
(2001) 02 P&H CK 0074
In the Punjab And Haryana At Chandigarh
Case No : L.P.A. No. 1051 of 1990

Antu

APPELLANT

Vs

Naresh Saran

RESPONDENT

Date of Decision : 22-02-2001

Acts Referred:

Punjab Security of Land Tenures Act, 1953 — Section 2, 4, 5

Citation : (2001) 2 RCR(Civil) 790

Hon'ble Judges : A.B. Saharya, C.J;V.K. Bali, J

Bench : Division Bench

Advocate : Mr. K.K. Mehta and Mr. M.S. Kohli, for the Appellant; Mr. S.K. Goyal, Mr. C.R. Dahiya, DAG and Mr. P.C. Bhardwaji, for the Respondent

Judgement

V.K. Ball, J.—Originating in the year 1961, this case has rather a chequered history showing a perennial dispute between the landlord and tenants. The fate of the parties in this marathon litigation has been fluctuating, luck smiling ultimately on the land owners when writ petition filed by them against the orders passed by the authorities constituted under the Punjab Security of Land Tenures Act, 1953, was allowed by learned Single Judge of this Court on November 24, 1989. It is against this order of learned Single Judge that the present appeal under Clause X of the Letters Patent has been filed by the tenants. Backdrop of events, culminating into filing the same, need a necessary mention.

2. Brij Raj Saran, resident of Jagadhri, District Ambala, in terms of the provisions of Punjab Security of Land Tenures Act, 1953 (hereinafter referred to as the "Act") was a big landowner. His case for determination of surplus area was taken for decision by the Collector Agrarian on January 31, 1961 and it was held that out of total holding of 133 standard acres 2 units, 126 standard acres 17 units were under the cultivation of old tenants and, therefore, there was no area with him that may be declared surplus. It appears that the consolidation proceedings were in progress at a time when the orders aforesaid came to be passed by the Collector Agrarian and further that proceedings of consolidation in respect of the

area of landowner, resulted in some decrease of his land. The reduction in land holding of Brij Raj Sharan motivated him to move an application before the Collector Agrarian praying therein that since consolidation had taken place in their village, resulting into reduction of his total holding, he may be permitted to make fresh selection of his permissible area. This prayer of the landowner was allowed by the Collector Agrarian on January 29, 1968. Aggrieved, tenants challenged the said order in appeal before the Commissioner, Ambala which was accepted vide orders dated February 10, 1970 and the case was remanded to the Collector Agrarian for fresh decision. The Collector Agrarian, after remand decided the case afresh and as per order dated December 13, 1970 imposed a penalty of ten standard acres on landowner u/s 5(c) of the Act. This order was challenged by the landowner before the Commissioner in an appeal which was accepted and the case was once again remanded vide order dated April 6, 1971 for fresh decision. In tune with the order of remand, Collector Agrarian once again decided the case vide order dated September 14, 1971 and reduced the penalty of ten standard acres to five standard acres. Against this order of the Collector, two appeals, one by the landowner and the other by tenants were filed before the Commissioner. The appeals were accepted and vide order dated July 14, 1972, once again case was remanded to the Collector for deciding the matter keeping in view the following points :-

"(a) The entire record be seen carefully and the landowner be given due allowance for any decrease in his holding due to consolidation.

(b) The land situated in villages Devdharand Tejha be taken into account;

(c) any land sold by Brij Sharan landowner after 15.4.1953 be included in his permissible area;

(d) the permissible area of the landowner be worked out in accordance with Section 5 of the Act;

(e) The observation made by the Commissioner (in the impugned order) be kept in view while imposing penalty u/s 5(c) of the Act." This order of remand was challenged unsuccessfully before the Financial Commissioner as the revision that was preferred against the orders aforesaid came to be dismissed on May 5, 1980.

3. It is quite apparent that a number of years rolled by when the matter remained pending before the Financial Commissioner in a revision that was preferred by the landowner against order dated July 14, 1972 and meanwhile, Brij Sharan died on March 9, 1981. Consequently, before the matter could be disposed of by the Collector, pursuant to directions given by the Commissioner, as referred to above, the landowner had died. This event resulted into complete change of complexion of the case. The contesting parties and, in particular, heirs of the landowner then totally concentrated on the fact of demise of their predecessor-in-interest and the consequences thereof. It was strenuously pleaded by them that death of Brij Sharan would result in succession of his estate to four heirs, namely, his widow and three sons of Brij Sharan, none of

them could be declared a big landowner under the provisions of the Act. Once, the land had since not been declared surplus even in the hands of Brij Sharan, initial declaration of Collector that, available with the landowner was tenant's permissible area and, therefore, his land could not be declared surplus, would not make the least difference, particularly when even the said order was set aside on an application of Brij Sharan landowner when he was permitted to make selection of his permissible area de-novo. This change in stand of heirs of Brij Sharan, arising from his demise, was strongly objected to by the tenants. The Collector, after hearing the parties, after remand, held that Brij Sharan owned land measuring 136 standard acres and eight and half units on April 15, 1953 and on account of consolidation, his holding was reduced by 8 standard acres and five and half units and in this way he was left with 128 standard acres. Brij Sharan had died and before decision of his case, his wife had also died, leaving only three heirs, who were entitled to retain 30 standard acres each and in this manner, the permissible area in the hands of Brij Sharan would be 90 standard acres. Since the land owner had concealed his area and was imposed a penalty of ten standard acres u/s 5(c), the Collector considered that it was quite proper. In this way, three owners were entitled to keep 80 standard acres as their permissible area, leaving balance of 48 standard acres. Out of this 48 Standard Acres, 7 standard acres 13 units was purchased by the old tenants u/s 18 of the Act and, therefore, there was no need to pass any orders with regard to this parcel of land. Out of the area of landowner, 40 standard acres 3 units were declared as tenants' permissible area, list whereof was prepared by the Collector. Being not satisfied with this order of the Collector, heirs of Brij Sharan filed an application for review of order of Collector dated December 8, 1983. After hearing the parties, the Collector permitted proceedings for review vide order dated March 12, 1984. It was held by the Collector that an opportunity to select the permissible area had to be given to the landowner, which had since not been given earlier. For reviewing order dated December 8, 1983, it was canvassed before the Collector that the area, which had been sold during the life time of Brij Sharan, should not be declared as surplus and that penalty of ten standard acres, as imposed, deserves to be withdrawn and further that Smt. Ganga Devi, widow of Brij Sharan, died a day after his death and further that she had made a registered will in favour of her grand-sons, by which she bequeathed her movable and immovable properties in their favour and that this benefit should also be given. "After hearing the parties, the Collector, vide order dated February 7, 1985, came to the conclusion that out of 128 standard acres, 56 standard acres had since already been sold by Brij Raj Saran, leaving a balance of 72 standard acres. This area was inherited by four heirs of Brij Sharan and each one of them could retain 18 standard acres as permissible area. Smt. Ganga Devi, widow of Brij Sharan, died a day after the death of her husband and she had executed a registered will in favour of her grand-sons, in pursuance of which 18 standard acres had to be entered in favour of each of the grand-sons. He further held that even if the will was to be ignored from consideration, then too, after adding the share of the mother to her children,

they became owners to the extent of 24 standard acres each, whereas they could retain upto 30 standard acres. In view of what has been said above, the Collector declared that heirs of Brij Sharan and Smt. Ganga Devi were small landowners. Since the order in review passed by the Collector on February 7, 1985, adversely affected the tenants, it was their turn now to agitate it by way of appeal before the Commissioner, Ambala Division, Ambala. Vide order dated February 25, 1985, order of Collector dated February 7, 1985, was set aside. Aggrieved, this time, heirs of Brij Sharan and Smt. Ganga Devi carried the matter before the Financial Commissioner by way of revision which was dismissed on June 20, 1988. In a writ petition, that then came to be filed by the landowners, learned Single Judge reversed the orders passed by the Commissioner, Ambala Division, Ambala and Financial Commissioner, dated February 25, 1986 and June 20, 1988 respectively and it is this order which is subject-matter of appeal before us.

4. Having examined the facts of the case, resulting into frequent change of fortunes of the parties, time is now ripe to evaluate the contentions, that have been raised by learned Counsel for the parties for and against the view taken by learned Single Judge in the impugned judgment but, before we may take this exercise in hand, we would like to mention that on an earlier occasion, after hearing arguments of learned Counsel for the parties, we had reserved judgment. While dictating the judgment, however, it came to our notice that even though some observations in some of the orders with regard to Brij Sharan having selected his permissible area, were made and even for that matter, the landowner himself had pleaded in some of the proceedings that he had selected his permissible area, it appeared to us that there was nothing available on records that may straightaway manifest that Brij Sharan was given any opportunity to select his permissible area nor same had been determined or selected for him by the authorities constituted under the Act. In view of conflicting pleadings and findings of various authorities from time to time on the fact aforesaid? which has great bearing on the fate of his case, we ordered this matter to be listed for re-hearing and summoned the entire records of Brij Sharan from the concerned authorities. Records were received and learned Counsel for the parties were permitted to have inspection of the same in the office of the Advocate General, Haryana. They confirm that they have inspected the records. Learned counsel for the parties further confirm that there is nothing on record that may reveal selection of permissible area by the landowner or any other that might have been passed on that behalf. True, the landowner did fill in the requisite form meant for giving particulars of land held by him as landowner in which he could select his permissible area which is dated June 9, 1958. The contents of aforesaid form reveal that in the column dealing with the total land in Column No.5 (b) (d), (f), (h), (k), there is mention of eleven and half acres of land whereas in the last column pertaining to total land of column No. 1, mention is only of 7-3/16 standard acres of land. This was not the holding of landowner as per admitted position on records of the case. As mentioned above, there are divergent and contrary pleadings and observations made by the

concerned authorities from time to time with regard to Brij Sharan having selected his permissible area. Immediately after the Collector Agrarian on January 31, 1961 held that there was no surplus area with the landowner as out of his total holding of 133 standard acres and 2 units, 126 standard acres 17onits were under the cultivation of old tenants, the landowner made an application for permission to select his permissible area and in the application aforesaid, he did state that he had selected his permissible area in the year 1958. While pleading the matter before the Collector on remand, the heirs of Brij Sharan, however, pleaded that the land in the hands of Brij Sharan had not been declared surplus and that in any case Brij Sharan was permitted to make selection of the permissible area de-novo when the matter was remanded by the Collector on an application made by him to do so when because of consolidation his total holding had been reduced by eight standard acres and five and half units. The Collector, after hearing the parties after remand, vide his order dated March 12, 1984, held that opportunity to select the permissible area had to be given to the landowner which had since not been given earlier. Further, it is while deciding the case on remand vide order dated December 8, 1983. that the Collector, it appears, for the first time, made a list of the land which would be permissible area of the surviving landowners. From the records of the case, this Court is left with undeniable impression that Brij Sha-ran might have made pleadings with regard 10 his having selected permissible area before 1961 but the same is not a fact and ultimate finding recorded by the Collector, referred to above, is also to the same effect.

5. As mentioned above, orders of the Collector dated Decembers, 1983 and March 12, 1984, were set aside by the Commissioner and order of Commissioner was upheld by the Financial Commissioner but writ petition filed by the landowners against the aforesaid two orders has since been allowed, thus, setting aside the orders of Commissioner and Financial Commissioner. Learned Single Judge, while upsetting the orders aforesaid, observed that the landowner died on March 9, 1981 and that the surplus area had not been utilised in his lifetime. Under Sections 10-A and 10-B of the Act, the said holding would cease to be the holding of the said landowner and would stand devolved and distributed between his heirs by operation of law as a result of succession and authorities were required to re-determine the surplus area in the hand of each of heirs and further that the order regarding surplus area in the hands of the original landowner was rendered non-existent. It was further held that by virtue of Section 8 land would devolve on heirs by inheritance and Section 12 of the said Act provides that surplus land would vest in the State and this would be possible only if redetermination of surplus area was made and in so doing permissible area for each heir had to be allowed and the balance would vest in the State. It was further held that the Financial Commissioner was swayed away by wholly irrelevant consideration when he set aside the order of the Collector dated February 7, 1985 which order was passed by the Collector Agrarian after allowing the review petition filed by the heirs of the deceased landowner, but, in fact, it

would be deemed to be an order determining the permissible area of the heirs of the deceased. From the findings returned by learned Single Judge, as reflected above, it would, thus, appear that the controversy in issue primarily came to be decided in favour of the landowners on the dint of provisions contained in Sections 10-A and 10-B of the Act.

6. Having examined the facts of the case in detail, time is now ripe to evaluate the contentions raised by Mr. 1.K. Mehta, Senior Advocate, who represents the appellant/tenants. The counsel vehemently contends that death of landowner would not make the least difference in tenant's permissible area as the same stands utilised the moment it is so declared. Section 10-A and 10-B of the Act were not at all attracted to the tenants' permissible area and the fact that such area stood automatically utilised was not noticed by learned Single Judge as also that the Collector had no jurisdiction whatsoever to review his order dated December 8: 1983. Mr. Goyal, learned Counsel representing the respondent/landowners, however, joins issue with the learned Counsel for the appellant on his two fold contentions, as noted above.

7. Permissible area has been defined under sub-section (3) of Section 2 which means thirty standard acres and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres, in relation to a landowner or a tenant. Subsection (5-A) of Section 2 defines "surplus area" to mean the area other than the reserved area, and where no area has been reserved, the area in excess of the permissible area selected u/s 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 u/s 19-B, but it will not include a tenant's permissible area. Every landowner or tenant, who owns or holds land in excess of the permissible area and where land is situated in more than one Patwar circle, shall furnish, within a period of six months from the commencement of the Punjab Security of Land Tenures (Amendment) Act, 1957, a declaration supported by an affidavit in respect of the land owned or held by him in such form and manner and to such authority as may be prescribed, by virtue of Section 5-A of the Act. A landowner, who has not exercised his right of reservation under the Act, may select his permissible area and intimate the selection to the prescribed authority within the period specified in Section 5-A and in such form and manner as may be prescribed, by virtue of Section 5-B of the Act. As per sub-section (2) of Section 5-B if a landowner, however, fails to select his permissible area in accordance with the provisions of sub-clause (1), the Prescribed Authority may, subject to the provisions of Section 5-C, select the parcel or the parcels of land which such person is entitled to retain under the provisions of the Act.

8. Definition of "surplus area" would clearly show that the same is the area other than the reserved area and where no area has been reserved, the area in excess of the permissible area selected u/s 5-B or the area which is deemed to be surplus area under sub-section (1) of Section 5-C but does not include the

tenant's permissible area. The ceiling on land holding is 30 standard acres and if on being converted into ordinary acres, it exceeds 60 acres, such 60 acres. Even though, it is true, that while passing order way back in 1961 the Collector did not declare any surplus area in the hands of big landowner Brij Sharan, as a big chunk of land was tenant's permissible area, which is not included in the definition of surplus area, but the fact remains that either while passing order in 1961 or thereafter, at any stage, Brij Sharan had neither reserved his permissible area himself nor the same was ordered to be reserved by the concerned authority, as envisaged under the provisions of the Act.

9. The scheme of the Act, by virtue of provisions contained therein, would clearly manifest that while making declaration with regard to surplus area, which land would naturally go out of ownership of landowner, insofar as permissible ceiling is prescribed, the landowner has an absolute right to select the same. Even though, a big chunk of land, belonging to the original owner, was occupied by the old tenants and which land, being tenants' permissible area, could not be declared as surplus, the landowner ought to have been given a choice to make selection of his permissible area, a part of it, or for that matter, whole of it, "might have been in possession of tenants. It is only giving the landowner a choice to make selection of his permissible area and if he was not to do so, as enjoined upon him by the provisions of the Act to do so by the Prescribed Authority themselves, that the remaining area could be declared as tenants' permissible area or surplus area, as the case may be. In the present case, however, the Collector Agrarian, while initially deciding the case of big landowner, simply stated that out of 133 standard acres 2 units, 126 standard acres, 17 units were under the cultivation of old tenants and, therefore, there was no area with him that may be declared surplus. In the facts, as were available before the Collector, he ought to have permitted the landowner to select his permissible area out of 133 standard acres, a part of which would have obviously been in possession of tenants as well as it is only the remaining area which could be declared as tenants' permissible area. This initial mistake made by the Collector, in our considered view, has changed the whole complexion of the case in the event of demise of the original landowner and the situation is irretrievable. One could think of correcting or modifying the order of Collector Agrarian dated January 31, 1961 so as to read that out of holding of 133 standard acres 2 units, Brij Sharan is entitled to keep 30 standard acres as his permissible area and the remaining would be tenant's permissible area but that course cannot now be adopted as. to which 30 standard acres of land would have been the choice of landowner, cannot be guessed. It is, thus, a case where the landowner was deprived to make selection of his permissible area to the extent of ceiling of land as provided under the Act and meanwhile the original landowner has died. In considered view of this Court, it is a straightforward case where this exercise has to be done de-novo, but if the same is to be done, naturally, the land, in the hands of present landowners, shall be taken into consideration. Demise of Brij Sharan resulted into inheritance by his legal heirs, i.e., the present respondents and the Collector, in our view,

was absolutely justified in considering the ceiling on each of surviving heirs of Brij Sharan as each one of them was entitled to the permissible area. This would naturally not leave any tenants' permissible area or surplus area and the heirs of Brij Sharan shall have to be held as small landowners. Even though, as mentioned above, the matter came to be decided in favour of respondents on the dint of Sections 10-A and 10-B of the Act, but, in our view, in the facts and circumstances of this case, the same are not applicable to the situation in hand. The State Government is competent to utilise any surplus area for the settlement of tenants ejected or to be ejected, 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 standard acres, at the commencement of the Act, shall affect the utilisation thereof, as would be clear from the provisions of Section 10-A of the Act. The surplus area has to be utilised for settlement of tenants but if it has not been utilised and the landowner dies, same cannot be so utilised or in other words, has to revert to the heirs of landowners. Section 10-A of the Act pre-supposes existence of surplus area and, in the present case, as would be clear from the narration of events given above, no area was ever declared as surplus in the hands of Brij Sharan. On the other hand, it was specifically held by the Collector Agrarian that there was no need to declare any surplus area in the hands of big landowner as most of the area, owned by him, was occupied by tenants.

10. Mr. I.K. Mehta, Senior Advocate, appearing on behalf of the appellants, for the proposition that death of landowner would not make any difference in tenants' permissible area as the same stood utilised the moment it was so declared, relies upon a DB judgment of this Court in Hari Chand (dead) through LRs. v. " The Financial Commissioner, Revenue, Punjab 2000(2) RCR 547 as also a judgment of Supreme Court in Sudarshan Nath and other v. The State of Punjab and others 2000(2) PLJ 97 : 2000(2) RCR 758 (SC). The facts of Hari Chand's case (supra) reveal that Hari Chand was a big landowner. His case for declaration of surplus area came before a Special Collector, who vide order dated May 5, 1961 held that he was entitled to permissible area of 60 ordinary acres or 30 standard acres which had since been selected by him. After giving details of this permissible area, it was further stated by the Special Collector that the area to the extent of 209 ordinary acres or 0-11 and half standard acres in village Sathwan was under orchard and land measuring 573 ordinary acres or 4-3 and half standard acres was with the tenants. It was further observed by the Special Collector that landowner had 178.38 ordinary acres or 50.1 -1/4 standard acres surplus in nine different villages. It is this area which was declared to be surplus. The tenants, who were old ones, made an application for review on August 3, 1961 and stated that they were old tenants settled on the land belonging to Hari Chand and that the Circle Revenue Officer had reported that land to the extent of 17-8 and half standard acres was with the tenants since 1952-53 and, therefore, that land could not be included in the surplus area and had to be held as tenant's permissible area under the provisions of Act of 1953. The Special

Collector, after examining the report of verification, found the plea of tenants to be correct and, therefore, excluded the area to the extent of 17-8 and half standard acres from the surplus area of Hari Chand. This order was agitated by landowner after nine years but the appeal preferred for that purpose came to be dismissed by the Commissioner, Jalandhar Division, Jalandhar. Still not satisfied, revision came to be filed before the Financial Commissioner, which too was rejected. Orders of Commissioner and Financial Commissioner were challenged in a writ petition in this Court and during the pendency of the said petition, Full Bench of this Court in *Ranjit Ram v. Financial Commissioner, Revenue, Punjab and others* 1981 PLJ 259 held that the landowner, whose land was declared surplus under the Punjab Security of Land Tenures Act, 1953 or under Pepsu Tenancy and Agricultural Lands Act, 1955, and who has not been divested of ownership of surplus area before enforcement of Punjab Land Reforms Act, was entitled to select permissible area for his family and for each of his adult sons in view of provisions of Section 4 read with Section 5(1) of the Punjab Security of Land Tenures Act. It was further held that the landowner was entitled to get permissible area for his adult sons out of the land held or possessed by him whether already declared surplus or not and the landowner while making selection u/s 5(1) of the Punjab Security of Land Tenures Act for himself as also for his adult sons could include the area declared surplus under the Punjab Law or the Pepsu Law of which possession had not been taken over by the State Government till commencement of Punjab Land Reforms Act. Taking cue from this judgment, additional pleadings in tune with the findings recorded by the Full Bench, as mentioned above, came to be filed. Respondent-tenants had by then purchased the land u/s 18 of the Act of 1953. Besides applicability of Full Bench in *Ranjit Ram's* case (supra), a further question, thus, came to be mooted before the learned Single Judge as to whether the purchase applications having been allowed before the appointed date under the Act of 1972, would result in utilising the land, thus, giving benefit of the aforesaid decision to the landowner.

11. It is in the context of facts, as have been detailed above, that it was held by this Court that "as mentioned above, insofar as landowner is concerned, he had reserved the permissible area, i.e., upto the brim of ceiling provision under the Act of 1953. It is concerned position and so is recorded in the impugned orders that on some of the land declared surplus, earlier in point of time, old tenants were there. It could also not be disputed at any stage that such land has to be declared as tenant's permissible area..... Surplus area, as mentioned above, does not include tenant's permissible area. It is only non-utilisation of surplus area that would come to the rescue of the landlord by dint of the provisions contained in the Act of 1972 and by virtue of judgment of Full Bench in *Ranjit Ram's* case (supra) insofar as tenants' permissible area is concerned, the same stood utilised by dint of the fact that the tenants had already occupied the same and of which landlord was not in possession. Such land, in our view, stood utilised, the day it was declared to be tenants' permissible area". The facts of *Hari Chand's* case (supra), thus, reveal that landowner had reserved his

permissible area and it is over and above the said area that there was some land which was tenants' permissible area. In such a case, landowner could not complain that he was not given choice to select his permissible area, but, in the case in hand, as fully detailed above, Brij Sharan was not given any chance to select his permissible area nor the same was selected for him by the concerned authorities. Sans his reservation, there would be no area which could be said to be tenants' permissible area as the landowner had an indefeasible right to select upto the ceiling limit any area of his choice and his choice could naturally include tenant's permissible area as well. In such an event, therefore, there is no question of automatic utilisation of tenants' permissible area. In fact, there could not be any tenants' permissible area, as mentioned above.

12. The facts of Sudarshan Nath's case (supra) reveal that Raghubinder Nath was a big landowner. Vide order dated June 30, 1960, ceiling area of the said landowner came to be determined and an extent of 30 standard acres and 9-1/4 units were declared as surplus. On March 31, 1976, the Collector Agrarian, Gurdaspur, after completion of consolidation proceedings in the area, passed an order declaring that there is no area left surplus and ordered the case to be filed. While matter stood thus, the predecessor-in-interest of respondents No. 2 and 3, late Jagat Ram, to whom 20 kanals 13 marlas were said to have been given on lease even prior to 1953, filed a suit for declaration that he, being a tenant, is eligible for allotment of surplus area measuring about 56 kanals 4 marlas with a consequential direction to the Collector, Gurdaspur, to allot the surplus land to him. The landowner was not im-pleaded as a party and only the State represented by the Collector was joined as party-respondent. The suit came to be decreed on November 17, 1979 ex parte. When an execution petition came to be filed, learned Subordinate Judge adverted to the fact that the legal heirs of Raghubinder Nath had filed an appeal against the order of the Collector and inasmuch as the matter had been stayed, the vesting cannot take effect and the allotment order could not be issued at that stage.

The execution proceedings were held premature. In the meanwhile, on September 29, 1980, the Collector Agrarian, Gurdaspur, passed an order declaring 3 standard Acres and 9-1/4 units to be the surplus area. This order was challenged by the original landowner before the Commissioner by way of an appeal but same was dismissed. Challenge was further pursued before the Financial Commissioner by means of a revision petition and when the said proceedings were pending, the Collector, Gurdaspur, allotted the surplus land, as declared, to Jagat Ram on March 24, 1982. Pursuant to allotment so made, on March 30, 1982 Jagat Ram deposited Rs. 5900/-. The revision filed by Raghubinder Nath before the Financial Commissioner was disposed on March 10, 1983, with a direction that the landowner should be given an opportunity of selecting permissible area and the allottee accommodated else where on an equivalent land. The Revisional Authority was of the view that the revenue officers are bound to give an opportunity to a landowner of being heard and selecting his permissible area under Section- 24-A(2) of the Land Tenures Act,

after con-solidation proceedings, if the land declared surplus had not been utilised by them. The Revisional Authority did not approve of the bona fide nature of transfers said to have been effected in 1954. On February 2, 1984 the original landowner Raghubinder Nath died and the mutation was sanctioned in favour of appellants on January 16, 1986. Pursuant to order dated March 10, 1983 passed by the Financial Commissioner, the Collector Agrarian pursued the matter further and by his proceedings dated June 10, 1986, came to the conclusion that the heirs of late Raghubinder Nath were entitled to reserve the area for themselves in accordance with the provisions of Punjab Land Reforms Act, 1972 and that total land holding of Raghubinder Nath worked out to 43 standard acres 2 units. Since Raghubinder Nath died leaving seven legal heirs, there was no surplus area with them and consequently the allotment made in favour of Jagat Ram was not only held bad but stood cancelled and he had to be accommodated else where in terms of the directions of the Financial Commissioner dated March 10, 1983. Naib Tehsildar Agrarian was directed to put up a proposal for allotment of alternative land equivalent to the area to be given to Jagat Ram. This resulted into filing of appeal by Jagat Ram before the Commissioner. During the pendency of the said appeal, Jagat Ram died on October 2, 1986. Appeal was pursued by his legal representatives and was dismissed on May 16, 1988 on the ground that area declared surplus did not vest in the State u/s 8 of the Act for want of notice as required u/s 9(1) of the Act. The legal heirs of Jagat Ram pursued the matter by filing a revision before the Financial Commissioner. The revision was allowed on August 1, 1990 and order of Commissioner dated May 16, 1988 came to be set aside holding that the declaration of surplus area in the year 1960/1980 held the field and was never set aside and that Jagat Ram, allottee, having deposited the purchase amount on March 30, 1982, in the treasury, became owner of the land on such deposit. It was also held that in view of death of the original landowner in 1984 and the utilisation of land even during the lifetime of the landowner, who did not challenge the same, successfully, the orders of Commissioner could not be sustained. This resulted into filing of writ petition by heirs of Raghubinder Nath which was dismissed. It is on the facts, as fully detailed above, that it was held by the Apex Court that "since the lands were already in the possession of tenant Jagat Ram, who happened to be allotted also, there is no substance in the challenge. The land holder or his heirs, having not challenged specifically orders dated March 24, 1982, cannot be allowed to dispute this factual position at all. The Financial Commissioner chose to give relief to the heirs of Jagat Ram only on the ground that the lands declared surplus came to be also utilised effectively under the Punjab Utilisation of Surplus Area Scheme, 1973 before February 2, 1984 when the land-holder died and, therefore, there was nothing for the appellants to reagitate the matter once over again to revise the ceiling area taking advantage of the death of the erstwhile landholder." It is, thus, apparent that the surplus land was allotted to a tenant and he had purchased the same and deposited the entire compensation. The allotment was made in his favour on the basis that he was tenant of the land which came to be declared surplus.

Inasmuch as land was already in possession of the tenant, who happened to be allottee also, it was held that the surplus area came to be utilised effectively before the death of landowner and there was nothing for the landowner to reagitate the matter once over again. The facts of Sudarshan Nath's case (supra) and the one in hand are distinguishable. As mentioned above, present is a case where landowner had not selected his permissible area which was his vested right under the Act and we have already held that there could not be any order declaring a landowner's area to be tenant's permissible area, or for that matter even surplus area, if such an opportunity has not been given to the landowner or, in the alternative, such an exercise is not done by the concerned authorities themselves. The Collector, on remand, in our view, correctly applied the provisions of the Act by holding that death of landowner, in the event when he had not been given chance to select his permissible area, would result in computing the area for the purpose of declaration of standard acres in the hands of his heirs and inasmuch as his heirs were not the big landowners, having less than 30 Standard Acres of land, no area could be declared as tenants' permissible area or surplus area.

13. In view of the observations made above, we find no merit in this appeal and dismiss the same, leaving, however, the parties to the litigation, in peculiar facts and circumstances of this case, to bear their own costs.

14. Before we may part with this order, we would like to mention that the counsel representing the respondents stakes no claim in respect of 7 standard acres and 13 units of land, which has since been purchased by old tenants u/s 18 of the Act. That being so, order permitting purchase to the tenants occupying 7 standard acres and 13 units has, thus, attained finality and this order would not affect the right of the concerned tenants on the land aforesaid.

15. Appeal dismissed