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vendee had withdrawn the money paid into the lower appellate Court under its decree by the pre-emptor did not debar the vendee from appealing against that decree. The same point arose before Tek Chand, J. in *Mehdi v. Mt. Nadran and another* (4), in which the earlier decision was followed, and also the decision in *Mt. Qudrat-Un-Nissa Bibi v. Abdul Rashid and another* (5). In that case Sulaiman and Banerji, JJ approved of the decision in *Iftikhar Ali's case*.

It seems to me in these circumstances that since the vendee could have withdrawn the sum of Rs. 20,300 and enjoyed the use of it until their appeal was accepted without in any way prejudicing the success of their appeal, and the interest on this amount at 6 per cent per annum would have exceeded the amount calculated as compensation for the land occupied by the pre-emptors during the same period, the correctness of which is not now contested, the view of the executing Court was correct, and no amount should have been allowed as compensation for the occupation of the land during the period in question. The result is that I would accept the appeal and restore the order of the executing Court. The parties may, however, be left to bear their own costs.

Harbans Singh,  
J.

HARBANS SINGH, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

*Before A. N. Grover, J.*

HARTEJ BAHADUR SINGH,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ No: 1910 of 1963.

1963  
Nov., 11th.

*Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 43—Whether applicable where the possession of*

(4) A.I.R. 1929 Lah. 137.

(5) A.I.R. 1926 All. 661.

*land in the course of consolidation proceedings is given to the landlord when it ought to have been given to the tenant—Adjudication by Consolidation authorities—Whether final.*

*Held*, that if in the course of consolidation proceedings, the possession of the land comprised in the tenancy of a tenant is given to the landlord the tenant can obtain possession thereof under section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955.

*Held*, that under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, the Consolidation authorities have no power to decide a dispute with regard to a right-holder being a tenant or not if such a dispute is raised. Even if tentatively they have to come to some conclusion in such eventualities as to who is entitled to possession, that by no means can be a final adjudication on the question of the relationship between the parties of landlord and tenant.

*Writ petition under Articles 226/227 of the Constitution of India praying that the orders passed by Respondents No. 2 and 3, Financial Commissioner and Commissioner, respectively restoring possession of the disputed land to respondent No. 5 be set aside and the High Court be pleased to stay the operation of the order of the Financial Commissioner and also stay dispossession of the petitioner during the pendency of the petition in the High Court*

TIRATH SINGH, ADVOCATE, for the Petitioner.

S. P. GOYAL, ADVOCATE, for the Respondents.

#### ORDER

GROVER, J.—According to the allegations in this petition under Article 226 of the Constitution, respondent No. 5 moved the Collector under section 43 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (to be referred to as the Act) for restoration of land on the ground that the petitioner had illegally occupied the same and his possession was wrongful and unauthorised. The Collector refused the prayer on the ground that possession had been delivered to

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the petitioner by the Consolidation Officer in consolidation proceedings. On appeal, the Commissioner reversed the decision of the Collector and ordered the restoration of possession to respondent No. 5. The Financial Commissioner in revision declined to interfere with the order of the Commissioner. The present petition is directed against the orders of the Commissioner and the Financial Commissioner. \*

It is alleged in the petition that there was consolidation in the village of the petitioner and respondent No. 5 where the latter contended that he was a tenant and that the land comprising his tenancy should be allotted to him but the Consolidation Officer did not accede to that plea and allotted the land free of tenancy to the petitioner. No appeal or revision was taken which became final. It was after the lapse of a period of four years that respondent No. 5 applied to the Collector under section 43 of the Act for restoration of the land comprising his alleged tenancy. The case of the petitioner is that the possession of the disputed land had been delivered to him lawfully under the orders passed by the Consolidation Officer and section 43 of the Act in such circumstances could not possibly apply.

Learned counsel for the petitioner contends that apart from the facts stated above, even before the Collector it had been admitted that in the application which had been filed by respondent No. 5 it was stated that possession had been delivered to the petitioner by the Consolidation authorities. The Collector considered that since the possession had been delivered by the Consolidation authorities to the petitioner, there was no question of any forcible dispossession. The Commissioner, however, found that according to the revenue record admittedly respondent No. 5 had

been in cultivating possession of the *Khasra* numbers in dispute prior to 1958. It had also been conceded before him that no order of ejectment had been obtained through a Court of law. The Commissioner proceeded to say—

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“The object of the Pepsu Tenancy and Agricultural Lands Act is to provide security to the tenants and section 43 affords summary remedy to a person who has been wrongfully dispossessed. The appellant, therefore, has a right to continue on his tenancy.”

Finally, the Commissioner remanded the case for further examination of the revenue record for determining the parcel of land to the possession of which respondent No. 5 was entitled. Before the Financial Commissioner it had also been argued that section 43 of the Act did not apply but he was not able to accept that view.

Section 43 of the Act is as follows:—

“(1) Any person who is in wrongful or unauthorised possession of any land—

(a) the transfer of which either by the act of parties or by the operation of law is invalid under the provisions of this Act, or

(b) to the use and occupation of which he is not entitled under the provisions of this Act, may after summary enquiry, be ejected by the Collector, who may also impose on such persons a penalty not exceeding five hundred rupees.

(2) The Collector may direct that the whole or any part of the penalty imposed under

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sub-section (1) shall be paid to the person who has sustained any loss or damage by the wrongful or unauthorised possession of land.”

Reliance by the counsel for respondent No. 5 is placed on sub-section (1)(b) of the aforesaid section. It is submitted that the petitioner was not entitled under the provisions of the Act to the use and occupation of the land which was in occupation of respondent No. 5 as tenant before consolidation and, therefore, the revenue authorities had the jurisdiction under the Act to investigate the matter in a summary way and eject the petitioner if it was found that he was not entitled to the use and occupation of the aforesaid land. The learned counsel for the petitioner has strenuously contended that under the provisions of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (to be referred to as the Consolidation Act), the Consolidation authorities had the power to decide who was entitled to possession of a particular holding and in what capacity and if possession was given to the petitioner, that was final and it was not open to respondent No. 5 to move under section 43 of the Act to have the petitioner evicted. My attention has been invited to section 25 of the Consolidation Act which is to the effect that landowner or a tenant shall subject to the provisions of sections 16 and 16A have the same right in the land allotted to him in pursuance of the scheme of consolidation as he had in his original holding or tenancy, as the case may be. Section 26 deals with encumbrances of landowners and tenants and says that if the holding of a landowner or the tenancy of a tenant brought under the scheme of consolidation is burdened with any lease, mortgage or other encumbrance, such lease, mortgage or other encumbrance shall be transferred and attached to the holding or

tenancy allotted under the scheme or to such part of it as the Consolidation Officer may have determined in preparing the scheme. It is sought to be established from all this that the Consolidation authorities have to decide whether the occupation or possession of a particular right-holder is that of a landowner or a tenant and if any such possession is given by the Consolidation authorities, that would be final. I can find no warrant for this proposition in the Consolidation Act and it is difficult to find any provision therein which may justify the view that the Consolidation authorities can decide any dispute with regard to a right-holder being a tenant or not if such a dispute is raised. Even if tentatively they have to come to some conclusion in such eventualities as to who is entitled to possession, that by no means can be a final adjudication on the question of the relationship between the parties of landlord and tenant. As is clear from the preamble of the Act, it was enacted to amend and consolidate the law relating to tenancies of agricultural lands and to provide for certain measures of land reforms. Chapter III relates to general rights of tenancy and section 7 gives the circumstances in which alone the tenancy can be terminated. Section 7-A gives the additional grounds for termination of tenancy in certain cases. Section 43 gives an overall power of evicting and inflicting fine in a summary manner on any person who is in wrongful or unauthorised possession of any land to the use an occupation of which he is not entitled under the provisions of the Act. The petitioner would certainly be in wrongful or unauthorised possession if it is found that he is not entitled to the use and occupation of the land in dispute under the provisions of the Act. In other words, if it is found, as has been indeed done, that respondent No. 5 was a tenant in the *Khasra* numbers in question any land allotted in lieu thereof on consolidation could not have been allotted to the petitioner

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but ought to have been allotted to Respondent No. 5 as he was entitled to its use and occupation and not the petitioner. If the petitioner came to be allotted that land and given possession thereof, the matter would clearly be covered by section 43 (1)(b) of the Act. This is the view taken by the Financial Commissioner and the Commissioner and I see no reason to differ from them. At any rate, even if two views are possible it is difficult to see how there can be any interference under Article 226 of the Constitution as it is well-settled that if either view can be correct, the Court would decline to interfere by *certiorari*.

In the result, this petition fails and it is dismissed, but I make no order as to costs.

R.S.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

KARAM SINGH,—Petitioner

versus

UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No: 1556 of 1961:

1963  
 Nov., 11th.

*Displaced Persons (Compensation and Rehabilitation) Rules, 1955—Rules 18 and 21—Person having two verified claims, one in his individual capacity and the other in his capacity as an heir to an uncle—Whether can be clubbed together for determination of compensation.*

*Held*, that for the purpose of assessing compensation payable to a displaced person, his verified claims in his individual capacity cannot be clubbed with the verified claims to which he succeeded by inheritance. Both these verified claims have to be processed separately. "Different Capacities" in Rule 21 mean the capacities already referred to in Rules 18, 19 and 20. If the Legislature intended to deal with the capacity of a claimant as an heir to another claimant, it would have specifically made a provision to that effect.