the Amendment Act. There may be so many reasons for doing so, for example, a landowner may have to go out of his village for a pretty long time and in order to avoid his land lying fallow, he may give it on lease to someone. If section 8 had not been there, then a landowner would think twice before giving the land out of his reserved area to a tenant for cultivation because in that case it would not be possible for him to eject the tenant till he commits a default as provided under section 7 of the Act. By providing section 8, a landowner can safely lease out land even out of his reserved area for a short period while a tenant is also given security that the period would not be less than three years. In this view of the matter. I hold that section 8 provides an independent ground of eviction and a tenant inducted after the enforcement of the Amendment Act can be ejected after the expiry of three years without proving any of the conditions specified in section 7 of the Act.

(5) No other point was urged.

(6) For the reasons recorded above, I allow these petitions, quash the impugned orders and send back the cases to the Assistant Collector, First Grade, for decision in accordance with law. The parties, through their learned counsel have been directed to appear before the Assistant Collector, First Grade, Jind, on 20th April, 1970. In the circumstances of the case, I leave the parties to bear their own costs.

K. S. K.

FULL BENCH

Before Harbans Singh, C.J. and Gurdev Singh, R. S. Narula, Bal Raj Tuli and Prem Chand Jain, JJ.

HARNEK SINGH AND ANOTHER,—*Petitioners.*

Versus.

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 124 of 1967

August 25, 1971.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Section 32-FF—Transfer of land by a land-owner after August 21, 1956—Determination of surplus land of such land-owner—Transferee of the land—Whether an interested person—Notice to him before declaring surplus area of the transferor—Whether essential.

Held, that section 32-FF was added to Pepsu Tenancy and Agricultural Lands Act, 1955, to frustrate the device of land-owners for saving lands by transferring them to their relatives. Such transfers made after August 21, 1956, do not effect the right of the State Government under the Act to the surplus area to which it would be entitled but for such transfers. The transfers, however, are otherwise good for all purposes between transferor and transferee and are rendered in-effective only against the State Government. The interest of the the transferee subsists in the matter of the declaration area in most cases. Hence where a transfer is made by a land-owner after August 21, 1956, the transferee is a person interested in participating in the proceedings for declaration of surplus area and he must be given an opportunity of being heard to avoid his interest being prejudically affected before declaring the surplus area of his transferor under the Act. (Paras 15 and 21)

Case referred by the Division Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh, and Hon'ble Mr. Justice Prem Chand Jain on the 24th September, 1970 to a larger Bench for deciding an important question of law. The Full Bench consisting of Hon'ble the Chief Justice Mr. Harbans Singh, Hon'ble Mr. Justice Gurdev Singh, Hon'ble Mr. Justice R. S. Narula, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Prem Chand Jain, after deciding the question of law, returned the case back to the Division Bench on 25th August, 1971 for deciding the case in accordance with law.

Letters Patent Appeal under Clause X of the Letters Patent against the Judgment and order of Hon'ble Mr. Justice Shamsher Bahadur passed in Civil Writ No. 1064 of 1963 on 17th March, 1967.

J. N. SETH AND N. L. DHINGRA, ADVOCATES, for the petitioner.

S. S. KANG, DEPUTY ADVOCATE GENERAL, PUNJAB, for Respondents Nos. 1 to 3 WITH MR. SARJIT SINGH, ADVOCATE.

REFERRING ORDER.

The order of this Division Bench was delivered by:—

HARBANS SINGH, C. J.—This Letters Patent appeal under clause 10 challenges the judgment of the learned Single Judge dated 17th of March, 1967, by which a writ petition filed by the appellants under Article 226 of the Constitution, was dismissed.

(2) The admitted facts are that Harchand Singh, father of the appellants, was at one time the owner of the entire village of

Nanahri in Hissar district. This village was acquired by the Government for the settlement of displaced persons from Bhakra reservoir area. A compensation of over two lacs of rupees was awarded on the 31st of August, 1956, to the appellants for the land acquired from their father. The appellants thus became landless persons. They then purchased an area of 377 Bighas and 9 Biswas for a consideration of Rs. 50,000 from their father's sister, Dhan Kuar, on 22nd March, 1958. It is sated that collaterals of Dhan Kuar filed a suit for pre-emption which was decreed by the trial Court and the first appellate Court and it was only ultimately in this Court that in Regular Second Appeal No. 62 of 1960, decided on 18th January, 1961, the suit was dismissed in view of the amendment in the Punjab Pre-emption Act by Act 10 of 1960. Dhan Kaur, as a big landowner, had to furnish a return under section 32-F of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Pepsu Act). But it is stated that since she had no interest left in the matter, she did not furnish any return and consequently the Collector, respondent No. 3, acting under section 32-D of the Pepsu Act, on 26th February, 1960, finally declared an area of 27.83 standard acres in the hands of respondent No. 4 as surplus. It is common case of the parties that no notice was given of these proceedings under section 32-D of the Pepsu Act to the appellants who had purchased the land in 1958. According to the appellants they came to know about this declaration of the surplus area on 3rd January, 1963, when proceedings for the allotment of the surplus area were started. Their appeal and revision filed before the Commissioner and Financial Commissioner, respectively, met with no success. So they filed the writ out of which this appeal has arisen. *Inter alia* the points taken up by them were that they were interested persons for the declaration of the area as surplus; that they were shown as purchasers in the revenue records after 1958; that under section 32-FF of the Pepsu Act they being landless persons, the alienation in their favour, which was obviously made in a *bona fide* manner as is apparent from the fact of a suit having been filed by the collaterals of Dhan Kaur, was saved and that, in any case, under the proviso to section 32-FF of the said Act, they were entitled to receive back from the transferor the advantage taken by her, namely, a sum of Rs. 50,000, which was paid to her as the consideration. It was found as a fact that no notice was given, but at the same time it was held that in view of the fact that the appellants were relations of the

transferor within the prescribed degree, they could not take advantage of the exception given in section 32-FF and conseqently the Government could ignore such a transfer. On this ground the writ petition was dismissed.

(3) On behalf of the appellants it was urged, and not without force, that if the appellants were entitled to a notice, the lack of such a notice would vitiate the proceedings to make them null and void, and it is not for the Courts to decide whether what they had to urge would have found favour with the authority concerned. The learned counsel for the appellants further contended that so far as the landless persons were concerned, even if they were relations within the prescribed degree, such a transfer would be valid under section 32-FF and that, in any case, if they had been given a hearing, they could have claimed the price that they had paid to the vendor. However, on the other side, the contention raised on behalf of the State was that, as held by a Full Bench of this Court in *Pritam Singh and others* v. *The State of Punjab and others*, (1) transferees were not interested parties to whom notice had to be given while determining the surplus area. Reliance is placed on paragraph 14 of the judgment which is to the following effect:—

> "The last contention of Mr. Tuli is that no notice was issued to the donees before the surplus area was determined. Section 32-FF provides that no transfers or other disposition of land after 21st August, 1956, shall affect the right of this State Government under this Act, to the surplus area to which it would be entitled but for transfer or disposition. The net result of the provision is that the transfers have to be ignored. If the transfers are ignored, no question of any notice to the transferees arises. The transferred property will not vest in the transferees and for the purposes of the Act, they will not be deemed to be the owners of the property. Therefore, the contention, that the non-giving of notice to the transferees violates the principles of natural justice, has no substance."

(4) That was a case of a donor and the other question, whether the transferee was a landless person and was or was not covered by exception provided under section 32-FF did not come for

(1) I.L.R. (1966) 1 Pb. 707=1966 Curr. L.J. (Pb.) 165.

consideration. This Full Bench judgment was referred to by Narula, J. in *Bhool Chand and others* v. *The State of Punjab and others*, (2) That was a case under the Punjab Security of Land Tenures Act, 1953. Relying upon two judgments of Shamsher Bahadur, J. in *Shambandi Ram and others* v. *The Financial Commissioner and others*, (3) and *Indraj Singh and others* v. *The State of Punjab and others*, (4) and his Lordship's own judgment in *Shrimati Pari and another* v. *State of Punjab and others*, (5) it was held that under the Act and the Rules, it was necessary for the Collector, while taking proceedings for declaring surplus area, to give notice to the transferees from the landowner whose surplus area case was dealt with. Referring to the Full Bench *case of Pritam Singh*, (1) it was observed as follows:—

> "* * * * the Full Bench judgment * * * * * * * * relates to the Pepsu Tenancy and Agricultural Lands Act (13 of 1955) and not the Punjab Act and that the distinction in the two Acts in this respect is apparent from the discussion of the relevant provisions of the Pepsu Act in paragraph 14 of the Full Bench judgment in *Pritam Singh and others* v. *The State of Punjab* (1) * * * *. The main difference between the two Acts, is that whereas the landowner is divested of his surplus area under the Pepsu Act, he remains the owner under the Punjab Act and merely his right to cultivate the said land himself or to settle his own tenants thereupon is taken away from the landowner. The settled law in respect of the second point (with regard to the notice), therefore, is that in view of the specific provisions of rule 6 of the Punjab Security of Land Tenures Rules, 1956, and form 'D' attached to the rules, it is necessary that a notice should be given to the transferees before deciding the surplus area of the transferor as the transferees are persons interested in the matter."

The basis on which it was held that the transferee is an interested party to whom notice has to be given, was more specifically dealt with by Narula J. in *Shrimati Pari and others* v. *State of*

(2) 1969 Rev. L.R. 70.

(3) (1965) 44 L.L.T. 31=1965 P.L.J. 24.

(4) 1965 P.L.J. 66.

(5) (1966) 45 L.L.T. 176=1966 Curr. L.J. (Pb.) 634=1966 P.L.R. 844.

Punjab and others, (5) At page 635 bottom it was observed as follows:—

> "Rule 6(6) of the Punjab Rule requires that the Collector shall assess the surplus area after such enquiry as he thinks fit. This rule further requires that in doing so, he is bound to hear the landowner or the tenant and has to decide those objections by a written order. A further safeguard is provided in the rule to the effect that even in a case where no objections are made or the person affected does not appear, this fact has to be stated in the order, In view of the contents of Form D, referred to above, it was necessary that a notice should have been issued to the tenants as well as to the transferees as it cannot be said that they were not persons interested in the matter. Even at the hearing the Collector should have recorded the fact as to whether the said persons interested had appeared before him or and what objections they had filed and should then have disposed of each of the objections preferred before him."

The contention of the learned counsel for the appellants was that the relevant rules of the Pepsu Act and the corresponding form are materially the same as in the Punjab Act and that consequently the argument, which prevailed with the learned Judges in holding that under the Punjab Act transferee is an interested party and should be given a notice before giving a decision of the surplus area, applies with full force to the Pepsu as well. So far as the question as to what happens to the surplus area, after the same has been declared and notified, is concerned, it is a question which arises only after the declaration of the surplus area and is foreign to the matter in controversy before us, namely, as to what the Collector is required to do before declaring the surplus area. The mere fact that after the surplus area is declared and notified, the land vests in the State Government under the Pepsu Act, therefore, is a consideration which is irrelevant for the purpose of the question whether a transferee should or should not be given a notice by the Collector before declaring the surplus area. Relevant parts of rule 6 (of the Punjab Act) and those of rules 21-B and 22 (of the Pepsu Act) are substantially the same. The corresponding form under the Pepsu Act is form VII-F and Part B of this form is a verbatim copy

of part B of form D under the Punjab Act which was dealt with by Narula J., in *Shrimati Pari's case* (5).

(5) It was further contended that once it is held that a notice is necessary to be given to the transferee, it is not necessary to go into the question whether the transferee would have had something to say which would ultimately give him some benefit or not. As already stated under section 32-FF of the Pepsu Act two matters have to be dealt with, (1) whether the transferee is landless and (2) whether he is a relation within the prescribed degree and even if he is so, there is a proviso that he is entitled to receive from the vendor the advantage received by him. Even if apparently the transferees have no case, yet they cannot be denied their right of an hearing, because they may be able to persuade the Collector in some matters. We, therefore, feel that in view of the importance of the point involved, this matter may be decided by a Bench of more than three Judges, because the observations made by the Full Bench in *Pritam Singh's case* (1) may require reconsideration. The following question is consequently referred to the Full Bench for decision:—

> "Where a transfer is made by a landowner after 21st August, 1956, is the transferee an interested person to whom a notice must be given before declaring the surplus area of the transferor under the Pepsu Tenancy and Agricultural Lands Act, 1955?"

September 24, 1970.

Judgment of the Full Bench dated 25th August, 1971.

NARULA, J.—(6) The circumstances in which the following question of law has been referred to this Full Bench of five Judges by the Division Bench of my lord the Chief Justice and my learned brother P. C. Jain, J., are set out in sufficient detail in their order of reference, dated September 24, 1970, and need not be reiterated:—

> "Where a transfer is made by a land-owner after August 21, 1956, is the transferee an interested person to whom a notice must be given before declaring the surplus area of the transferor under the Pepsu Tenancy and Agricultural Lands Act, 1955?"

(7) The relevant statutory provisions (sections 32-A to 32-NN) are contained in Chapter IV-A of the Pepsu Tenancy and Agricultural Lands Act (13 of 1955) (hereafter called the Act). Section 32-A prohibits, *inter alia*, the owning or holding as land-owner of any land within the State which in the aggregate exceeds the "permissible limit". Without referring to the detailed definition of that expression given in section 3 of the Act, we will assume for the sake of this case that the permissible limit is thirty Standard Acres. Section 32-B enjoins, *inter alia*, on every person who owned or held any land as land-owner on October 30, 1956, which exceeded the permissible limit, to furnish to the Collector within one month from July 30, 1958, a return giving the particulars of all his land in the prescribed form and manner and stating therein :—

(a) his selection of the parcel or parcels of land not exceeding the permissible limit which he desires to retain;

(b) the lands in respect of which he claims exemption from the ceiling under the provision of Chapter IV-A; and

(c) particulars of any transfer or other disposition of land made by him after August 21, 1956.

I will deal with the prescribed forms and the prescribed manner after referring to the remaining relevant provisions of the Act. Section 32-BB is not relevant for our purposes as that is an additional provision meant for land-owners whose land is situate in more than one Patwar Circle, and requires an additional declaration prescribed under the rules. In section 32-C it is stated that if any person owning or holding land in excess of his permissible limit fails to furnish the return and intimate his selection within the period prescribed under section 32-B, the Collector may obtain the information required to be shown in the return through such agency as he may deem fit and select the parcel or parcels of land which such person is entitled to retain under the provisions of the Act as also the surplus area of such person. Section 32-D is in the following terms:—

"*Submission of statement to Government.*

(1) On the basis of the information given in the return under section 32-B or the declartion furnised under sub-section (1) of section 32-BB which shall be duly verified through such agency as may be prescribed or the information

obtained by the Collector under sub-section (3) of section 32-BB or section 32-C, the Collector shall prepare a draft statement in the manner prescribed showing among other particulars, the total area of land owned or held by such a person, the specific parcels of land which the land-owner may retain by way of his permissible limit or exemption from ceiling and also the surplus area.

(2) The draft statement shall include the advice of the Pepsu Land Commission appointed under section 32-P regarding the exemption from ceiling if claimed by the land-owner and be published in the office of the Collector and a copy thereof shall be served upon the person or persons concerned in the form and manner prescribed. Any objection received within thirty days of the service shall be duly considered by the Collector and after affording the objector an opportunity of being heard order shall be passed on the objection.

(3) Any person aggrieved by an order of the Collector under sub-section (2) may, within thirty days of the order prefer an appeal to the State Government or an officer authorised by the State Government in this behalf.

(4) Without prejudice to any action under sub-section (3), the State Government may of its own motion call for any record relating to the draft statement at any time and, after affording the person concerned an opportunity of being heard, pass such order as it may deem fit.

(5) Any order of the State Government under sub-section (3), or sub-section (4), or of the Collector subject to the decision of the State Government under those sub-sections shall be final.

(6) The draft statement shall then be made final in terms of the order of the Collector or the State Government, as the case may be, or in terms of the advice of the Pepsu Land Commission regarding exemption from the ceiling claimed by the land-owner (if any), and published in the Official Gazette and no person shall then be entitled to question it in any court or before any authority.

(7) The final statement shall then be submitted by the Collector to the State Government as soon as may be and a copy thereof may on demand be given to the land-owner or the tenant concerned."

(8) Section 32-DD requires future tenancies in surplus area and certain judgments etc. to be ignored. Vesting of the surplus area in the State Government is provided by section 32-E, notwithstanding anything to the contrary contained in any law, custom or usage. The surplus area of a land-owner is deemed to have been acquired by the State Government for a public purpose on the date on which possession thereof is taken by or on behalf of the State Government, and all rights, title and interest of all persons in such land thereby stand extinguished, and all such rights, title and interest are vested in the State Government free from any encumberances created by any person. Section 32-F authorises the Collector to direct the land-owner or any other person in possession of the surplus area to deliver possession thereof to any officer specified by the Collector. Section 32-FF which is the next material provision reads as under :—

"*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 upto 30th July, 1958, by a landless person, or a small land-owner, 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 person from whom he received it."

Section 32-G(1) contains the principles for payment of compensation. Sub-section (2) of section 32-G requires the Collector to prepare a

compensation statement in the prescribed form and to give notice thereof to all persons known to have any interest in the land for which compensation is to be paid, to appear personally or by duly authorised agent before him and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interest. The amount of compensation is thereafter required to be apportioned among the persons having interest in the land. Section 32-H provides for the manner of payment of compensation and section 32-J for the disposal of surplus area. The other provisions of Chapter IV-A are not relevant for deciding the question referred to us. I have purposely omitted reference to tenants having land under their personal cultivation as we are not concerned in the present litigation with the case of the declaration of the surplus area of a tenant. Such tenants have been dealt with throughout the above-mentioned provisions on the same footing as land-owners.

(9) The Pepsu Tenancy and Agricultural Lands Rules, 1958 (hereinafter called the 1958 Rules) have been framed by the State Government in exercise of the powers vested in it by section 52 of the Act. Provisions for filing returns of land in excess of the ceiling and aquisition and disposal of surplus area by the Government have been made in Part V of those Rules. Rule 19 with which Part V starts provides that every land-owner (once again omitting reference to the case of tenants) is required to furnish a return under section 32-B of the Act in Form VII-A to the Collector of the district in which his land is situate, either personally or by registered post. Rule 20 authorises, the land-owner to secure the services of the concerned Patwari to fill up the prescribed form on payment of the prescribed fee. In a case where the Patwari fills up the form he is made responsible by sub-rule (2) of rule 20 for the correctness of all entries taken from the revenue record in his possession. Rule 21 requires the Collector to get the particulars given in the prescribed form verified by the concerned Tehsildar in whose tahsil the land is held by the land-owner. Rule 21-A refers to the prescribed form in which additional declarations, etc., have to be given under section 32-BB by a land-owner having land in more than one Patwar circle. Rule 21-B the states:—

"Collection of information through Revenue Field Staff, under section 32-C of the Act.—

(1) Where any person referred to in section 32-B of the Act fails to furnish the return prescribed under that section, the

Collector shall cause the return to be filled up by the Patwari, in duplicate in Form VII-F, if such person is a land-owner or in Form VII-G if such person is a tenant. The Patwari shall retain one copy of each return filled in by him and forward the other to Circle Kanungo. (2) The Circle Kanungo shall after personal *examination, attest all entries made by the Patwari in Form VII-F or Form VII-G and forward it to the Tahsildar who shall verify it and forward it further to the Collector.

(3) Where, in the case of laand-owner, additional copies of Form VII-C and VII-E, and, in the case of a tenant, additional copies of Forms VII-D and VII-E, have been received by the Collector under sub-rule (4) of rule 21-A the Collector shall after holding such inquiry as he thinks fit, return them to the Collector from whom they were received along with Form VII-A or Form VII-F, in the case of a land-owner and Form VII-B or VII-G, in the case of a tenant, as the case may be."

Rule 22 enjoins on the Collector a duty to prepare a draft statement (mentioned in sub-section (1) of section 32-D of the Act), in prescribed Form No. VIII, after satisfying himself as to the correctness of the particulars mentioned in Form VII-A. A copy of the statement in Form VIII is required to be forwarded by the Collector to the land-owner and has to be served on the land-owner like summons in manner prescribed in section 90 of the Punjab Tenancy Act, 1887. Rule 23-A enumerates the prescribed relations for the purposes of section 32-FF of the Act.

(10) Broadly speaking the entries to be made in Form VII-A relate to the name, parentage, place of residence, etc., of the land-owner, the total area owned or held by him, the total area under self-cultivation village-wise, the area under tenants with their names, the selected area within the permissible limit, particulars of the area sought to be exempted from the ceiling under section 32-K of the Act with reasons for claiming the exemption, the estimated surplus area, etc. In addition to this, particulars of any transfer or disposition made by the land-owner after August 21, 1956, have to be furnished as required by the proviso to section 32-B. Where the Patwari prepares the statement under section 32-C, he has to give same particulars in Part A of Form VII-F as those contained in Form VII-A; and in

addition to those particulars (statement showing the area owned by a land-owner in a Patwar circle), a statement is required to be given in Part B of that Form showing the transfers made by the land-owner after August 21, 1956. In Part B the name and the parentage of the transferor, the date of transfer, the party to whom the land as transferred, the nature of the transfer, the area involved with Khasra numbers, particulars of the consideration paid, if any, and information about the transfer being oral or registered are required to be furnished. Form VII-F has to be prepared by the Patwari, to be attested by the Kanungo, and to be verified by the Tahsildar.

(11) Following admitted relevant legal propositions emerge from the above mentioned provisions of the Act and the 1958 Rules :—

(i) Transfers of land effected by a land-owner from out of his holding prior to August 21, 1956, have to be given full effect and no part of land so transferred is to be deemed to belong to the land-owner for purposes of declaring his surplus area;

(ii) Voluntary transfers of land made by a land-owner after July 30, 1958, have to be completely ignored by the State and the land so transferred is to be deemed to be still belonging to the land-owner for purposes of declaring the surplus area of the land-owner notwithstanding such transfer;

(iii) Transfers effected by a land-owner for consideration out of his holding between August 21, 1956, and July 30, 1958, to a landless person or to a small land-owner (up to an area which with or without the area owned or held by him does not in the aggregate exceed the permissible limit), have to be given effect even against the State if the same are not in favour of any of the prescribed relations enumerated in rule 23-A (wife or husband male or female descendants and the descendants of such female, father, mother, father's or mother's sister, brother and his descendants, mother's brother and his descendants, wife's brother and sister's husband):

(iv) Such transfers (between August 21, 1956, and July 30, 1958) in favour of anyone or more of the prescribed relations

referred to above have to be ignored for the purpose of declaring the surplus area of the land-owner as if such transfers had not been made;

(v) Though the ownership of the land declared surplus vests in the State Government, compensation therefor is payable to the land-owner or to other persons interested in the land in accordance with the relevant provisions. Any person who has received any advantage under a transfer of land to which transfer effect is not given under the Act, is bound to restore such advantage (or to make compensation for it) to the persons from whom he received it;

(vi) In his return filed under section 32-B the land-owner is required (by the proviso to that section) to give particulars of any transfer or other disposition of land made by him after August 21, 1956; and

(vii) In Part B of Form VII-F to be prepared by the Patwari for purposes of declaration of the surplus area of a land-owner who has not himself furnished Form VII-A particulars of the transfer effected by the land-owner along with the name and particulars of the transferee, etc. have to be specifically mentioned.

(12) It appears to be pertinent to notice at this very stage a proposition of law which has since been settled by their Lordships of the Supreme Court in *S. Pritam Singh Chahil* v. *The State of Punjab and others*, (6). While observing that section 32-FF was added to the principal Act to frustrate the device of the land-owners for saving lands by transferring them to their relatives and after noticing the fact that such a transfer made after August 21, 1956, was not to affect the right of the State Government under the Act to the surplus area to which it would be entitled but for such transfer, their Lordships held as below:—

"Between the transferor and the transferee the transfer would be good, but it would not be effective against the State Government. That is to say for ascertaining the surplus area the land transferred would be included in the

(6) A.I.R. 1967 S.C. 930.

transferor's land. Out of the total extent, the land above the ceiling, that is the permissible limit, would be the surplus land."

This authoritative pronouncement of the Supreme Court sets at rest one possible controversy about the effect of ignoring the transfers which are not protected by the Act. It also establishes beyond doubt that the transfer being good for all purposes between the transferor and the transferee and being rendered ineffective only against the State Government, the interest of the transferee may subsist in the matter of the declaration of the surplus area in most of the cases. He would, in the first instance, be interested in showing, if possible, that his transfer was either effected before August 21, 1956, or if the transferee does not happen to be one of the prescribed relatives, the transfer was effected before July 31, 1958. He may also be interested to make some claim in appropriate proceedings before some competent authority under the proviso to section 32-FF. Even Mr. S. S. Kang, the learned Deputy Adovcate-General for the State of Punjab was not able to suggest that an order passed under the Act for declaring the surplus area of a land-owner cannot prejudicially affect the interest of a transferee from that land-owner. It is in this perspective that we are called upon to decide whether a person to whom land has been transferred after August 21, 1956, is or is not a person interested in the proceeding for the declaration of the surplus area to whom an opportunity to safeguard his interests has to be allowed by giving him a notice before declaring the surplus area of the transferor under the Act.

(13) Mr. Jagan Nath Seth, the learned Advocate for the appellants, referred to a large number of cases under the corresponding Punjab Act (the Punjab Security of Land Tenures Act, X of 1953) in which it has been held from time to time by different Benches that a transferee from a land-owner is a prson concerned or a person interested in the matter of declaration of surplus area and is entitled to be given notice of those proceedings, and to have his objections, if any entertained and adjudicated upon by the appropriate authorities under that Act. Reference was made in this connection to the judgments of Shamsher Bahadur, J. in (i) *Ghamandi Lal and others* v. *The State of Punjab and others,* (3) *and* (ii) *Indraj Singh and others* v. *The State of Punjab and others,* (4) and to my Single Bench judgment *in Shrimati Pari and another* v. *State of Punjab and others.* (5)

Counsel then brought to our notice the Division Bench judgment of *S. B. Capoor*, J. and myself in *Hardev Singh and other* v. *The State of Punjab and others*, (7) Besides interpreting the relevant rules under the Punjab Act to suggest that such a notice was necessary, I had specifically observed in that judgment (with which S. B. Capoor, J. concurred) that "even otherwise, the requirement of service of notice on all persons interested under sub-rule (3) of rule 6 of the 1956 Rules (framed under the Punjab Act) appears to us to be based on principles of natural justice requiring an opportunity being afforded to any person who is likely to be prejudicially affected by an order which might be passed in the relevant proceedings. "It had further been observed by the Division Bench in *Hardev Singh's case* (7) (supra) that such a notice cannot be dispensed with on the mere ground that particular transferees or tenants who may otherwise be deemed to be the persons interested in the proceedings may have no good defence to the proposed order. Even before the Bench hearing *Hardev Singh's case*, (7) reliance was sought to be placed by the State counsel on certain observations made in the Full Bench judgment of this Court in *Pritam Singh and others* v. *The State and other*, (1) to the effect that the contention that the non-giving of notice to the transferees violates the principles of natural justice has no substance. Since *Hardev Singh's case* (7) had arisen under the Punjab Act and Pritam *Singh's case* (1) was decided under the Pepsu Act, between the relevant provisions of which two Acts there are certainly some differences which may not be very material for our present purposes, the Division Bench did not fell inself bound to give effect to the law laid down by the Full Bench in *Pritam Singh's case* (1) under a different statute.

(14) Mr. Seth next placed reliance on the Full Bench judgment of P. C. Pandit, S. S. Sandhawalia and M. S. Gujral, JJ. in *Balwant Singh Chopra and others* v. *Union of India and others*, (8). In fact the decision on the relevant point was concluded by the Division Bench of Mahajan and Sandhawalia, JJ. while making reference to the Full Bench on some other question with which we are not concerned. Sandhawalia, J. who prepared the judgment of the Division Bench (with which Mahajan, J. agreed) referred to the previous decisions (to which I have already referred) and followed the view adopted by the earlier Division Bench in *Hardev Singh's case* (7) on

(7) I.L.R. (1970) 1 Pb. & Hr. 411.
(8) I.L.R. (1971) 1 Pb. & Hr. 490=1971 P.L.R. 335.

the ground that the said decision was binding on them and was in consonance with the consistent view held in this Court on that point. The learned Judge endorsed that view further by observing that even otherwise he was wholly in agreement with the reasoning and ratio of the decision in *Hardev Singh's case* (7) wherein it had been held that the requirement of notice was based on the principles of natural justice.

(15) The last authorrity on which Mr. Seth relied in this connection is the judgment of my lord the Chief Justice and my learned brother Jain, J. in Smt. *Ankauri and another* v. *Financial Commissioner and other,* (9). The Division Bench in that case appears to have merely followed and endorsed the view taken by this Court in the earlier decisions. Mr. S. S. Kang placed reliance on the other hand on the following passage in the judgment of the Full Bench in *Pritam Singh's case* (1) (supra) which judgment was given in relation to the Pepsu Act as distinguished from the cases relied upon by Mr. Seth, all of which had arisen under the Punjab Act:—

> "The last contention of Mr. Tuli is that no notice was issued to the donees before the surplus area was determined. Section 32-FF provides that no transfers or other disposition of land 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 transfer or disposition. The net result of this provision is that the transfers have to be ignored. If the transfers are ignored, no question of any notice to the transferees arises. The transferred property will not vest in the transferees and for the purposes of the Act, they will not be deemed to be the owners of the property. Therefore, the contention, that the non-giving of notice to the transferees violates the principles of natural justice, has no substance. It is not disputed that notice was given to the donor."

(16) Though Mr. Seth has tried to argue that a transferee is included in the expression "persons concerned" occurring in section 32-D(2) of the Act, and is, therefore, entitled to be heard at all stages relating to the declaration of the surplus area of the transferor, we consider it unnecessary to enter into this controversy for the simple reason, that even if the statute and the rules framed thereunder are silent on the point, it appears to us to be necessary

(9) 1971 Rev. L.R. 169.

for satisfying the principles of natural justice, without which it is impossible to maintain the rule of law, to give an adequate opportunity to a transferee to safeguard his interest in proceedings which can possibly culminate in a decision prejudicially affecting him and his property rights. I have already illustrated in an earlier part of this judgment that the interests of such a transferee are always in jeopardy in proceedings for determination of the surplus area of his transferor. The Full Bench in *Pritam Singh's case* (1) appears to have thought (in the passage quoted above) that the net result of section 32-FF was that "the transfers have to be ignored" and, therefore, "no question of any notice to the transferees arises." It has since been settled by the Supreme Court in *S. Pritam Singh Chahil's case* (6) (supra) that the only effect of section 32-FF is that such transfers do not bind the Government, but they are otherwise good transfers so far as the transferors and the transferees are concerned. The point in issue does not appear to have been argued before the Full Bench at any lenght and appears to have been raised there almost incidentally towards the end of the case. It appears to me that in view of the authoritative pronouncement of the Supreme Court in *Pritam Singh Chahil's case* (6) relating to the scope and effect of section 32-FF relating to transfers referred to therein and having regard to the other provisions of the Act and the Rules, the observations of the Full Bench in the case of *Pritam Singh and others* v. *The State and others* (1) (supra) (about no notice of the surplus proceedings to the transferee being necessary), which have been quoted in an earlier part of this judgment, are no longer good law.

(17) It cannot be doubted that the transferee of the kind with whom we are dealing may in certain circumstances be entitled to the benefits of the proviso to section 32-FF. The interest of the transferee is also recognised in the requirement to give particulars of the transfer in the return to be filed under section 23-B and also in Part B of Form VII-F. In most of these cases the likelihood of a conflict between the interest of the transferor and the transferee cannot be excluded. We are, therefore, unable to find any force in the contention of Mr. Kang that the interest of the transferee is fully safeguarded by giving notice to the transferor.

(18) It is absolutely fallacious for the State counsel to argue that principles of natural justice cannot operate in a case where the

relevant rules do not make provision for the same being followed. Things may be different in a case where the application of particular rules of natural justice may be excluded by the Legislature, that is not the case here. No part of the Act or the Rules framed thereunder has even purported to exclude the well-known principle of *audi alteram partem*. Without feeling the necessity of referring to the long series of cases relating to the observance and importance of the above-mentioned principle of natural justice, I may quote with advantage the following passages from the latest judgment of the Supreme Court on the subject in *Union of India* v. *Col J. N. Sinha and another*, (10):—

> "As observed by this Court in *Kraipak and others* v. *Union of* India (11) 'the aim of rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words they do not supplant the law but supplement it'. It is true that if a statutory provision can be read consistently with the principles of natural justice, the Courts should do so because it must be persumed that the legislatures and the statutory authorities intend to act in accordance with the principles of natural justice. But if on the other hand a statutory provision either specifically or by necessary implication excludes the application of any or all the principles of natural justice, then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon the express words of the provision conferring the power, the nature of the power conferred, the purposes for which it is conferred and the effect of the exercise of that power."

(19) In *State of Orissa* v. *Dr. (Miss) Binapani Dei and others*, (12) it was held that even an administrative order which involves civil consequences must be made consistently with the rules of

(10) 1970 S.L.R. 748.
(11) A.I.R. 1970 150=1969 S.L.R. 445.
(12) A.I.R. 1967 S.C. 1269.

natural justice after informing the person concerned of the case against him, the evidence in support thereof, and after giving such person an opportunity of being heard and of meeting or explaining the evidence. It was further observed that a decision arrived at without conforming to the above principles would be contrary to the basic concept of justice and cannot have any value. It is beyond doubt that the proceeedings under the Act with which we are concerned are unquestionably quasi-judicial. The observations of the Supreme Court in *Dr. (Miss) Binapani Dei's case* therefore, apply to the same with still greater force.

(20) Again in *A. K. Kraipak and other* v. *Union of India and others,* (11) it was observed that the aim of rule of natural justice is to secure justice or put it negatively to prevent miscarriage of justice. It was specifically stated that the rules of natural justice can operate only in areas not covered by any law validly made. In other words they do not supplant the law of the land, but supplement it. Detailed reference was then made to the great deal of change which the concept of natural justice has undergone in recent years. It was specifically held that the opinion held earlier by the Courts to the effect that unless the authority concerned was required by law under which it functioned to act judicially there was no room for the application of the rule of natural justice no longer holds good.

(21) Following the principles laid down in the above-mentioned judgments of the Supreme Court and the earlier judgments of that Court in which the earliest dictum on the subject in *Board of Education* v. *Rice and others,* (13) were approved, I would answer the question referred to us in the affirmative and hold that where a transfer is made by a land-owner after August 21, 1956, the transferee is a person interested in participating in the proceedings for declaration of surplus area and he must be given an opportunity of being heard to avoid his interest being prejudicially affected before declaring the surplus area of his transferor under the Act.

(22) The costs of the hearing before the Full Bench shall abide the decision of the appeal which shall now go back to the Division Bench for being decided in occordance with law, keeping in view the answer returned by us to the question referred by the Division Bench.

(13) (1911) A.C. 179.

(23) HARBANS SINGH C.J.—I agree

(24) GURDEV SINGH, J.—I agree.

B. R. Tuli, J.

(25) I entirely agree with the judgment prepared by my learned brother Narula, J., and the answer proposed by him to the question of law referred to this Bench for decision. It was argued before us that the 1958 Rules do not contemplate the giving of notice to the transferees. This is so and that is why the matter was referred to a Full Bench. We have to determine whether the provisions of the Act require a notice to be given or not and if the Rules do not make a provision for a notice to be given, the provisions of the Act shall have force instead of the Rules. In my opinion, the proviso to section 32-FF clearly indicates the desirability of notice being issued to the transferee. This proviso puts a statutory obligation on the transferor to restore the advantage he received under the transfer he made in favour of the transferee out of the land, which formed part of the surplus area and of which the transferee lost possession because of the provisions of the Act, vesting the surplus area in the Government. The transferee has no cause of action for claiming restoration of such advantage from the transferor till the land transferred to him is determined as part of the surplus area of the transferor and it is, therefore, necessary that this matter should be decided in his presence. Under the law of contract, the transferee will have no right to claim the restoration of advantage because there is no provision which declares the sales of surplus area by the landowner as illegal. As has been pointed out by their Lordships in *Pritam Singh Chahil's case* (6) the transfer is good as between the transferor and the transferee but qua the State Government it has to be ignored. It is for this reason that the proviso gave the right to the transferee to claim restoration of advantage and put the transferor under the statutory obligation to restore that advanage. It is also open to the transferee to show that the sale in his favour needs protection according to the provisions of the Act and should not be ignored. I am, therefore, firmly of the opinion that notice of the proceedings for declaring surplus area of a big landowner is necessary to be given to the transferees before final orders are passed in that matter.

P. C. JAIN, (26)—I agree with my learned brother Narula J.

K. S. K.