(9) In the instant case the learned counsel for the petitioners advanced an argument that the country liquor vend in favour of the petitioners was auctioned on March 21, 1969, and they did not deposit the security within seven days thereof as required under the rules and, therefore, no contract came into existence between the petitioners and the State Government. It was up to the Excise Commissioner to reject their bid within twenty-one days but that was not done because the petitioners paid Rs. 8,252 on April 8, 1969, Rs. 2,000 on April 19, 1969 and Rs. 500 on April 21, 1969, thus making a total of Rs. 10,752, which was equal to the security required to be deposited. They also accepted the licence and began to operate the vend with effect from April 1, 1969. They continued operating that vend thereafter and never disowned the contract or the licence. They even paid the licence fee for many months and on account of delayed payments of the monthly instalments of the licence fee for some months, they paid additional fee by way of penalty. It is, therefore, too late for them now to urge that no contract, in fact, had come into being between them and the State Government. This submission is consequently repelled.

(10) The facts of other cases are similar and, for the reasons given above, there is no merit in these petitions which are dismissed but the parties are left to bear their own costs.

Mahajan, J.—I entirely agree.

Narula, J.—So do I.

B. S. G.

FULL BENCH

Before D. K. Mahajan, Bal Raj Tuli and Pritam Singh Pattar, JJ.

SUCHA SINGH BAJWA,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Writ No. 3150 of 1973.

February 14, 1974.

Punjab Land Reforms Act (X of 1973)—*Sections* 3, 4, 5 *and* 11—*Constitution of India* (1950)—*Articles* 14, 15, 19, 31, 31-*A and* 39—*Provisions of the Act—Whether covered by Article* 31-*A—Constitutional validity thereof—Whether can be challenged on the ground of violation of rights conferred by Articles* 14, 19 *or* 31 *of the Constitution—Act—Whether gives*

effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39—Section 5—Whether offends Article 15 because of discrimination on the ground of sex alone—Section 3(4) and 3(10)—Punjab Land Reforms Rules (1973)—Rule 5(4)—Definition of 'family' and 'person' in section 3(4) and 3(10)—Whether in the interest of agricultural reform and valid—Provisions of the Act with regard to permissible area of the family—Whether violative of Article 31A (1) second proviso of the Constitution—General Clauses Act (X of 1897)—Section 3(42)—Definition of 'person' including 'family' in section 3(10), Punjab Land Reforms Act—Whether unconstitutional.

Held, that if an Act and its provisions fall either under Article 31A or under Article 39(b) and (c) of the Constitution, their constitutional validity cannot be challenged on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Articles 14, 19 or 31 of the Constitution. The Punjab Land Reforms Act, 1973, extinguishes the rights of the landholder in the area declared surplus which is to vest in the State Government and enjoins upon the Government to dispose of that land in the manner provided in section 11 thereof and is, therefore, clearly covered by the provisions of Article 31A of the Constitution. The lands which form the subject-matter of this legislation are 'estates' as defined in Article 31A (2) (a) of the Constitution and any legislation with regard to their acquisition or extinguishment or modification of any rights therein will be immune from any attack on the ground that it abridges or takes away the Fundamental Rights guaranteed under Articles 14, 19 and 31 of the Constitution. **(Paras 3 and 8)**

Held also, that the land declared surplus under the Act can be described as material resources of the community and its distirbution amongst the persons and classes mentioned in section 11 of the Act will subserve the common good and avoid the concentration of wealth and means of production in fewer hands. In the statement of objects and reasons, reference has been made to the policy evolved by the Central Committee on Land Reforms appointed by the Government of India seeking to make available additional lands to be distributed amongst landless persons to guarantee equitable distribution of land. The provision for acquiring the surplus area and its distribution amongst various persons mentioned in section 11 of the Act will promote the policy specified in Article 39(b) and (c) of the Constitution. Thus the Act also gives effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution. Hence the Punjab Land Reforms Act is immune from attack on the ground that its provisions take away or abridge any of the Fundamental Rights guaranteed under Articles 14, 19 and 31 of the Constitution.

(Paras 10 and 12)

Held, that every person described in section 5 of the Act, whether male or female, is allowed the same permissible area and there is no discrimination *qua* one landowner and the other on the ground of sex alone, that is, the female owners or holders of land have not been treated differentlly from the male owners or holders of land. Each one of them shall have the right to select one permissible area for himself or herself and another permissible area in respect of each adult son of his or hers subject to the condition that the land so selected together with the land already owned or held by such person shall not exceed the permissible area of such son. The son has not been given the right to select his permissible area. The permissible area is to be selected by the person owning or holding the land and each such person is allotted an extra permissible area in respect of each adult son that he or she may have. In other words, Section 5 provides for the measure of permissible area that a person with one or more adult sons will be allowed to select out of the area owned or held by him and his children, whether male or female, have not been given any right to make a selection for himself or herself and for providing a measure, the legislature can adopt any method. The legislature is the best judge to decide how much area should be left as permissible area with each owner or holder of land. In so far as no distinction between a male and a female holder or owner of land has been made in respect of the permissible area in any given circumstances, there is no violation of Article 15 of the Constitution. Moreover, this section does not provide for any succession to the land; it only provides for the measure of the permissible area to be retained by every holder or owner of land out of the area held or owned by him or her on the appointed day on the basis of the number of adult sons he or she has. Since each adult son has not been given the right to select a permissible area for himself out of the land held by his father or mother but only the landholder has been given the right to select a separate permissible area in respect of each of his adult sons, it cannot be said that an adult daughter has been deprived of the right of selectinng a permissible area for herself on the ground of sex alone. There is thus no discrimination between an adult brother and an adult sister on the basis of sex alone. From the definition of 'family' in the Act which excludes a married minor daughter, it is evident that distinction between an adult son and an adult daughter has been made not only on the ground of sex but also for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised. This is an institution of general prevalence which is the foundation of organised and civilised societies and communities. Section 5 of the Act, therefore, is not *ultra vires* Article 15 of the Constitution merely because it allows the holder or owner of land to select a separate permissible area in respect of each adult son but not so in respect of each adult daughter.

(Para 13)

Held, that according to the definitions of 'family' and 'person' given in Sections 3(4) and 3(10) of the Act, no family can own or hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area. The mode of selection of permissible area for the family is provided in sub-section (4) of Section 4. The only restriction on the free choice of the person entitled to make selection of his permissible area is contained in sub-section (2) of Section 5 as to the order in which different categories of lands held by him are to be selected. It, however, does not make mention of the order in which the lands held separately by the members of a family are to be selected by the husband, the wife or the eldest surviving child, who is a member of the family as provided in rule 5(4) of Punjab Land Reforms Rules. No provision has been made in the Act that the permissible area so selected by the husband or the wife or the eldest surviving child of the family will become the permissible area of that family. In the absence of such a provision, it is legitimate to conclude that even after selection of the permissible area and the filing of the necessary declaration the land shall continue to remain in the individual name of the member of the family in whose name it stood previously so that he or she will be at liberty to deal with it as he or she pleases even to the detriment of the other members of the family. The family as such will not acquire or become the owner of the land comprised in its permissible area. That part of the land selected as permissible area which belongs to a minor son will be lost to the family when the minor son becomes adult and ceases to be a member of the family. He will then own that land as a part of his own permissible area. Similarly, a minor daughter will take the land with her on marriage when she ceases to be the member of the family. It is thus obvious that the husband or the wife or the eldest surviving member of the family, while making the selection, and other junior members by attaining adulthood or getting married, as the case may be, can deprive the other members of the family of the area held by them at his or her own sweet will. The share of each member of the family in the permissible area of the family has not been defined nor has any restriction been placed on the alienation of that land by the members of the family so as to ensure its retention in the family. Hence the definition of 'family' and 'person' in sections 3(4) and 3(10) cannot be said to be in the interest of or by way of agricultural reform, nay, it is the very negation thereof and cannot be upheld as valid or constitutional. (Para 19)

Held, that the provisions with regard to the permissible area for the family also suffer from another infirmity which makes them unconstitutional as being violative of the second proviso to Article 31A(1) of the Constitution. In case each member of the family, as defined in the Act, held land immediately before the commencement of the Act as landowner or mortgagee with possession or tenant within the permissible area fixed by the Act, he continued to be the holder thereof on the day the Act commenced and if he is to be deprived of the land so held by him, which is within

his permissible area and is under his personal cultivation, he has to be paid compensation which will not be less than the market value in accordance with the second proviso to Article 31A(1) of the Constitution. On the day the Act came into force, that is, April 2, 1973, it was not known to what extent the area of each member of the family, separately held by him or her, would be reduced under the Act. It has been left to the will of the husband or the wife or the eldest surviving member of the family to effect the reduction by making selection under section 4(4) of the Act read with rule 5(4) of the Rules. It cannot, therefore, be said that the Act, by its own force and on the very day of its enforcement, fixed the extent of the permissible area in respect of each member of the family as defined in the Act. Furthermore, whatever land is selected as permissible area will not become the land of the family as such but will continue to vest in the member in whose name it stood prior to the selection. The provision for pooling together of the entire land held by the members of the family, as defined, on the appointed day, out of which one permissible area in terms of section 4 of the Act has to be selected, is violative of second proviso to Article 31A(1) of the Constitution as no provision for payment of compensation in terms of that proviso has been made in the Act, and is, therefore, void. (Para 20)

Held, that the expression 'family' has been given an artificial meaning in the Act and that artificial entity has been included in the definition of the word 'person' as defined in the Act, which is not in accordance with the definition of 'person' in section 3(42) of the General Clauses Act, 1897, the provisions of which, according to Article 367 of the Constitution, are to apply for the interpretation of the expressions used in the Constitution and which have not been defined in that Article. According to the definition of the word 'person' as given in the General Clauses Act, not only individuals but juristic persons are also called 'person'. In order to constitute an association or body of individuals, whether incorporated or not, the association or body of individuals has to exist as such by their own volition and not as may be defined by the legislature by adopting artificial definition. The family, as defined in Reforms Act, cannot be said to be an association or body of individuals unless it existed in that form on the appointed day and held any land in its name. By an artificial definition a 'family' cannot be brought into existence retrospectively with reference to the appointed day and, by a fiction, deemed to hold the land which was, in fact, not held by it but was held individually by each of its members. No provision has been made in the Act that the permissible area selected for a family shall become the property of that family nor is there any provision made with regard to the share of each member of the family therein or the mode of succession thereto nor is there any provision made barring its alienation by any member of the family. The result of the impugned provision is the expropriation of the land of some members of the family as defined, although the land of each member so expropriated did not exceed the permissible area prescribed

under the Act which, like any other person, he was entitled to continue to hold. If they were to be deprived of that area, a provision should have been made in the Act for paying them compensation at a rate not less then the market value of the land in accordance with the second proviso to Article 31A(1) of the Constitution. Hence the definition of the expression 'person' in section 3(10) of the Act, in so far as it includes 'family', is unconstitutional and is struck down with the result that in every provision of the Act the word 'person', wherever used, shall not include 'family'. Consequently, proviso (ii) to sub-section (2) of section 4 is struck down and shall stand deleted. From clause (a) of sub-section (4) of section 4, the words 'or if such person is a member of a family, together with the land held by every member of the family' shall stand deleted. Clause (b) of sub-section (4) of section 4 shall also stand deleted. Rule 5(4) of the Punjab Land Reforms Rules, 1973 has become redundant and is also deleted. These provisions are separable and their unconstitutionality and deletion will not affect the other provisions of the Act or make them unworkable.

(Para 22)

Case referred by a Division Bench of this Court consistiny of Hon'ble Mr. Justice D. K. Mahajan and Hon'ble Mr. Justice Pritam Sinyh Pattar,— vide *order dated 1st November, 1973, to larger Bench consisting of Hon'ble Mr. Justice D. K. Mahajan, Hon'ble Mr. Justice Bal Raj Tuli and Hon'ble Mr. Justice Pritam Singh Pattar for opinion on the questions of law involved in the case. The Full Bench returned the case to the learned Division Bench for deciding the case in the light of the observations made by the Full Bench.*

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, order or direction be issued declaring section 5(1) of the Punjab Land Reforms Act, 1972 to be ultra vires *the Constitution of India and as section 5(1) is an integral part of the Act the whole Act be declared to be* ultra vires *the Constitution of India and further praying that proceedings under rule 4(1) and (2) of the Punjab Land Reforms Rules, 1973 which enjoins the land owner to give a declaration in Form 'A' to the authorities be stayed and still further praying that the operation of the Act be stayed.*

H. L. Sibal, Senior Advocate, K. P. Bhandari, Kapil Sibal, and R. C. Setia, Advocates with him, *for the petitioner.*

J. S. Wasu, Advocate-General, Punjab, S. K. Syal, Advocate and D. N. Rampal, Assistant Advocate-General, with him, *for the respondent.*

JUDGMENT

TULI, J.—(1) A number of writ petitions have been filed challenging the constitutional validity of the various provisions of the Punjab Land Reforms Act, 1973 (hereinafter referred to as the Act). The Act received the assent of the President of India on March 24, 1973, and was published in the Punjab Government Gazette under notification No. 12-Leg./73 dated April 2, 1973, from which date it came into force. It is not necessary to state the facts of any case because all these cases (C.W. Nos. 3145, 3150, 3210, 3254, 3287, 3288, 3293, 3456 to 3463, 3469, 3470, 3472, 3503, 3547 to 3550, 3564 to 3568, 3629 and 4004 of 1973) will be decided on merits by a learned Single Judge in the light of the decisions rendered in this judgment.

(2) The sections of the Act which have been challenged as *ultra vires* are section 4, section 5 and the definitions of 'family' and 'person' in section 3(4) and (10). These sections read as under :—

"4(1) Subject to the provisions of section 5, no person shall own or hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area.

(2) permissible area shall mean in respect of—

(a) land under assured irrigation and capable of yielding at least two crops in a year (hereinafter in this Act referred to as 'the first quality land'), seven hectares; or

(b) land under assured irrigation for only one crop in a year, eleven hectares; or

(c) barani land, 20.5 hectares; or

(d) land of other classes including banjar land, an area to be determined according to the prescribed scale with reference to the intensity of irrigation, productivity and soil classification of such classes, having regard to the respective valuation and the permissible area of the classes of land mentioned at (a), (b) and (c) above, subject to the condition that the area so determined shall not exceed 21.8 hectares.

Provided that—

(i) where land consists of two or more classes, the permissible area shall be determined on the basis of relative valuation of such classes of land, subject to the condition that it does not exceed 21.8 hectares;

(ii) where the number of members of a family exceeds five, the permissible area shall be increased by one-fifth of the permissible area for each member in excess of five, subject to the condition that additional land shall be allowed for not more than three such members.

(3) Notwithstanding anything contained in sub-section (2), where any land is comprised in an orchard on the appointed day, such land shall, for the purpose of determining the permissible area, be treated as barani land.

(4) (a) Where a person is a member of a registered co-operative farming society, his share in the land held by such society together with his other land, if any, or if such person is a member of a family, together with the land held by every member of the family shall be taken into account for determining the permissible area;

(b) where a person is a member of family, the land held by such person together with the land held by every other member of the family, whether individually or jointly, shall be taken into account for determining the permissible area.

(5) In determining the permissible area, any land which was transferred by sale, gift or otherwise, other than a *bona fide* sale or transfer, after the appointed day but before the commencement of this Act, shall be taken into account as if such land had not been transferred and the onus of proving the transfer as *bona fide* shall be on the transferor.

(6) For the purpose of valuation of land one and quarter hectares of banjar land shall be treated as equivalent in value to one hectare of barani land.

(7) For evaluating the land of any person at any time under this Act, the land owned by him immediately before the commencement of this Act as well as the land acquired by him after such commencement by inheritance, bequest or gift from a person to whom he is an heir shall be evaluated as if the evaluation was being made on the appointed day and the land acquired by him after such commencement in any other manner shall be evaluated as if the evaluation was being made on the date of such acquisition.

5(1) Every person, who, on the appointed day or at any time thereafter, owns or holds land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area, shall select his permissible area and intimate his selection to the Collector, and where land is situate in more than one district, to the Collectors concerned through a declaration to be furnished in such form and manner and within such period as may be prescribed and if such person has an adult son, he shall also be entitled to select separate permissible area in respect of each such son, out of the land owned or held by him subject to the condition that the land so selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son;

Provided that where land is situate in more than one patwar circle, the declaration shall be supported by an affidavit in the prescribed form.

(2) In making the selection, such a person shall include firstly, land mortgaged without possession and secondly, land under self-cultivation on the date of commencement of the period prescribed for furnishing the declaration under sub-section (1) but shall not include area declared surplus under the Punjab Law, the Pepsu law or this Act, other than the area which was exempt from utilization by the State Government immediately before such commencement.

3(4) 'family' in relation to a person means the person, the wife or husband, as the case may be, of such person and his or her minor children, other than a married minor daughter;

3(10) 'person' includes a company, family, association or other body of individuals, whether incorporated or not, and any institution capable of holding property;".

(3) The first point argued by Shri H. L. Sibal, the learned counsel for the petitioners, is that in spite of the declaration made in section 2 of the Act there is no nexus between the provisions of the Act and the Directive Principles enshrined in Article 39(b) and (c) of the Constitution of India and it is, therefore, not saved from attack under Articles 14, 19 and 31A. It has been urged that in view of the declaration made in section 2, the constitutional validity of the Act had to be judged in the light of the principles specified in clauses (b) and (c) of Article 39 of the Constitution alone without reference to any other Article thereof. In my view, there is no merit in this submission. Section 2 reads as under :—

"2. It is hereby declared that this Act 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."

The declaration in section 2 seems to have been made by the Legislature in view of the provisions of Article 31C, which was inserted in the Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971, and reads as under :—

"31C. Notwithstanding anything contained in article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by article 14, article 19 or article 31; and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy :

Provided that where such law is made by the Legislature of a State, the provisions of this article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

The purpose of this Article was to make a legislation giving effect to the policy of the State towards securing the principles specified in

clauses (b) and (c) of Article 39 immune from attack under Articles 14, 19 and 31 of the Constitution. It was further provided that such a law would not be called in question in any Court on the ground that it does not give effect to such policy, if it contained a declaration that it was enacted to give effect to such policy. This later part of the Article barring judicial review has been struck down by their Lordships of the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvary and others* v. *State of Kerala and another* (1). This Act was passed by the legislature of the Punjab State and was reserved for the consideration of the President which assent was accorded on March 24, 1973, and was brought into force on April 2, 1973. By that date the Supreme Court judgment had not been delivered. In view of that judgment, it is now open to this Court to examine whether the Act gives effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 in spite of this declaration, so that if it does, the various provisions of the Act will be immune from attack under Articles 14, 19 and 31 of the Constitution and if it does not, the provisions of the Act can be challenged on the grounds mentioned in those Articles. In my opinion, it is not necessary to go into the matter whether the Act and its provisions primarily give effect to the policy of the State as specified in clauses (b) and (c) of Article 39 of the Constitution because if this Act and its various provisions are covered under Article 31A of the Constitution, they shall be immune from attack under Articles 14, 19 and 31. The net result is that if the Act and its provisions fall either under Article 31A or under Article 39(b) and (c) of the Constitution, their constitutional validity cannot be challenged on the ground that they are inconsistent with or take away or abridge any of the rights conferred by Article 14, Article 19 or Article 31 of the Constitution. In this view of the matter, the declaration made in section 2 of the Act has lost all importance and meaning and can be considered to have become redundant and superfluous after the Supreme Court judgment in *His Holiness Kesavananda's case* (1) (*supra*).

(4) After hearing the learned counsel for the parties and giving the matter my careful consideration, I am of the opinion that the

(1) A.I.R. 1973 S.C. 1461.

Act and its provisions clearly fall under Article 31A of the Constitution as they relate to the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights as provided in sub-clause (a) of clause (1) of Article 31A, which reads as under :—

"31A(1) Notwithstanding anything contained in article 13, no law providing for—

(a) the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights;"

The expressions 'estate' and 'rights' have been defined in clause (2) of Article 31A as under:—

"31A(2). In this article,—

(a) the expression 'estate' shall, in relation to any local area, have the same meaning as that expression or its local equivalent has in the existing law relating to land tenures in force in that area and shall also include—

(i) any jagir, *inam* or *muafi* or other similar grant and in the States of Tamil Nadu and Kerala, any janmam rights;

(ii) any land held under ryotwari settlement;

(iii) any land held or let for purposes of agriculture or for purposes ancillary thereto, including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans ;

(b) the expression 'rights', in relation to an estate, shall include any rights vesting in a proprietor, sub-proprietor, under-proprietor, tenure-holder, *raiyat*, under-raiyat or other intermediary and any rights or privileges in respect of land revenue."

The preamble of the Act shows that it is "an Act to consolidate and amend the Law relating to a ceiling on land holdings and acquisition of proprietory rights by tenants in land and other ancillary

matters in the State of Punjab". In the statement of objects and reasons, it has been pointed out that—

> "In the State of Punjab two enactments, that is, the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, are in force. The Punjab Security of Land Tenures Act, 1953, applies only to those parts of the State which were comprised in the State of Punjab before 1st of November, 1956. The Pepsu Tenancy and Agricultural Lands Act, 1955, applies to those territories of the the erstwhile State of Pepsu which now form part of the State of Punjab. It has become essential that the law relating to ceiling on agricultural land contained in the aforesaid two Acts and which applies to certain parts of the State of Punjab should be unified and there should be only one Act on the agricultural land for the whole of the State of Punjab.
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> Secondly, the Central Committee on land reforms appointed by the Government of India evolved a policy which sought to make available additional land to be distributed among landless persons to guarantee equitable distribution of land. To achieve this object it has been decided that permissible area be reduced, that the surplus area should vest in the State Government and a family is to be treated as a unit for determining the permissible area. It has also been decided that certain exemptions which were allowed under the two existing enactment should be withdrawn.
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> Thirdly, the surplus land is to be acquired by the State Government for allotment to the landless persons and further proprietory rights are to be conferred on them."

(5) Section 3 of the Act defines certain expressions used therein; section 4 provides for the extent of the permissible area of a person; section 5 prescribes the method of selection of permissible area and furnishing of declaration by certain persons; section 6 deals with the collection of information in case declaration is not furnished as provided in section 5; section 7 provides the method for

determining permissible and surplus areas; section 8 provides for vesting of unutilized surplus area in the State Government; section 9 gives to the Collector the power to take possession of the Surplus area; section 10 prescribes the amount payable to a landholder for the surplus area taken over by the State Government; section 11 provides for the disposal of the surplus area; section 12 makes a provision bearing future acquisition of land in excess of permissible area; section 13 confers the power on the Collector to separate share of landowners in joint lands and section 14 provides for exemption of lands belonging to religious or charitable institutions. All these sections are contained in Chapter II of the Act. Chapter III deals with miscellaneous provisions. Section 15 saves the rights of tenants to purchase land; section 16 provides for summary eviction of and imposition of penalty on a person who is in wrongful or unauthorised possession of any land; section 17 abrogates pending decrees, orders and notices; Section 18 provides for appeal, review and revision; section 19 provides for correction of clerical errors; section 20 provides for the Court-fee stamp which every application, appeal or other proceeding under the Act has to bear; section 21 bars the jurisdiction of the civil Courts to question the validity of any proceeding or order taken or made under this Act; section 22 provides for indemnity to the authorities under the Act; section 23 provides for penalty for making a false statement; section 24 provides for the mode of recovery of any amount payable under the Act; section 25 deals with the power to remove difficulties; section 26 gives the power to the State Government to make rules; section 27 enumerates the exempted lands to which the provisions of this Act shall not apply and section 28 is the repealing and saving section.

(6) Admittedly, the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, had been enacted as a measure of agricultural reforms and were fully protected under Article 31-A(1)(a) of the Constitution. The present Act also deals with some of the matters which were provided for in those two Acts and the preamble shows that this Act was enacted to consolidate and amend the provisions of those two Acts so as to make them uniform. It cannot, therefore, be successfully urged by the petitioners that the Act is not a measure of agricultural reforms and, therefore, does not fall under the provisions of Article 31A of the Constitution. The various sections of the Act provide for the

acquisition by the State of lands which are declared surplus and for the modification of the *inter se rights* of the landlords and the tenants and for some ancillary matters concerning the land. What is *meant by agrarian reforms* has nowhere been defined. However, in *The State of Kerala and another* v. *The Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. etc.* (2) Palekar, J., observed in para 19 of the report as under :—

> "The objectives of increasing the agricultural production and the promotion of the welfare of the agricultural population are clearly a predominant element in agrarian reform. How these objectives are to be implemented are generally stated in sections 10 and 11. All the private forests, after certain reservations, are to be assigned to agriculturists or agricultural labourers and to the poorer classes of the rural population desiring *bona fide* to take up agriculture as a means of their livelihood."

In the Act in question, section 11 makes a provision for the disposal of the surplus area and the State Government has to frame a scheme for utilising the same. The modes of utilisation of surplus area are—

> "(a) conferment of rights of ownership on tenants in respect of such land as is comprised in the surplus area of the landowner of such a tenant; and
>
> (b) allotment to tenants, members of Scheduled Castes and Backward Classes and landless agricultural workers, or an area not exceeding two hectares of the first quality land or equivalent area, provided that the total area held or owned by any such allottee, after the allotment, shall not exceed two hectares of the first quality land or equivalent area."

This Act, therefore, clearly envisages agricultural reforms in respect of the surplus area which is to vest in the State Government and has to be transferred to the tenants, members of the Scheduled Castes and Backward Classes and landless agricultural workers, evidently, for providing them with the means of livelihood and better

(2) A.I.R. 1973 S.C. 2734.

utilisation of the land so as to increase the production of foodgrains, fodder or other crops required by the community for the common good. Krishna Iyer, J., in the same judgment, observed in para 31 of the report as under :—

> "Agricultural economists have focussed attention on the need of under-developed countries to upgrade the standard of living of village communities by resort to schemes for increasing food production and reorganising the land system. The main features of the agrarian situation in India and in other like countries are the gross inequality in landownership, the disincentives to production and the desparate backwardness of rural life. As one Latin American has stated (1964-65 (Vol. 50) IOWA Law Review 529)—
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> 'Agrarian reform ought to be an inseparable part of an agricultural policy which furthers the advance of that aspect of economic activity in harmony with overall economic development. Agrarian reform likewise pursues social and political ends congruent with economic goals, such as the cultural elevation of the peasants, their liberation from all vestiges of feudalism, their well-being, their group solidarity, and their participation in public life through the mechanism of democracy.'
>
> It is thus clear to those who understand developmental dialectic and rural planning that agrarian reform is more humanist than mere land reform and, scientifically viewed, covers not merely abolition of intermediary tenures, zamindaris and the like but restructuring of village life itself taking in its broad embrace the socio-economic regeneration of the rural population. The Indian Constitution is a social instrument with an economic mission and the sense and sweep of its provisions must be gathered by judicial statesmen on that seminal footing."

In that case, the constitutional validity of the Kerala Private Forests (Vesting and Assignment) Act, 1971, was challenged on the ground that its provisions were violative of Articles 14, 19(1) (f) (g) and 31 of the Constitution. The lands involved were private forest lands

which were described in the preamble of the Act as agricultural lands which, the Government considered, should be utilised to increase the agricultural production in the State and to promote the welfare of the agricultural population in the State and to give effect to those objectives it was necessary that the private forests should vest in the Government. The High Court came to the conclusion that forest lands in the State of Kerala could not generally be regarded as agricultural lands and, therefore, could not be the subject of agrarian reforms and that the scheme of agrarian reforms envisaged by the impugned Act was not real or genuine but only illusory and the provisions of the Act were not protected under Article 31A of the Constitution. The Act was, therefore, declared to be unconstitutional and void. Section 3 of the Act provided that—

> On and with effect from the appointed day, the ownership and possession of all private forests in the State of Kerala shall, by virtue of this Act, stand transferred to and vested in the Government free from all encumbrances, and the right, title and interest of the owner or any other person in any private forest shall stand extinguished."

Section 10 of the Act provided that—

> "The Government shall, after reserving such extent of the private forests vested in the Government under sub-section (1) of section 3 or of the lands comprised in such private forests as may be necessary for purposes directed towards the promotion of agriculture or the welfare of the agricultural population or for purposes ancillary thereto, assign on registry or lease to—
>
> (a) agriculturists;
>
> (b) agricultural labourers;
>
> (c) members of Scheduled Castes and Scheduled Tribes who are willing to take up agriculture as means of their livelihood;
>
> (d) unemployed young persons belonging to families of agriculturists and agricultural labourers, who have no sufficient means of livelihood and who are willling to take up agriculture as means of their livelihood;

(e) labourers belonging to families of agriculturists and agricultural labourers whose principle means of livelihood before the appointed day was the income they obtained as wages for work in connection with or relate to private forests and who are willing to take up agriculture as means of their livelihood, the remaining private forests or the lands comprised in the private forests on such terms and subject to such conditions and restrictions as may be prescribed."

The Supreme Court upheld the validity of that Act on the ground that it was a measure of land reform and was protected from attacks under Articles 14, 19 and 31 as provided in Article 31A of the Constitution.

(7) The Supreme Court in *The Kannan Devan Hills Produce Company Ltd.* v. *The State of Kerala* (3), held that Kannan Devan Hills (Resumption of Lands) Act (5 of 1971), envisaged reservation of lands for promotion of agriculture and for welfare of agricultural population and assignment of remaining lands to agriculturists and agricultural labourers which purposes were covered by the expression 'agrarian reform' and the legislation was protected from challenge by Article 31A.

(8) The constitutionality of the Punjab Security of Land Tenures Act, (as amended by Act 11 of 1955), was challenged by various persons in petitions under Article 32 of the Constitution in the Supreme Court. The judgment is reported as *Atma Ram and others* v. *State of Punjab and others* (4), and it was held that "the Act modifies the landowner's substantive rights, particularly in three respects, as indicated above, namely—

(1) it modifies his right of settling his lands on any terms and to any one he chooses;

(2) it modifies, if it does not altogether extinguish, his right to cultivate the 'surplus area' as understood under the Act; and

(3) A.I.R. 1972 S.C. 2301,

(4) A.I.R. 1959 S.C. 519.

(3) it modifies his right of transfer in so far as it obliges him to sell lands not at his own price but at a price fixed under the statute, and not to any one but to specified persons in accordance with the provisions of the Act, set out above.

Thus, there cannot be the least doubt that the provisions of the Act, very substantially modify the landowner's rights to hold and dispose of his property in any estate or a portion thereof. It is, therefore, clear that the provisions of Article 31A save the impugned Act from any attack based on the provisions of Articles 14, 19 and 31 of the Constitution."

The Punjab Security of Land Tenures Act did not vest the surplus area in the State Government and the State Government had only the right to settle tenants on that land who were to pay the rent to the landowner. An argument was, therefore, raised that the said Act did not have the effect of either extinguishing or modifying any rights in any estate and even then the Act was held to be valid on the ground that it modified certain rights of the landowner. The present Act extinguishes the rights of the landholders in the area declared surplus and enjoins upon the Government to dispose of that land in the manner provided in section 11 of the Act. This Act, therefore, is clearly covered by the provisions of Article 31A of the Constitution and cannot be challenged on the ground that it violates any of the rights guaranteed in Articles 14, 19 and 31 of the Constitution. The land which is the subject-matter of this legislation means 'land' which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes (a) the site of buildings, and other structures on such land; and (b) *banjar* land, as per definition in section 3(5) of the Act. It is thus evident that primarily it is the agricultural land that is to be dealt with under the Act and leaving the permissible area with the landowner or landholder, the rest of the land is to be declared as surplus which is to vest in the State Government to be utilised in the manner provided in section 11 of the Act. Such lands are 'estates' as defined in Article 31A(2) (a) of the Constitution and any legislation with regard to their acquisition or extinguishment or modification of any rights therein will be immune from any attack on the ground that it abridges or takes away the Fundamental Rights guaranteed under Articles 14, 19 and 31 of the Constitution.

(9) In this view of the matter, it is not necessary to decide whether the Act gives effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39, which read as under:—

> "39. The State shall, in particular, direct its policy towards securing—
>
> (a) * * * * * *
>
> (b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;
>
> (c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;".

But since the matter has been raised, I feel I should express my opinion on this point as well.

(10) There is no dispute that the land declared surplus under the Act can be described as material resources of the community and its distribution amongst the persons and classes mentioned in section 11 of the Act will subserve the common good and avoid the concentration of wealth and means of production in fewer hands. In the statement of objects and reasons, reference has been made to the policy evolved by the Central Committee seeking to make available additional lands to be distributed amongst landless persons to guarantee equitable distribution of land. The provision for acquiring the surplus area and its distribution amongst various persons mentioned in section 11 of the Act will promote the policy specified in Article 39(b) of the Constitution.

(11) Mehar Chand Mahajan, J., in *The State of Bihar* v. *Maharajadhiraja Sir Kameshwar Singh of Darbanga and others*, (5), observed at page 941 of the report as under:—

> "Now it is obvious that concentration of big blocks of land in the hands of a few individuals is contrary to the principle on which the Constitution of India is based. The purpose of the acquisition contemplated by the impugned Act, therefore, is to do away with the concentrationn of big

(5) 1952 S.C.R. 889.

blocks of land and means of production in the hands of a few individuals and to so distribute the ownership and control of the material resources which come in the hands of the State as to subserve the common good as best as possible. In other words, shortly put, the purpose behind the Act is to bring about a reform in the land distribution system of Bihar for the general benefit of the community as advised. The legislature is the best judge of what is good for the community, by whose suffrage it comes into existence and it is not possible for this Court to say that there was no public purpose behind the acquisition contemplated by the impugned statute. The purpose of the statute certainly is in accordance with the letter and spirit of the Constitution of India. It is fallacious to contend that the object of the Act is to ruin five and a half million people in Bihar. All lands in khas possession of all these persons have not been made the subject-matter of acquisition. Their homesteads, their mineral wealth except mines not in operation have not been seriously touched by the provisions of the Act. Various other exemptions have also been made in their favour in the Act, apart from the provisions as to compensation which in the case of small zamindaris can by no means be said to be of an illusory character. It is difficult to hold in the present day conditions of the world that measures adopted for the welfare of the community and sought to be achieved by process of legislation so far as the carrying out of the policy of nationalization of land is concerned can fall on the ground of want of public purpose. The phrase 'public purpose' has to be construed according to the spirit of the times in which particular legislation is enacted and so construed, the acquisition of the estates has to be held to have been made for a public purpose."

The learned Judge while making these observations relied on clauses (b) and (c) of Article 39 of the Constitution and these observations aptly applied to the various provisions of the Act in so far as the acquisition of surplus land and its distribution amongst the poorer and weaker sections of the society mentioned in section 11 of the Act are concerned. These provisions can also, therefore, be justified under clauses (b) and (c) of Article 39 of the Constitution.

(12) Accordingly I hold that this Act is immune from attack on the ground that its provisions take away or abridge any of the Fundamental Rights guaranteed under Articles 14, 19 and 31 of the Constitution.

(13) Shri H. L. Sibal, the learned Senior Advocate for the petitioners, has, then argued that section 5 of the Act is unconstitutional as it offends Article 15 of the Constitution. The short argument is that the person making selection of his permissible area has been allowed to select a separate permissible area in respect of each adult son but not in respect of each adult daughter. The adult son and the adult daughter of such a person are citizens of India and one cannot be discriminated against *qua* the other on the ground of sex alone. It is contended that the discrimination between an adult son and an adult daughter is solely on the ground of sex of the child begotten by a person owning or holding land who is to select his permissible area. In my opinion, there is no merit in this submission of the learned counsel. The subject of legislation is the person owning or holding land and not his or her children. The extent of the permissible area has been prescribed in section 4 of the Act and every person owning or holding land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area provided under the Act has been allowed to select his own permissible area and a separate permissible area in respect of each adult son subject to the condition that the land so selected together with the land already owned or held by such son shall not exceed the permissible area of each such son. The effect is that every person described in section 5, whether male or female, is allowed the same permissible area and there is no discrimination *qua* one landowner and the other on the ground of sex alone, that is, the female owners or holders of land have not been treated differently from the male owners or holders of land. Each one of them shall have the right to select one permissible area for himself or herself and another permissible area in respect of each adult son of his or hers subject to the condition that the land so selected together with the land already owned or held by such person shall not exceed the permissible area of such son. The son has not been given the right to select his permissible area. The permissible area to be selected is by the person owing or holding the land and each such person is allowed an extra permissible area

in respect of each adult son that he or she may have. In other words, section 5 provides for the measure of permissible area that a person with one or more adult sons will be allowed to select out of the area owned or held by him and his children, whether male or female, have not been given any right to make a selection for himself or herself. It cannot, therefore, be said that this section makes a discrimination between a son and a daughter in respect of his or her permissible area on the ground of sex alone. The legislature is the best judge to decide how much area should be left as permissible area with each owner or holder of land. In so far as no distinction between a male and a female holder or owner of land has been made in respect of the permissible area in any given circumstances, there is no violation of Article 15 of the Constitution. This section does not provide for any succession to the land; it only provides for the measure of the permissible area to be retained by every holder or owner of land out of the area held or owned by him or her on the appointed day on the basis of the number of adult sons he or she has. It is for the legislature to prescribe the measure of permissible area and no exception can be taken because only adult sons have been taken into consideration. It may be that according to the prevailing custom amongst the communities in the State of Punjab, the daughter normally goes to another family by marriage and, therefore, it was not considered desirable to make any provision for her in her parents' land. This intention of the legislature becomes manifest from the definition of 'family' in the Act which excludes a married minor daughter. It is evident that distinction between an adult son and an adult daughter has been made not only on the ground of sex, but also for the reason that a daughter has to go to another family after her marriage in due course, marriage being a normal custom which is universally practised. This is an institution of general prevalence which is the foundation of organised and civilised societies and communities. I am, therefore, of the opinion that section 5 of the Act cannot be held to be *ultra vires* Article 15 of the Constitution merely because it allows the holder or owner of land to select a seperate permissible area in respect of each adult son, but not so in respect of each adult daughter.

(14) The learned counsel for the petitioners, in support of his argument, relied on the observations of their Lordships of the Supreme

Court in *Kathi Raning Rawat* v. *The State of Saurashtra* (6) (at page 442) reading as under:—

> "All legislative differentiation is not necessarily discriminatory. In fact, the word 'discrimination' does not occur in Article 14. The expression 'discriminate against' is used in Article 15(1) and Article 16(2), and it means, according to the Oxford Dictionary, 'to make an adverse distinction with regard to; to distinguish infavourably from others'. Discrimination thus involves an element of unfavourable bias and it is in that sense that the expression has to be understood in this context. If such bias is disclosed and is based on any of the grounds mentioned in Articles 15 and 16, it may well be that the statute will, without more, incur condemnation as violating a specific constitutional prohibition unless it is saved by one or other of the provisos to those articles. But the position under Article 14 is different. Equal protection claims under that article are examined with the presumption that the State action is reasonable and justified. This presumption of constitutionality stems from the wide power of classification which the legislature must, of necessity, possess in making laws operating differently as regards different groups of persons in order to give effect to its policies."

I have not been able to understand how these observations help the learned counsel. No unfavourable bias has been shown by the legislature in favour of adult sons and against adult daughters. Only the extent of permissible area to be selected by each holder or owner of land in respect of each adult son has been provided for, which is the same for every person, whether male or female.

(15) The next case relied upon by the learned counsel for the petitioners is *Yusuf Abdul Aziz* v. *The State of Bombay and Husseinbhoy Laljee* (7), wherein it was held that section 497 of the Indian Penal Code did not offend Articles 14 and 15 of the Constitution. It was observed that—

> "Article 14 is general and must be read with the other provisions which set out the ambit of fundamental rights. Sex

(6) 1952 S.C.R. 435.

(7) 1954 S.C.R. 930.

> is a sound classification and although there can be no discrimination in general on that ground, the Constitution itself provides for special provisions in the case of women and children. The two articles read together validate the impugned clause in section 497 of the Indian Penal Code."

From these oservations, the learned counsel argues that special statutory provision can be made in favour of the women and children but not against them. As I have said above, there is no legislation made against the adult daughters of a holder or owner of land entitled to make a selection by section 5, which only provides for the number of permissible areas which can be selected by every owner or holder of land, whether male or female. Reference is then made by the learned counsel to the judgment of the Supreme Court in *The General Manager Southern Railway* v. *Rangachari* (8), which has not even the remotest bearing on the point canvassed. In that case the High Court had issued a writ of mandamus restraining the General Manager, Southern Railway, and the Personnel Officer (Reservation), Southern Railway, from giving effect to the directions of the Railway Board ordering reservation of selection posts in Class III of the Railway Service in favour of the members of the Scheduled Castes and Scheduled Tribes and in particular the reservation of selection posts among the Court Inspectors in Class III, one of which was held by the respondent. It was held by majority that the promotion to selection post is also included in the matters relating to employment, and even in regard to such a promotion to a selection post, all that Article 16(1) guarantees is equality of opportunity to all citizens, who enter into service. There was no question of discrimination on the ground of sex.

(16) Lastly, reliance has been placed by the learned counsel on a Division Bench judgment of this Court in *Mrs. H. M. Dhillon* v. *The State of Punjab and another* (9), which was a case under Article 16 of the Constitution and not article 15. In that case, Mrs. Dhillon was included in the Men's cadre as a result of the resolution relating to the final integration of the Education Service dated September 23, 1954, in Pepsu, pursuant to which the cadre was reconstituted with effect from September 1, 1954. She was shifted to the Women's cadre subsequently in 1956 on the ground that the Government had

(8) (1962) 2 S.C.R. 586.

(9) 1966 Curr. L.J. 678.

decided to accept the prevailing practice in the Punjab of separate cadres for men and women and it was held that there was no escape from the conclusion that that was done essentially and principally on the sole ground that she was a woman. Such an action immediately attracted the applicability of Article 16(2) inasmuch as her future chances of promotion were prejudicially affected. It was not disputed that if Mrs. Dhillon had continued to remain in the Men's cadre, she would have been entitled for appointment to a post in the Selection Grade shortly but that if she remained in the Women's cadre, she had to wait for a number of years before she could get promoted to the Selection Grade. In view of this admitted position, it was held that the exclusion of Mrs. Dhillon from the Men's cadre in the year, 1956 was based solely on her sex which was not permissible in view of the provisions of Article 16(2) of the Constitution. No such situation has arisen in the case of landholders under the Act. To repeat, the legislature has only provided the number of permissible areas which an owner or holder of land, whether male or female, can select out of the area held by him or her on the appointed day and has given no right to the adult son to make such a selection which has been denied to the adult daughter on the ground of sex alone. The number of permissible areas to be selected depends on the number of adult sons that a person may have which has only provided a measure of the total permissible area which can be selected by the owner or holder of land.

(17) The learned counsel for the petitioners has argued that an adult daughter can cultivate the land or get it cultivated through any other person mentioned in the definition of 'self-cultivation' in section 2(13) of the Act just as any other landowner can do and adult daughters could not, therefore, have been left out on the ground that they cannot cultivate the land themselves. I do not think that this factor weighed with the legislature while enacting section 5 of the Act nor has it been so pleaded by the State. Section 4 defines the permissible area of each person, but makes its provisions subject to the provisions of section 5 which means that in the case of a landowner having one adult son, the permissible area will be twice the area mentioned in section 4 for each person minus the area held by the adult son within his permissible area. In the case of a landowner having two adult sons, the permissible area will be thrice the area mentioned in section 4 reduced by the area already held by each of the adult sons within his permissible area and so on if the adult sons are more than two. Section 5, therefore, provides for the measure of permissible

area to be selected by each landowner and for providing a measure the legislature can adopt any method. What is worthy of note is that there is no discrimination made between a male landowner and a female landowner as regards the selection of permissible area in accordance with the number of adult sons each landowner has. Since each adult son has not been given the right to select a permissible area for himself out of the land held by his father or mother but only the landholder has been given the right to select a separate permissible area in respect of each of his adult sons, it cannot be said that an adult daughter has been deprived of the right of selecting a permissible area for herself on the ground of sex alone. There is thus no discrimination between an adult brother and an adult sister on the basis of sex alone. It cannot be claimed by the landowner that he must also be allowed to select a separate permissible area in respect of each adult daughter in the same manner as he is permitted to select a separate permissible area in respect of an adult son nor can it be said that, in the absence of such a provison, the provision as to the selection of permissible area in section 5 of the Act is bad or *ultra vires*. It is open to the legislature to prescribe the extent of the permissible area for each landowner and to adopt a measure therefor on any rational basis. The measure prescribed in section 5 cannot be termed as irrational. We cannot lose sight of the fact that amongst the agricultural communities of the State of Punjab no landowner desired that his land should go either to his sister or to his daughter who, after marriage, settled in another family, to avoid the raising of disputes by the members of that family with regard to the land of or in the family of her parents. This feeling was so strong that the landowners preferred that in the absence of male lineal descendants or collaterals the land might escheat to the Crown rather than it should go to the female relations. In any case no right of succession was allowed to females of the family, wife, widow, mother, daughter or sister, in the presence of male lineal descendants under customary law prevailing amongst the agricultural communities of Punjab. Even when she succeeded in the absence of male heirs, she never acquired absolute right or owenrship in the land of her husband, father, brother or son; she always held life estate therein with a very restricted right of transfer or alienation. It is only by virtue of the Hindu Succession Act that her estate has been enlarged to full ownership and made absolute. I am of the opinion that it is the fact of a daughter going out of the family after marriage that seems to have prevailed with the legislature for not making a provision for selection of a separate permissible area in respect of an

adult daughter by the landowner which is made clear by the exclusion of a minor married daughter from the definition of 'family' in section 3(4) of the Act.

(18) It is then urged by the learned counsel for the petitioners that by excluding adult daughters while selecting the permissible area, section 5 has the effect of changing the law of succession which is within the power of Parliament and not of the State Legislature. To that extent, it is submitted, the State Legislature lacked jurisdiction to enact section 5 of the Act. This argument is clearly untenable. Section 5 only deals with the selection of permissible area and not with any matter of succession to the land held by the person selecting the permissible area. The succession to his estate will take place according to his personal law after his death if he dies intestate leaving the estate intact. Section 5, as enacted, does not deal with or operate in the field of succession, and, therefore, cannot be said to have entrenched upon the field of legislation within the exclusive jurisdiction of Parliament.

(19) The challenge to the constitutional validity of section 4 of the Act is based on second proviso to Article 31A(1) of the Constitution which was inserted by the Constitution (Seventeenth Amendment) Act, 1964, and reads as under:—

> "Provided further that where any law makes any provision for the acquisition by the State of any estate and where any land comprised therein is held by a person under his personal cultivation, it shall not be lawful for the State to acquire any portion of such land as is within the ceiling limit applicable to him under any law for the time being in force or any building or structure standing thereon or appurtenant thereto unless the law relating to the acquisition of such land, building or structure, provides for payment of compensation at a rate which shall not be less than the market value thereof."

The argument is that 'family' has been given an artificial meaning by section 3(4) of the Act and such a family is included in the definition of 'person' in section 3(10) of the Act. According to these definitions, no family can own or hold land as landowner or mortgagee with possession or tenant or partly in one capacity and partly in another in excess of the permissible area which is 7 hectares, 11

hectares, 20.5 hectares or 21.8 hectares, as mentioned in clauses (a), (b), (c) and (d) of section 4(2) of the Act. If the members of such a family exceed five, the permissible area is increased by 1/5th of the permissible area for each member in excess of five subject to the condition that additional land shall not be allotted for more than three such members. The mode of selection of permissible area for the family is provided in sub-section (4) of section 4, that is, the land held by each member of the family on the appointed day has to be pooled and out of that land the husband, and where the husband is dead or does not own or hold any land, the wife and in any other case the eldest surviving child, who is a member of the family, has to make the selection of permissible area and furnish the necessary declaration as is provided in rule 5(4) of the Punjab Land Reforms Rules, 1973 (hereinafter called the Rules). This rule does not provide that if the husband holds any area in his own name, he has necessarily to select that area for the family and can select the land of other members only to the extent his own area falls short of the permissible area. Similarly, if the husband does not own any land and the wife does, it has not been made obligatory on her to select the area owned by her as the permissible area and to select only such area from the land held by the children as may fall short of the permissible area for the family. The only restriction on the free choice of the person entitled to make selection of his permissible area is contained in sub-section (2) of section 5 as to the order in which different categories of lands held by him are to be selected. It, however, does not make mention of the order in which the lands held separately by the members of a family are to be selected by the husband, the wife or the eldest surviving child, who is a member of the family, as provided in rule 5(4) of the Rules. It is well-known that the lands in the State of Punjab are entered in the revenue records in the names of individuals and not families. The definition of 'family' is an artificial one as it excludes adult children and married minor daughters. For the purpose of determining the permissible area of such a family, minor children in excess of six have to be ignored. It is a common phenomenon that even adult sons are many a time dependant on their father or mother for their maintenance till they are able to support themselves. It has, however, not been provided by the Act that the permissible area so selected by the husband or the wife or the eldest surviving child of the family will become the permissible area of that family. In the absence of such a provision, it is legitimate to conclude that even after selection of the permissible area and the filing of the necessary declaration the land

shall continue to remain in the individual name of the member of the family in whose name it stood previously so that he or she will be at liberty to deal with it as he or she pleases even to the detriment of the other members of the family. The family as such will not acquire or become the owner of the land comprised in its permissible area. That part of the land selected as permissible area which belongs to a minor son will be lost to the family when the minor son becomes adult and ceases to be a member of the family. He will then own that land as a part of his own permissible area. Similarly, a minor daughter will take the land with her on marriage when she ceases to be the member of the family. It is thus obvious that the husband or the wife or the eldest suriving member of the family, while making the selection, and other junior members by attaining adulthood or getting married, as the case may be, can deprive the other members of the family of the area held by them at his or her own sweet will. The share of each member of the family in the permissible area of the family has not been defined nor has any restriction been placed on the alienation of that land by the members of the family so as to ensure its retention in the family. Such a provision cannot be said to be in the interest of or by way of agricultural reform, nay, it is the very negation thereof and cannot be upheld as valid or constitutional.

(20) The provisions with regard to the permissible area for the family also suffer from another infirmity which makes them unconstitutional as being violative of second proviso to Article 31A(1) of the Constitution. In case each member of the family, as defined in the Act, held land immediately before the commencement of the Act as landowner or mortgagee with possession or tenant within the permissible area fixed by the Act, he continued to be the holder thereof on the day the Act commenced and if he is to be deprived of the land so held by him, which is within his permissible area and is under his personal cultivation, he has to be paid compensation which will not be less than the market value in accordance with the second proviso to Article 31A(1) of the Constitution. On the day the Act came into force, that is, April 2, 1973, it was not known to what extent the area of each member of the family, separately held by him or her, would be reduced under the Act. It has been left to the will of the husband or the wife or the eldest surviving member of the family to effect the reduction by making selection under section 4(4) of the Act read with rule 5(4) of the Rules. It cannot, therefore, be said that the Act, by its own force and on the very day

of its enforcement, fixed the extent of the permissible area in respect of each member of the family as defined in the Act. Further more, whatever land is selected as permissible area will not become the land of the family as such but will continue to vest in the member in whose name it stood prior to the selection. In my view, the provision for pooling together of the entire land held by the members of the family, as defined, on the appointed day, out of which one permissible area in terms of section 4 of the Act has to be selected, is violative of second proviso to Article 31A(1) of the Constitution as no provision for payment of compensation in terms of that proviso has been made in the Act, and is, therefore, void. The attack to the provisions of the Act is only barred under Articles 14, 19 and 31 of the Constitution, but not under Article 31A itself or any other Article. While coming to this conclusion, I have been influenced by the fact that the expression 'family' has been given an artificial meaning in the Act and that artificial entity has been included in the definition of the word 'person' as defined in the Act, which is not in accordance with the definition of 'person' in section 3(42) of the General Clauses Act, 1897, the provisions of which, according to Article 367 of the Constitution, are to apply for the interpretation of the expressions used in the Constitution and which have not been defined in that Article. In order to understand the meaning of the expression 'person' in second proviso to Article 31A(1) of the Constitution, we have to refer to the meaning of that expression in section 3(42) of the General Clauses Act, 1897, according to which 'person' includes any company or association or body of individuals, whether incorporated or not. According to this definition of the word 'person', not only individuals but juristic persons are also called 'person'. In order to constitute an association or body of individuals, whether incoroprated or not, the association or body of individuals has to exist as such by their own volition and not as may be defined by the legislature by adopting artificial definitions. The family, as defined in the Act, cannot be said to be an association or body of individuals unless it existed in that form on the appointed day and held any land in its name. By an artificial definition a 'family' cannot be brought into existence restrospectively with reference to the appointed day and by a fiction deemed to hold the land which was, in fact, not held by it but was held individually by each of its members. As I have said above, no provision has been made in the Act that the permissible area selected for a family shall become the property of that family nor is there any provision made with regard to the share of each member of the family therein or the mode of succession thereto nor

is there any provision made barring its alienation by any member of the family. The result of the impugned provision is the expropriation of the land of some members of the family as defined, although the land of each member so expropriated did not exceed the permissible area prescribed under the Act which, like any other person, he was entitled to continue to hold. If they were to be deprived of that area, a provision should have been made in the Act for paying them compensation at a rate not less than the market value of the land in accordance with the second proviso to Article 31A(1) of the Constitution.

(21) In the Maharashtra Agricultural Lands (Ceiling of Holdings) Act, 1961, the family has been defined in section 2(11) to include a Hindu undivided family and in the case of other persons a group or unit the members of which, by custom or usage, are joint in estate or possession or residence. Such a family is included in the definition of 'person' in section 2(22) of the said Act and to such a family the provisions with regard to ceiling area etc. apply. From the definition of the word 'family' in that Act it is quite clear that an entity known to the law was particularised as a family which owned land as such and no artificial family was created for the purposes of that Act, as has been done by the Punjab Legislature in the Act under challenge. The provision with regard to a family is also made in the Kerala Land Reforms Act (1 of 1964), according to section 2(14) of which the family means husband, wife and their unmarried minor children or such of them as exist. Section 82 of that Act provides that the ceiling area of the land shall be 5 standard acres (but not less than 6 or more than 7½ ordinary acres) in the case of a single person, 10 standard acres (but not less than 12 or more than 15 ordinary acres) in the case of a family of two or more persons with 1 standard acre added for each member in excess of five (but not less than 12 or more than 20 ordinary acres) and in the case of any person other than a joint family, 10 standard acres (but not less than 12 or more than 15 ordinary acres). A further provision is made that all the lands held by members of the family shall be deemed to be held by the family and the share of an adult unmarried person or a member of a family in joint family lands, or lands held by a co-operative society is to be taken into account in calculating the extent of the land held by the adult unmarried person or the family as the case may be. That provision is clearly distinguishable from the provisions with regard to the family in the impugned Act.

(22) As a result of the above discussion, it is held that the definition of the expression 'person' in section 3(10) of the Act, in so far as it includes 'family', is unconstitutional and is struck down with the result that in every provision of the Act the word 'person', whereever used, shall not include 'family'. Consequently, proviso (ii) to sub-section (2) of section 4 is struck down and shall stand deleted. From clause (a) of sub-section (4) of section 4, the words 'or if such person is a member of a family, together with the land held by every member of the 'family' shall stand deleted. Clause (b) of sub-section (4) of section 4 shall also stand deleted. Rule 5(4) of the Punjab Land Reforms Rules, 1973, has become redundant and is also deleted. These provisions are separable and their unconstitutionality and deletion will not affect the other provisions of the Act or make them unworkable.

(23) The learned counsel for the petitioners has next argued that sub-section (5) of section 4 of the Act is bad in so far as it nullifies all transfers of land by way of sale, gift or otherwise made by the landowner after the appointed day and before the commencement of the Act unless he is able to prove that those transfers were *bona fide*. This challenge is based on the provisions of Articles 19 and 31 of the Constitution which is not permissible because of the protection afforded to the Act by Article 31A of the Constitution. Moreover, this matter is not *res integra*. A Full Bench of this Court in *Bhagirath Ram Chand* v. *State of Punjab and others* (10), made the following observations with regard to a similar provision in the Punjab Security of Land Tenures Act, 1953:—

> "The next argument raised was that the statute nullifies retrospectively all gifts, exchanges and family settlements and this was against the spirit of the Constitution and natural justice. Counsel relied upon certain observations contained in a decision of the Calcutta High Court in *'Subodh Gopal* v. *Behari Lal* (11). In that case section 7, Bengal Land Revenue Sales (West Bengal Amendment) Act was declared invalid on the ground that it purported to deprive individuals of right which they had acquired retrospectively.

(10) A.I.R. 1954 Pb. 167.
(11) A.I.R. 1951 Cal. 35.

There can, however, be no doubt that the Legislature can pass laws with retrospective effect. This power was recognised in a decision of the Federal Court—*'United Provinces* v. *Mt. Atiqa Begum* (12). So long as the restrospective effect of the Act is in conformity with the objects of the Act and does not violate any principles of the Constitution, the provision must be held to be valid. The Act gives certain rights to those tenants who were ejected after 15th August, 1947 and there seems to be nothing unreasonable in giving them the same rights as are acquired by persons who are tenants at the commencement of the Act. In the same way the abrogation of *mala fide* transactions is brought under the mischief of the Act by section 16. This section is intended to prevent evasion of the provisions of the Act by colourable transactions."

The Supreme Court, in *State of Bihar and another* v. *Umesh Jha* (13), dealt with a similar provision contained in section 4(h) of the Bihar Land Reforms Act (30 of 1950), which empowered the Collector, *inter alia,* to make enquiries in respect of any transfer of land comprised in an estate and to cancel the same if he was satisfied that such transfer was made any time after January 1, 1946, with the object of defeating any provisions of the Act or causing loss to the State or obtaining compensation thereunder. It was contended that that section *ex proprio vigore* did not provide for acquisition by the State of any estate or of any rights therein or for the extinguishment or modification of any such right and, therefore, was not hit by Article 31A of the Constitution. The argument was repelled and it was held that—

"Section 4(h) is an integral part of the Act, and taken out of the Act, it can only operate in vacuum. Indeed, the object of the section is to offset the anticipatory attempts made by landlords to defeat the provisions of the Act. Suppose the Collector cancels a transfer of land by the owner of an estate under the said section; the said land automatically vests in the State, with the result that the rights of the transferor and the transferee therein are extinguished. The said result accrues on the basis that the said land

(12) A.I.R. 1941 F.C. 16.

(13) A.I.R. 1962 S.C. 50.

continued to be a part of the estate at the time the Act came into force. That apart, the section is a part of the Act designed to extinguish or modify the rights in an estate, and the power conferred on a Collector to cancel a transfer of any land in an estate is only to prevent fraud and to achieve effectively the object of the Act. This question was directly raised and answered by this Court in *Raghubir Singh* v. *State of Ajmer* (14). There, the constitutional validity of the Ajmer Abolition of Intermediaries and Land Reforms Act, 1955 (Ajmer III of 1955) and section 8 thereof was attacked. Section 8 of the said Act conferred a power on the Collector to cancel a lease or contract, if he was satisfied that it was not made or entered into in the normal course of management, but in anticipation of legislation for the abolition of intermediaries. Repelling the said contention, Wanchoo, J., speaking for the Court, observed at p. 477 thus:

'The provision is not an independent provision; it is merely ancillary in character enacted for carrying out the objects of the Act more effectively ... Such cancellation would sub-serve the purpose of the Act, and the provision for it, therefore, would be an integral part of the Act, though ancillary to its main object, and would thus be protected under Article 31A(1)(a) of the Constitution.'

The same reasoning applies to section 4(h) of the Act, and for the same reasons we hold that section 4(h) of the Act is likewise not hit by Article 31A of the Constitution."

Thus, section 4(h) was held to be protected under Article 31A (1)(a) of the Constitution and was held to be not constitutionally invalid and in support of that conclusion an earlier judgment of the Supreme Court was relied upon. The learned counsel for the petitioners has, however, relied upon the judgment of the Supreme Court in *Kunjukutty Sahib and others* v. *The State of Kerala and others* (15), with regard to the Explanation to section 85(1) of the Kerala

(14) A. I.R. 1959 S. C. 475.
(15) A.I.R. 1972 S.C. 2097.

Land Reforms Act (1 of 1964) (as amended by Act 35 of 1969). Section 85 of the said Act, so far as relevant, read:

"85. Surrender of excess lands.—

(1) Where a person owns or holds land in excess of the ceiling area on the date notified under section 83, such excess land shall be surrendered as hereinafter provided:

Provided that where any person *bona fide* believes that the ownership or possession of any land owned or held by such person or, where such person is a member of a family, by the members of such family, is liable to be purchased by the cultivating tenant or kudikidappukaran or to be resumed by the landowner or the intermediary under the provisions of this Act, the extent of the land so liable to be purchased or to be resumed shall not be taken into account in calculating the extent of the land to be surrendered under this sub-section.

Explanation.—Where any land owned or held by a family or adult unmarried person owning or holding land in excess of the ceiling area was transferred by such family or any member thereof or by such adult unmarried person, as the case may be, after the 18th December, 1957, and on or before the date of publication of the Kerala Land Reforms Bill, 1963, in the Gazette, otherwise than—

(i) by way of partition; or

(ii) on account of natural love and affection; or

(iii) in favour of a person, who was a tenant of the holding before the 18th December, 1957, and continued to be so till the date of transfer; or

(iv) in favour of a religious, charitable or educational institution of a public nature solely for the purposes of the institution,

the extent of land owned or held by such family or adult unmarried person shall be calculated for purposes of

fixing the extent of land to be surrendered under this section as if such transfer had not taken place, and such family or adult unmarried person shall be bound to surrender an extent of land which would be in excess of the ceiling area on such calculatoin, or, where such family or person does not own or hold such extent of land, the entire land owned or held by the family or person; but nothing in this Explanation shall affect the rights of the transferee under the transfer."

A Full Bench of the Kerala High Court struck down this provision with the following observations:—

"Section 85 provides for the surrender of excess land, but sub-section (1) thereof contains an explanation which we think cannot stand. Under the explanation, subject to certain exceptions, any land transferred by a person holding land in excess of the ceiling area between the 18th December, 1957 (the date of publication of the Kerala Agrarian Relations Bill) and the date of the publication of the Kerala Land Reforms Bill, 1963 (here we think that ceiling means the ceiling area under the Act, for it does not appear there was any ceiling area during the period in question) is to be regarded as still held by him for the purpose of fixing the extent of land to be surrendered by him and such surrender is to be made out of the land still held by him. This can lead to absurd results. For example, supposing a person holding land just one cent in excess of the ceiling area had transferred some lands between the dates mentioned and bought the lands now held by him, possibly at a higher price, he will have to surrender all his land for the nominal compensation provided by section 88. No doubt, absurdities like this can only be attacked under Articles 14, 19 or 31, which are not available in the case of a legislation protected by Article 31-A, but, there is the second proviso to sub-clause (a) of clause (1) of the article which enjoins the payment of compensation not less than the market value for the acquisition of any land within the ceiling limit under the law for the time being in force. The effect of the explanation is to offend this proviso since it means that even land held by a person within the ceiling limit applicable to him under the Act (the law for the time being in force

within the meaning of the article) can be taken away for the nominal compensation payable under section 88, by the fiction of regarding lands disposed of by him within the dates mentioned as if those lands were still held by him although the transfer remains untouched, in other words, as if the ceiling limit for such a person is different from the ceiling limits for persons, who had not disposed of land between the relevant dates. That is not so. The ceiling limits imposed by the Act are the same for all, but in the case of a person, who has so disposed of land, that land is to be regarded as still held by him (although, in fact, it is not) for the purpose of calculating the extent of the land to be surrendered by him, and the surrender is to be made out of the land still held, even if its effect be to leave him with land less than the ceiling limit, indeed with no land at all. If a fiction by which land not held by a person could be taken into account for the determination of the excess land to be surrendered by him, and he could be forced to surrender land actually held by him although it is within the ceiling limit without payment of the market value thereof, were permitted, the proviso in question could easily be rendered nugatory. That would be to mock the proviso."

This reasoning appeared to their Lordships of the Supreme Court to be unexceptionable and the learned Advocate-General was wholly unable to offer any serious criticism of those observations of the High Court. Their Lordships accepted the conclusion of the High Court with the following observation:

"It is clear that by virtue of the second proviso to Article 31-A(1) land within the ceiling limit is expressly protected against acquisition by the State unless the law relating to such acquisition provides for compensation which is not less than its market value. No attempt was made to take the impugned explantion out of this constitutional inhibition. We, therefore, do not find any reason to differ from the conclusions of the High Court."

A careful reading of the Explanation shows that what was to be ignored, while determining the ceiling area, were the *bona fide* transfers by sale or otherwise barring those which were specifically

mentioned in the Explantion. These four kinds of alienations which were excepted show that the changes in the area brought about by *bona fide* sales, etc. were to be ignored while determining the ceiling area without affecting the rights of the transferees. Any readjustment of the land amongst the members of the family by partition or by gift and all sales in favour of a tenant, a religious, charitable or educational institution of a public nature solely for the purposes of that institution were not to be taken into account. The same cannot be said of the provision made in section 4(5) of the Act. If a landowner is able to satisfy the Collector that any transfer of land made by him after January 24, 1971, was *bona fide,* that transfer will be recognised. It is only *mala fide* transfers, which shall be presumed to have been made with a view to reduce the surplus area in view of the impending legislation, that are to be ignored. According to the judgments already referred to above, such a provision is an integral part of the Act and of the agrarian reforms which are sought to be brought about and *mala fide* transfers to defeat the provisions of such an Act after the knowledge of its enactment cannot be allowed. I, therefore, hold that section 4(5) of the Act is constitutionally valid.

(24) Since the Act is protected by Article 31-A of the Constitution, no challenge can be made to the provisions of section 10 of the Act on the ground that the amount payable by the State for the suplus area acquired by it is not adequate or is illusory.

(25) Lastly, a challenge has been made to the validity of rule 10 and Schedule B of the Punjab Land Reforms Rules, 1973. The argument in brief is that in case a landowner reserves perennial area as his permissible area, he is allowed more land than a landowner who reserves non-perennial area as a result of the working of the formula mentioned in rule 10 and Schedule B. I do not find any substance in this submission. Every person has to be allowed seven hectares of first quality land or higher area of lower qualities. Rule 10 provides the method of converting the entire land held by a landowner into land of first quality and then to determine seven hectares of land for him. It is not a universal rule that the area served by perennial canals must be less than the areas served by non-perennial canals. The words 'perennial' and 'non-perennial' have not been used in the Act or the Rules. What is provided is assured irrigation for one crop or two crops and the sources of such assured irrigation. The quality of land is to be determined on the basis of assured irrigation and its sources. I, therefore, do not find anything wrong, unjust

or unworkable in the formula prescribed in rule 10 and Schedule B of the Rules. Every landowner shall get the permissible area worked out on the basis of the quality of land in accordance with one and the same formula and no question of discrimination between one landowner and another arises nor can the formula be termed as arbitrary or unworkable. This submission is, therefore, repelled.

(26) No other point has been argued.

(27) All these cases will now be placed for hearing before a learned Single Judge for final decision on the merits of each case in the light of the observations made herein. Since we are not finally disposing of any case, we make no order as to costs of these proceedings.

February 14, 1974.

D. K. MAHAJAN, J.—I agree.

P. S. PATTAR, J.—I also agree.

B. S. G.

14070 ILR—Govt. Press, Chd.