

(33) In the light of the above discussion, the appeal is allowed, the judgment of the learned Single Judge, dated May 20, 1966, is reversed, and the impugned orders, dated July 18, 1963, October 29, 1963, November 20, 1963, and May 20, 1964, of the Assistant Collector, Collector, Commissioner, and the Financial Commissioner, respectively, are quashed, excepting with regard to the right of respondents 2 to 4 to purchase Killa No. 16 of Rectangle No. 15 and Killa Nos. 2 and 3 of Rectangle No. 23, not covered by the Assistant Collector's ejectment order, dated May 31, 1962.

(34) In view of the law point involved, the parties are left to their own costs of the appeal.

MEHAR SINGH, C.J.— I agree.

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CIVIL MISCELLANEOUS

*Before Prem Chand Pandit and H. R. Sodhi, JJ.*

JAIMAL AND OTHERS,—*Petitioners.*

*versus*

THE COMMISSIONER, AMBALA DIVISION, AMBALA CANTT. AND  
OTHERS,—*Respondents.*

**Civil Writ No. 1826 of 1968**

March 21, 1969.

*Punjab Village Common Lands (Regulation) Act (I of 1954)—Sections 7, 13 and 15—Constitution of India (1950)—Articles 14, 19, 31 and 31-A—Validity of the Act—Whether immune under Article 31-A from attack for taking away any right conferred under Articles 14, 19 and 31—Section 7—Whether stands independent of the Act—Section 7—Whether discriminatory and ultra vires Article 14—Section 13—Remedy by way of suit for ejectment in regard to village common land—Whether available to the Panchayat under the Act—Punjab Village Common Lands (Regulation) Rules (1964)—Rules 19, 20, and 21—Whether ultra vires section 15.*

*Transfer of Property Act (IV of 1882)—Sections 108 and 116—Tenant for a fixed term—Such tenant—Whether can be treated as trespasser after the expiry of the term of his lease.*

*Held*, that there can be no manner of doubt that Punjab Village Common Lands (Regulation) Act, provides for extinguishment to the rights of the proprietors in village common lands and vests the same in local Panchayats. A local Panchayat is a local authority within the meaning of Article 12 of the Constitution and thus included in the definition of "State". The result is that the Act falls in

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the category of laws enacted to provide for the acquisition by the State of any estate, or of any such rights. It is, therefore, not open to challenge the validity of the law as contained in the Act on the ground that any provision thereof is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31 of the Constitution. (Para 9).

*Held*, that the preamble to the Act makes it sufficiently clear that the intention of the legislature in enacting this law is to regulate all the rights in Shamilat Deh and Abadi Deh. When the lands vest or are deemed to have vested in the village panchayat by virtue of section 4, a duty is cast upon the Panchayat to utilise or dispose of the same for the benefit of inhabitants of the village concerned in the manner prescribed. In order to utilise the land for the benefit of the inhabitants and to carry out the objects and scheme of the Act, it became necessary for the legislature to make incidental and ancillary provisions to secure possession of the vested land to the Panchayat. Section 7 accordingly provides a machinery to enable the panchayat to approach an Assistant Collector of First Grade having jurisdiction in the village, who, after such summary enquiry as he thinks fit, can put the Panchayat in possession of any land or other immovable property in the Shamilat Deh of that village which has vested or is deemed to have vested in the panchayat. There may be cases of trespassers wrongfully occupying any portion of the vested common land not only at the time of the commencement of the Act but subsequently as well. The legislature has provided in sub-section (2) of section 7 that any person who is in wrongful or unauthorised possession of any such land or other immovable property can be ejected by the Assistant Collector either *suo motu* or on an application made to him by a panchayat or even an inhabitant of the village. The procedure to be followed by the Assistant Collector has been left by the legislature to be prescribed by the rules. It cannot, therefore, be contended with any reasonableness that section 7 is independent of the provisions relating to acquisition of an estate as contemplated by Article 31-A of the Constitution of India and is not ancillary thereto for carrying out the objects of the Act effectively. Section 7 is indeed a part of the agrarian legislation and as such immune from attack by virtue of Article 31-A of the Constitution.

(Para 9).

*Held*, that the object of the Act can be better achieved and the village common lands utilised for the common benefit only if summary remedy of ejection of unauthorised persons is provided for as has been done in section 7(2). A long, tedious and delayed remedy by way of a regular suit to obtain possession of common land from those wrongfully holding the same would beyond doubt hamper the implementation of the objects of the Act. If the panchayats were to be compelled to go to regular civil courts for ejecting a trespasser or any person in unauthorised possession of the village common land, the whole scheme of the Act would be negated and the public denied the benefits accruing by the utilization of the common land by the panchayat in accordance with the Act. The existence of two remedies for such a situation, even if a remedy by way of suit were available, would not be violative of Article 14. The section is, therefore, not discriminatory and not *ultra vires* Article 14 of the Constitution. (Para 10).

*Held*, that the remedy of ejection provided for in section 7(2) is the only exclusive remedy available to the Panchayat with regard to village common land. This remedy is not supplemental or additional to the ordinary remedy by way of suit. In fact remedy by way of such a suit is clearly barred under section 13 of the Act. (Para 11).

*Held*, that rule making authority by framing Rules 19, 20 and 21 of Punjab Village Common Lands (Regulation) Rules, 1964, has not exceeded its power of subordinate legislation and has not made any invalid rule by declaring a lessee whose lease had been determined or cancelled, as an unauthorised person. Clause (k) of section 15 of the Act gives wide powers to the State Government to make rules in any matter in regard to which such rules can be made and it cannot be disputed that rules could be made for carrying out the purposes of the Act. The impugned rules obviously do carry out the objects of the Act, and are, therefore, not *ultra vires* section 15 of the Act. (Para 12).

*Held*, that a tenancy for a fixed term stands automatically determined by efflux of time and no action on the part of the landlord by way of notice to quit or the like is necessary. It becomes the duty of the tenant to hand over the possession of the demised premises immediately as enjoined in section 108(q) of the Transfer of Property Act. Section 116 of the said Act cannot help tenant in such circumstances and he can get some rights by holding over only if a lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession. It is then alone that the lease can be said to have been renewed from year to year or from month to month according to the purpose for which the property was originally leased. Such assent or acceptance of rent creates novation of contract between the parties and the tenant holding over gets fresh rights because of this novation. In the absence of any such new contract as contemplated in section 116, it is for the landlord either to treat the tenant as a tenant or as a trespasser. There may be cases where there is no assent directly given or rent accepted after the expiry of the lease but the landlord takes no steps to secure ejection of the tenant. A tenancy at sufferance may arise in such a case because of the neglect of the landlord to take any steps to oust the tenant from the premises which the latter had no right to hold any longer. Hence it cannot be said that a tenant for a fixed period can in no case, on the expiry of his lease, be treated as trespasser. It will depend on the facts and circumstances of each case as to whether he is a trespasser or the landlord by his own conduct has indicated an intention to treat him as a tenant after the determination of his first lease. (Para 12).

*Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus, or any other appropriate writ, order or direction be issued, quashing the orders of respondents 1 and 2, dated 7th February, 1968 and 31st August, 1966 and further praying that the petitioners be not dispossessed from their respective tenancy land belonging to respondent No. 3 till the decision of the writ petition.*

ROOP CHAND CHAUDHRY, ADVOCATE, for the Petitioners.

C. D. DEWAN, ADVOCATE-GENERAL, HARYANA, for Respondent No. 1 AND H. L. SARIN, A. L. BAHL, C. B. KAUSHIK, AND H. S. AWASTHY, ADVOCATES, for Respondent No. 3.

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JUDGMENT

SODHI, J.—In this writ petition which is directed against the order dated 7th February, 1968, appended as Annexure 'B' with the writ petition, passed by the Commissioner, Ambala Division, whereby he directed the ejection of the petitioners, the validity of section 7 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called the Act), and rule 19 of the Punjab Village Common Lands (Regulation) Rules, 1964 (hereinafter called the Rules), has been challenged.

(2) The facts are not in dispute. On the coming into force of the Act, common land in the area of village Kotra, Tahsil Kaithal, District Karnal, vested in the Gram Panchayat of that village and it leased out land measuring 7 Kanals 12 Marlas comprised in Rectangle No. 58, Killa No. 16, to the petitioner No. 2 for a period of ten years ending in Kharif 1965. The lease was not extended by the Panchayat after the expiry of the said period and an application was made to the Assistant Collector, First Grade, Kaithal, praying for the ejection of the petitioners who were formerly lessees for a fixed period. This application was made under section 7 of the Act read with rule 19. The case of the Panchayat was that the occupation of the land by the petitioners was unauthorised since the period for which the lease was granted had expired and they had not surrendered the possession. The Assistant Collector, after following the summary procedure prescribed under rules 20 and 21, ordered the ejection of the petitioners on 31st August, 1967, holding that they were in unauthorised occupation. The defence of the petitioners was that they were lessees of the land in dispute and had been occupying the same on payment of rent which, according to them, was being paid regularly. Since the lease had not been renewed, a mutation was also effected in favour of the Gram Panchayat on the expiry of the period of the lease. The Assistant Collector, as already stated, held that the petitioners had no *locus standi* to remain in possession of the area leased out to them after the expiry of the period of the lease, and that their possession being unauthorised, they were liable to be ejected. Three separate appeals were filed by the petitioners before the Collector, Karnal, who rejected the same on 14th March, 1967.

(3) Further appeals were taken to the Commissioner, Ambala Division, but with no success. The Commissioner dismissed them

by one consolidated order passed on 7th February, 1968. The contention of the petitioners there was that they would still be deemed to be in the position of 'tenant holding over' and they could be ejected only in accordance with the procedure contemplated by the Punjab Security of Land Tenures Act, 1953. It was also argued there that the petitioners were Harijans and that they had a preferential right to be given on lease the Panchayat land. The learned Commissioner did not accept the contentions of the petitioners and upheld the order of the Assistant Collector. The petitioners have thus come up in a writ petition before this Court.

(4) The main contention of the learned counsel for the petitioners is that section 7 and rules 20 and 21 under which ejection has been ordered are *ultra vires* inasmuch as section 7 gives wide, arbitrary, uncontrolled and unbridled powers to an Assistant Collector to eject a lessee and that rules 20 and 21 which are couched almost in the same language as sections 4 and 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act, 1959, are capable of abuse by leaving it to the Assistant Collector to arbitrarily choose persons in possession in the matter of ejection without there being any guiding principles on which he could act. These provisions are consequently urged to be offending and violative of the right of equality guaranteed by Article 14 of the Constitution. Reliance in this connection has been placed on a judgment of their Lordships of the Supreme Court in a case reported as *Northern India Caterers (Private) Ltd. and another v. State of Punjab and another* (1).

(5) The vires of rules 20 and 21 have not been challenged in the writ petition but in the course of arguments the attack was also directed against these rules. The validity of rule 19 has been challenged on the ground that it is *ultra vires* of section 15. The contention is that the rule making power given by section 15 was not intended to enable the State Government to assume the functions of the Legislature and virtually legislate by providing a definition of unauthorised person which the Legislature alone could do. According to the learned counsel, it is a case of excessive delegated legislation not permitted by law. It is also urged vehemently that a 'tenant holding over' was not intended by section 7 to be a person in wrongful or unauthorised possession and the rule making authority by including such a tenant in the category of unauthorised occupants has gone contrary to section 7 and rule 19

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(1) A.I.R. 1967 S.C. 1581.

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is *ultra vires* on that score also. As a matter of fact, it is this argument about the validity of rule 19 which has been pressed hard before us.

(6) The relevant provisions of the Act and the Rules may, at this stage, be reproduced in extenso for facility of reference. Section 7 reads as under:—

- “7. (1) An Assistant Collector of the first grade having jurisdiction in the village shall on an application made to him by a Panchayat, after making such summary enquiry as he may think fit and in accordance with such procedure as may be prescribed, put the Panchayat in possession of the land or other immovable property in the *shamilat deh* of that village which vests or is deemed to have been vested in it under this Act and for so doing the Assistant Collector may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 1887.
- (2) An Assistant Collector of the first grade having jurisdiction in the village may, either *suo motu* or on an application made to him by a Panchayat or an inhabitant of the village eject in the manner and in accordance with the procedure referred to in sub-section (1), any person who is in wrongful or unauthorised possession of any land or other immovable property in the *shamilat deh* of that village which vests or is deemed to have been vested in the Panchayat under this Act.
- (3) An appeal against the order of the Assistant Collector shall lie to the Collector.
- (4) An appeal against the appellate order of the Collector shall lie to the Commissioner.
- (5) The period of limitation for an apppal under sub-sections (2) and (3) shall run from the date of the order appealed against, and shall be—
  - (a) thirty days, when the appeal lies to the Collector; and
  - (b) sixty days, when the appeal lies to the Commissioner.”

Rules 19, 20 and 21 are in the following terms:—

- “19. Unauthorized occupation of *Shamlat Deh*.—For purposes of section 7 of the Act, a person shall be deemed to

be in unauthorised occupation of any land in *Shamlat Deh*—

- (a) where he has, whether before or after the commencement of the Act, entered into possession thereof otherwise than under and in pursuance of any allotment, lease or grant by the Panchayat; or
- (b) where he being an allottee, lessee or grantee, has, by reason of the determination or cancellation of his allotment, lease or grant in accordance with the terms in that behalf, therein contained, ceased whether before or after the commencement of the Act, to be entitled to occupy or hold such land in *Shamlat Deh*; or
- (c) where any person authorised to occupy any land in *Shamlat Deh* has, whether before or after the commencement of the Act—
  - (i) sub-let in contravention of the terms of allotment, lease or grant, without the permission of the Panchayat or of any other authority competent to permit such sub-letting the whole or any part of such land in *Shamlat Deh*; or
  - (ii) otherwise acted in contravention of any of the terms express or implied, under which he is authorised to occupy such land in *Shamlat Deh*;

*Explanation.*—For purposes of clause (a), a person shall not merely by reason of the fact that he has paid any rent be deemed to have entered into possession as allottee, lessee or grantee.

20. Issue of notice to show cause against order of eviction.—
- (1) If the Assistant Collector of the 1st grade is of opinion that any persons are in unauthorised occupation of or claim interest in the land in *Shamlat Deh* situated within his jurisdiction and that they should be evicted, he shall issue in the manner hereinafter provided a notice in writing calling upon all the persons concerned to show cause why an order of eviction should not be made.
  - (2) The notice shall—
    - (a) specify the grounds on which the order of eviction is proposed to be made; and

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- (b) require all persons concerned, that is to say, all persons who are or may be, in occupation of, or claim interest in the land in *Shamlat Deh*, to show cause, if any, against the proposed order on or before such date as is specified in the notice being a date not earlier than ten days from the date of issue thereof.
- (3) The Assistant Collector shall cause the notice to be affixed outside the Panchayat ghar or any other building used as office by the Panchayat and at some conspicuous places of the estate in which the land in *Shamlat Deh* is situated, whereupon the notice shall be deemed to have been duly given to all persons concerned.
- (4) Where the Assistant Collector knows or has reasons to believe that any persons are in occupation of the land in *Shamlat Deh*, then without prejudice to the provisions of sub-rule (3), he may cause a copy of the notice to be served on every such person by post, or by delivering or tendering it to that person.
21. Eviction of unauthorised person.—(1) If, after considering the cause if any, shown by any person in pursuance of notice under rule 20, and any evidence he may produce in support of the same and after giving him a reasonable opportunity of being heard, the Assistant Collector is satisfied that the land in *Shamlat Deh* is in an unauthorised occupation, the Assistant Collector may on a date to be fixed for the purpose make an order of eviction for reasons to be recorded therein, directing that the land in *Shamlat Deh*, shall be vacated by all persons who may be in unauthorised occupation thereof or any part thereof, and cause a copy of the order to be affixed on the outer door of the Panchayat ghar and at some other conspicuous places of the *Shamlat Deh* or of the estate in which the land in *Shamlat Deh* is situated.
- (2) If any person refuses or fails to comply with the order of eviction within thirty days of the date of its publication, the Collector or any other officer duly authorised by him in this behalf may evict that person from and take possession of, the land in *Shamlat Deh* and may, for that purpose, use such force as may be necessary."



(7) The submission is that the remedy by way of a suit for ejectment under the Punjab Tenancy Act was available to the Panchayat and in addition a summary remedy by way of an application to the Assistant Collector under section 7 has been provided. The existence of two remedies leaves the matter to the arbitrary will of the Assistant Collector who may in one case order the ejectment of a tenant in a summary procedure and in another leave the parties to seek their remedy by way of lengthy proceedings under the Punjab Tenancy Act.

(8) The learned Advocate-General appearing for the State of Haryana has, in reply, contended that the Act being a piece of agrarian legislation, all its provisions and the Rules made thereunder are, under Article 31-A of the Constitution, immune from attack on the ground of being violative of Articles 14 and 19 of the Constitution. The submission further is that the provisions of section 7 are incidental and ancillary to the law relating to acquisition of land for the benefit of the common village community. Another argument of the learned counsel is that section 7 is a self-contained provision and the definitions given in rule 19 were wholly unnecessary and at any rate those definitions do not run counter to section 7. Clause (k) of section 15, it is argued, is wide enough to enable the State Government to make rules and provide for the matters referred to in rules 19, 20 and 21, as these are the matters on which rules can be made if one were to refer to the purposes of the Act as to be seen from the various provisions thereof. It is urged that no question of any excessive delegation arises and the mere fact that there are two procedures which can be available to seek ejectment of a tenant whose period of tenancy has expired does not by itself make section 7 or the rules invalid or *ultra vires*.

(9) There can be no manner of doubt that the Act provides for extinguishment of the rights of the proprietors in village common lands and vests the same in local Panchayats. A local Panchayat is a local authority within the meaning of Article 12 of the Constitution and thus included in the definition of "State". The result is that the Act falls in the category of laws enacted to provide for the acquisition by the State of any estate, or of any rights therein, or the extinguishment of any such rights. As to whether the Act is designed to effect agrarian reforms was considered by a Division Bench of this Court in a case reported as *Kangra Valley Slate Co. Ltd. v. Kidar Nath and others* (2). It was held by this Court that the Act is a

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(2) A.I.R. 1964 Pb. 503.

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piece of legislation intended to promote agrarian reforms and, therefore, protected under Article 31-A. We are in respectful agreement with the observations made in that case and no arguments have been advanced to us to persuade us to take a contrary view. In this view of the matter, it must be held that it is not open to the petitioners to challenge the validity of the law as contained in the Act on the ground that any provision thereof is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31 of the Constitution. Article 31-A gives complete protection against such a challenge. The only argument that has been next urged by the learned counsel for the petitioners in regard to this aspect of the case is that section 7 taken by itself cannot be said to be law falling within Article 31-A inasmuch as it is only the actual provision relating to acquisition of any estate or rights therein or extinguishment or modification of such rights that is protected from the attack by virtue of the said Article and not every provision in an agrarian legislation unrelated to the acquisition of land. This argument is wholly devoid of force. The preamble to the Act makes it sufficiently clear that the intention of the legislature in enacting this law is to regulate all the rights in Shamilat Deh and Abadi Deh. When the lands vest or are deemed to have vested in the village Panchayat by virtue of section 4, a duty is cast upon the Panchayat to utilise or dispose of the same for the benefit of the inhabitants of the village concerned in the manner prescribed, which means prescribed by rules made under the Act. There is again to be noticed in section 5 of the Act that Panchayat land is to be distributed by the Collector in consultation with the Panchayat but that too in the manner prescribed by the rules. In order to utilise the land for the benefit of the inhabitants and to carry out the objects and scheme of the Act, it became necessary for the legislature to make incidental and ancillary provisions to secure possession of the vested land to the Panchayat. Section 7 accordingly provides a machinery to enable the Panchayat to approach an Assistant Collector of First Grade having jurisdiction in the village, who, after such summary enquiry as he thinks fit, can put the Panchayat in possession of any land or other immovable property in the Shamilat Deh of that village which has vested or is deemed to have vested in the Panchayat. There may be cases of trespassers wrongfully occupying any portion of the vested common land not only at the time of the commencement of the Act but subsequently as well. The legislature has provided in sub-section (2) of section 7 that any person who is in wrongful or unauthorised possession of any such land or other immovable property can be

ejected by the Assistant Collector either *suo moto* or on an application made to him by a Panchayat or even an inhabitant of the village. The procedure to be followed by the Assistant Collector has been left by the legislature to be prescribed by the rules. It cannot, therefore, be contended with any reasonableness that section 7 is independent of the provisions relating to acquisition of an estate as contemplated by Article 31-A of the Constitution of India and is not ancillary thereto for carrying out the objects of the Act effectively. Section 7 is indeed a part of the agrarian legislation and as much immune from attack by virtue of Article 31-A of the Constitution as section 4, or any other provision relating directly to the acquisition of land.

(10) The contention of the learned counsel for the petitioners that section 7 is discriminatory giving unbridled, uncontrolled and arbitrary power to the Assistant Collector in regard to the ejection of a trespasser or any other person in unauthorised possession of the village common land vested in the Panchayat has also no merit. The argument is that a Panchayat may, at its own whim, choose either of the two procedures, namely, a regular suit for ejection of a tenant holding over or, treating him as a trespasser, make an application to the Assistant Collector who can, in a summary manner, eject such a tenant treating him as a person in unauthorised or wrongful possession, and that the summary procedure deprives a person of the benefit of regular trial in a suit. Reliance in this connection is placed on a judgment of the Supreme Court reported as *Northern India Caterers (Private) Ltd., and another v. State of Punjab and another* (1), where by a majority judgment section 5 of the Punjab Public Premises and Land (Eviction and Rent Recovery) Act (31 of 1959), was declared as discriminatory and violative of Article 14 of the Constitution and held to be *ultra vires*. After examining the object, reasons and scheme of the said Act, their Lordships of the Supreme Court in that case came to the conclusion that the summary remedy of eviction of an unauthorised person from public premises was only an additional one and that a suit for eviction under the ordinary law was not barred. It was in these circumstances that it was held by the Supreme Court that the Punjab Public Premises and Land (Eviction and Rent Recovery) Act gave the Collector power to pick and choose and thus discriminate between occupiers of different premises in similar circumstances. In order to determine whether the provisions of any Act are violative of Article 14 of the Constitution, the Court has to bear in mind several principles as enunciated by their Lordships in *Ram Krishna Dalmia and others v.*

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*Justice Tendolkar and others* (3). Classification or discrimination is permissible both in the matter of substantive as well as procedural law if the differentia has a reasonable relation to the object sought to be achieved by a particular legislation. In other words, when there is a necessary nexus between the basis of classification and the object of the Act under consideration, the discrimination of procedural law has also to be sustained and it will not be violative of Article 14. The object of the Act before us can be better achieved and the village common lands utilised for the common benefit only if summary remedy of ejection of unauthorised persons is provided for as has been done in section 7(2). A long, tedious and delayed remedy by way of a regular suit to obtain possession of common land from those wrongfully holding the same would beyond doubt hamper the implementation of the objects of the Act. If the panchayat were to be compelled to go to regular civil courts for ejecting a trespasser or any person in unauthorised possession of the village common land, the whole scheme of the Act would be negatived and the public denied the benefits accruing by the utilization of the common land by the panchayat in accordance with the Act. The existence of two remedies for such a situation, even if a remedy by way of suit were available, would not be violative of Article 14. It is a matter of common knowledge in this State that in several cases landowners or other inhabitants of the village are to be found in unlawful or unauthorised possession of the village common land, and summary remedy, as contemplated by section 7(2), was absolutely necessary to advance the scheme of the Act.

(11) In the instant case, there is, however, no remedy by way of suit available and, as a matter of fact, the same is clearly barred under section 13 of the Act which runs as under:—

“13. No civil court shall have any jurisdiction over any matter arising out of the operation of this Act.”

The expression “any matter arising out of the operation of this Act” is of wide amplitude and to secure possession of village common land to the panchayat by ejecting unauthorised persons in wrongful possession is beyond doubt a matter arising out of the operation of the Act. The remedy of ejection provided for in section 7(2) is the only exclusive remedy and not supplemental or additional to the ordinary remedy by way of a suit. The learned counsel for the

petitioners has not been able to show to us how the remedy of ejectment under the Punjab Tenancy Act could be available to the panchayat. Ejectment of a tenant, as defined in the Punjab Tenancy Act, 1887, which has the same meaning as in the Punjab Land Revenue Act, 1887, can only be by an application under section 9 of the Punjab Security of Land Tenures Act, 1953. Section 9 provides that "notwithstanding anything contained in any other law for the time being in force, no land-owner shall be competent to eject a tenant except when such tenant—

(i) is a tenant on the area reserved under this Act or is a tenant of a small land-owner;

(ii) \* \* \* \*

It is not understood how this remedy of a suit for ejectment under the Punjab Tenancy Act is available to the panchayat in regard to village common land.

(12) The only argument that survives for consideration is as to whether rules 19, 20 and 21 made under the Act are *ultra vires* of section 15 thereof, and are in excess of the power of subordinate legislation given to the State Government. The contention raised is that it was for the legislature to have defined the expression "wrongful or unauthorised possession" and that section 15(k) of the Act does not permit the State Government to make rules defining these expressions. The validity of these rules was not challenged in the writ petition but we allowed the learned counsel to make submissions in this regard as well. The contention further is that the rule-making authority has acted contrary to the general law in declaring a lessee whose lease stands determined as an unauthorised occupant of the demised premises and, therefore, it is a case of excessive legislation not permitted by law. The learned counsel relied on a case reported as *Brigadier K. K. Verma and another v. Union of India and another* (4), to support the argument that the possession of a tenant whose tenancy has ceased is judicial and protected by law in India inasmuch as it is open to him to file a suit for restoration of possession under section 9 of the Specific Relief Act, 1877, which now corresponds to section 6 of the Specific Relief Act, 1963, if the landlord deprives him of possession otherwise than in due course of law. Our attention was also invited to section 116 of the Transfer of Property Act, 1882, to show that the tenant holding over has certain rights and cannot be equated with a trespasser.

(4) A.I.R. 1954 Bom. 358.

Jaimal and others v. The Commissioner, Ambala Division, Ambala Cantt. and others (Sodhi, J.)

In *Brigadier K. K. Verma's case* (4), a fiat had been given to him on lease on a monthly basis under Government Premises (Eviction) Act (27 of 1950), creating contractual monthly tenancy between him and the Union of India which was admittedly the owner of the premises. A notice to quit was given on behalf of the Union of India and the tenancy thus terminated. Brigadier Verma, who was the tenant, did not hand over possession. Ejectment was sought under the Eviction Act on the ground that he was in unauthorised occupation. It was in the background of these facts that the Division Bench of the Bombay High Court considered the distinction between a trespasser and an erstwhile tenant, and that a tenant holding over did not become a trespasser simply because a notice to quit had been served on him and the validity of which he was agitating. It was indeed a case of tenancy-at-will but we are here concerned with a case of tenancy for a fixed term. In the latter case, the tenancy stands automatically determined by efflux of time and no action on the part of the landlord by way of notice to quit or the like is necessary. It becomes the duty of the tenant to hand over the possession of the demised premises immediately, as enjoined in section 108(q) of the Transfer of Property Act. Section 116 of the said Act cannot help a tenant in such circumstances and he can get some rights by holding over only if a lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession. It is then alone that the lease can be said to have been renewed from year to year or from month to month according to the purpose for which the property was originally leased. Such assent or acceptance of rent creates novation of contract between the parties and the tenant holding over gets fresh rights because of this novation. In the absence of any such new contract as contemplated in section 116, it is for the landlord either to treat the tenant as a tenant or as a trespasser. There may be cases where there is no assent directly given or rent accepted after the expiry of the lease but the landlord takes no steps to secure ejectment of the tenant. A tenancy at sufferance may arise in such a case because of the neglect of the landlord to take any steps to oust the tenant from the premises which the latter had no right to hold any longer. Decision in *Brigadier K. K. Verma's case* (4) though not directly dissented from was noticed by a Division Bench of this Court in *N. H. Thandani v. Chief Settlement Commissioner* (5), but obviously not followed in view of the conclusion arrived at by the learned

(5) A.I.R. 1958 Pb. 314.

Judges. We must, therefore, hold that it cannot be said that a tenant for a fixed period can in no case, on the expiry of his lease, be treated as trespasser. It will depend on the facts and circumstances of each case as to whether he is a trespasser or the landlord by his own conduct has indicated an intention to treat him as a tenant after the determination of his first lease. It cannot, in the present case, be said that the rule-making authority exceeded its power of subordinate legislation or made any invalid rule by declaring a lessee whose lease had been determined or cancelled, as an unauthorised person. Clause (k) of section 15 of the Act gives wide powers to the State Government to make rules in any matter in regard to which such rules can be made and it cannot be disputed that rules could be made for carrying out the purposes of the Act. The impugned rules obviously do carry out the objects of the Act as stated above. Mr. Roop Chand, learned counsel for the petitioners has been vehemently contending that it was a case of excessive legislation since a tenant holding over would not be treated as a trespasser contrary to the general law. We are of the considered opinion that a tenant whose lease has been terminated can be treated as a trespasser by the landlord unless he chooses to renew the contract of lease expressly or by implication.

(13) For the foregoing reasons, there is no merit in the contentions of the learned counsel for the petitioners and the writ petition stands dismissed with no order as to costs.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

CIVIL MISCELLANEOUS

*Before Bal Raj Tuli, J.*

M/s. EASTERN ELECTRONICS N.I.T., FARIDABAD,—*Appellants.*

*versus*

THE STATE OF HARYANA AND ANOTHER,—*Respondents.*

**Civil Writ No. 1199 of 1968**

March 21, 1969.

*Punjab Urban Immovable Property Tax Act (XVII of 1940)—Section 4(1)(g)  
—Punjab Urban Immovable Property Tax Rules (1941)—Rule 18—Exemption of  
buildings and lands of a factory—State Government—Whether has power to give*