contrary both to the proviso to section 27 of the Act and to bye-law 3 of 1932 Bye-Laws of respondent 3. Nothing done on such a meeting was valid. The resolution passed by the members present at such a meeting appointing the petitioner as secretary was no resolution of the Municipal Committee of Muktsar, respondent 3. In this approach the petitioner was not in law appointed secretary of respondent 3. Respondent 2 on realisation of all this may well have ignored the resolution, but if he proceeded to suspend it under section 232 of the Act, there was nothing wrong or objectionable in that, and, equally, if afterwards respondent 1, the State of Punjab, proceeded to approve of the action of respondent 2 in suspending such resolution, there has been nothing improper or objectionable in that. It rather, as already said, gives the clearest indication of its intention not approving the appointment of the petitioner as secretary to respondent 3.

In consequence this petition fails and is dismissed, but the parties are left to their own costs.

A. N. GROVER, J.—I agree.

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*K.S.K.*

CIVIL MISCELLANEOUS

*Before Mehar Singh, A.C.J., and A. N. Grover, J.*

JOT RAM,—*Petitioner.*

*versus*

A. L. FLETCHER AND OTHERS,—*Respondents.*

**Civil Writ No. 2205 of 1965.**

May 19, 1966.

*Punjab Security of Land Tenures Act (X of 1953)—S. 18—Order of purchase made in favour of tenant and complied with by him—Death of landlord during pendency of appeal against that order—Whether divests the tenant of his ownership of the land in case the heirs of the landlord, because of inheritance, are small landowners.*

*Held*, that after a tenant has complied with the order of purchase, made by an appropriate authority under section 18 of the Punjab Security of Land Tenures Act, 1953, and had made payment in the terms of the order, in accordance with the provisions of section 18(4)(b) of the Act, he is deemed to have become owner of the same. Once he becomes owner of the same, anything happening after that date cannot divest him of the ownership of the land. Of course his right as such owner of the land is subject to his claim having been maintained in appeal, but that is on grounds having arisen and remaining in subsistence to the date of the vesting of the ownership in the tenant. A subsequent even can only divest such a person of ownership of the land if it is so provided in a statute expressly or, in some extreme cases, by necesary implication, and neither is the case here. In fact section 18(4)(b) is indicative of legislative intent to the contrary that on compliance with those provisions a tenant is deemed to have become the owner of the land. He may, of course, lose such a title if he is unable to establish one of the three things that he must establish before he can succeed in an application under section 18, but not by the death of the landlord after he has become owner of the land, an event which has nothing to do with his title acquired under the statute.

*Petition under Articles* 226 *and* 227 *of the Constitution of India, praying that a writ of* mandamus, certiorari, *or any other appropriate writ, order or direction be issued quashing the order of respondent No.* 1, *dated 4th July,* 1965.

ANAND SWARUP AND R. S. MITTAL, ADVOCATES, for the Petitioner.

M. M. PUNCHHI AND A. S. ANAND, ADVOCATES, for the Respondents.

## ORDER

MEHAR SINGH, A.C.J.—This judgment will dispose of three petitions under Articles 226 and 227 of the Constitution, Civil Writ No. 2205 of 1965 by Jot Ram, Civil Writ No. 2206 of 1965 by Surja, Bhagwana and Rampat *alias* Pat Ram, and Civil Writ No. 2215 of 1965 by Mansukh, against one order, dated 4th July, 1965, of the learned Financial Commissioner, whereby the application of each one of the petitioners under section 18 of the Punjab Security of Land Tenures Act, 1953 (Punjab Act 10 of 1953), for purchase of the land in the possession of each in the capacity of a tenant, has been dismissed. The facts, for the purpose of disposal of these petitions, are common and raise a common question of law, and that is why these three petitions have been taken together.

The owner of the land in question was Teja, and under him each one of the petitioners was a tenant of the land in his possession. Each one of them made an application under section 18 of the

Act for purchase of the land under his possession as tenant from Teja, and obtained an order in his favour in that behalf from the Assistant Collector. Teja, the landlord, filed an appeal in each case to the Collector, and, while the appeals were pending, he died. When the petitioners made their applications under section 18 of the Act, admittedly, at the time, Teja was not a small landowner as that expression is defined in Section 2(2) of the Act, which says that 'small landowner' means a landowner whose entire land in the State of Punjab, does not exceed the 'permissible area', and sub-section (3) of section 2 of the Act defines the expression 'permissible area' to mean 30 standard acres and where such 30 standard acres on being converted into ordinary acres exceed 60 ordinary acres, such 60 ordinary acres. In other words, at the time Teja's holding was more than 30 standard acres or 60 ordinary acres. On the death of Teja he was succeeded by his son Rameshwar, four daughters named Dhapan, Shugni, Viran and Parmeshri, and a grand-daughter, being the daughter of his predeceased son Pat Ram, named Santo. So Teja was succeeded by six heirs. It is again common ground between the parties that when the total holding of Teja is divided between those six heirs, each one of them is a small landowner within the meaning and scope of Section 2(2) of the Act.

Leaving out the two proviso and sub-clauses (ii) and (iii), which are not relevant here, sub-section (1) of Section 18 of the Act, provides:—

> "18. (1) Notwithstanding anything to the contrary contained in any law, usage or contract a tenant of a landowner other than a small landowner—
>
> (i) Who has been in continuous occupation of the land comprised of his tenancy for a minimum period of six years, * * * shall be entitled to purchase from the landowner the land so held by him but not included in the reserved area of the landowner, in the case of a tenant falling within clause (i)..... at any time.....".

A tenant, if he proves (a) that he has been in continuous occupation of the land in his tenancy for a minimum period of six years, (b) that his landlord is not a small landowner, and (c) that the land sought to be purchased is not included in the reserved area of his landlord, is entitled to purchase the land of his tenancy in terms of this Section. A permissible area and a reserved area are synonymous terms for the purpose. If he succeeds in his application and

makes the payment in the terms of clause (b) of sub-section (4) of Section 18, he is deemed to have become owner of the land of his tenancy. Section 18(4) (b) says this—

> "18.(4) (b) On the purchase price or the first instalment thereof, as the case may be, being deposited, the tenant shall be deemed to have become the owner of the land, and the Assistant Collector shall, where the tenant is not already in possession, and subject to the provisions of the Punjab Tenancy Act (XVI of 1887), put him in possession thereof."

It is admitted again on both sides that each one of the petitioners pursuant to the order of the Assistant Collector, made payment of the first instalment as fixed by the Assistant Collector in the terms of Section 18(4)(b), and is deemed to have become the owner of the land of his tenancy. This was before the death of Teja. These facts are not in dispute.

On these facts the learned Financial Commissioner has maintained the order of dismissal of each one of the applications of the petitioners following *Lachmeshwar Prasad Shukul* v. *Keshwar Lal Chaudhuri* (1) *and Ram Lal* v. *Raja Ram and another* (2) on the ground that the hearing of an appeal under the procedural law of India, is in the nature of re-hearing and, therefore, in moulding the relief to be granted in the case of appeal, the appellate Court is entitled to take into account even fact and events which have come into existence after the decree appealed against, and the learned Financial Commissioner is of the opinion that, as during the pendency of the appeals of the petitioners, Teja died, with the result that each one of his six heirs is a small landowner, each one of the petitioners as a tenant does not satisfy one of the conditions under Section 18 of the Act, for him to obtain relief under that Act, that his landlord is not a small landowner. It is on this ground that each petitioner has been unsuccessful in his application under section 18 of the Act, and it is the correctness of this approach to the facts of the cases by the learned Financial Commissioner that has been challenged in these petitions.

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(1) A.I.R. 1941 F.C. 5.

(2) I.L.R. (1960) 2 Punj. 233=1960 P.L.R. 291.

The only matter that has been canvassed by the learned counsel for the parties in these petitions is the soundness of the approach of the learned Financial Commissioner in these cases. The argument on the side of the petitioners-tenants is simple that during the lifetime of Teja they complied with the order of the Assistant Collector made under section 18 of the Act directing the purchase of the tenancy lands by them and on having paid the first instalment they are deemed to have become owners of the lands under section 18(4) (b) of the Act, with the result that from the date a vested right arose in them, which vested right is not divested by the subsequent death of Teja and by his having been substituted in the proceedings by his six heirs. It is pointed out that the two cases upon which the learned Financial Commissioner has relied upon do not decide even directly that, in the circumstances as in these cases, vested right is taken away. On the contrary the reply of the learned counsel for the respondents-landlords is that the whole tenor and spirit of not only the Act but, in particular, of Section 18 is to give protection not only to the tenants but also to the landowners, who are small landowners, and once the respondents-landlords prove, as they do since the death of Teja, that they are small landowners, they are entitled to as much protection under section 18 as the tenants. In this respect the learned counsel first refers to Section 16 which provides that "Save in the case of land acquired by the State Government under any law for the time being in force, or by an heir by inheritance, no transfer or other disposition of land effected after the 1st February, 1955, shall affect the rights of the tenant thereon under this Act", and contends that the protection given to the tenants does not extend to land acquired by an heir by inheritance, and the learned counsel presses that here is a case the respondents-landowners who have inherited the land as heirs of Teja and, in view of Section 16 of the Act, they have protection against the claim of the tenants under section 18. It is apparent that section 16 has no application to section 18 and it only applies to cases of protection given to tenants in Sections preceding Section 16. Section 18 is complete by itself and, in any case, Section 16, even if it is to be read with Section 18, cannot and does not mean that a vested right is swept away by inheritance opening subsequent to its coming into existence. No inheritance opening after a right has come to be vested can possibly affect that right except in the case of a statutory provision to the contrary, which there is none in the present case. The learned counsel then refers to Section 10-A and 10-B, of the Act to say that even in the matter of utilisation, if the land which is surplus has not been utilised under

the provisions of the Act, and the holder dies, his heirs are entitled to divide up the holding and then have the case of each considered whether after the division there remains any surplus area with each heir or not. But this result follows because of a specific provision in Section 10-B of the Act, which says that "Where succession has opened after the surplus area or any part thereof has been utilised under clause (a) of Section 10-A, the saving specified in favour of an heir by inheritance under clause (b) of that Section shall not apply in respect of the area so utilised." Whatever advantage is given by Section 10-B of the Act in consequence of inheritance, does not lead to the conclusion that where, before such a situation arises, a vested right has accrued in favour of a third party, such vested right ceases to be so on account of the inheritance of the last holder opening. So the argument of the learned counsel for the landlords is that the matter of inheritance has to be taken into consideration and, as an appeal is a continuation of the original proceedings, so an event like the death of Teja has to be taken into account for moulding the relief to be given to his legal representatives.

In my opinion the argument advanced on behalf of the petitioners is sound, because, after a tenant has complied with the order of purchase, made by an appropriate authority under section 18 of the Act, and has made payment in the terms of the order, in accordance with the provisions of Section 18(4) (b) of the Act, he is deemed to have become owner of the same. Once he becomes owner of the same, anything happening after that date cannot divest him of the ownership of the land. Of course his right as such owner of the land is subject to his claim having been maintained in appeal, but that is on grounds having arisen and remaining in subsistence to the date of the vesting of the ownership in the tenant. A subsequent event can only divest such a person of ownership of the land, if it is so provided in a statute expressly or, in some extreme cases, by necessary implication, and neither is the case here. In fact Section 18(4) (b) is indicative of legislative intent to the contrary that on compliance with those provisions a tenant is deemed to have become the owner of the land. He may, of course, lose such a title if he is unable to establish one of the three things that he must establish before he can succeed in an application under section 18, but not by the death of the landlord after he has become owner of the land, an event which has nothing to do with his title acquired under the statute. The learned counsel for the landlords presses that it is curious that Section 18(4) (b) of the Act should use the words 'the tenant shall be deemed to have become the owner of

the land', instead of saying straightway that 'the tenant shall become the owner of the land.' But, in the first place, in law, there is no substantial difference between this as a legal fiction to the extent its operation is as effective as anything stated in a direct form, and secondly, the legislature probably had a reason to state the matter so, because on the purchase price having been fixed by the Assistant Collector under section 18(2), on payment of only one instalment of that the tenant is given title and there still remains the rest to be recovered. It is probably because the whole of the consideration in a case may not be paid immediately that this form of language has been used by the legislature. In any case, the language used by the legislature does not create any defect whatsoever in the title of the tenant. On this view, although undoubtedly an appeal is a continuation of the original proceedings and subsequent facts and events may be taken into consideration to mould the relief to be granted in appeal, such subsequent facts and events cannot divest a vested right, except in one case when a statute so provides expressly or by necessary implication, which is not the case here.

In a pre-emption case somewhat similar situation arises when after a pre-emptor has obtained a decree pre-empting a sale and pursuant to the decree has made payment of the pre-emption money and obtained possession of the pre-empted property, but, while the appeal of the vendee is pending against the decree, the pre-emptor loses his right of pre-emption for some reason or the other, which may be by his own death where he has sought to pre-empt the sale because of relationship, or by the improvement of his status by the vendee, or some such similar cause, and the question arises whether title thus vested in the pre-emptor under the decree can be defeated by such happenings at the stage of the appeal by the vendee. The question has been answered in the negative by a Full Bench of three learned Judges of the Lahore High Court in *Zahur Din* v. *Jalal Din* (3), and the main basis of the conclusion of the learned Judges is that a vested right cannot be lost in this manner by a subsequent event. This case came for consideration of a Full Bench of three learner Judges again in *Ramji Lal and another* v. *The State of Punjab and others* (4), and the majority view was that the decision in *Zahur Din's case* must hold the field until it is considered by a larger Bench and over ruled. Now, as I have said already, the situation in the present case is parallel to a pre-emption case as explained

(3) I.L.R. (1944) 25 Lah. 443.

(4) I.L.R. (1966) 2 Punj. 125=1966 Curr. Law Jour. (Pb.) 276.

above and the analogy of *Zahur Din's case* to the facts of the present case is complete. A vested right cannot be lost in the manner in which it is said to have been lost in the present cases by the death of Teja. It can only be lost by legislation and, as stated, that is not the case here. In this approach the orders of the learned Financial Commissioner in the three cases cannot be maintained and are quashed.

The learned counsel for the landlords contends that there are other matters that the learned Financial Commissioner had to consider in the revision applications of the landlords or in the litigation between the parties before him. If this is so, and any matters after the decision of the above question still remain pending between the parties before the learned Financial Commissioner, the same will now be disposed of according to law. There is no order in regard to costs in these petitions.

A. N. GROVER, J.—I agree.

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*B. R. T.*

REVISIONAL CRIMINAL

*Before R. S. Narula, J.*

ABDUL SALAM,—*Petitioner.*

*versus*

AHMAD DIN,—*Respondent.*

**Criminal Revision No. 172-D of 1965.**

May 19, 1966.

*Code of Criminal Procedure (V of 1898)—S. 145—Proceedings under—Affidavits sworn by witnesses and parties before Oath Commissioner appointed under S. 139(b), Code of Civil Procedure—Whether can be received in evidence in such proceedings—Oath Act (X of 1873)—S. 4—Scope of—Affidavits for proceedings under S. 145 Cr. P.C.—Whether can be sworn before a third class Magistrate.*

*Held,* that the affidavits, in order to be good evidence in proceedings under section 145 of the Code of Criminal Procedure have to be sworn before an authority which is otherwise competent under some law to administer oath. An