CIVIL MISCELLANEOUS

Before Mehar Singh and Shamsher Bahadur, JJ.

BHAGAT GOBIND SINGH,—*Petitioner.*

versus

PUNJAB STATE AND OTHERS,—*Respondents*

Civil Writ No. 68 of 1962.

1962

November, 6th

Punjab Security of Land Tenures Act (X of 1953)—S. 19-E—Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-KK—Whether infringe rights of members of joint Hindu family and violate Articles 14, 15, 19 and 31 of the Constitution of India—Nature of the Acts—Whether measures of agrarian reform—Punjab Security of Land Tenures Act (X of 1953)—Ss. 5-A, 5-B and 5-C—Whether ultra vires *the Constitution—Ss. 10-A and 19-B—Surplus area—Whether can be declared out of the area left with the landowner after alienations or from entire area ignoring the alienations—Constitution of India (1950)—Article 13(2)—Legislation in regard to fundamental rights—Whether can be made retrospective—Colourable legislation—What amounts to—Interpretation of statutes—Objects and Reasons—Whether can be referred to.*

Held, that section 19-E of the Punjab Security of Land Tenures Act, 1953 and sections 32-KK of the Pepsu Tenancy and Agricultural Lands Act, 1955, are *intra vires* the Constitution and are not violative of the provisions of Articles 14, 15, 19 and 31 of the Constitution. Each of these sections creates a legal fiction only for the purposes of the Act and does not otherwise touch the general principles or rules of Hindu Law. It deems land with a Hindu undivided family constituted of a landowner and his descendants as land of the land owner, with no descendant, as member of such family, having title to claim any share in it as a land owner in his own right. The effect of it is not to cause a disruption of a joint Hindu family nor to deprive right and title of the descendants of the landowner as members of such family to the land. Its object is to leave in such a family with the ancestor one permissible area so that the remaining area with it be available for utilization under section

10-A. After that has been settled all the members of such a family have the same rights in the permissible area and in the surplus area as they previously had as such members. So that either section merely deals with the determination and ascertainment of a permissible area and surplus area with a Hindu undivided family and with nothing else. All the members of such a family have precisely the same right in the permissible area as also the surplus area as they have ever had under the Hindu Law.

Held, that there is no discriminatory treatment which attracts Article 14, no case of deprivation of right to acquire, hold or dispose of land in contravention of Article 19, and no case attracting Article 31, because in the permissible area the landowner and his descendants forming a Hindu undivided family continue to have all the rights as before and in the surplus area also with this difference that under the provisions of section 10-A, the State Government has the right to settle tenants over such land, but then such a family is entitled to the rent of that land according to the provisions of that Act, and further when pursuant to such provisions the tenant purchases the surplus area, then the proceeds go to such a family.

Held, that there is no discrimination on the ground of religion in that an undivided family among Hindus is discriminated against an undivided family among other religious denominations. There is no such thing as an undivided family of the type as a Hindu undivided family under the Hindu Law in any other system of law or among followers of any other religion.

Held, that the Punjab Security of Land Tenures Act. 1953, and the Pepsu Tenancy and Agricultural Lands Act. 1955, are measures of agrarian reform which attracts Article 31-A of the Constitution and are thus saved from attack on the basis of Articles 14, 19 and 31.

Held, that sections 5-A, 5-B and 5-C, of the Punjab Security of Land Tenures Act merely provide a machinery for the enforcement of the substantive provisions of this Act for ascertainment of permissible area, and of surplus area, and then for utilisation of surplus area. There is nothing in these sections which attracts violation of any Article of the Constitution.

Held, that the test of colourable legislation is an attempt on the part of the legislature to legislate on a matter beyond its competency while putting it forward as if it is a legislalation within its competency. The doctrine of colourable legislation has relation to legislative competence and where the legislation is within the constitutional competence of the legislature, it cannot be assailed as being colourable whatever the reasons behind it.

Held, that the Punjab Security of Land Tenures Act, 1953, does not invalidate alienations of an area from the holding of a landowner in which there is subsequently found to be surplus area, and all that it does is to provide in section 10-A that the total holding of the landowner, ignoring the alienation or alienations, will be taken into consideration for determination of permissible area and surplus area. There is nothing in the Act which deprives the landowner of his right to dispose of any part of his holding simply because subsequently it may be found that part of his holding comes to be surplus area. The land in the hands of a transferee does not cease to be available for utilisation under section 10-A of the Act. Unless there is a clear allegation of misrepresentation, fraud or deceit in the shape of concealment of possibility of surplus area having been found with the transferor, the transferee is in no better position than the transferor so far as the provisions of the Act are concerned. If there is a case of deceit, fraud or misrepresentation, then it must be clearly alleged and proved.

Held, that the Objects and Reasons for enacting a statute are no aid to interpretation but they can be referred to for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced.

Petition under Articles 226 and 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 of the Financial Commissioner, Punjab, respondent No. 2, dated the 23rd December, 1961, the Commissioner, Jullundur Division, Jullundur, respondent No. 3, dated 1st September, 1961 and the Collector, Jullundur, respondent No. 4, dated 7th July, 1961, and further praying that the respondents be directed not to dispossess the petitioner from the land.

K. S. CHAWLA, ADVOCATE, for the Petitioner.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL AND H. R. AGGARWAL, ADVOCATES, for the Respondents.

ORDER

Mehar Singh, J.

MEHAR SINGH, J.—This judgment will dispose of three civil writ petitions Nos. 68, 935, and 936 of 1962, the first under Articles 226 and 227 and the remaining two under Article 226 of the Constitution, in which, although other matters have been raised, but the main question for consideration is the constitutional validity and *vires* of section 19-E of the Punjab Secruity of Land Tenures Act, 1953 (Punjab Act 10 of 1953), which section has been added to this principal Act by section 7 of the Punjab Security of Land Tenures (Amendment and Validation) Act, 1962 (Punjab Act 14 of 1962), and section 32KK of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955), which section has been inserted in this principal Act by section 7 of the Pepsu Tenancy and Agricultural Lands (Amendment and Validation) Act, 1962 (Punjab Act 16 of 1962), the provisions of both the sections in either Act being verbatim the same.

In Civil Writ No. 68 of 1962, the petitioner is Bhagat Gobind Singh and there are 18 respondents, of whom the first four respectively are the Punjab State, the Financial Commissioner, the Commissioner, Jullundur Division, and the Collector, Jullundur, and the remaining 14 are alienees from the petitioner.

The father of the petitioner owned 53 standard acres in villages Paddi Jagir and Bir Sher Singh on this side before the partition of the country and, of course, continued to do so even after that and in lieu of his land left in what is now Pakistan he was allotted 43 standard acres in 1949. Sometime in 1949, he died leaving two sons, one of whom is the petitioner. He left a total holding of 96 standard acres of which the share by inheritance of the petitioner is 48 standard acres.

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The mutation of the land in villages Paddi Jagir and Bir Sher Singh was attested in favour of the petitioner in the same year, but permanent rights in the allotted land were given to him on December 27, 1955, and mutation of inheritance in respect of this land was attested in his favour on January 19,, 1956, All the same on the death of his father in 1949, the petitioner became owner of 48 standard acres, the title to the allotted land having been conferred on him a little later. Punjab Act 10 of 1953 came into force on April 15, 1953, and thus on that date the land in the ownership of the petitioner was 48 standard acres. In sub-section (3) of section 2 of this Act 'permissible area' has been defined to be 30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 acres, such 60 acres, but in the case of a displaced person the respective figures are 50 standard acres or 100 ordinary acres where the allotment is of more than 50 standard acres, and where the allotment is of less than 30 standard acres, the permissible area is 30 standard acres, including any other land or part thereof, if any, that the land-owner owns in addition. On the date of the coming into force of this Act the petitioner had 21½ standard acres of allotted land and 26½ standard acres of other land. So, in his case the permissible area is, in all, 30 standard acres. Under section 5 of the Act the petitioner could reserve permissible area for self-cultivation and this was not done by the petitioner. There was an amendment of the principal Act by Punjab Act 57 of 1953, but that is not material here. The Act was again amended by the Punjab Security of Land Tenures (Amendment) Act, 1955 (Punjab Act 11 of 1955), and this Act added sub-section (5-a) to section 2 of the principal Act defining the expression 'surplus area' to mean the area other than the reserved area, and, where, no area has been reserved, the area in excess of the

permissible area selected as prescribed; but it is not to include a tenant's permissible area. There is a proviso to this sub-section, but that is again not material for the present purpose. This amending Act inserted by section 8, section 10-A in the principal Act and this section has given power to the State Government or any officer empowered by it to utilise surplus area for the resettlement of tenants described in it. This amending Punjab Act 11 of 1955 came into force on May 26, 1955.

There has been further amendment of Punjab Act 10 of 1953 by the Punjab Security of Land Tenures (Amendment) Act, 1957 (Punjab Act 46 of 1957), and by section 3 of this amending Act sections 5-A; 5-B and 5-C have been inserted after section 5 of the principal Act. This Act was published in the State Gazette on December 20, 1957. Section 5-A provides for the making of declarations supported by affidavits by landowners and tenants within six months from the commencement of the amending Act in respect of lands owned or held by them in such form and manner and to such authority as may be precribed. Section 5-B refers to selection of permissible area where a landowner has not exercised his rights of reservation under the principal Act. This is provided in sub-section (1), and sub-section (2), in the event of failure of the landowner so to do, gives this power to the prescribed authority to do so for him under section 5-C, and section 5-C, provides that where declaration has not been made by a landowner or a tenant under section 5-A, the prescribed authority not below the rank of Collector may, by order, direct that the whole or part of the land of such landowner or tenant in excess of ten standard acres to be specified by such authority shall be deemed to be the surplus area of such landowner or tenant and shall be utilised by the State Government for the purpose mentioned in section 10-A.

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This is sub-section (1) and there is a proviso to it that before such an order is made, an opportunity of being heard is to be given to the person against whom it is made. Sub-section (2) merely provides for obtaining information for the urposes of sub-section (1). The petitioner avers that the forms for declaration as referred to in section 5-A were not printed till March 22, 1958, and so the period of six months referred to in this section must be taken to commence from that date, for without the availablity of such forms no such declaration could practically be made by any landowner or tenant. Assuming this to be so, the petitioner did not make any declaration even according to this date under section 5-A. The next amendment to the principal Act has been made by the Punjab Security of Land Tenures (Amendment) Ordinance, 1958 (Punjab Ordinance 6 of 1958), which has, in due course, been replaced by the Punjab Security of Land Tenures (Amendment) Act, 1959 (Punjab Act 4 of 1959). By section 4 of this amending Act sections 19-A, 19-B, 19-C and 19-D have been inserted, after section 19, in the principal Act, that is to say, Punjab, Act 10 of 1953. For the first time sub-section (1) of section 19-A fixes a ceiling on holdings in the measure of permissible area and excess acquisition in future is prohibited. Sub-section (2) makes any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of subsection (1) as null and void. Section 19-B deals with a case in which land, in excess of permissible area, is acquired by inheritance or bequest or gift and also speaks of acquisitions before July 30, 1958, by transfer, exchange, lease, agreement, or settlement, and then says that the person acquiring shall furnish a declaration as required by section 5-A. In case of failure to do so, provisions of section 5-C are applied and it is further provided that excess area over the permissible area shall

be at the disposal of the State Government for utilisation as surplus area under section 10-A. Section 19-C deals with delivery of possession of surplus area, and section 19-D with exemption from the provisions of the Act of lands granted to any member of the Armed Forces of the Union for gallantry. There has been further amendment of the principal Act by the Punjab Security of Land Tenures (Second Amendment) Act, 1959 (Punjab Act 32 of 1959), but that does not concern the present case.

The petitioner transferred, by six transfers of areas ranging from one standard acre and 4¾ units to 9 standard acres and 6½ units, total 21 standard acres and 10½ units, between March 15, and July 14, 1958. So, according to him he made these transfers before the expiry of six months from March 22, 1958, by which date he was required to make declaration of surplus area under section 5-A. And he says that as the period was six months, which is to be reckoned from March, 22, 1958, and he made the transfers before the expiry of that period, when the last date came for making declaration, he had no surplus area, and, therefore, it was unnecessary for him to make any declaration under section 5-A. Punjab Ordinance 6 of 1958 was promulgated on July, 21, 1958. So, the petitioner takes the position that as section 19-B validated the transfers made before that date in the case of acquisitions by purchasers, so his transfers cannot be taken into consideration for the matter of finding out any surplus area with him. He urged this case before Mr. K. D. Arora, Revenue Assistant exercising powers of Collector under the principal Act, and the order made was to impose a penalty of one standard acre leaving 29 standard acres as permissible area with the petitioner. This order was found by the Commissioner to be without jurisdiction, because an order in the case could

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only be made by the Collector of the district and Mr. K. D. Arora was not a Collector of the district. The case subsequently came before Mr. Sri Chand Chhabra, District Collector of Jullundur, who by his order of July 7, 1961, the petitioner not having either reserved any permissible area or made a declaration under section 5-A about selection of permissible area, exercising his powers under section 5-C, allowed 30 standard acres as permissible area to the petitioner, but in that permissible area he included 21 standard acres and 10½ units sold by the petitioner to respondents 5 to 18, thus leaving in the actual possession of the petitioner 8 standard acres and 5½ units which he has been permitted to select from the remaining area of 26 standard acres and 12 units. The land with the petitioner has been not only 48 standard acres but, in addition, 6½ units. Against the order of the Collector the petitioner went in appeal to the Commissioner who affirmed the order of the Collector by his order of Sepember 1, 1961, observing—"the discretion vested with the Collector for determining as to which part of the land held by the appellant on the date of the commencement of the Act was to be placed in the surplus pool and which was to be left with him. The appellant had sold portion of the land to respondents 2 to 14. The Collector has correctly kept those portions of the land out of the surplus pool. The spirit of the Punjab Security of Land Tenures Act is that a landowner is entitled to take benefit of a permissible area. In this case the landowner has been allowed to take that benefit by leaving with him a part of the land after taking into consideration that portion of the land of which he had derived benefit in the shape of its price. If the Collector had placed the lands which had been sold by the appellant in the surplus pool, the appellant would have derived double benefit which would have been against the

spirit of the Act. I hold that the Collector has exercised his discretion correctly in this case." A revision by the petitioner against this appellate order of the Commissioner was dismissed by the learned Financial Commissioner on December 23, 1961, saying that there is no impropriety or illegalty in he proceedings of the subordinate Revenue Officers, which would warrant interference in revision. Although there is no mention in the order of the learned Financial Commissioner of any question in regard to a claim made by the petitioner that he forms a Joint-Hindu Family along with his sons, but it is stated in paragraph 18 of the petition that an affidavit was filed before the learned Financial Commissioner in this respect and that the matter was argued also. It appears that this question, which obviously is a question of fact, was not raised before the Collector or the Commissioner, and was, for the first time, raised before the learned Financial Commissioner because in the meantime a Division Bench of this Court held in *Jagan Nath and others* v. *The State of Punjab and others* (1), that "a member of a Joint-Hindu Family owning land with other members can insist that for purposes of deciding the question of surplus area his share in the joint land alone should be considered and he be entitled to prove the extent of his share by all legal evidence not confined merely to the entry in the record-of-rights and that, when land which is joint family property, happens to be partitioned, no interest passes from one owner to another, and it is neither a transfer nor such disposition as is mentioned in section 10-A or section 16 of the Punjab Security of Land Tenures Act." What the learned Judges held was that in the case of a Joint Hindu Family each member was entitled to a permissible area of 30 standard acres and

(1) I.L.R. (1962) 1 Punj. 811 : (1962) 64 P.L.R. 22.

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that the total land with the Joint-Hindu Family was not to be taken as a single unit and out of that one permissible area of 30 standard acres was to be allowed declaring the rest as surplus area. Reference to this case will be made a little later when the main argument on behalf of the petitioner is considered. As stated, the learned Financial Commissioner does not refer in his order to this question. It was after that that the petitioner filed Civil Writ No. 68 of 1962, questioning the legality of the orders of the authorities below.

Initially in this petition the petitioner has claimed (a) that he forms a Joint-Hindu Family with his sons and if the decision in *Jagan Nath's case* applies, there is no surplus area with him and his sons, (b) that he was not required to file declaration under section 5-A because the land was not mutated in his name till January, 1956, (c) that he sold 21 standard acres and 6½ units before July 30, 1958, and Punjab Act 4 of 1959 validates such sales, (d) that the order of the Collector is contrary to section 5-C and is thus illegal and improper, (e) that the provisions of sections 5-A, 5-B and 5-C are *ultra vires* the Constitution, (f) that the order passed by Mr. K. D. Arora, Assistant Collector exercising the powers of the Collector, was legal order, and (g) that the procedure followed by the revenue officers is illegal, *ultra vires* and without jurisdiction. Leaving out for the moment the first ground; there is no substance in any of the other grounds. The fact that mutation of a part of the land, which is the allotted land, was attested in the name of the petitioner in 1956 did not absolve him from making declaration under section 5-A at the proper time, title to the land having vested in him on the death of his father in 1949. Section 19-B has given recognition to certain transfers in so far as the transferees are concerned, so that the transferees, if

they acquire more than the permissible area, are then to follow the procedure laid down in section 5-A, but that section did not, in so many words, say that any land sold before the date of its enactment was not to be considered for the purposes of section 10-A as part of surplus area for utilisation. So, the fact that all the alienations were made by the petitioner before the coming into force of Punjab Act of 1959, which has enacted section 19-B, does not help he petitioner and the sales have not been validated in the sense in which the petitioner understands that. There is nothing in the order of the Collector which is contrary to section 5-C for, although the Collector could, in the exercise of his discretion, have reduced the permissible area of the petitioner to ten standard acres because of his default to file a declaration under section 5-A, he has done nothing of the sort. Instead, he has allowed the total area of 30 standard acres as permissible area to the petitioner. There is no contravention of section 5-C. There is a separate question whether, on the Collector having allowed the petitioner 30 standard acres as permissible area under section 5-C, the surplus area is to come out of the land in his permissible area or out of the land sold away by him, or, in other words, whether the permissible area allowed to him is to form of the area sold plus the remaining area to make up 30 standard acres, or is it to be selected from land other than land sold by the petitioner. This quesion will be dealt with separately. But it has nothing to do with the application of section 5-C, to the facts of the case. It is stated in the petition that provisions of section 5-A, 5-B and 5-C are *ultra vires* the constitution, but it is not explained how, in what manner and in relation to which Article. At the hearing the learned counsel has addressed no argument in this respect. These sections merely provide a machinery for the enforcement of the substantive provisions of

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Punjab Act 10 of 1953 for ascertainment of permissible area, and of surplus area, and then for utilization of surplus area. There is nothing in these sections which attracts violation of any Article of the Constitution. So that this ground is without substance. It has not been shown how the order of Mr. K. D. Arora was legal, for it was the jurisdiction of the Collector of the district to pass an order on the question of permissible area and surplus area in the holding of the petitioner and Mr. K. D. Arora, was not such a Collector. There is nothing to show that there has been anything wrong with the procedure followed by the revenue officers and not one single word has been said during the arguments on this ground. So, all these grounds are really of no substance at all.

In the other two Civil Writ Petitions Nos. 935 and 936 of 1962, the facts are exactly the same. In each petition, the petitioner claims that he forms a Joint-Hindu Family along with his sons, that their Joint-Hindu Family is entitled to the total area of the land with them, which when split over the members of the joint family allowing each 30 standard acres leaves no surplus area, and that the land has been wrongly valued. In each case on June 9, 1962, the Revenue Assistant and Collector of Bhatinda District issued notice, copy of which is filed with the petition, saying, with description, that certain area with each petitioner is surplus area and calling upon each petitioner to surrender possession of a part of the surplus area. These petitions proceed only on the support of *Jagan Nath's case,* the only other ground taken in the petitions being wrong value of the land. There are rules fixing the measure of valuation of land in each Tahsil and the rest is a mere matter of arithmetical calculation. The rates are fixed by the rules. The only question that can possibly

remain, in the circumstances, is arithmetical miscalculation and it is not explained how the value has been miscalculated. There is no substance in the allegation of each petitioner that the land has been wrongly valued. This leaves for consideration only the question of the claim of the petitioner on the basis of Joint-Hindu Family in each case. Neither petitioner has gone in appeal or revision under the provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act 13 of 1955), and in each petition the reason given appears to be that there was immediate threat of dispossession which forced the petitioner to have speedy recourse by such a petition to this Court. Action against the petitioners has been taken under the provisions of Pepsu Act 13 of 1955.

In this State by and large there are two categories of landowning families: one category is of those who follow custom, and the other category of those who are governed by Hindu law. In the case of the first category, sons have no right to claim partition of land from their father. They have right under custom to challenge the validity of his alienations in regard to ancestral land on the ground of want of legal necessity. They, therefore, control his power of alienation. Of course, nothing stops a father from partitioning the land with his sons. In the second category a Hindu son, governed by Hindu Law, has, in this State, no right to claim partition of joint-family land from his father: *Hari Kishen* v. *Chandu Lal* (2), *Nihal Chand-Gopal Das* v. *Mohan Lal* (3), *Punjab National Bank Ltd.*, v. *Jagdish Sahai* (4), *Sain Dass* v. *Ujagar Singh* (5), and *Satish Narain* v. *L. Deoki Nandan* (6). He also

(2) 105 P.R. 1917.
(3) I.L.R. (1932) 13 Lah. 435.
(4) A.I. R. 1936 Lah. 390.
(5) I.L.R. (1940) 21 Lah. 191, 195.
(6) A.I.R. 1947 Lah. 372.

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controls alienations by his father of joint family property including land, which is mostly ancestral and may include accretions from the income of ancestral land. Even in this category, the father can partition the land with his sons. At the same time a son being a member of a Joint Hindu Family or Hindu undivided family has present interest in the joint family land inasmuch as he is entitled to common possession and enjoyment of it. That he has present right in the joint family property has been held in *Nihal Chand-Gopal Das* v. *Mohan Lal* (3), *Satish Narain* v. *L. Deoki Nandan* (6) and *Jagan Nath* v. *The State of Punjab* (1), The Hindu Succession Act, 1956 (Act 30 of 1956), by section 6, provides, in a case coming within the scope of the proviso to that section, for devolution of the coparcenary interest of a deceased male Hindu on a surviving female relative specified in class 1 of Schedule to the Act or a male relative specified in that class who claims through such female relative, and, by section 30, gives powers to testamentary disposition of his interest in the coparcenary property which becomes crystallised immediately upon his death in somewhat the same way as if disruption had resulted. This being the position of these two categories of families, the effect of the decision in Jagan Nath's case was that while in the first category only one permissible area of 30 standard acres could be retained by the father, in the second category of families, apart from the father, each son or member of the Joint-Hindu Family could have 30 standard acres permissible area of his own. In other words, in the first category of families there could remain no more than 30 standard acres permissible area, but in the second category of families there could be much more than that. In practice, therefore, the second category of families came to have a distinct and a clear advantage over the first class of families and it is this advantage which created discriminatory

treatment that the Legislature proceeded to even and to place both categories of families at par and in the same position. As much is stated in the Objects for insertion of section 19-E in Punjab Act, 10 of 1953 by Punjab Act 14 of 1962 and section 32-KK in Pepsu Act 13 of 1955 by Punjab Act 16 of 1962. It is settled that objects and reasons are no aid to interpretation, but it is also settled that objects and reasons can be referred to for the limited purpose of ascertaining the conditions prevailing at the time the bill was introduced, and the purpose for which the amendment was made : *Aswini Kumar Ghosh* v. *Arabinda Base* (7), and *Kochuni* v. *States of Madras and Kerala* (8). Reference to the Objects of the amendments in the two Acts has been made just to show the circumstances in which the Legislature made the amendments and the situation that it intended to remedy thereby. The Legislature, therefore, proceeded to insert section 19-E in the principal Act and that section reads as below:—

"19-E. *Land owned by Hindu Undivided Family to be deemed land of one landowner.*—Notwithstanding anything contained in this Act or in any other law for the time being in force,—

(a) Where, immediately before the commencement of this Act, a landowner and his descendants constituted a Hindu Undivided Family, the land owned by such family shall, for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall, as member of

(7) 1953 S.C.R. 1.
(8) A.I.R. 1960 S.C. 1080.

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such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right; and

(b) a partition of land owned by a Hindu Undivided Family referred to in clause (a) shall be deemed to be a disposition of land for the purposes of sections 10-A and 16.

Explanation.—In this section, the expression 'descendant' includes an adopted son."

In Pepsu Act 13 of 1955 similarly section 32-KK has been inserted, and, as already stated, this is in words exactly the same as section 19-E in the former Act and as reproduced above. It is the constitutional validity and *vires* of these sections in these two Acts that has been questioned in these petitions. When the petitions were initially filed, the amendments had not yet been made and had not come into force, but they came into force during the pendency of the petitions and the petitioners then filed additional grounds impugning the validity and *vires* of these sections.

The challenge to these sections is on the basis of contravention of Articles 14, 15, 19 and 31 of the Constitution. It has been held by their Lordships of the Supreme Court in *Kochuni's case* that Article 31A of the Constitution is attracted where legislation is for the purpose of agrarian reform, and that case has been so appreciated by a Full Bench of this Court in *Jagat Singh* v. *The State of Punjab* (9), and it is accepted that if the impugned section in either Act falls within the ambit and scope of Article 31A, argument based on Articles

(9) I.L.R. (1962) 1 Punj. 685.

14, 19 and 31 is out of place. So, the immediate question for consideration is whether impugned section in either Act is a measure of agrarian reform and thus within the meaning and scope of Article 31A?

The arguments of the learned counsel for the petitioners are—

1. (a) The impugned section takes away vested rights of the descendants of the father as members of the Hindu Undivided Family vesting the same in the father alone, which means expropriation of the shares of the descendants inasmuch as their rights and title in land are extinguished leaving the father alone to be the owner of land, so that as between members of a Hindu Undivided Family, there is discriminatory treatment favouring the father as against the descendants;

(b) its effect is that when land with a Hindu Undivided Family is less than 30 standard acres the whole goes to the father and if it is more than 30 standard acres, he takes not only the permissible area of 30 standard acres but also the rights to compensation over the surplus area when such area is purchased by the tenant and also a right even to dispose of the permissible area of 30 standard acres;

(c) it applies only to a Hindu Undivided Family of males leaving out of consideration a Hindu Undivided Family of which females are also members; and in this way it contravenes Articles 14, 19

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and 31 thereby amounting to no more than mere regulation of rights in the Joint-Hindu Family land *inter se* between the members of a Hindu Undivided Family which is not a measure of agrarian reform.

2. The impugned section takes away retrospectively the right of ownership in the descendants of the land-owner a Hindu Undivided Family and local legislature is not competent to enact law so as to deprive a person in this way of his fundamental right to acquire, hold and dispose of property in view of Article 19(1).

3. The impugned section (i) unsettles the settled titles, (ii) operates to set aside the decrees of Courts, (iii) operates to take away vested rights in property retrospectively, and (iv) merely regulates rights *inter se* among the members of a Hindu Undivided Family; and the fact that this section has been inserted in the principal Act makes not the least difference for this could well be done by a separate Act.

4. The impugned section is a colourable legislation inasmuch as although it apparently makes changes in the definition of 'land-owner' and the expression 'disposition', its effective result is to attract the provisions of section 10-A of the pricipal Act to the land with a Joint Hindu Family.

5. This new section is violative of the provisions of Article 15(1) of the Constitution both on ground of religion and

sex inasmuch as a Hindu Undivided Family is discriminated against any other undivided family and further within Hindu Undivided Families there is discrimination between a Hindu Undivided Family formed of males and a Hindu Undivided Family which includes females.

6. This impugned section applies to a land-owner and his descendants but each one of those who formed a Hindu Undivided Family is a land-owner himself and consequently the section is meaningless and redundant.

Some of the grounds thus raised in the arguments have not been specifically taken as grounds in these writ petitions, but the learned counsel for the petitioners have been permitted to address their arguments in regard to the same for it has been said that in a number of other similar petitions that are pending such grounds have been specifically raised. Besides, the respondents have had notice of the same and such grounds have not been excluded on the mere technical consideration that the same have not been specifically raised in these petitions. Apart from this the cases have been heard for some days and in the meantime the counsel for the respondents have had ample opportunity to be ready for an answer to any of the grounds not particularly taken in the petitions.

The basis upon which the first argument proceeds is that the impugned section makes a change in the Hindu Law so as to vest the joint family land of a Hindu Undivided Family in a land-owner, when such family is constituted by a land-owner and his descendants, thus depriving the other members of such a family of right and title to such land. This basis is not correct and is unsound. The section does nothing of the sort. It

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creates a legal fiction and that for the purposes of the Act only. It does not otherwise touch the general principles or rules of Hindu Law. It deems land with a Hindu Undivided Family constituted of a land-owner and his descendants as land of the land-owner, with no descendant, as member of such family, having title to claim any share in it as a land-owner in his own right. This, as stated, is just for the purposes of the principal Act and for no other purpose. So the effect of it is not to cause a disruption of a joint Hindu family nor to deprive right and title of the descendants of the land-owner as members of such family to the land. Its object is to leave in such a family with the ancestor one permissible area so that the remaining area with it be available for utilization under section 10-A. After that has been settled all the members of such a family have the same rights in the permissible area and in the surplus area as they previously had as such members. So that the section merely deals with the determination and ascertainment of a permissible area and surplus area with a Hindu Undivided Family and with nothing else. All the members of such a family have precisely the same right in the permissible area as also the surplus area as they have ever had under the Hindu Law. The misconception proceeds on the ground that the section confers title to the land with such 'a family upon the ancestor alone who is then said to become a full owner in his own right of both the permissible area and surplus area which, as stated, is not the case. So this aspect of the argument that the ancestor can, without control, alienate the permissible area at will or realise the rent from the surplus area from a tenant settled upon it or compensation of that area from such a tenant and appropriate the same to himself alone proceeds on a misconception as referred to above. He has been given no such right. It follows that there is no discrimination in treatment favouring

the father or the ancestor as against the descendants. The other aspect of the argument proceeds on the basis that the word 'descendants' does not include females, but this is not correct for this word includes both male as well as female descendants. In paragraph 212 of Mulla's Hindu Law, 12th Edition, it is stated that "a Joint-Hindu Family consists of all persons lineally descended from a common ancestor, and include their wives and unmarried daughters". So that female descendants are within the meaning and scope of word 'descendants' as used in the impugned section. This only leaves for consideration the position of the wife. In the same work the learned author says in paragraph 307 that every adult coparcener is entitled to demand and sue for partition of the coparcenary property at any time, but a wife cannot herself demand a partition, though if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband (paragraph 315). In this State, however, as already shown, even a son cannot demand partition of joint family property from the father. So a wife has no immediate interest with which it was necessary for the legislature to deal in the impugned section. The legislature is not expected to legislate on unnecessary aspects of a matter. So that there is really no discrimination between a Hindu Undivided Family constituted of a land-owner and his descendants and such a Hindu Undivided Family which may include a female as for instance a wife. Thus there is no case of discriminatory treatment which attracts Article 14, no case of deprivation of right to acquire, hold or dispose of land in contravention of Article 19, and no case attracting Article 31, because in the permissible area the land-owner and his descendants forming a Hindu Undivided Family

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continue to have all the rights as before and in the surplus area also with this that under the provisions of the principal Act, section 10-A, the State Government has the right to settle tenants over such land, but then such a family is entitled to the rent of that land according to the provisions of that Act, and further when pursuant to such provisions the tenant purchases the surplus area, then the proceeds go to such a family. The landowner is not made absolute owner of either the permissible area or the surplus area or both as against the rights and title of his descendants as the remaining members of a Hindu Undivided Family, and all that the impugned section does is to provide, as stated, the mode of determining and settling the permissible area and surplus area for the purposes of the provisions of this Act. The argument, therefore, that the aspects of the matter in this respect as urged do not render the impugned section a measure of agrarian reform cannot possibly be accepted.

In *Atma Ram* v. *State of Punjab* (10), their Lordships of the Supreme Court considered the provisions of Punjab Act 10 of 1953, as amended down to the amending Act 11 of 1955 and their Lordships held—

> "The Act modifies the landowner's substantive rights, particularly, in three respects, as indicated above, namely, (1) it modifies his right of setting his lands on any terms and to anyone he chooses; (2) it modifies, if it does not altogether extinguish, his right to cultivate the 'surplus area' as understood under the Act; and (3) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price

(10) A.IR. 1959 S.C. 519.

but at a price fixed under the statute, and not to anyone but to specified persons in accordance with the provisions of the Act, set out above. Thus there cannot be the least doubt that the provisions of the Act, very substantially modify the land-owner's right to hold and dispose of his property in any estate or a portion thereof. It is, therefore, clear that the provisions of Article 31A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution."

Their Lordships found the Principal Act a measure of agrarian reform which attracts Article 31-A and is thus saved from attack on the basis of Articles 14, 19 and 31. Recently, in *Jagan Nath's case* a Division Bench of this Court has considered Punjab Act 10 of 1953 down to a point before the amendment which has introduced the impugned section. The learned Judges have observed that the Act "provides for four matters—

(1) A ceiling on individual land holding;
(2) a certain security of tenure to tenants;
(3) resettlement of tenants lawfully evicted; and
(4) a right given to certain tenants to purchase land held by them.

The Act does not expressly provide for a general "redistribution of land but it is certainly designed to have that tendency, and so far as I can see the intention is to leave each individual owner and similarly each individual tenant in possession of no more than the permissible area." This also puts it beyond question that the principal Act is a measure of agrarian reform in all its detailed

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aspects. Now, the impugned section has been set into the principal Act as a part and parcel of it and for the sole purpose of effectuating its provisions. Its object is to facilitate the determination of permissible area and to ascertain surplus area for settlement or resettlement of tenants. It is in spirit as also in word in line with the whole scheme of the Act and its sole purpose has been to achieve the success of that scheme. So that the impugned section as a part and parcel of a measure already held to be a measure of agrarian reform cannot itself be anything other than a measure of such a reform. The argument of the learned counsel for the petitioners that it is not a measure of agrarian reform thus cannot prevail.

There are two bases urged in support of the second argument. It is first said that the State Legislature is not competent to legislate in regard to a fundamental right retrospectively, because the words of Article 13(2) do not so permit. That Sub-Article says—"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall to the extent of the contravention, be void." It is said that under this Sub-Article any taking away or abridgement of fundamental rights must operate from the date of the enactment of a statute and it cannot operate retrospectively. There is nothing in this Sub-Article which leads to such a conclusion. In fact, Article 31A is in express terms retrospective in operation and if there was any substance in this argument, such retrospective operation of that Article would be rendered meaningless. So, the first basis is untenable. The second basis urged has reference to *Punjab Province* v. *Daulat Singh* (11), in which their Lordships held in regard to a statute where certain alienations were

(11) A.I.R. 1946 P.C. 66.

prohibited that it did not operate retrospectively observing that the "word 'prohibited' can only mean the forbidding of a transaction, and such a direction is appropriate only in respect of transactions to take place subsequently to the date of the direction, and cannot include an attempt to reopen or set aside transactions already completed, or to vacate titles already acquired." There is however, no such expression used in the impugned section and it is not quite clear how this case advances the position on the side of the petitioners. All the same, the learned counsel for the petitioners have again referred to Sub-Article (2) of Article 13 and pointed out that the words "shall not make" in this Sub-Article are strong and have the same connotation as the word 'prohibit' as used in the statute which their Lordships of the Privy Council were considering, but it has already been pointed out that in the context of Sub-Article (2) of Article 13 and interpretation of the type suggested is not admissible that legislation, otherwise valid, cannot be made to operate retrospectively from a date subsequent to the coming into force of the Constitution. During the arguments on this aspect of the case reference has been made to two cases decided by their Lordships of the Supreme Court. The first case, which has been relied upon on the side of the petitioners is *Kochuni's case*, but in that their Lordships left this question open. The second case is *Sadhu Ram* v. *The Custodian-General of Evacuee Property* (12), in which at page 1116, the following observation of their Lordships appears—

> "Learned counsel for the petitioner relies on the fact that his transaction which, on enquiry, was held to be genuine, was entered into before the East Punjab

(12) (1955) 2 S.C.R. 1113.

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Act XIV of 1947, was enacted and before the amendment thereof by insertion of section 5-A came into operation. He contends that the retrospective operation of section 5-A in such circumstances amounts to deprivation of his property, without any compensation and is, therefore, hit by Article 31 of the Constitution. Whatever may have been the position if this matter had to be dealt with much earlier, it seems doubtful whether any such contention can be raised by the petitioner before us, on this date, in view of the recent Constitution (Fourth Amendment) Act, 1955, which has came into force on the 27th April, 1955. It is unnecessary, however, to base our decision on this ground."

Article 31A was substituted by the Constitution (Fourth Amendment) Act, 1955, and so while answering the argument their Lordships are referring to Article 31A. The leaning of their Lordships has been against the argument as urged in these petitions so far as this argument is concerned, though the opinion was not made the basis of the decision. In the circumstances, this argument is also without substance.

The third argument actually reproduces the considerations in *Kochuni's case* that prevailed with their Lordships to reach the conclusion that the particular Act impugned in that case was, in fact, not a measure of agrarian reform and had nothing to do with agrarian reform but intermeddled with the affairs of individuals. In brief, the Act impugned in that case made provision for conversion of the properties belonging to sthanees as properties of the tarwad and junior members of the

family, whose claim had been repelled by the Privy Council, and who were then able to claim once again share in the properties. The sthanees challenged the validity of the Act and it was when considering that Act that their Lordships observed that it was not a measure of agrarian reform but had the effect of the considerations as stated in this argument. In this case it has already been stated that the impugned section is as much a measure of agrarian reform as the principal Act and the considerations referred to in this argument do not in the least detract from this nature of the provisions. There is no substance in the approach of the learned counsel for the petitioners that if the impugned section had been a separate Act, it could have been attacked on the same basis as the statute in *Kochuni's case*. Actually, the impugned section has been inserted in the principal Act by a separate statute; and even if it was a statute of a single section but in the terms as it is at present, it would still have become part and parcel of the principal Act and would only have had meaning in the context of the principal Act, otherwise it would have been meaningless and understandable. So, neither on facts nor on considerations in *Kochuni's case* the impugned section can be said not to be a measure of agrarian reform.

The fourth argument describes the impugned section as colourable legislation. The grounds urged for this are (a) that the section alters the meaning of the word 'land-owners' as used in the principal Act to confine it to the ancestor excluding his descendants constituting with him a Hindu Undivided Family and further it deems partition of land owned by a Hindu Undivided Family to be a disposition of land for the purposes of sections 10-A and 16 and this is done to attract the provisions of section 10-A to the surplus area found having regard to the provisions of this Act, and

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(b) that it provides a way of deprivation of land or compensation for land to the descendants of the ancestor with whom they form a Hindu Undivided Family. It appears apparent that this argument proceeds on misconception. There is no concealment in this section of the intention of the legislature nor any attempt to legislate on a subject other than the section purports to do so. Their Lordships of the Supreme Court have held that the doctrine of colourable legislation really postulates that legislation attempts to do indirectly what it cannot directly do. In other words, though the letter of the law is within the powers of the legislature, in substance the law has transgressed the powers and by doing so it has taken the precaution of concealing its real purpose under the cover of apparently legitimate and reasonable provisions: *Sonapur Tea Co. Ltd.* v. *Deputy Commissioner and Collector of Kamrup* (13), and *Board of Trustees, Ayurvedic and Unani Tibia College, Delhi* v. *State of Delhi* (14), it is immediately apparent that the test of colourable legislation is an attempt on the part of the legislature to legislate on a matter beyond its competency while putting it forward as if it is a legislation within its competency. The doctrine of colourable legislation has relation to legislative competence and where the legislation is within the constitutional competence of the legislature, it cannot be assailed as being colourable whatever the reasons behind it. In this case the legislature has not held back the reason for enactment of the impugned section and it has clearly laid bare the purpose of it. There is no concealment. It has not been urged that the enactment of the impugned section is beyond the competence of the State legislature. This argument is entirely without basis.

(13) A.I.R. 1962 S.C. 137.
(14) A.I.R. 1962 S.C. 458.

The fifth argument proceeds in relation to Sub-Article (1) of Article 15 of the Constitution which provides—

> "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them."

In these petitions discrimination is alleged on basis of religion and sex. In regard to sex it is said that when the impugned section refers to 'a landowner and his descendants' constituting a Hindu Undivided Family, it refers to such a family consisting of males and excludes such a family in which females are also members. This is not correct, for the word 'descendant' includes both male as well as female descendants. There is thus no discrimination on the ground of sex. In regard to religious discrimination it is urged that the impugned section singles out a Hindu Undivided Family for its purposes discriminating it against any other undivided family of any other religious denomination. In this connection reference is made to section 4 of the Partition Act, 1893 (Act 4 of 1893), in which section appears the expression 'an undivided family' and the learned counsel also refers to *Sultan Begum* v. *Debi Prasad* (15), *Masitullah* v. *Umrao* (16), *Latifannessa Bibi* v. *Abdul Raheman* (17), and *Mst. Gangi* v. *Atma Ram* (18), on the meaning of this expression. In these cases, it has been held that that expression is not confined to a joint Hindu Family but embraces undivided family of any religious denomination. The object of section 4 of Act 4 of 1893 is to give a right to a shareholder to purchase a share sold by a member of an undivided family and this expression in the section

(15) I.L.R. (1908) 30 All. 324.
(16) A.S.R. 1929 All. 414.
(17) A.I.R. 1934 Cal. 202.
(18) A.S.R. 1936 Lah. 291.

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concerns a family the members of which have not divided their property. It has no analogy with the conception of a Hindu Undivided Family. No such institution exists in so far as this State is concerned with any other religious denomination. Consequently, there is no discrimination on the ground of religion in that an undivided family among Hindus is discriminated against an undivided family among other religious denominations. There is no such thing as an undivided family of the type as a Hindu Undivided Family under the Hindu Law in any other system of law or among followers of any of the religion. Thus there is no such discrimination as is relied upon in support of this argument on behalf of the petitioners. This alone is sufficient to discard this argument. The impugned section is a legislation not just affecting a Hindu Undivided Family but it is also a measure of agrarian reform. The main consideration thus for the legislation is agrarian reform and not an attempt at any discrimination as has been urged on the side of the petitioners. The use of the word 'only' in this Sub-Article clearly shows that the discrimination to be within the mischief of this Sub-Article must be confined to one of the grounds stated in it and is not to proceed on any other ground or any other additional ground. In the present case the real ground for the enactment of the impugned section is agrarian reform. So that there is no case of discrimination made out to attract the provisions of Sub-Article (1) of Article 15 of the Constitution. This argument also fails.

The last argument urged on behalf of the petitioners is that the impugned section is meaningless and redundant, because in view of what has been held in *Jagan Nath's case* each member of a Hindu Undivided Family is a landowner and thus each member is entitled to a separate permissible area. In Section 2(1) of the Principal Act

the expression 'landowner' has been defined to mean a person defined as such in the Punjab Land Revenue Act, 1887 (Act 17 of 1887), and in section 3(2) of the last mentioned Act is given the definition of the word 'landowner'. For the present purpose only this much of the definition is relevant—

> "'landowner' does not include a tenant or an assignee of land revenue, but does include * * * * * *
> * * * * * *
> every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof, or in the enjoyment of any part of the profits of an estate."

It is said that leaving aside other considerations a member of an undivided Hindu family is, at least, entitled to enjoyment of profits of the land with such a family, and this is so even though a son in the Punjab is not entitled to partition of joint family land from his father. Reference has already been made to the present interest of such a person in Joint Hindu Family land or property, but even in a case like *Nihal Chand-Gopal Das* v. *Mohan Lal* (3), all that the learned Judges held was that his interest is attachable and saleable in execution of a decree against him, but that that would not make the purchaser a member of the coparcenery and it may be that he cannot enforce partition during the lifetime of the father. So that such a purchaser will have to wait till the death of the father before he will reach the share of the coparcenery. Sections 6 and 30 of Act 30 of 1956, in substance, also take effect only upon the death of a coparcener. So that in this State the present right of a descendant of the ancestor in a Hindu Undivided Family is not immediately effective. In the actual preparation

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of the record of rights according to Punjab Act 17 of 1887 and the rules thereunder the practice is to record as landowner the person who has acquired land in any manner and in the case of a Hindu Undivided Family when devolution takes place, then land is recorded in the name of the next immediate heir or person entitled to the land as landowner and not in the name of a Hindu Undivided Family or all the members of such a family. The reason for this is obvious, and it is this, that the shares of the members of such a family remain unascertained until separation or disruption and in the record of rights a person is recorded as landowner who can be reached for payment of the land revenue and for a definite statement in those records. In any case, it is precisely this argument which the impugned section directly meets and does away with. So that on this ground it cannot be said that that section is meaningless and redundant. In a Hindu Undivided Family constituted by a landowner and his descendants by statutory fiction the land is deemed to be of the landowner and consequently in the face of this statutory provision an argument at this cannot prevail. In this connection there is another aspect of the matter and that is the question of partition having taken place before the enactment of the impugned section. It must, of course, be a voluntary partition, for, as already pointed out, the sons or the descendants in this State have no right to demand it. This type of partition has been declared to be a disposition of land by clause (b) of the impugned section but only for the purposes of sections 10-A and 16 of the Principal Act, the object of this being to have the whole land of such a family for the matter of determination and ascertainment of its permissible area and surplus area which can be utilised under section 10-A. So that the fact that such a partition has been arrived at in the wake of the provisions of the Principal Act

makes no difference, for now the effect of it has been taken away. The argument is thus untenable.

The consequence is that the impugned section in either Principal Act is a constitutionally valid piece of legislation and as it is a measure of agrarian reform, it comes within the ambit and scope of Article 31A and thus argument with reference to Articles 14, 19 and 31 is out of place. Article 15 is not attracted to this case. The main argument in the petitions on behalf of the petitioners fails.

There remains only one other question for consideration in Civil Writ No. 68 of 1962. The question is, the petitioner having alienated parcels of his holdings, which alienations are to be ignored because of clauses (b) and (c) of section 10-A, from which area is the surplus area to be ascertained, whether from the unalienated land left with the petitioner or from the alienated land with the alienees? The learned Commissioner remarks in his order that the spirit of the Principal Act is that a landowner is entitled to take benefit of a permissible area and that he cannot have double benefit by disposing of what might come within his surplus area and by realising the value of the same, for that, according to the learned Commissioner, would be against the spirit of the Act. The letter of the Act, to my mind, is quite clear and so is the spirit of the Act. The Act leaves for self or personal cultivation with a landowner permissible area, but it does not deprive him of title to the surplus area. It specifically preserves that title but subject to the statutory condition under section 10-A of the right of the State Government to settle a tenant or tenants on it not of his choice. It, however, specifically further reserves to him the right of realisation of rent from

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such tenants and when such tenants claim to purchase such surplus area under the provisions of the Act, then the right to compensation is preserved in him. So that it is neither the letter nor the spirit of the Act that the landowner is not to have the value of the surplus area. Ultimately, when the tenant chooses to buy him off, the landowner does get the value of the land though not value which he would have obtained in the market, all the same he does get the value of the land, according to the statutory provisions. Thus it is not quite clear how the learned Commissioner has reached the conclusion as stated above. In *Hira Singh* v. *The State* (19), Grewal, F.C., on this question, held as below—

> "The legal position, however, is that the area owned by a landowner is determined under section 6 of the aforementioned Act, ignoring all transfers made after the 15th August, 1947, and before the commencement of the Punjab Security of Land Tenures Act, 1953 (except *bona fide* sales or mortgages with possession or transfers resulting from inheritance). If at the enforcement of the Act a landowner was a big landowner, i.e., owned more than the 'permissible area', then the excess area automatically becomes surplus area, and is liable to be utilised by Government for the resettlement of ejected tenants. Section 10-A(b), which is reproduced below further clarifies that no transfer or disposition of land comprised in a surplus area, at the commencement of this Act, shall affect its utilisation for re-settlement of ejected tenants:—

(19) (1961) 40 L.L.T. 37.

'10-A(b)—Notwithstanding anything contained in any other law for the time being in force (and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance) no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act, shall affect the utilisation thereof in clause (a)'.

While there is no legal ban on the sale, transfer or disposition of surplus area by a landowner, which was surplus area at the commencement of the Punjab Security of Land Tenures Act, will always be under a legal obligation to accommodate ejected tenants, whom Government may wish to re-settle, under section 10-A(a). And this obligation will not be altered or affected by the fact that the vendee or transferee is himself a small landowner. A vendee or a transferee of land comprised in a surplus area will, therefore, not have the same rights or freedom as a landowner of normal land. He will be perpetually burdened with an obligation to accept evicted tenants. Such a limited landowner will in practice merely be entitled to recover and receive rent from the resettled tenants which shall not exceed 1/3rd crop or its value. Such an inferior owner not being able to refuse ejected tenants imposed by Government for resettlement will also not be entitled to eject such tenants for self-cultivation. The position of such a landowner will in some ways be akin to a landlord whose

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land is under occupancy tenants who can never be ejected."

However, the decision of the same learned Financial Commissioner in *Pirtha Singh* v. *The Punjab State* (20), does not seem to be consistent with his previous decision in *Hira Singh's case*. In this last-mentioned case the learned Financial Commissioner observes—

> "An allied question that arises is in whose hands should the excess land be declared as surplus area. The answer is in the hands of Mota Singh. He cannot transfer that liability by selling or otherwise disposing of his land. Apart from the impropriety of allowing a big landowner to sell his land to innocent persons, without disclosing that fact and its legal consequences, countenance of such transactions would mean acquiescing in a breach of the scheme and spirit of the Act. What has been attempted here is that the landowner should keep his permissible area in kind and convert the surplus area into cash, leaving the innocent and misguided purchaser to face the resettlement of ejected tenants on that land. That is menifestly unfair and inequitable. Mota Singh appears to have acted with some cunningness. He sold the land in suit to the petitioners without obviously disclosing that some of his land would be declared surplus area including that sold. Subsequently, he transferred a substantial portion to the Agriculture Department in the hope of evading

(20) (1961) 40 L.L.T. 68.

> the law. In neither case can he be allowed to profit by these transactions because that would mean giving him a double advantage (of retaining his permissible area and converting the surplus area into cash). That is not the intention of the Punjab Security of Land Tenures Act. Such sales and dispositions, if countenanced, would give an unfair advantage to unscrupulous persons, who have transferred their burden to others, and discriminate against honest and straightforward landowners who accepted the rigour of the law and surrendered their surplus area for resettlement of ejected tenants. There is no warrant in law for such discrimination."

The two decisions can only be reconciled with reference to the opinion of the learned Financial Commissioner in *Pirtha Singh's case* that the landowner in that case sold the land "without obviously disclosing that some of his land would be declared surplus area including that sold", which means that the learned Financial Commissioner was probably of the opinion that some kind of misrepresentation or fraud had been practised upon the alienee, though the judgment does not refer to the fact that any such plea was taken by the alienee or that there was any evidence in support of it. But since the learned Financial Commissioner proceeds to his opinion, which is apparently inconsistent with his previous opinion, on that basis I must assume for the present purpose that there was material before the learned Financial Commissioner upon which he came to the conclusion that the dealing was unfair and inequitable inasmuch as the landowner in that case did not disclose the facts which

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the learned Financial Commissioner thought ought to have been disclosed to the alienee. This is the only way in which the two decisions can be reconciled. These two decisions were cited before Saroop Krishen, F.C., in *Sapooran Singh* v. *The Punjab State* (21), and the learned Financial Commissioner proceeded on the view consistent with *Hira Singh's case*, not following *Pirtha Singh's case*, saying that there was no reason to think that the alienee was under any misapprehension in respect to the question of surplus area. I consder that the view of the learned Financial Commissioners in *Hira Singh's* and *Sapooran Singh's case* is the correct view and *Pirtha Singh's case* must be taken only a decision on its own peculiar facts. The Principal Act does not invalidate alienations of an area from the holding of a landowner in which there is subsequently found to be surplus area, and all that it does is to provide in section 10-A that the total holding of the landowner, ignoring the alienation or alienations, will be taken into consideration for determination of permissible area and surplus area. There is nothing in the Act which deprives the landowner of his right to dispose of any part of his holding simply because subsequently it may be found that part of his holding comes to be surplus area. In section 19-B, before its amendment by Punjab Act 14 of 1962, provision was made for furnishing of declaration under section 5-A by a person acquiring land so as to determine his surplus area and in *Bhalle Ram* v. *The State of Punjab* (22), Mahajan, J., held that according to section 19-B, the area acquired by the transferees including the area held by them is to be taken into account for the purpose of finding the surplus area

(21) (1962) 41 L.L.T. 30.
(22) (1962) 64 P.L.R. 331.

in their hands. Therefore, such transfers cannot be ignored *vis-a-vis* the transferees and they must be taken into consideration so far as the transferees are concerned in arriving at the decision as to whether the area in the hands of the transferees including the area held by them before the transfers is in excess of the permissible area and further that section 10-A stands impliedly repealed by sections 19-A and 19-B of the Principal Act. In the wake of this decision section 19-B has been amended by Punjab Act 14 of 1962 by adding in the beginning of sub-section (1) of it these words—"subject to the provisions of section 10-A", which means that the position has now been clarified that land in the hands of a transferee does not cease to be available for utilisation under section 10-A. This amendment is consistent with the views of the learned Financial Commissioner in *Hira Singh's* and *Sapooran Singh's cases.* There is no secret about the provisions of the Principal Act and, in fact, the substance of its provisions is, by and large, known to all persons concerned with transactions in land. No party can urge ignorance of its provisions. It follows that unless there is a clear allegation of misrepresentation, fraud or deceit in the shape of concealment of possibility of surplus area having been found with the transferor, the transferee is in no better position than the transferor, so far as the provisions of the Principal Act are concerned. If there is a case of deceit, fraud or misrepresentation, then it must be clearly alleged and proved. It is not clear whether any such allegation has been made in this particular case and if so made, whether proper enquiry in this respect has been made. The Government has in its letter of July 22, 1961, issued instructions for giving relief to transferees as in the present case. The portion of the letter that is relevant here and states the extent of relief to be given is—"The areas which

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have been declared surplus in erstwhile Punjab but which have been purchased by landless persons or small landowners who are not the relations of prescribed degree of the vendor landowners, between the period 15th April, 1953 and 30th July, 1958, up to such limit which, with other area owned by the person, comes up to 10 standard acres", and it then says that relief is to be given in the light of that statement. No doubt, these instructions have not the force of law, but in implementation of the provisions of the principal Act such instructions do play part and come in for consideration of the authorities implementing them. Now, there is nothing to show that the same have been kept in view by the authorities in this case in finally disposing of the case of the petitioner. In the circumstances, the order of the learned Financial Commissioner in this petition cannot be sustained. It has to be quashed with a direction that it be considered in the light of what has been stated above and then disposed of according to law.

The result is that Civil Writ Petitions Nos. 935 and 936 of 1962 are dismissed with costs and Civil Writ Petition No. 68 of 1962 is accepted to the extent as stated in that order of the learned Financial Commissioner is quashed with the direction that he will now proceed to dispose of the revision application of the petitioner in accordance with what has been observed above. In this petition the parties are left to their own costs.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

B. R. T.