

# **Lajpat Rai And Others vs State Of Punjab And Others on 24 April, 1981**

**Equivalent citations: 1981 AIR 1401, 1981 SCR (3) 590, AIR 1981 SUPREME COURT 1401, 1981 PUNJ LJ 316, 1981 REV LR 445, (1981) LANDLR 341, 1981 (3) SCC 94**

**Author: A.D. Koshal**

**Bench: A.D. Koshal, Baharul Islam**

PETITIONER:  
LAJPAT RAI AND OTHERS

Vs.

RESPONDENT:  
STATE OF PUNJAB AND OTHERS

DATE OF JUDGMENT 24/04/1981

BENCH:  
KOSHAL, A.D.  
BENCH:  
KOSHAL, A.D.  
ISLAM, BAHARUL (J)

CITATION:  
1981 AIR 1401                      1981 SCR (3) 590  
1981 SCC (3) 94                  1981 SCALE (1) 930

ACT:  
Punjab Security of Land Tenures Act (10 of 1953) Ss. 5, 5A and 5-B and Punjab Security of Land Tenure Rules 1956 Rule 4 and Form E-Intimation by landlord in Form E-Whether amounts to selection of permissible area under S,. 5-B(1) Prescribed authority whether can alter the same.

HEADNOTE:  
Respondent No. 3, a displaced person from Pakistan, was allotted more than 60 standard acres of land. Out of this land he made an oral gift of some land in lieu of maintenance to his wife, respondent No. 4, who sold that land to the appellants.  
In the proceedings for declaration of the surplus area of the land owned by respondent No. 3 the Special Collector

included the land sold to the appellants in the "select area" of Respondent No. 3. The appeal of Respondent No. 3 to the Commissioner was dismissed as time-barred and this order was upheld in revision by the Financial Commissioner.

A single Judge dismissed his petition under Article 226. In appeal, a Division Bench held that the order of the Special Collector, directing a variation in the reservation made by respondent No. 3 without his consent was not only contrary to the provisions of the Act but was without jurisdiction and a nullity in as much as the Act vested no power of such variation in the Collector.

In the appeal to this Court it was contended on behalf of the appellant, that: (1) the admission to the effect that respondent No. 3 had intimated his reserved area in Form E to the Collector before gifting the land to his wife was made before the High Court on behalf of the appellants on the basis of some misconception on the part of their counsel, that actually no such reservation was ever made and that the admission could at best be interpreted to mean that respondent No. 3 had sent an intimation in Form E to the Special Collector detailing therein the area selected by him as his permissible area in pursuance of the provisions of sub-section (1) of section 5-B of the Act, and (2) If no reservation was made by respondent No. 3 the whole basis of the impugned judgment falls and the Collector would have jurisdiction to amend the permissible area of respondent No. 3 by way of adjustment of the equities arising in favour of the appellants.

Dismissing the appeal,

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HELD: In assuming that respondent No. 3 had intimated his reservation in pursuance of sub-section (1) of section 5, the High Court was in error  
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and the case had to be decided on the basis of the factual position that respondent No. 3 had failed to make any reservation under that sub-section but that he had made a selection in Form E in pursuance of the provisions of sub-section (1) of section 5-B. [600 H-601A]

The inclusion of the land in question in the surplus area of respondent No. 3 does not effect the right of ownership of the appellants. [604 A]

1. (a) Reservation of land was envisaged only in section 5(1) of the Act and had to be intimated within six months from the date of its commencement i.e. on or before the 15th October, 1953. [599 E]

(b) No provision was ever made in the Act or the rules framed thereunder for a reservation of land by a land-owner who had failed to send an intimation thereof on or before the 15th October, 1953. [599 F]

(c) What was provided by section 5-B was, that a landowner who had not exercised the right of reservation under the Act could select his permissible area and send

intimation thereof in Form E to the prescribed authority within a period of six months from the 11th December, 1957 i. e. on or before 11th May, 1958. 'Reservation' was something different from the 'Selection' of permissible area. The two terms were not only not synonymous but were mutually exclusive. 'Selection' of permissible area was allowed only to a landlord who had not exercised his right of 'reservation'. [599 G-600 A]

(d) Form E was meant only for intimation of selection of permissible area under sub-section (1) of section 5B and not for reservation under sub-section (1) of section 5 which could be made only through an intimation in the Form in Annexure "B" to the 1953 Rules. [600 B]

2.(a) 'Surplus area' is arrived at by excluding the reserved area from the total area of a land-owner in case a reservation has been made by him lawfully. (Clauses (4) and (5-a) of section 2.) [601 C]

(b) Where no area has been lawfully reserved by the land-owner, surplus area is worked out under section 5B or 5C. [601 D]

(c) Under section 5, the landowner is entitled to reserve out of the entire land held by him in the State as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form to the Patwari of the estates, etc. In doing so he is legally bound to include in his reserved area such land as conforms to the description of any of the 6 categories covered by clauses (a) to (f) of the proviso to sub-section (1) of section 5. [601E]

(d) Once a reservation has been intimated within 6 months from the date of commencement of the Act, it cannot be varied either by act of parties or by operation of law, except with the written consent of tenant affected by such variation. [601 F]

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(e) If a land-owner has failed to reserve land in accordance with the provisions of section 5 he has another chance to select his permissible area within 6 months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1937. [601 G]

(f) The prescribed authority is given the power to select the permissible area of a landowner under sub-section (2) of section 5-B but the mandatory condition attached to the exercise of that power is that it shall be resorted to only if the landowner has failed to select his permissible area in accordance with the provisions of sub-section (1) of that section. In other words, if the concerned land-owner has already selected his permissible area in accordance with the provision of sub-section (1) of section 5-B, sub-section (2) of that section does not come into play at all and there is no occasion for the exercise by the prescribed authority or the power of selection. [602 A-C ]

In the instant case Respondent No. 3 had made a

selection of his permissible area in accordance with the provisions of sub-section (1) of section 5-B, a selection which the prescribed authority had no power to vary either under sub-section (2) of section 5-B or under any other provisions of the Act. The order of the Special Collector dated March 30, 1962 was therefore passed without jurisdiction and was a nullity. [602 D-E]

Gurucharan Sing and Ors. v. Prithi Singh and Ors. [1974] 1 S.C.C. 138, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1981-N of 1970.

From the judgment and order dated the 21st May 1970 of the Punjab and Haryana High Court in Letters Patent Appeal No. 195 of 1966.

G.L. Sanghi, S.K. Metha, P.N. Puri and M.K. Dua for the Appellants.

O.P. Sharma and M.S. Dhillon for the Respondents. The Judgment of the Court was delivered by KOSHAL, J. This appeal by certificate is directed against the judgment dated May 21, 1970 of a Division Bench of the High Court of Punjab and Haryana accepting a Letters Patent Appeal and holding that in view of the provisions of sections 5, 5-A and 5-B of the Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the Act), the concerned Collector had no jurisdiction to vary the reserved area of a land-owner by including therein the lands sold by him to others.

2. Most of the relevant facts are undisputed and may be briefly stated thus. Sadh Singh, respondent No. 3, who is a displaced person from Pakistan, was allotted more than 60 standard acres of land in village Karyam, Tehsil Nawanshehar, District Jullundur, in lieu of the land left by him in Pakistan. He also owned a little more than 1 standard acre of land in village Surwind, Tehsil Patti, District Amritsar. About 3 years after the Act came into force, i.e., on March 9, 1956, respondent No. 3 made an oral gift of some of his land in lieu of maintenance to his wife Nirmal Kaur, respondent No. 4, who entered into an agreement dated January 21, 1957 with the three appellants for sale to them of the land gifted to her. against a consideration of Rs. 4200. The land covered by the gift was mutated in favour of respondent No. 4 on April 17, 1957 and she conveyed the same to the three appellants by a registered sale-deed dated August 8, 1957. The agreement mentioned above as well as the sale deed following it were attested by respondent No. 3 as a marginal witness.

3. The proceedings for declaration of the surplus area out of the land owned by respondent No. 3 were initiated by the Collector on June 20, 1958. They passed through various stages before the Collector and in appeal before the Commissioner. Ultimately the Special Collector, Punjab, declared the surplus area of respondent No. 3 after hearing him and the appellants, through an order dated March 30, 1962, and while doing so, he included the land sold to the appellants by respondent No. 4 in the "select area" of respondent No. 3, as prayed for by the appellants. The order was based on

some rulings of the Financial Commissioner, Punjab, to the effect that all sales for valuable consideration effected by a land-owner after the enforcement of the Act should be included in his "select area". Respondent No. 3 unsuccessfully challenged the order in an appeal which was dismissed by the Commissioner as time-barred. The order of the Commissioner was upheld in revision by the Financial Commissioner. It was then that respondent No. 3 knocked at the door of the High Court through a petition under article 226 of the Constitution of India which was dismissed by a learned Single Judge on the ground that the order of the Special Collector had become final by reason of the appeal taken against it being time-barred. The learned Judge observed that respondent No. 3 was not entitled to any relief in exercise of the extra-ordinary jurisdiction of the High Court under the said article in view of the fact that he had failed to pursue diligently the remedy of appeal which was open to him.

In the appeal which respondent No. 3 filed under clause 10 of the Letters Patent, the Division Bench observed:

"In accordance with section 5 of the Punjab Security of Land Tenures Act, 1953, the appellant intimated his reserved area in form E to the Collector before making the gift in favour of his wife. This fact is not so stated in the pleadings, but the counsel of both the parties admit this fact to be so".

and after referring to the provisions of sections 5, 5-A and 5-B of the Act concluded:

"The Collector has no jurisdiction to vary the reserved area of a landowner by including the land sold by him to others in his reserved area. Under section 5 of the Act, the only jurisdiction with the Collector is to find out whether the reservation has been made in accordance with the directions contained in that section but the Collector has no jurisdiction to include an area in the reserved area of a landowner which is not covered by any of the clauses (a) to (f) of the proviso to section 5 of the Act."

In coming to this conclusion. the Division Bench relied upon three decisions of the High Court of Punjab and Haryana rendered by other Division Benches and reported as Bhagat Gobind Singh v. Punjab State and others, State of Punjab and others v. Shamsher Singh and others, and Mota Singh v. Financial Commissioner Punjab and if others. An argument raised before it on behalf of the present appellants that the order of the Collector made in contravention of section 5 of the Act could at best be treated as an illegal order and not one passed without jurisdiction and therefore a nullity, was repelled. In this connection, reliance was placed by the Division Bench on three judgments of this Court, namely, Nemi Chand Jain v. Financial Commissioner Punjab, Smt. Kaushalya Devi v. K.L. Bansal, and Bahadur Singh v. Muni Subrat Dass, another. In the result, the Division Bench held that the order of the Special Collector dated March 30, 1962, directing a variation in the reservation made by respondent No. 3 without his consent was not only contrary to the provisions of the Act but was without jurisdiction and a nullity in as much as the Act vested no power of such variation in the Collector. It further held that a petition under article 226 of the Constitution of India by respondent No. 3 with the prayer that the order of the Special Collector dated March 30, 1962, be quashed was

competent, even though he had not exhausted his remedies of appeal and revision.

In the above premises, the Division Bench accepted the Letters Patent Appeal and set aside the order of the Special Collector dated March 30, 1962, as also those orders which followed and confirmed it, and directed the Collector to declare the surplus area of respondent No. 3 after excluding therefrom the area reserved by him as his Permissible area.

4. Mr. Sanghi, learned counsel for the appellants, has raised the following contentions before us:

(a) The admission to the effect that respondent No. 3 had intimated his reserved area in Form E to the Collector before gifting the land to his wife was made before the High Court on behalf of the appellants on the basis of some misconception on the part of their counsel. Actually no such reservation was ever made and the admission could at best be interpreted to mean that respondent No. 3 had sent an intimation in Form E to the Special Collector detailing therein the area selected by him as his permissible area in pursuance of the provisions of sub-section (1) of section 5-B of the Act.

(b) If no reservation was made by respondent No. 3 the whole basis of the impugned judgment falls and the Collector would have jurisdiction to amend the permissible area of respondent No. 3 by way of adjustment of the equities arising in favour of the appellants.

After hearing Mr. Sanghi we find force in contention

(a) but none in contention (b), as we shall presently show. We may mention here that respondent No. 3 has remained up- represented before us in spite of service.

5. For a proper consideration of the two contentions, it is necessary to refer to certain provisions of the Act as they originally stood, the amendments made thereto in the year 1957 and the rules framed thereunder from time to time. The Act was enforced on the 15th April 1953. On that date section 5 thereof comprised 5 sub-sections of which sub- sections (4) and (5) were omitted in the year 1953 itself. Sub-sections (1) and (3) of that section are relevant and are reproduced below:

"5. (1) Any reservation before the commencement of this Act shall cease to have effect, and subject to the provisions of sections 3 and 4 any landowner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed:

"Provided that in making this reservation he shall include his areas owned in the following order:

- (a) area held in a Co-operative Garden Colony,
- (b) area under self-cultivation at the commencement of this Act other than the reserved area,
- (c) reserved area excluding the area under a jhundimar tenant or a tenant who has been in continuous occupation for 20 years or more immediately before such reservation,
- (d) area or share in a Co-operative Farming Society,
- (e) any other area owned by him,
- (f) area under a jhundimar tenant".

"(3) A landowner shall be entitled to intimate a reservation within six months from the date of commence-

ment of this Act, and no reservation so intimated shall be varied subsequently whether by act of parties or by operation of law, save with the consent in writing of the tenant affected by such variation or until such time as the right to eject such tenant otherwise accrues under the provisions of this Act." The term 'reserved area' was defined in clause (4) of section 2 thus:

'(4) "Reserved area" means the area lawfully reserved under the Punjab Tenants (Security of Tenure) Act, 1950 (Act XXII of 1950), as amended by President's Act, V of 1951, hereinafter referred to as the "1950 Act" or under this Act.' The Act as originally framed did not contain any provision for the determination of what is now known as "surplus area" a term which was introduced into the Act for the first time in 1955 through the addition of clause (5-a) to section 2.

On the 19th May 1953 were promulgated the Punjab Security of Land Tenures Rules, 1953 (for short, the 1953 Rules), under rule 3 of which a landowner had to notify his reservation to the Patwari of the concerned estate in pursuance of the provisions of sub-section (1) of section 5 of the Act in the Form designated as Annexure "B" to those Rules.

On the 27th April 1956 were promulgated the Punjab Security of Land Tenures Rules, 1956 (hereinafter referred to as the 1956 Rules). It was by rule 4 thereof that Form E was for the first time prescribed. That rule stated:

"4. Where a landowner has not reserved the area permitted for self-cultivation, he will, at the same time as he submits the declarations prescribed in rule 3 above, intimate, in writing, to the Patwari/Patwaris of the Circle/ Circles in which his lands are situated, the land/lands selected by him for self-cultivation.. This intimation shall

be in Form E."

This rule clearly indicates that a landowner was given the right to select an area for self-cultivation only in case he had not reserved such area on or before the 15th October, 1953.

Sections 5-A and 5-B were added to the Act in the year 1957 with effect from 11th December 1957 by means of Punjab Act No. 46 of 1957. They state:

Section 5-A "Every land-owner or tenant. who owns or holds land in excess of the permissible area and where land is situated in more than one Patwar Circle, shall furnish, within a period of six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957, a declaration supported by an affidavit in respect of the land owned or held by him in such form and manner and to such authority as may be prescribed."

Section 5-B "(1) A land-owner who has not exercised his right of reservation under this Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in section 5-A and in such form and manner as may be prescribed:

"Provided that a land-owner who is required to furnish a declaration under section 5-A shall intimate his selection along with that declaration. "(2) If a land-owner fails to select his permissible area in accordance with the provisions of sub-section (1), the prescribed authority may, subject to the provisions of section 5-C, select the parcel or parcels of lands which such person is entitled to retain under the provisions of this Act:

"Provided that the prescribed authority shall not make the selection without giving the land-owner concerned an opportunity of being heard".

Simultaneously the definition of 'surplus area' contained in clause (5-a) of section 2 of the Act was amended to read thus:

'(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 it 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 landowner admits a new tenant, within three years of the expiry of the said six months.' In consequence of these additions rule 4 of the 1956 Rules was also



amended so as to contain a provision that an intimation under section 5-B (1) of the Act shall be furnished by a landowner in Form E.

6. In relation to contention (a) the following propositions emerge from the various provisions of law just above set out:

(i) Reservation of land was envisaged only in section 5 (1) of the Act and had to be intimated within six months from the date of commencement of that Act, i.e., on or before the 15th October 1953.

(ii) No provision was ever made in the Act or the rules framed thereunder for a reservation of land by a landowner who had failed to send an intimation thereof on or before the 15th October 1953.

(iii) What was provided by section 5-B was, inter alia, that a landowner who had not exercised the right of reservation under the Act could select his permissible area and send intimation thereof in Form E to the prescribed authority within a period of six months from the 11th December, 1957, i.e., on or before 11th May, 1958. 'Reservation' was something different from the 'Selection' of permissible area. The two terms were not only not synonymous but were mutually exclusive. 'Selection' of permissible area was allowed only to a landlord who had not exercised his right of 'reservation'

(iv) Form was meant only for intimation of selection of permissible area under sub-

section (1) of section 5-B and not for reservation under sub-section (1) of section 5 which could be made only through an intimation in the Form in Annexure "B" to the 1953 Rules.

7. The propositions just above enunciated bring out incongruity from which the admission made before the High Court suffers. There could be no reservation in Form E by respondent No. 3. If he send an intimation in that Form it could only be about a selection of his permissible area under sub-section (1) of section 5-B. That this was really so clearly appears from the following observation made in the order of the Special Collector dated 2nd March 1961:

"The counsel for the owner argued that area sold was not included in Form E filed before the Special Collector and that he was not prepared to include it in the select area of 50 S.A. to which he is entitled".

The order from which this observation has been extracted was set aside by the Commissioner, Jullundur Division, on the 8th January, 1962 when the case was remanded to the Special Collector for a fresh decision after hearing the three appellants as well as respondents Nos. 3 &

4. The Special Collector then heard all these parties and passed his order dated the 30th March 1962 which also unmistakably indicates that the intimation given by respondent No. 3 to the Special Collector was not in respect of any reservation but covered only a selection of the permissible area.

Reference in this connection may be made to the fact that twice in that order the Special Collector used the term "select area" in relation to the lands which respondent No. 3 could be allowed to retain in his possession .

In assuming (on the basis of the admission made at the bar) that respondent No. 3 had intimated his reservation in pursuance of sub-section (1) of section 5, the High Court was thus in error and the case has to be decided on the basis of the factual position that respondent No. 3 had failed to make any reservation under that subsection but that he has made a selection in Form E in pursuance of the provisions of sub- section (1) of section 5-B. Contention (a) raised by Mr. Sanghi is, therefore, accepted in full.

8. We now proceed to consider contention (b) in the light of the provisions above extracted, a bare reading of which leads to the following conclusions in relation to that contention:

(a) 'Surplus area' is arrived at by excluding the reserved area from the total area of a land-owner in case a reservation has been made by him lawfully. (Clauses (4) and (5-a) of section 2.)

(b) Where no area has been lawfully reserved by the land owner, surplus area is worked out under section 5-B or 5-C]

(c) Under section 5, the landowner is entitled to reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating his selection in the prescribed form and manner to the patwari of the estate, etc. In doing so he is legally bound to include in his reserved area such land as conform to the description of any of the 6 categories covered by clauses (a) to (f) of the proviso to sub-section (1) of section 5.

(d) Once a reservation has been intimated within 6 months from the date of commencement of the Act, it cannot be varied either by act of parties or by operation of law, except with the written consent of the tenant affected by such variation.

(e) If a land-owner has failed to reserve land in accordance with the provisions of section 5, he has another chance to select his permissible area within six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act (Punjab Act No. 46 of 1957) in the prescribed manner.

(f) The prescribed authority is given the power to select the permissible area of a landowner under sub-section (2) of section 5-B but the mandatory condition attached to the exercise of that power is that it shall be resorted to only if the landowner has failed to select his permissible area in accordance with the provisions of sub-

section (1) of that section. In other words, if the concerned land-owner has already selected his permissible area in accordance with the provisions of sub-section (1) of section 5-B, sub-section (2)

of that section does not come into play at all and there is no occasion for the exercise by the prescribed authority of the power of selection. These conclusions further lead to the inference that if the prescribed authority (in this case the Special Collector) exercises the power of selection in a situation to which sub-section 5-B is not attracted, his order would be without jurisdiction and a nullity and that is precisely what has happened in this case. As held by us earlier, respondent No. 3 had made a selection of his permissible area in accordance with the provisions of sub-section (1) of section 5-B a selection which the prescribed authority had no power to vary either under sub-section (2) of section 5-B or under any other provisions of the Act. The order of the Special Collector dated March 30, 1962 must, therefore, be held to have been passed without jurisdiction and, therefore, to be a nullity.

9. In support of the proposition that the order of the Special Collector did not suffer from lack of jurisdiction, learned counsel for the appellants has relied upon the following observations in *Gurcharan Singh and Others v. Prithi Singh and Others*, wherein this Court defined the scope of powers of the Collector while acting under sub-section (2) of section 5-B of the Act:

"While it is true that a landowner who fails to reserve or select his permissible area within the prescribed period, cannot exercise that right subsequently, and thereafter it is for the Collector to determine the defaulter's permissible and surplus areas, in exercising this power under section 5-B, the Collector has to act judicially. He is bound to give notice to the landowner, and the transferees from him, if known. Thereafter he has to hear the parties who appear, and to take into consideration their representations and then pass such order as may be just. In so exercising his discretion, the Collector may, subject to the adjustment of equities on both sides, include the transferred area in the 'permissible area' or the 'surplus area' of the landowner. Thus, in the process the Collector is not to ignore altogether the wishes of the landowner. He may accept them to the extent they are consistent with the equities of the case".

It is urged on the authority of these observations that the Collector has in all cases the power to alter the particulars of an area reserved or selected by a landowner so as to bring it in conformity with any equities that may arise in the attendant circumstances. This proposition is wholly unacceptable to us for the simple reason that in *Gurcharan Singh's* case (*supra*), the landowner had made neither a reservation nor a selection of his permissible area within the prescribed period, so that sub-section (2) of section 5-B was undoubtedly attracted to his case. The observations above extracted were obviously confined to a case of that type, and have nothing to do with a situation where the landowner concerned has selected his permissible area in accordance with the provisions of sub-section (1) of section 5-B so that there is no occasion for the prescribed authority to exercise his powers under sub-section (2) of that section. *Gurcharn Singh's* case, therefore, is of no assistance at all to the case of the appellants.

10. Nor do we see how any equities arise in favour of the appellants, such as would entitle them to have the land in question included in the permissible area of respondent No. 3. It is not their case that any representation to the effect that land would be so included was made to them by either

respondent No. 3 or respondent No. 4. Furthermore they must be credited with full knowledge of the extent of the land owned by respondent No. 3 and of the consequences flowing therefrom in view of the provisions of the Act. Thus they acquired the land with their eyes open and subject to all the liabilities and defects from which it suffered in the hands of their transferor (and also their transferor's transferor). In the absence of word of mouth of respondent No. 3 or his conduct to the contrary; they cannot now be heard to say that if respondent No. 3 exercises a right of selection of his permissible area which the Act confers on him, that right must be modified to suit their convenience.

In this connection we may also mention that the inclusion of the land in question in the surplus area of respondent No. 3 does not affect the right of ownership of the appellants. Of course the result of such inclusion would certainly be that the concerned authorities would be enabled to settle tenants on the land as permitted by the Act-and that is a risk which the appellants must be deemed to have bought with the land.

11. For the reasons stated we dismiss the appeal but with no order as to costs.

N.V.K.

Appeal dismissed.