

(1976) 06 SHI CK 0011

In the High Court Of Himachal Pradesh

Case No : C.W.P. No"s. 4, 12, 23 of 1974, 9, 12, 28, 345 to 347 of 1975 and 6, 50, 51 and 52 of 1976

Rajkumar Rajindra Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-06-1976

Acts Referred:

Constitution of India, 1950 — Article 15, 15(1), 245, 246(2), 254
Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 1, 14, 3, 4, 4(1)

Citation : AIR 1976 HP 82 : (1977) ShimLC 132

Hon'ble Judges : R.S. Pathak, C.J;D.B. Lal, J;C.R. Thakur, J

Bench : Full Bench

Advocate : H.S. Thakur, for the Appellant; Adv.-General and Joseph Dina Nath, for the Respondent

Judgement

R.S. Pathak, C.J.—The petitioners in this and the connected writ petitions challenge the validity of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 and the proceedings taken thereunder.

2. It may be mentioned that after a preliminary hearing of the writ petitions we found it desirable, in view of the nature of the questions raised before us, that learned counsel for the parties should file a written statement of their submissions and learned counsel were informed that during the oral hearing of the writ petitions they would be confined to the points set out in their respective statements. Written statements of submissions have been filed by Shri R.N. Malhotra, Shri H.S. Thakur and Shri K.D. Sud and they have orally argued their case on that basis. Learned counsel for the remaining petitioners have adopted the submissions so made.

3. The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter-referred to as "the impugned Act") was passed by the Himachal Pradesh Legislative Assembly on December 21, 1972 and received the assent of the President of India on July 10, 1973, Subsequently it was amended by the

Himachal Pradesh Ceiling on Land Holdings (Amendment) Ordinance, 1973, published in the Himachal Pradesh Rajpatra (Extraordinary) of October 3, 1973. The Ordinance was replaced by the Himachal Pradesh Ceiling on Land Holdings (Amendment) Act, 1973. On September 7, 1974 Parliament enacted the Constitution (Thirty-fourth Amendment) Act, 1974 and thereby inserted the impugned Act as Entry 73 in the Ninth Schedule to the Constitution.

4. At the outset, a conspectus of the impugned Act would be in order. As its Long Title indicates, the Act is intended to consolidate and amend the laws relating to a ceiling on land holdings in the State of Himachal Pradesh. Section 2 declares that it is for giving effect to the policy of the State towards securing the principles specified in Clauses (b) and (c) of Article 39 of the Constitution of India. Broadly, the impugned Act provides for the separation of the area of the land holdings which a person may retain (the "permissible area") from the remaining area (the "surplus area") which vests in the State Government for the purpose of disposal in accordance with the impugned Act. Section 4 lays down the principles on which the permissible area of a person or a family has to be determined. A person has been defined by Section 3 (m) to mean a "landowner, tenant and mortgagee with possession", and the expression includes "a company, a family, and association or other body of individuals, whether incorporated or not, and any institution capable of holding property". A family has been defined u/s 3 (e) to mean a "husband, wife and their children or any one or more of them." For the purpose of determining the permissible area, land has been divided into different categories, land under assured irrigation capable of growing two crops in a year, land under assured irrigation capable of growing one crop in a year and other lands including land under orchards. Different ceilings have been prescribed for the three categories. A larger permissible area has been contemplated in respect of land in certain agriculturally poorer regions of the State. Sub-sections (1) and (2) of Section 4 prescribe the permissible area for a person or a family consisting of a husband, wife and three minor children. By virtue of Sub-section (3) the permissible area of a family has been increased by one-fifth of the permissible area under Sub-sections (1) and (2) for each additional minor member of a family subject to the condition that the aggregate permissible area does not exceed twice the permissible area of a family under Sub-sections (1) and (2). Under Sub-section (4), every adult son of a person is treated as a separate unit. By reason of Sub-section (6), where a person is a member of the family, land held by him together with the land held by all the members of the family will be taken into account for the purpose of calculating the permissible area. Section 6 provides that no person shall be entitled to hold land within the State of Himachal Pradesh exceeding the permissible area on or after the appointed day, i.e. January 24, 1971. Section 7 declares that transfers by persons holding land in excess of the permissible area, except a bona fide transfer, made after the appointed day will not affect the right of the State Government to the surplus area to which it would be entitled but for such transfers. The Collector has been empowered to determine whether a transfer is

bona fide or not and his decision has been made final. Section 8 entitles a person to select land, within the limits of his permissible" area, which he desires to retain. Returns will be filed, and on the basis of the information before him, the Collector is required to prepare a draft statement setting out various particulars, including the land to be retained and the surplus land. After considering objections to the draft statement, it is to be finalised under Sub-section (3) of Section 10. The surplus area so determined is deemed, u/s 11, to have been acquired by the State Government for a public purpose. In respect of such surplus area the landowner is entitled to compensation u/s 14. The surplus area vesting in the State Government is intended for allotment to landless persons or persons whose holding is less than one acre. That is Section 15. Then there are the usual miscellaneous provisions.

5. The first contention on behalf of the petitioners is that the impugned Act (as enacted originally) and its Amending Ordinance of 1973 are void inasmuch as Article 111 of the Constitution has not been complied with. It is said that when the Himachal Pradesh Ceiling on Land Holdings Bill, 1972, as originally passed by the Himachal Pradesh Legislative Assembly, was presented to the President of India for his assent the President conveyed his assent thereto on condition that certain amendments suggested by him should be effected. It is said that pursuant to those instructions the Amendment Ordinance of 1973 was passed thereafter. It is urged that under Article 111 the President could either assent to the Bill or withhold his assent, that conditional assent had no meaning in law and in the result, the Bill never became law. There is nothing on the record before us to indicate that the President gave conditional assent to the Bill. It is true that the Amendment Ordinance recites that it has been issued after obtaining the instructions of the President to promulgate it. Those instructions constitute a requirement envisaged by the proviso to Article 213 (1) of the Constitution, which declares that the Governor shall not, without instructions from the President, promulgate an Ordinance if an Act of Legislature of the State containing the same provisions would, under the Constitution, have been invalid unless, having been reserved for the consideration of the President, it has received the assent of the President. In the absence of any material to show that Article 111 was not complied with, this contention must fail.

6. The second contention on behalf of the petitioners is that material provisions of the impugned Act violate Articles 14, 15, 19, 26 and 31 of the Constitution. It is urged that for the purpose of determining the permissible area, Section 4 creates an invidious distinction between an adult son and an adult daughter, between a major son and a minor son, between a landowner having a major son and a landowner having a minor son or daughter, between a son whose father is living and a son whose father is dead, between different kinds of land, land under assured irrigation and land not under assured irrigation, that no consideration has been paid to the circumstance that the land may be ban-jar or private forest and the yield of the land has not been kept in view, and that certain regions of the State have been given a larger permissible area based on

no relevant consideration. It is also contended that the definition of "orchard" in Section 3 (k) creates discrimination inasmuch as it excludes land under Banana orchard, Guava and vine-yards, and Section 5 exempts tea estates from the application of the Act. It is said that the concept of a "family" in Section 3 (e) which confines the family to "husband, wife and their minor children" is an artificial and arbitrary concept. It is claimed that under the Act a wife has been deprived of the right to hold land. It is also urged that inasmuch as the expression "person" has been defined to include a mortgagee it is unreasonable and gives rise to discrimination. It is also pointed out that as the ceiling on land has been imposed with effect from the appointed day and the impugned Act came into force from a later date, no account has been taken of those minors who attained majority during the intervening period. It is then urged that Section 14, which provides for compensation, contravenes Article 31 of the Constitution, the compensation being wholly illusory and no compensation being provided in respect of trees standing on the land. Some of the writ petitions have been filed by religious institutions owning land, and on their behalf it is said that their right to own and administer immovable property guaranteed by Article 26 of the Constitution has been violated. It will be noticed that the aforesaid submissions rest on an assertion by the petitioner of their rights under Part III of the Constitution. The respondents contend that because the impugned Act has been entered in the Ninth Schedule to the Constitution it is protected by Articles 31-B and 31-C of the Constitution, and the aforesaid challenge must fail. They do not refer to Article 31-A.

7. As is apparent, a number of points raised on behalf of the petitioners concern themselves with the interpretation and scope of the provisions of Section 4 of the impugned Act. It is, therefore, appropriate that those provisions be examined without more ado.

8. At the outset, it will be seen that Section 4 is concerned with the determination of the permissible area. That defines its purpose, and sets the limits within which its scope has to be determined. The different sub-sections of Section 4 constitute a single scheme, each of the sub-sections forming a constituent component of the scheme, the entire object of which is the determination of the permissible area. It is the permissible area in the case of a person or a family. And it is the permissible area in respect of the landholding of such person or family. It is the landholding of such person or family alone which forms the subject-matter of Section 4, and the several sub-sections lay down the principles for the mathematical computation of the permissible area in respect of such land-holding. Section 4 is not concerned with the landholding of any other person or family nor with the transfer of the rights of one landholder in favour of another. The only transferee from the landholder is the State Government. With this as the scope of Section 4, the true construction of its sub-sections can be easily reached, and accordingly the validity of the contentions advanced before us can be readily evaluated.

9. It is urged that Sub-section (4) of Section 4 provides that an adult son of a person shall be treated as a separate unit entitled to a share in the landholding while an adult daughter has not been granted such a right. That, it is said, constitutes discrimination on the ground of sex alone, and therefore Sub-section (4) violates Article 15 (1) of the Constitution. Sub-section (4) provides:--

"Every adult son of a person shall be treated as a separate unit and he shall be entitled to the land upto the extent permissible to a family under Sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-sections :

Provided that where the separate unit owns any land, the same shall be taken into account for calculating the permissible area for that unit."

10. If we bear in mind what has been said above of the object and scope of Section 4, it will be apparent that when Sub-section (4) speaks of treating an adult son as a separate unit, it intends that in the process of determining the permissible area available to the landholder out of the landholding belonging to such landholder, the extent of the permissible area will be the area prescribed for the landholder under Sub-sections (1) and (2) enlarged by an equally extensive area by reason of the existence of each adult son. The entire permissible area represents the land which the landholder can retain out of the related landholding. The additional area is added on the fiction that so much more land out of the landholding is required as a provision in the hands of the landholder in respect, of an adult son or sons.

11. When Sub-section (4) recites that the adult son shall be entitled to the land.....", that is merely in aid of the fiction mentioned above. The object remains the mathematical computation of the permissible area in the case of the landholder out of his landholding. To what extent will the permissible area of such landholder be enlarged by virtue of this principle? For every adult son add the area specified in Sub-sections (1) and (2), so however that the aggregate land worked out on the basis of Sub-sections (1), (2) and (4) does not exceed twice the permissible area specified under Sub-sections (1) and (2). There is one proviso, and that is that when you compute the area to be added by reason of the existence of an adult son you must, for the purpose of such computation, take into account the land actually belonging to such son. The extent of his land is involved as a factor in the determination of the land which the landholder is entitled to retain out of his own landholding; it in no way affects the extent and continuity of rights of the son in his own land.

12. On the aforesaid construction of Sub-section (4) of Section 4, when it is clear that no right to a share is created thereby in favour of the son in the landholding of the landholder, no question can arise of any discrimination between a son and a daughter. It is possible that a landholder with an adult son becomes entitled, by virtue of Sub-section (4), to a larger permissible area than a landholder with

no adult son but with an adult daughter. But even there, it cannot be said that the landholder suffers discrimination on the ground of the landholder's sex. Further, if an adult son alone is mentioned in Sub-section (4) as a factor determining the permissible area of the landholder, it is explained by the circumstance that in the average Indian family a daughter is usually married off and has left the family by the time she attains adulthood. It is reiterated that the presence of an adult son is relevant only for the purpose of determining the extent of the permissible area available to the landholder; it does not affect the rights of the son and daughter on succession. It may be noted that in *Sucha Singh Bajwa Vs. The State of Punjab*, a Full Bench of the Punjab and Haryana High Court repelled a similar contention as the one before us.

13. The next submission is that a distinction has been drawn between a minor son and a major son, that whereas for a minor son the increase of the permissible area is only one-fifth, in the case of an adult son the permissible area is as much as that of the landholder himself. Here again, it is necessary to remember that it is not the minor son or the major son who acquires rights in the property of the landholder by virtue of Sub-sections (3) and (4) of Section 4; reference to them is made in those sub-sections only for the purpose of enlarging the permissible area available to the landholder out of his own landholding. The only role which the minor son or adult son plays is as a mathematical factor employed for computing the permissible area available to the landholder; they acquire no rights in the landholding of such landholder by virtue of Sub-sections (3) and (4) of Section 4. Consequently, no question of discrimination arises between a minor son and an adult son. It is true that a family with an adult son will be entitled to a larger permissible area than a family with a minor son, but that difference is rational and justified by the fact that the family with an adult son has need of greater income than one with a minor son. It cannot be denied that greater resources are required to meet the needs of an adult son than of a minor son. It must be remembered that the ceiling is imposed from the "appointed day", a fixed point in time, and the needs of the family are to be assessed with sole reference to that point of time. It is immaterial that the minor son will one day grow up into an adult son. What the scheme of the Act contemplates is the needs of the family crystallised with reference to one particular day, the "appointed day".

14. It is also urged that a discrimination has been effected between a son whose father is living and a son whose father is dead. The submission is difficult to appreciate. A son whose father is living or a son whose father is dead will be treated either as an individual person or as member of a family, depending on whether the landholding in question belongs to the individual or the family. An individual person and a family have been treated as two separate entities for the purposes of determining the permissible area.

15. It is then urged for the petitioners that a discrimination has been imposed between different kinds of land. It seems to me that account has been taken of

different categories of land by reference to relevant circumstances. Clause (a) of Sub-section (1) of Section 4 refers, to land under assured irrigation capable of growing two crops in a year. The area permitted is 10 acres. Clause (b) relates to land under assured irrigation capable of growing one crop in a year. The area permitted is 15 acres. In the case of land not falling under Clauses (a) and (b), that is land which is not under assured irrigation capable of growing even one crop in a year the area permitted is 30 acres. As regards the regions mentioned in Sub-section (2) of Section 4 the permissible area is 70 acres. That is because the regions mentioned in sub-section (2) are, it cannot be disputed, so extensively barren that they are capable of producing much less than other regions in the State. It is pointed out that no consideration has been paid in sub-section (1) of Section 4 to the effect that certain land may be banjar. Clearly, where the land is not cultivated, it will fall under one or the other clauses of Sub-section (1). By making the provision included in Sub-clauses (a), (b) and (c) of Sub-section (1) a sufficient comprehensiveness has been given to the scheme for the determination of the permissible area. Our attention has been drawn to the observations of the Punjab and Haryana High Court in *Saroj Kumari v. State of Haryana*, AIR 1975 Punj & Har 353 where a Division Bench of that Court has held invalid Rule 5 of the Haryana Ceiling on Land Holdings Rules-, 1972. Having regard to the material placed before as I am not persuaded that similar considerations should prevail with us.

16. It has been contended that the yield of the land has not been kept in view of Section 4 while providing for the determination of the permissible area. It seems to me that the scheme envisaged in Section 4 makes sufficient provision for taking the yield into account. As has been pointed out, in respect of different categories of land the permissible area is calculated on different bases. Sub-sections (1) and (2) bear that out. Sub-section (5) gives detailed consideration to a person holding land of two or more categories described in Clauses (a), (b) and (c) of Sub-section (1) of Section 4 and the permissible area has to be determined on the basis mentioned in Sub-section (5). This contention must also fail.

17. The petitioners urge that the definition of "orchard" in Section 3 (k) imposes an invidious discrimination inasmuch as it excludes land under Banana or Guava gardens or vineyards. It is said that there is no reason why such land should be exempted from the operation of the Act. The submission proceeds on a misconception. Land of that description is excluded from the meaning of the expression "orchard". It is not exempted from the application of the Act. It is land which falls within the definition of that term in Section 3 (f). The Act applies to such land, and the permissible area is to be determined u/s 4 of the Act.

18. The petitioners then point out that Section 5 (9) excludes tea estates from the application of the Act, and they contend that there is no valid basis for discriminating against orchards and other agricultural land. The respondents point out that tea estates are plantations treated on a special basis in view of the

economy of the country as a whole. It seems to me that in excluding tea estates the State Legislature had in mind the considerations which prevailed in the formulation of the live-Year Plans, which have recommended the exemption of tea plantations from the operation of "ceiling laws". Reference to those considerations is referred to with approval by the Supreme Court in *Karimbil Kunhikoman Vs. State of Kerala*, In the circumstances, no ground of discrimination is made out.

19. The petitioners say that while a husband and the children have the right to hold land a wife has been deprived of such right. There is nothing in the Act which can lead to that conclusion. A family, consisting of husband, wife and children has been recognised as a unit for the determination of the permissible area, and the land holding of the family as such is treated for that purpose. If a wife holds land separately in her own right, she is entitled to be treated as an individual person for the purposes of determining the permissible area available to her.

20. It is also contended that the inclusion of a mortgagee with possession within the scope of Section 4 is unreasonable, because a mortgagee has no absolute title in the land. It will be evident from the scheme of the Act that it is concerned with different kinds of rights presently enjoyed in the land, including those which imply a right to possession, and has adopted that basis for the purpose of determining the permissible area. It will be noticed that it is a mortgagee with possession who has been included with the landowner and a tenant in Sub-Section (1) of Section 4. The basis of such inclusion is a matter of legislative policy in respect of which this court cannot constitute itself a judge.

21. The petitioners then say that no account has been taken by the impugned Act in the case of those minors who attained majority between the appointed day and the date on which the impugned Act came into force. The impugned Act fixed upon a certain day. It decided upon January 24, 1971 and called it the "appointed day". That is the day from which the ceiling on land has been imposed. The legislature chose not to take into account those who attained majority after that day. That again is a matter of legislative policy, with which the court is not concerned.

22. These are all the contentions raised on behalf of the petitioners in regard to the contravention alleged of the right of equality. Whether the right is claimed under Article 14 or Article 15, in my opinion, there is no substance in the contentions and they must be rejected.

23. Some of the writ petitions have been filed by religious institutions owning land, and on their behalf it is said that their right to own and administer immovable property guaranteed by Article 26 of the Constitution has been violated. The contention has no force. In *Khajamian Wakf Estates etc. Vs. State of Madras* and *Another*, , the Supreme Court repelled a similar contention that in acquiring the property belonging to a religious denomination the Legislature

violated Clauses (c) and (d) of Article 26. The Supreme Court observed :

"The provisions do not take away the right of the State to acquire property belonging to religious denominations. Those denominations can own, acquire properties and administer them in accordance with law. That does not mean that the property owned by them cannot be acquired. As a result of acquisition they cease to own that property. Thereafter their right to administer that property ceases because it is no longer their property. Article 26 does not interfere with the right of the State to acquire property."

24. Finally, it is contended that the impugned Act contravenes Article 31 of the Constitution inasmuch as the compensation is wholly illusory and no compensation has been provided for trees standing on the land. Section 14 of the impugned Act lays down the principle for determining the compensation payable in respect of the surplus area vesting in the State Government under the impugned Act. For land upto ten acres, the compensation has been prescribed as ninety-five times the land revenue (including rates and cesses) and for land in excess of ten acres and below thirty acres, the compensation will be seventy-five times the land revenue (including rates and cesses). For the remaining land the compensation has been prescribed as forty-five times of the land revenue (including rates and cesses). If the holding or a part thereof comprising surplus area is not assessed to land revenue the land revenue on such land shall be construed as assessed on similar Land in the estate and if not available in the estate then in the adjoining estate or estates, as the case may be. Waste land is required to be treated as banjar land for the purpose of assessment of land revenue and determination of the compensation. The petitioners have not been able to place clear and detailed material before us on the basis of which it can be concluded that the principles laid down in Section 14 lead to the payment of illusory compensation only and that the compensation cannot be said to include compensation for trees standing on the land. Adequate data in that regard is completely wanting in the record before us, and therefore, it is not possible to say that the compensation is illusory and that therefore, there is a breach of Article 31 of the Constitution.

25. To my mind the contentions raised on behalf of the petitioners that their fundamental rights have been impaired or abrogated by the impugned Act have no substance and must fail.

26. In this view of the matter, it is unnecessary to consider whether the respondents can invoke Article 31-B and Article 31-C in protection of the impugned Act.

27. At this stage it would be convenient to deal with another contention raised on behalf of the petitioners. The contention is that the impugned Act is vague and incomplete and, therefore, unworkable. The submission is based on certain observations made by the Punjab and Haryana High Court in *Sucha Singh Bajwa Vs. The State of Punjab*, and *Saroj Kumari and Others Vs. The State of Haryana*

and Another, Construing the provisions of the Punjab Land Reforms Act, 1973 before them in the former case the learned Judges took the view that the land held by each member of the family had to be pooled and as the selection of the permissible area for the families provided in Section 4 (4) of that Act contemplates that the selection is to be made by the husband, and if he is dead, by his wife and, in any other case, by the eldest surviving child, it is open to a person entrusted with the selection to select land from a holding which enures to his advantage and to the detriment of the others. The entire reasoning proceeds on the basis that for the purpose of determining which land will be included in the permissible area and which will be treated as the surplus area has been entrusted to an individual who may be influenced by considerations of self-interest to the prejudice of the rights of other members of the family. That question may arise in a case where the decision by one member of the family affects the rights of other members in their respective holdings. It cannot arise in a case where, upon the view taken by me, the extent of the holding of one landholder is taken into account solely for the purposes of mathematical computation for determining the permissible area of another landholder whose case is under consideration. A determination in such a case will affect the rights of the particular landholder, and will indicate how much and which part of his landholding can be retained by him as permissible area and how much of that landholding and which part of it will vest as surplus land in the State Government. Any decision taken in the case of such a landholder cannot affect the rights of another in the land held by him. Each case is complete and independent in itself. Considerations entering into the determination of the permissible area in a case are relevant only for the decision of that case, even though the data considered may include reference to the extent of the landholding of another person, by virtue of his family relationship. No doubt Sub-section (6) of Section 4 contemplates that where a person is a member of a family, the land held by such family together with the land held by all the members of the family shall be taken into account for the purpose of calculating the permissible area. As is evident, that question can arise only in relation to a family, and according to the view which has prevailed with me the provision is concerned only with the mathematical computation of the permissible area. The basis of the reasoning adopted in *Sucha Singh* (supra) being entirely different, the view taken by the learned Judges in that case cannot, with respect, be accepted in the present writ petitions. For the same reason the basis on which *Saroj Kumari and Others Vs. The State of Haryana and Another*, has been decided cannot be accepted as applicable to these writ petitions. In that case, it was held by the learned Judges that the Act was vague and incomplete and was not workable. The learned Judges proceeded on the basis that the option had been left to the seniormost member of the family to select the permissible area out of the land of other members of the family. It was also pointed out that the Haryana Ceiling on Land Holdings Act, 1972 did not make clear who was the person entitled to compensation, and that no provision had been made in the Act for adjusting the inter se rights of the members of the family in the permissible

area. None of those considerations arise on the con-construction which has found favour with me in respect of the impugned Act before me. I am not satisfied that the contention of the petitioners that the impugned Act is vague and incomplete and; therefore, unworkable can be accepted.

28. At this stage, reference may be made to the submission that the definition of the expression "family" in Section 3 (f) of the impugned Act and the concept of a "family" in Sub-section (1) of Section 4 is artificial, and as it does not include adult members of the family it is invalid. It will be noticed that the definition and the concept referred to have been formulated purely for the purpose of the impugned Act. The measure of the permissible area is defined first by reference to a husband, wife and upto three minor children under Sub-section (1) of Section 4. The measure is enlarged under Sub-section (3) by reference to further minor children. Thereafter, account is taken of adult sons in Sub-section (4). The extent of the permissible area alone is affected by this artificial concept; the existing rights in land included within the permissible area are not affected, and all members of the family holding land continue to enjoy rights therein to the extent of the determined permissible area.

29. The next contention of the petitioners may be noticed now. It is urged that the impugned Act is void for want of legislative competence in the Himachal Pradesh Legislative Assembly. It is pointed out that in its accepted connotation the expression "land" does not include forests, and when enacting legislation in respect of land it was not open to the Legislature to include forests therein. It is pointed out that in List II of the Seventh Schedule, Entry 18 refers to land and Entry 19 refers to forests. It is said that the two entries being separate and distinct from each other a single piece of legislation cannot be enacted. The submission in my opinion proceeds on a fallacy. The Entries in List II of the Seventh Schedule specify the different matters in respect of which the State Legislature is competent to enact legislation. The power to so legislate vests in the State Legislature over the entire area covered by List II. In exercising its legislative power under Article 245 in respect of that area, it is open to the State Legislature to enact a single piece of legislation in respect of the subject-matter of one Entry alone or to include the subject-matter of two or more Entries in a single piece of legislation. No constitutional principle, so far as I am aware, requires the Legislature to enact a single statute in respect of the subject-matter of a single Entry alone. By defining the expression "land" in Section 3 (f) of the impugned Act to include land in its ordinary connotation as well as private forests, the State Legislature has done that which it was competent to do.

30. It is urged that there is a conflict between the impugned Act and the Private Forests Act and, therefore, the impugned Act is invalid. The contention is without force. The two enactments deal with different matters and operate in different fields. There is no conflict between the operation of one Act and the other. The Private Forests Act assumes ownership and operates on that basis. The impugned Act takes away that ownership and removes the very basis on

which the former operates.

31. It has been also contended by the petitioner that the law of succession enacted in the Hindu Succession Act providing for equal shares in the property between a son and a daughter on the death of their father, is altered by Sub-section (4) of Section 4 of the impugned Act. It is urged that the impugned Act is void for that reason. As has already been mentioned, Sub-section (4) of Section 4 has nothing to do with the right of succession. It is concerned merely with the computation of the permissible area.

32. Reference may also be made at this stage to the contention on behalf of the petitioners that a transfer of land valid under the Transfer of Property Act cannot be invalidated by Sub-section (1) of Section 7 of the impugned Act. This contention is also without substance. The impugned Act deals primarily with the transfer of agricultural land. That is covered by Entry 18 in List II of the Seventh Schedule of the Constitution. Where it can be said to deal with the transfer of property other than agricultural land, the matter falls under Entry 6 in List III of the Seventh Schedule. That is the Concurrent List, and the State Legislature is empowered under Article 246 (2) to make laws with respect to such matters, and any inconsistency with the Transfer of Property Act is saved by the assent of the President, by virtue of Article 254 (2) of the Constitution.

33. The next contention on behalf of the petitioners is that Section 7 of the impugned Act is invalid insofar as the Collector has unfettered power to determine whether a transfer made after the "appointed day" is bona fide or not. It is pointed out that by virtue of Sub-section (2) of Section 7 a decision of the Collector in that behalf is to be treated as final. It is urged that in the absence of any guidelines confining the exercise of discretion by the Collector the power so conferred on him must be held void. Now, the question whether a transfer is bona fide or not is essentially a question of fact. A decision on the matter does not call for the application of any involved principle of law nor is there any scope for the play of discretion. If the facts disclose that the transfer is bona fide, the Collector in the exercise of his judgment cannot hold otherwise. In the event the Collector finds that a transfer is not bona fide and in doing so proceeds upon considerations which are wholly irrelevant, the decision rendered by him cannot be regarded as a decision contemplated within the scope of his powers. A decision of the Collector which is void cannot be protected on the assumption that it is final. If, however, the decision rests on relevant material, it falls within the scope of his powers and must be regarded as final. The Legislature has in its wisdom considered it expedient to entrust the responsibility to the Collector of determining whether a transfer is bona fide, and having regard to the nature of the enquiry envisaged no guidelines are required beyond what are already implied by the object and purpose of the impugned Act. That object and purpose is writ large on the face of the enactment.

34. The petitioners then point out that some of the land sought to be covered by the proceedings taken under the impugned Act have already been made the

subject of proceedings under the Land Acquisition Act and, therefore, the proceedings under the impugned Act are invalid. It is pointed out on behalf of the respondents that wherever proceedings under the Land Acquisition Act have been taken and are pending, and it is found that the land is also affected by the operation of the impugned Act, the Collector will consider which of the proceedings he should maintain. Both proceedings are essentially directed to the acquisition of the land. It is open to the Collector to decide which should be preferred. That disposes of this point.

35. In the writ petitions filed on behalf of religious institutions, it is contended that a religious institution is not a "person" within the meaning of Section 3 (n) of the impugned Act and, therefore, the impugned Act does not apply to it. It is urged that it is an artificial entity, and therefore, Section 4 of the impugned Act, which contemplates a husband, wife and children, cannot apply. It seems to me that Section 3 (n), which defines the expression "person", is wide enough and includes "any institution capable of holding property". An institution, it is true, cannot be conceived of as a husband or wife nor can it be considered to have children. A husband, wife and children contemplate the relationship of natural persons. But Section 4 speaks separately of a "person", and a person here means an individual person. A person may be natural or artificial. It would include, according to the definition in Section 3 (n), a religious institution. While the provisions of Section 4, which speak of a family, a husband, wife, an adult son and other children will not be attracted, Sub-sections (1), (2) and (5) will be. Those sub-sections apply in the case of artificial persons also.

36. The petitioners also contend that trees standing on the land can be described as "crop", entitling the landholder to remove them under Sub-section (4) of Section 14 of the impugned Act. Whether or not the expression "crop" includes standing trees is a matter arising on the application of the impugned Act. There are other questions also, similarly involved in the application of the Act, which have been raised in some of the writ petitions. All those questions can be appropriately raised before the Collector in proceedings under the Act and thereafter in appeal and revision u/s 20 of the impugned Act. There is no reason why this court should entertain them at this stage. In *Jabbar Singh v. The Collector*, C. W. P. No. 332 of 1975 (Punj & Har), however, it appears that the petitioners have sought relief against the order of the Financial Commissioner. They have exhausted their remedies available under the Act. In this case, while the questions relating to the constitutional validity of the impugned Act stand disposed of by this judgment, the questions which relate to the application of the impugned Act remain. That case is referred back to a learned single Judge for disposing of in accordance with law.

37. Accordingly, *Jabbar Singh v. The Collector*, C. W. P. No. 332 of 1975 (Punj & Har) is directed to be placed before a learned single Judge for disposal in accordance with the findings and observations contained in this judgment, while this and the remaining writ petitions are dismissed, in the circumstances there is

no order as to costs.

D.B. Lal, J.

38. I agree.

C.R. Thakur, J.

39. I agree.