Government of India in the Ministry of Labour, Employment and Rehabilitation, addressed to the General Secretary to the Khadi Karamchari Sangh, Krishnapura, Panipat, on the subject of "Appropriate Government in realtion to the disputes in respect of Khadi Ashram, Panipat". That letter reads:—

> "I am directed to refer to your letter No. KKS/70(2), dated the 24th January, 1970, on the above subject and to say that your letter together with its enclosures has been forwarded for disposal to the Government of Haryana, who are the appropriate Government in the matter. It is, therefore, requested that all future correspondence in the matter may kindly be addressed to the Haryana Government".

I think the Central Government was correctly advised in this connection.

(13) After considering all the abovementioned aspects of the matter, I am of the opinion that there is no escape from the conclusion that the Khadi Ashram, Panipat, which is a Society registered under the 1860 Act and which is functioning on the grant of a certificate by the Khadi and Village Industries Commission, established under section 4 of the 1956 Act, is not being run either by or under the authority of the Central Government. That being so, the "appropriate Government" in relation to any industrial dispute concerning the appellant-industry and its workmen is not the Central Government within the meaning of section 2(a)(i), but is the State Government referred to in section 2(a)(ii) of the 1947 Act. No fault at all can, therefore, be found with the view taken in this matter by the learned Single Judge. Both these appeals must, therefore, fail and are accordingly dismised with costs.

K. S. K.

MISCELLANEOUS CIVIL

Before R. S. Narula and Bal Raj Tuli, JJ.

SHRI SHANTI SWARUPA,—*Petitioner.*

versus

THE STATE OF PUNJAB, ETC.,—*Respondents.*

C.W. No. 2020 of 1973

April 3, 1974.

Punjab Land Reforms Act (X of 1973)—Section 15—Punjab Security of Land Tenures Act (X of 1953)—Section 18—Constitution of India (1950)—*Articles* 14, 19, 31(2), 31-*A*, 39(*a*) *and* 39(*b*)—*Proviso to section* 15(1) *reducing the amount payable by a tenant*

to his landlord for purchasing the land under his tenancy—Whether partakes of the nature of an agrarian reform and immune to an attack of being violative of Articles 14, 19 and 31—Expression "Article 31" in Article 31-A—Whether refers to Article 31 as it stood at the time of coming into force of the Constitution—Provisions of Section 18, Punjab Security of Land Tenures Act, 1953 and section 15, Punjab Land Reforms Act, 1973—Whether provide for the "compulsory acquisition of property" within the meaning of Article 31(2)—Section 15, Punjab Land Reforms Act 1973—Whether violative of Articles 14, 19 and 31—Purchase price fixed by section 15—Courts—Whether can probe into such fixation—Purchase applications under section 18 of Punjab Security of Land Tenures Act, 1953 pending before the coming into force of Punjab Land Reforms Act, 1973—Reduced price mentioned in proviso to section 15(1), 1973 Act—Whether applicable to such applications—Permissible area of a landowner not determined—Tenant—Whether entitled to purchase the land before determination of such area—Policy of the towards securing the principles under Article 39(b) and 39(c) of the Constitution—Courts—Whether can decide a particular law having been enacted for securing such principles.

Held, that the authority conferred on a tenant to purchase the land under his tenancy from out of the surplus area of his land-lord does envisage agrarian reform. The proviso to sub-section (1) to section 15 of Punjab Land Reforms Act, 1973, which fixes the purchase price at reduced rates of the land comprised in the surplus area of the land-owner which he is compelled by law to sell to his tenants, is also an agrarian reform as it modifies the "right" of the land-owner in relation to his "estate". The proviso, therefore, falls squarely within Article 31-A(i)(a) as per the meaning of the word "estate" and the expression "rights" given in clause (2) of that Article. The agrarian reform in respect of the rights of the tenants to purchase specified parts of the estates of the land-owners has not been completed under Punjab Security of Land Tenures Act, 1953. The proviso does advance that reform. Hence this agrarian reform as contained in section 15(1) proviso is immune from attack on the ground of its being violative of Articles 14, 19 and 31 of the Constitution.

Held, that the only conditions precedent for being a law under the umbrella of Article 31-A are that (i) the law must provide for one or more of the things specified and cover one or more of the subjects enumerated in sub-clauses (a) to (e) of clause (1) of that Article; and (ii) if such law has been made by a State Legislature, the same must have been reserved for the consideration of the President and should have received his assent. The reference to Article 31 in Article 31-A is not to that Article as it stood at the time of coming into force of the Constitution or even at the time of the enactment of Article 31-A. It has reference to Article 31 as it may

exist at any time in the same manner as reference to Article 14 and 19 in Article 31-A refers to those Articles as amended from time to time.

Held, that the scope of clause (2) of Article 31 is, much narrower than that of clause (1) of that Article. Whereas clause (1) refers to deprivation of any property in any manner save by authority of law, clause (2) is referable only to compulsory acquisition or requisition of property. Clause (2-A) of Article 31 lays down, *inter alia*, that where a law does not provide for the transfer of the ownership or right to possession of any property to the State, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. No property of a land-owner is either acquired or requisitioned by the State under section 15 of the Punjab Land Reforms Act, 1973. Hence the provisions of section 18 of the 1953 Act and of section 15 of the 1973 Act do not provide for "the compulsory acquisition of property" within the meaning of clause (2) of Article 31 of the Constitution.

Held, that section 15 of Punjab Land Reforms Act, 1973, merely modifies the right of the landlord to transfer a part of his holding and obliges him to sell the same not at his own price, but at a price fixed under the Act, and not to anyone but to specified persons in accordance with the provisions of this Act. If, therefore, squarely falls within the scope of Article 31-A(1)(a) of the Constitution. Hence it cannot be held that section 15 of the Act is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31 because this Act had been reserved for the consideration of the President and had actually received his assent.

Held, that it is a matter for the exclusive judgment of the appropriate Legislature as to what programme of agrarian reform should be initiated from time to time to satisfy the requirements of rural uplift in a particular community under the prevailing circumstances. If the fixation of the purchase price is within the legislative competence and is not unconstitutional or illegal, there is nothing into which the Court can probe further. In any case the purchase price fixed by section 15 of Punjab Land Reforms Act, 1973 is not illusory or arbitrary and is directly related to the actual value of the land.

Held, that under Punjab Land Reforms Act, 1973, a right has been conferred on the tenants who had applied under section 18 of Punjab Security of Land Tenures Act, 1953 to continue their applications subject to only two modifications, namely, that the procedure for purchase of the tenancy land and the rate at which the purchase price has to be paid to the land-owner shall be determined

by the 1973 Act. In all other matters the tenant is entitled to continue the previous proceedings and pursue the previous remedy in respect of the rights conferred on him under section 18 of the 1953 Act. The mandate of Legislature in respect of giving retrospective effect to the reduced price mentioned in the first proviso to sub-section (1) of section 15 of the Act is express and cannot be ignored. Hence the provisions of section 15 of 1973 Act are retrospective in the sense that they also apply to applications made under the 1973 Act before the coming into force of the 1973 Act which had not been finally disposed till the coming into force of this Act.

Held, that when an application for purchase is made by a tenant and the landowner has not reserved his permissible area, the tenant is entitled to purchase the land only after the reservation has been made by the landowner or by the Collector on his behalf. The tenant is not entitled to purchase from the landowner the land held by him which is included in the landowner's reserved area, and therefore, reservation by the landowner is a *sine qua non* for the exercise of the tenant's right to purchase. The application of the tenant has not to be dismissed in such circumstances, but it should be kept in abeyance and processed after the determination of the permissible area and the reservation of the landowner. If the land comprised in the tenancy falls within the reserved permissible area of the landowner, the application of the tenant must be dismissed.

Held, that any law giving effect to the policy of the State towards securing the principles specified in Article 39(b) and 39(c) of the Constitution is rendered immune to an attack on its validity or constitutionality under Article 13 on the ground that such law violates Articles 14, 19 or 31, but the jurisdiction of a Court to go into the matter and decide whether such law has or has not in fact been made for giving effect to such policy of the State is not barred in spite of a declaration having been made to that effect. However, the removal of the bar of the jurisdiction of the Court to go into such a matter also by any process of reasoning does not take away the immunity conferred on the Act pertaining to agrarian reforms, which has been afforded to it by Article 31-A of the Constitution.

Petition under Articles 226 and 227 of the Constitution of India praying that an appropriate writ, order, or direction be issued declaring that the provisions of the Impugned Act, i.e., the Punjab Land Reforms Act No. 10 of 1973, are liable to be struck down and declaring that the petitioner is entitled to get compensation for or value of his land which is sought to be purchased by respondent Nos. 3 to 15 as provided in section 18(2) of the repealed Act, i.e., the value of the land shall be the average of the price obtaining for similar land in the same locality during ten years immediately preceding the dates on which the said respondents had filed their purchase applications under section 18 of the repealed Act and not in accordance with the Provision (i) to section 15 of the impugned Act.

H. L. Sarin, Senior Advocate, M. L. Sarin & Suresh Amba, Advocates, with him, *for the petitioner.*

J. S. Wasu, Advocate-General, Punjab, S. K. Sayal, Advocate, with him, *for respondents* 1 *and* 2.

M. M. Punchhi, Advocate, *for respondents* 3 *to* 9.

K. C. Puri, Advocate, *for respondents* 10 *to* 15.

JUDGMENT

NARULA, J.—The constitutionality and scope of the operation of section 15 of the Punjab Land Reforms Act (10 of 1973) (hereinafter called the 1973 Act) has been called in question in this bunch of ten writ petitions (C.Ws. 2020, 2182, 2574, 2825, 3033, 3046, 3906 and 4036 of 1973, and 658 and 659 of 1974) on the following grounds :—

(i) the proviso to sub-section (1) of section 15 reducing the amount payable by a tenant to his landowner for purchasing the land comprised in his tenancy from 75 per cent of ten years' average market value under section 18 of the Punjab Security of Land Tenures Act (10 of 1953) (hereinafter referred to as the 1953 Act) to 90 times the land revenue or Rs. 500 per hectare (whichever is less) does not partake of the nature of an agrarian reform, and is, therefore, not immune to an attack on the ground of its being violative of Articles 14, 19 and 31 of the Constitution;

(ii) the bar to the questioning of the adequacy of any amount made payable by any statute for acquiring any property by the State, referred to in Article 31-A, does not operate against an attack on the *vires* of a statute on the ground of violation of Article 31 of the Constitution if the statute has been enacted after the substitution of the present clause (2) of Article 31 for the original corresponding clause as the present Article 31(2) was not in the Constitution when Article 31-A was enacted in 1951. In other words the expression "Article 31" in Article 31-A refers to only that "Article 31" which was in the Constitution at the time of the coming into force of the Constitution (First Amendment) Act, 1951 ;

(iii) the relevant decision of seven out of thirteen Judges of the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalyaru and others* v. *State of Kerala and another* (1), (hereinafter referred to as the *Kesavananda's case*) makes the question of the quantum of the amount fixed by a law under Article 31(2) of the Constitution justiciable by a Court if it is found that the amount fixed by the law was not based on any norm or principle which might be relevant for the purpose of arriving at the amount payable in respect of acquiring the property or if it is found that the amount fixed under the law is either illusory or has been fixed arbitrarily ;

(iv) the amount equal to 90 times the land revenue subject to a ceiling of Rs, 500 per hectare, which is to be received by a landowner from his tenant who acquires the land comprised in his tenancy, has no reasonable relationship with the value of the property sought to be acquired by a tenant and the same has been fixed arbitrarily and is absolutely illusory; and is in reality a fraud on the Constitution and is therefore *ultra vires* Article 31(2) of the Constitution ;

(v) the ceiling of Rs. 200 per acre (that is Rs. 500 per hectare) fixed by the proviso to sub-section (1) of section 15 has in any case no relevancy at all to the value of the property and is absolutely arbitrary ;

(vi) the proviso to sub-section (1) of section 15 which reduces the rate of compensation payable by a tenant to the detriment of the landowner is not retrospective in its operation, and cannot, therefore, apply to fixation of the compensation payable to those of the petitioners whose tenants had applied under section 18 of the 1953 Act for purchasing the land prior to the coming into force of the 1973 Act; and

(vii) the authorities under the Act have no jurisdiction to decide an application under section 18 of the 1953 Act (read

(1) A.I.R. 1973 S.C. 1461.

with section 15 of the 1973 Act or otherwise) till the permissible area of the landowner has been finally determined.

(2) In view of the nature of the points canvassed before us by the learned counsel for the parties it is unnecessary to refer to the detailed facts of any case except to mention that in nine out of these ten cases, applications under section 18 of the 1953 Act for acquiring the land comprised in the tenancy of the respective tenant-respondents were pending when the 1973 Act come into force, and in some of the cases the applications are being proceeded with in spite of the fact that the permissible area of the landowner-petitioners in those cases has not yet been determined.

(3) Due to historical reasons two different enactments were in force in different portions of the State of Punjab before the 1973 Act came into force. The Patiala and East Punjab States Union formed a separate State before its merger with the erstwhile State of Punjab under the States Reorganisation Act, 1956. Whereas the 1953 Act was enforced in the erstwhile State of Punjab with effect from April 15, 1953, the Pepsu Tenancy and Agricultural Lands Act (hereinafter called the Pepsu Act) was enforced in the Pepsu region with effect from March 4, 1955. The relevant material difference between the scheme underlying the two Acts was that whereas under the 1953 Act the landowner was not divested of his rights of ownership in that area of his holding which was declared to be surplus (that is the area which was beyond his permissible area) and the tenants of the landowner on the surplus area (whether originally settled by him or inducted into that area by the State in accordance with the terms of a scheme framed under that Act) continued to be the tenants of the landowner and were liable to pay the rent of the land to him; the Pepsu Act provided for the landowner being divested of his rights of ownership in the surplus area which was to belong to the State and which was to be utilised by the State for the benefit of the evicted tenants or landless persons, etc. under section 32-E of the Pepsu Act. Under that Act the surplus area of a landowner was to vest in the State Government free from encumbrances created by any person, and the right, title and interest of all other persons in such land stood extinguished.

(4) A landowner whose total holding was within the permissible limits was described as a small landowner in the 1953 Act.

Such a landowner was entitled to eject a tenant under section 9(1) (i) of the 1953 Act. Similarly a tenant on the reserved area of a landowner had no protection against ejectment. Section 18 of that Act conferred a right on a tenant of a landowner other than a small landowner to purchase from the landowner the land held by him in his tenancy which was not included in the reserved area of the landowner, if the tenant had been in continuous occupation of the said land for a minimum period of six years prior to the date of his making the application and in two other eventualities mentioned in that section. Under sub-section (2) of section 18, the Assistant Collector was required to determine the value of the land sought to be purchased by a tenant. The value so determined was to be the average of the prices obtaining for similar land in the locality during ten years immediately preceding the date on which the application was made. The purchase price payable by a tenant under section 18(3) of the 1953 Act was to be three-fourths of the value of the land so determined. The purchase price had to be paid either in a lump sum or in six-monthly instalments not exceeding ten in the manner prescribed in section 18. Clause (b) of sub-section (4) of section 18 provided that on the purchase-price or the first instalment thereof, as the case may be, being deposited, the tenant was to be deemed to have become the owner of the land (and was to be put in possession by the Assistant Collector where he had been dispossessed). Under section 22 of the Pepsu Act, a tenant of a big landowner on a piece of land which was not reserved by the landowner for his personal cultivation was entitled to acquire the right, title or interest of his landowner in the land comprised in his tenancy by making an application under sub-section (2) of that section. Section 23 required the prescribed authority to determine the compensation payable by a tenant for the land purchased by him under section 22 in accordance with the principles set out in section 26. Those principles were couched in the following language in section 26(1) of the Pepsu Act :—

> "Where any person has acquired proprietary rights in respect of any land under this Chapter, he shall be liable to pay to the landowner from whom such rights have been acquired compensation at the rate of ninety times the land revenue (including rates and cesses) payable for such land or two hundred rupees per acre, whichever is less."

The compensation so determined was to be deposited by the tenant in the manner prescribed in sub-sections (2) and (3) of section 23.

On and with effect from the date of issue of the certificate of the requisite deposit having been made under sub-section (3) of section 23, the proprietary rights of the landowner in the land specified in the certificate was to stand extinguished and was to vest in the tenant-applicant free from all encumbrances. It was in the above-mentioned circumstances that the 1973 Act was enacted and brought into force with effect from April 2, 1973, so as to attain uniformity in respect of the law relating to the ceiling of agricultural land in the historically two different portions of the united State of Punjab. In the official statement of objects and reasons for passing the 1973 Act, following three objects for repealing the 1953 Act and the Pepsu Act, and for enacting the new law were set out :—

> "Now in the State of Punjab two enactments, i.e., the Punjab Security of Land Tenures Act, 1953 and the Pepsu tenancy and Agricultural Lands Act, 1955, are in force. The Punjab Security of Land Tenures Act, 1953, applies only to those parts of the State which were comprised in the State of Punjab before 1st of November, 1956. The Pepsu Tenancy and Agricultural Lands Act, 1955, applies to those territories of the erstwhile State of Pepsu which now form part of the State of Punjab. It has become essential that the law relating to ceiling on agricultural land contained in the aforesaid two Acts and which applies to certain parts of the State of Punjab should be unified and there should be only one Act on the agricultural land for the whole of the State of Punjab.
>
> Secondly the Central Committee on land reforms appointed by the Government of India evolved a policy which sought to make available additional land to be distributed among landless persons to guarantee equitable distribution of land. To achieve this object it has been decided that permissible area be reduced, that the surplus area should vest in the State Government and a family is to be treated as a unit for determining the permissible area. It has also been decided that certain exemptions which were allowed under the two existing enactments should be withdrawn.

Thirdly the surplus land is to be acquired by the State Government for allotment to the landless persons and further proprietary rights are to be conferred on them."

On the whole the Pepsu pattern has been adopted in the 1973 Act for the whole of the State of Punjab. The Pepsu Act and the 1953 Act have been described in the 1973 Act as the Pepsu law and the Punjab law as per definition of those expressions contained in clauses (x) and (xii) respectively of section 3 of the new Act. Subject to the right of the tenant to purchase the land comprised in his tenancy out of the surplus area of a land-owner, the entire surplus area of a land-owner, whether declared as such under the Punjab law or the Pepsu law, which has not been utilised till the commencement of the 1973 Act has, under section 8 of the aforesaid Act, been vested in the State Government free from all encumbrances. The Collector has been authorised by section 9 of the 1973 Act to take possession of the surplus area of any land-owner, even by force it necessary. The amount payable to a land-owner for his surplus area which is vested in the State under section 8 has to be determined on the principles set out in section 10(1) in the following words :—

"(1) for the first three hectares of land, twelve times the fair rent, subject to a maximum of five thousand rupees per hectare ;

(ii) for the next three hectares of land, nine times the fair rent subject to a maximum of three thousand seven hundred and fifty rupees per hectare; and

(iii) for the remaining land six times the fair rent subject to a maximum of two thousand and five hundred rupees per hectare."

The surplus area so fixed and taken over by the State Government has then to be utilised according to a scheme for utilisation under section 11 of the 1973 Act.

(5) The next relevant provision in the 1973 Act is section 15 which may, for the sake of convenience of reference, be quoted verbatim at this stage :--

"(1) Notwithstanding anything contained in this Act, a tenant who was entitled to purchase the land comprised in

his tenancy, under section 18 of the Punjab Law or section 22 of the Pepsu Law, as the case may be, immediately before the commencement of this Act, shall be entitled to purchase such land from the land-owner on the same terms and conditions, as were applicable immediately before such commencement :

Provided that:—

(i) the amount payable by the tenant for the land shall be equivalent to ninety times the land revenue (including rates and cesses) payable for such land or five hundred rupees per hectare, whichever is less ; and

(ii) the procedure for purchase of such land shall be as is specified hereinafter and the period of limitation for exercise of such a right shall be one year from the date of commencement of this Act.

(2) An application for the purchase of land under sub-section (1) shall be made to the Assistant Collector of the first grade having jurisdiction who shall, after giving notice to the landowner and after making enquiry in the prescribed manner, determine the amount payable in respect thereof.

(3) The tenant may pay the amount determined under sub-section (2) either in lump sum or in half-yearly instalments not exceeding fifteen in the manner prescribed.

(4) On the payment of the entire amount or the first instalment thereof, as the case may be, the 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 of the land, put him in possession thereof, subject to the provisions of the Punjab Tenancy Act, 1887.

(5) If a default is committed in the payment of any of the instalments, the entire outstanding balance shall, on application by the person entitled to receive it, be recoverable as arrears of land revenue.

(6) If the land is subject to mortgage, at the time of purchase, the land shall pass to the tenant unencumbered by the mortgage, but the mortgage amount shall be a charge on the purchase price."

(6) Section 28 which provides for the partial repeal of the 1953 Act and the Pepsu Act and which provides for the savings in respect of the pending proceedings subject to certain changes states as below:—

"(1) The Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955 in so far as these are inconsistent with the provisions of this Act are hereby repealed.

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

(i) The proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by the State Government in accordance with the provisions of this Act;

Provided that such proceedings shall, as far as may be, be continued and disposed of, from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act, and the cases pending before the Pepsu Land Commission immediately before the date of commencement of this Act shall stand transferred to the Collector of the district concerned for disposal.

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area referred to above, in accordance with the provisions of this Act;

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder ;

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right, privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed;

Provided that such proceeding or remedy shall, as far as may be, be instituted, continued or enforced in accordance with the procedure specified by or under this Act."

(7) It would be noticed from the above-mentioned legislative changes that the 1973 Act has brought into force in the whole of the State of Punjab the principles underlying the determination of the purchase-price payable by a tenant to his land-owner contained in section 26(1) of the Pepsu Act, and has done away with the right of the land-owners under section 18 of the 1953 Act to obtain from their purchasing tenants the value of their lands comprised in the tenancy calculated on the basis of ten years' average of the market value of similar land in the locality. It is this change with which all the petitioners have been hit and the effect of which, each of the petitioners seeks to aviod in these writ petitions. Stage is now set for dealing with the submissions made by the counsel for the petitioners.

Ground No. (i).

(8) It is sought to be established by the petitioners that the first proviso to sub-section (1) of section 15 of the 1973 Act does not contain any agrarian reform and the said provision cannot, therefore, attract Article 31-A of the Constitution, so as to render it immune to an attack on its validity on the ground of violation of Articles 14, 19 and 31 of the Constitution. The relevant part of Article 31-A is extracted below :—

"31-A(1) Notwithstanding anything contained in Article 13, no law providing for :

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights, or

(b) to (e) ....

shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31.

Provided ....

Provided further ....

(2) In this article—(a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) and (ii) ....

....

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans;

(b) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure holder, raiyat, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

The argument of Mr. K. P. Bhandari, learned counsel for the petitioner in Civil Writ 4036 of 1973, was two-fold in this respect. His first submission was that it is not necessary that each provision in an enactment relating to agrarian reforms must itself pertake of that character. For that proposition he relied on the following ob-

servations in the Full Bench judgment of this Court in *Sucha Singh Bajwa* v. *The State of Punjab* (2) wherein while dealing with the argument relating to invalidity of the definition of 'family' contained in section 3(4) of the 1973 Act, it was observed :—

> "The share of each member of the family in the permissible area of the family has not been defined nor has any restriction been placed on the alienation of that land by the members of the family so as to ensure its retention in the family. Such a provision cannot be said to be in the interest of or by way of agricultural reform, nay, it is the very negation thereof and cannot be upheld as valid or constitutional."

We are bound by the Full Bench judgment in *Sucha Singh's case* (2) (supra) and accordingly agree with the learned counsel that it is possible that a particular provision in an enactment, which is made generally by way of an agricultural reform, may not partake of that particular character. Such a provision would not be immune, under Article 31-A, to an attack under Article 14, 19 or 31.

(9) We are, however, unable to find any force in the second submission of Mr. Bhandari to the effect that the reduction in the quantum of the purchase-price payable by the tenant to his land-owner has nothing to do with an agrarian reform. The authority conferred on a tenant to purchase the land of his tenancy from out of the surplus area of his land-owner admittedly envisages such a reform. Counsel, however, submitted that the mere reduction of the amount which a land-owner may be entitled to receive from his tenant in respect of the land purchased by the tenant has no relevance with any such reform. This argument is certainly not open to the petitioners in the face of the authoritative pronouncement of the Supreme Court in *Atma Ram* v. *State of Punjab and others* (3). While dealing with the question of protection of Article 31-A against the attack on the *vires* of the 1953 Act (as amended by Punjab Act II of 1955), it was observed that the expressions "estate" and "rights" in Article 31-A have been used in their widest amplitude and must be given their fullest and widest effect. It was specifically held by their Lordships that the provisions of the 1953 Act amounted to modification of the land-owner's substantive "right" in the lands

(2) I.L.R. 1974(1) Pb. & Hr. 575 (F.B.)=1974 P.L.R. 273.
(3) A.I.R. 1959 S. C. 519.

comprised in his "estate" or "holding" inasmuch as provisions in that Act obliged him to sell lands, not at his own price, but at a price fixed under that statute, and not to any person of his choice, but to specified purchaser in accordance with the requirements of the 1953 Act. After referring to the modification of the land-owner's rights in the above and in two other respects, the Supreme Court stated:—

> "Thus, there cannot be the least doubt that the provisions of the Act very substantially modify the land-owner's rights to hold and dispose of his property in any estate or a portion thereof. It is, therefore, clear that the provisions of Article 31-A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution. That being so, it is not necessary to consider the specific provisions of the Act, which, it was contended, were unreasonable restrictions on the land-owner's rights to enjoy his property, or whether he had been unduly discriminated against or whether the compensation, if any, provided for under the Act, was illusory or, at any rate inadequate."

In the light of the above-quoted decision of the Supreme Court, it is clear that the proviso to sub-section (1) to section 15, which fixes the purchase-price of land comprised in the surplus area of the land-owner which he is compelled by law to sell to his tenants, is definitely an agrarian reform as it modifies the "rights" of the land-owner in relation to his "estate." Since the proviso to sub-section (1) of section 15 has modified the rights of the land-owner in his estate, it falls squarely within Article 31-A(a) as per the meaning of the word "estate" and the expression "rights" given in clause (2) of that Article. Nor is there any force in the submission of Mr. Bhandari that the agrarian reform in respect of the rights of the tenants to purchase specified parts of the estates of the land-owners has been completed under the 1953 Act, and the proviso to sub-section (1) of section 15 of the 1973 Act does not in any manner advance that reform. If the original fixing of the purchase-price in the 1953 Act was such a reform, the reduction of that price or prescribing of different or other norms for determining such price must also partake of the same character. In any case the same norms had been provided in section 26(1) of the Pepsu Act, and inasmuch as that was concededly an agrarian reform, it cannot be said that substituting the said reform in place of the one which had been provided in the Punjab area by the 1953 Act assumes a different

character. The petitioners cannot, therefore, ward off the immunity against an attack under Articles 14, 19 and 31 granted to the proviso to sub-section (1) of section 15 of the 1973 Act by describing the amendment contained therein as not being in the nature of an agrarian reform.

Ground No. (ii).

(10) There is no doubt that when Article 31-A was introduced into the Constitution in 1951 with retrospective effect, clause (2) of Article 31 was in the following form and contained the word "compensation" in place of the present expression "amount", and did not create any bar against the right of any Court to determine whether the compensation fixed under a law was or was not adequate and whether the principles contained in a statute for determining the compensation were legal or not:—

> "No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of or acquired for public purposes under any law authorising the taking of such possession or such acquisition, unless the law provides for compensation for the property taken posession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given."

Clause (2) of Article 31 as it now reads after its amendment by the Constitution (Fourth Amendment) Act, 1955; and the Constitution (Twenty-fifth Amendment) Act, 1971, is in the following terms:—

> "No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law; and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash:

Provided that in making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1) of article 30, the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

The argument of Mr. Bhandari was that what is now contained in clause (2) of Article 31 not having been there at the time of enactment of Article 31-A in 1951 (or in fact with effect from January 26, 1950, on account of the retrospective effect given to that Article), the immunity afforded to the laws referred to in clause (1) of Article 31-A cannot be extended to a statute of which the constitutionality is sought to be justified under the present Article 31 (2). This argument of the learned counsel appears to us to be wholly misconceived. The only conditions precedent for bringing a law under the umbrella of Article 31-A are that:—

(i) the law must provide for one or more of the things specified and cover one or more of the subjects enumerated in sub-clauses (a) to (e) of clause (1) of that Article; and

(ii) if such law has been made by a State Legislature, the same must have been reserved for the consideration of the President and should have received his assent;

The reference to Article 31 in Article 31-A is not to that Article as it stood at the time of coming into force of the Constitution or even at the time of the enactment of Article 31-A. It has reference to Article 31 as it may exist at any time in the same manner as reference to Articles 14 and 19 in Article 31-A refers to those Articles as amended from time to time. The 1973 Act was admittedly reserved for the consideration of the President and received his assent. It has already been held by the Full Bench of this Court in *Sucha Singh's case* (2) (supra) that the Act is immune from an attack on the ground that its provisions take away or abridge any of the fundamental rights guaranteed in Articles 14, 19 and 31 of the Constitution. In these circumstances it is impossible to agree with the contention of Mr. Bhandari in this respect. His second argument also, therefore, fails.

Grounds Nos. (iii) to (v).

(11) In connection with his submission relating to the justiciability of the adequacy of the amount fixed by the provisio to

sub-section (1) of section 15 of 1973 Act read with Article 31(2) of the Constitution, counsel invited our attention to the following different passages in the judgments of different Hon'ble Judges of the Supreme Court in *Kesavananda's case* (1) (supra):—

(i) (In the judgment of Sikri, C.J., at page 1554 paragraph 422 of the A.I.R. Report) "If I were to interpret Article 31(2) as meaning that even an arbitrary or illusory or a grossly low amount could be given, which would shock not only the judicial conscience, but the conscience of every reasonable human being, a serious question would arise whether Parliament has not exceeded its amending power under Article 368 of the Constitution. The substance of the fundamental right to property, under Article 31, consists of three things: one, the property shall be acquired by or under a valid law; secondly, it shall be acquired only for a public purpose; and, thirdly, the person whose property has been acquired shall be given an amount in lieu thereof, which, as I have already said, is not arbitrary, illusory or shocking to the judicial conscience or the conscience of mankind."

(ii) (In the judgment of Shelat and Grover, JJ., at page 1610 in paragraph 624) "Clause (2) of Article 31, as substituted by section 2 of the 25th Amendment, does not abrogate any basic element of the Constitution nor does it denude it of its identity because—

(a) the fixation or determination of 'amount' under that Article has to be based on some norm or principle which must be relevant for the purpose of arriving at the amount payable in respect of the property acquired or requisitioned;

(b) the amount need not be the market value but it should have a reasonable relationship with the value of such property;

(c) the amount should neither be illusory nor fixed arbitrarily, and

(d) though the courts are debarred from going into the question of adequacy of the amount and would give

due weight to legislative judgment, the examination of all the matters in (a), (b) and (c) above is open to judicial review."

(iii) (In the judgment of Hegde and Mukherjea, JJ., at page 1648 in paragraph 759) "(5) (A). The newly substituted Article 31(2) does not destroy the right to property because—

(i) the fixation of 'amount' under that Article should have reasonable relationship with the value of the property acquired or requisitioned

(ii) the principles laid down must be relevant for the purpose of arriving at the 'amount' payable in respect of the property acquired or requisitioned;

(iii) the 'amount' fixed should not be illusory; and

(iv) the same should not be, fixed arbitrarily, (5) (b) The question whether the 'amount' in question has been fixed arbitrarily or the same is illusory or the principles laid down for the determination of the same are relevant to the subject-matter of acquisition or requisition at about the time when the property in question is acquired or requisitioned are open to judicial review. But it is no more open to the court to consider whether the 'amount' fixed or to be determined on the basis of the principles laid down is adequate."

(iv) (In the judgment of J. Reddy, J., at page 1776 in paragraph 1222) "Clause (2) of Article 31 has the same meaning and purpose as that placed by this Court in the several decisions referred to except that the word 'amount' has been substituted for the word 'compensation', after which the principle of equivalent in value or just equivalent of the value of the property acquired no longer applies. The word 'amount' which has no legal concept and, as the amended clause indicates, it means only cash which would be in the currency of the country, and has to be fixed on some principle. Once the Court is satisfied that the challenge on the ground that the amount or the manner of its payment is neither arbitrary nor illusory or where the principles upon which it is fixed are found to bear reasonable relationship to the value of the property acquired,

the Court cannot go into the question of the adequacy of the amount so fixed or determined on the basis of such principles."

(v) (In the judgment of Chandrachud, J., at page 2055 in paragraph 2156) "Section 2(a) and section 2(b) of the 25th Amendment are valid. Though Courts have no power to question a law described in Article 31(2) substituted by section 2(a) of the Amendment Act, on the ground that the amount fixed or determined for compulsory acquisition or requisition is not adequate or that the whole or any part of such amount is to be given otherwise than in cash, Courts have the power to question such a law if (i) the amount fixed is illusory; or (ii) if the principles, if any, are stated, for determining the amount are wholly irrelevant for fixation of the amount; or (iii) if the power of compulsory acquisition or requisition is exercised for a collateral purpose; or (iv) if the law of compulsory acquisition or requisition offends the principles of Constitution other than the one which is expressly excepted under Article 31(2-B) introduced by section 2(b) of the 25th Amendment Act—namely Article 19(1)(f); or (v) if the law is in the nature of a fraud on the Constitution."

The argument of the learned counsel is that the law laid down in the abovequoted passages of seven out of thirteen Hon'ble Judges being in his favour, the Court should not decline to test the merits and efficacy of the argument that the method of calculating the amount laid down in the first proviso to sub-section (1) of section 15 of the 1973 Act is not based on any norm or principle which may be relevant for arriving at a sum which may have any reasonable relationship with the value of the land in question, and the further argument that the maximum amount payable to a landowner under the new provision is wholly arbitrary, entirely illusory, grossly low and would shock the conscience of every reasonable human being.

(12) Once again there is an apparent fallacy in the argument of the learned counsel for the petitioners in this respect. All the abovequoted passages from the different judgments of the learned Judges of the Supreme Court in *Kesavananda's case* (supra) are concerned with the interpretation of clause (2) of Article 31 without any reference to the impregnable insulation provided by Article 31-A against any attack on the ground of infringement of Article 14,

19 or 31. This is more than obvious from a mere reference to the judgment itself. Sikri, C. J., starts the relevant observations with the words—"if I were to interpret Article 31(2)———". The relevant discussion in the judgment of Sikri, C.J., starts with paragraph 412 of the judgment. The discussion about the validity of section 2 of the Constitution (Twenty-fifth Amendment) Act, 1971 [whereby the present clause (2) was substituted in place of the earlier clause (2) of Article 31] starts from that passage. The observations of the other Hon'ble Judges on which the petitioners have relied are also confined to the abovementioned subject. Article 31-A was introduced into the Constitution by the Constitution (First Amendment) Act, 1951, and is not the subject-matter of discussion in any of the passages to which reference has been made by Mr. Bhandari. None of those passages is even remotely concerned with the scope and effect of Article 31-A. In fact *Kesavananda's case* was concerned only with the validity, constitutionality and effect of the Constitution (Twenty-fourth Amendment) Act, 1971 (relating to the amendment of Articles 13 and 368 of the Constitution dealing with the provisions for amendment of the Constitution), the Twenty-fifth Amendment Act [which substituted Article 31(2), added new clause (2B) in Article 31, and enacted new Article 31-C] and the Constitution (Twenty-ninth Amendment) Act. Neither the Constitution (First Amendment) Act, nor Article 31-A of the Constitution directly came up for interpretation before the Supreme Court in that case. All the above-quoted observations were made by the Supreme Court to repel the argument advanced before it that in amending clause (2) of Article 31, the Parliament had exceeded its amending power under Article 368 as the amendment had abrogated the basic elements of the Constitution and had denuded it of its very identity. The effect of the bar created by Article 31-A was not at all the subject-matter of discussion in those passages. In fact the scope and effect of Article 31-A had already been considered theardbare and had consistently been given the same meaning by different Benches of the Supreme Court from 1952 onwards. Reference to some of the latest judgments on that subject will hereinafter be made.

(13) The arguments advanced before us on behalf of the petitioners under Article 31 of the Constitution appear to me to be irrelevant from another point of view also. Clause (1) of Article 31 no doubt relates to deprivation of any person's property "save by authority of law". Since the landowners are sought to be deprived of their right to sell their land to a purchaser of their choice and at

a price of their choice, they are certainly deprived of some property, but this deprivation is under the authority of the 1973 Act, and is, therefore, not otherwise than by the authority of law. The scope of clause (2) of Article 31 is, however, much narrower than that of clause (1) of that Article. Whereas clause (1) refers to deprivation of any property in any manner save by authority of law, clause (2) is referable only to compulsory acquisition or requisition of property. No property of a landowner is either acquired or requisitioned by the State under section 15 of the 1973 Act. Clause (2A) of Article 31 lays down, *inter alia,* that where a law does not provide for the transfer of the ownership or right to possession of any property *to the State*, it shall not be deemed to provide for the compulsory acquisition or requisitioning of property, notwithstanding that it deprives any person of his property. Neither the provisions of section 18 of the 1953 Act nor of section 22 of the Pepsu Act, nor even of section 15 of the 1973 Act, therefore, provide for "the compulsory acquisition of property" within the meaning of clause (2) of Article 31 of the Constitution. Nothing stated in clause (2) of Article 31 is, therefore, relevant for our purposes.

(14) Even if it could be argued that section 15 provides for compulsory acquisition of any property of the petitioners, the provision would still be immune against being tested on the altar of Article 19(1)(f) of the Constitution (irrespective of its being or not being an agrarian reform) because of the shield against an attack under that Article having been provided by clause (2B) of Article 31 of which clause the validity and constitutionality has been upheld by the Supreme Court in *Kesavananda's case* (supra). Clause (2B) states that nothing in sub-clause (f) of clause (1) of Article 19 shall affect any such law as is referred to in clause (2). The provisions of section 15 apply equally to all landowners and all tenants within the whole of the State of Punjab. The validity of section 15 cannot, therefore, be impugned on the ground of violation of Article 14. This shows that neither Article 14 nor Article 31 has any application to section 15. The only Article under which the *vires* of section 15 could possibly be attached is 19(1)(f), that is the violation of the fundamental right "to acquire, hold and dispose of property" Complete immunity against that attack appears to have been afforded to the section by Article 31-A. I have already held on the authority of the judgment of the Supreme Court in *Atma Ram's case* (3) (supra), and in accordance with the earlier decision of a Full Bench of this Court in *Sucha Singh's case* (2) (supra), that section 15 of the 1973 Act merely modifies the right of

the landlord to transfer a part of his holding and obliges him to sell the same not at his own price, but at a price fixed under the Act, and not to any one but to specified persons in accordance with the provisions of the 1973 Act, and, therefore, it squarely falls within the scope of Article 31-A (1)(a) of the Constitution. That being so it cannot possibly be held that section 15 is inconsistent with or takes away orabridges any of the rights conferred by Articles 14, 19 or 31 because the 1973 Act had been reserved for the consideration of the President and had actually received his assent. I do not consider it necessary to traverse the entire ground relating to the invulnerability of a law provided by Article 31-A against an attack under Article 19 of the Constitution (and Articles 14 and 31 also). It would suffice to refer in this connection merely to three judgments of the Supreme Court, namely *Atma Ram's case* (3) (supra), *Kunjukutty Sahib and other* v. *The State of Kerala and others* (4), and *State of Kerala and another* v. *The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. etc.* (5), and to the Full Bench judgment of this Court in *Sucha Singh's case* (2) (supra). I have already made a detailed reference to the relevant part of the decision in *Atma Ram's case* (supra) to show that the first proviso to sub-section (1) section 15 has been safely put by Article 31-A in a fort which is not vulnerable to the arrows of Articles 14, 19 and 31.

(15) In *Kunjukutty Sahib's case* (4) (supra), the *vires* of certain provisions of the Kerala Land Reforms Act (1 of 1964) (as amended by Act 35 of 1969) came up for consideration before their Lordships of the Supreme Court on an appeal from the judgment of the Kerala High Court, Dua, J., who prepared the judgment of the Court, held that the extinguishment or modification of the landlord's rights in relation to his estate amount to agrarian reforms and are protected by Article 31-A of the Constitution.

(16) The latest pronouncement of the Supreme Court on this subject in the *Gwalior Rayon Silk Mfg. (Wvg.) Company's case* (5) (supra) is of great importance. Section 3 of the Kerala Private Forests (Vesting and Assignment) Act (26 of 1971) vests jenmam rights to forest lands in the State Government without payment of any compensation. The section provides that the ownership and possession of all private forests in the State of Kerala shall stand transferred to and vest in the Government free from all encumbrances

(4) A.I.R. 1972 S.C. 2097.
(5) A.I.R. 1973 S.C. 2734.

and the right, title and interest of the owner or any other person in any other private forest shall stand extinguished. The challenge to the validity of the abovequoted provision on account of its being violative of Articles 14, 19(1)(f) and 31 of the Constitution was sought to be met by Article 31-A. The forest owners contended that the Kerala Act was not protected by Article 31-A. The Supreme Court held that the Kerala Act vested the jenmam rights of the forests in the Government as a step in the implementation of the agrarian reform as its object was to distribute forest land for agricultural purposes after making reservation of portions of the forests for the benefit of the community. In the course of the judgment it was observed that what programme of agrarian reform should be initiated to satisfy the requirements of rural uplift in a particular community under the prevailing circumstances is a matter for the legislative judgment and that the sole issue which the Court was called upon to adjudicate upon was whether the Kerala Act was in fact a scheme of agrarian reform or not, and that it having been found that the legislative area covered by the Kerala Act was barricaded by Article 31-A it could not be breached by Articles 14, 19 and 31, and that a judicial break-in is, therefore, constitutionally interdicted. It was further observed that all that the Supreme Court could say was that this was an area where not the Court but the elector was the proper corrective instrument.

(17) Protection under Article 31-A of the Constitution was also granted to the 1973 Act itself by the Full Bench in *Sucha Singh case* (supra), though the specific provision contained in section 15 did not come up for consideration before this Court in that case. The condition precedent for successfully invoking Article 31-A (regarding the statute or the relevant statutory provision containing the scheme of an agrarian reform, or such other scheme as is referred to in Article 31-A(1) having been fulfilled in this case, section 15 must be held to be immune to an attack under Article 19 of the Constitution.

(18) In the view I have taken about the invulnerability of section 15, it is unnecessary to deal at any length with the argument advanced by the learned counsel for the petitioners (on points Nos. iv and v) to the effect that the provision is *ultra vires* Article 19(1)(f) because the sole criterion for fixing the purchase-price payable by a tenant to the landowner under section 15 of the Act is based on assessment of land revenue which was last made about 40 years ago, and which is allegedly not related in any manner to the

market value of the land. Since good deal of time has been taken by the counsel to argue these matters, it may be observed that even if the attack on section 15 under Article 19 was not constitutionally prohibited, we would not have held in favour of the petitioners on these points for various reasons. Firstly, land revenue referred to in section 15 is not necessarily the initial land revenue assessed in the last settlement, but also includes (*vide* section 4(10) of the Punjab Tenancy Act, 1887): —

> "(a) any rate imposed in respect of the increased value of land due to irrigation, and
>
> (b) any sum payable in respect of land, by way of quit-rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment."

The surchage on land revenue levied in the State of Punjab under the Punjab Land Revenue (Surcharge) Act, 1954, and the Punjab Land Revenue (Special Charges) Act, 1958, has been held specificially to be included in the epression "land revenue" for purposes of the Pepsu Act by my learned brother Tuli, J., in *General Shivdev Singh and another* v. *The Prescribed Authority and others* (6). It is significant to note in this connection that what is to be multiplied 90 times is not only the land revenue as defined in the Punjab Tenancy Act and the statutory surcharges therein, but also the other rates and cesses. "Rates and cesses" have been defined in section 4(11) of the Punjab Land Revenue Act as those charges which are primarily payable by landowners including—

> (i) the local rate, if any, payable under the Punjab District Boards Act and any fee leviable under section 33 of that Act on landowners for the use or benefits derived from such works as are referred to in clauses (i) to (j) of section 20 of the District Boards Act;
>
> (ii) any annual rate chargeable on owners of land under section 59 of the Northern India Canal and Drainage Act, 1873;
>
> (iii) the Zaildars and villages officers cesses; and

(6) 1969 P.L.R. 847.

(iv) sums payable on account of village expenses.

Secondly, section 48-A of the Punjab Land Revenue Act, 1887, which provides that the basis of assessment of land revenue shall be an estimate of the average money value of the net assets of the estate or group of estates in which the land concerned is situated, read with the Punjab Land Revenue Assessment Rules, 1929, showing that the estimate of an estate is based on the rent in kind and the factors involved in the assessment of land revenue include the quality of land and quantity of its yield, clearly show that the amount of land revenue (including surcharges, etc.) assessed on agricultural land in the State of Punjab is not unrelated to the value of the land, but is directly related thereto. Thirdly, the contents of the proviso to sub-section (1) of section 15 providing for payment of 90 times the land revenue subject to a ceiling of Rs. 500 per hectare cannot shock the conscience of the Court as exactly the same provision existed in the Pepsu Act right from 1955, and its validity or constitutionality was never questioned by any one for almost 18 years till the provision was in effect made applicable to the rest of the Punjab also by the unifying 1973 Act in spite of the fact that the scope of the expression 'Land Revenue' contained in that provision was directly raised before my learned brother in *General Shivdev Singh's case* (supra). Fourthly, it appears to us that even the vast difference between the maximum amount payable to a landowner by the State for the deprivation of his land out of his unutilised surplus area on the one hand and the one-tenth of that amount recoverable by a landowner as the maximum price of his land purchased by a tenant on the other, is not without any basis. Under the Pepsu Act and under the 1973 Act, the right of a landowner in the land comprised in the tenancy of a tenant of more than six years' standing on any part of the surplus area of the landowner, is indeed of comparatively very little value, as the landowner cannot eject his tenant falling in the said category if he merely continues to pay rent and the tenant can acquire the rights of ownership in the land at his choice. It has been commonly said that possession is nine points out of ten in law. That proverb appears to have incidentally received legislative recognition at the hands of the Punjab Legislature in the matter of enactment of sections 10 and 15 of the 1973 Act. Where the possession of the unutilised surplus area is with the landowner and possession is with him, he is given what is considered to be the reasonable value of the land, that is up to Rs. 5,000 per hectare. On the other hand, when the landowner is out of possession, then he is left with one out of ten points, and the nine points

out of ten are with the tenant who is in actual and almost invincible possession of the land. In that eventauility the land-owner has, therefore, been given the maximum price of Rs. 500 per hectare only, which is exactly one-tenth of the compensation payable to him under section 10 for unutilised surplus area in his own possession. Fifthly, as per the dictum of the Supreme Court in the *Gwalior Rayon Silk case* (supra), it is a matter for the exclusive judgment of the appropriate Legislature as to what programme of agrarian reform should be initiated from time to time to satisfy the requirements of rural uplift in a particular community under the prevailing circumstances. If the fixation of the purchase price is within the legislative competence and is not unconstitutional or illegal, there is nothing into which the Court can probe further. For the foregoing reasons, I would hold that the purchase price fixed by section 15 is not illusory or arbitrary and is directly related to the actual value of the land. The third, fourth and fifth grounds of attack launched by the petitioners against section 15 must also; therefore; be repelled.

Ground No. **(*vi*)**

(19) The attempt of the land-owners to extricate themselves from the effect of applicability of the reduced purchase price payable to them under section 15 of the 1973 Act by contending that only prospective and not retrospective effect should be given to that provision has been confined to nine out of these ten petitioners as the application of the tenant-respondent (Sohan Singh respondent No. 3) in Civil Writ 659 of 1974; for purchasing the land comprised in his tenancy was filed after the coming into force of the 1973 Act, and an attack on the ground of retrospectivity is not available to Jawahar Lal and others, the land-owner-petitioners in that case. The argument of the remaining land-owners was that the reduced rate mentioned in the first proviso to sub-section (1) of section 15 of the 1973 Act cannot apply to applications under section 18 of the 1953 Act which had been filed before April 2, 1973, that is, before the coming into force of the 1973 Act. Emphasis has been laid on sub-section (3) of section 1 of the 1973 Act wherein it has been stated that this Act shall come into force at once. The Act received the assent of the President of India on March, 24, 1973, and was first published in the official Government Gazette on April 2, 1973, and is, therefore, deemed to have come into force on the date of its publication in the Gazette. The provision in section 1(3) of the Act about its coming into force at once is not decisive about

the retrospectivity or otherwise of all the provisions contained in the Act. For example sub-section (7) of section 4 of the Act provides that the land of any person at any time under the Act, has to be evaluated as if the evaluation was being made on the appointed day. "Appointed day" means according to section 3(1), the twenty-fourth day of January; 1971. The expression "appointed day" occurs at various other places in the Act. Wherever that expression occurs more than two years retrospective effect has been given to those provisions. Similarly, the reading of section 15 along with section 28, and sub-section (6) of section 11 of the 1973 Act, leaves no doubt in our mind that the curtailed rate of- purchase price under section 15 and not the higher rate under the 1953 Act is to be paid to the land-owners against whom applications for purchase had been made under section 18 of the 1953 Act even before the present Act came into force. The pre-1973 Act right of the tenants to purchase the land comprised in their tenancy under section 18 of the 1953 Act has been sustained by the purview of sub-section (1) of section 15. That right survives for all those tenants in whose favour right to purchase had accrued before the coming into force of the 1973 Act irrespective of whether they had already made applications for purchase or not. The only difference is that for those who had not applied before the 1973 Act came into force, a period of limitation of one year has now been provided by the second proviso to sub-section (1) of section 15 for doing so after the coming into force of this Act. The fact that the reduced rate has been mentioned in the proviso to sub-section (1) of section 15 and not in its purview also lends strength to the view that the purview of section 15(1) includes reference to pending applications If the new rate was not to be applied to pending applications, the new rate would not have formed an exception which had to be incorporated in a proviso. Again, the fact that it has been stated in the second proviso to sub-section (1) of section 15 that the procedure for the purchase of such land shall be as is specified in the new Act also indicates that the first proviso applies to pending applications also. If the new procedure was intended to apply to only applications under the new Act, it was not necessary to make a provision to that effect. It further appears to us that the very object of reducing the purchase-price in order to ameliorate the economic condition of tenants would have been defeated if the proviso to section 15(1) had not been intended to apply to pending applications, as a very large number of tenants, who were entitled to purchase the land had already made applications before the 1973 Act came into force. On the other hand it would not have been

proper to provide two different norms of calculating the purchase-price for tenants purchasing the land comprised in their tenancy on the same day merely because one had applied before and other applies after April 2, 1973. Sub-section (6) of section 11 provides that the utilisation of any surplus area before the commencement of the 1973 Act will not affect the right of the tenant to purchase land in accordance with the provisions of section 15 or the right of the land-owner to receive rent from the tenant settled on the surplus area till the tenant becomes the owner thereof. This also shows that the provisions of section 15 are to apply to pending proceedings also as the liability of the tenant to continue to pay rent to the land-owner till he becomes the owner of the property under section 15 has been continued. In any case section 28 is a clincher. The whole of that section has already been quoted by me in an earlier part of this judgment. The whole of the 1953 Act and the Pepsu Act have not been repealed by sub-section (1) of section 28. Those Acts have been repealed only insofar as those are inconsistent with the provisions of the 1973 Act. In fact, it appears to us that even after the coming into force of the 1973 Act an application for purchase has to be made under section 18 of the 1953 Act or section 22 of the Pepsu Act as the case may be though the purchase proceedings and the purchase-price shall be determined under the 1973 Act, because the new purchase-price and the new procedure is not consistent with the old procedure and principles contained in the 1953 Act. Sub-section (2) of section 28 uneqcivocally states that the repeal of the two old Acts shall not affect only such rights, privileges, obligations or liabilities under the old enactments which are not inconsistent with the provisions of the 1973 Act. All other rights, privileges, obligations and liabilities have, therefore, been expressly made subject to the 1973 Act. It is also stated in clause (iii) of sub-section (2) of section 28 that any proceedings or remedy in respect of any right, privilege, obligation or liability accrued or incurred under the 1953 Act and of the Pepsu Act may be instituted, continued or enforced as if the 1973 Act had not been passed. This right to continue the pending proceedings is subject to the proviso that such proceedings or remedy shall be instituted, continued and enforced "in accordance with the procedure specified by or under this Act." The net result of a proper analysis of the above-mentioned statutory provisions contained in the 1973 Act is that a right has been conferred on the tenonts, who had applied under section 18 of the 1953 Act (I am not referring to the applications under the Pepsu Act as the rate at which the purchase-price has to be calculated under that Act

is exactly the same as under the 1973 Act), to continue their applications subject to only two modifications, namely that the procedure for purchase of the tenancy land and the rate at which the purchase-price has to be paid to the land-owner shall be determined by the 1973 Act. In all other matters the tenant is entitled to continue the previous proceedings and pursue the previous remedy in respect of the rights conferred on him under section 18 of the 1953 Act. In our view, there is no ambiguity in the statute in this respect, and it is, therefore, not at all necessary to deal with the long list of authorities cited by the different counsel for the petitioners in support of the proposition that retrospective effect should not be given to any statutory provision unless such effect is sought to be given by the Legislature to the provision in question either expressly or by necessary intendment. The cases referred to in this connection by Mr. K. P. Bhandari include the judgment of the Federal Court in *Venugopala Reddiar and another* v. *Krishnaswami Reddiar alias Raja Chidambara Reddiar and another* (7) and the judgments of the Supreme Court in *Moti Ram* v. *Suraj Bhan and others* (8) and *Arjan Singh and another* v. *The State of Punjab and others* (9) as well as the judgments of this Court in *Colonel His Highness Raja Sir Harindar Singh Brar Bans Bahadur, Ruler Faridkot State* v. *The Punjab State* (10) and *Dev Raj* v. *The Union of India and others* (11). It appears to us that the mandate of the Legislature in respect of giving retrospective effect to the reduced price mentioned in the first proviso to sub-section (1) of section 15 of the Act is express and canot be ignored. In the view we have taken of this point it is not necessary to refer to the arguments addressed by both the sides on the question whether a tenant, who had applied under section 18 of the 1953 Act, is or is not entitled to withdraw that application and to file a fresh one under section 15 of the 1973 Act read with section 18 of the old Act within one year after the coming into force of the new Act without running any risk of the new application being held to be barred on principles of *res judicata*. For the reasons already assigned, we are of the opinion that the provisions of section 15 of 1973 Act are retrospective in the sense that they also apply to applications made under the 1953 Act before the coming into force of the

(7) A.I.R. 1943 F.C. 24.
(8) A.I.R. 1960 S.C. 655.
(9) A.I.R. 1970 S.C. 703.
(10) I.L.R. 1957 Pb. 1351.
(11) I.L.R. 1973 (1) Pb. & Hr. 192.

1973 Act which had not been finally disposed of till April 2, 1973. The petitioners cannot, therefore, succeed even on the sixth ground urged by them.

Ground No. (vii)

(20) This ground is not available to all the petitioners but only to some of them. The contention advanced on behalf of those petitioners is that the right conferred on a tenant by section 18 of the Act is not an absolute one, but is subject to the conditions contained in that provision. That being so, it is contended that no tenant can succeed in a petition under section 18 unless he can show that he is the tenant on the surplus area of a big landowner. On that basis it was argued that so long as the permissible area of a landowner is not determined, the application of a tenant for purchasing the land comprised in his tenancy cannot possibly be decided. We find force in this submission. This view is also supported by two previous Division Bench judgments of this Court (D. K. Mahajan and H. R. Sodhi, JJ.). In *Jee Ram and others* v. *Gobind and others* (12), which arose under the 1953 Act, it was held that when an application under section 18 of that Act is made by o tenant for purchase when the land-owner has not reserved his permissible area, the tenant would be entitled to purchase the land only after the reservation has been made by the land-owner or by the Collector on his behalf, if the land comprised in the tenancy falls in the surplus area of the land-owner. It was emphasised that the very language of section 18 shows that the tenant is not entitled to purchase from the land-owner the land held by him which is included in the land-owner's reserved area and that, therefore, reservation by the land-owner is a *sine qua non* for the exercise of the tenant's right under section 18. Of course the application of the tenant has not to be dismissed in such circumstances, but it should be kept in abeyance and processed after the determination of the permissible area and the reservation of the land-owner so that if the land comprised in the tenancy falls within the reserved permissible area of the land-owner, the applictaion of the tenant must be dismissed. The view of the learned Single Judge (C. G. Suri, J.) expressed in

(12) 1971 P.L.J. 766.

Gobind and others v. *The State of Haryana and others* (13) was upheld by the Division Bench. The contrary view taken by another learned Single Judge of this Court in *Madho Dass and another* v. *Midha Singh and another* (14) was reversed in the Letters Patent appeal preferred against that judgment in *Madho Dass and another* v. *Midha Singh and another* (15). We are in respectful agreement with the law laid down by Mahajan and Sodhi, JJ., in *Jee Ram's case* (supra) and *Madho Dass's case* (supra). We accordingly hold thot the applications of the tenant-respondents against the land-owner-petitioners, whose permissible area has not yet been determined or who have not yet made reservation, shall be kept in abeyance till such reservation is made by the land-owners and the applications under section 18 shall be proceeded with and decided in accordance with law only after the determination of the permissible area and the reservation for self-cultivation by the respective land-owners is made.

(21) It was contended by the counsel for the petitioners in Civil Writs 2182 and 3033 of 1973, that Mohari Lal, the original land-owner whose legal representatives (Hans Raj and others) have filed these petitioners, had died in 1970 before his permissible area had been determined, and in any case before any alleged surplus area could be utilised, and, therefore, the applications of the tenant-respondents in those two cases should be dismissed as the present writ-petitioner have become small land-owners by inheritance. Since the aplications under section 18 are pending before the appropriate authorities, the writ-petitioners should raise all these points before those authorities as all these matters involve questions of fact which should appropriately be decided by the authorities under the Act, and an enquiry into which cannot be undertaken for the first time in these petitions.

(22) Only one additional argument advanced by Mr. Bhandari, which is not included in the formulation of the seven points made in the opening part of this judgment, has to be noticed before parting with this judgment. The contention of the learned counsel was that Article 31-C has been held to be unconstitutional, and, therefore, the bar to the challenge to the validity of any provision of the 1973 Act on the ground of such a provision being void as

(13) 1971 P.L.J. 148.

(14) C.W. No. 3008 of 1969 decided on 8th March, 1971.

(15) 1971 P.L.J. 782.

being inconsistent with the fundamental rights conferred by Article 14, 19 and 31 no more exists. This argument, with all respect to the counsel, is wholly misconceived. Firstly, Article 31-C as a whole has not been held to be unconstitutional. It is only the last sentence in the purview of the Article providing for a bar against any Court to decide whether the impugned law does or does not give effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 that has been held to be void. The first part of Article 31-C, which provides that notwithstanding anything contained in Article 13, no law giving effect to such policy shall be deemed to be void on the ground of infringement of Article 14, 19 or 31, has been held to be good and still holds the field. The only effect of the judgment of the Supreme Court in *Kesavananda's case* (supra) in connection with Article 31-C is that any law giving effect to the policy of the State towards securing the principles specified in Article 39(b) and 39(c) is rendered immune to an attack on its validity or constitutionality under Article 13 on the ground that such law violates Article 14, 19 or 31, but the jurisdiction of a Court to go into the matter and decide whether such law has or has not in fact been made for giving effect to such policy of the State is not barred in spite of a declaration having been made to that effect. A declaration has been made in section 2 of the 1973 Act, that the said Act is (has been) enacted for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. The jurisdiction of the Court to go into the question whether in fact the 1973 Act has been enacted for giving effect to the said policy of the State is not barred. At the same time, it cannot be held that the removal of the bar of the jurisdiction of the Court to go into such a matter also by any process of reasoning takes away the immunity conferred on the Act pertaining to agrarian reforms, which has been acorded to it by Article 31-A of the Constitution.

(23) No other point was argued before us in any of these cases by any of the parties. Subject to the observation that all the defences open to the land-owners on merits of the controversy in respect of each individual case may be raised by them before the appropriate authorities and subject to the direction that no application of a tenant under section 18 of the Act shall be granted before the permissible area of his land-owner has been determined

and reservation for self-cultivation has been made by him, all these petitions fail and are dismissed though without any order as to costs.

TULI, J.—(24) I agree and find myself unable to add anything useful.

K. S. K.

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