

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

**MR. JUSTICE MUSHIR ALAM
MR. JUSTICE QAZI MUHAMMAD AMIN AHMED
MR. JUSTICE AMIN-UD-DIN KHAN**

**CIVIL PETITIONS NO.1057, 1049, 1077, 1168, 1355, 1356,
1449, 1450, 1683, 1188-L, 1189-L, 1240-L, 1241-L, 1242-L
& 1243-L OF 2019**

AND

**C.M.As.3081 OF 2019 IN C.P.1057 OF 2019, 3099 OF 2019
IN C.P.1077 OF 2019, 3172 OF 2019 IN C.P.1168 OF 2019,
3357 OF 2019 IN C.P.1355 OF 2019, 3359 OF 2019 IN
C.P.1356 OF 2019, 3569 OF 2019 IN C.P.1449 OF 2019 AND
3571 OF 2019 IN C.P.1450 OF 2019**

(Stay applications)

AND

**C.M.As.5090 & 8488 OF 2019 IN C.P.1057 OF 2019 AND
4199 OF 2019 IN C.P.1450 OF 2019**

(Impleadment applications)

JS Bank Limited, Karachi

*(In C.P.1057/2019 and C.P.1049/2019 &
C.M.As.3081, 5090 & 8488/2019)*

The Bank of Khyber, Peshawar

(In C.P.1077/2019 & C.M.A.3099/2019)

Summit Bank Ltd, Lahore

*(In C.P.1168/2019 and C.M.A.
3172/2019)*

***Al Baraka Bank (Pakistan) Ltd,
Lahore***

*(In C.Ps.1355 & 1356/2019 and
C.M.As.3357 & 3359/2019)*

National Bank of Pakistan

*(In C.P.1449/2019 & C.P.1450/2019 and
C.M.A.3569/2019, C.M.As.4199 &
3571/2019)*

Summit Bank Ltd, Islamabad

(In C.P.1683/2019)

United Bank Ltd

(In C.Ps.1188-L & 1189-L/2019)

MCB Bank Ltd

(In C.Ps.1240-L to 1243-L/2019)

...Petitioner(s)

Versus

**Province of Punjab through Secretary
Food, Lahore & others**

(In C.P.1057/2019 and C.P.1049/2019 &
C.M.As.3081, 5090 & 8488/2019)

**M/S Brother Sugar Mills Ltd, thr. Its
Chief Executive & others**

(In C.P.1077/2019 and C.M.A.3099/
2019)

**Cane Commissioner Punjab, Lahore &
others**

(In C.P.1168/2019 and C.M.A.3172/2019)

**Government of Punjab thr. Chief
Secretary, Punjab, Lahore, etc**

(In C.Ps.1355, 1356/2019, C.P.1449/
2019, C.P.1450/2019, C.Ps. 1683, 1188-
L, 1189-L and 1240-L to 1243-L/2019
and C.M.As.3357 & 3359/2019,
C.M.A.3569/2019, C.M.As. 4199 &
3571/2019).

...Respondent(s)

For the Petitioners

Mr. Ahmed Pervaiz, ASC.
Chaudhry Akhtar Ali, AOR
(in CPs No.1057, 1049, 1168 &
1683 of 2019)

Mr. Javed Imran Ranjha, ASC.
Syed Rifaqat Hussain Shah,
AOR a/w. M. Fawad, Executive
Vice President BoK (in CP.1077
of 2019)

Mr. Imtiaz Rashid Siddiqui,
ASC (via video link at Lahore)
Mr. Mehmood A. Sheikh, AOR
(in CPs No. 1355 & 1356 of
2019).

Mr. Imran Aziz Khan, ASC
(in CPs No. 1449 and 1450/19)

Syed Ali Zafar, ASC and Mr.
Zahid Nawaz Cheema, ASC
(in CPs No. 1188-L, 1189-L,
1240-L to 1243-L/2019)

For Cane Commissioner:

Mr. Nadeem Abbas Bhangoo,
Cane Commissioner, Punjab.
Adnan Badar, Asstt.
Commissioner Chunian.
Adnan Nazir, Technical Officer.

For Govt. Of Punjab:

Ch. Faisal Fareed, Addl. A.G.
Pb.

For Brother Sugar Mill:
(MianNishat):

Mr. Ahsan Bhoon, ASC
Ch. Akhtar Ali, AOR.

For NAB: (On Court Notice)

Mr. Imran ul Haq Khan, DPG,
NAB.

For Brother Sugar Mill
(Mian Furqan Idrees&
others)

Barrister Haris Azmat, ASC
Syed Rifaqat Hussain Shah,
AOR (in CMA.No.5090/2019).

For Cane Growers
(thr.TariqAzam
Khan)(Brother Mill):

Barrister Rafey Altaf, ASC.

For Commissioner Inland
Revenue:

Mr. Khawar Ikram Bhatti, ASC.

For Brother Sugar Mill
(Mian Bashir)

Mr. Ijaz Ahmed Awan, ASC.

Date of Hearing

22nd, 23rd, 24th& 27th July,
2020.

JUDGMENT

AMIN-UD-DIN KHAN, J.- Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the judgment passed by the learned Division Bench of the Lahore High Court dated 11.02.2019 whereby ICA No. 199615 of 2018 in Writ Petition No.4650 of 2016 was dismissed being not maintainable. Seven other ICAs were also decided through the said judgment dated 11.02.2019 by the learned Division Bench of the Lahore High Court and same were also dismissed being not maintainable against which the following Civil Petitions have been filed:-

1. C.P.No.1077 of 2019
2. C.P.No.1168 of 2019
3. C.P.No.1356 of 2019
4. C.P.No.1449 of 2019
5. C.P.No.1189-L of 2019
6. C.P.No.1240-L of 2019
7. C.P.No.1241-L of 2019

Petitioners have also sought leave against the consolidated judgment of the learned Single Judge of the Lahore High Court dated 12.04.2018 whereby their respective writ petitions were dismissed (the said judgment is subject matter of the ICAs noted supra also). The said Civil Petitions are as under:-

1. C.P.No.1242-L of 2019
2. C.P.No.1049 of 2019
3. C.P.No.1355 of 2019
4. C.P.No.1450 of 2019
5. C.P.No.1683 of 2019
6. C.P.No.1188-L of 2019
7. C.P.No.1243-L of 2019

2. The litigation started in this matter when the Cane Commissioner vide his order dated 25.08.2015 declared the pending payments of cane growers recoverable as arrears of land revenue from the Occupier. The Cane Commissioner passed another order on 28.12.2015 allowing the Brothers Sugar Mills to start crushing for fresh season upon their undertaking and offer for sale of sugar stocks. Simultaneously, the Cane Commissioner directed the District Coordination Officer/Additional Cane Commissioner, Kasur, to recover the outstanding amount of cane growers. Some of the cane growers approached the High Court through Writ Petitions for the payment of the price of the sugarcane supplied to the Occupier of a factory (as defined in Section 2-K of the Punjab Sugar Factories Control Act, 1950). The banks also approached the High Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging the orders as well as action of the Cane Commissioner whereby the refined sugar as per their contention, was pledged with the banks against the "Running Finance" facility extended to the Sugar Mills (Occupier) and under the possession of the "Muqaddam" of the Bank, was attached and sold for the payment to the cane growers, and claimed that the banks have a first charge being secured creditors upon the refined sugar. The writ petitions filed by the banks were dismissed whereas those of the cane growers

were disposed of (order passed in the Writ Petitions of cane growers is not subject matter of these Civil Petitions). The banks opted to file ICAs before the learned Division Bench of the Lahore High Court. The Intra Court Appeals were dismissed vide order impugned through the instant petition holding that the same were not maintainable. Then the banks opted to file CPLAs No. 1242-L of 2019, 1249 of 2019, 1355 of 2019, 1450 of 2019, 1683 of 2019, 1188-L of 2019 and 1243-L of 2019 against the order of dismissal of their writ petitions dated 12.04.2018.

3. It was duty of the petitioners to choose the correct forum available to them under the law, whether the Intra Court Appeal was competent before the Lahore High Court or else a petition was to be filed before this Court against the judgment passed by the learned Single Judge dismissing the writ petitions filed by them. However, they opted to file petitions to challenge the judgment of the learned Division Bench of the Lahore High Court whereby ICAs were dismissed being not maintainable as well as filed Civil Petitions to challenge the judgment of the learned Single Judge of the High Court directly before this Court. Challenging both the orders i.e. the order of the learned Single Judge as well as of the learned Division Bench dismissing ICAs through separate petitions, the stance of the petitioner is not only contradictory but in clear violation of the law declared by this Court in the case reported as "Trading Corporation of Pakistan versus Devan Sugar Mills Limited and others" (PLD 2018 SC 828).

4. We have been told that all other mills have cleared their liability of payment of sugarcane prices to the cane growers except the Brothers Sugar Mills, therefore, we refer the record of Brothers Sugar Mills. Paragraph No. 3, 5 & 5(i) of the order passed by the Cane Commissioner dated 28.12.2015 are relevant which are reproduced:-

3. AND WHEREAS, the mill management filed Writ Petition No. 25077/2015 which was dismissed for non-prosecution vide order dated 3.09.2015 passed by his

Lordship Mr. Justice Mamoon Rashid Sheikh, Judge Lahore High Court, Lahore. Subsequently, the said Writ Petition was restored and heard and disposed off by his Lordship Mr. Justice Syed Mansoor Ali Shah, Judge, Lahore High Court, Lahore vide order dated 17.11.2015, wherein it was contended by the writ petitioner that identical matters have already been decided vide order dated 02.10.2015 passed in writ petition No. 23910/2015, whereby the Honorable Court directed the defaulting sugar mills to clear 95% payment upto 30.10.2015 and remaining 5% shall be cleared up to 15.11.2015.

4. -----

5. AND WHEREAS, in compliance of the order of Honorable Lahore High Court Lahore, Mian Nishat Ahmad attended this office and submitted request undertakings dated; 18.12.2015 & 22.12.2015 which is summarized as under---

i. Brother Sugar Mills surrenders the stock of 3,10,000 bags of 50 kg sugar worth about Rs:77,50,00,000/- @ Rs:50/kg against pending liability of Rs:67,89,25,729/- as per SCR-II dated 30.11.2015.

5. We have heard learned counsel for the parties at length on the point of maintainability of the ICAs as well as on merits of the case because the order of the learned Single Judge is also under challenge before us through the Civil Petitions mentioned supra. Learned counsel for the parties have advanced lengthy arguments in the Court as well as they filed written arguments and referred voluminous case law. Although we have considered all the arguments as well as case law cited by the learned counsel for the parties but we will discuss only the arguments and the case law cited by the learned counsel for the parties which is directly relevant for the determination of point in issue before us.

6. First we will address the point of maintainability of the ICAs. An ICA is competent under section 3 of the Law Reforms Ordinance, 1972 (XII of 1972). Proviso to sub section (2) of section 3 of the Law Reforms Ordinance, 1972 is relevant which is reproduced:-

(2). Provided that the appeal referred to in this sub-section shall not be available or competent if the application brought before the High Court under Article [199] arises out of any proceedings in which the law applicable provided for at least one appeal

[or one revision or one review] to any Court, Tribunal or authority against the original order.”

Now if the order/action impugned through the writ petitions is out of any proceeding in which the law applicable provided for at least one appeal or one revision or one review to any Court, Tribunal or authority against the original order, the ICA is not competent. In this view of the matter, the learned Division Bench of the High Court dismissed the appeal on the ground that as under the law applicable i.e. the Land Revenue Act, 1967 remedy of review, revision and appeal was available, therefore, appeal was not maintainable. We note that admittedly the Punjab Sugar Factories Control Act, 1950 (XXII of 1950) (hereinafter referred as “**The Act**”) and The Punjab Sugar Factories Control Rules, 1950 (hereinafter referred as “**The Rules**”) are the **law applicable** and the application brought before the High Court under Article 199 arises out of the **proceedings** from the law applicable. Admittedly, the sugarcane is a regulated crop from its very cultivation to the sale to the Occupier under “The Act” as well as “The Rules”. The purpose of Act and Rules is to ensure the required productivity of every day essential item “white sugar”. Hence, the statutory restrictions as well as protections extended to the cane growers are to be interpreted to advance the purpose of statute. The cane growers and sugar factories enter into a mandatory agreement under Rule 9(3) of the Rules, Rule 9 is reproduced:-

“Rule 9—Purchase of Cane Grown in a Reserved Area. (1) The occupier of a factory shall estimate or cause to be estimated, by 30th September, the quantity of sugarcane with each grower enrolled in Growers’ Register and shall submit the estimate to the Cane Commissioner who may, after such enquiries as he considers necessary, modify the estimates and cause them to be published in such manner as he may direct.

(2) A cane grower or a cane growers’ co-operative society in a reserved area may offer in Form 6, Appendix II by the 1st October, each year to supply during a crushing season to the occupier of the factory for which the area has been reserved, cane not exceeding, in the case of cane growers, the quantity estimated in accordance with sub rule (1).

(3) The occupier of the factory for which the area is reserved shall enter into an agreement with the cane grower or the cane growers' cooperative society, as the case may be, in Form 7 and 8, respectively, or in any other Form approved by the Cane Commissioner, within a month of the offer mentioned in sub rule (2).

(4) The occupier of a factory shall spread the purchases made to the reserved area in an equitable manner, and shall in the case cane growers of the reserved area make purchase of cane only after issuing requisition slips.

In order to comply with this rule the occupier shall cause identification cards to be distributed to all cane growers of the reserved area to whom requisition slips will be issued, and shall maintain a record of the same.

(5) Requisition slips and identification cards to members of a cane growers' cooperative society shall be issued by the society.

(6) In case of a dispute whether a particular system adopted for the purchase of cane growers in the reserved area is equitable or not the dispute may be referred to the Cane Commissioner, whose decision shall be final."

Sub Rule (3) of the Rule 9 is relevant and in accordance with the said Rule under Form Nos. 7 and 8 of Appendix II of "The Rules" the agreement is entered by the parties, which are reproduced:-

FORM 7
AGREEMENT FORM UNDER RULE 9 (3) BETWEEN CANE
GROWERS AND OCCUPIER OF A FACTORY

I _____ son of caste _____ a cane grower of village _____ tehsil _____ District _____ hereinafter to be referred to as the first party and _____ the occupier of _____ factory hereinafter to be referred to as the 2nd party, hereby enter into an agreement about the sale and purchase of cane on the following terms:

1. The first party agrees to sell during the season 20 _____ 20 _____ his sugarcane crop standing on _____ hectares as per details given in the enclosed statement with an approximate yield of _____ kgs/quintals to the 2nd party at the minimum price notified by the Government, subject to such deductions, if any, as may be notified by the government from time to time. The first party further undertakes to supply good cane free from leaves, tops and roots at the factory gate or at _____ purchasing centre in such quantities and on such dates as may be specified in the requisition slip issued by the occupier of the factory in conformity with this agreement and the instructions issued by the Cane Commissioner.
2. The cane shall be taken by the 2nd party in instalments equitably spread over the whole working period of the factory.
3. In the event of wilful failures to supply at least 85 per cent of the estimated yield of cane from the area whose crop has been contracted to be sold after excluding the quantity needed for seed, the first party shall be liable to pay the second party

compensation at the rate not exceeding * one paisa per six kgs, on such deficit.

4. In case the first party wilfully fails to supply cane to the 2nd party on three consecutive occasions according to the requisition made by 2nd party, the first party shall cease to have a claim to sell cane to the 2nd party.
5. In the event of the 2nd party wilfully failing to take delivery of the cane, which the first party is ready to deliver in accordance with this agreement, the 2nd party shall be liable to pay to the first party the actual price of the quantity of such cane which it fails to purchase. In the event of the 2nd party otherwise wilfully failing to purchase cane in accordance with this agreement, it shall be liable to pay the first party compensation at a rate not exceeding ## one paisa per six kgs, for such quantity of cane as the 2nd party fails to buy, provided that for any deficiency in the purchase in the instalments fixed for the period after 1st April, the 2nd party shall be liable to pay compensation to the first party at a rate not exceeding @ two paisas per six kgs.
6. In the event of a breakdown at the factory or of other circumstances due to natural causes, calamities or accidents beyond human control arising, to show that the 2nd party will not be able to purchase the cane it has agreed to purchase, the 1st party after giving a week's notice to the 2nd party and with previous permission of the Cane Commissioner, shall have option of making other arrangements for the disposal of the cane and in such case no compensation shall be payable by either party to the other.
7. No compensation for breach of this agreement shall be payable by either party when such breach is due to natural causes, calamities or accidents beyond human control.
8. Any dispute between the parties regarding the quality and conditions of the cane, the place of delivery, **the instalments and other matters pertaining to the agreement shall be referred to arbitration in the manner provided for in the rules.** No suit shall lie in a civil or revenue court in respect of any such dispute.

Signature of the cane grower
(or his thumb impression)

Signature of the occupier or his authorised
Representative in token of his accepting
the above contract.

APPENDIX II FORM 8

AGREEMENT FORM UNDER RULE 9, BETWEEN A CANE GROWERS COOPERATIVE SOCIETY AND THE OCCUPIER OF A FACTORY

We _____ the Cane Growers' Cooperative Society of District _____ acting through its authorised representatives hereinafter to be referred to as the first party, and occupier of _____ factory, **hereinafter referred to as the second party, hereby enter into an agreement about the sale and purchase of cane on the following terms—**

1. The first party agrees to sell during the season 20_____ 20_____ the sugarcane crop of the members of the society standing on _____ * hectares as per details given in the enclosed statement with an approximate yield of _____ kg/quintals to the 2nd party at the minimum price notified by the Government, subject to such deductions, if any, as may be notified by the government from time to time provided that price payable by the second party to the first party shall not in any case be lower than that paid generally by the second to other growers of the village in which cooperative societies operate from _____. The first party further undertakes to supply good cane free from leaves,

tops and roots at the factory gate or at purchasing centre in such quantities and on such dates as may be specified in the requisition slip issued by the occupier of the factory in conformity with this agreement and the instructions issued by the Cane Commissioner.

2. The cane shall be taken by the 2nd party in instalments equitably spread over the whole working period of the factory.
3. In the event of wilful failures to supply at least 85 per cent of the estimated yield of cane from the area whose crop has been contracted to be sold after excluding the quantity needed for seed, the first party shall be liable to pay the second party compensation at the rate & not exceeding one paisa per six kgs, on such deficit.
4. In case the first party wilfully fails to supply cane to the 2nd party on three consecutive occasions according to the requisition made by 2nd party, the first party shall cease to have a claim to sell cane to the 2nd party.
5. The 2nd party shall ordinarily send its requisition for cane to the 1st party at least four days before the cane is required and will not make changes within this period without sufficient reason.
6. In the event of the 2nd party wilfully failing to take delivery of the cane, which the first party is ready to deliver in accordance with this agreement, the 2nd party shall be liable to pay to the first party the actual price of the quantity of such cane which it fails to purchase. In the event of the 2nd party otherwise wilfully failing to purchase cane in accordance with this agreement it shall be liable to pay the first party compensation at a rate **not exceeding one paisa per six kgs, for such quantity of cane as the 2nd party fails to buy provided that for any deficiency in the purchase in the instalments fixed for the period after 1st April, the 2nd party shall be liable to pay compensation to the first party at a rate **not exceeding two paisas per six kgs.
7. In the event of a breakdown at the factory or of other circumstances due to natural causes, calamities or accidents beyond human control arising, to show that the 2nd party will not be able to purchase the cane it has agreed to purchase, the 1st party after giving a week's notice to the 2nd party and with previous permission of the Cane Commissioner, shall have option of making other arrangements for the disposal of the cane and in such case no compensation shall be payable by either party to the other.
8. No compensation for breach of this agreement shall be payable by either party when such breach is due to natural causes, calamities or accidents beyond human control.
9. Any dispute between the parties regarding the quality, and condition of the cane, the place of delivery, **the instalments and other matters pertaining to the agreement shall be referred to arbitration in the manner provided for in the rules.** No suit shall lie in a civil or revenue court in respect of any such dispute.

Signature of the authorised representatives of the Cane Growers' Cooperative Society Ltd.

Signature of the occupier or his authorised representative in token of his accepting the above contract.

Then comes Rule 17 in the matter in issue, which is also reproduced.

"Arbitration.

(1). Any dispute touching an agreement referred to in these rules shall be referred to the Cane Commissioner for decision, or if he so directs to arbitration. No suit shall lie in a civil or revenue court in respect of any such dispute.

(2). If the Cane Commissioner directs the reference of a suit to arbitration, it shall be referred to a sole arbitrator acceptable to the parties concerned. In case no sole arbitrator is acceptable to both parties, the dispute in question shall be referred to the Board of Arbitration, consisting of one representative of each party and an umpire acceptable to both representatives. If the representatives of the parties are unable to elect such an umpire within a fortnight, the Cane Commissioner shall either himself act as Umpire or nominate one. The Umpire shall be the President of the Board of Arbitration, and shall have a vote in case of disagreement between the representatives.

(3). The sole arbitrator of the Board of Arbitration shall have the full power of a court in respect of summoning the parties, witnesses and records.

(4). The decision of the sole arbitrator or Board of Arbitration shall be final and binding on both parties and shall not be called in question in any civil or revenue court.

(5). The sole arbitrator of the Board of Arbitration shall give an award within the time fixed by the Cane Commissioner failing which the Cane Commissioner may decide the dispute himself or appoint another arbitrator or arbitrators for the purpose.

(6). Any party considering himself aggrieved by an award may appeal to the Provincial Government within one month of the date of communication of the award and Government shall pass such orders as they deem fit.

(7). The Provincial Government's order in appeal shall be final.

(8). On application to the Civil Court having jurisdiction over the subject matter of the decision or award, the decision of the Cane Commissioner, or the award of the arbitrator or arbitrators or the Provincial Government's order in appeal against an award, shall be enforced by all court as if such decision, award, or orders in appeal were a decree of that court."

In accordance with the Sub Rule (6) of Rule 17 any party considering himself aggrieved by an award may appeal to the

Provincial Government within one month of the date of communication of the award and Government shall pass such order as they deem fit.

7. Admittedly, the matter in issue is a dispute regarding payment of price of sugarcane provided by the cane growers to the occupier of the sugar mills. It is not relevant for the purposes of considering the maintainability of ICA whether the Banks, as claimed by them, were having a right of appeal or not. The only test is that if the application brought before the High Court under Article 199 arose out of the **proceedings** in which the **law applicable** provided for at least **one appeal**. Admittedly, the law applicable provides an appeal. It stands in addition to the findings of the learned Division Bench of the Lahore High Court whereby the ICAs were dismissed being not maintainable.

8. In this view of the matter, no case for leave against the judgment of learned Division Bench of the Lahore High Court is made out, therefore, instant Civil Petition as well as Civil Petition No. 1077 of 2019, Civil Petition No. 1168 of 2019, Civil Petition No. 1356 of 2019, Civil Petition No. 1449 of 2019, Civil Petition No. 1189-L of 2019, Civil Petition No. 1240-L of 2019 and Civil Petition No. 1241-L of 2019 are dismissed and leave is refused.

9. Now we turn to other limb of the matter.

C.M.A.2962 of 2019 in/and C.P.1049 of 2019,
C.M.A.3356 of 2019 in/and C.P.1355 of 2019, C.M.A.
3570 of 2019 in/andC.P.1450 of 2019, C.M.A. 4077
of 2019 in/andC.P.1683 of 2019 C.M.A. 449-L of
2019 in/andC.P.1188 of 2019 and C.M.A. 1010-L of
2019 in/andC.P.1243 of 2019

All the above noted applications are for condonation of delay i.e. C.M.A No. 2962 of 2019 for 288 days, C.M.A. No. 3356 of 2019 for 300 days, C.M.A.No.3570 of 2019 for 310 days,

C.M.A.No.4077 of 2019 for 318 days, C.M.A.No.449-L of 2019 for 326 days and C.M.A.No.1010-L of 2019 for 331 days.

10. The ground taken in the applications for condonation of delay is almost the same that the applicants considered that the ICAs were competent, hence, they filed the ICAs and the same were dismissed being not maintainable, and they have filed Civil Petitions against the said judgment of dismissal of ICAs. They still contest that the ICAs were competent and their Civil Petitions against the dismissal order of ICAs were filed, but as a precautionary measure they also filed the petitions against the order of dismissal of their writ petitions by the learned Single Judge of High Court along with the C.Ms. As we have noted supra in the light of "Trading Corporation of Pakistan versus Devan Sugar Mills Limited and others" (PLD 2018 SC 828), it was petitioners' responsibility to be clear in their mind as regards to what remedy was available to them under the law. Relevant portion from Para No. 11 of the said judgment is reproduced:-

"In this view of the matter, the impugned judgment of the learned bench of the High Court cannot be sustained. Fair trial, does not envisage recourse to successive remedies one after another against one and the same impugned order on substantially same set of facts and pleadings seeking substantially similar relief, as it would be against the doctrine of election, as expounded above. A tenant confronted with ex-parte order striking out its defence resulting in his ejectment order, quite a few remedies may be available against such order; namely Appeal under section 24 of the Cantonments Act, 1963, Application under Order IX, Rule 13 C.P.C., Application under section 12(2), C.P.C., application under Order XXI, Rules 99 to 103, C.P.C. and not the least application under section 47 C.P.C. all such remedies arm the tenant/judgment debtor to effectively resist ex-parte ejectment order passed against it. In instant case as noted above respondent-tenant, chose not to file appeal under section 24 of the Act, 1963 against the ejectment order dated 17.5.2011 but had chosen to invoke provisions of section 12(2) C.P.C. on 07.12.2011, which application was dismissed on merits by the executing Court on 7.8.2012 and maintained by High Court on 19.8.2016. The Appellant after almost five years from date of ejectment order, ventured to invoke Section 47 C.P.C on substantially same facts and grounds. Even if it is assumed that grounds as available under section

47 C.P.C to question executability, discharge or satisfaction of ejectment order passed as a consequence for non-compliance of tentative order, set down different parameter to resist and defend execution of eviction order, then too, all such grounds were very much available when first application under section 12(2), C.P.C. was initially made."

Even if more than one remedies are available to the petitioners against the impugned order, they have to choose one remedy, at a time all the available remedies cannot be pressed by the petitioners in the light of the judgment of this Court noted supra. In case in hand situation is different; one remedy was available to the petitioners, if it is their stance that ICA was competent and that has wrongly been dismissed then their petition to challenge the order of learned Division Bench was to be filed only and if they admit that the ICA was not competent then they were having a right to challenge the order of learned Single Judge dismissing their writ petitions. Invoking the jurisdiction of this Court against the order of learned Single Judge directly through a petition for leave to appeal and simultaneously challenging the order of the learned Division Bench by filing leave to appeal petition are self-contradictory.

We could have considered applications/grounds for the condonation of delay in these petitions, keeping in view the complexity of the matter in the light of judgment of this Court reported as "Khushi Muhammad through L.Rs. and others v. Mst. Fazal Bibi and other" (PLD 2016 SC 872). However, as petitioners have chosen to avail both remedies i.e. direct petitions before this Court against the judgment of the learned Single Judge as well as they have challenged the order of learned Single Judge through ICAs. Now praying that the judgment of the learned Division Bench is not maintainable and ICAs were competent and that order be set aside. The ground taken for condonation of delay is not acceptable under the law, therefore, we are not inclined to condone delay in filing the petitions and, the same are dismissed. As C.Ms for condonation of delay stand dismissed, therefore, CPLA Nos. 1049 of 2019,

1355 of 2019, 1450 of 2019, 1683 of 2019, 1188-L of 2019 and 1243-L of 2019 also stand dismissed for being barred by time.

11. Only CPLA No. 1242-L of 2019 remains in field, being filed within time, therefore, we are going to decide it on merits. The legal relationship between the Banks and the occupier is undisputed as a pure contractual one and the rights of the Banks (as secured creditors) would be dependent on the rights of the Occupier as to the legal and equitable title of white sugar produced/converted goods from the sugar cane purchased from the growers. The pivotal question in the given controversy revolves around the legal relationship between the cane growers and the Occupiers of the factories. It is, therefore, important to understand the statutory framework regulating the relationship. The Punjab Sugar Factories Control Act, 1950 is a pre-Constitution era piece of legislation where the legislature had unfettered powers to regulate any business and trade. However, after the introduction of fundamental rights in the successive Constitutions, these powers of the legislatures and executive are subject to the Constitution and must be interpreted as such. In the case of *Begum Zeb-un-Nissa Hamidullah, Editor and Publisher of "The Mirror", Karachi v. Pakistan, Through The Secretary, Ministry of Interior Government of Pakistan (PLD 1958 SC 35)* it was observed: -

"The Security of Pakistan Act is a pre-Constitution Act, having been passed in May 1952 when no basic rights had been guaranteed by the Constitution and the Government had absolute authority to restrict the freedom of speech and expression by securing legislation to enable it to act in the manner it considered expedient. After the Constitution; however, these powers no longer exist and neither the legislature nor the Government can impose any restriction on freedom of speech and expression except for the purposes mentioned in Article 8."

12. Since, the vires of the Act and the Rules have not been challenged in the case in hand, we accord deference to the presumption of constitutionality. However, when a pre-Constitution legislation is held to be constitutional, the presumption includes that it is consistent with the fundamental

rights and other constitutional values. Prof. A. Barak in his book ***Proportionality: Constitutional Rights and their Limitations*** at page 72 noted, “[A]t the sub-constitutional level, whenever we examine a statutory provision, we observe that every legislative act is like “a creature living within its environment.” On the same analogy, a statute must be read as a creature living within its constitutional framework. Therefore, the statutory framework for the regulation of sugar cane crop and production of white sugar must be read under the umbrella of fundamental rights, especially Article 9, 18 and 25 of the Constitution with respect to the rights and liabilities of cane-growers and the Occupiers.

13. Moreover, the legal text must be interpreted in the context of its purpose. This Court has consistently ruled that a purposive rather than a literal approach to interpretation is to be adopted while interpreting Statutes. An interpretation which advances the purpose of the Act is to be preferred rather than an interpretation which defeats its objects. Reference can be made to the judgments reported as “Saif-Ur-Rehman v. Additional District Judge, Toba Tek Singh and 2 others” (2018 SCMR 1885) and “RAB NAWAZ DHADWANA, ADVOCATE and others v. Rana MUHAMMD AKRAM, ADVOCATE and others” (PLD 2014 Lahore 591.)

14. Now, in view of the above stated legal principles we examine the Act and the Rules made under it to the extent it regulates the relationship between the cane growers and the Occupiers. The preamble of the Act runs as: -

WHEREAS it is expedient to provide **for regulating the supply of sugarcane** intended for use in such factories and **the price at which it may be purchased** and **for such other matters as may be incidental** thereto. (emphasis added)

The purpose of the Act is clear that it addresses “supply of sugarcane”, “the price at which it may be purchased” and “for such other matters as may be incidental thereto”. It almost covers every step, from the cultivation of sugar cane to the

production of white sugar comes within the scope of Act and nothing is left out. Hence, the statutory restrictions as well as protections extended to the cane-grower are to be interpreted to advance the purpose of statute.

15. The Cane Growers and the Occupier enter into mandatory agreement under Rule 9 (quoted above). A "Form" (reproduced above) for the "agreement" has been prescribed under the Rules. The grower is bound to supply the sugarcane to the Occupier and entitled to receive the price within two weeks. Sub Rule (1) of Rule 14 is reproduced for ready reference:-

"The occupier or purchasing agent shall provide adequate facilities to the satisfaction of the Cane Commissioner for the payment of the price of cane. (emphasis added)

The sub Rule (10) reads as under:-

"The occupier or purchasing agent shall be liable to pay interest at the rate of eleven percent per annum or unpaid balance of payment for cane, from the date of delivery of the cane, in case where such payment is not cleared within fifteen days of its delivery."
(emphasis added)

It may be noted that no specific penalty has been provided for the violation of above referred Rules. However, when read in conjunction with Rule 18, the breach of any Rule for which no penalty has been provided by the Act or the Rules, would be punishable under this Rule. Therefore, all the Rules are to be taken as mandatory unless the text and the context altogether provides for otherwise. Even otherwise, if we treat sub Rule (10) of Rule 14 "shall be liable to pay interest at the rate of eleven percent per annum or unpaid balance of payment for cane" as a penalty clause, it is incidental and it does not add premium to the Occupier to defer or delay the payment for unlimited period.

16. The grower supplies cane to the occupier in view of the above referred statutory assurance. The Cane Commissioner acts as a statutory fiduciary for both the parties. He is the key person who ensures required amount of cane supply to the Occupier and payment for the cane to the grower.

Rule 14(1) of the Rules can only be complied with if the Occupier has made certain arrangements for payment to the satisfaction of the Commissioner prior to purchase of sugarcane from the growers. In case, the Occupier made arrangements for the payment of sugar cane to the satisfaction of the Commissioner and subsequently he changed his position or for any other reason, no money was available for the payment, or in case where apparently no arrangements for payment were made, in all such like cases, it would be presumed that there was an implied "satisfaction" of Commissioner that the payment would be made from the white sugar produced by the Occupier. Otherwise, it would amount to a statutory fraud and defeating the statutory rights of the grower without providing them "level playing fields" viz-a-viz Occupiers.

17. We can also examine the grower and occupier relationship from another perspective. The occupier purchases sugar cane from the grower under the statutory assurance and converts it to his own use without paying to the grower (without any legal justification), it would amount to unjust enrichment with the occupier and the same cannot be allowed. In such like situations, the courts may apply the doctrine of "remedial constructive trust". The position is stated thus in **Snell's Principles of Equity (28th edn, 1982 at p 193)**:

"In some jurisdictions the constructive trust has come to be treated as a remedy for many cases of unjust enrichment; whenever the court considers that the property in question ought to be restored, it simply imposes a constructive trust on the recipient. In England, however, the constructive trust has in general remained essentially a substantive institution; ownership must not be confused with obligation, nor must the relationship of debtor and creditor be converted into one of trustee and cestui que trust. Yet the attitude of the courts may be changing; and although the constructive trust is probably not confined to cases arising out of a fiduciary relationship, it is far from clear what other circumstances suffice to raise it or how far it can be employed as a species of equitable remedy to enforce legal rights."

McLachlan J delivering opinion for the Supreme Court of Canada in the case of **Soulos v. Korkontzilas**, [1997] 2 S.C.R. 217 observed: -

43. I conclude that in Canada, under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground: where there is a wrongful act but no unjust enrichment and corresponding deprivation; or where there is an unconscionable unjust enrichment in the absence of a wrongful act, as in *Pettkus v. Becker*, *supra*. Within these two broad categories, there is room for the law of constructive trust to develop and for greater precision to be attained, as time and experience may dictate.

She further identified the circumstances wherein this remedy may be enforced by the court. She ruled: -

45. In *Pettkus v. Becker*, *supra*, this Court explored the prerequisites for a constructive trust based on unjust enrichment. This case requires us to explore the prerequisites for a constructive trust based on wrongful conduct. Extrapolating from the cases where courts of equity have imposed constructive trusts for wrongful conduct, and from a discussion of the criteria considered in an essay by Roy Goode, "Property and Unjust Enrichment", in Andrew Burrows, ed., *Essays on the Law of Restitution* (1991), I would identify four conditions which generally should be satisfied:

- (1) The defendant must have been under an equitable obligation, that is, an obligation of the type that courts of equity have enforced, in relation to the activities giving rise to the assets in his hands;
- (2) The assets in the hands of the defendant must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff;
- (3) The plaintiff must show a legitimate reason for seeking a proprietary remedy, either personal or related to the need to ensure that others like the defendant remain faithful to their duties and;
- (4) There must be no factors which would render imposition of a constructive trust unjust in all the circumstances of the case; e.g., the interests of intervening creditors must be protected.

Supreme Court of Alaska in the case of **Riddell v. Edwards, 76 P.3d 847, 852 (Alaska 2003)** observed: -

"A constructive trust is an equitable remedy that becomes available upon clear and convincing proof that the party against whom the trust will be imposed has been unjustly enriched by receiving assets that rightly belong to the party in whose favour the trust will be created. We have said that a **"constructive trust may be defined as a [device] used by chancery to compel one who unfairly holds a property interest to convey that interest to another to whom it justly belongs"**; the trust arises to prevent the property holder from retaining property obtained "by reason of unjust, unconscionable, or unlawful means." At a minimum, then, a constructive trust presupposes a transfer or holding of property in which the equitable beneficiary has a legal interest and unconscionable conduct by the property's holder in connection with its acquisition." (emphasis added)

Superior Court of Connecticut in **Swift v. Ball, No. CV010344047S, 2005 Conn. Super. LEXIS 417 (Super. Ct. Feb. 22, 2005)** held: -

In such cases, a trust does not arise so much by reason of the parol agreement of the parties but by operation of law . . . A constructive trust is the formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him into a trustee . . . The imposition of a constructive trust by equity is a remedial device designed to prevent unjust enrichment . . . **Thus, a constructive trust arises where a person who holds title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it** . . . One holding title to property upon which a constructive trust is imposed is not compelled to reconvey the property because he is a constructive trustee; it is because he can be compelled to convey title to the property that he is a constructive trustee.

18. In the given circumstances, the Occupier cannot be allowed to use statutory protections unilaterally. Therefore, after the passing of legal title of sugar cane to the Occupier, the equitable title shall remain with the grower till the payment is made and the buyer/occupier of the mills cannot pass on better title than his own. The court would be justified in imposing

constructive trust upon the converted goods/sugar cane in the possession of the Occupier in favour of the grower.

19. Since, the title of white sugar to the extent of unpaid amount remains with the growers, there arises no occasion for the lien of the creditor Banks to the "pledged stock". A valid pledge could only be created against the goods owned by the occupier and not the third party. The Creditor Banks and the growers are stranger to each other and their respective rights are not dependent upon each other. The formers have a contractual relationship with the occupier and may find a remedy under the private law. While, the latter have a statutory relationship with the Occupier and their rights and liabilities would be governed by the statute.

20. In view of the above, no exception can be taken to the findings recorded by the learned Single Bench of the Lahore High Court. The petitioners have failed to make out a case for grant of leave and the same is refused. Petition stands dismissed.

*I agree with the
Conclusion, and append
my separate note/opinion.*
JUDGE

JUDGE

JUDGE

Announced in open Court on
07-07-2021

Judge

Islamabad, the 7th of JULY, 2021
Mazhar Javed Bhatti
"Not Approved for reporting."

MUSHIR ALAM, J.— I have carefully gone through the opinion authored by my learned brother *Amin-ud-Din Khan, J.* in the matters before us and agree with the conclusions reached by him with respect to jurisdiction and the preferential right of the cane-growers. However, with respect to the preferential right of the cane growers, I have arrived at the same conclusion, but for different reasons, recorded as follows. The Facts are already recorded in the opinion of by my learned brother and the same are not repeated to avoid duplication and verbosity.

✓ **THE TRANSACTION UNDER THE SUGAR FACTORIES ACT, 1950 IS A SALE FOR THE PURPOSES OF THE SALES OF GOOD ACT?**

1. The first question that requires our consideration is whether the transaction between the sugar mills and the growers under **s.13** of the **Punjab Sugar Factories Control Act, 1950** constitutes a valid sale or is it a mere compulsory acquisition? The determination of this question is necessary to ascertain the application of the Sales of Goods Act, 1930 in the context of the matter in hand.
2. Two types of transactions require careful consideration before us. The first category can be referred to as '*compulsory acquisition*'¹ where a person is deprived of their property for a compensation provided under the law². The most common example of this transaction can be the procurement of land by the state through the exercise of eminent domain for a public purpose.³ On the contrary, a regulatory law providing for the circumcision and allocation of area, and obligating parties to sell only to a specific class of buyers at a pre-determined price does not essentially deprive a 'contract of sale' of its basic characteristics. Despite such considerable compulsive restrictions, the crucial element of choice is still left at the behest of the parties to the agreement.

¹ See Article 24 of the Constitution of Pakistan, 1973

² Land is acquired under the Land Acquisition Act 1894

³ See 2021 SCMR 201

3. The Indian Supreme Court, in a five-member bench, considered the aforementioned question in the case of **Andhra Sugars Ltd. and Ors. vs. State of Andhra Pradesh and Ors.**⁴ The case concerned whether the sale of sugar under *Andhra Pradesh Sugarcane (Regulation of Supply and Purchase) Act, 1961* constituted a valid sale over which tax could be levied by the state government. The Court considered the meaning of the expression 'purchase of goods' enumerated in *Entry 54, List II*,⁵ for which there must be an agreement for purchase of goods and passing of property pursuant to such an agreement. Therefore, the question became whether the purchases by the sugar mills from the cane growers were made pursuant to an agreement of sale and purchase or were they compulsorily acquired.

4. It was held that:

*"Now, under Act No. 45 of 1961 and the Rules framed under it, the cane grower in the factory zone is free to make or not to make an offer of sale of cane to the occupier of the factory. But if he makes an offer, the occupier of the factory is bound to accept it. The resulting agreement is recorded in writing and is signed by the parties. The consent of the occupier of the factory to the agreement is not caused by coercion, undue influence, fraud, misrepresentation or mistake. His consent is free as defined in s. 14 of the Indian Contract Act though he is obliged by law to enter into the agreement. The compulsion of law is not coercion as defined in s. 15 of the Act. In spite of the compulsion, the agreement is neither void nor voidable. In the eye of the law, the agreement is freely made. The parties are competent to contract. The agreement is made for a lawful consideration and with a lawful object and is not void under any provisions of law. The agreements are enforceable by law and are contracts of sale of sugarcane as defined in s. 4 of the Indian Sale of Goods Act..."*⁶

⁴ AIR 1968 SC 599

⁵ *Pari Materia* Entry in the Constitution of Pakistan is Entry 49 of the Fourth Schedule that is to be read with Article 70(4)

⁶ AIR 1968 SC 599 at Paragraph 8

5. In order to establish a contract, the *free consent*⁷ of the parties remains a vital element. Although, the factors on which this free consent is required remains regulated by law. The restriction of area, regulation of price, and stipulations vis-à-vis delivery remain necessary safeguards to protect an already ailing economy such as ours. It is not entirely uncommon for the state to ensure the availability of essential commodities by passing such regulatory legislations.
6. In the case before us, the cane grower is at liberty to choose between making an offer or to refrain from making one for the sale of sugarcane to the owner of the factory, or factories.⁸ Similarly, the minimum price is fixed by the provincial government under **s.16** of the **Punjab Sugar Factories Act 1950**. There are no provisions of the law that prohibit the cane growers from charging a higher price. On the contrary, the mill owners also benefit from similar privileges. They can choose between whom to buy sugarcane from, the price at which it is to be bought, so long as it does not violate s.16 of the Act, and the exact quantity of sugarcane.
7. S.14 of the Contract Act provides for free consent as one that is not caused by coercion,⁹ undue influence,¹⁰ fraud,¹¹ misrepresentation,¹² and mistake. The nature of consent of the cane grower is not caused by any of these factors and, therefore, it can be concluded that it is free consent. Identical to the case mentioned above, in the case before us, the agreement is validly made by parties who were competent to contract for a lawful consideration and a lawful object.

⁷ Section 14 of the contract Act, 1872

⁸ The occupier of such factories are regulated under the Sugar Cane Act, 1934

⁹ Ibid at S.15

¹⁰ Ibid at S.16

¹¹ Ibid at S.17

¹² Ibid at S.18

8. The aspect of mutual assent in cases of transactions regulated under specific law was assessed by the Indian Supreme Court in the case of ***Indian Steel Wire Products Ltd v. State of Madras***.¹³ The case addressed the proposition of whether a transaction done under regulatory law qualified as a sale or a compulsory acquisition. The Appellants in this case was The Indian Steel and Wire Products Ltd. who contended that the sale of steel regulated by law were not sales and, therefore, could not be taxed. The court confirmed that such transactions were indeed sales as:

"15. It is true that in view of the orders, the area within which there can be bargaining between a prospective buyer and an intending seller of steel products, is greatly reduced. Both of them have to conform to the requirements of the order and to comply with the terms and conditions contained in the order of the controller. Therefore, they could negotiate only in respect of matters not controlled by the order or prescribed by the controller. It is true, in these circumstances, the doctrine of laissez faire can have only a limited application. That is naturally so. In certain quarters the validity of that doctrine is, seriously challenged. Under the existing economic compulsions - all essential goods being in short supply - in a welfare State like ours, social control of many by of our economic activities is inevitable. That does not mean that there is no freedom to contract. The concept of freedom of contract has undergone a great deal of change even in those countries where it was considered as one of the basic economic requirements of a democratic life. Full freedom to contract was been never there are at any time. Law invariably imposed some restrictions on freedom to contract. But due to change in political outlook and as a result of economic compulsions, the freedom to contract is now being confined gradually to narrower and narrower limits.

16. It would be incorrect to contend that because law impose some restrictions on freedom to contract, there is no contract at all. So long as mutual assent is not completely excluded in any dealing, in law it is a contract. On the facts on this case for the reasons already mentioned, it is not possible to accept the contention of the learned counsel for the appellant that nothing was left to be decided by mutual assent."

¹³ [1968] 1 SCR 479

9. The question of mutual assent, or lack of it thereof, between sugar mills and cane growers to establish a contract of sale was also answered by the Indian Supreme Court in the case of **Jung Sugar Mills Ltd. v. State of Mysore**.¹⁴ It was held that statutory instruments regulating price, delivery, supply, and restricting areas for transactions does not impede the freedom of contract and must be balanced with economic needs to ensure equitable distribution of essential commodities in the land. The appropriate portion is reproduced below:

"The parties choose the term of delivery. They have choice of obtaining a supply exceeding 95% of the yield. They can stipulate for a price higher than the minimum. They can have terms for payment in advance as well as in cash. A grower may not cultivate and may not have any yield. A factory may be closed or wound up, and may not buy any sugarcane. A factory can reject goods on inspection. A combination of all these features indicate that the parties entered into agreement with mutual assent and with volition for transfer of goods in consideration of price."

10. Furthermore, the principle of mutual assent in parties dealing with essential commodities was further clarified by the Indian Supreme Court in the case of **Vishnu Agencies v. Commercial Tax Officers**¹⁵ where it was held that:

"33. In order, therefore, to determine whether there was any agreement or consensuality between the parties, we must have regard to their conduct at or about the time when the goods changed hands. In the first place, it is not obligatory on a trader to deal in cement nor on any one to acquire it. The primary fact, therefore, is that the decision of the trader to deal in an essential commodity is volitional. Such volition carries with it the willingness to trade in the commodity strictly on the terms of Control Orders. The consumer too, who is under no legal compulsion to acquire or possess cement, decides as a matter of his volition to obtain it on the terms of the permit or the order of allotment issued in his favour. That brings the two parties together, one of whom is willing to supply the essential commodity and the other to receive it When the allottee presents his permit to the dealer, he signifies his willingness to obtain the commodity from the

¹⁴ [1972] 2 SCR 228

¹⁵ (1978) 1 SCC 520

dealer on the terms stated in the permit. His conduct reflects his consent. And when, upon the presentation of the permit, the dealer acts upon it, he impliedly agrees to supply the commodity to the allottee on the terms by which he has voluntarily bound himself to trade in the commodity. His conduct too reflects his consent. Thus, though both parties are bound to comply with the legal requirements governing the transaction, they agree as between themselves to enter into the transaction on statutory terms, one agreeing to supply the commodity to the other on those terms and the other agreeing to accept it from him on the very terms. It is therefore not correct to say that the transactions between the appellant and the allottees are not consensual. They, with their free consent, agreed to enter into the transactions.

34. We are also of the opinion that though the terms of the transaction are mostly predetermined by law, it cannot be said that there is no area at all in which there is no scope for the parties to bargain. The West Bengal Cement Control Act, 1948 empowers the Government by Section 3 to regulate or control the prices at which cement may be purchased or sold. The Cement Control Order, 1948 provides by paragraph 4 that no person shall sell cement at a "higher than notified price", leaving it open to the parties to charge and pay a price which is less than the notified price, the notified price being the maximum price which may lawfully be charged. Paragraph 8 of the Order points in the same direction by providing that no dealer who has a stock of cement in his possession shall refuse to sell the same "at a price not exceeding the notified price", leaving it open to him to charge a lesser price, which the allottee would be only too agreeable to pay. Paragraph 8 further provides that the dealer shall deliver the cement 'within a reasonable time' after the payment of price. Evidently, within the bounds of reasonableness, it would be open to the parties to fix the time of delivery. Paragraph 8A *ibid*; which confers on the allottee the right to ask for weighment of goods also shows that he may reject the goods on the ground that they are short in weight just as indeed, he would have the undoubted right to reject them on the ground that they are not of the requisite quality. The circumstance that in these areas, though minimal, the parties to the transactions have the freedom to bargain militates against the view that the transactions are not consensual."

11. In **Sukhnandan Saran Dinesh Kumar v. Union of India**,¹⁶ the Indian Supreme Court definitively held that the provisions of sugarcane control orders were created to protect the sugarcane growers who were in no position to negotiate against large monopolies of sugar mills. Therefore, the government prescribed terms to the contract which was to be entered into with the factory owners. Hence, the conclusion arrived was that:

"The proposition is now beyond the pale of controversy that the State can impose a restriction in the interest of general public on the right of a party to contract where in the opinion of the Government the contracting parties are unable to negotiate on the footing of equality. Constitutional validity of statutes prescribing minimum wages has been founded on this proposition. The principle can be effectively extended to the powerful sugar industry and the cane-growers because the cane-growers admittedly are at a comparative disadvantage to the producers of sugar and khandsari sugar who were described in the course of arguments as sugar barons. It does not require an elaborate discussion to reach an affirmative conclusion that sugarcane-growers who are farmers cannot negotiate on the footing of the equality with the producers of sugar and khandsari sugar. The State action for the protection of the weaker sections is not only justified but absolutely necessary unless the restriction imposed is excessive."

12. The accepted position of law is the one enumerated above. It has since been cited with approval in subsequent cases. In **U.P. Cooperative Cane Unions Federations v. West U.P. Sugar Mills Association and Ors**,¹⁷ wherein it was held that:

"29. Learned Counsel for the respondent has also submitted that in order to constitute a valid agreement, the consent of the parties thereto should be a voluntary consent and not consent obtained under any kind of compulsion or duress. It has been submitted that after the State Government makes an announcement of a State-advised price, the occupiers of the sugar factories are compelled to enter into agreements with the cane-growers and canegrowers' cooperative societies in Forms B and C, wherein the State-advised price is mentioned. The same price is also mentioned in the parchas issued to the cane-growers. It has been urged that the sugar

¹⁶ [1982] 3 SCR 371 at Paragraph 22

¹⁷ AIR 2004 SC 3697

*factories cannot be compelled to pay such State-advised price even though it may have been mentioned in the forms or in the parchas. It is not possible to accept the contention raised. As discussed earlier, the State Government in exercise of its regulatory power can fix the price of sugarcane. The mere fact that this price is not to the liking of the sugar factory does not mean that it cannot form the basis for supply of sugarcane by the cane-growers or cane-growers' cooperative society to the sugar factory. It is well settled that even a compulsory sale does not lose the character of a sale. This question has been examined in considerable detail in *Indian Steel & Wire Products Ltd. v. State of Madras* (supra)¹⁸ ...”*

13. The Constitution of Pakistan also does not allow a complete freedom to contract either. Property rights enumerated in Article 23 have been subjected to any reasonable restrictions imposed by law. The Article reads as follows:

“23. Provision as to property.-

Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.”

14. The above mentioned provision is clearly indicative of the fact that the right to property carries with it certain caveats. The sugarcane growers are at liberty to dispose of their goods, the sugarcane, and the mills are at liberty to accept them with the limitations imposed by the state. The mere fact that this transaction is regulated by a control regime created in the public interest does not deprive it of its basic characteristics of sale, nor does it render the agreement void.
15. In light of the discussion above and case-laws referred, it is apparent to us that there is mutual assent in the transaction between the sugarcane growers and the sugar mills. The fact that such sale is regulated by legislation does not infringe on the basic characteristics of sale and, therefore, the Sales of Goods Act, 1930 is applicable to such a transaction.

¹⁸ [1968] 1 SCR 479

II. THE PREFERENCE OF RIGHTS BETWEEN SUGARCANE GROWERS AND SECURED CREDITORS

a. THE TRUE INTEREST OF THE SUGARCANE GROWERS:

16. It has been pleaded before us that the interest of the sugarcane growers is one of an unsecured creditor, whereas, the interests of the bank are argued to be those of a secured creditor. The uninspiring argument before us has been that the rights of the unsecured creditor cannot prevail over the secured creditor. While this is the correct position of the law,¹⁹ we do not find ourselves in agreement with the fact that the interest of the sugarcane growers is one of an unsecured creditor. The ascertainment of the true nature of the sugarcane grower's rights, including the integral right to be compensated for the purchase price of the sugar, among others, will require closer examination.
17. Upon curious inquiry through numerous sugarcane and sugar regimes across various jurisdictions, we have found that the Indian jurisdiction has most aptly safeguarded the rights of sugarcane growers. We also find ourselves compelled by the rationale adopted by them to do so.
18. The status of the bank as a secured creditor is neither disputed nor can its essential status be overstated. While the banks have their right protected as a secured creditor, instances where their right has been circumvented by the operation of statutory provisions is not entirely novel. The Indian Supreme Court case of **Maharashtra State Co-operative Bank Ltd. v. The Assistant Provident Fund Commissioner**²⁰ is as peculiar a case as the one before us. In the cited case, the question concerned was whether bags pledged by sugar mills with the bank could be sold to satisfy the provident fund of the mill's employees. The provident fund for employees was governed under the Indian ***Employees Provident Funds and***

¹⁹ 1994 SCMR 2248

²⁰ (2009) 10 SCC 123

Miscellaneous Provisions Act, 1952. Sub-section (2) of section 11 of the Act, 1952 provided a statutory protection on priority basis against all other debts to the provident fund when a company became insolvent. The provision is reproduced below:

"(2) Without prejudice to the provisions of Sub-section (1), if any amount is due from an employer whether in respect of the employees' contribution (deducted from the wages of the employee) or the employer's contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts."

19. Incidentally, the aforementioned Act also contained a statutory forum for protection of the employee's provident fund known as "Assistant Provident Fund Commissioner"²¹ whom could be approached if any breach of the Act occurred. Therefore, the employees approached the statutory authority and an order of attachment for the bags of sugar was made. The Banks challenged the order of attachment by the Commissioner in the High Court during which an application for auction of the sale of sugar bags was submitted by the Commissioner. The Court allowed the auction and the amount was deposited with the Court. In addition, at a subsequent date, the Commissioner, in exercise of his lawful authority, issued an order which appended the mill's bank accounts, moveable & immoveable properties, and further bags of sugar to satisfy the debts of the employees. The order was challenged by the sugar mill in the High Court, which was dismissed. The High Court issued various directions that amounted to satisfying the debts of the employees initially and the remaining amount was used to satisfy the debts of the bank, subject to the bank's right to appeal under the Provident Fund Act.

²¹ Analogous statutory authority to the "Cane Commissioner"

20. The question before the Indian Supreme Court was whether the provision contained in s.11(2) of the *Indian Provident Fund Act, 1952* operated against other debts like mortgage or a pledge, among others. It was concluded by the Indian Supreme Court that *section 11(2)* gave statutory priority to the amount due from the employer vis-à-vis all other debts.²²
21. This case has applied the principle of Statutory First Charge ("**SFC**"). The SFC is created by the operation of a provision in a legislation that grants preference to the holder of the SFC over all other creditors, including secured creditors, holding any form of security. These SFC's derive their authority through the statute which is the precise reason why the court cannot interfere in granting secured creditors rights over parties holding SFC's.
22. The courts have also interpreted the creation of a SFC where the object and purpose of the provision was to create a statutory first charge to protect the interest of the weaker cross-section of society. In the case of ***UCO Bank v. Official Liquidator, High Court Bombay and Anr***,²³ the court considered the scope of the vires of ***section 529(1)***²⁴ of ***The Indian Companies Act***. The Supreme Court arrived at the conclusion that the purpose of the insertion of such a provision was to protect the interests of the workers and place them at par with secured creditors. It was therefore concluded as follows;

"The proviso to Sub-section (1) of Section 529 inserted by the Amending Act clearly provides that 'the security of every secured creditor shall be deemed to be subject to a pari passu charge in favour of the workmen'. The effect of the proviso is to create, by statute, a charge pari passu in favour of the workmen on every security available to the secured creditors of the employer company for recovery of their debts at the time when the amendment came into force. This expression is wide enough to apply to the security of every secured creditor which remained unrealised on the date of the amendment. The clear

²² (2009) 10 SCC 123 at Paragraph 47

²³ (1994) 5 SCC 1

²⁴ inserted by the Indian Companies (Amendment) Act 1985

object of the amendment is that the legitimate dues of workers must rank pari passu with those of secured creditors and above even the dues of the Government.

A debt due to a secured creditor, when recovered by realisation of the security after commencement of the winding up proceedings, results in depletion of the assets in the hands of the Official Liquidator. This provision is intended to protect the interests of the workmen in proceedings for winding up. In view of the nature of workmen's dues being similar to those of secured creditors, the purpose of this provision is to place the workmen on a par with the secured creditors and create a statutory charge in their favour on all available securities forming part of the assets of the company in liquidation so that the workmen also share the securities pari passu with the secured creditors. The workmen contribute to the growth of the capital and must get their legitimate share in the assets of the company when the situation arises for its closure and distribution of its assets first among the secured creditors due to winding up of the company. The aforesaid amendment made in the Act is a statutory recognition of this principle equating the legitimate dues of the workmen with the debts of the secured creditors of the company. To achieve this purpose, it is necessary that the amended provision must apply to all available securities which form part of the assets of the company in liquidation on the date of the amendment."

23. In the case before us, when we decipher the purpose and object of **The Punjab Sugar Factories Act 1950** from its preamble, it is manifest that the resolution of the Act is standing out on behalf of the State as an assurance "to sugar cane growers a fair price for their product". The State, being cognizant that the sugar cane growers are the weaker of the two contracting parties, has attempted to secure the interest of the cane growers to recover the price of the sugarcane supplied to the Factory. It has armed the Cane Commissioner with coercive tool to recover the price from factory owners as an arrears of land revenue.²⁵ This Court is empowered to employ numerous interpretational instruments to discern the object and purpose of a legislation. These are settled techniques and need no reproduction. In light of such instruments

²⁵ Section 11(4) of the Punjab Sugar Factories Act 1950

available to the court, the object and purpose of the **Sugar Factories Act 1950** can be found in the preamble which states as follows:

“WHEREAS it is expedient to provide for regulating the supply of sugarcane intended for use in such factory and the price at which it may be purchased and for such other matters as may be incidental thereto.”

24. The impugned judgment has, in reliance of various sources of interpretational wisdom available, succinctly discerned the intent of the parliament by passing the **Punjab Sugar Factories Act 1950** and held as follows:

“The intent of the Act and the Rules in specifying the time for payment is to ensure that the cane grower is paid and that the price owed to the cane grower is not only secured but also remains enforceable under the Act. This is because the supply of sugarcane to the sugar mill is not an ordinary sale of goods. The legislature considered it to be a special transaction which required regulation and control and also required protection so far as the rights of the cane growers are concerned. The Act is designed to protect the suppliers and buyers of sugarcane which is a fast moving commodity due to its essential and perishable nature. The mandatory period for making payment secures the price of the sugarcane for the benefit of the cane grower while giving the sugar mill the benefit of a fifteen-day credit. Doing business on credit is an acceptable mode, however in the case of the sale of sugarcane the Act, while regulating and controlling the sale transaction cannot be interpreted so as to leave the cane grower helpless at the hands of the sugar mill. In such eventuality the entire scheme of the law is defeated if the rights of the cane growers are not protected such that their right to receive payment is not enforceable. The purpose of requiring the cane grower to deliver on credit, is to facilitate the buyer sugar mill, so that it can use the goods. This does not suggest that the Act leaves the cane grower without any remedy to recover its dues. Therefore, to the mind of the Court, by specifying the time within which payment must be made the intent of the law is to protect the cane grower so as to secure his payment and to ensure that the cane grower's right to recover his dues from the sugar mill will not be subservient to any other right.”²⁶

²⁶ See Paragraph 35 of 2018 PLD Lahore 450

25. The query before us is whether the interest of the sugarcane growers is one of an unsecured creditor or one that is protected by a statutory first charge. Prior to arriving at a conclusion, it would be appropriate to set a non-exhaustive list of factors that the court can consider when assessing the nature of a statutory due. It would not be viable to provide an exhaustive list of factors that could be considered by the court given when considering the existence of a Statutory First Charge given the plethora of statutes that provide for a variety of securities.
26. Therefore, when considering whether a statutory due carries with it a statutory first charge, the court can take into account the object & purpose of the legislation, the language of the provision conferring the statutory due, whether a statutory right is created through the operation of the act, and whether a priority is granted for the statutory due over other creditors. Each of these serve as indicative factors that the legislature intended to create a statutory first charge. We again reiterate that this is a non-exhaustive list of factors and each statutory due must be assessed subjectively.
27. In the present case, it would appear that the title in the sugarcane is transferred to the sugar mills as they deal with the goods in a manner akin to that of an owner. The contract is clearly one of deferred payment under the law. **S.19** of the ***Sales of Goods Act 1930*** clearly stipulates that the property passes when intended to pass. We could not locate any provisions of the Sugar Factories Act 1950 or find any evidence through the conduct of the sugarcane growers that the property was intended to pass when the payment was completed.
28. Upon the passing of property in the sugarcane, the mills process the sugarcane into sugar as well as other byproducts. While the mills become the legal and beneficial owner of the sugarcane, a *SFC* is created not only on the sugar but also on all its byproducts as

and when the title in the sugarcane is transferred to the mills. It is when the title in goods is transferred and purchase price becomes due, payable, and recoverable that a *SFC* is created over the unpaid goods. The interest of the sugarcane growers is not one of an unsecured creditor but, that of a creditor holding a *SFC* defeasible upon the payment of liability owed to them under the Sugar Factories Act. The interests of the mills are protected as the legal owner, and the interests of the banks are protected as secured creditors; however, the first preference in satisfaction of the mill's debts is to be given to the sugarcane growers as they hold a *SFC*.

29. The ramifications of such a *SFC* is that these are given preference over all other interests that may be created by the sugar mills as legal owners. A similar conclusion was also arrived at by the Indian Supreme Court in ***State of M.P. v. State Bank of Indore***²⁷ where it was held that the statutory first charge created under section 33C of the ***M.P. General Sales Tax Act, 1958*** would prevail over the bank's charge. The appropriate portion is reproduced below:

"Section 33-C creates a statutory first charge that prevails over any charge that may be in existence. Therefore, the charge thereby created in favour of the State in respect of the sales tax dues of the second respondent prevail over the charge created in favour of the Bank in respect of the loan taken by the second respondent."

30. Similarly, the Indian Supreme Court case of ***State Bank of Bikaner and Jaipur v. National Iron and Steel Rolling Corporation***²⁸ also considered whether a statutory first charge was to be given priority against the interests of the secured creditor, being the bank, created prior in time through a mortgage prior. It was held that:

"Where a mortgage is created in respect of any property, undoubtedly, an interest in the property is carved out in favour of the mortgagee. The mortgagor is entitled to redeem his property on payment of the mortgage dues. This does not, however, mean that the property ceases to

²⁷ (2002) 10 SCC 441

²⁸ (1995) 2 SC 19

be the property of the mortgagor. The title to the property remains with the mortgagor. Therefore, when a statutory first charge is created on the property of the dealer, the property subjected to the first charge is the entire property of the dealer. The interest of the mortgagee is not excluded from the first charge. The first charge, therefore, which is created under Section 11AAAA of the Rajasthan Sales Tax Act will operate on the property as a whole...

In the present case, the section creates a first charge on the property, thus clearly giving priority to the statutory charge over all other charges on the property including a mortgage."

31. Therefore, even though the sugarcane grower's transfers title in the goods, they retain a statutory first charge on the recently transferred unpaid goods. This statutory charge cannot be defeated even through a mortgage or charge created prior in time. Hence, given the fact that the interests of the sugarcane growers are by way of Statutory First Charge due to the object and purpose of the **Sugar Factories Act 1950**, they are entitled to their statutory right to be paid the liability of sum owed to them under the Act.
32. It is clear to us that the Sugar Factories Act 1950 was enacted to tackle the egregious disparity in the bargaining authority of the cane growers with the mills. It is unfathomable that the interests of the sugarcane growers would be those of a mere unsecured creditor when the entire object and purpose of the **Sugar Factories Act 1950** denotes a comprehensive legislative regime incepted to regulate the price of sugarcane in a manner that the sugarcane grower is not in any way disadvantaged. The subsistence of a regulatory framework for sugarcane is an acknowledgement by the legislature of the unequal negotiating capacity between the grower and sugar monopolies that presents a bleak picture for the cane growers. It is clear that when enacting the statute, the legislature itself was aware that the scenario of cane growers and sugar mills is one that can be equated to David against Goliath.

33. In this scenario, the appropriate conclusion would be that the rights and interests of the sugarcane growers are created and protected by way of statutory first charge.

34. Another instance where a SFC is visibly created under the **Sugar Factories Act 1950** is under **Rule 12(3)** of the **Punjab Sugar Factories Rules 1950**. The provision concerns itself with the conduct of licensing of purchasing agents and provides as follows:

"(3) The applicant shall deposit with the factory for which he desires to act as purchasing agent, as security, a sum of rupees one thousand in cash or Government securities of the face value of rupees one thousand or Post Office Cash Certificates of the present encashment value of rupees one thousand, or a bond of hypothecation of landed property worth rupees two thousand, and such security shall be maintained through the period such works as a purchasing agent and for six months thereafter.

*Government will have the **first charge** on such or property for the recovery of any fine or compensation due from the purchasing agent or his employees under the Act or under these Rules...*

35. Therefore, with respect to the **Sugar Factories Act 1950**, another SFC is created under **Rule 12(3)** in the favor of the government that grants the government precedence for recovery of fine from purchasing agents over all other charges and mortgages which may be created by the purchasing agent.

36. Support of such a statutory first charge on sugarcane grown by growers under legislative control orders can also be found in the Indian Supreme Court case of **State of M.P. v. Jaora Sugar Mills Ltd.**²⁹ which was cited with approval in **State of Karnataka Ors. v. Chamundeswari Sugar Ltd.**,³⁰ wherein it was held that:

"13. It would thus be clear that the Cane Commissioner having power to compel the cane-growers to supply cane to the factory or khandsari unit, he has incidental power and is duty-bound to ensure payment of the price of the

²⁹ (1997) 9 SCC 207 at 213

³⁰ (2008) 7 SCC 469 at Paragraph 38.2

sugarcane supplied by the sugarcane- grower. The price fixed or agreed (for the sugarcane) is a statutory price and bears the stamp of statutory first charge on the sugar and assets of the factory over any other contracted liabilities to recover the price of the sugarcane supplied to the factory or khandsari unit."

37. Interestingly, this decision was also cited by the learned Lahore High Court.³¹ While such reliance was correct in support of the conclusion arrived, it seemed that the underlying principle was subject to oversight. The fundamental principle advanced in this case was that the price of sugarcane was a statutory first charge over the bags of sugar that would gain preference over other the interests of other secured creditors. It is inconsequential if the first charge is created prior or subsequent to the mortgage or lien of the secured creditor. It is also immaterial if the nature in the goods are changed. The charge perseveres as it attaches itself onto the goods, travels with them, and remains enforceable in a preferential manner against other secured creditors irrespective of the manner in which the goods are processed, sold, or pledged.
38. Therefore, the *SFC* remains unfazed by whatever processing the goods undergo. It takes precedence over all contractual liens and mortgages that may be claimed and its creation remains independent from the requirement of registration.

b. THE APPLICATION OF THE SALES OF GOODS ACT 1930

39. Further support for this conclusion reached above can be found through the application of **s.53(2)** of the **Sales of Goods Act 1930**. This provision, too, creates a statutory first charge over the goods of unpaid seller that must be protected over the interests of unsecured creditors. Therefore, even if the sugarcane grower's interests were not safeguarded by the operation of an *SFC* through the **Sugar Factories Act 1950**, they could seek solace in *section 53(2)* of *The Sale of Goods Act 1930*.

³¹ Paragraph 30 of 2018 PLD Lahore 450

40. The Sales of Goods Act, 1930 defines an "unpaid seller" as "the seller of goods when the whole of the price has not been paid or tendered".³² The rights and remedies of the unpaid sellers are further provided for in s. 46 – s. 54.
41. Upon a bare perusal of these provisions, it can be discerned that the applicable provision is s.53 which concerns the effect of a sub-sale or pledge by buyer of the unpaid seller's goods. **S.53(2)** states that:
- "Where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer."*
42. It is curious how the aforementioned provision was not brought to notice of neither the High Court nor this Court. The unpaid seller's rights and remedies enumerated through s.46 to s.52 are inapplicable to the current set of facts and circumstances of the case. The transfer of the interests in the sugar by the sugar mills to the banks was done by way of pledge. What transpires through the implication of the noted provision is that the unpaid seller, the sugarcane growers, is instilled with the right to have the pledge amount secured by the buyer, the sugar mill, from the pledgee, the bank, in the first instance, while simultaneously ensuring that the pledgee's interest is also secured to follow other goods and securities of the buyer such as the buyer's sugar factories and other assets for the recovery of any shortfall, if any, out of the pledge amount.
43. The provision is significant because it grants preferential treatment to the unpaid seller over secured creditors as a *SFC* should. However, what is admirable is the manner in which such protection is accorded to the unpaid seller. The right of the unpaid seller is protected by ensuring the payment of the balance amount with

³² S.45(a) of the Sale of Goods Act, 1930

respect to any and all goods held as securities. What this provision demonstrates is that in terms of priority, the courts will enforce the statutory right of the unpaid seller over the rights of the secured creditor as a *SFC* is created in such a scenario as well.

44. It has been argued that since the nature of goods has changed from raw goods to value-added goods, the seller's remedies are limited to those provided under **s.46**. We do not find this to be the correct position as **s.53(2)** does not concern itself with the intricacies of the change in nature of the goods nor does it provide any consideration to the change in nature of the goods. It merely confers upon the seller a *SFC* that persists on the unpaid goods irrespective of their change in nature, change in ownership, or any other factors. The *SFC* only subsides upon the payment of purchase price to the unpaid seller.
45. In a scenario where the nature of the seller's goods is changed and the goods are subsequently pledged, he is saved by the operation of **s.53(2)**. The rights of secured creditors have been aptly laid down by the impugned judgment³³ and need no reproduction. The correct position of law is stated in the impugned judgment only with respect to the banks as secured creditors. However, what the impugned judgment failed to consider was that the sugarcane growers had *SFC*'s over the sugarcane that had been supplemented with the imbued statutory right by the operation of **s.53(2)** which cannot be whittled down. Therefore, the statutory right of the sugarcane growers will prevail over the rights of secured creditors.
46. It may be observed that Sugar Factories Act 1950 is special and beneficial legislation, promulgated to protect the weaker segment of the sugarcane growers. **Section 53(2)** of the Sales of Goods Act 1930 is not couched with any concomitant limitation or condition. It is unequivocally clear that any amount is to be paid to an unpaid

³³ 2018 PLD Lahore 450 at Paragraph 29

seller on a priority basis where their goods are pledged by the buyer. This priority clause will naturally operate against both secured and unsecured debts. Therefore, the claims of the unpaid seller cannot be defeated by prior claims of secured or unsecured creditors.

47. This existence of this provision acknowledges the harsh fact that a buyer, when transferred title and possession, may pledge the goods and the unpaid seller would be left without recourse of law but a suit for damages. In cases where the company goes into liquidation and the unpaid seller's goods are pledged, the right of the unpaid seller, being that of an unsecured creditor when they do not hold a *SFC*, would give way to the secured creditor. The operation of **s.53(2) of Sale of Goods Act, 1930** caters for such an eventuality where the rights of the unpaid seller are protected through the existence of a statutory first charge.
48. It is true that each of the cases for statutory first charges mentioned above can be distinguished on the ground that the nature of goods did not change as they remained in their original identifiable form. The question then becomes whether the change in nature of the goods is consequential to the extent of the statutory first charge. This proposition can be resolved with reference to the British interpretation of Retention of Title clauses.

c. THE APPLICATION OF RETENTION OF TITLE CLAUSES:

i. THE CASES RELIED UPON IN THE IMPUGNED JUDGMENT:

49. The supporting authorities that a change in nature of the goods does not extinguish a charge can be derived from the English cases pertaining to the *Retention of Title Clause*.³⁴ The title in goods is transferred to the mills and they deal with the goods in a manner identical to as the owner would. Even though the property in goods changes, the charge to the extent of the purchase price of the goods is still retained on the goods. These cases primarily concerned the operation of retention of title clauses where the nature in goods had changed irreversibly. The court was unable to give sensible operation to the *retention of title clauses* in such instances as the buyer had visibly invested exorbitant sums in the processing of the goods and the only construction that allowed the courts to safeguard the seller's rights was by way of charge. Therefore, where the nature in goods had changed in a manner that they no longer remained identifiable, even though the title had passed to the buyer, the *retention of title clause* was considered to be a charge over the buyer's goods instead.
50. In order to clarify to the application of such cases on the current set of facts, it will be appropriate initially to look through the cases referred to in the impugned judgment. The learned Lahore High Court has placed reliance on **Re Weldtech Equipment Ltd.**³⁵ and **Tatung (U.K) Ltd v Galex Telesure Ltd.**³⁶ to draw support of the contention that the retention of title clause operated on the proceeds of sale where the goods no longer retained their original characteristics. It is regrettably corrected that the reliance on such authorities is misplaced.

³⁴ Retention of Title clauses primarily derive their authority from the case *Aluminium Industrie Vaassen B. V. v. Romalpa Aluminium Ltd* [1976] 1 W.L.R 676 which has since been limited to its own facts.

³⁵ 1991 BCC 16 (Eng. Ch. 1990)

³⁶ 1989 BCC 325 (Eng. Q.B. 1988)

51. In the case of ***Tatung (U.K) Ltd v Galex Telesure Ltd***, the issue before the court was whether a retention of title clause over the proceeds of sale of the seller's unpaid goods sold by the buyer constituted a charge which was void for non-registration. The first reason as to why the Plaintiff's interest constituted a charge was that the interest of the plaintiff-seller was agreed to be defeasible upon the payment of debts owed to them. Therefore, such an interest can only be one, which is created by way of security rather than an absolute interest in the goods.³⁷
52. The second reason why the interest of the plaintiff was held to be one through charge was when the court drew a distinction between an interest arising out of the operation of law and an absolute equitable interest arising out of the equitable principles laid down in ***Re Hallet's Estate***.³⁸ Given the fact that the interest arose from the execution of the contract, and not through the equitable principles laid down, it could only have been a security.³⁹
53. Therefore, any interest, including the proceeds of sale clause, arising out of the contract, and not through equitable principles, must be by way of security, which was subsequently void for non-registration. Hence, it was held that that the interest of the unpaid seller over the proceeds of sale arose by virtue of the agreement between the parties which was void for non-registration under section 395 of the ***British Companies Act 1985***.⁴⁰
54. Reliance on the cited case in the given circumstances is misplaced and in no way lends support to either the Appellants or Respondents stance in this case.

³⁷ 1989 BCC 325 at 334

³⁸ (1880) 13 Ch.D. 696

³⁹ 1989 BCC 325 at 335

⁴⁰ Corresponding provision in Pakistan is section 100 of the *Companies Act 2017*, which inter-alia stipulates in case a company fails to register the charge with the Registrar of Companies for registration the same shall be void against the liquidator and the creditor of the company

55. Similarly, the second case relied upon was on **Re Weldtech Equipment Ltd**(supra), which concerns the question as to whether the charge created by the retention of title clause was registerable or not. The court held that the charge was indeed registerable and non-registration rendered it void. This case, too, does not advance the proposition further.

ii. THE APPLICATION OF APPROPRIATE PRINCIPLES OF RETENTION OF TITLE CLAUSES:

6. Primarily, there exist four categories of retention of title clauses. The first kind is a *simple retention of title clause*, which allows the seller to retain the title in the goods where they maintain their original characteristics. The validity of such clauses has been endorsed by the House of Lords in **Armour v. Thyssen Edelstahlwerke A.G.**⁴¹ The second category is where the *retention of title clause* allows the unpaid seller to retain the title in the goods even *when the goods have irreversibly changed their characteristics* thereby allowing the unpaid seller to trace the property of his own goods into any subsequent products created by the buyer. The third kind is known as the '*proceeds*' clause which entitles the seller to proceeds of the sale for the product of which his goods form a part of. Therefore, this clause allows the buyer to trace, to the extent of the purchase price of the unpaid goods, any proceeds of sub-sales carried out by the buyer. The fourth category is known the '*all moneys clause*' which allows the seller to retain the title in the goods until *all debts* owed to him are paid, as opposed to the debts of the most recently contracted goods. The House of Lords did not comment on the validity or approach laid down by the Court of Appeal vis-à-vis the second, third, or fourth category as the subject-matter in **Armour** did not concern them.

⁴¹ [1990] 3 All ER 481. The case has been followed by the Supreme Court of New South Wales in *Chattis Nominees Pty Ltd v Norman Ross Homework Pty Ltd*, (1992) 28 NSWLR 338 and in New Zealand in *Geal Investments Limited v Ivil Hotels Limited* (1992) 4 NZBLC 99 280

57. We are only concerned with the operation of the second and, to an extremely limited extent, the third category of such clauses. It is pertinent to mention here that the intervention of the courts to give effect to such clauses became necessary to protect the interests of the unpaid seller as the **British Sales of Goods Act 1979** did not contain a *pari materita* or a provision corresponding to **s.53(2)** as applicable in Pakistan. We have been fortunate that the legislators had the foresight to insert such a provision to avoid the jurisprudential ordeal undergone in England to protect the rights of unpaid sellers. Nevertheless, the rules for the second and third category of Retention of title clauses will be considered in detail below.

58. The second category of *Romalpa clauses* have been employed for goods that lose their original characteristics. In the case of **Re Bond Worth Ltd**,⁴² the retention of title clause stipulated for the seller to retain the '*beneficial and equitable*' title in the synthetic fiber provided by him, any component the fiber was a part of, and any proceeds of subsequent sales from the sale of the fiber until all outstanding debts were settled. The fiber was then woven into carpets by the seller and he then became insolvent. When the unpaid seller attempted to enforce the retention of title clause, *Slade. J* held that:

"the whole purpose of retention of title clause was to afford Monsanto⁴³ security for the payment of purchase price under each relevant order⁴⁴ and that the seller's 'rights must necessarily have been rights by way of mortgage or charge.'⁴⁵

Therefore, any interest retained by the seller where the goods had changed their nature could only be by way of charge that was void for non-registration. The title had been transferred to the seller when the parties had intended to do so.

⁴² [1980] 1 Ch 228

⁴³ The Seller in the case

⁴⁴ [1980] 1 Ch 228 at 268

⁴⁵ Ibid

59. Similarly, the case of **Re Peachdart**⁴⁶ followed the rule laid down in **Re Bondworth** (*supra*). In this case, the retention of title clause stipulated that the seller would retain ownership over the leather provided until all debts were cleared. The leather was then manufactured into handbags by the seller and he went into insolvency. When the seller attempted to enforce the retention of title clause to trace their ownership of the leather into the handbags, the court disallowed them to do so. *Vinellot J* inferred the intention from the contract that the seller must lose exclusive ownership once the leather lost its original characteristics by being converted into the handbag.⁴⁷ *Vinellot J* admitted that such an interpretation amounted to 'doing some violence' to the wording of the contract. However, he stated that the object and purpose of the contract – to protect the seller's interest until the goods were paid for – should be given precedence over its literal purpose, which was for the seller to retain title. It is ironical that *Vinellot J* arrived at this conclusion as he was subsequently held the charge to be void for non-registration, essentially depriving the seller of both the title and security in the goods.
60. One of the few reported instances where the seller has been successful in relying on the retention of title clause to retain their title in the goods where the goods had changed in nature is **Hendy Lennox Ltd. v. Grahame Puttick Ltd.**⁴⁸ The only reason the retention of title clause remained operational was because the unpaid seller's goods, being diesel engines that subsequently became a part of diesel generating set, retained their original characteristics. *Staughton. J* held that since the goods had remained in their original state, the unpaid seller would successfully retain the title in the goods.⁴⁹

⁴⁶ [1983] 3 ALL ER 204

⁴⁷ *Ibid* at 210

⁴⁸ [1984] 1 W.L.R. 485

⁴⁹ *Ibid* at 494. Paragraph F.

61. The convoluted jurisprudence regarding retention of title clauses was eventually clarified by the Court of Appeal in ***Clough Mill v Martin***.⁵⁰ The court answered the longstanding question of whether the court was correct in construing retention of title clauses to be charges where the parties had clearly intended for the title remain vested in the seller if the debts remained unsatisfied. *Oliver L.J* accepted that retention of title clauses only remained effective to retain title in cases where the goods remained in their original identifiable state.⁵¹ However, the title would pass to the buyer where the goods had irreversibly lost their original characteristics.⁵² In order to avoid injustice, the only interest accrued by the seller in such a scenario would be by way of charge.⁵³
62. These cases lay down two basic principles. The first principle is that the only interest the seller retains by the operation of such clauses is by way of unregistered charge as the property in goods is transferred to the buyer once the nature in goods has been irreversibly changed. The second principle is that such charge survives the change in nature of the goods. The charge, in the cases mentioned above, is created once the buyer manufactures the goods. Initially, the unpaid seller retains the title in the goods until the debts for the unpaid goods have been satisfied.
63. We are concerned only with the second basic principle pertaining to the charge. In our case, there exists a statutory first charge that is created by the operation of **s.14 of *The Punjab Sugar Factories Act 1950***. The question, therefore, becomes whether the charge is affected in any manner due to the change of goods. It is visible from the aforementioned jurisprudence that the charge remains unaffected even after the nature in goods changes.

⁵⁰ [1985] 1 W.L.R. 111

⁵¹ Ibid at 124, Paragraph F

⁵² Ibid at 119, Paragraph G.

⁵³ Ibid at 119, Paragraph G. Ibid at 120, Paragraph D.

64. Furthermore, the seller's interest is not by way of a mere ordinary charge but one that is conferred by the statute,⁵⁴ which cannot be defeated through the change in nature of the goods. Therefore, the unpaid seller will have priority over the secured creditor's interests and may seek attachment of the sale proceeds in the hands of banks out of pledged sugar to satisfy the liability of unpaid sugar cane grower.
65. The learned Lahore High Court has correctly drawn the distinction that the amount owed under the Sugar Factories Act are not governmental dues and we agree with the conclusion so arrived.⁵⁵ However, the learned High Court has erred in holding that sugarcane growers retained title in the sugarcane by inferring a statutory retention of title clause.

d. THE DUTY ON THE STATE TO PROTECT THE GROWERS:

66. Furthermore, there exists a duty on the state to ensure payment of purchase price to the sugarcane growers as held in the Indian Supreme Court case of **State of M.P. v. Jaora Sugar Mills Ltd. & Ors.**⁵⁶ This duty was further affirmed in the case of **U.P. Co-operative Cane Unions Federations vs. West U.P. Sugar Mills Association and Ors.**⁵⁷ Where the state fails to fulfill its obligations, the onus falls to the court to ensure that the law is complied with.

⁵⁴ Section 53(2) of the Sales of Goods Act 1938

⁵⁵ Paragraph 16 of 2018 PLD 450 Lahore

⁵⁶ (1997) 9 SCC 207

⁵⁷ (2004) 5 SCC 430

III. THE SUM OWED TO THE CANE GROWERS:

67. As per the impugned judgment, an amount of Rs. 669,215,411 has been deposited with the Deputy Registrar (Judicial) of the Lahore High Court. The amount was received from an auction of the bags of sugar owned by Brother Sugar Mills vide order dated 12.07.2016.⁵⁸ The possession of the bags of sugar with respect to Darya Khan Sugar Mills and Pattoki Sugar Mills had been restored with the banks vide interim orders dated 14.09.2017 and 29.08.2017.
68. A perusal of the file displays an exploitative pattern of non-payment by Brothers Sugar Mills Ltd. The order of the Cane Commissioner Punjab dated 28.12.15 displays that this particular sugar mill left the cane growers unpaid for the 2014-2015 season till 30.11.2015.⁵⁹ The order of the cane commissioner directed the mill to ensure that payment for the 2014-2015 season and the permission for crushing for the 2015-2016 was granted to protect the interests of the sugar cane growers.⁶⁰ However, it would appear that this particular sugar mill did not abstain from the error of their ways. The order dated 25.08.2015 office of the Cane Commissioner Punjab visibly shows that the total pending payment due to the cane growers for the crushing season of 2014-2015 was Rs. 878,787,753.⁶¹
69. During the time the cane growers remained unpaid, the **Punjab Sugar Factories Act 1950** was amended by the **Punjab Sugar Factories Control (Amendment) Ordinance 2015**.⁶² The amendment empowered the Commissioner as the relevant authority under **Section 6(3)** of the **Punjab Sugar Factories Act**

⁵⁸ Paragraph 28 of the 2018 PLD Lahore 450

⁵⁹ Paragraph 5 at Page 113 of CPLA 1057/2019

⁶⁰ Page 117 of CPLA 1057/2019

⁶¹ Paragraph 9 at Page 117 of CPLA 1057/2019

⁶² w.c.f 10.11.15

to calculate the liability for the sugarcane. The provision is reproduced below:

“(3) The Cane Commissioner may determine the liability of an occupier of a factory for payment of cane price to a cane grower and upon such determination, the outstanding amount of payment shall be recovered as arrears of land revenue under the Punjab Land Revenue Act, 1967 (XVII of 1967).”

70. S.4 of the Ordinance further contained a deeming provision that provided as follows:

“(4. **Validation.**— Notwithstanding anything contained in any other law the liability of an occupier of a factory to pay any amount to a cane grower, determined by the Cane Commissioner before the promulgation of this Ordinance, shall be deemed to have validly been determined under subsection (3) of section 6 of the Punjab Sugar Factories Control Act, 1950 (XXII of 1950) and the amount thus determined shall be recovered as arrears of land revenue.”

71. The calculation by the Cane Commissioner on 28.08.15 is deemed to be under the now ineffective amendment. The provision quoted above, empowers the sugarcane commissioner to determine the liability owed, which would be final and conclusive upon which the District Collector may, through the operation of **section 6(4) of *The Punjab Sugar Factories Act*** recover the amount so calculated from the sugar mills and satisfy the debts of the sugarcane growers. It further conclusively provides that any collection done by the Cane Commissioner shall be as arrears of land revenue. The very fact that the Ordinance did not graduate into an Act of Parliament does not affect the merits of the case. **S.6(3)** merely served as an enabling provision to **S.6(2)** that serves as the primary provision conferring authority to the Cane Commissioner of a Collector under the ***Punjab Land Revenue Act 1967*** and ***Punjab Tenancy Act, 1887***. The cane commissioner remains the empowered statutory authority to determine liability and to collect it.

72. While the amount of Rs. 669,215,411 has been collected, the remaining amount is still due. In addition, under **Rule 14(10)** of the **Punjab Sugar Factories Control Rules 1950** also stipulates an interest of 11% per annum from the date of delivery. The provision is reproduced below:

“(10) The occupier or purchasing agent shall be liable to pay interest at the rate of eleven percent per annum or unpaid balance for cane, from the date of delivery of the cane, in case where such payment is not cleared within fifteen days of its delivery.”

73. The order of the Cane Commissioner Punjab, dated 25.08.2015, mentions that interest is to be calculated from the date of closure of the sugar mill, i.e. 14.03.2015, and not the date when the cane was delivered.⁶⁴ We find this to be an incorrect position in law and, the eleven percent interest is to be calculated from the date of delivery of the sugar cane and further in case, where such payment is not cleared within fifteen days of its delivery.

74. The learned bench of the Lahore High Court has rightfully pointed out in the impugned judgment that⁶⁵ any rules validly made under a statute have the force of law, as they are to be read as a main part of the enactment.⁶⁶ The question then arises is, if the interest also constitutes a part of the *SFC* or is it an amount completely divested of the preferential nature of the *SFC*. In order to assess the nature of interest arising as a consequence of **Rule 14(10)** of **Sugar Factories Rules 1950**, we must assess its origin, nature, and why it was imposed.

⁶⁴ Paragraph 9 at Page 117 of CPLA 1057/2019

⁶⁵ Paragraph 17 of PLD 2018 Lahore 450

⁶⁶ (2004) 3 SCC 297

75. The liability of an occupier of the factory also encompasses dues that arise as a consequence from non-payment of the purchase price as well. The Indian Supreme Court, in the case of **Maharashtra State Co-operative Bank Ltd. v. The Assistant Provident Fund Commissioner**,⁶⁷ was confronted with the question that whether the interest charged under s.7Q, over amounts under section 11(2) of the Indian Provident Fund Act, 1952 and damages levied under section 14 of the Act, 1952 could be treated as "first charges" due to the preferential nature of right in section 11(2) *ibid*. The interest under s.7Q was charged on any amount due by the employer from the date on which such amount became due till the debt was satisfied. The Indian Supreme Court interpreted the provision in light of the object and purpose of the Act, which was to ensure the payment of provident funds to employees.⁶⁸ Therefore, it was held that:

"While enacting Sub-section (2), the legislature was conscious of the fact that in terms of existing Section 11 priority has been given to the amount due from an employer in relation to an establishment to which any scheme or fund is applicable including damages recoverable under Section 14B and accumulations required to be transferred under Section 15(2). The legislature was also aware that in case of delay the employer is statutorily responsible to pay interest in terms of Section 17. Therefore, there is no plausible reason to give a restricted meaning to the expression 'any amount due from the employer' and confine it to the amount determined under Section 7A or the contribution payable under Section 8. If interest payable by the employer under Section 7Q and damages leviable under Section 14 are excluded from the ambit of expression 'any amount due from an employer', every employer will conveniently refrain from paying contribution to the Fund and other dues and resist the efforts of the concerned authorities to recover the dues as arrears of land revenue by contending that the movable or immovable property of the establishment is subject to other debts. Any such interpretation would frustrate the object of introducing the deeming provision and non obstante clause in Section 11(2). Therefore, it is not possible to agree with the

⁶⁷ (2009) 10 SCC 123

⁶⁸ *Ibid* at Paragraph 47

learned senior counsel for the appellant- bank that the amount of interest payable under Section 7Q and damages leviable under Section 14 B do not form part of the amount due from an employer for the purpose of Section 11(2) of the Act."

76. As in the case before us, the legislature was aware of the fact that interest had been imposed under **Rule 14(10) of the Punjab Sugar Factories Rules 1950**. Any mill delaying the payment for the unpaid purchase price would also be statutorily liable to pay the interest accrued by virtue of their inaction. We are not inclined to give a narrow construction to the nature of the interest arising from the inability of the mill and consider it to be a part of the *SFC* as well. The object and purpose of the Act, as has already been expounded upon in great detail,⁶⁹ due to which we are of the unequivocal opinion that the *SFC* also includes the interest as well. If such interest, being a statutory right of the cane grower, is not protected, any mill can conveniently evade its collection by claiming that their assets are subject to other debts, which would have precedence over the interest. This cannot be the intention of the legislature. The interest was imposed to balance the rights of the cane growers by granting compensation for the delay by the mills in satisfying the purchase price of unpaid goods. Had it intended to be a penalty, we see no reason as to why the legislature did not insert it within **s.21 of the Punjab Sugar Factories Act 1950** or **Rule 18 of the Punjab Sugar Factories Rules 1950** that clearly entail penal consequences. Instead, the legislature found it appropriate to insert the provision of interest under **Rule 14** that provided mechanisms for payment. This, to us, is sufficient evidence to conclude that the interest payable forms part of the amount due to the cane grower due to which it also forms part of the *SFC*.

⁶⁹ See paragraph 23 and 24 of this judgment

77. Furthermore, the interest due arises as a direct consequence of the breach of statutory right to price of the cane growers. The remedy envisioned by the legislation against the breach of statutory right is the imposition of another statutory right to be entitled to the fine. Therefore, the interest due will also form part and parcel of the SFC, as it is to be collected as part of the price owed to the cane growers due to which it becomes the statutory right of the cane grower.
78. The right of the cane grower as a secured creditor with a statutory first charge is not only limited to the extent of the purchase price, but extends to any interest that may be accrued as a consequence of delayed or defaulted payment as well. Hence, the statutory right of the cane grower is with respect to the liability owed to them, which would carry a statutory first charge against all other secured creditors. In conclusion, the cane growers are held to be entitled to the interest stipulated under **Rule 14(10)** of Rules, 1950 'from the date of delivery of the sugarcane' as well as the purchase price as the unison of the two debts forms a SFC.
79. The Indian Supreme Court, also faced a similar question in **State of M.P. v. Jaora Sugar Mills Ltd**⁷⁰ where the question was whether the interest accrued to the sugarcane growers under the relevant control order as a result of delayed payment would be payable by the sugar mills. It was held that:

"The question then is: whether the respondent is also liable to pay interest for the delayed payment? It is seen that under the Order and the Act there is power to impose interest not exceeding 15%. In this case, 14% and odd was the interest levied on delayed payment. It is seen that in view of the agreement, as upheld earlier, in addition to the minimum price, therefore, the liability has arisen under the Order for payment of the value of the sugarcane supplied by the growers. On account of the default in payment thereof, in terms of Clause (3) of Rule 3, since it was not paid, by operation of Section 20 of the Act, they are entitled to recover the same as arrears of

⁷⁰ (1997) 9 SCC 207

land revenue. Therefore, the view of the High Court is clearly illegal.”⁷¹

80. The argument that the current state of the Act does not provide a clear enabling provision to collect outstanding dues as arrears of land revenue under the **Punjab Land Revenue Act, 1967** is too naïve a view. The impugned judgment has rightly interpreted the **s.6(2) of the Punjab Sugar Factories Act 1950** providing for the authority of the cane commissioner and held as follows:

“As part of the scheme of the regulatory framework, keeping in mind the relationship of the sugar mill and cane grower, a regulator oversees the entire process of supply and delivery and a mechanism is created under the Act, to recover amounts due to the cane grower through the Cane Commissioner. The powers of the Cane Commissioner for the purposes of recovery are the same as a Collector under the West Pakistan Land Revenue Act, 1967 (“LRA”) as provided in section 6 of the Act. This power as and when exercised by the Cane Commissioner is not to recover government dues but to recover amounts due to the cane grower. The regulatory framework puts the Cane Commissioner in a pivotal position to regulate the supply and delivery of sugarcane as well as to ensure that the cane grower is paid. Hence the Cane Commissioner, while exercising power under Section 6 of the Act can recover amounts due to the cane grower and this power does not translate into recovering government dues. The Cane Commissioner acts as the regulatory authority who is empowered under the law to protect the rights of the cane grower in the same way as he is empowered under the Act to protect the rights of the sugar mills.”⁷²

81. It was further correctly held in the impugned judgment that:

“The Act mandates the Cane Commissioner to recover the price of the sugarcane if the sugar mill does not pay the same within fifteen days’ time by exercising powers under section 6(2) of the Act. In order to effectuate the purpose of the Act the objective of section 6(2) cannot be limited to be construed as collection of arrears of land revenue that too when section 11(4) of the Act, itself stipulates that the cost of the survey can be recovered as arrears of land revenue. The purpose of section 6(2) of the Act is to empower the Cane Commissioner to recover the price of the sugarcane as mandated under the Act. Since

⁷¹ Ibid at paragraph 17

⁷² PLD 2018 Lahore 450 at Paragraph 16

the Act is a special law, a special mechanism has been created under the Act to enable the cane grower to recover its due. The lawmaker did not want the cane grower to pursue its dues through recovery suits and instead designed a mechanism where the role of the Cane Commissioner is such that it can exercise all the powers of the Collector in order to recover the cane growers' dues. Accordingly, the Cane Commissioner is the competent authority and forum under the Act for the recovery of all dues of the cane grower. So for example, the Cane Commissioner by virtue of section 6(2) of the Act can adopt the procedure and process given under Section 80 of the LRA to recover the dues of the cane grower.”⁷³

IV. THE ROLE OF THE CANE COMMISSIONER:

82. We find ourselves in agreement with the role of the cane commissioner outlined in the impugned judgment.⁷⁴ **Rule 14(2) of the Punjab Sugar Factories Rules, 1950** obligates the sugar mills to ensure payment of the sugarcane within fifteen days of delivery. The cane commissioner is under a statutory obligation to calculate the entire sum of liability owed to the cane grower, including purchase price and interest, and exercise the powers conferred under **s.6(2) of the Punjab Sugar Factories Act, 1950** to recover such amount.
83. In case the liability cannot be satisfied by the sum lying with the Deputy Registrar (Judicial) of the Lahore High Court, the cane commissioner is empowered under the **Punjab Land Revenue Act**, and all other enabling provisions, to take measures as he deems necessary. Similarly, the Cane Commissioner is also empowered to ensure payment out of any other goods or securities of the buyer, the mills, in the hands of the pledgee banks, by the operation of **section 53(2) of the Sales of Goods Act 1930**.

⁷³ Ibid at Paragraph 27

⁷⁴ See PLD 2018 Lahore 450 at Paragraph 25 to 27

84. However, we have also noticed that the cane commissioner has blatantly violated his statutory obligations by failing to recover the price of the unpaid goods in accordance with law. In case the Cane Commissioner fails to fulfill the mandate entrusted to him under the **Punjab Sugar Factories Act 1950**, and all enabling provisions of the Act, as well as the **Punjab Land Revenue Act**, and *rules framed thereunder*, he will be in violation of his statutory duty by infringing upon the statutory right of the cane growers for the purchase price of the unpaid goods and interest accrued as a result of non-payment. In such a scenario, the cane commissioner becomes liable to the scrutiny of the court as well as departmental proceedings for abdicating his duties and obligation to protect rights of cane grower for the unpaid price under the relevant laws.

V. CONCLUSION:

85. The ethos of the aforementioned discussion is as follows:
- a. The transaction regulated through *Sugar Factories Act, 1950* is not a compulsory acquisition of property but, a valid agreement for the sale of goods, as it is an enforceable contract under law, does not lack free consent of the parties, and does not completely exclude mutual assent.
 - b. The interest of the cane growers is not that of an unsecured creditor but, of a party carrying a Statutory First Charge granting them preference over all other creditors, unsecured or secured alike, of the Sugar Mills.
 - c. The Statutory First Charge clinches onto the goods and withstands any changes that may occur to the goods.

- d. The cane growers also have a statutory first charge through the operation of *section 53(2) of the Sales of Goods Act, 1930* that grants them preferential treatment over secured creditors of the sugar mill to recover the purchase price of unpaid goods.
 - e. The interest accrued under *Rule 14(10) of the Punjab Sugar Factories Rules, 1950* due to the delayed and defaulted payment of the sugar mills will also form part of the liability that carries a statutory first charge under *section 6(3) of the Punjab Sugar Factories Act 1950* and shall be paid to the cane grower.
 - f. The reference to the liability being collected as '*arrears of land revenue*' is to enable the Cane Commissioner, access to an existing mechanism to protect the rights of the cane growers.
 - g. An action not initiated by the Cane Commissioner, after the statutory period to collect the payment for the sugarcane has lapsed will result in the scrutiny of the court, as well as, warrant departmental proceedings against the Cane Commissioner, himself for abdicating to perform statutory duties casted upon him under the law.
86. The cane commissioner is hereby directed to calculate the liability owed, including interest to be calculated from the date the sugarcane was delivered, by the sugar mills and to ensure all necessary legal means to fulfill the outstanding debts of the cane growers. The learned Deputy Registrar (Judicial) of the Lahore High Court is directed to release the collected amount to the cane commissioner for the disbursement to the sugarcane growers.

87. For the foregoing reasons, I am persuaded to dismiss the petitions. However, before parting with judgement, I record appreciation for the commendable research carried out in instant matter, involving intricate questions of law of first impression, by Mr. Ahmad Hassan, *Law Clerk* attached to me, which immensely facilitated me to arrive at a conclusion recorded in my opinion.

Judge

I agree with the opinion
appended Separately by my
learned brother Mushir Dhami