CWP-16594-1994 (O&M)

Sr.No.101

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-16594-1994 (O&M)
Reserved on : 17.07.2026
Pronounced on : 29.09.2026
Uploaded on : 30.09.2026

Whether only operative part of the judgment is pronounced? No
Whether full judgment is pronounced? Yes

Dalip Singh and others **…Petitioners**

Versus

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

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Parvinder Singh, Advocate
for petitioner No.1, 2(A), 3(A), 3(B), 6(C), 6(D), 7, 8 and 10(A), 10(B) and 6A(i), 6(B)(i), (ii), (iv).

Mr. I.P.S. Mangat, Advocate
for petitioner No.13.

Mr. Prateek Gupta, Advocate
for the applicants.

Mr. H.P.S. Ishar, Addl.A.G., Punjab.

Ms. Pooja Sarin, Advocate
for respondent Nos.3 to 6.

Mr. Amit Jain, Sr. Advocate with
Mr. Parit Aggarwal, Advocate and
Mr. B.B.S. Randhawa, Advocate
for respondent Nos.4 (A to C) and 6(A & B).

Mr. Vishal Aggarwal, Advocate and
Mr. G.S. Saroa, Advocate
for respondent No.4(D).

Mr. Inder Mangat, Advocate
for respondent No.13.

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CWP-16594-1994 (O&M)

PANKAJ JAIN, J.

By way of present writ petition filed under Articles 226/227 of the Constitution of India, the petitioners assail order dated 01.02.1993 (Annexure P-8) passed by the Financial Commissioner Taxation, Punjab, whereby while accepting the revision petition filed by LRs of big land-owner, the Financial Commissioner has set aside the orders passed by the Collector Agrarian, Batala and the Commissioner (Appeals), Jalandhar Division remanding the matter to the Collector Agrarian, Batala to re-determine surplus area in the hands of the heirs of the big land-owner.

2. The petitioners are successors-in-interest of the tenants under one Swaran Singh son of Amrik Singh. Swaran Singh was declared a big land-owner vide order dated 06.02.1961 as the Special Collector declared land measuring 232.2 S.A. owned by him as surplus under the Punjab Security of Land Tenures Act, 1953 (*hereinafter referred to as 'the Punjab Law'*).

3. Swaran Singh assailed order passed by the Special Collector before the Commissioner in appeal. The appeal was allowed. The matter was remanded to the Special Collector with the direction to re-determine the surplus land. The Special Collector vide order dated 31.08.1964 declared land to the tune of 210 S.A. 11 Units in the hands of Swaran Singh as surplus. Still unsatisfied, Swaran Singh preferred appeal. The Additional Commissioner vide order dated 27.08.1966 reduced the surplus area from 210 S.A. 11 Units to 205 S.A. 10 Units.

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4. Swaran Singh preferred revision petition before the Financial Commissioner. The same was accepted vide order dated 18.07.1967. Issue was again remanded to the Special Collector with the direction to re-determine the surplus land afresh. The Collector, Batala declared 177 S.A. 4 Units as surplus land in the hands of Swaran Singh vide order dated 21.01.1977 (Annexure P-1). Swaran Singh died on 04.07.1977.

5. Heirs of Swaran Singh i.e. his widow, sons and daughter preferred appeal against order (Annexure P-1). The Additional Commissioner, Jalandhar Division dismissed the appeal upholding order (Annexure P-1) vide order dated 28.07.1978 (Annexure P-3).

6. The Collector, Agrarian, Batala issued notice to the legal heirs of Swaran Singh to hand-over possession of the surplus area under Section 9(1) of the Punjab Land Reforms Act, 1972 (*hereinafter referred to as 'the Reforms Act'*). Legal heirs of Swaran Singh filed written objections. The Collector, Agrarian vide order dated 27.08.1979 (Annexure P-4) rejected the objections. He directed C.R.O. to recover possession of the surplus area on behalf of State and ordered that mutation be entered to the said effect. Mutation (Annexure P-5) was entered in favour of the State but possession remained with legal heirs of Swaran Singh.

7. Gurbinder Kaur, one of the heirs of Swaran Singh, preferred appeal impugning order dated 27.08.1979 (Annexure P-4). The appeal was dismissed by the Commissioner vide order dated 08.05.1984 (Annexure P-6).

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8. The legal heirs of Swaran Singh preferred revision petition before the Financial Commissioner, Punjab. The same was allowed vide impugned order dated 01.02.1993 (Annexure P-8) holding that the surplus land having not been utilized before the death of big land-owner, the same needs to be re-determined in the hands of legal heirs of big land-owner.

9. Earlier the writ petition was disposed off vide order dated 04.10.2016 in terms of the Full Bench judgment of this Court in the case of ***Sardara Singh and others vs. The Financial Commissioner and others, 2008(2) RCR (Civil) 744***.

10. The petitioners challenged order dated 04.10.2016 in intra-court appeal i.e. LPA No.1524 of 2017. Vide order dated 22.12.2025, the appeal stands allowed and the writ petition has been remanded for fresh adjudication observing as under:-

> *"xxxx xxxx xxxx*
>
> *8. Once, the dispute arises qua the aspect that another counsel who appeared on behalf of the writ petitioner had jurisdiction to make said statement or not, coupled with the fact that in the appeal, the applicability of the judgement in Sardara Singh (supra) is being disputed along with the assertion that there was other issue also raised in the said writ petition, it would be proper that the writ petition is decided by the learned Single Judge of this Court by examining the said contention being raised on behalf of the appellant(s).*
>
> *9. Keeping in view the above, order dated 04.10.2016 and 21.07.2017 passed by the learned Single Judge of this Court is*

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set aside and the cases are remanded back to the learned Single Judge of this Court for adjudication of the issue raised in the said writ petitions. As the writ petitions are pending since long, learned Single Judge of this Court is requested that in case possible, the same be decided as expeditiously as possible.

xxxx xxxx xxxx"

11. Counsel for the petitioners would submit that the proceedings were though initiated under the Punjab Law, but the same were pending on the day the Reforms Act came into being. Thus, in terms of Section 28 of the Reforms Act the proceedings are required to be continued as if the Reforms Act was not enacted. He further contends that the word 'determine' carries significance under the scheme of the Reforms Act and the same has been consciously used by the legislation in the provision contained in Section 11(7) of the Reforms Act. The same expression, when used in Section 28(2)(i) of the Reforms Act, cannot be assigned a different meaning. The 'determination' contemplated under Section 28 of the Reforms Act is, therefore, 'determination of surplus area by the Collector' under Section 7 of the said Act.

12. Counsel for the petitioners further submits that even if the proceedings continued under the Punjab Law by virtue of saving clause, the 'determination' shall be treated as 'determination' for the purpose of utilization under the Reforms Act. Original land-owner was alive on the day of commencement of the Reforms Act. He neither objected to the continuation of proceedings nor challenged their maintainability. Thus, the

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order (Annexure P-3) is required to be treated as 'determination' within the meaning of Section 28(2)(i) of the Reforms Act. It has been contended that Section 8 of the Reforms Act cannot be invoked by the private respondents as the same applies only to those cases where the land was declared surplus under the Punjab Law or Pepsu Law before the commencement of the Reforms Act, but has remained unutilized till the commencement of the Reforms Act. He contends that legislature has consciously used the expression 'declared surplus' under the erstwhile laws in contradistinction to expression 'determined' in Section 28(2)(i) of the Reforms Act. Further reliance is being placed upon ***Ajmer Kaur vs. State of Punjab, 2004(7) SCC 381,*** wherein the Supreme Court held that Section 11(7) of the Reforms Act contemplates a situation where the order passed by the Collector has attained finality. Thus, the death of big land-owner will not be of any consequence in this matter.

13. He further submits that the ratio of law laid down by Supreme Court when applied to the facts of the present case, the order determining surplus area by Collector having attained finality and the same having never been challenged by Swaran Singh during his lifetime, it cannot be allowed to be reopened by the Financial Commissioner, that too in proceedings under Section 9 of the Reforms Act. He contends that the Full Bench of this Court in ***Smt. Ajit Kaur and others vs. The Punjab State and others, 1980 PLJ 354*** had no occasion to consider Section 8 of the Reforms Act. Thus, ratio thereof cannot be applied to the present case. It has been contended that if the legal

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heirs of Swaran Singh are permitted to get the land re-determined, the same shall defeat the Constitutional mandate as contained under Article 39 of the Constitution of India. It has been further contended that the petitioners are continuing in possession of land in question much prior to the commencement of the Punjab Law through their predecessors-in-interest. Their possession is not in dispute. Petitioners having not been heard by the Financial Commissioner while passing order dated 01.02.1993 (Annexure P-8), the present writ petition deserves to be allowed. Apart from the judgments passed in ***Ajit Kaur's case (supra), Sardara Singh's case (supra), Ajmer Kaur's case (supra)***, counsel for the petitioners has also placed reliance in the case of ***Ranjit Ram v. Financial Commr., Revenue, AIR 1981 P&H 313*** and ***Piar Kaur vs. State of Punjab, 1989 PLJ 503***.

14. *Per contra,* learned Senior Counsel for respondent No.4 (A to C) and 6 (A&B) would submit that proceedings were initiated against Swaran Singh under the Punjab Law. During the pendency thereof, the Reforms Act came into being on 24.03.1973. In terms of Section 28(2)(i) of the Reforms Act, the proceedings for determination of surplus area pending before the commencement of the Reforms Act, were to continue and dispose off as if the Reforms Act had not been passed and the surplus area so determined was to vest and utilized by the State Government in accordance with the provisions of the Reforms Act. He further submits that the petitioners have neither any locus to challenge order (Annexure P-8) by way of present writ petition nor

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had any right to be heard prior to passing of order (Annexure P-8). There is no allotment in their favour till date. The right being agitated does not exist.

15. It has been contended that the land declared as surplus in the hands of Swaran Singh would vest in the State Government as per Section 8 of the Reforms Act i.e. on the date on which the possession thereof is taken by or on behalf of the State Government. In order to take possession of surplus area, the Collector issued notice under Section 9(1) of the Reforms Act to legal heirs of Swaran Singh recognizing their possession over the land in dispute. Before the land could vest in State i.e. before the possession could be taken by State, Swaran Singh died. Thus, in terms of dictum of law laid down by Full Bench of this Court in ***Ajit Kaur's case (supra)***, the benefit available under Section 11(5) of the Reforms Act, has been rightly granted by the Financial Commissioner to the heirs of Swaran Singh ordering re-determination of surplus land in their hands. To support his contentions, he relies upon ***Ajit Kaur's case (supra), Ranjit Ram's case (supra), Sardara Singh's case (supra) and Karnail Singh vs. State of Punjab, 1989 PLJ 95; Ujjagar Singh (dead) Through LRs vs. The Collector, Bathinda, 1996 AIR Supreme Court 2623; Tarlok Singh vs. F.C. (Revenue), 2009(5) RCR (Civil) 764 and Harjinder Singh and another vs. State of Punjab and others, 2019(1) RCR (Civil) 656.***

16. I have heard counsel for the parties and have carefully gone through records of the case.

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17. There is hardly any major dispute regarding facts. The parties are at disagreement with regard to application of law. In the considered opinion of this Court, the following three issues arise for the consideration of this Court:-

(i) Whether the vesting of surplus land in the State would be governed by Section 8 of the Reforms Act in the present case?

(ii) Whether the ratio of law laid down by Full Bench of this Court in the case of ***Sardara Singh's case (supra)*** would be attracted in the present case?

(iii) Whether the Financial Commissioner can order re-determination of surplus land owing to death of big land owner in proceedings under Section 9 of the Reforms Act?

18. In order to appreciate the contention raised by counsel for the parties, it shall be apt to trace evolution and history of land reforms in the State of Punjab. Independent India became Republic in the year 1950. The land reforms were implemented throughout the country recognizing the mandate of Constitution of India. While encapsulating the scheme of statutory agrarian re-organisation, Supreme Court in the case of ***State of Punjab (now Haryana) and others vs. Amar Singh and another, (1974) 2 SCC 70*** observed as under:-

> *"xxxx xxxx xxxx*
>
> ***7.*** *The scheme of agrarian re-organisation contemplated by the statute is simple. The legislature fixed a limit on ownership expressively described as "permissible area". Landowners who*

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exceeded this area were allowed to reserve for themselves the best lands they desired to keep and this parcel or parcels of land was meaningfully designated as "reserved area". Of course, if he failed to intimate his selection within six months from the commencement of the Act to the Patwari concerned, the prescribed authority was empowered to select the parcel or parcels of land which such person was entitled to retain for himself. The legislature found that many landowners had failed to make the reservation in time and so by the Amending Act 46 of 1957 a further period of six months from the commencement of the later Act was given for selecting the lands they meant to keep, and further again gave the prescribed authority power to select the parcel or parcels of land on behalf of the defaulting landholders. The intendment of the statute was that the reserved area was to be self-cultivated and so landowners were competent to eject tenants from the reserved area, although, generally speaking, evictions had been barred. As a matter of fact, landholders were directed to start self-cultivation within six months from the date of reservation or the date on which they got possession by eviction. Small holders i.e. persons who owned less than the permissible area, were not only not disturbed by the statute in regard to their ownership but were also allowed to evict tenants from their parcels of land so that they may also become self-cultivators. This process of making the proprietor cultivator naturally would result in the co-existence of possession and ownership at the cost of ejectment of tenants from their holdings.

xxxx xxxx xxxx"

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19. Punjab Security of Land Tenures Act, 1953 was amended to initiate agrarian reforms in the State of Punjab. In East Punjab reforms were governed by The Pepsu Tenancy and Agricultural Lands Act, 1955 (*hereinafter referred to as 'the Pepsu Law'*). The seminal difference in both the enactments was that, while under the provisions of the Punjab Law, the big land-owner got divested of surplus land on utilization thereof by State, under the Pepsu Law, Section 32E provided that on the day the State gained possession of surplus land, the same shall vest in State. After the unification and re-organization of State of Punjab, the Pepsu Law as well as the Punjab Law stand replaced by the Reforms Act. Repealing both the enactments, the Reforms Act brought uniformity in law regarding permissible area and surplus area.

20. Section 28 of the Reforms Act contains repeal and saving clause. The same reads as under:-

> *"**Section 28 - Repeal and Saving***
>
> *(1) The Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955, in so far as these are inconsistent with the provisions of this Act, are hereby repealed.*
>
> *(2) The repeal of the enactments mentioned in sub-section (1), hereinafter referred to as the said enactments, shall not affect,-*
>
> *(i) the proceedings for the determination of the surplus area pending immediately before the commencement of this Act, under either of the said enactments, which shall be continued and disposed of as if this Act had not been*

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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:

Provided that such proceedings shall, as far as may be, be continued and disposed of, from the stage these were immediately before the commencement of this Act, in accordance with the procedure specified by or under this Act, and the cases pending before the Pepsu Land Commission immediately before the date of commencement of this Act shall stand transferred to the Collector of the district concerned for disposal:

Provided further that nothing in this section shall affect the determination and utilisation of the surplus area, other than the surplus area referred to above, in accordance with the provisions of this Act;

(ii) the previous operation of the said enactments or anything duly done or suffered thereunder;

(iii) any right, privilege, obligation or liability acquired, accrued or incurred under the said enactments, in so far as such right privilege, obligation or liability is not inconsistent with the provisions of this Act and any proceeding or remedy in respect of such right, privilege, obligation or liability may be instituted, continued or enforced as if this Act had not been passed:

Provided that such proceeding or remedy shall, as far as may be, instituted, continued or enforced in accordance with the procedure specified by or under this Act."

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21. Counsel appearing for the petitioners has also endeavoured to take refuge under Section 28 of the Reforms Act. The provision came up for consideration before Supreme Court in the case of ***Hernek Singh vs. Financial Commissioner, Appeals, (2001) 9 SCC 480***. Supreme Court interpreted the impact and effect of Section 28 of the Reforms Act as under:-

> *"xxxx xxxx xxxx*
>
> *16. A plain reading of sub-section (1) shows that the provisions of the Punjab Security of Land Tenures Act, 1953 and the Pepsu Tenancy and Agricultural Lands Act, 1955 insofar as they were inconsistent with the provisions of the Land Reforms Act, were repealed. Sub-section (2) which is a saving provision enacts that the proceedings for determination of the surplus area pending immediately before the commencement of the Land Reforms Act, under either of the said enactments referred to above, shall be continued and disposed of as if the Land Reforms 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 the Land Reforms Act. The language of this clause is unambiguous and plain. It enjoins continuation and disposal of proceedings for the determination of the surplus area under various Acts mentioned in sub-section (1), including the Pepsu Act, which were pending before the commencement of the Act in accordance with the provisions of those Acts, as if the Land Reforms Act had not been passed. It further directs that vesting in and utilisation of the land determined as surplus, by the State Government, in the aforementioned proceedings, shall be in accordance with the provisions of the Land Reforms Act. To this clause are appended two provisos. The first proviso says that as far as may be, such proceedings shall be continued and disposed of*

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> *from the stage they were pending immediately before the commencement of the Land Reforms Act and in accordance with the procedure specified thereunder (i.e. under the Land Reforms Act) and that the cases pending before the Pepsu Land Commission immediately before that date shall stand transferred to the Collector of the district concerned for disposal. The second proviso, which is not really in dispute, provides that nothing in that section shall affect the determination and the utilisation of the surplus area other than the surplus area referred to above in accordance with the provisions of the Land Reforms Act.*
>
> *xxxx xxxx xxxx"*

22. Thus, it is clear that Section 28(2)(i) of the Reforms Act saved the pending proceedings for determination of surplus area. However, the procedure as envisaged under the Reforms Act needs to be followed. Second proviso appended to Section 28(2)(i) of the Reforms Act saved determination and utilization of surplus area but the same does not deal with vesting of the surplus area. Vesting of unutilized surplus area in the State, which was declared under Punjab law or Pepsu law or has been declared under the Reforms Act, is governed by Section 8 of the Reforms Act. So is the ratio of law laid down by Full Bench in ***Ranjit Ram's case (supra)***, the same vests in the State Government on the date the possession thereof is taken by or on behalf of the State Government. Thus, the land which has been declared surplus under the Punjab Law but has remained unutilized, remained vested in the big land-owner till the date the possession thereof has been taken by or on behalf of the State Government after

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Reforms Act came into being, as per Section 8 of the Reforms Act, which reads as under:-

> ***"8. Vesting of unutilized surplus area in the State Government.***
>
> *- Notwithstanding anything contained in any law, custom or usage for the time being in force, but subject to the provisions of section 15, the surplus area declared as such under the Punjab law or the Pepsu law, which has not been utilized till the commencement of this Act and the surplus area declared as such under this Act, shall, on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government, free from all encumbrances and in the case of surplus area of a tenant which is included within the permissible area of the landowner the right and interest of the tenant in such areas shall stand terminated on the aforesaid date:*
>
> *Provided that where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government."*

23. Section 8 thus deals with all the 3 species of surplus area i.e. the area declared surplus under Punjab Law or Pepsu Law but not utilized and the area declared surplus under the Reforms Act.

24. As a footnote, I must hastily add here that position is different under the Haryana Ceiling on Land Holdings Act, 1972 (*hereinafter referred to as 'Haryana Ceiling Act'*). Section 12(3) of the Haryana Ceiling Act provides that the surplus land declared under the Pepsu Law and that under Punjab Law stands vested in the State w.e.f. the appointed day under

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the Haryana Ceiling Act i.e. 24.01.1971. Thus, there is a difference between the Haryana Ceiling Act and the Reforms Act, 1972. There is no provision under the Haryana Ceiling Act to re-open the surplus determined under the Punjab Law. Under the Haryana Ceiling Act, the land declared surplus under the old Punjab Law and Pepsu Law vests in State by virtue of deeming provision contained under Section 12(3) of the Haryana Ceiling Act. Reference can be made to observation made by Supreme Court in the case of ***Amar Singh vs. Ajmer Singh, 1994 Supp(3) SCC 213***, wherein the mandate of Section 12(3) of the Haryana Ceiling Act has been spelled out.

25. Section 9 of the Reforms Act prescribes the following mode to take possession of surplus area:-

> *"**9. Power to take possession of surplus area.***
>
> *(1)The Collector may, by an order in writing, after an area has become surplus under the Punjab law or the Pepsu law or becomes surplus under this Act, direct the landowner or tenant or any other person in possession of such area to deliver possession thereof, within ten days of the service of the order on him, to such person as may be specified in the order.*
>
> *(2)If the landowner or tenant or any person in possession of such area refuses or fails without reasonable cause to comply with the order made under sub-section (1), the Collector may take possession of that area and may, for that purpose, use such force as may be necessary."*

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26. Section 10 of the Reforms Act provides for amount payable for the surplus area which has no bearing on the present *lis*. Section 11 of the Reforms Act deals with disposal of surplus area as under:-

> *"**11. Disposal of surplus area**—*
>
> *(1) The surplus area, which has vested in the State Government under section 8, shall be at the disposal of the State Government.*
>
> *(2) The State Government may, by notification in the official Gazette frame a scheme for utilizing the surplus area under the Punjab law, the Pepsu law or this Act by –*
>
> > *(a) conferment of rights of ownership or 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 of the landless agricultural workers, of 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 land or equivalent area.*
>
> *(3) Any scheme framed by the State Government under sub-section (2) may provide for the terms and conditions on which the rights of ownership are to be conferred on the tenants and also the terms and conditions on which the land comprised in the surpkus area is to be allotted.*
>
> *(4) The State Government may, by notification in the official Gazette add to, amend, vary or revoke any scheme made under this section.*
>
> *(5) <u>Notwithstanding anything contained in any law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir</u>*

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by inheritance, no transfer or other disposition of land which is comprised in the surplus area under the Punjab law, the Pepsu law or this Act, shall affect the vesting thereof in the State Government or its utilization under this Act.

(6) The utilization of any surplus area before the commencement of this Act will not affect the right of the tenant to purchase land in accordance with the provisions of section 15 of the right of the landowner to receive rent from the tenant settled on the surplus area till the tenant becomes the owner thereof.

(7) Where succession has opened after the surplus area or any part thereof has been determined by the Collector, the saving specified in favour of an heir by inheritance under sub-section (5) shall not apply in respect of the area so determined."

27. Section 10-A(b) of Punjab Law reincarnated as Section 11(5) of the Reforms Act. It saves the holding of big landlord from involuntary transfers of land viz., compulsory acquisition by State and inheritance on account of death of big landlord.

28. Section 10-A(b) of old Punjab Law came up for consideration before Supreme Court in the case of ***Financial Commissioner, Haryana State and others vs. Smt. Kela Devi and another, (1980) 1 SCC 77.*** Supreme Court held that since the land has not been utilized and the allottees are yet to be put in possession, mere allotment order does not amount to completion of process of utilization and the heirs of deceased big landlord are entitled for re-determination of the surplus area as the land is yet to vest in State.

29. Dealing with a similar situation, a Division Bench of this Court in ***Karnail Singh's case (supra)*** observed as under:-

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"xxxx xxxx xxxx

10. Now adverting to the facts of the case, which are distinguishable from Sher Singh's case (supra), the landowner died on 11th January, 1983 and it is thereafter that notice under Section 9(1) of the Reforms Act was issued directing the landowner to deliver possession and it is thereafter that on 28th March, 1983 the possession was taken in purported exercise of powers under Section 9(2) of the Reforms Act and allotment to the father of the petitioner before us was made thereafter on 30th March, 1983. Therefore, the surplus area declared was not utilised before the death of the landowner nor its possession was taken by the State Government. Even if possession had been taken by the State Government before the death of the landowner in whose hand the area was declared surplus by virtue of Section 8 of the Reforms Act, the land would have vested in the State Government free from all encumbrances from the date of taking of possession. Since even possession was not taken before the date of death, the taking of possession on 28th March as also the order of allotment dated 30th March, 1983 are without jurisdiction and were rightly set at naught by the learned Financial Commissioner.

xxxx xxxx xxxx"

30. In ***Sardara Singh's case (supra)***, the Full Bench of this Court relied upon ***Ajmer Kaur's case (supra)***. In ***Ajmer Kaur's case (supra)***, the Supreme Court held that the order regarding determination of surplus area by the Collector has serious consequences. The Court enlisted the consequences as under:-

a) So far as the land owner is concerned he is divested of the land.

b) The surplus land vests in the State Government.

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c) The State Government utilizes the surplus land in accordance with law which includes allotment of the surplus land to third parties like landless persons for purposes of cultivation etc.

31. As already explained hereinabove, under the Reforms Act, 1972, vesting of surplus land is not automatic, it is only when possession has been taken. Supreme Court in ***Ajmer Kaur's case (supra)*** was dealing with a situation where land already stood utilized and big land-owner stood divested of surplus land. It is in these circumstances, the Supreme Court observed that the order of declaration of surplus having attained finality and land having already been handed over to the allottees, the same cannot be re-opened after the lapse of more than six years.

32. Five Judges Bench of Supreme Court in ***Ujjagar Singh's case (supra)*** dealt with the issue of re-determination of unutilized land. Approving the ratio of law laid down by Full Bench in ***Ranjit Ram's case (supra)*** and reiterating the dictum of law laid down in ***Kela Devi's case (supra)***, the Supreme Court observed as under:-

"xxxx xxxx xxxx

5. The learned counsel, appearing for the State of Punjab, could not point out as to how in view of the admitted position that some area had been declared surplus in the year 1961-62 under the Pepsu Act, the possession thereof had not been taken either by or on behalf of the State Government till the coming into force of the Punjab Act, the right, title and interest of the appellant in the land which had been declared surplus under the Pepsu Act was extinguished. The taking of possession was a must, in absence whereof it shall be deemed that

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right, title and interest of the appellant had never been extinguished and the said land which had been declared surplus never vested in the State; fresh steps for fixation of the ceiling had to be taken in accordance with the provisions of the Punjab Act.

6. A similar controversy had arisen in the case of Financial Commr., Haryana State v. Kela Devi [(1980) 1 SCC 77] in connection with the Punjab Security of Land Tenures Act, 1953. Section 10-A(a) enabled the State Government or any officer empowered by it in that behalf to utilise any surplus area for the resettlement of tenants ejected or to be ejected under clause (i) of sub-section (1) of Section 9 of that Act. In this connection, it was said: (SCC pp. 79-80, para 5)

> *"In order to understand the full meaning and effect of the provisions of Section 10-A, it is necessary to make a cross-reference to Rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures Rules, 1956 (hereafter referred to as the Rules). Rule 18 deals with the procedure for allotment of 'surplus area' to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and Rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of the land allotted to him within a period of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter alia, for the execution of a 'qabuliyat' or 'patta' by a resettled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the 'surplus area', it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a 'qabuliyat' or 'patta' in respect thereof. The process of utilisation contemplated by Section 10-A of the Act is therefore complete, in respect of any 'surplus area', only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process."*

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Construing the scope of Section 10-A of the aforesaid Act, this Court pointed out that allotment of land was an initial stage in the process of utilisation of the "surplus area" and such utilisation was not complete till the allottee obtained a certificate of allotment and took possession of the land within the period specified for the purpose. It was pointed out that the process of utilisation contemplated under Section 10-A of the said Act was complete in respect of any "surplus area" only when possession thereof had been taken by the allottee and other formalities had been completed — by mere order of allotment there was no question of completion of the process of utilisation. The same was the position in respect of the Pepsu Act in view of Section 32-E(a). Unless the possession had been taken of the surplus area by the State Government or on its behalf, right, title and interest of the landowner was not extinguished and such surplus area never vested in the State Government. A Full Bench of the Punjab and Haryana High Court in the case of Ranjit Ram v. Financial Commr., Revenue [(1981) 83 Punj LR 492 : AIR 1981 P&H 313] said:

> *"As already observed, even if the land of a landowner has been declared surplus, either under the Punjab law or under the Pepsu law, and if the land of landowner has not been utilised and further has not been purchased by the tenants in case of Punjab law, and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under Section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab law or the Pepsu law, which has not been utilised till the commencement of the Reforms Act, shall on the date or the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State Government free from all encumbrances. It would thus be seen that such landowners' surplus area shall vest in the State Government on the date of taking of possession by the State Government under Section 8 of the Reforms*

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Act and till then the landowners are not divested of the ownership of the surplus land. Thus, if a landowner owns or holds land which is beyond the permissible area as defined under Sections 4 and 5 of the Reforms Act, his case shall have to be processed again by the Collector and the determination of the permissible area and the surplus area has to be according to the mandate of Sections 4 and 5 of the Reforms Act. Sub-section (1) of Section 4 of the Reforms Act contains a clear bar that no person shall own or hold land in excess of the permissible area and when the case is reprocessed by the Collector, the permissible area as provided for in Sections 4 and 5 of the Reforms Act has to be allowed to the landowner. It may be observed that the permissible area as defined under sub-section (2) of Section 4 of the Reforms Act is subject to the provisions of Section 5 of the Reforms Act. This is so because a clear provision has been made to this effect in sub-section (1) of Section 4 of the Reforms Act. Under Section 5 of the Reforms Act if a landowner has an adult son, he shall also be entitled to select separate permissible area in respect of such son out of the land owned or held by him, subject to the condition that the land selected together with the land already owned or held by such son, shall not exceed the permissible area of each such son. It would thus be seen that merely because the case of a landowner had already been processed under the Punjab law or the Pepsu law would not be a bar for the application of the provisions of Section 4 read with Section 5 of the Reforms Act. The provisions of sub-section (1) of Section 5 of the Reforms Act entitle the landowner to select permissible area for his adult son from the land owned or held by him in addition to the permissible area of the family. It is clear that the rest of the provisions made in sub-sections (1) and (2) of Section 5 of the Reforms Act are procedural."

It may be mentioned that in the aforesaid judgment "Punjab law" refers to Punjab Security of Land Tenures Act, 1953, "Pepsu law" refers to Pepsu Tenancy Agricultural Land Act, 1955 and "Reforms Act" refers to Punjab Land Reforms Act, Reforms. According to us, the majority judgment of the Full Bench has correctly appreciated the scope of the three enactments referred to above. Once the lands declared as surplus under the Pepsu Act did not vest in the State

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Government, as possession thereof had not been taken, there has to be a fresh determination in respect of the area which the appellant is entitled to hold in the light of the Punjab Act.

7. The learned counsel, who appeared for the State, did not take a stand that under the Punjab Act, the appellant is holding any surplus area. He, however, placed reliance on the judgment of this Court in the case of Amar Singh v. Ajmer Singh [1994 Supp (3) SCC 213] where it has been said that merely because the land had not been utilised and remained in possession of the heirs of the landowner, was inconsequential. The aforesaid decision of this Court relates to the Haryana Ceiling on Land Holdings Act, Reforms which came into force w.e.f. 23-12-Reforms. From a bare reference to the aforesaid judgment, it shall appear that the vesting under that takes place on the appointed date. There is no provision under that Act like Section 32-E(a) of the Pepsu Act under which the surplus area had been declared so far the appellant is concerned. As such the aforesaid judgment in the case of Amar Singh v. Ajmer Singh [1994 Supp (3) SCC 213] is of no help to the respondent-State. In normal course, we would have directed the respondent-State to examine the question of surplus land held by the appellant along with his four adult sons in accordance with the provisions of the Punjab Act, but in view of an admitted position that if a fresh proceeding is to be initiated under the Punjab Act, there is no question of declaration of any land as surplus area, no useful purpose will be served by issuing any such direction. Accordingly, the appeal is allowed. The order of the dismissal passed by the High Court on the writ petition filed on behalf of the appellant is set aside. All proceedings initiated against the appellant either under the provisions of the Pepsu Act or the Punjab Act are quashed. In the facts and circumstances of the case there shall be no order as to costs.

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33. In the present case, since under Section 9 of the Reforms Act the notice was served upon legal heirs of Swaran Singh, it proves that the possession vests with them till that date. In other words, though the land was declared surplus in the hands of Swaran Singh but he was not divested thereof on the day he died. Petitioners were in possession as tenants not as allottees. There is no allotment in their favour till date. Notice under Section 9 by the State is testimony to the fact of land being in possession of legal heirs of Swaran Singh. Petitioners are agitating in anticipation of a right which may would have travelled to them.

34. The issue with regard to re-opening of determination of surplus land on account of death of big land-owner during the proceedings of utilization/possession is no more *res integra* and has been answered by Supreme Court in ***Kela Devi's case (supra)*** observing as under:-

> *"xxxx xxxx xxxx*
>
> *3. The only question which therefore arises for consideration is whether the High Court was right in taking the view that mere allotment of land to other tenants under Section 10-A(a) of the Act did not amount to utilisation of the "surplus area" when the resettled tenants had not taken possession under the allotment orders.*
>
> *4. It is not in controversy that it had been finally decided that the "surplus area" in the case of Nathi was 6 standard acres and 8 standard units, and a decision to that effect was taken in his lifetime on November 25, 1959. It is also not in dispute that orders were made for the allotment of the "surplus area" to other tenants under Section 10-A(a) of the Act which reads as follows:*

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> *"10-A. (a) The State Government or any officer empowered by it in this behalf shall be competent to utilise any surplus area for the resettlement of tenants ejected, or to be ejected, under clause (i) of sub-section (1) of Section 9."*

While therefore the section empowers the State Government or its authorised officer to "utilise" any "surplus area" for the resettlement of tenants, the Act does not define what is meant by an order of utilisation under the section. A clue to what is actually meant by that expression, is however to be found in clause (b) of Section 10-A which provides as follows:

> *"10-A. (b) Notwithstanding anything contained in any other law for the time being in force and save in the case of land acquired by the State Government under any law for the time being in force or by an heir by inheritance no transfer or other disposition of land which is comprised in surplus area at the commencement of this Act, shall affect the utilisation thereof in clause (a)."*

The clause therefore has the effect of saving the land, comprised in the "surplus area", if it has been acquired by an heir by inheritance. So where an heir succeeds by inheritance, as in this case, that basic fact would affect the utilisation of the surplus area even if only an order has been made under clause (a) of Section 10-A for its utilisation for the resettlement of other tenants but that order has not been implemented.

5. In order to understand the full meaning and effect of the provisions of Section 10-A, it is necessary to make a cross-reference to Rules 18, 20-A, 20-B and 20-C of the Punjab Security of Land Tenures Rules, 1956 (hereafter referred to as the Rules). Rule 18 deals with the procedure for allotment of "surplus area" to other resettled tenants. Rule 20-A provides for the issue of certificates of allotment of lands to them, and Rule 20-B provides for delivery of possession and makes it obligatory for the resettled tenant to take possession of the land allotted to him within a period

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of two months or such extended period as may be allowed by the officer concerned. Rule 20-C provides, inter alia, for the execution of a "qabuliyat" or "patta" by a resettled tenant. It would thus appear that while allotment of land is an initial stage in the process of utilisation of the "surplus area", it does not complete that process as it is necessary for the allottee to obtain a certificate of allotment, take possession of the land within the period specified for the purpose, and to execute a "qabuliyat" or "patta" in respect thereof. The process of utilisation contemplated by Section 10-A of the Act is therefore complete, in respect of any "surplus area", only when possession thereof has been taken by the allottee or the allottees and the other formalities have been completed, and there is no force in the argument that a mere order of allotment has the effect of completing that process.

6. Reference in this connection may also be made to Rule 20-D of the Rules which provides that in case a tenant does not take possession of the "surplus area" allotted to him for resettlement within the period specified therefor, the allotment shall be liable to be cancelled and the area allotted to him may be utilised for the resettlement of another tenant. It cannot therefore be doubted that a completed title does not pass to the allottee on a mere order of allotment, and that order is defeasible if the other conditions prescribed by law are not fulfilled.

7. So when the process of utilisation of Nathi's "surplus area" had not been completed by the time his heirs by inheritance made the aforesaid application to the authorities concerned, it was permissible for those authorities to re-examine the question whether there was any "surplus area" at all after Nathi's holding had been inherited by his two heirs in equal shares so as to reduce the area of the holding of each one of them below the permissible

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area. The High Court therefore rightly allowed the writ petition of the respondents.

xxxx xxxx xxxx"

35. Even in ***Hernek Singh's case (supra)***, Supreme Court while dealing with similar situation observed as under:-

"xxxx xxxx xxxx

18. A careful reading of Section 8, insofar as it relates to the landowner, discloses, inter alia, that the surplus area declared under the Pepsu Act which had not been utilised till the commencement of the Land Reforms Act and the surplus area declared as such under the Land Reforms Act, shall on the date on which possession thereof is taken by or on behalf of the State Government, vest in the State Government free from all encumbrances. Thus it is evident that vesting in of the surplus land takes place on taking possession of the land by or on behalf of the State Government.

19. It will be useful to notice that Section 11 of the Land Reforms Act provides that the surplus area which has vested in the State Government under Section 8, shall be at the disposal of the State Government to frame the scheme for utilisation of the surplus area declared as such under the Punjab law, the Pepsu law or the Land Reforms Act. It is thus clear that under the Land Reforms Act, vesting of the surplus land in the State Government is a prerequisite of framing of the scheme in respect of such land. The allotment of the land under the scheme is a subsequent step. Without taking possession of any surplus land there can be no vesting of surplus land in the State Government and a fortiori no scheme can be framed in respect of such land, much less can it be allotted to any person.

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20. Here it would be apt to mention that the provisions of these two enactments came up for consideration of a Full Bench of the Punjab and Haryana High Court in Ranjit Ram v. Financial Commr., Revenue [(1981) 83 Punj LR 492 (FB)] . In para 7, it was held: (Punj LR pp. 500-01)

> *"[E]ven if the land of a landowner has been declared surplus, either under the Punjab law or under the Pepsu law, and if the land of landowner has not been utilised and further has not been purchased by the tenants in case of Punjab law, and if the landowner has not been dispossessed by the Government under the provisions of the Pepsu law, he continues to be a landowner of the land and also holds the same even though his land has been declared surplus, till he is divested of its ownership by taking possession of the land under Section 8 of the Reforms Act, where it has been provided that the surplus area declared as such under the Punjab law or the Pepsu law which has not been utilised till the commencement of the Reforms Act, shall on the date or the date on which the possession thereof is taken by or on behalf of the State Government, vests in the State Government free from all encumbrances. It would thus be seen that such landowners' surplus area shall vest in the State Government on the date of taking of possession by the State Government under Section 8 of the Reforms Act and till then the landowners are not divested of the ownership of the surplus land."*

A Constitution Bench of this Court in Ujjagar Singh v. Collector, Bhatinda [(1996) 5 SCC 14 : JT (1996) 6 SC 713] having quoted para 7 of the said judgment of the Full Bench, approved the same and held that once the lands declared as surplus under the Pepsu Act did not vest in the State Government, as possession thereof had not been taken, there had to be a fresh determination in respect of the area which the appellant was entitled to hold in the light of the Punjab Act.

21. In the instant case the land in question did not vest in the State Government, as admittedly, the possession of the land was not taken by or on behalf of the State Government. This is also clear

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from the averment made in the reply filed by the State Government in the special leave petition. It is admitted that the land had been declared surplus and that the allotment order was passed in the year 1980. It is also admitted that the possession of the landowner continued and still continues to be that of the landowners. In view of these averments, it cannot be legitimately contended that the land had vested in the State Government and therefore the allottees acquired right to get possession of land which is said to have been allotted on 22-9-1980.

22. From the above discussion it follows that the rights, title and interest of the landowner of the land in question continued with him and in law the land did not vest in the State Government, therefore, the allotment of the land in question in favour of Respondents 5 to 10 is illegal and void and is of no legal consequence. The order of the Financial Commissioner (Appeals II) dated 26-6-1998 and the impugned order of the High Court confirming the said order of the Financial Commissioner (Appeals II) are, therefore, unsustainable and are accordingly set aside. The appeal is allowed but in the circumstances of the case, we make no order as to costs."

36. As a sequel to the discussion held hereinabove, this Court accordingly answers the issues culled out in paragraph No.17 hereinabove as under:—

(i) Whether the vesting of surplus land in the State would be governed by Section 8 of the Reforms Act in the present case?

Answer: That vesting of surplus land in the State irrespective of having been declared under the old laws of Punjab or Pepsu, if not utilized till the promulgation of Reforms Law, and that of land declared surplus under the Reforms Act, 1972, shall be governed by Section 8 of the Reforms Act. In the present case also, the land remained unutilized and

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admittedly possession was never taken by State. Thus, as per mandate of Section 8 of the Reforms Act, the same never vested in State.

(ii) Whether the ratio of law laid down by Full Bench of this Court in the case of Sardara Singh's case (supra) would be attracted in the present case?

And

(iii) Whether the Financial Commissioner can order re-determination of surplus land owing to death of big land-owner in proceedings under Section 9 of the Reforms Act?

Answer: That ratio of law laid down by Full Bench of this Court in Sardara Singh's case (supra) is not attracted in the present case. Sardara Singh's case is based on ratio of law laid down by Supreme Court in Ajmer Kaur's case (supra). In Ajmer Kaur's case (supra), the big land-owner stood divested of surplus area which stood utilized. In the present case, possession still remains with legal heirs of big land-owner and the land has not yet vested in State. Section 10-A(b) of Punjab Law was interpreted by Supreme Court in Kela Devi's case (supra). As per the same, till the big landlord is divested of his title over the surplus land and the same vests in State, the Financial Commissioner is within his power to order re-determination of surplus land. View taken in Kela Devi's case (supra) was reiterated by Five Judges Bench in Ujjagar Singh's case (supra). Thus, the present case is fully covered by the same as the surplus area has to be determined under old Punjab Law as per Section 28 of the Reforms Act in light of ratio of law laid down by Supreme Court in Hernek Singh's case (supra).

37. As a sequel to the discussion held hereinabove, this Court finds that the present writ petition *sans* merit and deserves to be dismissed.

38. Petition stands ***dismissed***.

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

(PANKAJ JAIN)
JUDGE

September 29, 2026
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No

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