16. The writ petition being without merit is hereby dismissed with costs. This, however, would not preclude the petitioner-firm from pursuing its ordinary remedy by way of appeal if now available to it by virtue of section 58 of the Constitution (42nd Amendment) Act, 1976 against the impugned orders of the Assessing Authority.

S. C. Mital, J.—I agree

H.S.B.

Before S. S. Sandhawalia, C.J. and S. S. Dewan, J.

SRI CHAND and others—*Petitioners.*

versus

STATE OF HARYANA and others—*Respondents.*

Civil Writ Petition No. 3365 *of* 1977.

August 18, 1978.

Haryana Ceiling on Land Holdings Act (26 of 1972) *as amended by Haryana Ceiling on Land Holdings (Amendment) Acts* (40 of 1976 *and* 18 of 1978)—*Section* 18(7), (8) *and* (9)—*Whether unconstitutional—Right of appeal conferred by the statute—Whether can be restricted by imposing conditions for its exercise—Failure to vest discretion in an authority to relax conditions in certain cases—Whether makes the conditions unreasonable.*

Held, that the right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the Constitution which may even remotely vest any such inalienable right in the citizens. That being so, it is evident that there is no inherent claim or right to appeal from an original forum. It is plain that the creator who confers such rights, namely, the legislature, can equally take the same away. It inevitably follows that if the whole right thus can be taken away it can equally be impaired, regulated or burdened with conditions onerous or otherwise. Thus the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise. The Haryana Legislature has, therefore, in no way transgressed the limits of its authority by the insertion of sub-clauses (7), (8) and (9) of Section 18 of the Haryana Ceiling on Land Holdings Act, 1972.

(Paras 7 and 9).

Held, that the language of sub-section (7) of section 18 of the Act is plain and the intention of the legislature is manifest to the effect that what is required to be deposited as security is thirty times the annual land holdings tax. There is nothing in the relevant provision which can possibly be construed to imply a requirement to deposit more than the annual levy. Merely because under section 12 land may have been deemed to be vested in the State from an earlier date has not the least relevance with regard to the quantum of the deposit required under sub-section (7). In view of the present agricultural production from land, in a progressive State like Haryana it cannot be said that a mere payment of this amount required against an acre of agricultural land would render the right of appeal nugatory. Construing sub-section (7) correctly in the scheme in which it is laid along with sub-sections (8) and (9), there is no escape from the conclusion that the restrictions and the regulations of the right of appeal which the legislature has found necessary is indeed far from either being too onerous and equally far from the sentimental cry that the same renders the meaningful right of appeal given under section 18(1) and (2) nugatory or illusory. (Paras 12 and 14).

Held, that a number of factors which have motivated and indeed compelled the legislature to avoid the vesting of any discretion for exempting certain persons from the restrictions imposed, cannot possibly be termed as either discriminatory or arbitrary. In the context of thousands of appeals which may inevitably come to be filed against the orders of the prescribed authority, it would be practically impossible for the appellate Court to examine the status and ability of each of the appellants or petitioners to deposit or not to deposit the security required under sub-section (7). The launching of such enquiries by the Collector in the context of thousands of appeals pertaining to innumerable landholders would by itself bog down and delay the process of ceiling and agrarian legislation at that very stage and thus defeat the very purpose and the intent of the legislature to expeditiously implement what appears to be a progressive measure of social engineering. Again, indiscriminate grant of exemptions by the Collector by following a precedent of having granted it once to one or the other landholders would again defeat the very purpose of the intent of the legislature to ensure some security against the filing of frivolous appeals. The legislature had designedly found it necessary to avoid vesting of any such discretion which might be capable of arbitrary exercise and, therefore, to make no exceptions in the case of anyone of the appellants, and to treat them all with an even hand. A provision which treats all persons similarly situated with an equal hand cannot possibly be termed as either discriminatory or arbitrary. The divested big landlords had neither a moral nor a legal right to continue in possession of the surplus area. Nevertheless past experience has shown that this object had been achieved sometime by filing frivolous appeals and thereafter revisions by the landlords lured obviously by the desire to continue in possession of the

surplus area. It was to mitigate this evil and to discourage the filing of frivolous appeals and revisions as a subterfuge for remaining in possession of land which in the eyes of law stood vested in the State that the legislature had been compelled to step in to regulate the right of appeal and revision. All that has been done is that the entertaining of all these appeals and revisions has been made conditional upon the appellant on the petitioner furnishing some security in proof of the genuiness of their claim. (Paras 17 and 18).

Petition under articles 226/227 *of the Constitution of India praying* :—

(a) *That the relevant records of the case be summoned.*

(b) *That this Hon'ble Court may be pleased to direct respondent No.* 2 *to entertain the appeal of the petitioner without insisting on depositing the* 30 *times' the land holding tax.*

(c) *That any other appropriate Writ, order or direction as this Hon'ble Court may deem fit in the circumstances of the case; be issued;*

(d) *That the issuance of prior notices to the respondent be dispensed with.*

(e) *That costs of this petition be allowed to the petitioner.*

Anand Swarup, R. S. Mittal, K. P. Bhandari, M. S. Ratta, G. C. Nagpal, Advocates, *for the Petitioners.*

S. C. Mohunta, A. G. Haryana with Naubat Singh, Senior D.A.G. Haryana, *for the Respondents.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) In this set of five hundred and thirty four connected civil writ petitions ably argued by a galaxy of learned counsel, the focal point that falls for determination is indeed a single one whether the provisions of section 18(7), (8) and (9) of the Haryana Ceiling on Land Holdings Act, 1972, as amended by the Haryana Ceiling on Land Holdings (Amendment) Act, 1978 suffer from the vice of unconstitutionality ?

(3) As is manifest, the issue herein is pristinely legal and indeed the learned counsel for the petitioners did not even refer at all to

the facts of either one of the cases. Therefore a passing reference to the main Civil Writ Petition No. 3365 of 1977 amply suffices the purpose. The three petitioners therein claim to be owners in possession of agricultural land measuring 41 Kanals 14 Marlas and are primarily aggrieved by the declaration of the said area as surplus and the vesting of the same in the State under section 12 of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter called the Act), The petitioners consequently filed an application under section 8 of the Act before respondent No. 3, the Collector (Prescribed Authority) under the Act seeking a relief of declaration that the land in dispute did not vest in the State and, therefore, it could not be utilised under the Act. This application was rejected by respondent No. 3 on the 16th of May, 1977. Aggrieved the petitioners preferred an appeal before respondent No. 2, the Commissioner Ambala Division who by virtue of section 18(2) is the appellate authority against the order of the Collector. The petitioners are primarily aggrieved by the provisions of section 18(7) requiring them at the time of the filing of the appeal to deposit a sum equal to thirty times of the land holding tax payable in respect of the dispute surplus area before their appeal is to be entertained. It is averred that calculated on that basis the petitioners are required to pay in all a sum of nearly Rs. 1200. In substance this alleged fetter on the right of appeal and revision conferred by section 18 of the Act is sought to be challenged as a violation of the right to hold property under Article 19(1)(f) and on a variety of other grounds to which reference inevitably would follow.

(3) The facts are not in dispute and indeed at the stage of the Motion hearing on 25th of July, 1978, the learned Advocate General Haryana states that the issue being purely legal, no return on behalf of the respondent-State was necessary and the same was consequently not filed. However, as regards the legal issue a reference to the legislative history of the provisions under challenge is both necessary and inevitable and may, therefore, be made at the very outset. The predecessor Land Ceiling legislation in the State of Haryana was primarily contained in the Punjab Security of Land Tenures Act, 1953 and Pepsu Tenancy and Agricultural Land Act, 1955 as applicable to the said State. The Haryana Ceiling on Land Holdings Act, 1972 was enacted to consolidate and amend the law relating to ceiling on land holdings in the State of Haryana and after receiving the assent of the President of India it came into force on 23rd Dscember, 1972. Section 1 thereof

imposing a ceiling on land holdings laid down that no person shall be entitled to hold in any capacity land within the State of Haryana exceeding the permissible area on or after the appointed day. Sections 8, 9, 10, and 11 of the Act laid down the procedure for the determination and the declaration of the surplus area by the prescribed authority whilst section 12 declared in unequivocal terms that a surplus area of a land-owner shall vest in the State Government from the date on which it is so declared free from any encumbrances.

(4) The material provisions of section 18, *vide* sub-section 1 and (2) provided for an appeal, review and revision of the orders of the prescribed authority and as originally enacted no fetter was placed on the appellate and the revisional remedy by the statute. However, by the enactment of the Haryana Ceiling on Land Holdings (Second Amendment) Act, 1976 (Act No. 40 of 1976), apart from other changes, sub-section (5) of section 18 was omitted and sub-section (7) and (8) were added therein. The newly inserted sub-section (7) of section 18 for the first time imposed a condition that all appeals or revisions under sub-section (1) or (2) thereof would be entertained only on the deposit of a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area.

(5) The aforesaid regulation of the right of appeal and revision was made the subject-matter of challenge in Civil Writ Petition No. 3365 of 1977 preferred on the 27th of October, 1977 and many other similar writ petitions. In view of the relevant provisions of the Forty-second Amendment Act this writ petition first came up for motion hearing before a Bench of five judges of this Court and after a preliminary hearing the learned Advocate General, Haryana took up the stand that the respondent-State was contemplating an amendment of sections 18(7) and 18(8). The writ petition aforesaid and the other connected cases were hence adjourned *sine die* to await the necessary amendment. Consequent upon the repeal of the relevant provisions of the forty-second amendment Act the case reverted back to a Division Bench. On the 6th of June, 1978, the Haryana Ceiling on Land Holdings (Amendment) Act, 1978 was enacted whereby consequential changes were made in section 18(7) and whilst retaining sub-section (8) in its original form a new sub-section (9) was inserted thereafter. Despite the aforesaid changes introduced in section 18 learned counsel for the petitioners pressed

their attack on the constitutionality thereof and in view of the significance of the question, the writ petitions were admitted for hearing before a Division Bench.

(6) Inevitabe the controversy herein has to revolve around the relevant provisions of section 18 in the context of the changes introduced therein. However, it suffices to recall that as originally enacted section 18 had conferred an unrestricted and un-fettered right of appeal, review and revision not regulated by any further conditions. Act 40 of 1976, however, imposed the condition of deposit by the insertion of sub-sections (7) and (8) whilst the recent amendment, *vide* Haryana Act No. 18 of 1978 has substantially watered down the rigour of the conditions imposed. To appreciate the contention in a correct perspective, it is, however, necessary to juxtapose the original and the amended relevant provisions in section 18 of the Act:—

Original Act (Act 40 of 1976)	*Amended Act (Act No. 18 of 1978)*
18(1) *Appeal, review and revision.*—Any person aggrieved by any decision or orders of the prescribed authority, not being the Collector, may, within fifteen days from the date of the decision of order, prefer an appeal to the Collector in such form and manner as may be prescribed;	*Appeal, review and revision* Any person aggrieved by any decision or orders of the prescribed authority, not being the Collector, may, within fifteen days from the date of the decision of order, prefer an appeal to the Collector in such form and manner as may be prescribed;
Provided that the Collector may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.	Provided that the Collector may entertain the appeal after the expiry of the said period of fifteen days if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.
(7) No appeal under the sub-section (1) and (2) or revision under sub-section (4) shall be	No appeal under sub-section (1) or Sub-section (2) or revision under sub-section (4) shall be

entertained unless, the appellant or the petitioner as the case may be has deposited with the appellate or revisional authority a sum equal to thirty times of the land holding tax payable in respect of the disputed surplus area.	entertained unless the appellant or the petitioner as the case may be, has deposited a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority.
(8) Notwithstanding anything contained in section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a license fee equal to thirty times the land holding tax, recoverable in respect of this area.	Notwithstanding anything contained in section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a license fee equal to thirty times the land holding tax, recoverable in respect of this area.
(9)	If the appeal or revision succeeds, the amount deposited or the bank guarantee furnished under sub-section (7) shall be refunded or released, as the case may be. If the appeal or revision fails, the amount deposited in cash or the amount of the bank guarantee furnished shall be adjusted against the licence fee recoverable under sub-section (8)".

Now in the light of the statutory provisions aforesaid the core of the argument advanced on behalf of the petitioners by their learned

counsel with considerable vehemence and eloquence, is this. That section 18(1) as originally enacted in 1972 gave an unrestricted and un-conditional right of appeal and revision to them against the orders of the prescribed or the appellate authority. That right is claimed to be a vested right which according to the learned counsel cannot be fettered or taken away. It was contended that Act 40 of 1976 by inserting sub-sections (7) and (8) had put a clog or a fetter on their unrestricted right of appeal which the legislature was unauthorised to do. Even the mellowing down of the restrictions imposed by the aforesaid amending Act by the recent amendment, *vide* Haryana Ceiling on Land Holdings (Amendment) Act, 1978 has according to the counsel not in any way removed the vice of unconstitutionality. On one extreme, it was argued that a vested right of appeal having been conferred on the petitioners every restriction or a clog thereon by subsequent legislation was impermissible. Lowering the sights a little, it was then contended that even the amended sub-sections (7) and (8) and the newly added subsection (9) of section 18 were so onerous in nature that they either virtually took away the vested right of appeal or in any case render it illusory.

(7) Despite the vehemence with which the proposition aforesaid was advanced and pressed it appears to me that the same stems from a basic fallacy with regard to the very nature and the content of the right of appeal if at all it may be so termed. It is manifest that the right of appeal is not a guaranteed or a constitutional right. There is nothing whatsoever in the constitution which may even remotely vest any such inalienable right in the citizens. Indeed learned counsel for the petitioners were compelled to concede that the right of appeal was not a fundamental right nor a constitutional one. That being so, it is equally evident that there is no inherent claim or right to appeal from an original forum. It is, therefore, that it has been repeatedly asserted that the right of appeal is a mere creature of the statute. If that be so, it is plain that the creator who confers such rights, namely the legislature can equally take the same away. It inevitably follows that if the whole right can be thus taken away it can equally be impaired, regulated or burdened with conditions onerous or otherwise.

(8) The legal position seems to be so manifest and supported by binding precedent that it would be obviously wasteful to launch on

a long dissertation on principle as if the issue was one of first impression. A Full Bench of this Court in *M/s Gordhan Das, Baldev Das* v. *The Governor General in Council* (1), on which the learned counsel for the petitioners had themselves placed reliance for the proposition that the right of appeal was not a mere procedural right but a substantive one, has in no uncertain terms held as follows:—

> "* * *. Although the law as we understand it considers it essential that a litigant, who is aggrieved by the order of one Court should be at liberty to have his case examined by a superior tribunal, it is somewhat of a paradox that appeals from one Court to another on the ground that the lower Court has given a decision erroneous in point of fact or law were entirely unknown to the common law of England. The right of appeal is not a natural or an inherent right which is available to every litigant as a matter or course; it is merely a legislative privilege which the law-making authority may confer or withold as it may think fit. Subject to the provisions of the Constitution the Legislature possesses full powers to grant or take away the right of appeal and to prescribe in what cases, under what circumstances, in what manner and to and from what Court appeals may be taken. It is for this reason that appeals are commonly regarded as creatures of statute".

(9) In this context the matter seems to be concluded by the observations of Chandrachud, J., (as the learned Chief Justice then was) in highlighting the basic distinction between the right of a suit and right of appeal in *Smt. Ganga Bai* v. *Vijay Kumar and others* (2):—

> "* * *. On this question the position seems to us well-established. There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring a suit of a civil nature and unless the suit is barred by statute one may, at one's peril bring a suit of one's choice it is no answer to a suit, howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainablity requires no authority of law and it is enough that no statute bars the suit. But

(1) AIR 1952 Pb. 103.
(2) A.I.R. 1974 S.C. 1126.

the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and, therefore, an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute."

Once it is held, as it necessarily must be that the right of appeal stems merely from its conferment by the legislature then it is equally evident that the same authority may regulate, impair or hedge it down with onerous conditions. This position, apart from being clear on principle, is equally covered by binding precedent. In *State of Bombay* v. *M/s. Supreme General Films Exchange Ltd.*, (3). Justice S. K. Das speaking for the Court observed as follows after referring to a number of authorities on the point:—

"It is thus clear that in a long line of decisions approved by this Court and at least in one given by this Court, it has been held that an impairment of the right of appeal by putting a new restriction thereon or imposing a more onerous condition is not a matter of procedure only; it impairs or imperils a substantive right and an enactment which does so is not retrospective unless it says so expressly or by necessary intendment."

The aforesaid observations can obviously leave no manner of doubt that not only is the legislature entitled to impair, imperil or restrict with onerous conditions the rights of appeal but it may go further by doing so retrospectively either by an express provision or even by necessary intendment. To my mind, the matter is concluded by the weighty observations of Khanna, J., in *Anant Mills* v. *State of Gujarat* (4), which paradoxically was brought to our notice on behalf of the petitioners by their learned counsel. Repelling an attack under Article 14 of the Constitution against an appellate provision which required the deposit of tax before the entertainment of the appeal it was observed:—

"The right of appeal is the creature of a statute. Without a statutory provision creating such a right the person aggrieved is not entitled to file an appeal. We fail to understand as to why the legislature while granting the right

(3) A.I.R. 1960 S.C. 980.
(4) A.I.R. 1975 S.C. 1234.

of appeal cannot impose conditions for the exercise of such right. In the absence of any special reasons there appears to be no legal or constitutional impediment to the imposition of such conditions. It is permissible, for example, to prescribe a condition in criminal cases that unless a convicted person is released on bail, he must surrender to custody before his appeal against the sentence of imprisonment would be entertained. Likewise, it is permissible to enact a law that no appeal shall lie against an order relating to an assessment to tax unless the tax had been paid. Such a provision was on the statute book in Section 30 of the Indian Income-tax Act, 1922. The proviso to that section provided that—'no appeal shall lie against an order under sub-section (1) of Section 46 unless the tax had been paid.' Such conditions merely regulate the exercise of the right of appeal so that the same is not abused by a recalcitrant party and there is no difficulty in the enforcement of the order appealed against in case the appeal is ultimately dismissed. It it open to the legislature to impose an accompanying liability upon a party upon whom a legal right is conferred or to prescribe conditions for the exercise of the right. Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14 in it."

On this aspect, therefore, there is no choice but to conclude that the legislature is perfectly within its right to regulate the right of appeal conferred by it by imposing conditions or restrictions on its exercise. The Haryana Legislature has, therefore in no way transgressed the limits of its authority by the insertion of sub-clauses (7), (8) and (9) in section 18 of the Act.

(10) Now the second but an equally substantial limb of the main argument is to the effect that the restrictions imposed on the right of appeal by sub-section (7) of section 18 are so onerous in nature as to virtually render the right of appeal as nugatory. Learned counsel for the petitioners waxed eloquent in contending that sub-section (7) takes away with one hand what the earlier sub-section (1) had given with the other. Particularising the argument it was said that sub-section (7) was so vague in content that it did not specify the

quantum of the land holding tax which was payable by the appellant on the number of years wherefor it was to be deposited. Relying on the amended provisions of section 12 it was then contended that since the surplus land vested in the State from the date of its original declaration as such even under the previous statute, therefore, a particular appellant may in such a situation be compelled to deposit the land holdings tax for a number of years rising up to ten years or more. In this context it was lastly submitted that in the case of large land-holders who might well be owning hundreds of acres of land which might be declared surplus is would become too burdensome to pay the land holding tax aforesaid with regard to such areas.

(11) It appears to me that the contentions aforesaid spring from some misconception or misinterpretation of the plain provisions of sub-section (7) and in any case raise bogies stemming from a fertile imagination to visualise situations which hardly arise or are even likely to arise. The submission that sub-section (7) is vague on the ground that it does not specify either the quantum or the period for which the land holdings tax is to be deposited as security cannot hold water even on the plain reading of the statute. It is specified therein that a sum equal to thirty times of land holdings tax payable in respect of the disputed surplus area is to be deposited. A mere reference to the Haryana Land Holdings Tax Act, 1973 makes the position crystal clear. Section 5 thereof and the other provisions of the Act leave no manner of doubt that the land holdings tax which consolidates a variety of taxes imposable upon land holdings is an annual tax. Schedule I to the said Act specifies in great detail the quality of the land, the kind of the soil, etc., for classifying the incidence of the tax whilst Schedule II meticulously prescribes the rates of land holdings tax in the greatest detail. It is more than manifest, therefore, that the deposit contemplated by sub-section (7) is clearly based on the annual land holdings tax which again is precisely determined by the detailed provisions of the Haryana Land Holdings Tax, Act 1972. Apart from the plain interpretation of the statute, the learned Advocate General, Haryana himself took a fair and firm stand that the deposit was related to the annual tax and the quantum thereof was precisely fixed by the statute. It was the common case before us that the annaul tax under the said provision varied around the paltry figure of Rs 8 only with regard to one acre of agricultural land. It is thus plain that the argument of vagueness with regard to sub-section (7) is patently ill founded.

(12) Again the imaginary bogey being raised to the effect that in a particular case the appellant may be required under sub-section (7) to deposit the land holdings tax for a number of years stand on a similar footing and is equallly misconceived. As already noticed, the language is plain and the intention of the legislature is manifest to the effect that what is required to be deposited as security is thirty times the annual land holdings tax. There is nothing in the relevant provision which can possibly construed to imply a requirement to deposit more than the annual levy. Merely because under section 12 land may have been deemed to be vested in the State from an earlier date has not the least relevance with regard to the quantum of the deposit required under sub-section (7). Once it is so, it is plain that by reference to the Land Holdings Act, 1976 when the amount is quantified, it comes to no more than about Rs 240 per acre in all. In view of the present agricultural production from land in a progressive State like Haryana it would indeed be a bold man who can say that a mere payment of this amount required against an acre of agricultural land would render the right of appeal nugatory. That the petitioners themselves clearly understand the implications of the quantum of deposit is plain from the averments in the closing part of the paragraph 7 of the writ petition to the effect that they are required to deposit an amount of Rs 1,200 for nearly five acres of surplus land. To repeat, it can hardly be ever said that the aforesaid quantum of deposit as security against the filing of frivolous appeals and in most cases the retention of the land during the pendency thereof is either unreasonably onerous or of a nature as to erode the very right of appeal itself.

(13) Yet against the argument that a particular appellant may under sub-section (7) be compelled to deposit the annual land holdings tax with regard to hundreds of acres or more seems to turn a blind eye to the preceding history of the agrarian legislation within the State of Haryana and perhaps over the whole of the country The present Act is merely a successor provision to the earlier provision with regard to the ceiling of land holdings contained the Punjab Security of Land Tenures Act as applicable to the State of Haryana. The permissible area therein, both of the land owners and the tenants did not in any case exceed thirty standard Acres. Equally well it is to recall that ceiling and agrarian legislations have progressively been enforced in the Punjab and Haryana for a period of nearly thirty years begininng with 1949 onwards. In this context to now imagine land-holdings of hundreds or thousands of acres has nothing but allowing one's imagination to run riot.

(14) Repelling the argument alleging the illusory nature of the right of appeal, I am inclined to hold that construing sub-section (7) correctly in the scheme in which it is laid along with sub-sections (8) and (9), there seems to be no escape from the conclusion that the restrictions and the regulation of the right of appeal which the legislature has found necessary is indeed far from either being too onerous and equally far from the sentimental cry that the same renders the meaningful right of appeal given under section 18(1) and (2) nugatory or illusory.

(15) Learned counsel for the petitioners had then attempted to assail the restrictive sub-sections (7), (8) and (9) of section 18 on the ground that the legislature had not vested any discretion in any authority to relax the same or to grant exemption in an individual case to an appellant or petitioner. It was half-heartedly argued on behalf of the petitioners that in all statutes which fetter the right of appeal without vesting a corresponding discretion in an authority to relax the same it must necessarily be held that the fetter is unconstitutional and should therefore, be struck down.

(16) I am unable to find much substance in this contention either. The galaxy of Advocates appearing on behalf of the petitioners, despite pressing could produce no authority in support of the proposition that unless discretion to exempt is vested in an authority every fetter on a right of appeal or revision is unwarranted. Indeed, as already noticed in the earlier part of this judgment, precedent runs rather entirely to the contrary, nor could learned counsel cite any cogent principle in support of the aforesaid contention.

(17) Learned Advocate-General, Haryana whilst meeting the aforesaid argument on behalf of the petitioners forthrightly contended that a regulation of the right of appeal cannot merely be challenged on the sole ground of the absence of the vesting of discretion for exempting appellants or petitioners from the restrictions imposed. Counsel highlighted in particular section 30 of the Indian Income-tax Act, 1922 which required the deposit of the tax before an appeal could be entertained and which had held the field for well-nigh forty years before it was replaced by the Indian Income-tax Act, 1961. Reliance was also rightly placed on the observations of their Lordships in this particular context in *Anant Mills'* case (supra). This apart, the learned Advocate-General, Haryana had

plausibly pointed out to a number of factors which had motivated and indeed compelled the legislature to avoid the vesting of any such power at the level of the Collector who in most cases may well be the appellate forum from the decision of the prsecribed authority. He pointed out that in the context of thousands or even tens of thousands of appeals which may inevitably come to be filed against the order of the prescribed authority it would be practically impossible for the appellate Court to examine the status and ability of each of the appellants or petitioners to deposit or not to deposit the security required under sub-section (7). Learned counsel appeared to be on firm ground that the launching of such enquiries by the Collector in the context of thousands of appeals pertaining to innumerable landholders would by itself bog down and delay the process of ceiling and agrarian legislation at that very stage and the defeat the very purpose and intent of the legislature to expeditiously implement what appeared to be as a progressive measure of social engineering. It was further contended that in such a situation exemption of one or other of the land-holders by a collector may be construed as an invidious distinction or an uncalled for discretion in their favour. Shri Mohunta even went to the length of contending that the Collectors though exercising quasi-judicial functions under the Act were nevertheless primarily executive officers and to vest them with such a discretion might needlessly imperil the same due to pressure from a variety of sources to exercise the said discretion in favour of the favoured few whilst refusing the same in the case of others. It was further pointed out that an indiscriminate grant of exemptions by the Collector by following a precedent of having granted it once to one or the other of the land-holders would again defeat the very purpose and intent of the legislature to ensure some security against the filing of frivolous appeals. It was, therefore, pointed out that the legislature had designedly fount it necessary to avoid vesting of any such discretion which might be capable of arbitrary exercise and, therefore, to make no exceptions in the case of anyone of the appellants or the petitioners in these proceedings and to treat them all with an even hand. It was, therefore, forcefully and rightly submitted that a provision which treats all persons similarly situated with an equal hand cannot possibly be termed either discriminatory or arbitrary and the more so in the peculiar context of the facts delineated above.

(18) Indeed when the matter is viewed against the background of the implementation of agrarian and ceiling legislation, the learned Advocate-General of Haryana seems to be on very firm ground

in contending that the regulation of the right of appeal by the moderate provisions of sub-sections (7), (8) and (9) was not only reasonable but indeed absolutely necessary if any meaning or content was to be given to the ceiling on land holdings within the State. Counsel drew our attention to the natural desire and the inevitable attempts of the large landholders to cling to the surplus area from which they were divested and in some cases to thwart the actual implementation of all the progressive legislation. That this has been sometimes done with a degree of success in individual cases and even collectively cannot perhaps be lost sight of. It was rightly pointed out that by virtue of the earlier provisions of the Punjab Security of Land Tenures Act and the Pepsu Tenancy Act as also by section 12 of the Haryana Ceiling on Land Holdings Act the surplus area so declared vests automatically in the State for the avowed object of utilisation by allotment to landless persons. That being so, the learned Advocate-General was forcefully able to contend that the divested big landlords had neither a moral nor a legal right to continue in possession of the surplus area. Nevertheless past experience has shown that this object had been achieved by sometime in filing frivolous appeals and thereafter revisions by the landlords lured obviously by the desire to continue in possession of the surplus area. It was to mitigate this evil and to discourage the filing of frivolous appeals and revisions as a subterfuge for remaining in possession of land which in the eye of law stood vested in the State that the legislature had been compelled to step in to regulate the right of appeal and revision. All that has been done is that the entertaining of all these appeals and revisions has been made conditional upon the appellant or the petitioner furnishing some security in proof of the genuiness of their claim. Reference was made to the plain provisions of the statute which made the intent of the legislature clear but this nevertheless appears to have been made more explicit by the statement of objects and reasons which was appended to the Bill, which culminated in the enactment of Act No. 40 of 1976. These deserve express notice as published in the Haryana Government Gazette dated the 2nd of July, 1976—

> "As a result of the deliberations of the conference of the Chief Ministers held in March, 1976, the Government of India suggested *inter alia* that the Haryana Ceiling on Land Holdings Act, 1972 should be amended so as to reduce the period of appeal and revision, to discourage the institutions of appeal on frivolous ground by prescribing payment of deposit money, to bar appearance of lawyers, and

also to provide that no compensation should be paid for a part of the surplus land of landowners who fail to furnish declarations or furnish declarations containing false information and the landowners should be made to pay licence fee in the event of the failure of their appeal/ revision.

The above recommendations were considered by the State Government and it was decided to carry out the above amendments alongwith amendments of section 12 and section 15 of the Act. The latter section is to be amended to clarify the position of allotment of surplus land to certain specified categories of tenants as also to reduce the measure of allotment of surplus land so that the benefit of the scheme of allotment is extended to the maximum number of eligible persons. Accordingly, the Haryana Ceiling on Land Holdings (Second Amendment) Ordinance, 1976 was promulgated on the 5th May, 1976, as the Vidhan Sabha was not in session at that time. It is now proposed to replace the said ordinance with the present legislation."

The manifest and the twin intent of the legislature, therefore, being to prevent frivolous appeals and revisions for retaining the possession of land and in the event of their failure to have some security as a licence fee for the unauthorised continuance in possession of the same, was therefore, spelled out in sub-sections (7) and (8) of section 18 which were inserted by the aforesaid amending Act. The learned Advocate-General was further able to point out that in most of the cases for the very valuable right of remaining and continuing in possession of surplus agricultural land, during the pendency of the appeal the appellants have to pay no court-fee as such and all that the regulation of the right of appeal herein requires is a deposit of thirty times the land holdings tax primarily in the nature of a security against frivolous appeals and their failure. This was so at the stage of the original insertion of sub-sections (7) and (8) and counsel highlighted the fact that by the recent amendment indeed the aforesaid regulation of the right of appeal has been further liberalised and mellowed down in favour of the subject.

(19) However, in view of the recent amendment, particular reference is called for to the provisions, objects and the manner of the enactment of the Haryana Ceiling on Land Holdings (Amendment) Act, 1978 (Haryana Act No. 18 of 1978). It deserves recalling

that this amending Act was patently a response by the legislature to the challenge made in this Court to the then existing sub-sections (7) and (8). It was before this Court that the learned Advocate General, Haryana, had himself fairly taken the stand that the legislature would itself modify the provision if at all necessary in order to mitigate the alleged stringency thereof and to bring the same in consonance with the law laid down by their Lordships of the Supreme Court. It was patently in pursuance of that assurance that sub-section (7) was amended and a new sub-section (9) was inserted. To put the matter beyond doubt, reference may be made to the Statement of Objects and Reasons which ultimately culminated in the enactment of the new provision. This calls for quotation *in extenso*:—

> "The existing sub-section (7) of section 18 of the Haryana Ceiling on Land Holdings Act, 1972, lays down that before filing an appeal/revision, a landowner shall deposit with the appellate/revisional authority an amount equal to 30 times the land holdings tax in respect of the disputed surplus area, which has been challenged in the Punjab and Haryana High Court through a number of writ petitions wherein it has been alleged that the said provision does not indicate as to whether the amount to be deposited thereunder is a court fee or any other fee to be charged for filing an appeal/revision, or the said amount will be refunded in case the appellant succeeds. In order to clarify the said provision beyond any doubt, it is proposed to amend sub-section (7) of section 18, and to add a new sub-section (9) to section 18 of the Act so as to provide that the amount to be deposited or the bank guarantee of an equal amount to be furnished thereunder will be treated as a security, which will be refunded or released as the case may be if the appeal/revision succeeds, and if the appeal/revision fails, the said amount will be adjusted against the amount which would become due under sub-section (8) of section 18 of the Act".

(20) Highlighting the position subsequent to the 1978 Amending Act, the learned Advocate General, Haryana, has rightly pointed out that the provisions have now been altered entirely and substantially in favour of the petitioners. Apart from the deposit required with the appeal or revision being a mere security, an alternative therefor has been provided by the provision regarding the furnishing of a bank guarantee of equal amount. With plausibility it was

argued that with the coming into being of the land mortgage and co-operative banks and other commercial facilities, a bank guarantee was available against land and property instead of depositing any hard cash. The counsel further highlighted the provision of sub-section (9) which in terms provided for the refund of the whole amount or the bank guarantee, as the case may be, in the case of seccess of the appeal or revision. Particularly highlighted on behalf of the respondent State is the fact that the deposit of the bank guarantee is neither a court fee nor on which may be lost altogether once the appeal or revision has been filed along with it. It is rightly a quantified amount of licence fee which under the provisions of sub-sections (8) and (9) is refunded entirely to the successful appellant and even in the event of the failure of the appeal or revision, all that is to be done is that the said amount would be adjusted as licence fee for the unauthorised use and occupation of the land during the pendency of the same and the amount where of would be determined accordingly.

(21) The learned Advocate-General then rightly pointed out that the deposit under sub-section (7) is called for in the case of an area declared surplus over and above the permissible area. It was contended with obvious plausibility that the appellants and petitioners herein by and large are a class of landlords whose holdings exceed the permissible area provided under the legislation. It cannot, therefore, be said that the person aggrieved by the declaration of their area surplus are a class of paupers who are unable to make even a reasonable deposit of money. It was submitted that the right of appeal involved no court fee related to the value of the land (which is even elementary in the case of an ordinary suit for possession), and the appellants and petitioners herein, in the total absence thereof, who have to make a reasonable deposit of money as licence fee in the event of the failure of the appeal which can hardly be termed as onerous. It was rightly contended that with the endemic love of land engained in the land-holders within the State of Haryana, it cannot possibly be said that a deposit of the sum of Rs. 240 per acre by a land-owner who holds an area over an above the permissible one is a condition which takes away his right of appeal.

(22) I am of the view that in the larger perspective the regulation of the right of appeal, in particular after its recent amendment by way of sub-sections (7), (8) and (9) of section 18 against the background of Haryana ceiling legislation, is not only wholly

moderate and reasonable but perhaps necessary to secure the objects of that legislation.

(23) In fairness to the learned counsel for the petitioners, one feels compelled to refer to some of their contentions which on the face of them appear to be wholly untenable. It was urged before us that Article 14 was attracted to the situation and stood violated because sub-sections (7) to (9) of section 18 treated the two classes of persons—namely those who can make the deposit and those who are unable to do so in unequal and unfair manner. It is unnecessary to examine this rather curious contention on principle because it appears to me as concluded against the petitioners by the following observations of their Lordships of the Supreme Court in *The Anant Mills Co., Ltd., etc. etc.*, v. *The State of Gujarat*, (4) (supra).

> "Any requirement for the discharge of that liability or the fulfilment of that condition in case the party concerned seeks to avail of the said right is a valid piece of legislation, and we can discern no contravention of Article 14, in it. A disability or disadvantage arising out of a party's own default or omission cannot be taken to be tantamount to the creation of two classess offensive to Article 14 of the Constitution, especially when that disability or disadvantage operates upon all persons who make the default or omission."

(24) We were then pressed repeatedly and persistently to retread afresh the well trodden ground of the unconstitutionality or otherwise of the land ceiling legislation, Counsel then raised the bogey that sections 2(a), 9(4), 12 and 16 of the Haryana Ceiling on Land Holdings Act 1972, were confiscatory in nature and patently violative of the right of property guaranteed under Article 31. We cannot possibly be drawn afresh into this controversy in view of the fact that a Five Judge Bench of this Court in *Shmt. Jaswant Kaur and another* v. *The State of Haryana and another* (5), has upheld in categoric terms the aforesaid provisions. Even the correctness of that view was not seriously challenged before us. Being bound by that decision, we are unable to entertain or consider afresh the constitutionality of the same provisions. Equally it is fit to recall in this conetxt that the similar if not identical provisions of the Punjab Land Reforms Act, 1973, have been upheld by the Division

(5) 1977 P.L.J. 230.

Bench decision in *Saroj Kumari etc.* v. *The State of Haryana etc.* (6). This apart, it deresrves notice that the aforesaid Division Bench of this Court had struck down the definition of "family" as laid out in the Punjab Land Reforms Act, 1973, which in turn was reversed by their Lordships of the Supreme Court in *D. G. Mahajan etc.*, v. *State Maharashtra,* (7) and the validity of the whole Act had been upheld.

(25) Based primarily on the alleged inherent unconstitutionality and confiscatory nature of the Haryana ceiling legislation, it was then contended that the right of appeal, when it touches this right of property, by itself is transformed more or less in the nature of a fundamental right to hold the said property and, therefore, any unreasonable restrictions placed on the right of appeal would involve a violation of the fundamental right under Article 31.

(26) Whilst we are slightly amused by the ingenuity of counsel on this score, it is almost manifest that the submission is fallacious. For the detailed reasons recorded above I have already found that the regulation of the right of appeal is far from being unreasonable. This apart, once it is held that the basic provisions of the Haryana legislation in the Haryana Ceiling on Land Holdings Act, 1972, are constitutional, then it is hardly possible to hold that the mere right appeal with regard to the declaration of surplus area would by of itself become a fundamental right or be violated on the same grounds on which the challenge to the substantive provisions has been repelled. Mr. K. P. Bhandari clearly conceded before us that he could not cite any authority which has held that the mere right of appeal is by itself a fundamental right because at one point or another it remotely touches the right of property. To me it appears that there is neither principle nor precedent for the rather curious contention raised before us at the cost of considerable Court time.

(27) Another curious contention raised on behalf of the petitioners was that sub-section (7) was in fact a great inroad into the judicial jurisdiction. It was contended that this was an uncalled for attempt on the part of the legislature to determine the mesne profits from the land during the pendency of the appeal which according to the counsel was a province of the Court and not that of the law makers.

(28) The plain provisions of sub-section (7) as also the broad construction I have earlier placed thereon need reference only to

(6) I.L.R. 1975(1) Pb. and Haryana 89.

(7) AIR 1977 S.C. 915.

summarily negative this contention. What the legislature has done by sub-section (7) is merely to provide a reasonable modicum of the security to discourage frivolous appeals and to provide some assurance for the recovery of a licence fee for the unauthorised use of land on the failure of an appeal without merit. As is evident from sub-sections (8) and (9), the amount is only to be adjusted later and this obviously involves an assessment and quantification by the authorities in doing so. The legislature cannot possibly be barred from quantifying the amount of security which it deems broadly necessary as a necessary restriction for the prevention of frivolous appeals. When after the amendment a clear provision has been made both for the refund or adjustment of the said security in the event of the success and failure of the appeal, respectively, the argument aforesaid on behalf of the petitioners loses content altogether. It has to be borne in mind that not in one but innumerable tax statutes the appellate right has been fettered with the requirement that the assessed tax or part thereof may be first deposited before the appeal can be entertained. Reference in this context may be made to section 25 of the Punjab General Sales Tax Act or the provisions of section 265 of the Indian Income Tax Act, 1961.

(29) It was then stated that it was unreasonable for the State to ask for a security from the appellant or the petitioner because in cases of surplus area the State was bound to pay compensation in graduated instalments and, therefore, could well adjust the amount of licence fee out of the said compensation in the event of the failure of the appeal. It is difficult to sustain such a contention. Firstly, it is for the legislature to consider as to the nature of the amount and the mode and manner of the payment of security or the regulation of the right of appeal which it deems necessary. Secondly, no provision in the Act was brought to our notice which entitled the State to deduct or adjust anything from the compensation payable to the land-holders. In fact, it was argued on behalf of the petitioners themselves that the persons, who are merely allottees, tenants or otherwise unauthorised occupants and who are not landlords entitled to compensation, may come to be aggrieved by the declaration of surplus area against which they may wish to file appeals. No question, therefore, of the adjustment of the licence fee out of the compensation due to the land-holders would arise in such a case.

(30) Counsel then contended that reference to or reliance on section 30 of the Indian Income-tax Act, 1922, was not well founded.

It was pointed out that the requirement to deposit the tax under the first proviso to sub-section 30(1) was related only to the default under section 46 of the same statute. Whilst there is some substance in the contention that the deposit visualised by section 30 aforesaid operated in the limited field aforesaid, it is equally manifest and deserves to be highlighted that the condition laid therein with regard to that area was at least absolute and no discretion was conferred on any appellate authority to exempt or negative the deposit of tax required by the said provision. Despite the absence of this discretion, their Lordships of the Supreme Court in *The Anant Mill's case* (supra) approvingly referred to the validity of such a provision with regard to the appellate jurisdiction. On reading the aforesaid case closely, I am wholly unable to subscribe to the view that the real ratio of the judgment is that the regulation of the right of appeal can be upheld only if a matching discreation is vested in the appellate authority to exempt or waive the same in individual cases. As I read that judgment, the observations with regard to the right of appeal recognise a virtually unfettered right to regulate the same by conditions howsoever onerous.

(31) Lastly, in this context even a more curious argument was raised that the security required by sub-section (7) was a tax and not a fee. Frankly, I have been unable to wholly appreciate the rather glib argument repeating a cliche with regard to the well-known distinction between the two as regards the constitutionality of legislation. I am unable to agree that in the context of sub-sections (7), (8) and (9) of section 18 any issue with regard to the distinction between a tax or a fee even remotely arises.

(32) For the reasons recorded, I am unable to find any merit in this set of writ petitions which I hereby dismiss, leaving the parties to bear their own costs.

(33) It may, however, be pointedly noticed that the writ petitioners herein, who had challenged the regulation of their right of appeal, were primarily aggrieved by the declaration of surplus area by the prescribed authority either actually or in prospect. The dismissal of the writ petitions would in no way effect their legal right to resort to the remedy by way of appeal and revision conferred on them by section 18(1) and (2) of the Act. They are all, therefore, relegated to their ordinary statutory rights if the same are attracted to the case of an individual petitioner.

S. S. Dewan, J.—*I agree.*

K.T.S.