CWP-18313-1995 (O&M)

Sr.No.102

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18313 of 1995 (O&M)
Reserved on : 14.08.2026
Pronounced on : 12.11.2026
Uploaded on : 12.11.2026

Whether only operative part of the judgment is pronounced? No

Whether full judgment is pronounced? Yes

Smt. Sarla Devi and others **…Petitioners**

Versus

The State of Haryana and others **…Respondents**

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. R.S. Mamli, Advocate
for the petitioners.

Mr. Pankaj Mulwani, Sr. D.A.G., Haryana.

Mr. Rakesh Nehra, Sr. Advocate with
Ms. Sandhya Saini, Advocate &
Ms. Bindu Tanwar, Advocate
for respondent No.7.

Ms. Veena Hooda, Advocate
for the applicant in CM No.20527-CWP-2024.

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CWP-18313-1995 (O&M)

PANKAJ JAIN, J.

1. By way of present writ petition filed under Articles 226/227 of the Constitution of India, the petitioners pray for issuance of a writ in the nature of certiorari quashing orders dated 10.07.1979 (Annexure P-6) and that dated 20.03.1980 (Annexure P-7) and that dated 19.04.1982 (Annexure P-8) passed by the respondent authorities. The petitioners also assail the orders dated 28.07.1989 (Annexure P-10), 21.04.1992 (Annexure P-11), 05.02.1993 (Annexure P-12) and 13.09.1995 (Annexure P-15).

2. The dispute relates to land declared surplus in the hands of Kallu Singh under the Punjab Security of Land Tenures Act, 1953 (*hereinafter referred to as 'the Punjab Law'*).

3. As per the pleadings raised in the writ petition, Kallu Singh had three sons namely Udaibir Singh, Satbir Singh and Manbir Singh. Kallu Singh by way of Settlement dated 03.09.1953 partitioned his ancestral land. 1/4th share each was distributed among Kallu Singh and his three sons out of the total land. Mutation No.568 was sanctioned by the Assistant Collector IInd Grade on 06.09.1953 (Annexure P-1) recognizing the family settlement. Consolidation was carried out in the village in the year 1962-63 and specific khasra numbers were allotted to the four co-sharers i.e. Kallu Singh and his three sons.

4. Petitioners claim that Manbir Singh, predecessor-in-interest of the petitioners, became owner of land measuring 318 Kanals 4 Marlas,

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comprised in Khewat No.100, Khatauni No.111, as per Jamabandi for the year 1962-63 (Annexure P-2).

5. Vide order dated 22.12.1959, the Collector (Agrarian), Jhajjar declared 52 S.A. 4½ Units as surplus area out of the total land owned by Kallu Singh as on 15.04.1953 i.e. the date of commencement of the Punjab Law. As per petitioners, even though Manbir Singh was recorded as owner of 1/4th share of the total land since 06.09.1953, yet no notice was served upon him before passing of order dated 22.12.1959. Circle Revenue Officer, Jhajjar vide order dated 09.11.1967 (Annexure P-3) specified permissible/reserved area for Kallu Singh and the surplus area. Against order dated 09.11.1967 (Annexure P-3) passed by the Circle Revenue Officer, Jhajjar, Satbir Singh, one of the sons of Kallu Singh, preferred appeal before the Collector, Jhajjar. On an appeal preferred by Satbir Singh, order dated 09.11.1967 (Annexure P-3) was modified. Kallu Singh filed an application (Annexure P-5) before the Collector Agrarian, Jhajjar seeking review of orders dated 22.12.1959 and 09.11.1967. Application filed by Kallu Singh was dismissed vide impugned order dated 10.07.1979 (Annexure P-6). Kallu Singh unsuccessfully assailed the order (Annexure P-6) in appeal before the Divisional Commissioner and further in revision before the Financial Commissioner. Impugned orders passed by the Divisional Commissioner and Financial Commissioner are on record as Annexures P-7 and P-8.

6. Kallu Singh died on 09.03.1982.

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7. After Kallu Singh failed in his attempt to seek review of orders passed by the authorities declaring his land surplus, Manbir Singh – the predecessor-in-interest of the petitioners, approached the Collector, Agrarian by filing application dated 24.11.1986 (Annexure P-9), whereby he sought protection under Section 8 of the Haryana Ceiling on Land Holdings Act, 1972 (*hereinafter referred to as '1972 Act'*) and sought exemption of land which had fallen to his share from being declared surplus by relying upon transfer in his favour by way of Family Settlement dated 03.09.1953 i.e. prior to 30.07.1958 i.e. the date mentioned under Section 8(1) of 1972 Act. The application filed by Manbir Singh was dismissed by the Prescribed Authority vide order dated 22.02.1988. Prior thereto, Manbir Singh died on 06.01.1988.

8. The present petitioners preferred an appeal. The Collector, Rohtak vide order dated 27.12.1988 remanded the matter to the Prescribed Authority for fresh decision acknowledging the fact of death of Manbir Singh prior to passing of order dated 22.02.1988. Prescribed Authority vide impugned order dated 28.07.1989 (Annexure P-10) rejected the application filed by Manbir Singh. Aggrieved by the order (Annexure P-10), the petitioners preferred an appeal before the Collector, Rohtak, which stands dismissed vide impugned order dated 21.04.1992 (Annexure P-11).

9. Petitioners approached the Commissioner, Rohtak Division by filing revision, which also stands dismissed vide impugned order dated 05.02.1993 (Annexure P-12). The order (Annexure P-12) has been further

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affirmed by the Financial Commissioner vide impugned order dated 13.09.1995 (Annexure P-15).

10. Petitioners are before this Court assailing the aforesaid orders passed by the authorities. The contention raised by the petitioners is based upon Family Settlement dated 03.09.1953 reflected in Mutation dated 06.09.1953 (Annexure P-1). Relying upon the mutation, the petitioners claim that the land already transferred by Kallu Singh to his sons including their predecessor-in-interest Manbir Singh, ought not have been declared surplus. Reliance has been placed upon the provision contained in Section 8(1)(a) of 1972 Act to claim that the transfers made before 30.07.1958 are saved.

11. Mr. Mamli, counsel for the petitioners, in order to hammer-forth his contention relies upon the ratio of law laid down by Full Bench of this Court in ***Smt. Jaswant Kaur and another vs. State of Haryana and another, 1977 PLJ 230*** and further relies upon the judgment of the Division Bench of this Court passed in ***LPA No.77 of 2013, titled as Ram Karam and another vs. State of Haryana and others, decided on 30.07.2013***, based upon the ratio of law laid down in ***Jaswant Kaur's case (ibid)***. He further relies upon order dated 16.10.2025 passed by Additional Civil Judge (Sr. Division), Jhajjar in an application under Order 39 Rules 1 & 2 CPC, titled as *Parmod Kumar vs. Mahesh etc.,* in which he claims that possession of the petitioners stands acknowledged and recognized by the Civil Court. Further reliance is being placed upon the Full Bench judgment of this Court in the matter of ***State of***

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Haryana and others vs. Vinod Kumar and others, 1986 AIR P&H 407, wherein this Court observed that where no opportunity of hearing was given to the landowners as envisaged by Rule 6 of the Punjab Security of Land Tenures Rules, 1956 prior to the Collector declaring the land as surplus, the order is a nullity and the landowners can maintain civil suit to challenge the validity of such order. Further reliance has been placed on judgment rendered by the Coordinate Bench in ***Nanak Singh vs. State of Haryana, passed in CWP No.3883 of 1986, decided on 06.09.1991***, whereby the Single Bench of this Court followed the ratio of law laid down by Full Bench in ***Vinod Kumar's case (ibid)*** to hold that the landowners must be given opportunity of hearing by Collector while declaring land as surplus.

12. *Per contra,* learned Senior Counsel appearing on behalf of respondent No.7 would submit that the land in question already stood utilized prior to coming into operation of 1972 Act. The possession of the surplus land was handed over to the allottees in the year 1971 and thus, the 1972 Act will not be applicable. He submits that prior to the filing of the present writ petition on 13.09.1995, the land in question was the subject matter of Civil Suit No.1232 of 1990, instituted on 31.10.1990 by the vendors under Manbir Singh, titled as *Prabhu Dayal vs. Amar Singh*. The same was decided vide judgment and decree dated 16.10.1995 (Annexure R-7/1). The factum of filing of the said suit was concealed by the petitioners from this Court. One of the issues on which the civil suit was tried, was qua order of surplus and

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the further allotment. The Civil Court, after analyzing the evidence, found that the predecessor-in-interest of the private respondent namely Jagdish was put in possession of land vide Roznamcha under order dated 20.04.1971 and that respondents are owner in possession of suit land. Prabhu Dayal (plaintiff) preferred appeal against the judgment and decree dated 16.10.1995. The appeal was dismissed by the Additional District Judge, Jhajjar vide judgment and decree dated 03.05.1999 (Annexure R-7/2). No further appeal was filed. Thus, the aforesaid judgments and decrees (Annexures R-7/1 and R-7/2) having attained finality, the plea raised by the petitioners has no legs to stand.

13. Learned Senior Counsel appearing for respondent No.7 further submits that Kallu Singh during his lifetime assailed the order declaring his land surplus by filing a review. The review application was dismissed and the order was affirmed in appeal and in revision. He thus submits that the petitioners cannot be allowed to reagitate the issue, which already stands concluded in earlier rounds of litigation.

14. I have heard counsel and learned senior counsel for the parties and have carefully gone through the records of the case.

15. The facts are not much in dispute. The Punjab Law came into operation w.e.f. 15.04.1953. Section 6 of the Punjab Law reads as under:-

> *"6. No transfer of land, except a bona fide sale or mortgage with possession or a transfer resulting from inheritance, made after the 15th August, 1947 and before the 2nd February, 1955, shall affect the rights of the tenant on such land under this Act."*

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16. Section 6 of the Punjab Law saves *bona fide* sale or mortgage with possession or a transfer resulting from inheritance made before 02.02.1955. The settlement claimed by petitioners on 03.09.1953 does not fall within the ambit of the transfers saved by Section 6 of the Punjab Law. Accordingly, the same was ignored by the Prescribed Authority while declaring surplus land in the hands of Kallu Singh as on 15.04.1953. Part of the surplus land was further allotted to the tenants including Jagdish son of Maman, the predecessor-in-interest of the private respondent.

17. Para 17 of the written statement filed on behalf of respondent Nos.1 to 6 reads as under:-

> *"That para no.17 is admitted up to the extent that Manbir Singh filed an application on dated 24.11.1986. Rest of the para is wrong and denied. The same application was dismissed by the learned Court. All the surplus proceedings were taken on account of the Punjab Security of Land Tenures Act, 1953. The land was allotted to 21 persons or more as per record and as per order of learned Circle Revenue Officer dated 31.01.1968 and possession was also delivered as per Rapat Rojnamcha No.361 to 368 to the allottees dated 12.06.1971. Much before filing of the said application by Manbir Singh even otherwise he had no locus standi to file the said application. The report of Rapat Rojnamcha No.361 to 368 are attached as Annexure R-1/A to R-I/H. The details of allotment and possession is given below:-*
>
> *1- Maman s/o Singha resident of village Machrauli, total land 134 Kanal 16 Marlas.*

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2- Ramu s/o Neki s/o Kishan Lal, resident of village Patsani, total land 80 Kanal 8 Marlas.

3- Dhupal s/o Sehaj Ram resident of village Machrauli, total land 4 Kanals 0 Marlas.

4- Mansha s/o Umrao Singh s/o Harna resident of village Bhatera, 16 Kanal 16 Marlas.

5- Bakhtawar s/o Sukh Dev resident of village Bathera, total land 44 Kanal 9 Marlas.

6- Badlu, Jai Lal, Sunder Lal, sons of Shri Bihari, r/o Bhatera, total land 79 Kanal 8 Marlas.

7- Nanak Chand s/o Kanhiya Lal r/o Machrauli, total land 58 Kanal 12 Marlas.

8- <u>Jagdish s/o Maman r/o Machrauli, total land 81 Kanal 5 Marlas.</u>

xxx xxxx xxxx"

18. A copy of the Rapat Roznamcha, as per which the possession of land measuring 81 Kanals 5 Marlas was delivered to the allottee/tenant Jagdish son of Maman, has been placed on record as Annexure R-1/E. Though the petitioners have controverted the same by filing a replication and have relied upon various orders in the contempt proceedings and in the petition filed under Section 482 Cr.P.C. seeking quashing of FIR. However, the counsel for the petitioners is not in a position to dispute that in Civil Suit No.1230/1990, decided vide order dated 16.10.1995, one of the issues framed by the Civil Court reads as under:-

"2. Whether the suit land was allotted to one Jagdish who sold the same to the defendant on 31.05.1990 and the said sale is

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illegal, null void and not binding on the plaintiff as the surplus allotment order dated 25.04.1988 and the mutation thereon vide mutation No.1702 dated 31.05.1990 are illegal, null, void and not binding on the rights of the plaintiff as alleged? OPP."

19. The Civil Court after analyzing the evidence, returned the following findings:-

"18. The evidence brought on record shows that after declaration of the land surplus in the hands of Kallu his heirs had challenged the surplus order as well as the subsequent order of allotment but they were not successful. The order of surplus and consequent allotment is perfectly legal and valid and bindings in the eyes of law. Manbir Singh had transferred the suit land vide sale deed dated 24.09.1985 in favour of the plaintiff in order to take undue benefit of the wrong entries recorded in his (Manbir's) favour. Mutation No.1501 (Ex.13) was also wrongly sanctioned and attested in favour of the plaintiff and his name was also recorded in the column of owner-ship and cultivation in the Jamabandi for the year 1986-87 (Ex. P2). This accordingly shows that revenue authorities have also not acted in accordance with law. They have not updated the revenue record. Had the revenue authority acted with due care and precaution in keeping the revenue record updated then it would not allowed Manbir Singh and now the present plaintiff to have DIM, misuse wrong entries. The present plaintiff has colluded with Manbir Singh in order to usurp the suit land and for creating further technicalities then Manbir Singh etc. and his heirs were not successful in challenging the order of surplus and allotment of the surplus land. The present plaint has been cleverly drafted because the

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plaintiff has filed a suit for permanent injunction on the basis of entries in the jamabandi as he claims to have purchased the suit land from Manbir Singh vide sale deed dated 24.09.1995. The plaintiff has tacitly challenged the surplus order and the allotment order and also the mutation, which was sanctioned and tested in favour of the State Govt. and the subsequent allotment. However, the plaintiff was not having any locus standi to challenged the order if the present suit is decreed that through backdoor it will effect in making surplus order & allotment order nugatory, which is unwarranted of surplus and its subsequent allotment. The impugned order and the mutations are also not tendered in evidence by the plaintiff. The plaintiff has also not appeared in the witness box. It accordingly shows that the plaintiff has tried to misuse the forum of Civil Court. As far as the sale deed dated 24.09.1985 is concerned, it is illegal, null and void because Manbir Singh was having no right, title or interest in respect of the suit land and therefore he was not in position to transfer the suit land in favour of the plaintiff. However, the plaintiff shall be entitled to claim back the sale consideration from Manbir Singh in accordance with law. The sale deed dated 24.09.1985 as well as entries in favour of Manbir Singh and Prabhu Dayal after the passing of surplus order and the allotment of the suit land are illegal, null and void and accordingly set aside. The evidence brought on record shows that the suit land was declared surplus in the hands of Kallu and therefore it vested in Haryana Govt. and it was allotted to Jagdish, who had sold the suit land in favour of the defendant is legal and absolute owner in possession of the suit land. Hence,

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issue no.1 and 2 are decided in favour of the defendant and against the plaintiff."

20. The aforesaid findings were affirmed by the First Appellate Court. No further appeal was preferred.

21. Reliance on Section 8 of 1972 Act by the counsel for the petitioners is misplaced. In order to appreciate rival contentions, it would be apt to peruse Sections 8, 12 and 33 of 1972 Act :-

*"**8. Certain transfers or dispositions not to affect surplus area.***

(1) Save in the case of land acquired by the Union Government or the State Government under any law for the time being in force or by a tenant under the Pepsu law or the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of –

(a)the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958; and

(b)the permissible area under this Act, except a bona fide transfer, or disposition after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer or disposition:

Provided that any person who has received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation for it, to the person from whom he received it.

(2)The burden of proving the transfer or disposition to be a bona fide one shall be on the transferor.

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(3)If any person transfers or dispossess of any land after the appointed day in contravention of the provisions of sub-section (1), the land so transferred or disposed of shall be deemed to be owned or held by that person in calculating the permissible area. The land exceeding the permissible area so calculated shall be the surplus area of the person and in case of the area left with him after such transfer is equal to the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area. If the area left with him is less than the surplus area so calculated, the entire area left with him shall be deemed to be the surplus area and to the extent of the deficiency in it the land so transferred or disposed of shall also be deemed to be the surplus area. If there is more than one transferee, the deficiency of the surplus area shall be made up from each of the transferees in the proportion to the land transferred or disposed of to them.

12. Vesting of surplus area.

(1)The surplus area of a landowner shall, from the date on which it is declared as such shall be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such area shall stand extinguished and such rights, title and interest shall vest in the State Government free from any encumbrance:

Provided that where any land within the permissible area of the mortgagor is mortgaged with possession and falls within the surplus area of the mortgagee, rights shall be deemed to have

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been acquired by the State Government and the same shall vest in it.

(2)The right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished.

(3) The area declared surplus or 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 Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared under the Punjab law or the Pepsu law after the appointed day shall be deemed to have vested in the State Government with effect from the date of such declaration.

(4) For the purposes of determining the surplus area under this Act, any judgment, decree or order of a court or other authority, obtained after the appointed day and having the effect of diminishing the surplus area shall be ignored.

33. Repeal and savings.

(1)The provisions of the Punjab Security of Land Tenures Act, 1953, and the Pepsu Tenancy and Agricultural Lands Act, 1955, which are inconsistent with the provisions of this Act are hereby repealed.

(2)The repeal of the provisions of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect –

(i)the applications for the purchase of land under section 18 of the Punjab Law or section 22 of the Pepsu Law, as the case may

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be, pending immediately before the commencement of this Act, which shall be disposed of as if this Act had not been passed;

(ii)the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under the provisions of either of the said enactments, which shall be continued and disposed of as if this Act had not been passed, and the surplus area so determined shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act;

(iii) the revisional power of the Financial Commissioner under section 24 of the Punjab law or under sub-section (3) of section 39 of the Pepsu law, as the case may be, shall be exercised as if this Act had not been passed; and the area declared surplus in exercise of such revisional power shall vest in, and be utilized by, the State Government in accordance with the provisions of this Act;

(iv)the power exercisable under section 5-C of the Punjab law or under section 32-BB of the Pepsu law, as the case may be, shall be exercised as if this Act had not been passed; and the area determined surplus in exercise of such power shall vest in, and be utilised by, the State Government in accordance with the provisions of this Act :

Provided that the powers of the Pepsu Land Commission under the Pepsu law shall vest in, and be exercised by, the Collector of the district concerned.

(3)Save as provided in sub-section (2), no authority shall pass an order in any proceedings whether instituted before or after the commencement of this Act which is inconsistent with the provisions of this Act.

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22. A bare perusal of Section 8 of 1972 Act would reveal that the same explicitly saves land acquired by a tenant under the Pepsu Law or the Punjab Law. In the present case, Jagdish who was tenant over the land in dispute, was allotted land under Punjab Law and thus acquisition of interest in the surplus land by Jagdish does not fall within the mischief of Section 8. The same is also saved under Section 33(2) of 1972 Act. Reliance placed by the counsel for the petitioners on the ratio of law laid down in ***Jaswant Kaur's case (ibid)*** is the result of a misreading of the judgment. In ***Jaswant Kaur's case (ibid)***, the Court was dealing with a perceived conflict between Section 8(1) and Section 12(3) of 1972 Act. The following observations made by the Full Bench in ***Jaswant Kaur's case (ibid)*** make the picture explicitly clear: -

> *"xxxx xxxx xxxx*
>
> *7. Coming now to the attack based upon inconsistencies between the various provisions of the Act, it was directed almost exclusively against Section 12 (3) (introduced by Act XVII of 1976), which provision, it was said was in conflict with Section 4 (1) and Section 8 of the Act. Section 4 (1) provides for the determination of permissible area in relation to a landowner as well as a tenant. Section 8 has the effect of saving certain transfers from the operation of the Act. It is useful to extract the whole of Section 8 (1). It is as follows:--*
>
> > *"8. Certain transfers or dispositions not to affect surplus area.*
> > *(1) Save in the case of land acquired by the Union Government or State Government under any law for the time being in force or by a tenant under the Pepsu law or*

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the Punjab law or by an heir by inheritance, no transfer or disposition of land in excess of:--
(a) the permissible area under the Pepsu law or the Punjab law after the 30th day of July, 1958 and
(b) the permissible area under this Act, except a bona fide transfer or disposition, after the appointed day, shall affect the right of the State Government under the aforesaid Acts to the surplus area to which it would be entitled but for such transfer:

Provided that any person who has received an advantage under such transfer or disposition of land shall be bound to restore it, or to pay compensation for it to the person from whom he received it."

Section 12(1) provides that the surplus area of a landowner shall be deemed to have been acquired by the State Government for a public purpose from the date on which it is declared as such and that all rights, title or interest of all persons in such area shall stand extinguished, all such rights vesting in the State Government free from encumbrances. Section 12 (2) provides that the right and interest of the tenant in his surplus area which is included within the permissible area of the landowner shall stand extinguished. Section 12 (3) against which, as we said, the attack was concentrated is as follows:--

"The area declared surplus or tenants permissible area under the Punjab law and the area declared surplus under the Pepsu law which has not so far vested in the State Government, shall be deemed to have vested in the State Government with effect from the appointed day and the area which may be so declared in pending proceedings to be decided under the Punjab law or Pepsu law shall be deemed to have vested in the State Government with effect from the date of such declaration".

The submission of the learned counsel was that there was glaring inconsistency between Section 12(3) and the two earlier provisions of Section 4 (1) and Section 8. It was said that while Section 4(1) provided for the determination of the permissible

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area of the tenant also, Section 12(3) prescribed that the tenant's permissible area under the Punjab Law which had not so far vested in the Government shall be deemed to have vested in the State Government with effect from the appointed day. The argument was if the land vested in the Government what was the point of determining a tenant's permissible area under the Act? It was again said that while Section 8 saved certain transfers from the operation of the Act, Section 12(3) made no such exception in favour of those transfers. For example, it was said that land which was declared surplus under the Punjab Security of Land Tenures Act but which was unutilized and later acquired by the Central Government would vest under Section 12(3) in the State Government notwithstanding the acquisition by the Central Government. Similarly, land purchased by a tenant under the provisions of Section 18 of the Punjab Security of Land Tenures Act would vest in the State Government under Section 12(3) notwithstanding the purchase by the tenant. So also, in the case of transfers by inheritance. Even transfers made before 30-7-1958 {the date mentioned in Section 8 (1) (a)} it was argued, would not be saved if they were made after the declaration of surplus area or tenant's permissible area under the Punjab Security of Land Tenures Act.

8. The provisions of Ss. 4 and 8, particularly Section 8, appear on first impression to be inconsistent with the provisions of Section 12 (3) but, as we said earlier, it is our first duty to seek to avoid conflict by endeavouring to harmonise and reconcile every part -so that each shall be effective. A closer and critical examination of the provisions shows that they are not irreconcilable and all of them fit well into the general scheme

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of the Act. Section 8 has not been repealed expressly, by Section 12(3) of the Act, nor can it be said, in the view that we are taking, that it was repealed by necessary implication. Section 12(3) was introduced by way of amendment by Act XVII of 1976. By Section 1 (2) of the Amending Act, it is deemed to have come into force on 23-12-1972. A Harmonious way of construing Ss. 8 and 12 (3) would be to give full effect to Section 8 (1) up to 23-12-1972, that is to say, to exclude from the operation of Section 12 (3), the transfers made up to 23-12-1972 which are protected by Section 8 (1) of the Act, namely, (1) acquisition of land by the State or Central Government, (2) acquisition by a tenant under the Pepsu Law or the Punjab Law, or (3) acquisition by an heir by inheritance. Other transfers of land in excess of permissible area under the Punjab Law or the Pepsu Law would be protected if the transfers were made prior to 30-7-1958. We see no reason why Ss. 8 and 12 (3) should not be construed in this harmonious manner so as to give effect to both the provisions. We find from the instructions issued from time to time that the Government has also construed the provisions in a similar manner. In Memo No. 5726-AR (LA)-76/ 28819, dated 15-9-1976, addressed by the Financial Commissioner and the Secretary to Government, Haryana, Revenue Department, to the Commissioners of the Ambala and Hissar Divisions etc., it is said:--

> *"The surplus area already purchased by the eligible tenants/persons under Section 18 of the Punjab Law and Section 22 of the Pepsu law should be considered to have been lawfully utilized and should not, therefore, be vested in the State Government under Section 12 (3) of the Haryana Ceiling on Land Holdings Act, 11972. Only such unutilized surplus area which was not purchased by the eligible tenants/persons under the Punjab Law or Pepsu*

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> *Law should be deemed to have been vested in the State Government from the appointed day under Section 12 (3) of the Haryana Ceiling on Land Holdings Act, 1972, and may be mutated in favour of the State Government immediately and necessary action to allot such area to the eligible persons may be taken in accordance with the provisions of the Utilization of Surplus and Other Areas Scheme, 1976."*

Again in Memo No. 6632-AR(II)-76/ 33389, dated 29-10-1976 it is said, "It has come to the notice of the Government that there is some lack of understanding in correctly interpreting the provisions of Section 8 and Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972. In this regard it is clarified that Section 8 of the Haryana Ceiling on Land Holdings Act, 1972, inter alia prohibits transfers and dispositions of land in excess of the permissible area under the old Acts made after the 30th July, 1958, Therefore, transfers or dispositions of surplus area under the Punjab Law or the Pepsu Law made before the 30th July, 1958 stand regularised by law or in other words they would affect the surplus pool. As a result of this, the surplus area which had been transferred or disposed of by the landowners before 30-7-1958, shall not vest in the State Government under Section 12(3) of the Haryana Ceiling on Land Holdings Act, 1972, and therefore, such area cannot be utilized in accordance with the Utilization of Surplus and Other Areas Scheme, 1976."

9. Shri Naubat Singh, the learned Assistant Advocate General, also agreed that we should harmonise Section 8 and Section 12(3) in the manner that we have done but he suggested that the date up to which transfers of the three categories specified by us earlier as (1), (2) and (3) should be recognised, should be

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the appointed day (24-1-1971) and not the date on which Section 12(3) came into force. We do not agree. Section 1(2) of Act XVII of 1976 expressly provides that the Act shall come into force on 23-12-1972. We must give some meaning and effect to it. In our view, the effect of Section 12(3) coming into force from 23-12-1972 on Section 8 is that transfers of the three categories specified by us made up to 23-12-1972 would be excluded from the operation of Section 12(3), that transfers of land in excess of the permissible area under the Punjab or Pepsu Law would be protected if made before 30-7-1958 and that all other land not excepted by Section 8 would vest in the State Government with effect from the appointed day.

xxxx xxxx xxxx"

23. In ***Jaswant Kaur's case (ibid)***, the Full Bench specifically noticed that transfers in the form of land acquired by the Union Government or State Government under any law for the time being in force or by a tenant under the Pepsu Law or the Punjab Law or by an heir by inheritance, is specifically saved from the operation of Section 8(1) of 1972 Act.

24. In view of above, this Court finds that the ratio of law laid down by Full Bench in ***Jaswant Kaur's case (ibid)*** and the other precedents following the same, does not advance the cause of the petitioners. The surplus land in the hands of Kallu Singh was declared surplus under the Punjab Law considering his holding as on 15.04.1953. The transfer by way of settlement dated 03.09.1953 does not fall within the saving clause as contemplated under Section 6 of the Punjab Law and was thus rightly ignored by the Prescribed

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Authority. Kallu Singh during his lifetime assailed the orders of declaration of surplus area and determination thereof by filing review application. The same was dismissed. Concededly, one of the sons of Kallu Singh namely Satbir Singh sought modification. Manbir Singh, predecessor-in-interest of the petitioners, remained a fence sitter and never asserted his right as owner. The land declared surplus, including the land in dispute, was allotted to tenants under the Punjab Law. Possession to the allottees was delivered prior to enactment of 1972 Act. The land in question being a surplus area acquired by a tenant under Punjab Law is specifically saved under Section 8(1)(a) of 1972 Act. The respondents have been held to be in possession by the Civil Court in a civil suit filed by a successor-in-interest of Manbir Singh. The findings recorded by the Civil Court have attained finality.

25. In view thereof, this Court finds no merit in the present writ petition. The same is ordered to be ***dismissed***.

26. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

November 12, 2026
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No

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