

2025:PHHC:078681



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**I. SMT. PREM AND OTHERS** **RSA-3074-1999 (O&M)**

.... APPELLANTS

**Vs.**

RAM PAL AND OTHERS

.... RESPONDENTS

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**II. SMT. VIDYA AND OTHERS** **RSA-3073-1999 (O&M)**

.... APPELLANTS

**Vs.**

AMAR SINGH AND OTHERS

.... RESPONDENTS

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**III. SMT. PREM AND OTHERS** **RSA-3075-1999 (O&M)**

.... APPELLANTS

**Vs.**

SARWAN KUMAR AND OTHERS

.... RESPONDENTS

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**IV. SMT. VIDYA AND OTHERS** **RSA-3076-1999 (O&M)**

.... APPELLANTS

**Vs.**

SARWAN KUMAR AND OTHERS

.... RESPONDENTS

**RESERVED ON: 08.05.2025**  
**PRONOUNCED ON: 01.07.2025**

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**CORAM: HON'BLE MR JUSTICE DEEPAK GUPTA**

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Argued by: Mr. Sanjeev Sharma, Sr. Advocate with  
Mr. Vikram Vir Sharda, Mr. Sandeep Singh and

Mr. Jugansh Goyal, Advocates  
for the appellant(s) in all the appeals.

Mr. Ashish Aggarwal, Sr. Advocate with  
Mr. Saket Bhandari and Mr. Nipun Vashisth, Advocates  
for respondent Nos.37 to 41 in RSA-3073 & 3076 – 1999  
for respondent Nos.26 to 28 in RSA-3074 & 3075 – 1999.

Mr. Sandeep Verma, Advocate  
for respondent Nos.2 & 3 in RSA-3073-1999;  
for respondent No.14 in RSA-3074-1999;  
for respondent No.16 in RSA-3075-1999;  
for respondent Nos.26 & 28 in RSA-3076-1999.

Mr. Amit Jain, Advocate  
for LRs of respondent Nos.27, 28, 31 & 32 in RSA-3073-1999;  
for LRs of respondent Nos.19, 20, 23 & 24 in RSA-3074-1999;  
for LRs of respondent Nos.1, 2, 5 & 6 in RSA-3075-1999;  
for LRs of respondent Nos.1, 2, 5 & 6 in RSA-3076-1999.

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**DEEPAK GUPTA, J.**

Plaintiffs of the two consolidated suits are before this Court in the present four appeals against reversal.

**Background:**

2.1 Civil Suit No. 656 of 1983 (later renumbered as Civil Suit No. 895 of 1992) was filed by Surat Singh and others, seeking a declaration and permanent injunction concerning 1240 kanal 12 marla of land situated in Village Shadipur, Tehsil and District Rewari, as described in the plaint. The suit was filed against Krishan and five others.

2.2 The same plaintiffs also filed Civil Suit No. 655 of 1983 (renumbered as Civil Suit No. 893 of 1992) against Shimbhu Singh and others, seeking similar relief in respect of 650 kanal 5 marla of land located in Village Noorpur, Tehsil Rewari.

2.3 Both suits were consolidated and decided by a common judgment dated 17.04.1995 passed by the Sub Judge Ist Class, Rewari, who decreed both suits in favour of the plaintiffs.

2.4 This judgment resulted in the filing of four appeals:

- In relation to land of Village Shadipur (Civil Suit No. 895 of 1992), two appeals were filed: Civil Appeal No. 110 of 1998/1995 and Civil Appeal No. 18 of 1999/1995 by different sets of defendants or their legal representatives.
- For Village Noorpur (Civil Suit No. 893 of 1992), two separate appeals—Civil Appeal Nos. 19 & 20 of 1999/1995—were filed by other defendants/legal representatives.

2.5 All four appeals were heard together and decided by a common judgment dated 27.02.1999 passed by the Additional District Judge, Rewari, who allowed all the appeals and consequently dismissed both civil suits.

2.6 Aggrieved by the reversal, the plaintiffs filed the present Regular Second Appeals:

- RSA Nos. 3073 & 3075 of 1999 have been filed by Surat Singh and others (plaintiffs in Civil Suit No. 895 of 1992).
- RSA Nos. 3074 & 3076 of 1999 have been filed by Jagmal Singh and others (plaintiffs in Civil Suit No. 893 of 1992).

3. In order to avoid confusion, parties shall be referred as per their status before the trial Court concerned.

**Pleaded case of the plaintiffs:**

4.1 The facts of both suits are broadly similar, save for the distinction that Civil Suit No. 895 of 1992 pertains to land situated in Village Shadipur, while Civil Suit No. 893 of 1992 relates to land located in Village Noorpur.

4.2 It is an admitted position that one Smt. Phunsa widow of Mangal, was the original owner of the land in both villages. Said land was sold by her to the plaintiffs vide registered sale deeds dated 04.04.1960.

4.3 The plaintiffs have alleged that approximately one year after the sale, the suit land was declared as surplus in the hands of Smt. Phunsa by the competent authority vide order dated 23.02.1961, purportedly

without issuing any notice either to them or to the vendor. Upon acquiring knowledge of the surplus declaration, the plaintiffs approached the appropriate authority but to no avail.

4.4 It is further their case that after the enforcement of the Haryana Ceiling on Land Holdings Act, 1972 (hereinafter referred to as "*the 1971 Act*"), a substantial portion of the suit land was allotted by the State to defendants No. 1 to 6 in Civil Suit No. 895 of 1992 (Village Shadipur), and defendants No. 1 to 16 in Civil Suit No. 893 of 1992 (Village Noorpur).

4.5 The plaintiffs challenged the said allotments by filing a writ petition before this Court, which was however dismissed on 12.08.1983, on the ground that a writ petition was not maintainable to challenge the sanctioning of mutation entries.

4.6 Plaintiffs alleged that both the declaration of surplus area and the subsequent allotments made to the defendants are illegal, void ab initio, and without jurisdiction, and are therefore not binding upon them, on the following grounds:

- The suit land was purchased in good faith, for valuable consideration, and at a time when each plaintiff's holding was below 10 acres.
- As on the date of sale, no area in the hands of Smt. Phunsa had been declared surplus.
- The surplus proceedings were conducted without service of notice to either the plaintiffs or the vendor.
- Banjar (waste) land was also not excluded from the surplus computation.
- The plaintiffs had already been recorded as owners in possession in the revenue records, yet no intimation was provided to them prior to the alleged allotments.
- It was contended that land sold prior to 1966 could not be declared surplus under the Punjab Security of Land Tenures Act, 1953

(hereinafter “*the 1953 Act*”), and that the provisions of the 1971 Act were not applicable to such transactions.

- Further, the plaintiffs contended that the alleged allotments were merely on paper, with no delivery of possession to the allottees.
- They also pointed out that after consolidation, no proceedings under Section 24A(2) of the 1953 Act were initiated.
- It was asserted that on the strength of such invalid allotments, the defendants were attempting to interfere in their possession.

4.7 With above averments, the plaintiffs prayed for the following reliefs:

- A declaration that they are the lawful owners in possession of the suit land by virtue of the sale deeds dated 04.04.1960;
- A declaration that the suit land never vested in the State of Haryana, and that the surplus area declaration and the allotments made to the contesting defendants are null and void and do not affect the rights of the plaintiffs;
- A permanent injunction restraining the defendants from interfering with their peaceful possession;
- Additionally, in the event that possession was disturbed during the pendency of the suit, a decree for possession was also sought.

**Stand of Defendants:**

5.1 The suit was contested by all the defendants. The private defendants—allottees, in their written statements, raised several preliminary objections. It was asserted that the suit was not maintainable, as the plaintiffs themselves had acknowledged the suit land to be surplus from the outset. In support, they pointed out that the plaintiffs had even filed applications in Form ‘L’ seeking the ejection of the defendants by treating the land as surplus. Therefore, the plaintiffs were estopped from asserting otherwise in the present proceedings.

5.2 The defendants further contended that the plaintiffs had earlier approached both the High Court and the Hon’ble Supreme Court by way of

writ petitions, which were dismissed, and hence, the present suits were barred by the doctrine of res judicata. They also denied that the plaintiffs were bona fide purchasers, asserting that the suit land had already been declared surplus and was allotted to them in the year 1963, thereby divesting the plaintiffs of any right or locus to challenge either the surplus declaration or the subsequent allotment. It was further averred that the land had been fully utilized after being declared surplus, not only under the 1953 Act, but also under the 1971 Act.

5.3 Denying all other allegations of the plaint, the private defendants prayed for dismissal of the suit.

6.1 The State of Haryana, in its separate written statements filed in both suits, raised preliminary objections, including that the civil court lacked jurisdiction, and that the suit was barred by limitation. The State also submitted that the plaintiffs had earlier filed writ petitions before the High Court as well as the Hon'ble Supreme Court, which had been dismissed, and as such, the plaintiffs were precluded from agitating the matter afresh by way of a civil suit.

6.2 Additionally, it was asserted by the State that the suit land had been declared surplus on 23.02.1960, and not on 23.02.1961 as claimed by the plaintiffs. Since this declaration predated the sale deed dated 04.04.1960, so the plaintiffs had no legal right or standing to challenge the surplus declaration. On these grounds, the State also sought dismissal of the suit.

7. Necessary issues were separately framed in both the suits. The two suits were consolidated. Evidence produced by both the parties was taken on record.

**Findings of the Trial Court:**

8.1 The learned Trial Court, vide consolidated judgment dated 17.04.1995, held that, in view of orders Ex.PF (pertaining to land in Village Shadipur) and Ex.PC (relating to land in Village Noorpur), both dated

24.06.1986, the suit land stood excluded from the surplus pool and consequently reverted to the plaintiffs, who were owners by virtue of sale deeds dated 04.04.1960.

8.2 It was further observed that these orders dated 24.06.1986 had not been challenged before any forum despite having been produced in evidence as early as 1990, and therefore, they had attained finality. The Court also noted that these orders were passed by the Prescribed Authority in accordance with the Government instructions of 1976, and since they were passed on applications for exemption, and not by way of review of earlier surplus declarations, notice to the allottees (defendants) was not required.

8.3 However, the Trial Court simultaneously held that the plaintiffs had not been able to prove their possession over the suit land. Accordingly, while granting a declaration that the surplus declarations and subsequent allotments in favour of the defendants were null and void, the Court also accepted the alternative prayer for possession, and passed a decree for possession of the suit land in favour of the plaintiffs.

**Findings by the First Appellate Court:**

9.1 As previously noted, separate sets of defendants filed four appeals challenging the consolidated judgment—two arising from Civil Suit No. 895 of 1992 and two from Civil Suit No. 893 of 1992. All four appeals were decided through a common judgment dated 27.02.1999 by the learned Additional District Judge, Rewari.

9.2 The Appellate Court referred to the order dated 05.12.1972 (Ex.DZ/16) passed by this High Court in CWP No. 1830 of 1972, filed by Bahadur Singh and others (*plaintiffs herein*) against the State of Haryana and others, wherein the plaintiffs had challenged the surplus declaration of the suit land. The writ petition was dismissed, and the Appellate Court held that the said judgment had attained finality and could not be re-agitated.

9.3 It further found, based on documentary evidence, that the land declared surplus by the State had been fully utilized, thereby conferring ownership rights upon the allottees/defendants. The Court also noted that the plaintiffs had suppressed material facts, including the dismissal of earlier writ petitions.

9.4 Still further, the Appellate Court held that the orders Ex.PC and Ex.PF, relied upon by the Trial Court to decree the suits, were not binding on the defendants, as no notice had been issued to them before passing those orders. It was also observed that these orders were passed during the pendency of the civil suits, and the Prescribed Authority lacked jurisdiction to reopen surplus proceedings under the 1971 Act, once the land had already been declared surplus under the 1953 Act.

9.5 On these grounds, all four appeals were allowed, resulting in the dismissal of both civil suits

10. The dismissal of the aforesaid four appeals has led to the filing of present four appeals by different sets of plaintiffs.

**Grounds of Appeal and Contentions raised by the appellants:**

11.1 The grounds raised in all four connected appeals are substantially identical.

11.2 The appellants–plaintiffs contend that their claim is rooted in an agreement to sell dated 27.05.1959, whereby Smt. Phunsa agreed to sell 135 bigha 3 Biswas (pucca) of land in village Shadipur, and 62 bigha 4 Biswas (pucca) of land in village Noorpur to their predecessors-in-interest. This agreement culminated in the execution of a registered sale deed on 04.04.1960. It is asserted that the declaration of the suit land as surplus on 23.02.1960 was subsequent to the agreement to sell, and therefore, the plaintiffs’ predecessors had already acquired ownership rights, which should have entitled them to a hearing before the surplus declaration.

11.2 The appellants submit that the original surplus declaration dated 23.02.1960 was void, as it was passed without issuing notice to them, despite their pre-existing interest under the agreement to sell. They argue that title under the sale deed relates back to the date of the agreement, making them the constructive owners from 27.05.1959. It is also contended that, under the Punjab Act, 1953, there was no provision for vesting of surplus land in the State, and thus, despite the declaration, ownership remained with the appellants, with the defendants only holding the land as tenants liable to pay rent and subject to eviction.

11.3 After consolidation, the land was reallocated, with 1240 kanal 12 marla being allotted in lieu of the Shadipur land, and 650 kanal 5 marla in lieu of the Noorpur land. Out of this land, 291 kanal 10 marla in village Noorpur was allotted to defendants of Civil Suit No. 893 of 1992, and 178 kanal 19 marla in Shadipur was allotted to defendants of Civil Suit No. 895 of 1992.

11.4 It is contended further that the initial allotment took place in 1963, and possession was delivered to the allottees, who began cultivating the land as tenants under the plaintiffs' predecessors. However, due to non-payment of rent by the allottees, the plaintiffs initiated eviction proceedings under Section 14A (1) read with Section 9(1)(ii) of the Punjab Security of Land Tenures Act, 1953, resulting in eviction orders by the Assistant Collector, First Grade, Rewari, and actual possession was restored to the appellants.

11.5 Despite above, the Allotment Authority again re-allotted the land in 1977, and possession was delivered back to the defendants in 1982–83, allegedly without notice to the appellants. It is contended that the second allotment was made in favour of individuals, who had already passed away, and hence was illegal. Moreover, once an allottee had been lawfully evicted, a second allotment could not be made in their favour for the same land.

11.6 It is further submitted that the appellants were entitled to benefit of the Haryana Government Notification dated 15.09.1976, which provided protection to sales made between 15.04.1953 and 15.04.1966, subject to conditions regarding total holding not exceeding 10 standard acres and the land not having been utilized prior to 15.04.1966. In terms of this notification, the appellants filed two separate applications on 07.02.1986 before the Prescribed Authority, Rewari, seeking exemption from surplus pool and cancellation of the illegal allotments. These applications were allowed vide orders dated 24.06.1986, directing exclusion of the suit land from the surplus pool and cancellation of the allotment made in favour of the contesting defendants. The said orders were rightly relied upon by the Trial Court, and significantly, were never challenged by the defendants, thereby attaining finality.

11.7 The appellants assail the First Appellate Court's judgment dated 27.02.1999, arguing that it erred in setting aside the well-reasoned judgment of the Trial Court dated 17.04.1995, which had decreed both suits. It is contended that the First Appellate Court wrongly relied on the dismissal of three writ petitions filed by the appellants:

- i. CWP No. 1830 of 1972, allegedly dismissed, was actually allowed with costs, and the matter remanded for fresh adjudication after notice;
- ii. CWP No. 3768 of 1977, challenging constitutional validity of certain provisions of the 1972 Act, was dismissed in limine;
- iii. CWP No. 1058 of 1983, filed to challenge revenue mutations, was also dismissed in limine as not maintainable.

It is urged that none of these petitions had any bearing on the substantive issues involved in the present suits and their dismissal in limine does not operate as res judicata. The plaintiffs' omission to mention them in pleadings was not material and does not vitiate their case.

11.8 The appellants maintain that even if the surplus declaration of 1960 is presumed valid, the land in dispute could not be utilized under the

Utilization Scheme of 1976, in light of the Notification dated 15.09.1976. As the conditions under the Notification were fulfilled and the land had not been utilized prior to 15.04.1966, the appellants were entitled to retain the land.

11.9 In addition to the contentions as mentioned in the grounds of appeal, it is submitted by learned senior advocate for the appellants that as per the allotment proceedings and order dated 30.03.1977 (Exhibit DZ/01), 291 kanal 10 marla of land was worthy for allotment in village Noorpur, out of which 231 kanal 3 marla had been allotted; and that 60 kanal 7 marla was yet to be allotted. In village Shadipur, an area of 178 kanal 18 marla was worthy of allotment, which had already been allotted as per the old Act and the same was now allotted under the new Act to the tenants of Category-B as per the annexed list. The contention is that as per the letters/certificates of allotments, the date of allotment is shown to be 19.10.1977 onwards, which is after the 1976 memo, exempting sales up to 15.04.1966 and as such, the judgement as reported in 1980 (1) SCC 70 i.e. **Jaswant Kaur's case** is fully applicable to this case. On the same point, Ld. Counsel also placed reliance upon **Om Prakash's case vs. State of Haryana** reported as 1993 (2) RRR 395.

11.10 Learned Senior Advocate further refers to the copies of Form L's relating to ejectment of the various tenants from the lands of village Shadipur and village Noorpur and contend that except these Form L's, there is no order of allotment or possession having been handed over to the allottees in 1963. There is no record of any payment or issuance of the allotment letter to the allottees and at the best, these Form L's can be taken to be the report of the Patwari regarding allotment.

11.11 It is contended that these Form L's in itself are not sufficient to show that the land had been utilized as held by Hon'ble Supreme Court in **Financial Commissioner Haryana vs. Kaladevi, 1980 (1) SCC 77**; wherein after perusing Rules 18, 20A, 20B and 20C of the Punjab Security of Lands Tenure Rules, 1956, it was held that process of utilization contemplated by Section 10E of the Act is complete, when the possession has been taken and

other formalities have been completed; and that mere issuance of the allotment letters is not sufficient.

11.12 Still further, it is contended that Ld. Lower Appellate Court failed to notice that allotment in 1977 had been made in favour of dead persons. Besides, the Learned Lower Appellate Court could not sit in the appeal over the order dated 24.06.1986 of the prescribed authority in view of Section 26 of the Haryana Ceiling on Land Holdings Act 1972.

11.13 In support of this contention, learned Senior advocate appearing for the appellants-plaintiffs has relied upon following authorities:-

- *Jaswant Kaur vs. State of Haryana, AIR 1977 P&H 221 [Full Bench],*
- *Om Prakash vs. state of Haryana 1993 PLJ 145 (P&H),*
- *Vidya Sagar vs. State of Haryana, 1983 PLJ 278 (P&H); and*
- *Financial Commissioner vs. Kela Devi, AIR 1980 SC 309*

11.14 With all the above submissions, prayer is made to allow all four appeals, by setting aside the judgment of the First Appellate Court; and to restore the judgment & decree of the Trial Court.

**Response by the Respondents:**

12.1 Refuting the contentions advanced on behalf of the appellants, the learned Senior Advocate appearing for the contesting respondents-defendants, as well as the learned Government Pleader for the State of Haryana, argued that the land in question was validly declared surplus in February 1960, and subsequently utilized in 1963, when it was allotted to the defendants under the provisions of the Punjab Security of Land Tenures Act, 1953. Since the purchase by the appellants took place after the surplus declaration, there was no requirement to issue notice to them at that stage.

12.2 Further, it is pointed out that the surplus declaration was already challenged by the plaintiffs through CWP No. 1830 of 1972, which was dismissed by this Hon'ble High Court, thereby affirming the validity of the said declaration.

12.3 It is also submitted that upon the enactment of the Haryana Ceiling on Land Holdings Act, 1972, a fresh allotment was made under that statute, and possession was duly handed over to the defendants.

12.4 The respondents contend that the suit filed by the appellants before the Civil Court is barred by limitation, and more importantly, jurisdiction of the Civil Court is expressly excluded under Section 26 of the 1971 Act, thereby rendering the present suit not maintainable.

12.5 It is contended further that the orders dated 24.06.1986 passed by the Prescribed Authority, by which the suit land was treated as excluded from the surplus pool and the allotment to the defendants was cancelled, were without jurisdiction, as once the land had been validly allotted and utilized, the matter could not be reopened under the Haryana Act of 1971, particularly when the allotment was originally made under the earlier 1953 Act.

12.6 In support of the above contentions, reliance has been placed upon following authorities: -

- *Devinder Singh and others Vs. State of Haryana and another, 2006(3) RCR (Civil) 491,*
- *Megh Raj Vs. Manphool, 2008 (3) RCR (Civil) 241,*
- *J.S. Yadav Vs. State of UP and another, 2011(6) SCC 570,*
- *State of Rajasthan Vs. Ucchab Lal Chhanwal, 2014(1) SCC 144,*
- *Rajan Kumar Vs. State of Bihar, 2014 (16) SCC 187,*
- *Ram Karan Vs. The State of Haryana and others, 2012(68) RCR (Civil) 264,*
- *Som Dev Vs. Rati Ram, 2006 AIR (Supreme Court) 3297,*
- *Gram Panchayat of Village Naulakha Vs. Ujagar Singh, 2000 AIR (Supreme Court) 3272,*
- *Nirbhay Singh Vs. State of Haryana, 2003 (2) PLJ 1,*
- *Amar Singh Vs. Ajmer Singh, 1994 (3) RRR 90,*
- *Smt. Bhagwanti Devi Vs. State of Haryana and another, 1994 PLJ 245,*
- *Dharam Pal Vs. State of Haryana, 2002 (2) RCR (Civil) 37,*
- *Baban Paswan Vs. Pratima Devi, 2003 (10) SCC 239,*
- *Ghasitu Singh Vs. The State of Haryana and others, 1980 PLJ 308,*

- *Bhupinder Singh Vs. State of Punjab and others, 1980 PLJ 72; and*
- *V. Chandrasekaran and another Vs. Administrative Officer and others, 2012(4) RCR (Civil) 588*

12.7 Prayer is accordingly made for dismissal of all the four appeals.

13. This Court has considered submissions of both the sides at great length and have perused the entire record including the trial Court record carefully.

**Court Analysis & Findings:**

***i) Effect of Agreement to sell vis-a-viz subsequent Sale Deed and the surplus declaration under 1953 Act:***

14. Despite the fact that land in the hands of Smt. Phunsa was declared surplus by Collector, Rewari on 23.02.1960, the plaintiffs made the assertion from time to time in this litigation as well as in previous litigations that said declaration was made on 23.02.1961 i.e., after the Conveyance Deed dated 04.04.1960 executed in their favour by Smt. Phunsa. Not only in the present suit, even in the CWP-1830-1972 and then in CWP 1058-1983, it was contended by the plaintiffs that surplus declaration was made on 04.04.1961. The said assertion was found by this High Court to be factually incorrect vide order dated 5.12.1972 (Ex.DZ/16) passed in CWP-1830-1972.

15. Now before this Court, contention is raised for the first time that prior to the sale deed dated 04.04.1960, Smt. Phunsa had executed an agreement to sell dated 27.05.1959 (Ex.PW1/2) in favour of the plaintiffs and so, plaintiffs had acquired title to the suit property from the date of execution of the said agreement dated 27.05.1959 and as such, the surplus declaration made on 23.02.1960 without any notice to them, was illegal.

16. The above said contention is devoid of any merit. Firstly, the agreement to sell dated 27.05.1959 was neither pleaded in the plaint of either of the two suits; nor in the earlier litigation i.e., CWP-1830-1972. The contention based on this agreement to sell dated 27.05.1959 to claim pre-existing title has been raised for the first time before this Court. As such,

being beyond pleadings, plaintiffs are estopped from relying upon any such agreement to sell dated 27.05.1959.

17. Even otherwise, for the sake of arguments, even if the agreement to sell dated 27.05.1959 is taken into consideration, it did not convey any right or title in the suit land in favour of the plaintiffs prior to the execution of the sale deed dated 04.04.1960 in their favour. As per Section 54 of the Transfer of Property Act, 1882, an agreement to sell does not by itself create any interest or charge in the property in favour of proposed vendee. Section 47 of the Registration Act, 1908 provides that a registered document operates from the date of its execution and not from the date of registration. But this does not mean that it relates back to the date of the agreement to sell. Rather, it relates to the date on which the sale deed was actually signed, if it was later registered.

18. In the circumstances, it is held that the agreement to sell dated 27.05.1959 (Ex.PW1/2) relied by the plaintiffs, did not convey any ownership rights to them regarding suit property, as it was merely a contract. It is only the sale deed of 04.04.1960 which after its execution and registration, which transferred the ownership rights to them.

19. As such, the contention of the plaintiffs-appellants that they were entitled to prior notice before the land of Smt. Phunsa was declared surplus is without merit. Even though the plaintiffs were subsequently recorded as owners in the revenue records based on the sale deed dated 04.04.1960, for the purpose of declaring land as surplus, the relevant was the extent of land held by the vendor Smt. Phunsa prior to the declaration and not the ownership status of the vendees – plaintiffs, who acquired title to the land after such declaration.

20. In view of the above factual position, plaintiffs cannot claim that at the time of declaring the land in the hands of Smt. Phunsa as surplus, the land held by them (plaintiffs) plus the land as purchased by them from Smt. Phunsa, was less than 10 standard acres each. To clarify again, it is repeated that it is only the land in the hands of Smt. Phunsa prior to the

declaration, which was required to be seen, as to whether it was surplus or not. Smt. Phunsa never challenged the declaration made on 23.02.1960, whereby suit land in her hands was found surplus.

21. Proceeding further, by filing CWP-1830-1972 (Mark AX/4), plaintiffs claimed two reliefs. They assailed the surplus declaration of the land in the hands of Smt. Phunsa, which they had purchased on 04.04.1960. They further assailed a notice dated June 6, 1972, whereby they were directed to hand over possession of 52 kanal more land, which on rechecking was found surplus. Said CWP-1830-1972 was disposed of by this High Court on 05.12.1972 vide order Exhibit DZ/16, which reads as under:-

*“This writ petition has been filed under Articles 226 and 227 of the Constitution of India, for issuance of writ of Mandamus restraining the respondents from interfering with the possession of the petitioners of the land in dispute.*

*The facts giving rise to this writ petition are that Mst. Phusan was the owner of the land measuring 133 ordinary acres. The petitioners are the collaterals of the husband of Mst. Phusan. A litigation started between the petitioners and Mst. Phusan in which a compromise was reached and she agreed to transfer whole of her share to the petitioners and Jagmal for a consideration of Rs.15,000/-. A sale-deed was executed by her in their favour on April 4, 1960 (Annexure A). In 1961, the Collector declared the land in dispute as surplus area in the hands of Mst. Phusan without any notice to the petitioners. They were asked to surrender some area for the settlement of tenants in 1964, which they did. The remaining area, they have been cultivating peacefully since then. A notice dated June 6, 1972 was served upon the petitioners to surrender another 52 Kanals of area without any previous notice to them. The petitioners have challenged the order of the Collector dated February 23, 1961 and the notice dated June 6, 1972. The former has been challenged on the ground that before declaration of surplus area, no notice was given to them, though they had purchased the land on April 4, 1960. The latter has been challenged for the reason that before issuing a notice for taking possession of the said area, no right of hearing was given to them. The respondents have contested the*

petition. It is stated by them that the surplus area was declared by the Collector on February 23, 1960 and not on February 23, 1961, as alleged by the petitioner. It is further stated by them that the petitioners were not entitled to any notice before a notice to surrender the area dated June 6, 1972 was served on them.

The first contention of the learned counsel for the petitioners is that in fact the area was declared surplus by the Collector on February 23, 1961 and not on February 23, 1960 as stated by the respondents. I have seen the original order and the date of the order given therein is February 23, 1960. On that date, the petitioners had not become the owners of the property. The land stood in the name of Mst. Phusan on the date of declaration of the surplus area. In the circumstances, the contention of the learned counsel for the petitioners has got no force and the same is rejected.

The second contention of the counsel for the petitioners is that before asking the petitioner to surrender the possession, a notice should have been served on them under Rule 17 read with rule 13 to 16 and rule 18 of the Punjab Security of Land Tenures Rules 1956. This matter has been settled by P.C. Jain, J. in Dhan Raj V. The State of Haryana and others, 1972 Punjab Law Journal 222, wherein it has been observed by the learned Judge that rule 17 of the aforesaid rules clearly envisages making of an inquiry and giving hearing to the parties concerned, and that the parties concerned are landowner and tenant. It is further observed by the learned Judge that issuance of a notice to a landowner on whole surplus land a tenant is to be resettled is necessary.

The learned counsel for the respondents submits that the aforesaid case has not been correctly decided. I do not agree with the contention of learned counsel for the respondents and I am in agreement with the observations of the learned Judge. The contention of the learned counsel for the petitioners, therefore, prevails.

For the reasons recorded above, I accept this writ petition with costs, quash the notice dated June 6, 1972. The respondents, however, are at liberty to decide the matter in accordance with law after issuing notice to the petitioners. Counsel's fee Rs. 100/-."

22. It is clear from the aforesaid order Ex.DZ/16 passed by this High Court that the contention of the plaintiffs to the effect that area in the hands of Smt. Phunsa was declared surplus on 23.02.1961 and not on 23.02.1960 was found to be factually incorrect, as it was found that the order of surplus declaration was passed by the competent authority on 23.02.1960 and as on that date, the petitioners of the writ petition i.e. *plaintiffs herein* had not become owner of the property, and the land stood in the name of Smt. Phunsa on the date of declaration of surplus area, therefore, the contention of the petitioners assailing the said surplus declaration was without any force.

23. In addition to above, in the CWP N: 1830 – 1972 (*Mark AX/4 - Page N: 745 of LCR*) as referred above, it was categorically mentioned that 355 Kanal of land belonging to Smt. Phusan was declared surplus and that they had surrendered the possession thereof somewhere in 1964. Even in the affidavits Ex.D4 & Ex.D5 by Bahadur Singh, one of the petitioners, dispute was raised for 52 kanal of land only, regarding which Patwari had issued notice to give possession, as it was found to be surplus on rechecking.

24. In view of the pleadings in CWP-1830-1972, affidavit Ex.D4 & D5 and the categoric finding of this High Court in the above petition, plaintiffs are now estopped to reagitate the surplus declaration of 1960 again by filing the present suit in 1983. Even otherwise, as the surplus declaration was made way back in February 1960, so the present suit filed in 1983 i.e. after 23 years challenging the surplus declaration of 1960 under the Act of 1953, is absolutely barred by limitation.

**ii) Utilisation of surplus land:**

25. The contention of the appellants that after 1960 declaration of the surplus land, the said land was not utilized, is also found to be without any merit. Exhibits DW-15/1 to DW-15/6 are the copies of various Form K6 issued on 27.10.1961/14.11.1961 revealing the allotment of land pertaining to village Noorpur in favour of various defendants - allottees. Exhibit D2/2 & DW2/3 are the Rapats N: 273 & 274 both dated 28.03.1963 recorded in

Roznamcha Vakyati for the year 1962-63, revealing the proceedings regarding delivery of possession of the allotted land out of surplus pool in village Noorpur & Shadipur respectively to the allottees/defendants. There is own admission of plaintiffs – appellants made in the grounds of appeal before this court that after initial allotment in 1963, and possession was delivered to the allottees, who began cultivating the land as tenants under the plaintiffs' predecessors. Ex.DZ/8 to Ex.DZ/15 are Khasra Girdawari entries + Jamabandi for 1978-79, showing the possession of allottees as tenants under the plaintiffs.

26. Still further, there is evidence on record to show that plaintiffs themselves filed petitions in Form L's seeking eviction of the various tenants – allottees/ defendants or their predecessors by filing Case No. 13/1973 to 16/1973 on 04.09.1973. By way of these petitions, eviction of the allottees/ tenants was sought from various parcels of the allotted land on the ground of non-payment of *Lagaan*. Ex.DW15/73 to DW15/76 are the statements of one of Jagmal, one of the predecessor of the plaintiffs, wherein he had pleaded for ejection of the tenants on the ground that land had been allotted to the respondents as surplus land and that they had not paid the *Lagaan* since 1963-64. It was clearly mentioned in the Form L's that land was given to allottees as surplus and possession was delivered to them vide Rapat No. 273 & 274 dated 28.03.1963. Statement of Jagmal was also supported by Halka Patwari namely Ami Chand vide statements Mark AX/1, Mark AX/3 and Mark AX/5. All these petitions were accepted on 31.03.1975 as evident from Ex.DX/1 to Ex.DX1/4. Ex.PD and Ex.PE are the copies of Rapats N: 31, 32 & 33 dated 29.9.1975 of Roznamcha, revealing that pursuant to the ejection orders, possession was delivered from the allottees/tenants to the plaintiffs.

27. Thus, documentary evidence and own admission of plaintiffs establishes beyond doubt that after declaration of land of Smt. Phunsa as surplus as per 1953 Act, it was allotted to the tenants and thus, properly utilised. In these facts and circumstances, ratio of ***Financial Commissioner vs. Kela Devi (supra)***, wherein it was held by Hon'ble Supreme Court that

complete title does not pass to allottee on a mere order of allotment, is not applicable to advance the case of appellants – plaintiffs, because in this case, not only allotment, even the possession had been delivered to the allottees.

**iii) Allotment & Utilisation under 1972 Act:**

28. The record reveals further that after coming into force of the Act of 1972, fresh allotment proceedings took place. Ex.DZ/1 contains the details of the proceedings of the allotment authority dated 30.03.1977. As per these proceedings, 291 kanal 10 marla of land in village Noorpur was available for allotment, out of which 231K 3M had already been allotted; and that 60 K 7 M was yet to be allotted. In village Shadipur, an area of 178 kanal 18 marla was available for allotment, which had already been allotted as per the old Act and the same was now allotted under the new Act to the tenants of Category-B as per the annexed list.

29. It is found further that plaintiffs approached this High Court by filing CWP N: 3768 of 1977 (copy Mark DX/2), whereby they not only challenged the constitutional validity of certain provisions of the 1972 Act, they also prayed for redetermination surplus area of Smt. Phusan, but the said petition was dismissed in limine on 18.8.1978, as per Ex.DW15/78.

30. Proceeding further, Ex.DW15/7 is the copy of Mutation No.183 pertaining to Village Noorpur dated 03.01.1983 revealing that 291 kanal 10 marla of land was mutated in the name of State of Haryana. Similarly, vide Mutation No.220 dated 03.01.1983 Ex.DW15/8, 176 kanal 18 marla of land of village Shadipur was mutated in the name of State of Haryana.

31. Further, reallocation of land (291 K 10 M) in village Noorpur was made in favour of the defendants as evident from Mutation No.184 to 190, all dated 03.01.1983 pursuant to the order dated 19.10.1977 of the Allotment Authority, copies of which are Ex.DW15/9 to Ex.DW15/15. Similarly, land (174 K 9 M) of village Shadipur was allotted to the defendants vide Mutations No.221 to 224 all dated 03.01.1983, copies of which are Ex.DW15/16 to Ex.DW15/19. The certificate of allotments in Form US-3; and

copies of Form No.32A i.e. the Chalans revealing the deposit of the money for the allotted land are Ex.DW13/1 to Ex.DW13/14. Possession of different parcels of the allotted land was handed over to the allottees/defendants, as is evident from the Rapats N: 161 to 166, and 168 to 171 of Roznamcha Vakyati, Halka Karavara Manakpur for the year 1982-83 dated 31.12.1982 and dated 02.01.1983, copies of which are Ex.DW2/4 to Ex.DW2/14. Ex.DW15/20 to Ex.DW15/37 are the copies of Girdawaris showing the possession of the allottees/defendants on the allotted land. Ex.DW15/38 to 42 are the copies of *Aks shajras*; whereas Ex.DW15/43 to Ex.DW15/65 are copies of Jamabandies for the year 1982-83 and 1987-88 revealing the defendants to have become owner of the suit property in possession pursuant to allotment in their favour.

32. The entire evidence as referred above would clearly establish that much prior to filing of the present suits on 6.10.1983, the allotment of the surplus land was earlier made in 1961 under 1953 Act & possession delivered in 1963; and then after eviction in Form L proceedings, the surplus land was allotted in 1977 under the 1971 Act to the defendants by the competent authority & possession delivered on 31.12.1982 and 02.01.1983.

33. After the aforesaid proceedings and before approaching the Civil Court by way of present suits filed on 6.10.1983, plaintiffs again approached this court by filing CWP No.1058 of 1983 on 21.02.1983 (copy Mark DX/1), whereby not only the mutations N: 220 of Village Shadipur (Ex.DW15/8) & 183 of Village Noorpur (Ex.DW15/7) were challenged & sought to be quashed, they also prayed to quash the proceedings showing the putting of the allottees in possession on 31.12.1982 & 2.1.1983 vide Patwari's Roznamcha reports N: 161 to 166, and 168 to 171. They also prayed to redetermine surplus area of Smt. Phusan by referring to Section 12 (3) of 1972 Act, as inserted by Act 17 of 1977, amended by Section 2 of Act 14 of 1977 and State Government Memo N: 5726-AR (LA) – 76/288 dated 15.09.1976. However, the said petition was dismissed by this Court vide order dated 12.08.1983 (Ex.DW15/77).

34. Having already exhausting their legal remedies by filing CWP No. 1830 of 1972, CWP No. 3768 of 1977, and CWP No. 1058 of 1983—through which they challenged the declaration of Smt. Phunsa's land as surplus under the 1953 Act, and later sought redetermination of surplus area after the enactment of the 1972 Act and its amendment, as well as the State Government Memo No. 5726-AR (LA)–76/288 dated 15.09.1976—all of which were rejected by this Court, the plaintiffs are now estopped from challenging the allotments made to the defendants under the 1953 Act and subsequently under the 1971 Act by way of the present suits. In these circumstances, ***Om Prakash vs. state of Haryana (supra)***, and ***Vidya Sagar vs. State of Haryana (supra)***, relied by Ld. Counsel for the appellants don't advance their case.

***iv) Bar of Jurisdiction of Civil Court:***

35. Even otherwise, jurisdiction of the Civil Court is barred in respect of allotment of surplus land or any such related matter, in view of Section 26 of the 1972 Act.

36. In ***Devinder Singh vs State Of Haryana and another, AIR 2006 SC 2850 : 2006 (5) SCC 720***, suit was filed after 9 years of the order passed by the concerned Prescribed authority. Objection was raised that the remedies available under the Act clearly ruled out any resort to Civil Court and so, suit was not maintainable. Reference was made to Section 26(1)(b) of the Haryana Security on Land Tenures Act, 1972. Hon'ble Supreme Court held as under:

“13. Section 26 deals with bar of jurisdiction. The same reads as follows:

*"26. Bar of jurisdiction: (1) No civil court shall have jurisdiction to -*

(a) entertain or proceed with a suit for specific performance of a contract for transfer of land which affects the right of the State Government to the surplus area under this Act; or

(b) settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the prescribed authority.

(c) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question ".

14. At this juncture it is relevant to take note of Section 18 also, which reads as follows:

*"18. Appeal, Review and Revision.* (1) Any person aggrieved by any decision or order of the prescribed authority, not being the Collector, may, within [fifteen days] from the date of the decision or order, prefer an appeal to the Collector in such form and manner as may be prescribed:

Provided that the Collector may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) Any person aggrieved by a decision or order of the Collector (whether acting as prescribed authority or not) being a decision or order made in an appeal under sub-section (1), may, within [fifteen days] from the date of the decision or order, prefer an appeal to the Commissioner in such form and manner as may be prescribed:

Provided that the Commissioner may entertain the appeal after the expiry of the said period of [fifteen days] if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

[(3) Omitted ]

(4) Any person aggrieved by an order of the Collector under sub-section (1), may, within [thirty days] from the date of the order, file a revision petition before the Commissioner so as to challenge the legality or propriety of such order and the Commissioner may pass such order as he may deem fit. The order of the Commissioner shall be final.

[(5) Omitted ]

(6) Notwithstanding anything contained in the foregoing sub-sections, the Financial Commissioner may suo motu at any time call for the record of any proceedings or order of any authority subordinate to him for the purpose of satisfying himself as to the legality or propriety of such proceedings or order, and may pass such order in relation thereto as he may deem fit.

(7) No appeal under sub-section (1) or sub-section (2) shall be entertained unless the appellant or the petitioner, as the case may be, has deposited a sum equal to thirty times the land holdings tax payable in respect of the disputed surplus area or has furnished a bank guarantee of the equal amount as security with the appellate or revisional authority;

(8) Notwithstanding contained in Section 21, a person who files an appeal or a revision against the order declaring his land as surplus area and the appeal or revision filed by him fails, shall be liable to pay, for the period he is or has at any time been in possession of the land declared surplus to which he is or was not entitled under the law, a licence fee equal to thirty times the land holdings tax, recoverable in respect of this area.

(9) If the appeal or revision succeeds, the amount deposited or the bank guarantee furnished under sub-section (7) shall be refunded or released, as the case may be. If the appeal or revision fails, the amount deposited in cash or the amount of the bank guarantee furnished, shall be adjusted against the licence fee recoverable under sub-section (8)."

15. The law relating to jurisdiction has been the subject- matter of various decisions. In ***State of Tamil Nadu v. Ramalinga Samigal Madam (1985 (4) SCC 10)***, it was, inter alia, held as follows:

"8. The principles bearing on the question as to when exclusion of the Civil Court's jurisdiction can be inferred have been indicated in several judicial pronouncements but we need refer to only two decisions. In ***Secretary of State v. Mask and Company (AIR 1940 PC 105)*** the Privy Council at page 236 of the Report has observed thus :

‘It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.’

In ***Dhulabhai v. State of M. P. (1968 (3) SCR 662)*** Hidayatullah, C.J., speaking for the Court, on an analysis of the various decisions cited before

the Court expressing diverse views, culled out as many as 7 propositions; out of them the first two which are material for our purposes are these :

‘(1) Where the statute gives a finality to the orders of the special tribunal the Civil Court's jurisdiction must be held to be excluded if there is adequate remedy to do what the Civil Courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.

(2) Where there is an express bar of the jurisdiction of the Court, an examination of the Scheme of the Particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the tribunals so constituted, and whether remedies normally associated with actions in Civil Courts are prescribed by the said statute or not.

xxx xxx xxx

14. Thirdly, having regard to the principles stated by this Court while enunciating the first proposition in *Dhulabhai case* it is clear that even where the statute has given finality to the orders of the special tribunal the Civil Court's jurisdiction can be regarded as having been excluded if there is adequate remedy to do what the Civil Court would normally do in a suit. In other words, even where finality is accorded to the orders passed by the special tribunal, one will have to see whether such special tribunal has powers to grant reliefs which Civil Court would normally grant in a suit and if the answer is in the negative, it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. Now take the case of an applicant who has applied for a ryotwari patta under Section 11 staking his claim thereto on the basis of his long and uninterrupted possession of the ryoti

land but the Settlement Officer on materials before him is not satisfied that the land in question is ryoti land; in that case he will refuse the patta to the applicant. But can he, even after the refusal of the patta, protect the applicant's long and uninterrupted possession against the Government interference? Obviously, he cannot, for it lies within his power and jurisdiction merely to grant or refuse to grant the patta on the basis of materials placed before him. But such a person even after the refusal of the ryotwari patta would be entitled to protect his possessory title and long enjoyment of the land and seek an injunction preventing Government's interference otherwise than in due course of law and surely before granting such relief the Civil Court may have to adjudicate upon the real nature or character of the land if the same is put in issue. In other words since the Settlement Officer has no power to do what Civil Court would normally do in a suit it is difficult to imply ouster of Civil Court's jurisdiction simply because finality has been accorded to the Settlement Officer's order under Section 64-C of the Act."

16. In *Richpal Singh and Ors. v. Dalip (1987 (4) SCC 410)*, it was held as under:

"12. It is well settled that ouster of jurisdiction of civil courts should not be inferred easily. It must be clearly provided for and established."

17. Strong reliance was placed by learned counsel for the appellant on (1979 (2) All ER 1016). Para 15 of *State of Tamil Nadu's case (supra)* deal with question relating to jurisdiction. These cases dealt with cases where there was no exclusion of any other remedy.

18. The principles culled out from various decisions of this Court are that even when the statute has given finality to the orders of the special tribunal, the Civil Court's jurisdiction can be regarded as having been excluded, if there is adequate remedy to do what the Civil Court would normally do in a suit. Section 26(1)(b) on the other hand specifically excludes jurisdiction of the Civil Court so far as matters which are required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, Collector or prescribed Authority. The entitlement, choice of land and the allotment are matters which are to be dealt with specifically by the authorities under the Act. Additionally, Section 18 provides a forum to ventilate the grievances under the Act in respect of several matters. This

is a case of exclusion of the remedy in certain contingencies. It is not a case where the controversy cannot be resolved by the forum provided under the Act. Further in case of any grievance, the validity of the order could have been questioned before the forum provided. That has not been done and on the other hand, the suit was filed after about nine years.”

37.1 In ***Megh Raj and others Vs. Manphul others, 2008 (3) RCR (Civil) 241***, a coordinate Bench of this court after referring to Section 26 of 1972 Act, observed as under:

“14. A plain reading of Section 26 leaves no manner of doubt that any matter, arising under the Haryana Act, required to be settled, decided or dealt with by laying challenge, before the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority can only be impugned before the aforesaid authorities. As a natural corollary, where the matter falls squarely within the ambit of the statutory powers of appeal, review and revision conferred upon the authorities enumerated under the Haryana Act, the jurisdiction of civil Courts to entertain challenge in such matter would be explicitly barred.

15. Civil Courts, draw their jurisdiction, to adjudicate matters from Section 9 of the C.P.C., which reads as follows :—

“9. Courts to try all civil suits unless barred-The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.”

A civil Court has plenary jurisdiction to adjudicate all disputes of a civil nature, except where cognizance thereof is barred either expressly or by necessary implication. As a general rule, courts are loathe to infer ouster of jurisdiction but where a statutory enactment, explicitly or by necessary intent, excludes the jurisdiction of civil Courts, such statutory intent, shall prevail. Section 26 of the Haryana Act, reproduced herein above, bars jurisdiction of civil Courts, to entertain, settle, decide or deal with any matter, which under the Act, is required to be settled, decided or dealt with by the Financial Commissioner, the Commissioner, the Collector or the Prescribed Authority. Section 18 of the Haryana Act, prescribes the mode

and manner of laying challenge to an order passed by an authority under the Haryana Act.”

37.2 After referring to Section 18 of the Act, 1972, it was then held as under:

“Thus, matters, that fall within the exclusive domain of a Financial Commissioner, Commissioner, Collector or a Prescribed Authority, would necessarily have to be dealt with in accordance with the provisions of the Haryana Act.

16. The question that, however, merits attention is, whether civil Courts, despite the explicit bar set out in Section 26, would have jurisdiction to entertain challenge to an order passed under the Haryana Act, which appears to be beyond or without jurisdiction. The answer to this question need not detain us any further as it is well settled that where the impugned order is a nullity or without jurisdiction, statutory bars as enacted by Section 26 would not oust the jurisdiction of a Civil Court to entertain a challenge thereto. A Full Bench of this Court in ***State of Haryana versus Vinod Kumar, 1986 PLJ 161***, while dealing with this proposition held as follows :—

“In our opinion, the bar created by the relevant provisions of the Act excluding the jurisdiction of the civil Courts cannot operate in cases where the plea raised before the civil Court goes to the root of the matter and would, if upheld, lead to the conclusion that the impugned order is nullity.”

It is, thus, apparent that where the impugned order is a nullity or is without jurisdiction, a civil Court would, irrespective of the ouster of its jurisdiction under Section 26, be entitled to entertain a suit and record its opinion for or against the impugned order. It is, therefore, held that jurisdiction of a civil Court, to entertain a dispute, arising from an order passed under the Haryana Act would not be barred, where the impugned order is without jurisdiction or is a nullity.”

37.3 After clarifying the legal position on the issue of bar of jurisdiction, it was found in the facts and circumstances of the case that jurisdiction of the civil court was barred by holding as under:

“25. Thus, as the order declaring the suit land surplus under the Punjab Act had attained finality and the suit land vested in the State of Haryana, it became available for allotment under the Utilisation Scheme, the Prescribed Authority, therefore, was well within its jurisdiction, in proceeding to allot the land. The order passed by the Prescribed Authority is, therefore, legal and valid and does not suffer from any error of jurisdiction.

26. In view of what has been held herein above, the jurisdiction of Civil Courts to entertain the suit, impugning the legality of the order passed by the Prescribed Authority was barred by the provisions of Section 26 of the Haryana Act.....”

37.4 The abovesaid decision of this court was upheld by Hon’ble Supreme Court in appeal ***‘Meg Raj vs Manphool, AIR 2019 SC 1491.***

38. Thus, as per ratio of various decisions, as culled out by Hon’ble Supreme Court, even if a statute gives finality to orders of a special tribunal, civil court jurisdiction is excluded only when the statute provides an adequate alternative remedy. Under Section 26(1)(b), the jurisdiction of civil courts is expressly barred for matters meant to be decided by designated authorities like the Financial Commissioner, Collector, or other prescribed authorities. Issues such as entitlement, land choice, and allotment fall squarely within their purview. Moreover, Section 18 offers a mechanism to address grievances under the Act. Therefore, in a case where an adequate remedy exists within the statutory framework and the plaintiffs did not avail those remedies and instead filed the suit, their claim is not maintainable.

39. Above cited authorities are squarely applicable to the facts of the present case, as plaintiffs instead of assailing the allotment proceedings of 1977 under 1972 Act by the competent Prescribed Authority, filed the present two suits after a delay of nearly six years from allotment without availing the remedy within the statutory framework. As such, suits before civil court are not maintainable for lack of jurisdiction and also being barred by limitation.

**v) Legality of Orders Ex.PC & Ex.PF:**

40. As far as the orders dated 24.06.1986 (Ex.PC and Ex.PF) pertaining to the land of the two villages Noorpur & Shadipur passed by the prescribed authority are concerned, these are *per se* illegal, null and void. By way of these orders, the prescribed authority, purportedly acting under the 1972 Act, and by referring to the Notification dated 15.09.1976, exempted the suit land from surplus pool and cancelled the allotment in favour of allottees - contesting defendants of this case, on the ground that the land had been purchased by the plaintiffs prior to 1966. These proceedings before the prescribed authority were initiated on 7.2.1986 during pendency of the present suit and were concluded on 24.6.1986 during the pendency of the suit, despite the fact that allotment had already been made earlier under the 1953 Act, and thereafter under the 1971 Act and possession delivered to the defendants in 1982/1983. In the circumstances, notice to the defendants/allotees was mandatory before taking any such action. However, what to serve any notice to the defendants, they were not even impleaded as a party to the proceedings before the prescribed authority.

41. In ***Baban Paswan Versus Pratima Devi, 2003 (2) PLJ 193 : 2003 (100) SCC 239***, allottee was not heard in surplus area proceedings of landowner. By referring to Punjab Utilisation of Surplus Areas Scheme, Para 6, 9 and 2(b) and Haryana Utilisation of Surplus and Other Areas Scheme, Paras 7 and 10, it was held by Hon'ble Supreme Court that being in enjoyment of land on the strength of allotment, allottee must have right to substantiate that allotment has been rightly made and area rightfully held to be surplus area and that Allottee should be heard before any final order is passed. Same view was taken in ***Ghasitu Singh Vs. State of Haryana and others, 1980 PLJ 308*** by this HC.

42. In ***Ram Swarup Vs. S.N.Maira, 1999 AIR (Supreme Court) 941***, it was held by Hon'ble Supreme Court that:

‘..... From the available records and the orders passed by the authorities, it is crystal clear that the Collector declared surplus land in the hands of the original surplus land holder by his order dated 8.6.60.

Thereafter such surplus lands were allotted to different landless persons and possession thereof was given to them who have been continuously in possession of the same since 1976. By such allotment and delivery of possession in their favour, rights have been conferred on such allottees and therefore, any order without impleading them as parties could not have been passed which has the effect of taking away their rights. These appellants allottees were not parties to the writ petition and therefore, the High Court was in error in snatching away their rights without hearing them and without impleading them as parties in the writ petition.....”

43. In the present case, allotment had already been made earlier in 1961 to the defendants – allottees under the 1953 Act, and thereafter under the 1971 Act and possession delivered to the defendants in 1982/1983. In the circumstances, orders dated 24.06.1986 (Ex.PC and Ex.PF) passed without notice to the defendants/allotees, cannot be sustained to give any advantage to the plaintiffs – appellants.

44. Apart from above, land already declared surplus under the Punjab Act of 1953 is saved by the provisions of Section 8(1)(a) of the Haryana Act of 1972 and, therefore, vest in the State of Haryana under Section 12(3) of the Act. In ***Megh Raj Vs. Manphul, 2008 (3) RCR (Civil) 241 [supra]***, later approved in appeal by Hon’ble Supreme Court, a coordinate Bench of this court held as under:

“20. In my considered opinion, Section 8(1)(a) of the Haryana Act, cannot be construed to support an interpretation that land, already declared surplus under the Punjab Act, would be saved by the provisions of Section 8(1)(a) of the Haryana Act and, therefore, would not vest in the State of Haryana under Section 12(3) of the Act. A conjoint reading of Section 8(1)(a) and 12(3) of the Act, leaves no manner of doubt that Section 8(1)(a) does not apply to orders, declaring surplus area, that have attained finality, under the Punjab Act. Section 8(1)(a) does not admit to an interpretation that the proceedings concluded under the Punjab Act, would be undone or reopened. Section 8(1)(a), in my considered opinion may apply to such cases, where proceedings for declaration of surplus area, under the Punjab Act, were pending on the appointed day under the Haryana Act. Any other

interpretation to the provisions of Section 8(1)(a) of the Act, would in essence assign a retrospective operation thereto. It would, therefore necessarily have to be held that Section 8(1)(a) does not apply to proceedings/orders of surplus area that have concluded/ attained finality before the coming into force of the Haryana Act.

There can be no quarrel with the interpretation assigned to Section 8(1)(a) of the Haryana Act, in *Jaswant Kaur versus State of Haryana (supra)*. However, the said judgment does support the arguments, advanced by counsel for the landlords that Section 8(1)(a) of the Haryana Act reopens surplus area cases already concluded under the Punjab Act. In fact while upholding the vires of Section 12(3) of the Haryana Act, the Full Bench held that land declared surplus under the Punjab Act would automatically vest in the State of Haryana on the appointed day.

21. Admittedly, in the present case, the suit land was declared surplus under the Punjab Act on 24th October, 1960. The said order has attained finality. No proceedings with respect to the suit land were pending on the appointed day under the Haryana Act. Section 8(1)(a) of the Haryana Act was, therefore, not applicable. In order to fortify this conclusion, a reference would have to be made to a judgement of Hon'ble the Supreme Court reported as *Bhagwanti Devi and another versus State of Haryana and another, 1994 (3) RRR 115 : 1994 PLJ 245*. The Hon'ble Supreme Court, while considering the question of vesting of surplus area declared under the Punjab Act, held as follows : -

“However, it does not appear that the surplus area declared under the Punjab Law should be reopened and recomputed under 1972 Haryana Act. No such express provision was engrafted in 1972 Act. Though the family of the appellants have swelled and some of the minors have become majors, the appellants are not entitled to have the surplus area which had become final reopened for re-computation under the 1972 Haryana Act. Thus considered, we find that the High Court was fully justified in dismissing the writ petitions. The appeals are, therefore, dismissed, but without costs.”

22. In *Amar Singh and others versus Ajmer Singh and others, 1994 Suppl. (3) SCC 213*, while considering the question of reopening of surplus

area declared under the Punjab Act, after the enactment of the Haryana Act, the Hon'ble Supreme Court held as follows :—

“Learned counsel for Ajmer Singh-respondent has contended that although the surplus proceedings against Mam Ram were finalised in the year 1961/1962 but the possession of the surplus land remained with Ajmer Singh-respondent, till 1981 when the same was handed over to the appellant. Simply because the surplus land declared under the Punjab Act was not utilised and it remained in possession of Ajmer Singh-respondent would not make any difference so far as the position in law is concerned. The language of Section 12(3) is unequivocal and clear. According to it the surplus land declared under the Punjab Act stood vested in the State. The non-utilisation of surplus land till the date of vesting (23rd December, 1972) is of no consequence and makes no difference. The view we have taken is supported by the judgment of this Court in **Bhagwanti Devi V State of Haryana, 1994 PLJ 245 SC**. We, therefore, allow the appeal, set aside the impugned judgement of learned Single Judge of the High Court dated 23rd September, 1987 and also the order of the Letter Patent Bench dated 3rd November, 1987.”

23. A Division Bench of this Court in **Dharam Pal and others versus State of Haryana and others, 2002 (2) RCR (Civil) 37 : 2002 (1) PLJ 188**, by relying upon the aforementioned judgment and after considering the provisions of Section 8(1)(a) and 12(3) of the Haryana Act, held that proceedings which have attained finality under the Punjab Act, cannot be reopened by taking benefit of the Haryana Act. Section 8(1)(a) of the Haryana Act, would not, therefore, entitle a land owner to pray for reopening of an order of surplus area, passed under the Punjab Act.

24. As the suit land was already surplus on the appointed day under the Haryana Act, it vested in the State of Haryana under Section 12(3) of the Haryana Act, which provides that land declared surplus under the Punjab 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. Thus, even if it is presumed that the suit land had not vested in the joint State of Punjab, but as it was declared surplus under the Punjab Act, it

vested in the State of Haryana, with the enactment of the Haryana Act, under the provisions of Section 12(3) of the Haryana Act. Even otherwise, it would be necessary to reiterate that neither Ram Rikh nor any of the landowners ever impugned the correctness of the order declaring the suit land surplus.

25. Thus, as the order declaring the suit land surplus under the Punjab Act had attained finality and the suit land vested in the State of Haryana, it became available for allotment under the Utilisation Scheme, the Prescribed Authority, therefore, was well within its jurisdiction, in proceeding to allot the land. The order passed by the Prescribed Authority is, therefore, legal and valid and does not suffer from any error of jurisdiction.”

45. Thus, the *Ratio Decidendi* laid down in the extracted judgment is that once land has been declared surplus under the Punjab Security of Land Tenures Act, 1953, and such declaration has attained finality prior to the commencement of the Haryana Ceiling on Land Holdings Act, 1972, the provisions of Section 8(1)(a) of the Haryana Act cannot be invoked to reopen or re-agitate such concluded proceedings. On the appointed day, such land shall be deemed to have vested in the State of Haryana under Section 12(3) of the Haryana Act, even if physical possession had not been taken or utilization had not yet occurred. The vesting is automatic and statutory, and the validity of the allotment under the Utilisation Scheme by the Prescribed Authority cannot be questioned on that ground.

46. In the present case, as has already been noted earlier, land in the hands of Smt. Phunsa had been declared surplus on 23.02.1960 under the Punjab Security of Land Tenures Act, 1953 and such declaration had attained finality prior to the commencement of the Haryana Ceiling on Land Holdings Act, 1972, therefore, provisions of Section 8(1)(a) of the Haryana Act or the subsequent notification of 15.09.1976 could not be invoked to reopen or re-agitate such concluded proceedings, as on the appointed day (24<sup>th</sup> January, 1971), such land shall be deemed to have vested in the State of Haryana under Section 12(3) of the Haryana Act, even if it be assumed

that physical possession had not been taken or utilization had not yet occurred, though in this case utilisation had taken place by way of allotment to defendants – allottees in 1961 and delivery of possession to them in 1963. The said vesting being automatic and statutory, the validity of the allotment made earlier under the Utilisation Scheme could not be reagitated.

47. Apart from this, the orders Ex.PC & Ex.PF passed in 1986 by the prescribed authority are contemptuous and directly in the teeth of the order dated 5.12.1972 Ex.DZ/16 passed by this High Court in CWP-1830-1972, whereby surplus declaration of 1960 was held to be valid, and challenge thereto given by the plaintiffs was held to be without any merit.

48. For all the reasons discussed above, it is held that the first appellate court rightly ignored the orders Ex.PC & Ex.PF passed by Prescribed authority, as these are not binding on the rights of the defendants – allottees. In fact, the Prescribed authority had no jurisdiction to set aside the surplus declaration made under the 1953 Act by resorting to the provisions of the 1972 Act read with Notification of 1976.

49. The contention of the learned counsel for the appellants that Writ Petition No. 1830 of 1972 was not dismissed in respect of 52 kanals of land and that no action was taken pursuant to the High Court's order, is devoid of merit. This is primarily because the plaintiffs have failed to clarify which specific 52 kanals of land were the subject of the 1972 notice requiring them to deliver possession. Moreover, as already noted, the plaintiffs neither referred to Writ Petition No. 1830 of 1972 nor relied upon any order passed therein in the present suit. Therefore, they cannot now be permitted to invoke that writ petition to claim any benefit.

**Conclusion:**

50. On account of the entire discussion as above, it is held that the First Appellate Court did not commit any error in dismissing both the suits and by accepting the four appeals, which were filed before it by the defendants.

51. As such, finding all the present four appeals [RSA-3074-1999, RSA-3073-1999, RSA-3075-1999 and RSA-3076-1999] to be devoid of any merit, the same are hereby dismissed, affirming the common judgment dated 27.02.1999 passed by the First Appellate Court.

52. Any Misc. application, not dealt with earlier, also stands disposed of.

53. A photocopy of this order be placed on the files of connected cases.

01.07.2025  
Vivek

(DEEPAK GUPTA)  
JUDGE

*Whether speaking/reasoned?*  
*Whether reportable?*

**Yes**  
**Yes**