

A KIRPAL SINGH & ORS.

v.

KAMLA DEVI & ORS.

(Civil Appeal No. 356 of 2020)

B JANUARY 28, 2020

[ASHOK BHUSHAN AND NAVIN SINHA, JJ.]

Haryana Ceiling of Land Act, 1972:

ss. 8(3) and 33(2) (ii) – Proceedings under Punjab Security

- C *of Land Tenures Act, 1953 – For determination of surplus land – During pendency of proceedings enactment of Haryana Ceiling of Land Act – The original land-owner sold certain area of land and gave the Khasra numbers of the sold lands, in surplus pool – Notice was issued to the vendee to vacate the land, the same being surplus land – Collector held that the surplus land was to be taken from the land of the owner, and vendee's land could be taken into account only if the surplus land could not be completed from the land of the owner – In Revision filed by land-owner, it was held that the land-owner could not be forced to exclude the land in question from surplus area – The order was further upheld by Financial*
- D *Commissioner – Writ petition filed by vendee – The vendee further sold the land to the appellant – High Court allowing the writ remitted the matter to consider the case of the vendee for grant of benefit envisaged u/s. 8(3) of 1972 Act – Writ appeal was decided in favour of the original land-owner – Appeal to Supreme Court – Held: Section 33(2)(ii) of 1972 Act provides that repeal of 1953 Act would not affect the pending proceedings as regards surplus land and would be continued and disposed of as per 1953 Act – Therefore, provisions of ss. 8(3) and 9(3) of 1972 Act could not have been applied to the pending proceedings – Punjab Security of land Tenures Act, 1953 – ss. 5A, 5B and 5C.*
- E *not affect the pending proceedings as regards surplus land and would be continued and disposed of as per 1953 Act – Therefore, provisions of ss. 8(3) and 9(3) of 1972 Act could not have been applied to the pending proceedings – Punjab Security of land Tenures Act, 1953 – ss. 5A, 5B and 5C.*
- F *Commissioner – Writ petition filed by vendee – The vendee further sold the land to the appellant – High Court allowing the writ remitted the matter to consider the case of the vendee for grant of benefit envisaged u/s. 8(3) of 1972 Act – Writ appeal was decided in favour of the original land-owner – Appeal to Supreme Court – Held: Section 33(2)(ii) of 1972 Act provides that repeal of 1953 Act would not affect the pending proceedings as regards surplus land and would be continued and disposed of as per 1953 Act – Therefore, provisions of ss. 8(3) and 9(3) of 1972 Act could not have been applied to the pending proceedings – Punjab Security of land Tenures Act, 1953 – ss. 5A, 5B and 5C.*
- G *not affect the pending proceedings as regards surplus land and would be continued and disposed of as per 1953 Act – Therefore, provisions of ss. 8(3) and 9(3) of 1972 Act could not have been applied to the pending proceedings – Punjab Security of land Tenures Act, 1953 – ss. 5A, 5B and 5C.*

G Dismissing the appeal, the Court

HELD: 1. The Haryana Ceiling of Land Holdings Act, 1972 was enacted w.e.f. 23.12.1972 on which date the proceedings for determination of surplus in the hands of original land-owner which were initiated in 1953 were pending. Section 33 of 1972 Act deals

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with “*Repeal and Saving*”. The Punjab Security of land Tenures Act, 1953 and the Pepsu Tenancy Act and Agricultural Lands Act, 1955 which were operating in erstwhile State of Punjab were repealed by Section 33(1). Sub-section (2) of Section 33 provided that repeal of the provisions of above mentioned two acts shall not affect certain proceedings. Section 33(2)(ii) thus clearly provides that repeal of 1953 Act shall not affect the proceedings for determination of surplus areas pending immediately before the commencement of 1972 Act under the provisions of 1953 Act which shall be continued and disposed of as if this Act had not been passed. [Paras 11 and 12][427-D-F; 428-G-H]

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2. The legislative intent as reflected in Section 33 makes it clear that the proceedings for determination of surplus area which was pending on 23.12.1972 was to be continued and disposed of as if 1972 Act had not been passed. Thus, in continuation of the disposal of pending proceedings, 1972 Act was not to be taken into consideration in any manner. [Para 13][429-A-B]

Jiwas Das (DEAD) through LRS. v. Financial Commissioner, Revenue, Haryana and others, (1998) 8 SCC 740; Bhagwati Devi v. State of Haryana and others (1994) Supp 3 SCC 101 : [1994] 1 SCR 180– relied on

3. Section 3(l) of 1972 Act provided that Permissible Area means the extent of land specified in Section 4. The Permissible Area as defined in Section 4 of 1972 Act was reduced as compared to Permissible Area under 1953 Act. Sections 8 and 9 occurs in Chapter 2 of 1972 Act under the heading “Ceiling on land and acquisition and disposal of surplus Area”. Section 8 contains the heading “Certain transfers (or dispositions) not to affect surplus area.” Section 9 contains a heading “Selection of permissible area and persons required to furnish declaration”. As per strength of Section 9(3), the land owner while selecting land within permissible area has to include any transfer made by him after the appointed date in contravention provisions of Section 8. The permissible Area and selection as occurring in Section 9 has to be read in reference to permissible area as referred to in Section

- A 3(l) read with Section 4 and selection there on. The selection of permissible area occurring in Section 9 and requirement to include in such selection land transferred by land owner after the appointed date i.e. 25.03.1972 is in reference to the proceedings under 1972 Act. [Paras 17, 18 and 19][430-D; H; 431-A; 432-A-C]
- B 4. The order by the appellate authority on 14.11.1979 remanding the matter to the Collector for permitting the land owner to submit a list of plot numbers to be retained by him was in reference to proceedings of surplus area which was initiated under 1953 Act and as per Section 33(2)(ii), the said proceedings have to be continued and disposed of as if 1972 Act has not been passed. When Section 33(2)(ii) provides for proceedings of determination of surplus area which were pending on 23.12.1972 to be continued as if 1972 Act had not been passed, there is no question of applying provisions of Section 8(3) and 9(3).
- D [Para 20][432-D-E]
 - E 5. The scheme of 1953 Act as delineated by Section 5A, 5B and 5C indicates that determination of surplus area is a process contemplating various steps in determination of surplus area. The submission of declaration by land owner, the selection of permissible area by land owner, failure of owner to furnish the declaration supported by an affidavit, direction of the Collector that whole or part of such land holder or tenant shall be deemed to be surplus area or all part of an integrated process of determination of surplus area. When the meaning of surplus as contained in Section 2(5a) expressly provides that "area in excess of permissible area selected deemed to be surplus area", the selection is clearly indicated as part of the surplus area. The very definition of surplus area as contained in Section 2(5a) negates the submission of the appellant that selection of permissible area is not covered in the expression determination of surplus area.
 - F G Therefore, it is not correct to say that since selection of permissible area by land owner was not covered in determination of surplus area, Section 8(3) and 9(3) are applicable. [Paras 23 and 24][433-D-F]

Chet Ram and another v. Amin Lal and others AIR 1983

H PH 50 – *distinguished.*

6. In so far as the submission of the appellant that land owner has cheated his predecessor in interest since the land which was already declared surplus was sold by the original land-owner on 18.06.1974, was expressly not pressed by appellant in the High Court. Appellant cannot be permitted to raise the above submission. The appellant has purchased the land in dispute from his predecessor-in-interest on 16.06.1989, when the claim of predecessor-in-interest stood rejected by both Commissioner and Financial Commissioner and land was included in the surplus pool. The appellant cannot be permitted to raise any issue of fraud played on the predecessor-in-interest of appellant by land owner. It was for the predecessor-in-interest in his life time, to establish the plea of fraud. The appellant could not be allowed to raise any such submission. [Paras 28, 29 and 30][434-G-H; 435-C-D]

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7. The Division Bench has rightly taken the view that Single Judge went wrong by holding that provisions of Section 8(3) of 1972 Act are applicable in the present case and the competent authority has to ensure that transferred area at first instance be included in the permissible area of the land owner. The Division Bench has rightly set aside the direction of Single Judge and restored the order of the Financial Commissioner dated 18.02.1987. [Para 31][435-E-F]

Jagan nath and others v. State of Punjab and others
1962 PLR 22 – referred to

Case Law Reference

1962 PLR 22	referred to	Para 2
(1998) 8 SCC 740	relied on	Para 14
[1994] 1 SCR 180	relied on	Para 16
AIR 1983 PH 50	distinguished	Para 25

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 356 of 2020.

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From the Judgment and Order dated 21.04.2010 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 55 of 2010 (O & M).

Narender Hooda, Sr. Adv., Siddharth Mittal, Deepak Aggarwal, Prabhat Kumar, Ms. Usha Nandini. V., Advs. for the Appellants.

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A Pradeep Kant, Neeraj Kumar Jain, V.K. Jain, Sr. Advs., Gagan Gupta, Divyansh Sahay, Ms. Shradha Narayan, Naresh Bakshi, Shekhar Raj Sharma, Dr. Monika Gusain, Advs. for the Respondents.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

B 1. This appeal has been filed by legal heirs of the subsequent purchasers challenging the judgment of Division Bench dated 21.04.2010 of the Punjab and Haryana High Court in LPA No.55 of 2010 by which the appeal filed by the legal heirs of land owner has been allowed setting aside the judgement of learned Single Judge by which he directed the

C prescribed authority to include the area sold to the appellants within the permissible area of the land holder.

2. Brief facts of the case giving rise to this appeal are: -

D (i) One Jaipal Singh, land holder, was owner of the land measuring 221.72 standard acres in village Kheri, Shishgarh on 15.04.1953, when Punjab Security of land Tenures Act, 1953(hereinafter referred to as 1953 Act) was enforced. The 1953 Act defined permissible area, standard acre and surplus area. Permissible area under the 1953 Act was defined as 30 standard acres. Land owner who owned land in excess of permissible area was entitled to

E intimate his selection in the prescribed form and manner to the Patwari of the State. The Collector of the area passed an order dated 28.07.1960 determining 191.72 standard area of land as surplus in the hand of Shri Jaipal Singh. An appeal was filed by Jaipal Singh to the Commissioner, Ambala Division which was dismissed on 14.11.1960. The Revision Petition before the Financial Commissioner, Punjab which was also dismissed on 01.05.1961.

F (ii) CWP No.639 of 1961 filed by the Jaipal Singh was allowed by the High Court vide judgment dated 12.03.1962 and authorities were directed to redecide the surplus area in accordance with the law laid down by the judgment of Punjab High Court reported in *1962 PLR 22, Jagan Nath and others versus State of Punjab and others*. The proceedings before the Collector in pursuance of the judgment of Punjab High Court dated 12.03.1962 remained pending. In the meantime, State of Haryana was created and State legislature passed an Act namely, Haryana Ceiling of land

H Act, 1972(hereinafter referred to as 1972 Act). Jaipal Singh on

18.06.1974 executed sale deeds in favour of one Mohan Singh of an area of 125 Kanal and 8 Marla. The Collector by an order dated 12.05.1978 allowed exemption of land of Jaipal Singh declared surplus measuring 150 standard acres and balance of 36.47 standard acres was declared surplus.

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(iii) Learned counsel for the plaintiff Jaipal Singh was granted time by the Collector to furnish list of land to be retained by Jaipal Singh but requisite list was not submitted and order was passed on 20.05.1978 declaring surplus. The appeal against order dated 12.05.1978 was filed by Jaipal Singh. The Commissioner, Ambala division decided the appeal vide order dated 14.11.1979 and remanded the case to the Collector with a direction that he should permit the appellant Jaipal Singh to give the list of Khasra to be given in surplus pool to the Collector. Appellant was given time till 21.11.1979. Jaipal Singh gave Khasra numbers which were sold to Mohan Singh in surplus pool. A notice was issued to Mohan Singh to vacate the land. An application was filed by Mohan Singh before the prescribed authority objecting notice given to him to vacate the land. The prescribed authority rejected the application of Mohan Singh by the Order dated 11.10.1983 observing that the Vendee had purchased the surplus area by registered sale deed dated 18.06.1974.

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(iv) Against the order of prescribed authority, Mohan Singh filed an appeal before the Collector. The Collector by order dated 06.02.1984 accepted the appeal directing that if the surplus land had to be taken the same will be taken from the land of the owner and if the same could not be completed from his land, only then, the land be taken from land in dispute i.e. land of the vendees. The Jaipal Singh having died in between, the widow of Jaipal Singh filed a revision before the Commissioner, Ambala Division. The Commissioner allowed the revision. The Commissioner held that the surplus area declared by the Collector in the year 1960 vested in the State. The Commissioner held that land owner could not be forced to exclude this land from surplus area. It was further held that prescribed authority had no jurisdiction to challenge or modify the orders passed by the Collector. The order of Collector was set aside and appeal was allowed. Revision filed by Mohan Singh before the Financial Commissioner, Haryana was dismissed

- A by the order dated 18.02.1987 against which writ petition No.2979 of 1989 was filed by Mohan Singh.
(v) Mohan Singh executed a sale deed on 16.06.1989 in favour of appellant of the land which was purchased by him from Jaipal Singh vide sale deed dated 18.06.1974.
- B (vi) The writ petition was allowed by learned Single Judge setting aside the order of Commissioner and Financial Commissioner. The learned Single Judge remitted the matter to consider the case of petitioner for the grant of benefit envisaged under Section 8(3) of 1972 Act with regard to permissible area by land owner without touching the order of declaration of surplus area. The order of the Collector dated 06.02.1984 was restored to the limited extent.
- C (vii) Against the judgement of learned Single Judge 18.11.2009, LPA was filed by the legal heirs of the land owner. LPA has been allowed by the Division Bench by the impugned judgment dated 21.04.2010. The appellant aggrieved by said judgment has filed this appeal.
- D 3. We have heard Shri Narender Hooda, senior Advocate for the appellants, Shri Pradeep Kant, senior Advocate, has appeared for the contesting respondents. We have also heard learned Counsel for the State of Haryana.
- E 4. Learned counsel for the appellants submits that the predecessors-in-interest of appellants having purchased land measuring 125 Kanal and 8 Marla on 18.06.1974, they were entitled to benefits of Section 8(3) and 9(3) of 1972 Act, which provides that big land owner shall first include his land and only if the same is deficient, the land of the vendee should be included in the surplus pool. It is submitted that appellant is not challenging the declaration of the land of surplus in the hands of Jaipal Singh nor seeking reduction in surplus pool.
- F 4.1. It is submitted that Section 33(2) (ii) & (iv) cannot be read to conclude that the provisions of 1972 Act would not be applicable if the proceedings had commenced under 1953 Act. The determination of surplus area does not include within its ambit the selection of land. The selection of the surplus pool by the land owner has to be made under 1972 Act and any selection made inconsistent with the provisions of 1972 Act is null and void.
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4.2. Relying on the full Bench judgment of Punjab and Haryana High Court in *Chet Ram and another versus Amin Lal and others, AIR 1983 PH 50*, it is submitted that sale can only be void by the State but will always remain valid and binding between the vendor and vendee. The big land owner had cheated the predecessor in interest of appellant, since he represented that the land sold is not included in the surplus area nor shall be given in the surplus pool. Land owner having sold the land in 1974 by declaring that the land was not either in surplus pool nor the same would be given in surplus pool, the land owner cannot be allowed to deprive the vendee of the land subsequently by giving the Khasra Number of the land sold by him in 1974 in the surplus pool.

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4.3. It is submitted that Section 33 of 1972 Act should be interpreted by applying beneficial rules of construction to fulfil the policy of the Act and to protect the interest of person for whose benefit the act has been passed. It is submitted that learned Single Judge had taken correct view of the matter and the Division Bench erred in allowing LPA filed by the respondent.

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5. Shri Pradeep Kant, learned counsel for the respondent submits that Section 8(3) of 1972 Act cannot be pressed into service by the appellant because Section 33(2) of 1972 Act clearly provides that the repeal of the provisions of the enactment mentioned in sub-Section(1), shall not affect (i) proceeding for the determination of the surplus area pending immediately before the commencement of this Act,(ii) which shall be continued and disposed of as this Act (1972 Act) had not been passed and (iii) surplus area so determined shall vest in and be utilised with the State Government in accordance with provisions of 1972 Act. On the date when 1972 Act came into force i.e. 23.12.1972, the proceedings of determination of surplus area of the land owner Jaipal Singh was pending under 1953 Act. Section 33(2)(ii) of 1972 Act creates a deeming fiction, it eclipses the operation of the new Act until proceedings for the determination of surplus area under the 1953 Act were disposed of in accordance with the law. Neither Section 9 nor Section 8(3) of 1972 Act can be invoked in the present case.

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5.1. The Division Bench has rightly set aside the Order of Single Judge and confirmed the Order of Financial Commissioner. The submission of the appellant that once the new Act had come into force, the selection of Permissible Area could only be made under

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- A Section 9 of the new Act as the land had vested in the State Government under Section 12(3) upon commencement of the new Act is misconceived. The appellants were not bonafide purchasers, they have purchased the land from Mohan Singh vide Sale deed dated 14.06.1989 i.e. much after land stood vested in the State Government and after the Orders were passed by the Commissioner and Financial Commissioner impugned before the learned Single Judge.
- B 5.2. Learned counsel submits that Sale deed dated 18.06.1974 having been obtained by Mohan Singh after the commencement of 1972 Act, the sale deed was void and no benefit can be claimed by the appellant on that Sale deed.
- C 5.3. Learned counsel for the parties have relied on the judgments of this Court as well as of Punjab and Haryana High Court which shall be referred to by considering the submissions in detail.
- D 6. We have considered the submissions for learned counsel for the parties and perused the record.
- E 7. From the submissions as made by learned counsel for the parties and materials on record, following are the main questions which arise for consideration in this appeal: -
- F (i) Whether the proceedings for determination of surplus area which was initiated in respect of land owner Shri Jaipal Singh under 1953 Act was required to be completed in accordance with provisions of 1953 Act or provisions of 1972 Act also became applicable since the proceedings initiated under 1953 Act were pending on the date of enforcement of 1972 Act.
- F (ii) Whether determination of surplus land under 1953 Act was only confined to declaration of surplus and selection of plots for surplus pool shall not be covered by determination of surplus land?
- G (iii) Whether the appellants and their predecessors-in-interest were entitled to the benefit of Section 8(3) and 9(3) of 1972 Act, which required the land owner to first include his owned land in surplus pool and only when land owned by him does not satisfy the surplus pool land transferred by him after the enforcement of the 1972 Act can be included in the surplus pool?
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8. All the above questions being inter-related are being taken A together for determination.

9. The Punjab Security of Land tenure Act, 1953, was enacted to give effect to the agrarian reforms which were taken in independent India by different States. Section 2 of the Act was a definition clause defining various terms and expressions. Section 2(3) provided that Permissible Area in relation to the land owner or tenant means 30 standard acres and where such 30 standard acres on being converted to 60 acres, such 60 acres. Section 2(5A) defined surplus area. B

10. As noted above, the proceedings for determination of surplus area in the hands of Jaipal Singh were initiated and an order was passed by the Collector on 28.07.1960 declaring 191.72 standard acres as surplus area out of 221.72 standard acres owned by Jaipal Singh. The said order was carried in Appeal and Revision by Jaipal Singh and ultimately was taken in the High Court by means of CWP No.639/1961 which was allowed by the High Court on 12.03.1962 remanding the matter for re-determination of the surplus area. C

11. The Haryana Ceiling of Land Holdings Act, 1972 was enacted w.e.f. 23.12.1972 on which date the proceedings for determination of surplus in the hands of Jaipal Singh which were initiated in 1953 were pending. What is the effect on the said proceedings by the enactment of 1972 Act is a moot question to be considered and answered in the present case? Section 33 of 1972 Act deals with “*Repeal and Saving*”. The Punjab Security of land Tenures Act, 1953 and the Pepsu Tenancy Act and Agricultural Lands Act, 1955 which were operating in erstwhile State of Punjab were repealed by Section 33(1). Sub-section (2) of Section 33 provided that repeal of the provisions of above mentioned two acts shall not affect certain proceedings. Section 33 of the 1972 Act, which is relevant is as follows: - D

“33. (1) *The provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby repealed.* E

(2) *The repeal of the provisions of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect-* F

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- A *(i) the applications for the purchase of land under section 18 of the Punjab Law or section 22 of the Pepsu Law, as the case may be, pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;*
- B *(ii) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act;*
- C *[(iii) the revisional power of the Financial Commissioner under Section 24 of the Punjab law or under sub-section (3) of section 39 of the Pepsu law, as the case may be, shall be exercised as if this Act had not been passed; and the area declared surplus in exercise of such revisional power shall vest in, and be utilized by, the State Government in accordance with the provisions of this Act;*
- D *(iv) the power exercisable under section 32-BB of the Pepsu law, as the case may be, shall be exercised as if this Act had not been passed; and the area determined surplus in exercise of such power shall vest in, and be utilized by, the State Government in accordance with the provisions of this Act:*
- F *Provided that the powers of the Pepsu Land Commission under the Pepsu law shall vest in, and be exercised by, the Collector of the district concerned.]*
- G *(3) Save as provided in sub-section (2), no authority shall pass an order in any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act."*
- H 12. Section 33(2)(ii) thus clearly provides that repeal of 1953 Act shall not affect the proceedings for determination of surplus areas pending immediately before the commencement of 1972 Act under the provisions of 1953 Act which shall be continued and disposed of as if this Act had not been passed.

13. The legislative intent as reflected in Section 33 makes it clear that the proceedings for determination of surplus area which was pending on 23.12.1972 was to be continued and disposed of as if 1972 Act had not been passed. Thus, in continuation of the disposal of pending proceedings, 1972 Act was not to be taken into consideration in any manner.

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14. The above interpretation of Section 33 is no longer *res integra* and has been finally settled by this Court in *Jiwas Das (DEAD) through LRS. versus Financial Commissioner, Revenue, Haryana and others, 1998 (8) SCC 740*. In the above case also, proceedings for determination of surplus area were initiated against the land holder on 27.07.1959 which proceedings came up to the High Court where High Court passed an order on 15.12.1961 remitting the matter for fresh determination. The proceedings were pending and proceedings were taken on 11.06.1975 in consequence of direction of the High Court which proceedings were challenged and the matter came to this Court.

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15. In the above context, the provisions of Section 33(2) came to be interpreted by this Court. In paragraphs 4 and 5, following was laid down: -

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“4. It may be mentioned that in the meantime the Haryana Land Holdings Act has come into force. Section 33(2)(i) of the said Act provides that proceedings for determination of the surplus area pending immediately before the commencement of the said Act meaning thereby the Punjab Security of Land Tenures Act, 1953, shall be continued and disposed of as if Haryana Ceiling on Land Holdings Act, 1972 had not been passed. In view of the aforesaid Section 33(2)(i) if the proceeding which had been initiated on 27-7-1959 and was pending when the Haryana Ceiling on Land Holdings Act, 1972 came into force, that proceeding has to be continued in accordance with the old Act.

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5. On behalf of the appellant it was urged that once the order dated 19-10-1959 declaring surplus land was quashed the proceeding came to an end and nothing was pending which can be continued. It is difficult to accept this contention. The order of the High Court dated 15-12-1961 which quashed the aforesaid order also directed the department concerned

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- A *to determine the question of surplus land according to the law laid down in the case of Jagan Nath v. State of Punjab-*"
16. To the same effect is another judgment of this Court in **1994 Supp (3) SCC 101, Bhagwati Devi versus State of Haryana and others**. Thus, proceedings for determination of surplus land which were initiated under 1953 Act were thus have to be continued and disposed of in accordance with 1953 Act. Learned counsel for the appellant to support his submissions that Section 8(3) and 9(3) of 1972 Act has to be applied while considering the selection of land by land holder in the surplus pool contends that expression 'determination of surplus land' does not include the selection of land by land owner to be given in surplus pool. Before we proceed further, few more provisions of 1972 Act need to be noted.
17. Section 3 of 1972 Act is a definition clause. Section 3(l) provided that Permissible Area means the extent of land specified in Section 4 as Permissible Area. The Permissible Area as defined in Section 4 of 1972 Act was reduced as compared to Permissible Area under 1953 Act. D Section 8 and 9 occurs in Chapter 2 of 1972 Act under the heading "*Ceiling on land and acquisition and disposal of surplus Area*". Section 8 contains the heading "*Certain transfers (or dispositions) not to affect surplus area.*" Section 8(3) on which reliance has been placed by learned counsel for the appellant provides for: -
- E "*8(3). If any person transfers [or disposes off] any land after the appointed day in contravention of the provisions of subsection (1), the land so transferred [disposed off] shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case the area left with him after such transfer [dispose off] is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred [or disposed off] shall also be deemed to be the surplus area shall be made up from each of the transferees in the proportion to the land transferred [or disposed off] to them.*"
- H *18. Further Section 9 on which reliance has been placed contains a heading "Selection of permissible area and persons*

required to furnish declaration". Section 9 which is relevant is as A follows: -

"9. (1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area, shall [within a period of three months from such date as the State Government may, by notification, specify in this behalf] 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 or 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 last date for furnishing the declaration shall be the 31st October, 1976.]

Explanation I.- 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 [and the separate unit.]

[Explanation II.- In calculating the extent of land owned or held by a person, the share of such person in the land owned and held by an undivided family, firm or association of individuals, whether incorporated or not, and the land contributed as share capital or otherwise by him to a co-operative society or a company of which he may be a member or shareholder, shall be taken into account.]

(2) Every person making a selection of the permissible area under sub-section (1), may also select land for the separate unit.

Explanation. - An Adult son, who owns or holds land and is living separately from his parents, shall file the declaration under sub-section (1) and make the selection of permissible area under sub-section (2) separately.]

(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."

*Selection of
permissible area and
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19. Section 9(3) provides that in making the selection such persons shall include in the first place the land which has been transferred by

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- A him after the appointed date in contravention of provisions of Section 8 and in the second-place land mortgaged by him without possession. Thus, as per strength of Section 9(3), the land owner while selecting land within permissible area has to include any transfer made by him after the appointed date in contravention provisions of Section 8. The permissible
- B Area and selection as occurring in Section 9 has to be read in reference to permissible area as referred to in Section 3(l) read with Section 4 and selection there on. The selection of permissible area occurring in Section 9 and requirement to include in such selection land transferred by land owner after the appointed date i.e.25.03.1972 is in reference to the proceedings under 1972 Act.
- C 20. The submissions of Appellant that while making selection by Jaipal Singh of the permissible area in pursuance of appellate order dated 14.11.1979. Section 9(3) had to be applied and land of the predecessor-in interest of the appellants which was purchased by Mohan Singh by Sale deed dated 18.06.1974 ought to have been included cannot be accepted. Firstly, the order by the appellate authority on 14.11.1979 remanding the matter to the Collector for permitting the land owner to submit a list of plot numbers to be retained by him was in reference to proceedings of surplus area which was initiated under 1953 Act and as per Section 33(2)(ii), the said proceedings have to be continued and disposed of as if 1972 Act has not been passed. When Section 33(2)(ii)
- D provides for proceedings of determination of surplus area which were pending on 23.12.1972 to be continued as if 1972 Act had not been passed, there is no question of applying provisions of Section 8(3) and 9(3) as contended by the appellant.
- E 21. Now coming to the submissions of learned counsel for the appellant that present was not a case of determination of surplus area rather it was selection of permissible area by the land owner and what has to be continued and disposed of as per Section 33(2)(ii) of 1972 Act was determination of surplus area and present being case of selection of permissible area Section 33(2)(ii) of 1972 Act was not applicable and
- F G Section 8 and 9 of 1972 Act has to be applied.
- H 22. What is the content and extent of expression “determination of surplus area” under 1953 Act needs to be looked into for considering the above submissions? Section 2(5a) of 1953 Act defined surplus area in following manner: -

“2. (5-a). “*Surplus Area*” means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected [under Section 5-B or the area which is deemed to be surplus area under sub-section (1) of Section 5-C] [and includes the area in excess of the permissible area selected under Section 19-B]; but is will not include a tenant’s permissible area:

Provided that it will include the reserved area, or part thereof, where such area or part has not been brought under self-cultivation within six months of reserving the same or getting possession thereof after ejecting a tenant from it, whichever is later, or if the land-owner admits a new tenant, within three years of the expiry of the said six months.]”

23. The scheme of 1953 Act as delineated by Section 5A, 5B and 5C indicates that determination of surplus area is a process contemplating various steps in determination of surplus area. The submission of declaration by land owner, the selection of permissible area by land owner, failure of owner to furnish the declaration supported by an affidavit, direction of the Collector that whole or part of such land holder or tenant shall be deemed to be surplus area or all part of an integrated process of determination of surplus area. When the meaning of surplus as contained in Section 2(5a) expressly provides that “area in excess of permissible area selected deemed to be surplus area”, the selection is clearly indicated as part of the surplus area. The very definition of surplus area as contained in Section 2(5a) negates the submission of counsel for the appellant that selection of permissible area is not covered in the expression determination of surplus area.

24. We thus also reject the above submissions of counsel for appellant that since selection of permissible area by land owner was not covered in determination of surplus area, Section 8(3) and 9(3) are applicable.

25. Learned counsel for the appellant has placed reliance on judgment of full Bench of Punjab and Haryana High Court in *Chet Ram and another versus Amin Lal and others (Supra)* for the proposition that transfer in contravention of provisions of 1953 Act is only void by the State but valid between parties *inter se*. In the above Full Bench judgment, the High Court had occasion to consider transfer in contravention under Section 19A under 1953 Act. Section 19A provided:-

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19-A.(1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, no person, whether as land-owner or tenant, shall acquire or possess by transfer, exchange, lease, agreement or settlement any land, which with or

Bar on future acquisition of land in excess of permissible area.

B with or without the land already owned or held by him, shall in the aggregate exceed the permissible area;

Provided that nothing in this section shall apply to lands belonging to registered co-operative societies formed for purposes of co-operative farming if the land owned by an individual member of the society does not exceed the permissible area.

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(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void.”

26. In paragraph 23, full Bench gave following answer: -

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“23. To conclude it must be held that even though the language of sub-section (2) of S. 19-A is absolute; yet for the reasons of sound interpretation it must be given a slightly constricted meaning in order to harmonise it with S. 19-B of the Punjab Act. The answer to the question posed at the outset is that a transfer in contravention of Section 19-A(1) would

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be void only qua the State for the purposes of the Punjab Act, but would be valid and binding between the parties inter se. The view in Labh Singh's case 1971 Cri LJ 719(supra) in this context, is hereby overruled, whilst that in Godhu's case 1979 PLJ 496(supra) is approved and affirmed.”

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27. The above full Bench judgment of Punjab and Haryana High Court was on different aspect. Present is not a case for any contravention of Section 19A, hence, the above judgment does not support the submission made by learned counsel for the appellant in the facts of the present case.

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28. In so far as the submission of learned counsel for the appellant that land owner has cheated his predecessor in interest since the land which was already declared surplus was sold by Jaipal Singh on 18.06.1974, the above submission on the ground of any fraud played on the appellant was expressly not pressed by appellant in the High Court which has been noticed by the learned Single Judge in paragraph 7 which

H is to the following effect: -

"7. At the very outset, it may be mentioned here that although the petitioner has challenged the impugned orders in this petition on the various grounds mentioned therein, but learned counsel for the petitioner has confined his argument only to the limited extent of legal proposition that Mohan Singh-Petitioner was entitled to the benefit of Section 8(3) of the Haryana Act."

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29. Limited submission pressed before the learned Single Judge by the appellant was as to whether Mohan Singh was entitled to the benefit of Section 8(3) of 1972 Act. No other submissions were neither pressed nor adverted to by the learned Single Judge who decided in favour of the appellant. We are thus of the view that appellant cannot be permitted to raise above submission.

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30. The appellant has purchased the land in dispute from Mohan Singh on 16.06.1989, when the claim of Mohan Singh stood rejected by both Commissioner and Financial Commissioner and land was included in the surplus pool. The appellant cannot be permitted to raise any issue of fraud played on Mohan Singh the predecessor-in-interest of appellant by land owner, it was for Mohan Singh in his life time, to establish the plea of fraud. The appellant could not be allowed to raise any such submission.

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31. In view of the above discussions, we are of the view that no error has been committed by Division Bench of the Punjab and Haryana High Court in allowing the LPA of the respondents. The Division Bench has rightly taken the view that Single Judge went wrong by holding that provisions of Section 8(3) of 1972 Act are applicable in the present case and the competent authority has to ensure that transferred area at first instance be included in the permissible area of the land owner. The Division Bench has rightly set aside the direction of learned Single Judge and restored the order of the Financial Commissioner dated 18.02.1987.

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32. In result, we do not find any merit in the appeal. The appeal is dismissed.