27, 1970, Exhibit P. 4. Simultaneously, the order was confirmed by a letter of even date, Exhibit P. 5. In the letter it is specifically mentioned that the weight of the roll was to be 400 grams net. In compliance with the order, the cotton was supplied by the plaintiff to the defendant. After the receipt of 1000 rolls by the defendant, it raised an objection that the full quantity of cotton had not been supplied. The plaintiff thereafter, on May 26, 1970, supplied about 850 rolls of 400 grams each, free of cost. In case the agreement between the parties was that paper used in the rolls was to be included in the weight of the cotton, the plaintiff should not have agreed to supply additional rolls. From the conduct of the plaintiff, it is further established that it agreed to supply rolls of 400 grams of cotton wool net. I, therefore, reject this contention of the learned counsel.

(13) No other point was raised.

(14) For the reasons recorded above, both the appeals fail and the same are dismissed with no order as to costs.

N.K.S.

Before R. S. Narula, C. J.

CHANDU LAL,—*Petitioner.*

versus

KALIA AND GORIA,—*Respondents.*

Civil Revision No. 849 of 1973.

January 6, 1976.

Punjab Tenancy Act (XVI of 1887)—Sections 45, 50, 50-A and 77(3) (f) and (g)—Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—Sections 39 and 47—Tenant ordered to be ejected under section 45(5)—Civil suit by such tenant contesting his liabiliy to ejectment—Jurisdiction of Civil Court—Whether barred.

Held that section 50-A of the Punjab Tenancy Act, 1887 has confined the bar to the jurisdiction of a Civil Court only in respect of the suit of a tenant whose ejectment has been ordered under sub-section (6) of section 46 of the Act and not of a tenant who has been directed to be ejected either under sub-section (5) of section 45 or under any other provision of law. Exclusion of the jurisdiction of a Civil Court has not to be readily inferred and all provisions containing such a bar have to be strictly construed. The bar to a suit in

respect of an ejectment under sub-section (6) of section 45 of the Act cannot be extended to a suit questioning the liability of ejectment under an order passed under sub-section (5) of section 45. A suit in which the tenant claims a declaration that he continues to be in cultivating possession of the land does not fall within the mischief of clause (g) of section 77(3) of the Act and is not excluded from the jurisdiction of the Civil Court. The object of the bar created by clause (f) is that a tenant may not instead of going to a revenue court come to a Civil Court after the expiry of the period of two months for claiming the relief which he could have claimed under section 45(3) of the Act within the period of two months. Since the reliefs regarding declaration of proprietary rights of the tenant and that he continues to be in possession of the land and of injunction restraining the landlord from ejecting him, could not possibly form the subject matter of a suit envisaged by section 45(3) of the Act, a suit in which such reliefs are claimed does not fall within clause (f) of section 77(3). Such a suit is also not barred under section 47 read with section 39 of the Pepsu Tenancy and Agricultural Lands Act 1955 since it does not fall within either sub-section (1) or sub-section (2) of section 47 of the Pepsu Act. Therefore, the jurisdiction of a Civil Court to try such a suit is not barred by any provision of law.

(Paras 5, 10, 11, 12 and 13).

Petition under Section 115 *of Civil Procedure Code for revision of the order of Shri Shiv Dass Tyagi, Additional District Judge Narnaul, dated* 25*th May,* 1973, *reversing that of Shri N. K. Jain, Sub-judge* 1*st Class, Narnaul, dated* 5*th October,* 1972, *and remanding the case for deciding the other issues which arise on the pleadings of the parties and directing the parties to appear in the trial Court on* 11*th June,* 1973.

B. S. Gupta, Advocate and Jaswant Jain, Advocate, *for the Petitioner.*

A. K. Goel, Advocate, *for the respondents.*

JUDGMENT

R. S. Narula, C.J.—(1) The sole question that has to be answered in this petition for revision of the order of the Court of Shri Shiv Charan Dass Tyagi. Additional District Judge, Narnaul, dated May 25, 1973, is whether the jurisdiction of the civil Court is barred to try and, decide the suit for a declaration and permanent injunction filed by the plaintiff-respondents. This question, which forms the subject matter of issue No. 4 out of the issues framed by the trial Court,

which issue was tried as preliminary one, has arisen in the following circumstances :—

(2) Kalia and Goria, sons of Ram Dhan, plaintiffs-respondents, were admittedly tenants of Chandu Lal, defendant-petitioner. They used to cultivate the defendant's land on payment of produce rent. It is also the common case of both sides that after the passing of the order of ejectment, they had never been dispossessed of the tenancy holding. On November 12, 1968, the defendant-petitioner made an application under section 43 of the Punjab Tenancy Act, 1887 (herein after referred to as the Tenancy Act), to the Assistant Collector (the Revenue Officer) for service on the plaintiff-respondents of a notice of ejectment envisaged in clause (b) of section 42 of that Act. Section 42 provides that no tenant is to be ejected otherwise than in execution of decree for ejectment except in the two cases specified in clauses (a) and (b) thereof. Clause (b) reads :—

> "(b) When the tenant has not a right of occupancy and does not hold for a fixed term under a contract or a decree or order of competent authority."

The plaintiff-respondents did not claim in the plaint any right of occupancy. Nor was theirs a tenancy for a fixed term under a contract or decree or order of any competent authority. Section 43 of the Tenancy Act provides as below :—

> "In any such case as is mentioned in clause (a) or clause (b) of the last foregoing section the landlord may apply to a Revenue-officer for the ejectment of the tenant in the case mentioned in the former clause or for the service on the tenant of a notice of ejectment in the case mentioned in the latter clause."

On receipt of the application of the defendant-petitioner, the Revenue Officer caused the notice of ejectment to be served on the tenants under sub-section (1) of section 45 of the Tenancy Act which is in the following terms :—

> "On receiving the application of the landlord in any such case as is mentioned in clause (b) of section 42, the Revenue-officer shall, if the application is in order and not open to

objection on the face of it, cause a notice of ejectment to be served on the tenant."

The issue and service of the notice under section 15(1) of the Tenancy Act has not been denied by the plaintiff-respondents. Their case as made out in para 3 of the plaint was that the said notice did not bear the signatures and seal of the Court of the Revenue Officer and the said notice was neither legal nor with authority. The plaintiff-respondents did, however, put in appearance before the Revenue Officer in response to the said notice (Exhibit P/10). The order of the revenue Court dated November 21, 1968 (Exhibit P/9) establishes this fact.

(3) Sub-section (3) of section 45 of the Tenancy Act provides *inter alia* that on the service of a notice under sub-section (1) if the tenant intends to contest his liability to ejecment, he must institute a suit for that purpose in a revenue Court within two months from the date of service of the notice. Admittedly, no such suit was filed by the plaintiff-respondents despite service of the above-mentioned notice on them. No such suit having been filed, the defendant-petitioner made an application to the Revenue Officer on March 20, 1969. under sub-section (5) of section 45 of the Tenancy Act for passing an order of ejectment against the plaintiff-respondents. Notice of that application is claimed by the defendant-petitioner to have been duly served on the plaintiff-respondents. The case of the plaintiff-respondents is that a false report of service of that notice was secured by the defendant-petitioner and in fact no such notice was served on them. On the basis of the report of service of that notice, an *ex parte* order of ejectment was passed against the plaintiff-respondents on June 13, 1969. Order for dispossession of the plaintiff-respondents in execution of the above mentioned *ex parte* order for ejectment was issued on June 14, 1969. In execution of that order the plaintiff-respondents are shown, according to the report on the warrant of possession, to have been dispossessed from the land in dispute on June 15, 1969. The claim of the plaintiff-respondents, however, is that the report is fictitious and in fact the plaintiffs were never dispossessed and are still continuing in cultivating possession of the land in question as tenants of the defendant-petitioner. To complete the history of the litigation, it may further be noticed that the appeal preferred by the plaintiff-respondents against the order of ejectment passed by the Assistant Collector was dismissed by the Collector on

March 29, 1959. The learned counsel for the plaintiff-respondents states that the said appeal was dismissed as barred by time.

(4) It was in the above-mentioned circumstances that on April 26, 1972, the plaintiff-respondents filed a suit :—

(1) For a declaration to the effect that they have been in cultivating possession of the land in question continuously for the previous 50 years as tenants-at-will on payment of certain annual produce rent ;

(ii) For a declaration that proprietary rights have accrued to them ;

(iii) For a declaration that they were never ejected or dispossessed in pursuance of the illegal order dated June 13, 1969, passed by the Assistant Collector First Grade, Narnaul. Nor could they be ejected by that order of the Assistant Collector First Grade, Narnaul, and they are not liable to be ejected; and

(iv) For a permanent injunction restraining the defendant-petitioner from ejecting them in pursuance of that order or in any other manner except in due course of law,

The suit was contested by the defendant. In para 10 of his written statement, the defendant took up the plea that the jurisdiction of the civil Court was barred. That plea gave rise to issue No. 4 to the effect :—

"Whether the jurisdiction of this Court is barred ?"

By its order dated October 5, 1972, the Court of Shri N. K. Jain, Subordinate Judge First Class, Narnaul, decided that issue in favour of the defendant and held that the civil Court is not competent to proceed with this issue and its jurisdiction is specifically barred by the "provisions of the Punjab and Pepsu Acts". He, therefore, directed that the plaint of this suit be returned to the plaintiff-respondents for presentation to the proper Court, i.e. to the Collector, after endorsing upon the plaint the particulars required in the first proviso to sub-section (3) of section 77 of the Tenancy Act. The plaintiff-respondents' appeal against that order was allowed by the

decision of the Court of the Additional District Judge, Narnaul, which is now under revision. The solitary point, on which the learned Additional District Judge reversed the order of the trial Court, is that section 77 of the Tenancy Act has no application to a case where the relationship of landlord and tenant is not admitted between the parties. In so far as the case of the defendant-petitioner that the tenancy of the plaintiff-respondents had come to an end with the passing of an order of ejectment was concerned, it amounted, according to the lower appellate Court, to a denial of the relationship of landlord and tenant, thus ousting the application of section 77 of the Tenancy Act.

(5) Mr. B. S. Gupta, who has argued this case at length, has tried to convince me that the suit of the plaintiff-respondents is barred under one or the other or all of the following provisions :—

(i) Section 50 and 50-A of the Tenancy Act ;

(ii) Section 77(3) (f) and (g) of Second Group of the Tenancy Act ; and

(iii) Section 47 read with section 39 of the Pepsu Tenancy and Agricultural Lands Act, 1955.

Sections 50 and 50(A) of the Tenancy Act may be quoted at this stage :—

"50. In either of the following cases, namely :—

(a) if a tenant has been dispossessed without his consent of his tenancy or any part thereof otherwise than in execution of a decree or than in pursuance of an order under section 44 or section 45,

(b) if a tenant who, not having instituted a suit under section 45, has been ejected from his tenancy or any part thereof in pursuance of an order under that section denies his liability to be ejected.

the tenant may, within one year from the date of his dispossession or ejectment, institute a suit for recovery of possession or occupancy or for compensation, or for both.

50-A. No person whose ejectment has been ordered by a Revenue Court under section 45, sub-section (6), or whose suit has been dismissed under section 50, may institute a suit in civil court to contest his liability to ejectment, or to recovery possession or occupancy rights, or to recover compensation."

It will be noticed from the plain language of section 50-A of the Tenancy Act that only two kinds of suits are barred under that provision, namely (i) suit at the hands of a person whose ejectment has been ordered under sub-section (6) of section 45; and (ii) of a tenant whose suit has been dismissed under section 50. It being the admitted case of both the sides that the tenant did not institute any suit under section 50, it has only to be considered whether the suit of the plaintiff-respondents is or is not a suit of a person whose ejectment has been ordered by revenue Court under sub-section (6) of section 45 of the Tenancy Act. Ejectment can be ordered under sub-section (6) of section 45 only if the tenant has filed a suit under sub-section (3) of section 45 within two months of the service on him of the notice issued to him at the instance of the landlord under sub-section (1) of that section. The tenant in the instant case did not institute any such suit. No question of dismissal of such a suit could, therefore, arise in this case. The tenant not having instituted such a suit the notice on him, the landlord, as already stated, applied for and obtained an order for his ejectment under sub-section (5) of section 45. If section 50-A had stated that no person whose ejectment has been ordered by a Revenue Court under section 45 could institute a suit in a Civil Court to contest his liability to ejectment, the plea of the plaintiff-respondents regarding lack of jurisdiction in the trial Court would no doubt have succeeded; but section 50-A, as it stands, has confined the bar to the jurisdiction of a Civil Court only in respect of the suit of a tenant whose ejectment has been ordered under sub-section (6) of section 45 and not of a tenant who has been directed to be ejected either under sub-section (5) of section 45 or under any other provision of law. Exclusion of the jurisdiction of a Civil Court has not to be readily inferred. All provisions containing a bar to the jurisdiction of the Civil Court have to be strictly construed. (Reference may in this connection be had to the judgment of the Supreme Court in *Dhulabhai etc.* v. *State of Madhya Pradesh and another*, (1). The bar to a suit in respect of an ejectment under

sub-section (6) of section 45 cannot be extended to a suit questioning the liability of ejectment under an order passed under sub-section (5) of section 45. I have, therefore, no hesitation in holding that section 50-A of the Tenancy Act did not bar the present suit filed by the respondents.

(6) This takes me to the bar claimed under section 77 (3) of the Tenancy Act. That provision reads as below :—

> "The following suits shall be instituted in, and heard and determined by, Revenue Courts, and no other Court shall take cognizance of any dispute or matter with respect to which any such suit might be instituted :—
>
> Provided that :—
>
> (1) where in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, the Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by order VII, rule 10, Civil Procedure Code, and return the plaint for presentation to the Collector ;
>
> (2) on the plaint being presented to the Collector the Collector shall proceed to hear and determine the suit where the value thereof exceeds Rs. 1,000 or the matter involved is of the nature mentioned in section 77 (3), First Group, of the Punjab Tenancy Act, 1887, and in other cases may send the suit to an Assistant Collector of the first grade for decision.)
>
> FIRST GROUP
>
> (a) * * * * * *
>
> (b) * * * * * *
>
> (c) * * * * * *
>
> SECOND GROUP
>
> (d) * * * * * *
>
> (e) * * * * * *

(1) A.I.R. 1969 Supreme Court 78.

(f) suits by a tenant under section 45 to contest liability to ejectment when notice of ejectment has been served ;

(g) suits by a tenant under section 50 for recovery of possession or occupancy, or for compensation or for both ;

(h) * * * * * *

(i) * * * * * *

(j) * * * * * *

(k) * * * * * *

(l) * * * * * *

(m) * * * * * *

(n) * * * * * *

(p) * * * * * *

Before considering the scope of the specific bar to the present suit claimed by the defendant-petitioner, I may deal with the solitary point on which the learned Additional District Judge has reversed the decision of the trial Court. There is no quarrel with the proposition of law that section 77(3) bars only such suits in which there is no dispute about the relationship of landlord and tenant between the parties. Reliance was placed for this proposition by the Court below on the judgments of Harbans Singh, A.C.J. and Sandhawalia, J. in *Khazan Singh and another* v. *Dalip Singh and another*, (2) of C. G. Suri, J. in *Raja Ram and another* v. *Raghbir Singh and others*, (3) of P.C. Pandit, J. in *Daljit Singh and another* v. *Nand Ram and others*, (4) of the Supreme Court in *Shri Raja Durga Singh of Solon* v. *Tholu and others*, (5) and of P. C. Pandit and Gopal Singh, JJ. in *Jaswant Rai and another* v. *Bhagwan Dass and another*, (6). The suit which had been filed in the *case of Khazan Singh and another* (supra) was for a declaration that the order of the Assistant Collector allowing the defendants to purchase the land of the plaintiff under section 18 of the Punjab Security of Land Tenures Act was void, without jurisdiction and ineffective. The defendants disputed the jurisdiction of the Civil Court to entertain the suit because of the bar of section 77. Because the relationship

(2) 1969 Revenue Law Reporter 599.

(3) 1970 P.L.J. 656.

(4) 1967 Current Law Journal (Pb. & Har.) 725.

(5) 1962 P.L.R. 837.

(6) 1971 P.L.J. 839.

of landlord and tenant had come to an end before the institution of the suit by the land in question having been purchased by the defendants, it was held that section 77 was not a bar to the suit. In the *case of Raja Ram and another* (supra), the defence of Raja Ram tenant (petitioner in the writ petition heard by Suri, J.) in the ejectment proceedings was that his deceased father had purchased the land in question at a Court auction *benami* in the name of Raghbir Singh respondent No. 1, and that a fictitious lease-deed had been executed between the parties showing the writ-petitioner being in possession as lessee. It was not admitted that Raja Ram was ever a tenant of Raghbir Singh, or that the previously existed tenancy had come to an end by an order of ejectment. In the *case of Daljit Singh and another* (supra), the learned Judge held that section 77(3)(d) applied only when the relationship of landlord and tenant was admitted and the nature of the tenancy alone was in dispute, and, therefore, a suit by an occupancy tenant who was out of possession to recover possession from his landlord of the land to which he claimed occupancy rights did not fall within section 77(3) of the Tenancy Act, because it was not a suit by a tenant. Similarly in the authoritative pronouncement of their Lordships of the Supreme Court in the *case of Shri Raja Durga Singh of Solon* (supra) it has been merely held that the Legislature barred only those suits from the cognisance of a Civil Code, where there is no dispute between the parties that a person cultivating the land or who was in possession of the land was a tenant. The civil suit had been filed by Raja Durga Singh for possession and mesne profits of certain land claimed to be his *khud kasht* land. The defendants contested Raja Durga Singh's suit, claiming that they were occupancy tenants of the land for the last two or three generations. The plaintiff did not admit that they were ever his tenants on the land. It was in that context that when the defendants took up the plea of the suit being barred under section 77(3) of the Tenancy Act that it was held that in order to attract the bar, the suit should relate to one of the matters described in sub-section (3), and secondly existence of the relationship of landlord and tenant should be admitted by the parties, and that if each of the two conditions mentioned above is not satisfied, the suit is not barred from the cognisance of the Civil Court. In the *case of Jaswant Rai and another* (supra) the land in dispute was owned by the Nawab of Malerkotla. Its occupancy tenant was Mohammed Khalil. Achhru Ram, Jaswant Rai and Sushil Kumar were its *dakhilkars*. Bhagwan Dass took this land on lease from Mohammad Khalil. Bhagwan Dass later brought a suit for declaration that the

dakhilkars were not entitled to receive any *batai* from him because they had no concern with the land in dispute after Mohammad Khalil had become its owner, and for a further declaration that he was not a tenant under the *dakhilkars* and the entries in the revenue records to that effect were incorrect. The decision of the District Judge on the question of jurisdiction in favour of the plaintiff was upheld by a Division Bench of this Court as the position which had been taken up in the plaint in suit was that he was not the tenant of the *dakhilkars* and this was one of the questions which had to be decided in the suit.

(7) It would be noticed from a study of all the five cases referred to in the judgment of the learned Additional District Judge and discussed above that the relationship of landlord and tenant had been denied *ab initio* in each one of those cases. None of those judgments relates to a case where the relationship between the parties was admittedly that of a landlord and tenant till the decree for ejectment which is sought to be avoided in the civil suit was passed by the revenue Court. If such a suit as the present one is sought to be excluded from the jurisdiction of the Civil Court on the ground that the bar under section 77(3) of the Tenancy Act does not apply because of the tenant taking up the position that his tenancy has come to an end by the impugned decree, the whole purpose of section 77(3) would be frustrated. The application of section 77(3) is excluded on this ground only if there is a genuine dispute as to the relationship of landlord and tenant having ever existed between the parties in respect of the property in dispute. It has been held by Mehar Singh, C. J. and R. S. Sarkaria, J. (as they then were) in *Shri Lakshbir* v. *Shri Anant Ram and others* (7) that by reason of a wrongful dispossession of a tenant by a landlord or by a third person, the tenant does not cease to hold the land under the landlord, and is not deprived of the character of tenant. The case of the plaintiff-respondents is that they were tenants, that an illegal order of their ejectment was passed, and that they were sought to be dispossessed under such an illegal order. Taking those pleas of the plaintiff-respondents on their face value, the relationship of landlord and tenant cannot be said to be disputed. The Division Bench held in the *case of Shri Lakshbir* (supra) that the legal relationship of landlord and tenant continues notwithstanding the tenant's wrongful dispossession.

(7) 1969 P.L.J. 176.

(8) On the facts and circumstances of this case and in the light of the law referred to above, I have no doubt that the learned Additional District Judge committed a patent error in holding on the admitted facts of this case that section 77(3) does not apply to the present case as the existence of the relationship of landlord and tenant is not admitted between the parties.

(9) This takes me to the question whether the present suit falls within either clause (f) or clause (g) of the second group of cases enumerated in section 77(3). It is clear from the language of section (3) of the Tenancy Act that this provision bars only such suits as are enumerated in any of the entries under the first or the second group of cases mentioned in that provision. This proposition is beyond dispute in view of the authoritative pronouncement of their Lordships of the Supreme Court in the case of *Shri Raja Durga Singh of Solon* (supra). The Civil Court's jurisdiction to try this suit would be ousted if the suit of the plaintiff is "a suit by a tenant under section 45 (of the Tenancy Act) to contest liability to ejectment when notice of ejectment has been served" on him; or if the tenant's "suit is under section 50 (of the Tenancy Act) for recovery of possession or occupancy or for compensation or for both."

(10) Mr. Gupta first claims the case to be covered by clause (g) of section 77(3) of the Tenancy Act as the plaintiffs have admitted that an order for ejectment was passed and according to the report made on the warrant for possession, the plaintiffs had been dispossessed. He submits that in these circumstances, the claim for a declaration for continuing possession amounts to a claim for recovery of possession. I am unable to agree with this contention. The suit of the plaintiffs is neither one under section 50 of the Tenancy Act, nor is a suit for recovery of possession or occupancy or compensation. Section 50 has already been quoted in an earlier part of this judgment. Only two types of suits are covered by that section. Firstly suits for restoration of possession where the tenant has been dispossessed "otherwise than in execution of a decree" or otherwise than in pursuance of an order under section 44 or section 45. The plaintiffs who were admittedly the tenants of the defendant-petitioner have either been ejected from the land in dispute as claimed by the defendant or have not been dispossessed. If they have not been dispossessed clause (a) of section 50 has no application to the case. If they have been dispossessed as claimed by the defendant-petitioner, they have been so dispossessed in pursuance of an order of ejectment under section 45 of the Act. In either event their suit

cannot possibly fall within the ambit of clause (a) of section 50. Secondly a suit under clause (b) of section 50 can be filed by a tenant who not having instituted a suit under section 45 has been ejected in pursuance of an order under that section, denies his liability to be ejected. Such a suit can be filed in a Revenue Court within one year. In order to exclude the possibility of such a suit being filed in a Civil Court after the expiry of one year, the bar to the institution of such a civil suit has been created by clause (g) of section 77(3). Clause (g) does not, however, bar all kinds of suits arising out of such a situation. The only suits barred in this respect are those in which dispossession is admitted and the claim is for possession of the erstwhile tenancy land or the occupancy tenancy or for compensation or for both. In the instant case, the plaintiff-respondents have not only claimed recovery of possession, but have on the other hand definitely asserted that they have never been dispossessed and have consequently claimed mere declaration to the effect that they continue to be in cultivating possession of the land. Such a suit does not obviously fall within the mischief of clause (g), and is not excluded from the jurisdiction of the Civil Court. I am, therefore, unable to agree with the learned counsel for the defendant-petitioner that this suit is barred under clause (g) of section 77(3) of the Tenancy Act.

(11) Most serious arguments have been advanced to cover the suit under clause (f) of section 77(3) of the Tenancy Act. I do not, however, find any difficulty at all in holding that this is not a suit "under section 45 to contest liability to ejectment". No doubt notice of ejectment was served on the plaintiff-respondents, but the only suit which they could file under section 45 within two months from the date of the service of the notice would be a suit contesting their liability to ejectment under sub-secton (3) of that section. Object of the bar created by clause (f) is that a tenant may not instead of going to a revenue Court come to a Civil Court after the expiry of the period of two months for claiming the relief which he could have claimed under section 45(3) of the Tenancy Act within the period of two months. No part of the relief claimed by the plaintiff-respondents in the suit from which the present proceedings have arisen falls within the ambit of sub-section (3) of section 45. The first declaration claimed by the plaintiffs that they have been in cultivating possession of the land for fifty years or more as tenants-at-will on payment of produce rent would not have been a defence to the defendant-petitioner's claim for their ejectment under section 45. Nor could

they claim in a suit under section 45 of the Tenancy Act that proprietary rights had accrued to them on the ground mentioned in their plaint. The third declaration claimed by the plaintiffs about their having in fact never been ejected or dispossessed in pursuance of the order for their ejectment passed by the Assistant Collector could not possibly form the subject-matter of a suit envisaged by sub-section (3) of section 45. Nor could the plaintiffs claim in a suit under section 45(3) an injunction to restrain the defendant-petitioner from ejecting them in pursuance of an order which had not been passed till then. No suit under section 45(3) lies after an order of ejectment has already been passed under section 45(5). The present suit of the plaintiff-respondents does not, therefore, fall within clause (f) of section 77(3). The claim about the suit being barred under that section also, therefore, fails.

(12) Mr. Adarsh Kumar Goel, learned counsel for the plaintiff-respondents who has argued this case ably and fully, has correctly pointed out that this suit is also not barred under sections 39/47 of the Pepsu Tenancy and Agricultural Lands Act (13 of 1955) (hereinafter called the Pepsu Act). Section 39 of the Pepsu Act merely provides that any person aggrieved by any decision or order of the prescribed authority or the Assistant Collector may, within the specified time prefer an appeal against such an order to the Collector, and that any person aggrieved by any decision or order of the Collector prefer a further appeal against the same to the Commissioner within the prescribed time and subject to the prescribed limitations. Sub-section (3) of section 39 reserved to the Financial Commissioner the power to call for, examine and revise the proceedings of the prescribed authority or the Assistant Collector or the Collector or the Commissioner with respect to all matters dealt with under the Pepsu Act. Section 47 of that Act which creates the bar to the jurisdiction of the Civil Court is in the following terms :—

> "(1) No civil court shall have jurisdiction to settle, decide or deal with any matter which is under this Act required to be settled, decided or dealt with by the Financial Commissioner, the Collector or the prescribed authority.
>
> (2) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority made under or in pursuance of this Act shall be called in question in any Court."

(13) No order of the Financial Commissioner, the Commissioner, the Collector or the prescribed authority passed under the Pepsu Act

has been questioned by the plaintiff-respondents. In fact no such order has been passed to which any reference might have been made in the pleadings of the parties or which may be relevant for the decision of the present suit. Sub-section (2) of section 47 does not, therefore, bar this suit. In order to decide whether sub-section (1) does or does not bar the suit, we have to see as to what are the matters which can be settled, decided or dealt with under the Pepsu Act, by any of the authorities named in that Act. It would be noticed that so far as the proceedings between the landlords and tenants are concerned, section 22 of the Pepsu Act deals with the acquisition of proprietary rights by the tenants, section 23 deals with the determination of compensation for acquisition of proprietary rights, section 24 with the abandonment by the tenant of his intention to acquire proprietary rights, and section 25 with the forfeiture of the right to acquire proprietary rights. No such dispute between the parties forms the subject-matter of the present suit. Learned counsel for the defendant-petitioner refers to the observations of the Division Bench of this Court in *Shri Lakshbir's case* (supra) to the effect that the second requirement of section 2 of the Pepsu Act (which defines the expression "tenant") is that a tenant is not liable to ejectment either under clause (a) or clause (b) of sub-section (1) of section 7-A or under clauses (a) and (b) of section 7-A of the Pepsu Act. Whatever be the definition of tenant under the Pepsu Act is not relevant for determining whether section 47 of that Act bars this suit or not. So long as the suit does not fall within either sub-section (1) or sub-section (2) of section 47, it cannot be held to be barred under the Pepsu Act. I have held above that the suit of the plaintiff-respondents does not fall within any of the sub-sections of section 47. The objection to the jurisdiction of the civil Court on that count also, therefore, fails.

(14) No other point was argued by the counsel for the parties in this case. For the reasons already recorded, the order of the learned Additional District Judge is upheld, issue No. 4 stands decided in favour of the plaintiff-respondents and it is held that the jurisdiction of the trial Court to try the suit of the plaintiff-respondents is not barred by any provision of law, and the revision petition is accordingly dismissed. Since the suit has already been tried and dismissed by the trial Court, and the decision of the trial Court has in the meantime been upheld even in the first appeal preferred against the trial Court decree by the plaintiff-respondents, there is no question of any further direction being given in this behalf. In the circumstances of the case the parties are left to hear their own costs in this petition.

N. K. S.