In view of the foregoing discussion, I find that the order of discharge of the respondents Raghbir Singh and Dharam Singh is illegal and cannot be sustained. The petition is, accordingly, accepted and in exercise of the powers of this Court under section 436 read with section 439 of the Criminal Procedure Code, I direct that the Chief Judicial Magistrate shall proceed against the respondents Raghbir Singh and Dharam Singh along with the other accused who are already being proceeded against in his Court. Since these two respondents, are not present, their counsel is directed to cause their appearance in the Court of the Chief Judicial Magistrate, Karnal, on the 10th of October, 1966. As they were on bail when they were discharged, they shall continue to be on bail if they furnish fresh bail-bonds to the satisfaction of the Chief Judicial Magistrate.

B. R. T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur and R. S. Narula, JJ.

AMAR SINGH,—*Petitioner.*

versus

STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ No. 854 of 1963.

October 4, 1966.

Punjab Security of Land Tenures Act (X of 1953)—Ss. 10-A and 18—"Transfer" or "other disposition of land in S. 10-A (b)—Whether includes involuntary transfer of a part of the holding of a landowner by operation of an order under S. 18—S. 10-A(c)—"Order of another authority"—Whether includes orders passed under S. 18 which have become final—In case of conflict between S. 10-A and S. 18—Which section will prevail.

Held, that—

(1) the expression "transfer" and "other disposition of land" "in clause (b) of section 10-A of the Punjab Security of Land Tenures Act 10 of 1953, do not include completed sales effected under section 18 of the Act;

(2) 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 an order of the Assistant Collector under section

18 of the Act, whereby a part of the holding of the landowner has vested absolutely in the erstwhile tenant; and

(3) 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 over-ride the earlier and general provision.

Case referred by the Hon'ble Mr. Justice Shamsher Bahadur on 31st August, 1966, to a larger bench for decision of an important question of law involved in the case. The case was finally decided by the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula on 4th October, 1966.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ *in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of the Collector, Surplus Area, Sirsa, dated 11th May,* 1962.

ANAND SARUP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

D. C. AHLUWALIA, ADVOCATE, for Advocate-General, for the Respondents.

ORDER OF THE DIVISION BENCH

Narula, J.—In these two petitions under Article 226 of the Constitution, which have come up before us in pursuance of the order of reference, dated August, 31, 1966, made by my learned brother Shamsher Bahadur, J., the following questions arise relating to the interpretation and scope of certain provisions of the Punjab Security of Land Tenures Act 10 of 1953(hereinafter called the Act), as subsequently amended in 1953, 1955, 1957, 1959 and 1962 :—

(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;

(2) Whether the order of any other authroity 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

(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.

The facts leading to the filing of these petitions are substantially common and are not very complicated. Land measuring more than 133 *bighas* in area in village Darba Kalan, tehsil Sirsa, district Hissar, belonged to Shrimati Lachhman (hereinafter called the landowner). She was admittedly not a small landowner. Out of the said holding of the landowner, we are concerned in this case with *Khasra* Nos. 177, 265 and 343 only. According to the findings of fact recorded by the departmental authorities, *khasra* No. 177, measuring 64 *bighas* 12 *biswas* was in the personal cultivation of the landowner, but *khasra* Nos. 265 and 343, measuring 67 *bighas* 19 *biswas*, were in the tenancy of Chandu and Shri Chand on April, 15, 1953, when the Act came into force. The mutation of gift of the land in question in favour of Amar Singh (petitioner in Civil Writ No. 854 of 1963), who is the son-in-law of the landowner, which had been recorded on December 24, 1955, was ignored by the Collector while declaring the surplus area of the landowner on April 24, 1961, as the alienation by way of gift was admittedly subsequent to the crucial date April 15, 1953.

Amar Singh and his brother Indraj (the latter being the petitioner in Civil Writ No. 855 of 1963), preferred an appeal against the order of the Collector, dated April, 24, 1961. The landowner filed a separate appeal against the same order. During the pendency of those appeals, Amar Singh and Indraj filed two separate applications, under section 18(2) of the Act on May 2, 1961, before the competent Assistant Collector, 1st grade in respect of the land, comprised in (i) *khasra* Nos. 265 and 343, and in (ii) *khasra* No. 117, respectively for exercising their statutory rights under sub-section (1) of section 18 of the Act, i.e., for purchasing the parcels of land in their respective tenancies, which land had admittedly not been included in the reserved area of the landowner. After giving notice to all concerned, the Collector determined the value of the land sought to be acquired by the tenants. In the case of Amar Singh, the value was determined to be Rs. 13,590. The landowner effected a compromise with the tenants in pursuance of which the applications of the tenants were granted by the order of the Assistant Collector, 1st grade, dated September, 15, 1961 (Annexure A), (Reference will be made to the Annexures in this judgment from the case of Amar Singh). The Assistant Collector allowed Amar Singh to purchase the land in question for a total determined price of Rs. 13,590 at the flat rate of Rs. 200 per *bigha* on the condition that the amount was deposited in the treasury up to the 29th of September, 1961, and held that on such deposit being made, Amar Singh would from

that very date be considered as full owner of the land allowed to be purchased by him. It is not disputed that the tenant made the requisite deposit within time in the Government treasury. On December 21, 1961, Amar Singh's appeal against the Collector's order, dated April 24, 1961, was allowed and the case was remanded to the Collector to hold a *de novo* enquiry regarding the area in the cultivation of Amar Singh and his brother Indraj, under the landowner. In pursuance of the order of remand, dated December 21, 1961, the Collector passed the impugned order, dated May 11, 1962 (Annexure B), whereby it was held:—

(i) that the gift of the land comprised in all the three *khasra* numbers in question under mutation entry, dated December 24, 1955, had to be ignored while assessing the surplus area of the landowner, as the latter could not part with this area after the 15th of April, 1953; (this finding has not been impugned in the present proceedings);

(ii) the land covered by *khasra* Nos. 265 and 343 was not under the self-cultivation of the landowner on the 15th of April, 1953, but was under the tenancy of Chandu and Siri Chand, who were in possession of that land at the time of the coming into force of the Act;

(iii) the land comprised in *khasra* No. 177 was on 15th of April, 1953, under the self-cultivation of the landowner and the evidence produced by Indraj did not make it clear whether he had been on that land since 15th of April, 1953, or not. All the same, the *Khasra Girdawaris* produced before him showed that land measuring 64.12 *bighas* under *khasra No.* 177, had passed on to Indraj,—*vide* mutation No. 581 by order of the Court in 1957-58.

After recording the above findings, the learned Collector, Surplus Area, went on a tangent and sat in appeal over the decision of the Assistant Collector, 1st Grade under section 18 of the Act, which had become final and against which no appeal or revision had been preferred, and proceeded to hold that in the application under Section 18 of the Act, the parties had entered into a compromise and it had not in fact been shown that the tenants had been in continuous cultivating possession of the respective holdings for full six years. On that basis he held that the landowner had conspired with her son-in-law Amar Singh and his brother Indraj to retain the land in

question in contravention of the law, and, therefore, the Collector felt inclined to ignore those transactions and to consider the entire area to be that of the landowner herself. On that basis, the Collector included the holdings of the tenants in question in the surplus area of the landowner. Subsequently, the landlowner's appeal against the order of the Collector, dated April 24, 1961, also came up before the Commissioner on 15th of October, 1962, but was dismissed by him as infructuous in view of the subsequent order of of the Collector, dated the 11th of May, 1962, in pursuance of the remand order which had earlier been passed by the Commissioner in Amar Singh's appeal on December 21, 1961.

It was in the above circumstances that the tenants filed their respective writ petitions in this Court on May 20, 1963, for the issue of a writ in the nature of *certiorari* to quash the impugned order of the Collector, dated May, 11, 1962 (Annexure B), and to direct the respondents (the State of Punjab and the Collector, Surplus Area, Sirsa) not to dispossess the tenants by the allotment of their area to any other tenant of the Government's choice. Prayer for interim relief was also made by the petitioners. While admitting their writ petitions on May 22, 1963, the Motion Bench (Falshaw, C.J. and Jindra Lal, J.) stayed the dispossession of the petitioners. The respondents have filed a common written statement consisting of the affidavit of the Under-Secretary to the Punjab Government in the Revenue Department, dated nil. Whereas the claim of the petitioners is that the land cultivated by the son-in-law of the landowner and by the son-in-law's brother, could not in law be deemed to be under the self-cultivation of the landowner within the meaning of section 2(9) of the Act, and was liable to be excluded from consideration while determining the permissible area of the landowner, as the Collector had no jurisdiction to ignore the orders of the Assistant Collector under section 18 of the Act, it has been averred on behalf of the respondents in their written statement that the area in question was surplus in the hands of the landowner on April 15, 1953, and that all transfers or dispositions of any portion of that area subsequent to April, 15, 1953, had to be ignored under section 10-A (b) of the Act and that all areas in dispute had, therefore, to be declared surplus and were available to the Government for being utilised for resettlement of the tenants liable to ejectment under sub-section (1) of section 9 of the Act. The exclusion of the tenant Amar Singh and Indraj from consideration has been justified on the ground that these particular tenants came on their respective holdings according to the findings of the Collector only in 1957-58. Though it is not stated in the return, it has also been argued

on behalf of State that the Collector was entitled to ignore the order of the Assistant Collector under section 18 of the Act by virtue of the powers conferred on him under clause (c) of section 10-A of the Act.

I have to take the facts as found by the Collector for the purposes of determining the sprplus area of the landowner and consequentially for determining the rights of the petitioners so far as they are sought to be interfered with by the impugned order. "Landowner" according to the meaning ascribed to that expression in sub-section (1) of section 2 of the Act includes a lessee. A lessee is, therefore, entitled to have his own permissible area declared. "Permissible area" in relation to a landowner or a tenant means 30 standard acres in the normal cases as provided by sub-section (3) of section 2. "Surplus area" under clause (5-A) of section 2 means the area other than the reserved area and where no area has been reserved, the area in excess of the permissible area selected by the landowner, but does not include a tenant's permissible area". It is, therefore, clear from a reference to the above-mentioned definitions that surplus area of a landowner does not and cannot include any land which was in possession of a tenant on the 15th of April, 1953, because such land has to be included in the permissible area of the tenant and is excluded by the statutory definition of surplus area from that expression by section 2(5-A) of the Act. It is equally clear that the land comprised in khasra Nos. 265 and 343 which was in the tenancy of Chandu and Siri Chand on April 15, 1953, could not be stated to have been in the "self-cultivation" of the landowner within the meaning of sub-section (9) of section 2 of the Act, as self-cultivation has been defined by that provision to mean cultivation by a landowner either personally or through his wife or children or through such of his relations as may be prescribed heirs under his supervision. Rule 5 of the rules framed under the Act prescribes the list of relations for purposes of section 2(2) (a) of the Act. This list does not include either the son-in-law or the brother of the son-in-law of a landowner. The tenants who are related to the landowner who are excluded from the benefit bestowed on them by section 9-A of the Act, are listed in rule 21, framed under the Act. Even that list does not contain a son-in-law or his brother. A survey of the above-mentioned provisions of the Act leaves no doubt that if Chandu and Siri 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 comprised 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 Siri Chand to either get the said land declared as their 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. This proposition is not denied by the learned State counsel. He has tried to meet this situation by a two-fold argument. The first contention is that the situation has changed by the tenancy of Chandu and Siri Chand having come to an end and by a new tenant namely Amar Singh having succeeded those old tenants. I think that this change is wholly irrelevant for determining the point in controversy. Surplus area and permissible area of a landowner has to be determined in view of the situation as it existed on the 13th 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 permissible area as accretions, no such thing can happen in respect of that parcel of land which could not be included in the permissible area of the landowner on 15th April, 1953, which was again not with the landowner on the date when the Collector sought to determine his/her permissible area. In other words, once a piece of land is excluded from the permissible 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 April, 1953, the mere subsequent change of the holder of the tenancy will not make the tenancy premises revert to the permissible area of the landowner. It is, therefore, clear that the land comprised in khasra Nos. 265 and 343 (subject-matter of the tenancy in favour of Amar Singh) could not fall within the definition of permissible area in the hands of the landowner and section 10-A of the Act could not apply to it. The Act appears to concern itself with land and not with persons. In *Harchand Singh* v. *The Punjab State and another* (1) a Division Bench of this Court held that a mere change in tenancy will not attract the provisions of sections 10-A, 19-A and 19-B of the Act, provided that the area which the tenant comes to occupy, thereby does not exceed his permissible area. The learned Judges further held in that case that by changing a tenant a landowner cannot be said to have acquired the land comprised in the tenancy, because the land which belonged to him before hand, continued to belong to him even after the change of the tenancy. The said Division Bench judgment of this Court appears to me to completely answer the first defence of the State counsel to the attack of Mr. Anand Swarup against the impugned order. On this

(1) I.L.R. (1964) 1 Punj. 331=1964 P.L.R. 285.

finding alone. Amar Singh must succeed and his writ petition has to be allowed. Even if he had not exercised his right of purchase under section 18 of the Act, and even if that order could be ignored by the Collector under section 10 A(c) of the Act, the area comprised in the tenancy of Amar Singh, which was not in the permissible area of the landowner on April 15, 1953, could not be included in her permissible area on account of a subsequent change of the tenant.

This question does not, however, arise in Indraj's case, as the finding of fact relating to his land (khasra No. 177) is that it was in the personal cultivation of the landowner on the crucial date and that Indraj came in as a tenant subsequent to April 15, 1953. For deciding his case, it is necessary to answer the main questions that have arisen in this reference.

Section 10-A of the Act reads as follows:—

> "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 section 9.
>
> (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 thereof in clause (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."

In my opinion, the other authority, to the judgment, decree or order of which reference is made in clause (c) of section 10-A of the Act, cannot be the Assistant Collector, the Collector or the Commissioner, while exercising their jurisdiction under other provisions of the same Act including section 18. "Other authority" in that sub-section obviously refers to authorities other than those under the Act. If "other authorities" in section 10-A (c) were to include the Collector

etc., in relation to their orders under section 18 of the Act, the result would be that the benefit sought to be conferred by section 18 on the tenants would be completely nullified and obliterated. 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 declaring the permissible area of a landowner. There is no discretion in the authorities to apply the provisions of clause (c) of section 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 for distribution of land to the tenants and for conferring a right on a tenant to purchase the land within the limits of permisible area would be flouted. Clause (c) was added to section 10-A of the Act by section 4 of the Punjab Security of Land Tenures (Amendment and Validation) Act 14 of 1962 with retrospective effect from April 15, 1953. The object for adding this clause was described in the objects and reasons for introducing the bill which took the form of the amending Act in question, in the following words:—

> "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 the official description of the object of introducing clause (c) into section 10-A, it is also clear that it was meant to neutralise judgements and decrees of Courts or other such authorities, i.e., arbitrators, etc. I have, therefore, no hesitation in holding that the authorities under the Act cannot ignore an order under section 18(2) thereof in favour of a tenant, who has actually purchased a part of the landowner's holdings under that provision and has become the owner of that land by operation of clause (b) of sub-section (4) of section 18 of the Act.

The only other question that remains to be decided is whether the transfer of the land in question in favour of Indraj by the order under section 18 of the Act has to be ignored under clause (b) of section 10-A. Some of the considerations to which I have referred above while discussing the scope of clause (c) of section 10-A, substantially apply to the determination of this question. Once again all orders under section 18 must be passed after the 15th of April, 1953. If what happens by the operation of an order under section 18 of the Act, can be deemed to be a transfer within the meaning

of clause (b) of section 10-A, the provisions of section 18, would be rendered wholly ineffective and meaningless. It appears that by "transfer or other disposition of land" in clause (b) of section 10-A, is meant only voluntary transfers or dispositions.. Such transfers over which the landowner has no control do not appear to be intended to be covered by these expressions. It is precisely for this purpose that clause (c) has been added to avoid the cloak of a transfer by order of a court being put on a voluntary disposition of land outside the control of the authorities under the Act. It is only a voluntary transfer or disposition by a landowner by any kind of alienation or demise that would be covered by clause (b). That the creation of a lease is a transfer or a demise as referred to in section 105 of the Transfer of Property Act, admits of no doubt. But all the same, a transfer of a part of holding ordered by the authorities under the Act themselves under section 18 of the Act in favour of a tenant is not a transfer within the meaning of clause (b) of section 10-A, as such a disposition is not only not voluntary, but is under the Act itself. It seems that it does not make any difference whether the transfer under section 18 takes place after a hot contest or a half-hearted contest or given by compromise. It is always open to the authorities under the Act to refuse the application of the tenant under section 18(2) of the Act in spite of the landowner's agreeing to it, if the authorities come to a conclusion that the tenant is not entitled to purchase the land. On payment of full purchase price, the tenants, Amar Singh as well as Indraj, became absolute owners of their respective tenancy holdings by operation of clause (b) of sub-section (4) of section 18 of the Act. In fact after paying even one instalment if the erstwhile tenant commits default in paying subsequent instalments, his vested right of ownership is protected by section 18(4)(b). In *Jot Ram* v. *A. L. Fletcher* (2), Mehar Singh, A.C.J.. (as the learned Chief Justice then was) observed, while delivering the judgement of the Division Bench as below :—

> "In my opinion the argument advanced on behalf of the petitioners is sound, because, after a tenant has complied with the order of purchase, made by an appropriate authority under section 18 of the Act, and has made payment in the terms of the order in accordance with the provisions of section 18(4) (b) of the Act, he is deemed to have become owner of the same. Once he becomes owner of

(2) I.L.R. (1967) 1 Punj. 597=1966 P.L.R. 787.

the same, anything happening after that date cannot divest him of the ownership of the land. Of course his right as such owner of the land is subject to his claim having been maintained in appeal, but that is on grounds having arisen and remaining in subsistance to the date of the vesting of the ownership in the tenant. A subsequent event can only divest such a person of ownership of the land if it is so provided in a statute expressly or, in some extreme case, by necessary implication and neither is the case here. In fact section 18(4) (b) is indicative of legislative intent to the contrary that on compliance with those provisions a tenant is deemed to have become the owner of the land. He may, of course, lose such a title if he is unable to establish one of the three things that he must establish before he can succeed in an application under section 18, but not by the death of the landlord after he has become owner of the land, an event which has nothing to do with his title acquired under the statute. The learned counsel for the landlords presses that it is curious that section 18(4) (b) of the Act should use the words 'the tenant shall be deemed to have become the owner of the land', instead of saying straightway that 'the tenant shall become the owner of the land'. But, in the first place, in law, there is no substantial difference between this as a legal fiction to the extent its operation is as effective as anything stated in a direct form, and secondly, the legislature probably had a reason to state the matter so, because on the purchase price having been fixed by the Assistant Collector under section 18(2), on payment of only one instalment of that the tenant is given title and there still remains the rest to be recovered. It is probably because the whole of the consideration in a case may not be paid immediately that this form of language has been used by the legislature. In any case, language used by the legislative does not create any defect whatsoever in the title of the tenant. On this view, although undoubtedly an appeal is a continuation of the original proceedings and subsequent facts and events may be taken into consideration to mould the relief to be granted in appeal, such subsequent facts and events cannot divest a vested right, except in one case when a statute so provides expressly or by necessary implication, which is not the case here."

Section 18 starts with the non-obstante clause Notwithstanding anything to the contrary contained in any law." "Any law" in section 18(1) includes the other sections of the Act itself. If the clause were to be read in any other manner, it would result in the provisions of section 18 being neutralised by section 10-A. The Court must so far as it is possible, avoid such an effect and must lean to a construction which will result in harmonising the two sections. It is settled law that in case of a possible conflict between two sections of the same Act, the more specific and the subsequent section should be allowed to over-ride the earlier and the general provisions. Section 18 is not only subsequent to section 10, but is a specific provision, as compared with the general law contained in section 10-A. Mr. D. C. Ahluwalia relied upon the following observations in the order of Shri R. S. Randhawa, Financial Commissioner (Revenue), Punjab in *Budh Ram* v. *Bahadur Ram* (3), and argued that section 10-A should, in case of conflict, be held to over-ride section 18 of the Act:—

> "It may also be pointed out that if the provisions of section 18 are not very clear regarding the right of purchase vested in the tenants whose tenancies are created after the 15th April, 1953 and there is conflict between sections 10-A(b) and 18, it shall have to be taken that the provisions of 10-A(b) impliedly modify section 18. Therefore, no right of purchase could accrue to tenants whose tenancies were created after the 15th April, 1953 on an area which was surplus on the 15th April, 1953. The main object of the definition of the surplus area being to avoid the conflict between the two categories of tenants, no tenants, whose tenancy is created on the surplus area after the 15th April, 1953, can have a right of purchase under section 18.
>
> Further if it be assumed for the sake of argument that section 18 confers right of purchase on the tenants whose tenancies were created after the 15th April, 1953 and proprietary rights are conferred on them by the order of the competent authority, this would amount to a transfer of part of the land which was surplus on the 15th April, 1953, but this transfer being based on the disposition of land it is to be ignored under section 10-A (b). Both the disposition and transfer is to be ignored and that area

(3) 1963 Lahore Law Times (Revenue Rulings) 22.

is liable to be utilised under section 10-A(a). There can be no doubt regarding this position as the provisions of section 10-A(a) are quite clear in this respect. If that be so, allowing right of purchase to tenants under section 18 when their tenancies are created after the 15th April, 1953, would only bring a conflict between the two categories of tenants, because such areas even after being purchased by tenants would be liable to be utilised under section 10-A(b) for the resettlement of tenants who were liable to ejectment under section 9(1)(i) of the Act.

If section 18 is interpreted to mean that the tenants whose tenancy is created after the 15th April, 1953 can have a right of purchase, every big landowner can adopt the device of creating a tenancy on his surplus area at any time after the 15th April, 1953, with the object of diminishing his surplus area and of defeating the object of the Act. He can do so even after his surplus area has been finally declared by the appellate authority but has not been utilised to resettle eligible tenants. The provisions relating to surplus area can thus he nullified by resort to such contrivance. The Legislature could never have intended the making of provisions which could be set at naught by this method at the will of the landowner. That is why in the definition of surplus area whatever safeguards had to be provided to the tenants who had a right of purchase had been so provided and the surplus area has been protected against further encroachment by section 10-A(b). For all these reasons I hold that the right of purchase under section 18(1)(i) can only be exercised by the tenant whose tenancy existed on the 15th April, 1953, and who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years on the date of the application for the purchase of the land and the land has been included in the reserved area of the landowner."

I regret I am unable to agree with the interpretation of sections 10-A and 18 which appears to have found favour with Shri R. S. Randhawa. The view of Mr. Randhawa in *Budh Ram's* case (supra), is directly opposed to the law laid down by a Division Bench of this Court (Mahajan and Pandit JJ.) in *Ganpat* v. *Jagmal and others* (4)

(4) I.L.R. (1963) 2 Punj. 808=1963 P.L.R. 652.

wherein it was held that a tenant who is the tenant of the land at the time when he wants to exercise his right under section 18 of the Punjab Security of Land Tenures Act, whether he was brought on the land before or after 15th April, 1953, can purchase the land of his tenancy under the section. Right to purchase by a tenant under section 18 is dependent only on the fulfilment of the specified conditions contained in sub-section (1) of that section and is not related in any manner to the other rights and liabilities of the land-owner. It was held by my learned brother Shamsher Bahadur, J. in *Bhajan Lal* v. *The Financial Commissioner, Punjab* (5), as follows:—

> "The question is: Can the words "comprised in his tenancy for a minimum period of six year" be read to refer to land which has been held by a landlord for a continuous period of six years? In my opinion, the protection is clearly intended for the benefit of a tenant who has been in continuous occupation of the lands comprised in his tenancy for a period of six years and does not protect a landlord who may have acquired the land recently and has held it for a period of less than six years."

In a recent unreported judgment, dated May 20, 1966, in *Shri Giani and others* v. *Financial Commissioner, Punjab, etc.*, Civil Writ No. 2184 of 1964, Shamsher Bahadur J. held in connection with the impossibility of a tenant's vested right, accrued to him under section 18, being affected by a subsequent event as below :—

> "On a plain construction of the provisions of the Act, my view is that the respondents having been in continuous occupation of the land comprised in the tenancy for the minimum period of six years are entitled to ask for the purchase and the order whereof affirmed right upto the Financial Commissioner could not have been and has not been abrogated by the subsequent order of ejectment which on the face of it was passed only for a limited period."

I would, therefore, hold that section 18, wherever it is applicable, over-rides section 10-A of the Act to the extent that a purchase under section 18 effected in pursuance of orders under the Act cannot be ignored or by-passed either under clause (b) or under

(5) 1963 P.L.R. 891.

clause (c) of section 10-A. While determining the permissible area or surplus area of the landowner in the instant case the Collector was not sitting in appeal over the order of the Assistant Collector under section 18 and could not sit in judgment over it or criticise it or ignore it. The order of the Assistant Collector had become final and was as much binding on the Collector as on anybody else so long as it was not set aside in appeal or revision or in any other appropriate proceedings. In *The State of Madhya Pradesh* (now *Maharashtra*) v. *Haji Hasan Dada* (6), it was held by their Lordships of the Supreme Court that until an order of assessment of sales tax is set aside by appropriate proceedings under the Sales Tax Act, full effect must be given to the order, even if it be later found that the order was erroneous in law. Similarly it was held by this Court (Pandit J.) in *Karam Chand Thapar & Bros., Coal Sales Ltd.* v. *The State of Punjab, and others*, (7), that all previous assessments made under the East Punjab General Sales Tax Act 46 of 1948, which had become final under that Act did not become without jurisdiction on account of a subsequent decision of the Supreme Court in accordance with which the order in question could never have been passed. It is not disputed that no appeal or revision was preferred against the order under section 18 of the Act in favour of the petitioners. The said orders had, therefore become final. Things would have been different if some provision had been made by the Legislature in the Act which authorised the Collector, while determining the surplus area of the landowner to ignore a completed sale under section 18 of the Act, if the Collector found that the order of the Assistant Collector had been secured by cullusion or otherwise. Counsel frankly conceded that there is no such provision in the Act. In the absence of such a provision, the Collector had no jurisdiction to ignore the completed sale under the Act on any ground whatsoever in the collateral proceedings for determining the permissible area of the landowner. Reference was then made by Mr. Ahluwalia to section 19-A of the Act and it was argued that the petitioners were not entitled to obtain orders in their favour unless it was shown that by adding the land purchased by them from the landowner, their total holding would not exceed their permissible area. This argument of the learned counsel is irrelevant for deciding the matter before us. This could have been relevant consideration in the section 18 proceedings before the Assistant Collector. But it is not even suggested that there is any material on the record to show that the

(6) (1966) 17 Sales Tax Cases 343.
(7) 1965 P.L.R. 1155.

purchases in question would result in holdings of the tenants exceeding their permissible area. Such a point cannot be allowed to be urged in these proceedings without the existence of even a factual basis on which the argument could be built.

In view of the law discussed by me above, I would answer all the three questions framed by me in the first paragraph of this judgment in favour of the petitioners. It is, therefore, held that :—

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

(2) 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 an order of the Assistant Collector or Collector under section 18 of the Act, whereby a part of the holding of the landowner has "vested absolutely in the erstwhile tenant; and

(3) 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 over-ride the earlier and general provision.

Each of the two petitioners having become absolute owners of their respective erstwhile tenancy holdings by operation of section 18(4)(b) of the Act, their rights as such owners became absolutely immune against possible deprivation in the proceedings relating to the determination of the permissible area of surplus area of the landowner. In this view of the matter, both the writ petitions must succeed and are accordingly allowed with costs, and the impugned orders of the Collector in so far as they affect the rights of the petitioners in respect of the land acquired by them from the landowner under section 18 of the Act, are held to be non-existent and inoperative in the eye of law.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.