

## FULL BENCH

*Before D. K. Mahajan, Shamsheer Bahadur and R. S. Narula, JJ.*

MAM RAJ AND OTHERS,—*Petitioners*

*versus*

STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No 1386 of 1963

March 19, 1969

*Punjab Security of Land Tenures Act (X of 1953)—Ss. 10-A and 18—Object of section 10-A—Whether distinguishable from section 18—Purchase of land under section 18—Whether amounts to transfer within the meaning of section 10-A(b)—Orders passed under section 18—Whether can be ignored in determining surplus area.*

*Held*, that while provisions of section 18 of Punjab Security of Land Tenures Act, 1953, are protective for the tenants and enable them to buy the lands which have been in their continuous occupation for six years or more in areas falling outside the reserved or permissible limits of the landowners, section 10-A deals with the accretions of parcels of land which have been added to the holdings of landowners, both by voluntary transfers or by the process of inheritance or gift, which are liable to be taken over for the utilization as surplus area for the settlement of tenants. The land which a landowner cannot acquire except in specific cases beyond the permissible limits is made subject, to a charge for the resettlement of ejected tenants. It would be manifest that methods may be adopted to get back the lands which have fallen as surplus areas by collusive decrees or otherwise, and to provide for such a contingency it has been said in clause (c) of section 10-A that any judgment, decree or order of a Court or other authority obtained "after the commencement of this Act" and tending to diminish the surplus area of a person shall be ignored. The object and purpose of section 10-A is separate and distinguishable from section 18 of the Act. There is no conflict at all between section 10-A and section 18 of the Act. (Para 11)

*Held*, that the purchase of land under section 18 of the Act does not amount to a transfer within the meaning of clause (b) of section 10-A, which a process of transfer not being a volitional disposition of the landowner. Whether the landowner opposes the purchase or not, the acquisition of land in consequence of the right bestowed on the tenant under section 18 cannot be treated as a transfer. (Para 13)

Mam Raj, etc. v. State of Punjab, etc. (Shamsher Bahadur, J.)

*Held*, that an order passed by the specified authorities under section 18 of the Act cannot be regarded as an order of "other authority" mentioned in clause (c) of section 10-A which can be ignored in computation of surplus areas. What can be ignored in determining surplus areas under clause (c) of section 10-A is "any judgment, decree or order of a court" and the orders passed under section 18 cannot fall in any of these categories. The subsequent words "or other authority" in clause (c) of section 10-A have to be read *ejusdem generis* with "judgment, decree or order of a court". (Para 14)

*Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 28th March, 1967 to a larger bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and the Hon'ble Mr. Justice R. S. Narula on 12th July, 1967, further referred the case to a Full Bench. The Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula on 19th March, 1969, after deciding the question of law referred to returned the case to the Single Bench for decision in accordance with law.*

*Petition under Articles 226/227 of the Constitution of India, praying that a writ of certiorari or any other appropriate writ, order or direction be issued quashing the orders, dated 19th May, 1961, 5th September, 1962, and 18th April, 1963, passed by the respondents 3, 2 and 1, respectively.*

ANAND SWAROOP, SENIOR ADVOCATE WITH N. L. DHINGRA, ADVOCATE, for the Petitioners.

A. S. SARHADI, ADVOCATE, for ADVOCATE-GENERAL, PUNJAB WITH N. S. BHATIA, ADVOCATE, for the Respondents.

#### ORDER OF THE FULL BENCH

SHAMSHER BAHADUR, J.—When these Civil Writ petitions, *Mam Raj and others v. State of Punjab* (Civil Writ No. 1386 of 1963) and *Hanuman and others v. State of Punjab* (Civil Writ No. 1508 of 1963) came for hearing before me in the first instance on 28th of March, 1967, a point was raised by the counsel for the respondent State of Punjab that the judgment in the Bench decision of Narula, J., with which I concurred, in *Amar Singh v. State of Punjab and another* (1) and on which reliance was placed on behalf of the petitioners, itself contained some observations which tended

(1) I.L.R. (1967) 2 Punj. & Hry. 120=1967 Pb. Law Journal 38.

to cast a shadow on the conclusions reached therein. In my reference order of 28th of March, 1967, I therefore, recommended that these cases should be placed for disposal before a Division Bench at an early date. Subsequently, on 12th of July, 1967, when the petitions came for hearing before the Bench of Mahajan and Narula JJ. they referred the matter for determination by a Full Bench.

(2) The Bench decision in *Amar Singh's* case dealt with the scope, relative importance and inter-relationship of sections 10-A and 18 of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act).

(3) Before discussing the decision in *Amar Singh's* case, the bearing of which on the present petitions is of undoubted importance, it is well to know of the inter-dependence of the various provisions of the Act so that the perspective of sections 10-A and 18 of the Act and the contradictions between these, if any, may be understood and appreciated. The Act passed on 15th of April, 1953, was not the first legislation on the subject and the contours of many of the concepts had already taken shape in the two earlier enactments on the subject, namely the Punjab Tenants (Security of Tenure) Act, 1950 (Act No. 22 of 1950) and Punjab Tenants (Security of Tenure) Amendment Act, 1951 (President's Act 5 of 1951). The Act, which at once consolidated and amended the existing law on the subject, was designed "to provide for the security of land tenure and other incidental matters". As is clear from the preamble, the primary object was the protection of tenants whose ejections recently from holdings held by landowners owning vast tracts of lands, had taken place on a massive scale. In restoring the rights of tenants ejected after 15th of August, 1947, care was taken that landlords with small holdings were not subjected to harassment by the tenants. For this reason, the concepts of "small landowner", "permissible area" and "reservation" were introduced. A small landowner was described as a person whose entire holding in the State of Punjab did not exceed the permissible area which though fixed at 100 standard acres in the Act of 1950 was reduced to 50 standard acres in the Act. A landowner owning larger areas was entitled to reserve the permissible area, and many of the provisions of the Act dealt with the manner and exercise of this right of reservation. The right of the landowner to eject tenants from the reserved or permissible areas was recognized in the Act though under section 9-A (introduced by Punjab Act 11 of 1955) the tenants liable to ejection on this score had to be accommodated in

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surplus areas ; a minimum period of ten years' tenancy was fixed under section 7 in respect of tenants who were in occupation of land outside the reserved areas and the right of the tenants who had been ejected after the 15th August, 1947, for restoration of the tenancies was recognised. Provisions were made for the exercise of the other rights of the tenants, the most important of these being the right to purchase the leased lands under section 18 of the Act. Except for slight modifications introduced by Punjab Act 11 of 1955, which are noticed below, the substantial provision is made in sub-section (1) of section 18 of the Act which is to this effect :—

“18. (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner—

- (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years (originally the period was 12 years), or
- (ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejection and immediately after restoration of his tenancy together amount to six years or more (again, the period was 12 years at first), or
- (iii) who was ejected from his tenancy after the 14th day of August, 1947 and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejection (again, the period at first was 12 years),

shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act :

Provided.....

Provided further.....

- (2) A tenant desirous of purchasing land under sub-section (1) shall make an application in writing to an Assistant

Collector of First Grade having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the landowner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine (formerly the word was 'fix') the average of the prices obtaining for similar land in the locality during 10 years immediately preceding the date on which the application is made.

- (3) The purchase price shall be three-fourths of the value of land as so determined.
- (4) (a) The tenant shall be competent to pay the purchase price either in a lump sum or in six-monthly instalments not exceeding ten in the manner prescribed.
- (b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.
- (c) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.
- (5) If the land is subject to a mortgage at the time of the purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage debt shall be a charge on the purchase money.
- (6) If there is no such charge as aforesaid the Assistant Collector shall, subject to any directions which he may receive from any court, pay the purchase money to the landowner.
- (7) If there is such a charge, the Assistant Collector shall, subject as aforesaid, apply in the discharge of the mortgage debt so much of the purchase money as is required for that purpose and pay the balance, if any, to the landowner, or retain the purchase money pending the decision of a civil Court as to the person or persons entitled thereto."

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(4) I have reproduced these provisions to demonstrate that section 18 is self-sufficient in respect of the machinery which has been created for the purchase of lands held by tenants. Firstly, only a tenant of a landowner other than the small landowner, has been given the right of purchase; secondly, the right is only in respect of the land which falls outside the reserved or permissible area, and thirdly, the minimum period of tenancy is prescribed, namely six years. Protection is given to small landowners whose holding does not exceed the permissible limit. This permissible limit is equally applicable to tenants who cannot acquire lands under the tenancy which exceed this limit. The Assistant Collector, to whom an application is to be made for purchase, is empowered under the Act to fix the value of the land the payment of which in the manner laid down in the various sub-sections, makes him the owner of the land. Virtually, the order of the Assistant Collector has the effect of a decree passed by a Civil Court for possession and ownership.

(5) It is very important for a landowner, other than a small landowner, to have his permissible area clearly defined and reserved. Not only is a provision for voluntary reservation made, but it is also provided by subsequent amendments introduced by sections 5-B and 5-C that in case of failure to make a reservation, a landowner can select his permissible area and on his default to do so the Collector himself can make such a selection.

(6) In order to evade and circumvent the right vested in the tenant, resort was taken to large scale alienations and dispositions of properties to trim down the holdings within the permissible limits. A general provision was made in section 6 of the Act that :—

“For the purposes of determining under this Act the area owned by a landowner, all transfers of land except *bona fide* sales or mortgages with possession, or transfers resulting from inheritance, made after the 15th August, 1947, and before the commencement of this Act, shall be ignored.”

The restriction was extended further by an amendment introduced in Punjab Act No. 14 of 1962, which laid down that :—

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

(7) Another situation had to be met when the tenants from reserved area were ejected at the instance of landowners. How were they to be resettled? It was provided for the first time by Punjab Act 11 of 1955 by the insertion of section 9-A that no tenant shall be liable to ejection under clause (i) of sub-section (1) of section 9, which deals with the case of ejection of tenants from reserved areas, unless "he is accommodated on a surplus area in accordance with the provisions of section 10-A or otherwise on some other land by the State Government."

(8) This brings us to the concept of 'surplus area' which was defined in sub-section (5-a) of section 2 of the Act inserted for the first time by Punjab Act 11 of 1955. It means "the area other than the reserved area, and where no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C, but it will not include a tenant's permissible area". The creation of 'surplus area' avowedly is for the purpose of resettling tenants, and within its definition are comprised the lands falling outside the reserved permissible or selected areas of landowners other than the small landowners. Though the term "permissible area" had occurred in the legislation right from the beginning, its meaning and content did not assume a complete shape till the amendments made in 1955 and 1962. It was visualised in section 19-B introduced for the first time by Punjab Act 4 of 1959 that a landowner or a tenant may acquire lands by inheritance in excess of permissible areas after the commencement of the Act. If any person as an heir acquired by gift, or bequest, such lands and also after 30th July, 1958, by transfer, exchange, lease agreement or settlement, which with or without the lands already owned or held by him, exceeds in the aggregate the permissible area, he had to furnish to the Collector a return of all such lands selecting the land not exceeding in the aggregate the permissible area which he desired to retain. Again, on failure of his furnishing such a return, a right was given to the Collector under sections 5-B and 5-C to have this area determined under section (4) of section 19-B :—

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

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(10) It now becomes necessary to interrelate the other provisions of the Act with section 10-A, two of its clauses being inserted by Punjab Act 11 of 1955 and clause (c) by Punjab Act 14 of 1962. The crucial importance of section 10-A was recognised in the statutory provisions themselves. To recall, even the tenants who are liable to ejection from the reserved or permissible areas cannot be actually ejected till they are accommodated in surplus areas under the provisions of section 10-A. Again, section 29-B, which envisages acquisition of land by gift of bequest at any time and after 30th of July, 1958, even by alienations etc., in excess of permissible area, makes them subject to the provisions of section 10-A and it is specifically said in sub-section (4) of section 19-B that the accretions in excess of the permissible area, even though lawful "shall be at the disposal of the State Government for utilization as surplus area under clause (a) of section 10-A". Section 10-A indubitably is the core of the whole Act and whatever areas, both of landlords and tenants, have to be trimmed in excess of the permissible limits, are liable for utilization under section 10-A.

(11) Thus, while the provisions of section 18 are protective for the tenants and enable them to buy the lands which have been in their continuous occupation for six years or more in areas falling outside the reserved or permissible limits of the landowners, section 10-A deals with the accretions of parcels of land which have been added to the holding of landowners, both by voluntary transfers or by the process of inheritance or gift, which are liable to be taken over for the utilizations as surplus area for the settlement of tenants. The land which a landowner cannot acquire except in specific cases beyond the permissible limits is made subject, to a charge for the resettlement of ejected tenants. It would be manifest that methods may be adopted to get back the lands which have fallen as surplus areas by collusive decrees or otherwise, and to provide for such a contingency it has been said in clause (c) of section 10-A that any judgment, decree or order of a Court or other authority obtained after the commencement of this Act" and tending to diminish the surplus area of a person shall be ignored. The object and purpose of section 10-A is separate and distinguishable from section 18 and this is precisely what has been emphasised in *Amar Singh v. State of Punjab*, (1).

(12) In *Amar Singh's* case, Shrimati Lachhman was a big landowner in the sense that she was not a small landowner and out of the vast area under her ownship, two tracts of land were under



the tenancy of Chandu and Siri Chand and in respect of some land a gift had been made in favour of Amar Singh, a son-in-law of the landowner. While proceedings for surplus area were being taken, Amar Singh and his brother Indraj applied for purchase of lands under section 18 of the Act before the Assistant Collector which they claimed had come under their tenancies and were not included in the reserved area of the landowner. These applications were granted by the Collector and subsequently in the computation of the surplus area the orders passed by the Collector under section 18 were ignored with the result that the lands which had been purchased by Amar Singh and Indraj were treated as surplus areas. In speaking for the Court, Narula, J., laid down three propositions of law which appear to us to be unexceptionable.

(13) In the first place, it was said that the purchase of land under section 18 of the Act did not amount to a transfer within the meaning of clause (b) of section 10-A, such a process of transfer not being a volitional disposition of the landowner. Whether the landowner opposes the purchase or not, the acquisition of land in consequence of the right bestowed on the tenant under section 18 cannot be treated as a transfer.

(14) Secondly an order passed by the specified authorities under section 18 of the Act cannot be regarded as an order of other authority" mentioned in clause (c) of section 10-A which can be ignored in computation of surplus areas. As rightly observed by Narula J., if the "other authority" referred to in section 10-A (c) is deemed to include the Assistant Collector or the Collector purporting to act under section 18 of the Act, the ameliorative provisions of this section would be "nullified and obliterated". What could be ignored in determining surplus areas under clause (c) of section 10-A is "any judgment, decree or order of a court" and the orders passed under section 18 cannot fall in any of these categories. The subsequent words "or other authority" in clause (c) of section 10-A have to be read *ejusdem generis* with "judgment, decree or order of a court".

(15) What follows from these two propositions is, and this is the third proposition, that even if there is a conflict between sections 10-A and 18 of the Act, the provisions of the latter must prevail.

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(16) We do not think that there is any conflict at all between sections 10-A and 18 of the Act. To repeat, section 10-A is a rule of guidance, no doubt of overriding importance, laying down that the right of the State Government to utilise surplus areas would remain unaffected. Both sections 19-A and 19-B, as already pointed out refer to the authority of the State Government to resettle ejected tenants on surplus areas. Whether the surplus area is formed in consequence of the subsequent accretions of the landowner or is carved from his original holding the right of utilization by the State is the same.

(17) The occurrence of the following sentences at page 46 in *Amar Singh's* case does not in any way affect the integrity or validity of the judgment:--

“Such transfers over which the landowner has no control do not appear to be intended to be covered by these expressions. It is precisely for this purpose that clause (c) has been added to avoid the cloak of a transfer by order of a Court being put on a voluntary disposition of land outside the control of the authorities under the Act. It is only a voluntary transfer or disposition by a landowner by any kind of alienation or demise that would be covered by clause (b).”

(18) This expression of opinion cannot be construed to lead to an inference that where the purchase of land had been affected in consequence of an order passed by a Collector on the tacit or implied consent of a landowner it should fall within the inhibition contained in clause (c) of section 10-A. The conclusion reached by the Bench in *Amar Singh's* case was based on the authorities to which reference is made in the judgment.

(19) In *Ganpat v. Jagmal and others* (2), a Bench decision of Mahajan and Pandit JJ., an argument raised by the State counsel regarding the construction to be put on section 18 which enabled the tenant to purchase land out of the surplus area and thereby reduce the available surplus area, was not accepted. Reference was

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(2) 1963 P.L.R. 652.

made to section 7 of the Act which stood deleted by Punjab Act 11 of 1955, to the effect that :—

“..... no tenant on land other than the reserved area of a landowner shall be liable to ejection before the expiry of a period of ten years from the commencement of this Act, or from the commencement of his tenancy, whichever is later.”

(20) In repelling the argument of the State counsel that a tenant must be in possession of land under his tenancy for a period of six years on or before the 15th April, 1953, to entitle him to the benefit of section 18, Mahajan J. observed that “section 18 gives the right to a tenant and that right has to be examined at the time when an application under section 18 is made and cannot be denied on the ground that he was not a tenant for more than six years on 15th April, 1956”.

(21) In *Jot Ram v. A. L. Fletcher and others* (3). Acting Chief Justice Mehar Singh and Grover J. held that after a tenant has complied with the order of purchase made by an appropriate authority under section 18 of the Act and has made payment in the terms of the order, in accordance with the provisions of section 18(4) (b), he is deemed to have become owner of the land and once he had become owner of the same, the death of the landowner after that date cannot divest him of the ownership of the land.

(22) The petitioners in both the petitions before us are tenants who have been allowed to purchase the lands of their respective landlords under section 18 of the Act. The orders of the Assistant Collector in both cases have been ignored in computing the surplus area on the ground that they are hit by clause (c) of section 10-A of the Act. Mr. Anand Swarup, the learned counsel for the petitioners, places reliance on the authority of the Bench decision of *Amar Singh v. State of Punjab* (1) and we think that his submission is right. We do not see any reason to doubt the validity of the judgment of the Division Bench and there is nothing in the observations contained therein to throw doubt on its correctness or validity.

(3) I.L.R. (1967) 1 Punj. & Hry. 597=1966 P.L.R. 787.

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(23) After this expression of view on the question of law, we send back these petitions for disposal by a learned Single Judge in accordance with law. There would be no order as to costs.

D. K. MAHAJAN, J.—I entirely agree.

NARULA, J.—(24) This reference to Full Bench appears to have been necessitated because of the contention of the learned counsel for the State of the effect that there is a possible contradiction in the views expressed by me while preparing the Division Bench judgment in *Amar Singh's case*. While holding *inter alia* that any land taken out of a big landowner's holding under section 18 of the Act is not deemed to have been 'transferred or otherwise disposed of by the landowners within the meaning of section 10-A(b), I made the following observations which are stated to contain the contradiction :—

"It appears that by 'transfer or other disposition of land' in clause (b) of section 10-A, is meant only voluntary transfers or dispositions. Such transfers over which the landowner has no control do not appear to be intended to be covered by these expressions. *It is precisely for this purpose that clause (c) has been added to avoid the cloak of a transfer by order of a Court being put on a voluntary disposition of land outside the control of the authorities under the Act.* It is only a voluntary transfer or disposition by landowner by any kind of alienation or demise that would be covered by clause (b)."

(25) I have underlined the sentence in the above-quoted passage which has led to this controversy. I think a duty is cast on me to avail of this opportunity to explain as to what was intended to be conveyed in this sentence so as to remove the impression, if it genuinely exists, in some minds about the force or validity of the law laid down in *Amar Singh's case* having been watered down or diluted in any manner by the controversial sentence. The insinuation which the learned State counsel wants to attribute to the sentence is apparently this. He thinks that I intended to convey that notwithstanding the general law about section 10-A(b) not applying to a sale under section 18, a sale under section 18 should nevertheless be ignored under section 10-A(b) if the authority determining the surplus area finds that the sale was a collusive one, and, therefore not genuine. In the context in which the sentence occurs, it would be straining it to a breaking point to spell out any such meaning from it. The scheme of section 18 shows that the Assistant Collector Grade I is not bound to pass an order for purchase in favour

of a tenant merely because the landowner is prepared to consent to the same. This only means that in an appropriate case, the Assistant Collector may after holding necessary enquiry record a finding against the tenant, on any one of the issues without proving which he cannot succeed, and thereupon reject his application. This would be within and not "outside the control of the authorities under the Act" in the course of the purchase proceedings. Once, however, the Assistant Collector, Grade I, has allowed an application under section 18 of the Act, and his order is not set aside in appeal or revision the same becomes final, and remains immune to an attack against its validity on any ground including that of collusion, before the co-ordinate authorities under the Act dealing with the question of determination of surplus area. It is quite possible that the juxtaposition of the sentence in question in the relevant passage in my judgment in *Amar Singh's case* was not very happy, but, as observed by my Lord Shamsher Bahadur, J., it cannot be construed to lead to an inference that where the purchase of the land had been effected in consequence of an order passed by the Collector with the consent of a landowner, it should fall within the inhibition contained in clause (c) of section 10-A. To so construe any observation in my judgment in *Amar Singh's case* would be to completely demolish the decision given therein to the effect that the expression "other authority" in section 10-A(c) does not include an Assistant Collector Grade I, who might have allowed an application under section 18. Subject to this clarification of my observations in the judgment of this Court in *Amar Singh's case*, I entirely agree with the judgment of the Full Bench prepared in this case by my learned Brother Shamsher Bahadur, J.

K. S. K.

FULL BENCH

*Before Mehar Singh, C.J. Ranjit Singh Sarkaria and B. R. Tuli, JJ.*

JUGRAJ SINGH,—Appellant

*versus*

THE STATE OF PUNJAB AND OTHERS,—Respondents

Letters Patent Appeal No. 202 of 1968

April 24, 1969.

*Punjab Civil Service Rules Volume I, Part I—Rules 2.9, 2.49 and 2.58—Punjab Civil Services (Punishment and Appeal) Rules (1952)—Rule 9—"Probationer"—Whether has a substantive status—Temporary post held substantively—Such post—Whether becomes substantive—Holder of the post—Whether acquires*