STATE OF PUNJAB (NOW HARYANA) AND ORS.

v.

AMAR SINGH AND ANOTHER

January 21, 1974

[D. G. PALEKAR, V. R. KRISHNA IYER AND R. S. SARKARIA, JJ.]

Punjab Security of Land Tenures Act (10 of 1953) Ss. 10A and 18—Scope of.

Interpretation of Statutes.

Section 10A(b) of the Punjab Security of Land Tenures Act, 1953, provides that *no transfer or other disposition of land* which is comprised in a surplus area [as defined in s. 2(5a)[, at the commencement of the Act, shall affect the utilization thereof for the resettlement of ejected tenants; and s. 10A(c) provides that for the purpose of determining the surplus area, any judgment, decree or order of a court *or other authority*, which diminishes the surplus area, shall be ignored. Under the Act, landowners who had land in excess of the 'permissible area' coluld reserve for themselves lands to the extent of the permissible area; and the rest, excluding the permissible area of the tenants, was the surplus area of the landowner. Section 18 provides that a tenant, who has been in continuous occupation of the land comprised in his tenancy for a minimum period of 6 years, shall be entitled to purchase from the landowner, the land so held by him.

At the commencement of the Act on April 15, 1953, a landowner owned three items of property which did not form part of her reserved area. One of the items was under her self-cultivation while there were tenants on the other two. Those tenants later gave up possession and abandoned the lands. The landowner made a gift of the 3 items to her daughter, who sold them to her husband and his brother, the 1st and 2nd respondents respectively. The Collector (Surplus Area), while determining the surplus area of the landowner, ignored the gifts and sales, and included the 3 items in the landowner's surplus area. The respondents appealed to the Commissioner. They also applied to the Assistant Collector under s. 18, for purchase of the lands in their possession on the ground of continuous occupation for 6 years. The applications were allowed on the basis of a compromise between the applicants (respondents) and the landowner, and the respondents paid the purchase price determined by the Assistant Collector. On the basis of those purchase orders, the Commissioner, set aside the order of the Collector (Surplus Area) declaring the surplus area of the landowner, and directed him to inquire into the matter afresh. The Collector [the Asstt. Collector who had allowed the purchases by the respondents had by then become Collector (Surplus Area)] thereupon determined the surplus area of the landowner under s. 10A(c). He, however, held that the leases granted to the respondents were collusive and that the orders of purchase under s. 18 were ineffective, and included the 3 items again in the landowner's surplus area.

The High Court allowed the Writ Petitions of the respondents on the ground that the authority acting under s. 10A(c) could not ignore the purchase orders passed under s. 18.

Allowing the appeals to this Court,

HELD : *Per* Palekar and Krishna Iyer, JJ. (Sarkaria J. *dissenting*) : 1(a) The public policy of s. 10A cannot be outwitted by consent orders calculated to defeat the provision, and, without the statutory authority charged with the inquiry being satisfied about the bonafides of and eligibility for, the purchase. [175G]

When high public policy finds expression in socio-economic legislation contractual arrangements between interested individuals, sanctified into consent or compromise decrees or orders cannot be binding on the instrumentalities of the State called upon to enforce the statute, although the tribunals, enjoined to enforce the law, may take probative note of the recitals in such compromise or consent statements in proof of facts on which their jurisdiction depends. Neither the materials on

A record in the present case, nor the recitals in the compromise, disclose the application of the judicial mind. [174C]

(b) It was found by the Collector (Surplus Area) that the leases in question have been collusively got up to dwindle the surplus area of the landowner and that the landowner had conspired with her son-in-law and his brother to retain the area in contravention of the law. Further, S. 18 applies only to persons who are legally tenants. In the present case, the lease was granted by the landowner after gifting the property to her daughter. Also, the section requires 6 years continuous occupa-
B tion by the tenant; but the Collector found that the respondents had not completed the period at the time of their application under S. 18. The order in fact is thus a nullity. Therefore, it could not be contended that the orders of purchase in favour of the respondents passed by the concerned officer under S. 18 had become final and not having been set aside bind the other authority determining the surplus area.

(c) There is no provision in s. 18 to give notice to the Collector who is to declare the surplus area and so, the State (represented by the Collector), which is vitally
C concerned in the resettlement of ejected tenants by utilising the surplus area, has no opportunity to present its case against the fraudulent character of the proceedings under s. 18 before the Assistant Collector. The State, not being a party to that order, in any case, cannot be bound by it, whatever may be the effect as between the parties to those proceedings. Since the State is not a party it has no right of appeal or review. [172B]

(2) The authority under s. 10A may ignore the order of the authority under s. 18.

D

(a) There is an apparent conflict between Ss. 10 and 18 and the basic judicial approach should be to harmonise the two sections. The major premise of statutory construction is that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, the meaning which promotes, the benignant intent of the legislation in preference to the one which perverts the scheme of the statute. The objects of the agrarian reform underlying the Act are : (a) to impart security of tenure; (b) to make the tiller the owner; and (c) to trim large land
E holdings thus creating peasant proprietorships ensuring even distribution of land ownership. The intendment of the statute is that reservation was to be made by a landowner to enable self-cultivation, and so, landowners could eject tenants. But, since agrarian reform must promote not eviction but security of tenure, it became necessary for the State to create surplus area of a considerable extent, so that, the evicted tenants could be rehabilitated on such surplus lands, enjoying fixity of tenure and paying rent to the owners. The success of the scheme depends on preventing leakages through private alienations, collusive awards and decrees and the like, and so, care was taken in s. 10A(c) to interdict alienations and to ignore decrees
F and orders which diminished the surplus pool. Such a strategic provision must receive a benignantly spacious construction. [160H, 161F, 157H]

(b) There is no force in the contention that the benefit under s. 18 would be completely nullified and obliterated if s. 10A(c) were to prevail and apply to orders under s. 18. Though S. 10A(c) uses the words '*shall* be ignored' it is not every order under s. 18 that would have to be ignored but only those orders which have the effect of diminishing the surplus area. The person who is entitled to purchase under s. 18 is a person lawfully inducted on the land as a tenant. The cases under the
G section would be, (i) of tenants who are eligible to purchase by virtue of 6 years continuous occupation of land in their permissible area, and (ii) of tenants resettled on surplus area of the landowner, after 6 years continuous occupation. The purchase in the first case being from the tenant's permissible area is outside the surplus area of the landowner and does not have the effect of diminishing the landowner's surplus area. In the second case, the purchase fulfils the object of the statute of making the tiller the owner. The principal category adversely affected would be post statutory collusive tenants and perhaps some bonafide tenants, who, however do not
H deserve sympathy since they damage the prospects of displaced persons to be resettled. Section 18(1)(iii) apparently contemplates purchase rights for persons who had no possession when the Act came into force, but the exception was made only in case of those persons who had been deprived of their rights by unjust eviction prior to the Act coming into force. [169H-170D]

(3) The purchase order by the Assistant Collector under s. 18 was rightly ignored by the Collector (Surplus Area), as 'other authority' in s. 10A(c) includes the officers under s. 18. The plain meaning of the sub-section is that any *order by any authority* which shrinks the surplus area of the landowner is invalid to the extent laid down in that clause, and orders under s. 18, if they diminish the surplus area suffer the same fate. The High Court was wrong in inferring from the statement of objects and reasons that 'other authorities' in s. 10A(c) are arbitrators or such like agencies and not authorities under the Act. The objects and reasons relating to the clause of a bill may be read for finding the object of the law and not to control its amplitude. The purpose as revealed in the statement of objects is that the legislature wanted to ensure the invulnerability of the surplus pool provision to attacks, by ignoring judicial and quasi-judicial orders of every sort. This object of s. 10A(c) cannot be fulfilled unless the widest meaning were given to the expression 'court or other authority'. Nor is there any basis for truncating the ambit of 'other authority'. 'Other authority' is every other authority within or without the Act. [168F, 169B, 171A-B] A B

(4) Further, the expression 'transfer or other disposition of land' in s. 10A(b) covers leases, which by very definition, are a species of transfer of land. In the present case, the lands in dispute fell outside the landowner's reserved area and were therefore included in her surplus area. The first respondent, to be entitled to be a lessee, must *prima facie* show that the alienation in his favour, as a lessee, does not violate s. 10A(b) which prohibits all transfers and other dispositions which diminish the surplus area of the landowner. Under s. 2(1), the word 'landowner' includes also the lessee and the permissible area of the tenant is excluded from the surplus area of the landowner. Merely because of the outstanding leases in favour of the prior tenants at the commencement of the Act, the two items which were earlier leased to tenants do not *ipso facto* fall outside the surplus area of the landowner. That would be so only if they are comprised in the permissible area of the tenant on the relevant date but there is no evidence to that effect. In relation to the prior tenants no such claim has been set up by the first respondent, and the first respondent was not a transferee from the prior tenants, but a *de novo* tenant. After the prior tenants gave up possession the lands came into the actual possession of the landowner and the leases were extinguished. It follows, that one item was always in the possession of the landowner and other two came into her possession subsequent to the coming into force of the Act, that those three items of property should be computed as part of the landowner's surplus area, and that s. 10A(b) operates to invalidate the alleged leases to the respondents, since they diminish the surplus area of the landowner. The respondents, therefore, had no right, as tenants, to purchase under s. 18. [167D, 167H-168D] C D E

(5) It could not be contended that even if leases are prohibited by s. 10A(b) the sub-section does not affect involuntary transfers and that since a purchase under s. 18, effects an involuntary transfer it is not affected by s. 10A(b). The three sub-clauses of s. 10A, read together, show that if the landowner, by any act or omission of his suffered a diminution in the surplus area by a transfer, *voluntary or otherwise* contrary to the right of the State Government to dispose of it, such a transfer is liable to be set aside. The expression 'transfer' is wide enough to cover transfers by operation of law, as in the present case, under s. 18. To uphold the contention of the respondents that involuntary transfers are not affected would stultify s. 10A and the scheme of the statute altogether as they would diminish the available surplus area of a landowner. Moreover, special exclusion to save transfers by way of inheritance and compulsory land acquisition by the State would be supererogatory had involuntary transfers been automatically excluded from s. 10A(b). [172H] F G

The Court expressed the hope that land reform measures would be quickly implemented, because, in the present case, more than a score of years notwithstanding the processes of fixing 'reserved areas and surplus areas' on the strength of which alone confirment of proprietary rights on tenants and resettlement of a ejected tenants could proceed, are still lingering. [176C] H

Mam Rai v. *State of Punjab* I.L.R. (1969) 2 Pun. & Har. 680; 682-683, over-ruled.

A *Chari* v. *Seshadri* [1973] 1 S.C.C. 761, *Bahadur Singh* v. *Muni Subrat* [1969] 2 S.C.R. 432, *Kaushalya Devi* v. *K. L. Bansal*, [1969] 2 S.C.R. 1048 and *Ferozi Lal Jain* v. *Man Mal* [1970] 3 S.C.C. 181, referred to.

Per Sarkaria J. (*dissenting*) :

(1) (a) The Collector (Surplus Area) would be entitled to ignore the order of the Asstt. Collector under S. 18 independently of s. 10A of the Act if the order based on the compromise is void and a nullity. But if it is only voidable or erroneous, it could be avoided only by way of appeal review or revision or in other appropriate pro-
B ceedings, known to law and the Collector (Surplus Area) could go behind it only when it is so set aside, or if the provisions of s. 10A entitle him to do so.

(b) An order is null and void if the quasi-judicial tribunal passing it lacks inherent jurisdiction over the parties and the subject matter. In the present case, the Assistant Collector who made the order under s. 18 was duly invested with jurisdiction under the section. The respondents were tenants and merely because they were related to the landowner they could not
C be denied the rights and privileges under the Act. The allegations in the purchase application about the applicants' being in continuous occupation of the lands comprised in their tenancy for the requisite period, coupled with admission by the landowner in the compromise, furnished sufficient material on the basis of which the authority could have been satisfied about the existence of all the facts essential for the exercise of his jurisdiction under s. 18. [191F, 192E]

(c) It is not correct to say, that on the facts of the instant case the Assistant Collector passed the orders solely on the basis of the compromise without apply-
D ing his mind to the facts of the case. Application of mind is evident from the circumstance that he assessed the price to be paid by each of the applicants who thereafter did so. The mere fact that he did not record a finding in so many words that he was satisfied from such and such material in regard to the existence of the basic conditions necessary for making the order under s. 18 did not render his order a nullity when such material was otherwise evident on the record. Therefore, the order under s. 18 was not a nullity and it could not be ignored as non-est by the Collector (Surplus Area). [192E]

E *K. K. Chari* v. *R. M. Seshadri* [1973] 1 SCC 761, *Nagindas Ramdas* v. *Dalpatram Ichchram* Civil Appeal No. 2479/72 decided on 30-11-1973, *Smt. Ujjam Bai* v. *State of Uttar Pradesh*, AIR 1962 S.C. 1621=[1963]1 SCR 778 and *Ittyavira Mathai* v. *Varkey Varkey*, A.I.R. 1964 S.C. 907 (910)=[1964]1 SCR 495, followed.

(d) The Collector (Surplus Area) and the Collector acting under s. 18, are coordinate authorities exercising separate and distinct jurisdictions. If one feels that a certain order passed by the other in the exercise of his distinct jurisdiction is erron-
F eous it was open to that authority to get it rectified in the appropriate manner provided by the Act, that is, by way of appeal, review or revision. The provisions in regard to appeal, review and revision against an order of the Assistant Collector under s. 18 are, under ss. 24 and 25 of the Act, ss. 80 to 84 of the Punjab Tenancy Act, 1887. There is nothing in the Act or the Rules framed under the Act, or in the Tenancy Act, as to who can file an appeal or revision against the decision or order of the Collector exercising jurisdiction under s. 18; and, in view of the long practice there could be no doubt that the State Government or its department can, if aggrieved or prejudiced by such a decision, go in appeal or revision against it. A person who is not a party to a decree or order, may with the leave of the
G Appellate Court prefer an appeal and as a rule, leave will not be refused to a person who might have been made a party to the proceedings. In any case, the State or the department could have moved the Financial Commissioner to set right the illegality or impropriety in revision. The Financial Commissioner under the Tenancy Act has wide powers in revision to correct errors committed by the inferior authorities and there is no time limit to the exercise of the revisional power. Once the application of the tenant under s. 18 has been allowed and the order is not set aside in appeal or revision, it becomes final and remains immune to an attack against its
H validity on any ground, including that of collusion, before the coordinate authorities under the Act dealing with the question of the determination of surplus area. In the present case the Collector (Surplus Area) could not go behind the orders under s. 18 or himself sit in appeal over them, especially when the officer who passed the two orders happended to be the same person. [194C]

Amir Chand v. *State of Haryana* 1971 PLJ. 449, *Securities Insurance Co.* [1894] 2 Ch. 410, *Province of Bombay* v. *W. I. Automobile Association* A.I.R. 1949 Bom. 141, *Heera Singh* v. *Veerka*, A.I.R. 1958 Raj. 181, *Shivaraja* v. *Siddamma* A.I.R. 1963 Mys. 127, *Executive Officer* v. *Raghavan Pillai* A.I.R. 1961 Kerala 114, *B., an Infant*, [1958] 1 Q. B. 12; *Govinda Menon* v. *Madhvan Nair* A.I.R. 1964 Kerala 235(DB), *Punjab State* v. *Dr. Iqbal Singh* [1965] Punjab Law Journal 110, *Mam Raj and ors* v. *State of Punjab* I.L.R. [1969] 2 Punj. and Haryana 680 and *Shyamlal* v. *State of Gujarat*, [1965] 2 S.C.R. 457, referred to. A

(2) The view taken by the High Court with regard to the interpretation and inter-relation of s. 10A and s. 18 is sound and therefore s. 18 prevails over s. 10A and so, the authority under s. 10A cannot ignore the order of the authority under s. 18. [197B] B

(a) The two canons of interpretation applicable to the statute are, (i) if choice lies between two alternative constructions, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty friction or confusion into the working of the system and, (ii) if there is an apparent conflict between different provisions of the same enactment they should be so interpreted that, if possible, effect may be given to both. [195E] C

King Emperor v. *Benori Lal Sarma* [1944] 49 CWN 178 (PC)=72 IA 57, referred to.

(b) Section 18 is designed to promote one of the primary objects of the Act, namely, of procuring ownership of the land to the tiller on easy terms. The self-sufficing machinery of this section is available for purchase of their tenancies to the tenants inducted before or after April 15, 1953, by the landowner, equally with tenants settled by the Government on the surplus area. The Act does not take away the right of the landowner to induct tenants on such area. Every sale made by the operation of s. 18 in favour of a tenant admitted by the landowner on the surplus area, causes diminution of the surplus area or affects the utilisation thereof by the Government. Under s. 10A(c) every judgment, decree or order of a court or the authority, which diminishes the surplus area *shall* be ignored. If sales in favour of tenants inducted by the landowner after April 15, 1953 were to be ignored under s. 10A(c) then it will reduce the working of the system of the Act to a mockery, because it will present the spectcle of manifest contradiction and absurdity of an Act giving a right with one hand and taking it away by another. The adoption of such an interpretation may not completely obliterate s. 18 but it will certainly truncate it, with reference to the category of tenants inducted by the landowner after April 15, 1953. [195G] D E

(3) The conflict between the two provisions can be avoided only if the general words 'other authority' in s. 10A(c) are read *ejusdem generis* with the specific words 'judgment, decree or order of a court' which immediately precede them. Thus construed, the general words 'or other authority' will not take in an authority exercising jurisdiction under s. 18 of the Act. [196B-C] F

(4) The lease created by the landowner in the present case, ceased to subsist as soon as the Collector made orders of purchase under s. 18 in favour of the respondent. The question whether the extinct lease which preceded the purchase orders was a transfer or not, did not therefore survive for decision. [197A]

Bhajan Lal v. *Punjab State* [1968] 70 I.L.R. 664, *Bishan Singh* v. *Punjab State* [1968] 47 LLt 284 and *Lakshmi Bai* v. *State of Haryana* [1971] LXXIII Punj. L.R. 815, referred to. G

Further, the land comprised in the lease of the prior tenants was far less than their permissible limit and the High Court rightly presumed that the lands were within their permissible area, since there was no evidence that they held any other land. Surplus area has to be determined, as appears from s. 19F, with reference to the situation as on April 15, 1953, when the Act came into force. The disputed land held by the prior tenants was within their permissible area and therefore it could not be included in the surplus area of the landowner. At the time when the Collector (Surplus Area) took up derermination of the surplus area, these lands were still comprised in a tenancy though under a different tenant, namely the first H

A respondent. Such change of the tenant does not amount to a future acquisition of land, comprised in that tenancy, by the landowner within the contemplation of s. 19A or s. 19B of the Act. [197H-198D]

Bhagwan Das v. *The State of Punjab*, [1966] 2 SCR 511, followed.

Harchand Singh v. *Punjab State*, (1964) 66 P.L.R. 285; 1963 P.L.J. 144, approved.

B (5) The expression 'transfer and other disposition of land' in s. 10A(b) does not include completed sales effected under s. 18. The words 'transfer or other disposition of land' must be restricted to voluntary dispositions of land made by the landowner and cannot be extended to cover involuntary transfers brought about by operation of law or circumstances beyond the control of the landowner. This is the only reasonable interpretation of the words 'transfer or other disposition of land' in s. 10A (b) which is consistent with s. 18 and can reconcile and keep effective both the sections. The two types of involuntary transfers, namely compulsory acquisition of land by Government or by an heir by inheritance are only illustrative of the intention of the legislature. [196 D]

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CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1755 and 1756 of 1967.

From the judgment and order dated the 4th October, 1966 of the Punjab and Haryana High Court in Civil Writ Petition No. 854 and 855 of 1963.

D

V. C. Mahajan and *R. N. Sachthey*, for the appellants.

S. K. Dhingra for the respondents.

The Judgment of D. G. PALEKAR and V. R. KRISHNA IYER, JJ. was delivered by Krishna Iyer, J. R. S. SARKARIA, J. gave a dissenting Opinion.

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KRISHNA IYER, J. These two appeals by the State of Haryana challenge the High Court's approach to an interpretation of two crucial provisions of a land reforms law, namely, ss. 10-A and 18 of the Punjab Security of Land Tenures Act (X of 1953) 1953 (for short called "the Act"). Counsel for the appellants complains that if the view upheld by the High Court of subordinating s. 10-A to s. 18 were not upset by this Court, large land holders may extricate their surplus land in excess of the ceiling set, through legal loopholes, such as have been practised in the present case. If make-believe deals and collusive proceeding, he argues, may maneouvre through the legal net cast by s. 10-A of the Act interdicting alienations and orders which diminish the surplus pool intended for re-settlement by the State of ejected tenants, the agrarian reform measure would be reduced to a paper tiger or socio-economic eyewash. Certainly, land reforms are so basic to the national reconstruction of the new order envisaged by the Constitution that the issue raised in this case deserves our anxious attention. We have to bear in mind the activist, though inarticulate, major premise of statutory construction that the rule of law must run close to the rule of life and the court must read into an enactment, language permitting, that meaning which promotes the benignant intent of the legislation in preference to the one which perverts the scheme of the statute

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on imputed legislative presumptions and assumed social values valid in a prior era. An aware court, informed of this adaptation in the rules of forensic interpretation, hesitates to nullify the plain object of a land reforms law unless compelled by its language, and the crux of this case is just that accent when double possibilities in the chemistry of construction crop up. A

A breif survey of the relevent facts leading up to the legal controversy seeking resolution in these appeals will help focus forensic attention on the provisions of the Act which bear upon the issue. A lady by name Lachhman had considerable agricultural property, far in excess of the relatively liberal ceiling set by the Act which came into force on April 15, 1953. She had a daughter Shanti Devi and son-in-law Amar Singh, respondent in Civil Appeal No. 1755 of 1967, whose brother Indraj is the respondent in the connected appeal No. 1756 of 1967. Annexure (B) to the writ petitions is an order dated May 11, 1962 passed under the Act and the Rules by the Collector (Surplus Area) Sirsa. It is this order which has been successfully attacked in the writ petitions and is the subject-matter of the present appeals. The facts stated therein have not been reversed in the judgment of the High Court and we have to proceed on the assumption that those statements are correct. We are concerned with three khasras Nos. 177, 265 and 343, in all over 131 acres of land. At the commencement of the Act, khasra No. 177 was under Mst. Lachhman's self-cultivation but there were two tenants under her, Chandu and Sri Chand, on other two plots. Together, these three plots constitute a large slice out of her surplus areas and are now claimed by the respondents, Amar Singh and Indraj, as their own under a purchase ordered by the Assitant Collector who is the competent authority under s. 18 of the Act (Annexure A to the writ petitions) Appellant's counsel urges that the history of the derivation of title of these claimants needs to be sceptically studied, the relationship of the parties being that of mother and daughter, son-in-law and brother and the heavy impact being slicing off a good chunk from the surplus area, otherwise available for re-settlement of evicted tenants. B C D E F

At the outset it must be mentioned that the two tenants, Chandu and Sri Chand who were on the land on the determinative date (April 15, 1953) presumably showed no interest in claiming rights granted to tenants under the Act, which were subject, of course, to their possessing lands less than the permissible 'area'. We have no information in this case what the total extent of lands in the possession of these two tenants was and whether they had chosen to keep other lands in preference to the ones under Mst. Lachhman. We need not speculate on how or why they left the suit plots but may note that they were on the holding on the key date in 1953 and if later they did not keep their possession (abandoned or surrendered) the tenancy terminated and on the facts of this case the lands came into the actual possession of the land holder, Mst. Lachhman, no other legal inference being possible than that the G H

A leases were extinguished and the lands reverted to the landlady on general principles of law. In short, we have to proceed on the assumption that one plot, namely, khasra No. 177 had always been in the self-cultivation of the landlady and that the two tenanted plots, namely, khasras Nos. 265 and 343, came into the khas possession of the landlady subsequent to the crucial date. Apprehending the statutory peril to these lands which were admittedly outside her
B "reserved areas" Mst. Lachhman went through the exercise of making a gift of the three lands to her daughter Smt. Shanti (vide mutation No. 445 decided on December 24, 1953 and referred to in Annexure B). Subsequently, it is seen that Amar Singh, husband of Shanti and Indraj, brother of Amar Singh purported to apply for purchase of the landholders right in these three plots under s. 18 of the Act making Lachhman and Shanti co-respondents and alleging that they
C were tenants' qualified for the statutory benefit. The Assistant Collector before whom the application was made for purchase under s. 18 has said in Annexure 'A' to both the writ petitions that these two ladies "are said to be big land-owners but had not got this land reserved for their own purpose". Curiously enough, in both the purchase petitions the parties avoided even an enquiry by the Assistant Collector as is evident from the following statement
D from Annexure 'A',

> "Before the proceedings could start the parties have come to terms and they have actually put in court a compromise deed which they have backed up by their statements."

May be, because these dubious moves if exposed to the examination of an officer might prove a fiasco, the close relations who
E figured as petitioner and respondents lulled the Assistant Collector into mechanically acting on the compromise without enquiring into any of the eligibility factors before a purchase could be ordered.

There is another set of facts which needs mention at this stage. Even before the purchase proceedings were initiated by the writ petitioners, the Collector had, as early as April 1961, declared the
F surplus area of Lachhman ignoring alienations and including the three khasra numbers. But on appeals carried both by the landholder and her son-in-law and his brother the Commissioner ordered a further enquiry. Meanwhile, purchase proceedings were started and by a quick compromise, orders of purchase were obtained. But all these proved exercises in futility because the Collector, Surplus Area, again ignored the leases to the writ petitioners as collusive and
G the orders of purchase as ineffective in the impugned order, Annexure B. However the High Court set aside Annexure 'B' so that the petitioners before it, the son-in-law and his brother, were restored to their purchases, and the State lost the lands from the surplus pool. The aggrieved State canvasses the correctness of the supersession of s. 18 and of certain other legal reasoning approved by the Court, as its impact on the working of the land reform scheme would be
H disastrous. Anyway, the law laid down in this case was affirmed by a Full Bench of that Court. Having regard to all those circumstances a series analysis and attempt at harmonisation of the various provisions of the Act is necessary now.

A flash back to the genetic evolution of the act and the legislative mutations by amendatory effort to make the law effective, and to unmake judicial decisions which weakened the working of it will help understand the current bio-chemistry of the Act. Any interpretation unaware of the living aims ideology and legal anatomy of an Act will miss its soul substance—a flaw which we feel, must be avoided particularly in socio-Economic legislation with a dynamic will and mission. Now to the legislation itself. A brief introduction is found in the reference order of the Full Bench (Shamsher Bahadur, J.) in *Mam Raj* v. *State of Punjab :* (1)

> "The Act passed on 15th of April, 1953, was not the first legislation on the subject and the contours of many of the concepts had already taken shape in the two earlier enactments on the subject, namely, the Punjab Tenants (Security of Tenure) Act, 1950 (Act No. 22 of 1950) and Punjab Tenants (Security of Tenure) Amendment Act, 1951 (President's Act 5 of 1951). The Act, which at once consolidated and amended the existing law on the subject, was designed "to provide for the security of land tenure and other incidental matters". As is clear from the preamble, the primary object was the protection of tenants whose ejectments recently from holdings held by landowners owning vast tracts of lands, had taken place on a massive scale. In restoring the rights of tenants ejected after 15th of August, 1947, care was taken that landlords with small holdings were not subjected to harassment by the tenants. For this reason, the concepts of "small landowner", "permissible area" and "reservation" were introduced. A small landowner was described as a person whose entire holding in the State of Punjab did not exceed the permissible area which though fixed at 100 standard acres in the Act of 1950 was reduced to 30 standard acres in the Act. A Landowner owning larger areas was entitled to reserve the permissible area, and many of the provisions of the Act dealt with the manner and exercise of this right of reservation. The right of the landowner to eject tenants from the reserved or permissible areas was recognized in the Act though under section 9-A (introduced by Punjab Act 11 of 1955) the tenants liable to ejectment on this score had to be accommodated in surplus areas, a minimum period of ten years' tenancy was fixed under section 7 in respect of tenants who were in occupation of land outside the reserved areas and the right of the tenants who had been ejected after the 15th August, 1947, for restoration to the tenancies was recognised. Provisions were made for the exercise of the other rights of the tenants, the most important of these being the right to purchase the leased lands under section 18 of the Act."

The triple objects of the agrarian reform projected by the Act appear to be (a) to impart security of tenure (b) to make the tiller the owner, and (c) to trim large land holdings, setting sober ceilings. To convert these political slogans into legal realities to combat the evil of mass evictions, to create peasant proprietorships and to ensure even dis-

(1) I.L.R. [1969] 2 Pun. & Har. 680; 682-683.

tribution of land ownerships a statutory scheme was fashioned, the cornerstone of which was the building up of a reservoir of land carved out of the large landholdings and made available for utilization by the State for re-setting ejected tenants.

The scheme of agrarian re-organisation contemplated by the statutes is simple. The legislature fixed a limit on ownership expressively described as "permissible area" land-owners who exceeded this area were allowed to reserve for themselves the best lands they desired to keep and this parcel or parcels of land was meaning fully designated as "reserved area". Of course, if he failed to intimate his selection within six months from the commencement of the Act to the Patwari concerned, the prescribed authority was empowered to select the parcel or parcels of land which such person was entitled to retain for himself. The legislature found that many land-owners had failed to make the reservation in time and so by the Amending Act 46 of 1957 a further period of six months from the commencement of the later Act was given for selecting the land/lands they meant to keep, and further again gave the prescribed authority power to select the parcel or parcels of land on behalf of the defaulting landholders. The intendment of the statute was that the reserved area was to be self-cultivated and so land-owners were competent to eject tenants from the reserved area, although, generally speaking, evictions had been barred. As a matter of fact, landholders were directed to start self-cultivation within six months from the date of reservation or the date on which they got possession by eviction. Small holders, *i.e.*, persons who owned less than the permissible area were not only not disturbed by the statute in regard to their ownership but were also allowed to evict tenants from their parcels of land so that they may also become self-cultivators. This process of making the proprietor cultivator naturally would result in the co-existence of possession and ownership at the cost of ejectment of tenants from their holdings. Since agrarian reform must promote not eviction of lessees but security of tenure for them it became necessary for the State to create a considerable surplus pool of lands coughed up by large owners who held beyond the permissible areas. All the tenant refugees from resumed lands were to be rehabilitated on surplus lands and such tenants, enjoying fixity of tenure would continue to pay rents to the owners. Another limb of the peasant proprietorship plan was the conferment of the right to purchase the landlord's right on long-standing tenants with six years continuous occupancy. If the scheme in the book had worked well on the ground the Act would have paved the way for a new rural map of economic relations even though the problem of the landless poor may perhaps have survived. Such was the conspectus of the legislative scheme.

It is obvious that this blue-print for a peaceful transformation of agrarian relations assumes the availability of a large surplus area on which the State can settle tenants from the reserved areas and small landholders' holdings. Thus the key to the success of the scheme is the maximising of the surplus land reservoir and sealing off legal leakages

through private alienations, collusive orders and decrees and the like, and so care was taken to interdict alienations and ignore decrees and orders which diminished the surplus pool. A

At this stage it may be useful to sketch out the broad outlines of the statute with specific reference to its provisions and changes. The Act of 1953 had been amended often, for the professed reason, atleast once, that judicial pronouncements have had the effect of defeating the objectives with which the law was enacted. Substantial amendments were made in 1955, 1957 and 1962. The objects and reasons of Punjab Act 14 of 1962, which brought in certain significant restrictions on alienations and acquisitions of large landholders starts off in the statement of objects thus : B

> "Some of the recent judicial pronouncements have the effect of defeating the objectives with which the Punjab Security of land Tenures Act, 1953, was enacted and amended from time to time. It was intended that the surplus area of every land-owner recorded as such in the revenue records should be made utilisable for the settlement of ejected tenants." C

Certain specific decisions and their impact on the legislative operation were mentioned, and then the statement of objects proceeded : D

> "In order to evade the provisions of s. 10-A of the Parent Act interested persons, being relations, have obtained decrees of courts for diminishing the surplus area. Clause (4) of the Bill seeks to provide that such decrees should be ignored in computing the surplus area."

E

We mention this only to emphasize that the legislature has been anxious to guard against erosion of the surplus pool by alienatory maneouvres or even decrees and orders obtained through judicial or quasi-judicial processes.

The Act defines "permissible area" "in relation to land-owner or a tenant as 30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 acres, such 60 acres." (s. 2(3). The landlord who has a vaster extent may utilise the specific lands he wants to keep for himself and this is called "reserved area." Section 2(4) defines "reserved area" as "the area lawfully reserved under the Punjab Tenants (Security of Tenures Act) 1950 (Act XXII of 1950), as amended by President's Act of 1951,....." The area other than the reserved area, *i.e.* the balance left over, is defined as "surplus area". Section 2 (5-a) defines "surplus area" a concept introduced by Act XI of 1955. It is useful to extract the definition which runs thus : F G

> "Surplus Area" means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under section 5-B or the area which is deemed to be surplus area under sub-section (1) of section 5-C and includes the area in excess of the permissible area selected under section 19-B; but it will not include a tenants permissible area : H

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

B At this stage it may be mentioned that land-owner is not only entitled to self-cultivate his reserved area but is obliged to do so within the period stipulated in the proviso to s.2(5-a) lest such un-self-cultivated land become surplus area. But for fear that absentee landlords may pretend to be self-cultivating while really leasing out their lands to close relations, the statute defines "self cultivation" as cultivation by the land-owner personally or through his wife or children or through C prescribed relations. It may be noted that a son-in-law is not one of those relations (*vide* rule 5 of the Punjab Security of land Tenures Rules, 1956.).

Sections 5, 5-A and 5-B deal with the reservation of land by large landholders and the procedure in that behalf. What is important to D note is that in the present case the landholder has made her reservation and the properties in dispute fall outside it and are therefore included in the surplus area. Immunity from eviction of tenants is conferred by s. 9 but a landlord is entitled to eject a tenant from the area reserved under this Act. However, such ejectment shall not be given effect to by way of dispossession unless the displaced tenant "is accommodated on a surplus area in accordance with the provisions of s. 10-A or....." E Of course, if the tenant is a close relation of the landlord within the prescribed category this protection does not enure to him as per the second proviso to s. 9-A. It is noteworthy that a son-in law is not one such relative. It is obvious that a large number of tenants would be ejected by small landholders and large landholders from their reserved areas under s. 9 of the Act. Naturally, legislative concern for their rehabilitation found expression in s. 10-A(a) which runs F thus :

"10-A(a) The State Government or any officer empowered by it in this behalf, shall be competent to utilize any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of s. 9."

G The success of the scheme, therefore, depends on the extent of the surplus pool. For one thing, large landholders, when deprived of their excess area, as well as small landholders, in order to be viable, have to secure actual possession of what they are eligible to keep, this being the legislative justice shown to land-owners by the Act. Actual possession could follow only if the potential for re-settlement of dispossessed tenants were sufficent. That is why the legislature has H jealously protected the surplus pool which plays a pivotal role in the whole programme. For this purpose s. 10-A(b) was brought in in 1955 and it reads :

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

Plainly, there is a wide interdict against any transfer of other disposition of land comprised in the surplus area, if it will affect the utilisation thereof for the re-settlement of tenants ejected or to be ejected under cl. (i) of sub-s. (1) of s. 9. Such a strategic provision which takes care of the surplus reservoir of land must receive a benignantly spacious construction. There can, therefore, be no doubt that the expression "transfer or other disposition of land" must definitely cover leases which, by very definition, are a species of transfer of land. It looks as if other devices were resorted to by large land-owners to defeat the surplus area scheme of s. 10-A. Courts and other authorities were approached and, through their processes, decrees and orders were secured whereby lands out of the surplus area could be salvaged by the land-owner. The legislature finding this anti-ceiling phenomenon clamped down a blanket ban on the adverse operation of "any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing" the area of a person which could have been declared as his surplus area. Section 10-A(c) may be usefully reproduced in this context:

"10-A(c) For the purposes of determining the surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored."

It is extremely important to remember that while this provision was enacted in 1962 and while s. 10-A(b) prohibiting alienations was passed in 1955, both these provisions were given retrospective effect as from the decisive date, namely, April 15, 1953. The deep concern of the legislature is clear from all this.

Right from the beginning one of the primary objects of the statute had been to enable tenants to purchase the Landlord's right and become full owners and in this behalf was enacted s. 18 which has figured very much in the controversy in these appeals. It states :

"18(1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a land-owner other than a small land-owner—

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

(ii)....

(iii)....

A shall be entitled to purchase from the land-owner the land so held by him but not included in the reserved area of the land-owner, in the case of a tenant falling within clause (i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of commencement of this Act:

B Provided that....

Provided further that...."

The further sub-sections of s. 18 deal with the process of purchase, the Assistant Collector being the authority empowered to order such purchase.

In the appeals before us there is an apparent competition for primacy between s. 18 and s. 10-A(b) and (c), and perhaps it may be relevant to refer to s. 23 also. This last section reads:

C "No decree or order of any court or authority and no notice of ejectment shall be valid save to the extent to which it is consistent with the provisions of this Act."

As we will presently see we are called upon to reconcile the claims and contentions put forward by either side on the strength of the provisions we have just mentioned.

D Let us interpret and apply the law to the facts of this case. The learned judge, Narula, J., stated at the outset:

"I have to take the fact as found by the Collector for the purposes of determining the surplus area of the landowner and consequently for determining the rights of the petitioners so far as they are sought to be interfered with by the impugned order."

E We agree. The same judge formulated the legal questions failing for decision in these words:

(1) Whether the expressions "transfer" or "other disposition of land" in clause (b) of section 10-A of the Act, include involuntary transfer of a part of the holding of a landowner by operation of an order forcing the landowner to sell a part of his holding to a tenant under section 18 of the Act;

F

(2) Whether the order of any other authority referred to in clause (c) of section 10-A of the Act includes an order of the authorities under the Act itself passed under section 18 thereof in favour of a tenant, which order has become final either at its original stage or at the appellate or revisional stage; and

G

(3) In case of conflict between section 10-A and section 18 of the Act, which of the two provisions has supervening effect or overrides the other."

H We do not wholly agree with this itemisation but it is good enough to focus attention of the relevant area of legal controversy. One further point pressed in both courts may be noticed, *viz.*, that the order of purchase of the concerned officer not having been set aside binds the other

authority determining the surplus area and so the question is whether one officer under the Act could ignore an order by another officer under a different provision of the Act, having regard to comity of courts and jurisdictions. As indicated already, the principal discussion in the judgment under appeal has turned on the claim to primacy of s. 18 as against s. 10-A and so it is as well that we state right now what stand we propose to take in resolving apparent conflicts in the provisions of a socially-oriented, project-implementing legislation. Every such statute has a soul and an integrated personality—minor deformities may mar this unity, especially when piecemeal amendments and unskilled drafting occur. The basic judicial approach must be to discover this soul of the law and strive to harmonise the many limbs to subserve the pervasive spirit and advance the social project of the enactment. Seeming confrontations between provisions must be resolved into a co-operative co-existence. This interpretative activism persuades us in this case to reconcile what the High Court has conceived to be a conflict between s. 10-A and s. 18.

Here, there are 3 khasra nos., two of which (nos. 265 and 343) were outstanding on tenancy with Chandu and Sri Chand at the relevant date, April 15, 1953 (which admittedly, is the date with reference to which "permissible area", "reserved area" and "surplus area" have to be fixed). The third item, khasra no. 177, had on the relevant date been with the landowner directly. The High Court treats them as two categories, not without reason. What was with tenants on the relevant date may well be part of their permissible area since 'landowner' in s.2(1) includes a lessee. Moreover, a permissible area of a tenant is excluded by definition from 'surplus area', obviously because the tenant can stabilise himself on his permissible area and it is not intended to dislodge him therefrom for re-settling other tenants under s. 10-A. Therefore, Narula, J., concludes:

> "A survey of the above-mentioned provisions of the Act leave no doubt that if Chandu and Sri Chand who were the tenants of the land now comprised in the tenancy of Amar Singh on April 15, 1953, had continued to be the tenants of that parcel of land, subsequently the land in their tenancy could not be included in the permissible area of the landowner. On the other hand it would have been the right of Chandu and Sri Chand to either get the said land declared as heir own permissible area or to exercise their right under section 18(1) of the Act by making an application under sub-section (2) thereof to purchase the said parcel of land."

The learned Judge proceeds to negative the argument that the legal result is different when the sitting tenants on the relevant date have quit and new tenants have been inducted subsequently: "Surplus area and permissible area of a land-owner has to be determined in view of the situation as it existed on the 15th of April, 1953 and subsequent alienations have to be completely ignored. Though subsequent acquisitions by the landowner may in certain circumstances be included in the surplus area as accretions, no such thing can happen in respect of that parcel of land which could not be included in the sur-

A plus area of the landowner on 15th of April, 1953, which was again not with the landowner on the date when the Collector sought to determine his/her surplus area. In other words, once a piece of land is excluded from the surplus area of a landowner on account of its forming the subject matter of the holding of a tenant in occupation (who is not related to the landowner in the prohibited manner) on the 15th of April, 1953, the mere subsequent change of the holder of the tenancy will not B make the tenancy premises revert to the surplus area of the landowner. It is, therefore, clear that the land comprised in Khasras Nos. 265 and 343 (subject matter of the tenancy in favour of Amar Singh) could not fall within the definition of surplus area in the hands of the landowner and Section 10-A of the Act could not apply to it."

We are afraid there is a fallacy in this reasoning. It is true that a C mere change in tenancy by transfer of the lease as such, as distinguished from a landlord inducting a new tenant on land the prior lease over which has been terminated and possession restored to the lanlord, may not perhaps offend s.10-A although situations may arise even in such cases leading to a different conclusion. We need not investigate this possibility further. In the present case, the exclusion of the two khasras from the surplus area depends on their being part of D the permissible area of Chandu and Sri Chand. To salvage the lease in his favour, Amar Singh, the new tenant, must *prima facie* show that this alienation does not violate s.10-A(b) which prohibits all transfers and other dispositions which diminish the surplus area of the landowner concerned. He has, therefore, to make out (a) that the demised lands do not form part of the landlord's surplus area or (b) that, as was vehemently argued but may with little legal qualms be rejected, a lease E is not a 'transfer or other disposition of property'. The High Court has disposed of this latter submission with the simple but impeccable observation"that the creation of a lease is a transfer or a demise referred to in s.105 of the Transfer of Property Act admits of no doubt". The purpose of the prohibitive provision is to strike at every alienatory essay and the natural meaning of 'transfer' or other disposition of land. apart from the contextual compulsion, embraces leases. The conten- F tion that even wide words must oblige the landlord's plea for a narrow meaning, *viz.*, absolute transfer of ownership, is beyond us to accept.

Do the lands, khasras nos. 265 and 343, because of outstanding leases on April 15, 1953, swim out of the surplus area *ipso facto*? We think not. For that they must be comprised in the *permissible* area of the tenant. Here we have no information placed by him who wants G to prove it affirmatively that these plots lie within the permissible area of 30 standard acres, by definition of Chandu and Sri Chand. That they did not continue in possession after the Act is not disputed. If that were in possession of other lands either as owners or tenants, and such holding was 30 acres or more, it was open to them to relinquish these lands being in excess of their permissible area, in which case, not being the permissible area of the tenant and being in excess of the reserved area of the landlord, these lands would be surplus area of the land- H lord within the definition under s.2(5-a). In the absence of proof that the lands in dispute were comprised in the permissible area of the prior it is not possible to hold that they do not come within the

surplus area of the landlord, Mst. Lacchman. On the contrary, the likely inference flowing from the disappearance from the scene of Chandu and Sri Chand their failure to claim to remain as tenants or to purchase is that these were not their permissible area. It is not as if every bit of land that is with a tenant on the relevant date is his permissible area. It has to fulfil the requirement of s.2(5). No such test has been satisfied here. Nor can it be argued that even if a tenant gives up his interest in the holding the statute will haunt him with rights. 'Permissible area' is not a concept in the abstract but, as s.2(3) mentions, is 'in relation to a landowner or a tenant'. In relation to Chandu and Sri Chand no claim to permissible area or consequential rights has been set up and Amar Singh is not a transferee from them but a *de novo* tenant. It follows that the two khasras should be computed as part of the surplus area of Mst. Lacchman and s.10-A(b) operates to invalidate the alleged lease to Amar Singh as its clear impact is to diminish the surplus area of the landowner. He had, therefore, no right as a tenant to purchase under s. 18.

The more serious question raised turns on the effect of the purchase orders, Annexure A, on s.10-A(c). The High Court reasoned—and this was repeated before us as counsel's argument—that while it is true that for determining the surplus area of a person 'any judgment, decree or order of a court or other authority' obtained after the commencement of the Act and having the effect of diminishing his surplus area 'shall be ignored', this mandate does not apply to orders of authorities under the Act, like the Assistant Collector exercising powers under s. 18. The learned judge quotes the object of s. 10-A(c):

> "In order to evade the provisions of section 10-A of the parent Act interested persons, being relations, have obtained decrees of Courts for diminishing the surplus area. Clause 4 of the Bill seeks to provide that such decrees should be ignored in computing the surplus area."

From this the Court infers that 'other authorities' in s. 10-A(c) are arbitrators or such like agencies and not authorities under the Act. It is useful to read the objects and reasons relating to the clause of a bill to illumine the idea of the law not to control its amplitude. Moreover, the purpose, as revealed in the statement of object is plain. The legislature wanted to insure the invulnerability of the surplus pool provision to attacks, by ignoring judicial and quasi-judicial orders of every sort. In this behalf two provisions were made namely ss. 10-A. and s. 23, primarily the former. In fact, we are concerned only with s. 10-A(b) and (c).

The High Court has taken the view that s. 10-A(b) cannot affect involuntary transfers and since a purchase effected under s. 18 effects an involuntary transfer it is not hit by s. 10-A(b). The further view taken is that the expression "other authority" in s. 10-A(c) refers only to authorities other than those under the Act; the Assistant Collector who has ordered the purchase under s. 10 being outside s. 10-A(c), his order cannot be ignored by the Collector on the strength of S. 10-A (c). A third point converging to the same conclusion taken by the

A Court is that when an order under s. 18 has become final, the Collector acting under s. 10-A(c) cannot but be bound by it until it is set aside in appeal or revision or other appropriate proceedings even though the Assistant Collector's order under s. 18 was passed on a compromise between the parties.

We may now consider the soundness of these grounds separa-
B tely. The object of s. 10-A(c) cannot be fulfilled unless the widest meaning were given to the expression "court or other authority". Nor is there any basis for truncating the ambit of "other authority" in the manner the High Court has done. "Other authority" is every other authority within or without the Act. The reason given by Narula, J., to exclude the officer passing orders under s. 18 from "other autho-rities" is that "the result would be that the benefit sought to be conferred
C by s. 18 on the tenants would be completely nullified and obliterated". In this connection he further observed :

> "In every case, order under section 18 of the Act, would be passed after the Act came into force. If an order under section 18 has to be ignored by the operation of clause (c) of section 10-A, every order under section 18, must be ignored while daclar-
D ing the permissible area of the Landowner. There is no discre-tion in the authorities to apply the provisions of clause (c) of s. 10-A or not to apply them. The provision is mandatory, if, therefore, clause (c) of section 10-A could be utilised for abrogating the effect of an order under section 18 of the Act, the whole scheme of the Act of distribution of land to the tenants and for conferring a right on a tenant to purchase
E the land within the limits of permissible area, would be flouted."

Having given serious consideration to the pros and cons we are not satisfied that this argument is valid; on the contrary, if upheld it may stultify s. 10-A and the scheme of the statute altogether. Obvi-ously, if every order of purchase sanctioned under s. 18 can success-fully diminish surplus area of a landowner, a spate of such, orders would
F be procured by previous arrangement between the landowner and his nominee tenants or even *bona fide* alienees. The present case is a capital illustration of the fraud and collusion that may follow on such an interpretation. Indeed, there is no provision in s. 18 to give notice to the Collector who is to declare the surplus area and so the State which is vitally concerned in the re-settlement of ejected tenants utilising the surplus area has no opportunity to present its case against the fraudulent
G character of the proceedings under s. 18 before the Assistant Collector. The State, not being a party to that order, in any case cannot be bound by it, whatever may be the effect as between the parties to those proceedings. We are concerned here with a challenge by the State to the efficacy of the order, Annexure A, and so we cannot muzzle the plea of the State that the order under s. 18 is void if there are good grounds to hold with it.

H Nor is there force in the argument that benefit under s. 18 would be "*completely nullified and obliterated*" if s. 10-A(c) were to apply to it. It is wrong for the Court to have said that "*in every*

case " orders under s. 10 would have to be ignored. That is not the result of s. 10-A. All the three sub-clauses of that section read together show that if the landlord by any act or omission of his suffered a diminution in the surplus area by a transfer, voluntary or otherwise, in favour of another, *contrary to the right of the State Government to dispose of it*, such a transfer only is liable to be set aside. The tenants described in s. 18 in whose favour the authority sanctions the purchase of the land are not transferees whose transfers have to be set aside as being contrary to the right of the State Government. Actually, the bulk of the cases under s. 18 would be by tenants who are eligible to purchase by virtue of six years' continuous occupation under s. 18(1). Their purchases would often be from land which is their permissible area. Every tenant with six years' ending, be it before or after the commencement of the Act, will be entitled to buy the ownership. Of course, if he is within the reserved area he is liable to be evicted even before he purchases but if he is outside the landlord's reserved area he can move for purchase. Such a purchase being from the permissible area of the tenant is outside the surplus area of the landlord and does not diminish "the area of *such person* which could have been declared as *his surplus area*". *Ex hypothesi* "surplus area" excludes a tenant's permissible area. Therefore, even if that land falls outside the reserved area of the landowner, if it is within the tenant's permissible area, its purchase by the tenant cannot diminish the landowner's surplus area. (emphasis supplied)

Another substantial category, who may buy under s. 18 without reducing the surplus area, is the re-settled tenants. When the State acting under s. 10-A(c) accommodates an ejected tenant the utilization of the surplus land *pro tanto* is fulfilled. Such a rehabilitated tenant of the landlord, after the six years' term, can qualify to buy under s. 18. Such a purchase only fulfils the second object of the Statute of making the tiller the owner and does not in any way diminish the surplus area of the landlord. For, with the re-settlement of an ejected tenant that land, for all practical purposes, is no longer available for the only purpose for which the surplus pool is meant, *viz.*, re-settlement of ejected tenants. Thus, it is clear that s. 18 is not rendered otiose by the view that orders thereunder which diminish the surplus area are bad for violation of s. 10-A(c). Indeed, the principal category adversely affected by our view would be post-statutory collusive tenants, who are in most cases likely to be brought in by landlords experimentally to rescue those lands from the surplus pool, and even in *bona fide* cases they do not deserve sympathy since they damage the prospects of displaced tenants from being re-settled. It may as well be noted here that the person who is entitled to purchase under s. 18 is a tenant. *i.e.* a person lawfully inducted on the land as a tenant. Once a land is held to be part of the surplus land of the landlord, it rests with the State Government for being disposed of for resettlement of tenants and any disposition of the same by the landlord after April 15, 1953 would be invalid against the State Government's claim to dispose of it. That is the effect of s. 10-A(a) & (b). Therefore, in respect of any land to which the State Government makes a claim for resettlement, on the ground of its being surplus

land, any person inducted by the landlord after April 15, 1953 would have no title to it as a tenant and, would not be able to avail of s. 18. To sum up, the 'other authorities' in s. 10-A(c) include officers under s. 16. Secondly, the plain meaning of s. 10-A(c) is that any order by any authority which shrinks the surplus area of the landlord is invalid to the extent laid down in that clause. Thirdly, orders under s. 18 if they diminish the surplus area suffer the same fate and Annexure 'B' fails to shield Mst. Lacchman's lands against orders re-settling ejected tenants thereon.

Shri Dhingra relied on *Sahib Ram* v. *The Financial Commissioner, Punjab* (1) but that decision only rules that a tenant, who completes his 6 years qualifying occupation required by s. 18 after April 15, 1953 is not excluded. Vaidialingam, J., took care to refer to the case under appeal now before us (Amar Singh's case) and said that it dealt with the scope of s. 10-A and did not bear upon the point before them.

The last point urged by Shri Dhingra for the respondent—and accepted by the High Court—is that the order, Annexure A, having become final could not have been ignored in Annexure 'B'. Here it serves the discussion to remember that the leases in question have been found by the Collector to have been collusively got up to dwindle the surplus area of the landowner. The Collector in Annexure 'B' finds:

> "....and it is crystal clear that Amar Singh and Indraj had not been in continuous cultivating possession of this land for full six years, the other copy of Khasra Girdawari put in this case and which is to be found at page 27 of the file, shows the possession over this land of Indraj and Amar Singh only from the year 1957-58, and so their possession over it for full six years is not complete as yet."

He has also stated that he was convinced "that the landowner has conspired with her son-in-law Amar Singh and his brother Indraj to retain this area in contravention of the law." A third pregnant fact is that the proceedings under s. 18 were *prima facie* collusive, and to burke an enquiry into the eligibility of the alleged tenants to purchase under s. 18 an expedient was resorted to. "Before the proceedings could start" says Annexure 'A', "the parties have come to terms and they have actually put in court a compromise deed which they have backed up by their statements." Thus, no finding on the basic facts of entitlement to purchase have been recorded by the authority under s. 18 because he has merely stated in Annexure 'A'.

> "As per statements of the parties, I allow Amar Singh to purchase the land in suit."

These facts have to be assumed since a controversy thereon in the writ court or in this Court cannot be permitted. We are, therefore, concerned to see whether on such a factual basis any legal consequences compelling the court to uphold Annexure 'A', and thus judicially condoning what is a fraud on the statutory scheme, follow.

(1) [1970] 3 S.C.R. 790

An order like Annexure 'A' ordinarily binds the parties only and here the State which is the appellant is seriously prejudiced by that order but is not a party to it. Therefore, it cannot bind the State *proprio vigore*. It was argued by Shri Dhingra that the State could have moved by way of appeal or review and got the order set aside if there was ground and that not having done so it was bound by the order. As a matter of fact, the State, which is not a party to the proceedings, does not have a right of appeal. The ordinary rule is that only a party to a suit adversely affected by the decree or any of his representatives-in-interest may file an appeal. Under such circumstances a person who is not a party may prefer an appeal with the leave of the appellate court "if he would be prejudicially affected by the judgment *and* if it would be binding on him as *res-judicata* under Explanation 6 to s. 11." (see Mulla—Civil Procedure Code—13th edn., vol. 1, 421). Section 82 of the Punjab Tenancy Act, 1887, which may perhaps be invoked by a party even under the Act, also speaks of applications by any party interested. Thus, no right of review or of appeal under s. 18 can be availed of by the State as of right.

If the State is not precluded from proving the invalidity of Annexure 'A', it is clear that the said order is unsustainable. Section 18 applies only to tenants, *i.e.*, not anyone who claims to be, but legally is one. Here who has granted the lease ? Mst. Lacchman? How could she, after gifting away to her daughter? And no lease from daughter Shanti is set up although obscurely both mother and daughter are made respondents. Secondly, s.18 qualifies for purchase only those tenants who had 6 years continuous occupation. Here, on the Collectors finding, Amar Singh and Indraj came by possession only in 1957-58 and, as he points out in Annexure 'B', the six year period is not complete at the time of application. The reason why even before the proceedings began parties presented a compromise and avoided an enquiry is not far to seek. In short, the State could and did make out the incompetence of the respondents to purchase under s. 18 and Annexure 'A', being also stricken by the vice of s. 10-A (b) and (c).

Shri Dhingra urged that s.18(1)(iii) did contemplate purchase rights for persons who had no possession when the Act came into force and their purchases must necessarily diminish the surplus area. This seeming attractiveness vanishes when we notice that s.18(1) (ii) and (iii) provide for two classes of hard cases where unjust evictions prior to the Act coming into force had deprived them of their rights. For all practical purposes the Act clothes them with such rights as they would have enjoyed had they not suffered unjust evictions. That is why specific provision was made in s. 18 for them. The exception proves the rule. The paramountcy of s. 10-A cannot be subverted by illegitimate use of the processes under s. 18.

Purchases under s. 18 being involuntary, s. 10-A(b) would not be hit, as it deals only with voluntary transfers, according to Shri Dhingra. While we need not finally pronounce on this argument, it is worthy of note that the expression 'transfer' is wide enough to cover transfers by operation of law unless expressly excluded as

A s. 2(d) of the Transfer of Property Act. Moreover, special exclusions to save transfers by way of inheritance and compulsory land acquisition by State have been made which would have been supererogatory had involuntary transfers automatically gone out of the pale of s. 10-A(b).

Another argument was suggested that the order even though passed
B on a compromise was as valid and binding as one passed on contest. May be that as a broad proposition one may assent to it. But where a compromise goes against a public policy prescription of a statute or a mandatory direction to the Court to decide on its own certain foundational facts, a *razi* cannot operate to defeat the requirement as specified or absolve the court from the duty. The resultant order will be ineffective. After all by consent or agreement, parties cannot
C achieve what is contrary to law and a decree merely based on such agreement cannot furnish a judicial amulet against statutory violation. For, 'by private agreement' converted into a decree, parties cannot empower themselves to do that which they could not have done by private agreement alone'. (see Mulla, C. P. C., vol. II, P 1300). The true rule is that "the contract of the parties is not the less a contract, and subject to the incidents of a contract, because there is superadded
D the command of the Judge". The learned author, Mulla, in his Commentary on Order XXIII r. 3 (Civil Procedure Code, vol. II, pp. 1299-1300) cites many authorities for this proposition and observes :

> "If a decree is passed under this rule on a compromise which is not lawful, the Court should not enforce the decree in execution proceedings. Thus, a sale of an office attached to a temple
E is against public policy. Hence, if in a suit against the holder of such an office a compromise is arrived at whereby the holder of the office consents to the office being sold in satisfaction of the debt due to the plaintiff, and a decree is passed on the compromise, the Court should not withstanding the consent decree refuse to sell the office in execution. It is clear that if the matter had rested in contract only, the Court could not have
F enforced the sale in a suit brought for that purpose. The mere fact that the contract is embodied in a decree does not alter the incidents of the contract."

It may be right to conclude that any authority, like the Collector here, enjoined to apply s. 10-A(b) and (c) may decline to act on a compromise which has ripened into an order if the agreement between the parties disposes of property in violation of a statutory man-
G date. He can and must lift the veil and look the agreement of the parties in the face. The vice of contravention of s. 10-A(b) is writ large in Annexure 'A.'

A few decisions of this Court bearing on the efficiency of consent decrees were cited at the bar and they are exhaustively dealt with in *Chari v. Seshadri*(1). The other rulings of this Court—all rendered
H under the Rent Control Law-are *Bahadur Singh v. Mimi Subrat*(2)

(1) [1973] 1 S.C.C. 761. (2) [1969] 2 S.C.R. 432.

Kaushalya Devi v. K.L. Bansal(1), and *Ferozi Lal Jain* v. *Man Mal*(2). The core principle or ratio that is revealed in these cases is that in cases where a statute, embodies a public policy and consequentially prescribes the presence of some conditions for grant of reliefs, parties cannot by-pass the law by the exercise of a consent decree or order, and mere judicial imprimature may not validate such decree or order where the court or tribunal is not seen to have applied its mind to the existence of those conditions and reached its affirmative conclusion thereon. Such mindless orders are a nullity but where the stage of the proceedings, the materials on record and/or the recitals in the *razi* disclose the application of the judicial mind, the order is beyond collateral attack merely on the score that it does not ritualistically write into the judgment what is needed by the statute. The important facet of the law clarified in these decisions is that where high public policy finds expression in socio-economic legislation contractual arrangements between interested individuals sanctified into consent or compromise decrees or orders cannot be binding on instrumentalities of the State called upon to enforce the statute, although the tribunals enjoined to enforce the law may take probative note of the recitals in such compromise or consent statements in proof of facts on which their jurisdictions may have to be exercised. Further, if there is no evidence either by way of admissions in consent statements and *razis* or otherwise on the record, the reliefs sanctioned by the statute cannot be granted and orders or decrees which purport to grant them *sans* proof of the legal requirements will be a nullity.

In *Kaushalya Devi* v. *K. L. Bansal* (1) the Court was concerned with a suit for eviction under the Rent Control law. On being satisfied about the statutory grounds the Court could decree possession. The plaintiff set out two grounds both of which were denied in the written statement. When the pleadings of the landlord and the tenant were in this state, both parties filed a compromise memo in and by which they agreed to the passing of a decree of eviction against the tenant. Representations to the same effect were also made by the counsel for both parties. The court passed the following order :

> "In view of the statement of the parties' counsel and the written compromise, a decree is passed in favour of the plaintiff. against the defendant."

The tanant did not vacate the premises within the time mentioned as per the compromise memo. On the other hand, he filed an application under s. 47, C.P.C., pleading that the decree is void as being in contravention of s . 13 of the Delhi statute. The High Court held that the decree was a nullity, as the order was passed solely on the basis of the compromise without indicating that any of the statutory grounds mentioned in s. 13 existed. Following the decision in *Bahadur Singh* v. *Muni Subrat*(*supra*), this Court upheld the order of the High Court.

In *Ferozi Lal Jain* v. *Man Mal*(2), the landlord's grounds for eviction were denied by the tenant but they reported compromise with prayer for a decree for eviction. This Court ruled :

(1) [1969] 2 S.C.R. 1048. (2) [1970] 3 S.C.C. 181.

A "From the facts mentioned earlier, it is seen that at no stage, the Court was called upon to apply its mind to the question wheather the alleged subletting is true or not. Order made by it does not show that it was satisfied that the subletting complained of has taken place, nor is there any other material on record to show that it was so satisfied. It is clear from the record that the court had proceeded solely on the basis B of the compromise arrived at between the parties. That being so there can be hardly any doubt that the court was not competent to pass the impugned decree. Hence the decree under execution must be held to be a nullity."

In both these cases the decrees based solely on the *razi* and without the courts applying their mind, were a nullity. The order of the C Assistant Collector, Annexure 'A', bears resemblance to the situation in these two cases. On the other hand *K. K. Chari's* case (*supra*) is a study in contrast. There was plethora of evidence to prove the ground of eviction and the court directed eviction based on the terms of the compromise and after making a reference to the provisions for eviction. Vaidialingam, J., has explained this aspect elaborately.

D The order, Annexure 'A', was passed before evidence was let in because even before the trial began parties reported compromise and gave statement accordingly. Not a word is to be found in the order indicating the court's mind adverting to the requirements of s. 18 of the Act, the contrary being the evidence. Indeed, unlike in *K. K. Chari's* case, no material existed on record to warrant a finding (a) regarding the tenancy, (b) continuous occupation for over 6 years, E (c) the surplus area being unaffected. Nor even recitals amounting to admissions on facts of entitlement to purchase were made. The order was a nullity, denuded of evidence and absent judicial satisfaction. Strictly speaking, collusive *razis* cannot affect the State which has the right to utilise surplus lands for re-settling tenants. Certain proceedings, *e.g.* election petitions and actions under s. 92, C.P.C., once set in motion, transcend private interests and public authoF rities cannot pass orders on collusive representations without regard to public interest or independent satisfaction. Annexure 'A' *ex facie* was a nullity. It is unfortunate that the Assistant Collector has, with insipient insouciance, lent his authority to a compromise, where care and conscientiousness would have averted the error. We are satisfied that Annexure 'A' is unavailing against the State and its officers in accommodating ejected tenants on the lands in question. G The public policy of s. 10-A cannot be outwitted by consent orders calculated to defeat the provision and without the statutory authority charged with the enquiry being satisfied about the *bona fides* of and eligibility for the purchase. So viewed, the respondents in these appeals cannot on the strength of the purchase orders exclude those lands from the operation of s. 10-A(a) of the Act.

H The legislature, charged with the constitutional mandate of art. 38 and art. 39 has passed the Act and amended it from time to time in furtherance of the major purpose of distributive justice. The judicial wing of the State, viewing the law in the same wave-length,

interprets and applies it. But the Executive instrumentality of the State has an activist role to play if the arm of the law were not to hang limp and social justice is not to be a cynical phrase. Good laws and correct interpretations are not enough. Quick, conscientious and public minded enforcement of the provisions is the responsibility of Government and its officers. In the present case the Assistant Collector's order, Annexure 'A', has fortified an attempted fraud on the statute. It was stated at the Bar that a score of years notwithstanding, the processes of fixing reserved areas and surplus areas on the strength of which alone conferment of proprietory right on tenants and re-settlement of ejected tenants could, proceed, are still lingering. If this is true Government has much to answer for and litigation abounds where delays in executive enforcement occur. We expect that this land reform measure will not be a slow motion picture but a strict and swift procedure so that parties affected may know where they stand. There is an 'executive' dimension to law's delays which defeats the rule of law. It must be remembered that the third reading of a bill and the last appeal in court are not the final scene in the drama of law and society. A post-audit on the enforcement of social legislation, all social scientists will agree, is a material aspect of law in action, *inter-alia* to avoid the administrative cutting edge of the law becoming blunt.

With these hopeful observations we allow the State appeals but we direct that in the circumstance parties will bear their costs throughout.

SARKARIA J.—I have gone through the judgment prepared by my learned brother, Krishna Iyer J. Since I cannot fully subscribe to the reasoning and the view taken therein, I have thought it fit to record my own opinion separately.

These two appeals (Nos. 1755 and 1756 of 1967) on certificate granted under Art. 133(1)(c) of the Constitution by the Punjab High Court, raise questions with regard to the interpretation and inter-relationship of the provision of Sections 2(5-a), 10-A and 18 of the Punjab Security of Land Tenures Act (X of 1953) (for short, the Act). The questions for determination, as formulated by the High Court, are :

"(i) Whether the expression "transfer" or "other disposition of land" in clause (b) of section 10-A of the Act., includes involuntary transfer of a part of the holding of a landowner by operation of anorder forcing the landowner to sell a part of his holding to a tenant under section 18 of the Act;

(ii) Whether the order of any "other authority" referred to in clause (c) of section 10-A of the Act includes an order of the authorities under the Act itself passed under section 18 thereof in favour of a tenant, which order has become final either at its original stage or at the appellate or revisional stage; and

A (iii) In case of conflict between section 10-A and section 18 of the Act, which of the two provisions has supervening effect or overrides the other."

To the above, I may add a fourth question which arises in Amar Singh's case (C.A. 1755 of 1967) and has been dealt with by the High Court.

B (iv) Whether any land held by tenants on April 15, 1953 within the permissible area of those tenants, can be included in the 'surplus area' of the landowner, if, at the time the surplus area collector takes up the determination of the matter, that land is found to be comprised in the tenancy of persons other than the original tenants."

C The material facts are these:

On April 15, 1953 when the Act came into force, Smt. Lachhman (hereinafter referred to as the 'landowner') owned 101·6 standard acres, equivalent to 404·10 ordinary acres, of land in the revenue estates of two villages, namely, Darba Kalan and Nahran Wali. Out of this holding of the landowner, we are concerned only with Field Nos. 177, 265 and 343, situate in the area of Darba Kalan. D On the determinative date (April 15, 1953), Field No. 177 measuring 64 bighas and 12 biswas which is the subject matter of C. A. 1756/67, was in the personal cultivation of the landowner, while Field Nos. 265 and 343, measuring 67 bighas and 19 biswas were in the occupation of two tenants, namely, Sri Chand and Nathu.

It is not clear from the record whether the landowner had made E the reservation or selection of her permissible area in the prescribed manner, within time. But the learned Counsel for the parties before us are agreed that Field Nos. 265, 343 and 177 in question do not form a part of her reserved or permissible area.

It appears from the Surplus Area Collector's order that in 1955 (vide mutation No. 144), the landowner tried to gift this land in favour F of her daughter Shanti Devi, who, in turn, attempted to sell the same to her husband, Amar Singh, and the latter's brother, Indraj. These alienations were ignored by the Surplus Area collector as per his order dated April 24, 1961, while declaring the surplus area of the landowner. Against that order, Amar Singh and Indraj carried an appeal to the Commissioner. The landowner also preferred a separats appeal.

G On May 2, 1961, Amar Singh made an application under s. 18 of the Act before the Assistant Collector, 1st Grade, for purchase of the land comprised in Field Nos. 265 and 343, on the ground that he has been in its continuous occupation as a tenant for the requisite period. A similar application was made on the same date, by his brother, Indraj, for the purchase of Field No. 177. After serving notice on all concerned, Shri Hardyal Singh, Assistant Collector 1st H Grade allowed these applications on September 15, 1961, on the basis of a compromise between the applicants and the landowner. In compliance with that order, Amar Singh, deposited in the Treasury,

Rs. 13,590/- which had been determined as the purchase price by the said Collector. Indraj also in his case deposited the price assessed by the Collector. The effect of these proceedings and the order of the Collector was that Amar Singh and Indraj the tenants, in the words of s. 18, itself, "shall be deemed to have become the owners of the land". A

The Commissioner on December 21, 1961, taking notice of the statutory purchases of these fields by Amar Singh and Indraj under s. 18, allowed their appeal and remanded the case to the Collector for *de novo* enquiry regarding the area in occupation of Amar Singh and Indraj as tenants under the landowner. B

After the remand, in the course of *de novo* enquiry, the same Officer, Shri Hardyal Singh, as Collector, Surplus Area, passed the impugned order, dated May 11, 1962, whereby he declared 408·10 ordinary acres equal to 101·61 standard acres as the surplus area of Smt. Lachhman and included in that area the land in question (comprised in Field Nos. 265, 343 and 177) of which according to his earlier order Amar Singh and Indraj were deemed to have become owners by purchase under s. 18. He ignored his order, dated September 15, 1961 on the ground that Amar Singh and Indraj has not been in continuous occupation of these fields as tenants for the full terms of six years and that "in fact the landowner has conspired with her son-in-law, Amar Singh, and his brother, Indraj, to retain this area in contravention of the law". It was added that the said order was based on a compromise and was a "collusive one". C D

Amar Singh and Indraj filed two separate writ petitions under Art. 226 of the constitution for the grant of a writ of *certiorari* for bringing up and quashing the order, dated May 11, 1962, of the Surplus Area Collector and for a writ of *Mandamus* directing the respondent State not to dispossess them from the fields purchased by them under s. 18. E

The High Court by its common Judgment, dated October 4, 1966, answered the three questions referred to above, as under : F

"(*i*) The expressions, "transfer" and "other disposition of land" in clause (b) of section 10-A of the Panjab Security of Land Tenures Act 10 of 1953, do not include completed sales effected under s. 18 of the Act ;

(*ii*) In exercise of the powers conferred by clause (c) of section 10-A of the Act, the authorities under the Act cannot exclude from consideration and order of the Assistant Collector or Collector under section 18 of the Act, where by a part of the holding of the landowner has vested absolutely in the erstwhile tenant; and G

(*iii*) If any conflict were detected between section 10-A and section 18 of the Act, the special provision of law contained in the latter section would override the earlier and general provision." H

A Regarding Question (iv) in Amar Singh's case, it was held that since Field Nos. 265 and 343 were, on April 15, 1953, comprised in the tenancy of Sri Chand and Nathu as part of their permissible area, they could not, in view of the definition given in s. 2 (5-a), be included in the surplus area of the landowner, and the subsequent change of the holder of the tenancy did not make the tenancy land revert to the Surplus Area. That was, according to the High Court, an addi-
B tional reason why s. 10-A was not attracted in *Amar Singh's* case.

In order that the questions raised in these appeals may be considered in the proper perspective, it is necessary to notice briefly the object, the scheme and the relevant provisions of the Act.

Chronologicallly, the Act is not the first measure enacted by the State to give effect to its policy of abolishing intermediaries and re-
C gulation of agricultural tenancies with the object of securing tenure or procuring ownership of land to the tiller. The first piece of legislation was the Punjab Tenants (Security of Tenure) Act, 1950. The contours of the concepts "permissible area" and "reserved area" first made their appearance in this statute. Under that Act, a landowner was entitled to reserve 100 standard acres for his self-cultivation ; and the protection against eviction was not available to tenants
D on the reserved area. The 1950 Act was amended by Punjab Tenants (Security of Tenure) Amendment Act, 1951 which reduced the permissible area of a landowner to 50 standard acres, and extended the tenure of the tenants from 4 to 5 years.

The Acts of 1950 and 1951, were repealed and replaced by Act 10 of 1953 with which we are concerned. The preamble says that
E the Act is a piece of legislation "to provide for the security of land tenure and other incidental matters". The Act classifies landowners into "small landowners" and "other landowners". A "small landowner" as defined in s. 2(2), means a landowner whose entire land does not exceed the "permissible area". Owners other than small landowners fall in the second category. "Landowner" means a person defined as such in the Punjab Land Revenue Act, 1887 (Act
F XVII of 1887) and also includes an "allottee" and "lessee" as defined in clauses (b) and (c) respectively, of section 2 of the East Punjab Displaced Persons (Land Resettlement) Act, 1949. Under the Explanation added to the clause, a mortgagee, in respect of the land mortgaged with possession is also to be deemed a 'landowner'. "Landowner" is not comprehensively defined in the Land Revenue Act. clause (2) of Sec. 3 of that Act makes it clear that "landowner" does not include
G a tenant. Thus, it is to be noted that lessees from the landowner (being other than those falling under s. 2(e) of the Land Resettlement Act, 1949) do not come within the definition of "landowner" given in the Act.

The fivefold object of the Act, endorsed by Subba Rao J. (as he then was) speaking for this Court in *Gurbax Singh* v. *State of Punjab*[1]
H is to—

(1) [1967] 1,S.C.R. 926.

(*i*) provide a permissile area of 30 standard acres to a landowner/tenant which he can retain for self cultivation ; A

(*ii*) provide security of tenure to tenants by reducing their liability to ejectment as specified in s. 9 ;

(*iii*) ascertain surplus areas and ensure re-settlement of ejected tenants on those areas ;

(*iv*) fix maximum rent payable by tenants ; and B

(*v*) confer rithts on tenants to pre-empt and purchase their tenancies in certain circumstances.

We are primarily concerned with the provisions relating to (i), (iii) and (v). What is to be borne in mind is that while self-contained and comprehensive provisions in Section 17 and 18 for effective achievement of object (v) were made from the very inception of the Act, C object (iii) did not assume shape and contant till Punjab Act XI of 1955 was enacted.

The concepts 'permissible area' and 'reserved area' were reshaped by the Act of 1953. 'Persmissible area' in relation to a landowner or a tenant has been defined to mean "30 standard acres and where such 30 standard acres are being converted into ordinary acres exceed 50 acres, such 60 acres". 'Reserved area' as defined in s. 2(4) D mean "area lawfully reserved under the Punjab Tenants (Security of Tenure) Act, 1950 (Act XXII of 1950), as amended by President's Act of 1951, hereinafter referred to as the "1950—Act or under this Act".

"Reserved area" is dealt with in sections 2, 5, 5-B, 9 and 18 of the Act. E

Section 5 lays down that "any landowner who owns land in excess of the permissible area may reserve out of the entire land held by him in the State of Punjab as landowner, any parcel or parcels not exceeding the permissible area by intimating this selection in the prescribed form and manner to the patwari of the estate in which the land reserved is situate or to such other authority as may be prescribed within six months from the date of the commencement of the F Act". Since, for one reason or the other many landowners could not exercise their right of reservation within the period of six months originally fixed by the 1953 Act, Sections 5-A, 5-B and 5-C were inserted by the Amending Act 46 of 1957 which came into force on December 20, 1957. Section 5-B enacts that "a landowner who has not exercised his right of reservation under this Act, may select his G permissible area and intimate the selection to the prescribed authority within the period specified in sec. 5-A and in such form and manner as may be prescribed". The requisite form was prescribed by Punjab Government Notification No. 3223-LR-II-57/1624 published in the Gazette Extraordinary of March 22, 1958, consequently, a landowner could make the selection of his permissible area within six months of date.

H

In *Gurbax Singh* v. *State of Punjab* (supra), this Court held that 'selection' in s. 5-B is similar to 'reservation' in s. 5 and that, in terms,

A s. 5-B gives the landowner another chance to make the reservation if he had not exercised his right of reservation earlier under s.5. It was clarified that "reservation" and "selection" involve the same process and indeed, to some extent, they are convertible, for, one can reserve land by selection and another select land by reservation.

Thus if the right of selection is exercised under s. 5-B, by the land-
B onwer, his permissible area would become his 'reserved area'; to that extent, the two concepts would represent one and the same thing.

The next provision to be noticed is in s. 9 which says *inter alia* that 'no landowner shall be competent to eject a tenant except when such tenant is a tenant on the area reserved under this Act or is a tenant of a small landowner". Its sub-s. (2) provides that "notwith-
C standing anything contained hereinbefore a tenant shall also be liable to be ejected from any area which he holds in any capacity whatever in excess of the permissible area."

Before proceeding to s. 18, it will be proper at this stage to advert to the concept "surplus area". This concept was born in 1955 when Act XI of that year inserted in the principal Act general provisons including s. 2(5-a) which (as modified by a subsequent Act) runs thus:

D

> "Surplus area" means the area other than the reserved area, and, where, no area has been reserved, the area in excess of the permissible area selected under s. 5-B or the area which is deemed to be surplus area under (1) of section 5-C (and includes the area in excess of the permissible area selected under section 19-B) *but it will not include a tenant's permissible area*;

E

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

F (emphasis supplied).

This definition will be considered further while dealing with proposition (iv). At this place it will be sufficient to have a general idea of the inter-relationship of "permissible area" and "surplus area", and the right of the landowner to deal with the surplus area. A full Bench of Punjab and Haryana High Court in *Dhaunkal* v. *Man*
G *Kauri*, (1) speaking through Mehar Singh C. J. summed up the inter connection between these concepts thus;

> "According to these provisions (of sections 5, 5-A 5-B, 5-C read with Rule 6 of the 1956 Rules framed under the Act) a landowner or a tenant who has more than 30 standard acres of land has to select or reserve his permissible area and the excess is
H available as surplus area. The Collector attending to such cases has to determine, therefore, three things; (a) the permissible

(1) (1970) LXXII PLR 882.

area of a landowner, (b) the permissible area of a tenant, and (c) the surplus area. The details for the determination of these matters are to be found in 1956 Rules..... Rule 6.....is really material.....No doubt in the Act, there is no specific provision which says that a decision has to be given by any authority whether a permissible area has or has not been rightly reserved or selected by a landowner or tenant concerned, but when the provisions of the Act with the rules are considered, it becomes plain that while determining the surplus area with a landowner or a tenant the question of his permissible area comes to be determined.....so that, if there is a question in regard to the validity of reservation or selection of permissible area, it must come for consideration before the Collector when he disposes of the surplus area of a particular landowner or tenant....."

(Parenthesis added).

Declaration of 'surplus area' does not have the effect of expropriating the landowner of that area. The only effect of such declaration is that the Government gets a right to utilize the surplus ara, if necessary, for settlement of ejected tenants. The tenants, thus settled on the surplus land become by operation of law, the tenants of the landowner. They are bound under the rules, to attorn and pay rent to the landowner. The latter's rights of ownership remain intact, who is even entitled to evict the settled tenants in certain contingencies specified in the Act. The landowner's right to transfer the surplus area is also not taken away, but the transferee even if a small landowner, will not be rid of the liability to accommodate evicted tenants whom the Government may wish to resettle under s. 10-A(a). The Act does not take away the right of the landowner to induct tenants on such area, or the rights of the tenants so inducted, to purchase the land under s. 18 if it has continuously remained comprised in their tenancy for the requisite period.

Section 9(1) (i) provides for eviction of a tenant from the area of a landowner reserved under the Act. Section 9-A safeguards such a tenant against dispossession of his tenancy so long as he is not accommodated on a surplus area or other land by the State Government. There is a positive indication in the 2nd proviso to s. 9-A that a landowner has a right to induct tenants on his land even after the commencement of the Act. The Proviso says "that if a tenancy commences after the commencement of this Act, and the tenant is also an owner and is related to his landlord in the manner prescribed, he shall not be entitled to the benefit of this section".

Now let us have a close look at the provisions of s. 18, which, as amended by Punjab Act 11 of 1955 runs thus:

"18 (1) Notwithstanding anything to the contrary contained in any law usage or contract, a tenant of a landowner other than small landowner—

(i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or

A (ii) who has been restored to his tenancy under the provisions of this Act and whose periods of continuous occupation of the land comprised in his tenancy immediately before ejectment and immediately after restoration of his tenancy together amount to six years or more, or

B (iii) who was ejected from his tenancy after the 14th day of August 1947 and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment,

shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause(i) or clause (ii) at any time, and in the case of a tenant falling within clause (iii) within a period of one year from the date of the commencement of this Act;

Provided..

Provided further....

D (2) A tenant desirous of purchasing land under subsection (1) shall make an application in writing to an Assistant Collector of First Grade having jurisdiction over the land concerned, and the Assistant Collector, after giving notice to the landowner and to all other persons interested in the land and after making such inquiry as he thinks fit, shall determine (formerly the word was 'fix') the average of the prices obtaining E for similar land in the locality during 10 years immediately preceding the date on which the application is made.

3. xxx xx xx

4(a) xxx xxx xx

(b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the F tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887) put him in possession thereof.

(c) x x

G (5) to (7) x x"

This section is the keystone of the arch of peasant-proprietors' complex which the Act seeks to build. The non-obstante clause with which the section starts, indicates the overriding operation of its provisions. It provides a self-sufficing machinery enabling tenants to purchase lands comprised in their tenancies. Broadly speaking, the existence of three conditions is necessary for the exercise of this H right. They are: (a) the landowner whose area is sought to be purchased is not a 'small landowner' i.e. one owning less than 30 standard acres. (b) the land to be purchased does not form a part of the 'reserved

area' of the landlord which has become fixed by reservation under s. 5, or selection under s. 5-B; (c) the applicant has been in continuous occupation of the land, as a tenant, for a period of six years or more on the date of the application.

For our purpose, condition (b) is the most important. By excluding a landowner's reserved permissible area from the operation of s. 18, it confines a tenant's right of purchase to that land which either falls within the 'surplus area' of the landowner, or, was on April 15, 1953 within the 'permissible area' of that tenant.

As observed by this Court in *Sahib Ram* v. *Financial Commissioner, Punjab* and *Ors.*(1)

> "Under s. 18(1) three categories of tenants have been given a right to purchase from the landowner the land so held by him. They are :
>
> (*i*) a tenant who has been in continuous occupation of the land for a minimum period of six years ;
>
> (*ii*) a tenant restored to his tenancy under the Act and whose period of continuous occupation of the land comprised in his tenancy immediately before ejectment and after restoration amounts to six years or more ; and
>
> (*iii*) a tenant who was ejected from his tenancy after August 14, 1947 and before April 15, 1953, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before his ejectment."

Category (iii) has become extinct and clause (iii) of s. 18(1) has become redundant because the exercise of the right of purchase by this category was limited to a period of one year, only, after the commencement of the Act. Only a small number of cases fall under category (ii). Most of the tenant-purchasers belong to category (i) which may be further divided into these sub-categories :

(a) Tenants who were on the land on April 15, 1953 and continued to be in occupation of their land for the requisite period upto the date of the application ;

(b) Tenants who were inducted on the surplus area by the landowner sometime after the determinative date and who thereafter remained in continuous occupation of the land for the requisite term ;

(c) Tenants who were resettled on the surplus area by the Government, and thereafter remained in continuous occupation of the land for the requisite period.

Quite a number of tenants who invoke s. 18, come under sub-category (b). In the instant case, Amar Singh and Indraj are tenants

(1) [1970] 3 S. C. R. 796 at p. 805.

A of this sub-category. In *Sahib Ram's case* (supra) also, this Court was dealing with a case of tenants of this sub-category. Vaidialingam J. speaking for the Court, enunciated the law on the point, thus :

> "So far as we could see there is no prohibition under the Act placing any restrictions against the right of the landowner creating new tenancies after the date of the Act. In fact, the
> B second proviso to s. 9-A clearly indicates to the contrary. It deals with contingency of tenancy coming into force after the commencement of the Act.
>
> Section 18(1)(ii) gives a right to tenant to purchase the land ; and that right has to be examined when an application under s. 18 is made and cannot be deemed on the ground that he was
> C not a tenant for more than six years on April 15, 1953. There is no limitation placed under clause (i) of s. 18(1) that the tenant who exercises his right should be a tenant on the date of the Act or that he should have completed the period of six years on April 15. 1953 and there is no warrant for reading in s. 18(1)(i) clauses which it does not contain. It is enough if the continuous period of six years has been completed on the date when the tenant files
> D the application for purchase of the land".

The Validity or otherwise of the orders of purchase made under s. 18 by the Collector in favour of Amar Singh and Indraj will be discussed a little later, at its appropriate place. Suffice it to say here, that in view of the law settled in *Sahib Ram's case* (supra), Amar Singh and Indraj provided the other conditions were satisfied—would
E be entitled to purchase the land comprised in their tenancies notwithstanding the fact that the said land was a part of the surplus area of the landowner and these tenancies were created by her after April 15, 1953.

It will now be appropriate to examine s. 10-A. It is one of the important sections, the interpretation of the provisons of which is in
F question. It reads :

> 10-A(a) The State Government or any Officer empowered by it in this behalf, shall be competent to utilise any surplus area or the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of section 9.
>
> G (b) Notwithstanding anything contained in any other law for the time being in force, and (save in the case of land acquired by the State Government under any law for the time being in force or by any heir by inheritance) no transfer or other disposition of land which is comprised in a surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).
>
> H Explanation—Such utilization of any surplus area will not affect the right of the landowner to receive rent from the tenant so settled.

(c) For the purposes of determining surplus area of any person under this section, any judgment, decree or order of a court or other authority, obtained after the commencement of this Act and having the effect of diminishing the area of such person which could have been declared as his surplus area shall be ignored." A

Section 10-A with its sub-clauses (a) and (b) was added by Punjab Act XI of 1955. Punjab Act 4 of 1959 inserted the saving clause (within brackets) in clause (b) Later Punjab Act 14 of 1962, inserted clause (c) and gave retrospective effect to all the provisions of s. 10-A from April 15, 1953. B

The Statement of Objects and Reasons published in the Punjab Gazette Extraordinary on April 16, 1955, lists among others, the main objects of Act XI of 1955 : C

"to prevent large scale ejectment of tenants to introduce new concepts of surplus area and its utilization by the State Government for the resettlement of ejected tenants....to coordinate the ejectment of tenants with their resettlement on surplus area....to prevent sales and other dispositions of land adversely affecting the continuance of tenancies and the extent of available surplus area ; to reduce the period (from 12 to 6 years) entitling a tenant to purchase the land comprised in his tenancy and to provide for easier terms of purchase ; and other incidental matters. D

The professed object of the concept of "Surplus area" and resettling ejected tenants on such area finds its manifestation in the insertion of s.2(5-A) and s. 10-A(a) ; while the object of entitling tenants to purchase their tenancy lands on easier terms is reflected in the amendments made in s. 18. E

According to the Statement of Objects and Reasons published in Punjab Gazette Extraordinary, dated April 27, 1962, the main purpose the Amending Act 14, of 1962 was two-fold : the First was to neutralize the effect of certain decisions and to plug the loopholes revealed in the interpretation among others, of sections 2(5-a), 6, 10-A (b), 18, 19-B. Among those decisions was one of the Financial Commissioner holding that section 6 did not protect the claim of tenants under section 18 to purchase the proprietary rights in respect of the land held by them in tenancy. The *second* was to ignore in computing the surplus area "*decrees of courts* for diminishing the surplus area" which "interested persons, being relatives, have obtained." "in order to evade the provisions of Section 10-A the parent Act" That was why clause (c) was inserted in s. 10-A. F G

I have referred in extenso to the Objects and Reasons which led to these Amendments to show that while the Legislature was anxious to preserve surplus area for settlement of evicted tenants and for that purpose enacted s. 10A, it did not in its wisdom, think it fit, to curtail the ambit of s.18 so as to exclude tenants inducted by the landowner on the surplus area from purchasing their tenancy lands through the machinery of this section. So far as the right to purchase their H

A tenancies is concerned, tenants inducted by the landowner and tenants settled by the Government, on the surplus area, remain on an equal footing. The Amendments did not in relation to the new Section 10-A, relegate s. 18 to a position of "subordinate alliance". The *non-obstante* clause of s. 18 has not been touched. Indeed, the amendments of s. 18 *inter alia*, by providing for easier terms of purchase and reducing the qualifying period from 12 to 6 years, have made B the machinery of the section more comprehensive, efficient and attractive for tenants desirous of purchasing their tenancies.

The Amendments have not changed the basic scheme of the Act, according to which, the jurisdiction of the Prescribed Authority assessing the surplus area under ss. 5-B and 5-C read with Rule 6 of the 1956 Rules, and acting under s. 10-A is distinct and separate from the juris- C diction of the Assistant Collector 1st Grade dealing with an application under s. 18. "Collector" has been defined by Rule 2(iii-A) of the 1956 Rules, to mean "the Collector of the district or any other officer not below the rank of Assistant Collector 1st Grade *empowered in this behalf by Government*". (emphasis supplied) Rule 4-B provides that the Prescribed Authority for the purposes of Section 5B(2) and Section 5-C shall be (i) the Collector if the lands owned or held by the D landowner or tenant are situate in one district : and (ii) the Special Collector—as defined in Rule 2(iv)—if the lands so owned or held are situated in more than one district. Section 18(2), however, confers the jurisdiction to try and determine applications for purchase made under that section specifically, on Assistant Collector of First Grade.

An order of the prescribed Authority made under the aforesaid E provisions has been made appealable under Sub-Rule (8) of Rule 6 ; whereas the provision in regard to appeal, review and revision against an order of the Assistant Collector First Grade made under s. 18. by virtue of Section 24 of the Act, the same as provided in ss. 80, 81, 83 and 84 of the Punjab Tenancy Act, 1887.

Section 80 of the Tenancy Act provides for "Appeals", s. 82 for "Review" and s. 84 for "Revisions". Sections 81 and 83 of that Act F relate to limitation and computation of limitation for Appeals and applications for review. Under s. 82 of Tenancy Act, Revenue Officers have the powers of reversing their own orders and those of their predecessors, if no appeal against those orders has been filed. In the case of Assistant Collectors of all Grades, the exercise of this power is always subject to the previous sanction of the Collector. Though a period of 90 days for making an application for review is provided in G sub-clause (b) of the proviso to s. 82(1), yet no limitation has been provided within which a Revenue Officer may *suo moto* review or move for sanction to review an order. Under s. 84 the Commissioner and the Financial Commissioner have the concurrent revisional jurisdiction. The revisional powers of the Financial Commissioner under s. 84 are in no way less extensive than those of the High Court under 115 of the Code of Civil Procedure. In a sense, his revisional powers H are wider. He has power to revise an order against which an appeal lies (see *Amir Chand* v. *State of Haryana* (1) decided by a Division

(1) 1971 P.L.J. 449.

Bench of the Punjab and Haryana High Court. No. statutory limitation for making an application for revision has been provided, but as a matter of practice the revision-petitions are ordinarily not entertained after a period of 90 days unless sufficient cause for the delay is shown. The Financial Commissioner can interfere in revision *suo moto* at any time, if the circumstances of the case so warrant. A

There is nothing in the Act or the Rules framed thereunder or in the Tenancy Act saying as to who can file an appeal or revision against the decision or order of the Collector exercising jurisdiction under s. 18. But in view of the long array of judicial decisions including that of the Financial Commissioner, there can be no doubt that the State Government or its Department can, if aggrieved, or prejudiced by such a decision, go in appeal or revision against it. B

Firstly there is a catena of authorities which, following the doctrine of Lindley L.J. in re *Securities Insurance Co.*(1) have laid down the rule that a person who is not a party to a decree or order may with the leave of the Court, prefer an appeal from such decree or order if he "is *either bound by the order or is aggrieved by it or is prejudicially affected by it.*" As a rule, leave to appeal will not be refused to a person who might have been made *ex nominee* a party—see *Province of Bombay* v. *W. I. Automobile Association*(2) *Heera Singh* v. *Veerka*(3) and *Shivaraja* v. *Siddamma*(4); *Executive Officer* v. *Raghavan Pillai*.(5) In re *B. an Infant* (6); *Govinda Menon* v. *Madhavan Nair* (7). C D

Secondly, the ruling of the Financial Commissioner in *Punjab State* v. *Dr. Iqbal Singh* (8), which is binding on all the authorities and Revenue Officers exercising jurisdiction under the Act clinches the matter. There, the decision of the Special Collector declaring surplus area was reversed by the Additional Commissioner. The State, filed against that decision of the Additional Commissioner, a revision-petition before the Financial Commissioner. Objection was taken with regard to the competency of the State to file that petition, on two grounds :

(i) that the order was appealable and the revision was incompetent and; F

(ii) that the State was not a party to the original proceeding.

The Financial Commissioner treated the revision as an appeal, and overruled the objection in these terms :

> "The argument on behalf of the Respondents overlooks the fact that the Revenue Officers act in a quasi-judicial capacity deciding such cases and if the Punjab State is aggrieved by their orders it is as much entitled to contest them through a remedy provided under the law as private parties are. In fact, there will be no justification for discrimination against the Punjab G

(1) [1894] 2 Ch. 410.
(2) A.I.R. 1949 Bom. 141.
(3) A.I.R. 1958 Raj. 181.
(4) A.I.R. 1963 Mys. 127.
(5) A.I.R. 1961 Kerala 114.
(6) [1958] Q.B. 12.
(7) A.I.R. 1964 Kerala 235(DB).
(8) [1965] Punjab Law Journal 110. H

A State in this regard and for holding that it suffers from any disability in the matter of agitating against decisions which are to to detriment."

The above being in accord with the general principles settled by the long chain of authorities, noticed earlier, appears to be a correct exposition of the law on the point.

B In the present case, neither the landowner, nor the State made any attempt to get the decision, dated 15-9-1961 of the Collector under s. 18 set aside or modified by way of appeal, review or revision or other appropriate proceedings. In a sense, therefore, that decision had become final and conclusive.

The stage is now set for examining the contentions canvassed at C the bar with regard to the correctness or otherwise of the findings of the High Court.

Mr. Mahajan, learned Counsel for the appellant-State contends that the Collector, Surplus Area had rightly ignored the sale orders dated September 15, 1961, of the Collector purportedly passed under s. 18, in favour of Amar Singh and Indraj and that the view taken by the High Court is wrong, because—

D

(a) the lease made by the landowner in favour of these Respondents, was itself a "transfer of land" effecting the utilization of surplus area, and as such, was hit by clause (b) of of s. 10-A, and the orders obtained on the basis of that lease could not stand on a better footing;

(b) the expression "transfer" in clause (b) of this section includes E involuntary transfers, also, brought about by operation of law, with only two exceptions which are specifically mentioned in that clause;

(c) these orders were consent orders and were not based on any independent finding of the Collector as to the existence of the the essential condition *viz.*, that the applicants were in continuous occupation of the lands, as tenants, for the requisite F period, but were the result of compromise and collusion between the landlady and her relation-tenants, and as such, were null and void ;

(d) these orders had the effect of diminishing the surplus area and as such, were orders of "other authority" hit by clause (c) of s. 10-A;

G

(e) Section 18 has to be construed in a manner which does not defeat the object of s. 10-A. These two sections can be reconciled only if the operation of s. 18 is confined to those purchases which do not adversely affect the extent or utilization of surplus area.

H In reply, Mr. S. K. Dhingra, learned Counsel for the respondents, maintains that a "lease" cannot be regarded as a "transfer or disposition of land" within the meaning of clause (b) of s. 10-A, because according to its general scheme and object, the Act not only recognise

the right of a landowner to create new tenancies on his surplus area after April 15, 1953, but further gives to such a tenant the right to purchase his tenancy under s. 18. Reliance has been placed on this Court's decision in *Saheb Ram's case* (supra). Laying stress on the omission of the word "lease" from clause (b) of s. 10-A. Counsel has referred to the use of the word "lease" in addition to the word "transfer" in somewhat similar provision relating to future acquisitions in s.19-A and 19-B, to show that whenever the Legislature intended to bring a "lease" within the sweep of such a provision, it expressly did so.

Reiterating the reasoning of the High Court, Mr. Dhingra submits that a "sale" made in accordance with an order of the Collector under s. 18 cannot be ignored by the Prescribed Authority, Surplus Area, either as a "transfer" under clause (b) or as an order of "other authority" under clause (c) of s. 10-A. Any other interpretation, according to the Counsel, will render nugatory s. 18 which is a self contained provision intended to achieve one of the primary objects of the Act. In support of these arguments, reliance has been placed on a later Full Bench judgment of the Punjab and Haryana High Court in *Mam Raj and ors.* v. *State of Punjab* (1) which affirmed the propositions of law laid down in the judgment under appeal *Shyamlal* v. *State of Gujarat* (2) was also cited.

Replying to Mr. Mahajan's contention (c), Counsel submits that this was not a case where the orders of the Collector passed under s. 18 could be said to be a nullity. The Khasra Girdawari before the Collector with the admission of the landowner, superadded, was sufficient material, on the basis of which the Collector making the orders of purchase in favour of the tenants could be satisfied about their being in continuous occupation of their tenancy lands for the requisite period. Great emphasis has been placed on the fact that in reply to the writ petition of Amar Singh, the State in their written statement had admitted *Amar Singh's* averment as to his being a tenant of the land for the requisite period. Even the Surplus Area Authority, it is pointed out, conceded in his impugned order that according to the copy of the Khasra Girdawari on the file, Amar Singh and Indraj were in occupation of the land as tenants since 1957-58, though such occupation was held to be of less than six years. In these circumstances proceeds the argument, the order dated September 15,1961, passed by the Collector under s. 18, on the basis of compromise, could not be treated as totally void and *non-est;* at the most they were erroneous orders passed by the Collector in the exercise of the distinct jurisdiction particularly conferred on him by s. 18(2). The only remedy—adds the Counsel—of the aggrieved person or the State was by way of appeal or revision as provided by the statute and since those orders were not so challenged, they had become final.

The Prescribed Authority, Surplus Area—it is emphasised, while assessing the surplus area, had no jurisdiction to sit in appeal or revision over the orders of the Asstt. Collector, Ist Grade passed under s. 18.

(1) I.L.R. (1969)2, Punj. and Haryana 680.
(2) [1965] 2 S.C.R. 457.

A Reference in this behalf has been made to ss. 24 and 25 of the Act, ss. 80 to 84 of the Punjab Tenancy Act and *R.K. Chari* v. *Seshadri;* (1) *Mohanlal* v. *Goenka*(2); *Dhaunkal* v. *Man Kauri* (3) and *Mam Raj* v. *Punjab State* (supra).

It will be appropriate to take contention (c), first, canvassed by Mr. Mahajan because it is the linch-pin of the entire case.

B

The question is, whether the compromise orders, were wholly void or merely voidable. If they were of the former kind, they would be a nullity which does not from its very nature needs setting aside, and consequently, they could be treated as non-existant whenever and wherever their legality comes in question. And, the Prescribed Authority Surplus Area would be entitled to ignore such orders as C *non-est independently* of the provisions of s. 10-A. In that view of the matter, the necessity of determining as to whether those orders are hit by clauses (b) and (c) of that section would not arise.

If the orders were of the latter type, i.e. voidable or erroneous, passed by the Asstt. Collector acting *within* his jurisdiction under s. 18, they could be avoided or questioned only by way of appeal, D review or revision as provided by the statute or in other appropriate proceedings known to law, and the Prescribed Authority or Collector, Surplus Area would not be entitled to go behind them and question their validity or propriety. He shall have to accept them as they are. In that view of the matter, the question will still remain whether such an order of the Assistant Collector passed by him in the exercise of his jurisdiction in favour of a tenant under s. 18, can be ignored as a E "transfer" under clause (b) or as an order of "other authority" under clause (c) of s. 10-A on the ground that it adversely affects the utilization or extent of surplus area.

An order is null and void if the quasi-judicial tribunal passing it lacks inherent jurisdiction over the parties and the subject matter. F Such was not the case here. The Assistant Collector who made the orders dated September 15, 1961, was duly invested with the quasi-judicial jurisdiction under s. 18(2). All the jurisdictional facts for making the orders under that section existed. There is no dispute that Smt. Lachhman was not a "small landowner". It is common ground that Field Nos.263, 343 and 177 did not fall within her reserved area. It was not controverted that in May 1961, when the purchase G applications were made, Field Nos. 263 and 343 were comprised in the tenancy of Amar Singh and Field No. 177 in that of Indraj. According to the observation of the Surplus Area Collector, the copy of the Khasra Girdawri on the file showed that their possession as tenants was from 1957-58 i.e. for about 4½ years only, preceding the applications and thus according to him they had failed to show their continuous possession for the requisite period of six years. It is important

H

(1) [1968] 2 S.C.R. 848. (2) [1953] 4 S.C.R. 377 (392).
(3) [1970] LXXII P.L.R. 882 (F.B.).

to note further that Amar Singh in para 2 of his writ petition pleaded: A

> "That on the 2nd of May 1961, the petitioner having been in continuous occupation of land comprised in his tenancy for a period of six years applied under s. 18 of the.... Act for purchase of the above land, and by his order dated 15th September 1961, Shri Hardial Singh, Assistant Collector Ist Grade, Sirsa District Hissar, allowed the petitioner to purchase the above land at a price of Rs. 13,590/-...." B

This averment of Amar Singh was admitted in the counter-affidavit filed on behalf of the State in these terms :

> "Para 2 of the petition is admitted"

In the written statement filed by the State—apart from a general statement that "in view of the facts explained by the Collector in his order dated 11-5-62 the surplus area....has been rightly declared"— C it was not specifically pleaded that the purchase order dated September 15, 1961, made by the Collector under s. 18 was collusive, void or without jurisdiction on the ground that Amar Singh and Indraj had not been in occupation of these fields for the full statutory period. Nor could Amar Singh and Indraj be denied the status of 'tenants' and the rights and privileges attaching thereto, merely because they were related to the landowner, the 'son-in-law' and 'son-in-law's brother' D not being among the "relatives" prescribed in Rule 5 of the 1956 Rules, whose cultivation [in view of s. 2(9) of the Act] may be deemed to be the "self-cultivation" of the landowner.

To sum up, the allegation in the purchase applications about the applicants' being in continuous occupation of these fields comprised E in their tenancies for the requisite period, coupled with the Khasra Girdawri on file and the admissions made by the landlady in the compromise, furnished sufficient material on the basis of which the Assistant Collector, at the time of making the orders of purchase on September 15, 1961, could have been satisfied about the existence of all the facts essential for the exercise of his jurisdiction under s. 18. It is not correct to say that on the facts of the instant case, the Assistant F Collector passed those orders solely on the basis of the compromise, without applying his mind to the case. Application of mind is evident from the circumstance that the Assistant Collector further assessed the price to be paid by each of the applicants who thereafter, deposited the same in the Government Treasury on September 29, 1961. And, it was on the making of such deposits that the respondents were deemed to be the owners of those fields. The mere fact that the Assistant Collec- G tor did not record a finding in so many words that he was satisfied from such and such material in regard to the existence of the basic conditions necessary for making the order under s. 18, did not render his order a nullity when such material was otherwise evident on the record.

In the view I take I am fortified by the decision of this Court in H *K. K. Chari* v. *R.N. Seshadri* (1). That was a case of a compromise

(1) [1973] 1 S.C.C. 761.

A order of eviction passed by the Rent Control Court under s. 10 of the Madras Building (Lease and Rent Control) Act, 1960. But by analogy, the *ratio* of that decision is an apposite guide for the present case. There the landlord brought an action under said Rent Act, for eviction of his tenant, Seshadri from a house on the ground that he required it for his bona fide use and occupation. The tenant at first controverted the landord's claim but subsequently, both the parties filed a com-
B promise in terms of which the court passed a decree of eviction. The tenant resisted the execution of that decree, on the ground that the decree was based on compromise or consent without the court having satisfied itself by an independent consideration regarding the *bona fide* requirement of the property by the landlord for his own occupation; and as such the decree contravened s. 10 of that Act, and was a nullity. The Bench unanimously rejected this objection of the judgement-debtor
C tenant. Vaidialingam J. (Dua J. concurring) laid down the law thus :

> "The true position appears to be that an order of eviction based on consent of the parties is not necessarily void if the juris-dictional fact *viz.*, the existence of one or more of the conditions mentioned in s. 10 were shown to have existed when the Court
D made the order. Satisfaction of the Court, which is no doubt a pre-requisite for the order of eviction, need not be by the manifestation borne out by a judicial finding. If at some stage the Court was called upon to apply its mind to the question and there was sufficient material before it, before the parties invited it to pass an order in terms of their agreement, it is possible to postulate that the Court was satisfied about the grounds on
E which the order of eviction was passed".

The above principle was reiterated and applied by this Court in *Nagindas Ramdas* v. *Dalpatram Ichchram* (1).

Judged by the basic principle enunciated in the above decisions, the order dated September 15, 1961 passed by the Assistant Collector under s. 18, was not a nullity which could be ignored as *non est* by the
F Prescribed Authority. Even if those orders were erroneous, they could be impeached only by way of appeal etc. as provided in the Act because the error was committed by the Collector *within the exercise of his jurisdiction.* A court or any quasi-judicial tribunal *acting* within its jurisdiction can decide rightly as well as wrongly. To use the felicitious words of S. K. Das J. vide *Smt. Ujjam Bai* v. *State of Uttar Pradesh* (2), such administrative bodies, or officers acting in judicial
G capacity" are deemed to have been invested with the power to err within the limits of their jurisdiction" and their decisions must be accepted as valid unless set aside in appeal. This general principle was reiterated by this Court in *Ittayavira Mathai* v. *Varkey Varkey* (3) as under :

> "It is well settled that a court having jurisdiction over the subject matter of the suit and over the parties thereto, though
H

(1) Civil Appeal No. 2479/72 decided on 30.11.73.
(2) A.I.R. 1962 S.C. 1621=[1963]1, SCR 778.
(3) A.I.R. 1964 S.C. 907(910)=[1964]1, SCR 495.

bound to decide right may decide wrong and that even though it decided wrong it would not be doing something which it had no jurisdiction to do. It had the jurisdiction over the subject-matter of the suit and over the party and, therefore, merely because it made an error in deciding a vital issue in the suit, it cannot be said that it has acted beyond its jurisdiction. As has often been said courts have jurisdiction to decide right or to decide wrong and even though they decide wrong the decrees rendered by them cannot be treated as nullities.....It merely makes an error of law (which) can be corrected only (on appeal) in the manner laid down in the Civil Procedure Code."

The above principle are applicable with greater force to the present case. The Prescribed Authority, surplus Area, and the Collector competent to make an order under s. 18 are both Assistant Collectors of the Ist Grade, that is coordinate authorities exercising *separate and distinct* jurisdictions. One cannot sit in appeal or revision over the orders of the other. If one feels that a certain order passed by the other in the exercise of distinct jurisdiction is erroneous it is open to get it rectified in the appropriate manner provided by the Act i.e. by way of appeal, review or revision. As has already been observed earlier, the State or the Department. if aggrieved or prejudiced by a decision of an authority under this Act can avail of the remedy of appeal available under the Act in any case, it can move the Financial Commissioner to set right the illegality or impropriety in revision. The Financial Commissioner it may be recalled has wide powers in revision to correct such errors committed by the inferior authorities in the exercise of their jurisdiction and there is no time limit to the exercise of this revisional power by the Financial Commissioner.

Section 25 of the Act provides :

"Except in accordance with the provisions of this Act, the validity of any proceedings of order taken or made under this Act shall not be called in question in any court or before any other authority.

On analysis of the section it is clear that it gives a two fold mandate. On one hand it debars the jurisdiction of courts or other authorities to question the validity of any proceeding or order taken or made under the Act and on the other it prohibits the impeachment of such orders or proceedings in a manner which is not in accordance with the provisions of the Act. It indicates that decisions of the authorities under the Act can be challenged only by way of appeal review or revision as provided in ss. 80, 81, 82, 83 and 84 of the Punjab Tenancy Act, 1887, made applicable by s. 24 of the Act or in the Rules made under the Act.

The Punjab and Haryana High Court has consistently taken this view. The Full Bench in *Dhankel* v. *Man Kauri* (supra) also held that the Assistant Collector while dealing with the purchase application under s 18 has no jurisdiction to sit in appeal or revision over the order of the Surplus Area Collector passed in surplus area proceeding and he has no jurisdiction to ignore that order.

A The rule equally holds good in the converse. In the Full Bench decision in *Mam Raj* v. *Punjab State* (supra) it was held that once an application of the tenant under s. 18 has been allowed and the other is not set aside in appeal or revision, the same becomes final and remains immune to an attack against its validity on any ground including that of collusion, before the co-ordinate authorities under the Act dealing with the question of determination of surplus area. B If I may say so with respect this proposition laid down by the Full Bench is unexceptionable.

The above being the law on the point, it is clear that the orders dated September 15, 1961 not having been impeached by way of appeal, review or revision as provided by the statute or in other proceedings recognised by law, had become final and conclusive and the Prescribed C Authority, Surplus Area was bound to accept them as valid. He could not go behind them or himself sit in appeal over them. It was all the more disconcerting in this case because the Collector who passed the orders under s. 18 and the Collector who ignored those orders as Prescribed Authority, Surplus Area happened to be the same Officer.

This takes me to the next question viz, if the orders dated September D 15, 1961 were not a nullity could they be ignored under s. 10 A on the ground that they amounted to "transfer" or orders of "other authority" affecting the utilisation or causing the diminution of surplus area?

Before embarking upon a consideration of this question, it is necessary to remember two fundamental canons of interpretation applicable to such statutes. The *first* is that if choice lies between two al- E ternative constructions, "that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system" (see Maxwell 12th Edn. page 45). The *second* is that if there is an apparent conflict between different provisions of the same enactment, they should be so interpreted that, if possible, effect may be given F to both (see King *Emperor* v. *Behari Lal Sharma* (1).

Let us now apply the above principles to the construction of ss. 10-A and 18. It has already been noticed that s. 18 is designed to promote one of the primary objects of the Act viz., of procuring ownership of land to the tiller on easy terms. It has also been seen that the self-sufficing machinery of this section is available for purchase of their G tenancies to the tenants inducted before or after April 15, 1953, by the landowner on land not being a part of *his permissible area*, equally with tenants settled on such area by the Government. In a way, every sale made by the operation of s. 18 in favour of tenant admitted by the land-owner on his surplus area, causes diminution of the surplus area or affects the utilisation thereof by the Government. If such sales were to be ignored under s. 10-A, then it will reduce the working of H the system of the Act to a mockery. It will mean "war" between sections 18 and 10-A. Such a construction of the Act will present a spec-

(1) 1944 [49] C. W. N. 178 P. C.=72 I. A. 57.

tacle of manifest contradiction and absurdity of an Act giving right by one hand and taking away the same by another. The adoption of such an interpretation may not *completely* "obliterate" s. 18, as the High Court has said, but it will certainly truncate it. A 'potent and substantial limb of s. 18, which according to the ruling of this Court in *Sahib Ram's case* (supra) entitles the category of tenants inducted by the landowner after April 15, 1953 to purchase their tenancies, would stand—as it were—"amputated" by judicial operation such an interpretation will run counter to the fundamental principles of construction. The conflict between the two provisions can be avoided only if we read the general words other authority" in cl. (c) of s. 10-A, *ejusdem generis* with the specific words "judgment, decree or order of a court", which immediately precede them. Thus construed, these general words "or other authority" will not take in an authority exercising jurisdiction under s. 18(2) of the Act.

Nor can the words "transfer or other disposition of land" in clause (b) of s. 10-A, be construed to include a transfer which results by the process of s. 18. The meaning of these words must be restricted to *volitional dispositions* of land made by the landowner, and cannot be extended to cover involuntary transfers brought about by operation of law or circumstance beyond the control of the landowner. The two type of involuntary transfers, namely, acquisition of land by Government under legal compulsion or by an heir by inheritance which were inserted by the Amending Act 4 of 1959 in the saving clause of this provision and were later given a retrospective effect from April 15, 1953, are only clarificatory or illustrative of the original intent of the Legislature. These two instances are not exhaustive of the involuntary transfers which are outside the sweep of clause (b).

This interpretation of "transfer" has been consistently adopted by the Punjab and Haryana High Court in several cases. Some of them in which involuntary transfers of a kind other than those specifically mentioned in the saving clause of clause (b) came up for consideration are reported in *Bhajan Lal v. Punjab State*(1) & *Bishan Singh* v. *Punjab State* (2). This case decided by Mahajan J. proceeds on an interpretation of the same words used in s. 32-FF of the Pepsu Tenancy and Agricultural Lands Act, 1953, which is in *pari materia* with s. 10-A of the Punjab Act; *Lakshmi Raj v. State of Haryana* (3).

The above is the only reasonable interpretation of the words "transfer or other disposition of land" in s.10-A(b) which is consistent with the content and object of s.18, and can reconsile and keep effective both the sections.

Though the contention of Mr. Dhingra that the words "transfer or other disposition" in the said clause(b) do not embrace within their scope tenancies or leases created by the landowner—because such a right of the landowner is recognised by the Act vide *Sahib Ram's case* (supra)—is not altogether without force, yet I do not think it necessary

(1) (1968) 70 P.L.R. 664. (2) (1968) 47 LLT 284.
(3) (1971) LXXIII Punjab L. R. 815.

A to decide that point. The lease created by Smt. Lachchman ceased to subsist as soon as the Collector made the orders of purchase under s. 18 in favour of the erstwhile tenants. The question, whether the extinct lease which preceded the purchase orders was a "transfer" or not, does not, therefore, survive for decision.

B In the light of what has been said above, I am firmly of the opinion that the view taken by the High Court with regard to the interpretation and inter-relationship of ss.10-A and 18 is sound and the answers given by it to the first three questions of law set out at the commencement of this judgment, are correct. I would, therefore, uphold the same.

Now I turn to question No. 4, which arises in *Amar Singh's* case only.

C

It is common ground that Field Nos. 265 and 343 on April 15, 1953, were comprised in the tenancy of Sri Chand and Nathu. The total area of these two fields is 67 bighas and 19 biswas equivalent to 42 ordinary acres, approximately. It is apparent from the record that the land in these two fields is entirely *Barani* and has no irrigation facilities, whatever. According to the scale adopted by the Collector, Surplus
D Area, for such land, these 42 ordinary acres will make 10·5 standard acres. The total area of Smt. Lachchman which has been found surplus is about 80 standard acres. The land comprised in these two fields is thus only one-eighth of her surplus area.

At no stage before the High Court was it contended that Sri Chand and Nathu held or owned in the state any other land apart from the
E said fields. In this Court, also, either in the grounds of appeal or otherwise, no such allegation or contention has been made. The "permissiable area" which can be held or retained by a tenant under the Act is 30 standard acres. That is to say, the permissible limit of the area which could be held in common by Sri Chand and Nathu, was 60 standard acres. Since it has been no-body's case that Sri Chand and Nathu held any other area, and the land comprised in these two fields
F being 10.5 standard acres, was far less than their permissible limit, the High Court presumed—and I think, not wrongly that Field Nos. 265 and 343 were held by the tenants Sri Chand and Nathu within their permissible area.

It is well settled that surplus area has to be determined with reference to the situation as it obtained on April 15, 1953 when the Act
G came into force. This proposition is clear from s.19-F, also, which says that the Prescribed Authority shall be competent to determine the surplus area, referred to in s. 10-A, of a landowner out of the lands owned by such land-owner immediately before the commencement of the Act. If there still remained any doubt on this point, the same must be deemed to have been authoritatively dispelled by the decision of this Court in *Bhagwan Das* v. *The State of Punjab*(1). A plain reading of the
H definition of 'surplus area' in s.2(5-a) which has been quoted in a foregoing part of this judgment, shows that land held by a tenant within

(1) [1966] 2 S. C. R. 511.

his permissible area, cannot be included in the surplus area of the landowner. Since on the determinative date i.e. 15-4-53, Field Nos. 265 and 343, measuring 10·5 standard acres only, were held by the tenants, Sri Chand and Nathu, within their permissible area, these fields could not, in view of the mandate of s. 2(5-a), be included in the 'surplus area' of Smt. Lachchman. At the time, when the Surplus Area Collector took up determination of the surplus area (which as pointed out in *Dhannkal's case* (supra) implies incidental verification of the permissible areas of the landowner and the tenants, also) these fields were still comprised in a tenancy, though the holder of the tenancy was a different tenant. In these circumstances, the change of the tenant will not make these Fields accrete to the surplus area of the landowner. Such change of the tenant does not amount to a future "acquisition of land comprised in that tenancy by the landowner within the contemplation of ss. 19-A or 19-B of the Act. Such a situation came up for consideration before a Division Bench (consisting of Sharma and Khosla JJ) of the Punjab High Court in *Harchand Singh* v. *Punjab State*. (1) Sharma J. who spoke for the Bench, made these observations:

> "There can be no doubt that in the instant case the surplus area was to be determined on the date the Act came into force i.e. 15th April 1953, and further that the area in the cultivating possession of a tenant if within the prescribed limit was also to be excluded from consideration. Section 10-A governs the disposition of land which was comprised in a surplus area at the commencement of the Act and not the land which was not surplus on that date or had become surplus after the coming into force of the Act. The latter case was evidently covered by ss. 19-A and 19-B of the Act.....the mere change in tenancies will not attract the provisions of these sections provided the area which the tenant comes to occupy thereby does not exceed the permissible area. *By changing a tenancy a landlord also can not be said to have acquired the land* comprising the tenancy because the land (which) belonged to him before hand continued to belong to him after the change in tenancy. The term "acquire" has not been defined in the Act and so we have to accept its dictionary meaning as, "To make property one's own. To gain permanently. It is regularly applied to permanent acquisition" (Bouvier's Law Dictionary and Concise Encyclopaedia, Eighth Edition, Vol. I. P. 114)"

(1) (1964) 66 P.L.R. 285; 1963 P.L.J. 144.

A These observations, in my opinion, contain a correct statement of law on the point.

For the foregoing reasons, I would hold that these two fields could not be included in the surplus area of the landowner, Smt. Lachman and s.10-A was not attracted to a disposition of these fields either by B an order made under s. 18 or otherwise.

In the result, I would dismiss both these appeals, leaving the parties to bear their own costs in this Court.

ORDER

In accordance with the Judgment of the majority, the appeals are C allowed, but in the circumstances, the parties will bear their costs throughout.

V.P.S.