CIVIL MISCELLANEOUS

Before Bal Raj Tuli and Bhopinder Singh Dhillon, JJ.

SAROJ KUMARI, ETC.—*Petitioners.*

Versus

THE STATE OF HARYANA ETC.—*Respondents.*

Civil Writ No. 4187 of 1973

September 9, 1974.

Haryana Ceiling on Land Holdings Act (XXVI of 1972)—Sections 3, 4, 7 and 9—Haryana Ceiling on Land Holdings Rules (1973)—Rules 5(2)(a), 5(2)(b) and 5(2)(c)—Constitution of India (1950)—Articles 31A and 31C—Part of section 4 and other allied provisions which prescribe permissible area for a 'family'—Whether liable to be struck down on account of vagueness and uncertainty—Such provisions—Whether protected under Articles 31A and 31C, Constitution of India, as promoting agrarian reforms—Explanation II to section 9—Whether unworkable—Words 'company' and 'cooperative society'—Whether to be deleted therefrom—Rules 5(2)(a), 5(2)(b) and 5(2)(c)—Whether ultra vires section 4(1)(a) and (b) of the Act—Such rules—Whether also liable to be struck down for non-maintenance by the Canal Department of the records mentioned therein.

Held, that it is evident from the provisions of sections 3, 4, 7 and 9 of the Haryana Ceiling on Land Holdings Act, 1972, that 'family' under the Act is an artificial entity unknown to any other law providing for enjoyment of or succession to property or any personal law governing the parties. According to the Explanation to section 7 and Explanation 1 to section 9(1) of the Act, the land held by all the members of the 'family', as defined in the Act, has to be pooled together and out of that land permissible area of the family has to be selected. There is no provision in the Act that the land selected as permissible area of the family shall cease to be the land of the individual who owned it and in whose name it was recorded on the appointed day. It is also not provided that such land shall become the property of the family thereafter. If a family has to be made a unit for holding permissible area, it is absolutely essential to define the *inter se* rights of the members of the family in respect of the permissible area. The Act does not define as to what will be the share of each member of the family in the permissible area of the family, whether he can claim any part of it as his individual share and seek partition thereof or whether on attaining majority a member of the family will be entitled to have his or her share in the land of the family partitioned for separate enjoyment or the unmarried daughter, who was a member of the family on the appointed day, will cease to have any share in the family property after her marriage as in the case of joint Hindu family or whether she will be able to claim her share in the property and get it partitioned. It is further not clear as to what will be the rights of the children born in the family after the appointed day, that is, whether they will be entitled to claim any share in the permissible area of the family

reserved before their birth. The family has been artificially created for the purposes of the Act without in any way defining the *inter se* rights or the share of each member of the family in the permissible area. It cannot, therefore, be determined how the family constituted under the Act will be able to hold and enjoy the permissible area for the purposes of the family and what will be the mode of succession to the various members of the family in the case of their death. It is also not made known whether the head of the family or any other member can make a will with regard to his or her share in the land or make any *inter vivos* alienation thereof without the consent of the other members of the family. The provisions of the Act, as they stand at present, deserve to be struck down on the ground that incomplete provision has been made on a vital subject of legislation leading to vagueness and ambiguity which will create many difficulties for landowners while declaring their lands and the area to be selected as permissible area. Such a legislation must be comprehensive as well as easily comprehensible. It is the duty of the Legislature to make unambiguous and easily-understandable provisions for the masses to comply with without any difficulty. Hence that part of section 4 and other allied provisions of the Act which prescribe the permissible area for a 'family' suffer from the vice of vagueness and uncertainty and being incomplete and unworkable are struck down. As a consequence of the striking down of these provisions, the following alterations shall be made in the provisions of the Act:—(1) The word 'family' shall be deleted from the definition of 'person' in section 3(m) ; (ii) The words 'or family consisting of husband, wife and upto three minor children (herein referred to as the "primary unit of family")' after the word 'person' shall be deleted from section 4(1); (iii) sub-section (2) of section 4 shall stand deleted; (iv). For the words 'primary unit of family, the word 'person' shall be substituted in sub-section (3) of section 4; (v). Explanation to section 7 shall stand deleted; (vi) Explanation I to section 9(1) shall stand deleted. Paras 4, 5, 6, 7 and 19).

Held, that if any provision of the Act does not amount to or promote agrarian reform or the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution, it can be struck down on any ground including the violation of the fundamental rights guaranteed by Articles 14, 19 and 31 of the Constitution. Agrarian reform does not mean that a landowner should be deprived of his land completely without leaving any portion thereof with him or her in order to distribute it amongst other landless persons or agricultural labourers or tenants etc. Most of the landowners depend for their livelihood on the land owned by them. In case more than one member of the family, as constituted under the Act, owned land in his or her own right on the appointed day, it will be the negation of agrarian reform to completely deprive him or her of that land at the whim and option of the head of the family, may he be the husband, the wife or the guardian of the minor children, particularly when their rights in the land of the family have not been prescribed or defined in the Act. The result of the present provisions of the Act is to make quite a number of landowners landless and force them to become labourers or agricultural workers or seek employment somewhere else in order to

eke out their livelihood. This kind of legislation is negation of agrarian reform and does not carry out the policy of the State Government under clauses (b) and (c) of Article 39 of the Constitution. Hence the provisions of the Act with regard to 'family' are not saved under Articles 31A and 31C of the Constitution. (Para 8).

Held, that Explanation II to section 9(1) of the Act is also not happily worded. According to it, while calculating the extent of land owned or held by a person, the share of such person in a co-operative society or acompany has also to be taken into account. Company is not defined in the Act or in the General Clauses Act, 1897. It is defined in the Companies Act, 1956, to mean a company formed and registered under that Act or an existing company as defined in clause (ii) of section 3 of that Act. Any company on its incorporation becomes a distinct legal entity altogether different from the subscribers to the memorandum of association or its shareholders. It can own and deal with property. While the company is a going concern, no shareholder can claim that any part of its property belongs to him. It is not possible, at any time, to determine his share in the company's property. It is, therefore not possible to determine the share of a person in the land owned or held by a company of which he is a shareholder, for the purposes of calculating the extent of land owned or held by such person. The position of a co-operative society registered under the Co-operative Societies Act, 1961, is also similar to the position of a company and the same applies *mutatis mutandis* to a cooperative society. The word 'person' as defined in the Act includes a company and a cooperative society which means that each company and cooperative society will be entitled to one permissible area in lieu of the land held by it as prescribed in section 4 of the Act. Out of that land, the share of each member of the company or a cooperative society cannot be determined. Therefore, the words 'company' and 'cooperative society' shall have to be deleted from Explanation II to section 9(1) of the Act. (Paras 12 and 13).

Held, that while defining various categories of land in clauses (ii), (iii), (iv) and (v) of rule 2 of the Haryana Ceiling on Land Holdings Rules, 1973, no consideration has been given to the kind of soil. These categories depend on assured irrigation from different sources and the number of crops the land is capable of growing but not the kind of soil which was necessary to be taken into consideration according to the mandate of the legislature given in section 4(4) of the Act. It may be that the yield from an inferior kind of land under assured irrigation capable of growing at least two crops in a year may be much less than from a superior kind of land under assured irrigation and capable of growing at letast two crops. To equate all kinds of lands under assured irrigation and capable of growing at least two crops or one crop in a year, as the case may be, is not in consonance with the provisions of section 4(4) of the Act. That the kind of soil plays an important part in the determination of a permissible area is clear from the provisions of section 16(1) of the Act wherein for paying amount in lieu of the surplus area the land has been divided into sixteen categories

and for each such category different amount has been prescribed. It, therefore, follows that rule 5 which prescribes the manner of evaluating various categories of lands which have been classified under rule 2, is not in accordance with the provisions of section 4(4) of the Act. Section 4(1) (a) of the Act prescribes permissible area in terms of land under assured irrigation capable of growing at least two crops in a year and this category of land has been defined as 'A category land' in the Rules if the source of irrigation is a canal or a State tubewell and 'AA category land' if the source of irrigation is a private tubewell or pumping set. In accordance with the provisions of section 4(5) one unit of 'A category land' has been made equal to 1.25 units of 'AA category land'. In rule 5(2), however, it has been provided that in case the land is irrigated by canal or Government tubewells or both by canal and private tubewell, the extent of the area which received irrigation during 5 or 6 crops according to the records of the Girdawari conducted by the Canal Department for charging abiana during the period of 3 years immediately preceding the appointed day, shall be treated as 'A category land'. Section 4(4) of the Act provides that intensity of irrigation shall be taken into consideration. According to the definition of 'intensity of irrigation' as explained in Volume II of the Manual of Irrigation Practice, that land can be classed as 'A category land' or 'AA category land' which has received irrigation for all the six crops during the period of 3 years immediately preceding the appointed day in order to accord with section 4(1)(a) of the Act. The inclusion of five crops in rule 5(2) (a) is, therefore, not in accordance with section 4(1) (a) and (4) of the Act. Similarly, rule 5(2)(b) which provides that in case the land is irrigated by canal of Government tubewells or both by canal and private tubewells, the extent of the area which received irrigation for 2, 3 or 4 crops during the period of 3 years immediately preceding the appointed day shall be treated as 'B category land', is not in accord with section 4(1) (b) of the Act according to which the assured irrigation must be for at least one crop in a year. If there has been assured irrigation for two crops in three years, it will not fall in the category for which provision is made in section 4(1)(b) of the Act. Clauses (a) and (b) of rule 5(2) are, therefore, *ultra vires* the provisions of section 4(1)(a) and (b) of the Act. (Paras 15, 16 and 17).

Held, that in rule 5(2) (a) mention is made of the "records of the Girdawari conducted by the Canal Department for charging abiana". No such record is maintained by the Canal Department. The record that is maintained is provided for in Standing Order No. 61 of the Financial Commissioners, Haryana and Punjab, wherein no mention has been made of Girdawari. It is, therefore, not possible for the landowners to obtain copies of the record of Girdawari maintained by the Canal Department in order to determine whether their land received irrigation for the number of crops provided for in section 4(1) of the Act. The rule-making authority must prescribe the record which is current and which is known to the Department as well as the landowners and of which certified copies can be easily obtained. This rule is, therefore, also liable to be struck down on the ground that the record for determining the area of a landowner which received irrigation during the crops as mentioned in rule 5(2)(a), (b) and

(c) is not maintained by the Canal Department in that form and the description of that record in this rule is not correct. (Para 18).

Petition under Articles 226/227 of the Constitution of India praying that the Haryana Ceiling on Land Holdings Act, 1972 (Haryana Act No. 26 of 1972) be declared ultra vires the provisions of the Constitution of India.

B. S. Gupta and A. S. Nehra, Advocates, *for the petitioners.*

J. N. Kaushal, Advocate-General, Haryana. C. D. Dewan, Additional Advocate-General, Haryana and H. N. Mehtani, Deputy Advocate-General, Haryana, *for the respondents.*

JUDGMENT

TULI, J.—The Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as the Act) received the assent of the President of India on December 22, 1972, and was published in the Haryana Government Gazette (Extraordinary), dated December 23, 1972, on which date it came into force. In exercise of the powers conferred by section 31 of the Act, the Governor of Haryana, by notification No. G.S.R. 99/H.A. 26/72/S. 31/73, dated August 28, 1973, promulgated the Haryana Ceiling on Land Holdings Rules, 1973 (hereinafter called the Rules), to carry out the objects of the Act. A number of landowners have filed writ petitions challenging the constitutional validity of various provisions of the Act and the Rules, out of which 172 petitions have been placed before us for decision. This order will dispose of all those writ petitions (Nos. 4187, 4192, 4224, 4326, 4342 to 4346, 4433 to 4435, 4442 to 4445, 4455 to 4457, 4463, 4468, 4474, 4484, 4490, 4491, 4496, 4501 to 4505, 4507 to 4511, 4518, 4520, 4521, 4540 to 4543, 4551, 4565, 4578 to 4581, 4583, 4594, 4603, 4609, 4614 to 4620, 4624 to 4629 and 4635 of 1973, 92, 140, 166 to 169, 183, 198, 200 to 203, 216, 217, 219 to 228, 230, to 233, 254, 256, 271, 272, 301, 303, 304, 319 to 321, 323, 325, 326, 341, 342, 363, 364, 366 to 370, 381, 387 to 389, 396, 399-A, 400, 412 to 415, 417 to 433, 436 to 440, 471 to 479, 518, 519, 535, 536, 597, 646 to 649, 1008, 1132 and 1134 of 1974).

(2) The preamble of the Act shows that it was enacted to consolidate and amend the law relating to ceiling on land holdings in the State of Haryana and the statement of objects and reasons reads as under:—

> "Now in the State of Haryana, two enactments, that is, The Punjab Security of Land Tenures Act, 1953, and the Pepsu

Tenancy and Agricultural Lands Act, 1955, are in force. The Punjab Security of Land Tenures Act applies only to those parts of the State, which were comprised in the State of Punjab, before 1st of November, 1956. The Pepsu Tenancy and Agricultural Lands Act, 1955, applies to those territories of the Erstwhile State of Pepsu, which now form part of the State of Haryana. It has become essential that the law relating to ceiling on agricultural land contained in the aforesaid two Acts and which applies to certain parts of the State of Haryana should be unified and there should be only one Act on the ceiling of agricultural land for the whole of the State of Haryana.

Secondly, the Central Committee on Land Reforms appointed by the Government of India evolved a policy which sought to make available additional land to be distributed among landless persons to guarantee equitable distribution of land. To achieve this object it has been decided that permissible area be reduced, that the surplus area should vest in the State Government and a family is to be treated a unit for determining the permissible area. It has also been decided that certain exemptions which were allowed under two existing enactments should be withdrawn.

Thirdly, the surplus land is to be acquired by the State Government for allotment to the landless persons and further proprietary rights are to be conferred on them."

Section 2 of the Act declares that the Act has been passed for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India. The purpose of this declaration was to make the provisions of the Act immune from challenge on grounds of violation of the Fundamental Rights guaranteed by Articles 14, 19 and 31 of the Constitution, as is provided in Article 31-C.

(3) The learned counsel for the petitioners have not challenged that the provisions of the Act, except those which are being declared *ultra vires* in the later part of this judgment, pertain to agrarian reforms and give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. This matter was dealt with in detail by a Full Bench

of this Court, of which one of us was a member, in *Sucha Singh Bajwa* v. *The State of Punjab* (1) and it was held that the provisions of the Punjab Land Reforms Act, which pertained to agrarian reforms and gave effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution of India, were immune from attack on the ground that they took away or abridged any of the Fundamental Rights guaranteed under Articles 14, 19 and 31 of the Constitution. The statement of objects and reasons and most of the provisions of the Act, being similar to those of the Punjab Land Reforms Act, that judgment applies with full force to the Act and the learned counsel for the petitioners have not urged anything to the contrary. So we will proceed on the same basis while considering the provisions of the Act under challenge in these petitions.

(4) The main attack of the petitioners is to the constitutionality of that part of section 4 of the Act and other allied provisions which prescribe the permissible area for a family and reliance is placed on the Full Bench judgment in *Sucha Singh's case* (supra), wherein it was held, with reference to the provisions of the Punjab Land Reforms Act, that—

> " 'family' has been given an artificial meaning by section 3(4) of the Act and such a family is included in the definition of 'person' in section 3(10) of the Act. According to these definitions, no family can own or hold land as landowner, or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area which is 7 hectares, 11 hectares, 20.5 hectares or 21.8 hectares, as mentioned in clauses (a), (b), (c) and (d) of section 4(2) of the Act. If the members of such a family exceed five, the permissible area is increased by 1/5th of the permissible area for each member in excess of five subject to the condition that additional land shall not be allotted for more than three such members. The mode of selection of permissible area for the family is provided in sub-section (4) of section 4, that is, the land held by each member of the family on the appointed day has to be pooled and out of that land the husband, and where the husband is dead or does not own or hold any land, the wife and in any other case the eldest surviving child,

(1) I.L.R. 1974(1) Pb. & Hr. 575.

who is a member of the family, has to make the selection of permissible area and furnish the necessary declaration as is provided in rule 5(4) of the Punjab Land Reforms Rules, 1973 (hereinafter called the Rules). This rule does not provide that if the husband holds any area in his own name, he has necessarily to select that area for the family and can select the land of other members only to the extent his own area falls short of the permissible area. Similarly, if the husband does not own any land and the wife does, it has not been made obligatory on her to select the area owned by her as the permissible area and to select only such area from the land held by the children as may fall short of the permissible area for the family. The only restriction on the free choice of the person entitled to make selection of his permissible area is contained in sub-section (2) of section 5 as to the order in which different categories of lands held by him are to be selected. It, however, does not make mention of the order in which the lands held separately by the members of a family are to be selected by the husband, the wife or the eldest surviving child, who is a member of the family, as provided in rule 5(4) of the Rules. It is well-known that the lands in the State of Punjab are entered in the revenue records in the names of individuals and not families. The definition of 'family' is an artificial one as it excludes adult children and married minor daughters. For the purpose of determining the permissible area of such a family, minor children in excess of six have to be ignored. It is a common phenomenon that even adult sons are many a time dependent on their father or mother for their maintenance till they are able to support themselves. It has, however, not been provided by the Act that the permissible area so selected by the husband or the wife or the eldest surviving child of the family will become the permissible area of that family. In the absence of such a provision, it is legitimate to conclude that even after selection of the permissible area and the filing of the necessary declaration the land shall continue to remain in the individual name of the member of the family in whose name it stood previously so that he or she will be at liberty to deal with it as he or she pleases even to the detriment of the other members of the family. The family as such will not

acquire or become the owner of the land comprised in its permissible area. That part of the land selected as permissible area which belongs to a minor son will be lost to the family when the minor son becomes adult and ceases to be a member of the family. He will then own that land as a part of his own permissible area. Similarly, a minor daughter will take the land with her on marriage when she ceases to be the member of the family. It is thus obvious that the husband or the wife or the eldest surviving member of the family, while making the selection, and other junior members by attaining adulthood or getting married, as the case may be, can deprive the other members of the family of the area held by them at his or her own sweet will. The share of each member of the family in the permissible area of the family has not been defined nor has any restriction been placed on the alienation of that land by the members of the family so as to ensure its retention in the family. Such a provision cannot be said to be in the interest of or by way of agricultural reform, nay, it is the very negation thereof and cannot be upheld as valid or constitutional."

The learned counsel for the petitioners have not advanced any further arguments in this behalf but the learned Advocate-General, appearing for the State, has contended that the judgment of the Full Bench on this point is not correct for the following reasons:—

(1) That one of the reasons in support of the conclusion of the Full Bench is that the Act and the Rules do not say that the permissible area selected for the family becomes the permissible area of the family. Those observations were made with regard to the Punjab Act and the Rules framed thereunder. The scheme of the Haryana Act and the Rules, which are now under consideration, and the various provisions unmistakably lead to the only conclusion that the area so selected will belong to the family:

(2) that after holding that the Act is immune from attack under Article 31-A and 31-C of the Constitution, being a measure of agrarian reform and a measure to give effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution, it was not open to the Full Bench to hold that the

artificial concept of family was unconstitutional. The entire Act is one integral whole and no provision is unconnected with agrarian reform or the policy of the State specified in Article 39(b) of the Constitution;

(3) that the scheme of the Act is to reduce the ceiling limit in order to find more surplus area for agrarian reform and the Legislature could adopt any device to achieve that purpose. Expropriation of land of any person for this purpose is intimately linked with agrarian reform and hence no provision can be struck down because of the protection afforded under Articles 31-A and 31-C of the Constitution;

(4) that the Act is not a colourable piece of legislation and is within the competence of the State Legislature and cannot be struck down if some of the provisions of the Act appear to the Courts to be harsh and inequitable. The Act is immune from the attack of Article 14;

(5) that the definitions given in the Act are for the purpose of this Act only and the provisions of the Act have an overriding effect as against all other laws. This Act does not purport to touch the provisions of any other legislation like the Succession Act, the Hindu Minority and Guardians and Wards Act, Transfer of Property Act or any other Central Act; and

(6) that the provisions of the Haryana Act are more explicitly stated then the Punjab Act and there is no ambiguity. The scheme of the Act and every section of the Act is vitally linked with agrarian reform.

Before dealing with these submissions of the learned Advocate-General, I consider it necessary to set out the various provisions of the Act bearing on the point. These provisions are—

"*Section* 3.

(a) 'adult' means a person, who is not a minor;

(f) 'family' means husband, wife and their minor children or any one or more of them;

Explanation.—A married minor daughter shall not be treated as a child;

(h) 'landowner' means the owner of land;

(i) 'minor' means a person, who has not completed the age of eighteen years;

(l) 'permisisble area' means the extent of land specified in section 4 as the permissible area;

(m) 'person' includes a company, family, association or other body of individuals, whether incorporated or not, and any institution capable of holding property;

(q) 'separate unit' means an adult son and in case of his death, his widow and children, if any.

Section 4. Permissible area:—

(1) The permissible area in relation to a landowner or tenant or mortgagee with possession or partly in one capacity or partly in another, of person or family consisting of husband, wife and upto three minor children (hereinafter referred to as 'the primary unit of family'), shall be, in respect of:—

(a) land under assured irrigation capable of growing at least two crops in a year (hereinafter referred to as the land under assured irrigation), 7.25 hectares;

(b) land under assured irrigation capable of growing at least one crop in a year, 10.9 hectares;

(c) land of all other types including land under orchard, 21.8 hectares.

(2) The permissible area shall be increased by one-fifth of the permissible area of the primary unit of family for each additional member of family;

Provided that the permissible area shall not exceed twice the permissible area of the primary unit of family.

(3) The permissible area of the landowner, who may also select land for a separate unit, shall be increased up to the

permissible area of the primary unit of family for each separate unit,

Provided that where the separate unit also owns any land, the same shall be taken into acount for calculating the permissible area.

(4) The permissible area shall be determined on the basis of the valuation to be calculated in the prescribed manner, taking into consideration the intensity of irrigation, ownership of the means of irrigation and the kind of soil such as *banjar*, *sem*, *thur* or *kallar* subject to the condition that the total physical holding does not exceed 21.8 hectares.

(5) In determining the permissible area for the purpose of clause (a) of sub-section (1), five hectares of land under irrigation from privately owned tubewells, pumping sets, etc., shall be equal to four hectares of land under irrigation from canal as defined in the Northern India Canal and Drainage Act, 1873 (Central Act 8 of 1873), or from State Tubewell as defined in the Punjab State Tube-well Act, 1954 (Punjab Act 21 of 1954).

(6) The permissible area, in relation to every Gowshalla of a public nature, in existence on the date of commencement of this Act, shall be such as the State Government may, by notification specify in that behalf:

Provided that if at any time any land of Gowshalla is not being used for the charitable and non-profit making purpose of the Gowshalla the Collector may, by order, declare such land to be a surplus area after making necessary enquiry.

Section 7. Ceiling on land.

Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold, whether as landowner or tenant or as a mortgagee with possession or partly in one capacity or partly in another, land within the State of Haryana exceeding the permissible area on or after the appointed day.

Explanation.—Where a person is a member of the family, the land held by such person together with the land held by all the members of the family shall be taken into account for the purpose of calculating the permissible area.

Section 9. Selection of permissible area and persons required to furnish declaration—

(1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall, within three months of the publication of rules made under this Act or subsequent acquisition of land, furnish to the prescribed authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain;

Provided that in case of a member of the Armed Forces of the Union, the period for furnishing the declaration shall be one year.

Explanation 1.—Where the person is a member of the family, he shall include in his declaration the particulars of land held by him and also of land, if any, held by other members of the family.

Explanation II.—In calculating the extent of land owned or held by a person, the share of such person in the undivided family, firm, co-operative society or association of individuals, whether incorporated or not, or a company shall be taken into account.

(2) In making a selection of his permissible area under sub-section (1), the landowner may also select land for the separate unit:

Provided that the land selected for the separate unit, after adding the land owned on or after the appointed day by such unit, shall not exceed the permissible area.

(3) In making the selection such person shall include in the first place the land which had been transferred by him after the appointed day in contravention of the provisions of section 8 and in the second place the land mortgaged by him without possession, but shall not include any land—

(i) which is declared surplus;

(ii) which was under the permissible area of a tenant;

under the Punjab law or the Pepsu law.

(4) The declaration under sub-section (1) shall be furnished by—

(a) in the case of an adult unmarried person, such person;

(b) in the case of a minor, lunatic, idiot, or a person subject to like disability, the guardian, manager or other person in charge of such person or of the property of such person;

(c) in the case of a family, the husband or in his absence, the wife, or, in the absence of both, the guardian of the minor children;

(d) in the case of any other person, any person competent to act for such person in this behalf."

The points raised by the learned Advocate-General may now be considered in the order in which they have been enumerated above. Points 1 and 3, however, can be conveniently dealt with together. It is evident from the provisions of the Act, referred to above, that family under the Act is an artificial entity unknown to any other law providing for enjoyment of or succession to property or any personal law governing the parties and no provision has been made in the Act as to how the land of the family will be possessed by its various members, how the succession to that property will take place and what will be the respective rights of each member in the land of the family. According to the Explantion to section 7 and Explanation I to section 9(1), the land held by all the members of the family, as defined in the Act, has to be pooled together and out of that land

permissible area of the family has to be selected. There is, however, no provision that the land selected as permissible area of the family shall cease to be the land of the individual who owned it and in whose name it was recorded on the appointed day and shall become the property of the family thereafter with the result that whatever has been said in the Full Bench judgment in *Sucha Singh Bajwa's case* (1) (supra), applies with full force to the provisions of this Act also. In case, however, the argument of the learned Advocate-General is accepted that after selection the permissible area becomes the land of the family, it was essential for the Legislature to provide for the *inter se* rights of the members of the family in that land in order to make it workable. Section 4 prescribes the permissible area of 'the primary unit of family' as 7.25 hectares, 10.9 hectares or 21.8 hectares under clauses (a), (b) and (c) of sub-section (1) and that permissible area is to be increased by one-fifth for each additional member of the family so that the permissible area of a family consisting of husband, wife and minor children, whatever the number, shall not exceed twice the permissible area of 'the primary unit of family'. Sub-section (3) of section 4 of the Act, however, provides for the permissible area of a landowner which means owner of land and cannot be said to refer to a family. According to this sub-section, any landowner can select his permissible area of 7.25 hectares, 10.9 hectares or 21.8 hectares, as the case may be, for himself and if any land in excess of that permissible area is left with him, he can select another permisible area for each separate unit to the extent the area owned by the separate unit is short of the permissible area prescribed in clauses (a), (b) and (c) of sub-section (1) of section 4. Sub-section (3) does not talk of the land owned by the various members of the family, which makes it quite clear that selection can be made for a separate unit out of the land of the landowner himself or herself and not out of the land held by other members of the family of the landowner although that land is to be taken into account for the purposes of calculating the permissible area according to the Explanation to section 7 of the Act. Section 9 of the Act provides that every person has to furnish declaration with regard to the land held by him or her on the appointed day or at any time thereafter exceeding the permissible area. In this section 'person' includes family and Explanation I to sub-section (1) of section 9 provides that the person making the declaration will include the land, if any, held by other members of the family, and sub-section (2) of section 9 reiterates that the landowner, and not the family, may also select land for the separate unit. Clause (c) of sub-section (4)

of section 9 makes it clear that in the case of a family, the husband or in his absence, the wife, or, in the absence of both, the guardian of the minor children, has to furnish the declaration. There is thus no provision in the Act under which the land held by various members of the family becomes the land of the family *qua* which the family becomes a landowner out of which permissible area for separate units can be selected. The permissible area for a separate unit has to be selected by the landowner out of the area owned and held by him. But the learned Advocate-General vehemently contends that the area selected for the family as permissible area will become the property of the family and the ownership of various members of the family in the land held by them prior to the reservation of the permissible area will be completely abolished. That conclusion is possible only if the family becomes the owner of the entire land pooled together under the Explanation to section 7 and Explanation I to section 9(1) of the Act before the permissible area is selected and the surplus area determined. In that case, the family should be allowed to select permissible area for each separate unit as provided in section 4(3) of the Act out of the entire land owned and held by the family, but that is not what section 4(3) enacts. Acording to that sub-section the selection of permissible area for each separate unit is to be made out of the land of the landowner which means the person making the declaration under the Act. The provisions of the Act on this point are thus, to say the least, ambiguous and the object of providing a permissible area for each separate unit out of the family holding seems to have been thwarted particularly because in sub-section (3) of section 9, the land already declared surplus nder the Punjab Law or the Pepsu Law and the land which was under the permissible area of a tenant under those Acts, has not to be taken into account for the purpose of making selection of permissible area by a person for his family or for a separate unit.

(5) In case the argument of the learned Advocate-General to the effect that after the selection of the permissible area it becomes the area of the family is accepted, it will mean that the individual ownership of every member of the family in respect of the land held by him or her on the date the Act came into force will cease. Agrarian reform does not mean that a landowner should be deprived of his entire land and be not left with any part thereof. What it means is that only surplus area may be acquired from each landowner and distributed amongst the needy sections of the community, that is, landless persons, agricultural workers and ejected tenants, etc. The surplus area can be said to be that area which is in excess of the needs of a

landowner, the extent of which has to be determined by the Legislature. If the entire land is taken away from a landowner, it will amount to making landowners landless and distribute their land amongst others which cannot be the object of any agrarian reform or the policy of the State enshrined in clauses (b) and (c) of Article 39 of the Constitution. Some economically viable unit has to be left with every landowner particularly because the landowners, by and large, depend on agriculture as their only means of livelihood. If a family has to be made a unit for holding permissible area, it is absolutely essential to define the *inter se* rights of the members of the family in respect of that area. The Act does not define as to what will be the share of each member of the family in the permissible area of the family, whether he can claim any part of it as his individual share and seek partition thereof or whether on attaining majority a member of the family will be entitled to have his or her share in the land of the family partitioned for separate enjoyment or the unmarried daughter, who was a member of the family on the appointed day, will cease to have any share in the family property after her marriage as in the case of joint Hindu family or whether she will be able to claim her share in the property and get it partitioned.

(6) It is further not clear as to what will be the rights of the children born in the family after the appointed day, that is, whether they will be entitled to claim any share in the permissible area of the family reserved before their birth. As I have said above, the family has been artificially created for the purposes of the Act without in any way defining the *inter se* rights or the share of each member of the family in that area. It cannot, therefore, be determined how the family constituted under the Act will be able to hold and enjoy the permissible area for the purposes of the family and what will be the mode of succession to the various members of the family in the case of their death. It is also not made known whether the head of the family or any other member can make a will with regard to his or her share in the land or make any *inter vivos* alienation thereof without the consent of the other members of the family. Apart from the reasons stated in the Full Bench judgment in *Sucha Singh Bajwa's case* (supra), the provisions of the Act relating to the permissible area of the family suffer from the vice of vagueness and uncertainty and being incomplete and unworkable deserve to be struck down.

(7) Section 16 of the Act provides for the payment of amount in lieu of the land acquired as surplus, but no provision has been

made in this Act as to the person, who shall be entitled to receive the compensation from the Government. Presumably the person making the declaration will be paid the amount for the surplus area, as has been submitted by the learned Advocate-General. It is possible to infer by reference to section 12 and the definition of landowner that the amount is payable to the owner of the land and not necessarily to the person making the declaration, but it is not made clear beyond doubt. The clarity may be brought in by appropriate amendment of section 16, for in case it is payable to the person making the declaration, he may or may not pass on the amount to the member of his family who actually owned the land on the appointed day which is declared surplus, thus, depriving him or her not only of the land owned and held by him or her, but also of the amount of compensation in lieu thereof. This will amount to depriving such a member of his land and compensation in lieu thereof not by an act of the State Government, but by an act of the head or senior member of the family who makes the declaration under the Act. A provision can easily be made in this section for the amount of compensation to be paid to the person whose land has been declared surplus if it is owned by a member of the family on whose behalf the husband, the wife or the guardian of the minor children, makes a declaration. Such a provision appears to be necessary to be made in order to protect the interests of the wife and the minor children. The amount in lieu of the land of the minors declared surplus can be deposited in the Court competent to act under section 8 of the Hindu Minority and Guardianship Act or the Guardian and Wards Act to be utilised or disposed of by the guardian under the directions of that Court. When an artificial family unknown to the law so far was being created by the Act, it was incumbent on the Legislature to define the rights of its members *inter se*, as explained above, in order to make it a complete code on the subject. If each landowner within the prescribed limit for the family is allowed to own a part of the family land in lieu of the holding previously owned by him, the necessity of making provision for succession to or the enjoyment of that land may not arise. The provisions of the Act, dealt with above, as they stand at present, deserve to be struck down on the ground that incomplete provision has been made on a vital subject of legislation leading to vagueness and ambiguity which will create many difficulties for the landowners while declaring their lands and the area to be selected as permissible area. Such a legislation must be comprehensive as well as easily comprehensible. It

is the duty of the Legislature to make unambiguous and easily understandable provisions for the masses to comply with without any difficulty. It may be kept in view that most of the people whose lands are to be declared surplus, are illiterate, not at all well-versed with the intricacies of law. To force them to obtain the services of a lawyer for the purpose will be putting an undue burden on them. There is thus no merit in the submissions made by the learned Advocate-General with regard to points 1 and 3.

(8) There is equally no merit in point No. 2 urged by the learned Advocate-General. If any provision of the Act does not amount to or promote agrarian reform or the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution, it can be struck down on any ground including the violation of the Fundamental Rights guaranteed by Articles 14, 19 and 31 of the Constitution. As said earlier, agrarian reform does not mean that a landowner should be deprived of his land completely without leaving any portion thereof with him or her in order to distribute it amongst other landless persons or agricultural labourers or tenants, etc. It is well-known that most of the land-owners depend for their livelihood on the land owned by them. In case more than one member of the family, as constituted under the Act, owned land in his or her own right on the appointed day, it will be the negation of agrarian reform to completely deprive him or her of that land at the whim and option of the head of the family, may he be the husband, the wife or the guardian of the minor children, particularly when their rights in the land of the family have not been prescribed or defined in the Act as has been discussed above. If the family has to be made a unit for the purposes of prescribing the permissible area, the option should not be left to the seniormost member of the family to select the permissible area out of the land owned by all the members of the family. The Legislature should provide that proportionate area from each member's holding will be selected which, in the aggregate, will be equal to and become the permissible area of the family, but that proportionate area will continue to be the ownership of the individual who owned it on the appointed day. In this manner the State will get the surplus area to the same extent as will be available under the existing provisions of the Act and will also leave the owners with a part of the land owned by them on the appointed day. In such a case any member of the family on attaining majority or becoming independent will be able to increase his area to the extent of the

permissible area so as to provide for his own family a viable economic unit to earn livelihood therefrom. The result of the present provisions of the Act is to make quite a number of landowners landless and force them to become labourers or agricultural workers or seek employment somewhere else in order to eke out their livelihood. This kind of legislation is negation of agrarian reform and does not carry out the policy of the State Government under clauses (b) and (c) of Article 39 of the Constitution. In our opinion, therefore, it is necessary to make a provision in the Act that in case the land is held by various members of the family as constituted under the Act, the permissible area shall be selected proportionately out of the area held by each member and the compensation for the surplus area declared from his or her share shall be paid to him or her. The members of the family can, however, agree that a particular area may be reserved as permissible area out of their individual holdings, but the permissible area so selected shall remain in their ownership in the proportion in which they held the land in their own names on the appointed day. It is not permissible to make one person the deemed owner of the land of the other members of the family by completely depriving them of their ownership and to ask him to make a declartion and allow him to select the permissible area for the family at his own sweet will and option even to the detriment of the other members of the family. The provisions of the Act with regard to family are, thus, not saved under Articles 31-A and 31-C of the Constitution.

(9) Point No. 4, as presented by the learned Advocate-General, admits of no argument. Some of the provisions of the Act are being struck down not because they are harsh and inequitable, but on the ground that they do not amount to or promote agrarian reform nor do they further the objects of the State policy mentioned in clauses (b) and (c) of Article 39 of the Constitution. The Act is not a colourable piece of legislation, but some of its provisions enacted to achieve the underlying object are quite vague, ambiguous, incomplete and unworkable, as discussed above and are, therefore, liable to be struck down.

(10) With regard to point No. 5, it is enough to say that some of the provisions of the Act do incidentally contravene the provisions of the other Acts mentioned by the learned Advocate-General, but such provisions cannot be held to be unconstitutional in view of the fact that the assent of the President of India was accorded to the

Act under Artcle 254(2) of the Constitution in consequence of which the provisions of this Act are to prevail against the provisions of other Acts.

(11) The learned Advocate-General has not correctly stated while formulating point No. 6, that there is no ambiguity in the provisions of the Act. I have already referred to some of the provisions which are either vague, incomplete or ambiguous. Further, section 4(3) of the Act provides that the permissible area of the landowner shall be increased up to the permissible area of the primary unit of family for each separate unit provided that where the separate unit also owns any land, the same shall be taken into account for calculating its permissible area. Section 9(2) provides that in making the selection of his permissible area under sub-section (1), the landowner may also select land for the separate unit. The provisions of section 4(3) leave an impression that the permissible area of the landowner himself will be increased by the area selected for the separate unit whereas section 9(2) gives the impression that the area selected for the separate unit will be for that unit and not for the landowner. There is thus some incongruity between the two provisions which has to be resolved by proper amendment of one or the other of these two provisions.

(12) Explanation II to section 9(1) of the Act is also not happily worded. According to it, while calculating the extent of land owned or held by a person, the share of such person in a co-operative society or a company has also to be taken into account. Company is not defined in the Act or in the General Clauses Act. It is defined in the Companies Act, 1956, to mean a company formed and registered under that Act or an existing company as defined in clause (ii) of section 3 of that Act. The companies are of various kinds, namely, private company, public company and a company limited by guarantee. Any such company on its incorporation becomes a distinct legal entity. It can own and deal with property, sue and be sued in its own name, contract on its behalf and the members or shareholders are not personally entitled to the benefits or liable for the burdens arising therefrom. Once the company is incorporated, it must be treated like any other independent person as it is altogether a different person from the subscribers to the memorandum of association or its shareholders. While the company is a going concern, no shareholder can claim that any part of its property belongs to him. It is not possible, at any time, to determine his

share in the company's property. The rights of the shareholders are to attend the general meetings, to transact the business of electing directors, passing of accounts and balance-sheets, declaration of dividend, appointment of auditors and passing of extraordinary and special resolutions. They are only entitled to the payment of a dividend in case it is declared but if it is not declared, they have no right to claim any share of the property of the company. It is only when the company goes into voluntary winding-up or is ordered to be wound up by the Court that the shareholders, as contributories, become entitled to the return of the amount falling to their share according to the number of shares held by them in the share capital of the company, if any amount is left after payment of all the liabilities of the company. At that stage it is possible that with the sanction of the Court the liquidator may distribute the assets of the company in specie amongst the contributories, but till that stage is reached, it cannot be said that the shares of a shareholder entitle him to any property of the company. Every shareholder is at liberty to transfer his shares to any one else and by that transfer the transferee steps into the shoes of the transferor. It is thus not possible to determine the share of a person in the land owned or held by a company of which he is a shareholder, for the purposes of calculating the extent of land owned or held by such person.

(13) The position of a co-operative society registered under the Co-operative Societies Act is also similar to the position of a company and whatever has been said above with regard to a company applies *mutatis mutandis* to a co-operative society. The word 'person' in its definition includes a company and a co-operative society which means that each company and co-operative society will be entitled to one permissible area in lieu of the land held by it, as prescribed in section 4 of the Act. Out of that land, the share of each member of the company or co-operative society cannot be determined as stated above. In our view, therefore, the words "company" and "co-operative society" should be deleted from Explanation II to section 9(1) of the Act.

(14) The learned Advocate-General has also contended that the judgment of the Full Bench is not correct when it says that the Act violates second proviso to Article 31-A(1) of the Constitution. He submits that the Act does nothing of the sort because it does not take away any land out of the permissible area fixed by section 4 and what is being taken away is the land which will be declared

surplus. The ceiling limit fixed by the earlier Acts becomes non-existent on the coming into force of this Act and for the purposes of second proviso to Article 31-A of the Constitution, the law for the time being in force is the present Act and not the repealed Acts. This matter has been dealt with in para 20 of the Full Bench judgment in *Sucha Singh Bajwa's case* (1) (supra) and the learned Advocate-General seems to have misread that paragraph to mean that permissible area mentioned therein was as declared under the repealed Acts. While preparing that judgment for the Full Bench, I had specifically stated that—

> "In case each member of the family, as defined in the Act, held land immediately before the commencement of the Act as landowner or mortgagee with possession or tenant within the permissible area fixed by the Act, he continued to be the holder thereof on the day the Act commenced and if he is to be deprived of the land so held by him, which is within his permissible area and is under his personal cultivation, he has to be paid compensation which will not be less than the market value in accordance with the second proviso to Article 31-A(1) of the Constitution."

The Act, wherever used in this sentence, means the Punjab Land Reforms Act, which was under consideration, as is clear from para 1 of the judgment. It was further stated in paragraph 20 that—

> "On the day the Act came into force, that is, April 2, 1973, it was not known to what extent the area of each member of the family, separately held by him or her, would be reduced under the Act. It has been left to the will of the husband or the wife or the eldest surviving member of the family to effect the reduction by making selection under section 4(4) of the Act read with rule 5(4) of the Rules. It cannot, therefore, be said that the Act, by its own force and on the very day of its enforcement, fixed the extent of the permissible area in respect of each member of the family as defined in the Act."

Since some doubt has been expressed by the learned Advocate-General about the interpretation to be put on the observations in para 20 of the judgment of the Full Bench, I may make it clear that what was meant was that if any land in excess of the permissible

area for a person (and not the family) as prescribed under the Punjab Land Reforms Act was to be taken away while declaring the surplus area of a family by pooling the entire land held by the various members of the family, each member of that family had to be paid compensation at market value in accordance with the second proviso to Article 31-A(1) of the Constitution. The submission of the learned Advocate-General is, therefore, repelled.

(15) Lastly, the petitioners have challenged the validity of rule 5 of the Rules which prescribes the manner of evaluating various categories of lands which have been classified into 'A category land', 'AA category land', 'B category land' and 'C category land'. These categories have been defined in clauses (ii), (iii), (iv) and (v) of rule 2 as under:—

> "2. (ii) 'A category land' means the land under assured irrigation capable of growing at least two crops in a year and irrigated by a canal or State tubewell as mentioned in section 4(1)(a);
>
> (iii) 'AA category land' means the land under assured irrigation capable of growing at least two crops in a year and irrigated by private tubewells/pumping sets as mentioned in section 4(1)(a) read with section 4(5);
>
> (iv) 'B category land' means the land under assured irrigation capable of growing at least one crop in a year as mentioned in section 4(1)(b);
>
> (v) 'C category land' means land of all other types including land under orchard as mentioned in section 4(1)(c);"

The challenge to the validity of rule 5 has been made on various grounds which are dealt with hereafter.

(16) Section 4(4) of the Act provides that the permissible area has to be determined on the basis of the valuation to be calculated in the prescribed manner, taking into consideration the intensity of irrigation, ownership of the means of irrigation and the kind of soil such as *banjar, sem, thur* or *kallar*, subject to the condition that the total physical holding does not exceed 21.8 hectares. While defining 'A category land', 'AA category land' and 'B category land', no

consideration has been paid to the kind of soil. These categories depend on assured irrigation from different sources and the number of crops the land is capable of growing, but not the kind of soil which was necessary to be taken into consideration according to the mandate of the legislature. It may be that the yield from an inferior kind of land under assured irrigation capable of growing at least two crops in a year may be much less than from a superior kind of land under assured irrigation and capable of growing at least two crops. To equate all kinds of lands under assured irrigation and capable of growing at least two crops or one crop in a year, as the case may be, is not in consonance with the provisions of section 4(4) of the Act. That the kind of soil plays an important part in the determination of a permissible area is clear from the provisions of section 16(1) of the Act wherein for paying amount in lieu of the surplus area the land has been divided into sixteen categories and for each such category different amount has been prescribed. It, therefore, follows that the Department will have to determine the kind of land while paying compensation and there is no reason why that method should not be adopted for the determination of permissible area particularly when the Legislature has specifically provided for this factor to be taken into consideration. The valuation statement of land, for the purposes of section 16(1), for each district of Haryana has been provided in the schedule to the Act and on the same basis the valuation of land for determining the permissible area can be worked out. It, therefore, follows that rule 5 is not in acordance with the provisions of section 4(4) of the Act.

(17) Section 4(1)(a) of the Act provides that the permissible area in respect of land under assured irrigation capable of growing at least two crops in a year shall be 7.25 hectares. This category of land has been defined as 'A category land' in the Rules if the source of irrigation is a canal or a State tubewell and 'AA category land' if the source of irrigation is from private tubewells or pumping sets. In accordance with the provisions of section 4(5) of the Act one unit of 'A category land' has been made equal to 1.25 units of 'AA category land'. In rule 5(2), however, it has been provided that in case the land is irrigated by canal or Government tubewells or both by canal and private tubewell, the extent of the area which received irrigation during 5 or 6 crops according to the records of the Girdawari conducted by the Canal Department for charging *abiana* during the period of 3 years immediately preceding the appointed day, shall be treated as 'A category land'. Section 4(4)

of the Act provides that intensity of irrigation shall be taken into consideration. The term 'intensity of irrigation' has been explained in the Manual of Irrigation Practice, Volume II, as under:—

> "*Intensity*—Annual—The term is applied to the percentage of the culturable irrigable area irrigated during the year. The project intensity is the annual intensity aimed at in the project."

According to this definition of 'intensity of irrigation' that land can be classed as 'A category land' or 'AA category land' which has received irrigation for all the six crops during the period of three years immediately preceding the appointed day in order to accord with section 4(1)(a) of the Act. The inclusion of five crops in rule 5(2)(a) is, therefore, not in accordance with section 4(1)(a) and (4) of the Act. Similarly, rule 5(2)(b) which provides that in case the land is irrigated by canal or Government tubewells or both by canal and private tubewells, the extent of the area which received irrigation for 2, 3 or 4 crops during the aforesaid period shall be treated as 'B category land', is not in accord with section 4(1)(b) of the Act according to the assured irigation for at least one crop in a year. If there has been assured irrigation for two crops in three years, it will not fall in the category for which provision is made in section 4(1)(b) of the Act. Clauses (a) and (b) of rule 5(2) are, therefore, *ultra vires* the provisions of section 4(1)(a) and (b) of the Act.

(18) In rule 5(2)(a) mention is made of the "records of the *Girdawari* conducted by the Canal Department for charging *abiana*". No such record is maintained by the Canal Department. The record that is maintained is provided for in Standing Order No. 61 of the Financial Commissioners, Haryana and Punjab, wherein no mention has been made of *Girdawari*. The record is maintained in form No. 1 called Shudkar Khasra (Vernacular Form No. 2-A). It is, therefore, not possible for the landowners to obtain copies of the record of *Girdawari* maintained by the Canal Department in order to determine whether their land received irrigation for the number of crops provided for in section 4(1) of the Act. A specimen copy of the said form was shown to us from which it is not possible easily to determine which field number of a landowner mentioned in the revenue records received the irrigation for any crop. The rule-making authority must prescribe the record which is current and which is known to the Department as well as the landowners and of

which certified copies can be easily obtained. This rule is, therefore, also liable to be struck down on the ground that the record for determining the area of a landowner which received irrigation during the crops as mentioned in rule 5(2)(a), (b) and (c) is not maintained by the Canal Department in that form and the description of that record in this rule is not correct. While providing for lands in rule 5(3) and (4) of the Rules, no consideration has been paid to the kind of soil and these sub-rules are also liable to be struck down on the first ground of attack discussed above. Accordingly, rule 5 of the Rules is declared *ultra vires* section 4 of the Act and is struck down.

(19) Since the provisions with regard to the permissible area of a family have been declared *ultra vires*, the following alterations shall be made in the provisions of the Act:—

(i) The word 'family' shall be deleted from the definition of 'person' in section 3(m);

(ii) the words 'or family consisting of husband, wife and up to three minor children (herein referred to as the "primary unit of family")' after the word 'person' shall be deleted from section 4(1);

(iii) sub-section (2) of section 4 shall stand deleted;

(iv) for the words 'primary unit of family' the word 'person' shall be substituted in sub-section (3) of section 4;

(v) Explanation to section 7 shall stand deleted;

(vi) Explanation I to section 9(1) shall stand deleted; and

(vii) the words 'co-operative society' and 'or a company' shall stand deleted from Explanation II to section 9(1).

(viii) Rule 5 of the Rules is declared *ultra vires* section 4 of the Act and is struck down.

Since rule 5 of the Rules is the pivotal provision for the submission of declarations by the landowners and for the determination of the permissible area, the proceedings, if any, already taken under the Act against the petitioners are quashed. These petitions are accepted in the above terms but without any order as to costs.

DHILLON, J.—I agree.

B. S. G.