matter and ultimately held that the suit was not triable by the Civil Court with the result the judgment and decree of the trial Court was set aside and the case was remanded to the trial Court for transferring the same to the Assistant Collector Ist Grade for deciding the matter in accordance with law. Dissatisfied from the order of remand passed by the learned District Judge, the present appeal has been filed.

(24) It was contended by the learned counsel for the appellants that the suit was triable by the Civil Court and that the provisions of section 13 or 13-B of the Act were not applicable. I am afraid, I am unable to agree with this contention of the learned counsel. From the admitted facts, it is evident that the suit has been filed by the appellants against the Gram Panchayat for the exclusion of the land in dispute from *Shamilat deh*. The appellants claim themselves to be the owners-in-possession of the property. In this situation, the learned District Judge was justified in deciding the question of jurisdiction and in remanding the case to the learned Subordinate Judge for transferring the same to the court of the Assistant Collector Ist Grade.

(25) In this view of the matter, I find no merit in this appeal and consequently dismiss the same but without there being any order as to costs. The parties through their learned counsel have been directed to appear before the trial Court on August 27, 1979.

S. S. Sandhawalia, C.J.—I agree.

S.C.K.

Before S. S. Sandhawalia, C.J. and Harbans Lal, J.

NAGENDER SINGH CHOHAN,—*Petitioner.*

versus

STATE OF HARYANA and another,—*Respondents.*

Civil Writ No. 3555 of 1976

April 20, 1979.

Haryana Ceiling on Land Holdings Act (26 of 1972)—*Sections* 3, 7 *and* 9(2)—*Determination of the eligibility of the son of a land-owner to a separate unit of land—Date of majority of the son to*

determine such eligibility—Whether can be earlier than the date of enforcement of the Act.

Held, that the Haryana Legislature has the power to legislate retrospectively with regard to the agrarian laws and that the appointed day is not an arbitrary day fixed without relevance or purpose. It was on this day that the decision of the high powered Central Panel on land reforms had been publicly announced declaring broadly the quantum of land which should be uniformly held within the whole country. Transfers or other dispositions of land made after the said date in order to defeat the larger purpose of the agrarian reforms and ceiling legislation were, therefore, to be excluded from consideration. The said, date, therefore, became the immutable fixed point from which the ceiling of land and the areas surplus or permissible thereunder had to be worked out. Section 7 of the Haryana Ceiling on Land Holdings Act, 1972 is patently retrospective in operation because though the Act was promulgated on 23rd December, 1972, the ceiling on land and the permissible area declared by the Act came into force with effect from the appointed day i.e. 24th day of January, 1971. It is, therefore, obvious that the surplus area of the land owner himself is, therefore, to be immutably fixed with regard to the date of 24th January, 1971. It would indeed be a curious situation that if this is so *qua* the landowner himself, yet as regards the separate unit permitted for his adult son, the same should be determined with reference to a constantly fluctuating day within three months of the date to be specified by the notification under section 9(2). From the provisions of the Act it appears that the concept of a separate unit is not so much a right of the adult son himself to hold the land but in essence is the right of the land owing father to hold extra land for each one of his adult sons living with him. The Government can, therefore, fix the relevant date for determining the majority of the sons for being eligible for a separate unit of land earlier to the enforcement of the Act. (Para 10).

Petition under Article 226 of the Constitution of India praying that the following reliefs be granted :—

(*i*) *the provisions of section* 18(7) *and,* 28(8) *and the provisions of Haryana Ceiling on Land Holdings Act be declared to be* ultra vires *of Article* 14, 19(1)(*f*), 31(1), *and* 265 *of the Constitution of India ;*

(*ii*) *a writ of mandamus be issued directing* Respondent No. 2 *to proceed in accordance with the law only ;*

(*iii*) *The instructions Annexure* P/1 *be quashed and any other suitable writ, direction or order that this Hon'ble*

Court may deem fit in the circumstances of the case be issued ;

(*iv*) *an ad-interim order be issued staying the dispossession of the petitioner from the land in dispute till the decision of the writ petition ; and*

(*v*) *costs of the petition be allowed to the petitioner.*

(*vi*) *In view of the urgency of the matter, condition regarding service of notice be dispensed with.*

K. P. Bhandari, Advocate with Ravi Kapur, Advocate, *for the Petitioner.*

S. C. Mohunta, A.G. with B. L. Gulati, Advocate, *for the respondent.*

JUDGMENT

S. S. Sandhawalia, C. J.

(1) Whether the crucial date for determining the majority of a son of a land-owner (and his consequent eligibility for separate unit of land) is the appointed day of the 24th of January, 1971, under the Haryana Ceiling on Land Holdings Act, 1972,—admittedly is the sole, though meaningful, question which arises for determination in this set of sixteen writ petitions.

2. As is apparent from the above, the question is primarily legal and the facts, therefore, pale into relevant insignificance. It, therefore, suffices to make a brief reference to those in C.W.P. No. 3555 of 1978 (Nagender Singh *v.* The State of Haryana). The petitioner therein claims to have been born on the 24th of April, 1954, and it is averred that his father owned considerable agricultural land in various village estates. The Haryana Ceiling on Land Holdings Act, 1972, came into force on the 23rd of December, 1972, by publication in the gazette of that date. By virtue of its provisions the father of the petitioner was entitled to select a separate unit of permissible area for each of his adult sons. The claim of the petitioner is that with effect from the aforesaid date of enforcement there arose a vested right to a separate unit of permissible area which could be claimed for each adult son at the time of making the selection under section 9(2) of the Act. The petitioner claims

that on this material date he had attained adulthood. However, the respondent-State had issued instructions, annexure P. 1, for filling in the declaration form wherein in paragraph 7 it was prescribed that the material date for determining the majority of the sons of a land-owner was the 24th of January, 1971. The petitioner's grievance is that in the absence of a specific provision in the Act, the respondent-State has no authority to prescribe the aforesaid date for determining the age of majority and thus to divest him of the right accruing to him under the statute. The aforesaid annexure P. 1 has, therefore, been challenged as patently unreasonable and in violation of the petitioner's fundamental right to hold property under Article 19 of the Constitution of India.

3. It calls for pointed notice that in many of the writ petitions a substantial part of the challenge was also levelled against sections 18(7), (8) and (9) of the Act which lay down the preconditions for presenting an appeal against the order of the prescribed authority under the Act. However, at the time of the hearing it was frankly conceded that this aspect of the case now stood concluded against the petitioners by the exhaustive Division Bench judgment of this Court in *Sri Chand and others* v. *The State of Haryana and others,* (1). No reference to this aspect of of the averments in the writ petitions is hence called for.

4. The material part of annexure P. 1, the impugned instructions, which is under challenge is as follows:—

> "In column 3 of Part 1 the ages of the persons named as on 24th January, 1971 should be given. The entry in the births and deaths register and, failing that, in the School Leaving Certificates shall, in the first instance, be accepted as proof of the age. The medical certificate and the oral evidence will be entertained only on proof of the existence of these entries."

Now the core of the argument on behalf of the petitioners is that the terminus for determining the age of majority of the son of a land-owner is the actual date of filing the declaration under section 9(1)

(1) 1978 P.L.R. 660.

of the Act. The date so originally prescribed (within three months where from the landowner was obliged to file the declarations) was the 15th of April, 1976, which appears to have been later extended by one month. In the alternative it was argued that at the highest the crucial date cannot be set back beyond 23rd of December, 1972, when the Act came into force.

5. Inevitably the argument here must revolve around the relevant provisions of the statute and it is, therefore, best to reproduce these at the very outset :—

"3. In this Act, unless the context otherwise requires:—

(a) 'adult' means a person who is not a minor ;

(c) 'appointed day' means the twenty-fourth day of January, 1971;

(f) 'family' means husband, wife and their minor children or any two or more of them;

Explanation : * * * *

(q) 'separate unit' means an adult son living with his parent or either of them and in case of his death his widow and children, if any.

S. 4. (1) The permissible area in relation to a land-owner or tenant or mortgagee with possession or partly in one capacity or partly in another; of person or family consisting of husband, wife and upto three minor children (hereinafter referred to as 'the primary unit of family'), shall be, in respect of—

(a) land under assured irrigation capable of growing at least two crops in a year (hereinafter referred to as the land under assured irrigation), 7.25 hectares;

(b) & (c) * * *

S. 4(3) The permissible area shall be further increased upto the permissible area of the primary unit of a family for each separate unit.

S. 7. Notwithstanding any thing to the contrary contained in any law, custom, usage or agreement, no person shall be entitled to hold whether as landowner or tenant or as a mortgagee with possession or partly in one capacity or partly in another, land within the State of Haryana exceeding the permissible area on or after the appointed day.

S. 9(1) Every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area; shall within a period of three months from such date the State Government may, by notification, specify in this behalf or subsequent acquisition of land, furnish to the prescribed authority a declaration supported by an affidavit giving the particulars of all his land and that of the separate unit in the prescribed form and manner and stating therein his selection of the parcel or parcels of land not exceeding in the aggregate the permissible area which he desires to retain.

Provided * * * *

Explanation * * * *

S. 9(2) Every person making a selection of the permissible area under sub-section (1) may also select land for the separate unit.

Explanation: An adult son, who owns or holds land and is living separately from his parents, shall file the declaration under sub-section (1) and make the selection of permissible area under sub-section (2) separately."

6. Though a wide variety of contentions was raised by the learned counsel appearing for the petitioners it is plain that in essence they stem from the corner stone of the reasoning of the Division Bench in *Nalini Ranjan Singh & others* v. *State of Bihar and others* (2). It was on this judgment that firm reliance was repeatedly placed by the learned counsel and in particular by Mr. K. P. Bhandari, who led the argument in the case. It is, therefore, best to deal with this authority first, because rest of the arguments on behalf

(2) A.I.R. 1977 Patna 171.

of the petitioners would thereafter fall in place. In *Nalini Ranjan Singh's case* (supra) a question of similar nature arose but under the substantially different provisions of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 12 of 1967, as amended by Act No. 1 of 1972. Therein it was held that the material date for the determination of the majority of a child of the landowner was the date on which notice under Section 6(3) of the amended Act was published.

7. At first flush reliance on the said judgment by the learned counsel for the petitioners seems attractive but a closer analysis in depth would disclose that the provisions of the Bihar Act (both the original and the amended) and those in the present case are, on the material points, so significantly different that the said case would have but little analogy for deciding the issue here. At the very outset what calls for pointed notice in this context is the admitted fact that whilst determination of the surplus area is wholly co-related to the appointed day under the Haryana Act — in fact this appointed day is the pole star immutably fixed around which the other provisions seem to revolve in the Bihar Act there is not the least reference or even a concept of an appointed day for the determination of the surplus area either of the landowner or of a major or minor child. Even a plain reading of the judgment in *Nalini Ranjan Singh's case* (supra), would show that a considerable part of the argument turns around section 5(1)(i) and section 5(3)(i) of the Bihar Act and these make no mention of any fixed or appointed day. In sharp contra-distinction thereto in section 7 of the Haryana Act, which is the basic provision for the fixation of the ceiling of land and this on its plain language provides that no person shall be entitled to hold land within the State of Haryana exceeding the permissible area on or after the appointed day. The terminus and indeed the very core of the legislation herein is pegged on the appointed day. On the contrary there is not even a remotely corresponding provision of this nature in the Bihar Act and in any case none was brought to our notice. What then calls for significant notice is the fact that the basic statute which fell for construction in *Nalini Ranjan Singh's case* (supra), was the earlier statute of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Lands) Act, 1962. Substantial amendments were introduced therein by Bihar Act No. I of 1973. It was this inter-play of the original provisions and the amendments introduced therein later which raised difficulties of construction which fell to be resolved before the Division Bench. Neither the original statute, nor the amending Act had even the

concept of any fixed or appointed day. On the other hand the Haryana Act is a self contained statute in which itself the concept of the appointed day is writ large from the beginning to the end.

8. Again in *Nalini Ranjan Singh's case* the Division Bench held that the date on which the notice under section 6(3) of the amending Act was published was a crucial date and this was so because except for section 6 there was no other provision in whole of the Act, & there was no other fixed date either mentioned or to be prescribed thereunder. On the other hand section 9 of the Haryana Act provides for the selection of the permissible area and the filing of the declaration and affidavits by the landowners with regard thereto. At the very outset it provides that every person, who on the appointed day or at any time thereafter holds land exceeding the permissible area shall have to furnish a declaration, supported by requisite documents giving all particulars of the land owned by him as also of the separate units in the prescribed form etc. Herein again the liability to file the requisite declaration, as also the right to hold permissible area both of the landowner and the separate unit for his major son appears to be directly co-related to the appointed day. What further highlights the dis-similarity of the provisions of the Haryana Act and the Bihar Act is Section 16(2) of the latter Act which provided that it was on the publication of the notification under Section 15(1) thereof that the land specified therein would be deemed to have been acquired and vested in the State free from all encumberance, etc. Diametrically opposite thereto are the provisions of section 12(3) of the Haryana Act which lay down that the area declared surplus or the tenant's permissible area under the Punjab law and the area declared surplus under the Pepsu law, which has not so far vested in the State, shall be deemed to have so vested in the State Government with effect from the appointed day.

9. Now it would be plain from the patent dis-similarity of the material provisions noticed above and without burdening this judgment by reference to other provisions of the Bihar Act, which are quite different, that the whole scheme of the statute with regard to the material date is so fundamently different that no rational analogy can be drawn from the Bihar statute for the purposes of constructing upon the specific provisions of the Haryana Act. The fundamental difference is manifest that whilst Haryana Act is co-related to and revolves around the fixed concept of the appointed day, the Bihar Act is totally oblivious of any such idea. *Nalini*

Ranjan Singh's case, therefore, is so totally wide of the mark that it cannot in any way advance the case of the petitioners.

10. Once the basic precedent relied upon by the learned counsel for the petitioners is out of the way, the argument on their behalf on principle either does not seem to withstand a closer scrutiny. At the very outset it may be noticed that it was fairly conceded that the Haryana Legislature has the power to legislate retrospectively with regard to the agrarian laws and no challenge to the competency of the Haryana Legislature to enact the provisions was laid. Equally it is not in dispute that the appointed day is not an arbitrary day fixed without relevance or purpose. It is the admitted position that it was on this day that the decision of the high powered Central panel on land reforms had been publicly announced declaring broadly the quantum of land which should be uniformly held within the whole country. Transfers or other dispositions of land made after the said date in order to defeat the larger purpose of the agrarian reforms, ceiling legislations were, therefore, to be excluded from consideration. The said date, therefore, became the immutable fixed point from which the ceiling of land and the areas surplus or permissible thereunder had to be worked out. In the aforesaid background it was again conceded by the learned counsel for the petitioners that section 7 patently is retrospective in operation because though the Act was promulgated on 23rd December, 1972, the ceiling on land and the permissible area declared by the Act was to come into force with effect from the appointed day of 24th January, 1971, i.e., nearly two years earlier. Counsel had conceded that this retrospectivity was valid and no challenge to section 7 was laid either in the writ-petitions or in the course of the arguments. Now once this is so, it is obvious that the surplus area of the landowner himself is, therefore, to be immutably fixed with regard to the date of 24th January, 1971. It would indeed be a curious situation that if this is so *qua* the landowner himself, yet as regards the separate unit permitted for his adult son, the same should be determined with reference to a constantly fluctuating day within three months of the date to be specified by the notification under section 9(1) sometimes in mid 1976. From the provisions of the Act it is apparent that the concept of a separate unit is not so much a right of the adult son himself to hold the land, but in essence is the right of the landowning father to hold extra land for each one of his adult sons living with him. It would indeed be an anamolous and uncalled for situation that whereas for the determination of his own permissible area the date immutably fixed by law should be 24th January, 1971, but for

the purposes of separate unit under section 9(2), the corresponding provision for his adult sons, the criteria should be of a different date fluctuating whimsically for well-nigh five years thereafter. There is neither any provision of the statute, nor any rational principle, and for that matter any precedent either, which can possibly warrant such a construction.

11. Learned counsel for the petitioners had then argued that the selection of land for a separate unit was provided under section 9(2) of the Act and the scope of the separate unit defined by section 3(q) was widened by the amending Haryana Act No. 17 of 1976 by the addition of an explanation thereto which was given retrospectivety from the date of the original Act. The tenor of this argument was that since the concept of the family under section 2(f) and separate unit under Section 3(q) had fluctuated and was widened by the amending provision, therefore, the date of the majority of the landowner's son and the consequent right attached thereto of a separate unit would also remain fluctuating and be related in each case to the particular date on which the return under section 9(1) and (2) may be filed.

12. The aforesaid argument suffers patently from the vice of attaching the stigma of unpredictability to the statute. If it were to be accepted, then a more empirical delay in filing the declaration would become material and in fact crucial to the valuable and vital right to a separate unit which undoubtedly means a substantial area of agricultural land added to the permissible area of the landowner. Section 9(1) leaves a period of three months at the option of landowner for filing his return and declaration from the specified date. Therefore, if the date of the filing of the return which inevitably remains varying and fluctuating with every landholder—is to be made the crucial date then the vital right of the parties must equally remain in a flux meanwhile. Such an intention cannot easily be attributed to the legislature. Uniformity, fixity, and clear predictability are the necessary hall marks of law and an interpretation which leaves the laws in a state of ambivalence must necessarily be avoided unless the language of the statute leaves no other choice. It is instructive to recollect the picturesque language of Krishna Iyer, J. in *Rameshwar and others* v. *Jot Ram and another, etc.* (3) :—

> "Of course, construction which will promote predictability of results, maintenance of reasonable orderliness, simplification of the judicial task, advancement by the Court of the

(3) 1975 P.L.J. 454.

purpose of the legislation and the judicial preference for what it regards as the sounder rule of law as between competing ones, must find favour with us. A plain reading of S. 18 without reference to consideration of subsequent events at the appellate level, yields the easy and only conclusion that the rights of parties are determined on the date they come to Court and what is an insurmountable obstacle to any other construction is that once deposit is made the title to the land vests in the tenant. Agrarian reform law affects a considerable number of people and to keep rights uncertain over a long stretch of time till appeals and reviews and revisions and other processes are exhausted, is to inject unpredictability of results for it is quite on the cards that a landlord may die in the long course of litigation, or other events may happen at later stages beyond the trial Court. Can rights of parties fluctuate with such uncertain contingencies ?

13. Apart from the canons of construction I find no ambiguity in the provisions of the main statute. Indeed at the cost of repetition it has to be reiterated that in fact it introduces the fixed concept of the appointed day for the determination of the parties' rights. The language of the Act, therefore, is unequivocal and should be given effect to. Any attempt on behalf of the petitioners to attach ambiguity or uncertainty thereto by a process of interpretation, therefore, has to be scrupulously avoided.

14. An ancillary argument as a matter of last resort was that under section 12(1) of the Act, the surplus area of a landowner vests in the State and is deemed to have been acquired by the State Government for a public purpose with effect from the date on which it is declared as such. It was submitted, rather superficially, that if the vesting of the surplus area can be from the date of its declaration, which necessarily varies, then the crucial date for the determination of the majority of the son could also be allowed to fluctuate with the time prescribed for the filing of the returns under section 9(1). Reliance was sought to be placed on *Rameshwar and others* v. *Jot Ram and another,* (3 supra) and *Malkiat Singh* v. *The State of Punjab* (4). Adverting first to the aforesaid two authorities, it appears on a close perusal thereof that they do not in any way advance the argument aforesaid. The compliment of a detailed refutation with regard to these precedents is, therefore, not called for and it suffices

(4) 1977 P.L.J. 126.

to mention that both of them are wholly wide of the mark. On principle the argument suffers from the basic fallacy of equating the vesting of the surplus area with the declaration thereof. It deserves recalling that under the Punjab Security of Land Tenures Act, the surplus area does not at all vest in the State and is merely utilised for the settlement of tenants. Therefore, the concept of surplus area and the vesting thereof in the State are not necessarily identical terms. The date with regard to which the surplus area is to be determined and the date when it may be vested in the State, therefore, do not have to be necessarily co-terminus. It is otherwise plain that it is only when the area has been declared as surplus in the hands of a landowner that the question of its subsequent vesting could possibly arise. Secondly the fixation of the time of the vesting of surplus area in the State by the relevant provisions of section 12 does not in any way afford an analogy or advance the case of the petitioners.

15. For the foregoing reasons the answer to the question posed in the opening part of the judgment is rendered in the affirmative, i.e., the majority of the son of a land owner is to be determined on the appointed day and consequently the validity of the impugned instructions Annexure P-1 is upheld.

16. Learned counsel for the parties are agreed that the crucial issue of law having been settled, the merits in individual case have now to be determined by the prescribed authority under the Act or the appellate and revisional forums. The individual cases of the petitioners would, therefore, go back for finalisation to the statutory authorities.

17. The writ petitions are dismissed. But in view of the slightly ticklish issues involved the parties are left to bear their own costs.

H.S.B.

Before S. S. Dewan, J.

PASHORI LAL and another,—*Petitioners.*

versus

PUNJAB STATE,—*Respondent.*

Criminal Misc. No. 983-M of 1979.

April 25, 1979.

Code of Criminal Procedure (V of 1898)—Section 423(1)—Conviction of an accused set aside by the appellate Court—Case remanded and a new prosecution witness directed to be examined—Such order—Whether within the competence of the appellate Court.