FULL BENCH

Before Prem Chand Jain, Bhopinder Singh Dhillon and M. R. Sharma, JJ.

PIARA SINGH,—*Petitioner.*

versus

THE FINANCIAL COMMISSIONER, REVENUNE AND OTHERS,—*Respondents.*

Civil Writ No. 3641 of 1972

January 11, 1977.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955) as amended by Pepsu Tenancy and Agricultural Lands (Second Amendment) Act (XV of 1956)—Sections 7, 7-A, 8 and 32—Tenant brought on land after the enforcement of Second Amendment Act—Ejectment of such tenant—Section 8—Whether confers an additional ground of ejectment—Security of tenure to such tenants—Extent of —Benefit of section 8—Landlords entitled thereto—Stated.

Held, (per majority B. S. Dhillon and P. C. Jain, JJ., M. R. Sharma, J. contra) that the provisions of section 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955 provide that all the tenants inducted on the land after the endorsement of the Second Amendment Act, 1956, should in general terms have three years protection from being ejected by the big landowners from their reserved area and by the small land owners from the area within their permissible limits. The proviso to this section provides a few exceptions, the same being that the tenants of a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity, shall not have the protection of three years. By providing section 7-A in the Amendment Act of 1956, the Legislature dealt with the existing tenancies and by making provisions in section 8, the Legislature provided for the tenancies to be created after the Second Amendment Act of 1956, an addition ground to landowners to evict the tenant from the reserved area or from the area owned by a small landowner within the permissible limits independent of the grounds mentioned in section 7 of the Act. However, such tenants cannot be evicted before a minimum period of three years subject to the cases provided for in the proviso. Thus section 8 of the Act confers an additional ground of eviction to a landlord for evicting a tenant brought on the land after the date on which the Second Amendment Act came into force.

(Paras 5 and 8)

Held, (per majority B. S. Dhillon and P. C. Jain, JJ., M. R. Sharma, J. contra) that section 8 of the Act affords security of tenure to tenants not covered under the proviso to section 8, to the extent of three years only and no further and in the case of land owners covered under the proviso, no such tenure of security is provided for.

(Para 14)

Held, (per majority B. S. Dhillon and P. C. Jain, JJ., M. R. Sharma, J. contra) that a big landowner can avail of the provisions of section 8 of the Act for the ejectment of the tenant from his reserved area and a small landowner can also equally avail of the grounds as given in section 8 for the ejectment of the tenant.

(Para 15)

Held, (per M. R. Sharma, J. contra) that—

(1) Section 8 of the Act does not afford an additional ground of ejectment to a landlord for ejecting a tenant brought on the land after the date on which the Second Amendment Act came into force.

(2) This section does afford additional security of tenure to tenants other than those of the persons mentioned in the proviso inasmuch as it entitles them to remain on land for a minimum period of three years, come what may.

(3) Only those landlords who are mentioned in proviso to section 8 of the Act can take benefit thereof subject to the proviso appearing under section 7 of the Act.

(Para 52)

Case referred by the Hon'ble the Chief Justice Mr. Harbans Singh and Hon'ble Mr. Justice B. R. Tuli, on 17th January, 1973 to a Full Bench for decision of the following questions of law involved in the case. The Full Bench consisting of Hon'ble Mr. Justice Prem Chand Jain, Hon'ble Mr. Justice Bhopinder Singh Dhillon and Hon'ble Mr. Justice M. R. Sharma, decided on 11th January, 1977, the questions referred to and returned the case to the Division Bench for disposal on merits:—

1. *Whether section 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, affords an additional ground of ejectment to a landlord for ejecting a tenant brought on the land after October 30, 1956, the*

date on which the Second Amendment Act came into force ?

2. *Whether section 8 ibid affords security of tenure to tenants brought on the land after October 30, 1956, and if so, what is the extent of that security ?*

3. *Who are the landlords who can take benefit of the provisions of section 8 ibid ?*

Petition under Articles 226/227 of the Constitution of India praying that this Hon'ble Court be pleased to issue a writ of certiorari or other suitable writ or order quashing the impugned orders dated 9th November, 1972 and 21st July, 1972, passed by Respondent No. 1 and 2 respectively in favour of Respondent No. 4, being illegal, ultra vires, without jurisdiction, against the provisions of the Pepsu Tenancy and Agricultural Lands Act and restoring that of Respondent No. 3 dated 13th January, 1972 and further praying that pending the hearing of the writ petition, the ejectment of the petitioner from the land in dispute be stayed and also praying that the file of the case be sent for and the costs of the petition be awarded to the petitioner.

D. S. Kang, Advocate, *for the Petitioner.*

Sunder Lal Ahluwalia, Advocate *for Respondent No. 4.*

JUDGMENT

Judgment of the Court was delivered by:—

B. S. Dhillon, J.

(1) The following questions of law have been referred to this Full Bench by a Division Bench,—*vide* orders, dated January 17, 1973:—

1. Whether section 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, affords an additional ground of ejectment to a landlord for ejecting a tenant brought on the land after October 30, 1956, the date on which the Second Amendment Act came into force ?

2. Whether section 8 *ibid* affords security of tenure to tenants brought on the land after October 30, 1956, and if so, what is the extent of that security ?

(3) Who are the landlords, who can take benefit of provisions of section 8 *ibid* ?

(2) In order to answer these questions, the legislative history of the relevant provisions of the Pepsu Tenancy and Agricultural Lands Act, 1955, may usefully be stated. In 1953, The Pepsu Tenancy and Agricultural Lands Act, 1953 (President Act No. 8 of 1953) was promulgated. The said Act was repealed by the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the Act). Chapter I of the Act deals with preliminary matters including the definition of permissible limit. Chapter II deals with the reservation of land for personal cultivation. Chapter III deals with the general rights of tenancy. Provisions of section 7 and 8 of the Act before enactment of the Second Amendment Act, 1956, are as under:—

"7. *Termination of tenancy* (1).—No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:—

(a) that the land comprising the tenancy has been reserved by the land owner for his personal cultivation in accordance with the provisions of Chapter II:

Provided that no tenant shall be ejected under this clause after the expiry of a period of five years from the commencement of the President's Act.

Explanation.—The said period of five years shall commence—

(i) in the case of a widow, on the termination of the life interest of the widow ;

(ii) in the case of a minor, on the attainment of majority; and

(iii) in the case of a member of the Armed Forces of the Union, on his discharge or retirement from service, as the case may be ;

(b) that the tenant has failed to pay rent within a period of six months after it falls due ;

(c) that the tenant, not being a widow, a minor or a member of the Armed Forces of the Union has, after the commencement of the President's Act, sublet without the consent in writing of the landowner, the land comprising his tenancy or any part thereof ;

(d) that the tenant has, without sufficient cause, failed to cultivate personally such land, in the manner and to the extent customary in the locality in which such land is situated;

(e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him;

(f) that the tenant, on demand in writing by the landowner, has refused to execute a Kabuliyat agreeing to pay rent in respect of his tenancy in accordance with the provision of sections 9 and 10.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), a landowner holding thirty standard acres or less of land may, within a period of five years from the commencement of the President's Act, eject any tenant from such land within the permissible limit if he requires such land for personal cultivation.

Explanation 1.—For the purposes of determining the permissible limit, all lands held by the landowner as such landowner for personal cultivation immediately before the commencement of the President's Act shall be included.

Explanation 2.—In the case of a widow, minor or a member of the Armed Forces of the Union, the Explanation to clause (a) of sub-section (1) shall apply.

8. *Restoration of possession of land to tenant if landowner fails to cultivate land personally.*—(1) Where a landowner who has taken possession of any land by ejecting any tenant therefrom on the ground that he requires the land for personal cultivation fails to cultivate such land personally within one year from the date on which he took possession thereof or ceases to cultivate such land personally in any year during a period of four years next following, the tenant may make an application to the prescribed authority for restoration of such land to him.

(2) On receipt of an application under sub-section (1), the prescribed authority after giving to the landowner concerned an opportunity of being heard and after holding such enquiry as it may deem fit may restore possession of such land to the tenant."

(3) The Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956 (Pepsu Act No. 15 of 1956) made certain amendments and the provisions of sections 7, 7-A and 8 of the Act after amendment read as under:—

"7. *Termination of tenancy.*—(1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:—

(a) (Omitted by Pepsu Act No. 15 of 1956).

(b) that the tenant has failed to pay rent within a period of six months after it falls due:

Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he has failed to pay such arrears during that period ;

(c) that the tenant, not being a widow, a minor, an unmarried woman, a member of the Armed Forces of the

Union or a person incapable of cultivating land by reason of physical or mental infirmity, has after commencement of the President's Act, sublet without the consent in writing of the landowner, the land comprising his tenancy or any part thereof;

(d) that the tenant has, without sufficient cause, failed to cultivate personally such land, in the manner and to the extent customary in the locality in which such land is situated :

(e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him ;

(f) that the tenant, on demand in writing by the landowner has refused to execute a Kabuliyat agreeing to pay rent in respect of his tenancy in accordance with the provisions of sections 9 and 10.

7(2) (Omitted by Pepsu Act No. 15 of 1956).

7-A. *Additional ground for termination of tenancy in certain cases.*—(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, may be terminated on the following grounds in addition to the grounds specified in section 7. namely:—

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II ;

(b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit:

Provided that no tenant other than a tenant of a landowner who is member of the Armed Forces of the Union, shall be ejected under this sub-section—

(i) from any area of land if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres until he is allotted by the State Government alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of twelve years or more under the same landowner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1)—

(a) from any area of land if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

(b) from any area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres ;

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a member incapable of cultivating land by reason of physical or mental infirmity.

Explanation.—In computing the period of twelve years, the period during which any land has been held under the same land owner or his predecessor in title by the father, brother or son of the tenant shall be included.

(3) For the purposes of computing under sub-sections (1) and (2) the area of land under the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included.

8. *Security of tenure to certain tenants.*—Subject to the provisions of section 7, every tenant admitted after the

commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, shall hold land for a minimum term of three years:

Provided that nothing herein shall apply to the tenant of a person, who is a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity."

(4) The question whether section 8, as re-enacted, provides an additional ground of ejectment of a tenant came for consideration before this Court in *Randhir Singh and others* v. *Financial Commissioner and others* (1), and it was held by learned brother P. C. Jain, J., that section 8 provides an independent ground of eviction and a tenant inducted after the enforcement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, can be ejected after the expiry of three years without proving any of the conditions specified in section 7 of the Act. This view of the learned Single Judge was affirmed by a Division Bench of this Court in *Devi Chand* v. *Financial Commissioner, Haryana and others* (2). The correctness of the view taken by that Division Bench was assailed before a Division Bench in the present case and, therefore, their Lordships referred the questions of law referred to above, to a Full Bench. It may not be out of place to mention here that earlier the learned Financial Commisioners of Punjab in *Dina* v. *Dalip Singh and others* (3), and *Avtar Singh and another* v. *Smt. Kaki and others*, (4), also took the same view.

(5) After hearing the learned counsel for the parties, we are of the considered opinion that no fault can be found with the view taken by a Division Bench of this Court in *Devi Chand's case* (2) (supra). With a view to interpret the provisions of section 8 of the Amended Act, the legislative history of the provisions of section 7 which provided grounds for ejectment under the Act, and subsequent amendment made under 1956 Act has to be kept in view. The

(1) 1970 P.L.J. 519.
(2) 1971 P.L.J. 200.
(3) 1967 (46) L.L.T. 232.
(4) 1968 (47) L.L.T. 193.

relevant provisions of both the Acts have already been reproduced in the earlier part of the judgment. It would be seen that in the 1955 Act, a tenant of a big landowner could be ejected by the landowner from the reserved area on the ground of self-cultivation. Similarly, according to the provisions of sub-section (2) of section 7 of the 1955 Act, a landowner holding 30 Standard Acres or less of land could eject a tenant on the ground of personal cultivation, but this could be done within a period of five years from the commencement of the President's Act, 1953. Section 8 of the 1955 Act provided that where a landowner, who has taken possession of any land by ejecting any tenant therefrom on the ground that he requires the land for personal cultivation fails to cultivate such land personally within one year from the date on which he took possession thereof or ceases to cultivate such land personally in any year during a period of four years next following, the tenant may make an application to the prescribed authority for restoration of such land to him. In the Second Amendment Act, 1956, section 7-A was incorporated which dealt with the existing tenancy and according to clauses (a) and (b) of sub-section (1) of section 7-A, a big landowner could eject a tenant from the reserved area and a small landowner could also eject a tenant without there being reference to any other ground of ejectment. However, two conditions were laid down that the tenants in that case must have under personal cultivation area to the extent of 5 Standard Acres and in case the tenant had more than 5 Standard Acres in personal cultivation, he could be ejected from an area excess of 5 Standard Acres of land. It is no doubt true that section 7-A deals with the tenancy subsisting at the commencement of the Second Amendment Act of 1956, but the fact remains that it allowed the big landowners qua the reserved area and the small landowners qua the area owned by them to eject the tenant from the area within the permissible limits. It would be seen from the provisions of section 32-E of the Act that the surplus area with the big landowners vested in the State and thus every big landowner remained owner of the permissible area whereas the small landowner also could own up to the permissible limit. Section 7-A provided additional grounds for ejectment from the reserved area or the area under permissible limit regarding the existing tenancies. It is in this background that the provisions of amended section 8 of the Act have to be construed. It would be seen that the interpretation given to the provisions of section 8 of the Act by the Division Bench in

Devi Chand's case (supra) brings out a clear intention of the Legislature in providing that all the tenants inducted on the land after the enforcement of the Second Amendment Act of 1956, should in general terms have three years protection from being ejected by the big landowners from their reserved area and by the small landowners from the area within their permissible limits. The proviso to section 8 provides a few exceptions and the same being that the tenants of a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity, shall not have the protection of three years.

Reference may also be made to the provisions of section 32-E of the Act, which are as follows:—

> "32-E. *Vesting of surplus area in the State Government*:— Notwithstanding anything to the contrary contained in any law, custom or usage for the time being in force, and subject to the provisions of Chapter IV after the date on which the final statement in respect of a landowner or tenant is published in the Official Gazette, then—
>
> (a) in the case of the surplus area of a landowner or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner, such area shall, on the date on which possession thereof is taken by or on behalf of the State Government, be deemed to have been acquired by the State Government for a public purpose and all rights, title and interest (including the contingent interest, if any, recognised by any law, custom or usage for the time being in force) of all persons in such land shall be extinguished, and such rights, title and interest shall vest in the State Government free from encumbrances created by any person, and
>
> (b) in the case of the surplus area of a tenant which is included within the permissible limits of the landowner, the right and interest of the tenant in such area shall stand terminated:

"Provided that for the purposes of clause (a), where any land falling within the surplus area is mortgaged with possession, only the mortgagee rights shall vest in the State Government."

(6) The argument that the tenants of reserved area of a big landowner and that of permissible area of a small landowner inducted after the Second Amendment Act stand on a better footing and they cannot be treated at par with the tenants before the Act and can only be evicted if the conditions of section 7 are satisfied irrespective of the fact that the period of three years provided in section 8 has expired, is without any merit. It is here that one has to refer back to section 32-E, which provides for extinguishment of the rights to ownership in the land more than the permissible area. The object of enacting section 8 seems to be that it permits a landowner holding permissible area to induct a tenant and not to be deterred by the provisions of the Act. Otherwise no landowner would induct a tenant and the land may remain fallow.

(6-A) Moreover, the words "Subject to the provisions of section 7" as have been enacted in section 8, cannot be read to mean that even if a tenant defaults and is liable to be ejected on any of the grounds, still he could not be ejected before the expiry of three years. These words in my view have to be read to mean that a tenant, who is inducted after the Second Amendment Act, shall be able to be ejected even before the expiry of three years in case he becomes liable to be ejected as provided under section 7 of the Act. Any other interpretation of section 8 would mean that even though a tenant has become liable to be ejected on any of the grounds as provided under section 7 could not be ejected for a period of three years. If the Legislature had intended this, instead of the words "Subject to the provisions of section 7", the words would have been "Notwithstanding the provisions of section 7", but this is not so.

(7) The opening words of sub-section (1) of section 7, "No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds" also make it clear that the ground given in section 8 is independent of section 7. These words clearly indicate that a tenancy can be terminated in accordance with the other provisions of the Act also. In case the

Legislature had intended section 8 to be dependant on the provisions of section 7, then the opening words of sub-section (1) would have been "No tenancy shall be terminated except on any of the following grounds".

(8) The contention of the learned counsel for the petitioner is that the words "Subject to the provisions of section 7" in section 8 should be read as "notwithstanding the provisions of section 7" and section 8 be interpreted to say that even if a tenant makes himself liable to be ejected on the grounds mentioned in section 7 of the Act, still he cannot be ejected for a period of three years according to the provisions of section 8. This contention is without any merit. This interpretation will lead to anomalous results. Firstly, the Legislature clearly provided that the provisions of section 8 are subject to the provisions of section 7 so that section 7 is independent of the provisions of section 8. We cannot rewrite these words to give completely opposite meaning to the intention of the Legislature. Secondly, if the contention of the learned counsel for the petitioner is accepted, it would be seen that even if the tenant has not paid a single penny to the landowner, still he will not be liable to be ejected for a period of three years and further the landowner, who even owns land to the extent of two acres, happens to give the land on tenancy at a time due to physical incapacity, he would not be able to get the land back until and unless a tenant is proved to be liable to be ejected under any of the clauses of section 7. Similarly, a soldier, small landowner, serving in the Army, if he gets disabled, will not be able to get his land back from a tenant until and unless he proves the liability of the tenant to be ejected under any of the clauses of section 7 of the Act. This does not appear to be the intention of the Legislature. By providing section 7-A in the Amendment Act of 1956, the Legislature dealt with the existing tenancies and by making provisions in section 8, the Legislature provided for the tenancies to be created after the Second Amendment Act of 1956, an additional ground to landowners to evict the tenant from the reserved area or from the area owned by a small landowner within the permissible limits independent of the grounds mentioned in section 7 of the Act. However, such tenants cannot be evicted before a minimum period of three years subject to the cases provided for under the proviso.

(9) It is difficult to uphold the contention of the learned counsel for the petitioner that the Second Amendment Act of 1956, was only

for the benefit of the tenants. On the other hand, looking at the provisions of the Act as a whole the original and the amended Acts emerge as a rational measure of land reforms having slashed down the ownership of the big landowners to the extent of permissible area and at the same time giving protection to the big landowners regarding their reserved area and the small land owners regarding the area within their permissible limits.

(10) The learned counsel for the petitioner has referred to a decision of the Financial Commissioner in *Mohd. Shafi* v. *Jangir Singh* (5). We are unable to agree with the interpretation given by the learned Financial Commissioner. He has wrongly interpreted the section and has also failed to give the words of section 8 its true meaning. Reference has also been made by the learned counsel for the petitioner to a decision of the learned Financial Commissioner in *Joginder Singh* v. *Sukhdaik Singh* (6), and it has been contended that the learned Financial Commissioner took the view that section 8 of the Act does not provide a separate ground for ejectment. This contention is without any merit. The learned Financial Commissioner on the other hand, has followed a Single Bench decision of this Court in *Randhir Singh's case* (1) (supra) and has also noticed the decision of the learned Financial Commissioner in *Ram Sarup* v. *Didar Singh* (7), for holding that section 8 of the Act provides something in addition to what has been laid down in section 7 as grounds for ejectment. However the learned Financial Commissioner fell in error in coming to the conclusion that the landowners whose cases are covered under proviso to section 8 of the Act will not be entitled to avail of the additional ground of ejectment as provided under section 8. The learned Financial Commissioner observed as follows:—

> "In other words a tenant of a normal person would be entitled to remain on his tenancy for a minimum period of three years, but a tenant of a mentally unsound landowner would be liable to be ejected even before the expiry of the term of three years *provided the ejectment is otherwise possible under section 7.*"

(5) 1970 P.L.J. 255.
(6) 1974 P.L.J. 537.
(7) 1970 P.L.J. 668.

(11) The proviso added in this finding by the learned Financial Commissioner appears to have been added inadvertently. In any case, this finding is erroneous. If section 8 is to be interpreted that it provides an additional ground for ejectment in the sense that the landowner can eject a tenant from the reserved area or from the area under the permissible limit as the same is being interpreted, in that case, all landowners including those metioned in the proviso, shall have the right to avail of the said ground, and in the case of the landowners mentioned in the proviso, the embargo of three years will not be available. To this extent the decision of the learned Financial Commissioner is incorrect and we accordingly overrule the same.

(12) No other argument has been pressed before us.

(13) For the reasons recorded above, we answer question No. 1 in the affirmative.

(14) As regards question No. 2, the answer is that section 8 affords security of tenure to tenants not covered under the proviso to section 8 of the Act, to the extent of three years only, and no further and in the case of landowners covered under the proviso, no such security of tenure is provided for. Question No. 2 is, therefore, answered accordingly.

(15) As regards the answer to the third question, in our opinion, a big landowner can avail of the provisions of section 8 for the ejectment of the tenant from his reserved area and a small landowner can also equally avail of the ground as given in section 8 for the ejectment of the tenant.

(16) The questions of law having been answered, this writ petition be placed before a Division Bench for its disposal on merits. However, there will be no order as to costs.

Prem Chand Jain, J.—I agree.

M. R. Sharma, J.

(17) The petitioner was cultivating as a tenant 16 Bighas and 2 Biswas of land belonging to respondent No. 4 situate in village

Bakhshiwala, tehsil Rajpura, District Patiala since 1961. On September 24, 1968, respondent No. 4 filed a suit for ejectment and arrears of rent amounting to Rs. 631.14 for the crops from Kharif 1965 to Rabi, 1968 against the petitioner in the Court of Assistant Collector, 1st Grade, Rajpura. A decree for ejectment from the land in dispute and for arrears of rent was passed against the petitioner on January 7, 1970.

(18) The petitioner went in appeal before the Collector, who allowed the same and ordered that the petitioner be allowed to pay the arrears of rent within a period of six months from January 13, 1972, failing which he would be ejected from the land in question. In response to this order, the petitioner deposited the arrears of rent for which a decree had been passed against him within the prescribed period. Respondent No. 4, then filed an appeal before the Commissioner, Patiala, who,—*vide* his order, dated July 21, 1972; Annexure 'C' held that the ejectment of the petitioner could not be ordered under section 7 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter called the Act), but the ejectment of the petitioner could be ordered under section 8 of the Act where the land is required for self cultivation of the owner in cases where three years' tenancy had been completed. The judgment rendered by the Collector was reversed and the petitioner was ordered to be ejected.

(19) The revision petition filed by the petitioner against the order of the Commissioner was dismissed by the learned Financial Commissioner,—*vide* his order, dated November 9, 1972. Before the learned Financial Commissioner, it was argued on behalf of the petitioner that section 8 of the Act merely provided the security of tenure to certain tenants and their ejectment could be ordered only under section 7 or 7-A of the Act. The learned Financial Commissioner, however, relied upon a Division Bench judgment of this Court in *Devi Chand* v. *Financial Commissioner, Haryana and others* (2) (supra) and affirmed the order of eviction passed by the Commissioner.

(20) The petitioner then challenged the order passed by the subordinate tribunals in Civil Writ No. 3641 of 1972. This petition came up for motion hearing before Harbans Singh, C.J., and P. C Jain, J., on November 16, 1972, and was dismissed *in limine* because of the Division Bench judgment in *Devi Chand's case* (supra).

(21) The petitioner then filed a review petition which was allowed by the same Bench and the writ petition was admitted to hearing. The Bench observed as under:—

"*R.A.* 69—72.

C.M. 8247—72.

In C.W. 3641—72.

Mr. D. S. Kang says—(1).—That S. 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955, does not provide, any additional ground for ejectment and that the Bench decision in 1971 P.L.J. 200 taking the contrary view, requires reconsideration; and

(2) That in any case, in view of the proviso to S. 8. this S. 8 does not apply to the tenant of a widow and that the petitioner being admittedly a tenant of the widow, S. 8 and, therefore, the Bench decision, are not applicable.

In view of the above we review our earlier decision and admit the writ petition to a hearing before a DB and it would be for the DB after hearing the other side to refer to a larger Bench. Notice DB for an early actual date. Notice re stay for an early date.

(Sd.) . . .,
Harbans Singh,
Chief Justice.
(Sd.) . . .,
Prem Chand Jain,
Judge."

29th November, 1972.

(22) The petition then came up for hearing before Harbans Singh, C.J., and B. R. Tuli, J., on January 17, 1973. After a detailed survey of the relevant legislation on the subject, the Bench doubted the correctness of the view taken in *Devi Chand's case* (supra), and referred the following three questions for decision by a Full Bench:—

1. Whether section 8 of the Pepsu Tenancy and Agricultural Lands Act, 1955, as amended by the Pepsu Tenancy and

Agricultural Lands (Second Amendment) Act, 1956, affords an additional ground of ejectment to a landlord for ejecting a tenant brought on the land after October 30, 1956, the date on which the Second Amendment Act came into force ?

2. Whether section 8 *ibid* affords security of tenure to tenants brought on the land after October 30, 1956, and if so, what is the extent of that security ?

3. Who are the landlords, who can take benefit of the provisions of section 8 *ibid* ?

(23) This is how this reference has come up for decision before this Bench. As shall be seen hereinafter the statutory provisions which have to be interpreted in this case are somewhat unhappily worded. In this situation, the Court is called upon to discover the intention of the Legislature. If the language employed in a statute is unambiguous the task of the Court becomes much easier because the intention of the Legislature can be inferred from the words employed therein. A difficulty, however, arises when a statutory provision when read in isolation conveys a different meaning from the one which it conveys when it is read along with the other provisions of the statute. In that case, it becomes the bounden duty of the Court to delve into the past for determining the real trend of the legislation on a particular subject. It was observed by Jessel, M. R. in *Holme* v. *Guy*, (1877) 5 Chancery Division 901—

"The Court is not to be oblivious of the history of law and legislation. Although the Court is not at liberty to construe an Act of Parliament by the motives which influenced the Legislature, yet when the history of law and legislation tells the Court, and prior judgments tell this present Court what the object of the Legislature was, the Court is to see whether the terms of the section are such as fairly to carry out that object and no other, and to read the section with a view to finding out what it means and not with a view to extending it to something that was not intended."

In *R.M.D. Chamarbaugwalla and another* v. *Union of India and another* (8), while speaking for the Court, Venkatarama Ayyar J., observed as under:—

> "Now, when a question arises as to the interpretation to be put on an enactment, what the Court has to do is to ascertain 'the intent of them that make it', and that must of course be gathered from the words actually used in the statute. That, however, does not mean that the decision should rest on a liberal interpretation of the words used in disregard of all other materials. 'The literal construction then', says Maxwell on Interpretation of Statutes, 10th End. P. 19, 'has, in general, but *prima facie* preference. To arrive at the real meaning, it is always necessary to get an exact conception of the aim, scope and object of the whole Act; to consider, according to Lord Coke: (1) What was the law before the Act was passed; (2) What was the mischief or defect for which the law had not provided; (3) What remedy Parliament has provided; and (4) The reason of the remedy'. The reference here is to Heydon's case, (1584) 3 Co. Rep 7-a: 76 E.R. 637 (A-1)".

While discussing the question of literal interpretation the same learned Judge observed as under in *Tirath Singh* v. *Bachittar Singh and others*, (9):—

> "It is argued that if the language of the enactment is interpreted in its literal and grammatical sense, there could be no escape from the conclusion that parties to the petition are also entitled to notice under the proviso. But it is a rule of interpretation well-established that, 'where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

(8) A.I.R. 1957 S.C. 628.
(9) A.I.R. 1955 S.C. 830.

(24) Laws are enacted for remedying the existing evils as also for preventing the evils to have sway over the future march of society towards progress. The founding fathers gave to themselves a Coonstitution for ensuring justice—social, economic and political. Article 39(c) of the Constitution lays down that the operation of economic system should not result in the concentration of wealth and means of production to the common detriment. Any impediment in the way of these lofty ideals has to be regarded as an evil. In a predominently agricultural society land constitutes an important means of production. The feudal system left very little for the actual tiller of the soil and concentrated wealth in the hands of idle landlords, who appropriated to themselves the bulk of unearned income from land. The laws relating to agrarian reforms were introduced in the country in order to remedy this evil. These laws are, therefore, to be interpreted in a manner which advances the intention of the legislature. A Court of law which is concerned with adminstering these laws is under an obligation to also consider their historical background for finding out the real purpose for which they were brought on the statute book. The true import of these laws and the intention of the Legislature sometimes lie buried in the decent obscurity of the language employed. It then becomes duty of a Court to tear the wordy veil and to see that the substance is not allowed to get lost in the form.

(25) Under the princely States which were later on merged together to form the Patiala and East Punjab States Union, commonly known as Pepsu, there were various types of tenants under proprietors. By and large, they did not enjoy any appreciable security of the tenures held by them. Popham Young, who conducted the settlement of 1900—1908 in the erstwhile State of Patiala, has said:—

> "In many cases in which the proprietary title had been in dispute between the main body of cultivating residents in the village, on the one hand, and, on the other, some individual who claim the entire *Biswedari* right on the score of descent from the founder, or alleging that his admitted right as *Maridar* covered the proprietary title also, the State Courts would often allot to the former the unasked for status of occupancy tenant. In fact, occupancy rights were generally awarded as a kind of compensation to the unsuccessful claimants of proprietary rights, and often, I fear,

as a sop to the conscience of officers who knew well that they were favouring men of their own class. There was throughout the State a strong offensive and defensive alliance between *Ahlkar* (official) and *Biswedar* (*landlord* classes). The *Ahlkar* who was not a *Biswedar* generally contrived to become one, and the *Biswedar* found that it was necessary to salvation to obtain a footing in the official camp. The tendency was for small proprietors, who happened to be share-holders in a village in which some one connected with the official class was an assignee of the revenue, or the owner of a predominent interest therein, to become occupancy tenants, and for old tenants in a *Biswedari* estate to sink to the level of mere tenents-at-will. Moreover, the influence of the landlord class led to the issue of a *Hidayat in* 1872 from the supreme authority in the State, making it incumbent upon all occupancy tenants to pay kind rents."

(26) The *Biswedars* and the landlords on the one side and the occupancy tenants and ordinary tenants on the other side, were continuously fighting with each other. In some of the areas of the erstwhile Patiala State, such as Sangrur and Bhatinda districts, the tenants just refused to pay the landlord's share of produce to him and the former just dare not enter these areas to claim their dues The ruler of the erstwhile State of Patiala issued Farman-i-shahi No. 6 dated Motibag Palace, Patiala, the 11th March, 1947, which noticed the progressively deteriorating relations between landlords and occupancy tenants and laid down that land which was subject-matter of occupancy rights should be partitioned between the landlords and the tenants in certain specified ratios. Since this measure did not achieve the desired end, it was followed by the Pepsu Abolition of Occupancy Tenures and Settlement of Land Disputes Ordinance, 2006 which was issued on August 15, 1949. It provided that those who were occupancy tenants within a period of seven years before March 11, 1947, and had since been dispossessed would continue to be regarded as occupancy tenants. Elaborate machinery was provided for partition of land between landlords and occupancy tenants, and an option was for the first time given to the occupancy tenant to acquire the share of landlord. A better version of this law was then promulgated as Patiala and East Punjab States Union Abolition of Biswedari Ordinance, 2006 Bk. Section 11 of this Ordinance laid

down that if an occupancy tenant within 15 days of the receipt of the notice to him consents in writing to the purchase of the share of the landlord the entire holding shall on deposit of compensation be transferable to him. In case the tenant did not agree to purchase the share of the landlord, the Partition Commissioner was authorised to partition the holding between the landlord and the occupancy tenant.

(27) In certain States there were a large number of occupancy tenants under the rulers of the erstwhile States. By virtue of Notification No. 8-B issued by the Revenue Department of Pepsu State on April 28, 1957, these occupancy tenants were made full proprietors of land. Under two notifications dated June 7, 1951, issued by the Revenue Department of the Pepsu State, *Adna Maliks* of Faridkot and Nalagarh were made the full proprietors of the lands held by them.

(28) All the above-mentioned measures, however, did not bring about the desired result and the relations between landlords and tenants did not improve as expected.

(29) Round-about this period, the Government of India, in the Ministry of States, passed a resolution on May 11, 1950, for appointing a committee to examine the system of land tenure in the Patiala and East Punjab States Union and to recommend such changes as might be necessary. This committee was headed by Shri C. S. Venkatachar, I.C.S., Regional Commissioner and Adviser, Rajasthan, and the report submitted by it was published in June, 1952. Elections were held to the Pepsu Assembly in March, 1952. United Front Ministry formed by S. Gian Singh Rarewala with the support of the Independent, Akali and Communist M.L.As., appointed a committee headed by S. Dara Singh as Chairman with following terms of reference:—

"(1) How to bring about coincidence between ownership and self-cultivation.

(2) Whether there should be any maximum or minimum limits to the size of holding and units of self-cultivation (if so what?).

(3) Solution of the financial implications of the proposals involved in Nos. 1 and 2.

(4) During the transitional period, what types of protection should be given to tenants-at-will."

This Committee noticed the plight of the occupancy tenants and also made some useful suggestions for ameliorating the lot of tenants-at-will. One of the suggestions made was that every individual landowner should be allowed to reserve 100 acres of land for personal cultivation and for the remaining area the tenants be given two years to exercise their option to purchase the proprietary rights of land on payment of compensation which might be fixed at 100 times the land revenue or Rs. 80 per bigha, whichever was less. It also suggested that the transfers made by landlords in favour of near relations to forestall the agrarian laws should be ignored and the tenants-at-will in possession of such land, if ejected should be restored their tenancies. The landlord's share of produce was recommended not to exceed one third of the total produce of land. One of the members of the committee Shri Inder Singh, M.L.A., recorded a note of dissent which leaned heavily in favour of tenants-at-will. One of the measures suggested by him was that the minimum term of tenancy in areas above the prescribed limit of self cultivation in which no option is exercised to purchase the proprietary right should be three years.

(30) Before any action could be taken on the recommendations of this Committee, the President of India assumed the administration of the State of Pepsu. The Pepsu Tenancy (Temporary Provisions) Act, 2008, Act No. 30 of 2008 was brought on the statute book. It received the assent of the President of India on March 28, 1952, and was published in the Pepsu Government Gazette on April 5, 1952. This law was enacted for a limited period because by that time the report of Venkatachar Committee had not been received by the President of India. Under this law, tenants-at-will were for the first time afforded security of tenures. They were not to be ejected from the lands in their possession unless they failed to pay rent regularly or they failed to pay the arrears of rent within six months of the date of the commencement of the Act. It was also made compulsory for the tenants to cultivate the land in accordance with the manner or to the extent customary in the locality, to keep

the land fit for cultivation and to execute a *kabuliat* agreeing to pay rent on demand in writing made by the landlord. Certain ejected tenants were invested with the right of restoration of possession of land, and it was provided that a landlord who had ejected a tenant and had failed to personally cultivate the land within one year, would be liable to hand over possession of land to his ex-tenant. In other words, this measure envisaged that the tenants-at-will who continued to cultivate land and pay the rent would not be liable to be ejected and even if they are ejected, the landlords were required to cultivate the land personally.

(31) The afore-mentioned Temporary Provisions Act was followed by an exhaustive statute called the Patiala and East Punjab States Union Tenancy and Agricultural Lands Act, 1953, which is commonly known as President's Act No. 8 of 1953. This Act for the first time, besides imposing a ceiling on holdings, made special provisions for seeing that the middlemen were removed and the land belonged to the actual tiller. Section 3 of this Act fixed the permissible limit as under:—

> "(1) 'Permissible limit' for the purposes of this Act means thirty standard acres of land and where such thirty standard acres on being converted into ordinary acres exceed sixty acres, such sixty acres:
>
> Provided that the permissible limit shall exceed one-half of the holding of a landowner:
>
> "Provided further that where the holding of a landowner exceeds ten standard acres, the minimum area of permissible limit shall be ten standard acres and where the holding is ten standard acres or less, the permissible limit shall be an area equal to the holding of the landowner.
>
> (2) For the purposes of computing the permissible limit under sub-section (1)—
>
> (a) where a person holds some land as a landowner and some other land as an allottee both kinds of land shall be included;

(b) land occupied by an occupancy tenant shall not be included in the holding of the landowner but it shall be included in the holding of the occupancy tenant in whom proprietary rights in respect of such land vest under the Patiala and East Punjab States Union Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953.

(c) where a landowner owns land jointly with other landowners his share of such land as ascertained from the record of rights shall alone be included;

(d) where a landowner dies within a period of six months from the commencement of this Act, the permissible limit shall be determined with reference to the land which has developed upon each of his successors-in-interest, including any land held by such successors-in-interest immediately, before the death of the landowner;

(e) any transfer of land made by the landowner after the commencement of this Act shall be disregarded;

(f) any class of land which the State Government may, by notification in the Official Gazette, specify, shall be excluded."

Reservation of land for personal cultivation was provided in section 5 of this Act as under:—

"5. (1) Subject to the provisions of this section, every land owner owning land exceeding thirty standard acres shall be entitled to select for personal cultivation from the land held by him in the State as a landowner any parcel or parcels of land not exceeding in aggregate area the permissible limit and reserve such land for personal cultivation by intimating his selection in the prescribed form and manner to the Collector:

Provided that in making such selection, the landowner shall include to the extent of the permissible limit, all land

which he held for personal cultivation immediately before the commencement of this Act.

(2) The right conferred by this section on a landowner to reserve land for personal cultivation shall cease if it is not exercised within a period of six months from the commencement of this Act."

Security of tenure was afforded to the tenant in section 7 which reads as under:—

"7. (1) No tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds, namely:—

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II:

Provided that no tenant shall be ejected under this clause after the expiry of a period of five years from the commencement of this Act.

Explanation.—The said period of five years shall commence—

(i) in the case of a widow, on the termination of the life interest of the widow;

(ii) in the case of a minor, on the attainment of majority: and

(iii) in the case of a member of the Armed Forces of the Union, on his discharge or retirement from service, as the case may be.

(b) that the tenant has failed to pay rent within a period of six months after it falls due;

(c) that the tenant, not being a widow, a minor or a member of the Armed Forces of the Union has, after the commencement of this Act, sublet without the consent in

writing of the landowner, the land comprising his tenancy or any part thereof;

(d) that the tenant has, without sufficient cause, failed to cultivate personally such land, in the manner and to the extent customary in the locality in which such land is situated;

(e) that the tenant has used such land or any part thereof in a manner which is likely to render the land unfit for the purpose for which it was leased to him;

(f) that the tenant, on demand in writing by the landowner, has refused to execute a *kabuliyat* agreeing to pay rent in respect of his tenancy in accordance with the provisions of sections 9 and 10.

(2) Notwithstanding anything contained in clause (a) of sub-section (1), a landowner holding thirty standard acres or less of land may, within a period of five years from the commencement of this Act, eject any tenant from such land within the permissible limit if he requires such land for personal cultivation.

Explanation 1.—For the purposes of determining the permissible limit, all lands held by the landowner as such landowner for personal cultivation immediately before the commencement of this Act shall be included.

Explanation 2.—In the case of a widow, minor or a member of the Armed Forces of the Union, the Explanation to clause (a) of sub-section (1) shall apply.

(32) Under section 8 it was provided that where a landowner ejected a tenant on the ground that he required the land for personal cultivation he shall be under a duty to restore the land to that tenant if he failed to personally cultivate the land within one year from the date on which he took over possession thereof. Maximum rent payable by the tenant was fixed at one-third of the total produce of the land. The tenants were allowed to become proprietors of land under section 20 of the Act which reads as under:—

"20. In this Chapter, the expression 'tenant' means a tenant as defined in clause (k) of sub-section (1) of section 2,—

(a) who is not liable to be ejected under clause (a) of sub-section (1) of section 7; or under sub-section (2) of that section, or

(b) who is not ejected within a period of five years specified in the proviso to clause (a) of sub-section (1) of section 7 or sub-section (2) of that section,

and includes a person who is restored possession of land under section 8.

Explanation.—For the purpose of clause (a), a tenant shall not be liable to be ejected under sub-section (2) of section 7—

(i) if, at any time before the expiry of the period of five years specified in that sub-section, the landowner has taken possession of land for personal cultivation to the extent of the permissible limit; and

(ii) the land held by the tenant is situated outside the permissible limit."

The compensation payable by the tenant was fixed at ninety times the land revenue payable for such land or Rs. 200 per acre, whichever was less.

(33) In short, President's Act No. 8 of 1953 allowed the landlords to reserve within a period of six months a maximum of 30 standard acres of land for personal cultivation, to eject tenants therefrom within a period of five years and thereafter to keep on personally cultivating the land. On their failure to personally cultivate the land from which tenants had been ejected on the ground of personal cultivation within a period of one year, they were obliged to restore this land to the ejected tenant. The tenants were granted the right to purchase land which fell beyond the permissible limit of the land and also that land from which they had not been ejected by the landlord on ground of personal cultivation for a period of five years from the date of the commencement of the Act. Really speaking, this Act envisaged that either the landlords themselves should cultivate the land personally or else the tenants who cultivate it would in due course become its proprietors. This Act also made provisions for acquisition by the State of *banjar* land and the formation of schemes for settlement of landless persons on such lands.

(34) The President's rule came to an end and a popular ministry was once again installed in PEPSU. The newly elected Assembly itself embarked upon the task of framing agrarian laws. The present Act which is Act No. 13 of 1955 was brought on the statute book on March 4, 1955. It retained most of the provisions of the President's Act No. 8 of 1953, but in some respects made a distinct departure therefrom. The Act was to remain in operation up to December 31, 1955, and the operation of section 7(1)(a), 7(2), and the provisions of Chapter IV were kept in abeyance and were ordered to come into force on such date as the State Government may, by notification in the Official Gazette, appoint. For the first time, the bar on the ejectment of the tenants and their right to purchase certain classes of land was kept in abeyance. It was hay day for the landlords and there was a mass ejectment of tenants in accordance with the ordinary law, namely, the Patiala Tenancy Act.

(35) The alarming situation created by these provisions once again received the attention of the Legislature which enacted PEPSU Act No. 9 of 1956. By this Act, the term of the Act, was extended to December 31, 1957, and the following proviso was added to clause (b) of sub-section (1) of section 7 of the Act:—

> "To clause (b) of sub-section (1) of section 7 of the principal Act, the following proviso shall be added, namely:—
>
> "Provided that no tenant shall be ejected under this clause unless he has been afforded an opportunity to pay the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment and he has failed to pay such arrears during that period."

(36) Mere non-payment of rent by a tenant did not entail his ejectment from the land held under his tenancy. The landlord had to wait for a further period of six months after the date on which he obtained a decree for ejectment of the tenant on the ground that he had failed to pay the arrears of rent.

(37) By this time, it was felt that allottees were entitled to a higher limit for reservation of land for personal cultivation. The

Pepsu Tenancy and Agricultural Lands (Second Amendment) Bill, 1956, was introduced with the following objects and reasons:—

> "The necessity for introducing certain agrarian reforms, particularly with a view to protecting the tenants against eviction and fixing for allottees a higher limit for reservation of land for personal cultivation, was being felt for some time past. This Bill seeks to achieve the object by amending the Pepsu Tenancy and Agricultural Lands Act, 1955."

Under this Bill, the permissible limit of allottees was proposed to be raised to forty standard acres of land and where such forty standard acres on being converted into ordinary acres exceeded eighty acres, such eighty acres. Under the proposed section 5, landowners were given a further period of six months to make a reservation. The other provisions of the Bill are given as under :—

> "5. Amendment of section 7 of the Act 13 of 1955.—In section 7 of the principal Act,—
>
> (1) in the proviso to clause (a) of sub-section (1) and in sub-section (2), for the words 'President's Act', the words 'Pepsu Tenancy' and Agricultural Lands (Second Amendment) Act, 1956' shall be substituted ;
>
> (2) after sub-section (2), the following new sub-sections shall be added, namely:—
>
> '(3) No tenant liable to ejectment under clause (a) of sub-section (1) or under sub-section (2) shall be ejected—
>
> (a) from the area of land held by him if it does not exceed five standard acres or from five standard acres if the area so held exceeds five standard acres unless he is accommodated on some other land by the State Government ;
>
> (b) from the area of land held by him on the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, if for a continuous

period of twelve years immediately preceding such commencement he has held any land under the landowner :

Provided that if the area so held exceeds fifteen standard acres he may be ejected from land which is in excess of fifteen standard acres.

Explanation I.—For the purposes of clause (a), in computing the area of five standard acres the area of land owned by a tenant shall be included.

Explanation II.—For the purposes of clause (b),—

(i) in computing the period of twelve years the period during which the grandfather, father, brother, son or grandson of the tenant held any land under the landowner shall be included ; and

(ii) in computing the area of fifteen standard acres the area of land owned by a tenant shall be included.

(4) The period of five years specified in the proviso to clause (a) of sub-section (1) and sub-section (2) shall, in the case of a tenant referred to in clause (a) of sub-section (3), be deemed to be extended to the date on which he is accommodated on some other land by the State Government unless he has been so accommodated within that period.'

6. Amendment of section 20 of Act 13 of 1955,—

In section 20 of the principal Act, in clause (a), after the brackets and figure '2', the words, brackets and figure 'or under clause (b) of sub-section (3)' shall be inserted.

7. Amendment of section 22 of Act 13 of 1955—

In section 22 of the principal Act, after sub-section (3), the following new sub-section shall be added, namely :—

'(4) The right conferred upon a tenant to acquire proprietary rights in respect of any land under this section shall be exercisable in such a manner that the

land owned by him, if any, do not exceed in aggregate thirty standard acres.'

8. Amendment of section 32 of Act 13 of 1955.—In section 32 of the principal Act, in sub-section (1) for the words commencement of the President's Act, the words and figures '18th November, 1953' shall be substituted."

(38) The proposed amendments envisaged that tenants holding less than five standard acres were not to be ejected unless they were accommodated on some other land and tenants who had continuously held land for a period of 12 years were not to be ejected from land up to 15 standard acres. The latter class of tenants was also invested with the rights to purchase the land under their tenancies. The concept of tenants being ejected within a period of five years faling that their right to purchase the land was also retained. Earlier, it had been provided that the transfers of land made after the commencement of the President's Act were not to affect the right of any person to acquire proprietary rights in such land, but this provision was modified to accommodate certain transferees who had been able to purchase land up to November 18, 1953.

(39) However, Act No. 15 of 1956, which was passed by the Legislature on October 29, 1956, on the basis of the Bill mentioned above; acquired the following shape :

"2. *Amendment of section* 1 *of Act* 13 *of* 1955.—In section 1 of the Pepsu Tenancy and Agricultural Lands Act, 1955 (hereinafter referred to as the principal Act),—

(1) in sub-section (2), for the words, figures, letters and brackets 'clause (a) of sub-section (1) of section 7, sub-section (2) of that section and Chapter IV shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint', the words, figures and letters section 7A and Chapter IV, IV-A and IV-B shall, save as otherwise provided in those provisions, come into force on the date of commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956' shall be substituted ;

(2) sub-section (3) shall be omitted.

6. *Amendment of section 6 of Act 13 of 1955.*—In section 6 of the principal Act, in sub-section (1), after the words and figure 'under section 5', the words, figure and letter or section 5A, as the case may be' shall be added.

7. *Amendment of section 7 of Act 13 of 1955.*—In section 7 of the principal Act,—

(1) sub-section (2) and clause (a) of sub-section (1) shall be omitted ; and

(2) in clause (c) of sub-section (1), for the words 'a minor or a member of the Armed Forces of the Union', the words 'a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity' shall be substituted.

8. *Insertion of new section 7A in Act 13 of 1955.*—After section 7 of the principal Act, the following new section shall be inserted, namely :—

7-A. *Additional grounds for termination of tenancy in certain cases.*—(1) Subject to the provisions of sub-sections (2) and (3), a tenancy subsisting at the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, may be terminated on the following grounds in addition to the grounds specified in section 7, namely:—

(a) that the land comprising the tenancy has been reserved by the landowner for his personal cultivation in accordance with the provisions of Chapter II ;

(b) that the landowner owns thirty standard acres or less of land and the land falls within his permissible limit :

Provided that no tenant shall be ejected under this sub-section—

(i) from any area of land, if the area under the personal cultivation of the tenant does not exceed five standard acres, or

(ii) from an area of five standard acres, if the area under the personal cultivation of the tenant exceeds five standard acres, until he is allotted by the State Government alternative land of equivalent value in standard acres.

(2) No tenant, who immediately preceding the commencement of the President's Act has held any land continuously for a period of 12 years or more under the same landowner or his predecessor in title, shall be ejected on the grounds specified in sub-section (1)—

(a) from any area of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or

(b) from an area of fifteen standard acres, if the area under the personal cultivation of the tenant exceeds fifteen standard acres :

Provided that nothing in this sub-section shall apply to the tenant of a landowner who, both, at the commencement of the tenancy and the commencement of the President's Act, was a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity.

Explanation.—In computing the period of 12 years, the period during which any land has been held under the same landowner or his predecessor in title by the father, brother or son of the tenant shall be included.

(3) For the purpose of computing under sub-sections (1) and (2) the area of land under the personal cultivation of a tenant, any area of land owned by the tenant and under his personal cultivation shall be included'.

9. *Substitution of section* 8 *of Act* 13 *of* 1955.—For section 8 of the principal Act, the following shall be substituted, namely :—

'8. *Security of tenure to certain tenants.*—Subject to the provisions of section 7, every tenant admitted after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956, shall hold land for a minimum term of three years :

Provided that nothing herein shall apply to the tenant of a person who is a widow, a minor, an unmarried woman, a member of the Armed Forces of the Union or a person incapable of cultivating land by reason of physical or mental infirmity'.

10. *Substitution of section* 20 *of Act* 13 *of* 1955.—For section 20 of the Principal Act, the following shall be substituted, namely:—

20. *Definition of 'tenant'*.—In this Chapter, the expression 'tenant' means a tenant as defined in clause (k) of section 2, who is not liable to be ejected—

(a) under clauses (a) and (b) of sub-section (1) of section 7A, or

(b) under clauses (a) and (b) of sub-section (2) of section 7A :

Provided that this definition shall not apply to a tenant who is to be allotted by the State Government land under the proviso to sub-section (1) of section 7A."

(40) A new Chapter IV-A was added making elaborate provisions of ceiling of land, determination of surplus area, its utilisation and payment of compensation to the landlords of their surplus area which under the provisions of the statute came to vest in the State Government, for being allotted to landless tenants, workers, etc.

(41) In substance, the Act which was of temporary duration was converted into a permanent measure. The provisions of clause (a) of sub-section (1) of section 7, and sub-section (2) of that section which related to the rights of the tenants not to be ejected save in accordance with the provisions of this Act were again revitalised. The rights of the tenants to purchase certain categories of land were also revised but the obligation of the landlords to eject the tenants within a period of five years and the corresponding rights of the tenants to purchase such land in case of their non-ejectment therefrom were done away with. The newly added section 7-A made it permissible for the landlords to eject tenants from their permissible areas barring some exceptions, namely, the area being under small tenants holding up to 5 standard acres and area up to 15 standard acres being under old tenants. The rights of the tenants to purchase land were confined to only that land which formed either the surplus area of the landlords or that land had been continuously under a tenant for a period of 12 years before the coming into force of the President's Act No. 13 of 1955. The tenants right to claim possession of land from which he had been ejected and which he failed to cultivate personally was also taken away. But one thing is quite clear. The tenant could retain the possession of land for a minimum period of 3 years even if he did not pay any rent during this period but this right was not available to tenants of widows, minors and the members of the Armed Forces etc. mentioned in proviso to section 8. Even when the landlord was allowed to eject a tenant, the right guaranteed to him under the proviso appearing under section 7 (1) (b) of the Act regarding the grant of six months' time to pay the arrears of the outstanding rent and on his doing so his non-availability to ejectment was retained.

(42) To sum up, it might be observed that at least in the erstwhile State of Patiala, which was the principal State in the Patiala and East Punjab State's Union, the tenants of land had been continuously given a raw deal. Originally they cultivated land under the Rulers and if that position had been allowed to continue, they would in due course of time have become the proprietors of land. The trouble, however, arose when assignments of land revenue or remissions of land revenue in the shape of *muafis* were granted to influential officials and big landlords who wielded considerable influence with the ruling house. In the words of Popham Young, the

Ahlkar class and the *Biswedar* class joined hands together to suppress the ordinary tillers of land by depriving them of their rights. The means adopted by them to achieve the desired ends can by no means be regarded to moral or legal. The *Ahlkars* exercising judicial functions to settle disputes should have decided these disputes on the basis of principles known to law instead of favouring their own class. The decision given by them though invested with the trappings of judicial pronouncements were clearly opposed to the principles of natural justice for, they were arrived at principally with a view to favour their own class. This state of affairs was known to the erstwhile Ruler of the State and the Governments which followed. The Ruler himself made tacit admissions of this fact in the various *Farmans* and Ordinances relating to occupancy tenants issued by him, to which reference has been made in the earlier part of this judgment. Further winds of change which blew in favour of the tenants were also noticed by the Government and it was rightly felt that the lot of ordinary tenants should also be ameliorated. In this situation, there was nothing strange for the Legislature to provide that such tenants should not be ordered to vacate land even if they did not pay rent for a period of three years and even when orders of ejectment were passed they should be further provided with opportunities to pay up the rent within a period of six months. A provision like this has to be read in the context of the historical background of the relations between the landlords and the tenants and it cannot be considered *de hors* the other statutory provisions, nor can it be interpreted to give any additional rights to the landlords.

(43) Section 32-A of the Act lays down that no person shall be entitled to own or hold land as landowner or tenant under his personal cultivation within the State which exceeds in the aggregate the permissible limit. Section 32-E of the Act lays down that the surplus area of a landowner or in the case of the surplus area of a tenant which is not included within the permissible limit of the landowner or the tenant shall be deemed to have been acquired by the State Government for a public purpose. Any reference to these two sections does not advance the case of the respondents either. The ownership and possession of land with the permissible limit *per se* does not imply that tenants inducted on such land shall not be governed by the other provisions of the statute which govern their eviction from the land in their possession under certain conditions. It

has been noticed that under the President's Act No. 8 of 1953, a ceiling on holdings was imposed and the landlords were given five years' time to evict the tenants from reserved land on the ground that they needed it for personal cultitvation. Where the landlord failed to cultivate the land personally, he was obliged to hand over the possession of land to the tenant. Again, where a landlord did not eject the tenants from the reserved area for a period of five years, he was debarred from doing so in the future. The tenants in possession of such were also authorised to purchase the same on nominal value. This Act truly and faithfully carried out the import of the principle that the land should vest in the actual tiller. It has also been noticed that when the Pepsu Legislature itself embarked upon the task of enacting agrarian legislation, it adopted a somewhat vacillating attitude. In some respects, the rights of the tenants were further augmented and in other respects these rights were watered down to some extent. For instance, under the proviso to section 7(1) (b) of the Act, which was introduced by Pepsu Act No. 9 of 1956, it was laid down that a tenant should not be ejected unless he had been given an opportunity of paying the arrears of rent within a further period of six months from the date of the decree or order directing his ejectment, but the right of the tenant to purchase land forming reserved area of the landlord from which he had not been ejected for a period of five years granted to him under President's Act No. 8 of 1953 was taken away. At the same time, the Legislature did not bring on the statute book any measure which laid down in clear terms that even when a tenant continued to pay the rent and to abide by the other covenants of his tenancy, he would still be liable to be ejected from the land. The provisions regarding the quantification of permissible area and the vesting of the surplus area in the State only indicate the legal capacity of a person to hold a particular area of land and if he inducts tenants on it, the tenants would be vested with all the rights granted to them by the statute. As I said earlier, laws relating to agrarian reforms have to be given a benevolent interpretation in favour of the tillers and unless the legisltature lays down to the contrary a Court of law should not, by a process of interpretation alone, whittle down the rights of the tenants.

(44) The matter can also be looked at from another angle. Section 7 appears in the Chapter relating to general rights of tenancy. It lays down the grounds on which a tenant can be

ejected from land. The Legislature advisedly enacted this provision but kept in abeyance by enacting Act No. 13 of 1955. If it had been intended to do away with the rights of the tenants, section 7 could have been easily deleted. The matter again received the attention of the Legislature when it enacted Act No. 15 of 1956 when the Act was permanently brought on the statute book and provisions of section 7 were revived. One cannot forget that the present section 8 of the Act was also substituted by this very statutory measure. Can it be imagined with any justification that the Legislature was in the same breath reviving section 7 which conferred rights on the tenants and recasting section 8 to obliterate those very rights ? In my considered opinion, such an absurd intention could not be attributed to the Legislature. It is settled law that so far as possible two provisions of a statute must be read together and a repeal by implication should be avoided. Crawford in his celebrated treatise of the statutory Construction says—

> "Of course, where a repeal is effected through implication, the latter enactment thus affecting pre-existing law must be subjected to close scrutiny in the light of its own provisions and those of the law apparently abrogated in whole or in part. The construction of the new law becomes an important consideration, since its meaning and scope will determine whether a repeal takes place and if so, its extent. And usually one of two questions will arise :
>
> (1) Whether the new law is intended as a substitute for the old ; or
>
> (2) Whether the new law is irreconcilably inconsistent with the old, so that the former is thereby terminated.
>
> In brief, the problem will be simply to determine what is the legislative intention — whether the old law shall cease or whether it shall be supplemented."

(45) Similar views were expressed by a Full Bench of this Court in *The Ambala Ex-Servicemen Transport Co-operative Society, Ltd., Ambala City, and another* v. *The State of Punjab and another*, (10)—

> "The rule of interpretation of statutes applicable to a matter like this is given at page 344 of Craies on Statute Law, Fifth Edition, in the following words :
>
> 'I do not think', said Grove, J., in *Hill* v. *Hall* (11), 'that a mere accidental inconsistency between two statutes

(10) AIR 1959 Pb. 1.

(11) (1876)1 Ex. D. 411 (g).

amounts to a total repeal of the earlier; such a doctrine might be pushed to a mischievous extent.' 'What words', said Dr. Lushington in The India, 'will establish a repeal by implication it is impossible to say from authority or decided cases.'

"If, on the one hand, the general presumption must be against such a repeal, on the ground that intention to repeal, if any had existed, would have been declared in express terms, so, on the other hand, it is not necessary that any 'express reference be made to the statute which it is intended to repeal. The prior statute would, I conceive, be repealed by implication if its provisions were wholly incompatible with a subsequent one; or if the two statutes together would lead to wholly absurd consequences; or if the entire subject-matter were taken away by the subsequent statute."

(46) In this situation, it has to be seen whether sections 7 and 8 of the Act can be read together or not. As I look at the matter, there appears to be no inconsistency between these sections. Both of them when read together lay down that tenant could be ejected in the circumstances mentioned in section 7 but even if these circumstances were present he should enjoy security of tenure for a minimum period of three years except of course when he happens to be a tenant of a widow, minor or a person suffering from mental incapacity etc. in which case the security of tenure for three years will not be available to him.

(47) Section 8 when read in isolation leads manifestly to absurd results as observed by the motion Bench. If it is treated as an additional ground available to the landlord for ejecting the tenant, then according to the language employed in the proviso, its benefits would not be available to widows, minors and other persons who are mentioned in the proviso and who are eminently suited to receive preferential treatment. In order to avoid this absurdity, hardship and injustice, the words "subject to the provisions of section 7" appearing in this section would have to be read notwithstanding the provisions of section 7, in accordance with the view expressed by their Lordships of the Supreme Court in *Tirath Singh's case* (9) (supra).

(48) An argument is raised that section 7 of the Act as worded admits of grounds other than those mentioned in that section on which a tenancy might be terminated. I find no merit in this argument either. This section, of course, is couched in the widest possible language when it says that—

> "no tenancy shall be terminated except in accordance with the provisions of this Act or except on any of the following grounds ....."

But this language has been employed for placing greater emphasis on the rights of the tenants. The Legislature proposed that the words "no tenancy shall be terminated except in accordance with the provisions of this Act" and the words "or except on any of the following grounds....." were synonyms with each other and used both the expressions for abundant caution. Furthermore, this section has been modelled on section 7 of the President's Act No. 8 of 1953, which was also similarly worded.

(49) In my considered opinion, the view taken by the learned Judge of this Court in *Randhir Singh and others* v. *Financial Commissioner and others* (1) (supra) and the view taken by the Letters Patent Bench in *Devi Chand's case* (2) (supra) does not lay down correct law.

(50) The interpretation which I have placed on section 8 would no doubt induce reluctance in small landowners to give their land to the tenants for cultivation even for a limited period, but if this policy has actually achieved recognition in section 7 of the Act, I cannot misconstrue the provisions of section 8 by imagining apprehensions of this type. A small landowner who wishes to be temporarily away from land can certainly seek the help of another landowner of his type on reciprocal basis. If in spite of this some land remains fallow it is reasonable to assume that the legislature would step in to meet the situation. It is certainly not for a Court of law to make inroads on the important rights of tenants which have been recognised by the legislature on such considerations.

(51) I have already noticed that the legislature has given some preferential treatment to the members of the Armed Forces who are holding land as tenants inasmuch as in their case right to sublet land comprised in their tenancy has been recognised. In the case of members of the Armed Forces who are landlords, the legislature only chose to give them preferential treatment for making the

reservation of land during extended period. The very fact that these provisions were enacted shows that the legislature was aware of the problems faced by the members of the Armed Forces either as landlords or as tenants. It would indeed be a laudable thing if the rights of the members of the Armed Forces, who are small landowners, are also protected, but this matter lies exclusively in the province of the legislature.

(52) I would accordingly answer the three questions posed to the Bench as follows:—

(1) Section 8 of the Act does not afford an additional ground of ejectment to a landlord for ejecting a tenant brought on the land after October 30, 1966, the date on which the Second Amendment Act came into force.

(2) This section does afford additional security of tenure to tenants other than those of the persons mentioned in the proviso inasmuch as it entitles them to remain on land for a minimum period of three years, come what may.

(3) Only those landlords who are mentioned in proviso to section 8 of the Act can take benefit thereof subject to the proviso appearing under section 7 of the Act.

The case may now be placed before a Division Bench for its disposal in the light of the answers given above.

K.T.S.

FULL BENCH

CIVIL APPELLATE

Before Prem Chand Jain, S. C. Mital and M. R. Sharma, JJ.

INDER SINGH and others,—*Plaintiffs-Appellants.*

versus

RAGHBIR SINGH, etc.,—*Defendants-Respondents.*

Regular Second Appeal No. 1302 of 1962

January 17, 1977.

Custom—Entries in Riwaj-i-am—Evidentiary value of—Stated—widow's power of alienation of immovable property acquired by the husband—Riwaj-i-am of Amritsar District—Answer to question No. 52—Whether a correct exposition of custom.