only in cases of illegal exercise of jurisdiction but also to correct errors of law apparent on the face of the record. We cannot regard the strict observance of the instructions contained in the Land Resettlement Manual cancelling the allotments in favour of *Samadhs* to involve any patent error of law. Distribution from the compensation pool cannot be claimed as a matter of right in the case of institutions. Principles have been evolved to ensure that allotments are made only to such institutions as have extended their beneficial activities in the State of Punjab. The instructions contained in paragraph 34 of the Land Resettlement Manual are in consonance with justice and fair play and no valid argument has been advanced to set aside the orders passed by the Chief Settlement Commissioner. These petitions would accordingly fail and are dismissed. As the petitions involve some questions of difficulty, we would make no order as to costs.

MEHAR SINGH, J.— I agree.

B. R. T.

APPELLATE CIVIL

Before Mehar Singh and Shamsher Bahadur, JJ.

JANG SINGH,—*Appellant*

versus

HARDIAL SINGH AND ANOTHER,—*Respondents*

Regular Second Appeal No. 1962 of 1960

1962

August, 13th.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 8-A—Sale of land to tenant jointly with others—Whether exempted from pre-emption.

Held, that the purchase of land made by a tenant from his landlord would be saved from the pre-emptive claim and there is no compelling context in the Act to suggest

that a sale should be made exclusively to him and none else. It is the tenant who is protected and not the sale as such, and consequently the interest of a tenant in the land sold has to be determined whenever there is a sale by the owner in his favour along with others. The case of indivisible sales is on a different footing altogether and where it is not possible to separate the share of a tenant in a sale made to him with others he would not of course be entitled to claim the benefit of section 8-A of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by Punjab Act No. 3 of 1959.

Case referred by Hon'ble Mr. Justice Dua, on 29th September, 1961, to a larger Bench for decision owing to the important questions of law involved in the case. The case was finally decided by the Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Shamsher Bahadur, on 13th August, 1962.

Regular Second Appeal from the decree of Shri D. R. Dhameja, Additional District Judge, Sangrur, dated the 7th day of October, 1960, modifying that of Shri Mewa Singh, Sub-Judge, III Class, Sangrur, at Sunam, dated 27th May, 1960 (granting the plaintiff a decree for possession by way of pre-emption of agricultural land against the defendants on payment of Rs. 1,500 and dismissing his suit regarding the rest of the land and further ordering that the plaintiff should deposit the amount of Rs. 1,500, on or before 27th June, 1960, failing which his suit would stand dismissed and leaving the parties to bear their own costs) to the extent that the suit of the plaintiff would stand decreed for the entire land sold, i.e., one half share of the Khasra numbers specified in the title of the plaint on deposit of Rs. 3,000, within two months from 7th October, 1960, failing which the suit would stand dismissed and leaving the parties to bear their own costs.

D. C. GUPTA, ADVOCATE, for the Appellants.

PARTAP SINGH, ADVOCATE, for the Respondent.

JUDGMENT

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—This judgment will dispose of three appeals, *Jang Singh* v. *Hardial*

Singh, etc. (R.S.A. No. 1692 of 1960), *Ranjit Singh, etc.* v. *Bega* (R.S.A. No. 1722 of 1960) and *Chand Singh* v. *Balvinder Singh, etc.* (R.S.A. No. 970 of 1961), these having been referred by Single Judges for decision of a larger Bench. *Jang Singh* v. *Hardial Singh* and *Ranjit Singh* v. *Bega* were referred by Dua, J., on 29th of September, 1961, while it was represented in *Chand Singh* v. *Balvinder Singh,* to the referring Judge (Harbans Singh, J.), that a question of law was involved which had been referred to a larger Bench for decision in *Jang Singh* v. *Hardial Singh* and *Ranjit Singh* v. *Bega.* This is how these three regular second appeals have come to be heard together by this Bench.

It would be best to deal first with the common question of law which provides the basis for this reference. An amendment was made by Punjab Act No. 3 of 1959 in the Pepsu Tenancy and Agricultural Lands Act, 1955 (Pepsu Act No. 13 of 1955), whereby certain sales of tenancy land were made non-pre-emptible. The amendment is embodied in the newly inserted section 8-A and is to this effect:—

> "8-A (1) Notwithstanding anything to the contrary contained in the Punjab Pre-emption Act, 1913, a sale of land comprising the tenancy of a tenant made to him by the landowner shall not be pre-emptible under the Punjab Pre-emption Act, 1913, and no decree of pre-emption passed after the commencement of this Act in respect of any such sale of land shall be executed by any Court.

It was successfully argued before the lower appellate Court in each of the three appeals that the exemption granted under section 8-A is not

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available to a tenant to whom the land has been sold jointly with others. Wherever the land is not transferred to a tenant exclusively by the owner, the provisions of section 8-A would not in other words, operate to save the land from pre-emption. It has been contended in this Court on behalf of the tenants-appellants that the scope of the benefit conferred on a tenant by the Amending Act (Punjab Act No. 3 of 1959) cannot be whittled down and the sale of land "comprising the tenancy of a tenant" cannot reasonably be left restricted to sales which are made only in favour of the tenant. In many cases, a tenant may not be in a position to purchase the land comprised in the tenancy by himself or the landlord may have chosen to sell it to the tenant along with other persons. It would be an obvious denial of an intended benefit to hold that a 'tenant' in the amended section should be the sole purchaser of the land from the owner. When the Legislature has considered it necessary to relax the rigour of a pre-emptive right in respect of sales made by a land-owner in favour of a tenant, it becomes the duty of the Courts to advance the remedy intended by the Legislature to its fullest extent.

In our opinion, the contentions of the learned counsel for the appellants have cogency and force. An individual sale to a tenant is not an absolute rule and in many cases tenants may have to be joined with others in the sale transactions. Section 8-A of the Pepsu Tenancy and Agricultural Lands Act, 1955, is plainly a remedial piece of legislation providing, as it does, relief to tenants who have purchased the land comprised in the tenancy from the land-owner against possible pre-emptors. The statute, as amended, provides that land comprised in the tenancy sold to a tenant is to be saved from any pre-emptive claims. There appears to be no rational ground to confine the amplitude of

the relief to those tenants only who are the sole purchasers of the land comprised in the tenancy. There is indeed no reasoned answer to the contention raised on behalf of the appellants that the land comprised in the tenancy of a tenant whose share could be separated from the others in a joint sale to him and others by a landlord would not be pre-emptible.

It is true that in some cases a sale is indivisible in the sense that it is impossible to separate or distinguish the interest of a tenant from his covendees in the land sold by the owner and in such situations, it may not be feasible to afford him any relief under section 8-A; but whenever and wherever the share of a tenant can be separated there seems to be no valid principle which would justify the denial of a benefit provided under section 8-A. The construction which has found favour with the lower appellate Court in each of the three appeals would lead to a result which could not possibly have been intended by the Legislature. Such a deprivation of a right in case of a tenant who has purchased the land comprised in his tenancy with some others is a conclusion which does not derive any sustenance from the language or context of section 8-A.

The counsel who have argued the case for a narrow construction to be placed on the word "tenant" have invoked the assistance of some rulings of the Lahore Court in which it was held that where a purchaser having an equal right of pre-emption associates with imself in the purchase a person with rights inferior to that of the pre-emptor, he is not entitled to resist the claim of such pre-emptor to enforce his rights even as to his share of the purchase. This view found favour with a Division Bench of Chatterji and Johnstone, JJ. in *Achhru and others* v. *Labhu and others*, (1),

(1) 48 P.R. 1907.

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and was subsequently followed in another Division Bench of the Punjab High Court (Addison and Beckett, JJ.) in *Bhagwana and others* v. *Shadi and others* (2). In the earlier Chief Court decision we do not find any reasons for the conclusion reached by the Court but in *Bhagwana's* case (2), it was pointed out that in the case of a sale to various persons, the contract of sale as regards the vendor was one and indivisible, the specification of the shares in the sale-deed being merely an arrangement among the purchasers *inter se*. The vendee in that case had claimed a better right of pre-emption than the pre-emptor and by his own volition associated strangers with him in the purchase. In our opinion, the cases of *Achhru and others* v. *Labhu and others* (1) and *Bhagwana* v. *Shadi* (2) do not afford an apposite analogy inasmuch as in the present instance we have to take into account the statutory safeguard against pre-emptor-claimants in favour of tenants. In the cases cited in support of the respondents' case, the Courts had to deal with the claims of the rival pre-emptors including the vendees. The rights of a pre-emptor have been strictly construed and any attempt on his part to overreach the rival pre-emptor or a vendee has been looked always with disfavour.

It is to be observed that while a pre-emptor seeking to avoid a contractual obligation has always been constricted to keep his claim within the strict statutory bounds, any exemption which the Legislature considers it necessary to maintain the sanctity of contractual obligations has to be construed liberally. That the whole land or a parcel of land comprised in his tenancy is sold to a tenant along with others is not always a matter

(2) A.I.R. 1934 Lah. 878.

of his own seeking and this circumstance alone cannot negative the reality of his being a tenant of the landlord. A recent decision of Gurdev Singh, J. in R.S.A. No. 904 of 1961 (decided on 14th March, 1962), has been brought to our notice by the learned counsel for the respondents. The learned Judge undoubtedly expressed the view in this case that the sale of land comprising the tenancy of a tenant should be one that has been made to him and cannot be construed as meaning "made to him or to him and a non-tenant". With great respect, we do not find it possible to accept this approach to the problem. According to the plain and grammatical construction the purchase made by a tenant from his landlord would be saved from the pre-emptive claim and there is no compelling context in the Act to suggest that a sale should be made exclusively to him and none else. It is the tenant who is protected and not the sale as such, and consequently the interest of a tenant in the land sold has to be determined whenever there is a sale by the owner in his favour along with others. It is for those who oppose this plain construction to show that the Legislature intended to exclude a tenant purchasing the land comprised in the tenancy with others. As already indicated, the case of indivisible sales is on a different footing altogether and where it is not possible to separate the share of a tenant in a sale made to him with others he would not of course be entitled to claim the benefit of section 8-A of the amended Act.

Having answered the question of law, we will now proceed to deal with the three appeals. In *Jang Singh* v. *Hardial Singh* (R.S.A. No. 1692 of 1960), the plaintiff Hardial Singh sued for possession by pre-emption of half share of 22 *bighas* and 11 *biswas* of agricultural land which had been sold for a sum of Rs. 6,000 by one Harnam Singh to his tenant Jang Singh and his wife Harnam Kaur.

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The plaintiff being the brother of the vendor was held to have a superior right of pre-emption as against the vendees. The trial Court, however, found that certain *khasra* numbers measuring 10 *bighas* and 15 *biswas* fell to the share of Jang Singh who was a tenant of the vendor. It was found that the market value of the land was Rs. 3,000. On these findings, the suit was decreed only to the extent of 11 *bighas* and 16 *biswas* and a decree was passed to the effect that half the land could be pre-empted on payment of Rs. 1,500, the remaining half being non-pre-emptible as it fell within the tenancy of Jang Singh. In appeal, the learned District Judge upheld the finding that Jang Singh was a tenant but came to the conclusion that he could not avail of the benefit of section 8-A as the co-vendee was not a tenant. The learned Judge, however, affirmed the finding of the trial Court that Jang Singh was a tenant. As we consider that the claim of Jang Singh has been defeated by the lower appellate Court on untenable grounds, this appeal must be allowed and the judgment of the trial Judge restored. There is, however, one ancilliary modification which has to be made in the decree of the trial Judge. Jang Singh has been found to be in possession of approximately half the area in dispute. The decree in favour of the plaintiff has been granted for one-half of the entire land. It woud be observed that in the suit a decree was sought for one-half of the entire land, the other half being the property of the plaintiff. This point appears to have been conceded before the lower appellate Court and the decree of the trial Judge would be modified accordingly and would be confined only to one-half of the land claimed to be pre-emptible excluding the share of the plaintiff.

In R.S.A. No. 1722 of 1960 (*Ranjit Singh* v. *Bega*), land measuring 46 *bighas* and 16 *biswas*

covered by six *khasra* numbers in village Bushehra, was sold by Hari Singh to the appellant Ranjit Singh and his five brothers by a sale deed of 23rd June, 1958, for a sum of Rs. 3,000. The respondent, Bega, brought a suit for pre-emption setting himself as a collateral of the vendor. Ranjit Singh, on the other hand, pleaded that he was a tenant and the land was not pre-emptible. The trial Judge found that the land had been sold for a sum of Rs. 3,000 and Ranjit Singh had not established his tenancy at all. The suit was therefore dismissed by the trial Judge. The learned District Judge, in appeal, held that even if Ranjit Singh was regarded as a tenant, his right was superseded by the plaintiff who had a superior right of pre-emption. The learned District Judge found that Ranjit Singh was shown to be a tenant in five *khasra* numbers and not in the sixth one which measured 9 *bighas* and 7 *biswas*. The District Judge being of the view that the plaintiff had a superior right of pre-emption does not appear to have considered the merits of Ranjit Singh's claim at all. As in our view Ranjit Singh as a tenant is entitled to defeat the plaintiff's right to pre-empt, it becomes necessary to determine the area of the tenancy which he is entitled to retain with himself. In sale-deed, Exhibit D.A., it is made clear that Ranjit Singh purchased the land measuring, 46 *bighas* and 16 *biswas* along with his five brothers, the share of each vendee being equal. Ranjit Singh alone is entitled to defeat the pre-emptor's claim and one-sixth of 46 *bighas* and 16 *biswas* (that is to say, 7 *bighas* and 16 *biswas*) would be excluded from the pre-emption decree and the purchase money would be reduced proportionately. This appeal would be allowed accordingly.

In appeal *Chand Singh* v. *Balvinder Singh*, (R.S.A. No. 970 of 1961), Mst. Parsin Kaur sold

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the land in suit by a registered deed on 25th of May, 1959, for a sum of Rs. 20,000 to Bachan Singh. Balvinder Singh and his brothers, who are sons of Parsin Kaur, brought a suit for pre-emption and, *inter alia*, a plea was raised that the sale was in favour of tenants. The trial Judge found that though one of the vendees, Mukhtiar Singh, was a tenant the sale was an indivisible transaction and section 8-A could not be availed of. The suit was accordingly decreed. Chand Singh preferred an appeal which was dismissed by the learned District Judge. The second appeal to this Court must fail on the short ground that the tenant Mukhtiar Singh has not filed this appeal. The appellant Chand Singh is admittedly not a tenant comprised in the tenancy of the land sold by the vendor. Mr. Atma Ram has urged that there is a prayer on behalf of Mukhtiar Singh for being transposed as an appellant. There is, however, no one present to press this petition and Mr. Atma Ram, who has filed the appeal on behalf of Chand Singh cannot be heard in support of this application. In this view of the matter, it is not necessary to discuss the other arguments which have been raised on behalf of the appellant to defeat the claim of the pre-emptor. This appeal would, therefore, stand dismissed.

As the decision of these appeals has involved a question of law, we would make no order as to costs of these appeals.

Mehar Singh, J.

Mehar Singh, J.—I agree.

B.R.T.