the tenants-respondents have not even denied it. Rather asserting that the petition was not maintainable, they have taken the plea that they are not liable to pay any amount to the petitioner since his title as *dohlidar*, for some reasons asserted, is not finally settled. Why the status of the petitioner landowner as *dohlidar* is unsettled has not been projected before us. There is no assertion by the tenants that they have paid the rent, or if they had not paid such rent, what was the sufficient cause for non-payment. Thus it appears to us that the tenants-respondents had no other point to urge before the Financial Commissioner except the one which they chose to project before the Financial Commissioner and which he opted to decide. Though it was urged by the learned counsel for the respondents that we must send back the case to the Financial Commissioner for redecision on other questions which may be raisable in the revision petition, yet we are disinclined to accept that prayer as it appears to us that none has been highlighted in the return and none is so raisable. And at the same time recalling the well known Latin phrase *'interest reipublicae ut sit finis litium'*, we have thus chosen to put an end to this long standing dispute.

(19) For the foregoing reasons, this petition is allowed. The impugned order of the Financial Commissioner, Annexure P. 2, is hereby quashed. There would, however, be no order as to costs.

N. K. S.

FULL BENCH.

Before S. S. Sandhawalia, C.J., S. P. Goyal and I. S. Tiwana, JJ.

CHANDER BHAN,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER and others,—*Respondents.*

Civil Writ Petition No. 32 *of* 1980.

November 3, 1981.

Punjab Security of Land Tenures Act (X of 1953)—Sections 6, 10-A, 16 and 18—Some area in the hands of a big landowner declared surplus—Surplus area prior to its determination already sold to

Chander Bhan *v.* The Financial Commissioner and others
(S. S. Sandhawalia, C.J.)

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small landowners—Ejected tenants resettled on the surplus area—Such tenants—Whether to be deemed tenants of the transferees (small landowners)—Right of purchase under section 18—Whether available to these tenants—Protection of section 16—Whether could be claimed by resettled tenants.

Held, that it was not the legislative intent that any and every tenant of an agricultural holding should be converted into its owner. The language of section 18 of the Punjab Security of Land Tenures Act, 1953 and the other provisions thereof do not seem to exhibit any such omnibus radical purpose. The larger triple object of the Act patently was to impose a ceiling on inordinately large holdings, to provide security of tenure to the tenants including the right to be resettled if ejected and thirdly to confer a right of purchase in strictitude only with regard to the surplus area of a big landowner. The right of statutory purchase under section 18 was limited and hedged with two significant pre-conditions. This right was allowed only as against a big landowner. The small landowners below the ceiling limits were absolutely protected against it, however long may have been the period of tenancy of their tenants. Even the big landowners were absolutely protected against this right of statutory purchase as regards the area reserved by them. The statutory right of purchase under section 18 of the Act is a happy compromise or a golden mean between the absolutism of passing of title in land to its tiller only and a feudal claim to own large chunks of land unreservedly without let or hindrance. The ideal which the statute apparently wishes to promote ultimately was that of peasant proprietorship within the ceiling limits. Certainly the object of the Act was not to expropriate small peasants at the hands of tenants whom they might have been compelled to induct because of innumerable circumstances. Keeping in view these objects of the statute there is no warrant for the proposition that a big landowner would be barred in law from transferring any part of the surplus area either on principle or any other statutory provision. Section 16 cannot be stretched and strained to arrive at the fictional construction that a statutory resettled tenant must be imagined to have become the tenant of the original big landowner despite the fact that the area on which he is so resettled had long since been transferred to a small landowner-vendee. Thus, a statutory resettled tenant would become the tenant of the small landowner-vendee, who had earlier purchased the same from a big landowner. Consequently, being the tenant of small landowner he would not satisfy the basic pre-requisite of section 18 and would be disentitled to purchase the land.

(Paras 5, 6, 8, 15 and 20).

Jagdish and Santu *v.* State of Haryana and others, 1980 P.L.J. 398.
Overruled.

Held, that from a reading of sections 6 and 16 together it would be plain that protection was afforded to tenants in cultivation of the land against *mala fide* transfers affected after the 1st February, 1955. However, later a similar protection was thought necessary against similar transfers from the date of the partition of the country. Consequently section 6 provided for protection to the tenants on such land against transfers made after 15th August, 1947 and before 2nd February, 1955. Both sections 6 and 16, however, categorically provide that such a protection was to be accorded to existing tenants. Section 6 uses even more explicit phraseology namely "the rights of the tenants on such land under this Act". Consequently the use of the word "thereon" in section 16 and the aforesaid language in section 6 would leave no manner of doubt that the protection was sought to be given to an existing and known class of tenants in actual cultivation of the land and not to any future and unknown class of tenants either under the statutory schemes of resettlement or inducted by agreement afterwards.

(Para 11).

Case referred by a Division Bench consisting of Hon'ble Mr. Justice S. P. Goyal, and Hon'ble Mr. Justice J. V. Gupta, dated the 24th March, 1981, to a larger bench for decision of an important question of law involving in this case. The larger bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia, and Hon'ble Mr. Justice S. P. Goyal, and Hon'ble Mr. Justice I. S. Tiwana, has finally decided the case on 3rd November, 1981.

G. C. Garg, Advocate, *for the Petitioner.*

M. L. Sarin, Advocate with Mr. R. L. Sarin, Advocates, *for Nos. 2 to 8.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether a tenant statutorily re-settled on agricultural land comprised in the surplus area of the original big landowner is to be fictionally deemed to become the tenant of such a landowner, despite the fact that the land had been sold much earlier to a vendee who was a small landowner — is the somewhat intricate question which has necessitated this reference to the Full Bench. Even more pointedly at issue is the correctness of the view in *Jagdish and Santu* v. *State of Haryana and others* (1) and its discordance with

(1) 1980 P.L.J. 398.

the earlier Full Bench in *Chandi Ram* v. *The State of Punjab and others* (2).

2. The issue aforesaid is the common link in these three writ petitions and specifically arises in the context of the tenants right of statutory purchase under section 18 of the Punjab Security of Land Tennures Act (hereinafter called the Act). It suffices to refer to the fact in *Chander Bhan* v. *Financial Commissioner, Haryana.* Madan Gopal, respondent No. 9 was a big landowner who had sold the land in dispute to respondents Nos. 2 to 8—*vide* registered sale deed executed way back on the 30th of October, 1958. Later, this area measuring 3 Acres comprised in Killa Nos. 11, 12 and 14 of rectangle No. 9 situated in village Sewari was declared surplus in the hands of Madan Gopal respondent in the year 1961. It calls for pointed mention that the sale by Madan Gopal in favour of respondents Nos. 2 to 8 who admittedly were small landowners was ignored for the purpose of the determination of his surplus area, by virtue of the provisions of section 10-A of the Act, Chander Bhan, petitioner who was an ejected tenant was re-settled on the aforesaid surplus area in accordance with the utilisation scheme and its possession was delivered to him on the 12th of June, 1964. On the completion of six years of his tenancy he preferred an application under section 18 of the Act to the Prescribed Authority for its purchase. This application was dismissed by the Assistant Collector, 1st Grade, Gurgaon (the Prescribed Authority) by his order dated the 11th December, 1972, primarily on the ground that the transferees of Madan Gopal (who stood recorded as owners in revenue record) were small landowners and, therefore, the applicant did not satisfy the pre-condition of being the tenant of a big landowner prescribed by section 18. The dismissal of the application was upheld in appeal by the Commissioner and in revision by the Financial Commissioner. He has then filed the present writ petition for quashing the impugned orders of the revenue authorities. The connected C.W.P. No. 33 of 1980 has been preferred by Jai Parshad, another tenant of Madan Gopal whose application for statutory purchase of land over which he was re-settled as ejected tenant was dismissed on similar grounds.

(2) 1974 P.L.J. 251.

3. C.W.P. No. 2438 of 1980, *Ram Singh and others* Vs. *F.C. Haryana & others* — presents the reverse situation. Therein the application under section 18 of the Act of Ram Sarup, a re-settled tenant on the surplus land of Madan Gopal was allowed at the revisional stage in accordance with *Jagdish and Sanu's case*. The transferees of Madan Gopal have preferred this writ petition for quashing the order of the Financial Commissioner.

(4) Inevitably the controversy here would revolve around the provisions of section 18 of the Act and it is apt to read the relevant portion thereof:—

> "18. (1) Notwithstanding anything to the contrary contained in any law, usage or contract, a tenant of a landowner other than a small landowner—
>
> (i) who has been in continuous occupation of the land comprised in his tenancy for a minimum period of six years, or
>
> (ii) who has been restored to this tenancy under the provisions of this Act and whose period of continuous occupation of the land comprised in his tenancy immediaely before ejectment and immediately after restoration of his tenancy together amounts to six years or more, or
>
> (iii) who was ejected from his tenancy after the 14th day of August, 1947, and before the commencement of this Act, and who was in continuous occupation of the land comprised in his tenancy for a period of six years or more immediately before the ejectment,
>
> shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i) or clause (ii) at any time and in the case of a tenant falling within clause (iii), within a period of one year from the date of commencement of this Act:
>
> PROVIDED that no tenant referred to in this sub-section shall be entitled to exercise any such right in respect

of t he land or any portion thereof if he had sublet the
lan d or the portion, as the case may be, to any other
per son during any period of his continuous occupation,
unl ess during that period the tenant was suffering
fro n a legal disability or physical infirmity or if a
wo man was widow or was unmarried :

PROVID ED FURTHER that if the land intended to be
pu chased is held by another tenant who is entitled to
pre -empt the sale under the next preceding section, and
wh o is not accepted by the purchasing tenant, the
ter ant is actual occupation shall have the right to
pr e-empt the sale.

* * * *

(5) Before adverting to the other statutory provisions and the
maze of precede it, it is refreshing to examine the larger purposes of
the conferment of the right of statutory purchase, by Section 18 of
the Act. Was it the legislative intent that any and every tenant of
an agricultural h olding should be converted into its owners? The
language of Sect ion 18 and the other provisions of the Act do not
seem to exhibit a ny such omnibus radical purpose. The larger triple
object of the Ac t patently was to impose a ceiling on inordinately
large holdings, t o provide security of tenure to the tenants (as the
very name of th e statute indicates), including the right to be
resettled if eject ed and thirdly to confer a right of purchase in
strictitude only with regard to the surplus area of a big landowner.
It would thus ap pear that the provisions of the Act as originally
enforced in 1953 and its subsequent amendments took the middle
road between th e extremes of absolute laissez-faire to own agricul-
tural land witho ut any limits, against the other extreme of divesting
the lawful owne of the land and substituting the tillers thereof in
their place. It w as, therefore, that the right of statutory purchase
under section 18 was limited and hedged with two significant pre-
conditions. This right was allowed only as against a big land-
owner. The sma ll landowners below the ceiling limits were abso-
lutely protected against it, however long may have been the period of
their tenants. Even the big landowners were absolutely
protected agains t this right of statutory purchase as regards

the area reserved by them. Thus the right of sta itutory purchase by a tenant was confined strictly to the area whic :h was above the ceiling limits and had been declared surplus in a big landowner's hands. All this manifests plainly the legislature's intent that the small landowners were completely out of the ambi :t of such a right and that within the ceiling limits even the big landowner was protected against any right of statutory purchase by his tenant under section 18.

(6) Now apart from the above, the right of p urchase was not conferred unreservedly on any and every tena nt-at-will. When originally enacted in 1953 it was only a statutory r ecognition of a very longstanding tenancy which was sought to be allowed to ripen into ownership qua large feudal holdings. The st: atute, therefore, required a strict qualification of 12 years' of contin uous occupation as a tenant before such a right of purchase could be exercised. Later perhaps this period was considered to be inordinatel y long and by an amendment it was halved to a period of 6 years. Tl ie legislature has maintained this statutory period of 6 years now : fo r well-nigh 26 years. It would thus be plain that the statutory r ig ht of purchase under Section 18 of the Act is a happy compromis e or a golden mean beween the absolutism of passing of title in l: and to its tiller only, and a feudal claim to own large chunks of la n d unreservedly without let or hindrance. The ideal which the sta tute apparently wishes to promote ultimately was that of peasar it proprietorship within the ceiling limits. Certainly the object of the Act was not to expropriate small peasants at the hands of ten ants whom they might have been compelled to induct because of innumerable circumstances. This is why no right of purchase was conferred qua small land holders at all or even with regard to th e reserved area of big land owners as well. The right of statutor y purchase was, therefore, not intended to rob Peter and pay Pau l in the sense of allowing a compulsory purchase by the tenant of a very small hold- ing as well which would have the effect of appr priating even a peasant of his holding by a tenant, who in terms l imself may well be a land holder also and sometimes quantitativel y a bigger one. It is with this back drop of the legislative purpo se, which is writ large over the statute that the individual provis ions thereof have now to be construed.

(7) Now the core of the argument on behalf of the tenant writ petitioners projected by their learned counsel Mr . G. C. Garg rests

on an appre hension of an abuse or misuse of the statute by a crafty big land-ov vner. It was argued that such a big landowner may successfully r transfer his surplus area in favour of a small land-owner thu: s exposing the resettled tenants to the liability of eject-ment and i n any case defeating his right to purchase the same on the expiry of the statutory period of 6 years.

(8) The learned counsel when unable to sustain his basic stand (that the big land-owner would be barred in law from transferring any part of the surplus area on either principle or any other statu-tory prov ision) made a last ditch attempt to contend that Section 16 should be fictionally brought in and made applicable to resettled tenants a lso even by a process of strained construction because otherwis some of the purposes of the Act may be hindered.

(9) In order to appreciate the rival contentions in the afore-said cont ext it is apt to read the provisions of Section 16 :—

"16. Saving of tenancies from effect of mala fide transfer.

Sa ve in the case of land acquired by the State Government under any law for the time being in force, or by an heir by inheritance, no transfer or other disposition of land effected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act."

(10) Now a plain reading of the above makes it manifest that the lang uage of Section 16 cannot possibly lend itself to the construc-tion sou ght to be canvassed by Mr. G. C. Garg and is indeed categorically ju st opposite to his stand. It in terms says that any *mala fide* transfer s hall not adversely affect the rights of the tenant thereon. The cruc ial word here is "thereon". It necessarily flows therefrom that the t enant must be on the land at the material time in order to invoke the protection guaranted by the statute. The word "thereon" cannot be whimsically converted to read as an equivalent to a tenant inducted years later under the provisions of the resettle-ment sc hemes and who may not have been even remotely in contem-plation wh en the alleged transfer was made. Section 16 to my mind was not intended to protect all the tenants which may subse-quently be brought on the land (either voluntarily by the land-owner or s tatutorily by way of resettlement) in perpetuity. Clearly

the protection extended by Section 16 to a tenant was *in presenti* and not *de futuro*. The aforesaid view receives massive support in light of the analogous provisions of Section 6 of the Act. Herein what calls for pointed notice is that this provision was substituted by Punjab Act No. 14 of 1962, nearly seven years after the enactment of Section 16. It reads as under :—

> "6. Certain previous transfers of land not to affect rights of tenants.
>
> No tranfer of land, except a *bona fide* sale or mirtgage with possession or a transfer resulting from inheritance made after the 15th August, 1947 and before the 2nd February, 1955, shall affect the rights of the tenant on such land under this Act."

(11) Reading the provisions of Section 6 and 16 together it would be plain that the protection was afforded to the tenants in cultivation of the land against **mala fide** transfers affected after the 1st February, 1955. However, later a similar protection was thought necessary against similar transfers from the date of the partition of the country. Consequently Section 6 provided for protection to the tenants on such land against transfer made after 15th August, 1947 and before 2nd February, 1955. Both Sections 6 and 16, however, categorically provide that such a protection was to be accorded to existing tenants. Section 6 uses even more explicit phraseology namely "the rights of the tenants on such land under this Act". Consequently the use of the word "thereon" in Section 16 and the aforesaid language in Section 6 would leave no manner of doubt that the protection was sought to be given to an existing and known class of tenants in actual cultivation of the land and not to any future and unknown class of tenants either under the statutory schemes of resettlement, or induced by agreement afterwards.

(12) Again Section 16 does not provide a protection which may be termed as absolute. It is confined to the specific limit that the rights of the tenant will not be affected as a result of the transfer by the land-owner. It is not as if thereby the tenant is absolutely protected or converted into an owner or vested with an inflexible right to stay on the land. Even the tenants within the ambit of section 16 would continue to be liable to ejectment for non-payment

of rent or other contingencies provided by the statute in section 9 and 14 of the Act. It was not disputed before us that even a re-settled tenant who after having executed the kabuliat nama incurs the obligation of paying the rent to the transferee landowner would also be liable to ejectment if he contravened any of the aforesaid provisions of the statute.

(13) Apart from principle authority also does not seem to be lacking for the proposition that section 18 stands by itself and no inroad into its provisions can be made on the basis of section 16. The Division Bench in Jot Ram v. The Financial Commissioner and others, (3), has held in no uncertain terms that section 16 has no application to section 18, and that the protection envisaged by it was merely for tenants adversely affected by *mala fide* transfer. Section 18 was held to be complete by itself and in no way overriden by section 16.

(14) Again the suggested inference of Mr. Garg that a big landowner could not induct any tenant on the surplus area immediately after the 15th of April, 1953, when the Act came into force is neither borne out by principle nor by precedent. Plainly on that date and in many cases long thereafter the precise area surplus in the hands of a landowner may not come to be determined by the authorities. It seems vain to argue that any blanket bar was imposed on a big landowner to lease out all or any parts of his land to a tenant on the mere apprehension of some land being declared surplus in his hands. Not only a big landlord could induct a tenant on his land both before or after the declaration of surplus area but indeed if such a tenant could satisfy the requisite conditions of section 18 he could well exercise the right of purchase also. The second proviso to section 9-A is clearly a pointer to this effect. This provision created a bar against tenants who were closely related to the landlord from statutorily purchasing the same. The necessary corollary therefrom is that this was intended primarily to hit collusive induction of relations by big landowners as their tenants, and that the *bona fide* tenants inducted by the landowners who were not related would be entitled to the same rights of purchases conferred by section 18.

(3) 1966 P.L.J. 252.

(15) In view of the aforesaid discussion, it seems to be plain that section 16 cannot be stretched and strained to arrive at the fictional construction (advocated by Mr. Garg) that a statutory re-settled tenant must be imagined to have become the tenant of the original big landowner, despite the fact that the area on which he is so re-settled had long since been transferred to a small land-owner-vendee.

(16) Coming now to the precedent which tilts to the contrary view (and which has necessitated this reference to the larger Bench) one may straightaway notice the two basic premises on which *Jagdish and Santu's case* (supra) rests and examine their correctness The learned Single Judge therein first proceeded on the assumption that section 10-A of the Act bars any transfer by a big landholder altogether and in any case if such a transfer is made the same would be *non est qua* the vendee. This conclusion appears to us to be erroneous and based on a mis-construction of section 10-A as authoritatively construed. It is not that all transfers by big land-owners are illegal or barred by he aforesaid provision. A plain reading of sub-sections (b) and (c) of section 10-A would indicate that the law merely provides that such transfers would be ignored if they come in the way of the utilisation of the surplus land for the re-settlement of tenants or for the purposes of the declaration of surplus area in the hands of a big landowner. Indeed within this jurisdiction this aspect is so well-settled that even Mr. Garg fairly conceded that there was neither a legal bar to the transfer of a surplus area by a big landowner nor could such a transaction be deemed as void *ab initia* or *non-est*. However, we are not at all basing ourselves on any concession but are inclined to the view both on the language of section 10-A and the precedents of this Court holding to the same effect which were not even remotely challenged before us. It suffices to refer to the following observations of the Division Bench in *The State of Punjab and others* v. *Shamsher Singh and others*, (4).

> * * * The Act does not invalidate alienations of an area from the holding of a landowner in which there is subsequently found to be surplus area, and all that it does is to provide in section 10-A that the total holding of the landowner, ignoring the alienation or alienations, will be taken into

(4) 1966 P.L.J. 16.

consideration for determination of permissible area and surplus area. There is nothing in the Act which deprived the landowner of his right to disopse of any part of his holding simply because subsequently it may be found that part of his holding comes to be surplus area.

It would thus be plain that the fundamental premises underlying *Santu's case* that transfers by big land-owners were under a blanket bar and any such transfer, if made, was *non-est* cannot hold water on a close analysis.

(17) Secondly the learned Single Judge in *Santu's case* firmly took the view that no provision of law existed to indicate that the re-settled tenant on the surplus area would become the tenant of the transferee to whom it had been sold by the big landowner before such resettlement. These observations and the inevitable conclusions therefrom appeared to us as having been rendered per incuriam. Counsel for the parties were apparently remiss is not bringing to the notice of the learned Single Judge the pivotal provision of rule 20-C in the basic set of statutory provisions with regard to the re-settlement of tenants. This reads as under :—

"R. 20-C. Conditions of resettlement : The tenant, who is resettled under this Part —

(a) shall be the tenant of the landowner in whose name the land in question stands in the revenue records,

(b) shall be liable to pay the same amount of rent as is customary in that estate for such lands subject to the maximum fixed under section 12 of the Act; and

(c) shall in respect of the land upon which he is resettled execute a Qabuliyat or a Patta as given in Annexure 'C' appended to the Punjab Security of Land Tenures Rules, 1953, in favour of the landowner before he is put in possession of the land."

Plainly enough the aforesaid provisions not only recognised the factum of a re-settled tenant being the tenant of the transferee land-owner but further provide a statutory obligation of attornment to

such a transferee as his landlord. Sub-rule (c) obliges such a re-settled tenant to execute a Qabuliat Nama in favour of the transferee landowner who may be recorded as the owner of the land in the revenue papers. The tenant thus comes under a legal obligation to tender the rent for the land to the transferee as his landlord. Inevitably he would incur the penalty of ejectment under section 9 if he fails or refuses to pay rent to the landlord in whose favour he has executed a Qabuliat Nama. Therefore, it is more than plain that apart from the Principle that a tenant inducted or re-settled on the land would necessarily be the tenant of the owner of such land (and not fictionally of his predecessors-in-interest) there is a categoric statutory recognition of this situation. The second basic rationable in *Santu's case* thus appears to us as equally unsustainable.

(18) Lastly the whole tenor of *Santu's case* in our view runs counter to the core and gist of the ratio of the Full Bench in *Chandi Ram's case* (supra). The learned Single Judge seemed to be aware of this fact and had attempted to distinguish this case. With respect we are unable to subscribe to that line of reasoning. It was observed that the Full Bench in *Chandi Ram's case* had not considered whether the transfer by the big landowner in favour of his sons was valid or invalid and the whole case was argued on the wrong assumption that the transfers were valid. However, we find that the clearest finding of the Full Bench in *Chandi Ram's case* which is in consonance with the earlier settled view of this Court is in the following terms:—

> "* * * Therefore, if he satisfies the conditions which are a pre-requisite to the exercise of his right of purchase under section 18 and one of the conditions being that the land is held by the landowner he can purchase it. Thus for the purposes of section 18, a tenant cannot exercise his right of purchase by ignoring the transfer. This seems to be the true legal position with regard to all transfers made between 15th August, 1947 and 15th April, 1953, the date on which the Act came into force. It is significant that the transfers other than those excepted by section 6 do not become void or inoperative so far as the transferer and the transferee are concerned but they cannot be recognised when they come in conflict with the purpose and the provisions of the Act. *Bona fide* sales are outside

> the prohibition regarding transfers under section 6 between 15th August, 1947 and 15th April, 1953, and are also not prohibited even after the 15th April, 1953. See in this connection section 16."

and again

> "* * *. Therefore, if the transfers are good and pass title, the tenant who wants to exercise the right of purchase under section 18 has to satisfy the requirements of that provision and one of the requirements of the same is that the land which he seeks to purchase is held by a 'landowner'. In all the present cases the lands are owned by small landowners and are not held by a landowner, and therefore, the tenants cannot purchase the same. They can only purchase the same if the transfers by which the lands have vested in the small landowners are to be ignored. There is no provision under which they can be ignored for the purpose of section 18 of the Act."

It would be plain from above that the observations in *Santu's case* run counter to the binding precedent in *Chandi Ram's case* and it suffices to mention that no challenge to the ratio thereof was even remotely raised before us.

(19) For the aforesaid reasons, with respect we must hold that *Santu's case* does not lay down the law correctly and is hereby overruled.

(20) To conclude, the answer to the question posed at the outset is rendered in the negative and it is held that a statutory re-settled tenant would become the tenant of the small landowner vendee who had earlier purchased the same from a big landowner. Consequently being the tenant of a small landowner he would not satisfy the basic pre-requisite of section 18 and would be disentitled to purchase the land.

(21) As a necessary application of the aforesaid view C.P.W. 32|1980—Chander Bhan v. Financial Commissioner, Haryana and C.W.P. 33|1980 which have been preferred by the tenants claiming

the right to purchase are hereby dismissed. C.W.P. 2438 of 1980 which challenges the purchase of land by the tenants under section 18 in consonance with *Jagdish and Santu's case* is hereby allowed and the impugned order of the Financial Commissioner is hereby set aside.

(22) In view of the conflict of precedent and the somewhat intricate issues involved the parties are left to bear their own costs.

N.K.S.

FULL BENCH.

Before S. S. Sandhawalia, C.J., D. S. Tewatia and K. S. Tewana, JJ.

AJIT SINGH and another,—*Appellants.*

versus

STATE OF PUNJAB,—*Respondent.*

Criminal Misc. No. 2638 *of* 1981

In

Criminal Appeal No. 490 *of* 1979.

November 13, 1981.

Code of Criminal Procedure (V of 1898)—Sections 369, 424, 430 and 561-A—Judgment by a High Court in the exercise of its criminal jurisdiction—Such Court—Whether has power to review or alter the same—Alteration or modification of sentence only without consideration of merits of the conviction—Whether amounts to review.

Held, that the High Court has no power to review or alter its earlier judgment within the criminal jurisdiction except to correct clerical errors. **(Para 7).**

Lal Singh and others *v.* State and others, A.I.R. 1970 Punjab and Haryana 32. *Overruled.*

Held, that a mere alteration or modification in the sentence alone without consideration of the merits of the conviction amounts to a review in the eye of law. **(Para 8).**