justification for interfering with the sentences imposed by the courts below. The revision petitions are hereby dismissed.

S. C. Mital, J.—I agree.

A. S. Bains, J.—I also agree.

N. K. S.

FULL BENCH

Before Prem Chand Jain, Harbans Lal and M. M. Punchhi, JJ.

AJIT KAUR and others,—*Petitioners*

versus

PUNJAB STATE and others,—*Respondents.*

Civil Writ Petition No. 3053 *of* 1979.

May 30, 1980.

Punjab Land Reforms Act (X of 1973)*—Sections* 8 *and* 11*—Punjab Security of Land Tenures Act (X of* 1953)*—Sections* 10-A *and* 10-*B—Pepsu Tenancy and Agricultural Lands Act (XIII of* 1955)*—Sections* 32-*D,* 32-*E and* 32-*FF—Land declared surplus under the* 1953 *Act in the hands of a land-owner but not utilized—Such land devolving on the heirs on the death of the land-owner—Land in the hands of each of the heirs within the permissible limit—Such surplus land—Whether vests in the Government for utilization under the* 1973 *Act—Protection as embodied in section* 11(5) *of the* 1973 *Act—Whether available to the heirs.*

Held (per P. C. Jain and Harbans Lal, JJ.) that :

(1) sub-section (7) of section 11 of the Punjab Land Reforms Act, 1973 will be attracted only in those cases where surplus area and the permissible area are determined by the Collector under the Act of 1973 and that subsequent to such a decision the death of a land-owner and the opening of succession in favour of his heirs will have no effect on the surplus area already determined; and

(2) where the surplus area and the permissible area in the hands of a land-owner were determined under the Punjab Security of Land Tenures Act, 1953 or the Pepsu Tenancy and Agricultural Lands Act, 1955 and thereafter the land-owner died which resulted in acquisition of the holding by his heirs, the protection to the heirs in the matter of determination of surplus area in their hands as embodied in sub-section (5) of section 11 of the Act of 1973 will be fully available. Thus, the land declared surplus under the provisions of Punjab Security of Land Tenures Act but yet not utilized nor in possession of the Government at the time of the enforcement of the Punjab Land Reforms Act, 1973 does not vest in the Government for the purpose of its utilization. (Para 14)

Secretary to Government, Punjab & others vs. *Jagar Singh & others* 1977 P.L.J. 88 OVERRULED.

Held (per M. M. Punchhi, J.) that :

(1) sub-section (7) of section 11 of the 1973 Act would be attracted to all cases of surplus area declared under the Punjab Security of Land Tenures Act, the Pepsu Tenancy and Agricultural Lands Act or the Land Reforms Act of 1973, but it envisages that stage of determining by snapping or de-linking the ties of the land-owner by divesting him of the possession and title under the orders of the Collector of the surplus area so declared.

(2) The protection available to heirs under sub-section (5) of section 11, under either of the aforesaid three laws, would be available till the time the State Government divests the land-owner of his land under section 8 of the Land Reforms Law or causes its utilisation under section 11 prior to the death of the land-owner.

(3) The formal re-declaration or de-declaration of the surplus area in the hands of the heirs after the death of the land-owner, whether at a time when the Punjab Law or the Pepsu Law as applicable or thereafter when the Land Reforms Act was applicable, would not be necessary and the protective legislation of sub-section (5) of section 11 would give a protection umbrella against the vesting of such area in the State Government or the utilisation thereof.

(4) Sections 7(1) and 11(7) are operative in mutually exclusive fields inasmuch as the former applies at the declaratory stage and the latter at the executory stage in order to de-link permanently the land-owner with his surplus area. (Para 32)

Case referred by a Division Bench consisting of Hon'ble the Acting Chief Justice Mr. Prem Chand Jain and Hon'ble Mr. Justice Harbans Lal on 15th January, 1980 to a Full Bench for decision of an important question of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice Harbans Lal, and Hon'ble Mr. Justice M. M. Punchhi, finally decided the case on 30th May, 1980.

Petition under Articles 226/227 of the Constitution of India praying that this petition be accepted and the following reliefs be granted to the petitioners :—

(*a*) *a writ in the nature of* Certiorari *be issued quashing the impugned orders. Annexures P-1, dated 2nd January, 1973, P-2, dated 28th May, 1973 passed by respondent No. 3 and Order. Annexure P-4, dated 26th December, 1978 passed by respondent No. 3 and a declaration that the land mentioned in the heading of the petition is not liable to vest in the Punjab State under Section 8 of the Punjab Land Reforms Act, 1972.*

(*b*) *filing of certified copies of Annexures P-1 to P-4 be dispensed with,*

(*c*) *service of notice of motion required under Article 226(4) of the Constitution be also dispensed with,*

(*d*) *any other appropriate writ, order or direction be issued which this Hon'ble Court may deem fit and proper.*

(*e*) *Costs of this petition be allowed.*

It is further prayed that dispossession of the petitioners be stayed during the pendency of this Civil Writ Petition.

Achhra Singh, Advocate, *for the Petitioners.*

Gur Rattan Pal Singh, Advocate, *for A. G., Punjab.*

JUDGMENT

Harbans Lal, J.—(1) The important question of law which falls for determination by the Full Bench is as to whether the land declared surplus under the provisions of the Punjab Security of Land Tenures Act, (hereinafter called the Punjab Law), but yet not utilised nor in possession of the Government at the time of the enforcement of the Punjab Land Reforms Act, 1973 (hereinafter to be called the Act of 1973), was vested in the Government for the

purpose of its utilization though on account of the death of the original landowner the entire land including the surplus land may have devolved upon the heirs and in consequence thereof the land in the share of each heir as a result of devolution by law may have been reduced so as to fall within the permissible limit.

(2) The necessity for the reference of this question to the Full Bench arose because the correctness of law as enunciated in the *Secretary to Government, Punjab, Revenue Department and others* v. *Jagar Singh and others,* was doubted by the learned counsel for the writ petitioners and in the opinion of the Division Bench before whom the writ petition was argued in the first instance it was a fit case for re-consideration of the said decision by a larger Bench. In order to appreciate the contentions on both sides in their proper prospectives, it is appropriate to bear in mind the legislative history of the land reforms in Punjab.

(3) After the enforcement of the Constitution of India in 1950, reform in agrarian economy in the country through proper legislation was given top priority. In line with the thinking throughout the country, for the purpose of bringing about land reforms, two laws were brought on the statute book before the reorganisation of the States in 1956. In the erstwhile areas of PEPSU which were subsequently merged with Punjab, the PEPSU Tenancy and Agricultural Lands Act, 1955 (hereinafter to be referred to as the PEPSU law) was enforced with effect from March 4, 1955 whereas in the erstwhile area of Punjab, the Punjab Law, received the assent of the President on April 15, 1953. A number of amendments were introduced from time to time in both the Laws. Though the merger of Punjab and PEPSU took place with effect from November 1, 1956, yet till the enforcement of the Act of 1973, both these laws held the field in their respective areas. The scheme of the land reforms, as envisaged in both these laws, was substantially identical inasmuch as ceiling was fixed on land-holding of landowners who were required to declare their entire land on a prescribed form. The authorities under each Act were prescribed to determine and declare the holding of a landowner within the permissible limit and to declare land in excess of the same as surplus. The landowner before this declaration and determination was given the right to choose his land out of his total holding as reserved area and even given the right to get the tenants, if any, ejected from

1(A) 1977 P.L.J. 88.

the said land to bring the same under self-cultivation. The tenants who were in occupation of the land under lease were also given protection from ejectment if they complied with the terms and conditions as laid down in each Act. The surplus land so determined was intended to be utilised for the purpose of resettlement of ejected tenants or, in the alternative, for allotment to landless agricultural workers.

(4) However, the surplus land was treated differently under both the Punjab and the PEPSU Laws so far as its ownership was concerned. According to the PEPSU Law, under section 32-E, the surplus area of a landowner or a tenant which was not included within the permissible limit of the landowner, as the case may be, was to be deemed to have been acquired by the State Government for a public purpose from the date the possession thereof was taken by or on behalf of the State Government and as a result all rights, title and interest of all persons in such land stood extinguished which were vested in the State Government free from all encumbrances. However, under the Punjab Law, such surplus area did not vest in the State Government at any time and its ownership continued to remain with the landowner concerned. However, under section 10-A, the State Government was invested with the power to utilize such surplus area for the resettlement of ejected tenants as may be ejected under section 9. In case of such resettlement, the landowners were entitled to receive rent from the tenants so settled as the right of ownership continued to be vested in them as before. Under both the statutes, it was also provided that no transfer or disposition of land except to a limited extent, as provided, was to be recognised for the purpose of determination of surplus area. This was obviously intended to forestall the malpractices and manipulations by the landowners to defeat the basic purpose of the law which was to get surplus area in each State which could be utilised for settling those who could bring this land under cultivation to subserve the purpose of agrarian economy. While doing so, a few exceptions were also made. So far as the Punjab Law is concerned, these exceptions are embodied in sub-section (b) of section 10-A, which is reproduced below :

> "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)."

(5) Its perusal makes it evident that though no transfer or other disposition of land comprised in a surplus area at the commencement of the Act was to be recognised, for the purpose of determination of surplus area of a landowner, yet exception was made in cases of two categories of transfers. According to the exception, if any land was acquired by the State Government in accordance with any law or it was acquired by heirs of the landowners by inheritance though after the commencement of the Act, the said transfers were to be treated as valid and the surplus area was not to include those lands. So far as the transfers of land by virtue of devolution by inheritance on account of the death of a landowner were concerned, a further exception was introduced by enacting section 10-B, which is reported below:

"Saving by inheritance not to apply after utilization of surplus area,—Where succession has opened after the surplus area or any part thereof has been utilized under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilized."

According to this, once the surplus area was utilised under the Act for resettlement of ejected tenants or others, the subsequent death of the landowner and inheritance by the heirs was not to have any effect on the surplus area already determined. From a combined reading of section 10A and 10B, the intention of the legislature was made clear beyond dispute that till the utilization of the surplus area, in fact, by the State, the death of a landowner could result in diminution or reduction of the surplus area already determined or declared as none could manipulate his own death to save himself from the rigours of the law and his heirs were entitled to own land up to the permissible limits in their own right and their interest as landowners had to be given equal weight in the new agrarian economy as was contemplated under the statute. It has been the consistent view of this Court that even if some land of a particular landowner had been declared surplus by the authorities under the Act, after his death, before the surplus area is utilised, his entire land has to be re-considered in the hands of his heirs for the puepose of re-determination

of surplus area. Reference may be made to the Division Bench judgments in *Financial Commissioner, Haryana and others* v. *Shrimati Kela Devi and another* (1), and *Kulbhushan and others* v. *Faquira and others* (2).

(6) Under the PEPSU Law though the position has not been made so clear as under sections 10A and 10B of the Punjab Law, yet similar conclusions can be justifiably drawn from the various provisions of the PEPSU Law. For the purpose of determining surplus area, at first draft statement has to be prepared by the Collector under section 32-D, a copy of which has to be served on the landowner concerned. After the decision by the Collector, the landowner is entitled to challenge the same in appeal before the State Government. It is after the decision by the Government that the final statement is published in the Gazette after due formalities. Under section 32-E, it is not the date of publication of the final statement from which the surplus area is to be deemed to vest in the State Government, but the date on which possession is taken by or on behalf of the State Government that the rights of the landowners are extinguished which are vested in the State Government. Under section 32 FF whereas other transfers and dispositions of land after August 21, 1956, are to be ignored with regard to the right of the State Government to the surplus area, but again the same two exceptions, that is, acquisition of land by the State Government under the law and acquisition by heirs by inheritance have been provided in this regard. Thus, in consequence of devolution of land on the heirs after the death of the owner, surplus area has to be re-determined in the hands of the heirs. This position of law continued till the time when both the PEPSU Law and the Punjab Law were replaced by the Act of 1973. By the Act of 1973, the two Acts, that is, the Punjab and the PEPSU Laws, were repealed so as to introduce uniformity of legislation in the entire State. Some of the important changes enforced related to reduction in the permissible limit of the landowners and the vesting of the surplus land in the Government. For the purpose of the present case, it is not necessary to go into the details of the formula regarding permissible limit as embodied in the Act of 1973. However, in order to find a correct answer to the question before us, section 8 and Sub-section (1), (5) and (7) of section 11

(1) 1969 P.L.J. 307.

(2) 1976 P.L.R. 537.

of the Act of 1973, have relevance and will need interpretation. The same are reproduced below:

> "8. Vesting of unutilized surplus area in the State Government,—Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of section 15, the surplus area declared as such under the Punjab law or the PEPSU Law, which has not been utilized till the commencement of this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:
>
> Provided that where any land falling within the surplus area is mortgaged with possession only, the mortgagee rights shall vest in the State Government."

"11. Disposal of Surplus area—

(1) The surplus area, which has vested in the State Government under section 8, shall be at the disposal of the State Government.

(2) * * * *

to

(4) * * * *

"(5) 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 the surplus area under the Punjab Law, the PEPSU law or this Act, shall effect the vesting thereof in the State Government or its utilization under this Act.

(6) * * * * *

(7) Where succession has opened after the surplus area or any part thereof has been determined by the Collector, the

> saving specified in favour of an heir by inheritance sub-section (5) shall not apply in respect of the area so determined."

An analytical study of the above provisions of sections 8 and 11 makes it clear that under the new statute, surplus area is sought to be vested in the State Government for the purpose of its utilization to resettle ejected tenants and others in both the areas of Punjab and PEPSU. However, only such surplus area is to vest in the State Government which though declared surplus under the Punjab or the PEPSU Law, had not been utilized till the time of the commencement of the Act of 1973. Besides, the vesting has also to take place from the date when its possession is taken by or on behalf of the State Government and it is from this date that all the rights of the owner or the tenant, as the case may be, are to stand extinguished. With regard to the acquisition of land by the State or by the heirs of the last owner, as a result of his death, the matter has also been made clear under sub-section (5) of section 11 of the Act of 1973, that these acquisitions or transfers by the State or the heirs, as the case may be, will not be ignored while computing the surplus area.

(7) Before the commencement of the Act of 1973, if the total holding of a landowner was taken into consideration for the purpose of determination of permissible limit under the Punjab or the PEPSU Law and the surplus area was finally declared but before the same could be utilised by the Government he died, under sections 10-A and 10-B of the Punjab Law, the said holding would cease to be the holding of the said landowner and will stand devolved and distributed between his heirs by operation of law as a result of succession and the authorities were required to re-determine the surplus area in the hands of each of the heirs. Legally and for all practical purposes, the order regarding surplus area in the hands of the original landowner was rendered non-existent. In this situation, either of the two contingencies could exist at the time of the enforcement of the Act of 1973, i.e., either the surplus area keeping in view the holding in the ownership of each heir separately was determined, or if no such decision had been taken, the question of determination of surplus area in the hands of each of the heirs was yet to be gone into. However, it cannot be disputed that the decision regarding the determination of the surplus area in the hands of the original landowner after his death could not be considered to be still in existence at the time

of the enforcement of the Act of 1973. Thus, the surplus area, which under section 8 of the Act of 1973 is to vest in the Government for the purpose of utilization has a reference to the original landowner if he had not died or to his heirs in case of his death. In case of death of the original landowner unless surplus area in the hands of each heir is declared or determined afresh, there can be no area as such to be vested in the Government under this provision. The position of law is made clear beyond any possibility of controversy under sub-section (5) of section 11, by providing that for the purpose of utilization of surplus area declared under the Punjab or the PEPSU Law, the acquisition of land by the heirs after death of the original landowner will be given due consideration in order to determine the area which may be available for the purpose of utilization.

(8) It has been argued by the learned counsel for the respondents, that in view of sub-section (7) of section 11, once surplus area was determined in the hands of a landowner by the authority concerned whether under the Punjab Law, PEPSU Law or the Act of 1973, his death subsequent thereto and succession by the heirs will not attract the exception as embodied in sub-section (5) and the diminution of land in the hands of the heirs in proportion to their shares will have no effect on the surplus area already determined. In fact, it was argued, that the exception envisaged in sub-section (5) regarding acquisition of land by heirs of a landowner has been withdrawn in sub-section (7). Thus if this interpretation of these two sub-sections is agreed to, it will have to be held that an important part of the provision in sub-section (5) relating to acquisition by inheritance by heirs has been deleted or repealed by sub-section (7). According to the learned counsel for the petitioner, such interpretation cannot be countenanced in view of the well established principles of interpretation.

(9) Regarding the rule of construction in the face of two provisions in a statute which appear to be in conflict with each other, their Lordships of the Supreme Court in *Sri Venkataramana Devaru and others* v. *The State of Mysore and others* (3), held that in such circumstances, the two provisions ought to be interpreted in such a manner that they stand harmonised. It was held at page 918 of the judgment by their Lordships as under:

"The result then is that there are two provisions of equal authority, neither of them being subject to the other. The

(3) 1958 Supreme Court Reports 895.

question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter effect can be given to both that provision and Article 26(b). We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b)."

(10) In *Collector of Customs, Baroda* v. *Digvijaysinhji and Weaving Mills Ltd., Jamnagar* (4), while interpreting sections 193, 182 and 190 of the Sea Customs Act, 1878, it was emphasised by their Lordships that where alternative constructions are equally open, that alternative should be chosen which will result in smooth working of the system and such an interpretation should be avoided which was likely to introduce uncertainty, friction or confusion. The following observation in this regard is worthy of notice:

"There are two well established rules of construction, namely, (1) where the words of a statute are in themselves precise and unambiguous no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the Legislature and (2) where alternative constructions are equally open that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating; and that alternative is to be rejected which will introduce uncertainty, friction or confusion into the working of the system.

(4) A.I.R. 1961 Supreme Court 1549.

(11) Keeping the above principle of harmonious construction in view, the question of primary importance is as to how the two sub-sections (5) and (7) of section 11 be harmonised. The interpretation suggested by the learned counsel for the respondents will result in negativing or deleting the substantial provision in sub-section (5) regarding acquisition of land by heirs in consequence of inheritance. Such an interpretation is obviously impermissible. Both these provisions can be worked harmoniously by interpreting sub-section (7) that this provision will be attracted only in cases where the surplus area is declared by the Collector for the first time under the Act of 1973. If surplus area in the hands of a landowner was declared under the Punjab Law or the PEPSU Law, but the landowner died before the enforcement of the Act of 1973, the acquisition by heirs will be saved under sub-section (5) and the surplus area will have to be re-determined in the hands of the heirs under the Punjab Law or the PEPSU Law or even the Act of 1973, as the case may be. However, once the surplus area was determined by the Collector under the Act of 1973 whether for the first time because no such order had been passed under the previous laws or after the death of the Landowner subsequent to the order regarding surplus area, the acquisition of land by the heirs will not be saved under sub-section (5) and sub-section (7) will be fully attracted. This interpretation is also borne out by the express provision in sub-section (7) which is in the following terms:

> "Where succession has opened after the surplus area or any part thereof has been determined by the Collector, the saving specified in favour of an heir by inheritance sub-section (5) shall not apply in respect of the area so determined."

(12) It will be noticed that the emphasis in this provision is that the succession will have no effect on the surplus area which has been "determined by the Collector". A close perusal of the provisions of the Punjab Law makes it evident that the authority which is entrusted with the power of selecting the permissible area or determining the surplus area in the hands of a landowner is not the Collector. Under sections 5-A, 5-B and 5-C, the authority which has been given the power is referred to as the prescribed authority or the "authority as may be prescribed." In section 10, the authority referred to is

the Assistant Collector. Even the word "Collector" as used in sub-section (7) of section 11 of the Act of 1973, has not been defined under the Punjab Law. Under the Act of 1973, on the other hand, in section 3(3), the term "Collector" has been given a specific definition. Under section 7, it is the "Collector" who has the jurisdiction to determine the permissible area and the surplus area, of a landowner or a tenant, as the case may be. The phraseology adopted in the Punjab Law, PEPSU Law and the Act of 1973, with regard to the determination of surplus area leaves no manner of doubt that according to the scheme of the Act of 1973, sub-section (7) of section 11 is applicable only to those cases in which surplus area is determined by the Collector under this Act only and not under the Punjab Law or the PEPSU Law. By interpreting the two provisions as embodied in sub-sections (5) and (7) of section 11, as discussed above, the purpose and object of the Act of 1973 is fully achieved and the apparent contradiction is resolved.

(13) Pointed attention was drawn by the learned counsel for the respondents to the *ratio* of the decision of the Division Bench in *Jagar Singh's case* (supra) wherein it was held that sub-section (7) of section 11 of the Act of 1973, is attracted in all cases where the order regarding determination of the surplus area is passed by the Collector under the Punjab Law, PEPSU Law or the Act of 1973 and that sub-section (7) is an express limitation on sub-section (5). According to the learned counsel, both the sub-sections of section 11 were correctly interpreted in the said judgment and reference was sought to be made to the following line of reasoning:

"Thus the following observations of the learned Single Judge,—

'The learned Advocate-General submits that under section 11, sub-section (7) of the Punjab Land Reforms Act, 1973, where succession opens after the determination of the surplus area, the saving specified in favour of an heir by inheritance under sub-section (5) shall not apply in respect of the area so determined. There is an obvious fallacy in this argument because section 11(7) would only apply if surplus area is determined under the Punjab Land Reforms Act (No. 10 of 1973). This section would not be attracted to those cases in which surplus area is determined either under the Punjab Law or under the PEPSU Law.'

with due respect, do not fit in the scheme of the 1973 Act. If the legislature had any intention to make the provisions of sub-section (7) of section 11 of the 1973 Act applicable to the surplus area determined under this Act, it could have clearly stated so in this section, and in that case the language of this sub-section would have been "where succession has opened after the surplus area or any part thereof has been determined by Collector under this Act, the saving specified in favour of an heir by inheritance under sub-section (5) shall not apply in respect of the area so determined." The words underlined, however, do not find mention in sub-section (7). Moreover, the wording of sub-section (5) of section 11 to the effect that "no transfer or other disposition of land which is comprised in the surplus area under the Punjab law, the PEPSU law or this Act, shall affect the vesting thereof in the State Government or its utilization under this Act" makes the intention of the Legislature all the more clear. The Legislature while enacting these provisions had clearly in view the surplus area determined under the aforesaid three enactments. It is well settled that in interpreting a statute, it is not competent for a Court to add words to a statute nor to substract any word from it. The Court must place due meaning upon every word thereof without straining the language in any way. The plain duty of the Court is to gather the intention of the Legislature from the words used in the statute. The Courts can depart from this rule only in rare and exceptional cases where the plain meaning of the words used would lead to absurd conclusions or would be destructive of the very purpose for which the Legislation sought to be interpreted happens to be enacted."

(14) I have given my thoughtful consideration to the above discussion. With utmost respect to the learned Judges, it is not possible to agree to the same. According to the learned Division Bench, sub-section (7) of section 11 of the Act of 1973, as interpreted in the judgment, imposed an express limitation on the saving provided in sub-section (5). Thus, the obvious conclusion is that sub-section (7) will have the overriding effect on sub-section (5). Such interpretation will be against the well established and salutary principle of harmonious construction of the two provisions which may be found to

be in conflict with each other. Besides, the legislative history of the three statutes under discussion is a clear pointer to the real intention of the Legislature. The clear intention of the legislature under the Punjab Law and the PEPSU Law was to give protection to the legitimate rights of the heirs of a landowner though the latter died after the determination of the surplus area in his hands by the authorities under those statutes, and the holding in the ownership of each heir was to be considered as a separate entity for the purpose of determination of surplus area. This position of law was not intended to be altered under the Act of 1973 as acquisition by inheritance was expressly protected under sub-section (5) of section 11 of the Act of 1973. Contrary intention so as to set at naught this protection to the heirs of a landowner is not discernible from any provision of the Act of 1973. Omission to make any reference to the Punjab Law or the PEPSU Law under sub-section (7) of section 11 of the Act of 1973 cannot be interpreted to mean that determination of surplus area under this sub-section has reference to all the three statutes. In the Act of 1973, permissible area is re-defined in section 4 which is substantially different from the Punjab Law or the PEPSU Law. Under section 5, every landowner holding or owning land in excess of this permissible area is given the right to select his permissible area afresh by furnishing a declaration to the Collector in the prescribed form within the prescribed time. In case this information is not furnished by the landowner himself, power is conferred on the Collector to obtain requisite information under section 6. Under section 7, the Collector is conferred the jurisdiction to determine the permissible area and the surplus area of a landowner or a tenant, as the case may be, in view of the information supplied to him by the landowner under section 5 or collected by him under section 6. In all these provisions, there is no reference to the Punjab Law or the PEPSU Law and it cannot be interpreted that the provisions in either of these two statutes have any relevance so far as the determination of the surplus area under the Act of 1973 is concerned. In section 8, there is a specific and express reference to the Punjab Law or the PEPSU Law as it has been stated therein that the surplus area declared under the Punjab Law or the PEPSU Law which had not been utilized till the commencement of the Act of 1973 shall vest in the State Government free from all encumbrances. Similarly, there is a reference to all these three statutes separately in sub-section (5) of section 11 which deals with the prohibition on transfer or other disposition of land comprised in the surplus area declared under either of the three statutes. The scheme and intention of the Act

Accession No. 65046 V-I
Date 11.1.82 C-4

of 1973 is clearly discernible from an analytical study of its provisions that wherever the legislature wanted to make any provision with reference to Punjab or the PEPSU Law, specific reference was made relating thereto. However, where some decision was required to be taken by the Collector or any of the authorities under the Act of 1973, there could not be obviously any reference to the Punjab Law or the PEPSU Law, nor was it necessary to specifically provide that such a decision may be made by the authority "under this Act." When some power is conferred on any authority under any statute, no specific reference to the statute is made, nor it is necessary in each and every provision. It appears that while interpreting sub-section (7) of section 11, this aspect of the scheme of the Act of 1973 and the intention of the legislature was not highlighted and the result was error in the interpretation of the two provisions. After a careful and analytical perusal of the judgment of the learned Division Bench and keeping in view the above discussion, it has to be held that sub-sections (5) and (7) of section 11 of the Act of 1973, were not correctly interpreted in the said judgment and the decision in this regard is, thus, reversed and it is held as under:

(1) Sub-section (7) of section 11 of the Act of 1973, will be attracted only in those cases where surplus area and the permissible area are determined by the Collector under the Act of 1973 and subsequent to such a decision the death of a landowner and the opening of succession in favour of his heirs will have no effect on the surplus area already determined; and

(2) Where the surplus area and the permissible area in the hands of a landowner were determined under the Punjab Law or the PEPSU Law and thereafter landowner died resulting in acquisition of the holding by his heirs, the protection to the heirs in the matter of determination of surplus area in their hands, as embodied in sub-section (5) of section 11 of the Act of 1973, will be fully available.

(15) Adverting to the facts of the present writ petition, Pakhar Singh alias Pakher, resident of Village Khanna Khurd, Tehsil Samrala, District Ludhiana was owner of 51 standard acres 10 units of land situated in the village. The Collector,—*vide* his order dated December 10, 1959, declared 20 standard acres 3/4 units of land in his hands out of his total holding as surplus area under the Punjab

Law. He was allowed to retain 30 standard acres as his permissible area. This order was maintained by the Collector after remand, by his order dated August 26, 1963. Appeal and revision filed by the said Pakhar Singh also did not prove fruitful. Pakhar Singh having died on November 1, 1965, his estate was inherited by his son Harbans Singh and Achhar Singh, son of his pre-deceased son Ajaib Singh. It is not disputed that the holding *qua* the share of each of the heirs was within the permissible limit. However, out of the surplus area as declared in his hands before his death, 8 standard acres and 10½ units was utilised for the purpose of resettlement under the provisions of the Punjab Law and the remaining area of 11 standard acres and 5¼ units out of the surplus area remained non-utilised and in possession of the heirs of Pakhar Singh and was in possession of the petitioners at the time of the filing of the writ petition. Some Proceedings were initiated under section 10-B of the Punjab Law by the Collector, Agrarian, Samrala, and by his order, dated January 2, 1973, and an *ex parte* order was passed declaring that the entire surplus area as declared in the hands of the said Pakhar Singh was vested in the Punjab Government. A copy of this order is Annexure P. 1. Subsequent thereto, it was held by the Collector by his order dated May 23, 1975 (Annexure P. 2), that the entire surplus area of 20 standard and 3/4 units had vested in the State under section 8 of the Act of 1973. That order was challenged on behalf of the petitioners before the Commissioner, but without success and the order of the Collector (Annexure P. 2), was upheld by the Commissioner in his order dated December 26, 1978 (Annexure P. 4). All the petitioners are admittedly the heirs of the said Pakhar Singh. Out of them petitioner No. 1 is the widow, petitioner No. 2 is the daughter and petitioner No. 3 is the son of Achhar Singh, son of Pakhar Singh's pre-deceased son; petitioners Nos. 4 to 7 are the grandsons of Pakhar Singh and petitioner No. 8 is the mother of Hardit Singh deceased, son of Harbans Singh, son of Pakhar Singh. In the reply filed on behalf of the respondents, it is not disputed that out of the surplus area declared in the hands of Pakhar Singh deceased, by the Collecor, 11 sandard acres and 5¼ units of land still remains non-utilised and its possession is with the petitioners.

(16) In view of the admitted facts, as narrated above, the writ petition under Articles 226 and 227 of the Constitution has to be allowed. The surplus area in the hands of the original landowner Pakhar Singh had been declared and determined by the Collector

in 1959 and after remand in 1963 under the Punjab Law. As the said Pakhar Singh died in 1965 before the Act of 1973 came into force, his heirs were entitled to the protection of the saving as embodied in section 10-A of the Punjab Law and the surplus area was required to be re-determined in their hands treating each heir as a separate landowner for the purpose of determination of permissible area and surplus area to the extent of 11 standard acres and 5½ units out of the surplus area so declared. No order regarding surplus area was passed by the Collector under the Act of 1973 and as such, sub-section (7) of section 11 of the Act of 1973, is not attracted. The learned counsel for the petitioners has not prayed for any relief in respect of 8 standard acres and 10½ units of land out of the surplus area which was utilized during the lifetime of Pakhar Singh, landowner. It is not disputed that the land of Pakhar Singh, after devolution, in the hands of his heirs, is not in excess of permissible area. Consequently, the orders of the Collector, Agrarian, Samrala, Annexures P. 1 and P. 2 and the order of the Commissioner, Annexure P. 4 are quashed. In view of the circumstances of the case, there will, however, be no order as to costs.

Prem Chand Jain, J.—I agree.

M. M. Punchhi, J.

(17) I had the privilege of reading through the judgment prepared by my illustrious brother Harbans Lal, J. Though I agree with the penultimate result that the writ petition awaiting disposal should be allowed, yet I cannot persuade myself to agree with the approach and reasoning, as also to the legal expositions expounded by my learned brother. Judicial norms caution me that I should avoid recording a discordant note, but since I find it extremely difficult to subscribe to some of the views expressed therein, I have opted to record a note of my own.

(18) We sat in a Full Bench to examine the correctness of law as enunciated in *Secretary to Government, Punjab, Revenue Department, and others* v. *Jagar Singh and others* [Supra (1A)] and not to answer any referred question. The Division Bench, before whom the writ petition was heard in the first instance, thought it a fit case in which the said decision be reconsidered by a larger Bench. The skeletal acts on which the writ petition is based are

that Pakhar Singh, the original landowner, died on November 1, 1965 at a time when the Collector had declared 20 standard acres 3/4 units of land in his hands, out of his total holding, as surplus area under the Punjab Security of Land Tenures Act, 1953 (hereinafter called the Punjab Law). Part of the surplus area was utilised in his lifetime and the remaining was in his possession. On his death, his sons claimed to have received his permissible as well as surplus area by inheritance. During this while, the Punjab Land Reforms Act, 1973 (hereinafter referred to as the Reform law) came into force and the Collector under the latter Act claimed that the surplus area so declared under the Punjab law, was an area on which the State could lay claim under the Reform law *de hors* the inheritance intervening. The State placed total reliance on *Jagar Singh's case* (supra) as the bed rest of justification, requiring the heirs of Pakhar Singh to deliver possession of the land declared surplus as such. And it is to foil that attempt that the writ petition was filed and is required to be decided by us while examining the correctness of *Jagar Singh's case* (supra).

(19) After the dawn of independence and the enforcement of the Constitution, the subject 'agrarian reform' was put at a high priority in line with the thought then prevalent. This part of the country saw the day of substantially two similar laws being brought on the statute book. In the erstwhile State of Punjab, there came into operation—the Punjab law with effect from April 15, 1953 and in the erstwhile areas of Pepsu, the Punjab Tenancy and Agricultural lands Act, 1955, with effect from March 4, 1955 (hereinafter referred to as the Pepsu law). Despite the merger of the two States in 1956, as a result of the reorganisation, the respective laws kept operating in their respective areas. One of the foremost reasons to introduce the Reform law was to unify the two Acts and replace them by only one Act on agricultural lands for the whole State of Punjab.

(20) On the Punjab law coming into operation on April 15, 1953. Ceiling was imposed on the owning and holding of land beyond the permissible area of 30 standard acres. Twin fold, the area was measurable surfacewise to be not exceeding 60 ordinary acres and classwise according to the prescribed scale with reference to the quantity of yield and quality of soil. Those were days when mechanisation and modern methods or farming had not caught the imagination of the countryside. The landowner was required to

reserve his area within a period of six months from April 15, 1953 and for the purpose had to intimate his selection, in the prescribed form and manner, to the Patwari of the estate concerned or to such other authority as may be prescribed. Later the Legislature finding that a large number of landowners had failed to earmark their permissible areas, granted them another opportunity to select their permissible area by June 20, 1958 by making a declaration supported by an affidavit in respect of the lands owned and held by each and to such authority, as may be prescribed. On his failure to make a selection, the prescribed authority could make a selection for the landowner subject of course of giving him a prior opportunity of being heard. Failure to furnish declaration also attracted penalty as given in section 5-C of the Punjab Law. The area reserved or selected had ultimately to be assessed under rules 3 to 6 of the Punjab Security of Land Tenures Rules, 1953 *vis-a-vis* reservation, as also for reservation and selection under Part II of the Punjab Security of Land Tenures Rules, 1956, and the Collector, being the authority prescribed, was entitled to pass an order declaring permissible area and the surplus area of the landowner. That declaration *per se* did not divest the landowner of the ownership of land but became available with the State Government for being utilised for resettlement of certain classes of tenants. Relevant portions of sections 10-A and 10-B of the Punjab law which are meaningful for our purpose may be reproduced here :—

"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 the Act, shall affect the utilization thereof in clause (a) ....".

"10-B. *Saving by inheritance not to apply after utilization of surplus area.*—Where succession has opened after the surplus area or any part thereof has been utilized under

clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section shall not apply in respect of the area so utilised".

(21) Likewise, in the Pepsu law, the permissible limit for the purposes of the Act was 30 standard acres of land but surface-wise could not exceed 80 ordinary acres under section 5 thereof. The land-owner was given the opportunity within a time limit to reserve land to the extent of 30 standard acres by intimating the selection in the prescribed form and manner to the Collector. Later in 1959, on introduction of section 32-B, another opportunity was given to the landowner to furnish the Collector a return, giving the particulars of all of his land in the prescribed form and manner and stating therein, his selection of the parcel or parcels of land, not exceeding in aggregate the permissible limit, which he desired to retain, and other lands in respect of which he claimed exemption. On failure to do so, the Collector could seek information otherwise under section 32-C. On preparation of a draft statement under section 32-D, the Collector was required to serve it on the land-owner, invite objections thereon and decide subject to later results in appeal or revision. The draft statement then became final and had to be publicised in the manner given. Under section 32-E, the surplus area declared,—*vide* the publicised draft statement, known as the final statement, was to vest in the State Government, on the date on which possession thereof was taken, by or on behalf of the State Government, and was to be treated deemingly acquired. At that stage, all rights, titles and interests of all persons in such land were to extinguish and these rights vested in the State Government. The surplus area acquired under section 32-E was then to be at the disposal of the State Government under section 32-J. Section 32-FF saved certain transfers which were not to affect the surplus area and may usefully be taken note of here:—

32-FF. *Certain transfers not to affect the surplus area,*— 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 or up to 30th July, 1958 by a landless person, or a small landowner, not being a relation as prescribed of the person making the transfer or disposition of land, for consideration, up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit, no transfer or

other disposition of land effected after 21st August, 1956, shall affect the right of the State Government under this Act to the surplus area to which it would be entitled but for such transfer or disposition.

Provided that any person who has received any advantage under such transfer or disposition of land shall be bound to restore it, or to make compensation for it, to the persons from whom he received it".

(22) Both the Acts took care to put ceiling on future acquisition of land, and future acquisition by inheritance beyond the permissible limit. While the Punjab law contained sections 19-A and 19-B for the purpose, the Pepsu law contained sections 32-L and 32-M for the purpose. Under both these laws, persons had to shed land in excess of the permissible limit, swelled on account of inheritance, and take steps in the manner given in the respective statutes. These sections in the respective laws, have been taken note of in addition to their other relevant provisions, to spell out, one of their aims at creating, what may be called, a class of "small landowners", i.e. "holders of the land not exceeding the permissible limit (this view takes life from a decision of the Supreme Court under the Punjab law reported as *Atma Ram* v. *State of Punjab and others*, (6) While in the Punjab law, the possessory links alone are broken by an act of the State in utilising the surplus area and not the proprietory links thereof; under the Pepsu law, the possessory and the proprietory links between the landowner of the land are broken by the act of taking possession, by or on behalf of the State, causing divestiture of title there and then. Under the Punjab law, the existing tenants on the land, other than on the permissible area of the landowner, and tenants settled on the land by the process of utilisation, gradually ripen their rights enabling them to purchase their tenancies under section 18 thereof, to cause divestiture of properietory title of the landowner. What is abrupt under the Pepsu law, is a time bound slow going process under the Punjab Law, but the aim is the same, i.e., to delink the landowner with his surplus area; in one stroke under the Pepsu law and two strokes under the Punjab law.

(23) Voluntary transfers of land comprised in the surplus area, subject to certain exceptions in the Pepsu law, could not diminish

(6) A.I.R. 1959 S.C. 519.

or cause affectation to the surplus area under both the laws. There are noticeably two exceptions and they are in the nature of involuntary transfers. The first is the case of land acquired by the State Government under any law for the time being in force. Such acquisition presupposes that it would take place at a time when the landowner still holds title to the land acquired. Under the Punjab law, such acquisition could conceivably take place prior to the utilisation, and in that case, the landowner would be entitled to compensation for his proprietory and possessory interests over the land. In the other event, such acquisition could take place after the area was utilised, and in that case, he would be entitled to receive compensation of his proprietory interests in the land, and the settled tenant to his possessory interest by a reasoned apportionment. The landowner would obviously be not concerned with the third situation, when he stands divested of the title by purchase of the land by the re-settled tenant under section 16. Under the Pepsu Law, the acquisition of land by the State Government, other than the acquisition contemplated under section 32-E which is of the self-served specific kind and purpose, would have the effect of causing affection to the declared surplus area of the landowner, for the proprietory and possessory titles thereto yet remain vested in him till possession was to be taken from him under section 32-E. The aforesaid principles of law are reflective of recognition of the principle, that property cannot remain in abeyance for a single moment and it must have an existing owner. Thus, till the landowner loses his title to the land absolutely under both the laws, he remains entitled to compensation of land in the event of its being acquired by the State Government under any other law, obviously causing affection to the surplus area declared as such. The second involuntary transfer causing affectation is the case of inheritance received by heirs to the deceased landowner. No man can ordinarily manipulate his death. In the event of his demise his personal law requires transference of his estate, simultaneous to his breathing last, on his heirs. The law of inheritance is the law of the "haves" and not of the "have-nots". If the dead man had any subsisting interest in a property, that alone would be heritable by his heirs. Thus, under the Punjab law, if surplus area declared as such, remains in possession and in the ownership of a big landowner, who dies and is succeeded by his heirs, who become or remain small landowners, the incidence of inheritance would cause affectation to the declared surplus area. There are no two opinions about it.

Reference may be made to the Division Bench judgment in *Financial Commissioner, Haryana, and others* v. *Smt. Kela Devi and another,* (supra) and *Kul Baushan and others* vs. *Faquira and others,* (supra). But if the big landowner were to die at a time when his surplus area, or a part thereof, had been utilised and thereby he had lost possession thereof, his heirs by inheritance received the estate and the title thereto, tainted with the smudge, that fictionally it remains the belonging of the big land-owner, and the title to the land could be divested by purchase application at the instance of the tenant under section 18. But other rights, like receiving of rent and receiving the purchase price thereof would travel down to the heirs. This, on either of the two situations, i.e. under the Punjab law or the Pepsu law, the possessory aspect of the mechanism is over-emphatic; and rightly so, as possession of land is the predominent attribute of owenrship. The landowner being delinked with the possession of surplus land, has not been permitted by the involuntary transfer by inheritance on his death, to reclaim back possession and to improve the title of his heirs under the Punjab law, and reversion back of title under the Pepsu law. There are instances of cases in which the areas declared as surplus under both the laws, on account of the breaking up of inheritance, were formally taken note of and orders passed by the surplus area authorities of recognition; whether be they called re-declaration of surplus area or de-declaration of surplus area. Yet, there are instances, where formal orders of the kind had not been passed and the surplus area authorities needed to be confronted with the altered situation by inheritance, when attempting to utilise, or take possession of, the surplus area of the deceased big landowner, in course of time. While these state of affairs were existing, the Reform law came into operation with effect from January 24, 1971.

(24) Now when the Reform law came on the statute book as an act of unification of the pre-existing two laws, agrarian economy in the country-side had undergone a revolutionary change. By the increase of population dependant on agriculture, need arose to shrink the permissible holding of landowners, peasant proprietors and peasants. Large scale mechanisation of farming and large scale exploitation of sub-soil irrigable water through tubewells and the employment of the net work of canal distributaries had fertilised and soaked the predominately arid lands of the State. The factors of area surface-wise and the quantity of yield and quality of soil,

which made the standard acre, receded to make way to a new measure of computing permissible area. The emphasis more was on irrigation, the source of irrigation and the land's capacity to produce two or more crops, one or more crop and the like. This revolutionised the concept of permissible area; the more the irrigation facilities, the better valued the land as prescribed, but the optimum valued land would surface-wise not exceed seven hectares to a person. Thus, a different standard of sieveing the holdings of landowners came into operation, so as to earmark permissible areas under the Reform law to the landowners to own and hold, and to the tenants to hold, and for the retrieving of the spare area, to be made over to the clamouring landless classes, whose man-power was meant to be put to use on those retrieved lands, known again as surplus area. Section 28 of the Reform law did not altogether repeal the Punjab law and the Pepsu law, but kept preserved those laws, except to what was contained in the Reform law as inconsistent to those laws. The Reform law defined surplus area for its purposes, as the area in excess of the permissible area. Thus, three mainstreams were meant to confluence, being the unutilised surplus area of the Punjab law declared as such; the unutilised surplus area of the Pepsu law declared as such; and the surplus area to be declared under the Reform law, so as to need the attention of the State Government under the Reform law to be dealt with thereunder. Sub-section (1) of section 7 of the Reform law, which provides for the determination of permissible and surplus areas, is reproduced as under:—

> "7. *Determination of permissible and surplus areas.*—(1) On the basis of the information given in the declaration furnished under section 5 of the information obtained under section 6, as the case may be, and after making such inquiry as he may deem fit, the Collector, shall, *by an order determine* the permissible area and the surplus area of landowner or a tenant as the case may be".
>
> (Emphasis supplied).

Section 8 of the Reform law, which provides for vesting of unutilised area in the State Government, is to the following effect:—

> "8 .*Vesting of unutilized surplus area in the State Government.*—Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject

to the provisions of section 15, the surplus area, declared as such under the Punjab law or the Pepsu law, which has not been utilized till the Commencement of this Act and the surplus area declared as such under this Act shall *on the date on which possession thereof is taken by or on behalf of the State Government vest in the State Government* free from all encumbrances and in the case of surplus area of a tenant, which is included within the permissible area of the landowner, the right and interest of the tenant in such area shall stand terminated on the aforesaid date:

Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee right shall vest in the State Government".

(Emphasis supplied).

(25) Section 9 enables the Collector to pass an order in writing after the area has become surplus under the respective laws, directing the landowner or tenant to deliver possession thereof in the manner provided. Section 10 provides for the amount payable for surplus area as compensation. Section 11 provides for its disposal. There are three sub-clauses which are relevant for our purposes:—

"11. *Disposal of surplus area.*—(1) The surplus area, which has vested in the State Government under section 8, shall be at the disposal of the State Government.

* * *

(5) 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 the surplus area under the Punjab law, the Pepsu law or this Act, shall affect the vesting thereof* in the State Government or its utilization under this Act. (Emphasis supplied).

* * * *

(7) Where succession has opened *after the surplus area or any part thereof has been determined by the Collector*, the saving specified in favour of an heir by inheritance under

sub-section (5) shall not apply in respect of the area so determined".

(Emphasis supplied).

(26) *In Jagar Singh's case* (Supra) the learned Single Judge, who heard the writ petition initially, while interpreting the provisions of the Reforms law, held that sub-section (7) of section 11 only applied to the determination of surplus area by the Collector under this law and that the saving provided in sub-section (5) in favour of heirs, who received inheritance of land comprised in the surplus area, under the Punjab law and the Pepsu law alone, would remain immune from the suggested rigour in sub-section (7). In other words, involuntary transfer by inheritance would cause affectation to the vesting of surplus area declared under the Punjab and the Pepsu laws in the State Government but not under the Reform law. The Letters Patent Bench took a contrary view in holding that sub-section (7) would predominate over sub-section (5) and that surplus area determined under either of the three laws would be affected to its vesting in the State Government ritance, unless under the Punjab law and the formal order of a re-declaration or as the case may be, had taken place at a time prior to the coming into force of the Reform law. The Bench treating that in declaration of surplus area under the Punjab law and the Pepsu law was effective, and the thread stood picked by section 8 providing for its vesting on the date on which the possession was to be taken held that sub-section (7) of section 11 would be a bar under all the three laws to retrieve surplus area for the benefit of a heir by inheritance. The same principle was uniformly applied to the surplus area to be dealt with under the Reform law. It is to examine the correctness of that view we have employed the effort.

(27) Now it would be pertinently noticed that section 7 of the Reform law employed the word "determine" to earmark the permissible area and the surplus area of landowner or a tenant, as the case may be. A similar word "determined" comes to be employed in sub-clause (7) of section 11 to oust uniformly the applicability of sub-section (5) of section 11. Should it be taken that these words in both the sections are used in the same sense, or are they employed to convey different meanings in the context. What exactly is the import of these words respectively employed becomes necessary to discern the true ambit of sub-section (5) of section 11. To recapitulate, in sub-section (5) of section 11, inheritance has been

provided to cause affectation of vesting of land comprised in the surplus area under the Punjab law, the Pepsu law and the Reform law. Now if such lands stood vested under section 8 of the Reform law by taking possession thereof, the links with it of the landowner, possessory and titular, both get snapped, incapable of being reverted back. After the possession has been taken and divestiture caused to the title of the landowner, his subsequent death would not cause a reversion back of the title or the possession. Necessarily, one has to interpret sub-section (5) of section 11, to apply to only those cases in which vesting had not yet taken place under section 8 of the Reform law. The said sub-section would only operate for an extended period i.e., uptil the time when the landowner is deprived of the possession of the land. It is worthy noticing that sub-section (5) of section 11 does not talk of "declared" surplus area under the three laws, but section 8 provides for taking possession of the "declared" surplus area under the three laws so as to vest in the State Government free from all encumbrances. Thus, the Act of declaring a surplus area under either of the three laws would neither cause divestiture of title or depriver of possession of the landowner, and since he would keep holding a valid title thereto, his death would cause inheritance and necessary affectation and to the anticipated vesting of the land in the State Government or its utilisation, under the Reform law. One has again to remind oneself that property would not remain in abeyance even for a single moment. The result would be incongruous if inheritance is to be kept in abeyance, so as to cater to the unripened claims of the State Government, trampling the legitimate rights of the heirs.

(28) While harmonising the apparent conflicting provisions in a statute, one can take light from Lord Denning's dictum "while a Judge should not alter the material of which the Act is woven, he can and should iron out the creases". The Single Bench in *Jagar Singh's case* (supra) predominated sub-section (5) of section 11 over sub-section (7) by confining the latter clause to a determination of the surplus area by the Collector under the Reform law alone. In this way, the learned Single Judge practically read into it "under this Act" singularly causing obvious violation to the language of the statute. The Letters Patent Bench upset that view by holding that they could not permit "under this Act" to be introduced in sub-section (7) and thus put it in a predominent position *vis-a-vis* sub-section (5) by further holding that the contemplated determination of the surplus area by the Collector in sub-section (7) was meant to

cover determination of surplus area under either of the three laws mentioned in sub-section (5). Harmonising the two sub-sections in this way, and treating the provisions of the Punjab law and the Pepsu law to be inconsistent with sub-section (5), they denied the benefit of inheritance even to the case of those heirs where the land-owner had died prior to the coming into force of the Reform law. This view was taken by pointing out an ethereal distinction that the declared surplus area under the Punjab law or the Pepsu law would remain as such, till and after the coming into force of the Reform law, unless it was re-declared or de-declared in the hands of the heirs. With due respect to the learned Judges of the Letters Patent Bench, this ethereal distinction is uncalled for and would lead to illogical results. Both the Pepsu and the Punjab law, did provide for affectation of surplus area, prior to the deprivation of possession of land from the landowner, and the law cannot be premitted to be stultified by the non-performance of a formal duty by the authorities of a re-declaration or de-declaration of surplus area in the hands of the heirs. It cannot be lost sight of that section 28 of the Reform law took adequate care to preserve such rights under the Pepsu and the Punjab laws subject to their not being inconsistent with the provisions of the Reform law. Sub-section (5) rather reiterates and carries forward, the thread of reaffirming the rights of an heir by inheritance of land comprised in a surplus area unvested or unutilised under the reform law.

(29) It is now left to be marshalled whether the Collector who determines the permissible area and the surplus area under the Reform law under section 7(1) and has again been referred to in sub-section (7) of section 11 is to be taking one step or are these two stages reflective of two separate steps in the same or continued process. Now the word "determine" carries, besides others, two mutually exclusive meanings depending on the context. While in one sense, it means to fix or settle or to define or to decide, in another sense, it means to put an end to or to come to an end. To me, it appears that the word "determine" used in the context of section 7(1) of the Reform law means in the first sense depicted heretofore, i.e. to fix or settle or to define or to decide. That is in the nature of an order of declaration that so much has been determined as the permissible area and the remaining as the surplus area. The word "determined" used in sub-section (7) of section 11 of the Reform law appears to me to have been used in the context in the second sense i.e. "to put an end to or to come to an

end". The meaning employed therein, contra-distinct of causing a declaration, is in the nature of putting an end to the surplus area by snapping the ties and the links of the landowner with his surplus land. I take strength from the phraseology used in the afore-referred to two provisions. While in section 7, surplus area is to be determined as such as a whole but in sub-section (7) of section 11, the surplus area has not necessarily to be determined as a whole; but even a part thereof can be determined. Obviously, whoever thought of a piece-meal declaration of surplus area, but it is conceivable that the surplus area by the taking of its possession, in full or part, can cause vesting in full or part, as the case may be, and thus to be so determined. It is undisputable that surplus area now has to vest under the provisions of the Act and the authority to cause vesting is the Collector who can call upon a landowner to surrender possession under section 9 to effectuate vesting under section 8 and on his failure to do so, use such force as may be necessary. It is in this sense, in my view, that sub-section (7) of section 11 has been studded in the section titled as "disposal of surplus area" contradistinct to the declaration of surplus area provided in section 7. Read in the manner in which I have, discovering the true import and meaning of sub-section (7) of section 11, the suggested controversy that the surplus area under the Reform law is declared by the Collector, but under the Pepsu law and the Punjab law by another authority, though it is not so and is yet the Collector all the same, defined in the respective laws, wanes out and becomes unnecessary. Sub-section (7) and sub-section (5) of section 11 become happy bed mates emanating no dishormony or cause for conflict.

(30) Before concluding the judgment, I must reminisce the well known canons of interpretation given by Lord Denning in *Seaford Court Estates Ltd.* v. *Asher,* (7):—

> "...... a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions which gave rise to it and the mischief which it was passed to remedy, and then he must supplement the written word so as to give 'force and life' to the intention of the legislature".

(7) (1949) 2 All. E.R. 155.

(31) Having travelled through the schemes and the provisions of the Punjab law, Pepsu law and the Reform law it is clear that the latent intention is to create a class of peasant proprietors. All the three laws have beneficiently let retrieved surplus area to walk out from the clutches of its confiscatory provisions, in the event of the death of a landowner if he is being succeeded by heirs holding or not remaining to hold, more than the permissible area. The social conditions in the State demanded that the spare land with a landowner on the standards of the "enough" set up uniformly, be made over to the 'have-nots', but if the same object stands achieved by the death of the landowner, prior to third party interests or of the State coming into cause divestiture, the 'have-nots' and 'half-nots' in the heirs to have a preferential right over the 'have nots' yet to be ascertained and earmarked. Interpreted in this manner can we only provide "force and life" to the intention of the Legislature.

(32) As a sequel to the aforesaid discussion, it is held:—

(1) Sub-section (7) of section 11 of the Reform law would be attracted to all cases of surplus area declared under the Punjab law, the Pepsu law or the Reform law, but it envisages that stage of determining by snapping or de-linking the ties of the landowner by divesting him of the possession and title under the orders of the Collector, of the surplus area so declared.

(2) The protection available to heirs under sub-section (5) of section 11, under either of the aforesaid three laws, would be available till the time the State Government divests the landowner of his land under section 8 of the Reform law or causes its utilisation under section 11, prior to the death of the landowner.

(3) The formal re-declaration or de-declaration of the surplus area in the hands of the heirs after the death of the landowner, whether at a time when the Punjab law or the Pepsu law as applicable or thereafter when Reform law was applicable, would not be necessary and the protective legislation of sub-section (5) of section 11 would give a protection umbrella against the vesting of such area in the State Government or the utilisation thereof.

(4) Sections 7(1) and 11(7) are operative in mutually exclusive fields inasmuch as the former applies at the declaratory stage and the latter at the executory stage in order to de-link permanently the landowner with his surplus area; and

(5) The Letters Patent Bench's decision in *Jagar Singh's case* (supra) is held not to be good law and hereby overruled.

(33) I have no difference to the result of the petition and the same deserve acceptance, which is hereby done, but with no order as to costs.

N. K. S.

FULL BENCH

Before S. S. Sandhawalia, C.J., K. S. Tiwana and Harbans Lal, JJ.

EMPLOYEES' STATE INSURANCE CORPORATION,—*Appellant.*

versus

OSWAL WOOLLEN MILLS LTD.,—*Respondent.*

First Appeal from Order No. 451 *of* 1978.

July 16, 1980.

Employees' State Insurance Act (XXXIV of 1948)—Sections 2(9), 38, 39 *and* 42—*Casual employment of a person in a factory—Person so employed—Whether an employee within the meaning of section* 2(9).

Held, that a bare look at the provisions of section 2(9) of the Employees' State Insurance Act, 1948 would make manifest the anxiety of the Legislature to couch the definition in such wide ranging terms so as to bring within its ambit all persons employed in the factory or establishment, both with regard to the nature of the work as also the mode or manner in which the employment has been brought about. What first deserves to be highlighted is that an 'employee' is not confined merely to a person engaged for the work of the factory or establishment alone. Clause (i) designedly extends this to work which may be merely incidental or preliminary and even merely connected therewith. The wide amplitude of the language is significant as this would at once negative and set at rest