the Supreme Court, nevertheless, the right of pre-emption being piratical in nature, *must be strictly construed so as not to confer on any person a right of pre-emption which is otherwise destructive of the fundamental right of property, which right has not been specifically conferred on the intended pre-emptor by the legislature.* Even from this point of view, the consideration placed by me on section 15(2) (b) of the Pre-emption Act, has to be preferred.

The seal of approval on this then has been set in the following words by the final Court in *Radhakishan Laxminarayan Toshniwal* v. *Shridhar Ramchandra Alshi and others* (22):—

> "***The right to pre-empt the sale is not exercisable till a pre-emptible transfer has been effected and the right of pre-emption is not one which is looked upon with great favour by the courts presumably for the reason that it is in derogation of the right of the owner to alienate his property. It is neither illegal nor fraudulent for parties to a transfer to avoid and defeat a claim for pre-emption by all legitimate means. In the Punjab where the right of pre-emption is also statutory the courts have not looked with disfavour at the attempts of the vendor and the vendee to avoid the accrual of right of pre-emption by any lawful means and this view has been accepted by this Court in *Bishan Singh* v. *Khazan Singh* (23) where Suba Rao J., observed:—
>
> 'The right being a very weak right, it can be defeated by all legitimate methods, such as the vendee allowing the claimant of a superior or equal right being substituted in his place'.

and again—

> There are no equities in favour of a pre-emptor, whose sole object is to disturb a valid transaction by virtue of the rights created in him by statute. To defeat the law of pre-emption by any legitimate means is not fraud on the part of either the vendor or the vendee and a person is entitled to steer clear of the law of pre-emption by all lawful means."

Again a powerful and picturesque enunciation of this rule of construction appears in the recent Full Bench judgment of this Court in *Than Singh* v. *Nandu etc.* (24) wherein Bains J., in his order of

(22) A.I.R. 1960 S.C. 1368.
(23) 1959 S.C.R. 878.
(24) 1978 curr.t. Law Journal (Civil) P. & H. 25.

reference styled the pre-emption law as an outmoded one in the modern changed socio-economic conditions because it created a clog on the right of the owner to alienate his property to the person of his own choice and was, therefore, to be strictly construed. Later speaking for the unanimous Full Bench he held that if two views are possible then the one which defeats the right of pre-emption has to be accepted and finally concluded:—

> "*****The vendor can by all legitimate means defeat the right of the pre-emptor. Pre-emption law is a relic of feudalism. It has been repealed in the State of Punjab. It creates a clog on the right of the owner to alienate his property to a person of his own choice. Even if* two interpretations of a document are possible; the one which defeats the right of the pre-emptor is to be accepted."

22. In view of the aforesaid settled judicial approach can it now be said that one should lean to a strained construction in order to extend this piratical right even when the legislature has chosen to constrict it categorically in sub-section (2) of section 15 of the Act? One can some time appreciate the eagerness of judicial conscience to extend and liberally interpret socially beneficent legislation but surely piracy, out-moded custom, and feudalism, are not to be set at large by a process of interpretation.

23. With the aforesaid clear canon of construction in the context of pre-emption law one can now proceed to construe the plain provisions of sub-section (2) of section 15 of the Act. The language thereof is crystal clear. Indeed it calls for notice that at no stage it was, and perhaps can ever be suggested, that there is any obscurity in the provisions thereof. The sub-section begins with a non-obstante clause and is thus clearly by way of an exception to the general provisions of the preceding sub-section (1). The effect of a non-obstante clause for purposes of construction of statute is too well known to call for any elaboration. This sub-section was plainly intended by the legislature to provide for sales made by female owners and further only that class of female owners who had succeeded to the property either through their fathers or brothers or through their husbands. Specifically the legislature made a special provision for this class of vendors excluding them

from general category. The plain purpose evident from the provisions of sub-section (2) is that it confined the right of pre-emption in this context, to the lineal descendants of the last male-holder (to the exclusion of the relations of the female vendor herself) and further constricted this right to the closest of relations only. It is unnecessary to elaborate this aspect because the same has been authoritatively laid down by their Lordships of the Supreme Court in *Channan Singh and another v. Smt. Jai Kaur,* (supra) in paragraph 4 of the report. Again in this context it must be highlighted that sub-section (2) is a special provision providing for the class of pre-emptors in sales made by female vendors only and further constricted by the qualification that the property sold should have been succeeded through a father or brother or a husband. On the hallowed rule of construction that a special rule of law would override a general one it would be equally patent that in this context section 15(1) cannot possibly have any place. To my mind the legislature having made its intent clear and categoric in sub-section (2), it is not for the Court to suit in judgment over the wisdom of its policy, nor do I entertain any doubt about the reasonableness of this provision. The basic and the fundamental postulate of judicial construction is that where the language is clear it should be given its plain meaning and it is not for the Court to read something into it which is conspicuous by its absence. This hallowed rule is so well-settled that it is unnecessary to buttress it with authority.

24. It becomes necessary to advert to a faint suggestion on behalf of the appellants that unless the tenant is inserted as a class of pre-emptors in section 15(2) of the Act, its provisions would be violative of Article 14 of the Constitution. This contention was not seriously pressed at the bar but because of certain observations in the minority judgment in *Pirthi Pal Singh's case* (supra) it has to be taken notice of. Firstly, in this context it calls for notice that the constitutionality of the Pre-emption law was meticulously challenged in this Court and was upheld and that view has been unreservedly affirmed by their Lordships of the Supreme Court without any qualification. Therefore to contend that the plain provisions of section 15(2) are in any way violative of Article 14 is contrary to binding precedent As has already been noticed, it was

for the first time by Act No. 10 of 1960 that the legislature severely slashed the class of pre-emptors and because of the historical and peculiar necessities was compelled to introduce the tenants therein, though at the bottom rung of pre-emptors, in section 15(1). It is patent that there is no fundamental or inherent right to pre-empt sales under the law and prior to 1960 the ordinary tenant did not fall in this class. No person, therefore, can lay claim to any inherent right of pre-emption unless it is conferred by recognised custom or expressly by statute. The question of discrimination or violation of the equality clause in the Article, therefore, cannot even remotely arise, in my view, nor would it be open to anyone to negatively challenge the law on the ground that because it gives the right of pre-emption to certain other categories he would be equally entitled to the same. If these considerations were to be introduced in law then probably the landless residents of the village community would be equally discriminated against because the right of pre-emption had not been conferred upon them by statute. Why not even the Harijans who may be both landless and otherwise a weaker section of the community be not clothed with a similar right, and for that matter why not other weaker sections of the community on basically financial grounds or poverty ? In my view these are considerations entirely for the legislature and not the Courts. No Court need come forward to declare that the right of pre-emption should be conferred on a tenant on larger grounds of policy even where the legislature has not chosen to do so. It may be pointed out that no other judgment apart from the solitary observations in the minority view in *Prithi Pal Singh's case* has so far held that the conferment or refusal of the right of pre-emption on a class would violate the equality clause. I am inclined to the view that no issue whatsoever of the violation of Article 14 can arise merely by the factor of the conferment, exclusion, extension or diminishing of the right of pre-emption of any class by the legislature in its wisdom. Therefore the argument that to avoid any infraction of Article 14-- a strained construction be adopted in order to preserve the constitutionality of section 15(2) — must be altogether abandoned.

25. Now the core of the argument on behalf of the appellant is that sub-section (2) should be read as a proviso to sub-section (1) and by a process of virtually re-writing the statute it be held that in case the class of pre-emptors in section 15(2) is exhausted, resort

be made afresh to sub-section (1) either by introducing all the classes of pre-emptors therein or by selectively adding the tenant alone thereto. In view of the vehemence with which this argument was pressed it becomes necessary to analyse it in some detail.

26. On the aforesaid argument the crucial issue of construction which arises is whether a non-obstante clause framed in classic and categoric terms can by a process of interpretation be wittled down to a proviso. Learned counsel for the respondents raised a twin argument in rebuttal of the stand of the appellant, firstly that it was totally impermissible to read a clear non-obstante clause as a mere proviso and secondly that even if it were possible to do so, no compelling reason or exigency arises herein to do any such violence to the clear language of the statute.

27. On the first aspect it was forcefully pointed out that sub-section (2) of section 15 is on the face of it not a part or a clause of the preceding sub-section (1) but has been clearly labelled seriatum as an independent one by itself. *Prima facie,* therefore, it is a self-contained sub-section and to read it as a proviso or as an explanation to sub-section (1) is not warranted by any canon of construction. The sound argument raised was that it is clearly labelled as an independent sub-section and because of the added fact that it opens with the words 'notwithstanding anyything contained in sub-section (1)', it would in effect become analogous to a separate section. Indeed it was argued with plausibility that sub-section (2) may well have been labelled as either section 15-A or section 16 and the mere fact that it has been made a part of section 15 is no ground for making it subservient or a mere appendage to the preceding sub-section.

28. The impact and the true legal import of a non-obstante clause are so well-settled by principle and precedent that it is not now easy to deviate therefrom. It is unnecessary to elaborate on principle because there is a virtual unanimity of precedent, both in the High Courts and in the final Court itself on the point. In *K. Parasuramaiah* v. *Pokuri Lakashmamma,* (25) the Division Bench succinctly stated the rule as follows:—

> "***It must be understood that a non obstante clause is usually used in a provision to indicate that that provision

(25) AIR 1965 A.P. 220.

should prevail despite anything to the contrary in the provision mentioned in such non obstante clause. In case there is any inconsistency or a departure between the non obstante clause and another provision one of the objects of such a clause is to indicate that it is the non obstante clause which would prevail over the other clause."

To the same effect are the observations in paragraph 35 of the report in *M/s. Shri Ganesh Trading Co.* v. *State of Madhya Pradesh and others*, (26) (Full Bench). Even a more categoric and classic highlighting of the effect of a non obstante clause appears in the following words in *Nawab Bahadur of Murshidabad* v. *Rameshwarlal Ganeriwalla*, (27) :—

"* * *, it seems to me to be only reasonable to suppose that the words 'notwithstanding anything contained in any law for the time being in force' which appear in section 30 refer only to general statutes which by their terms might be construed to impose upon the borrowers a liability exceeding the limits contemplated by that section. *The form of the words used may be regarded merely as a convenient method of repealing inconsistent provisions of such statutes as the Interest Act or the Contract Act* without making any express reference thereto."

29. The final Court is equally emphatic and on the high authority of Chief Justice Patanjali Shastri, C.J., in *Aswini Kumar* v. *Arabinda Bose*, (28), the rule has been enunciated as follows :—

"It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment."

(26) 1972 M.P.L.J. 864.

(27) A.I.R. 1949 Cal. 323.

(28) A.I.R. 1952 S.C. 369.

The aforesaid observations received express affirmance later in *A. V. Fernandez* v. *The State of Kerala*, (29). Lastly in *Budhan Choudhry's case* (supra) their Lordships were construing sections 28 and 30 of the Code of Criminal Procedure and had this to say with regard to the last section which begins with a non-obstante clause :—

> "* * *. Further, the text of section 30 itself quite clearly says that its provisions will operate 'notwithstanding anything contained in section 28 or section 29'. Therefore, the provisions of section 28 and the second schedule must give way to the provisions of section 30."

Following the aforesaid authoritative and binding enunciation in the present case, the clear effect of the words 'notwithstanding anything contained in sub-section (1)' is that the provision of the said sub-section must completely give way to what is provided for in sub-section (2). Or to put it in other words it is a convenient mode of virtually repealing the earlier provisions of sub-section (1) for the purposes of the construction of the later sub-section (2).

30. On the second aspect it has been rightly submitted that even assuming entirely for the sake of argument that in an extreme situation it may be perhaps permissible to do so in the present one there is neither any compelling, factual or legal warrant for this resort of a fictional conversion of a clear non-obstante clause into a proviso. The language of sub-section (2) is precise and plain. At no stage, the learned counsel for the appellant could even suggest that there was any obscurity therein which could possibly warrant the straining of its plain words. The three settled canons of construction, therefore, at once are attracted. Where the language of the provision is clear and categoric it has to be given its plain grammatical meaning and it is unwarranted to supplant one's own ideas in preference to the considered wisdom of the legislature experssed in the clearest terms. Only where the language of the statute is obscure or capable of different meanings would it be permissible to go to other arenas like the objects and reasons of the enacting statute; its preamble; and the pre-existing law; the mischief which Parliament wished to

(29) A.I.R. 1957 S.C. 657.

provide for and the intent of the ultimate remedy spelled out. In other words, the well-known rule in *Heydon's case* may well be attracted but these considerations also arise only if the language is obscure but certainly capable of being given a precise meaning. It is, however, well-settled lastly that if in a statute obscurity borders on unintelligibility and indeed unworkability then it is not within the province of the Courts to legislate in their garb of interpretation or to re-write the provision according to their own likes or dislikes and the true remedy, therefore, lies with the legislature alone. It is obvious that neither of these basic rules of interpretation of statutes can here be possibly brought in to convert a sub-section opening with a categoric non-obstante clause into a proviso.

31. Learned counsel for the appellant Mr. C. B. Goyal had attempted to place reliance on *Vaddeboyina Tulasamma and others* v. *Vaddeboyina Sesha Reddi,* (13), for buttressing his argument that a non-obstante clause may be read as a proviso. Therein their Lordships were construing the provision of section 14 of the Hindu Succession Act. To appreciate the argument it is, therefore, necessary to quote section 14 :—

> "14(1) Any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner :
>
> **Explanation** : In this sub-section 'property' includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner whatsoever, and also any such property held by her as stridhana immediately before the commencement of this Act.
>
> (2) Nothing contained in sub-section (1) shall apply to any property acquired by way of gift or under a will or any other instrument or under a decree or order of a civil Court or under an award where the terms of the gift, will or

(30) AIR 1977 S.C. 1944.

other instrument or the decree, order or award prescribe a restricted estate in such property."

Now a plain look at the aforesaid provisions would show that the contention on behalf of the appellant suffers from a double fallacy. The scheme of section 14 is entirely different. Sub-section (1) is immediately followed by an exhaustive explanation which gave the widest amplitude to the word 'property' used in sub-section (1). It was to slightly curtail this wide amplitude that sub-section (2) follows the explanation to indicate that property acquired by way of gift or under a will or other instrument etc. where the terms thereof expressly prescribe a restricted estate in such property would be excluded from the ambit of section 14(1) and its explanation. In effect it is a provision clarificatory to the explanation and with regard to the applicability of sub-section (1) in a certain situation. It is in the aforesaid peculiar context that the observations in *Vaddeboyina Tulsamma's case* have been made. In the present case, there is neither any explanation to sub-section 15(1) nor is there any attempt to any such explanation etc. and the aforesaid observation would, therefore, be hardly applicable.

32. Again it is plain that the aforesaid sub-section (2) does not *stricto sensu* begin with a non-obstante clause. The known and the classic language of 'notwithstanding anything contained in the section .....' has manifestly and designedly not been used by the legislature here indeed it is in essence a saving clause. It was only intended to limit the application of the explanation which had given the word 'property' in sub-section (1) a very extended meaning. It does not lay down that barring the provision of sub-section (1) or *de hors* it what the state of the law should be. It merely specifies the modus of its application. Therefore, both in letter and spirit sub-section (2) is not the nature of a non-obstante clause.

33. Secondly what deserves notice in this context is that in construing section 14 of the Hindu Succession Act, their Lordships found such obscurity in its meaning that they were compelled to observe as under :—

> " * * *. This is a classic instance of a statutory provision which, by reason of its inapt draftsmanship, has created endless confusion for litigants and proved a paradise for lawyers."

It was in the aforesaid context that the inevitable judicial search for rendering a meaning to an ill-drafted provision had to be launched. It deserves re-iteration that herein it is virtually the common case that the language of section 15(2) is crystal clear. I would, therefore, conclude that the analogy sought to be raised with regard to the observation in **Vaddebeyina Tulasamma's case** in the context of the peculiar provisions and the scheme of section 14 of the Hindu Succession Act is wholly wide of the mark here and indeed irrelevant to the issue before us.

34. Having held on the basic tenets of construction that here there is no warrant for converting of a categoric non-obstante clause into a mere proviso, it appears to me that the fallacy of the argument on behalf of the appellant becomes even more manifest by the startling results that would ensue, if such an interpretation is superimposed on the two sub-sections of section 15. We may first take the case of a female vendor who is the sole owner and has succeeded to the property through her father or brother. In such a case, by virtue of sub-section (2), the right of pre-emption has been severely limited to her brother or brother's son with a purposeful and clear exculsion of her husband or even her own sons or daughters from the class of pre-emptors what to say of other relations. If on the exhausting and the failure of the claimants specified under sub-section 2(a)(i), clauses First, Secondly, Thirdly and Fourthly of sub-section (1)(a) are brought to play then curious results would flow therefrom. Doing so would import in the preferential class of pre-emptors the sons or even daughters or the son's son or the daughter's son of such a female vendor when the whole and obvious purpose of sub-section (2) was to exclude this class of relations. Again, the brother or the brother's son of the vendor herein would come after the aforesaid claimants whereas in sub-section (2) the brothers or the brother's sons were the primary and indeed the sole class of pre-emptors. Equally under clause thirdly even the vendor's brother or the vendor's brother's son of such a female vendor could also come in as a class of pre-emptors in preference to the tenants. Now this would lead to a patent absurdity because as has already been shown and authoritatively held the whole concept underlying section 15(2) is that in the case of sales by female owners of property which they have succeeded through maleowner, the same should remain in the lineal descendants of the last male-owner through whom it was derived. The moment clause (a) of sub-section (1) is made applicable such a female vendor would become a fresh stock of descent for

the purposes of pre-emption with the result that the property would pass even to her remote relations to the total exclusion of the similar relations of the last male-owner. The very purpose and concept of the agnatic succession and the maintenance of the homogeneity of the agricultural tribe of the village would thus be completely blasted. In a way the whole thrust of the enactment of sub-section (2) would be set at naught by such a construction.

35. Even more glaring are the anomalies of such a construction where the sale is made by a female who is the sole owner of the property and has succeeded to the same through her husband or through her son. Taking up first the case of succeeding through her husband the law is dogmatic under sub-section (2)(b) (First) to the exclusion of her own flesh and blood by giving preference to the son or daughter of the husband over her own progney. It deserves recalling and reiteration that the statute had to be amended by Act No. 13 of 1964 to make the intent clear that the property was not to be allowed to go out of the stock of the last male holder, namely, the husband and his sons and daughters who have the pre-eminent right of pre-emption. In such a situation if sub-section 1(a) is brought into play, then even though the property had been succeeded through the husband the preferential class of pre-emptors would first be the son or the daughter of the female vendor from another husband (which were in terms excluded under sub-section 2(b) and further even the son's son or daughter's son of such a female vendor from the second husband. This apart even in property to which she has succeeded through her husband the right of pre-emption will under sub-clauses Secondly and Thirdly, then pass on to her brother or brother's son or even to her father's brother or father's brother's son who would be totally alien to the village community where her husband's land would be located and would equally violate the concept of the maintenance of agnatic succession. Thus, what the Legislature clearly intended and effectuated by the amendment introduced, the Punjab Act 13 of 1964 would be completely negated.

36. The more one examines this aspect the acuter grow the anomalies as a result of fictionally converting sub-section (2) as a proviso to sub-section (1). Take now the case where the sale is made by a female owner of a share out of joint land to which she has succeeded either through her father or brother or through her husband or son. What would be the clause of pre-emptors

in such a situation in the event of the exhausting of those mentioned in sub-section (2) would raise even a more acute conundrum. If clause (b) of sub-section (1) is also later to come into play then a co-sharer would also be in the class of pre-emptors. It was not disputed at the bar that in a particular case a co-sharer may be rank stranger to the family stock. Herein under section 15(1)(b) he ranks above the tenant in the class of pre-emptors. The whole concept of the retention of property in the agnatic line or the maintenance of the homogeneity of the agricultural community is given a go-by the moment such a construction is adopted.

37. In a flanking attempt to evade the aforesaid anomaly, it was then sought to be suggested on behalf of the appellant that the class of relations in sub-section (1) should be excluded and on the failure of the heirs under sub-section (2) the tenant alone may be added as a residuary class of pre-emptors. This curious attempt to exclude the blood-relations in sub-section (1) who are the primary and the preferential class of pre-emptors can be justified on no modicum of reasoning and little justification could be raised as to why the blood relations should be denied the right of pre-emption despite the whole concept of the agnatic theory underlying the pre-emption law. In fact, this would be glaringly discriminatory betwixt relations **inter se.** Under section 15(2), agnatic relationship would be the primary source for the class of pre-emptors, whilst blood relations under Sec. 15(1) are now sought to be excluded altogether to give pre-eminence to the tenant who otherwise figures at the bottom of all the classes of pre-emptors in sub-section (1). A construction of this nature would reduce the law of pre-emption herein to a jigsaw puzzle beyond the pale of solution.

38. Faced with the unending contradictions and anomalies resulting from such a stand, Mr. C. B. Goel, learned counsel for the appellant, was apparently in a quandary and unsure of his ground. It was first his stand that after the preferential class of pre-emptors mentioned in sub-section (2) are exhausted then clauses First to Fourthly of sub-section (1)(a) would come into play in the case of a sole female owner who succeeds to the property through male owners. Similarly, in case of sale of share out of the joint land by such a female owner clauses First to Fifthly of sub-section 1 (b) would again apply thus bringing in the co-sharer in the class of pre-emptors as well. A similar stand was sought to be taken with

regard to clause (c) of sub-section (1) as well. However, this position was then sought to be retracted from to contend that in all the aforesaid clauses (a), (b) and (c), the relation pre-emptors should be selectively cut out and the tenant and the co-sharer, as the case may be, should alone be added as a class of pre-emptors. At a later stage the counsel was unsure whether the co-sharers under clause (b) should be allowed to come in or not, because in such a situation he would defeat the claim of the tenant even though he might well be a rank stranger to the agnatic stock. With the greatest respect, I am unable to see on what principle such a scissors and paste operation on the statute can be performed and the same re-written selectively by a fictional process of interpretation. The attempt at such a construction appears to be as a patent trespass into the field of legislation under a veiled cloak and garb of its interpretation. To obliterate the non-obstante clause and to start reading a sub-section as a proviso to another and further to selectively exclude some provisions thereof from their plain and natural application appears to me as not even remotely the province of interpretation but plain violence to the language of the statute and a deliberate obliteration of its purpose and provisions.

39. Much ado was then raised with regard to the provisions of Sections 17 and 17-A of the Punjab Security of Land Tenures Act, 1953. Herein what one has to keep in mind at the threshold is the cardinal rule that in interpreting a self-contained statute like the Punjab Pre-emption Act, 1913. it would not be permissible to go to the definitions or provisions of an altogether different Act enacted 40 years after the same for seeking a clue to the former's interpretation. This apart, there first seems to be a patent mis-apprehension of the purpose and import of Section 17 of the Punjab Security of Land Tenures Act, 1953. The detailed reasons which impelled the legislature to bring-in these provisions have already been delineated in paragraphs Nos. 17 to 19 of this judgment. This provision was incorporated in the Act primarily for protecting the tenant against the devious use of the pre-emption right for ousting him from his tenancy and thus from the back door take away the security of tenure and the right of purchase which was sought to be conferred upon him by Agrarian Legislation. Section 17 was certainly not enacted for any larger purpose of inducting the ordinary tenant as a necessary class of pre-emptors. Indeed, if this was the object then

the provision would have been straightaway made in the Punjab pre-emption Act, and not deviously in an altogether different statute confined primarily to Agrarian Legislation. Equally what deserves highlighting in the context is that by Section 18 of the Punjab Security of Land Tenures Act, 1953 and the predecessor legislation, a statutory right had been conferred for the first time on tenants to purchase the land under their tenancy on the satisfaction of the conditions prescribed therein. Actual practice, however, showed that this ultimate benefit of acquiring the right of ownership was being nullified by collusive transfers made by landlords followed by the exercise of the pre-emptive right by their agnatic relations, whereby the very tenancy itself was jeopardised. Equally, the sale of the land under his tenancy by the landlord to his tenant was liable to be pre-empted by a very large class of agnatic pre-emptors under the unamended Section 15 of the Punjab pre-emption Act, 1913 and it was in order to protect the tenant from this predatory right under Section 17 of the Punjab Security of Land Tenures Act, 1953 was introduced. A plain look at the provisions of Section 17 shows that it begins with a reference to Section 18 and by bringing the tenants in a class of pre-emptors, it is sought to protect them from the predatory right of pre-emption from the relations or co-sharers of the vendors. A tenant had to be in the class of pre-emptors to enable him to better defend himself against the long line of the agnatic pre-emptors existing under the earlier unamended Section 15 The rest of the provisions of Section 17 would further indicate that the right was given only with regard to the land comprised in the surplus area in the hands of big landowners. Again, this right was conferred only on tenants who had held the land in continuous occupation for four years or more. There were innumerable further qualifications attached primarily with an eye to protect the tenancy. It is obvious that Section 17 had conferred a very limited right for a very limited purpose on the tenant below the primary class of agnatic pre-emptors for the peculiar purposes of Agrarian Legislation and for the protection of his tenancy which was sought to be undermined by the devious practices of instituting pre-emption suits through agnatic relations after a collusive sale by the original landowners.

40. Coming now to Section 17-A of the Punjab Security of Land Tenures Act, 1953, which was inserted by Punjab Act No. 14 of

1959, in the statute, it deserves highlighting that there was apparently a patent misapprehension in the reading of Section 17-A by the learned counsel for the appellant as if it conferred a right of pre-emption on the tenant. Plainly, it does not do so and is indeed far from putting the ordinary tenant in the class of pre-emptors. The reasons and objects for its insertion have already been referred to in paragraph Nos. 17 to 19 of this judgment. All that Section 17-A did was to raise a defence in favour of the tenant against the piratical right of pre-emption vested in others against him when a sale was made in his favour. Truly construed, Section 17-A therefore, is indeed the construction of the pre-emptive right and in derogation of such rights conferred by the Punjab Pre-emption Act rather than any extension thereof. It in no way confers any right of pre-emption on a tenant as such. To put it in other words, it only provides a shield to the tenant against the sword of pre-emptive right vested in the agnatic claimants. To say that because the legislature has chosen to protect a tenant under Section 17-A, then he should be clothed with the self-same piratical right as well and in particular with regard to sales made by female vendors who have succeeded to the property through their fathers, brothers or husband, appears to be neither logical nor warranted.

41. I am clearly of the view that Sections 17 and 17-A of the Punjab Security of Land Tenures Act, 1953 cannot give the least handle to the tenants to claim an inherent right to enter the class of pre-emptors against sales covered by Section 15(2) of the Act by a process of interpretation when the legislature has not chosen to place them therein.

42. Before parting with this aspect of the case, it becomes necessary to reiterate the twin postulate which underlines the enactment of Sub-section (2) of Section 15 of the Act. It is obvious that the legislature deliberately classified female vendors succeeding through their fathers, brothers, husbands or sons into a particular class and expressly treated them favourably or in any case differently from the ordinary run of male-vendors as also of female vendors of self-acquired proportions or categories other than those specified in sub-section (2). Historically, it deserves recalling that the particular class of the Hindu Women Estate which was liberated from the fetters of such ownership by Section 14 of the Hindu

Succession Act was sought to be treated specially and favourably against the piratical right of pre-emption. Secondly, what is writ large over Section 15(2) of the Act is the legislative intent the alienated property which had been succeeded through the male-owner within the lineal descendants of the male-owner to the total exculsion of the line of female-owner. This intention was in line with the earlier custom which provades throughout the spirit of the pre-emption law. Indeed, this is made wholly manifest when an analytical eye is turned on the amendment of Section 15(2) of the Act by Punjab Act 13 of 1964. Prior to that doubts had arisen whether under sub-section (2), the son of a female vendor from another husband would be within the class of pre-emptors or not. The legislature set its face totally against any diversion of the alienated property out of the lineal descendants of the original owner. It made no secret of its intent or what according to it was the clear purpose of sub-section (2). This appears in the following words of the Objects and Reasons of the Amenling Act :—

> *"It appears that the intention of the Legislature in enacting section 15(2) of the Punjab pre-emption (Amendment) Act (Punjab Act No. 10 of 1960) was to vest the right of pre-emption in the off-springs of the husband in regard to the property to which a female had succeeded through such husband.* But this intention is not clear from the words used in clause (b) of Section 15(2). The clause as it now stands may well include the son or daughter of such female by some other husband as also the brother or brother's son of a husband of such female other than the one through whom she succeeded to the property.
>
> Another flaw in the provision is that the off-spring of the same husband through another wife are excluded by the wording used in existing provisions which seems to have resulted inadvertantly.
>
> The amendment has been made retrospective in effect so as to extend the benefit of this amendment to such persons as may have become entitled to it since the enactment of Act 10 of 1960 but for the inadvertent flaw in the drafting of the clause (b) of Section 15(2). Hence this Bill"

By the Amending Act it was the former husband's son from another wife who was given the right of pre-emption not only in preference

to but even to the total exculsion of such female vendor's own sons and daughters. Now if the legislature has chosen to exclude her own flesh and blood namely, her son or daughter from another husband from the class of pre-emptors, would it stand to reason that a mere tenant of such a female vendor should now be inducted in the class of pre-emptors by a process of interpretation. The pointer is clear that the whole brooding spirit of Section 15(2) of the Act is to keep the alienated property in the lineal descendants of the last male-holder and to confine the pre-emptive right to the closest relations. It is significant that under sub-section (2) even the distant relations of the last male-holder are excluded (in sharp distinction to the long line of agnatic claimants under sub-section (1), and the relations of the female vendor succeeding through a male-owner are totally excluded with the clear purpose of preventing her from becoming a fresh stock for the purposes of pre-emption. Under sub-section (2), the legislature has deliberately limited and diminished the class of number of pre-emptors. The whole object seems to be cut down the number of pre-emptors in the case of female vendors who have succeeded to the property through the specified class of male-owners. Against this glaring intention of the legislature to turn the opposite way and extend the list of the class of pre-emptors by thrusting the whole lot of relations in sub-section (1) as also the co-sharers or tenants therein is, in my view, frustrating the very object and the intent of the legislature in enacting sub-section (2) and thus treating female vendors succeeding through specified class of male-owners as a distinct class of its own in whose case the number of pre-emptors was to be diminished and reduced rather than extended.

43. Again, it would appear that even if entirely for argument sake the stand of the appellant's counsel were to be accepted, it would again hardly make any difference in construing sub-section (2) of Section 15 of the Act. If sub-secion (2) is to be read as a proviso and consequently the word "Provided" were to be substituted for the words "notwithstanding anything in sub-section (1)" in the very opening part thereof (as has been contended on behalf of the appellant), the resultant interpretation would normally still be the same. Even when so read, it would be plain that sub-section (2) would still deal with a special class of vendors, namely; female vendors only and not only that, but with the further clarification that the property

alienated must have been succeeded to through a father, brother or husband. Clearly, therefore, such a proviso would over-ride the preceding general provisions and would be by way of an exception thereto since the former deals only with male vendors generally as also with female vendors who have not come into the property through the specified class of male-owners. It would appear consequently that even if sub-section (2) is read as a proviso, it would exclude the special class of female-vendors as an exception out of the general provisions of sub-section (1), which would have no application.

44. Lastly, though the contention projected on behalf of the appellant in terms was that sub-section (2) is to be read as a proviso to the preceding sub-section (1), a fuller and deeper analysis of the stand of the appellant discloses that its true practical effect would be to read sub-section (1) curiously as a proviso to sub-section 15(2) of the Act. It was not even remotely the appellant's case that in the case of a female vendor who had succeeded to the property through her father, brother or husband, the provisions of Section 15(1) would be attracted in the first instance. It was the clearest stand that in such a case, it is sub-section (2) which has to be necessarily invoked and applied. Only after all the clauses of pre-emptors mentioned in sub-section (2) are exhausted, it would be then alone that resort may be made to the class of pre-emptors in the earlier sub-section (1). In essence, therefore, the construction sought to be canvassed was to first apply sub-section (2) and thereafter, if necessary, to selectively make resort to sub-section (1). Plainly, therefore, sub-section (1) can come into play only later after all the classes of pre-emptors in sub-section (2) are exhausted. Therefore, the earlier sub-section (1) is sought to be converted into a proviso to the primarily applicable provisions of sub-section (2) in the particular class of female vendors succeeding through male-owners. With the greatest respect, this would be what is proverbially called — to put the cart before the horse. The result of the appellant's stand is that the earlier permission of sub-section (1) is sought to be made a provision to sub-section (2) against the settled canons of construction that a proviso would inevitably follow the main clause and obviously cannot precede the same.

45. In the **ultima ratio**, the stand on the part of the appellant can only be effectuated by fictionally reading into sub-section (2), a

detailed added clause thereto in somewhat following terms :—

"15 (2)— (a) — (b)

(c) If no person having a right of pre-emption under clause (a) or clause (b) aforesaid exists or seeks to exercise it, then the right of pre-emption in respect of the agricultural land and village immovable property shall vest :—

(i) where the sale is by a sole female-owner who has succeeded to the property through her father, brother, husband or son, in persons, specified in sub-clauses, first, secondly, thirdly and fourthly of section 15(1)(a) ;

(ii) Where the sale is by a female-owner who has succeeded to the property through her father, brother, husband or son, of a share out of the joint land or propetry and is not made by all the co-sharers jointly in persons, in sub-clauses, first secondly, thirdly, fourthly and fifthly of Section 15(1)(b) ;

(iii) where the sale is by a female-owner, who has succeeded to the property, through her father, brother, husband or son to property owned jointly and is made by all the co-sharers jointly, in persons, specified in sub-clauses, first, secondly, thirdly, and fourthly of Section 15(1)(c).

The spinal question is whether one can re-write the statute in the above terms and insert all the aforesaid clauses therein which the legislature has advisedly not chosen to do. It was said more than seven decades ago by Lord Mersey in **Thompson** v. **Goold and Company**, (31).

"It is a strong thing to read into an Act of Parliament words which are not there and in the absence of clear necessity, it is a wrong thing to do."

Therefore, the issue herein is whether reading whole clauses into the statute would not amount to a naked usurpation of a legislative function in the thin guise of interpretation. I am second to none in

(31) 1910 A.C. 409.

being alive to the dangers of an overly strict literal construction which may sometimes thwart and hamstring the intention of the legislature. A Judge faced with the difficulty of interpreting an obscure statute has not to fold his hands, but must proceed to the task of finding the true intent of the legislature, but nevertheless this exercise is limited by the texture of the statute and as was said by Denning, Lord Justice in **Seaford Court Estates Id.** v. **Asher,** (32). "A Judge must not alter the material of which it is woven but he can and should iron out the creases". Keeping that analogy in mind, it seems to me that herein to convert a categoric **non obstante** clause into a proviso and insert a whole clause (c) in Section 15(2) is not ironing out a crease, but weaving canvas into silk. Judicial activism within limits is undoubtedly a meritorious trait. However, carried to extreme lengths, it has within it the seeds of judicial anarchy. Herein as also in other walks of life, the falsehood of extremes has to be avoided. It is well in this context to recall the classic rebuke of Lord Simond to Denning, L.J. in **Magor and St. Mellons Rural District** *Council and Newport Corporation* in the following terms :—

> ".... The duty of the court is to interpret the words that the legislature has used; those words may be ambiguous, but, even if they are, the power and duty of the court to travel outside them on a voyage of discovery are strictly limited: see, for instance, **Assam Railways & Trading Co. Ltd.** v. *Inland Revenue Commissioners,* (33) and particularly the observations of Lord Wright."

> "The second part of the passage that I have cited from the judgment of the learned Lord Justice is no doubt the logical sequel of the first. The court, having discovered the intention of Parliament and of Ministers too, must proceed to fill in the gaps. What the legislature has not written, the court must write. This proposition, which restates in a new form the view expressed by the Lord Justice in the earlier case of **Seaford Court Estates Ltd.** v. **Asher** (to which the Lord Justice himself refers), cannot be supported. It appears to me to be a nacked usurption of the legislative function under the thin disguise of interpretation. And it is the less justifiable when it is guess-work

(32) 1949 (1) K.B. 491.

(33) 1952 A.C. (House of Lords) 189.

with what material the legislature would, if it had discovered the gap, have filled it in. If a gap is disclosed, the remedy lies in an amending Act."

However, the limits placed on judicial law reform by the nature of the forensic process and the somewhat dangerous consequences of unrestrained judicial law making, are well epitomised in the following classic words of Lord Scarman in **Duport Steels Ltd. v. Sirs**, (34).

"Legal systems differ in the width of the discretionary powers granted to judges; but in developed societies limits are invariably set, beyond which the judges may not go. Justice in such societies is not left to the unguided, even if experienced, sage sitting under the spreading oak tree.

Within these limits, which cannot be said in a free society possessing elective legislative institutions to be narrow or constrained, judges, as the remarkable judicial career of Lord Danning MR himself shows, have a genuine creative role. Great Judges are in their different ways judicial activists. But the Constitution's separation of powers, or more accurately functions, must be observed if judicial independence is not to be put at risk. For, if people and Parliament come to think that the judicial power is to be confined by nothing other than the judge's sense of what is right (or, as Selden put it, by the length of the Chancellor's foot), confidence in the judicial system will be replaced by fear of it becoming uncertain and arbitrary in its application."

(46) To conclude the discussion on questions Nos. (3) and (4) (formulated in para No. 7 above), it is held that sub-section (2) of section 15 is an independent self-contained provision and cannot be read as a mere proviso to the preceding sub-section (1). As a necessary consequence, the answer to question No. (4) is rendered in the negative and it is held that a tenant or a co-sharer has no right of pre-emption in cases falling squarely within sub-section (2) of Section 15 of the Act.

(34) (1980) 1 W.L.H. 142.

(47) In the light of the answers rendered to the four basic questions aforesaid, it is plain that the appellant must fail in *Kalwa' 'v. Wasakha Singh and Ors.* RSA 67 of 1969. The right of pre-emption therein was claimed primarily on the ground of being a tenant with regard to sales made by female-owners who had succeeded to the agricultural land from their father or husband. As regard the claim to pre-emption on the basis of a co-sharer, no meaningful argument was addressed against the rationale of the judgment of the first appellate Court. This appeal is, therefore, dismissed with no orders as to costs, in view of the rather intricate issues involved.

(48) It was the stand of the learned counsel for the appellants that apart from the basic issue which has necessitated this reference to the Larger Bench, other questions also arise for determination. We accordingly direct that these appeals be now placed before a learned Single Judge for disposal in accordance with the answers rendered to the legal questions.

D. S. Tewatia, J.

(49) I have had the privilege of perusing the judgment prepared by the learned Chief Justice and despite the great regard and esteem in which the views expounded by him are held by me, with respect, I find it difficult to concur in the view herein taken by him and, therefore, the separate opinion that follows hereafter.

(50) Whether the right of pre-emption of all or of only some of the persons enumerated as pre-emptors under section 15(1) of the Punjab Pre-emption Act (Act 1 of 1913), hereinafter referred to as the Act, stands excluded by virtue of sub-section (2) in regard to a sale dealt with by the said sub-section (2), even in the event of failure to avail the right by the persons enumerated as pre-emptors under sub-section (2), is the significant question of law that requires answering.

(51) The solitary fact bearing upon the question posed and which needs noticing to view the legal proposition in right perspective is that the pre-emptors in all the four R.S.As. Nos. 67 and 97 of 1969, 538 of 1979 and 2596 of 1980 — tenants in R.S.As. Nos. 67 and 97 of 1969 and 2596 of 1980 and the sons of the two of the joint vendors in R.S.A. 538 of 1979—are from the category of pre-emptors listed under section 15(1) of the Act, while the sales sought to be pre-empted by them

are alleged to have been made by persons and of property mentioned in sub-section (2) of section 15 of the Act. Sharma, J. by his order dated 17th April, 1980 has referred these appeals for a decision by a larger Bench of seven Judges and that is how these appeals are before us.

(52) The provisions of section 15 of the Act took the present shape as a result of amendment effected thereto by the Punjab Pre-emption (Amendment) Act, 1960. From then on, the question posed above has cropped up for consideration before this Court, not once but a number of times, and the Court, whether speaking through a Judge in Chamber or through larger Benches, has spoken with one voice in answering the question in the affirmative. Despite such unanimity of opinion in the Court over a long period, a nagging doubt has persisted as to the correctness of the view and the doubts have unquestionably been sustained by a genuine conviction that the legislature could not have intended such illogical a result, as would emerge if the answer to the question posed is to be in the affirmative, as would be presently shown.

(53) First the bird's eye view of the decisions rendered by this Court and reasoning employed therein in support of the conclusion that that the provision of sub-section (2) of section 15 of the Act is exhaustive of the pre-emptors having right to pre-empt the sale mentioned therein and that even in the event of persons mentioned in sub-section (2) thereof failing to seek pre-emption, the persons mentioned in sub-section (1) thereof as pre-emptors would not be entitled to do so.

(54) In *Debi Ram and another* v. *Smt. Chambeli and another*, (35), Shamsher Bahadur, J. (as he then was) sitting singly while dealing with the scope of section 15(2) of the Act regarding the right of co-sharers to pre-empt a sale by a female, held that—

> "the words 'notwithstanding anything contained in sub-section (1)' as used in sub-section (2) of section 15 of the Punjab Pre-emption Act, indicate that whatever is stated in sub-section (2) would prevail over the rights recognised in sub-section (1). Sub-section (2) 'deals with the sale

(35) 1963 P.L.R. 500.

of properties belonging to females to which they have succeeded either paternally or through their husbands. In either event, the co-sharers do not come into the picture at all as possible pre-emptors. They are excluded, even if the Khata is joint, from exercising the night of pre-emption to which they are entitled under sub-section (1), clause (b) fourthly of section 15".

In *Santa Singh* v. *Hazara Singh and others*, (supra) D. K. Mohajan, J. (as he then was) in considering the provisions of sub-sections (1) and (2) of section 15 of the Act adopted the criteria that a specific provision would exclude a general provision. He treated sub-section (2) as specific provision and provisions of sub-section (1) as general provision and held that provisions of sub-section (2) excluded the application of the provisions of sub-section (1) to the subject dealt with by the former provision.

(55) In *Mohinder Singh and another* v. *Mohinder Kaur and others*, 36A D. K. Mahajan, J. (as he then was) merely followed his earlier decision in *Smt. Joginder Kaur* v. *Jasbir Singh* (36).

(56) In *Jai Singh* v. *Mughla and others*, (37) Narula, J. (as he then was), while delivering the opinion for the Division Bench to which Mahajan, J. (as he then was) was a party — made a reference to the fact that sub-section (2) of section 15 of the Act starts with a non-obstante clause and, therefore, the provision of sub-section (1) had to be read subject to sub-section (2). If a case fell within both the sub-sections, it was sub-section (2) which would apply to it irrespective of the fact that it could also be covered by sub-secion (1). He was also of the view that even if the provision was capable of two possible interpretations, as indeed it does appear at first sight, he would have preferred to construe the same in such a way as to preserve to the vendor and the vendees their fundamental right guaranteed under article 19(1)(f) of the Constitution to acquire, hold and dispose of property. The right of pre-emption was, undoubtedly, a restriction on the aforesaid fundamental right, though

(36) 1965 P.L.R. 1158.
(36-A) 1966 P.L.R. 835.
(37) 1967 P.L.R. 475.

it was, no doubt, saved by clause (5) of article 19 of the Constitution, as held by the Supreme Court, nevertheless, the right of pre-emption being piratical in nature, must be strictly construed so as not to confer on any person a right of pre-emption which was otherwise destructive of the fundamental right of property, which right had not been specifically conferred on the intended pre-emptor by the legislature.

(57) Pandit, J., while delivering the opinion for a Full Bench of five Judges in *Karta Ram and another* v. *Om Parkash*, (38) after favourably referring to the consistent view taken by this Court in *cases, Debi Ram and another* (supra); *Santa Singh* (supra); *Jai Singh* (supra); and *Mohinder Singh and others* v. *Balbir Kaur* (supra) observed that—

> "In my opinion, the language employed in section 15(2) (a) is capable of no other interpretation. It says that in spite of anything that has been mentioned in section 15(1) where the sale has been made by a female and of property to which she has succeeded through her brother, then the right of pre-emption shall vest in her brother or brother's son. In other words, the right of pre-emption *qua* such a sale will not vest in anybody else, in spite of what has been stated in sub-section (1) of section 15 of the Pre-emption Act. The language of the statute being clear and capable of no other interpretation, it is idle to suggest that in the absence of the persons who have a right of pre-emption under sub-section (2) (a) of section 15, other persons referred to in sub-section (1) of section 15 of the Pre-emption Act would also have right to pre-empt."

Mehar Singh, C.J. in *Surja and others* v. *Smt. Chhotto and others* (39), after favourably referring to the earlier decisions, merely followed the earlier decisions in *Debi Ram and another* (supra), *Santa Singh* (supra); and *Surjit Singh* v. *Nazir Singh*, (supra).

(38) 1970 P.L.J. 815.
(39) 1972 P.L.J. 732.

(58) In *Surjit Singh's case Harbans Singh, J.* (as he then was) also held to the same effect, as in the earlier decisions.

(59) *In Amar Nath* v. *Smt. Nirmal Kumari and others* (supra), Suri, J. merely followed the earlier decisions. So also Bains, J. in *Mohinder Singh and another* v. *Har Kishan and another* (40), C. S. Tiwana, J., in *Anup Singh and another* v. *Ilam Chand* (supra) and J., V. Gupta, J. in *Nand Ram* v. *Pehlad Singh and others* (41) *and Chander and another v. Chao Khan and others* (supra).

(60) The inadequacy of the decisions referred to above shall come out in bold relief when viewed in the light of indicia well-settled by authoritative text and judgments in regard to the interpretation of statutes. Notice may be taken, in the first instance, of the following passage from the celebrated text of 'Statutory Construction' by Crawford — at pages 269 and 270 — highlighting the fact that it is the intent of the legislature which constitutes the law of any statute which should be given effect to, even if it necessitates supplying of omissions.

> "But, inasmuch as it is the intention of the legislature which constitutes the law of any statute and since the primary purpose of construction is to ascertain that intention, such intention should be given effect, even if it necessitates the supplying of omissions, provided, of course, that this effectuates the legislative intention. It would seem that the only time the omitted case might be included within the statute's operation, would be when the legislature intended to include it but actually failed to use language which would, on its face, cover the omitted case. The inclusion would then be justified, if from the various intrinsic and extrinsic aids, the intent of the legislature to incorporate the omitted case, could be ascertained with a reasonable degree of certainty....."

(40) 1976 P.L.J. 605.

(41) 1979 P.L.J. 307.

Lord Blackmurn in *Bradlaugh* v. *Clarke,* (42) expounded the same view in the following words :

> "All statutes are to be construed by the Courts so as to give effect to the intention which is expressed by the words used in the statute. But that is not to be discovered by considering those words in the abstract, but by inquiring what is the intention expressed by those words used in a statute with reference to the subject-matter and for the object with which that statute was made; it being a question to be determined by the Court, and a very important one which was the object for which it appears that the statute was made. The meaning of the words is to be found not so much in strict etymological propriety of language, or even in popular use, as in the subject or occasion on which they are used and the object that is intended to be attained. The subject-matter with which the legislature was dealing, and the facts existing at the time with respect to which the legislature was legislating, are legitimate topics to consider in ascertaining what was the object and purpose of the legislature in passing the Act."

In *Sheik Gulfan and others* v. *Sant Kumar Ganguli,* (43) it has been observed in this connection by their Lordships as follows :

> "Very often in interpreting a statutory provision, it becomes essential to have regard to the subject-matter of the statute and the object which it is intended to achieve. That is the reason why in dealing with the true scope and effect of the relevant words, the context in which the words occur, the object of the statute in which the provision is included, and the policy underlying the statute, become relevant and material....."

Lord Coke in a celebrated case: *Haydon's case* (44) handed down the following dictum in this regards :

> "To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope, and object of the

(42) (1883) 8 A.C. 354.
(43) AIR 1965 S.C. 1839.
(44) (1584) 3 Co. Rep. 7b.

whole Act; to consider (1) what was the law before the Act was passed; (2) what was the mischief or defect for which the law had not provided; (3) what remedy Parliament has appointed; and (4) the reason of the remedy."

A further and relevant concept that every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter, had the forceful backing of Lord Davey in *Canada Sugar, Refining Co.* v. *R.* (45).

(61) Lord Viscount Simonds, while delivering his opinion in *Attorney-General* v. *Prince Ernest Augustus of Hanover* (46), underlined with greater emphasis the above concept in the following words:

"I conceive it to be my right and duty to examine every word of a statute in its context, and I use the word 'context' in its widest sense ..... as including not only the enacting provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari-materia, and the mischief which I can, by those and other legitimate means discern the statute was intended to remedy."

In *Karta Ram's case* (supra), what was till now the binding precedent, there is no discussion whatsoever — it merely approved the earlier view which had run, no doubt, consistent. In the earlier case, Mahajan, J., as already observed, took the view by believing that to a provision of this nature, the well-known cannon of construction that specific excludes the general was applicable and, therefore, sub-section (2) being specific excluded sub-section (1) which was general in nature. Narula, J. additionally sought to shore up the above view by adding that where two constructions were possible, one that went against the pre-emptor had to be adopted.

(62) With great respect, the learned Judges, who have so far happened to construe the provisions of section 15 of the Act, have

(45) (1898) A.C. 735.
(46) (1957) A.C. 436.

taken rather too simplistic a view of the provisions and have altogether avoided consideration of the consistencies and incongruities that arise from the construction that they have put on sub-section (2) of section 15 of the Act.

(63) Now let us see as to how an answer in the affirmative to the question posed leads to illogical results in the application of the provisions of section 15(1) and (2) of the Act.

(64) The analysis shall, however, have to be attempted in the light of the objectives underlying the right of pre-emption. These objectives have been underlined by the legislature both while framing the Act or attempting an amendment thereto and by the Court, whenever a challenge happened to be posed to the constitutionality of the Act or a given provision thereof.

(65) To have the correct perspective, a look back on the historical past of this provision would be rewarding. Right of pre-emption in this part of India was first put in concrete shape in section 13 of the Punjab Civil Code of 1854. Section 13 was replaced by sections 9 to 20 of the Punjab Laws Act of 1872. The Act of 1872 gave primacy to a co-sharer, as would be clear from the provisions of sub-section (a) of section 12 of the said Act, which were in the following terms:

> "12. If the property to be sold or the right to redeem which, to be foreclosed is situate within, or as a share of a village, the right to buy or redeem such property belongs, in the absence of a custom to the contrary.,
>
> (a) first, in the case of joint undivided immovable property, to the co-sharers;
>
> * * * * * *
> * * * * * *
> * * * * * *."

(66) Basic object of right of pre-emption in so far as it concerned the village, being to prevent the incursion into the community of strangers in race and religion and thus protect compactness of village communities and, for that reason, this right was considered a mere corollary of the general principles regulating the

succession to and power of disposal of land and since it was the last means by which a natural heir could retain ancestral property in the family when he was unable to altogether prevent an act of alienation by the holder of the estate, the 'Punjab Laws Acts' appeared to be failing in the avowed object, as these laws merely regarded the village as it stood without any great regard to its historical foundation inasmuch as it gave all co-sharers similar footing subject to the proof of some special custom. Consequently, under the general law, that is, where no special custom was proved, an agnate of the vendor, merely as such, had no special preference over a non-agnate, even if the agnate was a son of the vendor and the family or tribe tie which underlay the whole scheme of pre-emption, as it does other restrictions on the power of alienation, was lost sight of. The result, to some extent, was, instead of strengthening the cohesion of the village, to weaken it, inasmuch as a co-sharer, for example, a moneylender, who had no real connection with the agricultural community, was in a better position than an actual blood-relation or tribe's men of the vendor, who held separate land in the village.

(67) The Act of 1905, which replaced the provisions of sections 9 to 20 of the Punjab Laws Act of 1872 and, later on, the Act of 1913, which replaced the Act of 1905, first aimed at reshaping the family or the tribal base of the village; where that failed, they aimed at preserving the integrity of the village as it stood at the time the Acts were passed and when that again failed, they aimed at securing the land to the agriculturists. New legislation on the subject was also necessitated by the passing of the Land Alienation Act, 1900, enacted to put a stop to the gradual passing of the proprietary rights from agriculturists to non-agriculurists in satisfaction of debts or otherwise — a process much hastened by the famine of 1897 and by the enormous growth of population resulting in extreme subdivision of the land.

(68) A Full Bench of this Court in *Uttam Singh* v. *Kartar Singh*, A.I.R. 1954 Punjab 55, distilled from the above history the following four as the objectives underlying section 15 of the Act :

(1) to preserve the integrity of the village and the village community.

(2) to avoid fragmentation of holdings;

(3) to implement the agnatic theory of the law of succession ; and

(4) to reduce the chances of litigation and friction and to promote public order and domestic comfort.

All but the last one of them had been underscored by their Lordships of the Supreme Court in *Ram Sarup etc.* v. *Munshi and another* (supra).

(69) It is these objectives, that the legislature intended to achieve that dictated from time to time the choice of instruments in achieving these objectives—that is, the persons, who were selected to exercise the right of pre-emption. Such persons were to be those by whose exercise of this right the underlying objectives of the Act or the provision in question were to be promoted. Two objectives, viz. Objectives (1) and (3) above, were sought to be achieved by conferring the right upon such persons as were entitled to succeed the vendor under the personal law applicable to such a vendor. To achieve Objective (2) above, the co-sharer was also clothed with the right of pre-emption.

(70) The order in which different categories of pre-emptors have been enumerated by the legislature is indicative of its priority or preference for the achieving of the given objective.

(71) The co-sharer all through, barring the Punjab Laws Act of 1872, has been mentioned after exhausting the persons who, but for the sale, would have been entitled to succeed to the agricultural land of the vendor. Since this is so even after the amendment of 1960, that means that the achieving of Objectives (1) and (3) above were given priority by the legislature over the achieving of Objective (2).

(72) An occupancy tenant, who being almost as good a member of the village agricultural community as any other land-owning agriculturist appeared in the list of pre-emptors, though placed at the fag-end, right from 1872, but the inclusion of tenant-at-will in

the list of pre-emptors advanced none of the afore-mentioned objectives, and, therefore, a tenant-at-will did not figure till 1960 in the list of pre-emptors.

(73) It was as a result of the amendment effected in 1960 that the tenant-at-will also was given right to pre-empt. The inclusion of the tenant in the list of pre-emptors as such was not dictated by the objectives that had inspired till then the framing of the pre-emption legislation. The inclusion of the name of the tenant was, on the other hand, dictated by the awareness of the fact that a tenant in actual cultivation of the land expends labour and capital on the land and makes at times non-arable land arable and an arable land more fertile and that if his tenure is placed on more secure basis or he is given a hope of securing the ownership of the land under his tenancy, he is likely to exert more in the aforesaid direction and food production would receive impetus. Hence, in the event of the land under the tenant being sold by the owner, the former's claim to purchase the same was given statutory recognition. In so providing, the legislature had fallen in line with the concept that the land should belong to the tiller an idea which had earlier inspired the enactment of Security of Land Tenures Act, 1953. Vesting of Proprietary Rights Act, 1953, and the Village Common Lands Act of 1953. The inclusion of the name of the tenant in the list of pre-emptors through the amending Act of 1960 was in some measure, pointedly goaded by the provisions of section 17 and 17-A of the Security of Land Tenures Act, where, under the former provision, the tenant's right to pre-empt the sale was recognised for the first time and, under the latter provision, the legislature went to the extent of making a sale in favour of a tenant non pre-emptible.

(74) If, as observed earlier, the objectives that the legislature had set for itself to achieve, governed the selection of the person who had to be invested with the right of pre-emption to achieve these objectives, then, atleast so far as a co-sharer and a tenant is concerned, it would be absolutely immaterial whether the land, that was to be pre-empted, had been sold by a male or the sale was by a female or her son or daughter, and whether the land had been inherited by her from her father or brother or from her husband or son, or it happened to be self-acquired. In the event of the pre-emptors in the sequence of priority coming above them, either not

availing of their right or being non-existent, the co-sharer or the tenant, as the case may be, would have a right to assert his right of pre-emption—the co-sharer to achieve the objective and avoidance of fragmentation of holdings and the tenant to promote noble objective of securing land to the tiller and the related objective of 'grow more food'. To hold otherwise is to uphold an incongruous situation that if the sale had been effected by the last male-holder, that is, father and brother in one case and husband and son in another case of the female, then both the co-sharer and the tenant, after the list of persons, under sub-section (1) of section 15 of the Act, whose right to pre-empt is based upon their agnatic connection with the vendor, is exhausted, can pre-empt the sale, but not so when sale of that very property is effected by the female heir or her son and daughter of the last male-holder of the property in dispute, if the list of persons, under sub-section (2) of section 15 of the Act, claiming pre-emption on the basis of their agnatic connection with the last male-holder is exhausted.

(75) If the view so far voiced by this Court is accepted to be the correct view, then an intention would have to be attributed to the legislature, which goes contrary to the objectives that the legislature had intended to achieve by enacting the legislation in question and framing the list of pre-emptors and also thereunder fixing the sequence of priority.

(76) It does not stand to reason that the concern of the legislature for avoiding fragmentation of holdings by giving a right of pre-emption to a co-sharer suddenly disappeared when it faced the question of pre-emption by a co-sharer of a land, sale whereof happened to be effected by a female, who had inherited that property from the source envisaged in sub-section (2) of the Act. Equally, one might again wonder as to what happened to those noble ideals that inspired the legislature to include, for the first time, the tenants in the list of pre-emptors enabling them to pre-empt the sale in a given event effected by a male-owner, whatever may have been the sources of his acquisition of the said land of a female owner of a land, of which she became the owner without inheriting from the two sources specified in sub-section (2), when it came to giving a right to a tenant to pre-empt a sale effected by a female or her son or daughter, of a property that they had succeeded to from the

sources mentioned in sub-section (2). Should one attribute to the legislature, a loss of memory when it took up for enacting the provision of section 15(2) or, should we take it that by then the concern for the tenants suddenly took leave of the authors of the legislation. I am of the view that it would be uncharitable to attribute such an inconsistency and irrationality to the legislature. It may be a different matter if somehow the language used in the provision by the legislature is somewhat inadequate by reason of inadvertent omission. But then, if the literal reading of the language of a statute runs counter to the avowed intention animating the authors of the legislation to enact the given provision and if the Court is clear in its mind about the legislative intent which the language used in the provision as a vehicle to convey the same has failed, then the provision be made worthy of conveying that intent, even if a word or two, here or there, is added or subtracted or even if a whole sentence is added or subtracted therefrom. The following observations in this regard of Venkatarama Ayyar, J., in *Tirath Singh v. Bachittar Singh and others*, (47), clearly underscore the desirability of the above indicated course of action in the given situation of textual inadequacy of the given provision :

> "It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, 'Where the language of a statute', in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a Construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

In order to have some idea as to the true intent of the legislature, the Court would have regard to the objective that the legislature wished to achieve by amending in 1960 the sub-section (1) of section 15 and recasting the existing 'explanation' thereto into sub-section (2) thereof. However, before dealing with the above aspect

(47) A.I.R. 1955 S.C. 830.

a reference to the provisions of section 15, as it stood before and after the amendment, would be desirable :.

SECTION 15 BEFORE THE AMENDMENT OF 1960.

"15. Subject to the provisions of section 14 the right of pre-emption in respect of agricultural land and village immovable property, shall vest—

(a) where the sale is by a sole owner or occupancy tenant or, in the case of land or property jointly owned or held, by all the co-sharers jointly, in the personss in order of succession, who but for such sale would be entitled, on the death of the vendor or vendors, to inherit the land or property sold ;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—

firstly, in the lineal descendants of the vendor in order of succession ;

secondly, in the co-sharers, if any, who are agnates, in order of succession ;

thirdly, in the persons, not included under firstly or secondly, above, in order of succession, who but for such sale would be entitled, on the death of the vendor, to inherit the land or property sold ;

fourthly, in the co-sharers ;

(c) if no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it,—

firstly, when the sale affects the superior or inferior proprietary right and the superior right is sold, in the inferior proprietors, and when the inferior right is sold in the superior proprietors ;

secondly, in the owners of the Patti or other sub-division of the estate within the limits of which such land or property is situate ;

thirdly, in the owners of the estate ;

fourthly, in the case of a sale of the proprietary right in such land or property, in the tenants (if any) having rights of occupancy in such land or property ;

fifthly, in any tenant having a right of occupancy in any agricultural land in the estate within the limits of which the land or property is situated.

Explanation.—In the case of sale by a female of land or property to which she has succeeded on a life tenure through her husband, son, brother or father, the word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded."

SECTION 15 AFTER THE AMENDMENT OF 1960.

15. (1) The right of pre-emption in respect of agricultural land and village immovable property shall vest—

(a) where the sale is by a sole owner,—

FIRST, in the son or daughter or son's son or daughter's son of the vendor ;

SECONDLY, in the brother or brother's son of the vendor ;

THIRDLY, in the father's brother or father's brother's son of the vendor ;

FOURTHLY, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof ;

(b) where the sale is of a share out of joint land or property and is not made by all the co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' sons of the vendor or vendors ;

SECONDLY, in the brothers or brothers' son or the vendor or vendors ;

THIRDLY, in the father's brothers or father's brother's sons of the vendor or vendors ;

FOURTHLY, in the other co-sharers ;

FIFTHLY, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof ;

(c) where the sale is of land or property owned jointly and is made by all the, co-sharers jointly,—

FIRST, in the sons or daughters or sons' sons or daughters' son of the vendors ;

SECONDLY, in the brothers or brother's sons of the vendors ;

THIRDLY, in the father's brothers or father's brother's sons of the vendors ;

FOURTHLY, in the tenants who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof ;

(2) Notwithstanding anything contained in sub-section (1),—

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest,—

(i) if the sale is by such female, in her brother or brother's son ;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors ;

(b) where the sale is by a female of land or property to which she has succeeded through her husband, or

through her son in case the son has inherited the land or property sold from his father, the right of pre-emption shall vest,—

FIRST, in the son or daughter of such female ;

SECONDLY, in the husband's brother or husband's brothers son of such female."

The objective in enacting the amending Act of 1960 and reshaping the provisions of existing section 15(1) of the Act, besides the one of taking note of the changes witnessed by the society between the years 1913 and 1960, like the partition of the country leading to the settling of the displaced persons in villages thus loosening in consequence the compactness of the village society, the amelioration of the conditions of the tenants, as already observed, by giving them right in the land which they tilled, was to shorten the list of the pre-emptors and remove therefrom such persons whose inclusion therein, of coerse, had earlier been partly dictated by the Land Alienation Act, 1900, which, when it was intended to safeguard the interest of the agriculturists, who were rapidly being bought out by the money-lending classes, and turned into mere surfs and partly to maintain the tribal homogeneity of the village. This objective was sought to be achieved by subjecting section 15 to the provisions of section 14, which provision is in the following terms :

"14. No person other than a person, who was at the date of sale, a member of an agricultural tribe, in the same group of agricultural tribes, as the vendor, shall have a right of pre-emption in respect of agricultural land sold by a member of an agricultural tribe."

Now let us focus attention on the objectives that the legislature intended to achieve by moulding the existing explanation to section 15 into sub-section (2) thereof.

(77) The legislature had recognised much earlier the necessity of dealing specifically with the sale effected by a female of the property to which she had succeeded through her husband or son

or father or brother. In the Punjab Act of 1905, the 'explanation' added to section 12 was in the following terms :

> "Explanation II. In the case of sale by a female of property to which she has succeeded through her husband, son, brother or father, the word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded."

A perusal of this explanation shows that it conferred right of pre-emption upon the 'agnates' of the specified last male-holder, whether the female vendor had succeeded to the property absolutely or only got a life tenure therein. However, the explanation of section 15 of the Act, which replaced explanation to section 12 of 1905 Act above, brought about one fundamental change, that is, it limited the rights of 'agnates' of the specified last male-holder to the pre-emption of sale by the females only of such a property, wherein she had acquired by inheritance only a 'life tenure'. If, for instance, she under the existing law was entitled to succeed to the aforesaid male-holder absolutely, then the expression 'agnates' would be taken in the sense in which it has been used in the earlier part of the provision of amended section 15, that is, 'agnates' of the female vendor. When so viewed, obviously her 'agnates' would not be in her husband's family, but in her father's family. That means, in the event of failure of pre-emptor's have preferential right of pre-emption in sequence of priority over the 'agnates', it would not be the agnates of husband or son, who would have a right of pre-emption, even though the female vendor has succeeded to the agri cultural land from her husband or son.

(78) The phenomenon that she could succeed absolutely to her husband or son or father or brother was no longer in the realm of speculation as, after the passing of the Hindu Succession Act of 1956, a female held all her properties, of which she was legally possessed, absolutely and, after the operation of the said Act, she as a matter of right, so far as the intestate succession was concerned, succeeded to the property, whether coming from one source or the other, absolutely.

(79) Apparently, the explanation, as it stood under section 15 of the Act, to an extent, went against the object that underlay the

right of pre-emption, that is, to keep the property in the family of the last male-holder, in so far as it related to the agricultural property, to which the female had succeeded through her husband or son and, therefore, the explanation in question required to be recast. Yet another reason for recasting the 'explanation' to section 15 was that it provided for the 'agnates' to assert their right of pre-emption only when the female was the vendor of agricultural land to which only when she had succeeded through her husband, son, brother or father, but not when that very land happened to be sold by her son or daughter, who had succeeded through her to her husband or son or her father or brother, as the case may be. Further, since from section 15(1) the expression 'agnate' had been removed by 1960 amendment, so the expression in the explanation thereto 'the word agnate in this section' would have conveyed no sense, as after amendment of sub-section (1), the word 'agnate' occurred in section 15(1) no where except in the explanation itself. Yet another reason that warranted recasting of the existing explanation to section 15 was to bring it in line with the preceding provision of sub-section (1) in regard to the number of pre-emptors. The legislature having restricted the number of pre-emptors in the agnatic line to vendor's father's brother and father's brother's son and if the explanation to section 15 had been allowed to stand as it was, then the result would have been that while in regard to the sale of the self-acquired property of the female, the blood-relations only of a certain degree could lay claim to pre-emption, but in regard to property to be succeeded to through either of the two sources, the agnates of any degree could lay claim to pre-emption. Hence, it was to remove these illogicalities that the explanation was reconstructed in the form of the present sub-section (2) of section 15 of the Act.

(80) From the above, it is clear that the reasons for moulding the existing explanation to section 15 of 1913 Act into sub-section (2) of section 15 after the amending Act of 1960 were those enumerated above and not the fact that the legislature intended thereby to limit the number of persons entitled to pre-empt merely to those who have been mentioned under sub-section (2) in regard to the sale dealt with in the said sub-section.

(81) Having regard to the objectives behind the amendment of section 15 of the Act and the literal and grammatical construction of sub-section (2) leading to illogical results and landing one

in a welter of inconsistancies in the matter of application of two sub-sections of section 15, the irresistible inference that follows is that sub-section (2) was intended to serve the same purpose as the pre-amendment explanation to section 15 which it replaced, that is of achieving the objective of agnatic principle of succession, that is, of giving primacy over others to the agnates of a limited degree of the specified last male-holder of the inherited property which the female or her son or daughter happen to sell. Hence, what the authors of the amendment of section 15 of the Act intended by giving the existing explanation to section 15, the shape it has acquired in sub-section (2) of section 15 of the Act was to place the pre-emptors mentioned in sub-section (2) at number one in sequence of priority over the pre-emptors listed under sub-section (1) of section 15 of the Act.

(82) This alone could be the intention of the legislature and if this construction of sub-section (2) is adopted, then sub-section (2) would have to be read as under :—

"(2) Notwithstanding anything contained in sub-section (1)—

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption, *in the first instance,* shall vest—

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors ;

(b) where the sale is by a female of land or property to which she has succeeded through her husband or through her son in case the son has inherited the

land or property sold from his father, the right of pre-emption *in the first instance*, shall vest,—

FIRST, in the son or daughter of such husband of the female ;

SECONDLY, in the husband's brother or husband's son of such female."

It was, however, contended on behalf of the vendees that where two constructions are possible of the provisions in the Act, then one that defeats the right of pre-emptor should be preferred, as the right of pre-emption is piratical in nature. The aforesaid submission was sought to be sustained by pressing into service *Thana Singh* v. *Nandu* (48).

(83) There is no dispute with the proposition that right of pre-emption does put a clog on the right of vendor to dispose of his property to anybody of his choice, and of vendees to acquire it, but since the exercise of right of pre-emption and the relevant provisions of the Act supplying such a right had been held to be in public interest by their Lordships and were thus held to constitute a reasonable restriction on the the constitutional right of the vendor and vendee and for that reason these provisions of the Act were held not to be suffering from the vice of unconstitutionality, so, to the extent the right of pre-emption which thus stands saved, being a statutory right is exercisable within the statutory limits. The ratio of the aforesaid judgment could be applicable where one is in doubt as to the legislative intent. But here is a case, where no two views about the legislative intent can be entertained. The legislature had merely intended the persons mentioned in sub-section (2) as the persons in the sequence of priority constituting the first group of pre-emptors above the persons listed as pre-emptors above the persons listed as pre-emptors under sub-section (1) of section 15 of the Act.

(84) It was, however, argued before us that if the category of pre-emptors listed under sub-section (2) of section 15 of the Act

(48) 1978 Cur. L. J. (Pb. - Har.) 25.

merely constituted a category of pre-emptors which, in point of preference, came above such pre-emptors as were listed in sub-section (1) of section 15 of the Act, then even her own son or daughter or son's son or daughter's son would be brought in as pre-emptors, when they are from a husband other than the one whose property, after being inherited by her, was being put to sale, which was sought to be pre-empted, when the whole objection of sub-section (2) (b) of section 15 of the Act, as amended by the Punjab Act No. 13 of 1964, was to exclude such of her sons and daughters.

(85) In my opinion, that would not be a correct way of reading the legislative intent (See page 53 of the present judgment for 'Objects and Reasons' of the Amending Act).

Previous to the amendment, section 15 (2) (b) (i) was in the following terms :

> "15 (2) (b) where the sale is by a female of the land or property to which she has succeeded through her husband or through her son, in case the son has inherited the land or property sold, from his father, the right of pre-emption shall vest—
>
> (i) First, in the son or daughter of such female.
>
> (ii) * * * * * *."

After the amendment, it read as under :

> "15 (2) (b) where the sale is by a female of the land or property to which she has succeeded through her husband or through her son, in case the son has inherited the land or property sold, from his father, the right of pre-emption shall vest—
>
> (i) First, in the son or daughter of such *husband of the* female.
>
> (ii) * * * * * *."

The amendment was of merely a clarificatory nature. Their Lordships of the Supreme Court in *Channan Singh and another* v. *Smt.*

Jai Kaur, (supra), held that, even without the said amendment, it was clear that the legislature had intended that only such son and daughter of the female vendor, as bore agnatic relationship with her husband whose property, after being inherited, was being sold by her, were entitled to pre-empt the sale as forming the first category given in sub-section 2(b) of section 15 of the Act.

(86) The legislature, however, did not intend that her own flesh and blood was to remain altogether excluded, even when close agnatic relations of her husband did not exist to pre-empt the sale. It is not without significance that unlike clause (a), where the legislature listed only brother and brother's son of the female as pre-emptors, in clause (b) when it came to provide the pre-emptors, for pre-empting sale of the property, of which the last male-holder was the husband of the female, it did not remain content by mentioning son or daughter of such husband of the female, but in paragraph (ii) of clause (b), it further mentioned her such husband's brother or, brother's son as pre-emptors. The reason for this departure, in my view, was dictated by a concern on the part of the Legislature that while in regard to pre-emption of the property dealt with in clause (a), after the exhausting of pre-emptors mentioned in clause (a), the relation pre-emptors listed in sub-section (1), who were to stake their claim to pre-emption, bore close (agnatic) relationship to the last male-holder, that is, father or brother of the female, but in case of pre-empion to property dealt with in clause (b), such would not have been the case and, therefore, the legislature provided, so to say, a second line of defence tc keep the property within the agnatic relations of the last male-holder by naming as pre-emptors brother and brother's son of the husband of the female.

(87) It may, however, be urged that the above rationale would fail in regard to clause (a) of sub-section (2) if the vendor instead of being the female happened to be her son or daughter, in that after exhausting the list of pre-emptors mentioned in clause (a) of sub-section (1) are to be given the right to pre-empt, then such latter pre-emptors would bear no agnatic relationship with the last male-holder of the property, which was subject-matter of the sale and sought to be pre-empted.

(88) It may be observed that in a case like this, where the property by succession had gone in the hands of maternal grand children, it had already gone beyond the circle of agnatic relations and,

therefore, the legislature must have considered it sufficient to safeguard the interest of the maternal grand father's family by mentioning vendor's maternal uncle and materal uncle's son as the pre-emptors, in the absence of whom it might have been considered more relevant that the effort should be to keep the property within the family of the vendor by availing the list of pre-emptors given in sub-section (1) of section 15, for, as already observed, by the time the amendment of 1960 came to be effected, the original objective underlying the law of right of pre-emption to maintain the tribal homogeneity of the village had become impossible to be achieved as a result of influx of a large number of people from West Pakistan after partition into the villages which now form part of the State of Haryana and, therefore, the legislature, by the amedment of 1960, removed the subjection of section 15 to the provisions of section 14 and in order to confine the right of pre-emption within the very close relations of the vendor, it pruned the list of the relation pre-emptors and in doing so, it did not wholly keep in view the agnatic relationship, otherwise, in sub-section (1) of section 15 in the first category, it would not have included daughter's son as one of the pre-emptors.

(89) It was then argued that if the proposed construction of sub-section (2) of section 15 of the Act is accepted, then its practical effect would be to read sub-section (1) curiously as a proviso to sub-section (2) of section 15 of the Act which really tantamounts to putting the cart before the horse.

(90) The argument, in my opinion, is bereft of any basis. In effect, sub-section (1) of section 15 does not resume the place of proviso to sub-section (2) of section 15. The manner, in which I have, interpreted the two sub-sections of section 15, it is section 15(2) that, in a way, can be read as a proviso to sub-section (1) thereof and not vice versa.

(91) Lastly, the argument, based on the doctrine of **stare decisis**.

(92) As I observed in the very inception of the judgment that the view, correctness whereof has been debated before this larger Bench, had, no doubt, held the field for long and, therefore, the Court would be extremely averse to upturn it, unless the view under

challenge is held to be manifestly erroneous or unreasonable or unjust or productive of public hardship or inconvenience.

(93) In my opinion, the current view, when viewed in the light of foregoing discussion, with great respect, is manifestly erroneous, unreasonable, unjust and patently contrary to the statutory intent and therefore, despite implicit respect that the doctrine of **stare decisis** commands, I cannot but hold that the current view no longer deserves to be adhered to.

(94) Now reaches the stage to consider the partisan submission advanced on behalf of the tenant-pre-emptors that tenants alone from the list of pre-emptors under section 15(1) of the Act were entitled to pre-empt a sale dealt with under section 15(2) of the Act, in the event of failure of the pre-emptors listed under section 15(2) to do so. Mr. C. B. Goel appearing for the tenant-appellant in R.S.A. 67 of 1969 argued that the legislature by enacting sub-section (2) of section 15 of the Act in any case had intended to exclude all but the tenant and the co-sharer, in the event of persons listed as pre-emptors in sub-section (2) had either not availed of their right or were non-existent, that is, blood-relations of vendor listed in sub-section 15(1) were alone intended to be excluded.

(95) The learned counsel sought to sustain his contention by emphasising that sub-section (2) would be violative of article 14 of the Constitution of India if an intention is spelled out therefrom that it envisaged the exclusion of the tenant from pre-empting a sale dealt with under sub-section (2), even in the absence of the pre-emptors mentioned therein and, therefore, this sub-section has to be read down in order to avoid a challenge to its constitutional validity based on article 14 of the Constitution which, otherwise, clearly arise when regard is had to the fact that a tenant has a right to pre-empt the self-acquired property of a female, but he stands debarred from exercising the same right in respect of the land acquired by a female through her husband or father, which fact would amount to introducing invidious discrimination by a process of judicial interpretation. I am, however, unable to see any reason or logic in the contention.

(96) The right of pre-emption is a creature of statute and anybody who enjoys it does so because it has been conferred upon him

by the statute. If a person has been given right to pre-empt sale of a given property, he cannot come round and say that he should be entitled to pre-empt sale of another given property, even though a right to that effect had not been given to him by a given provision of the statute. He cannot say that the provision which had excluded him from asserting his right of pre-emption in regard to that other property is violative of article 14, in that he had been discriminated against. For one thing, the discrimination arises when persons similarly placed are dissimilarly treated. Here, what the legislature has done is that it has categorised the land in two classes in one class it has given right to all tenants and in the other it has excluded, say, all tenants from asserting their right of pre-emption. Surely, in regard to the other class of land, no tenant can say that he has been discriminated against.

(97) What is more, if this argument is accepted to be valid one, then with what logic can it be said that the provision of sub-section (2)—if it is accepted as it is—suffers from vice of unconstitutionality only because it had excluded tenants from exercising right of pre-emption in regard to sale covered by the said sub-section (2) even though he had the right to pre-empt under section 15(1)? Why would this provision not suffer from the same vice of unconstitutionality, because it had excluded some other persons too who had a right of pre-emption under sub-section (1)—a right which because of being higher in sequence of priority was superior to that of the tenants? So, if his argument of reading down the provision of sub-section (2) in order to save it from the vice of unconstitutionality has to be resorted to, then consistency and logic demands that it would have to be done not only because in its present state it discriminates against one of the persons listed as pre-emptors under sub-section (1), that is, tenants, but because it discriminates against all persons, who were listed as pre-emptors under section 15(1) of the Act, more tellingly so because such other pre-emptors happened to be placed above the tenants in the sequence of priority under section 15(1).

(98) I am, therefore, clearly of the opinion that no such distinction can be drawn between the persons listed as pre-emptors under sub-section (1) while examining their right to pre-empt a sale effected by a female of a property that she had succeeded to through sources mentioned under sub-section (2).

(99) It was then argued by Mr. Goel that since the ushering of the socialistic pattern of society and the concept of 'land should belong to the tiller' as one of the hallmarks of that pattern had inspired the legislature to include the tenant in the list of pre-emptors, so the tenant-pre-emptor fell in a category apart from the relation-pre-emptors and, therefore, the exclusion of tenant could not have been contemplated by the legislature while enacting sub-section (2). Basing himself on this hypothes the learned counsel maintained that the exclusion from the ambit of sub-section (2) of only the relation-pre-emptors should be presumed and not of the tenant. The exposing of speciousness of this argument requires no more effort than pointing out that if specialistic fervour alone had guided the legislature in including the tenant as one of the pre-emptors under sub-section (1), how is it that they placed him as a pre-emptor at the fag-end of the list. It deserves highlighting that when it came to the pre-empting of a female's self-acquired land or such land, which she had come to own without inheriting it from either of the two sources mentioned in sub-section (2) the tenant figured in the order of priority at the last, but we are required to believe that socialistic intent of the legislature suddenly registered effervesence of such a proportion that when it came to enact sub-section (2) it placed the tenant as one of the pre-emptors above not only the relation-pre-emptors, but also over the co-sharer in regard to the pre-empting of sale of the land mentioned in sub-section (2), in the event of failure of the pre-emptors mentioned in sub-section (2) to pre-empt. It deserves noticing that though in the Security of Land Tenures Act, the concern for tenants pulsated all through, even then the legislature while enacting section 17 thereof, did not jack up the right of the tenant to pre-empt the sale of the land which he tilled, above certain categories of the ognate relations of the vendors, as would be clear from section 17 itself, which is in the following terms:

> "17. Notwithstanding anything to the contrary contained in any law, usage or contract, and subject to the provision of section 18, tenant of a land-owners other than a small land-owner;
>
> (i) who has been incontinuous occupation of the land comprised in his tenancy for a period exceeding four years the date of the sale of the land or foreclosure of the right to redeem the land or; or

(ii) in case of a sale or foreclosure that has taken place or shall take place within a period of three years from the commencement of this Act and there is no tenant who has acquired a right under clause (i).

(a) * * * * *

(b) * * * * *

shall, in preference to the rights of other pre-emptors as provided in Punjab Pre-emption Act, 1913 (Act 1 of 1913), except the descendants of vendor's grand-father, be entitled to pre-empt the sale or foreclosure of the land other than the land comprised in the reserved area of the land-owner in the manner prescribed in that Act within one year from the date of the sale or foreclosure, as the case may be:

* * * * * *
* * * * * *
* * * * * *

I am, therefore, of the view that an interpretation of the kind, as suggested by Mr. Goel, of sub-section (1) and (2) of section 15 of the Act is not in consonance with logic and bristles with the same inconsistencies, as have already been observed and shown while analysing the correctness of the view that the list of the pre-emptors given in sub-section (2) is exhaustive, that is, even if no pre-emptor mentioned under sub-section (2) is available, then too the sale could not be pre-empted by the pre-emptors mentioned in sub-section (1).

(100) For the reasons aforementioned, while answering the question posed in the negative I hold that in the event of failure for any reason whatsoever on the part of the pre-emptors listed under sub-section (2) of section 15 of the Act to pre-empt the sale the pre-emptors listed under sub-section (1) of section 15 of the Act in the very sequence of priority would be entitled to lay a claim to pre-emption to a sale by vendors and of property envisaged in sub-section (2) of section 15 of the Act.

(101) The appeals be now placed before the learned Single Judge for disposal in the light of the legal proposition enunciated above.

...

M. R. Sharma, J.

(102) I have had the advantage of going through the judgments prepared by Hon'ble the Chief Justice and my learned brother D. S. Tewatia, J. With utmost respect to both of them, I agree with the conclusion arrived at by D. S. Tewatia, J., that section 15(2) of the Punjab Pre-emption Act, 1913 (herein referred to as the Act), does not debar a co-sharer and a tenant to exercise the right of pre-emption. Since the question is of some importance, I propose to deal with the matter at some length.

(103) Section 15 of the Act is ill-punctuated, ill-divisioned and unhappily worded. Nevertheless, before the appearance of sub-section (2) on the scene in its present form, it was conceded that a co-sharer and a tenant did have a right to file a suit for per-emption. In order to see what change has been brought about by sub-section (2), the section as a whole has to be subjected to a closer scrutiny. Under sub-section (1) right of pre-emption is available against the following classes of property:—

(1) Property belonging to a male, whether it is self-acquired or inherited from the father's side, or the mother's side.

(ii) Property belonging to a female, whether self-acquired, or inherited from her husband's side, or from her parents' side.

(ii) Property belonging to a male or a female, which he or she holds jointly with others.

For the purpose of the exercise of right of pre-emption, heirs, specifically mentioned in the section get a priority followed by co-sharers and tenants.

(104) Then comes sub-section (2) which lays down that in spite of what has been stated in sub-section (1) a different set of heirs shall have the right to file a suit for pre-emption in respect of property which has been inherited by a female. To be more precise, if the property is inherited by her from her father's side, the heirs from his family shall have the right of pre-emption, and if she has inherited the same through her husband the specified heirs of the husband's family shall have the right of pre-emption.

(105) Even if we put a question to a layman about the change brought about by sub-section (2), he would indicate that this sub-Section modifies the right of pre-emption only in respect of the property inherited by a female. I fail to see how persons learned and trained in the discipline of law can come to a different conclusion It is pertinent to mention that it is conceded by both the sides that under sub-section (1) the right of pre-emption is available to a co-sharer and a tenant against the self-acquired property of a female. This conclusion can be arrived at only if the two sub-sections are read together and made to operate in their respective fields. It would be incorrect to urge that sub-section (2) can stand all by itself. I am not advocating this view for the first time that two parts of a section should be read together. This principle has been authoritatively laid down in **Madanlal Fakirchand Dudhediya** v. **Shri Changdeo Sugar Mills Ltd. and others** (49), wherein it was observed—

> "The two sub-sections must be read as parts of an integral whole and as being inter-dependent; an attempt should be made in construing them to reconcide them if it is reasonably possible to do so, and to avoid repugnancy. If repugnancy cannot possible be avoided, then a question may arise as to which of the two should prevail. But that question can arise only if repugnancy cannot be avoided."

(106) The two sub-sections cannot be interpreted to mean that they are pulling apart and indeed it is not being done qua the self-acquired property of a female. The right of pre-emption is being made to vest in a co-sharer and a tenant under sub-section (1). If the Legislature intended to take away the right of pre-emption against the property sold by a female, it could easily have provided in sub-section (2) that in no other case right of pre-emption shall be available against the property sold by a female. While dealing with 'repugnancy', Maxwell on Interpretation of Statutes, Eleventh Edition, at page 153, has dealt with the subject in the following words:—

> "An author must be supposed to be consistent with himself, and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the

(49) A.I.R. 1962 S.C. 1543.

same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the Legislature is treated in the same manner as that of any other author, and the language of every enactment must be construed as far as possible in accordance with the terms of every other statute, which it does not in express terms modify or appeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it. It cannot be assumed that Parliament has given with one hand what it has taken away with the other."

(107) The only way in which the two sub-sections can be harmonised is that sub-section (2) should be made to operate in its own field which is really a part of the whole field covered by sub-section (1). In spite of the word "notwithstanding" appearing in subsection (2), it is in substance in the nature of proviso. A statutory provisions beginning with the word "notwithstanding" was indeed treated by the Supreme Court as a proviso in **Vaddeboyina Tulasamma and others** v. **Vaddeboyina Sesha Reddi (dead) by L.R.**, (supra). With utmost respect to the proponents of the opposite view, I maintain that my conclusion arrived at on this point in the minority judgment in **Prithi Pal Singh and others** v. **Milka Singh and others** (50), is correct. In coming to that conclusion I had relied upon the following passage appearing in **Ram Narain Sons Ltd., and others** v. **Asst. Commissioner of Sales Tax and others** (51):

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

After doing so, I concluded as under:—

"That right of pre-emption granted under section 15(1) of the Act relates to various types of properties which are sold by an owner. The owner may be a male or a female. Sub-section (2) of this section comes into operation only

(50) A.I.R. 1976 Pb. & Hary. 157.

(51) A.I.R. 1955 S.C. 765.

when the sale of property is made by a female. It does not have the effect of abrogating or repealing or in any way modifying the other provisions of the enacting clause. Its application must be restricted only to those matters governed by it regarding which the general provision of the statute also cover the field. If these tests are applied to the case in hand to section 15 of the Act, it becomes clear that section 15(2) of the Act only makes an exception in case of right of pre-emption to be exercised in respect of the sales made by female owners. In all other respects, section 15(1) of the Act remains untouched."

Even if sub-section (2) is treated as a **non obstante** clause, the result would not be any different.

In **Aswini Kumar Ghose and another v. Arabinda Bose and another**, (supra), it was laid down—

"The enacting part of a statute must, where it is clear, be taken to control the **non obstante** clause where both cannot be read harmoniously; for even apart from such clause, a later law abrogates earlier laws clearly inconsistant with it. **Posteriores leges priores contrarias abrogant** (Broome's Legal Maxims, Edn. 10 p. 347). Here section 2 entitles every Advocate of the Supreme Court as of right to practise in any High Court in India."

(108) All the parts of statute have to be read together and assigned their due role. In short, harmonious construction is the rule and repeal by implication an exception.

(109) Strangely enough, a clear *non obstante* clause was given a complete go-by in two Full Bench decisions of this Court which arose under the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the 'Gurdwaras Act'). Under the Gurdwaras Act, a special machinery had been provided for settling disputes relating to the Sikh Gurdwaras. Under sub-section (1) of section 7 of the Gurdwara Act, 50 worshippers of a Gurdwara are entitled to file a petition with the State Government praying therein that the Gurdwara

be declared a 'Sikh Gurdwara' Under sub-sections (3) and (4) of that section the State Government is under an obligation to publish such a petition in the Official Gazette and to send by registered post a notice of the claim to a person named in the petition and interested in the Gurdwara. Section 8 of the Gurdwaras Act lays down that after the publication of the notice under section 7(3) in respect of any Gurdwara, any hereditary office-holders or any 20 or more worshippers of the Gurdwara may file a petition claiming therein that the Gurdwara is not a Sikh Gurdwara. Section 16(1) of the Gurdwaras Act reads as under:—

> "**Section 16(1)**: Notwithstanding anything contained in any other law in force, if in any proceeding before a Tribunal it is disputed that a Gurdwara should or should not be declared to be a Sikh Gurdwara, The Tribunal shall, before enquiring into any other matter in dispute relating to the said Gurdwara, decide whether it should or should not be declared a Sikh Gurdwara in accordance with the provisions of sub-section (2)."

(110) Under normal law, a discretion vests in a Court or a Tribunal to treat some of the issues arising in a cause as preliminary issues and to give a decision thereupon, before adverting to the other issues arising therein. In the Gurdwaras Act, however, a special provision has been made that whenever the nature of a Gurdwara is disputed, the Tribunal shall first decide that issue. These provisions came up for consideration in **Mahant Hari Kishan v. The Shiromani Gurdwara Parbandhak Committee, Amritsar, etc.** (52). It was held therein that it was open to the Tribunal to hold that the petitioner-Mahant who challenged the nature of the Gurdwara had no locus standi to file the petition because he was not a hereditary office-holder and that the petition filed by him could be dismissed without there being any decision on the point whether the Gurdwara in dispute was a Sikh Gurdwara or not speaking for the Full Bench, Dhillon, J., observed as under:—

> "The provisions of section 16 of the Act will not be attracted in a case where the petition is dismissed by the Tribunal holding that the person making the petition has no **locus standi** to file such a petition keeping in view the provisions of section 8 of the Act. The provisions of section 16

(52) I.L.R. (1975) II Pb. & H. 569.

will only come into play where in any proceedings before the Tribunal it is disputed that a Gurdwara can or cannot be declared to be a Sikh Gurdwara, but where there is no competent petition making chaloe challenge to the institution being declared a Sikh Gurdwara, the provisions of section 16 of the Act will not be attracted. If in every case, whether the petition is filed by the persons competent to file the same under the provisions of section 8 or not, the Tribunal has to decide the question whether the institution in question is a Sikh Gurdwara or not, the provisions of sections 8 and 9 would be virtually rendered nugatory. The issue of **locus standi** is a preliminary issue and if raised, has to be decided first in the peculiar setting of the Act. If the petitioner has **locus** standi to file the petition, the provisions of section 16 shall then be taken into consideration by the Tribunal to determine whether the institution in question is a Sikh Gurdwara or not, but if there is no competent petition, that is, in other words, there is no valid challenge to the notification issued under section 7 within the frame work of section 8, the provisions of section 9 are bound to be complied with and once a Notification having issued that the institution in question is a Sikh Gurdwara, there will be no question of the application of the provisions of section 16 to such a case."

I need not advert to the manner in which the claim of the Mahant in that case regarding his being a hereditary office-holder was rejected. The fact, however, remained that he belonged to a religious denomination which was in possession of the Gurdwara, and he was divested of the Gurdwara without there being any adjudication on the point that the same was a Sikh Gurdwara. This is a classic example of a case wherein rights which were to be determined by a judicial tribunal had been adjudicated upon under the assumed fiat of the Legislature.

(11) Earlier in **Mahant Lachhman Das Chela Mahant Ishar Dass** v. **The State of Punjab and others** (53), an attack against the constitutional validity of this Act had been repelled by a full Bench of

(53) I.L.R. (1968) 2 Pb. & H. 499.

this Court. While dealing with the argument based on Article 26(c) and (d) of the Constitution, Narula, J. (as the learned Chief Justice then was), had observed—

> "Regarding the last contention advanced on behalf of the petitioner, i.e., the alleged infringement of Article 26 of the Constitution, it was half-heartedly argued by Mr Gupta that the Act provides for machinery for taking away non-Sikh institutions, or their property from the persons in their possession and to hand them over to the Sikhs. It appears to me that no argument under Article 26 can arise in these cases as there is no claim in any of these petitions on behalf of a denomination or even on behalf of any section thereof. Assuming, however, for the sake of argument that Lachhman Dass petitioner has come to this Court on behalf of Udasi Bhekh, **it is significant to note that the Act does not even purport to deal with or touch any non-Sikh institution or its property.** It is not disputed and indeed it has been so held repeatedly that Udasis are not Sikhs though even Udasis do not conform to any single type."

(112) These observations imply that before a Mahant is called upon to part with a Gurdwara, a finding has to be given that the same is a Sikh Gurdwara within the meaning of the Gurdwaras Act. This was the attitude adopted when the attack against the constitutional validity of the statue was repelled. However, in actual practice, the appellant in **Mahant Hari Kishan's** case (supra) was deprived of the Gurdwara in dispute without there being any finding that the Gurdwara in that case was proved to be a Sikh Gurdwara. The approach made in the two cases was apparently contradictory. This contradiction was noticed by a Division Bench of this Court of which I was a member in first appeal (F.A.O. No. 263 of 1971) and the case was referred to a larger bench. A Full Bench of five Judges was constituted and this time again the leading judgment was written by Dhillon, J., who repelled the argument based on section 16 of the Gurdwaras Act with the following observations.—

> "I am unable to agree with the contentions raised by the learned counsel for the appellant. As regards the argument regarding the **non obstante** clause in the provisions

of section 16 of the Act, it may be observed that the interpretation sought to be given to the words 'Notwithstanding anything contained in any other law in force,' as contained in Section 16, to mean that no other provision of this Act even has to be taken into consideration, cannot simply be given keeping in view the scheme of the Act. It would be noticed that **non obstante** clause in the Act has been provided in many other provisions of the Act. Wherever the Legislature wanted that in applying a particular provision of the Act, the other provisions of the Act itself should be excluded from consideration, a specific provision in that regard has been made in the **non obstante** clause of the said sections of the Act. For instance, in section 38 of the Act, it has been provided as follows:—

38(1): Notwithstanding anything contained in this Act or any other Act or enactment in force.....".

Similarly, same language has been used in section 127-A of the Act, where it has been specifically provided that notwithstanding anything contained in any other law for the time being in force or in this Act etc. While enacting **non obstante** clause in section 16, the Legislature designedly did not exclude the application of the other provisions of the Act. Faced with this situation, Mr. Sibal, the learned counsel for the appellant, then contended that the **non obstante** clause in section 16 of the Act would preclude the application of the provisions of Order 14. Rules 2 and 3 of the Code of Civil Procedure and, therefore, the question of decision of the issue regarding the **locus standi** need not be decided by the Tribunal. This argument is again without any merit. It is not because of the provisions of Order 14. Rules 2 and 3 of the Code of Civil Procedure that the Tribunal is enjoined upon to decide the issue of **locus standi**, but it is because of the mandatory provisions of section 8 read with the other provisions of the Act that such an issue, which the Legislature designedly left for the determination of the Tribunal, has to be decided by the Tribunal. It is not disputed that the Act being a Special Act, its provisions so far as they are

not inconsistent with the provisions of the Code of Civil Procedure, have to prevail. This is so because of the provisions of sub-section (11) of section 12 of the Act. It would, thus be seen that the contention of the learned counsel for the appellant as regards **non obstante** clause in section 16 of the Act is without any merit."

(113) By a majority it was held that there was no conflict between the two Full Bench decisions. S. C. Mital, J., who delivered the minority judgment took the following view:—

"By denying Mahant Tehal Dass the **locus standi** to prove that the institution is not a Sikh Gurdwara, the result of the decision of the Tribunal is that Tehal Dass has been deprived of his Mahantship and the religious denomination in question has been made to vest in the body created by Part III of the Act for the administration of the Sikh Gurdwaras. Thus, the argument of Mr H. L. Sibal that section 8 of the Act restricting the right of the religious denomination to protect itself through a hereditary office-holder as defined in section 2(4)(iv) of the Act, is **ultra vires** Article 26(d) of the Constitution, carries conviction."

(114) In view of the rigid stand taken on behalf of the respondent in that case the learned Judge had no option to hold otherwise.

As I said earlier, if the majority view is allowed to prevail, then a Mahant can be deprived of his Gurdwara under the supposed fiat of the Legislature without there being any judicial determination of the nature of the institution. This view runs counter to the rule of law laid down in *Smt. Indira Nehru Gandhi* v. *Shri Raj Narain* (54), which struck down clause (4) of Article 329-A of the Constitution on the ground that it was a legislative judgment disposing of an election dispute. Mathew, J., observed—

"The result of the discussion can be summed up as follows:

Our Constitution, by Article 329(b) visualises the resolution of an election dispute on the basis of a petition presented to such authority and in such manner as the appropriate legislature may, by law, provide. The nature of

(54) A.I.R. 1975 S.C. 2299.

the dispute raised in an election petition is such that it cannot be resolved except by judicial process, namely, by ascertaining the facts relating to the election and applying the pre-existing law; when the amending body held that the election of the appellant was valid, it could not have done so except by ascertaining the facts by judicial process and by applying the law. The result of this process would not be the enactment of constitutional law but the passing of a judgment or sentence. The amending body, though possessed of judicial power, had no competence to exercise it unless it passed a constitutional law enabling it to do so. If, however, the decision of the amending body to hold the election of the appellant valid was the result of the exercise of an irresponsible despotic discretion governed solely by what it deemed political necessity or expediency, then, like a bill of attainder, it was a legislative judgment disposing of a particular election dispute and not the enactment of a law resulting in an amendment of the Constitution. And, even if the latter process (the exercise of despotic discretion) could be regarded as an amendment of the Constitution, the amendment would damage or destroy an essential feature of democracy as established by the Constitution, namely, the resolution of election dispute by an authority by the exercise of judicial power by ascertaining the adjudicative facts and applying the relevant law for determining the real representative of the people. The decision of the amending body cannot be regarded as an exercise in constituent legislative validation of an election for these reasons: Firstly, there can be no legislative validation of an election when there is dispute between the parties as regards the adjudicative facts; the amending body cannot gather these facts by employing legislative process; they can be gathered only by judicial process. Secondly, the amending body must change the law retrospectively so as to make the election valid, if the election was rendered invalid by virtue of any provision of the law actually existing at the time of election. Article 368 does not confer on the amending body the competence to pass any ordinary law whether with or without retrospective effect. Clause

(4) expressly excluded the operation of all laws relating to election petition to the election in question. Therefore, the election was held to be valid not by changing the law which rendered it invalid. Thirdly, the cases cited for the appellant are cases relating to legislative validation of invalid elections or removal of disqualification with retrospective effect. Being cases of legislative validation, or removal of disqualifications by Legislature, they are not liable to be tested on the basis of the theory of basic structure, which, I think, is applicable only to constitutional amendments. Fourthly, there was no controversy in those cases with regard to adjudicative facts; if there was controversy with regard to these facts, it is very doubtful whether there could be legislative validation of an election by changing the law alone without ascertaining the adjudicative facts by judicial process."

(115) With utmost respect to the learned Judges who decided the aforementioned two cases, it might be observed that no effort was made by them to synchronise sections 16 and 8 of the Gurdwaras Act. These two sections could easily be reconciled by holding that the nature of the Gurdwara should be decided as a preliminary issue. Nor was there any justification to whittle down the effect of clear language employed in section 16 of the Gurdwaras Act. The view taken by them cannot be regarded as good law and I hereby over-rule the same. I am aware of the fact that in *Dharam Dass etc.* v. *The State of Punjab and others* (supra), constitutional validity of the Gurdwaras Act has been upheld by the Supreme Court of India but the observations made therein run counter to those made in *Smt. Indira Nehru Gandhi's case* (supra), decided by a larger bench.

(116) An argument is raised that right of pre-emption is in the nature of a piratical right and for that reason the provisions of the Act should be strictly construed. The law of pre-emption in its inception aimed at preserving the homogeneity of the village community. This right was originally conferred on close relations only and since it put fetters on the free alienation of land by a landowner, the Courts viewed with disfavour the exercise of this right with the passage of time, things have materially changed. The Constitution has established a Social Democratic Republic in which

citizens are entitled to have justice — social and economic. Pursuant to this policy, land reforms have been introduced almost in all the States of India. In some cases proprietary rights have been conferred upon the tenants and in others it has been made more convenient for the tenants to purchase land. The object of the land reforms is that the tenants who till the land should be able to reap the reward of their labour. It cannot be disputed that a landlord who gets his land cultivated from tenants in a way receives some benefit from the land which he does not really earn. When right of pre-emption is conferred upon a tenant, it really helps him in preventing the landlord from collecting this unearned interest. Such a right in essence fulfils an important social objective and cannot be regarded as a piratical right. Similarly, when right of pre-emption is vested in a co-sharer, the exercise of this right by him goes to consolidate the holdings and deserves to be lauded on the same ground.

(117) Some doubts have been expressed for the proposition that if sub-section (2) is interpreted to negative the right of pre-emption vested in a tenant or a co-sharer, the interpretation shall violate the spirit of Article 14 of the Constitution. While dealing with this point in *Prithi Pal Singh's case* (supra), I had observed as under :—

> "If sections 15(1) and (15)(2) of the Act were to be regarded as separate Codes, then, obviously, section 15(1) of the Act will have to be confined to the self-acquired property of a female. In case of such a property, the tenant and the co-sharer would, no doubt, have a right of pre-emption. On the other hand, if section 15(2) of the Act is held to apply to the property acquired by a female either through her husband or through her father, then only the persons mentioned in section 15 (2) (b) will have any right of pre-emption. In that case, the tenant and the co-sharer would have to be ousted from the exercise of this right. It has already been noticed that in recent times there has been a tendency to augment and to enlarge the rights of the tenants in respect of the lands comprising their tenancies. If the sale of land is made to a tenant even the son and other near relations of the land-owner

would be debarred from exercising any right of pre-emption in respect of such a sale. In view of section 8-A of the Pepsu Tenancy and Agricultural Lands Act, 1955, and section 17-A, of the Punjab Security of Land Tenures Act, 1953, it is not imaginable that the Legislature which had manifested a clear intention of ushering in a socialistic pattern of society by placing the rights of the tenants on a higher pedestal would have debarred the tenants from exercising the right of pre-emption in respect of the property acquired by a female either through her husband or through her father. Further, to hold otherwise would be to introduce an element of invidious discrimination by a process of judicial interpretation. If the tenant has a right to pre-empt the self-acquired property of a female, it does not stand to reason why he should be debarred from exercising the same right in respect of the land acquired by a female through her husband or father. The aggrieved tenant would at once come forward with a plea that his right under Article 14 of the Constitution has been violated. It is no doubt open to the Legislature to make classification in respect of laws, but the classification apart from being reasonable should have a nexus with the object sought to be achieved by the Legislature. So far as the tenants are concerned, the Legislature had manifested its intention in clearest possible terms to improve their rights. It would be wholly unreasonable to assume that the Legislature held different views *quo* the property acquired by a female through her husband or her father. If right of a co-sharer to pre-empt land is to be defended on the ground that it prevents fragmentation of holdings, the Legislature could not have ignored this consideration in case sale was made by a female inheriting land from her husband or from her father."

(118) I hold the same opinion even now. To elaborate the matter further, I would like to observe that the basis for classification in case of a tenant is his relationship with the land as a tiller. This relationship becomes no different if he cultivates the self-acquired land belonging to a female or the land which she inherits from somebody. If

differentiation is made **qua** the source of acquisition of land, it would have no relationship with the object of classification. Something which the Legislature cannot do because of the bar of Article 14 of the Constitution, a Court of law should not introduce by a process of interpretation. What is true about a tenant is equally true about a co-sharer in whose case the basis for classification is joint ownership of land.

(119) It is argued that the right of pre-emption is creature of statute and it is open to the Legislature to exclude tenants and co-sharers to exercise this right in respect of property inherited by a female. The argument tends to over-simplify the matter. The consideration of the question of discrimination arises only when the Legislature moves into action. If no law is passed on a particular subject, no one can complain of discrimination. However, when a law is passed, its application in various spheres becomes the subject-matter of scrutiny. If such a scrutiny reveals that the law differently treats various objects or persons, the basis for differential treatment is then analysed. If it has some relevancy with the object which the Legislature had in mind while passing the law, the differential treatment or the classification introduced is declared to be valid. On the other hand if the classification has no reasonable nexus with the object of the Legislature, the law is held to be violative of Article 14 of the Constitution. Herein the Legislature has entered the field inasmuch as the right of pre-emption has been conferred on tenants under the enacting clause. The undoubted object of the Legislature in doing so was to make the tiller of the land its owner. The classification, if any, could only be made on the basis of this object. For instance, the Legislature could have said that the tenants cultivating land for a number of years as against the recent tenants alone shall have the right of pre-emption. Or, it could possibly have said that the tenants belonging to scheduled castes alone shall exercise this right. In these two cases, it could have been said that the classification based on the age of the tenancy or the one based on the peculiar status in life of the recepient of the benefit was valid. But if this right is conferred on all the tenants without any reservations under the enacting clause, the denial of this right under the proviso or the **non obstante** clause based on the source of acquisition of ownership rights would be wholly pugnatious. For in that case, the affected tenant could urge

that the classification on the basis of which he is being excluded has no nexus with the object which the Legislature had in mind. Again, it would be improper to intermingle the cases of tenants and heirs while considering the argument based on classification. The relations belong to an entirely different category and in their case the Legislature would be acting within its right to make a classification on the basis that the right of pre-emption should vest in the members of the family from which the property has come.

(120) The learned Chief Justice has drawn on the principle of **stare decisis** for affirming the earlier view. With utmost respect to him, I would like to observe that where the interpretation of a statute violates the letter and spirit of Article 14 of the Constitution, it becomes the duty of the Court to reconsider and to correct the earlier view. For this reason as also for the observations made by D. S. Tewatia, J., on this point, I hold that it would not be proper to invoke the principle of **stare decisis** in this case.

For reasons aforementioned, my conclusions are:—

(1) Section 15 of the Act has to be read as a whole.

(2) On a proper interpretation, sub-section (2) of this section does not debar a co-sharer or a tenant to exercise right of pre-emption regarding the property inherited by a female.

(3) Sub-section (2) is in the nature of a proviso to sub-section (1) and cannot be interpreted to destroy the effect of sub-section (1).

(4) If co-shares and tenants are disallowed to exercise the right of pre-emption by placing a contrary interpretation on sub-section (2), that interpretation would violate the spirit of Article 14 of the Constitution.

(5) It would be wholly improper to take shelter behind the principle of **stare decisis** in the circumstances of this case.

Prem Chand Jain, J.

(121) I have carefully gone through the judgments of the learned Chief Justice, brother Tewatia, J., and brother M. R. Sharma, J. I agree with the conclusions arrived at by my Lord the Chief Justice.

S. C. Mital, J.

(122) I have gone through the judgment of My Lords, the Chief Justice, Tewatia, J., and Sharma, J.

(123) For construing the non-obstante clause in sub-section (2) of the Section 15 of the Punjab Prem-emption Act, with utmost respect to Sharma, J., I find it exceedingly difficult to draw an analogy from the non-obstante clause in the provisions of the Sikh Gurdwara Act.

(124) I agree with my Lord the Chief Justice.

R. N. Mittal, J.

(125) I have perused the judgments of the Chief Justice, Tewatia, J., and Sharma, J. I agree with the Chief Justice.

A. S. Bains, J.

I also agree with the Chief Justice.

ORDER OF THE COURT

(126) In accordance with the view of the majority, Regular Second Appeal No. 67 of 1969 (*Kalwa* v. *Wasakha Singh and others*) is hereby dismissed with no order as to costs.

(127) It is further directed that the remaining appeals be now placed before a learned Single Judge for disposal in accordance with the answers rendered to the legal questions therein.

S. S. Sandhawalia, C.J.
Prem Chand Jain, J.
S. C. Mital, J.
D. S. Tewatia, J.
M. R. Sharma, J.
R. N. Mittal, J.
A. S. Bains, J.

N.K.S.

5441 HC—Govt. Press, Chd.