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ATAM PRAKASH

v.

STATE OF HARYANA & ORS.

FEBRUARY 27, 1986

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[P.N. BHAGWATI, C.J., O. CHINNAPPA REDDY, R.B. MISRA, V. KHALID AND G.L. OZA, JJ.]

Punjab Pre-emption Act 1913, as applicable in the State of Haryana, s. 15 - Whether constitutionally void.

Interpretation of statutes - Provision of Constitution sought to be interpreted or a statute whose constitutional validity is sought to be questioned - Interpretation that will promote march & Progress towards a Socialistic Democratic State - To be given.

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Section 15 of the Punjab Pre-emption Act, 1913 as applicable in the State of Haryana, incorporates the right of pre-emption based on consanguinity. The petitioners challenged this right of pre-emption based on consanguinity under Art.32 of the Constitution on the ground that it offends Arts. 14 and 15 of the Constitution. It was contended on behalf of the respondent-State that the classification in favour of the persons mentioned in section 15 has been made on reasonable basis in the interests of the public: (i) to preserve integrity of village community; (ii) to avoid fragmentation of holdings; (iii) to implement the agnatic theory of succession; (iv) to promote public and private decency; (v) to facilitate tenants to acquire ownership rights; (vi) to reduce litigation consequent to introduction of an outsider on family property or jointly owned property.

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Allowing the writ petitions,

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HELD: 1(i) There is no justification for the classification contained in section 15 of the Punjab Pre-emption Act of the kinsfolk entitled to pre-emption. The right of pre-emption based on consanguinity is a relic of the feudal past. It is totally inconsistent with modern ideas. The reasons which justified its recognition quarter of a century

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A ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant. It is difficult to uphold the classification on the basis of unity and integrity of either the village community or the family or on the basis of the agnatic theory of succession which is again in a way connected B with the integrity of the family. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self-contradictory. There is, therefore, no reasonable classification and clauses 'First', 'Secondly' and 'Thirdly' of s. 15(1)(a), 'First', 'Secondly', and 'Thirdly' of s. 15(1)(b), clauses 'First', 'Secondly' and 'Thirdly' of C s. 15(1)(c) and the whole of section 15(2) are, therefore, declared ultravires the Constitution. [419 E-H]

1.2 Clause 'fourthly' of s. 15(1)(a), clauses 'fourthly and fifthly' of s. 15(1)(b) and clause 'fourthly' of s. 15(1)(c) are valid and do not infringe either Art. 14 or 15 of the D Constitution. [416 H; 417 A]

2.1 Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble to the Constitution as the guiding light and to the Directive Principles of State E Policy as the Book of interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. The Directive Principles set out proximate goals. At the time of examining statutes against the Constitution, it is through these glasses that the court must look, 'distant vision' or 'near vision'. The Constitution being sui-generis, where F constitutional issues are under consideration, narrow interpretative rules which may have relevance when legislative enactments are interpreted may be misplaced. [411 D-F]

2.2 In 1977 the 42nd amendment proclaimed India as a Socialist Republic. The word 'socialist' was introduced into G the Preamble to the Constitution. The implication of the introduction of the word 'socialist' which has now become the centre of the hopes and aspirations of the people - a beacon to guide and inspire all that is enshrined in the articles of the Constitution - is clearly to set up a "vibrant throbbing socialist welfare society" in the place of a "Feudal exploited H society". When the Court considers the question whether a

statute offends Article 14 of the Constitution it must consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted. [411 G-H; 412 A-C]

3.1 The right of pre-emption based on consanguinity is antiquated and feudal in origin and in character. The right is very much like another right of feudal origin and character which subsisted here and there in India until recently, particularly amongst the princely families, namely, the right of succession by primogeniture. It is a well-known characteristic of feudalism that the control of the most important productive resource, land, should continue in the hands of the same social and family group. The right of pre-emption based on consanguinity is a consequence flowing out of this characteristic. It is entirely inconsistent with our Constitutional scheme. Since the Forty-Second Amendment, India is a socialist republic in which feudalism can obviously have no place and must go. [404 G-H; 405 A-B]

3.2 Avoidance of fragmentation of holdings, promotion of private and public decency and reduction of litigation do not seem to have any relevance to the right of pre-emption, vested in the kinsfolk of the vendor. The real question is whether a classification in favour of kinsfolk of the vendor can be considered reasonable so as to justify a right of pre-emption in their favour for the purpose of preserving the integrity of the village community or implementing the agnatic theory of succession or preserving the unity and integrity of the family. The classification cannot be considered reasonable in the circumstances prevailing today whatever justification there might have been for the classification in 1960 when the legislature amended s. 15 of the Punjab Pre-emption Act. A scrutiny of the list of persons in whose favour the right of pre-emption is vested under s. 15 reveals certain glaring facts which appear to detract from the theory of preservation of the integrity of the family and the theory of agnatic right of succession. Neither the father nor the mother figures in the list though the father's brother does. The son's daughter and the daughter's son do. The sister and sister's son are

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excluded though the brother and the brother's son are included. Thus relatives of the same degree are excluded either because they are women or because they are related through women. It is not as if women and those related through women are altogether excluded because the daughter and daughter's son are included. If the daughter is to be treated on a par B with the son's son it does not appear logical why the father's son (brother) should be included and not the father's daughter (sister). These are but a few of the intrinsic contradictions that appear in the list of relatives mentioned in s.15 as entitled to the right of pre-emption. [417 G-H; 418 A-B; H; 419 A-C]

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3.3 There has been a green and a white revolution in Haryana. This State is also in the process of an industrial revolution. Industries have sprung up through out the State and the population has been in a state of constant flux and movement. The traditional integrity of the village and the D family have now become old wives' tales. Tribal loyalties have disappeared and family ties have weakened. Such is the effect of the march of history and the consequence of industrialisation, mechanisation of agriculture, development of marketing and trade, allurement of professions and office, employment opportunity else-where and so on. The processes of E history cannot be reversed and the court cannot hark back to the traditional rural-family-oriented society. Quite apart from the break up of the integrity of village life and family life, it is to be noticed that the property in respect of which the right of pre-emption is to be exercised is property of which the vendor or the vendors, as the case may be, have F rights of full ownership and their kinsfolk have no present right whatsoever. [418 C-F]

3.4 The right of pre-emption is not to be confused with the right to question the alienation of ancestral immovable property which the male lineal descendants of the vendor have G under the Punjab Custom (Power to Contest) Act 1920. The right of pre-emption is now entirely a statutory right and dissociated from custom or personal law. [418 G]

4.1 In **Bhau Ram v. B. Baijnath Singh** 1962 (Suppl.) 3 S.C.R. 724, the right of pre-emption given to co-shares was H held to be a reasonable restriction on the right to hold, acquire or dispose of property conferred by Art. 19(1)(f) of

the Constitution. What has been said there to uphold the right of pre-emption granted to a co-sharer as a reasonable restriction on the right to property applies with the same force to justify the classification of co-sharers as a class by themselves for the purpose of vesting in them the right of pre-emption. [416 D-E]

4.2 The right of pre-emption vested in a tenant can also be easily sustained. There can be no denying that the movement of all land reform legislation has been towards enabling the tiller of the soil to obtain proprietary right in the soil so that he may not be disturbed from possession of the land and deprived of his livelihood by a superior proprietor. The right of pre-emption in favour of a tenant granted by the Act is only another instance of a legislation aimed at protecting the tenant. There can be no doubt that tenants form a distinct class by themselves and the right of pre-emption granted in their favour is reasonable and in the public interest. [416 G-H]

Bhau Ram v. B. Baijnath Singh, [1962] Supp. 3 S.C.R. 724 and **Sant Ram v. Labh Singh** A.I.R. 1965 S.C. 314 referred to.

Ram Sarup v. Munshi & Ors. [1963] 3 S.C.R. 858 explained.

ORIGINAL JURISDICTION: Writ Petition (Civil) No. 13227 of 1984 etc.

(Under Article 32 of the Constitution of India.)

Pankaj Kalra for the Petitioner in W.P. No. 13227 of 1984.

M/s. Harbans Lal, V.C. Mahajan, Mahabir Singh, Avadh Behari Rohtagi, S.S. Banerjee, M.S. Gujaral, K.G. Bhagat, Hardev Singh, Yogeshwar Prasad, Anil Dev Singh, Govind Das, and K.P. Bhandari, M/s. S.M. Ashri, G.K. Bansal, J.S. Malhotra, Ali Ahmed, Jayashree Ahmed, C.K. Bansal, Narendra Singh Malik, D.K. Garg, B.P. Maheshwari, Vidya Sagar Vashist, S.N. Agarwal, S.K. Jain, S.K. Dhingra, M.L. Verma, S.K. Bagga, Ranbir Singh Yadav, H.M. Singh, Kirpal Singh, Amlan Ghosh, M. Qamaruddin, Mrs. M. Qamaruddin, R.K. Kapur, M.M. Kashyap, B.R. Kapur, Anil Katyal, O.P. Sharma, Amis Ahmad Khan, R.C. Kapoor, Mrs. Laxmi Arvind, Suresh C. Gupta, S.S. Ray, Anil Bhatnagar,

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Praveen Kumar, Ashok Mathur, M.K. Dua, P.N. Puri, Gyan Singh, I.S. Goel, S.N. Singh, C.V. Subba Rao, V.M. Issar, Khaitan & Co., Brij Bhushan Sharma, P. Narasimhan, Ms. Madhu Mool Chandani, K.K. Jain, Pramod Dayal, A.D. Sangar, A.K. Ganguli, A. Mariaputam, Nafiz Ahmad Siddiqui, M.C. Dhingra, Avtar Singh Sonal, Shreepal Singh, S.R. Srivastava, Ashok K. Srivastava, Balmukand Goel, S.K. Bhulakia, R.C. Bhatia, R.K. Agnihotri, Dr. Meera Aggarwal, R.C. Misra, M.S. Dhillon, S.K. Dholakia, P. Narasimhan, R.K. Agarwal, T. Sridharan, S.C. Patel, N.M. Popli, Brij Bhushan and Kailash Mehta for the appearing parties.

C The Judgment of the Court was delivered by

CHINNAPPA REDDY, J. The archaic right of pre-emption based on consanguinity is in question in the several thousand writ petitions under Art. 32 of the Constitution. The constitutional validity of sec. 15 of the Punjab Pre-emption Act, 1913 was applicable in the State of Haryana which incorporates this right is challanged. The State of origin of the Punjab Pre-emption Act, the State of Punjab, has repealed the Act in 1973. The Act, however, continues to be in force in the State of Haryana which originally formed part of the State of Punjab. The vires of sec.15(1)(a) of the Act was questioned in this Court in **Ram Sarup v. Munshi and Ors.** [1963] 3 S.C.R. 858 on the ground that it offended the fundamental right guaranteed by sec.19(1)(f) of the Constitution. It was ruled by a Constitution Bench that there was no infringement of Art.19(1)(f) and that the provision was valid. The validity of sec.15 is now impugned primarily on the ground that it offends Arts. 14 and 15 of the Constitution.

The right of pre-emption based on consanguinity has been variously described by learned judges as 'feudal', 'piratical', 'tribal', 'weak', 'easily defeated', etc. [**Kalwa v. Vasakha Singh** A.I.R. 1983 Punjab & Haryana 480 (F.B.) at 490 and **Bishan Singh v. Khazan Singh** [1959] S.C.R. 878.] Fusing as it does the ties of blood and soil, it cannot be doubted that the right is antiquated and feudal in origin and in character. The right is very much like another right of feudal origin and character which subsisted here and there in India until recently, particularly amongst the princely families, namely, the right of succession by primogeniture. It

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is a well-known characteristic of feudalism that the control of the most important productive resource, land, should continue in the hands of the same social and family group. The right of pre-emption based on consanguinity is a consequence flowing out of this characteristic. It is entirely inconsistent with our Constitutional scheme. Since the Forty-Second B Amendment, India is a socialist republic in which feudalism can obviously have no place and must go. Our Constitution now proclaims India as a sovereign, socialist, secular democratic republic in which the right to equality before the law and the equal protection of the laws are guaranteed and all citizens are assured that the State shall not discriminate on grounds only of religion, race, caste, sex, place of birth or any of C them. The citizens are also assured of the right to move freely through out the territory of India, to reside or settle in any part of the territory of India and to practise any profession or to carry on any occupation, trade or business. The State is further enjoined to direct its policy towards securing that the operation of the economic system does not D result in the concentration of wealth and means of production to the common detriment. The right to property has also now ceased to be a fundamental right since the Forty- Fourth Amendment. The question now is whether this adjunct of the right to property, perhaps perfectly reasonable in a feudal society, can be constitutionally sustained in a society E dedicated to socialistic principles. The question has to be examined with reference to Arts. 14, 15 and 19(1)(d) and (g), in the background of the Preamble to the Constitution and Art.39(c) of the Directive Principles of State Policy. We think that the question has to be primarily answered with reference to Art.14. F

The Punjab Pre-emption Act, 1913 repealed the Punjab Pre-emption Act of 1905 and sec.12 of the 1905 Act which corresponded to sec.15 of the 1913 Act was as follows:-

> "12. Subject to the provisions of section 11, the G right of pre-emption in respect of agricultural land and village immovable property shall vest-
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> (a) in the case of the sale of such land or property by a sole owner or occupancy tenant, or when such land or property is held jointly, by the H co-sharers,

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in the persons who but for such sale would be entitled to inherit the property in the event of his or their decease, in order of succession;

(b) in the case of a sale of share of such land or property held jointly-

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first in the lineal descendants of the vendor in the male line in order of succession; secondly, in the co-shares, if any, who are agnates, in order of succession;

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thirdly, in the persons described in sub-clause (a) of this sub-section and not hereinbefore provided for;

fourthly, in the co-sharers, (i) jointly, (ii) severally;

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(c) As section 15(c), Act of 1913, with the addition of words (i) jointly, (ii) severally, in secondly, thirdly and fourthly.

Explanation 1. - In the case of sale of a right of

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occupancy, clauses (a), (b) and (c) of this sub-section, with the exception of sub-clause fourthly of clause (c), shall be applicable.

Explanation 2. - In the case of a sale by a female of property to which she has succeeded through her

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husband, son, brother or father, the word 'agnates' in this section shall mean the agnates of the person through whom she has so succeeded."

Section 15 of the Punjab Pre-emption Act, 1913 as it originally stood, was as follows:-

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"15. Subject to the provisions of section 14 the right of pre-emption in respect of agricultural land and village immovable property shall vest -

(a) where the sale is by a sole owner or occupancy

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tenant or, in the case of land or property jointly

owned or held, is by all the co-sharers jointly, in the persons in order of succession, who but for such sale would be entitled, on the death of the vendor or vendors, to inherit the land or property sold:

(b) where the sale is of a share out of joint land or property, and is, not made by all the co-sharers jointly, -

firstly, in the lineal decendants of the vendor in order of succession;

secondly,in the co-sharers, if any, who are agnates, in order of succession;

thirdly in the persons, not included under firstly or secondly, above, in order of succession, who but for such sale would be entitled, on the death of the vendor, to inherit the land or property sold;

fourthly, in the co-sharers:

(c) If no person having a right of pre-emption under clause (a) or clause (b) seeks to exercise it, -

firstly, when the sale affects the superior or inferior proprietary right and the superior right is sold, in the inferior proprietors, and when the inferior proprietors, and when the inferior right is sale, in the superior proprietors;

secondly, in the owners of the patti or other sub-division of the estate within the limits of which such land or property is situate;

thirdly, in the owners of the estate;

fourthly, in the case of a sale of the proprietary right in such land or property, in the tenants (if any) having rights of occupancy in such land or property;

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fifthly, in any tenant having a right of occupancy in any agricultural land in the estate within the limits of which the land or property is situated.

Explanation - In the case of sale by a female of land or property to which she has succeeded on a B life tenure through her husband, son, brother or father, the word (agnates' in this section shall mean the agnates of the person through whom she has so succeeded."

In 1960, there were substantial amendments to the Punjab C Pre-emption Act and, after amendment, sec.15 was as follows:-

"15. Persons in whom right of pre-emption vests in respect of sales of agricultural land and village immovable property - (1) The right of pre-emption in respect of agricultural land and village immov- D able property shall vest -

(a) where the sale is by a sole owner - First, in the son or daughter or son's son or daughter's son of the vendor;

E Secondly, in the brother or brother's son of the vendor;

Thirdly, in the father's brother or father's brother's son of the vendor;

F Forthly, in the tenant who holds under tenancy of the vendor the land or property sold or a part thereof;

(b) where the sale is of a share out of joint land or property and is not made by all the co-shares G jointly-

First, in the sons or daughters or sons' son or daughters' sons of the vendor or vendors;

Secondly, in the brothers or brother's sons of the H vendor or vendors;

Thirdly, in the father's brother or father's brother's sons of the vendor or vendors;

Fourthly, in the other co-sharers;

Fifthly, in the tenants who hold under tenancy of the vendor or vendors the land or property sold or a part thereof;

(c) where the sale is of land or property owned jointly and is made by all the co-sharers jointly-

First, in the sons or daughters or sons' sons or daughter's sons of the vendors;

Secondly, in the brothers or brother's sons of the vendors;

Thirdly, in the Father's or brother's or father's brother's sons of the vendors;

Fourthly, in the tenants, who hold under tenancy of the vendors or any one of them the land or property sold or a part thereof.

(2) Notwithstanding anything contained in sub-section(1) :-

(a) where the sale is by a female of land or property to which she has succeeded through her father or brother or the sale in respect of such land or property is by the son or daughter of such female after inheritance, the right of pre-emption shall vest:-

(i) if the sale is by such female, in her brother or brother's son;

(ii) if the sale is by the son or daughter of such female, in the mother's brothers or the mother's brother's sons of the vendor or vendors;

(b) where the sale is by a female of land or

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> property to which she has succeeded through her husband, or through her son in case the son has inherited the land or property, sold from his father, the right of pre-emption shall vest,-
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> FIRST, in the son or daughter of such (husband of
> L the) female;
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> SECONDLY, in the husband's brother or husband's brother's son of such female."

Agricultural land has been defined in the Act to mean
C land as defined in the Punjab Alienation of Land Act, not including the rights of a mortgagee, whether usufructuary or not, in such land. 'Member of an agricultural tribe' and 'Group of agricultural tribes' are to have the same meanings assigned to them respectively under the Punjab Alienation of Land Act. The Punjab Alienation of Land Act has been repealed,
D but the definitions continue to have force for the purposes of the Punjab Pre-emption Act. Section 4 of the Punjab Pre-emption Act states what the right of Pre-emption is. It says :

> "4. Right of pre-emption application of - The right of pre-emption shall mean the right of a person to
> E acquire agricultural land or village immovable property or urban immovable property in preference to other persons, and it arises in respect of such land only in the case of sales and in respect of such property only in the case of sales or of foreclosures of the right to redeem such property.
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> Nothing in this section shall prevent a Court from holding that an alienation purporting to be other than a sale is in effect a sale."

Section 5(b) prescribes that there shall be no right of
G pre-emption in respect of the sale of agricultural land being waste land reclaimed by the vendee. Section 6 provides that a right of pre-emption shall exist in respect of village immovable property and subject to the provisions of section 5(b), in respect of agricultural land, but only subject to all the provisions and limitations contained in the Act. Section 7
H refers to the right of pre-emption in respect of urban immovable property. Section 8 enables the Government to

declare by a notification that there shall be no right of pre-emption in any local area or with respect to any land or property or class of land or property or with respect to any sale or class of sales. Section 10 prevents a party to a sale along with other joint owners from claiming a right to pre-emption. In respect of land sold by a member of an agricultural tribe, section 14 provides that no person who is not a member of the same agricultural tribe as the vendor shall have a right of pre-emption. We have already extracted section 15. Section 16 refers to the vesting of the right of pre-emption in the case of an urban immovable property. Section 17 prescribes how the right of pre-emption may be exercised where several persons are entitled to such right. Other provisions deal with the procedure to be followed for the exercise of the right of pre-emption.

Now, to the question at issue and first, a word about interpretation. Whether it is the Constitution that is expounded or the constitutional validity of a statute that is considered, a cardinal rule is to look to the Preamble to the Constitution as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The Preamble embodies and expresses the hopes and aspirations of the people. The Directive Principles set out proximate goals. When we go about the task of examining statutes against the Constitution, it is through these glasses that we must look, 'distant vision' or 'near vision'. The Constitution being sui-generis, where Constitutional issues are under consideration, narrow interpretative rules which may have relevance when legislative enactments are interpreted may be misplaced. Originally the Preamble to the Constitution proclaimed the resolution of the people of India to constitute India into 'a Sovereign Democratic Republic' and set forth 'Justice, Liberty, Equality and Fraternity', the very rights mentioned in the French Declarations of the Rights of Man as our hopes and aspirations. That was in 1950 when we had just emerged from the colonial-feudal rule. Time passed. The people's hopes and aspirations grew. In 1977 the 42nd amendment proclaimed India as a Socialist Republic. The word 'socialist' was introduced into the Preamble to the Constitution. The implication of the introduction of the word 'socialist', which has now become the centre of the hopes and aspirations of the people - a beacon to guide and inspire all that is enshrined in the

articles of the Constitution –, is clearly to set up a "vibrant throbbing socialist welfare society" in the place of a "Feudal exploited society". Whatever article of the Constitution it is that we seek to interpret, whatever statute it is whose constitutional validity is sought to be questioned, we must strive to give such an interpretation as will promote the march and progress towards a Socialistic Democratic State. For example, when we consider the question whether a statute offends Article 14 of the Constitution we must also consider whether a classification that the legislature may have made is consistent with the socialist goals set out in the Preamble and the Directive Principles enumerated in Part IV of the Constitution. A classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted. With these general ennunciations we may now examine the questions raised in these writ petitions.

We may first refer to two decisions of this court where the court had occasion to consider the question of the constitutional validity of the right of pre-emption incorporated in the Rewa State Pre-emption Act and the Punjab Pre-emption Act in relation to Art. 19(1)(f) of the Constitution.

In **Bhau Ram v. B. Baijnath Singh** [1962] Suppl. 3 S.C.R. 724, a Constitution Bench of this court had occasion to consider the question whether a provision of the Rewa State Pre-emption Act which gave a right of pre-emption based on vicinage and the provisions of the Punjab Pre-emption Act, 1913 which gave a right of pre-emption to co-sharers offended Art.19(1)(f) of the Constitution. It was held that a right of pre-emption by vicinage offended Art.19(1)(f) and that a right of pre-emption in favour of co-sharers did not. While dealing with the provision of the Rewa Act relating to pre-emption by vicinage, the Constitution Bench not only held that the right to pre-emption by vicinage offended Art. 19(1)(f), but also appeared to indicate that the right might also offend the fundamental right guaranteed by Art.15. Wanchoo, J., speaking for the court said :

> "Before the Constitution came into force, the statutes if they were passed by competent authority, could not be challenged; but we have now to judge the reason ableness of these statutes in

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the light of the fundamental rights guaranteed to the citizens of this country by the Constitution. In a society where certain classes were privileged and preferred to live in groups and there were discriminations, on grounds of religion, race and caste, there may have been some utility in allowing B persons to prevent a stranger from acquiring property in an area which had been populated by a particular fraternity of class of people and in those times a right of pre-emption which would oust a stranger from the neighbourhood may have been tolerable or reasonable. But the constitution now prohibits discrimination against any citizen on C grounds only of religion, race, caste, sex, place of birth or any of them under Art. 15 and guarantees a right to every citizen to acquire, hold and dispose of property, subject only to restrictions which may be reasonable and in the interests of the general public. Though therefore D the ostensible reason for pre-emption may be vicinage, the real reason behind the law was to prevent a stranger from acquiring property in any area which had been populated by a particular fraternity or class of people. In effect, therefore, the law of pre-emption based on vicinage E was really meant to prevent strangers i.e. people belonging to different religion, race or caste, from acquiring property. Such division of society now into groups and exclusion of strangers from any locality cannot be considered reasonable, and the main reason therefore which sustained the law of F pre-emption based on vicinage in previous times can have no force now and the law must be held to impose an unreasonable restriction on the right to acquire, hold and dispose of property as now guranteed under Art.19(1)(f), for it is impossible to see such restrictions as reasonable and in the G interests of the general public in the state of society in the present day."

Considering the question relating to the right of pre-emption given to co-sharers in the Punjab Pre-emption Act, 1913, the court observed : H

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"The question as to the constitutionality of a law of pre-emption in favour of a co-sharer has been considered by a number of High Courts and the constitutionality has been uniformly upheld. We have no doubt that a law giving such a right imposes a reasonable restriction which is in the interest of the general public. If an outsider is introduced is a co-sharer in a property it will make common management extremely difficult and destroy the benefits of ownership in common. The result of the law of pre-emption in favour of a co-sharer is that if sales take place the property may eventually come into the hands of one co-sharer as full owner and that would naturally be a great advantage the advantage is all the greater in the case of a residential house and s.16 is concerned with urban property; for the introduction of an outsider in a residential house would lead to all kinds of complications. The advantages arising from such a law of pre-emption are clear and in our opinion outweight the disadvantages which the vendor may suffer on account of his inability to sell the property to whomsoever he pleases. The vendee also cannot be said to suffer much by such a law because he is merely deprived of the right of owning an undivided share of the property. On the whole it seems to us that a right of pre-emption based on co-sharership is a reasonable restriction on the right to acquire, hold and dispose of property and is in the interests of the general public."

In Bhau Ram's case, there was also a question relating to the right of pre-emption granted by s.174 of the Berar Land Revenue Code in favour of occupants in a survey number in respect of transfers of interests in that survey number. Referring to the provisions of the Berar Land Revenue Code, it was held that the law of pre-emption in s.174 applied to those who were co-sharers or akin to co-sharers and was not an unreasonable restriction on the right guaranteed by Art.19(1)(f).

The question whether section 15(1)(a) of the Punjab

Pre-emption Act, 1913 (as amended in 1960) which granted a right of pre-emption in respect of agricultural land and village immovable property (where the sale was by a sole owner) to the son or daughter or son's son or daughter's son of the vendor, offended the fundamental right guaranteed by Art.19(1)(f) of the Constitution was considered by a Constitution Bench of the court in **Ram Sarup v. Munshi and Ors.** (supra). Before the Constitution Bench, the following five grounds were relied upon to vindicate the reasonableness of sections 15 and 16 of the Act :

(i) to preserve the integrity of the village and the village community;

(ii) to avoid fragmentation of holdings;

(iii) to implement the agnatic theory of the law of succession;

(iv) to reduce the chances of litigation and friction and to promote public order and domestic confort; and

(v) to promote private and public decency and convenience.

It was held that the ground of "promotion of public order and domestic comfort" and "private and public decency and convenience" had relevance to urban immovable property which was dealt with in s.16 and not to agricultural property which was dealt with in s.15. It also held that the ground of avoidance of chances of litigation had no relevance and further that the ground of avoidance of fragmentation of holdings was of no assistance to sustain the claim of a son to pre-empt in the event of a sale by a sole owner-father as that criterion was of real relevance in the case of the right of pre-emption given to co-sharers and the like. In regard to the ground relating to preservation of the integrity of the village and the village community, the court held that it was not a final and conclusive answer to the argument against the reasonableness of the provision. The court however upheld s.15(1)(a) as a reasonable restriction in the interest of the general public on the basis of the third ground which was that

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the next in succession should have the chance of retaining the property in the family. It was observed that the son and other members of the family though not entitled to a present interest in the property or a right to prevent the alienation, would nevertheless have a legitimate expectation founded on and promoted by the consciousness of the community. It was B observed that if the social consciousness did engender such feelings, and taking into account the very strong sentimental value that was attached to the continued possession of family property in the Punjab, it could not be said that the restriction on the right of free alienation imposed by s.15(1)(a) limited as it was to a small class of near relations of the C vendor was either unreasonable or not in the interest of the general public.

In **Sant Ram v. Labh Singh,** A.I.R. 1965 S.C. 314, it was held that the reasons given by the court in Bhau Ram's case to invalidate the right of pre-emption based on vicinage held D good to invalidate such a custom also.

In the first case, (Bhau Ram's case), the right of pre-emption given to co-sharers was held to be a reasonable restriction on the right to held, acquire or dispose of property conferred by Art. 19(1)(f) of the Constitution. What E has been said there to uphold the right of pre-emption granted to a co-sharer as a reasonable restriction on the right to property applies with the same force to justify the classification of co-sharers as a class by themselves for the purpose of vesting in them the right of pre-emption. We do not think that it is necessary to re-state what has been said in that F case. We endorse the views expressed therein. The right of pre-emption vested in a tenant can also be easily sustained. There can be no denying that the movement of all land reform legislations has been towards enabling the tiller of the soil to obtain proprietory right in the soil so that he may not be disturbed from possession of the land and deprived of his G livelihood by a superior proprietor. The right of pre-emption in favour of a tenant granted by the Act is only another instance of a legislation aimed at protecting the tenant. There can be no doubt that tenants form a distinct class by themselves and the right of pre-emption granted in their favour is reasonable and in the public interest. We are, therefore, of H the view that clause 'fourthly' of s.15(1)(a), clauses 'four-

thly and fifthly' of s.15(1)(b) and clause 'fourthly' of s.15(1)(c) are valid and do not infringe either Art. 14 or 15 of the Constitution.

We now come to the primary question whether the right of pre-emption based on consanguinity and contained in the remaining clauses of sec.15(1)(a), (b) and (c) and sec. 15(2)(a) and (b) can be sustained. Earlier we have briefly indicated the character of the right of pre-emption based on consaguinity. In the counter affidavit, the classification in favour of the persons mentioned in s.15 is sought to be justified in the following manner :-

> "The classifications has been made on reasonable basis in the interests of the public :-
>
> (i) to preserve integrity of village community;
>
> (ii) to avoid fragmentation of holdings;
>
> (iii) to implement the agnatic theory of succession;
>
> (iv) to promote public and private decency;
>
> (v) to facilitate tenants to acquire ownership rights;
>
> (vi) to reduce litigation consequent to introduction of an outsider on family property or jointly owned property.

These were the very factors which were put forward to support the plea in Ram Sarup's case that s.15(1)(a) was a reasonable restriction on the right to hold acquire or dispose of property conferred by Art. 19(1)(f) of the Constitution. As pointed out in Ram Sarup's case, avoidance of fragmentation of holdings, promotion of private and public decency and reduction of litigation do not seem to have any relevance to the right of pre-emption, vested in the kinsfolk of the vendor. The real question is whether a classification in favour of the kinsfolk of the vendor can be considered reasonable so as to justify a right of pre-emption in their

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favour for the purpose of preserving the integrity of the village community or implementing the agnatic theory of succession or preserving the unity and integrity of the family, We do not think that the classification can be considered reasonable in the circumstances prevailing today whatever justification there might have been for the classification in 1960 when the legislature amended s.15 of the Punjab Pre-emption Act. Apart from the courts characterising the right as 'archaic', 'feudal', 'piratical', 'outmoded' and so on, the Punjab legislature recognised the incongruity of the right in modern times and repealed it in 1972. We find it difficult to uphold the classification on the basis of unity and integrity of either the village community or the family or on the basis of the agnatic theory of succession which is again in a way connected with the integrity of the family. It is well known and, we may take judicial notice of it, that not only has there been a green and a white revolution in Haryana, this State is also in the process of an industrial revolution. Industries have sprung up through out the State and the population has been in a State of constant flux and movement. The traditional integrity of the village and the family have now become old wives' tales. Tribal loyalities have disappeared and family ties have weakened. Such is the effect of the march of history and the consequence of industrialisation, mechanisation of agriculture, development of marketing and trade, allurement of professions and office, employment opportunity elsewhere and so on. The processes of history cannot be reversed and we cannot hark back to the traditional rural-family-oriented society. Quite apart from the break-up of the integrity of village life and family life, it is to be noticed that the property in respect of which the right of pre-emption is to be exercised is property of which the vendor or the vendors, as the case may be, have rights of full ownership and their kinsfolk have no present right whatsoever. The right of pre-emption is not to be confused with the right to question the alienation of ancestral immovable property which the male lineal descendants of the vendor have under the Punjab Custom (Power to Contest) Act, 1920. The right of pre-emption is now entirely a statutory right and dissociated from custom or personal law.

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A scrutiny of the list of persons in whose favour the right of pre-emption is vested under s.15 reveals certain

glaring facts which appear to detract from the theory of preservation of the integrity of the family and the theory of agnatic right of succession. First we notice that neither the father nor the mother figures in the list though the father's brother does. The son's daughter and the daughter's brother does. The son's daughter and the daughter's daughter do not appear though the son's son and daughter's son do. The sister and the sister's son are excluded, though the brother and the brother's son are included. Thus relatives of the same degree are excluded either because they are women or because they are related through women. It is not as if women and those related through women are altogether excluded because the daughter and daughter's son are included. If the daughter is to be treated on a par with the son and the daughter's son is treated on a par with the son's son it does not appear logical why the father's son (brother) should be included and not the father's daughter (sister). These are but a few of the intrinsic contradictions that appear in the list of relatives mentioned in s.15 as entitled to the right of pre-emption. It is ununderstanable why a son's daughter, a daughter's daughter, a sister or a sister's son should have no right of pre- emption whereas a father's brother's son has that right. As s.15 stands, if the sole owner of a property sells it to his own father, mother, sister, sister's son, daughter's daughter or son's daughter, the sale can be defeated by the vendor's father's brother's son claiming a right of pre-emption.

We are thus unable to find any justification for the classification contained in section 15 of the Punjab Pre-emption Act of the kinsfolk entitled to pre-emption. The right of pre-emption based on consanguinity is a relie of the feudal past. It is totally inconsistent with the Constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition quarter of a century ago, namely, the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant. The list of kinsfolk mentioned as entitled to pre-emption is intrinsically defective and self-contradictory. There is, therefore, no reasonable classification and clauses 'First', 'Secondly', and 'Thirdly' of s.15(1)(a), 'First', 'Secondly' and 'Thirdly', of s.15(1)(b), Clauses 'First', 'Secondly' and 'thirdly' of s.15(1)(c) and the whole of section 15(2) are, therefore, declared ultravires the Constitution.

A We are told that in some cases suits are pending in various courts and, where decrees have been passed, appeals are pending in appellate courts. Such suits and appeals will now be disposed of in accordance with the declaration granted by us. We are told that there are a few cases where suits have
B been decreed and the decrees have become final, no appeals having been filed against those decrees. The decrees will be binding inter-partes and the declaration granted by us will be of no avail to the parties thereto.

C There will be no order regarding costs.

M.L.A.