

(2013) 08 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 7016 of 1995 (O and M)

Kuldip Singh (through Lrs.) and Others	APPELLANT
Vs	
State of Punjab and Others	RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 08 P&H CK 0057

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : K.S. Sidhu and Mr. G.S. Benipal, for the Appellant; Rajesh Mehta, Addl. A.G., Punjab for State, Mr. R.B.S. Chahah, Advocate for Respondent No. 5 to 15 and 19 to 29, Mr. Harsh Aggarwal, Advocate for Respondent No. 16 to 18 and Mr. Ravi Sharma, Advocate for Mr. Sunil Bhardwaj, Advocate for Respondents No. 6, 8, 11, 13, 14, 15, 22 and 29, for the Respondent

Judgement

Rameshwar Singh Malik, J.

CM. No. 6030 of 2013

1. Applicants seek to bring on record the legal representatives of petitioner No. 1 Kuldip Singh. The application is supported by an affidavit.

Application is allowed subject to just exceptions. Legal representatives of Kuldip Singh-petitioner No. 1 are permitted to be brought on record.

CM. stands disposed of.

CM No. 6031 of 2013

Applicants seek to place on record the documents i.e. Death Certificate as Annexure A-1 and amended Memo of Parties as Annexure A-2.

Application is allowed as prayed for.

Death Certificate as Annexure A-1 and amended Memo of Parties are permitted to be placed on the record.

CM. stands disposed of.

CM No. 860 of 2013

2. Applicants seek vacation of interim directions dated 26.7.1996.

Since the writ petition itself is being decided, the present application has been rendered infructuous and the same is disposed of, as such.

CWP No. 7016 of 1995

3. The present writ petition is directed against the orders dated 27.5.1993 (Annexure P-10) passed by the Collector (Agrarian), Rajpura, Distt. Patiala-respondent No. 4, thereby holding that the area measuring 55.89 Std. Acres was rightly declared surplus in the hands of Pritam Singh, predecessor-in-interest of the petitioners and his legal heirs i.e. the petitioners were not entitled to get the surplus area case decided afresh, after the death of Pritam Singh, inspite of the order dated 23.9.1968 (Annexure P-2) passed by this court, allowing CWP No. 835 of 1964 (Pritam Singh and another v. Financial Commissioner, Punjab and others), remanding the matter to the Collector (Agrarian) to determine afresh the surplus area case. Petitioners have also challenged the orders dated 17.11.1993 (Annexure P-11) passed by the Commissioner, Patiala Division, Patiala-respondent No. 3 and the order dated 17.8.1994 (Annexure P-12) passed by the Financial Commissioner (Appeals), Punjab-respondent No. 2, whereby the appeal and revision of the petitioners were dismissed, upholding the order dated 27.5.1993 (Annexure P-10) passed by the Collector (Agrarian).

4. Facts first.

This case has a long and chequered history. Pritam Singh, predecessor-in-interest of the petitioners, was allotted 95.12 Std. Acres of land by the Rehabilitation Department on temporary basis in villages Rajgarh and Bapre in Patwar Halqa Pepla, Tehsil Rajpura, Distt. Patiala in the year 1951-52, in lieu of the land left by him in West Pakistan, during partition of the country. Consequently, Sanad (deed of allotment) dated 29.1.1958 was issued. Out of this allotted area, 50.12 Std. Acres was allotted on a quasi permanent basis and remaining on temporary basis. In the year 1961, Collector (Agrarian), Rajpura, vide his order dated 18.7.1961 declared 55.89 Std. Acres, out of the above said land measuring 95.12 Std. Acres, as surplus area in the hands of Pritam Singh under the Pepsu Tenancy and Agricultural Land Act, 1955 (for short "the Pepsu Act"). Aggrieved, Pritam Singh filed an appeal against the order dated 18.7.1961, which was dismissed by the Commissioner, vide order dated 13.8.1961 and the revision filed before the Financial Commissioner was also dismissed, vide order dated 14.9.1962. Pritam Singh challenged the above said orders dated 18.7.1961 passed by the Collector (Agrarian), declaring 55.89 Std. Acres of land as surplus in his hands and also the appellate order dated 13.8.1961 passed by the Commissioner, Patiala Division, as well as the revisional order dated 14.9.1962 passed by the Financial Commissioner, before this court

by way of CWP No. 835 of 1964, which came to be allowed vide order dated 23.9.1968 appended at Annexure P-2. All the above said orders were quashed and the matter was remanded to the Collector (Agrarian), with a direction to determine afresh the surplus area in the hands of Pritam Singh, who was petitioner No. 1 in CWP No. 835 of 1964. Nobody challenged this order dated 23.9.1968 (Annexure P-2) passed by this court any further and the same became final between the parties.

5. In the interregnum, the land which was declared surplus in the hands of Pritam Singh i.e. 55.89 Std. Acres was allotted to the tenants-private respondents herein, vide order dated 28.1.1963. Vide order dated 12.6.1963 (Annexure P-1), Assistant Registrar-cum-Managing Officer, Department of Rehabilitation, Punjab, allotted to Pritam Singh 55.12 Std. Acres on quasi permanent basis and 35.13 1/4 Std. Acres on temporary basis, subject to verification of his land left in Pakistan. It is pertinent to note here that this was the same land i.e. 92.12 Std. Acres, which was earlier allotted to Pritam Singh. Pursuant to the orders dated 23.9.1968 (Annexure P-2) allowing CWP No. 835 of 1964 (Pritam Singh and another v. Financial Commissioner, Punjab and others), Pritam Singh applied to the Collector (Agrarian) for restoration of the area to him, which had been allotted to the tenants-private respondents herein.

6. On the application moved by Pritam Singh, Collector (Agrarian) Rajpura, passed the order dated 18.4.1969 (Annexure P-4) observing that since the earlier orders passed by the authorities had been quashed by this court, directing for redetermination of surplus area afresh, would mean that no area was surplus in the hands of Pritam Singh. He ordered restoration of possession to Pritam Singh from the sitting allottees i.e. private respondents. Reply to the above said application moved by Pritam Singh seeking restoration of possession, was filed on behalf of the State of Punjab through Naib Tehsildar (Agrarian), Patiala, who submitted that although declared surplus area was allotted to some persons, yet possession thereof was not taken by the State till that time. This reply dated 7.7.1967 is appended at Annexure P-5. Tenants private respondents No. 5 to 29 filed an appeal, which was dismissed by the Commissioner, Patiala Division, vide order dated 27.8.1969 and 21.4.1971 (Annexure P-6) (colly). Orders dated 21.4.1971 were challenged before the Financial Commissioner by way of revision petition, which was also dismissed vide order dated 28.10.1971 (Annexure P-7). It is also the pleaded case of the petitioners that in the meantime, possession was delivered back to Pritam Singh on 23.11.1970 in compliance of the above said orders (Annexure P-4) dated 18.4.1969 passed by the Collector (Agrarian).

7. It is also pertinent to note that during this time, Pritam Singh filed Civil Writ Petition No. 768 of 1973 before the Hon'ble Supreme Court of India, under Article 32 of the Constitution, challenging vires of Section 32KK of the Pepsu Act, claiming:- (i) that Section 32KK of the Pepsu Act was ultra vires the Constitution; (ii) he should be granted compensation for the land left by him in Pakistan, thereby challenging the vires of Rule 51 of Displaced Persons (Compensation and

Rehabilitation) Rules, 1955. The Hon''ble Supreme Court, vide its order dated 27.4.1973 (Annexure P-3) stayed the re-determination proceedings, which were going on before the Collector (Agrarian) in compliance of the orders dated 23.9.1968 (Annexure P-2) passed by this court.

8. When the matter was pending before the Hon''ble Supreme Court, Pritam Singh died on 30.3.1983. The above said CWP No. 768 of 1973 filed by Pritam Singh under Article 32 of the Constitution was dismissed by the Hon''ble Supreme Court on 24.9.1986. Thereafter, private respondents filed an application on 8.5.1987 before the Collector (Agrarian) for restoration of possession on the ground of dismissal of writ petition of Pritam Singh by the Hon''ble Supreme Court. On the other hand, legal representatives of Pritam Singh filed an application dated 29.6.1987 before the Collector (Agrarian) claiming redetermination of the surplus area case, in their hands, after the death of Pritam Singh. After hearing both the parties at length, Collector (Agrarian) vide his detailed order dated 25.8.1987 (Annexure P-8) allowed the application of legal representatives of Pritam Singh, the petitioners herein, whereas the application of tenants-private respondents for restoration of possession was dismissed. Petitioners were directed to file their declaration afresh on or before 12.5.1988. Dissatisfied, private respondents filed their appeal before the Commissioner, Patiala Division, who dismissed the same, vide order dated 28.9.1987 (Annexure P/9-A). However, Collector (Agrarian) moved a reference before the Commissioner, seeking a review of the order dated 25.8.1987 passed by his predecessor, but the same was declined by the Commissioner, Patiala Division, vide order dated 16.4.1992 (Annexure P-9). The orders dated 28.9.1987 (Annexure P/9-A) and orders dated 16.4.1992 (Annexure P-9), both passed by the Commissioner, Patiala Division were since not challenged either by the private respondents or by the State, became final between the parties.

9. Thereafter, in compliance of the order dated 23.9.1968 (Annexure P-2) passed by this court and the orders dated 16.4.1992 (Annexure P-9) passed by the Commissioner, Patiala Division, Collector (Agrarian) vide impugned order dated 27.5.1993 (Annexure P-10) re-determined the surplus area case holding that death of Pritam Singh will be of no effect and declared 59.89 Std. Acres as surplus i.e. the same area, which was declared as such, vide initial order dated 18.7.1961, in the hands of Pritam Singh, during his life time. This order dated 27.5.1993 (Annexure P-10) passed by the Collector (Agrarian) was challenged by the petitioners by way of appeal before the Commissioner, Patiala Division, but the same was dismissed, vide impugned order dated 17.11.1993 (Annexure P-11). Their revision was also dismissed by the Financial Commissioner, vide order dated 17.8.1994 (Annexure P-12). Hence this writ petition.

10. Notice of motion was issued directing the parties to maintain status-quo with regard to possession and pursuant thereto, separate written statements on behalf of official respondents No. 1 to 4 and private respondents were filed. Petitioners filed their replication. Thereafter, case was admitted for regular

hearing. That is how, this court is seized of the matter.

11. Sh. K.S. Sidhu, learned Senior counsel for the petitioners submits that while passing the order dated 23.9.1968 (Annexure P-2), this court quashed all the three orders dated 18.7.1961 passed by the Collector (Agrarian), Rajpura, order dated 13.8.1961 passed by the Commissioner, Patiala Division and the order dated 14.9.1962 passed by the Financial Commissioner, Punjab. Case was remanded directing the Collector (Agrarian) to determine afresh the surplus area in the hands of Pritam Singh- predecessor-in-interest of the petitioners, as the area allotted on temporary basis could not have been considered for declaring any area as surplus. The writ petition was allowed by this court granting benefit to the petitioners u/s 51(1)(b) of the Pepsu Act, which was not even considered by the respondent authorities, while passing the impugned orders. Similarly, area which was submerged in water due to river action was also not considered.

12. He further submits that the private respondents, to whom the land was allotted, would have no locus standi in the matter because in compliance of the orders dated 23.9.1968 passed by this court vide Annexure P-2, even possession was also restored to the petitioners which is clear from orders dated 18.4.1969 (Annexure P-4) and reply of the State dated 7.7.1987 (Annexure P-5). The appeal as well as revision filed by the private respondents were also dismissed, vide orders appended at Annexure P-6 (colly) passed by the Commissioner, Patiala Division and the orders appended at Annexure P-7 dated 28.10.1971 passed by the Financial Commissioner. The above said orders passed by the Financial Commissioner were not challenged by the private respondents and became final, duly recognising the right of the petitioners for restoration of their possession over the land in dispute.

13. He next contended that it was a matter of record that Pritam Singh died on 30.3.1983 and the mutation of inheritance was sanctioned in favour of the petitioners. Till the death of Pritam Singh, the land in question was not utilised because the earlier orders had been set aside by this court, vide its order dated 23.9.1968 (Annexure P-2). Learned Senior counsel submits that after coming into force the Punjab Land Reforms Act, (for short "the Act 10 of 1973"), land of the petitioners was required to be redetermined u/s 4 read with Section 5(1) and Section 7, even if it was to be determined in the hands of Pritam Singh in compliance of the orders dated 23.9.1968 (Annexure P-2) passed by this court. No redetermination took place till the death of Pritam Singh. Thereafter, redetermination of the surplus land, if any, was to be decided in the hands of legal representatives of Pritam Singh, which has not been done by the respondent authorities, thereby causing serious prejudice to the petitioners. In support of his arguments, learned counsel for the petitioners relies upon the Full Bench judgments of this court in Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, which was affirmed by the Hon''ble Supreme Court in Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, , Sardara Singh and Others Vs. The Financial Commissioner and Others,

(Full Bench), Ajit Kaur and Others Vs. The Punjab State and Others, (Full Bench) as well as Bhupinder Singh Vs. State of Punjab and Others, , Naresh Saran and others Vs. Financial Commissioner Haryana and others, and the judgment dated 16.2.1989 in CWP No. 2512 of 1984 (Rajinder Singh and another v. State of Punjab and others). He finally prays for setting aside the impugned orders, by allowing the present writ petition.

14. Per contra, Sh. R.B.S. Chahal, learned counsel for some of the private respondents submits that Pritam Singh was a displaced person with a verified claim, because of which land was allotted to him. His area was declared surplus and was utilised. The nature of allotment in favour of Pritam Singh, whether it was temporary or quasi permanent basis would not make much difference. He strenuously argued that the order dated 23.9.1968 (Annexure P-2) passed by this court was a procured order. He painstakingly argued further that after dismissal of the Writ Petition No. 768 of 1973 by the Hon"ble Supreme Court of India, the order dated 23.9.1968 (Annexure P-2) passed by this court would become non existent. He next contended that Pritam Singh had filed another writ petition before this court at earlier point of time, challenging the vires of Section 32-KK of the Pepsu Act and that writ petition was dismissed, as pointed out in the order dated 23.9.1968 (Annexure P-2) itself.

15. Regarding utilisation of the surplus area, he submits that once the land was allotted to the private respondents, the utilisation was complete. He concluded by submitting that after dismissal of the writ petition of Pritam Singh by the Hon"ble Supreme Court, the order dated 23.9.1968 passed by this court was no more required to be followed by the respondent authorities, who have rightly passed the impugned orders, because the principle of merger would apply. To buttress his arguments, learned counsel relies upon the judgments reported as Dunichand Hakim and Others Vs. Deputy Commissioner (Deputy Custodian Evacuee Property) Karnal, State of Punjab and Others, , Financial Commissioner, Haryana and others v. Smt. Kela Devi and another, 1980 PLJ 121, Ajit Kaur and Others Vs. The Punjab State and Others, , Bhagwan Singh and Others Vs. State of Punjab and Others, , Mala Singh Vs. Financial Commissioner and others, Mohan Lal Sharma Vs. The Central Government and Others, . Niranjan Kaur and Others Vs. The Financial Commissioner, Revenue and Secretary to Government and Others, , Battan Singh and others v. Smt. Rakhi, 1982 Kunhayammed and Others Vs. State of Kerala and Another, , Smt. Daya Wanti Vs. Yadvindra Public School and Others, and Amarjit Singh and Others Vs. Financial Commissioner, Taxation, Punjab, Chandigarh and Others,

16. Sh. Harsh Aggarwal, learned counsel for some of the private respondents submits that before passing of the order dated 23.9.1968 (Annexure P-2) passed by this court, allotment in favour of Pritam Singh had become quasi permanent, because of which he was not entitled for exemption u/s 51 (1) (b) of the Pepsu Act. He further submits that death of Pritam Singh would be of no consequence because the land stood utilised in view of the provisions contained in Section

32E, F and J of the Pepsu Act. After the possession was taken from Pritam Singh, the land vested in the State u/s 32E and the utilisation thereof was complete u/s 32J of the Pepsu Act. Thereafter, Pritam Singh would have no right whatsoever. Tenants-private respondents purchased the land for due consideration, paid the amount and third party rights came to be created in their favour. The right which came to be vested in the private respondents was never set aside by any court. To substantiate his arguments, he relies upon the judgment of the Hon''ble Supreme court in Bhagwan Singh and Others Vs. State of Punjab and Others, as well as of this court in Nirbhay Singh and others v. State of Haryana and others, 2003 (2) PLJ 1 (DB) and Baldev Singh and others v. State of Punjab and others, 2009(1) RCR (Civil) 355.

17. Learned counsel for the State supports and reiterates the arguments raised by learned counsel for the private respondents. He also relies on the

same judgments and prays for dismissal of the writ petition.

18. Learned Senior counsel for the petitioners, while refuting the arguments raised by learned counsel for the respondents, again submits that since the prayer made before the Hon''ble Supreme Court was totally different, the same had nothing to do with the writ petition filed before this court, which was decided vide order dated 23.9.1968 (Annexure P-2). Since admittedly none of the parties challenged the order dated 23.9.1968 (Annexure P-2) passed by this court and had become final between the parties, there was no scope of applying the rule of merger. He seriously objected to the allegations that the order dated 23.9.1968 (Annexure P-2) was a procured order. He further submits that the utilisation, if any, would be set at naught by the order Annexure P-2 passed by this court.

19. Once the possession, if any given to the private respondents, had been restored back to the petitioners pursuant to the orders Annexures P-6 and P-7, which became final, the private respondents go out of the picture and would have no locus standi in the matter. So far as the stand of the State was concerned, it had become clear at the time of passing of the order dated 25.8.1987 (Annexure P-8) and order dated 16.4.1992 (Annexure P-9). He concluded by submitting that since the impugned orders have not dealt with the nature of allotment, effect of the river action, death of Pritam Singh after coming into force the Act 10 of 1973 and above all, the directions issued by this court, vide order dated 23.9.1968 (Annexure P-2), the impugned orders were liable to be set aside.

20. Having heard the learned counsel for the parties at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the rival contentions raised, this court is of the considered opinion that in the given fact situation of the present case, the instant writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

21. On the basis of pleadings of the parties and the arguments raised on their

behalf by their respective counsel, following are the questions that fall for consideration of this court:-

(i) Whether the petitioners were entitled for the benefits flowing in their favour, as a consequence of meticulous compliance of the orders dated 23.9.1968 (Annexure P-2) passed by this court, allowing their earlier writ petition, which had become final between the parties, de-hors the dismissal of their Writ Petition No. 768 of 1973 by the Hon"ble Supreme Court filed under Article 32 of the Constitution of India ?

(ii) Whether the death of Pritam Singh on 30.3.1983 would affect the surplus area, as the final determination thereof could not take place during his life time, in compliance of the order dated 23.9.1968 (Annexure P-2) passed by this court and legal representatives of Pritam Singh would be entitled for redetermination of surplus area, in their hands ?

(iii) Whether after coming into force Act 10 of 1973 the land was required to be redetermined under Chapter II thereof, in the hands of Pritam Singh and after his death in the hands of his legal representatives, as the land could not be redetermined during the life time of Pritam Singh ?

22. The provisions of law, which are relevant for decision of instant matter and also relied upon by learned counsel for the parties, are contained in Section 32-E-32-F, 32-J, 32-KK and 51(1)(b) of the Pepsu Act and Section 11(5) and (7) of the Act 10 of 1973 and the same read as under:-

32-E-Vesting of surplus area in the State Government Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV after the date on which the final statement in respect of landowner or tenant is published in the official gazette, then

(a) in the case of the surplus area of a landowner, or in the case of the surplus area of tenant which is not included within the permissible limit of the landowner such area shall on the date on which possession thereof is taken by or on behalf of State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest including the contingent interest, if any recognised by any law, custom or usage for the time being in force of all persons in such land shall be extinguished and such rights title and interest shall vest in the State Government free from encumbrances created by any person; and

(b) in the case of the surplus area of a tenant which is included within the permissible limits of the landowner, the right and interest of the tenant in such area shall stand terminated.

Provided that, for the purpose of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government.

32-F-Power to take possession of surplus area

(1) The Collector may by order in writing, at any time after the date on which the final statement in respect of landowner or the tenant or any other person in possession of the surplus area to deliver possession thereof within ten days of the service of the order on him to such person as may be specified in the order.

(2) If the landowner or the tenant or any other person in possession of the surplus area refused or fails without reasonable cause to comply with the order made under sub section (1), the Collector may take possession of the surplus area and may for that purpose use such force as may be necessary.

32-J Disposal of surplus area -

(1) The surplus area acquired u/s 32-E shall be at the disposal of the State Government.

(2) The State Government may, by notification in the official gazette, frame a scheme for utilising the surplus area by allotment to tenants willing to cultivate land personally or to landowners or tenants owning or holding land not exceeding five standard acres in order to make their holding equal to five standard acres and to landless agricultural workers or for the development of cooperative farms or seed farms or efficient management of land.

(3) Any scheme framed by the State Government under sub-section (2) may provide for the terms and conditions on which the land in the surplus area are to be utilised by allotting to tenants and fixing the area of land to be allotted shall form part of the scheme namely:-

(a) tenants who are liable to ejectment and entitled to allotment of alternative land u/s 7A and

(b) landowners or tenants owning or holding land not exceeding five standard acres in order to make their holdings equal to five standard acres and landless agricultural workers.

(4) The terms and conditions on which the land, in the surplus area are to be allotted, shall include payment of the prescribed amount for the land in a lump sum or in annual instalments spread over twenty years.

Explanation:- The said amount shall be prescribed by the State government having regard to the condition that the aggregate amount of compensation payable by the State Government for surplus area which is acquired.

(5) The State Government may by notification in the official Gazette, add to, amend, vary, or revoke and scheme made under this section.

32-KK-Land owned by Hindu undivided family to be deemed land of one landowner.

Notwithstanding anything contained in this Act or in any other law for the time

being in force.

(a) where, immediately before the commencement of this Act, a landowner and his descendants constitute a Hindu undivided family, the land owned by such family shall for the purposes of this Act, be deemed to be the land of that landowner and no descendant shall as member of such family, be entitled to claim that in respect of his share of such land he is a landowner in his own right, and

(b) a partition of land owned by a Hindu undivided family referred to in clause (a) shall be deemed to be a disposition of land for the purposes of Section 32-FF.

23. Before proceeding further to consider and decide the above said questions, it is pertinent to refer to the operative part of the order dated 23.9.1968 passed by this court vide Annexure P-2, whereby CWP No. 835 of 1964 filed by Pritam Singh and his son Kuldip Singh was allowed and the same reads as under:-

Before me, the learned counsel for the petitioner submitted that in 1961 when the land was declared surplus, the entire allotment in favour of petitioner No. 1 was on temporary basis and the provisions of the Pepsu Tenancy and Agricultural Lands Act did not apply to that land in view of the provisions of Section 51(1)(b) of the Act. It is only after the allotment was made quasi-permanent that the Act became applicable and it was then that he became entitled to reserve his permissible area. There is force in this argument of the learned counsel. Out of the allotted area, 55 standard acres 12 units were made quasi-permanent on June 12, 1963, while the remaining area of 91.9 standard acres was made quasi-permanent by order dated September 26, 1964. For this reason the proceedings for the determination of the surplus area in the hands of petitioner No. 1 had to be taken against after giving the right to the petitioner of reserving his permissible area. The proceedings taken before the allotment was made quasi-permanent were without jurisdiction and hence void. The petitioners have also alleged in the petition that a substantial area of the allotment of petitioner No. 1 has become lost due to the action of river Ghaggar and, therefore, that area has to be excluded from his permissible area. This matter will be considered by the Collector, Agrarian, during the course of fresh proceedings that he is being directed to take for the declaration of surplus area in the hands of petitioner No. 1 in accordance with law.

For the reasons given above, this petition is accepted, the order dated 18th July, 1961 (Annexure "A") of the Collector, Agrarian, Rajpura, order dated 13th August 1962 (Annexure "B") of the Commissioner, Patiala Division and the order dated 18th April 1964 of the learned Financial Commissioner Planning, Punjab (Annexure "H") are quashed and the Collector, Agrarian is directed to determine afresh the surplus area in the hands of petitioner No. 1 in accordance with law. In the circumstances, I leave the parties to bear their own costs.

24. A bare reading of the above said order passed by this court would show that the earlier orders dated 18.7.1961 passed by the Collector (Agrarian), Rajpura

declaring 55.89 Std. Acres as surplus under the Pepsu Act, in the hands of Pritam Singh, as well as the appellate and revisional orders dated 13.8.1962 passed by the Commissioner, Patiala Division and the order dated 18.4.1964 passed by the Financial Commissioner (Planning), Punjab, respectively upholding the order dated 18.7.1961 of Collector (Agrarian), were set aside by this court. Once all these three orders stood quashed by this court allowing the writ petition filed by Pritam Singh and his son Kuldip Singh, remanding the matter back to the Collector (Agrarian) with a direction to determine afresh the surplus area in the hands of Pritam Singh and this order became final between the parties, the natural consequences would follow. The resultant effect of the orders passed by this court would be that the order dated 18.7.1961 declaring the area surplus, vesting of the land in the State, followed by the allotment orders in favour of private respondents, thereby utilising the surplus area, would become inoperative and ineffective for all intents and purposes. De-novo proceedings for redetermination of surplus area would start.

25. A bare combined reading of above said provisions of law contained in Pepsu Act as well as the Act 10 of 1973 read with the above said orders dated 23.9.1968 (Annexure P-2) passed by this court, would make it crystal clear that the initial order dated 18.7.1961 passed by the Collector (Agrarian), which was further upheld by the Commissioner and the Financial Commissioner, had since been set aside by this court, the same would become non-existent for all intents and purposes. Once the initial order dated 18.7.1961 passed by the Collector (Agrarian) declaring the surplus area was set naught by this court, the revenue authorities were duty bound to start the proceedings afresh, so as to redetermine the surplus area.

26. After having passed the above said order dated 23.9.1968 (Annexure P-2) by this court, Pritam Singh applied to the Collector (Agrarian) for restoration of the possession of the area, which was declared surplus vide orders dated 18.7.1961. On the application moved by Pritam Singh, Collector (Agrarian), Rajpura, ordered the restoration of possession in favour of Pritam Singh, vide his order dated 18.4.1969 (Annexure P-4) and the relevant part thereof, reads as under:-

Application of the applicant-petitioners has been considered today. As per the orders of the Punjab and Haryana High Court, the orders passed by the authorities in this case have been quashed. Copy of order of High Court is on the record. It has been ordered that surplus area of the petitioner may be determined afresh which means that no area of the petitioners is surplus because of the previous order having been quashed. Therefore, order is made for giving back possession to the petitioners from the sitting allottees.

27. In compliance of the above said order, possession was handed over to Pritam Singh on 23.11.1970. Feeling aggrieved, private respondents filed their appeal before the Commissioner against the above said order dated 18.4.1969 reproduced above, but their appeals were dismissed vide Annexure P-6 (colly) dated 27.8.1969 and 21.4.1971. Then they went before the Financial

Commissioner by way of revision but the same was also dismissed, vide orders dated 28.10.1971 (Annexure P-7). The positive and cogent findings recorded by the Financial Commissioner, read as under:-

The orders passed by the High Court are not before me. It is, however, not in dispute that the original order determining the surplus area has been set aside. It is, therefore, immaterial as to whether the orders determining the surplus area were set aside on one or the other ground. The fact remains that there is no order determining the surplus area of the landowner. The allotment of the area was made to the petitioners on account of the fact that the same was included in the landowner's surplus area. The allotment cannot be obviously stand if there is no order determining the surplus area. It is, no doubt, correct that the petitioners have been put to considerable hardship in view of the litigation which has gone on for a considerable period. The landowner cannot, however, be denied the possession of the area which was allotted to the petitioners.

A similar question came up for consideration in *Harnam Singh and others v. Hazara Singh and others*, (1965 PLJ P. 14). It was held that-

Where the declaration of surplus area was set aside and the case remanded for fresh decision, held, whatever the circumstances in which the original order declaring the area surplus with landowner has been reversed and whatever the ultimate decision that is taken in regard to such surplus area, if any, the fact remains that at present there is no area of the landowner which is surplus. The position would be different if the decision finally is that part of his holding is in fact surplus but until that happens no area with him can be treated as surplus.

28. In the interregnum, Pritam Singh filed Writ Petition No. 768 of 1973 before the Hon'ble Supreme Court under Article 32 of the Constitution, challenging the constitutional validity of Section 132KK of the Pepsu Act. He also sought compensation for the land left by him in Pakistan, challenging Rule 51 of the Displaced Person (Compensation and Rehabilitation) Rules, 1955. Initially, the Hon'ble Supreme Court granted stay vide order dated 27.4.1973 (Annexure P-3). However, finally, the writ petition was dismissed by the Hon'ble Supreme Court vide order dated 24.9.1986. During pendency of his writ petition before the Hon'ble Supreme Court, Pritam Singh died on 30.3.1983. After dismissal of the above said writ petition by the Hon'ble Supreme Court, private respondents moved an application dated 25.8.1987 before the Collector (Agrarian) for restoration of possession, whereas legal representatives of Pritam Singh filed application dated 29.6.1987 before the Collector ((Agrarian) requesting that after the death of Pritam Singh, the land may be redetermined in their hands. Application of both the parties were considered and the Collector (Agrarian), after discussing factual as well as legal aspect of the matter in detail, passed his order dated 25.8.1987 (Annexure P-8) holding that after passing of the order dated 23.9.1968 by this court, there was no surplus area so far as land owner was concerned. Once there was no surplus area, there was no scope of any utilisation thereof. The operative part of the order dated 25.8.1987 passed by the

Collector (Agrarian), Rajpura, reads as under:-

I have considered the arguments put forth by the Id. Counsel by the parties and Naib Tehsildar, Agrarian and perused the record. A perusal of the record shows that according to the direction of the Hon. Punjab and Haryana High Court dated 23.9.1968, the Collector, Agrarian was to determine afresh the surplus area in the hands of the land owner Pritam Singh. When the proceedings for declaring the area surplus afresh were going on, before the Collector, Agrarian, Rajpura, the land owner filed the Writ Petition in the Hon. Supreme Court of India, challenging the Constitutional Validity of the vires of Section 32-KK of the Pepsu Tenancy and Agricultural Lands Act, 1955 and Rule 51 of the Displaced Person (Compensation & Rehabilitation) Rules, 1955 as being a violative of the fundamental right guaranteed under Article 14 of the Constitution.

As the orders of the Collector, Agrarian dated 18.7.61 under which the surplus area was declared as surplus of this land owner have been set aside by the Hon"ble Punjab and Haryana High Court and no fresh assessment has been made by the Collector, Agrarian Rajpura. The case has naturally to be decided afresh after the dismissal of the Writ Petition in the Supreme Court of India.

As regards the utilisation of the surplus area, it may be stated that only symbolic possession was given to the allottees and physical/actual possession has never given. The report dated 25.8.87 of the Patwari/Kanungo shows that no entry about the allotment of possession exists to the Revenue Record. The Naib Tehsildar, Agrarian, Patiala, who filed a written statement dated 7.2.87 on behalf of the State has admitted that the surplus declared land has not been taken possession by the State so far. As a matter of fact after the order dated 27.9.68 was passed by the Hon. Punjab and Haryana High Court there was no surplus area so far as the land owner was concerned and fresh determination of the surplus area has not been made so far. Therefore the possession even if given to the allottees has no meaning in the eyes of law.

It is a fact admitted by the parties that Pritam Singh land owner died on 30.3.83 when the proceedings in the surplus area case were pending. As discussed above the land has not been utilised and therefore in the ruling in case of Ranjit Singh v. State are applicable in this case. It is, therefore, ordered that the heirs of Pritam Singh should file returns of their holdings so that action to declare any land surplus in their hands could be taken. They should file these returns upto 15.9.1987, when the case should come up for further action.

29. Private respondents filed appeal before the Commissioner against the above said order dated 25.8.1987 (Annexure P-8) passed by the Collector (Agrarian), Rajpura. The appeal filed by private respondents came to be dismissed by the Commissioner, Patiala Division vide his order dated 28.9.1987 (Annexure P/9-A). The Commissioner, Patiala Division, while dismissing the appeal of private respondents vide his order dated 28.9.1987 (Annexure P/9-A) rightly held as under:-

4. I have considered the plea of the learned counsel and find no force in it. A bare reading of the order dated 23.9.68 of the High Court of Punjab and Haryana, a copy of which is on the file, shows that Mr. Justice Tuli had held that proceedings taken before in favour of Pritam Singh or made quasi permanent were without jurisdiction and hence void. He had, therefore, quashed all the orders including the order dated 18.4.1964 of the Financial Commissioner and directed that the surplus area be determined afresh. In view of the finding that there was no legally assessed surplus area, whatever allotments were made out of the area owned by Pritam Singh, stood extinguished as on 23.9.1968. The allottees could have some rights only if and when any surplus area was determined afresh with Pritam Singh in accordance with the order of the High Court. Later on the proceedings were stayed by the order of the Supreme Court of India. As such when the landowner died on 30.3.1983 his surplus area had not been determined. Accordingly, as per case law laid down on the point it is necessary to assess the area with each of the heirs of Pritam Singh to decide as to whether any of them holds land over and above permissible limit. The impugned order of the Collector is, therefore, quite correct and in accordance with law. The appeal is dismissed in limine.

30. In the meantime, Collector (Agrarian) made a reference before the Commissioner, Patiala Division, seeking review of the orders dated 25.8.1987 (Annexure P-8) passed by his predecessor. However, this reference also came to be dismissed by the Commissioner, vide his orders dated 16.4.1992 (Annexure P-9), holding as under:-

I have heard both parties at length and have gone through the record of the case carefully. I agree with the learned counsel for the landowners that since this court has already passed orders on the same subject, this review application should be dismissed. Accordingly, this review application is dismissed and the Collector, Agrarian, Rajpura is directed to determine the surplus area afresh, as directed by the High Court in its order dated 23.9.1968 and according to the case law applicable to the facts of this case.

31. So far as the nature of allotment in favour of Pritam Singh was concerned, it was being treated by the State authorities themselves as temporary allotment. In this regard, the communication as late as dated 9.3.1995 (Annexure P/9-B), reads as under:-

To S. Kuldeep Singh s/o Pritam Singh , Resident of Rajgarh, Teh. Rajpura.

Sub: For cancelling the area of temporary allottees situated in village Rajgarh, Khasra No. 1280/976, 1262/977, 1278/978, 1282/979, 971, 977, 973, 974, 975, 980, 983, 984, 985, 986, 987, 988, 989, 1286/900, 1990/990, 991-992, 993, 1293/994, 1295/994, 995, 999, 1000, 1302/1001, 1304/1000, 1306/1002, 1003, 1004, 1005, 1006, 1007, 1008, 1009, 1012, 1081, Fields 40, Total 149-9.

You are hereby informed on the subject noted above through this notice that the above area which was allotted to you in village Rajgarh in this respect you are to

produce proof in respect of the said allotment which you may do on 27.3.95 during working hours in the office of Tehsildar (Sales) Rajpura. In case of not producing of any such proof regarding temporary allotment, the area mentioned in the subject noted above, would be cancelled.

Sd/- Tehsildar Sales-cum-M.O. Rajpura 9.3.95

32. Thereafter, in compliance of the above said orders dated 23.9.1968, passed by this court and the subsequent orders passed by the Commissioner and the Financial Commissioner, Collector (Agrarian) Rajpura, proceeded on a wholly misconceived and perverse approach, while passing the impugned order dated 27.5.1993 (Annexure P-10) holding that the land measuring 55.89 Std. Acres was rightly declared surplus in the hands of Pritam Singh, vide order dated 18.7.1961, altogether ignoring the above said orders passed by this court, vide which the initial order dated 18.7.1961 passed by the Collector (Agrarian) had been set aside by this court. He also illegally held that after the death of Pritam Singh, his legal heirs were not entitled for redetermination of the surplus area in their hands. The misconceived and illegal findings recorded by him in paras 8 and 13 of the order, read as under:-

8. I have heard the learned counsel for the parties and Naib Tehsildar (Agn.), Patiala for the State and have gone through the record carefully. As per judgment of the Hon"ble High Court dated 23.9.1968, this court has been directed to determine afresh the surplus area in the hands of only Pritam Singh son of Beant Singh, in accordance with the law. The said Pritam Singh land owner died on 30.9.1983. As the matter remained pending, the death of the said Pritam Singh is to be ignored and the surplus area is to be determined qua the said Pritam Singh, land owner. The learned counsel for the land owner has argued that as the said Pritam Singh has died, the land is to be considered in the hands of his heirs and that as per mutation dated 25.9.1984 the said Pritam Singh has left the legal heirs namely Kuldip Singh son, Mohinder kaur, Tirath Kaur and Taran Kaur daughters. He has further stated that if the holdings of Pritam Singh land owner now deceased is considered in the hands of his heirs, no surplus area is left with the L.Rs. of the said Pritam Singh, but this contention is misconceived because as per judgment of the Hon"ble High Court dated 23.9.1968, the surplus area is to be considered qua the said Pritam Singh and the death of the said Pritam Singh has no effect on the surplus area because the land declared surplus has already been utilised.

13. I, therefore, hold that an area measuring 55.89 Std. Acres was rightly declared as surplus and the possession of the same was duly taken by the State. The land was allotted to the eligible persons and the possession thereof was also delivered to the allottees. The land has been fully utilised and, as such, the death of Pritam Singh has no effect on the case and his heirs cannot get any benefit after the death of Pritam Singh, u/s 32-FF of the Pepsu Tenancy & Agrl. Lands Act, 1955.

33. Similarly, Commissioner, Patiala Division, while dismissing the appeal of the petitioners fell into serious error of law, while passing his impugned order dated 17.11.1993 (Annexure P-11). In fact, he recorded his contradictory findings, which were against the record also. The findings recorded by the Commissioner, Patiala Division, read as under:-

I have gone through the arguments of the appellants as well as the arguments given by the respondents in writing which are on the file. I find that the Hon''ble High Court of Punjab and Haryana quashed the earlier proceedings on the ground that the land in the hands of Pritam Singh was allotted on a temporary basis and could not be made the basis for determining surplus area and on no other grounds. There after Pritam Singh went to the Supreme Court who stayed the proceedings in the case but finally the Hon''ble Supreme Court dismissed the appeal of Pritam Singh and thus the situation reverted back to the point where it stood at the time when the Hon''ble High Court passed its orders dated 23.9.1968. At that time Pritam Singh stood as land owner and the surplus area was to be determined on the basis of land held by Pritam Singh. Not doing so would amount to disobeying the High Court''s order. It is purely coincidental that due to the stay order issued by the Supreme Court, the matter could not proceed from 27.4.1973 till 24.8.1987 and it is also equally coincidental that Pritam Singh died on 30.3.1984, during the pendency of the stay order. Now his heirs have come to try to gain advantage of this stay in the proceedings and the death of Pritam Singh to have the surplus area declared separately on the basis of the lands inherited by them from Pritam Singh individually, because if it is so done then there will be no surplus. The stay by the Supreme Court and the death of the land owner are purely subsequent events which cannot be allowed to contravene the intention and order of the High Court which stands.

Moreover, the Supreme Court dismissed the appeal of Pritam Singh landowner, therefore, there is no justifiable reason to now accept an inheritance which took place due to the death of Pritam Singh during pendency of the same appeal. In case the inheritance is accepted it will tantamount to negating the Supreme Court''s decision in which an appeal against the land Reforms Law was dismissed.

34. Again, the Financial Commissioner misdirected himself, while dismissing the revision petition filed by the petitioners against the above said orders of the Commissioner, Patiala Division. He passed the impugned order dated 17.8.1994 (Annexure P-12), as if he was totally unaware about the above said orders dated 23.9.1968 (Annexure P-2) passed by this court. The operative part of the impugned order passed by the Financial Commissioner, reads as under:-

Viewed in the facts and circumstances of the present case I have no hesitation in agreeing with the learned counsel for respondent No. 3 and the Senior State counsel that there is no occasion for redetermining surplus area in respect of the holding of original landowner (Pritam Singh) after his death.

In the light of my observations in the foregoing paragraphs I come to the

conclusion that the land allotted to respondents No. 2 to 25 cannot be reckoned to belong to the petitioners who are legal heirs of the original big landowner (Pritam Singh) during whose life time it stood utilised according to law. Therefore, there is no occasion for redetermination of surplus area in the hands of the petitioners. With these observations the revision petition is hereby dismissed in limine.

35. A combined reading of the above said impugned orders would show that the respondent authorities measurably failed to ensure the meticulous compliance of the orders passed by this court. They had tried to justify their initial order dated 18.7.1961, which had already been set aside by this court. While passing the three impugned orders contained as Annexures P-10, P-11 and P-12 passed by the Collector (Agrarian), Commissioner, Patiala Division and the Financial Commissioner respectively, they proceeded on wholly misconceived, illegal and perverse approach. They failed to appreciate and follow the true import of the orders passed by this court. Once the initial order dated 18.7.1961 passed by the Collector (Agrarian) declaring 55.89 Std. Acres as surplus in the hands of Pritam Singh and also the orders passed by the Commissioner, as well as the Financial Commissioner upholding the order of the Collector (Agrarian) had been quashed by this court, remanding the matter back to the Collector (Agrarian) for redetermination of the area, the respondent authorities were bound to follow the judgment of this court, in its letter and spirit. However, they failed to do so. Having said that, this court feels no hesitation to conclude that the impugned orders are patently illegal and cannot be sustained.

36. The respondent authorities, before passing the impugned orders Annexures P-10, P-11 and P-12, proceeded on a wholly erroneous approach, while ignoring their own earlier orders, particularly the order dated 18.4.1969 (Annexure P-4) passed by the Collector (Agrarian), restoring the possession back to the petitioners from the private respondents, order dated 21.4.1971 (Annexure P-6) passed by the Commissioner and order dated 28.10.1971 passed by the Financial Commissioner upholding the above said orders dated 18.4.1969 of the Collector (Agrarian). Further, orders dated 25.8.1987 (Annexure P-8) passed by the Collector (Agrarian) holding that after passing of the order dated 23.9.1968 (Annexure P-2) by this court, there was no surplus area so far as landowner was concerned, was altogether ignored illegally by the Collector (Agrarian), while passing the impugned order Annexure P-10, inspite of the fact that there was no change in the fact situation of the case.

37. The orders dated 28.9.1987 (Annexure P/9-A) passed by the Commissioner, Patiala Division upholding the order dated 25.8.1987 (Annexure P-8) and another order dated 16.4.1992 (Annexure P-9) passed by the Commissioner, Patiala Division dismissing the application of Collector seeking permission to review his above said order dated 25.8.1987, have also been ignored by the respondent authorities, while passing the impugned orders. What to talk of discussing and appreciating their own earlier orders, referred to herein above, there is not even

a passing reference of the earlier orders in the impugned orders passed by the respondent authorities. In this view of the matter, it is held that the respondent authorities fell in serious error of law, while passing the impugned orders Annexures P-10, P-11 and P-12, which have been found just contrary to the true import of the order dated 23.9.1968 (Annexure P-2) passed by this court, therefore, the impugned orders cannot be sustained for this reason also.

37. A. It goes without saying that the respondent authorities, before passing their respective impugned orders, were duty bound, nay, under legal obligation to obey and meticulously complied with the order dated 23.9.1968 (Annexure P-2) passed by this court. However, the respondent revenue authorities have failed to comply with the orders (Annexures P-2) passed by this court. They have also failed to take into consideration very material development i.e. the death of Pritam Singh on 30.3.1983, during the pendency of surplus area proceedings, pursuant to the above said orders dated 23.9.1968 (Annexure P-2) passed by this court. In the given facts and circumstances of the case, death of Pritam Singh was bound to affect the surplus area because the final determination of the surplus area could not take place during the life time of Pritam Singh.

38. The natural consequence of the death of Pritam Singh was that redetermination of surplus area, proceedings for which could not be concluded during his life time, was to be decided afresh in the hands of his legal representatives, because the legal representatives of Pritam Singh could not be said to be at fault in this regard, by any stretch of imagination. Since the respondent authorities have miserably failed to consider and appreciate this material aspect of the matter, while passing their respective impugned orders, the same have resulted in serious miscarriage of justice and cannot be sustained.

39. Similarly, the respondent authorities again fell in serious error of law, while not taking into consideration the material change in the codified law. After coming into force the Act 10 of 1973, the land was required to be redetermined under Chapter II thereof, in the hands of Pritam Singh and after his death in the hands of his legal representatives, because the land could not be redetermined during the life time of Pritam Singh. Since the respondent revenue authorities have also failed to delve deep into this aspect of the matter, the impugned orders cannot be sustained for this reason, as well.

40. The thrust of arguments raised by learned counsel for the respondents was that since the land initially declared surplus vide order dated 18.6.1961 passed by Collector (Agrarian), Rajpura, came to be vested in the State and thereafter stood utilised by its allotment in favour of the private respondents, there was no illegality committed by the respondent authorities, while passing the impugned orders. This argument raised by learned counsel for the respondents seems to be attractive at the first blush, however, when deeply examined, has been found to be wholly misplaced and bereft of any merit. It is so said be-cause once the initial order dated 18.6.1961 passed by the Collector (Agrarian) and also the appellate as well as revisional orders upholding it, were set aside by this court,

vide order dated 23.9.1968 (Annexure P-2), the fact of declaring the land surplus, its vesting in the State as well as its utilisation would be set at naught. Thereafter, the only option left with the respondent authorities was to start the de-novo proceedings for redetermination of the surplus area. In fact, the respondent authorities as well as the learned counsel for the respondents have failed to appreciate the true import of the orders dated 23.9.1968 (Annexure P-2) passed by this court, which was meant to be meticulously complied with in its letter and spirit.

41. The argument raised by Sh. R.B.S. Chahal, learned counsel for some of the private respondents that the order dated 23.9.1968 (Annexure P-2) passed by this court was a procured order, is not at all in good taste, however, this court would like to restrain itself to comment upon any further in this regard. Similarly, the next argument of Sh. Chahal that after dismissal of the Writ Petition No. 768 of 1973 by the Hon''ble Supreme Court, the order dated 23.9.1968 (Annexure P-2) passed by this court would become non-existent, is again wholly misconceived. Admittedly, the order dated 23.9.1968 passed by this court as Annexure P-2 was never challenged by any of the parties before the Hon''ble Supreme Court. The writ petition filed by Pritam Singh before this court, as pointed out in the order dated 23.9.1968 (Annexure P-2) at page 51 of the paper book, as well as the Writ Petition No. 768 of 1973 filed before the Hon''ble Supreme Court, under Article 32 of the Constitution of India, wherein vires of constitutional validity of Section 32-KK of the Pepsu Act were challenged and dismissal of both the writ petitions by this court as well as by the Hon''ble Supreme Court, cannot be said to have any adverse affect on the order dated 23.9.1968 (Annexure P-2) passed by this court allowing CWP No. 835 of 1964 (Pritam Singh and another v. State of Punjab and others).

42. There is no scope of any such confusion. Reason is very simple and it is that all the orders passed by this court as well as by the Hon''ble Supreme Court of India were clearly independent of each other. The next argument raised by Sh. Chahal that after the dismissal of Writ Petition No. 768 of 1973 by the Hon''ble Supreme Court, under Article 32 of the Constitution of India, there was no necessity to comply with the orders dated 23.9.1968 (Annexure P-2) passed by this court because the principle of merger would apply, is again misconceived and without any force.

43. No principle of merger applies here. The order dated 23.9.1968 passed by this court was never under challenge before the Hon''ble Supreme court because Writ Petition No. 768 of 1973 was filed by Pritam Singh before the Hon''ble Supreme Court of India, under Article 32 of the Constitution. The judgments relied upon by Sh. Chahal in support of his above said contentions are of no help to him, being clearly distinguishable on facts. The crux of the arguments of Sh. Chahal, learned counsel for some of the private respondents, being that the order dated 23.9.1968 (Annexure P-2) passed by this court as well as the death of Pritam Singh were avoidable, since contrary to the true facts of the case as

well as the law applicable thereto, the same are liable to be rejected.

44. The arguments raised by Sh. Aggarwal, learned counsel for some of the private respondents that Pritam Singh was not entitled for the benefit u/s 51(1) (b) of the Pepsu Act is without any merit. Similarly, his next contention that in view of the vesting of land in the State and its utilisation, after having been declared surplus vide initial order dated 18.7.1961, the order dated 23.9.1968 passed by this court, as well as the death of Pritam Singh will not change the factual as well as legal position, has also been found fallacious.

45. As noticed in the foregoing paragraphs, once the initial order dated 18.7.1961 passed by the Collector (Agrarian) and upheld by the Commissioner as well as by the Financial Commissioner, had been set aside by this court, vide order dated 23.9.1968 (Annexure P-2), status quo ante had to be restored, as it stood before 18.7.1961. The judgments cited by Sh. Aggarwal are also of no help to him, because the same are distinguishable on facts. It is so said because in none of the judgments relied upon by learned counsel for the respondents, initial order passed by the Collector (Agrarian) was set aside by this court remanding the matter back for de-novo proceedings, as had been directed in the instant case. That makes the whole difference.

46. Learned counsel for the State also supported the arguments raised by learned counsel for the private respondents. He relies on the same judgments. Thus, his arguments have also been found to be without any substance for the same reasons, recorded herein above. Had the initial order dated 18.7.1961 passed by the Collector (Agrarian) and upheld by the Commissioner as well as the Financial Commissioner would not have been set aside by this court, in that situation, the common arguments raised by learned counsel for the respondents would have been certainly worth acceptance. In that eventuality, even the death of Pritam Singh would not have made any difference.

47. However, the most important development which has taken place in the present case and sought to be ignored by learned counsel for the respondents was the order dated 23.9.1968 (Annexure P-2) passed by this court, whereby the earlier orders declaring the land as surplus, in the hands of Pritam Singh, had been set aside. The immediate resultant effect of the order Annexure P-2 passed by this court would be that the latter proceedings arising out of the initial order dated 18.7.1961, including vesting of the land in the State and its utilisation by way of allotment in favour of private respondents would be set at naught. Once that is so, it has to be treated that the initial orders dated 18.7.1961 passed by the Collector (Agrarian) and all the subsequent proceedings thereto had become non existent. Further, as per the clear directions issued by this court, vide order dated 23.9.1968 (Annexure P-2), the Collector (Agrarian) was bound to redetermine the surplus area, in strict compliance of the orders passed by this court.

48. It is the settled proposition of law that peculiar facts and circumstances of

each case are to be examined, considered and appreciated first before applying any codified or judge made law thereto. Sometimes, one additional fact or circumstance can make the world of difference, as held by the Hon''ble Supreme Court in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . The most important additional and material fact in the present case is the judgment dated 23.9.1968 (Annexure P-2) passed by this court, setting at naught the initial order dated 18.7.1961 passed by the Collector (Agrarian) declaring the land surplus in the hands of Pritam Singh.

49. The aforesaid view taken by this court also finds support from the following judgments of this court reported as Ajit Kaur and Others Vs. The Punjab State and Others, Ranjit Ram Vs. The Financial Commissioner, Revenue Punjab, Chandigarh and Others, Naresh Saran and others Vs. Financial Commissioner Haryana and others, and Sardara Singh and Others Vs. The Financial Commissioner and Others,

50. While interpreting sub-sections (5) and (7) of Section 11 of the Act of 1973, the Hon''ble Full Bench in Ajit Kaur's case (supra) made the following observations in paras 11 and 12 of the judgment, which aptly apply here:-

11. Keeping the above principle of harmonious construction in view, the question of primary importance is as to how the two subsections (5) and (7) of Section 11 be harmonised. The interpretation suggested by the substantial provision in sub-section (5) regarding acquisition of land by heirs in consequence of inheritance. Such an interpretation is obviously impermissible. Both these provisions can be worked harmoniously by interpreting sub-section (7) that this provision will be attracted only in cases where the surplus area is declared by the Collector for the first time under the Act of 1973. If surplus area in the hands of a landowner was declared under the Punjab Law or the Pepsu Law, but the landowner died before the enforcement of the Act of 1973, the acquisition by heirs will be saved under sub-section (5) and the surplus area will have to be redetermined in the hands of the heirs under the Punjab Law or the Pepsu Law or even the Act of 1973, as the case may be. However, once the surplus area was determined by the Collector under the Act of 1973 whether for the first time because no such order had been passed under the previous laws or after the death of the landowner subsequent to the order regarding surplus area, the acquisition of land by the heirs will not be saved under sub-section 5) and sub-section (7) will be fully attracted. This interpretation is also borne out by the express provision in sub-section (7) which is in the following terms:

Where succession has opened after the surplus area or any part thereof has been determined by the Collector, the saving specified in favour of an heir by inheritance subsection (5) shall not apply in respect of the area so determined

12. It will be noticed that the emphasis in this provision is that the succession will have no effect on the surplus area which has been "determined by the Collector." A close perusal of the provisions of the Punjab Law makes it evident

that the authority which is entrusted with the power of selecting the permissible area or determining the surplus area in the hands of a landowner is not the Collector. Under sections 5A, 5B and 5C, the authority which has been given the power is referred to as the prescribed authority or the "authority as may be prescribed." In section 10 the authority referred to is the Assistant Collector. Even the word "Collector" as used in sub-section (7) of Section 11 of the Act of 1973, has not been defined under the Punjab Law. Under the Act of 1973, on the other hand, in section 3(3), the term "Collector" has been given a specific definition. u/s 7, it is the "Collector" who has the jurisdiction to determine the permissible area and the surplus area, of a landowner or a tenant, as the case may be. The phraseology adopted in the Punjab Law, Pepsu Law and the Act of 1973, with regard to the determination of surplus area leaves no manner of doubt that according to the scheme of the Act of 1973, sub-section (7) of Section 11 is applicable only to those cases in which surplus area is determined by the Collector under this Act only and not under the Punjab Law or the Pepsu Law. By interpreting the two provisions as embodied in sub-sections (5) and (7) of section 11, as discussed above, the purpose and object of the Act of 1973 is fully achieved and the apparent contradiction is resolved.

51. Similarly, the observations made by the Hon'ble Full Bench in para 7 of the judgment in Ranjit Ram's case (supra), which can be gainfully followed in the present case, read as under:-

7. As already observed, even if the land of a landowner has been declared surplus, either under the Punjab Law or under the Pepsu Law and if the land of landowner has not been utilised and further has not been purchased by the tenants in case of Punjab Law and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu Law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land u/s 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab Law or the Pepsu Law, which has not been utilised till the commencement of the Reforms Act, shall on the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State Government free from all encumbrances. It would thus be seen that such landowners' surplus area shall vest in the State Government on the date of taking of possession by the State Government u/s 8 of the Reforms Act and till then the landowners are not divested of the ownership of the surplus land. Thus, if a landowner owns or holds of the Reforms Act, his case shall have to be processed again by the Collector and the determination of the permissible area and the surplus area has to be according to the mandate of sections 4 and 5 of the Reforms Act. Subsection (1) of section 4 of the Reforms Act contains a clear bar that no person shall own or hold land in excess of the permissible area and when the case is re-processed by the Collector, the permissible area as provided for in sections 4 and 5 of the Reforms Act has to be allowed to the landowner. It may be observed that the permissible area as defined under subsection (2) of

section 4 of the Reforms Act is subject to the provisions of Section 5 of the Reforms Act. This is so because a clear provision has been made to this effect in sub-section (1) of section 4 of the Reforms Act. u/s 5 of the Reforms Act if a landowner has an adult son, he shall also be entitled to select separate permissible area in respect of such son out of the land owned or held by him, subject to the condition that the land selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son. It would thus be seen that merely because the case of a landowner had already been processed under the Punjab Law or the Pepsu Law would not be a bar for the application of the provisions of section 4 read with section 5 of the Reforms Act. The provisions of sub-section (1) of section 5 of the Reforms Act entitles the landowner to select permissible area for his adult son from the land owned or held by him in addition to the permissible area of the family. It is clear that the rest of the provisions made in sub-sections (1) and (2) of section 5 of the Reforms Act are procedural. A landowner has been given option to furnish a declaration containing his selection of permissible area in which he is bound to include, firstly, land mortgaged with possession and secondly, land under self-cultivation. However, under the provisions of subsection (2) of section 5 of the Reforms Act, a landowner cannot have preference to include the land declared surplus under the Punjab Law, the Pepsu Law other than the area which was exempt from utilisation by the State Government immediately before the commencement of the Reforms Act. The contention raised by the learned counsel for the State that since the area which has been declared surplus under the Punjab Law or Pepsu Law, other than which was exempt from utilisation, cannot be preferred to be included in the declaration for reservation of the permissible area, therefore, landowner is not entitled to select permissible area for his adult son from the land so declared surplus, is really without any merit. As already observed, the permissible area of a landowner as defined in subsection (2) of Section 4 of the Reforms Act, is subject to the provisions of section 5. Section 5 entitles the landowner to select permissible area for his adult son in addition to the permissible area of his family. The right of the landowner to get permissible area for his adult son in addition to the permissible area of the family, cannot be held to be taken away merely by his not filing a declaration u/s 5 of the Reforms Act, the Collector has been enjoined upon to obtain requisite information in the prescribed manner in accordance with the provisions of section 6 of the Reforms Act. Section 7 of the Reforms Act enjoins duty on the Collector to pass an order determining the permissible area and the surplus area of a landowner or a tenant, as the case may be. It cannot be successfully contended that in case a landowner fails to make declaration u/s 5 of the Reforms Act, his adult son will not be given permissible area by the Collector when an order is passed u/s 7 of the Reforms Act. The failure of a landowner to furnish the declaration u/s 5 of the Reforms Act has been made an offence under the provisions of sub-section (2) of section 7 of the Reforms Act and a landowner is liable to be imprisoned for a term which may extend to two years or with fine, which may extend to two thousand rupees, or with both. If the Legislature intended that in a case where

the landowner fails to make declaration, he will not be entitled to get permissible area for his adult son when so determined u/s 7 of the Reforms Act, it would have clearly made provision to this effect in sub-section (2) of section 7. Since landowner has been given right to get permissible area for his adult son as well, omission of the landowner to file the declaration would not take away the right of his entitlement to get permissible area for his adult son in addition to the permissible area of the family. Collector is duty bound while passing an order u/s 7 of the Reforms Act to allow permissible area for the adult son as well. It is clear that the entitlement of the landowner to get permissible area for his adult son is out of the land of the landowner held or possessed by him whether already declared surplus or not. Sub-section (2) of section 5 of the Reforms Act is only procedural section and an omission by the landowner of not filing a declaration u/s 5 of the Reforms Act would not take away his right for getting permissible area for his adult son when the Collector has been enjoined upon u/s 7 of the Reforms Act to pass an order determining the permissible area and the surplus area of a landowner. It may be appropriately observed at this place that the permissible area and surplus area is to be determined keeping in view the provisions of section 4 read with the provisions of subsection (1) of section 5 of the Reforms Act. The combined reading of the said provisions would provide guidelines to the Collector to determine the permissible area or the surplus area of the landowner. I have already come to the conclusion that the remaining provisions of section 5, which deal with the procedure for selection, are procedural and the same cannot be made use of by the Collector u/s 7 so as to nullify the mandatory provisions of section 4 and section 5(1) which define permissible area and surplus area. If the Legislature intended to exclude the land which has already been declared surplus from the operation of the provisions of the Reforms Act, a clear provision would have been made to that effect in section 5(1) of the Reforms Act, but on the contrary I find that the landowner has been entitled to select separate permissible area in respect of his adult son out of the land owned or held by him. As already observed, till the landowner is divested of the rights of ownership, he continues to hold and own the land.

52. Finally, the Hon"ble Full Bench in para 35 of the judgment summarised the law, as under:-

35. For the reasons recorded above, I summarise the following inevitable conclusions:-

(i) That the surplus area declared under the Punjab Law or the Pepsu Law or any part thereof, of which possession was not taken by the State before the commencement of the Act (the Land Reforms Act), can be taken possession of u/s 9 of the Act and the moment possession is taken over by the State, it would vest in the State from that date by virtue of section 8 for being utilised u/s 11 of the Act:

(ii) that a landowner who owns land more than the permissible area under the Act on its commencement would be entitled to select permissible area for himself

as also for his adult sons as provided in section 5(1) of the Act but while making such selection, the landowner shall not be entitled to include any area declared surplus under the Punjab Law, the Pepsu Law or this Act, as provided by section 5(2);

(iii) that in case where out of the surplus area some area was exempted from utilisation by an order of the State Government, the landowner would be entitled to make selection from the exempted surplus area;

(iv) that while determining the permissible area u/s 7(1), even if a landowner fails to file a declaration, as required by section 5(1) of the Act, yet the Collector will have to follow the mandatory provisions of section 5(1) and 5(2) and would provide permissible area to the landowner as also to his adult sons:

(v) that the penalty provided in section 7(2) of the Act would operate while determining the permissible area of the landowner;

(vi) that in case a landowner dies after the determination of the surplus area under the Punjab Law or the Pepsu Law but possession of the same is not taken over by the State before his death, there will be fresh determination of the surplus area in the hands of the heirs and in that eventuality, the State would not be entitled to take possession of the surplus area declared under the Punjab Law or the Pepsu Law, u/s 9 of the Act. However, in case of determination of surplus area under the Act, the aforesaid exception would not apply because of section 11(7) of the Act and notwithstanding the death of the landowner the surplus area can be taken possession of by the State and utilised according to law;

(vii) that while the surplus area is in possession of the landowner, whether declared under the Punjab Law, the Pepsu Law or the Act, if the State Government acquires any part of the land out of the permissible area under any law for the time being in force, which has the result of reducing the permissible area of the landowner, the State will not be able to take possession of the surplus area until surplus area is determined afresh. After the permissible area is allowed to the landowner, the balance would be declared surplus of which alone the State would be able to take possession.

53. The present case, in view of its peculiar facts and circumstances, would be squarely covered under clauses vi and vii of para 35, reproduced above, in Ranjit Ram's case (*supra*). It is so said for more than one reasons. Firstly, the initial order dated 18.7.1961 passed by the Collector (Agrarian) under the Pepsu Act, which was upheld by the Commissioner as well as the Financial Commissioner, had been set aside by this court vide above said order dated 23.9.1968 (Annexure P-2). Secondly, in compliance of the orders passed by this court, possession was ordered to be restored in favour of the petitioners, by the orders passed by the Collector (Agrarian) on 18.4.1969 (Annexure P-4), reproduced above and consequently possession was handed over to Pritam Singh on 23.11.1970.

54. This order dated 18.4.1969 (Annexure P-4) came to be upheld by the Commissioner as well as the Financial Commissioner dismissing the appeal and revisions of the private respondents, vide orders appended at Annexure P-6 (colly) and Annexure P-7, referred to herein above. These proceedings for restoration of the possession in favour of Pritam Singh had been initiated and concluded before coming into force the Act of 1973.

55. Thereafter, no surplus area was redetermined in the hands of Pritam Singh during his life time under the Pepsu Act. After coming into force the Act of 1973 and after the death of Pritam Singh on 30.3.1983, his legal representatives would be entitled for redetermination of the surplus area in their hands. It was so held by the Hon"ble Supreme Court in Ujjagar Singh (Dead) by Lrs. Vs. Collector, Bhatinda and Another, , in which the above said Full Bench of this court rendered in Ranjit Ram"s case (supra) was upheld.

56. Again, the Hon"ble Full Bench in Sardara Singh"s case (supra), in paras 40, 41 and 42 of the judgment, set the controversy at rest. The law laid down by the Hon"ble Full Bench in Sardara Singh"s case aptly applies to the present case and the observations made by the Hon"ble Full Bench, read as under:-

40. The arguments of the learned counsel for Rattan Devi may not be required to be examined in detail because we are harmoniously constructing Section 11(5) and 11(7) of the Act. This necessarily implies that Section 11(7) is not be declared otiose or unworkable, as the learned counsel had tried to advance before us.

41. We are, therefore, of the considered opinion that in order to harmoniously read the two views in Ajit Kaur"s case and to give correct interpretation of the provision of Section 11(5) and 11(7) of this Act, we ought to take the aid of Supreme Court"s judgment in Ajmer Kaur"s case. We hold that until the surplus area has been finally determined by the Collector and appeals/revisions have been dismissed, the death of the landowner would certainly cause affection to the surplus area which would be required to be redetermined in the hands of his heirs.

42. Resultantly, where the surplus area has not been finally determined and the matter is pending in appeals or revisions before the Revenue Courts or before this court under Article 226 of the Constitution or before the Supreme Court of India, death of the landowner would cause affectation of surplus area which would be required to be redetermined in the hands of the heirs of the deceased landowner. Such an interpretation would harmoniously construct the provisions of Section 11(5) and 11(7) and also give a proper interpretation to both the views expressed in Ajit Kaur"s case. However, we are unable to uphold the judgments of this Court in Jasbir Kaur"s case because Ajit Kaur"s case was not at all considered by the Hon"ble Division Bench. As regards Manjit Kaur"s case, even though Ajit Kaur"s case was considered, the majority view had been entirely overlooked.

57. Recapitulating the facts of the present case and respectfully following the law laid down by the Hon''ble Supreme Court as well as in the three Full Bench judgments of this court, referred to herein above, it is unhesitatingly held that in the present case, the petitioners are placed on better footing. The reason is that the initial order dated 18.7.1961 passed by the Collector (Agrarian) declaring the land surplus in the hands of Pritam Singh under the Pepsu Act, had been set aside by this court remanding the matter back to the Collector (Agrarian), to redetermine the surplus area.

58. The Hon''ble Full Bench in Sardara Singh's case (supra) had gone many steps further observing that even if the order passed by the Collector declaring surplus area is subject matter of challenge at any stage upto the Hon''ble Supreme Court of India and the death of big landowner takes place, his legal representatives would be entitled for redetermination of the surplus area, in their hands. In the present case, the petitioners were much better placed because the surplus area could not be re-determined by the Collector (Agrarian), in compliance of the orders passed by this court on 23.9.1968 (Annexure P-2), during the life time of Pritam Singh, which is an admitted fact on record.

59. Further, it is again an undisputed and material fact on record that the possession was restored to the big landowner-Pritam Singh on 23.11.1970, pursuant to the order dated 18.4.1969 (Annexure P-4) passed by the Collector (Agrarian) in compliance of the orders passed by this court. The order dated 18.4.1969 passed by the Collector (Agrarian) was challenged by the private respondents, but their appeal as well as revision came to be dismissed by the Commissioner as well as the Financial Commissioner vide orders appended at Annexure P-6 (colly) and Annexure P-7. In this view of the matter, the irresistible conclusion is and has to be that the ownership as well as possession of the land remained with Pritam Singh till the date of his death i.e. 30.3.1983.

60. After the death of Pritam Singh, the land was mutated in favour of his legal representatives by way of mutation of inheritance, which is again not in dispute, being a matter of record. In view of this, it is held that in compliance of the orders dated 23.9.1968 (Annexure P-2) passed by this court, since the Collector (Agrarian) could not redetermine the surplus area till the date of death of Pritam Singh i.e. 30.3.1983, his legal representatives petitioners herein, were entitled for getting the surplus area redetermined in their hands.

61. In view of the discussion herein above, answer to the question posed above is and has to be in favour of the petitioners holding that the petitioners were entitled for the benefits flowing in their favour, as a consequence of meticulous compliance of the orders dated 23.9.1968 (Annexure P-2) passed by this court, allowing their earlier writ petition, which had become final between the parties, de hors the dismissal of their Writ Petition No. 768 of 1973 by the Hon''ble Supreme Court filed under Article 32 of the Constitution of India.

62. Similarly, the answer to the second question is also in the affirmative holding

that the death of Pritam Singh on 30.3.1983 would affect the surplus area, as the final determination thereof could not take place during his life time, in compliance of the order dated 23.9.1968 (Annexure P-2) passed by this court and legal representatives of Pritam Singh, would be entitled for getting the surplus area redetermined, in their hands.

63. Again, the answer to the third question posed above is an emphatic "yes" in favour of the petitioners. The inescapable conclusion is that after coming into force the Act of 1973, the land was required to be redetermined under Chapter II thereof in the hands of Pritam Singh during his life time and after his death in the hands of his legal representatives, because the land could not be redetermined during the life time of Pritam Singh and also because the possession of the land remained with the petitioners.

64. No other argument was raised.

65. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the impugned orders cannot be sustained.

66. Consequently, the impugned orders dated 27.5.1993 (Annexure P-10) passed by the Collector (Agrarian), Rajpura, Distt. Patiala-respondent No. 4, orders dated 17.11.1993 (Annexure P-11) passed by the Commissioner, Patiala Division, Patiala-respondent No. 3 and orders dated 17.8.1994 (Annexure P-12) passed by the Financial Commissioner (Appeals), Punjab respondent No. 2, are hereby ordered to be set aside. However, it is made clear that although there remains hardly any scope for finding any land surplus in the hands of the legal representatives of Pritam Singh, because during the pendency of the writ petition, even his son Kuldip Singh has died and his legal representatives have been brought on record, yet the Collector (Agrarian) would be at liberty to proceed further in the matter, in accordance with law, for the purpose of redetermination of the surplus area, in the hands of the legal representatives of Pritam Singh. Resultantly, with the observations made and directions issued herein above, the present writ petition stands allowed, however, with no order as to costs.