(7) I regret to have to differ from the learned District Judge, whose judgments generally are held in high esteem. I would allow this appeal, set aside the judgment and decree of the lower appellate Court and restore that of the trial Judge. There would be no order as to costs of this appeal.

N.K.S.

FULL BENCH

Before Prem Chand Pandit, S. S. Sandhawalia and Man Mohan Singh Gujral, JJ.

BALWANT SINGH AND OTHERS,—*Appellants.*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 541 of 1968

November 20, 1970

Punjab Security of Land Tenures Act (X of 1953)—Sections 2 and 10-A and 10-B—Punjab Reorganisation Act (XXXI of 1966)—Sections 88 and 89—Declaration of surplus area of land-owner in Joint Punjab—Order of declaration neither implemented nor the surplus area utilised for tenants—Such order—Whether continues to be effective after the re-organisation of Punjab on 1st November, 1966.

Held, that under the Punjab Security of Land Tenures Act, 1953, alongwith the liability of the land to be declared surplus, a corresponding right accrues to the Government to utilise the said surplus area for the resettlement of tenants. The result is that when an order declaring the surplus area becomes final under the Act, the Government gets an indefeasible right to resettle tenants thereon. No time limit is given in the Act, during which the Government has to utilise the land for that purpose. It is also not provided that if the utilisation is not made by the Government within a specified period, the landowners can claim that the land has ceased to be surplus and should be restored to them. It is, therefore, clear that if the surplus area has not been utilised by the Government, that fact does not affect its right to the said area and the same can be utilised by it for the resettlement of the tenants. The non-utilisation of the surplus area by Government does not clothe the landowner with any rights. The resettlement of the tenants is the duty of the Government and if due to one reason or the other the said duty has not been performed, that circumstance does not, under the Act, afford a ground to the landowner to say that the declared surplus area ceases to be so and comes back to him, especially when no time is fixed in the Act for doing so. Under section 88 of the

Punjab Reorganisation Act, 1966, the Punjab Security of Land Tenures Act as applicable to the old State of Punjab continues to apply to all the territories comprised in the said State before 1st November, 1966, although those territories had been distributed among the various States by the Reorganisation Act with effect from 1st November, 1966. This means that if the order declaring the surplus area becomes final under the Punjab Security of Land Tenures Act before the reorganisation of the State of Punjab takes place, the same would be given effect to and the surplus area utilised by the Government even after 1st November, 1966, since no change in law has been affected. Hence an order declaring an area of a landowner to be surplus, passed before 1st November, 1966, will continue to have effect after that date even if that order has not been implemented and the surplus area so declared has not in fact been utilised by the Government.

(Paras 14, 15, 16 and 32)

Case referred by the Division Bench consisting of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice S. S. Sandhawalia,—vide their order dated 21st May, 1970 to a larger Bench for deciding the important question of law involved in the case. The Full Bench constituting of Hon'ble Mr. Justice Prem Chand Pandit, Hon'ble Mr. Justice S. S. Sandhawalia and Hon'ble Mr. Justice Man Mohan Singh Gujral decided the question of law and sent back the case to the Division Bench for deciding it on merits in accordance with law on 20th November, 1970.

Letters Patent Appeal under Clause 10 of the Letters Patent against the judgment of Hon'ble Mr. Justice B. R. Tuli dated 30th August, 1968 in Civil Writ No. 2775 of 1966, by which Hon'ble Judge in Single Bench dismissed the writ petition with costs.

M. S. LIBERHAN, ADVOCATE FOR MR. K. K. CUCCRIA, ADVOCATE.
for the appellants.

H. L. SIBAL, ADVOCATE-GENERAL (PUNJAB) WITH M. R. SHARMA, DEPUTY ADVOCATE-GENERAL, (PUNJAB), HARI MITTAL, ASSISTANT ADVOCATE-GENERAL, (HARYANA) for the respondents.

JUDGMENT

PANDIT, J.—The following question of law has been referred to us for opinion—

> "Whether after the reorganisation of the State of Punjab the land owners owning land in both the States of Punjab and Haryana can claim to retain their permissible area in each State separately after 1st of November, 1966. If so, whether an order declaring the area to be surplus passed prior to the date above said, but which order has not been implemented and the surplus land so declared has not in fact

been utilised would continue to have effect after the said date?"

(2) It has arisen in the following circumstances— Balwant Singh was a displaced person from West Pakistan. He was allotted about 37 standard acres of land in village Dab Kharial, district Ferozepore, about six standard acres in village Mohamad Pera, district Ferozepore and about 31 Standard Acres in village Samani, district Karnal in lieu of the land left by him in Pakistan. According to him, he had sold the entire land in village Mohamad Pera to certain persons and transferred the whole of the land in village Dhab Kharial in favour of his wife, Bimla Rani and his son Ranbir Singh (minor) in 1957.

(3) On 8th November, 1960, the Special Collector Punjab declared about 29 standard acres of Balwant Singh as surplus area, after ignoring the above mentioned two transfers made by him. Balwant Singh had selected the entire land allotted to him in village Samani as his permissible area and did not reserve any area out of the land in the other two villages, presumably on the ground that he had already transferred those lands. The Special Collector reserved for him about 18 standard acres out of his holding in village Dhab Kharial in order to make up his permissible area of 50 standard acres. The order of the Special Collector was confirmed by the Commissioner, Jullundur Division, on 5th of January, 1965, the appeal before him having been held to be barred by limitation. Subsequently, the Financial Commissioner, Planning, Punjab, also dismissed the revision petition against the order of the Commissioner, Jullundur Division on 19th February, 1965.

(4) On 1st of November, 1966, the Punjab Re-organisation Act, 1966 (hereinafter referred to as the Re-organisation Act) came into force and the territories comprising the State of Punjab were transferred to the present State of Punjab, State of Haryana, Union Territory of Chandigarh and Union Territory of Himachal Pradesh. In December, 1966, Balwant Singh, his wife Bimla Rani and his son Ranbir Singh (minor) filed a writ petition (Civil Writ No. 2775 of 1966) under Articles 226 and 227 of the Constitution of India in this Court against the Union of India, the State of Punjab and the State of Haryana for issuing necessary directions to the two States for restraining them from utilising the surplus area declared by the Special Collector on 8th November, 1960. The writ petition came up for hearing before B. R. Tuli, J.

(5) Two points were urged before the learned Judge by the petitioners. The first was that after the re-organisation of the State of Punjab the land owners owning lands in the States of Punjab and Haryana could claim that they should be allowed the permissible area in both the States separately and the order declaring the area as surplus prior to 1st November, 1966, but which area had not been utilised so far, should be deemed to have no effect. The second was that no notice of the proceedings for declaring the land surplus was given to the transferees of the land, namely, Bimla Rani and Ranbir Singh The learned Judge repelled both these contentions and dismissed the writ petition with costs.

(6) The petitioners then filed a Letters Patent Appeal No. 541 of 1968 and the same came up for hearing before D. K. Mahajan, and S. S. Sandhawalia, JJ. The learned Judges were of the view that the second contention raised before the learned Single Judge had merit and the Letters Patent Appeal was liable to succeed on that ground alone. But since the appellants were claiming a larger right on the basis of their first contention, they thought that the same should be referred to a larger Bench because it was likely to affect a number of cases. It was in view of these facts that the Letters Patent Bench formulated the above-mentioned question of law and referred it for determination by a larger Bench. That is how the matter has been placed before us.

(7) It may be stated that along wih the case of *Balwant Singh and others* v. *The Union of India and others* (Civil Writ No. 2775 of 1966) three other Civil Writs Nos. 693, 1284 and 1285 of 1966 were also disposed of by the same judgment by B. R. Tuli, J., as according to the learned Judge a common question of law had arisen in all of them. In these cases, however, the second point, namely, the non-giving of notice of the proceedings for declaring the land surplus did not arise for consideration. After the dismissal of those writ petitions, the petitioners also filed Letters Patent Appeals Nos. 566, 594 and 595 and they also came up for hearing along with Letters Patent Appeal No. 541 of 1968 (Balwant Singh and others) before D. K. Mahajan and S. S. Sandhawalia, JJ. This decision will cover those appeals as well.

(8) I propose to take up the second part of the question of law referred to us, in the first instance, because, in my view, if that is decided against the appellants, it may not be necessary to give any opinion on the first part of the question.

(9) The Punjab Security of Land Tenures Act, 1953, (hereinafter called the Act) came into force on 15th April, 1953. The expressions "Small land-owners", "Permissible area", "Reserved area" and "Surplus Area" have been defined in sub-sections (2), (3), (4) and (5-a) of Section 2 of the Act as under:—

"(2) "Small land-owner" means a land-owner whose entire land in the State of Punjab does not exceed the "permissible area".

Explanation.—In computing the area held by any particular land-owner, the entire land owned by him in the State of Punjab, as entered in the record-of-rights, shall be taken into account, and if he is a joint owner only his share shall be taken into account.

(3) "Permissible area" in relation to a land-owner or a tenant, means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres;

Provided that—

(i) no area under an orchard at the commencement of this Act, shall be taken into account in computing the permissible area;

(ii) for a displaced person—

(a) who has been allotted land in excess of fifty standard acres, the permissible area shall be fifty standard acres or one hundred ordinary acres, as the case may be;

(b) who has been allotted land in excess of thiry standard acres but less than fifty standard acres, the permissible area shall be equal to his allotted area ;

(c) who has been allotted land less than thirty standard acres, the permissible area shall be thirty standard acres, including any other land or part thereof, if any, that he owns in addition.

Explanation.—For the purposes of determining the permissible area of a displaced person, the provisions of

proviso (ii) shall not apply to the heirs and successors of the displaced persons to whom land is allotted.

(4) "Reserved area" means the area lawfully reserved under the Punjab tenants (Security of Tenures) Act, 1950 (Act XXII of 1950), as amended by President's Act of 1951, hereinafter referred to as the "1950 Act or under this Act."

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

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

(10) It is undisputed that surplus area has to be determined after taking into consideration the entire holding of a person on the date of the commencement of the Act, i.e., 15th April, 1953. It was so held by the Supreme Court in *Jai Bhagwan Dass* v. *State of Punjab* (1), where it was observed that the entire land held by the land owner in the State of Punjab on the date of the commencement of the Act must be evaluated as on that date and the status of the land owner and his surplus area, if any, must be then ascertained. This is also clear from the provisions of sections 9(1)(i) and 10-A (b) of the Act. A similar view was taken by a Bench of this Court in *Hans Raj and others* v. *Financial Commissioner, Development, Punjab,* (2).

(11) In Letters Patent Appeal No. 541 of 1968 (*Balwant Singh and others* v. *The Union of India and others*), on 15th April, 1953, the total holding of Balwant Singh was admittedly more than his permissible area, namely, 50 standard acres. The rest was liable to be

(1) 1966 P.L.R. 300.
(2) 1968 L.L.T. 30.

declared as surplus and it had actually been declared as such by the Special Collector on 8th November, 1960, and that order of the said Officer was confirmed on appeal and then on revision by the Commissioner and the Financial Commissioner on 5th January, 1965, and 19th February, 1965, respectively. These were the two authorities mentioned in the Act, before whom the land owner could go up in appeal and revision against the declaration of surplus area by the Special Collector. It means that the order declaring the surplus area had become final under the Act, when the Re-organisation Act came into force. Under that Act, a part of the holding of Balwant Singh fell in the territory of State of Haryana and the remaining in the present State of Punjab. He, therefore, took up the position that after the re-organisation of the States he was entitled to retain his permissible area separately in both the States of Punjab and Haryana. In other words, he said that he could have 50 standard acres in each of the two States and, consequently, the order passed by the Special Collector on 8th November, 1960, declaring some of his holding as surplus area had no effect, when that order had not been implemented and the said land had not been utilised. He, therefore, alongwith his wife and son filed a writ petition in this Court saying that both the States may be restrained from utilising the surplus area declared by the Special Collector.

(12) It is common ground that in all the four cases the order declaring the surplus area had become final before the Re-organisation Act came into force.

(13) The question for decision is whether an order, declaring the area of the petitioners to be surplus, which had become final under the Act before the re-organisation of the State of Punjab, would continue to have effect after 1st of November, 1966 (the date of the enforcement of the Re-organisation Act), when that order had not been given effect to and the surplus area had not been utilised by the Government.

(14) It has already been stated above that the entire holding of a person on 15th April, 1953, has to be taken into consideration for determining his surplus area. If on that date a displaced person owns more than 50 standard acres, the liability is attached to the area above that limit to be declared surplus. Simultaneously, the Government acquires the right to utilise the surplus area of that person for the resettlement of tenants ejected or to be ejected under

clause (i) of sub-section (1) of section 9 of the Act. This is clear from the provisions of section 10-A (a) of the Act which say—

> "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) * * * *.
>
> (c) * * * *."

Clause (i) of section 9 (1) of the Act is as follows:—

> "9. (i) Notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant—
>
> (i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner; or
>
> * * * *
>
> * * * *

It means that along with the liability of the land to be declared surplus, a corresponding right accrues to the Government to utilise the said surplus area for the resettlement of tenants. The result is that when the order declaring the surplus area becomes final under the Act, the Government gets an indefeasible right to resettle tenants thereon. But it is noteworthy that no time limit has been given in the Act, during which the Government had to utilise the land for that purpose. It has also not been further provided in the Act that if the utilisation is not made by the Government within a specified period, the land-owners can claim that the land has ceased to be surplus and should be restored to them. In the Act there are, however, two exceptions given in section 10-A (b) which reads thus—

> "10-A (b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in

surplus area at the commencement of this Act, shall affect the utilization thereof in clause (a).

* * * *".

* * * *".

According to this section, the two exceptions are only in two cases, firstly, when the land is acquired by the Government and secondly, when it goes to an heir by inheritance. So far as the second exception is concerned, it has further been provided in section 10-B of the Act that where succession had opened after the surplus area or any part thereof had been utilised under clause (a) of section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that section would not apply in respect of the area so utilised. Under the Act, therefore, these are the only two exceptions. It was so held by a Bench of this Court in *Karam Singh and others* v. *State of Punjab and others* (3), where it was observed:

"The only two classes of land that are exempted from the operation of the mischief of clause (b) of Section 10-A are:—

(i) land acquired by the State Government under any law for the time being in force; and

(ii) land acquired by an heir by inheritance, out of the land comprised in the surplus area at the commencement of the Act."

(15) In view of what has been said above, it is clear that if the surplus area had not been utilised by the Government, that fact did not affect its right to the said area and the same could be utilized by it for the resettlement of the tenants. The right to resettle the tenants on the surplus area was subject only to two exceptions mentioned in the Act and referred to above, and the said exceptions could not be increased. It has not been shown as to how the non-utilization of the surplus area by the Government in any way clothes the landowner with any more rights. The resettlement of the tenants is the duty of the Government and if due to one reason or the other the said duty had not been performed, that circumstance did not, under the Act, afford a ground to the landowner to say that

(3) 1968 P.L.J. 190.

the declared surplus area ceased to be so and came back to him, especially when no time limit was fixed in the Act for doing so. As under the ordinary law, if no limitation had been fixed for the execution of a decree, it could not be held that on account of its non-execution, it had ceased to exist. This was the position in law regarding the surplus area and its utilization, when the re-organisation of the State of Punjab took place. By virtue of section 88 of the Re-organisation Act, reproduced below, the law, which was applicable to the territories before 1st November, 1966, continued to apply in spite of the fact that those territories had been transferred to the various States mentioned in part II of the Reorganisation Act.

> "The provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

(16) In other words, if the Punjab Security of Land Tenures Act was applicable to the old State of Punjab, the same would continue to apply to all the territories comprised in the said State before Ist November, 1966, although those territories had been distributed amongst the various States by the Reorganisation Act with effect from Ist November, 1966. That means that if the order declaring the surplus area had become final under the Act before the reorganisation of the State of Punjab took place, the same would be given effect to and surplus area utilised by the Government under the provisions of the Punjab Security of Land Tenures Act after Ist November, 1966, since no change in law had been effected.

(17) After the Reorganisation Act had come into force, the Haryana Adaptation of Laws (State and Concurrent Subjects) Order, 1968, (hereinafter called the Order) was made on 23rd October, 1968, by the Governor of Haryana in exercise of the powers conferred by section 89 of the Reorganisation Act and the same was published in the Haryana Government Gazette on 29th October, 1968. In the preamable of that Order, it was mentioned:

> "Whereas by section 89 of the Punjab Re-organisation Act; 1966 (hereinafter referred to as "the Act"); the appropriate

Government is empowered by order, to make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, for the purpose of facilitating the application of any law made before the 1st November, 1966, in relation to the State of Haryana so that every such law shall have effect subject to the adaptation and modifications so made,

Now, therefore, in exercise of the powers conferred by section 89 of the Act and all other powers enabling him in that behalf, the Governor of Haryana hereby makes the following order, namely—"

(18) It was stated therein that the Order would be deemed to have come into force on the 1st day of November, 1966, and the term 'appointed day' occurring anywhere in the said Order meant '1st day of November, 1966. The term 'existing State Law' had been defined in clause 2(b) of the Order as—

" 'existing State law' means any law in force immediately before the appointed day in the whole or any part of the territories now comprised in the State of Haryana, but does not include any law relating to a matter enumerated in the Union List;"

Clauses 10 and 11 of the Order read—

10. "The provisions of this Order which adapt or modify any law so as to alter the manner in which, the authority by which, or the law under or in accordance with which any powers are exercisable shall not render invalid any notification, order, licence, permission, award, commitment, attachment, bye-law, rule or regulation duly made or issued, or any thing duly done, before the appointed day; and any such notification, order, licence, permission, award, commitment, attachment, bye-law, rule, regulation or thing may be revoked, varied or undone in like manner, to the like extent and in the like circumstances as if it has been made, issued, or done after the commencement of this Order by the competent authority and under and in accordance with the provisions then applicable to such a case.

11. Nothing in this Order, shall affect the previous operation of, or anything duly done or suffered under any existing

State law or any right, privilege, obligation or liability already acquired, accrued or incurred under any such law, or any penalty, forfeiture or punishment incurred in respect of any offence already committed against any such law."

(19) A combined reading of these clauses would show that any order made or anything done or any liability incurred or right accrued before 1st Novmeber, 1966, would not be affected by the coming into force of the Order. Applying this principle to the instant case, it is clear that the order declaring the surplus area in the case of the petitioners, before 1st November, 1966, the liability attaching to the surplus land belonging to the petitioners and the corresponding right accruing to the State Government for utilising the said area for resettling the tenants thereon would not be affected, in any way, by the enforcement of the Order on 1st November, 1966. Consequently, the respective State Governments would be entitled to give effect to the order declaring the surplus area by utilising the same for the resettlement of the tenants after the reorganisation of the State of Punjab. To put it differently it would mean that the order declaring the surplus area would be enforced and the tenants settled thereon by the Government even after 1st November, 1966; as if no change in the law had taken place. The concerned Officers of the States of Punjab and Haryana will continue to act and comply with the orders already passed before 1st November, 1966. It is needless to mention that all the objections and the remedies that were available to the landowners under the provisions of the Act before 1st November, 1966, will remain in-tact and un-changed even after that date.

(20) It was argued by the learned counsel that the mere fact that the area had been declared surplus before the reorganisation of the State of Punjab made no difference; because the appellants were still in possession of the area in question, the land having not been utilised by the Government for the resettlement of the tenants. Before the appellants could be dispossessed, so argued the counsel, they could take up the plea that after the reorganisation the land could not be taken from them, because they could then retain permissible area separately in the two States.

(21) There is no substance in this submission. Admittedly an order declaring the land of the appellants surplus had been finally made under the Act before the reorganisation of the State of Punjab took place, with the result that rights accrued to the Government to resettle tenants thereon. Under the provisions of the Order,

the said rights were not in any way affected by the non-utilisation of the surplus area by the Government. As I have already held above, under clauses 10 and 11 of the Order, nothing in the said Order would affect the previous operation of anything done, liability incurred or rights accrued under any law in force immediately before 1st November, 1966. It is undisputed that the order declaring the surplus area was passed, liabilities were incurred and rights in the Government had accrued under the old law. All these things would continue even after 1st November, 1966, as if no change under the old law had taken place. The result would be that the Government would be able to utilise the area declared surplus before 1st November, 1966, for the resettlement of the tenants even after that date.

(22) In view of what I have said above, the answer to the second part of the question, in my opinion, therefore, is that an order, declaring the area to be surplus, passed before 1st November, 1966, will continue to have effect after that date; even if that order had not been implemented and the surplus area so declared had not in fact been utilised by the Government.

(23) Since in view of this answer, all the four Letters Patent Appeals, out of which the question of law, referred to us, has arisen, are liable to be dismissed, it is needless to give any opinion on the first part of the question.

(24) It was, however, argued by the learned counsel for the appellants in Letters Patent Appeal No. 541 of 1968 (*Balwant Singh and others* v. *The Union of India and others*) that the appeal was liable to succeed, because according to the observations of the Letters Patent Bench, no notice of the proceedings for declaring the land surplus was given to the transferees of the land, namely, Bimla Devi and Ranbir Singh (minor) appellants Nos. 2 and 3. The order declaring the surplus area would, so argued the learned counsel, be set aside and the case remanded to the authorities below to start the proceedings afresh in accordance with law. Counsel, therefore, contended that so far his clients were concerned, the first part of the question should also be answered, because on remand the landowner was bound to raise the objection that after the reorganisation of the State of Punjab and coming into existence of the States of Punjab and Haryana, he was entitled to retain his permissible area in each State separately.

(25) The entire argument of the learned counsel is based on so many assumptions. The fact remains that, at present, the said Letters Patent Appeal has not been accepted. If that happens then whatever order is passed by the Bench, it will be given effect to. In the event of the case being remanded, it all depends what precise objection the landowner or the transferees are going to take before the authorities below and what view the latter take regarding the same. The appellants would have their remedies under the Act and it is only after exhausting them that they will be able to come to this Court on the writ side. It is then that a decision will be given by this Court on whatever points are raised here. It is too much to speculate regarding all these matters at this stage. In my view, therefore, it is pointless to give our answer on the first part of the question.

(26) All the four Letters Patent Appeals can now go back to the Division Bench for final decision.

(27) There would be no order as to costs.

SANDHAWALIA, J.—I agree.

GUJRAL, J.—I agree.

K.S.K.

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