regard to the charge of criminal conspiracy under Section 120-B, Indian Penal Code. On this short ground, the appeals preferred by Amrit Lal Kapila, Harbhajan Singh Sanghera and Joseph Verghese appellants must succeed. There was no separate substantive charge under Section 466, Indian Penal Code, against these three appellants. I would, therefore, allow their appeals, set aside their convictions, and acquit them.

(His Lordship then decided the case of Manmohan Singh Johal, on facts Edito).

K.S.K.

FULL BENCH

Before D. K. Mahajan, Shamsher Bahadur and R. S. Narula, JJ.

GURDEV SINGH AND OTHERS,—*Appellant*

versus

MOHNA RAM AND OTHERS,—*Respondents*

Regular Second Appeal No. 1503 of 1965

March 18, 1969

Punjab Security of Land Tenures Act (X of 1953)—S. 19-A—Punjab Pre-emption Act (I of 1913)—Ss. 4, 5, 8, 9, and 23—Land owner holding maximum permissible area—Whether can institute and obtain a pre-emption decree— S. 19-A Whether a bar to the entertainment of such a suit by Civil Courts.

Held, that the right to claim property by pre-emption is conferred by section 4 of the Punjab Pre-emption Act, subject to the exceptions contained in sections, 5, 8, 9 and 23—S. 19-A of Punjab Security of Land Tenures Act does not fall in the category of exceptions to the right of pre-emption. The title of the pre-emptor is deemed to accrue to the land which is the subject-matter of the pre-empted sale from the date of payment of the pre-emption money in Court, and neither from the date of the original sale nor from the date of the suit; nor even from the date of the decree. Section 19-A does not deprive a big land woner holding maximum permissible area either of his primary or inherent right to the offer of agricultural land which is intended to be sold, nor of the secondary or remedial right to follow the thing sold. It is only the third part of the right of pre-emption, i.e., his right of substitution in place of the vendee that has been effected

by section 19-A. The right of substitution is the right to acquire the property sold, and a successful pre-emptor acquires the properly sold, for the first time when he deposits the pre-emption money. There is nothing in section 19-A which takes away even by necessary intendment the ordinary jurisdiction of a Civil Court to entertain a suit by a big land-owner for possession of agricultural land in exercise of his right of pre-emption. The question whether the pre-emptor will or will not hold more than the land he is allowed to hold under section 19-A can only be decided when, after having deposited the pre-emption money in Court, he seeks assistance of the Court to attain possession, because only if and when he does acquire or get possession of more than the permissible area will the law be violated. (Paras 8, 12, 13 and 14)

Case referred by the Hon'ble Mr. Justice D. K. Mahajan on 27th March, 1967 to a larger Bench for decision of an important question of law involved in the case and the Full Bench consisting of the Hon'ble Mr. Justice D. K. Mahajan, the Hon'ble Mr. Justice Shamsher Bahadur and the Hon'ble Mr. Justice R. S. Narula after deciding the questions of law returned the case to the Single Bench to decide the case in accordance with law.

Second appeal from the decree of the Court of the Shri Sant Ram Garg, District Judge, Ferozepore, dated 1st October, 1965 modifying that of Shri Brij Mohan, Sub-Judge, 1st Class, Fazilka, dated 4th September, 1964

HARNAM SINGH WASU, SENIOR ADVOCATE WITH B. S. WASU AND L. S. WASU, ADVOCATES, for the Appellants.

M. L. SETHI, SENIOR ADVOCATE WITH N. L. DHINGRA, ADVOCATE, for the Respondents.

ORDER OF THE FULL BENCH

NARULA, J.—The solitary question which calls for decision in this reference to the Full Bench is whether section 19-A of the Punjab Security of Land Tenures Act (10 of 1953) as subsequently amended (hereinafter called the ceiling Act) creates a bar in the way of a land-owner already holding his maximum permissible area under the Act from instituting a suit and obtaining a decree for possession by pre-emption. The circumstances in which this question has arisen may first be surveyed briefly. One Gurmel Singh sold to Mohna Ram and other respondents 237 Kanals and 2 Marlas of agricultural land for Rs. 22,945. Gurdev Singh and his three brothers, the plaintiffs claiming to be the sons of the brother of the father of the vendor, filed the suit from which the present

appeal has arisen, for possession of the said land by pre-emption. In paragraph 2 of their written statement, the vendees took a defence to the suit in the following terms:

> "In reply to the contents of paragraph No. 2 of the petition of plaint it is submitted that all the plaintiffs have been owners and in possession of more than 30 standard acres of land each prior to the sale of the land in suit. Even if the least area of the land in dispute be added to the land already owned and possessed by them, the area of each of them would exceed 30 standard acres. As such, no plaintiff has got the right of pre-emption regarding the land, in suit, sold to the defendants. None of the plaintiffs is entitled to file a suit for pre-emption against the defendants."

(2) By his judgment, dated September 4, 1964, the Subordinate Judge, Fazilka, dismissed the suit for pre-emption on the finding that though the plaintiffs were proved to be sons of the father's brother of the vendor, their right to pre-empt the sale had been taken away by section 19-A of the ceiling Act, as each of the plaintiffs owned more than thirty standard acres of land on the date of sale of the land in dispute. The learned Subordinate Judge held that inasmuch as section 19-A precluded the purchase of land in excess of the permissible area, the plaintiffs could not claim that they had any preferential or primary right to purchase land in violation of the provisions of that section. Whereas the appeal preferred by plaintiffs-appellants other than Gurtej Singh was dismissed, the appeal of Gurtej Singh plaintiff was allowed to the extent of 3 standard acres and 14 units out of the land in dispute on the finding that he was a small land-owner inasmuch as he owned only 26 standard acres and 2 units of land which was less than his permissible area by 3 standard acres and 14 units.

(3) Before Shri Sant Ram Garg, District Judge, Ferozepore, it was conceded on behalf of the plaintiff-appellants that acquisition of agricultural land in exercise of the right of pre-emption amounted to "acquisition" of land within the meaning of section 19-A of the ceiling Act. The Division Bench judgment of this Court in *Bhupinder Singh* v. *Smt. Surinder Kaur and another* (1), was cited before the District Court, and was noticed in the judgment of that

(1) I.L.R. (1965) 2 Punj. 513=1965 P.L.R. 735.

Court. In the face of the binding Division Bench judgment of this Court, the learned District Judge entertained the argument to side-track the issue, and held that the point canvassed before him had not been raised before the Bench of this Court, and that, therefore, what had to be seen was whether at the time of the sale each of the plaintiffs had a cause of action to acquire more agricultural land by pre-emption or not. Thus having evaded the impact of the decision of the High Court on the instant case, the first appellate Court went into the question of the individual holding of each of the plaintiff-appellants and partially allowed the appeal in favour of Gurtej Singh plaintiff-appellant to the extent indicated above. Regarding the manner in which the learned District Judge avoided following the Division Bench judgment of this Court which fully covered the point in issue, we need not say anything more in this judgment than express our strong disapproval of his conduct in this matter which conduct lacks judicial propriety.

(4) Not satisfied with the decision of the first appellate Court on the pure question of law referred to above, the plaintiffs came up to this Court in Regular Second Appeal 1503 of 1965. After hearing the counsel for the appellants to some extent, my Lord Mahajan, J., before whom the appeal originally came up for hearing noticed the conflict between Division Bench judgments of this Court (Dulat and Mahajan, JJ.), in *Bhupinder Singh* v. *Smt. Surinder Kaur and another* (1), and in *Mangla and others* v. *Sukhminder Singh minor and others* (2), on the one hand, and in the Bench decision of the Court (S. B. Capoor and Gurdev Singh, JJ.) in *Kartar Singh* v. *Ghukar Singh and others* (3), on the other, and therefore, directed that it was in the fitness of things that the matter may be examined afresh by a Full Bench in order to finally settle as to which of the two views expressed in the above cases was the correct one. It is in pursuance of the said order of reference of my learned brother, dated March 27, 1967, that this case has been placed before us for deciding the above-said question.

(5) Section 4 of the Punjab Pre-emption Act (1 of 1913) as subsequently amended (hereinafter referred to as the Pre-emption Act) which confers the right of pre-empting a sale, is in the following terms:—

> "The right of pre-emption shall mean the right of a person to acquire agricultural land of village immovable property

(2) 1965 Curt. L.J. 519.

(3) I.L.R. (1967) 2 Punj. and Hry. 512=1967 P.L.R. 319.

or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosures of the right to redeem such property.

Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale."

(6) Out of the three categories of property mentioned in section 4, we are concerned in this case with agricultural land. Section 5 contains exceptions to the right of pre-emption conferred by section 4. Regarding agricultural land it is stated in clause (b) of Section 5 that no right of pre-emption shall exist in respect of such land being waste land reclaimed by the vendee. Section 6 provides *inter alia* that a right of pre-emption shall exist in respect of agricultural land subject to the provisions of clause (b) of section 5. It further states that "every such right (right of pre-emption) shall be subject to all the provisions and limitations in this Act contained." Section authorises the State Government to declare by notification that in any local area or with respect to any sale or class of sales, no right of pre-emption or only such limited right as the State Government may specify shall exist. Section 9 excludes from the purview of exercise of right of pre-emption sales made by or to Government or by or to any local authority, or to any company under the Land Acquisition Act. A list of persons in whom right of pre-emption vests in respect of sales of agricultural land is given in order of preference in section 15 of the Pre-emption Act. As the sale in the instant case was by a sole owner, the right of pre-emption claimed by the appellants was obviously under sub-clause "SECONDLY" of clause (a) of sub-section (1) of section 15, which provides that the right of pre-emption in respect of agricultural land shall vest where the sale is by a sole owner in the brother or brother's son of the vendor.

Section 19-A of the ceiling Act runs as follows:—

"(1) Notwithstanding anything to the contrary in any law, custom, usage, contract or agreement, from and after the commencement of the Punjab Security of Land Tenures (Amendment) Ordinance, 1958, no person, whether as land-owner or tenant, shall acquire or possess by transfer,

exchange, lease, agreement or settlement any land, which with or without the land already owned or held by him shall in the aggregate exceed the permissible area:

Provided that nothing in this section shall apply to lands belonging to registered co-operative societies formed for purposes of co-operative farming, if the land owned by an individual member of the society does not exceed the permissible area.

(2) Any transfer, exchange, lease, agreement or settlement made in contravention of the provisions of sub-section (1) shall be null and void."

(7) Where the appellants claim that section 19-A (quoted above) merely bars the actual acquisition of title to or possession of land by a plaintiff, who is not a small land-owner though he may take all preliminary steps for acquiring such title or possession such as filing a suit for recovery of possession, and even obtaining a decree in that suit, it has been contended on behalf of the respondents that section 19-A imposes a disqualification on a big land-owner from making any such claim on the basis of a right of pre-emption. The question as to which of the two contentions is correct came up for consideration for the first time before a Division Bench of this Court (Dulat and Mahajan, JJ.) in *Bhupinder Singh's case* (supra) Dulat, J., who prepared the judgment of the Division Bench, made the following observations before entering into the merits of the legal controversy:—

"It does appear and is not disputed before us that the Punjab Security of Land Tenures Act, Section 19-A, does prohibit the acquisition of land by an individual beyond the permissible area which admittedly is 30 standard acres, and, if we could be persuaded that the effect of the decree granted to the pre-emptor in this case is that the pre-emptor will necessarily acquire more than 30 standard acres, we would refrain from granting such a decree."

The learned Judge then referred to the scope of a pre-emption decree in the following terms:—

"The pre-emption decree merely says that in case the amount in question is deposited by a certain date the pre-emptor

would be entitled to possession, and it is impossible to say at the time of passing the decree whether the pre-emptor will or will not come to own the land for it can just as well happen, in case the pre-emptor chooses not to deposit the money or is for various reasons unable to do so, that the suit may stand dismissed."

(8) In view of this situation, the Bench held that it was unable to hold as a matter of law that the granting of a pre-emption decree violates or has the effect of violating the provisions contained in section 19-A of the ceiling Act, and that being so, the Bench held that there seemed to be no reason why a pre-emptor should be debarred from obtaining a pre-emption decree in the terms in which it is framed. The argument of the vendee to the effect that it could be presumed that a pre-emptor would take advantage of the decree and by taking possession of the land covered by the decree he would come to own and possess more than he is entitled to under the law, was repelled by the Division Bench on the ground that the contention amounts to anticipating an event which may never come about for it can just, as well happen that by the time the pre-emptor comes to deposit the money in Court, he may have parted with all or a substantial part of his own holding. For the foregoing reasons it was held that the question whether the pre-emptor will or will not at any time hold more than the land he is allowed to hold under section 19-A of the ceiling Act, can only be decided when, after having deposited the pre-emption money in Court, he seeks assistance of the Court to attain possession, because only if he does get possession of more than the permissible area will the law be violated. The same question again arose before the same Division Bench of this Court in the *case of Mangla and others* (supra). It was contended before the Bench that what has to be seen is whether the pre-emptor had a right of pre-emption when he filed the suit, and whether that position was maintained at the time when the decree was granted in his favour. After referring to the earlier judgment of the Court in *Bhupinder Singh's case*, the learned Judges disposed of the question in the following words:—

"Ownership passes only after the terms of the decree are complied with. It is, therefore, not right to say that by the granting of a pre-emption decree the pre-emptor becomes the owner of the land he is seeking to pre-empt. The decree is merely contingent and comes into force

when the pre-emption amount is deposited in Court and certainly not before this so that there is no way of finding out at the time of the decree whether the pre-emptor will ultimately become the owner of the land in question or not. To say, therefore, that the pre-emption decree in the present case will make the plaintiff-pre-emptor the owner of more than permissible area of land, seems to us entirely wrong and an anticipation unwarranted by law. Mr. Aggarwal does suggest that a pre-emption decree should be taken to vest the property in the pre-emptor but this has not been the view of the Courts and the Supreme Court decision in *Bishan Singh* v. *Khazan Singh* (4), makes it quite clear that a pre-emptor does not become the owner of the land and is not substituted for the owner till the terms of the decree are complied with. The Supreme Court has in this connection approved the rule laid down by the Privy Council in *Deonandan* v. *Ramdhari* (5), expressing the same view, namely that the actual substitution takes place when possession is taken under the decree. Nothing happens at the date of the decree and the question, whether any violation of section 19-A of the Punjab Security of Land Tenures Act has or has not taken place, cannot be determined at the time of the granting of a pre-emption decree and that question has to be deferred, in our opinion, to the time of the execution of the decree, for only then it can be found out whether the decree-holder seeks to acquire more than the area permitted by section 19-A of the Punjab Security of Land Tenures Act. On this view of the matter it is not possible for us to disturb the conclusion reached by the learned Single Judge that the pre-emption decree in this case is not violative of any provision of the Punjab Security of Land Tenures Act."

(9) Somewhat different view of the matter was taken by the Division Bench of S. B. Capoor and Gurdev Singh, JJ., in *Kartar Singh's case* (supra). After noticing the earlier Division Bench judgments in *Bhupinder Singh's case* and in the *case of Mangla and*

(4) A.I.R. 1958 S.C. 838.
(5) A.I.R. 1916 P.C. 179.

others, and after referring to the provisions of section 4 of the Pre-emption Act, the learned Judges found that both the previous decisions were distinguishable on facts, and that the observations of the Court in those earlier cases could not apply to the case of *Kartar Singh*, as Kartar Singh plaintiff was, on the date of the institution of the suit, already in possession of more than the permissible area, and it was, therefore, not open to him to acquire any further agricultural land by transfer, etc., without violating the provisions of section 19-A of the ceiling Act. In a way the Bench agreed with the contention which is now sought to be advanced before us by Mr. Madan Lal Sethi, the learned counsel for the respondents, that a plaintiff cannot institute a suit for possession in exercise of his right of pre-emption if on the date of the sale which is sought to be pre-empted, the plaintiff had no right to acquire any land as he was already in possession of more than 30 standard acres.

(10) After carefully considering all the submissions made before us by the learned counsel for both sides, we are of the opinion that the fallacy in the arguments advanced by the learned counsel for the respondents lies in his equating the qualification for pre-empting a sale, and equating the right to acquire property by pre-emption with the acquisition itself. We put the following hypothetical case to Mr. Sethi:—

> 'A' owns 30 standard acres of land, and enters into an agreement with B to purchase from the latter 10 standard acres of land on March 1, 1969, the sale to be completed within one month. On March 15, 'A' disposes of by absolute sale 15 standard acres of his original holding. After being left with only 15 standard acres out of his original holding, 'A' completes the agreed sale, and purchases on the 20th of March, 10 standard acres of B's land. Will the purchase of the 10 standard acres of land by 'A' from 'B' on March 20 be hit by section 19-A of the ceiling Act?"

(11) Mr. Sethi's reply to the above question was in the negative. We are unable to see any difference between the case of an intending purchaser who is disqualified from purchasing further land agreeing to purchase additional land and removing the disqualification before actual purchase on the one hand, and the case of a plaintiff-pre-emptor who owns more than 30 standard acres on the date of the decree who disposes

of as much of his original holding as the land which he wants to acquire by pre-emption between the date of the decree, and the date of the deposit of the pre-emption money in terms of the decree. Section 19-A does not fall in the category of exceptions to the right of pre-emption contained in sections 5, 8 and 9 of the Pre-emption Act. The right to claim property by pre-emption is conferred by section 4 subject to the exceptions contained in sections 5, 8, 9 and 23. The qualifications entitling a plaintiff to pre-empt a sale of agricultural property are mentioned in order of preference in section 15 What is prohibited by section 19-A is to acquire the title to the land as well as to acquire possession of land in excess of one's permissible area. The question then arises as to when does a successful plaintiff-pre-emptor acquire title to the land which is the subject-matter of the sale sought to be pre-empted by him. The answer to this question is contained in the statutory provision of clause (b) of sub-rule (1) of rule 14 of Order 20 of the Code of Civil Procedure. Sub-rule (1) of rule 14 of Order 20 states as follows:—

> "Where the Court decrees a claim to pre-emption in respect of a particular sale of property and the purchase-money has not been paid into Court, the decree shall—
>
> (a) specify a day on or before which the purchase-money shall be so paid; and
>
> (b) direct that on payment into Court of such purchase-money, together with the costs (if any) decreed against the plaintiff, on or before the day referred to in clause (a), the defendant shall deliver possession of the property to the plaintiff, whose title thereto shall be deemed to have accrued from the date of such payment, but that, if the purchase-money and the costs (if any) are not so paid, the suit shall be dismissed with costs."

(12) From a reading of the abovequoted provisions, it is plain that the title of the pre-emptor is deemed to accrue to the land which is the subject-matter of the pre-empted sale from the date of payment of the pre-emption money in Court, and neither from the date of the original sale nor from the date of the suit; nor even from the date of the decree. In *Deonandan Prashad Singh* v. *Ramdhari Chowdhri and others* (5), it was held that in a suit for pre-emption, ownership of the property does not vest in the pre-emptor from the

date of the sale notwithstanding success in the suit but from the date of possession obtained on payment of the amount fixed under the decree. It was further decided that till payment of purchase-money on the date fixed in the decree under which pre-emptor obtains possession of property, the original purchaser continues to be the owner of the property and is entitled to rents and profits thereof. While approving the dictum of the Privy Council in *Deonandan Prashad Singh's case,* their Lordships of the Supreme Court held in *Bishan Singh and others* v. *Khazan Singh and another* (4), as follows:—

> "The right of pre-emption could be effectively exercised or enforced only when the pre-emptor has been substituted by the vendee in the original bargain of sale. A conditional decree whereunder a pre-emptor gets possession only if he pays a specified amount within a prescribed time and which also provided for the dismissal of the suit in case the condition was not complied with, could not obviously bring about the substitution of decree-holder in place of the vendee before the condition was complied with. Such a substitution took place only when the decree-holder complied with the condition and took possession of the land."

(13) There is no quarrel with the proposition of law canvassed before us by the learned counsel for the appellants, to the effect that the right of pre-emption is a right of a plaintiff-pre-emptor to be substituted in place of the original vendee in the sale in question. To support this proposition our attention was invited to the illustrious judgment of Mahmood, J., in *Gobind Dayal* v. *Inayatullah* (6). The fact, however, remains that according to the authoritative pronouncements of their Lordships of the Supreme Court in *Bishan Singh's* case, such substitution takes place only if and when the pre-emption money is deposited in Court. It is settled law that the exclusion of the general jurisdiction of a Civil Court has not to be readily inferred and such exclusion must either be explicitly expressed or clearly implied. If the Legislature intended to bar the institution of a suit for pre-emption by a big land-owner nothing could be simpler than making a provision to that effect either in the Pre-emption Act itself or even in the ceiling Act. In the absence of any

(6) I.L.R. 7 All. 775.

such provision, it cannot be held that the jurisdiction of a Civil Court to entertain a suit for pre-emption by a person who has a preferential right to the vendee, has been barred by implication by section 19-A. In *Sham Sunder* v. *Ram Das* (7), it was held by a Full Bench of this Court that section 13 of the East Punjab Urban Rent Restriction Act, 1947, does not oust the jurisdiction of Civil Courts to grant a decree for eviction, but merely controls the execution of such a decree by prescribing procedure for the eviction of tenants. An illustration of a case where the passing of the decree by the Court was itself barred in the absence of the happening of a specified event, is contained in section 3 of the Punjab Registration of Money-lender's Act (3 of 1938), which provides *inter alia* that notwithstanding anything contained in any other enactment for the time being in force, a suit by a money-lender for the recovery of a loan, shall be dismissed unless the money-lender at the time of the institution of the suit (or at the time of passing the decree) is registered under the Act, and holds a valid licence in the prescribed form. In the Pre-emption Act itself section 23 provides that no decree shall be granted in a suit for pre-emption in respect of the sale of agricultural land until the plaintiff has satisfed the Court that the sale in respect of which pre-emption is claimed is not in contravention of the Punjab Alienation of Land Act (13 of 1900), and that the plaintiff is not debarred by the provisions of section 14 of the Pre-emption Act from exercising the right of pre-emption. If the Legislature intended to convey what the appellants want us to hold, a provision in the nature of section 23 would have been made at a proper place either in the Pre-emption Act or in the Ceiling Act. In our opinion there is nothing in section 19-A which takes away even by necessary intendment the ordinary jurisdiction of a Civil Court to entertain a suit by a big land-owner for possession of agricultural land in exercise of his right of pre-emption. There is no doubt that if the provisions of section 19-A stood as an absolute bar in all circumstances to the successful execution of a decree for pre-emption, the Court could not possibly be asked to indulge in a mere pastime to pass a decree which would be incapable of execution. But, as already illustrated, there can be more than one eventualities in which a decree passed in favour of a big land-owner may be successfully executed by such a plaintiff-decree-holder without offending against section 19-A, if he ceases to be a big land-owner on

(7) 1951 P.L.R. 159.

the date on which he seeks to acquire title to the property in dispute or wants to obtain its possession.

(14) Section 19 of the Pre-emption Act states that when any person proposes to sell any agricultural land in respect of which any persons have a right of pre-emption, he may give notice to all such persons of the price at which he is willing to sell such land. Section 20 provides that the right of pre-emption of any person shall be extinguished unless such person shall, within the period of three months from the date on which the notice under section 19 is duly given or within the permissible extended time allowed by the Court, present to the Court a notice for service on the vendor of his intention to enforce his right of pre-emption. It is quite conceivable that on receipt of such a notice in respect of valuable agricultural land, measuring 10 or 20 standard acres, a land-holder already owning thirty standard acres of his permissible area, may lawfully dispose of ten or twenty standard acres of his original holding which may be of land which is not to his liking and avail of an opportunity given to him by the notice under section 19 and acquire the land offered to be sold. In such an eventually, there would, in our opinion, be no violation of the prohibition contained in section 19-A. On the facts of the same illustration if the person on whom the notice under section 19 is served, purchases land offered to him which is in excess of his permissible area, the purchase of the said land would be void and ineffective because of the bar contained in sub-section (2) of section 19-A. The vendor cannot, however, plead that whereas he gave notice to some other possible pre-emptor, he could not be expected to serve such a notice on the person already holding thirty standard acres on the ground that he was not qualified to purchase the land in dispute. The qualifications for exercising the right of pre-emption in respect of the agricultural land are contained in sections 4 and 15. Sales which are not subject to such right of pre-emption are mentioned in section 5(b), section 8, 9 and section 23. The right to file a suit claiming possession by pre-emption is conferred by section 4 of the Pre-emption Act read with section 9 of the Code of Civil Procedure. But when the matter reaches the stage of acquiring possession by depositing the pre-emption amount under rule 14 of Order 20 of the Code of Civil Procedure, and of obtaining possession of the land in execution of the decree, the bar of section 19-A comes into effect, if at that time the decree-holder already holds the maximum permissible area allowed

to him by the ceiling Act. The right to acquire land is a fundamental right guaranteed by Article 19(1)(f) of the Constitution; and cannot be taken away from a citizen save by authority of law. The only person from whom the right to acquire agricultural land has been taken away is the person who already holds the maximum permissible area with him under the ceiling Act at the time of his acquiring the land in dispute. The primary or inherent right of pre-emption has been described by the Supreme Court in the case of *Bishan Singh and others* v. *Khazan Singh and another* (4), as a mere right to the offer of a thing about to be sold and not as a right to the thing sold itself. Mr. M. L. Sethi contended that a big land-owner has been deprived of his primary or inherent right by section 19-A. We do not find any warrant for this proposition. In our opinion, section 19-A has not deprived a big land-owner either of his primary or inherent right to the offer of agricultural land which is intended to be sold, nor of the secondary or remedial right to follow the thing sold. It is only the third part of the right of pre-emption, i.e., his right of substitution in place of the vendee that has been effected by section 19-A. The right of substitution is the right to acquire the property sold, and a successful pre-emptor acquires the property sold, for the first time when he deposits the pre-emption money. It is significant to note that no provision in the ceiling Act prohibits the sale of the proprietary rights of a land-owner. It is only the acquisition of land beyond the maximum permissible area by a purchaser which is made void by section 19-A.

(15) The right to pre-empt must exist prior to or at the time of the sale. The right to pre-emption must continue to subsist in the plaintiff right from the date of the sale to the date of the decree by the trial Court. The provision of section 19-A does not in any manner effect the said right. It only bars actual acquisition of title or possession. In *Shri Audh Behari Singh* v. *Gajadhar Jaipuria and others* (8), the Supreme Court held that the law of pre-emption creates a right which attaches to the property and can be enforced by or against the owner of the land for the time being although the right of the pre-emptor does not amount to an interest in the land itself. Mr. Sethi wanted us to hold that if a person is prohibited from acquiring certain land, he cannot be said to have a preferential right to claim the property in question. The fallacy in this submission of Mr. Sethi is that whereas a person who does not have a

(8) A.I.R. 1954 S.C. 417.

preferential right to acquire a property by pre-emption cannot possibly acquire it, the reverse of that proposition is not necessarily correct. A person having a legal and preferential right of pre-emption may still never be able to acquire the pre-emptible property—

(i) because he may lose the right to pre-empt after the sale and before the filing of a suit by him; or

(ii) because the property may not be offered to him, and he may never exercise the right by filing a suit; or

(iii) because he may file a suit; but lose the preferential right during the pendency of the suit, and before the passing of the decree; or

(iv) because even after obtaining a decree, he may not deposit the pre-emption money within time; or

(v) because some statute may bar the execution of the decree for possession; or

(vi) because some law like section 19-A of the ceiling Act may prohibit the decree-holder from actually acquiring or possessing the subject-matter of the suit for pre-emption in case the plaintiff falls within the mischief of such a barring provision at the relevant time.

(16) Mr. Sethi referred to two Full Bench judgments of the Lahore High Court in *Faiz Mohammad* v. *Chaudhary Fajar Ali Khan and another* (9), and *Zahur Din and another* v. *Jalal Din, plaintiff and others* (10) and argued that nothing which happens after the decree is relevant for purposes of deciding a claim for pre-emption. That is indeed so. But while interpreting section 19-A of the ceiling Act, we are not concerned with the right of pre-emption, but the right to acquire title to or possession of land.

(9) A.I.R. 1944 Lah. 172.
(10) A.I.R. 1944 Lah. 319.

(17) Whereas it was held by a Full Bench of this Court in *Ramji Lal Ram Lal and another* v. *State of Punjab and others* (11), that the question as to when a decree-holder's title to the property would be complete, seemed to be besides the point for determining the right of pre-emption, it is the said question with which we are concerned for correctly interpreting section 19-A. The Full Bench observed:—

> "We are only concerned in a suit for pre-emption with a plaintiff's preferential right to acquire the property and to get himself substituted for the vendee in the sale which he wishes to pre-empt and not with the question as to when he becomes the owner of the property after his suit for pre-emption has been decreed."

The dicta of the above-mentioned three cases are, therefore, not of much help to us in answering this reference.

(18) For the foregoing reasons we are of the opinion that the law laid down by a Division Bench of this Court (Dulat and Mahajan, JJ.) in *Bhupinder Singh's case* and in the *case of Mangal and others,* is correct, and that the observations of the other Division Bench (S. B. Capoor and Gurdev Singh, JJ.) in *Kartar Singh's case,* which are contrary to the pronouncement of the Court in *Bhupinder Singh's case* do not lay down the correct law. We say this with the greatest respect to the learned Judges who decided the case of *Kartar Singh* v. *Ghukar Singh and others* (3). The Regular Second Appeal will now be placed before the learned Single Judge for being disposed of in accordance with law keeping in view our decision relating to the true scope and interpretation of section 19-A of the ceiling Act. Costs of the hearing before the Full Bench shall abide the result of the Regular Second Appeal.

D. K. MAHAJAN, J.—I agree.

SHAMSHER BAHADUR, J.—I also agree.

K.S.K.

(11) I.L.R. (1966) 2 Punj. 125(F.B.)=A.I.R. 1966 Punj. 374 (F.B.).